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W. PATRICK EVANS  
*Chief Tax Counsel*

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Please respond to:

Paul T. Magrath  
Director, Taxation  
AstraZeneca Canada, Inc.  
1004 Middlegate Road  
Mississauga, Ontario L4Y 1M4

Mr. Gord Parr  
Director – Large Business Audit Division  
International and Large Business Directorate  
Canada Revenue Agency  
344 Slater Street  
Ottawa, Ontario K1A 0L5

## **RE: Value of Personal Use of Business Aircraft**

Dear Mr. Parr:

The CRA is currently reviewing its policy toward the audit of taxpayers that occasionally provide the use of business aircraft to employees<sup>1</sup> for their personal use. TEI thanks the CRA for providing stakeholders with the opportunity to comment on this matter, because predictability, fairness and neutrality, and consistency are vitally important for all taxpayers. The purpose of this letter is to provide our input on how the CRA should design such a policy that is fair to taxpayers while also ensuring the proper amount of tax is collected. We believe the CRA should (1) maintain its policy that a taxpayer can deduct the costs of a business aircraft that is used primarily for business purposes, which is more than 50 percent of the time, and (2) find the value of personal use of corporate aircraft to be the fair

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<sup>1</sup> All references to “employee” in this letter are intended to refer to employees who are also shareholders of their employer companies.

market value of the highest available airfare on a comparable commercial flight. Such policies would promote predictability for taxpayers and their employees, neutrality among taxpayers, and simplicity for both taxpayers and the CRA. Finally, any changes in these policies should be made prospectively so as to not upset any previous expectations of business taxpayers and their employees, expectations that would have been reasonably relied on.

## **TEI Background**

TEI is the preeminent international association of business tax executives. The Institute's approximately 7,000 professionals manage the tax affairs of more than 2,800 of the leading companies in North and South America, Europe, and Asia. Canadians constitute nearly 15 percent of TEI's membership, with our Canadian members belonging to chapters in Calgary, Montreal, Toronto, and Vancouver. TEI members must contend daily with the planning and compliance aspects of Canada's business tax laws. Many of our non-Canadian members (including those in Europe and Asia) work for companies with substantial activities and investments in Canada. These comments reflect the views of TEI as a whole, but more particularly those of our Canadian constituency.

TEI gets involved in important issues of tax policy and administration, and is dedicated to working with government agencies to reduce the costs and burdens of tax compliance and administration to our common benefit. In furtherance of this goal, TEI supports efforts to improve Canadian tax laws and their administration at all levels of government. The diversity, professional training, and global viewpoint of our members enable us to bring a balanced and practical perspective to the issues discussed below.

### **1. Purpose and Effect of Personal Use of Business Aircraft**

As a general matter, when companies purchase and use their own aircraft, they do so to increase efficiencies and make their businesses more productive. At a certain threshold, it simply saves time and money for a company to pay for its own aircraft and use it in the ordinary course of its business. Many business taxpayers require certain employees to use privately owned aircraft for business-related travel to make the most effective use of the employees' time, to alleviate security concerns surrounding the use of commercial air carriers, and to often reach business facilities that are too remote for

commercial air carriers to reach. Many business taxpayers further require those employees to conduct personal travel in such aircraft, for insurance and security reasons as well as to make sure those employees can attend to work with short notice. When the values of such personal travel are imputed to employees' income, it is critical that these amounts are accurately determined and consistent among taxpayers.

## **2. Business Purpose Test**

We believe the CRA should maintain its long-standing policy that business taxpayers may deduct the costs associated with their aircraft if the aircraft is purchased and maintained primarily for business purposes. To the extent it is necessary to measure whether this threshold is met, the CRA should determine that aircraft is purchased and maintained primarily for business purposes if more than 50 percent of the aircraft's flight hours are dedicated to business purposes. The overwhelming majority of corporate taxpayers that purchase aircraft do so subject to the approvals of their boards of directors, and business realities generally preclude the possibility that such taxpayers would retain aircraft if they were to lose a bona fide business purpose for keeping it. Business realities make it highly unlikely that taxpayers would maintain the cost of aircraft that no longer served primarily business purposes.

## **3. Value of Personal Use of Business Aircraft**

### *a. Highest Available Commercial Airfare*

The CRA should adopt the policy that the value to an employee of his or her personal use of business aircraft is the highest available commercial airfare<sup>2</sup> on a comparable commercial flight. This method would ensure the closest approximation to what the employee would likely engage in an arms-length open-market transaction, taking into account the value of relatively private flight accommodations but also the fact that flights on business aircraft would not likely be engaged but for the employment-related necessities placed on that individual.

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<sup>2</sup> This letter uses the phrase "highest available commercial airfare" to refer to any given flight's most premium ticket offered on the open market. This generally refers to what has historically been a first-class ticket but can also refer to a business-class ticket for those itineraries where business class is the most premium class offered on any commercial airline. Likewise, it can also refer to the most premium ticket available in economy class where such economy class is the best offered ticket for that itinerary.

Under paragraph 6(1)(a) of the Income Tax Act, an employee must include in his or her income “benefits of any kind whatever received or enjoyed ... by virtue of the taxpayer’s office or employment.” The CRA stated in Income Tax Folio, Chapter S2-F3-C2 Benefits and Allowances Received from Employment (July 6, 2016) that value of the “benefit” in this context means fair market value and elaborated on what that means. Specifically, Paragraph 2.26 states:

The employer must determine the value of the benefit to include in an employee’s income. In *The Queen v Carroll A. Spence*, 2011 FCA 200, 2011 DTC 5111, the Federal Court of Appeal determined that the value of a benefit for purposes of paragraph 6(1)(a) is the fair market value of the benefit. Fair market value is the highest price expressed in terms of money that can be obtained in an open and unrestricted market between *informed and prudent parties*, who are dealing at arm’s length and *under no compulsion to buy or sell*. The fair market value of the benefit less any amount paid by the employee is the amount included in the employee’s income under paragraph 6(1)(a).” (first emphasis original, subsequent emphases added)

The circumstances of an employee engaging a business-owned aircraft for primarily personal use make this analysis difficult because such use is almost always accompanied by some business purpose – whether because of security reasons or the need to quickly convert personal use into business use or just the need to have the employee available by phone – thus injecting some element of compulsion. For the sake of making a comparison to a non-compulsory transaction, this begs the question of what similarly situated employees do when free to choose travel accommodations and lacking the option to use business-owned aircraft. In our collective experiences, such employees, who we presume to be “informed and prudent parties,” generally opt to fly commercial airlines and, more often than not, in first class or business class.<sup>3</sup> Therefore, the best determination of the fair market value of the personal use of a business aircraft is the highest available commercial airfare on a flight with a comparable itinerary.

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<sup>3</sup> While not all “informed and prudent” employees would fly such highest available class in all commercial situations, we recognize the obvious benefits of expediency and privacy involved in flying on business-owned aircraft and acknowledge that the equities command that a fair-market analysis err on the side of comparing such travel to the highest available class of travel rather than economy-class travel.

Additionally, determining the fair market value of traveling on business aircraft by comparing it to the uppermost class of commercial flight promotes predictability, neutrality, and simplicity. When any employee arranges personal travel on business aircraft, he or she can easily determine how the value of that trip imputes to income for tax purposes. The employer can simply obtain the current highest available commercial airfare for the same itinerary and apply that amount to the employee's income. The market for such tickets is transparent and can be documented with ease, applying equally to employees of all Canadian corporate taxpayers with business aircraft.

*b. Chartered Flight*

The CRA should avoid valuing an employee's personal use of business aircraft based on the cost of a chartered flight, generally because the informed and prudent employee is likely to choose commercial travel over the chartered flight in lieu of the business aircraft. Furthermore, unlike with first-class or business-class commercial tickets, the costs of comparable chartered flights are not consistently reliable and uniform for all taxpayers for any given itinerary. The chances of different taxpayers' employees having disparate imputed incomes for similar itineraries increase when using chartered flights as the standard for valuation.

Additionally, valuing the use of a personal flight on business aircraft by comparing it to a chartered flight would require unnecessarily complicated adjustments, such as the case of unused seats. If a business aircraft seats 12 passengers but only four passengers were flying, an informed and prudent employee would have chartered a four-person aircraft for a much lower rate than a 12-person aircraft, yet the valuation might call for a comparison to a 12-seat charter. With this discrepancy, either the value of the flight to the employee is unjustly high or the adjustment is unnecessarily complicated. For example, it would not make sense for an employee to have a taxable benefit of \$5,000 when he or she is the only passenger on the flight but have a taxable benefit of \$1,000 when accompanied by four other passengers on the same flight.

Finally, charter rates are often based on a combination of subscription fees and hourly rates. Personal use of business aircraft – which is necessarily a measurement of an isolated event (even for multiple such events) – does not lend itself to simple comparison with an ongoing subscription-based model. All these factors make it difficult to verify the value of personal flights with any consistency when based on the

costs of chartered flights, a consistency that would otherwise always be available when the standard is the highest available commercial airfare.

The CRA should only value personal use of business aircraft based on the cost of a similar chartered flight when no comparable commercial ticket price is available for the given itinerary. When no comparable commercial itinerary exists, the informed and prudent party would have no choice but to engage a chartered flight without access to corporate aircraft. In this situation, the value of the chartered flight truly represents the amount that a taxpayer would have to pay in the open market for a similar itinerary.

*c. Cost-Based Valuations*

The CRA should also avoid valuing an employee's personal use of business aircraft based on the employer's costs of that flight, generally because the informed and prudent employee would be highly unlikely to engage in a similar transaction at arm's length. This is particularly true in situations where a business requires its employee to travel on the business aircraft, and the employee brings his or her family along. In this situation, the real benefit to the employee, at most, is the value of first-class tickets and the ability to travel with his or her family. The costs of the flight simply do not reflect the fair market value of the flight to the employee.

Informed and prudent employees would not likely engage in this type of cost-basis transaction because it is generally too difficult to determine all cost-based values in an accurate and timely way. For example, an employee taking business aircraft for personal use in January could not be certain of those cost values until the end of the year, once the aircraft's true total costs are known, taking into account its total business and personal usage amounts. Valuations that incorporate fixed costs and usage, which are undetermined until the tax year's end, necessarily make any sort of timely and precise valuation analysis difficult. An aircraft's total cost for any given year rises and falls based on how much the company uses that aircraft during the year. If a company uses its aircraft for business purposes half as much in Year 2 as it did in Year 1, then a cost-based value of an employee's flight in Year 2 can be double what it was just months earlier in Year 1. Because business and personal uses by other individuals are often outside the control of the employee using the corporate aircraft, that employee

cannot really be “informed” for purposes of determining fair market value without knowing the cost of the flight before taking it.

As opposed to the highest available commercial airfare, valuing an employee’s personal use of business aircraft based on the employer’s costs of that flight make it difficult to verify the value of personal flights with any consistency and neutrality, particularly when full costs are included.

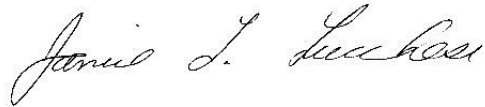
#### 4. Prospective Changes

Finally, to the extent CRA changes any policies to its valuations of personal use of corporate aircraft, such changes should be made prospectively so as to not upset any previous expectations of business taxpayers and their employees, expectations that would have been reasonably relied on. Corporate taxpayers have the utmost interest in complying with certainty, and effecting policy changes retrospectively makes this difficult.

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Again, TEI thanks the CRA for providing stakeholders with the opportunity to provide comments on this matter. Should you have any questions about these issues, please contact Mr. Paul Magrath, Chair of TEI’s Canadian Income Tax Committee, at (905) 804-4930 (or [paul.magrath@astrazeneca.com](mailto:paul.magrath@astrazeneca.com)).

Respectfully submitted,  
Tax Executives Institute, Inc.



By:  
Janice L. Lucchesi  
TEI International President