



Some Relief on the Vehicle Benefit Front!



For several years, CCA has been seeking some tax relief for construction employees using employer-provided motor vehicles to travel to and from home to construction work sites. A recent Tax Opinion (2008-0272741E5) issued by the Canada Revenue Agency (CRA) has opened up the possibility

for a new CRA administrative approach that would apply a significantly reduced value to the personal, taxable benefit in certain circumstances, (e.g. 24 cents per kilometre as opposed to the current 52 cents prescribed by Regulation). CCA is in close consultation with the CRA regarding the development of a new CRA administrative policy based upon this Opinion.

The Opinion essentially states that the CRA will accept a reduced benefit calculation where ALL of the following conditions have been met:

1. The employer prohibits any other personal use of the motor vehicle (other than commuting between home and work); and
2. The employer has *bona fide* business reasons for requiring the employee to take the vehicle home at night; and
3. The motor vehicle is specifically suited to or designed for the employer's business or trade and is essential in a fundamental way for the performance of the employment duties.

It is important to note, however, that this Opinion does not apply to "automobiles" as defined by the *Income Tax Act*. Vehicles are considered automobiles by the Act where they have a seating capacity of more than the driver and two passengers (e.g. a pick-up or van with a "king" or extended cab) and in the year they are acquired are not used 90% or more of the time to transport goods, equipment, or passengers in the course of business.

CCA is continuing to press for further changes, including broader application of the foregoing reduced benefit.



Agreement Reached on Minimum Duration for "Substantial Machinery or Equipment"

CCA has learned that the CRA and the Non-Agreeing Provincial Governments, (i.e. Alberta, Ontario and Quebec), have agreed on a minimum duration test for the presence of "substantial machinery or equipment" as a determinant in finding a taxpayer has a "permanent establishment" in a given province for the purposes of allocating provincial income and establishing provincial tax liability. Currently, the *Income Tax Act*, provides that the use of substantial machinery or equipment "at any time in a year" in a province will trigger provincial tax liability. CCA has been seeking clearer guidelines in this area, and in particular, ones defining specific and reasonable time periods.

The agreement provides that where a taxpayer uses substantial machinery or equipment in a province for 30 continuous days on a particular site or project or 90 days cumulative in a 12-month period, the taxpayer will be deemed to have a permanent establishment in that province. However, where the use of such machinery or equipment is less than the minimum duration, the taxpayer will have the option to elect to have a permanent establishment in that jurisdiction without fear of reassessment from another jurisdiction.

