Inland Revenue
Te Tari Taake

FRINGE BENEFIT TAX AND MOTOR VEHICLE MULTI-LEASES

PUBLIC RULING - BR Pub 04/03

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

Taxation Laws

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

This Ruling applies in respect of clause 1(c) of Schedule 2 Part A, and sections CI 2, GC 15, GC 17 and BG 1.

The Arrangement to which this Ruling applies

The Arrangement is the leasing of a motor vehicle under a multi-lease product, to a lessee who in turn provides the motor vehicle to an employee of the lessee, for their private use or enjoyment, or makes the motor vehicle available for such private use or enjoyment.

A "multi-lease product", for the purposes of this Ruling, is a lease product that exhibits the following characteristics:

- it is a lease of a motor vehicle for a specified period, with the option or possibility of the lessee entering into a further or multiple further leases of that vehicle for specified periods, or periods to be specified prior to their commencement;

- separate and comprehensive written contracts are required to be executed in respect of each period under the multi-lease product;

- any rental rate for a lease period under the multi-lease product is calculated on the same basis as it would be for any other customer who was entering into the lease of the vehicle otherwise than under a multi-lease product;

- the lease period to which any entitlement relates is able to be clearly identified in the relevant lease documentation;

- there is no contract, agreement, arrangement, plan, undertaking or understanding (whether enforceable or unenforceable) at the time of entering into any lease under the multi-lease product, or prior to that time, or thereafter, which directly or indirectly concerns, relates to, or otherwise affects the Arrangement and is:

    - in any way inconsistent with the characterisation of the leases under the multi-lease product as separate and distinct, or

    - in any way indicative of the specific terms and conditions of any potential further leases being agreed or determined at a time earlier than the time of entering into such further lease or leases;

- it does not constitute a finance lease, as defined in section OB 1 of the Act; and
- it does not involve a lease between parties who are associated persons pursuant to section OD 7 of the Act.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- The market value of motor vehicles leased under the Arrangement, for the purposes of calculating the value of any fringe benefit arising in respect of those vehicles, in accordance with section CI 3(1) and clause 1(c) of Schedule 2 Part A, is determined on the date on which each lease under the multi-lease product commences.
- Section GC 15 does not apply in respect of the Arrangement.
- Section CI 2 does not apply in respect of the Arrangement.
- Section GC 17 does not apply in respect of the Arrangement.
- Section BG 1 does not apply in respect of the Arrangement.

The period or income year for which this Ruling applies

This Ruling will apply for the period 29 March 2004 to 28 March 2009.

This Ruling is signed by me on the 29th day of March 2004.

Martin Smith
General Manager (Adjudication & Rulings)

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COMMENTARY ON PUBLIC RULING BR Pub 04/03

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusions reached in Public Ruling BR Pub 04/03 ("the Ruling").

Background

A number of motor vehicle lessors offer products whereby a lessee enters into a lease for a specified period (for example, 12 months), with the option or possibility of entering into further leases for pre-specified periods (for example, two further possible leases of 12 months each). There are similar "multi-lease" products available whereby the lease periods are flexible, usually varying in period from 6 months to 75% of the vehicle's depreciable estimated useful life. The lease periods under these "flexible term" multi-lease products are specified prior to their commencement, and are only flexible in the sense that the lessee may assess their requirements toward the end of any given stipulated period, and select an appropriate term for the next period, if one is desired.

Where a lessee under a multi-lease product in turn provides the motor vehicle to one of their employees, for their private use or enjoyment, or makes the motor vehicle available for such private use or enjoyment, a "fringe benefit" arises for the purposes of the FBT rules, by virtue of section CI 1(a) or (b) of the Act.

Section CI 3(1) of the Act provides formulae for calculating the value of any fringe benefit, being a benefit that consists of the private use or enjoyment, or the availability for private use or enjoyment, of a motor vehicle.

The variable "z" in the formulae in section CI 3(1) is the amount that is the value of the benefit that would be able to be enjoyed by the employee if they had unlimited private use or enjoyment of the motor vehicle during the relevant period. This amount is to be calculated in accordance with Schedule 2 Part A, which relevantly provides that the value of such a benefit, where the motor vehicle is leased or rented and the lessor and lessee are not associated persons, is a stipulated percentage of the market value of the motor vehicle on the date on which the period of that leasing or renting commenced.

The relevant issue for the purpose of this Public Ruling is whether the period of leasing of a vehicle under a multi-lease product commences at the beginning of the initial period under the product, and concludes at the end of however many further periods under the product are taken up by the lessee, or alternatively, each period under the relevant product constitutes a separate lease, the period of leasing of a vehicle therefore commencing at the beginning of the relevant period (i.e. whether the successive periods under multi-lease products constitute separate leases, or together form one lease).

The Ruling also deals with the application of sections GC 15, CI 2, GC 17 and BG 1 to the Arrangement.

The Commissioner has issued a number of product rulings on variations of these types of lease products and accordingly considers that a general Public Ruling is warranted.

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Legislation

Section CI 1 provides (relevantly) as follows:

> In the FBT rules, "fringe benefit", in relation to an employee and to any quarter or (where fringe benefit tax is payable on an income year basis under section ND 14) income year, means any benefit that consists of−
>
> **(a) The private use or enjoyment, in relation to the employee, at any time during the quarter or (where fringe benefit tax is payable on an income year basis under section ND 14) income year, of a motor vehicle owned, leased, or rented by the person who makes the motor vehicle available to the employee:**
>
> **(b) The availability for the private use or enjoyment of the employee, at any time during the quarter or (where fringe benefit tax is payable on an income year basis under section ND 14) income year, of a motor vehicle that is so owned, leased, or rented:**
>
> …
>
> **being, as the case may be, private use or enjoyment, availability for private use or enjoyment, a loan, subsidised transport, a contribution to a fund referred to in paragraph (e), a specified insurance premium or a contribution to an insurance fund of a friendly society, a contribution to a superannuation scheme, a service referred to in paragraph (ga), or a benefit that is used, enjoyed, or received, whether directly or indirectly, in relation to, in the course of, or by virtue of the employment of the employee (whether that employment will occur, is occurring, or has occurred) and which is provided or granted by the employer of the employee; but does not include** …
>
> [Emphases added]

Section CI 3 provides (relevantly) as follows:

> (1) For the purposes of the FBT rules, the value of any fringe benefit, being a benefit that consists of the private use or enjoyment, or the availability for private use or enjoyment, of a motor vehicle, shall, in relation to each motor vehicle the private use or enjoyment of which or the availability for private use or enjoyment of which constitutes that benefit, be—
>
> (a) Where the benefit is subject to fringe benefit tax on a quarterly basis, an amount calculated in accordance with the following formula:
>
> $$\frac{y \text{ X } z}{90}$$
>
> where—
>
> …
>
> **z is the amount, calculated in accordance with Schedule 2, Part A, that in relation to the quarter and to the motor vehicle is the value of the benefit that would be able to be enjoyed by the employee if the employee had unlimited private use or enjoyment of the motor vehicle in that quarter:**
>
> …

(c) Where the benefit is subject to fringe benefit tax on an income year basis under section ND 14, an amount calculated in accordance with the following formula:

$$\frac{y \times z}{365}$$

where—

…

z **is the amount, calculated in accordance with Schedule 2, that in relation to the income year and to the motor vehicle is 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 income year.**

[Emphases added]

Schedule 2, Part A provides (relevantly) as follows:

1. 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,—

…

(c) Where the motor vehicle is leased or rented by that person from any other person, where that person and that other person are not associated persons, 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 **market value of the motor vehicle on the date on which the period of that leasing or renting commenced**:

[Emphasis added]

Section GC 15 provides (relevantly) as follows:

(1) For the purposes of the FBT rules, where any benefit which, if it were provided for or granted to an employee would be a fringe benefit, is provided or granted by the employer of the employee, or is provided or granted by another person with whom the employer of the employee has entered into an arrangement for the providing or granting of that benefit, for or to a person other than the employee of the employer, the employee of the employer and the other person being associated persons, that benefit shall be deemed to be a benefit provided for or granted to the employee by the employer of the employee.

Section CI 2 provides (relevantly) as follows:

(1) For the purposes of the FBT rules, where a benefit is provided for or granted to an employee by a person with whom the employer of the employee has entered into an arrangement for that benefit to be so provided or granted, that benefit shall be deemed to be a benefit provided for or granted to the employee by the employer of the employee.

Section GC 17 provides as follows:

> Where the Commissioner is satisfied that an arrangement has been entered into between persons and a purpose or effect of the arrangement (not being a merely incidental purpose or effect) is to defeat the intent and application of the FBT rules, or of any provision of the FBT rules, the Commissioner may, notwithstanding the arrangement, deem—
>
> (a) A person who is a party to that arrangement (that person being referred to in this section as the "participant") to be the employer in relation to such other person or such other persons as the Commissioner specifies by notice in writing to the participant; and
>
> (b) Any person so specified to be, in relation to the participant, an employee (that person being referred to in this section as the "deemed employee"); and
>
> (c) Any benefit that—
>
> (i) Is obtained by the deemed employee and is provided or granted by the participant; or
>
> (ii) The deemed employee would have, or might be expected to have, or would in all likelihood have, obtained if that arrangement had not been made or entered into,—
>
> to be a benefit provided or granted by the participant to the deemed employee by virtue of the employment of the deemed employee,—
>
> for the purposes of the FBT rules; and the FBT rules shall apply accordingly throughout such period or periods (each being a period during which that arrangement is in force) as the Commissioner determines.

Section BG 1 provides as follows:

> (1) A tax avoidance arrangement is void as against the Commissioner for income tax purposes.
>
> (2) The Commissioner, in accordance with Part G (Avoidance and Non-Market Transactions), may counteract a tax advantage obtained by a person from or under a tax avoidance arrangement.

Section OB 1 provides (relevantly) as follows:

> In this Act, unless the context otherwise requires,—
>
> …
>
> **"FBT rules"** is defined in section OZ 1(1) for the purposes of this Act:
>
> …
>
> **"Finance lease"** means a lease of a lease asset that is entered into on or after the date that the Taxation (Accrual Rules and Other Remedial Matters) Act 1999 receives the Royal assent under which—
>
> (a) The ownership of the lease asset is transferred to the lessee or an associate of the lessee at the end of the lease term; or
>
> (b) The lessee or an associate of the lessee has the option of acquiring the lease asset for an amount that is likely to be substantially lower than the lease asset's market value on the date of acquisition; or
>
> (c) The lease term is more than 75% of the lease asset's estimated useful life as that term is used in the formula applied by the Commissioner under section EG 4(3)

…

"Lease"—

…

(f) In paragraph (b) of the definition of "cost price", paragraph (b) of the definition of "lessee", and paragraph (a) of the definition of "lessor", and in the definitions of **"finance lease"**, "guaranteed residual value", "initial period", "instalment", "lease asset", "lease payment", "lease term", "outstanding balance", and "specified lease", and in sections CG 11(23), CG 11(23A), EO 2, EO 2A, FC 6 to FC 8, and FC 8A to FC 8G—

(i) Means an agreement under which a lessor transfers to a lessee for a lease term a lease asset or the right to possess a lease asset in consideration for a lease payment; and

(ii) Includes a hire or bailment, and a sublease; and

(iii) Does not include a hire purchase agreement as defined in section 2 of the Hire Purchase Act 1971, or an assignment of a hire purchase agreement; and

(iv) If the same lease asset is leased to the same lessee or an associated person of the lessee under 2 or more consecutive or successive leases, and the Commissioner, having regard to the tenor of this paragraph, regards the consecutive or successive leases as one lease, that lease:

…

"Operating lease" means a lease, other than a finance lease, that is entered into on or after the date that the Taxation (Accrual Rules and Other Remedial Matters) Act 1999 receives the Royal assent:

…

"Tax avoidance arrangement" means an arrangement, whether entered into by the person affected by the arrangement or by another person, that directly or indirectly—

(a) Has tax avoidance as its purpose or effect; or

(b) Has tax avoidance as one of its purposes or effects, whether or not any other purpose or effect is referable to ordinary business or family dealings, if the purpose or effect is not merely incidental:

…

"Tax avoidance", in sections BG 1, EH 1, EH 42, GB 1, and GC 12, includes—

(a) Directly or indirectly altering the incidence of any income tax:

(b) Directly or indirectly relieving any person from liability to pay income tax:

(c) Directly or indirectly avoiding, reducing, or postponing any liability to income tax:

[Emphases added]

Section CI 8 provides as follows:

Subject to the FBT rules, the other provisions of this Act and of the Tax Administration Act 1994, so far as they are applicable and with any necessary modifications, shall apply with respect to fringe benefit

tax as if it were income tax imposed under section BB 1, and as if every reference to an income year were a reference to a quarter or (where fringe benefit tax is payable on an income year basis under section ND 14) an income year; **but nothing in the FBT rules shall be so construed as to include fringe benefit tax in the expressions "income tax" or "tax" for the purposes of,—**

(a) The provisions listed in section OZ 1(3)(a) to (o); or

(b) Sections 121 and 122 of the Tax Administration Act 1994.

[Emphasis added]

Section OZ 1 provides (relevantly) as follows:

(1) In this Act—

…

"FBT rules" means Part ND and sections CI 1 to CI 6, CI 8 to CI 10, and GC 15 to GC 17 of this Act and sections 93, and 139B, and Part VII of the Tax Administration Act 1994; and includes section CI 11 (being a provision inserted after the original enactment of this Act):

…

(3) In the following provisions (which correspond to provisions in Parts IV and IVA of the Income Tax Act 1976 in which the terms "income tax" and "tax" were used)—

(a) Part B, except for sections BB 3(2) and BH 1; and

…

the terms "income tax" and "tax" do not include—

…

(q) Fringe benefit tax; or

...

[Emphases added]

Section OB 6 (which defines the term "income tax" for the purposes of the Act) provides (relevantly) as follows:

(2) Notwithstanding anything in subsection (1), the term "income tax" does not include the taxes specified in section OZ 1(3)(p) to (u) when the term is used in the provisions listed in section OZ 1(3)(a) to (o).

Section ND 1 provides (relevantly) as follows:

(1) Subject to section CI 5, an employer who has provided or granted a fringe benefit to an employee is liable to pay a special tax by way of an income tax to be known as fringe benefit tax.

Application of the Legislation

Date of market value determination

In determining whether the successive periods under multi-lease products constitute separate leases, or together form one lease, authorities in relation to the distinction between variation and rescission of contract are of some assistance. It is, however, noted that the question in this case is not one of rescission versus variation of contract, but rather of whether a new contract is entered into upon the natural conclusion of another, versus variation of the original contract.

The House of Lords considered the distinction between variation and rescission of contract in *Morris v Baron and Company* [1918] AC 1 ("*Morris v Baron*"), which was applied in *New Zealand Needle Manufacturers Ltd v Taylor and Another* [1975] 2 NZLR 3. Lord Dunedin in *Morris v Baron* stated the test for making this distinction as follows (at pp. 25-26):

> The difference between variation and rescission is a real one, and is tested, to my thinking, by this: In the first case there are no such executory clauses in the second arrangement as would enable you to sue upon that alone if the first did not exist; in the second you could sue on the second arrangement alone, and the first contract is got rid of either by express words to that effect, or because, the second dealing with the same subject-matter as the first but in a different way, it is impossible that the two should be both performed.

Viscount Haldane, in the same case, noted (at p. 19) that for a contract to rescind an earlier contract:

> … there should have been made manifest the intention in any event of a complete extinction of the first and formal contract, and not merely the desire of an alteration, however sweeping, in terms which still leave it subsisting.

Lord Atkinson also noted in *Morris v Baron* (at p. 31) that rescission of a contract will be implied "… where the parties have entered into a new contract entirely, or to an extent going to the very root of the first inconsistent with it".

It is the Commissioner's view that the same sorts of considerations as these are relevant to determining whether a new contract is entered into upon the natural conclusion of another, or the original contract is varied. However, in relation to this particular question, it is the Commissioner's view that in considering whether a party can be sued on a subsequent agreement alone, as if the earlier agreement did not exist, it is not necessary to inquire as to whether both that and an earlier agreement purport to deal with the same subject matter but in different ways.

Further, in the Commissioner's opinion, changes going to the very root of a contract for the lease of a motor vehicle would not necessarily be suggestive of a new contract being entered into upon the natural conclusion of another, as opposed to the original contract being varied. For instance, it could well be that toward the conclusion of the contract for the first, say, 12 month period under a multi-lease product, the parties decide to vary that contract by extending its term for an additional, say, 9 month period, for which the rental rate per month will be decreased. In this situation, the change of period and rental rate would arguably go to the very root of such a contract. However, this does not mean that a new lease contract is entered

into as opposed to the original lease contract being varied. It is clear in such a situation that the parties' intention is to vary the contract by extending the lease period and setting an appropriate rental rate to take the extended period into account. As an agreement to vary a lease contract for personal property by extending its term will not alter the legal interest that the lessee has (as the lessee's legal interest arises by virtue of possession, not the lease agreement), but rather will simply alter the lessee's possessory entitlement, the variation would not give rise to a surrender and regrant by operation of law.

Accordingly, it is the Commissioner's view that the rationale behind the considerations relating to inconsistency between different agreements concerning the same subject matter, and whether there are changes going to the very root of a contract, in determining if a contract has been varied or rescinded, is only relevant to the extent that both agreements purport to deal with the same subject matter **at the same time**.

The Commissioner is satisfied that the characteristics set out in the description of a multi-lease product in the Arrangement (discussed further below) ensure that each lease entered into for a further successive period constitutes a distinct lease. Therefore, the market value of motor vehicles leased under the Arrangement, for the purposes of calculating the value of any fringe benefit arising in respect of those vehicles, in accordance with section CI 3(1) and clause 1(c) of Schedule 2 Part A of the Act, is determined on the date on which each lease under the multi-lease product commences.

***Option** or **possibility** of further lease periods*

The description of a "multi-lease product" in the Arrangement requires there to be a lease of a motor vehicle for a specified period, with the **option** or **possibility** of the lessee entering into a further or multiple further leases of that vehicle for specified periods, or periods to be specified prior to their commencement. The Arrangement would cover lease products with pre-specified potential lease periods (for example a 12 month lease with two further possible leases of 12 months each), and also products with flexible potential lease periods (where if the lessee decides to enter into a further lease they may select the period of that lease, usually within some parameters, prior to its commencement).

Any lease documentation which refers to further potential leases under a multi-lease product should clearly identify that the further leases are **options** or **possibilities** only.

Separate and comprehensive written contracts

The description of the "multi-lease product" in the Arrangement requires that separate and comprehensive written contracts are required to be executed in respect of each period under the multi-lease product.

Consecutive or successive leases under multi-lease products are generally (but not necessarily) entered into by execution of a schedule or supplement to a master hire / lease agreement. The schedule or supplement is generally required to be read and construed by reference to a master hire / lease agreement, as if each provision of the master hire / lease agreement were set out in the particular schedule or supplement. The schedule or supplement will contain all particulars of the vehicle being leased, including any options, allowances and accessories etc., and will specify the lease term and rate, and any excess kilometre or other

charges. The terms and conditions imported by the master hire / lease agreement are the standard generic terms and conditions for motor vehicle leases that the lessor wishes to have in all of its leases, including, for example, provisions with respect to term and payment (usually with reference to the specifications in the relevant schedule or supplement), lessor and lessee obligations and warranties, liabilities and indemnities, termination, and rights arising upon default.

Provided that the schedule or supplement, read and construed by reference to a master hire / lease agreement constitutes a comprehensive contract which is separate from contracts for any other period or periods under the product, the Commissioner will be satisfied with respect to this requirement in the description of a "multi-lease product".

Calculation of rental rate

The description of the "multi-lease product" in the Arrangement requires that any rental rate for a lease period under the multi-lease product is calculated on the same basis as it would be for any other customer who was entering into the lease of the vehicle otherwise than under a multi-lease product.

This requirement is to be considered taking account of all factors which may impact upon the lease rate offered for the particular vehicle, apart from whether the vehicle is leased under a multi-lease product or otherwise. For instance, it is appropriate to have regard to things such as the lease period; customer credit rating; customer fleet size; kilometre allowances; replacement tyre allowances; options; accessories; and general service requirements of the lease, including vehicle maintenance.

The fact that the vehicle may have been previously leased under the multi-lease product or may potentially be leased again under the product, should not be taken into account in formulating the applicable rental rates.

Entitlements

The description of a "multi-lease product" in the Arrangement requires that the lease period to which any entitlement relates is able to be clearly identified in the relevant lease documentation.

Such entitlements may include kilometre allowances; replacement tyre allowances; options; accessories; general service components of the lease, including vehicle maintenance; or any other entitlement or extra.

For example, a quotation may be given for a 12 month lease of a vehicle under a multi-lease product, with projected lease rates for two further possible 12 month leases of the vehicle. If the quotation stipulated, for example, 4 replacement tyres, 2 services and a 60,000 kilometre allowance, the period to which these entitlements relates must be apparent. If the entitlements relate to a period longer than the immediate lease term (i.e. if the anticipated needs over the life of the lease and any further leases of the vehicle which may be taken up were identified in order accurately to project lease rates for further potential periods), the documentation should identify what portion of the entitlements is available for each period or potential period. The lessee is to be entitled to the full amount or value of the entitlements which relate to each

lease period entered into, irrespective of whether any further potential lease or leases of the vehicle is or are taken up.

Inconsistent agreements etc

The description of a "multi-lease product" in the Arrangement requires that:

"there is no contract, agreement, arrangement, plan, undertaking or understanding (whether enforceable or unenforceable) at the time of entering into any lease under the multi-lease product, or prior to that time, or thereafter, which directly or indirectly concerns, relates to, or otherwise affects the Arrangement and is:

- in any way inconsistent with the characterisation of the leases under the multi-lease product as separate and distinct, or

- in any way indicative of the specific terms and conditions of any potential further leases being agreed or determined at a time earlier than the time of entering into such further lease or leases."

In particular, such an inconsistent agreement, understanding, etc. under the first limb may include the following:

- that any party will, or will if requested, renew, extend or vary the lease term;

- that the parties will enter into a further lease in respect of the vehicle; or

- that there will be penalties for choosing not to enter into a further lease in respect of the vehicle.

The second limb may include, for example, anything which suggests that rental rates for any potential further lease have been agreed in advance of that lease being taken up, as opposed to simply being estimated or projected. The specific terms and conditions of any potential further lease should be determined at the time such lease is taken up, and take account of all relevant factors in existence at that time (see above, for example, in relation to calculation of rental rate).

Section GC 15

Section GC 15(1) of the Act applies where a relevant benefit is provided for or granted to a person **other than an employee** of the employer (that person and the employee being associated persons), by either the employer, or a third party with whom the employer has entered into an arrangement for the providing or granting of that benefit. Section GC 15(1) then operates to deem that benefit to be provided for or granted to the employee by the employer of the employee.

The description of the Arrangement is limited to the leasing of a motor vehicle under a multi-lease product, to a lessee who in turn provides the motor vehicle to an employee of the lessee for their private use or enjoyment, or makes the motor vehicle available for such private use or enjoyment. As the benefits are provided directly to the lessee's employees, rather than any person associated therewith, section GC 15 does not apply in respect of the Arrangement.

Section CI 2

Section CI 2 of the Act applies where a benefit is provided for or granted to an employee **by a person with whom the employer of the employee has entered into an arrangement** for that benefit to be so provided or granted. Section CI 2 then operates to deem that benefit to be provided for or granted to the employee by the employer of the employee.

The description of the Arrangement is limited to the leasing of a motor vehicle under a multi-lease product, **to a lessee who in turn provides the motor vehicle to an employee of the lessee** for their private use or enjoyment, or makes the motor vehicle available for such private use or enjoyment. As the benefits are provided to the lessee's employees **by the lessee**, rather than any person with whom the lessee has entered into an arrangement for the provision of the benefit, section CI 2 does not apply in respect of the Arrangement.

Section GC 17

Section GC 17 of the Act allows the Commissioner to deem certain persons to be in an employment relationship, and to deem benefits to be provided or granted, for the purposes of the FBT rules, by virtue of the deemed employment, where the Commissioner is satisfied that an arrangement with a purpose or effect of defeating the intent and application of the FBT rules, or any provision thereof, has been entered into.

The relevant question for the purpose of this Public Ruling is whether the Arrangement has the effect of defeating the intent and application of the FBT rules. The intention of the relevant FBT rules is found by ascertaining what was Parliament's intention in this regard. As stated by the Privy Council in *Commissioner of Inland Revenue v Auckland Harbour Board* (2001) 20 NZTC 17,008 at 17,011 per Lord Hoffmann "… for this purpose, the only available material is the language in which Parliament has expressed itself, properly construed according to currently accepted notions of how a taxing act should be interpreted and with due regard to s 5(j) of the Acts Interpretation Act 1924 as amended".

The Commissioner is satisfied that an Arrangement as described in the Ruling cannot be said to defeat the intent and application of the FBT rules, or any provision thereof. The Act provides that the market value of motor vehicles for FBT purposes, in accordance with section CI 3(1) and clause 1(c) of Schedule 2 Part A, is determined at the commencement of a lease. The general scheme of these provisions is to set out how to calculate the value of the benefit enjoyed by the employee where the motor vehicle is leased or rented. The statutory language makes it clear that the relevant calculations are based on stipulated percentages of the motor vehicle's market value on the date the period of leasing or renting commenced. The Arrangement as described in the Ruling involves separate leases of the motor vehicle, and as such, the market value of the vehicle is correctly determined as at the commencement of each lease. A taxpayer is free to choose, based on valid and reasonable commercial reasons, whether to enter into an extended period lease, or enter into a shorter lease with the possibility of further leases, which may be decided upon as and when required. Further, on the basis of the description of "multi-lease products" in the Ruling, there is nothing which would be indicative of the lease documents constituting a sham.

The Commissioner is therefore of the view that section GC 17 does not apply in relation to the Arrangement.

Section BG 1

Section BG 1 of the Act provides that a tax avoidance arrangement is void as against the Commissioner for income tax purposes, and that the Commissioner may counteract a tax advantage obtained by a person from or under a tax avoidance arrangement.

Section CI 8 relevantly provides that "… nothing in the FBT rules shall be so construed as to include fringe benefit tax in the expressions 'income tax' or 'tax' for the purposes of … the provisions listed in section OZ 1(3)(a) to (o) …".

Of paragraphs (a) to (o) of section OZ 1(3), the only relevant paragraph for present purposes is paragraph (a), the provisions listed therein being "Part B, except for sections BB 3(2) and BH 1".

Accordingly, section CI 8 operates to preclude FBT from inclusion in the expressions "income tax" or "tax" for the purposes of section BG 1 (contained in Part B of the Act).

Further, section OB 6(2) states that the term "income tax", when used in the provisions listed in section OZ 1(3)(a) to (o), does not include the taxes specified in section OZ 1(3)(p) to (u) (paragraph (q), being the relevant paragraph for present purposes, lists "Fringe benefit tax").

Fringe benefit tax is specified in section OZ 1(3)(q), and, as noted above, the provisions listed in section OZ 1(3)(a) are "Part B, except for sections BB 3(2) and BH 1", which includes section BG 1.

The Commissioner is therefore satisfied that section BG 1 does not apply in relation to the Arrangement.