

August 16, 2017

## Summary of CRA'S Verbal Briefing of Proposed Administrative Policy on Personal Use of Company-Owned Aircraft in Canada

Per our earlier correspondence to CBAA members and other interested parties, please find below a summary of proposed Canada Revenue Agency policy that was **verbally represented to the CBAA by the CRA on August 3, 2017.**

**The following is a general discussion only and is not legal advice in respect of any particular set of facts.** Therefore, to the extent that you share this information with others, it must be clearly understood that this discussion is of a general nature only and does not constitute legal advice in respect of any particular taxpayer's circumstances. **Taxpayers are encouraged to consult a tax lawyer in respect of their particular circumstances and obtain proper legal advice.**

### Summary of Canada Revenue Agency's Administrative Policy

---

The Canada Revenue Agency has proposed three categories in its proposed Administrative Policy for the taxation of the personal use of business aircraft owned by a corporation.

#### *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 or officer of the corporation, who has his or her spouse accompany them on a business trip on the aircraft, and the spouse is not on the trip in support of the business activities of the corporation, will have the value of a non-discounted first class ticket between the two (or multiple) city pairs included in their income and reported on their T4. In such a circumstance, the tax cost of the benefit will equal the employee, or officer's marginal rate of taxation on the value of the benefit.

For example, if the value of a first class ticket for the trip is \$1,000 and the employee or officer is resident in Quebec, their tax cost would equal their marginal rate of taxation in Quebec applied to the value of the benefit. We will assume the highest marginal rate in these circumstances which is

equal to 53.31% in Quebec. Therefore, the employee or officer would have a tax cost equal to \$533.10 for the benefit of having their spouse accompany them on the aircraft on a business trip.

These personal benefits will be required to be calculated by the corporation on a calendar basis so that the benefits are aligned with the personal income taxation year which ends on December 31 in Canada.

### *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 or officer uses the aircraft for a personal trip with people of their choosing on board (family, friend etc.). In this circumstance, the purpose of the flight is entirely personal and there is no business component. The CRA will require the corporation to assess a value for this personal benefit to the employee or officer in an amount equal to the charter rate for the type of aircraft for this flight or series of flights. The value of that benefit will be included in the employee or officer's income and reported on their T4 for the personal taxation year. In such a circumstance, the tax cost of the benefit will equal the employee, or officer's marginal rate of taxation on the value of the benefit.

For example, if the cost of the trip using a charter aircraft of the same or similar type is \$100,000 and the employee or officer is resident in Quebec, their tax cost would equal their marginal rate of taxation in Quebec applied to the value of the benefit. Therefore, in the example above, the employee or officer would have a tax cost equal to \$53,310 for the personal benefit of using the business aircraft to convey them on their entirely personal trip.

These personal benefits will be required to be calculated by the corporation on a calendar basis so that the benefits are aligned with the personal income taxation year which ends on December 31 in Canada.

### *Category 3*

**In category three 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.**

In this circumstance, the value of any personal use by this individual will be calculated under the CRA's administrative policy by including the sum of an operating benefit and an available for use benefit as follows:

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. For example, assuming that the aircraft is

1. operated 80 flying hours for business use and 20 flying hours for personal use; and
2. the operating costs are \$1,000,000 for the year; and
3. the original capital cost of the aircraft is \$30,000,000; and
4. the prescribed rate of interest is 6%;

the value of the personal benefit is calculated as follows:

The sum of the following amounts is included in the income of the employee or officer: twenty percent of \$1,000,000 (\$200,000) plus twenty percent of 6% of \$30,000,000 (\$360,000). The employee or officer will have an income inclusion of  $(\$200,000 + \$360,000) = \$560,000$  for the 20 hours of personal use and a tax cost equal to 53.13% of \$560,000 (Quebec's highest marginal personal tax rate). If the individual recipient is resident in Quebec that amount is equal to \$297,528. In such a scenario the hourly tax cost for the 20 hours of personal use is equal to \$14,876.40. In such a circumstance the provision of the operating benefit should be deductible in the hands of the corporation to the extent that the employee or officer receives the benefit as part of their employment agreement with the corporation. There is no deductibility for the operating benefit in circumstances where the personal benefit is received in the individual's capacity as a shareholder. There is no deduction available for the available for use benefit in the hands of the corporation. The available for use benefit charge is meant to approximate the opportunity cost to the corporation of

the capital used to purchase the aircraft which the CRA believes is a personal benefit to the employee or officer described in this Category 3.

#### *Other factors*

The CRA has indicated where the individual who controls access and use is a passenger on a personal flight provided for the benefit of another employee or officer of the corporation, the value of the personal benefit will always be imputed to the individual who controls access and use for the personal use of the aircraft even though they are not directing the particular trip (i.e. A senior vice president invites the person who controls access and use for the personal use of the aircraft to accompany him or her on a family vacation).

Where the aircraft is leased, the lease amount will be included in the operating costs and the individual who controls access and use for personal use will have a pro rata share of these lease costs imputed to them based upon the number of personal use flying hours versus the number of business use flying hours during the calendar year. In such a case there is no available for use benefit as described in this section charged to the employee or officer. Their proportionate share of the lease costs captures the value of the available for use benefit according to the CRA.

The prescribed rate for calculating the available for use benefit for business aircraft owned by a corporation will be determined by applying the Treasury Bill rate plus 4% plus 1%. The current Treasury Bill rate is 1%. Therefore, prescribed rate as of August 15, 2017 is equal to 6%.

The 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 administrative policy.

The CRA will consider stakeholder input until August 21, 2017.