Inland Revenue
*Te Tari Taake*

**"COST PRICE OF THE MOTOR VEHICLE" – MEANING OF THE TERM FOR FRINGE BENEFIT TAX (FBT) PURPOSES**

**PUBLIC RULING - BR Pub 03/06**

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**Note** (not part of ruling): This ruling replaces public ruling BR Pub 00/10 which was published in *Tax Information Bulletin* Volume 12, No 10 (October 2000). BR Pub 00/10 applied until 31 October 2003. This ruling is essentially the same as BR Pub 00/10. Its period of application is from 1 November 2003 to 31 October 2008.

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This is a public ruling made under section 91D of the Tax Administration Act 1994.

**Taxation Law**

All legislative references are to the Income Tax Act 1994 unless otherwise stated.

This Ruling applies in respect of section CI 3(1) and Schedule 2 of the Income Tax Act 1994 (and the meaning of "cost price" for the purposes of determining the value of the benefit to the employee).

**The Arrangement to which this Ruling applies**

The Arrangement is the provision of a motor vehicle by an employer, who owns the motor vehicle, to an employee for the private use and enjoyment of the vehicle by the employee.

**How the Taxation Law applies to the Arrangement**

The Taxation Law applies to the Arrangement as follows:

The "cost price of the motor vehicle" for the purpose of the calculation of fringe benefit tax under section CI 3(1) and Schedule 2 will be determined as follows:

- The "cost price of the motor vehicle" will include:
  - the purchase price of the vehicle (inclusive of goods and services tax (GST)).
  - the cost of initial registration and licence plate fees (inclusive of GST).
  - the cost of accessories, components, and equipment (other than "business accessories") fitted to the vehicle at the time of purchase or at any time thereafter (all costs inclusive of GST).
  - the cost of sign writing or painting the vehicle in the employer's colours or style (all charges GST inclusive).

- the cost (if any) of transporting the motor vehicle to the place where the motor vehicle is to be first used (all charges GST inclusive).

- The "cost price of the motor vehicle" will not include:

  - the cost of annual vehicle re-licensing fees.

  - the cost of "business accessories", fitted to the motor vehicle at the time of purchase or at any time thereafter.

  - the cost of financing the purchase of the vehicle.

For the purposes of this Ruling:

- The term "business accessories" means accessories, components, and equipment fitted to the vehicle, required for and relating solely to the business operations to which the vehicle is used, and that are in themselves "depreciable property" for the purposes of the Act. Where powered, they will usually require the vehicle's power source to operate them, e.g. a two-way radio, roof mounted flashing warning lights, electronic testing/monitoring equipment, etc.

- The term "fitted to the vehicle" means permanently affixed to the vehicle. Permanency would not be negated if the accessory were removed from the vehicle on a temporary basis, for repair or maintenance, or on the removal of the accessory at the time of sale or disposal of the vehicle or the accessory itself.

**The period or income year for which this Ruling applies**

This Ruling will apply from 1 November 2003 to 31 October 2008.

This Ruling is signed by me on the 4th day of September 2003.

**Martin Smith**
General Manager (Adjudication & Rulings)

Inland Revenue
Te Tari Taake

**COMMENTARY ON PUBLIC RULING BR Pub 03/06**

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusion reached in public ruling BR Pub 03/06 ("the Ruling").

All legislative references are to the Income Tax Act 1994 unless otherwise stated.

**Background**

If an employee has the private use or enjoyment, or the availability for private use or enjoyment, of a motor vehicle that is owned by the employer of the employee, the employer must pay FBT on the value of the benefit. The benefit is calculated by reference to the cost price of the vehicle to the employer, not the value of the benefit to the employee. If an employer purchases a motor vehicle to be used by, or to be made available for use by, an employee, a number of costs are incurred in addition to the purchase price of the vehicle for the vehicle to be in a state where it can be used by the employee. Some of the additional costs include:

- On-road costs. Under section 5 of the Transport (Vehicle and Driver Registration and Licensing) Act 1986, no motor vehicle can be driven on the road unless:
    - the motor vehicle is registered; and
    - the registration plates and a current license issued for the vehicle are affixed and displayed on the vehicle; and
    - the full amount of the accident compensation levy has been paid.
- The cost of transporting the vehicle to the initial place where it is to be used.
- The cost of fitted accessories, components, or equipment required for and relating solely to the business operations for which the vehicle is used.
- The cost of accessories, components, and equipment, such as towbars, roof racks, and stereos, fitted to the car at the time of purchase or at some later time.

This Ruling identifies the costs that form part of the "cost price of the motor vehicle" for the purposes of calculating FBT.

The Commissioner considers the cost of motor vehicles includes accessories that are permanently affixed to the vehicle. Everything that is permanently affixed to the vehicle, including accessories such as CD players, towbars, and radiotelephone sets, is part of the cost to the employer of making the vehicle available to the employee. Accessories not so permanently affixed are not part of the cost price of the vehicle in the first place and their FBT (or other income tax) status is to be determined separately. However, the Commissioner considers that certain accessories, permanently fitted to the vehicle and relating solely to the business operations for

which the vehicle is used, should not be treated as part of the cost of the vehicle for FBT purposes. For example, a radiotelephone set fitted to the vehicle and only able to be used for business purposes would be excluded from the vehicle's cost price because it is a "business accessory". On the other hand, a mobile phone is an example of an item considered not to be part of the cost price of the vehicle because it does not meet the test of being permanently affixed to the vehicle.

**Legislation**

Section CI 3(1) provides a formula for calculating the value of the fringe benefit that consists of the private use and enjoyment, or the availability for the private use and enjoyment, of a vehicle. This formula is:

- $\frac{y \times z}{90}$ when the benefit is subject to FBT on a quarterly basis; and

  $\frac{y \times z}{365}$ when the benefit is subject to FBT on an income year basis.

In these formulae, if the benefit is subject to FBT, (z) is the amount calculated in accordance with Schedule 2.

Schedule 2 states:

PART A – MOTOR VEHICLES

Subject to clause 3, in relation to any quarter or (where fringe benefit tax is payable in respect of the vehicle on an income year basis under section ND 14) to any income year, and to any motor vehicle that in the quarter or income year is provided by any person for the private use or enjoyment of an employee or is available for such private use or enjoyment, the value of the benefit that would be able to be enjoyed by the employee, if the employee had unlimited private use or enjoyment or availability for private use or enjoyment of the motor vehicle in that quarter or income year, shall be, -

(a) Where the motor vehicle is owned (whether in the person's own right or jointly with any other person) by that person, 6% or (where fringe benefit tax is payable in respect of the vehicle on an income year basis under section ND 14) 24% of **the cost price of the motor vehicle to that person** or, as the case may be, those persons: (Emphasis added)

(b) Where the motor vehicle is leased or rented by that person from any other person (that person and that other person being associated persons) under a lease or rental agreement that commenced -

  (i) …

  (ii) On or after 23 September 1985, 6% or (where fringe benefit tax is payable in respect of the vehicle on an income year basis under section ND 14) 24% **of the cost price of the motor vehicle** to the person who is the owner of the motor vehicle at the time the benefit is provided to the employee: (Emphasis added)

The definition of "Adjusted tax value" in section OB 1 states:

(a) Means, in relation to any depreciable property of a taxpayer and any particular time (and subject to section EG 11, in the case of property in a pool, and to section EG 19(10)(a), in the case of software to which that section applies), the amount calculated in accordance with the following formula:

  bv (base value) - ad (aggregate deductions)

where –

bv (base value) is –

(i) Except where paragraph (ii) or paragraph (iii) or paragraph (iv) of this item applies, the **cost of the property** to the taxpayer (excluding any expenditure of the taxpayer allowed as a deduction under any provision of this Act or the Income Tax Act 1976 other than sections EG 1 to EG 15 and section EG 18 of this Act or sections 108 to 108N and section 113A of the Income Tax Act 1976): (Emphasis added)

## Application of the Legislation

The determinative factor in the calculation of FBT on motor vehicles is the "cost price of the motor vehicle to that person" (the employer) as contained in Schedule 2. The calculation of fringe benefit tax on the provision of a motor vehicle to an employee is based on the vehicle's cost price, and **not** its value to the employee. This was the "test" adopted by Parliament and confirmed in *C of IR v Atlas Copco (NZ) Ltd* (1990) 12 NZTC 7,327. At pages 7,334 and 7,335 Sinclair J said:

The Tenth Schedule to the Income Tax Act clearly states that the value of the benefit is an amount equal to "6% of the cost price of the motor vehicle *to that person*", where "that person" is the person providing the benefit. In other words, the schedule expressly states that the value of the benefit is to be calculated by reference to the cost price to the employer. There is no justification in the legislation for defining the term by reference to the *value* of the benefit to the *employee* rather than the cost of the benefit to the *employer*. There is no room for an employee notion to be introduced when construing the Schedule.

The above comment is consistent with the intent of Parliament that the cost price of motor vehicles for FBT purposes should equal the cost to the employee, had the employee purchased the vehicle rather than having the vehicle provided by the employer. In introducing the Tax Reform Bill 1990, on the 19 December 1990, the then Minister of Revenue (Hon. Wyatt Creech) said that the amendment to the FBT rules was to ensure that the value of the motor vehicle for FBT purposes included GST. He said that this was to ensure that the FBT "cost price" would equate with the cost that the employee would have had to pay had the employee purchased the vehicle.

### *Meaning of "cost price"*

"Cost price" is not defined in the Act for the purposes of the FBT rules. It is, therefore, not clear whether it is limited to the purchase price of the vehicle, as some suggest, or whether it includes costs incidental to the purchase, such as on-road costs and the costs of transporting the vehicle to the place where it will be used.

The words "cost" and "cost price" are used extensively throughout the Act. Section OB 1 defines these words for a very limited number of sections where the words are used. Examples include:

- For the purposes of Part EE (the trading stock rules) "cost" is defined as:

> In Part EE, for trading stock other than an excepted financial arrangement, means costs incurred in the ordinary course of business to bring trading **stock to its present location and condition** including purchase costs and costs of production calculated under sections EE 5 to EE 7. (Emphasis added)

- "Cost price" in relation to "specified leases" means:

> …the amount of expenditure of a capital nature incurred by the lessor in acquiring **and installing** that lease asset… (Emphasis added)

The significance of these two definitions (even though they have limited application in the Act) is that they both include a reference to costs ("bringing to its present location" and "installing") that are more than simply the *purchase price* of the item in question. In the definition of "cost" (for the purposes of the trading stock rules), it could be argued that getting the stock "*to its present location*" is synonymous with "*installing*" as used in the definition of "cost price". "Install" is defined in the *Concise Oxford Dictionary* as "*place (heating or lighting etc.) in position for use*". While the two definitions relate to the two different sides of the revenue/capital distinction, they both relate to the assets used in a business.

This leads to the view that there may be very little difference (if any) between the terms "cost" and "cost price" as used throughout the Act. This view is supported by the comments of Fullagar J in *Australian Jam Co. Pty Ltd v FCT* (1953) 10 ATD 220. This case concerned the valuation of trading stock. At 570 the Judge said:

> The words 'cost price' in the section [relating to the valuation of trading stock] are perhaps not literally appropriate to goods manufactured, as distinct from goods purchased, by the taxpayer, but I feel no difficulty in reading them as meaning simply 'cost'.

This implies that "price" adds nothing to the meaning of "cost". "Cost price" is simply "cost". In commenting on the above citation in an item entitled "Some Aspects of Valuation of Trading Stock for Income Tax Purposes" in the *NZ Universities Law Review*, Vol. 1 (September 1964), ILM Richardson (now Sir Ivor) said:

> If "price" adds anything to "cost" it is only in emphasis, in stressing that what is involved is the actual expenditure of money by the taxpayer with relation to the trading stock.

In *Phillip Morris Ltd v. F.C. of T.* 79 ATC 4,352, the Supreme Court of Victoria had to decide what constituted "cost price" for the valuation of cigarettes (trading stock) on hand at the end of an income year under section 31(1) of the Income Tax Act Assessment Act 1936. The Court determined that in respect of manufactured goods:

> …the words "cost price" in that subsection [section 31(1)] should be understood as meaning "cost".

Both the above cases (*Australian Jam* and *Phillip Morris)* considered section 31(1) of the [Australian] Income Tax Assessment Act, which gives taxpayers an option of valuing trading stock at its "cost price". The wording of the section is very similar to the former New Zealand equivalent - section EE 1(3) prior to amendments that applied from the 1998-99 income year - that is, the same "cost price" option applied to New Zealand taxpayers. It follows that in considering the use of the words "cost

price" in New Zealand, the courts would arguably adopt the same position as the Australian courts in the above decisions. Where the words are used in other parts of the Act (including Schedule 2), and there is no specific definition, it is considered that "cost price" should be given a similar interpretation. This means that "cost price" as used in Schedule 2 for FBT purposes also means "cost".

In discussing trading stock, some authorities take the view that "cost price" relates to things purchased, while "cost" relates to things manufactured. For example, in *Phillip Morris* Jenkinson J said:

> The statutory conception of "cost price" or, **in the case of manufacturer's stock, "cost"** is merely a value at a particular time… (Emphasis added)

In *Australian Jam*, Fullagar J said:

> The words 'cost price' in the section [relating to the valuation of trading stock] are **perhaps not literally appropriate to goods manufactured, as distinct from goods purchased**, by the taxpayer, but I feel no difficulty in reading them as meaning simply 'cost'. (Emphasis added).

In *TRA Case S12* (1995) 17 NZTC 7,102, Barber DJ considered what is meant by "its cost price" in relation to the valuation of foals born to broodmares owned by a horse breeder. He determined that the foal's cost price should include the write-down (depreciation) of the broodmare. At 7,107 he said:

> ...the Legislature has provided that the breeder or farmer must take progeny into account at "its cost price". Those words do not seem to me to be a particularly happy choice because **"cost price" is normally that which a merchant buys something** (refer Sixth Edition of the *Concise Oxford Dictionary*). The cost is the price to be paid for a thing and the price is the money or other consideration for which a thing is bought or sold. The taxpayer has not purchased the foal but has had the foal created through the mare after servicing from the stallion. However, in their context, the words "its cost price" must be given a sensible interpretation. In the *Shorter Oxford English Dictionary* (3rd Edition) a meaning for "cost" is "That which must be given in order to acquire, produce or effect something". (Emphasis added)

In these cases the courts make a distinction between "cost" and "cost price". "Cost" relating to manufactured goods (the cost of manufacture) and "cost price" relating to goods purchased (the cost of purchase). However, under both the Australian and the former New Zealand trading stock valuation rules there is only one option for valuing trading stock at cost and that is its "cost price". In terms of the legislation, therefore, both manufacturers of trading stock and purchasers of trading stock are required to value their goods under its "cost price". So, in the trading stock context at least, "cost price" includes both the terms "cost" and "cost price".

*Trading stock context*

As mentioned above, the trading stock rules changed with effect from the 1998-99 income year. The current definition of "cost" applying to the valuation of trading stock requires the "cost" to include, "*any costs incurred in the ordinary course of business to bring the trading stock to its present location and condition including purchase costs and costs of production calculated under sections EE 5 to EE 7*". The effect is that now trading stock must be valued by the taxpayer using generally accepted accounting principals (section EE 5(1)). Effectively, section EE 5(2) says

that the trading stock must comply with Financial Reporting Standard No.4 (FRS 4) 1994 (Accounting for Inventories).

In FRS 4, the value of inventories (trading stock) is to include:

4.6 "Cost of inventories" is the total of:
(a) **cost of purchase** (as defined in paragraph 4.10 below);
(b) costs of conversions (as defined in paragraph 4.13 below); and
(c) other **costs incurred in bringing the inventories to their present location and condition**.

4.10 "Cost of purchase" includes:
(a) import duties and other purchase taxes (**other than those subsequently recoverable**);
(b) **Transport and handling costs**
(c) …
(Emphasis added)

As this standard applied from 1994 (replacing the previous standard -SSAP 4), presumably FRS 4 could have been used as a guide by taxpayers in valuing trading stock under the former valuation option, "cost price". That the Commissioner accepted similar calculations to FRS 4 is illustrated by the contents of an item on the valuation of trading stock published in *Public Information Bulletin* No.82 (December 1974). This item set out the three options available to taxpayers, being cost price, market selling value, or replacement price. It then went on to define "cost" - (note: not "cost price"). In respect of purchases of finished goods the item said:

Here the cost should include **freight inwards**, customs duty, insurance, and sales tax in addition to the actual purchase price of the goods. (Emphasis added)

In the context of their use in relation to trading stock, the words "cost" and "cost price" are interchangeable.

*Depreciation context*

The only provisions that deal with valuation of capital assets in the Act are the depreciation rules set out in Subpart EG.

Generally, business assets are "depreciable property" as defined in section OB1, being property that "*might reasonably be expected …to decline in value …while used or available for use …in carrying on a business for the purposes of deriving gross income*". This is provided that the assets are not trading stock, land, financial arrangements, or intangible property. Motor vehicles are "depreciable property" and will qualify for depreciation deductions under Part EG.

Under section EG 2(1)(a) depreciation is calculated:

- where the diminishing value method is being used, on the "adjusted tax value" of the property.

- where the straight-line method is being used, on the "cost of the property" to the taxpayer.

"Cost" is not defined in the Act for the purposes of section EG 2. "Adjusted tax value" is defined in section OB 1. The main component of this definition is the "base value" of the property. "Base value" in the majority of cases, especially in respect of property acquired after the beginning of the 1993-94 income year, will be its "cost".

As stated above, as far as trading stock is concerned there appears to be no difference between the use of the words "cost" and "cost price". The words are interchangeable. If the same applies in respect of the word "cost" used in subpart EG, it could mean that "cost" and "cost price" are interchangeable elsewhere in the Act, e.g. in Schedule 2, in determining the "cost price" of a motor vehicle for FBT purposes.

The definition of "cost price", as it applies to Schedule 2, was discussed in *C of IR v Atlas Copco (NZ) Ltd*. This case considered whether the "cost price" in respect of motor vehicles was the GST inclusive or exclusive cost. While it was not necessary for the Court to formulate an exhaustive meaning of "cost price", Sinclair J concluded that the words "cost" and "price" are susceptible to a wide variety of meanings. At page 7,332 Sinclair J referred to expert accounting evidence on the meaning of "cost" and stated:

This accords with the expert evidence given by two accountants, Mr John Hagen and Professor David Emanuel. Professor Emanuel cited a number of definitions of "cost" from leading textbooks on accounting:

"(a) 'Costs represent the financial sacrifices which are involved in acquiring or producing assets.' Ma, Matthews and Macmullan, The Accounting Framework (2nd Ed, 1987) at p 43.

(b) 'Accountants have placed a great deal of emphasis upon the principle of objective evidence, and nowhere is it more apparent than in accounting for the acquisition of plant and equipment. Cost is used as the valuation method in this instance because it is more easily identified than any other valuation and because it is said to be the sacrifice given up now to accomplish future objectives.' McCullers and Schroeder, Accounting Theory: Text and Readings (1978) at p 233.

(c) 'We define cost here as the sum of the quantitative representations of the sacrifices necessarily incurred **to bring the fixed asset to its place and state of use**.' Most, Accounting Theory (1977) at p 235. (Emphasis added)

(d) 'Cost is thus the economic sacrifice expressed in monetary terms required to obtain a specific asset or group of assets.' Hendriksen, Accounting Theory (3rd Ed, 1977) at p 270.

(e) 'Cost is an economic sacrifice, an outflow of wealth, by giving up asset value or incurring liability value.' Staubus, Activity Costing for Decisions (1988) at p 192."

Professor Emanuel then summarised the position by saying that:

"Cost is the economic sacrifice associated **with getting the purchased item to its current location and condition."** (Emphasis added)

It is interesting to note that here the accountants used the term "cost" rather than "cost price" – the term (as used in Schedule 2) that the Court was considering. This is consistent with the earlier analysis that the words are interchangeable.

In *Atlas Copco* the Commissioner objected to the evidence of the accountants. At page 7,333 the Court said:

Counsel for the Commissioner objected to the evidence of the two accountants on the basis that the interpretation of "cost price" is a question of law for the Court, and to rely upon the interpretation of accountants would infringe the "ultimate issue" rule. Moreover, counsel felt that the accountants had mistakenly placed economic substance over legal form in analysing the nature of the payment paid by the purchaser.

It is true that defining "cost price" is a question of statutory interpretation and, as such, must be resolved by the Court. **Where the meaning of words in a statutory context is unclear or ambiguous, however, the Court may derive some assistance from common business parlance and practice**, as well as international standards. Moreover, as I have already discussed, the approach of the accountants accords with both the economic substance and the legal form of the transaction: the GST component of the purchase price which may be recovered by a registered purchaser cannot be considered part of the effective "cost price". (Emphasis added)

Here the Court accepts that where uncertainty in the legislation exists, common business practice can be taken into account in defining terms or words. As sufficient doubt surrounds the use of the words in question, accounting or business usage may be of assistance.

Generally, the accounting treatment is that the initial cost of a fixed asset includes the costs of putting it into the working condition necessary for its intended use, installation costs, and freight etc (see for instance, FRS 4, 4.6(c), and the expert evidence given in *Atlas Copco* (cited above)).

This further strengthens the proposition that no fundamental difference exists between "cost" and "cost price" as used in the Act.

*Conclusion*

On the above analysis it is concluded that "cost" and "cost price" as used in the Act are interchangeable. The calculations of both terms, using accepted accounting principles, include costs in addition to what can be termed the "purchase price". This means that for the purposes of the phrase "cost price of the motor vehicle" in the FBT rules, the "cost price" of a motor vehicle will be more than just its purchase price.

***What is the "cost price" of a motor vehicle for FBT purposes?***

When a new motor vehicle is purchased, a number of Government charges have to be paid before the purchaser can use the vehicle on the road. The purchaser may also have accessories fitted to the vehicle at the time of purchase or at a later date. Some of these accessories may be of a non-business nature, such as a towbar, CD player, CNG/LPG conversion, air conditioning, alloy wheels, etc. Generally, unless they are part of a special deal, these accessories will be additional costs to the purchaser. In some instances the purchaser may have a business accessory, e.g. a radio-telephone, fitted to the vehicle at the time of purchase or at a later date.

The question to be considered is whether all or any of (the cost of) these items forms part of the "cost price" of the vehicle.

*Government charges*

Fees payable at the time of purchase of a new car so that it can be driven on the road include:

- Once only payments: registration fee, number plate fee.

- Annual (recurring) fees: annual relicensing fee, ACC levy, label fee.

It is arguable that without payment of the initial registration and plate fees (as distinct from the recurring annual re-licensing fees) by the employer the vehicle cannot be used immediately. The employer has to pay these costs before the vehicle can be "put on the road" or in a position to be used. This suggests that they are properly to be treated as part of the "cost price" of the car.

Support for the view that "cost" includes such items as getting the vehicle "on the road" so that it can be used, is found in the High Court of Australia case of *BP Refinery (Kwinana) Ltd v FCT* (1960) 8 AITR 113. At page 117, Kitto J in considering the issue of what was included in the term "cost", said.

… in my opinion, the word "cost" in section 56 (1)(b) bears the meaning which it has in the business life of the community. It seems to me impossible to suppose that the depreciation provisions of the Act are intended to apply only to those simple cases in which the ascertainment of cost is a purely arithmetical process. I interpret it as embracing the whole sum which, according to accepted accountancy practice as applied to the circumstances of the case, ought to be considered as having been laid out by the taxpayer in order to acquire the subject-matter as plant, **that is to say installed and ready for use** as plant for the purpose of producing assessable income. (Emphasis added)

Therefore, the cost of the vehicle must include expenditure making it "ready for use" by the taxpayer. Without payment of the registration and plate fees the vehicle is not ready for the purpose intended.

Whether the costs of the initial registration fee and the plate fee form part of the cost of the vehicle is not entirely clear. The Commissioner considers the better view of the law, and the likely intent of Parliament, is that such expenses form part of the cost price of the vehicle, particularly given that they are one-off costs that fall into the "once and for all payments" category (see *BP Australia Ltd v FCT* [1965] 3 All ER 209) and hence are capital in nature. These fees are intended to make the vehicle able to be used.

The remaining fees are annual charges and normal accounting practice would treat them as revenue expenditure, even if they were incurred upon purchase of the vehicle.

In summary, the better view is that registration and plate fees are "once and for all" payments, are of a capital nature, make the vehicle able to be used, and are part of the "cost price" of the vehicle. Annual charges (licensing, ACC levy, etc.) are revenue expenditure and not part of the "cost price".

*Business accessories*

Generally, accessories permanently fitted to the motor vehicle are properly to be included as part of the vehicle's cost. As discussed earlier, accessories, such as stereos, towbars, roofracks, etc., fitted to a vehicle will form part of its cost price. However, some components or equipment fitted to vehicles may be of a purely business nature. The issue arises as to whether such components or equipment should also be included in the "cost price of the vehicle" for FBT purposes.

There is no legislative direction on this issue. This may indicate that all accessories, components, or equipment attached to the vehicle form part of its "cost price". It is arguable, however, that business accessories, components, and equipment fitted to the vehicle should not be treated as forming part of the cost price, where they are required and relate solely to the special business operations for which the vehicle is used, and are in themselves depreciable property for the purposes of the Act, e.g. a two-way radio telephone in a salesperson's vehicle. Such components or equipment are fitted to the vehicle to facilitate the business use of the vehicle, and may be considered as separate business assets located in the vehicle.

Another factor (relevant to this last-mentioned aspect) possibly pointing to the components or equipment as not being part of the cost price, is to consider the nature of the assets and how they are treated by businesses for accounting purposes. For example, it is most likely that components such as two-way radios are accounted for and depreciated separately. The radios can be removed from vehicles, or moved from one vehicle to another, and it seems logical that they be treated as separate assets for depreciation purposes. Note: motor vehicles and radiotelephone equipment are listed separately in Depreciation Determination DEP 1. Two-way radios have their own depreciation rate because they are regarded as assets in their own right and not accessories (to a motor vehicle). They form part of a larger asset, for example, the entire radio telephone network, consisting of radios in vehicles and the central control unit in the employer's premises. In such circumstances, even though they are a form of accessory or addition to the motor vehicle, they are an asset in their own right and therefore require a separate asset classification. Usually, radio networks are purchased as a package consisting of a number radios (for each vehicle) plus the central control station. To treat the network as part of the cost price of each car would require an apportionment of the overall expense, including installation costs to each vehicle. The Commissioner does not consider this to be a sensible approach.

The same could be said of accessories such as roof mounted flashing lights, and electronic monitoring equipment. If these types of assets are added because they are required for and relate solely to the business operations for which the vehicle is used, they will be treated similarly to the two-way radio system.

Therefore, where business components, such as two-way radios, roof mounted flashing lights, electronic testing or monitoring equipment, etc., are fitted to the vehicle and are paid for by the employer, they do not form part of the "cost price" for FBT purposes. As mentioned earlier, such accessories are business assets of the employer, coming within the definition of "depreciable property" for the purposes of the Act.

As previously discussed under the heading "Application of the Legislation", it was the clear intent of Parliament that the "cost price" for FBT purposes should equal the cost to the employee had the employee purchased the vehicle rather than having it provided by the employer. It follows that if the employee had to pay for the vehicle, the cost to the employee must also include accessories fitted to the vehicle as already discussed. Exceptions are the cost of separately depreciable components or equipment fitted to the vehicle solely to meet the special needs of any business operations for which the vehicle is used.

Therefore, the Commissioner considers that business components fitted to the vehicle, which are required for and relate solely to the business operations for which the vehicle is used, and are in themselves depreciable property, should be excluded from the "cost price" of motor vehicles for FBT purposes. This covers assets requiring the vehicle's power source in order to operate: they are not part of the cost price of the car itself.

There may be isolated instances, where the type of business asset mentioned above will unavoidably be used for non-business purposes. The Commissioner considers that any extraordinary and unenvisaged use of the accessory for non-business use over the life of the asset will not in itself negate the purpose of fitting the accessory to be "solely for business purposes" in this context.

*Cost of non-business accessories*

Commonly, when a vehicle is purchased the owner asks for certain "extras" or accessories (other than business accessories) to be fitted to the vehicle. If these accessories are not "optioned" (and included in the purchase price), the dealer will charge for their cost and fitting to the vehicle. Such accessories can include:

- stereos, towbars, sunroof, roofrack, CNG/LPG conversions, alloy wheels, air-conditioning, electric windows and locking systems, higher specification tyres, etc.

Where the vendor charges for any of these accessories, the question arises as to whether they should be added to the "cost price" of the vehicle for FBT purposes. The same issue arises if the accessories are acquired from another person or supplier, or acquired at a later date.

Such accessories are of a capital nature and should be added to the vehicle's purchase price to arrive at its "cost price". They are part of the vehicle as a whole and are not generally removed at the time the vehicle is sold or otherwise disposed of. They are either singularly or collectively a "once and for all" payment(s), culminating in the "cost price" of the vehicle that is provided to the employee by the employer for the employee's "private use and enjoyment".

Under this interpretation, the cost price may vary from period to period, depending on when accessories are added (or in the unlikely or rarer event of an accessory being removed).

Therefore, in summary, accessories fitted to a vehicle form part of its "cost price" for FBT purposes (as contemplated in Schedule 2), irrespective of the time they are purchased and fitted to the vehicle.

*Cost of sign writing or painting the vehicle in the employer's colours or design*

It is the Commissioner's view that costs associated with sign writing and painting the motor vehicle in the employer's colours, logo, or design are part of the "cost price" of the vehicle for FBT purposes. It was concluded earlier that "cost price" for the purposes of Schedule 2 means something more than the "purchase price" of the motor vehicle. While the cost of sign writing or painting may not add to the value of the motor vehicle, that is not the test. As discussed earlier, the test is the "cost to the employer", not the "value to the employee". Some may argue that the costs associated with sign writing and painting the vehicle are primarily of a business nature and should be excluded from the vehicle's cost price. However, unlike business accessories, the sign writing and painting will generally not be depreciable property and therefore, such costs must be added to the cost of the vehicle. The better view of the law is that the costs are correctly attributable to the vehicle itself and form part of the cost price for FBT purposes.

*Transporting or freighting the vehicle to its place of use*

In the above discussion on "cost price", it is clear that the courts have accepted that the cost of transporting or freighting goods (whether those goods are trading stock or capital assets of the business) to the place where they are to be used is part of the cost of the goods. As a general rule, the initial cost of fixed assets will include expenditure incurred to put it (the asset) into the working condition necessary for its intended use. And in *Atlas Copco,* "cost is …associated with getting the purchased item to its current location and condition". This would include installation costs and freight.

The cost of transporting a purchased motor vehicle to the place where it can be used by the taxpayer, is clearly part of its "cost price", both for FBT and depreciation purposes. For example, the purchase of vehicles direct from a manufacturer or from another source overseas, where the purchaser pays for the cost of transporting the vehicle to New Zealand. It is the Commissioner's view that these transport costs form part of the "cost price" of the vehicle for FBT purposes.

However, these costs only relate to the initial cost of getting the vehicle to the place it will first be used by the employer, after acquisition. Subsequent transport costs of moving the vehicle within New Zealand (say from one branch of the employer's firm to another) are considered to be part of the normal business operations of the employer and on revenue account.

**Cost of repairs and maintenance**

Another issue is the costs of repairs and maintenance of the vehicle and/or accessories, and whether they should be added to the cost price.

Generally, repairs and maintenance expenditure on the vehicle or accessories will not increase the vehicle's "cost price" for FBT purposes. However, if work on the car is more than normal repairs and maintenance, such as replacing the existing motor with one of larger capacity, the question arises whether that alteration will increase the cost price of the vehicle for FBT purposes. If the repair or replacement is considered to be of a revenue nature, and deductible for income tax purposes, the cost price of the vehicle will not increase in value for the calculation of FBT. On the other hand, if the repair or replacement is of a capital nature, the cost price for FBT purposes must be increased by the amount of that capitalisation. Each case will need to be considered on the basis of its own facts applying established capital/revenue distinction rules. If the FBT cost price is increased, the recalculation of FBT (on the increased cost price) will apply from the quarter in which that capital expenditure was incurred.

**Example 1**

Employer A purchases a secondhand motor vehicle as a company car for the use of a salesperson employee. The employee will be travelling long distances, so the employer purchases a CD player and has it fitted to the vehicle. As the employee has the full use of the vehicle for private use and is likely to tow his own trailer from time to time, he asks the employer to purchase and fit a towbar to the vehicle. The employer agrees. The "cost price" of the vehicle for FBT purposes will be the total of the purchase price plus the cost of acquiring and fitting the CD player and the towbar (all costs GST inclusive).

**Example 2**

Employer B is looking for a vehicle to replace an existing vehicle written-off by the firm's Wellington based accountant. The accountant will be entitled to use the vehicle for private purposes when it is not being used for business purposes. While on a trip to Auckland the employer locates a suitable secondhand car, purchases it, and has it transported to Wellington where the accountant will use it. The "cost price" of the car for FBT purposes will be the purchase price plus the cost of transporting it to Wellington (both costs GST inclusive).

**Example 3**

Employer C decides to replace the company's fleet of cars used by its sales representatives, because of the high cost of maintaining the existing fleet. The sales representatives are permitted to use the vehicles for private use when they are not required for business purposes. Through a contact with a motor vehicle dealer, the company decides to purchase 10 secondhand cars direct from Japan. The employer agrees on a purchase price with a Japanese car dealer and arranges for the vehicles to be shipped to New Zealand. The "cost price" of the vehicles for FBT purposes will be the total of:

- the purchase price of the cars, including any costs or commissions paid in Japan or in New Zealand
- the cost of transporting the cars to New Zealand

- GST and any import or inspection levies payable at the time of importation
- the cost of initial registration and licence plate fees, and
- the cost of any accessories fitted to the cars at the time of purchase or any time after purchase, either in Japan or in New Zealand.

**Example 4**

Employer D is a forestry contracting firm, and has recently purchased a four-wheel drive motor car for its forestry foreman. The foreman has the full use and enjoyment of the vehicle for private purposes while not working. As with the employer's other work vehicles, the car is fitted with a radiotelephone used only for communication between the company's headquarters and its own vehicles. As the radiotelephone is fitted solely for business purposes, and may be considered a separately depreciable business asset located in the vehicle, it does not form part of the cost price of the vehicle for FBT purposes.

**Example 5**

An employee of Employer E is a travelling salesman. When the employer purchased a new vehicle for the employee's use, a mobile phone kit (mobile phone and car kit) was installed in the car at the employer's expense. The cost of the mobile phone will be excluded from the cost price of the motor vehicle because it is not "permanently affixed to the vehicle". Whether use of the mobile phone gives rise to a fringe benefit in its own right must be decided on the facts.

**Comments on technical submissions received**

Many comments received in the course of producing this item suggested that the cost of fitted accessories should not be subject to FBT, as they have no inherent benefit for employees. As noted earlier in the ruling commentary, this argument ignores the fact that the statutory test, in the context of motor vehicles, is not the value of the benefit to the employee, but the cost price of the vehicle to the employer.

It is considered that the Commissioner's approach in excluding any such fittings and accessories on the basis of being business assets is arguably a favourable interpretation of the legislation to taxpayers, particularly when compared to the wording in the Australian legislation where such a test has been specifically legislated.