CBAA POSITION ON THE CANADA REVENUE AGENCY’S PROPOSED ADMINISTRATIVE POLICIES ON THE PERSONAL USE OF BUSINESS AIRCRAFT

Introduction

The CRA made a verbal presentation of its draft policies on the personal use of business aircraft to CBAA on August 3rd. Subsequently, we transcribed and sent the CRA briefing to members asking for their comments. We received a broad range of concerns and views, which in turn informed and directed the official CBAA position which will be presented to CRA on September 6th.

We are indebted to the many members who contacted the CBAA to make their views known. As we go forward, our aim is to have policies that are fair, and

- Give members a level of certainty so they can proceed with aircraft purchases and/or other key decisions;
- Ensure that there are no unintended consequences or marketplace distortions that will negatively affect either the purchase and/or use of business aircraft, or the individual(s) receiving the benefit;
- Ensure that proposed administrative policy complies with the Tax Act and common law, results in low compliance costs for taxpayers, and is tax neutral regardless of the taxpayer’s location or segment in the business aviation industry.

Overview of CRA’s proposed policies

CRA has proposed three different categories (depending on the circumstances of the individual and the flight) to assess the taxable benefit to an individual when they use a business aircraft for personal travel.

AS PROPOSED:

Category 1: The business aircraft is owned by a corporation and the person receiving the personal benefit does not control access and use of the aircraft for personal use. In this category an employee, officer or shareholder of the corporation has their spouse, relative or friend accompany them on the business trip and the person accompanying the employee, officer or shareholder on the aircraft is not supporting the business activities of the aircraft owner. In this circumstance the employee, officer or shareholder will have the value of a non-discounted first class ticket between the two (or multiple) city pairs included in their income.
**Category 2:** The business aircraft is owned by a corporation and the person receiving the personal benefit does not control access and use of the aircraft for personal use. In this category the employee, officer or shareholder uses the aircraft for a personal trip. The CRA will require the corporation to assess a value for this personal benefit to the employee, officer or shareholder in an amount equal to the charter rate for this benefit.

**Category 3:** The business aircraft is owned by a corporation and the person receiving the personal benefit for the personal use of the aircraft is a person who controls access and use for the personal use of the aircraft. The CRA requires that the sum of an operating benefit and an available for use benefit be included in the individual’s income:

1. **Operating Benefit:** The employee or officer will have an amount included in their income equal to their proportionate share of the operating costs (variable plus fixed costs) for the calendar year for the aircraft (excluding depreciation, capital cost allowance and interest); plus

2. **Available for Use Benefit:** the employee or officer will have an amount included in their income equal to the prescribed rate of interest on the original capital cost of the aircraft. This amount will be pro rated based upon their number of flying hours for personal use versus the number of flying hours for business use during the calendar year.

The sum of these two amounts is included in the income of the recipient of the personal benefit.

Finally, CRA stated that the application of this proposed administrative policy will be retroactive and be applied to any open audits, notices of objection or pending litigation within the applicable normal reassessment periods or where taxpayers have signed waivers to the normal reassessment period. Files already closed by the CRA will remain closed and will not be subject to this proposed administrative policy.

**CBAA Response to the CRA**

**Overview**

In broad terms, the CBAA, after consultation with our members:

- rejects the application of the concept of a person that controls access and use as a gateway to taxpayer treatment under the Tax Act for personal benefit valuations; and

- rejects category 3 in its entirety because it overprices the value of the benefit received by the individual who controls access and use. In most of the scenarios we examined, the valuation
of the benefit under this category is not less than double the amount the taxpayer could purchase the same service in the charter market; and

- rejects the application of this proposed policy on a retroactive basis by the CRA. The policy should only be applied to taxpayers prospectively providing them with an ability to organize their affairs to be in line with the CRA's administrative policy; and

- the CBAA, and its subject matter experts, following consultation with members, believe that the policies described in category 1 & 2 may be workable in principle, but only without any requirement to determine who controls access and use of the aircraft as the gateway to this particular tax treatment and a statement from the CRA indicating that its accepted methodology to determine these valuations will create real tax certainty for the affected taxpayers.

CBAA’s detailed legal and technical position paper is under development and will be presented to CRA in advance of our September 6th meeting. Copies will be made available to the membership.