



FRINGE BENEFITS TAX UPDATE - AUGUST 2007

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MINOR FRINGE BENEFITS

With respect to the recent increase of minor benefit thresholds from \$100 to \$300 effective 1 April 2007, the Commissioner has issued the Draft Ruling TR2007/D6 to set out his view on the application of the minor benefits.

This Draft Ruling clarifies that a minor benefit that satisfies the "less than \$300" threshold criterion is not necessarily an exempt benefit and that other criteria must be considered before it can be concluded that the minor benefit is an exempt benefit.

Other criteria includes the infrequency and irregularity of the benefit, the sum of the notional taxable values of any other associate benefits which are identical or similar to the minor benefit, the sum of the notional taxable values of any other associate benefits, practical difficulty in determining the taxable value of the benefit and circumstances surrounding the provision of minor benefits.

Infrequency and irregularity

The confusion surrounding the minor benefit exemption is largely attributable to confusion around the words "infrequent and irregular", which is not defined under the Act and therefore take the ordinary meaning. In this draft ruling, the ATO concludes that "infrequency and irregularity" does not mean "isolated or rare".

Furthermore, the Commissioner states that it is not correct to say that a benefit can only be provided once a month to be considered as satisfying the meaning of "infrequent". Although an AAT case suggests that 48 times a year would in any circumstances be considered "infrequent or irregular", the Commissioner does not consider this would be appropriate. Accordingly, the ATO consider that it is inappropriate to stipulate the number of times a year that associated benefits that are identical or similar could be provided and still be considered a minor benefit. It is suggested the more often and regular those benefits are provided, the less likely that this criterion would be satisfied.

The "less than \$300" threshold test on the notional taxable value of a minor benefit applies to each benefit provided to an individual employee, and/or each benefit provided to an associate of an employee.

The Draft Ruling further states that in considering the application of the exemption, it is necessary to look at the nature of the benefit provided and give due weight to each of the criteria. The weight given to each criterion will also depend on the surrounding circumstances.

The Draft Ruling provides a number of examples of when a benefit would or wouldn't be treated as a minor benefit, such as:

- **Car Benefit**

A car benefit can constitute a minor benefit, for example, the occasional use of an employer's vehicle for a special purpose, provided however that the employee in question did not have a general entitlement to use the vehicle for private purposes.

- **Meal Entertainment**

Where an employer elects to use the 50-50 split method to value meal entertainment fringe benefits, the minor benefits exemption cannot apply to reduce the taxable value of the fringe benefit. An employer using the actual method or the 12 week register method for valuing meal entertainment can however apply the minor benefits exemption where all the criteria are satisfied.

- **Salary Packaging**

The minor benefit exemption does not apply to benefits that are provided to an employee under a salary sacrifice arrangement.

- **Christmas Party and Gifts**

The draft ruling provides an example where the employer provides to each of its employees a Christmas gift of less than \$300 in value and these were distributed at the annual Christmas party, which also has a value of less than \$300 per employee. In this case, the ATO says that the gift and the party would be an exempt benefit as they are both treated as separate benefits.

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.

cooper
partners

Level 6, London House, 216 St Georges Terrace, Perth WA 6000
t 08 6311 6900 f 08 6311 6999
enquiries@cooperpartners.com.au
www.cooperpartners.com.au

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