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26 AUGUST 2015

Tax deductible expenditure for employees flying to and from work

John Holland Group Pty Ltd v Commissioner of Taxation [2015] FCAFC 82 (11 June 2015)

In Australia the view has prevailed that the expenses of traveling from home to work and back are not deductible expenses for tax purposes¹. This longstanding principle becomes muddled when an employee is flying to their place of work, as is often the case for travelling professionals (consultants, lawyers, miners, engineers).

From a fringe benefits tax perspective, the fundamental question is whether the employee is travelling to work, or travelling in the course of work? If the employees are travelling in the course of work, the expenditure would be deductible for the employees and the employer taxpayer would have their fringe benefits tax liability reduced to nil. The recent John Holland case from the Full Court of the Federal Court of Australia helps clarify the situation.

Background Facts

The John Holland Group operates a consortium of various

construction, rail, building and services companies. One of the companies within the John Holland Group operates a business providing railway construction and maintenance throughout Australia. In operating the railway projects, John Holland employs a mobile skilled workforce available for deployment on a project to project basis. In the current case, John Holland flew employees from Perth (WA) to Geraldton (WA) and back for a rail upgrade construction project east of Geraldton.

In practice, many John Holland employees opted to reside in Perth and travel to Geraldton on a rostered basis of a two to four week deployment period. John Holland paid for all of the employee's flights between Perth and the project in Geraldton. During the course of travelling to Geraldton, the employees were paid and required to conform to John Holland's conduct standards.

Normally, these 'fly-in, fly-out' arrangements are exempt from fringe benefits tax pursuant to s 47(7) of the *Fringe Benefits Tax*



¹ *Lunney v Federal Commissioner of Taxation* (1958) 100 CLR 478, [1]



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Assessment Act 1986 (Cth) (**FBTAA**). It provides a fringe benefits tax exemption for employers where an employee's usual place of employment is:

- i) on an oil rig, or other installation, at sea; or
- ii) at a location in a State or internal territory but not in, or adjacent to, an eligible urban area; or
- iii) at a remote location that is not in a State or internal territory.

The Australian Tax Office determined that s 47 (7) did not apply because the railway project near Geraldton was considered a non-remote location. Therefore, in order to claim exemption from Fringe Benefits Tax, John Holland needed to rely upon the 'otherwise deductible' rule in s 52(1) of the FBTAA.

The 'otherwise deductible' rule provides a reduction in the taxable value to employers where the expenditure incurred would have

been deductible to the employee. In order to rely on the 'otherwise deductible' rule, John Holland was required to demonstrate that the expenditure was incurred in the course of the employee's work.

The question before the Full Court of the Federal Court was whether John Holland was entitled to rely upon the 'otherwise deductible' reduction to fringe benefits tax. In answering the above question, the Court ascertained whether the expenditure incurred by employees would have amounted to deductible expenditure under the general deduction provisions of s 8-1 of the ITAA97. In order to claim a general deduction under s 8-1, ITAA97, an individual must demonstrate the expenditure was incurred in gaining or producing assessable income.

Key Observations of the Court

The Full Court of the Federal Court unanimously agreed that the flight expenditures were incurred as part of the employees' work and therefore would have been deductible expenses for the employees. The result for John Holland was that the 'otherwise deductible' rule applied and John Holland was entitled to reduce the taxable value of the residual fringe benefits to 'nil'.

In allowing John Holland's appeal, Justice Edmonds was persuaded by the fact that John Holland employees were paid, and held to workplace standards as soon as they checked in at the Perth Airport:

From the time the John Holland employees checked in at Perth Airport they were travelling in the course of their employment, subject to the directions of John Holland and being paid for it. That situation subsisted until they disembarked the plane at Perth

Airport at the end of their rostered-on work time... at no time during that period were [the employees] travelling to work; they were travelling on work..."²

In finding that the employees were travelling to Geraldton in their course of work, Justice Edmonds held the flight expenditures would have been deductible expenses for the employees, and therefore, John Holland was entitled to rely upon the 'otherwise deductible' reduction.

In a supporting judgment, Justice Pagone focused on whether the travel to Geraldton constituted part of the employment:

In this case... the employment necessitated that travel be part of the activities productive of assessable income. It was the remoteness of the project location that caused there to be a need for travel to be part of that for which employees were employed. There is no suggestion of the obligation to travel being created other than by the demands of the nature of the employment, or as device to clothe what would be a private journey before the derivation of income with the appearance of a journey as part of the employment.³

Additionally, Justice Pagone afforded weight to the distance of the project. The remoteness of the project location provided evidence that the travel was undertaken as part of the employment.⁴

² *John Holland Group Pty Ltd v Commissioner of Taxation* [2015] FCAFC 82 (11 June 2015), Edmonds J at [45]

³ *Ibid.* Pagone J at [59-60]

⁴ *Ibid.*



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Practical Implications

This successful appeal is good news for employees and employers alike. Australian working arrangements are becoming increasingly flexible and many companies are now engaging or employing mobile workforces. In finding that John Holland employees incurred travel expenses in the course of their work, the resulting fringe benefits tax reduction provided to employers is substantial.

Employers now have peace of mind, knowing that as soon as employees travelling for work check into the airport, they are deemed to be working. Any expenditure incurred between airport check-in and a subsequent return to the airport will amount to tax deductible expenditure.

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