

WHEN STAFF TAKE WORK CARS HOME



We will address the potentially thorny issue of employees taking motor vehicles home for garaging. As a starting point, a fringe benefit arises and liability for Fringe Benefit Tax arises when a motor vehicle is made available to an employee for private use.

This is because the notion of private use of a motor vehicle is defined in legislation to include travel between home and work, and any other travel that confers a private benefit on the employee. Having said that, the Court in the Schick case distinguished between travel by an employee making his or her way to where work begins, and travel by an employee from his or her home, which is also a place of work, to a work site.

In the subsequent case of Yes Accounting Services Ltd the sole shareholders and directors of the company were a husband and wife. The company owned a car used for business purposes; that was supported by a log book. The car was garaged at the shareholders' home every night.

There was a written notice from the directors to themselves as employees advising that private use of the company's car was prohibited. The shareholders personally owned another car for private purposes. The court held that the company car was not available for private use, thus no fringe benefit.

Based on that decision, we believe no fringe benefit arises where an employee is required to take a car home for security purposes and that employee is restricted from using the car privately. As a bare minimum I recommend that:

- A letter be issued to the employee asking him or her to take the car home for garaging.
- The letter makes it clear that private use is not permitted unless agreed to between the employer and employee. That would include a mechanism for the employee to contribute to the cost of providing the fringe benefit.
- The requested garaging actually occurs.
- There be periodic reviews to establish whether there has been unpermitted private use and if so that a written warning be issued.

If that approach is adopted, we strongly suggest that the parties be "reasonable". For example, if the employee does use the vehicle at the weekend, public holidays and holidays, then there is a fringe benefit. That fringe benefit could be dealt with by paying FBT or the employee making a contribution to the costs incurred. In the case of shareholder employees that contribution probably would be made as drawings.

Alternatively, reimburse employees for use of their vehicles on a mileage basis. We have a template available on our website should you wish to put in place the appropriate employee documentation.



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