



FRINGE BENEFITS TAX - MARCH NEWSLETTER 2009

WHAT'S NEW IN 2009?



With 31 March fast approaching employers should ensure they are aware of recent changes to the Fringe Benefits Tax ("FBT") rules and the required reporting obligations for the 2009 FBT year. In addition, it is an ideal item to consider FBT planning for the 2010 FBT year.

1. Otherwise Deductible Rule

Employers should be mindful of changes to the otherwise deductible rule which apply to benefits provided after 13 May 2008. Basically, the changes ensure the otherwise deductible rule only applies to reduce the value of the portion of a fringe benefit provided to an employee.

The otherwise deductible rule provides that the taxable value of a fringe benefit is reduced by the amount that the employee could have claimed as a personal tax deduction had the employee incurred the expense personally, i.e. the amount that is "otherwise deductible" to the employee.

Prior to the legislative change, the otherwise deductible rule applied to benefits provided to employees. However, where benefits are provided jointly to an employee and an associate, the FBT Act deems the benefits to have been provided to the employee only. As a result, the otherwise deductible rule had been used to reduce the value of a benefit provided jointly to an employee and an associate to nil albeit that the employee would otherwise only be able to claim a deduction for his/her share of the benefit. Where this is achieved via a salary sacrifice arrangement, the tax deduction has been effectively shifted from the associate to the employee.

Under the new otherwise deductible rule, the taxable value of the benefit can only be reduced by the employee's share of the benefit, i.e. the amount the employee would have been entitled to claim as a tax deduction in the employee's personal income tax return.

The changes apply to benefits provided after 13 May 2008 subject to the exceptions below:

- Where a loan benefit is provided prior to 13 May 2008, the amendments do not apply to this loan benefit until 1 April 2009;
- Employees who had already entered into salary sacrifice arrangements will be able to utilise current arrangements until 31 March 2009 so as to allow time for employers and employees to renegotiate salary packages to avoid incurring a FBT liability.

In order to reduce the value of a benefit under the otherwise deductible rule, a declaration or logbook is required to be provided to the employer before the FBT return lodgement due date.

2. Work-related Items

Changes have also been made to the work-related items exemption such that the exemption now only applies if the item is primarily for use in the employee's employment. Prior to the amendment, this requirement only applied to mobile phones, protective clothing and computer software.

The description of the exempt items has been extended to acknowledge advancements in technology. Employers should consider the use of the item and the date it was provided in considering if the item will be an exempt benefit as summarised below:

Exempt Benefits if provided prior to 14 May 2008	Exempt Benefits if provided on or after 14 May 2008
<p><i>Any Intended Use</i></p> <ul style="list-style-type: none"> • Briefcase • Calculator • A tool of trade • An electronic diary, a laptop computer or a similar portable computer • A portable printer 	<p><i>Any Intended Use</i></p>
<p><i>Primarily for Work-related Use</i></p> <ul style="list-style-type: none"> • Mobile phone or car phone • Item of protective clothing • An item of computer software 	<p><i>Primarily for Work-related Use</i></p> <ul style="list-style-type: none"> • A portable electronic device • An item of computer software • An item of protective clothing • A briefcase • A tool of trade

The exemption is limited to one item per employee per FBT year for items that have substantially identical functions, unless it is a replacement item.

3. Meal Cards

There is no longer an exemption for meals provided to employees under salary sacrifice arrangements including meal card arrangements. However, in most cases, the exemption will still apply to food and drink provided prior to 1 April 2009 under an agreement entered into prior to 13 May 2008.

Specific Benefits for Consideration

Entertainment

Actual Cost Method

- If the actual costs per head per employee and their associates on meals are over \$300 each, these benefits will be subject to FBT. Please note that these costs will be deductible under income tax purposes and the input tax credits are also available to be claimed in the relevant quarter BAS.
- However, if the actual cost per head per employee and their associates on meals are less than \$300 each, these benefits may be FBT exempt under the minor benefits exemptions. Accordingly, neither the tax deduction nor the input tax credits will be available. Considerations should however be given to whether the benefit is eligible for the minor benefit exemptions.

50/50 Split & 12 Weeks Register Methods

- Whilst these options reduce significant compliance costs, it is important to remember that employers adopting the 50/50 split method cannot take advantage of the minor benefit exemption (i.e. Christmas Party costs and incidental meal costs at an eligible seminar will be subject to FBT even where the cost per person is less than \$300).

Car fringe benefits

Points to note

- Log books must include the date on which the journey began and on which it ended, odometer readings at the start and end of each journey and kilometres travelled and the purpose of the journey in English;
- All journeys must be included;
- A car garaged at an employee's home is considered to be available for private use; hence, an FBT obligation may arise;
- In relation to Employee Contributions:
 - Employees' cash contributions are assessable income of the employer. GST must be remitted to the ATO in respect of cash contributions, being 1/11th of the amount received.
 - Where the employee has paid the running costs of the vehicle, which were paid to a third party for the supply of goods and services, the amount will be counted towards the employee contribution. However it will not be a taxable supply of the employer, therefore there is no requirement to remit GST to the ATO.



Housekeeping before 31 March 2009

The end of the FBT year is 31 March and FBT returns are due for lodgement with payment by 21 May 2009.

Employee Declarations

1. Travel diaries for overseas travel or travel within Australia requiring more than 5 nights away from home must be made as soon as is reasonably practicable thereafter, otherwise can be prepared in advance.
2. Although the following declarations are not required to be obtained until the lodgement of the FBT return, it is recommended that processes be set in place to obtain them as soon as possible upon completion of the FBT year.
 - If employees are paying for fuel expenses, fuel expense declarations;
 - No private use declarations e.g. expense payment benefits, motor vehicles etc;
 - Living away from home declarations;
 - Usual place of residence declarations; and
 - Otherwise deductible rule declarations.

Motor Vehicles

1. Ensure that all your employees record odometer readings as at 31 March 2009 for cars leased or held by the entity;
2. Check the validity of log books (if applicable)
 - If log book year, has it been maintained for a continuous 12 week period?
 - If not log book year, the log book is only valid for 5 years
 - Is the business percentage still reasonable? Has actual business usage changed by more than 10% compared to the log book percentage?
 - If a car has been replaced during the year, has a replacement car election been made in respect to the log book?

Planning Opportunities

With the proposed reduction in personal income tax for the year ending 30 June 2009 and 30 June 2010, employers should remind their employees who have entered into salary sacrifice arrangements ("SSA") to ensure that they are still satisfied that they are obtaining a satisfactory financial benefit under the SSA.

SSA arrangements should also be considered in light of annual changes to reasonable limits as published by the Commissioner. For example, due to the increase in the reasonable food components for employees Living Away From Home Allowance ("LAFHA") payments made to employees may be increased from 1 April 2009 without incurring FBT (if within revised limits).

Employers should ensure correctly documented employment arrangements are entered into prior to the commencement of the employment period.

If you have any queries, or would like advice in relation to any matters relating to any of the above, please contact either Michelle Saunders or Marissa Bechta on (08) 6311 6900.

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