

# TAX TALKS

Australia's Tax News Podcast - The Podcast for Australian Tax Professionals

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## 15 | Fringe Benefits Tax

Fringe benefits tax (FBT) is a tax on most, but not all non-cash employee benefits an employer might provide to an employee. These non-cash employee benefits are called fringe benefits. It is the employer who pays FBT even though the employee is the one receiving the benefit. Australia introduced fringe benefits tax in 1986 to help restore equity and fairness in the Australian tax system.

Australia, NZ and India are currently the only countries world-wide who apply fringe benefits tax. In Australia FBT raises around \$4 to \$5b per tax year.

### Fringe Benefits Tax

In Australia fringe benefits tax has its own legislation – *Fringe Benefits Tax Assessment Act 1986* (Cth) (FBTAA). The FBTAA is separate from the *Income Tax Assessment Act 1936* (Cth)(ITAA 36) and the *Income Tax Assessment Act 1997* (Cth)(ITAA97). The FBT year runs from 1 April to 31 March.

### What is a Fringe Benefit

Fringe benefits tax only applies if there is a fringe benefit. This fringe benefit exists per s 136(1) FBTAA if:

- There is a **benefit**
- Provided in relation to the relevant tax year
- To an **employee** or an associate of the employee
- **In respect of employment** of the employee and either
- Provided by an **employer** or an **associate** of the employer or
- By a third party under an **arrangement** with the employer or associate

### Benefit

A benefit includes any right, privilege, service or facility. In fact, the definition of a benefit is so broad that it basically includes anything from a desk or chair to a kitchen or toilet. But most of these are generally exempt per s 47 (3) and (4) FBTAA.

### Employee

An employee is any current, future or former employee. A current employee receives a salary or wages which – and this is important – leads to a PAYG withholding obligation. But benefits to staff whose salary and wages are exempt per s 23AG ITAA36 and hence not subject to a PAYG withholding obligation are exempt for FBT purposes..

People receiving non-cash remuneration where they would have been “employees” if that non-cash remuneration had been a cash payment, are also employees per s137.

In addition, TR 2005/16 lists factors the ATO considers important in deciding whether a contract one is “of service” (an employee) or “for service” (an independent contractor).

### **In respect of employment**

A benefit is still in respect of employment even if it is also provided for some other reason or for previous or future employment.

So if a benefit is provided for several reasons and one of the reason is employment, the benefit is in respect of employment per s 148(1)(a) .

### **Employment v Shareholding**

For a non-arm's length employee, for example in a family business, it is often difficult to determine whether a benefit is provided in respect of employment or in respect of shareholding.

A benefit provided for employment and shareholding is still taken to be provided in respect of employment only. So to avoid FBT a benefit must not relate in any way to employment.

MT 2016 and Mt 2019 list factors the ATO considers important in determining whether a benefit is provided in respect of employment or share ownership.

In addition MT 2019 states that, “as a general rule, where there are no facts or circumstances which positively indicate that a loan to a shareholder/employee is associated with that person’s employment and the loan is consistent with his or her status as a shareholder, it would ordinarily be inferred that the loan was made by virtue of the shareholding”.

### **Employer**

Employer includes current, former and future employers per s 136.

### **Associate**

Associate (s 318 ITAA36, and expanded in s 159 FBTAA) includes de facto spouses and fiance(e)s.

### **Arrangement**

Arrangement has a wide definition for FBT purposes (s 136). To work out whether the benefit is provided under an arrangement, go through these four questions:

First of all, was the benefit provided under an agreement between the third party and the employer? If Yes: A fringe benefit arises and the employer is liable for FBT – If No: Continue

Second question: Was the employer involved in the provision of the benefit? If No: A fringe benefit does not arise. The employer is not liable to pay FBT – If Yes: Continue

Third question: Did the employer know that they were involved? If yes: A fringe benefit arises and the employer is liable to pay FBT – If No: Continue

And last but not least: Should the employer have known that they were involved? If Yes: A fringe benefit arises and the employer is liable to pay FBT – If No: A fringe benefit does not arise. The employer is not liable to pay FBT.

## **Types of Fringe Benefits**

There are 11 types of fringe benefits, which are.

Car Div 2 FBTA – Debt waiver Div 3 – Loan Div 4 – Expense Payment Div 5 – Housing Div 6 – Living-away-from-home allowance Div 7 – Board Div 9 – Meal entertainment Div 9A – Car parking Div 10A – Property Div 11 and last Residual Div 12.

You could also argue that meal entertainment is not a separate benefit, just a different way to treat these benefits for tax purposes. And then you would only have 10 benefits.

## **What is Not a Fringe Benefit**

What benefits are not fringe benefits? There is a long list but here are the most common exclusions: Salary and wages – Exempt benefits – Benefits under employee share acquisition schemes – Contributions to complying superannuation funds – Employment termination payments – Payments for restrictive covenants and compensation for personal injury suffered by an employee – Deemed dividends and Excessive remuneration (s26-35 ITAA97).

Where an administration or service entity exists only to provide superannuation benefits to partners, then the view of the ATO is that the provision of these benefits to employee partners does not constitute fringe benefits (TD 95/57).

## **What are Exempt Fringe Benefits**

There is no FBT on exempt fringe benefits. While division 13 FBTA (ss53 to 58Z) lists general exempt benefits, there are also specific exemptions for specific types of benefits.

s 41 exempts food consumed on the employer's premises, while s 54 exempts food or drink (not being a meal) consumed on the employer's premises on the same day that the employer provides a board fringe benefit.

s 47 exempts all property located on an employer's premises and used for work purposes.

s57 exempts benefits provided by religious institutions to religious practitioners primarily in relation to pastoral duties. And s57A exempts benefits to employees of public benevolent institutions where the employee duties relate exclusively to a public hospital or public benevolent institution.

## **s58 FBTA**

Here are the most common exemptions in s58:

### **Car Parking**

58G – Car parking provided by scientific, religious, charitable or public educational institutions – 58GA – Car parking provided by small business employers

### **Travel**

58Z – Single taxi trips starting or ending at the employee’s place of work – 58LA – Travel on compassionate grounds on the death or illness of a close family member

### **Domestic**

58B-58F – Relocation expenses such as removal, transportation or storage of household effect, incidental costs on the sale or purchase of a home, costs of connecting gas as well as electricity and phone, temporary accommodation and meals

58T – Live-in domestic workers employed by religious institutions or practitioners – 58U – Live-in help for elderly and disadvantaged persons – 58V – Food and drink for non-live-in domestic employees – 58ZB – Approved student exchange programs – 58ZC – Remote area housing benefits – 58ZD – Meals on working days

### **Health**

58J – Benefits provided for a compensable work-related trauma – 58K – Provision of in-house health care facilities for employees – 58L – Travel to obtain medical treatment if employed in a foreign country – 58M – Work-related medical examinations, medical screening, preventative health care and counselling – 58N – Provision of emergency assistance for health care expenses

### **Employment, Training and Education**

58A – Employment interviews or selection tests – 58H – Newspapers and periodicals used for business purposes – 58Q – Long-service award benefits under certain conditions – 58R – Safety awards if the value does not exceed \$200 per year – 58S – Benefits to trainees engaged under the Australian Traineeship System – 58Y – Subscription to a trade or professional journal – 58Y – Membership for a corporate credit card and airport lounge access – 58M – Migrant language training

### **General**

58 – Benefits provided by government bodies, religious institutions or non-profit companies involved in live-in residential care – 58W – Deposits under the Small Superannuation Accounts Act 1995 (Cth) – 58P – Minor benefits – each less than \$300 taxable value and infrequent

### **How To Calculate Fringe Benefits Tax**

FBT applies to the “fringe benefits taxable amount” (ss 66 and 5B FBTA). This taxable amount is:

$(\text{Type 1 aggregate fringe benefits amount} \times 2.2802) + (\text{Type 2 aggregate fringe benefits amount} \times 1.8868) + \text{Aggregate non-exempt amount}$

Type 1 applies when the provider of the benefit is entitled to any input tax credit on the acquisition of the benefits. Type 2 applies when the employer is not entitled to an ITC.

The aggregate non exempt amount on the other hand refers to the excess beyond the capping threshold of a grossed-up taxable value of \$17,677 or \$31,177 for non-profit and public hospitals, and public benevolent institutions (PBIs) respectively.

### **Fringe Benefits Tax for Rebutable Employers**

As non-profit employers do not get the benefit of being able to deduct fringe benefits tax, rebate-eligible employers receive a rebate s65J FBTA up to a total grossed-up value of \$31,177. If the total grossed-up value exceeds \$31,177 (excluding “excluded fringe benefits”), the rebate is only available on \$31,177. Hence no rebate is available for the amount in excess of \$31,177.

### **Reportable Fringe Benefits**

Employers who provide fringe benefits to an employee (and associates) of a total taxable value exceeding \$2,000 for an FBT year must record the grossed-up value of the benefits on the employee’s payment summary for the income year (1 July to 30 June).

Reportable fringe benefits also include benefits which are exempt merely because the employer is exempt.

### **Reduction in taxable value**

Recipient contributions/payments as well as the “otherwise deductible” rule reduce the taxable value of a fringe benefit.

### **Otherwise Deductible Rule**

The otherwise deductible rule applies where, if the employee had incurred the expenditure personally, they would have been entitled to a once-only deduction. Important to note is that depreciation does not qualify, since it would result in several deductions, not just one once-only.

However, the rule does not apply to loan, expense payment, airline transport, board, property and residual fringe benefits.

It also doesn’t apply to benefits received by an associate of the employee or for income from a foreign source.

And the rule only applies if the employee provides the relevant declarations and documentation to their employer.

If the rule would result in a negative taxable value, the taxable value of the fringe benefit is nil.

So this is a brief overview of Australia’s fringe benefit tax regime.

## **MORE**

[Meal Entertainment Fringe Benefits](#)

[NSW Payroll Tax Exemptions And Rebates](#)

[sPayroll Tax Contractor Provision](#)

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