

Dear Client,

We are pleased to supply you with the March 2008 edition of **The Report**, which contains information on a number of important developments in taxation including:

- **FBT and minor benefits** — When a minor benefit can be exempted from FBT.
- **Wash sale arrangements** — Taxation Ruling warns taxpayers of the dangers in participating in such arrangements.
- **Provision of trade credit** — Taxation Determination released about the tax consequences of private companies providing trade credits to their shareholders (or their associates).
- **Timing of receipts** — The Tax Office's stance on when a dividend or trust distribution is received by a SMSF.
- **Alert on stapled securities** — The Tax Office warns taxpayers investing in stapled securities that it is examining the tax benefits associated with such securities.
- **UK War Widows pension** — The assessability of pensions received by an Australian taxpayer.
- **Entrepreneurs' tax offset** — Eligibility for the tax offset by a company and partners in a partnership.
- **Tax Office assistance** — The Tax Office offers assistance to taxpayers affected by drought, floods, bushfires and storms.
- **Caps on Superannuation Contributions** – We provide details of maximum amounts that can be contributed to Superannuation Funds.

In addition, with the FBT season upon us, you'll find a fully updated FBT Return **Action Checklist** to help your with this year's **fringe benefits tax return**.

Holidays

The office will be closed on the following days:

10 March 2008 – Labour Day

21 March 2008 – Good Friday

24 March 2008 – Easter Monday

21 to 24 April 2008 – Passover

25 April 2008 – Anzac Day

Please contact us if you wish to discuss how the points raised in **The Report** specifically affect you.

Yours sincerely

GUESTS ACCOUNTING

the report

tax news | views | clues

FBT and Minor Benefits

In a recent Taxation Ruling, the Commissioner expressed that a fringe benefit provided by an employer to their employees (or associate) will only attract the minor benefits exemption where:

- the notional taxable value of each benefit is less than \$300; and
- having regard to the circumstances, including a consideration of the infrequency and irregularity, it would be unreasonable to treat the benefit as a fringe benefit.

Further, the Ruling states that even if the notional taxable value of a benefit is less than \$300, the benefit is not necessarily an exempt benefit. There are certain fringe benefits that are specifically excluded from the operation of the minor benefits exemption.

If the minor benefits exemption applies to a benefit, no FBT liability arises from the provision of that benefit.

Wash Sale Arrangements

The Tax Office has stated recently in a Taxation Ruling that the Commissioner may make a determination to cancel any tax benefits obtained in connection with a 'wash sale' arrangement. Whether the Commissioner makes a determination to cancel any tax benefits obtained will depend on the facts of the particular situation.

An arrangement where a taxpayer disposes of an asset in order to apply a resulting capital loss against a capital gain previously incurred (or deduction against assessable income), and both capital assets are significantly similar, may attract the Commissioner's adverse attention.

Provision Of Trade Credit

The recently released Taxation Determination TD 2008/1 discusses the consequences of a private company providing trade credit to a shareholder (or their associate) on the usual terms it gives to parties at arm's length, and the shareholder fails to repay an amount within the agreed payment term. The Tax Office states that provided the private company deals with the failure to repay in the same manner in which it deals with defaults on similar loans made to parties at arm's length, the tax law does not automatically deem that a loan has been made by the private company to the shareholder (or their associate).

If the private company does not deal with a failure to repay on time by a shareholder (or their associate) in the same manner in which it deals with defaults of similar loans made to parties at arm's length, potentially a loan can be deemed to have been made.

A private company may be taken to pay a dividend at the end of the company's income year if it lends an amount to a shareholder (or their associate) during the year.

The dividend needs to be included in the assessable income of the shareholder (or their associate) as an unfranked dividend. (The definition of loan includes the provision of credit or any other form of financial accommodation.)

However, if the shareholder (or their associate) fully repays the amount by the earlier of either the due date for lodgment of the private company's tax return for the income year or the lodgment day of the private company's tax return for the income year, a loan does not arise between the private company and the shareholder (or their associate).

Timing Of Receipts

The Tax Office has issued a Self Managed Superannuation Funds (SMSF) Determination that provides its view on the timing of when a dividend or trust distribution is received by a SMSF for the purposes of the in-house asset rules. The Determination states that the timing depends on the payment option that is either chosen by the SMSF or prescribed by the company or trust respectively.

The in-house asset rules govern the proportion of a superannuation fund's assets that may be lent by the trustee to or invested in an employer-sponsor of the fund or an associate of the employer. The rules state that a trustee of a superannuation fund must not acquire in-house assets if to do so would increase the ratio of such assets to over 5% of total assets, or if the ratio already exceeds 5%.

However, transitional provisions can apply to exclude investments in related entities as being in-house assets. One of the transitional provisions seeks to exclude investment made in related entities between 12 August 1999 and 30 June 2009 as being classified as in-house assets. This transitional provision requires a taxpayer to test when a dividend or trust distribution is received by the SMSF.

Alert On Stapled Securities

The Tax Office has issued a Taxpayer Alert warning taxpayers investing in stapled securities that it is considering whether they are entitled to a deduction when the stapled securities are sold on the ASX at a loss, or on the occurrence of an Assignment Event.

In particular, the Tax Office is considering whether the structure of a stapled security constitutes a scheme to obtain a tax benefit therefore denying any deductions arising from its disposal.

A stapled security is an arrangement where a company issues a security consisting of a note and a preference share to resident investors. The Tax Office said that in these arrangements the company issuing the securities suggests that an investor may claim deductions for losses in certain circumstances. These circumstances include the assignment, transfer or surrender of the note, or conversion or disposal of the stapled security.

UK War Widows pension

In two separate but related Interpretative Decisions, the Tax Office expresses its view that the UK War Widows pension and supplementary pension received by a taxpayer are not assessable income for the purpose of Australian tax. This is because the pensions are similar to a pension for defence caused death or incapacity paid under the Veterans' Entitlement Act, which is listed as an exempt payment for income tax purposes.

Entrepreneurs' Tax Offset

Partners in a partnership

In a recent Interpretative Decision, the Tax Office states its view that a taxpayer whose assessable income includes personal services income (PSI), which is attributed to being a partner in a partnership that is not conducting a personal services business (PSB), is entitled to the entrepreneurs' tax offset (ETO).

Company and eligibility

In another recent Interpretative Decision, the Tax Office has provided its view that a company that is not conducting a PSB is entitled to the ETO. However, if the company is only deriving PSI, the ETO will be nil. This is because any PSI derived by a company does not form part of its assessable income but is included in the assessable income of the individual generating the PSI.

ETO and PSI

The ETO is available to eligible taxpayers. The offset is equal to 25% of the income tax liability that is attributed to a small business entity income. If the annual turnover is more than \$50,000, the offset is phased out until it equals zero at turnover of \$75,000.

PSI is income that is mainly derived from an individual's personal exertion. The income can be derived either directly by the individual or indirectly through an interposed entity (company, trust or partnership). However, the PSI regime does not apply when an individual is carrying on a PSB.

Tax Office Assistance

In two separate but related media releases, the Tax Office has stated that farmers, businesses and individuals who are experiencing difficulty in complying with their tax obligations as a consequence of the drought, floods, bushfires and storms to contact its office either through their tax agents or directly.

Important: This is not advice. Clients should not act solely on the basis of the material contained in this Bulletin. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The Bulletin is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.

CAPS ON CONTRIBUTIONS TO SUPERANNUATION

Clients are reminded that there are limits on the amount that can be contributed to superannuation both as deductible (concessional) contributions and as undeducted (non concessional) contributions.

The amounts are as follows:

(1) **CONCESSIONAL CONTRIBUTIONS**

A maximum per year of \$50,000

NOTE: As a transitional measure until 30th June 2012, persons aged 50 and over may contribute a maximum per year of \$100,000.

(2) **NON CONCESSIONAL CONTRIBUTIONS**

A maximum per year of \$150,000.

NOTE: In some cases persons under age 65 can bring forward Non Concessional contributions for the next 2 years.

Clients should make sure that the above maximum amounts are not exceeded. There are high tax rates payable if the maximum is exceeded.

When making any contributions in a year to a fund, please take into account any contributions during the financial year to any other funds or Life Insurance Policies that are superannuation policies.

It is advisable to consult your engagement Partner or Accountant at Guests before making contributions.

FBT return | action checklist

Gross-up Rates

	Yes	No
Are you entitled to a GST refund on the provision of the fringe benefit? <i>If yes, the Type 1 gross-up rate will apply: 2.0647. If no, the Type 2 gross-up rate will apply: 1.8692.</i>		
Have the reportable fringe benefits amounts on the employees' PAYG payment summaries been grossed-up using the Type 2 gross-up rate? <i>Only the Type 2 gross-up rate will apply for reporting purposes regardless of the gross-up rate used for the FBT return.</i>		

Checklist — Types of Benefits

Type of fringe benefit	Yes	No
Car fringe benefit		
Was a vehicle made available to an employee (or their associate) for private use and the vehicle is owned or leased by you, an associate of yours or a third party pursuant to an agreement with you? <i>If yes, a car fringe benefit potentially arises.</i>		
Was the vehicle provided designed to carry less than one tonne or fewer than nine passengers? <i>If yes, a car fringe benefit potentially arises. If no, the fringe benefit may be a residual benefit.</i>		
Were you entitled to a GST refund for the purchase or lease costs of the vehicle? <i>If yes, the value of the benefit will be grossed-up by 2.0647. If no, the value of the benefit will be grossed-up by 1.8692.</i>		
Did the employee contribute to the running costs of the vehicle? <i>The value of the benefit will be reduced by the employee's contribution where appropriate evidentiary documents have been maintained.</i>		
Has an election been made to use either the statutory formula method or the operating costs method? <i>The statutory formula method has to be used unless an election has been made to use the operating costs method.</i>		
Has the valuation method been switched from the previous year? <i>If the statutory formula method was used in the previous year and the operating costs method has been elected in this current year, has a logbook been maintained?</i>		
Car parking fringe benefit		
Did you meet the costs or part thereof for the car parking expenses of an employee, provided that the car being parked is designed to carry a load of less than one tonne or fewer than nine passengers and the following conditions are present: <ul style="list-style-type: none"> the car is parked on the business premises; the car is used by the employee to travel between home and work and is parked at or in the vicinity of employment; the car is parked for periods totalling more than four hours between 7 am and 7 pm; and a commercial car parking station is located within a kilometre of the premises where the car is parked and the operator of the parking station charges more than \$6.78 for all-day parking. <i>A car parking benefit potentially arises if the answer is yes.</i>		

Type of fringe benefit	Yes	No
Does your business meet the requirements to be classified as a small business entity (SBE) for income tax purposes? <i>If you have been classified as a SBE, an exemption from car parking fringe benefits arises.</i>		
Has an election been made for calculating the number of car parking benefits provided: actual usage records method, statutory formula method, or 12-week register method? <i>Where no election has been made, the actual usage records method must be used.</i>		
Has an election been made for calculating the value of car parking benefits provided: commercial parking station method, market value basis, or average cost method? <i>The commercial parking station method will automatically apply if no election has been made.</i>		
Entertainment fringe benefit		
Has an election been made to use either the 50/50 split method or the 12-week register method? <i>If no election is made, the taxable value is determined based on actual expenditure.</i>		
If using the 12-week register method, is the register still valid? <i>A register is only valid for the FBT year in which the register period ends and the next four FBT years provided that the total GST-inclusive entertainment costs do not vary by more than 20% between each FBT year.</i>		
Did the employee (or their associate) contribute to the provision of the benefit? <i>The taxable value of the benefit is reduced by any such contributions.</i>		
Loan fringe benefit		
Was a loan made to an employee (or their associate) during the FBT year? <i>A fringe benefit may potentially exist.</i>		
Was the interest rate charged on the loan lower than the notional FBT interest rate (8.05%)? <i>The taxable value of the benefit is the amount by which the notional interest rate calculated on the loan for the year exceeds the amount of interest that has actually accrued on the loan during the year.</i>		
Was the interest on the loan paid at least every six months? <i>If the interest is not paid at least every six months, a new loan equivalent to the deferred interest component will arise.</i>		
Did the employee use the loan for income-producing purposes, and thus would be entitled to a deduction (in their personal income tax return) in respect of the interest incurred? <i>The taxable value of the benefit is reduced by the amount which the employee would be entitled to a deduction, provided a declaration has been given setting out particulars to the use to which the loan was put to.</i>		
Property fringe benefits		
Was any property provided in respect of an employee's employment? <i>Property includes all tangible and intangible property. Examples of property are goods, shares and real property.</i>		
Have employer-provided property (in-house property fringe benefits) and those provided from other sources (external property fringe benefits) been identified? <i>The taxable values for the former and latter are calculated differently.</i>		
If the benefit is an in-house property fringe benefit, has the \$1,000 exemption been applied? <i>The first \$1,000 of the benefit is exempt from FBT. The taxable value is 75% of the amount after the \$1,000 exemption has been applied less the amount (if any) paid by the employee.</i>		
If the benefit was an external property fringe benefit, were you dealing with the external party at arm's length? <i>Where the dealing was not at arm's length, the taxable value is the amount the employee could reasonably be expected to pay to acquire the property under an arm's length transaction, reduced by any employee contribution. For an arm's length transaction, the taxable value of the benefit is the expenditure incurred for the property reduced by any employee contribution.</i>		

Type of fringe benefit	Yes	No
Was the employee entitled to a deduction (in their personal income tax return) if they had incurred expenditure equal to taxable value of the benefit after reduction for any consideration paid by the employee (the otherwise deductible rule)? <i>The taxable value of the benefit can be further reduced by the amount that the employee could have deducted. This further reduction applies to both the in-house property fringe benefit and the external property fringe benefit.</i>		
Is an employee declaration required? <i>The otherwise deductible rule requires an employee declaration setting out details sufficient to establish the connection between the property provided and the income-producing activities of the employee. However, if the property was exclusively in the course of the employee's employment, no declaration is required.</i>		
Expense payment fringe benefit		
Did you pay or reimburse an employee (or their associate) for any expenses incurred by them? <i>Potentially, an expenses payment fringe benefit arises.</i>		
Was the payment or reimbursement for an item that was used solely for an income generation purpose? <i>If there was no private usage of the item, a fringe benefit does not arise. However, the employee must supply a 'no-private-use declaration'.</i>		
Did the employee contribute towards the provision of the benefit? <i>The taxable value of the benefit (which is the amount of the expenditure paid or reimbursed) is reduced by the amount of the employee's contribution.</i>		
Would the 'otherwise deductible rule' apply? <i>The taxable value of the benefit can be further reduced by the amount that the employee could have deducted in their personal income tax return.. This further reduction applies to both the in-house property fringe benefit and the external property fringe benefit.</i>		
Debt waiver fringe benefit		
Was an employee (or their associate) released from an obligation to pay an amount owing since 1 April 2007? <i>A debt waiver benefit potentially arises.</i>		
Was the reason for the waiver in connection with the employment of the employee? <i>A debt waiver benefit can only occur if it is waived for reasons related to the employee's employment.</i>		
Miscellaneous exempt benefits		
Was the employee provided with any work related items such as laptop computers, subscription to trade and professional journals, and mobile phones primarily used in the employee's employment? <i>Work-related items provided to employees could attract an exemption from FBT.</i>		
Were there any infrequent and irregular benefits with a notional taxable value of less than \$300 per benefit being provided? <i>A benefit with a notional taxable value of less than \$300 does not automatically attract an exemption from FBT unless it is infrequent and irregular. Refer to this month's newsletter for further information on when the exemption will apply.</i>		

Rates and threshold

	FBT year ending 31 March 2008	FBT year ending 31 March 2007
FBT tax rate	46.5%	46.5%
Type 1 gross-up rate	2.0647	2.0647
Type 2 gross-up rate	1.8692	1.8692
Fringe benefits reporting exclusion threshold	\$2,000	\$1,000
Car parking threshold	\$6.78	\$6.62
Benchmark interest rate	8.05%	7.30%
Maximum notional taxable value for a minor benefit	\$300	\$100
Statutory car rates for car fringe benefit:		
Kilometres travelled	Statutory	Statutory
Less than 15,000	26%	26%
15,000 – 24,999	20%	20%
25,000 – 40,000	11%	11%
Above 40,000	7%	7%

Cents per kilometres for motor vehicle (where benefit is a residual benefit):

Engine capacity	Rate per kilometre	Rate per kilometre
0 – 2,500cc	41 cents	40 cents
Over 2,500cc	49 cents	48 cents
Motor cycles	12 cents	12 cents

Deemed depreciation rate – cars

Date car purchased	Depreciation rate	Depreciation rate
On or after 10 May 2006	18.75%	18.75%
From 1 July 2002 to 9 May 2006	18.75%	18.75%
Up to and including 30 June 2002	22.5%	22.5%

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