

TAX RETREAT NEW CALEDONIA

24 – 25 MAY 2017

Chateau Royal, Noumea

FBT – On The ATO Radar
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Session 4



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Legislation

Fringe Benefits Tax Assessment Act 1986

- Main Act implementing FBT
- Sets out method of calculating FBT involving layers of definitions
- Deals separately with 13 categories of benefits
- Sets out a series of exemptions (exempt benefits are not 'fringe benefits')
- Sets out a series of reductions in TV

Calculating FBT payable

- Determine whether FB
- Identify type of FB
- Calculate TV
- Gross up TV
- Apply 47% FBT rate (49% from 01.04.15)

Definition of fringe benefit (2)

Issues raised by definition of fringe benefit

- 'In relation to'
 - There must be an employer/employee relationship
- 'Provided during or in respect of a year of tax'
- the 'Employee'
 - Current, future or former employee included

Definition of fringe benefit (3)

Issues raised by definition of fringe benefit

- the 'Employee' (cont.)
 - Current employee defined in terms of receipt of salary or wages
 - Salary or wages defined in terms of PAYG withholding liability (common law employee)
 - Section 23AG changes
- 'Provided to employee or associate'
 - Is 'same sex spouse' an associate?

Definition of fringe benefit (4)

Issues raised by definition of fringe benefit

- 'Provided by the employer, or associate or another person'
 - Provided by employer or associate
 - Third-party arrangements with employer or associate
 - Third-party provider where employer or associate participates in or facilitates provision of benefit or scheme to provide a benefit
 - Note – the employer is always responsible for the FBT

Definition of fringe benefit (5)

Issues raised by definition of fringe benefit

- 'In respect of employment'
 - In respect of employment, or some other relationship?
 - Certain matters not taken into account
 - Shareholders and directors of private companies
 - Link with employment must be sufficient and material

Definition of fringe benefit (7)

The exclusions

- The important exclusions are:
 - Division 7A deemed dividends
 - Salary and wages
 - Exempt benefits
 - Benefits under employee share schemes
 - Superannuation contributions, including *in-specie* contributions for employee (associate super contributions not excluded)

Calculating FBT payable

Fringe benefits taxable amount – gross-up

- Is based on aggregate fringe benefits amounts
- FBTA is equal to:
 - Type 1 aggregate fringe benefits amount x Type 1 Gross-up rate
 - *plus*
 - Type 2 aggregate fringe benefits amount x Type 2 Gross-up rate
- Type 1 – GST credit available
- Type 2 – No GST credit

FBT - Updated rates and thresholds for 2017

- 47% for 2014-15*
- 49% for 2015-16 and 2016-17 FBT years
- FBT rate reverts to 47% in 2018

FBT Year	2014-15	2015-16	2016-17
FBT rate	47%	49%	49%
Gross-up rate			
Type 1 (GST incl)	2.0802	2.1463	2.1463
Type 2 (GST excl)	1.8868	1.9608	1.9608

FBT - Updated rates and thresholds for 2017

- FBT exempt and rebateable employers - changes

Employer type	Current cap	New cap 2015-16 & 2016-17 FBT year
FBT exempt employer:		
Public benevolent institution	\$30,000	\$31,177
Health promotion charity	\$30,000	\$31,177
Public & non-profit hospitals	\$17,000	\$17,667
Public ambulance service	\$17,000	\$17,667
FBT rebateable employer *	\$30,000	\$31,177

Calculating FBT payable

Employer's FBT payable

$$\text{FBT} = 47\% \times \text{Fringe benefits taxable amount}$$

Note FBT rate is 49% from 1 April 2015

Benefit categories (2)

Loan fringe benefit

- Involves a loan to an employee or associate
 - Benefit arises in each year in which the recipient is under an obligation to repay
 - Also applies if an obligation to pay an amount is not enforced
 - If repayments are required less frequently than six monthly, the interest amount is a separate loan
 - If loan amounts to a deemed dividend, it is not a fringe benefit

Benefit categories (3)

Loan fringe benefit

- Taxable value is the difference between the actual interest and notional interest at a benchmark rate
 - 2017 current benchmark rate is 5.65% (2016 - 5.65%)
- Exempt benefits:
 - Employee owes money on same terms and conditions as ordinary customer even if 0% interest
 - Advance to current employee for employment expenses
 - Rental or utilities bond

Benefit categories (4)

Loan fringe benefit

- Reduction in taxable value – otherwise deductible
 - Recipient must be employee
 - ‘Once-only’ deduction
 - Interest rate < statutory rate
- Substantiation – employee must give declaration

Benefit categories (5)

Expense payment fringe benefit

- Occurs when the provider:
 - Discharges an obligation to pay an amount to a third party; or
 - Reimburses a recipient for expenditure by the recipient
 - ‘In-house’ if it involves goods or services supplied by provider
 - ‘External’ otherwise

Benefit categories (6)

Expense payment fringe benefit

- Taxable value:
 - In-house – calculated as for property benefits (see later)
 - Legislative change re in-house benefits
 - External – amount of payment or reimbursement
- Exempt benefits:
 - No-private-use declaration
 - Living-away-from-home accommodation
 - Certain motor vehicle cents per km reimbursements

Benefit categories (7)

Expense payment fringe benefit

- Reduction in taxable value – otherwise deductible
 - Recipient must be employee
 - ‘Once-only’ deduction
- Substantiation – employee must give declaration
 - If in respect of travel, a travel diary is required

Benefit categories (11)

Property fringe benefit

- Involves the provision of property or use of property
 - Includes gas and electricity, real property and intangible property
 - Can be in-house or external
 - Legislative change re in-house benefits
 - Taxable value depends on in-house or external

Benefit categories (12)

Property fringe benefit

- Exemptions:
 - Property consumed on business premises on a working day by a current employee
 - Covers 'work benefits' such as use of computer, desk, chairs, telephone

Car benefits

- For a car fringe benefit to arise, there:
 - must be a 'car' provided
 - the car must be 'held' by a provider
 - must be private use by an employee or availability for private use
- If provision of motor vehicle not a car benefit, then residual benefit

Car

- 'Car' is defined in the *FBT Act* as:
 - a motor vehicle (including a vehicle known as a four wheel drive vehicle), being:
 - (a) a motor car, station wagon, panel van, utility truck or similar vehicle, designed to carry a load of less than 1 tonne; or
 - (b) any other road vehicle designed to carry a load of less than 1 tonne or fewer than 9 passengers;
 - but does not include a motor cycle or similar vehicle.
- Two paragraphs operate independently
- To cover primarily passenger vehicles

Held

- For a car benefit to be provided, car must be 'held' by the provider
- Can be owned, leased or otherwise made available
- Must not be short-term hire – eg. taxi travel
- Short-term hire represents a period that does not exceed 12 weeks where vehicle is not subject to successive hire arrangements

Private use

- 'Private use' is defined in the FBT Act to mean:
 - ... in relation to a motor vehicle, in relation to an employee or an associate of an employee, means any use of the motor vehicle by the employee or associate, as the case may be, that is not exclusively in the course of producing assessable income of the employee.

Private use (2)

- Travel to and from work is usually private use – with certain exceptions (MT 2027):
 - Travel on stand-by duty
 - Travel between two places of business
 - Travel by itinerant workers
 - Business trips on way to and from work
 - Use of 'pool vehicle' for travel to and/or from
 - Carrying bulky / heavy equipment

Available for private use

- Car benefit can also arise if the car is deemed to be available for private use
- Situation 1:
 - Car garaged at employee's residence – employee takes car home
 - Exception for emergency vehicles – must be visibly marked with a flashing warning light and audible alarm / siren (car horn does not suffice)

Available for private use (2)

- Situation 2:

- Car is not at employer's place of business
 - Employee is entitled to use the car for private purposes
 - Employee has car in custody or is in control of car and is not performing work duties
 - Associate had custody or control of car or a right to use car

Available for private use (3)

- Interaction of actual private use and availability for private use
 - If there is deemed availability, there will be a car benefit on that day
 - But if never any private use, taxable value may be zero or minor benefit exemption may apply
 - See also *Jetto Industrial Pty Ltd v Federal Commissioner of Taxation* [2009] AATA 374

Exempt car benefits

- **Work vehicles**

- An exemption for work vehicle used to travel to and from work
- Other (non-work related) private use is minor, infrequent and irregular – removal of domestic rubbish, pick up grocery items
- Vehicle must be taxi, panel van or utility truck or other road vehicle of < one-tonne capacity (other than passenger vehicles)
- Acceptable private use of such a vehicle is limited to travel between home and work and travel that is incidental to travel in the course of duties of employment

Exempt car benefits (2)

- **Work vehicles**

- ATO list of exempt vehicles – MT2024
- Now list available on the ATO website at:
<http://ato.gov.au/businesses/content.asp?doc=/content/00167339.htm>
- Problem to substantiate minor and infrequent if no other vehicle available for private use
- If not exempt and no documentation, ATO may impose higher statutory percentage for TV

Exempt car benefits (4)

- **Unregistered cars**

- Applies to cars that are unregistered for the whole of the FBT year; and
- Must be used in connection with business operations of the employer

Exempt car benefits (5)

- **Motor vehicles that are not cars**

- Provision of a motor vehicle that is not a car is a residual benefit.
- MT 2034 - FBT implications of an employee's private use of motor vehicle other than a car
- Cents per km method approved in MT 2034 as appropriate method for calculating TV of a motor vehicle that is not a car

Exempt car benefits (6)

- **Motor vehicles that are not cars**
- Operating cost or cents per km method
- **Cents– per kilometre valuation rates**

	Engine capacity		
	0-2,500 cc	over 2,500 cc	Motorcycles
• 2015	50	60	15
• 2016	51	61	15
• 2017	52	63	16

Taxable value

Statutory formula method

$$\bullet \text{ TV} = \frac{\text{A} \times \text{B} \times \text{C}}{\text{D}} - \text{E}$$

• *where:*

- **A** = base value of the car
- **B** = the 'statutory percentage'
- **C** = number of days in the year car benefit is provided
- **D** = number of days in the FBT year
- **E** = recipient's payment (if any).

Taxable value (6)

Statutory formula method –pre 10 May 2011

- The statutory percentages are:
- | Total kms travelled | Statutory percentage |
|---------------------|----------------------|
| Less than 15,000 | 26% |
| 15,000 to 24,999 | 20% |
| 25,000 to 40,000 | 11% |
| Over 40,000 | 07% |

Taxable value (7)

- **Statutory formula method –post 10 May 2011**

Annualised number of whole kilometres travelled during the FBT year (1 April – 31 March)	From 10 May 2011	From 1 April 2012	From 1 April 2013	From 1 April 2014
0 – 15,000 km	0.20	0.20	0.20	0.20
15,000 – 25,000 km	0.20	0.20	0.20	0.20
25,000 – 40,000 km	0.14	0.17	0.20	0.20
More than 40,000 km	0.10	0.13	0.17	0.20

Taxable value (11)

Operating cost method

- This method calculates the total costs of operating the car and takes the private percentage as the taxable value
- You must elect to use it, but if statutory formula method is lower, you use the lower taxable value
- $C \times (100\% - BP) - R$

Taxable value (12)

Operating cost method

- Operating costs are:
 - Car expenses
 - If car is owned:
 - depreciation
 - imputed interest cost
 - If car is leased:
 - lease payments

Taxable value (13)

Operating cost method

- Car expenses are:
 - registration and insurance
 - repairs and maintenance
 - Fuel
 - Extended warranty costs



Taxable value (14)

Operating cost method

- Deemed depreciation:
 - Three possible depreciation rates apply depending on date car first held (**25%** after 10 May 2006)
 - Based on number of days car was 'owned'
 - Apportioned for number of days car was held and car benefits provided

Taxable value (15)

Operating cost method

- Imputed interest:
 - Rate for 2017 FBT year is 5.65% (2016 – 5.65%)
 - Based on cost of car in first year and depreciated value (as calculated for deemed depreciation) in later years
 - Apportioned for number of days car was held and car benefits provided

Taxable value (16)

Operating cost method

- Lease charges:
 - Applies in place of deemed depreciation and imputed interest if car is leased

Taxable value (17)

Operating cost method

- Business use percentage:
 - Calculated from a log-book kept for that car
 - Log-book kept for 12 weeks
 - Valid for four years (unless use pattern changes or Commissioner decides you must do one or you choose to do a new log-book)

Taxable value (18)

Operating cost method

- Log-book must contain following information:
 - Date journey began and ended
 - Odometer readings at beginning and end
 - Number of kilometres travelled
 - Purpose or purposes of journey
- Need not include specific details for private travel

Reporting of car benefits

- General reporting requirement if fringe benefit **taxable value exceeds \$2,000**
- From 1 April 2007, no requirement to report pooled or shared car as reportable fringe benefit on employee's payment summary – excluded benefit
- A 'pooled' or 'shared' car is one provided for private use of 2 or more employees
- Only car benefits may be excluded benefits as pooled or shared cars
- Car shared under employer's direction or consent

Entertainment

- The provision of entertainment to employees, associates and clients has income tax, fringe benefits tax and GST implications
- Identifying what amounts to "entertainment" is the first step
- Concept of entertainment is different to the narrower concept of meal entertainment

Entertainment (2)



- Entertainment is defined by reference to ITAA
- Entertainment means:
 - *Entertainment by way of food, drink or recreation; or*
 - *Accommodation or travel to do with providing entertainment by way of food, drink or recreation.*
- Ordinary meaning of 'entertainment' – fun, gathering, amusement, enjoyment, recreation, social...
- Provision of food and drink may be entertainment, but is not always - consider questions in **Taxation Ruling TR 97/17**

Entertainment (3)

- **Why is the food and drink provided?**
 - Providing refreshments to employee - generally not entertainment.
 - Providing food or drink in a social situation – generally entertainment.
- **What food and drink is being provided?**
 - The more elaborate a meal, the more likely it is entertainment.
- **When is the food and drink being provided?**
 - Provided during work time, overtime or while travelling – not entertainment
- **Where is the food and drink being provided?**
 - Provided on your business premises or workplace - not entertainment.
 - Provided off your business premises, function room, hotel, restaurant or consumed with other forms of entertainment – likely entertainment

What is not entertainment?

- Sustenance v Entertainment:

- Important to understand the difference between sustenance and entertainment
- Light meals (not entertainment) against more elaborate meals (entertainment)
- Morning / afternoon tea not entertainment
- ATO has distinguished 'hand food'
- No definitive tipping point for light meals becoming entertainment – alcohol may be determinative

What is not entertainment? (2)

- Travelling employees

- Generally food and drink does not amount to entertainment for travelling employee
- Note impact of accompanying spouse
- Note impact of clients attending



What is not entertainment? (3)

- **Promotional events** may involve entertainment
 - Income tax deduction may apply
 - exception to general non-deductibility

What is not entertainment? (4)

- **Seminar expenses** may include entertainment
 - Income tax deduction may apply
 - Exception to general non-deductibility
 - Also relevant to FBT treatment applied by tax exempt bodies



What is not entertainment? (5)

- **In-house dining facilities** - Food and drink consumed may constitute entertainment
 - Income tax deduction may apply
 - Exception to general non-deductibility
 - Boardroom/meeting room with kitchen facilities is not an in-house dining facility
 - Exception to general non-deductibility
 - Also relevant to FBT treatment applied by tax exempt bodies

Meal entertainment (2)

For FBT purposes, entertainment may amount to:

- **expense payment fringe benefit** – employer reimburses an employee for the cost of a restaurant meal with clients.
- **property benefit** – employer provides alcohol and food at a social event to an employee.
- **board benefit** – meals provided in dining facility on remote construction site.
- **meal entertainment fringe benefit** – employer pays for restaurant meal for an employee and employer elects to apply s37B or 37C of FBTAA
- **tax-exempt body entertainment fringe benefit** – tax-exempt body provides theatre tickets to an employee.
- **residual benefit** – entertainment facility leasing expenses

Meal entertainment (5)

- Entertainment facility leasing expenses:
 - Separate fringe benefit, not meal entertainment
 - Food and drink provided in connection with EFLE remains meal entertainment

Tax exempt body entertainment

- Separate category of fringe benefit
- Section 38 of FBTA sets out the circumstances in which a tax exempt body entertainment benefit is provided
- A tax exempt body entertainment benefit arises when:
 - a person (the provider of the benefit) incurs *non-deductible exempt entertainment expenditure*;
 - expenditure is incurred in respect of the provision of entertainment to an employee or associate of an employee; and
 - provision of the entertainment is in respect of the employment of that employee or associate.

Taxable value (3) - exemptions

Property consumed on premises

- Food or drink consumed on employer's premises, on a working day, by current employee, benefit is exempt
- Does not matter if work related – can be social event
- Covers biscuits, coffee, meals (lunch or dinner), morning and afternoon teas
- Not entertainment – not tax-exempt body entertainment benefit under s 38 - not meal entertainment under s 37AD
- New limitation on salary packaging, meal cards, etc.

Taxable value (4) - exemptions

• Minor benefits

- Applies where amount per employee is less than \$300 (GST inclusive) and it is 'unreasonable' to treat the benefit as a fringe benefit
- Benefit must be provided on a basis that is minor, infrequent and irregular
- Divide total meal entertainment expenditure by total attendees (not no. of employees attending)
- The threshold increased to \$300 (GST inclusive) from 1 April 2007; prior to this it was \$100 (GST inclusive)

Taxable value (8)

- Generally if entertainment provided is 'meal entertainment', can elect to use one of three methods for calculating taxable value:
 - **Actual method** – calculate actual expenditure on staff and associates
 - **50/50 split method** – which assumes 50% of total meal entertainment expense is provided to staff or associates
 - **12-week register** – which calculates a percentage of meal entertainment provided to staff or associates over 12-week period

TV - Entertainment facility leasing

- The taxable value of entertainment facility leasing expenses is determined by the actual method or the 50/50 split method
- The election required in order to adopt the 50/50 split method is separate from the 50/50 election for meal entertainment
- Even where the 50/50 split method is elected for EFLE, the amount does not become meal entertainment

Income tax

- Entertainment expenses generally non-deductible under section 32-5 ITAA 1997
- Relevant exceptions:
 - Cost of providing fringe benefits, if otherwise deductible under section 8-1:
 - deduction amount is amount of expense that is subject to FBT
 - if using 50/50 or 12-week register methods, the deduction is the amount of the expense calculated as subject to FBT

Deductibility of entertainment

- Relevant exceptions:
 - Cost of providing certain fringe benefits and exempt benefits, if otherwise deductible under section 8-1

GST credits

- GST credits are denied for certain expenditure, including entertainment expenditure
- The prohibition on GST credits does not apply if amount is deductible
- If income tax deduction is available, then GST credit is also allowed
- You can elect to base your GST credit on 50/50 or 12-week register method during the FBT year and adjust if you elect differently for FBT

Entertainment Matrix

Entertainment Matrix

Situation	Classification	FBT Treatment	Income Tax Treatment	GST Treatment
Employee takes two clients to lunch at a restaurant – cost \$150	Meal entertainment	Actual method \$50 employee portion taxable 50/50 method \$75 taxable	Actual method \$50 employee portion – deductible \$100 client portion – not-deductible 50/50 method \$75 deductible, \$75 not-deductible	Actual method Input tax credit available on employee portion only 50/50 method Input tax credit available on 50% of total cost
Employee has meal in restaurant while travelling on business trip	Not entertainment	Otherwise deductible	Tax deductible	Input tax credit available
Employee has a sandwich in an 'in-house canteen'	Not entertainment	Exempt from FBT	Tax deductible	Input tax credit available
Employer provides sandwiches and juice for working lunch in office	Not entertainment	Exempt from FBT	Tax deductible	Input tax credit available

Entertainment Matrix

Employer provides substantial lunch with wine for employees in office but not in 'canteen'	Meal entertainment	Actual method Exempt 50/50 method 50% taxable	Actual method Not deductible 50/50 method 50% deductible	Actual method No input tax credit available 50/50 method Input tax credit available on 50% of total cost
Employer provides Friday drinks and food for employees in office	Meal entertainment	Actual method Exempt 50/50 method 50% taxable	Actual method Not deductible 50/50 method 50% deductible	Actual method No input tax credit available 50/50 method Input tax credit available on 50% of total cost
Employer provides Friday drinks and food for employees and associates in office	Meal entertainment	Actual method Employee portion – Exempt Associate portion – Taxable unless exempt as minor 50/50 method 50% taxable	Actual method Employee portion – Not deductible Associate portion – Deductible unless exempt as minor 50/50 method 50% deductible	Actual method Employee portion – No input tax credit available Associate portion – Input tax credit available unless exempt as minor 50/50 method Input tax credit available on 50% of total cost

Entertainment Matrix

Situation	Classification	FBT Treatment	Income Tax Treatment	GST Treatment
Employer reimburses employee for cost of private party	Potentially both entertainment and meal entertainment components	Actual method 100% taxable 50/50 method (available for ME component only) 50% taxable	Actual method Full deduction 50/50 method 50% tax deductible	Actual method Full input tax credit available 50/50 method Input tax credit available on 50% of total cost
Employer provides employee and associates with theatre tickets	Entertainment	Taxable as property benefit	Tax deductible	Input tax credit available

Entertainment Matrix

Overnight conference held by employer for employees only with following costs (seminar requirements satisfied):	a, c and d – not entertainment b – recreation e – meal entertainment f – entertainment	a, c and d – not taxable b – fully taxable under actual method e – fully taxable per election made for all other meal entertainment f – fully taxable	a, c and d – full deduction available b and f – full deduction available unless exempt as minor benefit e – full deduction available under actual method unless exempt as minor benefit, 50% deduction available under 50/50 method	a, c and d – full input tax credits available b and f – full input tax credits available unless exempt as minor benefit e – full input tax credits available under actual method unless exempt as minor benefit, 50% input tax credit available under 50/50 method
a) Breakfast/lunch				
b) Team building survivor activities				
c) Accommodation, one night				
d) Travel to and from conference venue				
e) Food and drink consumed at dinner/dance				
f) Band for dinner/dance				

Entertainment Matrix

Staff Christmas gifts provided (\$200 gift voucher)	Not entertainment	Exempt minor benefit	Tax deductible	Input tax credit available
Staff Christmas gifts provided (\$300 value)	Not entertainment	Taxable benefit	Tax deductible	Input tax credit available
Employer pays for employee to attend full day seminar with lunch provided	Not entertainment	Exempt benefit	Tax deductible	Input tax credit available
Employer provides morning tea for employees on a workday	Not entertainment	Exempt property benefit	Tax deductible	Input tax credit available
Employer hires golf course (to the exclusion of all others) for employee and associate golf day	EFLE	Actual method 100% taxable 50/50 method 50% taxable	Actual method Full deduction 50/50 method 50% tax deductible	Actual method Full input tax credit available 50/50 method Input tax credit available on 50% of total cost

General miscellaneous exemptions

- Portable digital device – laptops, mobile phones, etc
- **NOTE - laptops limited to one per year but exception for SBE employers from 1 April 2016**
- Professional memberships / Journals / Subscriptions / airport lounge
- Long service awards
- Preventative health care
- Medical care – work related trauma
- Child care – on premises
- Relocation transport & ancillary exemptions
- Emergency travel / compassionate travel
- Transport / travel – interview or selection tests

FBT - Updated rates and thresholds for 2016

2017 FBT return

	Lodgement	Payment
Business	21 May, 2017	21 May, 2017
Tax agent*		
Electronic lodgment:	25 June, 2017	28 May, 2017
By paper:	21 May 2016	28 May, 2017

THANK YOU



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