

Via email: [Dana.Ghinzel@ato.gov.au](mailto:Dana.Ghinzel@ato.gov.au)

Attention: Dana Ghinzel

Australian Taxation Office  
GPO Box 9977  
Sydney NSW 2000

9 February 2018

## DRAFT PRACTICAL COMPLIANCE GUIDELINE PCG 2017/D14

Dear Dana,

BDO welcomes the opportunity to provide feedback in response to Draft Practical Compliance Guideline PCG 2017/D14 ('PCG 2017/D14') - *Exempt car residual benefits: compliance approach to determining private use of vehicles* that was released by the Australian Taxation Office (ATO) on 18 December 2017. PCG 2017/D14 sets out general principles for determining when an employer does not need to comply with substantiation requirements for vehicles provided to employees when their private travel is relatively low to maintain FBT exemption status under subsections 8(2) and 47(6) of the Fringe Benefits Tax Assessment Act 1986 (FBTAA).

This BDO submission recommends:

- When finalised, PCG 2017/D14, have prospective application from FBT year commencing 1 April 2018, in order for affected stakeholders to modify their administrative practice to comply with the safe harbour conditions for relief;
- Clarification on whether PCG 2017/D14 applies to private use of vehicles under both subsections 8(2) and 47(6);
- Clarification on, and potential simplification of, the substantiation requirements in order for employers to properly ascertain whether any private vehicle use is "*minor, infrequent and irregular*". BDO recommends that employees complete an annual declaration warranting such minor usage;
- Extending the safe harbour rules beyond the limited class of vehicles currently envisaged. In particular, to non-commercial vehicles and/or those that are salary packaged;
- Expanding and clarifying that the safe harbour rules include eligible vehicles used by service providers, i.e. individuals who provide a service and the vehicle is a tool of trade necessary to deliver that service (such as a plumber);
- Removing the prohibition that vehicles cannot benefit from the safe-harbour relief if they fitted with non-business accessories as the focus of the safe harbour relief should be on the usage of the vehicle;
- Removing the condition that eligible vehicles is below the Luxury Car Tax Limit, considering the market value of many commercial vehicles can exceed the luxury car limit;
- Substituting the specific numeric test of what constitutes "*minor, infrequent and irregular*", with a test that provides a relative or proportional result, namely in percentage terms. For example, private use of less than 10%;
- Further examples that reflect both contemporary and practical scenarios of using eligible vehicles for private use;
- The reference to diversion take into consideration the practicalities of travel; and

- Consideration of employees who change work locations and therefore diversions.

These and other issues are expanded upon in the attached appendix.

Should you wish to discuss any of our comments, please feel free to contact me on +61 2 9240 9736, or via email: [Lance.Cunningham@bdo.com.au](mailto:Lance.Cunningham@bdo.com.au).

Kind regards,

A handwritten signature in black ink, appearing to read 'Lance Cunningham', written over a light grey rectangular background.

Lance Cunningham  
BDO National Tax Director

### Prospective Application

PCG 2017/D14 states that when finalised it will apply to car and residual benefits provided in the 2018 FBT year and later years. That is, it will apply for the FBT year commencing 1 April 2017. Accordingly, there is a slight retrospective effect to safe-harbour criteria as prescribed in PCG 2017/D14.

BDO would consider it appropriate if the finalised version of PCG 2017/D14 would apply prospectively from 1 April 2018. This will provide sufficient time for stakeholders to be appropriately consulted. Moreover, it will also allow employers sufficient time to consider the safe-harbour criteria as prescribed in the final ruling and to implement the necessary administrative and record keeping procedures to adequately measure private use that is “*minor, infrequent and irregular*”.

### Vehicle Under or Over One Tonne

PCG 2017/D14 needs to make it clear whether it is relating to private use under both subsections 8(2) and 47(6) are the same for vehicles with a load capacity under 1 tonne as those with a load capacity in excess of 1 tonne. While both these subsections are mentioned at the start of PCG 2017/D14, all the examples refer to vehicles on less than one tonne carrying capacity.

### Practical Impact - Substantiation Still Required

The purpose of PCG 2017/D14 is to provide relief to employers from substantiation requirements in certain circumstances where there has been minor private use of the eligible vehicle, as well as relieving the Commissioner of compliance resources to determine the use of such private use.

However, the conditions of relief as set out in PCG 2017/D14 still require employers to maintain some kind of record keeping to determine that private usage of the eligible vehicle is within the requirements of the safe harbour provisions. Moreover, these conditions need to be assessed on an annual basis.

The conditions for relief effectively require that the total kilometres travelled in the FBT year be compared to the total yearly kilometres travelled between an employee’s home and workplace and on wholly work trips, in order to ascertain the level of private travel undertaken. As reflected in footnote reference “5”, as well as in Examples 1 and 2, this will require that odometer records are maintained from the beginning to the end of the FBT year.

Further, there needs to be a measurement system whereby it can be ascertained if private usage falls within the restrictive and specific numerical criteria, for example whether the 750kms threshold has been breached. The conditions for relief will also require some methodology to differentiate private trips from work trips, for example a logbook.

It is suggested that a less onerous method of verifying the acceptable level of minor private usage. For instance, an annual employee declaration.

## Recording keeping requirements

The lack of recording keeping requirements is inconsistent with the onus on employers to monitor the activities of employees.

According to paragraph 6(a) taxpayers do not need to rely on the PCG 2017/D4, but if they do they do not need to keep records about their employee's use of the vehicle that demonstrate that the private use of the vehicle is 'minor, infrequent and irregular', and 6(b) the Commissioner will not devote compliance resources to review access to car-related exemptions for that employee.

Employers may choose to rely on PCG 2017/D4 if pursuant to paragraph 5(a) they provide an eligible vehicle to a current employee, (b) the vehicle is provided to the employee to perform their work duties and (c) they take all reasonable steps to limit private use of the vehicle and have measures in place to monitor such use.

What constitutes reasonable steps would depend on the circumstances of a business, but may include a monitored policy on private use of vehicles. Monitoring may take the form of checks of odometer readings to compare business kilometres and home to work kilometres travelled by the employee against the total kilometres travelled. Example 1 contains an illustration of such monitoring.

Also, if an employee uses a vehicle to travel between their home and their place of work and any diversion adds no more than two kilometres to the ordinary length of that trip, no more than 750 kilometres in total for each FBT year for multiple journeys taken for a wholly private purpose, and no single, return journey for a wholly private purpose exceeds 200 kilometres then you do need to monitor and keep records.

BDO recommends there should be more guidance on what constitutes reasonable steps.

## Requirement that the Vehicle is Provided to the Employee to Perform Their Work Duties

PCG 2017/14 stipulates the conditions that need to be met in order to meet the criteria for safe-harbour relief. This includes the following:

5. *You may choose to rely on this draft Guideline if:*

...

*(b) the vehicle is provided to the employee to perform their work duties<sup>4</sup>*

The footnote reference "4" provides a number of examples including "a utility truck provided to a delivery driver, a panel van to a tradesperson or a taxi to a taxi driver."

BDO considers that this criteria relating to vehicles provided for employees to perform their work duties will include where the vehicle is fundamental to the delivery of the service such as a limousine, taxi, hearse. However, this is distinguishable from circumstances where the individual provides a service (such as a plumber) and the vehicle is a tool of trade necessary to deliver that service.

BDO considers that criteria 5(b) should be expanded to make it clear that the safe harbour rules will include eligible vehicles used by service providers.

## Prohibition of Non-Business Accessories

PCG 2017/14 stipulates the conditions that need to be met in order to meet the criteria for safe-harbour relief. This includes the following:

5. *You may choose to rely on this draft Guideline if:*

...

*(b) the vehicle has no non-business accessories<sup>6</sup>*

As previously mentioned, paragraph 5(b) of PCG 2017/D14 refers to “*the vehicle is provided ... to perform their work duties*”. BDO considers this as reference to a vehicle that is an essential tool for that employee in a similar manner to a desk is an essential tool to an office worker. Often the employee is required to spend a lot of their working hours in that vehicle.

The addition of non-business accessories will include items added by the employee to personalise their work environment and to allow them to better perform their duties. This is particularly the case where the employee spends a lot of time travelling for work, e.g. delivery drivers.

Footnote reference “6” introduces a distinction between non-business accessories and non-business safety accessories. For instance, it states that non-business safety accessories such as child safety seats are permissible. However, it is considered that many non-business accessories that improve the quality and suitability of the vehicle as a workplace could be regarded as improving the work place health and safety of the employee, even where they are not strictly speaking considered safety accessories. For example, a sophisticated stereo system for work related long distance driving, which would greatly benefit the mental health of the employee.

BDO considers that the requirement that there be no non-business accessories should be removed entirely.

## Luxury Car Tax Limit

PCG 2017/14 stipulates the conditions that need to be met in order to meet the criteria for safe-harbour relief. This includes the following:

5. *You may choose to rely on this draft Guideline if:*

...

*(e) the vehicle had a GST-inclusive value less than the luxury car tax threshold<sup>7</sup> at the time the vehicle was acquired.”*

For the 2017/2018 financial year the luxury car limit (LCT) is \$75,526 for fuel-efficient vehicles and \$65,094 for other vehicles (*Luxury Car Tax Determination LCTD 2017/1 Luxury car tax: what is the luxury car tax threshold and the fuel-efficient car limit for 2017-18 financial year?*)

BDO considers that a reference to the need for the purchase price of the vehicle to be less than luxury car limit could be interpreted to be that vehicles in excess of the limit are luxury vehicles and not commercial vehicles.

Many commercial vehicles have a purchase cost in excess of the luxury car limit. For example, above one tonne category all of the Toyota Landcruiser utilities cost in excess of the luxury car limit. Limousines and taxis can also exceed the same limit.

BDO considers that the focus of PCG 2017/D14 should be on the use of a vehicle, rather than its purchase cost. Accordingly, BDO considers that the requirement that the purchase price of the vehicle be less than luxury car limit should be removed entirely.

### **Prohibition on Salary Packaged Commercial Vehicles**

PCG 2017/14 stipulates the conditions that need to be met in order to meet the criteria for safe-harbour relief. This includes the following:

*5. You may choose to rely on this draft Guideline if:*

...

*(e) the vehicle is not provided as part of a salary packaging arrangement8.....”*

BDO considers this prohibition against vehicles which are included in salary packing arrangements is arbitrary and shifts the emphasis away from the permissible private use of the vehicle. A requirement that the vehicle not be subject to a salary packaging arrangement does not reflect how a vehicle is to be selected or used. Take an example of where an employer offers a very base utility and the employee is prepared to forego some salary to have a utility that is more comfortable to travel in since that employee will be in the vehicle for long periods of time to perform their work.

BDO considers the Commissioner should reconsider this prohibition against salary packaged commercial vehicles being able to utilise the safe harbour relief.

### **Measurement of Permissible Private Usage**

PCG 2017/14 stipulates the conditions that need to be met in order to meet the criteria for safe-harbour relief. This includes the following:

*“5. You may choose to rely on this draft Guideline if:*

.....

*(g) your employee uses the vehicle to travel*

- i. between their home and their place of work and any diversion adds no more than two kilometres to the ordinary length of that trip*
- ii. no more than 750 kilometres in total for each FBT year for multiple journeys taken for a wholly private purpose, and*
- iii. no single, return journey for a wholly private purpose exceeds 200 kilometres.”*

BDO considers these numeric requirements imposes extremely prescriptive and precise measurement benchmarks, which may not be reflective of the relative usage of a vehicle for employment usage as opposed to minor private use.

That is, the distances suggested as the safe harbour are all actual specified distances, e.g. no single private journey exceeds 200 kilometres, which may not reflect the pattern of use of the vehicle.

Some commercial vehicles will travel a low total of kilometres per annum whilst others will travel substantial distances, for example an occasionally used commercial vehicle compared to a delivery van.

We consider that a specific cap of 750 kilometres for private use would be a distorted cap when comparing a vehicle that travels 5,000 kilometres in a year with one that travels 90,000 kilometres. For instance, delivery vehicles may travel 60,000 kilometres a year. Furthermore, employees may live significant distances from their place of employment, particularly in recent times where due to escalating housing costs there has been a trend for employees to seek accommodation in regional areas.

In situations of high employment related mileage and/or where employees are living long distances from their workplace, the caps of 200 kilometres (for single journeys) and 750 kilometres (for total private journeys) would be rapidly expended.

BDO recommends the parameters should be more realistic. The 2km diversion threshold is too low - this is not practical as it does not allow for instances where there is travel congestion or other legitimate reasons for variances in travel.

The 750km threshold should use percentage as an alternative to the 750km threshold, consideration should be given to using a percentage. This way it will also allow for the situation where you have genuine commercial vehicles travelling significant kms (such as delivery vehicles travelling upwards of 60,000kms a year).

The prescriptive numeric kilometre caps should be replaced by a methodology that best reflects the relative use of private usage of a commercial vehicle, namely percentage terms. We consider that an appropriate percentage to reflect “*minor, infrequent and irregular*” private use would be less than 10%.

## Further Examples

BDO appreciates the inclusion of examples in PCG 2017/D14. However, in order to clarify to taxpayers how to properly apply the safe-harbour rules we would welcome more examples. Particularly examples that would illustrate common situations where there would be minor and infrequent private use such as school children drop-offs/pick-ups; acceptable record keeping etc.

PCG 2017/14 stipulates the conditions that need to be met in order to meet the criteria for safe-harbour relief. This includes the following:

*“5. You may choose to rely on this draft Guideline if:*

*.....*

*(g) your employee uses the vehicle to travel*

- iv. between their home and their place of work and any diversion adds no more than two kilometres to the ordinary length of that trip*

- v. *no more than 750 kilometres in total for each FBT year for multiple journeys taken for a wholly private purpose, and*
- vi. *no single, return journey for a wholly private purpose exceeds 200 kilometres.”*

These conditions do not reflect the contemporary working environment in Australia. Employees are increasingly working from locations other than ‘the office’ and from home. Increasing numbers of employees are also able to conduct the majority if not all of their business using portable electronic devices. This means that less physical equipment is required to establish a place of work, which for some employees could be anywhere they have access to and can work on portable electronic devices.

We therefore request further clarity on the definition of ‘work location’ in TR 2017/D6 and guidance on how travel between such locations should be treated. BDO also recommends that it would be beneficial to have more practical examples such as school children drop-offs/pick-ups, filling up on petrol, acceptable record-keeping and residual vehicles. BDO further requests that the finalised PCG contain more examples to address the modern working scenarios including flexible working arrangements.

## Declarations

There are currently declarations that employers that have to complete to qualify for car fringe benefits namely the [Employee's car declaration](#) and [Residual benefit declaration - vehicles other than cars](#), however there is no such declaration for exempt car benefits.

BDO recommends employers be required to complete declarations for applications for exempt car benefit concessions which would assist with ATO compliance.

## Changing work locations

There are certain categories of employee such as tradespeople who will have changing work locations and therefore changing diversions on their journey from work to home. ‘Work location’ as outlined in paragraph 6 of TR 2017/D6 is currently defined as “any place an employee attends for work” but when read in conjunction with footnote 7 in TR 2017/D6, which states “an employee may attend a place for different purposes at different times (sometimes for work, sometimes for private purposes)”, indicates that a place is only a work location on occasions the employee attends there for work.

BDO recommends PCG 2017/D14 take into consideration employees who change work locations and the impact this may have on their journey from work to home.