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Practice Update

Please read this update
and contact this office
if you have any queries

APRIL 2007

End of the 2006/07 FBT Year

Now that 31 March has passed, 2006/07 FBT returns will soon be due for lodgment.

Where we usually prepare the FBT return for your business, we ask that you collect all relevant FBT records relating to any benefits provided, such as:

- ◆ motor vehicles;
- ◆ car parking;
- ◆ entertainment;
- ◆ expense payments; and
- ◆ living away from home allowances;

together with travel diaries, employee declarations, etc.

Editor: Please call if you need to make an appointment or discuss the records needed.

Changes

There have been some significant changes this FBT year:

- ❑ The FBT rate of tax for the year ended 31 March 2007 is 46.5% (down from 48.5%).

As a result, the gross-up rates are as follows:

- ❑ Type 1 benefits (employer is entitled to an input tax credit when the fringe benefit is acquired) – gross-up rate of 2.0647.
- ❑ Type 2 benefits (employer is not entitled to an input tax credit when the fringe benefit is acquired) – gross-up rate of 1.8692.

New Super Measures – Year end and start of 2007/08

Editor: The legislation bringing in the raft of superannuation changes announced in last year's Budget is now law.

Notable changes from 1 July 2007:

- Superannuation benefits paid from a taxed fund either as a lump sum or a pension will be tax free for people aged 60 and over.
- Reasonable benefit limits will be abolished.
- Deductible contributions will be limited to \$50,000 p.a. As a transitional measure, for those aged 50 or more, contributions of up to \$100,000 p.a. can be made from 2007/08 to 2011/12.
- Employers will generally be able to claim a full deduction for all super contributions on behalf of employees less than 75 years of age.
- Self employed taxpayers will be entitled to a 100% deduction (not 75% over the first \$5,000).
- Individuals can make post tax (called 'undeducted' or 'non-concessional') contributions of up to \$150,000 in one year.
- People under 65 will be allowed to 'bring forward' up to 3 years of post tax contributions in one year (i.e., up to \$450,000) as long as the following 2 years do not breach the 'bring forward' cap.

For example, if Ms Citizen contributes \$450,000 into her superannuation fund in the 2007/08 year, she wouldn't be able to contribute anything again until 2010/11.

Editor: As decisions made before 1 July may be affected by the changes that apply after 30 June, clients may be well advised to discuss their circumstances with us before the end of the financial year.

GIC and SIC rates for June quarter

For the June 2007 quarter, the GIC (General Interest Charge) rate is 13.37% (0.03663014% daily compounding rate).

For the same quarter, the SIC (Shortfall Interest Charge) rate is 9.37% (0.02567123% daily compounding rate).

No FBT on Employee Share Plan

In line with a number of earlier decisions, the Full Federal Court has held that FBT would not apply to an employee share plan in relation to a proposed issue of shares to a trustee of a Share Plan rather than specific employees.

In this case, an employer wanted to issue shares to the trustee of a Share Plan for the (later) benefit of employees of its franchisees (the taxpayer was one of these franchisees).

The trustee would hold the shares and eventually issue them to employees, as and when it believed they had met certain criteria.

The taxpayer applied to the ATO for a private ruling, but when it was told that the share issue will be liable to FBT, it appealed to the Federal Court.

The Court's Decision

The Full Federal Court unanimously held that the proposed issue of the shares would not give rise to a fringe benefit, as the specific employees who were to benefit from the Share Plan were not identified.

The wash-up

The Commissioner has finally accepted the decision, and advised that he will not appeal.

The Tax Office will now review outstanding employee benefit arrangement cases that are impacted by the Court's decision.

Repayments of loan liable to FBT

A taxpayer and his wife who were the shareholders in a private company have been found to be liable to FBT on expenses paid for by the company even though:

- ◆ the company clearly owed them money at the time; and
- ◆ the expenses paid were later written-off against the taxpayers' loan accounts.

Facts of the case

A taxpayer and his wife were the sole shareholders in a company. In the years concerned, the Company either paid their personal expenses directly or reimbursed their own private credit cards.

At the end of each year, a corresponding credit was entered in the taxpayers' loan accounts with the Company. That is, the payments of their expenses by the Company were set off against the loans owing to them.

The taxpayers received no other remuneration. There were no other employees. The Company's business could not have operated without their work as employees.

Although the Court accepted that "... the repayments were related to the entitlement of (the taxpayers) as creditors of the Company and as ultimate beneficial owners of the business", it held that the repayments were *also* directly or indirectly in relation to their employment.

Editor: Clearly, this is a case of not what you do but how you do it. Had the company simply repaid the money to the taxpayers rather than paying their expenses for them, this case would never have come before the Federal Court.

FBT Tip: Minor benefits exemption

For the 2006/07 FBT year, fringe benefits with a taxable value of less than \$100* are basically exempt from FBT if they are provided on an irregular and infrequent basis.

However, from 1 April 2007, the minor benefits exemption threshold will increase to 'less than \$300'.

Note(): For a benefit to qualify for the exemption, the benefit must have a GST-inclusive taxable value of less than \$100.*

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.