Inland Revenue
Te Tari Taake

INTERPRETATION STATEMENT | PUTANGA WHAKAMĀORI

FBT – travel by motor vehicle between home and work

Issued | Tukuna: 15 January 2025

IS 25/02

This interpretation statement considers when employer-provided travel by motor vehicle between home and work is a fringe benefit subject to FBT.

REPLACES | WHAKAKAPIA

- **IS3448**: Travel by motor vehicle between home and work – deductibility of expenditure and FBT implications

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RELATED ITEMS

- IS 17/07: Fringe benefit tax – motor vehicles
- OS 19/05: Employer-provided travel from home to a distant workplace – income tax (PAYE) and fringe benefit tax
- OS 23/01: When employee allowances for additional transport costs for home to work travel are exempt from income tax
- New legislation: Taxation (Annual Rates for 2022-23, Platform Economy, and Remedial Matters) Act 2023, specifically the sections on the ability to transfer FBT and ESCT obligations from a non-resident employer to an employee working in New Zealand (at 44), FBT exemption for certain public transport fares (at 77) and FBT exemption for certain vehicles including bicycles and scooters and certain vehicle share services (at 80)
- IR264: Rental income
- IR409: Fringe benefit tax guide
- IS 25/01: Income tax – deducting costs of travel by motor vehicle between home and work

Before continuing, refer to [12]-[14] to see which issues are covered by the related items.

Summary | Whakarāpopoto

1. Under the FBT rules, a fringe benefit arises where a motor vehicle is made available to an employee for their "private use". Private use includes travel between home and work and any "other" situation where a "private benefit" is supplied.
2. The courts have read the reference to "other" situations where a private benefit is supplied to mean travel between home and work will amount to private use only if a private benefit arises to the employee from that travel. A private benefit that is only incidental does not cause travel to be private use for the employee.
3. While the courts have viewed travel between home and work as private in nature, the courts have recognised four exceptions to this general rule.
4. Although not stated in the New Zealand legislation, the case law recognises that the four exceptions apply where the travel expenditure, had it been incurred by the employee, would have been incurred by them wholly, exclusively and necessarily in deriving their employment income. This will be the case where the need for the expenditure arises from the nature of the work, and the travel is "on work".

5. Where the case law exceptions apply, the employees are regarded as travelling on work as soon as they leave home and until they arrive home, rather than travelling to or from work. In such cases, the travel between home and work is not private use and is not subject to FBT.

6. Statutory exclusions from FBT may also apply to a home to work travel benefit. Although the legislation requires that a "private benefit" is conferred on the employee for there to be a motor vehicle fringe benefit, practically it can be useful to consider the statutory exclusions first, on the assumption that there is a "private benefit". This is particularly so if the vehicles are not cars, in which case they may qualify for the work-related vehicles exclusion. If none of the statutory exclusions applies, it is then necessary to consider whether there is in fact a private benefit by working through the four case law exceptions and cross-checking the answer against the summary of case law principles and the wholly, exclusively and necessarily incurred test. The statutory exclusions for motor vehicles are discussed from [149].

7. If the motor vehicle has been made available for other types of private use that do not involve travel between home and work on that day, FBT still applies (unless a statutory exclusion covers that use). In other words, if the motor vehicle has been made available for other private use, FBT will apply for the whole day. This is regardless of whether there was also business use on that day, and regardless of whether the employee's travel between home and work was business use. Therefore, the case law exceptions discussed in this item are most relevant where there is a general restriction in place on private use, but travel between home and work is specifically allowed and is not covered by a statutory exclusion.

8. Employers may disregard minor or insignificant private use (*de minimis* private use) when deciding whether travel is private use. The Commissioner's view on what can be regarded as minor or insignificant in the home to work travel context is set out in this item.

9. This item does not cover **pooled** motor vehicles made available to employees for travel between home and work. For more information, see [14], bullet 8.

10. Lastly, although the item's title refers to travel by motor vehicle between home and work, this item is concerned solely with travel between home and work where a motor vehicle has been made available to an employee. It does not consider the tax treatment that applies when an employer helps cover the cost of travel between home and work in the employee's privately owned motor vehicle. For cross references to information on employer allowances and employer-supplied fuel charge cards, see [14], bullet 5. For cross references to information on tax-free reimbursing allowances for travel to a temporary workplace in the employee's own motor vehicle, see [14], bullet 6.

11. All legislative references are to the Income Tax Act 2007, unless otherwise stated.

Who this interpretation statement is relevant to

12. This interpretation statement is most relevant to employers.

13. This statement is also relevant to IR56 taxpayers who are cross-border employees and who have agreed with their employer in a document that they will account for their own FBT liabilities as PAYE income payments.

14. Except where otherwise stated, this interpretation statement is **not** relevant to the following:

- Self-employed taxpayers and partners in partnerships claiming deductions for motor vehicle expenditure under the specific deductibility provision for motor vehicle expenditure, and to close companies that elect to use the specific deductibility provision for motor vehicle expenditure. These taxpayers should see the companion item **IS 25/01**.
- Employees considering what deductions to claim in their income tax return. Employees cannot claim deductions for travel expenditure (see from [117]).
- Landowners who rent out residential property or holiday homes and incur travel expenditure on journeys between their home and the rental properties in doing so. In this case, travel to the rental properties or holiday homes to carry out inspections or maintenance is generally deductible. For more information, see **IR264**, at 7–9.
- Where the distance travelled by an employee from home to work and back again is more than a reasonable daily travelling distance (ie, would usually take more than two hours). If the round trip is more than a reasonable daily travelling distance, see **OS 19/05**.
- Employers who pay allowances to employees for private travel between home and work in the employees' own vehicles, or who provide fuel charge cards to employees to buy fuel for private travel between home and work in the employees' own vehicles. For information on taxable allowances (cash benefits) see **IR409** at 3. For information on fuel provided by way of a fuel charge card (free, subsidised or discounted goods and services) see IR409 at 16.
- Where an employee is travelling to a temporary workplace, if the:
  - employer, instead of supplying a motor vehicle, pays the employee a reimbursing allowance for their additional transport costs;
  - employee will incur the expenditure travelling between home and work in connection with their employment and for the benefit of the employer; and
  - additional distance travelled, except in limited cases, is no more than 70 km per day.

See **OS 23/01** to determine whether a tax-free reimbursing allowance could be paid to the employee.

- Employers who supply their employees with transport by heavy vehicle that is designed principally for the carriage of passengers such as a bus. Such travel may be an unclassified fringe benefit (ss CX 2(1)(b)(ii) and (c), CX 19B and CX 37). For information on transport by heavy vehicle, see **IS 17/07** from [60].
- Employers who supply motor vehicle fringe benefits under pooled vehicle arrangements. Special rules apply to pooled vehicles for FBT purposes (s CX 8 and sch 5, cl 2). For general information on pooled vehicles, see **IS 17/07** at [242]. For pooled vehicles taken home only so they are available for out-of-hours business use, see IS 17/07 at 14.

Analysis | Tātari

15. This analysis is divided into five sections:
    - overview of the FBT rules relevant to travel between home and work (from [22]);
    - private benefit (from [28]);
    - FBT rules (from [102]);
    - minor or insignificant private use and the Commissioner's view (from [169]); and
    - vehicles taken home for storage or charging (from [179]).
16. The first section overviews the FBT rules relevant to travel between home and work.
17. For those familiar with the FBT rules, the second section covers the case law on the meaning of private benefit that has been decided specifically in the home to work travel context. (The FBT rules require an employer to pay FBT if they supply a fringe benefit to an employee. A fringe benefit arises where an employer makes a motor vehicle available to an employee for their private use. Private use includes travel between home and work and any other travel that gives rise to a private benefit to the employee. The courts have interpreted the reference to "any other travel" in the definition of private use to mean that travel between home and work is private use only if it confers a private benefit on the employee.)
18. The third section covers the FBT rules in more detail. The FBT rules are found mainly in subpart CX (see the definition of "FBT rules" in s YA 1, and s RD 25 for a list of the provisions that make up the rules). This section covers both the legislation and the case law on words and phrases used in the FBT rules. It covers the non-travel case law relevant to the meaning of private benefit, the concepts of availability for private use and incidental private use, the special rules for shareholder-employees, and the

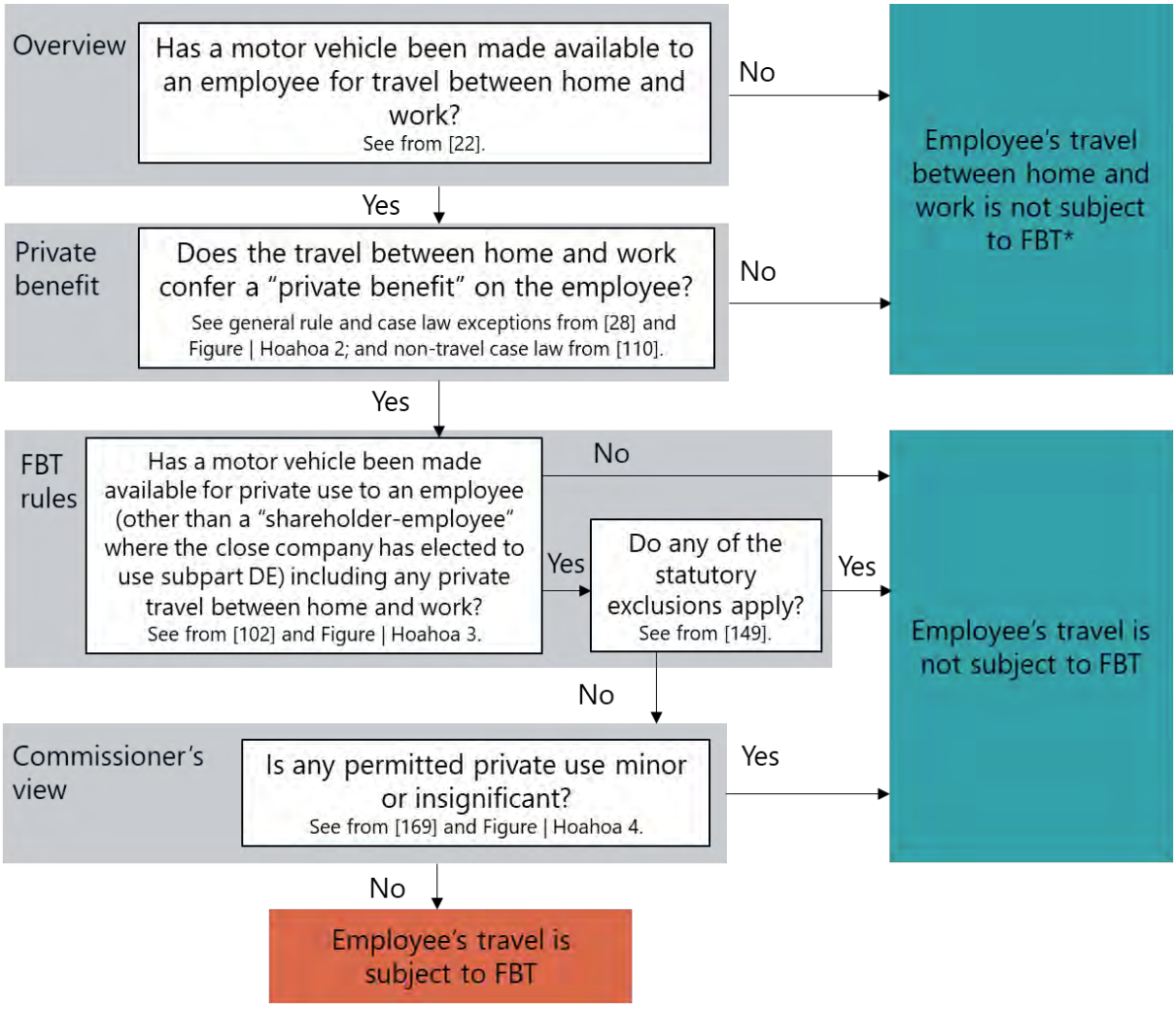
statutory exclusions (see Figure | Hoahoa 3 at [104]). **We suggest readers who are not familiar with the FBT rules read this section first.**

19. The fourth section covers the Commissioner's view on minor or insignificant private use (*de minimis* private use) in the context of travel by motor vehicle, mentioned at [8].

20. The final section covers the Commissioner's position on vehicles taken home for secure storage or electric vehicles (EVs) taken home for charging.

21. See Figure | Hoahoa 1 for an overview of the analysis. (The analysis on vehicles taken home for storage or charging stands on its own, so is not covered in the figure.)

Figure | Hoahoa 1: Travel by motor vehicle – subject to FBT



* However, the employee's travel will be subject to FBT for the day if the motor vehicle has been made available for other use that is private use on that day (unless a statutory exclusion covers that other use, or it is minor or insignificant private use).

Overview of the FBT rules relevant to travel between home and work

22. Under the FBT rules, an employer who supplies a "fringe benefit" to an employee is liable to pay FBT (s RD 26(1)).

23. In the home to work travel context, a fringe benefit is, broadly, a benefit that:

- is supplied by an employer to an employee in connection with their employment;
- arises when a motor vehicle is made available to an employee for their private use; and
- is not a benefit that is excluded from being a fringe benefit (ss CX 2(1) and CX 6(1)).

24. In this context, private use includes:

- the employee's use of the vehicle for travel between home and work; and
- any other travel that confers a private benefit on the employee (s CX 36).

25. In the FBT rules, "motor vehicle" takes the definition in s 2(1) of the Land Transport Act 1998 and does not include a vehicle where its gross laden weight is more than 3,500 kg (s YA 1, "motor vehicle" para (b)). (Usually, a 12-seater minibus would be a motor vehicle under the FBT rules, but anything larger would not.)

26. The FBT rules cover arrangements to supply benefits (s CX 2(2) and (5)). They also cover past and future employment as well as present employment (s CX 2(3)).

27. For the legislation, see the Appendix to this statement.

Private benefit

28. The meaning of private benefit is key to whether an employer is supplying a fringe benefit subject to FBT when they supply a motor vehicle to an employee for travel between home and work. Therefore, the case law on the meaning of private benefit in the travel between home and work context is discussed first in this item. (There is further discussion on the meaning of private benefit more generally in the section covering the FBT rules in more detail.) **Readers not familiar with the FBT rules may wish to read about the FBT rules (from [102]) before reading this section.**

29. This section of the item covers:

- the general rule for home to work travel expenditure (from [32]);
- the four case law exceptions (from [40]):
  - o necessary to transport essential equipment or instruments;

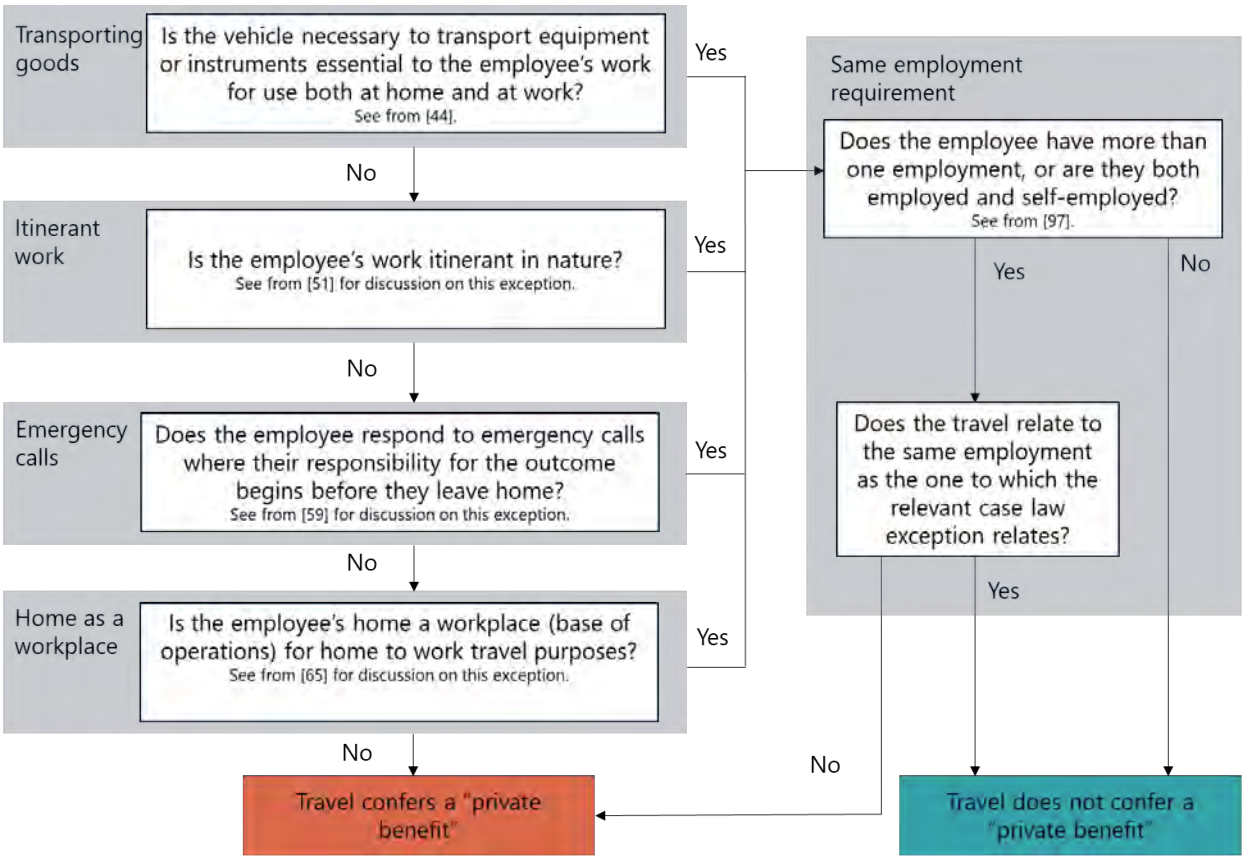
- taxpayer's work is itinerant;
- emergency calls (case law exception); and
- home as a workplace;

- same employment or income-earning activity requirement (from [97]); and
- summary of case law principles (from [99]).

30. As a rule, employer-supplied travel between home and work confers a private benefit on an employee. However, in four recognised situations it does not (the four case law exceptions). The case law exceptions apply where the need for the travel arises from the nature of the work, and the travel is on work. They only apply to travel between home and work undertaken in performing employment duties for the same employment as the one to which the case law exception applies.

31. See Figure | Hoahoa 2 for an overview of this section.

Figure | Hoahoa 2: Travel by motor vehicle between home and work – private benefit



General rule for home to work travel benefits

32. Travel between home and work must give rise to a private benefit for an employee for the travel to result in a fringe benefit subject to FBT. If no private benefit exists, there is no private use and no fringe benefit.

33. The case law on travel between home and work has concluded, as a rule, that expenditure on travel between home and work is private expenditure: *Ricketts v Colquhoun* [1925] AC 1 (HL). Case law exceptions to the general rule are discussed from [40].

34. The general rule has stood in the United Kingdom (UK) for over 100 years.[1] New Zealand decisions on travel between home and work have upheld the general rule. Although there have not been any cases decided in New Zealand on travel between home and work since 1998, recent case law decided in overseas jurisdictions such as Australia and the UK continues to uphold the general rule. The New Zealand courts have had regard to cases decided in these jurisdictions in earlier New Zealand home to work travel cases.

Rationale for the general rule

35. Lord Denning explained the reasons behind the general rule in *Newsom v Robertson* [1952] 2 All ER 728 (CA). *Newsom v Robertson* involved a barrister who worked at his chambers or in court during the day but often took papers home and continued to work there for several hours. Lord Denning explained that when income tax was introduced, most people lived and worked in the same place. Therefore, the court considered that the need for travel between a taxpayer's home and workplace arose from the taxpayer's choice to live away from their work.

36. In *Lunney v FCT* 11 ATD 404 (HCA), the taxpayer worked partly at home and argued that in travelling between his home and workplace he was travelling between two places of work. In their joint judgment, Williams, Kitto and Taylor JJ referred to *Newsom v Robertson* and commented that, while few taxpayers can choose whether to live at their workplace, the purpose of the taxpayer's journeys was at least as much to enable the taxpayer to live at his home, as to get to his place of work (at 413):

> None of the members of the [Court of Appeal] were prepared to assent to the proposition that the taxpayer's journeys were for the "purpose" of his profession; in the language of Romer LJ:

[1] Before *Ricketts v Colquhoun*, see *Cook v Knott* (1887) 2 TC 246 (QB).

> "The object of the journeys between his home and place of work, both morning and evening, is not to enable the man to do his work but to live away from it" (1953) 1 Ch, at p 17.
>
> The fact that few taxpayers are free to choose whether they will live at their place of work or away from it may appear to invest this statement with a degree of artificiality. But, even in these modern times, they still have, within limits, the right to choose where their homes shall be so that a taxpayer's daily journeys between his home and place of work are rendered necessary as much by his choice of a locality for his residence as by his choice of employment or occupation. And indeed the purpose of such journey [sic] is, at least, as much to enable him to reside at his home as to attend his place of work or business.

37. In *FCT v Collings* (1976) 76 ATC 4,254 (NSWSC) Rath J also noted that the decision in *Ricketts v Colquhoun* was based on ways of living that are no longer prevalent. However, changes in the way people live and work have not resulted in the general rule being overturned. In *Lunney v FCT* Dixon CJ commented (at 405) that the rule was well established and if it were to be changed, the legislature, not the court, should change it.

38. For more recent decisions upholding the general rule in the Australian and UK courts, see the decisions of the Federal Court of Australia (Full Court) in *Bechtel Australia Pty Ltd v Commissioner of Taxation* [2024] FCAFC 33 and *John Holland Group Pty Ltd v FCT* [2015] FCAFC 82 and of the UK High Court, Chancery Division in *Jackman v Powell* [2004] EWHC 550.[2]

Temporary workplaces

39. In New Zealand, the general rule applies regardless of whether the travel is to a temporary workplace: *Kirkwood v Evans* [2002] EWHC 30.[3] However, the approach in OS 19/05 on employer-provided travel to a distant temporary workplace may apply.

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[2] See also, decisions of the Australian Administrative Appeals Tribunal in *London v FCT* (2022) 2022 ATC 10-625, *Mfula v FCT* (2021) 2021 ATC 10-588, *Masters v FCT* (2017) 2017 ATC 10-460, *Vakiloroaya v FCT* (2017) 2017 ATC 10-446, *Hill v FCT* (2016) 2016 ATC 10-430, *Kaley v FCT* (2011) 2011 ATC 10-193 and *Brandon v FCT* (2010) 2010 ATC 10-143 and of the UK First-tier Tribunal (Tax Chamber) in *Daniels v Revenue and Customs Commissioners* [2018] UKFTT 462, *White v Revenue and Customs Commissioners* [2014] UKFTT 214, *Meynell-Smith v Revenue and Customs Commissioners* [2013] UKFTT 113 and *Kenyon v Revenue and Customs Commissioners* [2011] UKFTT 91, of the UK Upper Tribunal (Tax and Chancery Chamber) in *Samadian v Revenue and Customs Commissioners* [2014] UKUT 13, and of the UK Special Commissioners in *Lewis v Revenue and Customs Commissioners* [2008] STC (SCD) 895 and *Warner v Prior* (2003) Sp C 353.

[3] Note that, although the principle is drawn from UK case law, the legislation has been amended in the UK to allow a deduction for travel to a temporary workplace.

There is also the possibility of paying a tax-free allowance for additional transport costs in some cases. See [14].

Four case law exceptions

40. Four case law exceptions can apply to mean travel by an employee between home and work in a motor vehicle is not subject to FBT.

41. The four exceptions are as follows (*FCT v Genys* (1987) 77 ALR 527 (FCA) at 531):

- A vehicle is necessary to **transport equipment or instruments** that are essential to the employee's work between the employee's home and workplace.
- The employee's work is **itinerant**.
- The employee responds to **emergency calls** at home and their responsibility for the outcome begins before they leave home.
- The employee's **home is a workplace** (or base of operations). To satisfy this exception, the employee must meet specific criteria. It is not sufficient that work is carried on at home (even if it is a condition of the employee's employment contract).

42. The four exceptions apply to individual instances of travel by a person in a motor vehicle. They do not apply to 24-hour periods or to vehicle types, as the statutory FBT exclusions do (see from [148]).

43. The four exceptions can overlap: *Garrett v FCT* (1982) 82 ATC 4,060 (NSWSC).

Necessary to transport essential equipment or instruments

44. The first case law exception applies where a vehicle is necessary to transport equipment, instruments or other items (goods) that are essential to performing the employee's employment activities, both at the employee's home and at their workplace. In those circumstances, the vehicle is regarded as used to transport the goods. The transport of the employee is regarded as incidental or ancillary to the transport of the goods. The travel between home and work is not regarded as private use for the employee.

45. For this exception to apply:

- it must be necessary (because of the nature of the employment activity) to transport the goods between the employee's workplace and their home to enable them to carry out the employment activity partly at their home; and
- a vehicle must be required to transport the goods, which may be because of their bulk or because their value, sensitivity or other special characteristics make it

impractical to transport them without the use of a car: *FCT v Vogt* (1975) 75 ATC 4,073 (NSWSC); *Scott v FCT (No 3)* (2002) 2002 ATC 2,243 (AATA).

46. "Bulky" in this context means "cumbersome": *Re Crestani & FCT* (1998) 98 ATC 2,219 (AATA). Whether goods are bulky generally depends on their weight and the relative ease of transporting them: *Re Gaydon & DFC of T* (1998) 98 ATC 2,328 (AATA).

47. A requirement to transport sensitive work-related information is not, on its own, sufficient to bring an employee within the exception: *Vakiloroaya v FCT* (2017) 2017 ATC 10-446 (AATA).

48. In *Case S26* (1994) 17 NZTC 7,182 (TRA) and *Case Q25* (1993) 15 NZTC 5,124 (TRA) (both clothing manufacturer cases) one of the factors considered in reaching a conclusion that travel between home and work was not private use was that in each case a vehicle was used for transporting garments between the factory and the shareholder-employees' homes for work to be performed on them.

49. See also *Brandon v FCT* (2010) 2010 ATC 10-143 (AATA) in which case the taxpayer, a bombardier who transported his deployment kit between his home and the barracks in his car, was unable to prove that he had met the requirements to qualify for the exception.

50. Examples might include musicians who transport musical instruments and equipment to and from their homes to be used for practice between performances, and clothing manufacturers who transport garments between their factories and homes to carry out part of the manufacturing process (such as finishing work or test washing) there. See examples from [101].

Employee's work is itinerant

51. The second case law exception applies where the employee's work is itinerant.

52. An employee's work is itinerant if the:

- employee's **home is their base of operations**;
- **nature of the employee's employment is such that travel is essential** to performing their employment duties;
- employee must **undertake work at various workplaces during the course of a day; or the sequence of workplaces and the periods of time spent by the employee at each workplace vary and are unpredictable** so it is impractical for the employee to perform their employment duties without the use of a car; and
- employee can be regarded as **travelling in the performance of their work from the time of leaving home**.

53. See *Horton v Young* [1971] 3 All ER 412 (CA), *Re Gaydon, FCT v Wiener* (1978) 78 ATC 4,006 (WASC) and *FCT v Genys*.

54. *Wiener* involved a teacher who taught at five different schools from Monday to Thursday and on Fridays taught at one school and did the administrative work relating to the teaching programme. The court considered the employment was itinerant, as the nature of the job made travel in performing the duties essential. It was an implied term of the employment that the employee should provide her own means of transport. It was necessary for the employee to travel by car to follow her teaching timetable, and she could be regarded as travelling in the performance of her duties from the time she left home until the time she returned home. In contrast, *Genys* involved an agency nurse who worked at different hospitals. The court held that a lack of permanent employment at one hospital was not enough for the taxpayer's work to be itinerant. The court considered the taxpayer's duties did not begin until she arrived at the hospital. *Horton v Young* and *Re Gaydon* both involved self-employed taxpayers, but the principle applied in the cases was the same as in *Wiener* and *Genys*.

55. Note the conditions at [52] must be met by the individual employee – the exception does not apply to occupations (although some occupations will have more employees working in them whose work is itinerant than others).

56. An individual who chooses to move from place to place and take up several different jobs sequentially as an employee is not regarded as itinerant in this context: *Hill v FCT* (2016) 2016 ATC 10-430 (AATA).

57. Travel to the first job of the day and travel home from the last job of the day is not private use for employees whose work is itinerant. If an employer supplies a vehicle to an employee to undertake the travel, there is no fringe benefit for FBT purposes.

58. Examples include tradespeople, service engineers and salespeople, in all cases where the conditions listed at [52] are met. See examples from [101].

Emergency calls – case law exception

59. The case law exception for emergency calls differs from the statutory exclusion from FBT for emergency calls relating to health, life and the operation of essential machinery or services. For information on the statutory exclusion, see from [154].

60. The third case law exception applies where an employee is required to travel in response to emergency calls they receive at their home. For the exception to apply, the nature of the work must require that part of the employee's work is carried out at home and the employee's responsibility for completing the task to which the call relates must begin while the employee is still at home: *Owen v Pook* [1970] AC 244 (HL).

61. The exception does not extend to ordinary travel to and from work undertaken by these employees. It applies only to the travel they undertake in response to an emergency call (including the trip home afterwards): *FCT v Collings*.

62. Employees who are called in at short notice to cover a shift for an employee who is unwell (such as a pilot or health professional) are not covered by this exception: *Nolder v Walters* (1980) 15 TC 380 (KB), *FCT v Genys* and *Pitcher v DFC of T* (1998) 98 ATC 2,190 (AATA).

63. Similarly, employees whose work requires them to return to the office in the evenings or at the weekend to carry out a particular task (eg, to ensure the success of a scientific experiment) are not covered by this exception: *Case M99* (1980) 80 ATC 691 (CTBR).

64. Examples include doctors and computer consultants who give advice over the telephone from their home but who must travel to their workplace to resolve the issue if it cannot be resolved over the telephone. However, because of the statutory exclusion from FBT for emergency calls mentioned at [59] (which applies for a 24-hour period), reliance on this exception is expected to be rare in the New Zealand FBT context.

Home as a workplace

65. The fourth case law exception applies where an employee's home is a workplace for home to work travel purposes. This exception requires more than that some work is carried out at home.

66. Recently, working from home has become increasingly common due to both changes in technology and social changes brought about by the COVID-19 pandemic. However, choosing to work from home does not (of itself) affect whether a person's home is their workplace (or base of operations) for home to work travel purposes.

67. Personal choice alone has never been a basis for creating a home workplace (or a base of operations at home). While people will often make personal choices about whether to work from home part of the time (and it is not for the Commissioner to comment on such choices), other factors must be present for an employee's home to be a workplace (or base of operations) of the employer. The case law has always confirmed that, for employees, a home workplace or base of operations at home will exist in only exceptional circumstances. The most recent UK and Australian cases involving employees (decided in 2008 and 2024 respectively) have done so – see [80].

68. The home as a workplace exception is best understood as a variation on the second case law exception for itinerant work. The person must be required, **by the nature of the work itself**, to do the work in two (or more) places. This was discussed in *Taylor v Provan* [1974] 1 All ER 1,201 (HL), per Lord Wilberforce at 1,213:

> To do any job, it is necessary to get there: but it is settled law that expenses of travelling to work cannot be deducted against the emoluments of the employment. It is only if the job requires a man to travel that his expenses of that travel can be deducted, ie if he is travelling on his work, as distinct from travelling to his work. The most obvious category of jobs of this kind is that of itinerant jobs, such as a commercial traveller. **It is as a variant on this that the concept of two places of work has been introduced: if a man has to travel from one place of work to another place of work, he may deduct the travelling expenses of this travel, because he is travelling on his work, but not those of travelling from either place of work to his home or vice versa. But for this doctrine to apply, he must be required by the nature of the job itself to do the work of the job in two places: the mere fact that he may choose to do part of it in a place separate from that where the job is objectively located is not enough**. [Emphasis added.]

Determining whether home is a workplace

69. The factors relevant to whether an employee's home is their workplace are whether:

    1. there are **sound business reasons** for the employee working from home (ie, whether the expenditure has been "necessarily incurred");
    2. a **significant amount of work** is carried out at home;
    3. there is **significant storage of business goods or equipment** at home;
    4. **significant space is set aside and used** for work activities at home; and
    5. the activities the employee carries out at home are **closely integrated with the business**. See *CIR v Schick* (1998) 18 NZTC 13,738 (HC).

70. Subject to the following paragraphs, it is necessary to consider all the factors listed at [69] and weigh them to get an overall picture of whether an employee's home is a workplace (or base of operations) for home to work travel purposes. Different factors may carry different weight depending on the nature of the business.

71. For example, where a business needs substantial tangible assets to be run (eg, a manufacturing business) there may be a home workplace if some or all of the tangible assets are located at the employee's home, they take up a significant amount of space there, and they are regularly used there in carrying on the business. (See, for example, the clothing manufacturer cases discussed from [93] involving shareholder-employees.) However, where a business does not need substantial tangible assets to be run, or the nature of the business means that the substantial assets move from location to location, it is more useful to consider whether the employer had sound business reasons for requiring the employee to work at home part of the time and whether the activities the employee carries out at home are closely integrated with the business.

72. The first factor, sound business reasons, is particular to the case law for employees. It relates to the requirement that, had the travel expenditure been incurred by the

employee instead of the employer supplying the travel to the employee, it would have been "necessarily incurred" in deriving the employee's employment income. (See from [110] for discussion on why the necessarily incurred test is relevant in the New Zealand context.) The other four factors relate to both employees and the self-employed. They go to whether the expenditure is "wholly and exclusively" (solely) incurred in deriving income.

73. The home workplace is referred to as a base of operations in some case law. The relevant cases take the approach that usually, when considering whether expenditure on travel between home and work is private use, the first step is to identify the employee's base (or bases) of operations. If the base of operations is not at the employee's home, travel between the employee's home and their base of operations is private use. This is because the expenditure has been incurred at least partly for the private purpose of maintaining the employee's home at a distance from their base of operations.[4]

74. For there to be **sound business reasons** for an employee working from home, it is not sufficient that a contractual term states an employee will work partly at home. The travel expenditure must be of a type that, if it had been incurred by the employee, would have been necessarily incurred in deriving their employment income. This means it must be a contractual requirement for **every person** performing the role in question that they will undertake that type of travel. It cannot be the employee's private circumstances that cause them to work partly from home, so that only they (or they and a few other employees in the same role who negotiate similar arrangements) undertake that type of travel. Further, the expenditure must be **necessary to the role** (ie, objectively viewed, the contractual term requiring the travel must be a requirement of the role).

75. Where one or some employees performing a role carry out more complex work at home due to distractions in the office (for efficiency purposes) this would be travel caused by the employee's private circumstances and choices and therefore, private travel.

76. However, for these purposes, an employee's private circumstances are different from their personal abilities. In exceptional cases, where an employee is uniquely qualified to perform a role, their personal abilities may mean sound business reasons exist for them working from home, and travel between home and work will not be private use.

[4] See *Jackman v Powell, Kenyon v Revenue and Customs Commissioners* [2011] UKFTT 91 (TC), *Meynell-Smith v Revenue and Customs Commissioners* [2013] UKFTT 113 (TC), *Samadian v Revenue and Customs Commissioners* [2014] UKUT 13 (TCC), *White v Revenue and Customs Commissioners* [2014] UKFTT 214 (TC), *Daniels v Revenue and Customs Commissioners* [2018] UKFTT 462 (TC) and *Taylor v Revenue and Customs Commissioners* [2020] UKFTT 416 (TC). These cases involve self-employed taxpayers and are discussed in the companion item IS 25/01 from [70].

This is because, if the employee is the only person able to perform the role, their circumstances may shape the role's requirements. To decide whether a particular case is an exceptional case, it is necessary to consider the employee's role in the employer's business and why the employer agreed to the arrangement.

77. For example, in *Taylor v Provan* it was held that a director's two homes (in Canada and the Bahamas) were genuinely his workplaces (bases of operations). This was because it was a term of his appointment to the office (of special director of mergers and amalgamations) that he would carry out most of the required tasks from his two homes and would travel to London only from time to time to carry out work there as necessary. He was the only person who had the specialist skills, knowledge and business contacts needed to carry out the required tasks. This meant every person who held the office (in this case, only Mr Taylor) had to undertake the travel to and from London. The requirement to travel, viewed objectively, was a requirement of the office (because part of the work had to be carried out in London). It followed that the travel expenditure was necessarily incurred.

78. It would have cost the company far more to reimburse the director's accommodation and meal expenses in London for the duration of his directorship than to pay for his travel to London from Canada and the Bahamas. Therefore, the company had sound business reasons for requiring the travel. However, the sound business reasons factor is inextricably linked to the necessarily incurred requirement. While agreeing to allow some employees to work from home part of the time saves the employer rent, and so the employer might see this as a sound business reason for agreeing to allow some of their employees to work from home part of the time, the sound business reasons requirement is not met unless **every** employee performing the role in question has the same arrangement **and** the employees are a unique group of individuals whose skill set cannot be secured otherwise. It will be only then that, objectively viewed, the requirement to travel between home and work is one of the job requirements as a result of an employee's personal abilities.

79. More generally, travel expenditure will be a requirement of the role, objectively viewed, if the nature of the work requires the travel. For example, in *Schick*, the employees effectively ran the employers' earthmoving business from both their homes and the earthmoving sites, travelling between the two as needed (see from [90]). The employers did not require their employees to report to a business base. This was understandable because the earthmoving sites changed over time.

80. Other observations from the case law include the following:

- A person who is on-call 24 hours a day, 7 days a week has a workplace at their home, as they would otherwise never be able to leave their workplace. However, the home workplace exists only in relation to their on-call work. Travel between

home and work to carry out their everyday work (ordinary commuting) is private travel: *FCT v Collings*.

- Where an employee performs work at home as a matter of personal preference, home is not a workplace for the employee: *Burton v FCT* 79 ATC 4,318 (WASC).
- It is not enough that an employee is obliged to travel under their employment contract with the employer. If the travel is not integral to the employer's business, then the travel confers a private benefit on the employee and there is an FBT obligation for the employer: *Fitzpatrick v IRC (No 2)* [1994] SLT 836 (HL).
- If there is nothing specific to the duties that requires them to be carried out at home, then employer-provided travel between home and work to carry out the duties confers a private benefit on the employee: *Miners v Atkinson* [1995] STC 58 (Ch).
- When an employee chooses to take up an opportunity offered by their employer to work part of the time from home, but is not uniquely qualified to perform their role, employer-provided travel between home and work confers a private benefit on the employee: *Kirkwood v Evans*.
- Employer-provided travel between home and work does not confer a private benefit on an employee if, objectively viewed, the employee's role requires the travel to be undertaken. However, it is not enough that the employee's employment contract requires the travel. In some cases, it is necessary to "wield a razor" to detach an obligation that is not, objectively viewed, one of the duties of the employment from all the other obligations imposed on the parties under the employment contract: *Hinsley v Revenue and Customs Commissioners* [2007] STC (SCD) 63.
- The requirement that the travel between home and work must, viewed objectively, be a requirement of the employee's role is not overridden by other factors. It applies, for example, regardless of whether the employee has had the right to work at home part of the time since their employment began, the employee can prove they would not have taken on the role at all if they had not been permitted to work at home part of the time, or the employer has supplied the office furniture and equipment for the employee's home office and pays the insurance premium for these or has paid for the power and telephone line connections at the home office. Nor is it possible for an employer to divide a role artificially into two roles, one of which is purely office-based and one of which allows both office-based and home-based working: *Lewis v Revenue and Customs Commissioners* [2008] STC (SCD) 895.
- If employees are travelling while "rostered on", so are being paid by and under the control of the employer while travelling, this will only affect the nature of the travel if the location of the workplace is "remote" (ie, remote from all places

offering the services required to live an ordinary life, such as schools, hospitals, and shops, as well as remote from the employee's home): *John Holland Group Pty Ltd v FCT*. Employees who travel to remote workplaces while they are not rostered on are not travelling "on work": *Bechtel Australia Pty Ltd v Commissioner of Taxation*. However, see also, OS 19/05, which sets out the Commissioner's position on travel to a distant workplace. To the extent that OS 19/05 is inconsistent with the home to work travel case law, it overrides the case law.

81. Some taxpayers have argued the **sound business reasons** factor is met if their employees' employment contracts state they will work partly at home and partly at the employer's business premises (hybrid workplace approach) and will travel between home and work (or home and other locations for business reasons) as required. This saves the employer the cost of incurring rent on business premises that can accommodate all employees on every business day. However, as discussed above, it is not sufficient that an employee's employment contract states they will carry out some of the work at home and travel between home and work as required. The travel must be required by every person carrying out the role. It must also be a requirement of the role, objectively viewed. This means the need for the role to be performed in two locations must arise from the nature of the work. If the role could be performed just as easily full-time in the employer's office, the need for the travel does not arise from the nature of the work.

82. In summary, **sound business reasons** is a high threshold to meet. It brings with it a requirement to show that **every person who carries out that role must undertake the travel** and that, **objectively viewed, the travel is a requirement of the role**. The test is directed at whether the travel expenditure, had it been incurred by the employee, would have been necessarily incurred. It typically covers employees who are similar to itinerant workers but do not meet all the criteria to fall within the itinerant work exception, such as the employees in *Schick* (see from [90] below).

83. In rare cases, it will cover a unique employee or small group of employees who is or are the only people with the skills necessary to perform the role; and whose skills cannot be secured if all the work is to be performed at the employer's business premises, such as Mr Taylor in *Taylor v Provan*. Therefore, it becomes a requirement of the role that the work is performed in more than one location.

84. The third and fourth factors (**significant storage of business goods and equipment at home** and **setting aside significant space at home for business use**) do not of themselves make a home a place of work or business. Whether these factors are relevant depends on:

- the nature of the employment duties;
- whether the goods and equipment stored at home are necessary for the performance of the employment duties; and

- the space requirements of the activity.

85. Changes in technology mean significant space or significant storage of tangible goods may no longer be necessary for carrying on an employer's business activity at a home. Technology has also made it easier for employees to carry out some of their work outside the office or factory environment. This does not mean that setting aside a desk and chair in a room (or even a small room) at home to be used solely for work purposes is now considered to amount to setting aside "significant space".

86. Instead, for these reasons, the Commissioner considers that the presence or absence of the second to fourth factors (the second factor is **whether a significant amount of work is carried out at home**) does not necessarily determine whether travel between home and work is private travel. A home still retains the characteristics of a home, even though some business goods may be kept there, some space may be set aside for carrying on business activities there, and some employment duties may be performed there.

87. Setting aside space for carrying out business activities at home or storing business goods at home and performing work at home will make the employee's home a workplace (or base of operations) for home to work travel purposes only if the space set aside for carrying out work or storing goods is significant, the employment duties require the space and if the goods stored at home are necessary for and used in performing the employment duties. Even then, if the space set aside or goods stored at home are used only rarely, travel between home and work may be private travel.

88. Although choosing to work partly at home does not make a home a workplace, choosing to establish a facility at home (with significant space set aside for carrying on particular work, and/or significant space set aside for storage of work items), is different to choosing to work at home where no significant space is required at home by the work activity (either for carrying on the activity or for storage). Once a facility has been established at home, the taxpayer may have no choice but to carry out part of their work at home (because they do not have access to such a facility elsewhere).

89. If a business does not require significant tangible assets to run, or the significant tangible assets shift from location to location, the second to fourth factors listed at [69] will be less important in deciding whether an employee's home is a workplace (or base of operations) than the first and fifth factors (**sound business reasons**, and whether the **activities the employee carries out at home are closely integrated with the business**).

90. For example, in *Schick*, one of the issues was whether it had been open to the Taxation Review Authority to conclude, on the facts, that the employees' homes were also workplaces. In *Schick*, the taxpayers carried on business as transport operators and earthmoving contractors. They supplied vehicles to their foremen. The foremen used the vehicles to transport themselves, fuel and grease, and other items necessary for the

operation of earthmoving equipment to remote worksites where they and other employees operated the earthmoving equipment. The taxpayers had also supplied a mechanic they employed with a van that he used to service both the transport vehicles and the earthmoving equipment. The taxpayers' employees usually travelled direct from home to the worksites and were paid from the time they left home to the time they returned home. The foremen were paid for an extra half hour a day to do clerical work and had to keep their daily records at home. At times, the foremen kept oil or grease and a few tools at their homes. The taxpayers gave the foremen cards that allowed them to buy fuel, oil and grease. The taxpayers expected their foremen to keep stocks of oil and grease sufficient to ensure the smooth running of the earthmoving equipment. The foremen had discretion to discuss the progress of work with customers.

91. Applying the factors set out at [69], Gallen J concluded that the employees' homes were workplaces for FBT purposes. Gallen J noted three of the five factors had some application to the employees. He considered that these three factors taken together were sufficient for the employees' homes to be workplaces. Gallen J made the following comments in relation to the three factors:

- There were **sound business reasons** for the employees working from home. The employees were required by their employers to keep their daily records at home. They had to be available there for consultation with clients and for emergency purposes.
- The activities carried on at the employees' homes were **closely integrated with the taxpayers' business**. The employees effectively operated and managed the taxpayers' business from their homes to the work sites.
- The storage of work vehicles at the employees' homes would go some way towards showing there was **significant storage of business goods and equipment** at the employees' homes. The court noted, however, that **this factor should not be given too much weight given the issues in the case**. In the context of the employers' business (which involved work carried out at remote work sites and required the employees to be available at their homes for consultation with clients or to respond to emergencies), the vehicles were taken to the employees' homes and kept there to be available for work-related travel.

92. Gallen J also approved Judge Willy's view in the Taxation Review Authority (see *Case T5* (1997) 18 NZTC 8,024) that a place would not be a "home" for FBT purposes if the home were also a workplace.

93. In *Case R37* (1994) 16 NZTC 6,208 (TRA), it was held that travel from and to the shareholder-employees' home was travel from and to a second workplace. The company carried on the business of screen-printing. The actual printing and screening work was carried out at the company's factory. Test washing of sample garments (to

check for the adherence of inks and dyes) was carried out at the shareholder-employees' home on most days, as the factory had no washing facility. Preparation of artwork and clerical work was also carried out at the shareholder-employees' home.[5]

94. In *Case S26,* the shareholder-employees' home was also considered to be a workplace. The company's clothing manufacturing business had initially been conducted from home and was later expanded to the factory. Although much of the manufacturing was carried out at the factory, finishing work continued to be done at home.

95. In *Case Q25*, garments manufactured at the company's factory were taken to the shareholder-employees' home for finishing off work to be carried out on the garments. It was held that the vehicles were used for travel between home and work for income-earning purposes.

96. See examples from [101]. Further cases that consider whether a home is a workplace for the self-employed (taking a base of operations approach) are discussed in the companion item IS 25/01 from [70] (and listed in this item at [73], footnote 4).

Same employment requirement

97. Travel between a home workplace and another workplace is income-earning travel (and does not give rise to a private benefit) only where the two workplaces relate to the same employment or income-earning activity: *FCT v Payne* (2001) 2001 ATC 4,027 (HCA).

98. Travel between the workplaces of two different employments or of an employment and another income-earning activity is private travel. Therefore, if:

- an employee has two jobs, even if their home is a workplace in relation to their first job, travel between the employee's home and a workplace relating to their second job is private travel; or
- an individual is employed to work at a workplace away from their home and has a home workplace (base of operations) for a separate income-earning activity they carry on at their home, travel between the employee's home and their workplace to carry out the duties of their employment is private travel.

Summary of case law principles

99. For travel between home and work to be other than private use for FBT purposes (not subject to FBT) the following must be the case:

[5] In *Case R37* because it could not be shown that the vehicle was not "available for private use or enjoyment", the company was ultimately liable for FBT.

- It is not enough that an employee performs part of their work at home. The need for the travel must arise from the **nature of the work**. Travel between home and work is private use (subject to FBT) if an employee chooses to work partly at home. It is not sufficient that the employer and employee have contracted on the basis that duties will be performed partly at home. The travel must be a requirement for every employee doing the job and, objectively viewed, a requirement of the job, not of the employee.
- A distinction exists between travel undertaken to enable a person to begin work, and travel that is "**on work**". The four case law exceptions are situations where travel is on work rather than travel to or from work (and where the need for the travel arises from the nature of the work). When an employee travels in the situations covered by the four exceptions, the travel is for income-earning purposes. The travel is not private use so does not give rise to a fringe benefit for FBT purposes.

100. Based on the factors from the case law, the principles can be summarised as follows:

Home to work travel by motor vehicle supplied to an employee is not a fringe benefit if the:

- need for the work to be performed partly at home (and therefore the need for the travel) arises from the **nature of the work**; and
- travel is in the course of performing work (**on work**).

Examples of general rule and case law exceptions

101. Example | Tauira 1 to Example | Tauira 7 illustrate the general rule and case law exceptions.

Necessary to transport equipment or instruments

Example | Tauira 1 – Employee transports equipment and instruments necessary to their work, used both at home and at work

An employee works as a musician and is employed by a hotel to provide entertainment. The musician performs with their band at the hotel's bar. As bandleader, the musician transports the band's musical instruments and other equipment to and from the venue for each performance. Between times, the band practises in the musician's garage. The hotel supplies the musician with a vehicle in which to transport the musical instruments and equipment. The vehicle cannot be

used for any other purpose. The musician has their own car that they drive the rest of the time.

The musician's travel to and from the hotel is not private travel. The musical instruments and equipment are bulky and cannot be transported without the use of a vehicle. The musical instruments and equipment are used both at the hotel and at home. Transport of the musician to and from the hotel is incidental to the transport of the musical instruments and equipment and is not a purpose of the travel. The need for the travel arises from the nature of the musician's work and the travel to and from the hotel is "on work". The travel is necessary, both because it is a requirement of the musician's employment contract with the hotel and because, objectively viewed, it is a necessary requirement of the musician's job as bandleader. The travel is undertaken wholly (solely) in deriving the musician's employment income.

Itinerant work

Example | Tauira 2 – Employee's work is itinerant, and their home is their base of operations

An employee works as a community nurse covering a region in a rural area. Their employer supplies them with a car to carry out their role. Each day the regional community nurse travels from their home direct to their patients' homes, continuing from one patient's home to another, and then returning to their own home in the evening. The nurse's patient list changes as patients recover and no longer require care. The nurse visits the regional hospital only to pick up medical supplies as needed, about once a fortnight.

The nurse's travel described above is not private travel, including travel from their own home to the home of their first patient for the day, and travel from their last patient of the day's home to their own home. The nurse's shift begins from the time they leave home and ends at the time they return home. Every regional community nurse must undertake this type of travel. The travel, objectively viewed, is a requirement of the regional community nurse's job. The need for the nurse's travel arises from the nature of the work and the nurse is travelling on work from the time they leave home until the time they return home.

Home as a workplace (or base of operations)

Example | Tauira 3 – Employee chooses to work from home part of the time (traffic congestion)

An employee works as an administrator in a manufacturing business. The employee works at home some days because they would otherwise spend long periods travelling to and from work due to traffic congestion. The administrator's employer is considering supplying cars to employees and wants to know whether travel between home and work is private travel for the administrator.

On the days they choose to work from home, the employee attends meetings with their manager remotely using video conferencing technology. Once a week the employee is expected to attend a team meeting at the employer's premises in person, whether or not they choose to work the rest of the day there. The employee has a desk available to them in the office whenever they choose to work there.

Travel between the employee's home and the employer's premises is private travel. It is not a term of the administrator's employment contract that they work from home and, objectively viewed, is not a requirement of the administrator's job. Others doing the same job work in the office full time. Therefore, no sound business reasons exist for the employee working from home. The employee's job does not require that significant space is set aside at home for performing work duties or that the employee stores significant work-related equipment or other goods at home. Although the employee does carry out work at home and that work is integral to the employer's business, these two factors alone are not sufficient to make the employee's home a workplace (or base of operations) for the employer. The need for the employee's travel on the days they choose to work in the office and on the day they are required to attend their weekly meeting does not arise from the nature of the employee's work and the travel to and from the office is not "on work".

On the contrary, the employee performs work duties at home for the employee's own convenience. The travel is not necessary to the administrator's job and is not undertaken wholly (solely) in deriving their employment income.

Example | Tauira 4 – Employee chooses to work from home part of the time (disruptions in the office)

An employee works as a researcher in an open-plan environment at the employer's premises. Sometimes the researcher takes more complex work home because noise and interruptions from other employees at the employer's premises make it more

efficient for them to work at home. The researcher's employer is considering supplying cars to employees and wants to know whether travel between home and work is private travel for the researcher.

Although the employee may consider there are sound business reasons for working from home (efficiency), this is to a large degree a personal choice. The travel between home and work is not a contractual requirement of the job and, objectively viewed, is not a requirement of the job (other employees carry out the more complex work in the office). The employee does not have significant space set aside at home for performing work or for storing goods or equipment relating to their work.

Of the five factors to consider, the only factors satisfied are that the employee carries out some work at home and the work carried out at home is integral to the employer's business. These factors alone are not sufficient to make the employee's home a workplace (or base of operations) of the employer.

Travel between home and work is still private travel where work is performed at home because of perceived problems with facilities at work. The need for the travel does not arise from the nature of the work, and the travel is not "on work". The travel is not necessary to the researcher's job and is not undertaken wholly (solely) in deriving the researcher's employment income.

Example | Tauira 5 – Employee travels between work and home because they deal with people in different time zones

An employee works as the manager of a foreign exchange dealing room of a bank with its head office is in Hong Kong. Many of the bank's clients are in different time zones from New Zealand. The manager often works at home in the evenings or on Saturday mornings (when the United States markets are still open) supplying market information, reporting to the bank's head office and carrying out currency dealing. The manager's employer is considering supplying cars to employees and wants to know whether travel between home and work is private travel for the manager.

The manager's travel to work in the morning and home in the evening does not cease to be private travel merely because the manager performs some of their employment duties at home in the evenings and on Saturday mornings. The sound business reasons test is not met. Although working with people in different time zones outside normal business hours is a requirement of the job, the work can be performed anywhere, meaning the travel is not, objectively viewed, a requirement of the job.

The employee does not have significant space set aside at home for carrying out work and does not have significant space set aside at home for storage of work-related goods or equipment.

Only two of the five factors are satisfied: some work is carried out at home and the work carried out at home is integral to the employer's business. These two factors alone are not sufficient to make the employee's home a workplace (or base of operations) for the employer.

An employee who performs work duties after normal working hours is not continuously engaged in employment duties while travelling home from work in the evenings. The need for the travel (rather than the need to work in the evenings) does not arise from the nature of the work, and the travel is not "on work". Travel by an employee in such circumstances is undertaken to enable the employee to live away from their workplace.

The manager's daily journeys between home and work are travel of a private nature.

Variation

The facts are as above but the manager travels back to the bank's premises for video conferences in the evenings because their home environment can be noisy at that time.

Again, there are no sound business reasons for the travel. The work the employee undertakes at home can be performed anywhere. The employee travels back to work for video conferences in the evenings only because their home environment can be noisy, which means the need for the travel relates to their personal circumstances or preferences. A second journey to and from work to take part in a video conference in the evening is no different from travel undertaken by an employee who chooses to travel home for lunch and back to work again. Travel by an employee in such circumstances is undertaken to enable the employee to live away from their workplace.

The employee does not have significant space set aside at home for carrying out work and does not have significant space set aside at home for storage of work-related goods or equipment.

As above, only two of the five factors are satisfied: some work is carried out at home and the work carried out at home is integral to the employer's business. These two factors alone are not sufficient to make the employee's home a workplace (or base of operations) for the employer.

An employee who returns to work in the evening to perform further work duties is not continuously engaged in employment duties while travelling between home and work

in the evenings. The need for the travel (rather than the need to work in the evenings) does not arise from the nature of the work, and the travel is not "on work".

Both the manager's normal daily journeys between home and work and their evening journeys between home and work to attend video conferences are travel of a private nature.

Example | Tauira 6 – Most employees have chosen to work from home part of the time and as a result the employer has reduced their office space

An employee works as an accountant in a chartered accounting firm. Most of the firm's accountants (including the employee) have chosen to work from home part of the time on an ad hoc basis. (A few accountants have chosen to work in the office every day because they do not have a suitable space to work in at home. However, this is by far the less common choice.) As a result, the employer has reduced their office space.

The accountants' access cards still grant them access to the employer's office every day of the week and they may come in on the days they choose. Sometimes space is tight, but the employee has never had to return home because they could not find an unoccupied desk in the office. At home, the accountant works in a small room that is used only as an office.

The accountant's employer is considering supplying cars to their employees and wants to know whether travel between home and work is private travel for the accountant.

Travel between home and work is private travel for the accountant. Objectively viewed, working from home is not required to perform the accountant's job. The same job can be and is done by accountants who work full time in the employer's office. Therefore, although the employer saves money by reducing the office space they lease, the sound business reasons test is not met, because the travel expenditure, had it been incurred by the accountant, would not have been necessarily incurred in the performance of the accountant's duties. The accountant does not have significant space set aside at home for carrying out work duties or for storing work-related goods or equipment.

Although the accountant does carry out some of their work duties at home, and those duties are integral to the employer's business, these two factors alone are not sufficient to make the accountant's home a workplace (or base of operations) for the employer. The need for the travel to and from work on the days the accountant works in the office does not arise from the nature of the work, and the travel is not "on work".

The travel is neither necessarily nor solely undertaken in deriving the accountant's employment income.

Variation 1

The facts are as above, but the firm begins to employ all its new accountants on the basis that they will work 2.5 days per week in the firm's offices, and 2.5 days at home (hybrid basis). There is some flexibility in which days are worked in the office and which days are worked at home, to cover variable business needs. Over time, all accountants employed on the old basis have resigned or retired and every accountant working for the firm is now employed on the hybrid basis.

Travel between home and work is still private travel for the accountants. Objectively viewed, working from home is not required to perform the accountants' job. The same job could (and has been) done by accountants who work full time in the employer's offices. The accountants are not sufficiently unique in their capabilities that working on a hybrid basis and travelling between home and work is, objectively viewed, a requirement of the role.

Therefore, although the employer saves money by reducing their office space, the sound business reasons test is not met, because the travel expenditure, had it been incurred by the accountants, would not have been necessarily incurred in the performance of the accountants' duties.

The accountants do not have significant space set aside at home for carrying out work or for storing work-related goods or equipment. Although the accountants do carry out some of their work duties at home, and those duties are integral to the employer's business, these two factors alone are not sufficient to make the accountants' homes a workplace (or base of operations).

The need for the travel to and from work on the days the accountants work in the office does not arise from the nature of the work, and the travel is not "on work". The travel is neither necessarily nor solely undertaken in deriving the accountants' employment income.

Variation 2

The facts are as in Variation 1, but each employee's employment contract states when they will work in the office and when they will work at home (fixed days hybrid basis). One half of the accountants' employment contracts state they will work Monday, Wednesday morning, and Friday in the office, and the remaining time at home. The other half of the accountants' employment contracts state they will work Tuesday, Wednesday afternoon, and Thursday in the office, and the remaining time at home.

Travel between home and work is still private travel for the accountants, for the reasons set out above at Variation 1.

Example | Tauira 7 – Employee is required to charge an employer's EV at home but can also choose to work at home on an ad hoc basis

An employee works as an architect for a firm of architects. The architects work in the firm's offices most days but can work from home for up to two days per week on an ad hoc basis. The architects are expected to drive their own cars to building sites as needed.

The firm owns a compact electric vehicle (EV). The firm provides the architect with physical access to the EV and a signed letter saying the architect is allowed to use the EV only for travel between the office and work sites, travel between home and work, and incidental or minor or insignificant private travel. The architect must ensure the EV is kept charged. The architect signs and returns the letter, and the firm keeps it on file. The architect's own car is also an EV so they can charge the EV at home on their fast charger in the evenings.

The architect's travel between home and work in the employer-provided EV is private travel. Although the firm may consider sound business reasons exist for supplying the EV to the architect (it removes the need for the firm to reimburse the architect for the cost of travel between the office and building sites in their own car at the kilometre rate), the sound business reasons requirement is directed at whether expenditure would have been "necessarily incurred" had the employee incurred it themselves. As there are other architects who do the same job and who do not undertake the travel between home and work to charge an EV, the requirement to undertake the travel is not, objectively viewed, a requirement of the architect's job. (Even if all the architects were provided with EVs, objectively viewed, it would still not be a requirement of the architects' jobs to undertake travel between home and work.) Therefore, the travel expenditure, had the architect incurred it themselves, would not have been necessarily incurred. The relevant case law (*Schick*) states that storing a car at home should not be given too much weight (in terms of the storage of significant business goods at home factor) when considering whether an employee's home is a workplace.

Although the architect does carry out some work at home, and that work is integral to the employer's business, these two factors alone are not sufficient to make the employee's home a workplace (or base of operations) for the employer.

Further, in this case, the travel between home and work is not undertaken wholly and exclusively (solely) in earning employment income. Although the requirement to charge the EV is one purpose of the travel between home and work, transport of the

architect themselves between home and work is a second, and more than incidental, purpose of the travel. This second purpose is a private purpose. Being supplied with an EV gives rise to a private benefit to the employee that is more than incidental in nature.

In summary, the need for the architect's travel between home and work does not arise from the nature of the work, and the travel is not on work. The travel expenditure, had it been incurred by the architect, would not have been solely and necessarily incurred in performing the architect's duties. Therefore, a private benefit arises to the architect. FBT will apply in relation to every workday, as the employer has made the EV available for private use on any workday.

FBT rules

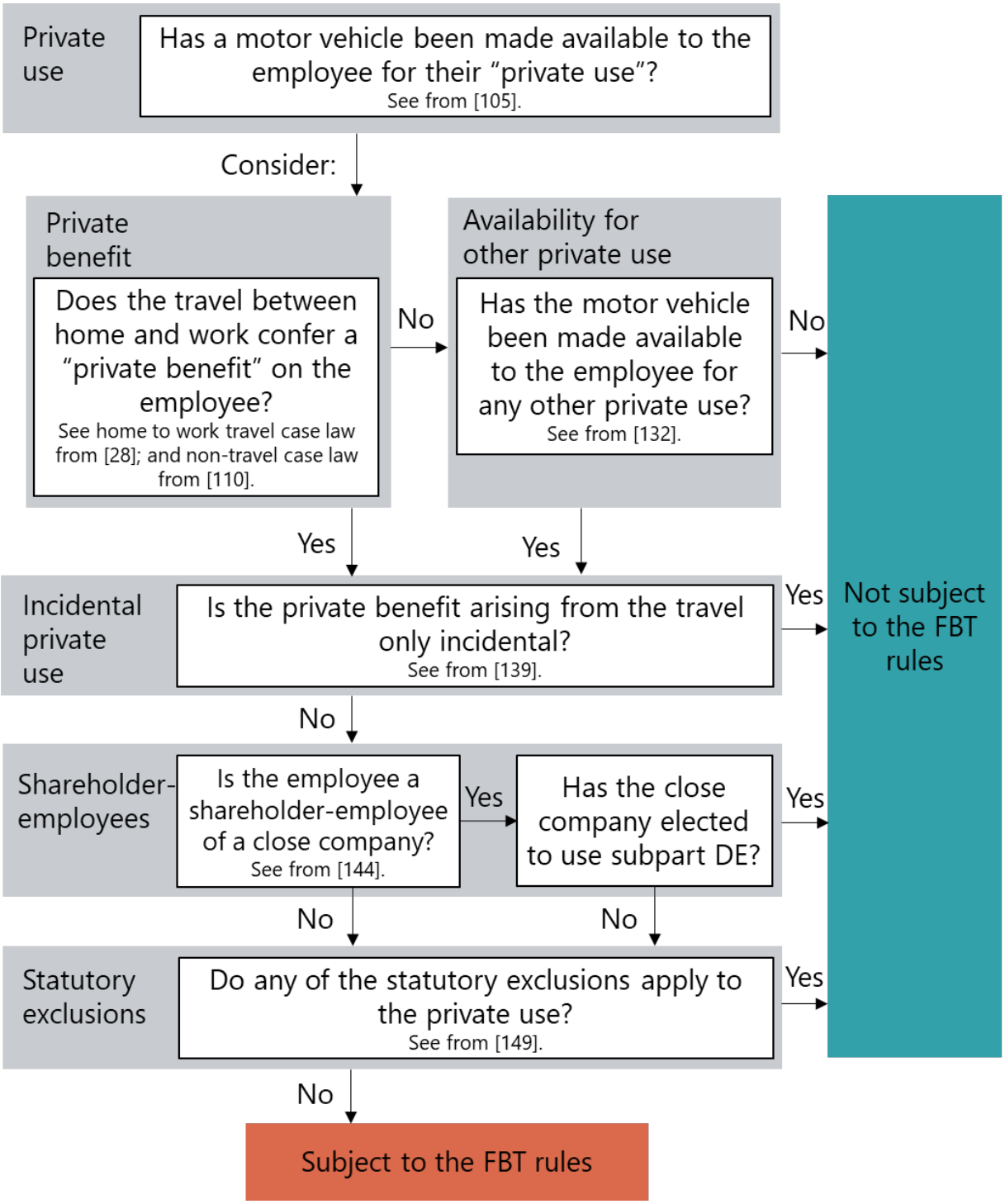
102. Subpart CX and related provisions contain the FBT rules (see the s YA 1 definition of "FBT rules", and s RD 25 for a full list of provisions). The FBT rules cover what a fringe benefit is and which types of benefits are excluded from being fringe benefits. (The FBT rules also cover how to calculate the value of fringe benefits, how to calculate the amount of FBT payable on fringe benefits, and how and when to return FBT. These aspects of the FBT rules are not covered in this item. For information on these other aspects of the FBT rules as they apply to motor vehicle fringe benefits, see **IS 17/07**.)

103. The analysis in this section covers:

- private use (from [105]) – the New Zealand statutory definition of private use and the New Zealand case law on the statutory definition:
  - private benefit – why the UK non-travel case law is relevant in New Zealand and an alternative test that can be derived from UK non-travel case law decided under the UK legislative provision that applies to travel expenditure (and to other expenditure);
  - availability for other private use – under the New Zealand FBT rules, availability for other private use (as well as availability for home to work travel that is private use) determines whether a motor vehicle fringe benefit exists; and
  - incidental private use – the case law on incidental private use (incidental private use will not confer a private benefit on an employee);
- shareholder-employees (from [144]) – when and how shareholder-employees of close companies can choose to use subpart DE instead of applying the FBT rules; and
- statutory exclusions from FBT (from [148]) – the statutory exclusions from FBT relevant to travel between home and work.

104. Figure | Hoahoa 3 provides an overview of the analysis in this part.

Figure | Hoahoa 3: Travel by motor vehicle – FBT rules



Private use

105. As stated at [24], private use for a motor vehicle includes:

- the employee's use of the motor vehicle for travel between home and work; and
- any other travel that confers a private benefit on the employee.

106. In *CIR v Schick,* the High Court considered the statutory definition of private use and whether that definition meant:

- **all** travel between an employee's home and work is private use for FBT purposes; or
- if the employee's home is also a workplace (or base of operations) for home to work travel purposes, the travel can be seen as travel between two workplaces for FBT purposes.

107. In *Schick*, vehicles had been made available to employees of an earthmoving and transport business for travel between their homes and various job sites. The vehicles were stored at the employees' homes when not in use.[6] The Commissioner argued that there was a fringe benefit under the first part of the definition because the employees used the vehicles to travel to and from their homes.

108. However, Gallen J held that the first part of the definition was qualified by the second part of the definition. His Honour stated (at 13,743):

> I agree with the Judge [Judge Willy in *Case T5* (1997) 18 NZTC 8,024 (TRA)] that **the word "travel" where used in the definition of private use or enjoyment, is to be regarded as qualified by that qualification which appears in the second part of the definition and means travel which confers a benefit of a private or domestic nature**. [Emphasis added]

109. The court explained that travel between home and work is not private use of a motor vehicle only because the travel starts or ends at the employee's home. Private use arises under the statutory definition only when travel between home and work confers a private benefit. If an employer supplies travel between home and work that does not confer a private benefit on an employee, the travel is not private use and there is no fringe benefit.

Private benefit

110. Some of the cases relied on in this statement to decide whether travel between home and work confers a private benefit and so is private use for New Zealand FBT purposes are Australian and UK deductibility cases and Australian FBT cases.

111. The pre-1998 Australian and UK cases are relevant because the New Zealand courts have applied them in New Zealand FBT cases (the most recent New Zealand FBT case on travel between home and work being *Schick*, decided in 1998). That is, the New Zealand courts have recognised the Australian and UK cases as authoritative in New Zealand on the meaning of the phrase "private in nature" (used in the

[6] Various issues were considered in *Schick*. The facts of the case are set out at [90], where *Schick* is considered in connection with the fourth case law exception (home as a workplace).

New Zealand deductibility provisions) and, importantly, in the phrases "private benefit" and "private use" used in the New Zealand FBT rules.

112. The New Zealand courts have relied on the Australian and UK deductibility cases in New Zealand FBT cases because the same question is being asked: whether the expenditure or use is private.

113. Decisions dating from after 1998 from Australia and the UK (both deductibility and FBT cases) would also likely be applied by the New Zealand courts if they had to decide whether there had been private use in a New Zealand FBT case today. However, such cases would be applied only to the extent that they were relevant to the New Zealand legislation, rather than to provisions that are specific to the Australian or UK legislation.

114. The rest of this section outlines the similarities and differences between the legislative tests in New Zealand, Australia and the UK. Examining the differences shows us that the UK Act offers useful guidance because it defines, in more detail than the New Zealand or Australian Acts do, what **is not** private in nature. This gives a further test that can be used to consider whether use confers a private benefit and **is** private use.

115. As a result, there are three alternative ways to decide whether use confers a private benefit and is private use in the context of travel between home and work. The first two are case-law based and were discussed from [32]. The third is derived from reading the words of the UK Act as they applied when New Zealand FBT was introduced (the amending legislation was enacted on 23 March 1985 with effect from 1 April 1985). It can be useful in considering whether the fourth case law exception, home is a workplace, applies, because the case law on that exception is less well developed than the case law on the other three case law exceptions.

116. The three approaches are as follows:

- Do any of the four case law exceptions apply to the travel?
- Did the need for the travel arise from the nature of the work, and was the travel "on work"?
- If the employee had incurred the expenditure on the travel, would it have been wholly, exclusively and necessarily incurred in deriving their employment income?

New Zealand legislation

117. Under the Income Tax Act 2007 there is a general deductibility rule (the general permission). There are also general limitations that apply to the general permission.

118. Under the general permission, a person is allowed a deduction for an amount of expenditure, to the extent to which the expenditure is incurred by them in deriving their assessable income (s DA 1(1)(a)).

119. Under the general limitations, no deduction is allowed for expenditure to the extent to which it is (among other things):

- private in nature (the private limitation);
- incurred in deriving exempt income (the exempt income limitation); or
- incurred in deriving employment income (the employment limitation) (s DA 2).

120. The above means that for most employees, expenditure on travel between home and work is non-deductible. The expenditure is non-deductible to the extent to which it is private in nature because the private limitation applies – and, even if the expenditure meets the general permission and is not private in nature, it is non-deductible because of the employment limitation. (Some shareholder-employees can claim deductions for motor vehicle expenditure through their close companies – see [144].)

121. As employees cannot usually claim deductions against employment income in New Zealand, there is no recent case law decided in New Zealand on the deductibility of expenditure on travel between home and work for employees.

Australian legislation

122. The relevant Australian legislation is like the New Zealand legislation in format (there is a general permission and a private limitation – see the Appendix to this statement). However, in Australia there is no employment limitation. Therefore, there are recent Australian cases involving employees that decide whether expenditure incurred by those employees on travel between home and work is private in nature.

123. The Australian Fringe Benefits Tax Assessment Act 1986 (Cth) specifically has an "otherwise deductible" rule. Under this Australian Act, a benefit is not a fringe benefit if the expenditure would have been deductible, had the employee incurred the expenditure themselves.

124. There is no otherwise deductible rule in the New Zealand FBT legislation. The New Zealand legislation relies only on there being private use. However, as discussed at [111], the New Zealand courts have considered the Australian deductibility cases when deciding whether home to work travel is private use for New Zealand FBT purposes. Therefore, the New Zealand courts would also likely consider the Australian FBT cases on home to work travel in deciding a New Zealand FBT case involving home to work travel today, even though there is no otherwise deductible rule in the New Zealand FBT rules.

United Kingdom legislation

125. The UK legislation does not have a private limitation (even though private expenditure is not deductible in the UK). Instead, the deductibility provisions stipulate, in more detail than the New Zealand and Australian provisions, which expenditure is deductible.

126. The UK has two general deductibility provisions: one for taxpayers who are self-employed, and one for employees and officeholders. The provision for self-employed taxpayers requires only that travel expenditure has been "wholly and exclusively" incurred for business purposes for it to be deductible. The UK provisions for employees and officeholders have the added requirement that the expenditure has been "necessarily incurred". That is, the expenditure must be "wholly, exclusively and necessarily" incurred in deriving the employee's income to be deductible (see the legislation in the Appendix). As discussed at [111], case law on the meaning of the phrase "wholly and exclusively" and on the meaning of the word "necessarily" has been applied in deciding New Zealand FBT cases, even though those words do not appear in the Income Tax Act 2007.[7]

127. A key UK case on the meaning of wholly and exclusively in the context of travel between home and work is *Newsom v Robertson* [1952] 2 All ER 728 (CA). Key non-travel cases on the meaning of wholly and exclusively are *Bentleys Stokes and Lowless v Beeson* [1952] All ER 82 (CA) and *Mallalieu v Drummond* [1983] 2 All ER 1,095 (HL). These cases interpret wholly and exclusively to mean **solely** incurred for income-earning purposes.

128. In *Newsom v Robertson,* the Court of Appeal held that expenses incurred by a barrister on travelling between his home and his chambers were not wholly and exclusively incurred for the purposes of his profession. Lord Denning said (at 731):

> In the case of a barrister [his base] is his chambers. Once he gets to his chambers, the cost of travelling to the various courts is incurred wholly and exclusively for the purposes of his profession. But it is different with the cost of travelling from his home to his chambers and back. That is incurred because he lives at a distance from his base. It is incurred for the purposes of his living there and not for the purposes of his profession, or at any rate not wholly or exclusively; and this is so, whether he has a choice in the matter or not. It is a living expense as distinct from a business expense.

[7] An intended policy change in the UK in 2003 means the only requirement now for travel expenditure to be deductible in the UK is that the expenditure was "necessarily incurred" by the employee. There is no longer a requirement in the UK that the employee's expenditure must have been wholly and exclusively incurred in deriving their income. However, since this policy change took place in 2003 (after 23 March 1985) and is not reflected in the New Zealand legislation, the test, when considering whether expenditure in New Zealand is private in nature and whether use is private use for New Zealand FBT purposes, remains a "wholly, exclusively and necessarily" test.

129. Therefore, in *Newsom v Robertson*, the barrister's travel expenditure between his home and his chambers was non-deductible because it was at least partly incurred to enable him to live away from his work. For further (non-travel) case law on the meaning of wholly and exclusively, see the companion item IS 25/01 from [113].

130. A key UK case on the meaning of necessarily incurred in the travel between home and work context is the House of Lords decision *Taylor v Provan* (see discussion from [77]). In *Taylor v Provan,* the House of Lords held that travel expenditure is necessarily incurred if it is, objectively viewed, a requirement of the role to undertake the travel. Often it will be enough to look at an employment contract to see whether travel is a requirement of the role. However, in some cases, it will be necessary to "wield a razor" and detach one or more obligations in the employment contract because they are not, objectively viewed, requirements of the role. (In *Taylor v Provan,* the requirement to travel was considered, both contractually and objectively, to be a requirement of Mr Taylor's role. However, see *Fitzpatrick* and *Hinsley* (discussed from [80]) for two non-travel cases where the UK courts found that contractual obligations to incur expenditure could be detached as they were not, objectively viewed, requirements of the role).

131. To conclude, for FBT purposes, use is private use unless the expenditure would have been wholly, exclusively and necessarily incurred in deriving the employee's employment income, had the employee incurred the expenditure themselves. The four case law exceptions are situations in which expenditure would have been wholly, exclusively and necessarily incurred in deriving employment income, had the employee incurred the expenditure themselves. The four case law exceptions are also situations where the need for the travel arises from the nature of the work, and the travel is on work. Therefore, these are three alternative ways of considering the same question – whether travel between home and work confers a private benefit on an employee and so is private use.

Availability for other private use

132. A fringe benefit arises when "a motor vehicle is made available to an employee for their private use" (s CX 6(1)). Therefore, even if travel between home and work is not private use for an employee, the employer must be able to show that the vehicle has not been "made available" to the employee for other private use.

133. For a vehicle to have been made available for private use, the owner, lessor or hirer of the vehicle must have permitted the employee's private use of the vehicle: *CIR v Yes Accounting Services Ltd* (1999) 19 NZTC 15,296 (HC).

134. If an employer has physically made a vehicle available for use by an employee, the vehicle is considered to have been "made available for private use" unless the employer can show that the:

- employee is prohibited from using the vehicle for private purposes;
- prohibition on private use of the vehicle is a genuine one; and
- employer takes steps to ensure the prohibition is observed.

135. If the employer has prohibited private use of the vehicle, the employer has not made the vehicle available for private use, even though the vehicle may be physically available for private use: *CIR v Yes Accounting Services Ltd*. The prohibition may be general (contained in a human resource manual or similar document) or may be specific (eg, in an employee's employment contract).

136. In *Case R37* (1994) 16 NZTC 6,208 (TRA) letters had been written on behalf of the company by shareholder-employees to themselves in their capacity as employees of the company prohibiting private use of the vehicles. However, the Taxation Review Authority found that the letters were not really intended to prevent the vehicles from being available for private use.

137. Whether employees have private motor vehicles available for private use is also relevant in deciding whether the prohibition is genuinely observed: see, for example, *Case S26* (1994) 17 NZTC 7,182. In *Yes Accounting Services Ltd* it was considered relevant that the employer had carried out regular checks to enforce the prohibition.

138. Record keeping requirements to support a private use restriction are set out in IS 17/07 from [259] and in IR409 at 15. Record keeping requirements for shareholder-employees and other factors to consider where an employee is a shareholder-employee are set out in IS 17/07 from [261].

Incidental private use

139. This section discusses incidental private use - a further matter relevant to whether use is private use as defined (see Figure | Hoahoa 3 at [104]).

140. Case law provides that where a private benefit that an employee receives from incurring expenditure is only incidental, it does not make the expenditure private in nature. The Commissioner accepts this also means the receipt of an incidental private benefit from travel does not make the travel private use for New Zealand FBT purposes.

141. In *Bentleys, Stokes and Lowless,* under the relevant UK Act, expenditure could be deducted only if it was "money wholly and exclusively laid out or expended for the purposes of the trade, profession or vocation". Romer LJ considered the meaning of wholly and exclusively in this context, including whether the receipt of an incidental private benefit from the expenditure could impact on whether expenditure had been incurred wholly and exclusively for the purposes of the trade, profession or vocation. He said (at 84-85):

> The sole question is … What was the motive or object in mind of the two individuals responsible for the activities in question? …
>
> It is, as we have said, a question of fact. And it is quite clear that the purpose must be the sole purpose. The paragraph says so in clear terms. **If the activity be undertaken with the object both of promoting business and also with some other purpose, for example, with the object of indulging an independent wish of entertaining a friend or stranger or of supporting a charitable or benevolent object, then the paragraph is not satisfied though in the mind of the actor the business motive may predominate. For the statute so prescribes. Per contra, if in truth the sole object is business promotion, the expenditure is not disqualified because the nature of the activity necessarily involves some other result, or the attainment or furtherance of some other objective, since the latter result or objective is necessarily inherent in the act.** [Emphasis added]

142. Therefore, an incidental private benefit arises where, objectively viewed, the expenditure is incurred solely to achieve a business objective or result, but also achieves some other non-business objective or result. In the home to work travel context, this means an employee who is undertaking a work-related journey might stop and purchase something to be used for non-work purposes without travelling any added distance to do so. For example, an employee who is travelling on work passes a café to reach their destination. The employee stops at the café to buy a sandwich for lunch. The private benefit received in this situation (the travel to a location at which the taxpayer can buy their lunch) is incidental to the business use of the motor vehicle. There is no private use of the motor vehicle for FBT purposes.

143. An incidental private benefit also arises where transport of the employee is incidental to or a necessary consequence of travel undertaken for income-earning purposes. For example, if it is essential for an employee to use a vehicle to transport goods or equipment (because of their bulk, weight or other special characteristics) between home and work in the course of carrying out income-earning activities, there is no private benefit, even though the employee is also transported. See the discussion of the first case law exception for transport of essential equipment or instruments from [44].

Shareholder-employees

144. A close company may elect to use subpart DE for a motor vehicle and a shareholder-employee instead of applying the FBT rules if the company:

- supplies no more than two fringe benefits that consist of private use of a motor vehicle to shareholder-employees during the relevant income year; and
- does not supply any other fringe benefits to employees during the relevant income year (s CX 17(4B)).

145. Subpart DE provides methods for calculating the proportion of business use of a motor vehicle. This proportion forms the basis for the amount of motor vehicle expenditure that can be deducted. For information on claiming deductions for motor vehicle expenditure under subpart DE, see IS 25/01. For information on close company elections to use subpart DE for a motor vehicle and a shareholder-employee instead of applying the FBT rules, see IS 17/07 from [278].

146. A close company that elects to use subpart DE instead of the FBT rules for a motor vehicle and a shareholder-employee cannot rely on the Commissioner's position on distance travel set out in OS 19/05 in respect of that shareholder-employee and motor vehicle. OS 19/05 allows distance travel between home and work to be treated as business travel (not subject to FBT) in certain situations. Where shareholder-employees of a close company undertake distance travel in their motor vehicles, the close company should take this into account when considering whether to remain in the FBT rules or to use subpart DE.

147. For the legislation, see the Appendix to this statement.

Statutory exclusions from FBT

148. Three statutory exclusions from FBT can apply to motor vehicle benefits and two further exclusions from FBT can apply to home to work travel benefits.

Three statutory exclusions from FBT for motor vehicles

149. The three statutory exclusions from FBT that relate to motor vehicles are for:

- work-related vehicles (from [150]);
- emergency calls affecting health, life, or the operation of essential machinery or services (from [154]); and
- business trips of more than 24 hours (from [159]).

Work-related vehicles exclusion

150. The work-related vehicles exclusion can apply to exclude the private use of a motor vehicle from being a fringe benefit. The exclusion applies to a "motor vehicle" (see [25]) that is sign-written with the employer's usual business name and logo (or for leased vehicles, with either the employer's or owner's usual business name and logo).

151. The work-related vehicles exclusion does not apply to a "car". A car is a motor vehicle designed exclusively or mainly to carry people. A car includes a motor vehicle that has rear doors or collapsible rear seats but does not include a minibus, moped, motorcycle, or small passenger service vehicle (eg, a shuttle service provided in a vehicle designed or adapted to carry 12 or fewer people including the driver).

152. The work-related vehicles exclusion does not generally apply on a day that the vehicle is available for private use. However, the vehicle may be available to the employee for the following types of private use, which do not prevent the exclusion from applying:

- private travel between home and work that is both necessary and a condition of the employee's employment; and
- private travel undertaken in the course of the employee's employment that is incidental to business use.

153. For more information on the work-related vehicles exclusion, see IS 17/07 at [66].

Emergency calls – statutory exclusion

154. As a starting point, it is important to note that this is a statutory exclusion for emergency calls that applies in defined circumstances. It differs from the emergency calls case law exception discussed from [59].

155. This exclusion applies to emergency calls made from the employee's home in the course of their employment to provide:

- essential services for the operation of their employer's or their employer's client or customer's plant or machinery;
- essential services for the maintenance of a local authority's or public authority's services;
- essential services for the carrying on of a business that supplies energy or fuel to the public; or
- emergency services relating to the health or safety of any person.

156. The services must be requested by the person's employer, the employer's client or customer, or a member of the public.

157. The services must be required to be performed outside business hours (that is, performed on a Saturday, a Sunday, a statutory public holiday, or from 6pm to 6am on a Monday to Friday), unless they relate to the health or safety of any person. The exclusion applies to the whole of the day on which the vehicle is used for an emergency call as defined.

158. For more information on the statutory emergency calls exclusion, see IS 17/07 at [116].

Business trips of at least 24 hours exclusion

159. This exclusion applies when an employee is absent from home with their employer-provided vehicle for a continuous period of at least 24 hours. It applies only to an employee whose job requires them to make regular business trips of this type. The

exclusion applies to the whole day even if the vehicle is used for only part of a day on a business trip of this type. Therefore, it does not matter whether the employer has made the vehicle available to the employee for home to work travel on that day and the travel is private travel for the employee. The exclusion overrides the FBT liability that would otherwise arise for that day.

160. For more information on the business trips of at least 24 hours exclusion, see IS 17/07 at [144].

Two statutory exclusions from FBT for home to work travel

161. Two statutory exclusions from FBT relate to home to work travel. They are for employer-provided:

- public transport; and
- self-powered or low-powered vehicles.

Employer-provided public transport exclusion

162. This exclusion applies where an employer subsidises an employee's fare on public transport by bus, rail, ferry or cable car. If the travel is by bus, the bus service must not be a charter service or shuttle service.

163. The fare must be incurred mainly for the purposes of the employee travelling between their home and workplace.

164. For more information on this exclusion, see the section on the FBT exemption for certain public transport fares in **New legislation**: Taxation (Annual Rates for 2022-23, Platform Economy, and Remedial Matters) Act 2023 at 77.

Employer-provided self-powered or low-powered vehicle exclusion

165. This exclusion applies when an employer provides an employee with a bicycle, electric bicycle, scooter or electric scooter. It also applies to other self-powered and low-powered vehicles that have been declared (under s 168A of the Land Transport Act 1998) to be a mobility device or not to be a motor vehicle.

166. This exclusion also applies when an employer helps an employee to meet the costs of using a vehicle-share service (a ride-share) for one of the self-powered or low-powered vehicle types referred to above.

167. The vehicle or the vehicle-share service must be used mainly for the purposes of the employee travelling between their home and workplace.

168. For more information on this exclusion, see the section on the FBT exemption for certain public transport fares in New legislation: Taxation (Annual Rates for 2022-23, Platform Economy, and Remedial Matters) Act 2023 at 77.

Minor or insignificant private use and the Commissioner's view

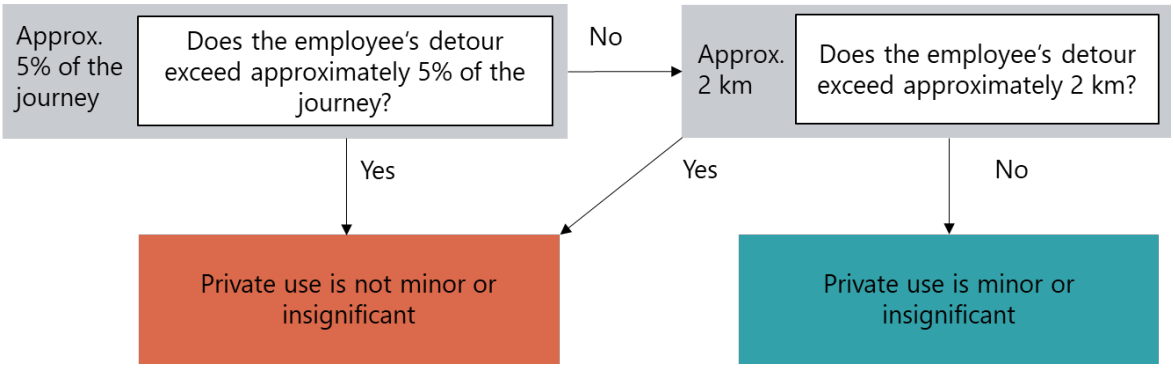
169. In the previous interpretation statement on travel by motor vehicle between home and work (**IS3448**), the Commissioner expressed a view on what constituted minor or insignificant private use (*de minimis* private use) in the travel between home and work context. The Commissioner continues to take the same view.

170. This section considers:

- what minor or insignificant private use is (the *de minimis* principle) (from [172]); and
- what the Commissioner's view is, and how to apply it (from [174]).

171. Figure | Hoahoa 4 summarises the Commissioner's view.

Figure | Hoahoa 4: Travel by motor vehicle – minor or insignificant private use



Note: The Commissioner considers private use is minor or insignificant (*de minimis*) if it does not exceed **both** approximately 5% of the journey and approximately 2 km.

Minor or insignificant private use

172. Minor or insignificant private use arises where a person makes a minor or insignificant detour for a private purpose during a journey that adds to the overall distance travelled (this differs from incidental private use, which by its nature does not add to the overall distance travelled – see [139]). Minor or insignificant private use can be disregarded under the *de minimis* principle.

173. The *de minimis* principle is based on the legal maxim *de minimis non curat lex* (the law does not concern itself with trifles). It has been applied in New Zealand by the Taxation Review Authority in deductibility cases: for example, see *Case S7* (1995) 17 NZTC 7,055, *Case S75* (1996) 17 NZTC 7,469 and *Case T16* (1997) 18 NZTC 8,095.

Commissioner's view

174. The Commissioner accepts that where travel that would otherwise be undertaken by an employee solely and necessarily for income-earning reasons involves a minor or insignificant detour for a private purpose, the *de minimis* principle applies so there is no private benefit to the employee and no private use for FBT purposes.

175. Any added distance travelled for a private reason must be minor or insignificant both as a percentage of the total journey and in itself. This means **both** the percentage of the total journey that the added distance makes up **and** the added distance travelled must be considered to decide whether a private detour is minor or insignificant.

176. The Commissioner considers that private travel that does not exceed **both** the following would be minor or insignificant private travel:

- approximately 5% of the journey; and
- approximately 2 km.

177. See Example | Tauira 8.

Example | Tauira 8 – Minor or insignificant private use

A is an employed plumber whose home is their base of operations. A's travel between home and work is not private travel because they are within the itinerant work case law exception. A's employer has written to A, saying that private use of their employer-provided motor vehicle (other than minor or insignificant private use) is prohibited.

A goes to the gym on their way home at the end of the day. The stop at the gym involves A travelling an alternative route from the last job of the day to their home workplace which adds 1 km to the journey. The total journey is 17 km.

In this case, A's detour is 5.88% of the journey (1 km). The Commissioner considers this would meet the requirement that A's private use does not exceed "approximately 5% of the journey". The detour to the gym also meets the requirement that it must not exceed "approximately 2 km". The detour to the gym is minor or insignificant, and there is no private use for FBT purposes.

178. Record keeping requirements to support a private use restriction are set out in IS 17/07 from [259]. See also IR409 at 15.

Vehicles taken home for security reasons or for charging

179. The Commissioner is aware that some employers have taken the view that taking a vehicle home for security reasons is sufficient to mean the travel does not confer a private benefit and the use is not private use for FBT purposes. This has been argued on the following bases:

- The vehicle is essential business equipment, and it is necessary for the employee to take it home for security reasons. The transport of the employee between home and work in the vehicle is merely an incidental flow-on consequence or effect of the requirement to take the vehicle home (and therefore the first case law exception applies).
- The employee's home is a workplace (or base of operations) for home to work travel purposes because the employer has sound business reasons for requiring the employee to take the vehicle home and because the employee stores significant business equipment (the vehicle) at home (and therefore the fourth case law exception applies).

180. The Commissioner disagrees with this view (as he did in IS3448).

181. The Commissioner has also been asked to consider whether taking an EV home to recharge the battery is sufficient to mean the travel is undertaken solely and necessarily in the performance of the employee's employment duties.

182. As a general principle, for use to be other than private use under the FBT rules, the travel must be undertaken solely and necessarily in the performance of the employee's employment duties. Transport of the employee must not make up **any** part of the journey's purpose but must instead be limited to an incidental flow-on consequence or effect of undertaking the journey.

183. When a vehicle is taken home for security purposes or for charging, the transport of the employee between home and work will, in all but perhaps a very few cases, still be one of the purposes of the journey. This means the journey will not be undertaken solely in the performance of the employee's duties.

184. Even if on the facts the dominant purpose of the journey is the transport of the vehicle home for storage or charging, the journey is still a mixed-use journey. The transport of the employee between home and work will still, except in perhaps a very few cases, be more than an incidental flow-on consequence or effect of the journey. The employee saves time, receives shelter from inclement weather, can hold confidential conversations on private matters, and may have a greater degree of personal safety because of travelling by motor vehicle instead of walking or taking public transport. These are all private purposes for travelling by motor vehicle.

Case law exceptions

185. The following paragraphs consider whether the first or fourth case law exception applies (see [44] and [65]) when a vehicle is taken home for security reasons or for charging.

Necessary to transport essential equipment or instruments

186. The Commissioner considers the first case law exception will not usually apply where a vehicle alone (that is, a vehicle that is not carrying equipment or instruments essential to the employee's work) is taken to the employee's home to be stored there overnight for security purposes or for recharging the battery where the vehicle is an EV.

187. The first case law exception requires that the equipment or instruments are used both at home and at work, and this is why they are being transported back and forth – so the employee can continue their work at home. An employee who takes a vehicle home to store or charge it does not use it at home. The vehicle remains parked while it is stored or charged, and the employee does not continue their work at home using the vehicle.

Home as a workplace

188. Whether sound business reasons exist for the travel and whether significant space has been set aside for the storage of business goods at home are two of the factors to consider when determining whether an employee's home is a workplace (or base of operations) for home to work travel purposes (see [69]). These factors are relevant to whether taking a vehicle home for security reasons or to charge the battery makes the taxpayer's home a workplace (or base of operations). None of the other factors listed at [69] are relevant to this question.

189. In *CIR v Schick*, it was decided that the storage of a vehicle at home should not be given too much weight in deciding whether the employees' homes were workplaces, given that the issue being considered was whether the travel between home and work was private travel.

190. In *Case Q25* (1993) 15 NZTC 5,124 the Taxation Review Authority appeared to give some weight to the evidence that the vehicle was taken home because it was unsafe to leave it at the factory. However, other factors were present in the case that led to the conclusion that travel between home and work did not confer a private benefit on the employees. First, the vehicle was used to transport garments between the factory and the shareholder-employees' home, so further work could be carried out on the garments there, and the garments could be stored there. (One room at the shareholder-employees' home was set aside and used for pressing garments and for unpicking any defective sewing work and refinishing it. Two further rooms at the

shareholder-employees' home were set aside and used for storing garments. Up to 5,000 garments may have been stored there at any one time.) Secondly, the shareholder-employees had a further vehicle they used purely for private purposes.

191. No cases have decided that simply taking a vehicle home for security reasons or to charge the battery are sufficient to make the employee's home (or the taxpayer's home, in a self-employed context) a workplace or base of operations for home to work travel purposes. Although the employer may consider sound business reasons exist for requiring the employee to store or charge the vehicle at home (for example, it reduces the employer's insurance premiums or reduces the time the employee spends waiting for the vehicle to charge at EV charging stations during the day), the travel between home and work in the vehicle must, objectively viewed, be a requirement of the employee's role for the sound business reasons requirement to be met. This will not be the case if other employees performing the same role do not have work vehicles that they store or charge at home. Even if all employees performing the role have work vehicles that they store or charge at home, there are not sound business reasons for the travel between home and work unless the travel is, objectively viewed, a requirement of the role.

192. Simply storing or charging a vehicle at home does not mean the employee necessarily has a significant amount of space set aside for the storage of business goods at home. It does not mean the employee is carrying out a significant amount of work that is integral to the employer's business at home or that the employee has a significant amount of space set aside for carrying on the employer's business activity at home and uses that space for carrying on the employer's business activity at home.

193. Therefore, based on *Schick* and *Case Q25*, the Commissioner considers that taking a vehicle home for security reasons or to charge the battery is not of itself sufficient to make the taxpayer's home a workplace or base of operations for home to work travel purposes. If other factors listed at [69] are present, then the employee's home may be a workplace or base of operations, depending on the facts.

Equivalent to stopping during a business journey to charge an EV

194. Some employers have taken the view that if an employee charges an EV at home, the journeys between home and work do not confer a private benefit on the employee on the basis that if the employee had instead driven their vehicle from their employer's workplace to a rapid charging station during the workday, and then on to a customer's business premises, the trip to the rapid charging station would not have been private use. The Commissioner agrees that the part of the journey to the rapid charging station would not have been private use. However, that is not what the employee has done if the EV is taken home. The employee has driven the vehicle from work to home, charged it, and driven it from home to work again.

195. Assuming the employee does not fall into any of the four case law exceptions, both journeys (from work to home and home to work) confer a private benefit on the employee. One of the employee's purposes for making the journeys home and back to work again in the EV is still to transport themselves between home and work (ie, each journey has a private purpose). The journeys are not made in the performance of the employee's duties. Although charging the EV is also a purpose of the journeys, it does not make the transportation of the employee merely incidental to, or a mere flow-on consequence or effect of, undertaking the journeys.

196. The employee's position is instead analogous to that of an employee who stops on the way home to fill up with petrol. In that case, the stop is incidental to the purpose of the journey and does not affect the private nature of the journey.

Applying summary of case law principles

197. The above conclusions can be supported by applying the case law principles as summarised from [99].

198. First, driving a vehicle home to store or charge it does not mean the travel arises from the nature of the work. Driving a vehicle home to store or charge it differs from transporting goods that the employee uses to perform work, both at work and at home. The first case law exception applies to employees whose work by its very nature requires the employee to have the goods at home with them, such as a musician who requires their instruments at home between performances so they can be used for practice, or a dentist who takes dental moulds home so they can use them to make prosthetics in their home laboratory in the evenings. While an employee who stores or charges a vehicle at home may carry out work at home in the evenings, this work is typically administrative in nature and the employee does not typically use the vehicle to carry out such work. Employees whose home is a workplace (or base of operations) are typically taxpayers who have varying places of work, even if not on a daily basis. No necessary connection exists between driving a vehicle home to securely store or charge it and shifting places of work.

199. Secondly, travel that is undertaken when an employee takes a vehicle home to store or charge it is not typically undertaken in deriving the person's income or in the performance of their employment duties (ie, it is not "on work"). The travel takes place after the end of or before the start of the workday. The travel is private travel between home and work, made necessary at least in part because the employee lives at a distance from their workplace.

Appendix – Legislation

Income Tax Act 2007

200. Sections RD 26(1), CX 2, CX 6(1)(a), CX 17(4B), CX 19B, CX 36 and YA 1 (definition of "motor vehicle") state:

RD 26 Liability for FBT

Liability

(1) An employer who provides a fringe benefit to an employee is liable to pay FBT under sections RD 27 to RD 57, choosing a method of payment described in subsection (2).

...

CX 2 Meaning of fringe benefit

Meaning

(1) A **fringe benefit** is a benefit that—

(a) is provided by an employer to an employee in connection with their employment; and

(b) either—

(i) arises in a way described in any of sections CX 6, CX 9, CX 10, or CX 12 to CX 16; or

(ii) is an unclassified benefit; and

(c) is not a benefit excluded from being a fringe benefit by any provision of this subpart.

Arrangement to provide benefit

(2) A benefit that is provided to an employee through an arrangement made between their employer and another person for the benefit to be provided is treated as having been provided by the employer.

Past, present, or future employment

(3) It is not necessary to the existence of a fringe benefit that an employment relationship exists when the employee receives the benefit.

Relationship with subpart RD

(4) Sections RD 25 to RD 63 (which relate to fringe benefit tax) deal with the calculation of the taxable value of fringe benefits.

Arrangements

(5) A benefit may be treated for the purposes of the FBT rules as being provided by an employer to an employee under—

(a) section GB 31 (FBT arrangements: general):

(b) section GB 32 (Benefits provided to employee's associates).

CX 6 Private use of motor vehicle

When fringe benefit arises

(1) A fringe benefit arises when—

(a) a motor vehicle is made available to an employee for their private use; …

CX 17 Benefits provided to employees who are shareholders or investors

…

Exclusion: election by close company

(4B) Despite subsection (4), subsection (2) does not apply and the benefit is neither a fringe benefit nor a dividend in an income year if—

(a) the benefit—

(i) arises when a close company makes a motor vehicle available to a shareholder-employee for their private use; and

(ii) would, in the absence of this subsection, be a fringe benefit arising under section CX 6; and

(b) the total benefits the close company provides to all employees in the income year are 1 or 2 of the benefits described in paragraph (a); and

(c) the close company chooses to apply subpart DE (Motor vehicle expenditure) for the motor vehicle and the shareholder-employee instead of the FBT rules.

…

CX 19B Transport in vehicle other than motor vehicle

A benefit that an employer provides to an employee in the form of transport of the employee in a vehicle is not a fringe benefit if the vehicle—

(a) is not a motor vehicle; and

(b) is not designed principally for the carriage of passengers.

CX 36 Meaning of private use

Private use, for a motor vehicle, includes—

(a) the employee's use of the vehicle for travel between home and work; and

(b) any other travel that confers a private benefit on the employee.

YA 1 Definitions

In this Act, unless the context requires otherwise,—

...

motor vehicle,—

(a) ...

(b) in the FBT rules, and in the definition of **car**,—

(i) is defined in section 2(1) of the Land Transport Act 1998; and

(ii) does not include a vehicle the gross laden weight of which is more than 3500 kilograms

Land Transport Act 1988

201. The definition of "motor vehicle" in s 2 of the Land Transport Act 1988 states:

2 Interpretation

(1) In this Act, unless the context otherwise requires,—

...

motor vehicle—

(a) means a vehicle drawn or propelled by mechanical power; and

(b) includes a trailer; but

(c) does not include—

(i) a vehicle running on rails; or

(ii) *[Repealed]*

(iii) a trailer (other than a trailer designed solely for the carriage of goods) that is designed and used exclusively as part of the armament of the New Zealand Defence Force; or

(iv) a trailer running on 1 wheel and designed exclusively as a speed measuring device or for testing the wear of vehicle tyres; or

(v) a vehicle designed for amusement purposes and used exclusively within a place of recreation, amusement, or entertainment to which the public does not have access with motor vehicles; or

(vi) a pedestrian-controlled machine; or

(vii) a vehicle that the Agency has declared under section 168A is not a motor vehicle; or

(viii) a mobility device

Income Tax Assessment Act 1936 (Cth)

202. As at 23 March 1985, s 51(1) of the Income Tax Assessment Act 1936 (Cth) stated:

> **51 Losses and outgoings**
>
> (1) All losses and outgoings to the extent to which they are incurred in gaining or producing the assessable income, or are necessarily incurred in carrying on a business for the purpose of gaining or producing such income, shall be allowable deductions except to the extent to which they are losses or outgoings of capital, or of a capital, private or domestic nature, or are incurred in relation to the gaining or production of exempt income.

Income and Corporation Taxes Act 1970 (UK)

203. As at 23 March 1985, s 189(1) of the Income and Corporation Taxes Act 1970 (UK) stated:

> **189 Relief for necessary expenses**
>
> (1) If the holder of an office or employment is necessarily obliged to incur and defray out of the emoluments thereof the expenses of travelling in the performance of the duties of the office or employment, or of keeping and maintaining a horse to enable him to perform the same, or otherwise to expend money wholly, exclusively and necessarily in the performance of the said duties, there may be deducted from the emoluments to be assessed the expenses so necessarily incurred and defrayed.

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