

NEWSFLASH BOOKLET

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FRINGE BENEFITS TAX (FBT)

Important – This booklet is simply a collection of Newsflash articles relevant to FBT. The articles are transferred from Newsflash into this booklet so it is best read from the back page forwards to ensure you are reading the latest article on the topic first. Note that the information contained in this booklet is not updated regularly so it is important that you seek professional advice before acting on it.

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Introduction

Some clients are not taking full advantage of the FBT concessions and others have packages that are not beneficial. To help negotiate a package that maximizes your benefits we have prepared a simple yet detailed discussion on the main benefits you should be considering. Please note in order to keep this succinct it does not cover every benefit but should help you to understand the traps and opportunities in most occupations.

The following does not apply to employees who work in remote areas or for rebatable employers, public hospitals or benevolent institutions. If you work in a remote area you need to read our Miners booklet and consider many more concession than those listed below. If you work for any of the others above you should package benefits that do not have any concessions in their own right into the exempt or concessional part of your package and then consider the following. You really need to seek advice on an individual basis and refer to our FBT booklet for Public Hospitals and PBIs.

If your package is under \$150,000 the only fringe benefits that are worth sacrificing are exempt benefits (laptops, Utes, superannuation, minor etc) or a car doing a decent amount of kilometres but make sure you crunch the numbers and make an employee contribution to bring the taxable benefit to zero.

If you are self employed you can still salary package fringe benefits if you operate through a trust or a company as you can become an employee of that entity. But you can't be an employee of yourself so if the business is operated through a partnership or as a sole trader you cannot utilise these benefits.

The Dangers

If your gross wage after the salary sacrifice is less than \$150,000 and you can't get out of your fringe benefits package you will need to make an employee contribution to reduce the taxable value of your fringe benefit to zero. An employee contribution is not necessary with exempt fringe benefits that are salary sacrificed such as superannuation, laptops, mobile phones, minor benefits etc. because their taxable value is already zero. The "taxable value" is normally the market value of the benefit you receive, so, if your package is under \$150,000, the only items worth salary sacrificing are the exempt benefits or in most cases a car (providing it is unlikely to have much business use and it will travel a reasonable amount of kilometres).

If you pay some of the expenses of a packaged car yourself the ATO does not reduce the amount of FBT your employer pays under the formula method. So you must keep the receipts and give them to your employer to include in the FBT calculation as employee contributions. If you don't do this you are effectively being double taxed because you have already paid tax on the money you use to buy the fuel etc but your employer is also deducting from your package the FBT he or she has to pay on the ATO's estimate of what the fuel expense will be. If you are in the maximum tax bracket and you pay \$100 in fuel out of your own pocket you have had to earn \$186.92. The ATO has also charged your employer FBT of \$86.92 because the formula assumed you would use that fuel and the employer would have paid for it. You are effectively paying tax twice on the same tank of fuel not to mention the fuel tax we all pay.

If you salary package a car you cannot claim any expenses for it in your personal tax return. You will need to crunch the numbers to see if it is worth losing this deduction. It may not be worth it if the car does few kilometres. A log book can be used to solve the problem if you are already in this situation.

If you do not travel many kilometres a packaged car may be costing you more than it is worth. For example if your car does less than 15,000 kilometres a year and it cost \$38,000 the ATO considers you to be receiving a benefit worth \$9880 per year or \$823 per month. Now unless your lease payments, fuel, repairs, registration and insurance are more than this your salary package is being reduced by FBT your employer has to pay on a benefit you are not really receiving. In other words the ATO's formula could calculate the benefit of the car to you to be greater than the cost of running the car. More details on this calculation are below. If this is the case you would be better taking your whole package as wages and providing the car for yourself. If you are already stuck in this position a log book can be used stop the negative effects but it will only restore equilibrium. A log book will not put you in a better position than if you provide the car for yourself.

Be aware when negotiating your salary package with your employer that your employer will not be liable under the superannuation guarantee for any items you package. So you are losing 9% in super contributions. If you are injured workers' compensation will only pay you your salary not the fringe benefits package. Unless you take advantage of the concessions your benefit will effectively be taxed at the maximum tax rate anyway so will cost you and your employer as much as receiving it as part of your gross wage. Considering the loss of superannuation and workers' compensation it is important that the numbers are looked at very closely.

What Benefits Are Worth Considering

Most fringe benefits are effectively taxed at 46.5% so there is no real advantage in receiving them and a big disadvantage if you are not in that tax bracket yourself. Some may gain an advantage from reducing their taxable income as Fringe Benefits are not included in your taxable income but the grossed up value of them is included on your group certificate and in your income tax return. Whenever your taxable income is relevant, the authority you are reporting to will probably request the Fringe Benefits Tax Amount as well. Therefore the only real advantage gained by arranging a Fringe Benefit Package is from those benefits that are either exempt, concessionally taxed or not reportable. Examples of these three classes of benefits are as follows:

Exempt:

Otherwise Deductible Benefits – Tools, Briefcase, Calculator, Electronic Diary, Trade Journals etc.

Items that would be tax deductible to you if you purchased them yourself. As far as your taxable income and the tax payable, you are in the same position whether you or your employer pays for the item but there is a bonus in that your employer (in most cases) would be entitled to an input credit for the GST which employees are not normally entitled to. Note there is no GST credit available on interest.

An interesting turn on this concession was taken to its full advantage in the *National Australia Bank v FCT*, 93 ATC 4914 where interest on a jointly owned property is effectively fully deductible to the highest income earner through salary sacrifice and the otherwise deductible rule. TR 93/32 and Case 63/96, 96 ATC 578 clearly state that expenses relating to a rental property owned by more than one person must be apportioned in accordance with the ownership interest. For many years this has been a problem when one of the owners is in the zero or a lower tax bracket than the other and the property is negatively geared.

National Australia Bank v FCT, 93 ATC 4914, has provided a window of opportunity here through salary sacrificing. This case resolved that a loan provided jointly to an employee and associate was 100% exempt from fringe benefits under the otherwise deductible rule even though the employee would have only been entitled to 50% because the other 50% was in regard to an associate of the employee i.e. a spouse.

This arrangement in many circumstances can provide huge advantages but there are many other scenarios that could apply to your rental property. If the property is positively geared in most cases it would be better just in the name of the spouse in the lower tax bracket. It just depends how far it is positively geared, again you need to crunch the numbers.

Using the *National Australia Bank Case* not only allows a high income earner to maximise the negative gearing benefits but when the property is sold at a profit the capital gains are still be apportioned on the basis of ownership. Therefore the low income spouse receives an equal share of the gain despite the fact he or she did not claim an equal share of the expenses. Further this provides brilliant flexibility in that if the low income earner becomes the higher income earner simply change the person who participates in the salary sacrifice arrangement.

Careful, do not salary sacrifice special building write off or depreciation of plant and equipment. The otherwise deductible rule would not apply to the principle portion of the repayments so there is no benefit in salary sacrificing them and the disadvantages discussed under the heading Dangers would apply. The above only applies to properties that the employee has an ownership interest in and expenses that the employee is liable for even if only proportionately liable.

It has not been tested in the courts whether this case could apply to shares owned jointly. It is certainly worth considering as it would only be a change to a minor and insignificant element of the NAB case facts.

Protective Clothing and Computer Software – Only if needed for employment purposes.

Airport Lounge and Corporate Credit Card Membership

Taxi Travel – When one end of the journey is the place of work or if the travel is related to sickness or injury.

Certain Vehicles – Providing the following vehicles are only used for home to work travel, business purposes and other minor, infrequent and irregular travel. The benefit received is exempt, MT 2024.

- a) Motor Cycles
- b) Vehicles designed to carry a load of at least one tonne
- c) Taxis, panel vans, utilities and commercial vehicles designed to carry a load of less than 1 tonne but not principally designed to carry passengers. According to MT 2024 this includes Nissan Navara Dual Cab Ute DX, Mazda Bravo 4WD Dual Cab Ute DX5, Toyota Hilux 4x2 Dual Cab Ute, Ford Courier

4x2Crew Cab pick-up GL and Holden Ute Series III 179kw V8. Other vehicles that have more load space than passenger space may well qualify.

If you have a long way to travel to work and cannot make that trip otherwise deductible (i.e. carry bulky tools due to no safe storage at work) it may be worth asking your employer to supply you with a vehicle that fits into one of the classes above, if you have another car to use for private. This will effectively allow you a tax deduction for all your home to work travel. Or in dollar terms close to halve your costs for running the vehicle if you are at the maximum tax rate.

Superannuation – The superannuation fund will have to pay 15% tax on the contribution your employer makes on your behalf but in most cases this would be less than the tax you would have to pay if you received the money yourself. Another benefit is any future earnings on the investment will only be taxed at 15%.

Minor Benefits – These are irregular benefits that cost the employer less than \$300 after 1st April 2007 (\$100 before that date). Note you can use an employee contribution to bring a benefit down to the \$300 limit.

Laptops – Your employer can give you a new laptop each year without any FBT liability.

Mobile Phones – Providing it is used primarily for work related purposes.

Relocation Costs - This includes travel meals and accommodation en-route for all the family. The cost of temporary accommodation, costs of selling and purchasing a home are also exempt.

With these benefits your employer does not pay FBT and the amount of the benefit does not appear on your group certificate or tax return. Nevertheless, your employer will no doubt reduce your income to pay for the benefit so it must be of use to you. For example if your employer reduces your pay by \$100 to provide you with a minor benefit your never use you have just wasted at least \$53.50 in after tax dollars.

Concessionally Taxed:

Car Benefits – Other than cars included under exempt benefits. Car benefits calculated under the statutory formula can be used to your benefit if you travel a decent amount of kilometres for private purposes. On the other hand if the car does not travel a lot of kilometres or a high percentage of the travel is work related the formula can work against you. The formula determines the taxable value of the car benefit but multiplying the original cost of the car by one of the following percentages depending on the number of kilometres it has traveled that year:

Kilometres Travelled	%	Kilometres Travelled	%
Less than 15,000	26%	25,000 to 40,000	11%
15,000 to 24,999	20%	Over 40,000	7%

Note if the car has been owned by the employer or an associate of the employer for more than 4 years only two thirds of the original cost is used to calculate the taxable benefit.

Non – Reportable:

Note non reportable benefits are only a benefit to you if you have something to gain by understating your taxable income. Being not reportable does not stop the benefit being effectively taxed at the maximum tax rate through FBT. Further don't forget the superannuation guarantee and workers' compensation disincentives. If the taxable value of all your fringe benefits (excluding exempt and non-reportable ones) is less than \$2,000 from 1st April, 2006 (\$1,000 before then) they are not required to be recorded on your group certificate. Examples of other non-reportable benefits are:

- **Meal Entertainment**
- **Car Parking**
- **Entertainment Facilities**
- **Overseas Emergency Health Care or Living Allowance**
- **Police Cars, Ambulance and Fire Vehicle** – When driven between work and home.
- **Benefits to the Defence Forces** – For example storage, reunion travel, housing, rental assistance, removal and travel assistance upon marriage breakdown.

Salary packaging – Changing tax bracket

With the maximum tax bracket Threshold lifting to \$150,000 in the 2006/2007 year it is time to re evaluate your salary package. If you are receiving fringe benefits as part of your package your employer will be paying FBT on these at the maximum tax rate. If you are not in the maximum tax bracket any more it is important that you make an employee contribution to bring the taxable benefit down to zero. This will effectively mean the benefit is taxed at your tax bracket rather than the maximum bracket

Salary packaging – Improve take home pay

If your salary package reduces your gross pay to less than \$150,000 you can improve your take home pay at the ATO's expense by making employee contributions. Fringe benefits tax is based on the assumption that if you received the money for the benefit in your pay packet all of it will be taxed at the maximum bracket. So if your salary package before the sacrifice is over \$150,000 but under \$150,000 once the sacrifice is deducted you need to make an employee contribution. A shortcut is to contribute the amount of the taxable value.

Note there are special concessions for employees of hospitals and public benevolent institutions which make salary sacrificing attractive no matter what your income as long as the package is within the limits of the concessions. This issue is addressed in our booklet on FBT for Public Hospitals and PBIs..

If your package is under \$150,000 before deducting the salary sacrifice you should make employee contributions to reduce the "taxable value" of the benefit to zero. An employee contribution is not necessary with exempt fringe benefits that are salary sacrificed such as superannuation, laptops, mobile phones, minor benefits etc. because their taxable value is already zero. The "taxable value" is normally the market value of the benefit you receive, so, if your package is under \$150,000, the only items worth salary sacrificing are the exempt benefits or in most cases a car (providing it is unlikely to have much business use and it will travel a reasonable amount of kilometres). The first worksheets below will help you calculate the taxable value of a car and therefore the employee contribution necessary. The second worksheet helps you work out how much it will cost your employer to provide you with the car and therefore how much your salary will need to be reduced by in order to receive the car.

This also applies to the self-employed that operate through a company or trust. In these cases the employee contribution is normally done by journal entry when the tax returns are done.

Note you will not be able to claim a tax deduction in your personal income tax return for the cost of using a salary sacrificed car for your work.

Taxable Value of Vehicle

GST Inclusive cost of the vehicle

Multiply by statutory fraction

Taxable Value

Statutory Fraction

Total kilometres pa less than 15,000 0.26

Total kilometres pa 15,000 to 24,999 0.20

Total kilometres pa 25,000 to 40,000 0.11

Total kilometres pa over 40,000 0.07

Calculate The Cost to the Employer of Providing the Car:

Lease Payments

Fuel

Registration

Insurance

Repairs and Maintenance

Tyres

Total Costs GST Inclusive

For GST on Above Divide by

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GST on Running Costs

Actual Running Cost*

Add: GST Payable on Employee

Contribution

Add FBT Payable

Less: GST on Running Costs

Less: Employee Contribution

Real Cost to Employer and normally
the amount of the salary sacrifice

Relocation expenses

The cost you incur transferring your household to another work location are not deductible but they are an exempt fringe benefit so you should negotiate with your employer to have them pay these costs even if there is a corresponding reduction in your income before tax.

Employee contributions for FBT and the BAS

On the 21st May, 2001 the Commissioner released GSTR 2001/3 which deals with employee contributions towards fringe benefits, being subject to GST. Unless the employee makes the contribution by way of paying the actual expenses associated with the benefit (such as fuel) and no input credit has been claimed on those expenses the taxable employee contribution is to appear in the BAS in the quarter in which it is received if the BAS is on a Cash basis. According to GSTR 2000/D17 paragraph 24, if the BAS is on an accruals or non cash basis all of the employee contribution is included in the BAS in which the first amount is received or when a bill is issued to an employee unless the full amount is not known then only the amount received is included. While the ruling doesn't address this I believe the legislation supports that the full amount of the contribution should be included when the supply is made if this is the first thing to happen and you are reporting on a non-cash basis.

Unfortunately the ruling only looks at the limited circumstances of employees who are not owners of the company. Many of our clients own companies or trusts of which they are employees. They don't pay fringe benefits tax because they make employee contributions to cancel out the benefit. Many clients may not even be fully aware of this because until now the entry has been made by journal entry by the accountant when the tax return is done. This is permitted to be done retrospectively under ruling MT2050. GSTR2001/3 accepts that the employee can make a contribution after the end of the FBT year and have it apply to that year. So in order to be technically correct the journal, when made should not be back dated as it has been in the past but dated the date it is made. This way it can be correctly recorded in the BAS for the period when the accountant is doing the work. Just make sure you get this information for your BAS. We have had the above approach confirmed by the NTAA and ATO.

The above probably applies to you if your vehicle is owned by a trust or company and you are not in the maximum tax bracket, or if an employee makes contributions to you.

In short, what to do Now:

If you have employees who make actual contributions during the year and you prepare your BAS on a cash basis you will have to enter these amounts on the BAS for each period they are received. If you prepare your BAS on a non-cash accruals basis you have to include all the future payments when the first one is received or you issue a bill or the goods are supplied unless the total amount is uncertain. This should not be a problem if the contribution is for goods as they have been supplied so the amount should have been set. The problem arises when a car is provided on an ongoing basis. There seems to be a good argument here that the total amount is not certain so the contribution only needs to be included when it is received or the journal entry made. In the latter case where you are at risk of missing this one off entry as it does not go through the cashbook. So if you are preparing your own BAS don't forget to ask your accountant for this amount when the business income tax return is done.

Some employees will be making an annual contribution in the June quarter as in most cases this is the quarter when the liability is calculated for the FBT return. The fringe benefit calculation for motor vehicles based on the formula method is reasonably simple. So once shown by your accountant you should be able to do it yourself in future years. But note when the car has been held for more than 4 years, at the beginning of the FBT year, the cost base in the formula is reduced to 2/3rds of the original cost. If you are accounting for the car on a log book basis the fringe benefit calculation is much more complex.

FBT return preparation

How to account for those Christmas parties and gifts:

Gifts that are not entertainment are fully tax deductible and a GST input credit is available but they are subject to FBT if they exceed \$100 per employee (\$300 after 1st April, 2007). If they are gifts to a customer they are fully deductible, a GST input tax credit is available and no FBT payable.

A Christmas party is considered entertainment so the following dissection needs to be made of those attending:

Family members etc of employees – FBT payable, tax deductible and input credit can be claimed. But if the total value to the family of the benefit received is under \$100 (\$300 after 1st April, 2007) no FBT, no GST input credit and no tax deduction. The employee himself or herself is included in the family total if the party is away from work or not on a normal working day.

Employees – on a normal working day at work no FBT, no tax deduction for the expense and no input credit can be claimed. If not at work or not on a normal working day FBT applies and a tax deduction and input credit is allowed if the benefit in total received by the employee and his or her family exceeds \$100 (\$300 after 1st April, 2007). If it does not exceed \$100 (\$300 after 1st April, 2007) no FBT is payable but no tax deduction or input credit.

Customers – No tax deduction, no GST input credit and no FBT payable.

There are 2 methods available for apportioning the costs between employees, family members and customers. One is a 12 week register which is not really appropriate for a one off Christmas party. The other is the 50/50 method which allows you to assume one half of the total expense is subject to FBT. Therefore only one half of the expense is deductible. But careful as, if the amount per employer qualifies as a minor benefit then no tax deduction is permitted. If you use this method the other half of the expense that is not deemed to be a benefit is not tax deductible. The availability of the GST input credit is on the same basis as the tax deductibility. References – TR97/17, FBTA 136(1) and 58P

What To Put On Group Certificates:

Fringe Benefits need only be included on group certificates if their value before grossing up exceeds \$1,000. But if this is the case the whole amount including the first \$1,000 is included. This \$1,000 threshold changes to \$2,000 from 1st April, 2007. The FBT year finishes on 31st March yet group certificates don't come out until 30th June. So the group certificates for the year ended 30th June, 2007 will show fringe benefits supplied from 1st April 2006 to 31st March 2007. Some fringe benefits such as meals and car parking are excluded from the \$1,000 limit and excluded from the amount to appear on the group certificate. The gross up rate for reportable fringe benefits is 1.8692 regardless of whether GST applies to the benefit or not.

Employee Contribution:

The amount of the fringe benefit can be reduced by employee contributions but if these are made in cash, GST and income tax is payable on this amount by the employer. GST is not payable if the employee contribution is towards motel accommodation or a GST free expense such as health insurance.

Administration fee for salary packaging

ID 2003/566 states that the small monthly or fortnightly fee charged to cover the cost of administering a salary package is not tax deductible to the employee. On the other hand such an administration fee would be a direct cost to the employer of running his or her business so fully deductible. So, it is better for the employer to be the one to incur these costs.

Salary packaging a car – Sometimes it can go wrong

Note the following is not for employees of hospitals or public benevolent institutions.

Recently we have come across some salary packaging of cars that has actually made the employee worse off. About a year ago we published some articles on the calculations to work out the actual benefits of a salary package and these are still available in this booklet. We understand that the calculations are quite complicated so the following is a list of **some** of the pit falls. If you think these could apply to you it is worth reading the booklet or talking to us. Note the following is not conclusive just some examples we have come across. To really know if your package is right you must crunch the numbers.

1) The ATO determine the FBT payable by your employer by a formula that increases the amount of FBT payable if the kilometres travelled by the car are low, the higher the kilometres travelled the more business purpose the ATO assumes the car has. The formula takes the purchase price of the car (assuming less than 4 years old) and multiplies it by one of the following:

Total kilometres p.a. less than 15,000	0.26
Total kilometres p.a. 15,000 to 24,999	0.20
Total kilometres p.a. 25,000 to 20,000	0.11
Total kilometres p.a. over 40,000	0.07

If your car is only doing 15,000 kilometres and it cost \$38,000 the ATO considers you to be receiving a benefit worth \$9880 per year or \$823 per month. Now unless your lease payments, fuel, repairs, registration and insurance are more than this your salary package is being reduced by FBT your employer has to pay on a benefit you are not really receiving. In other words the ATO's formula calculates the benefit of the car to you to be greater than the cost of running the car. So you would be better paying the tax on your package and providing the car for yourself.

A log book can be used stop the negative effects of the above but it will only restore equilibrium. A log book will not put you in a better position than if you provide the car for yourself.

2) If your gross wage after the salary sacrifice is less than \$150,000 you will need to make an employee contribution to reduce your fringe benefit to zero. The tax your employer pays on your non exempt salary sacrifices is at 46.5%, which is the maximum personal tax bracket and is not reduced just because your own personal tax rate is lower. Therefore it is important that you make an employee contribution to bring the taxable value of your benefit to zero as you will pay less tax on the money than your employer. There is still a benefit in salary packaging a car even if you are under the maximum tax bracket threshold. If you are doing a high amount of private kilometres as discussed above the ATO assumes in its formula that there is a high business portion and reduces the FBT payable accordingly. If your package is under \$150,000 the only fringe benefits that are worth sacrificing are exempt benefits (laptops, superannuation, utes, minor benefits, etc) or a car providing it travels a reasonable amount of kilometres. In the latter case it is imperative that the numbers are crunched to ensure there is a real benefit.

3) If you pay some of the car's expenses yourself the ATO does not reduce the amount of FBT your employer pays under the formula in point 1) above. So you must keep the receipts and give them to your employer to include in the FBT calculation as employee contributions. If you don't do this you are effectively being double taxed because you have already paid tax on the money you use to buy the fuel etc but your employer is also deducting from your package the FBT he or she has to pay on the ATO's estimate of what the fuel expense will be. If you are in the maximum tax bracket and you pay \$100 in fuel out of your own pocket you have had to earn \$186.92. On top of that the ATO in its formula discussed in 1) above have taken into account that car will use that in fuel so will charge your employer FBT which your employer will take out of your pre tax salary package. You are effectively paying tax twice on the same tank of fuel not to mention the fuel tax we all pay.

Rental Properties

TR 93/32 and Case 63/96, 96 ATC 578 clearly state that expenses relating to a rental property owned by more than one person must be apportioned in accordance with the ownership interest. For many years this has been a problem when one of the owners is in the zero or a lower tax bracket than the other and the property is negatively geared.

National Australia Bank v FCT, 93 ATC 4914. has provided a window of opportunity here through salary sacrificing. This case resolved that a loan provided jointly to an employee and associate was 100% exempt from fringe benefits under the otherwise deductible rule even though the employee would have only been entitled to 50% because the other 50% was in regard to an associate of the employee i.e. a spouse.

For example A & B are married and own a rental property as joint tenants which means they automatically are required to split the profit or loss from the property 50:50. The loan, rates, insurance etc are also in joint

names. A has no other income and B is in the maximum tax bracket by more than \$20,000. The property is negatively geared as follows:

Rent Income			\$15,000
Less:			
	Rates (\$1,800), Insurance (\$600) & Interest (\$18,000)	\$20,400	
	Special Building Write Off	<u>5,000</u>	<u>25,400</u>
Loss			10,400 = 5,200 each

The tax refund to B is \$2,418 ($\$5,200 \times 46.5\%$). A receives no refund but may be able to carry forward the losses for the future unless exempt income such as Family Payment Part B is being received. The actual after tax cash flow cost of the rental property is the rates, insurance and interest of \$20,400 less rent received of \$15,000 less the tax refund of \$2,418 = \$2,982 out of pocket each year.

If B salary sacrifices expenses they are paid before B's 46.5% tax bracket is applied to the income. This is the equivalent dollar wise to claiming a tax deduction but no FBT is payable by the employer because of the otherwise deductible rule. If B salary sacrifices the Rates, Insurance and Interest, a total of \$20,400 B's take home pay is only reduced by $\$20,400 \times 53.5\% = \$10,914$ because unlike take home pay no tax was payable on the \$20,400. The rental property net income calculation for A & B is now as follows:

Rent Income	\$15,000
Less: Special Building Write Off	<u>5,000</u>
Profit	\$10,000 = \$5,000 each. Note this will have a minor effect A's part B family payment.

The \$5,000 will be included in B's taxable income resulting in a tax bill of \$2,325. Under the traditional method the property was costing an extra \$2,982 in cashflow each year. Under the salary sacrifice method the cashflow would be the rental income of \$15,000 less the reduction in take home pay of \$10,914 less B's tax payable of \$2,325 and A's loss of part B say \$200 ($\$1,000 \times .20$) = \$1,561 positive. That is an annual saving of \$2,982 plus \$1,561 = \$4,543.

Note there are many other scenarios that could apply to your rental property. If the property is positively geared in most cases it would be better just in the name of the spouse in the lower tax bracket. Each case needs to be looked at individually.

Not only does the above allow a high income earner to maximise the negative gearing benefits but when the property is sold at a profit the capital gains are still be apportioned on the basis of ownership. Therefore the low income spouse receives an equal share of the gain despite the fact he or she did not claim an equal share of the expenses. Further this provides brilliant flexibility in that if the low income earner becomes the higher income earner simply change the person who participates in the salary sacrifice arrangement.

Careful, do not salary sacrifice special building write off or depreciation of plant and equipment. The otherwise deductible rule would not apply to the principle portion of the repayments so make sure you only sacrifice the interest portion. If you have any non deductible debt the rental property loan should be interest only anyway. The above only applies to properties that the employee has an ownership interest in and expenses that the employee is liable for even if only proportionately liable.

Secret plans and clever tricks

Employers, if you want to take advantage of the \$100 (\$300 from 1st April, 2007) minor benefit exemption from FBT but the expense exceeded that amount, simply have the employee make an employee contribution sufficient to bring the expense down to the \$100 (\$300 from 1st April, 2007). You will still get a full input credit (providing the benefit is not entertainment) for all the expense as you will be liable for GST on 1/11th of the employee contribution unless the employee contribution is towards motel accommodation or a GST free expense such as health insurance.

Note there are other requirements to meet the minor benefit exemption under 58P as follows:

58P(1)(a) The benefit is provided in respect of employment

58P(1)(b) The benefit is not an airline transport benefit

58P(1)(c) The benefit must not be an inhouse expense payment, inhouse property, or inhouse residual.

58P(1)(f) The benefit must be infrequent and irregular

There are special conditions for exempt employers. Also section 58P(2) links associated benefits i.e. a benefit of \$75 to an employee and the same sort of benefit to their spouse makes the amount \$150 i.e. \$50 over the threshold until 1st April, 2007 when the threshold increases to \$300.

Ultimate secret plan and clever trick with rental properties

Earlier in this booklet we covered National Australia Bank v FCT 1993 ATC 4914. The case resolved that a loan provided jointly to an employee and associate was 100% exempt from fringe benefits under the otherwise deductible rule even though the employee would have only been entitled to 50% because the other 50% was in regard to an associate of the employee i.e. a spouse.

Not only does this allow a high income earner to maximise the negative gearing benefits but when the property is sold at a profit the capital gains will still be apportioned on the basis of ownership. Therefore the low income spouse receives an equal share of the gain despite the fact he or she did not claim an equal share of the expenses. Further this provides brilliant flexibility in that if the low income earner becomes the higher income earner simply change the person who participates in the salary sacrifice arrangement.

There were many doubters that such a golden opportunity has existed since 1993 without being brought to public attention. To prove our point we applied to the ATO for a ruling.

Now this ruling is a private ruling so can only be enforced on the ATO by the individual applicant. Accordingly, each employee wishing to utilise this case needs to pursue his or her employer to accept the case or apply for their own ruling to be safe. There will be a major problem with employers as they get no real benefit from the arrangement yet would be made to pay FBT if the ATO takes a narrow view or have to pay their accountants to apply for a ruling. This is probably why the concept has not yet taken off which is a shame as it can save employees thousands of dollars every year.

To solve this we have prepared a kit to present to your employer. The kit explains the whole concept in detail. There is a page for the employer, the employee and the employer's accountant. There is also a checklist of dos and don'ts to make sure you stick within the bounds of the precedent case, a worked example, suggested issues for the employment agreement, an employee declaration and booklets of advice on CGT and Rental Property Taxation Issues. The kit includes a copy of the ruling we have received and all the paperwork necessary for the employer to apply for their own private ruling by simply putting in their personal details, signing and posting. At \$150 (tax deductible) the kit is considerably cheaper than your employer going through the ruling process from scratch. But more importantly it will help you explain it to your employer and your employer's accountant how simple it is for you to save tax every year. More details are available on our web site www.bantacs.com.au or phone your nearest BANTACS office for copy.

Home to work travel an exempt fringe benefit

Most fringe benefits are effectively taxed at 46.5% so there is no real advantage in receiving them and a big disadvantage if you are not in that tax bracket yourself. Some may gain an advantage from reducing their taxable income as Fringe Benefits are not included in your taxable income but the grossed up value of them is included on your group certificate and in your income tax return. Whenever your taxable income is relevant, the authority you are reporting to will probably request the Fringe Benefits Tax Amount as well. Therefore the only real advantage gained by arranging a Fringe Benefit Package is from those benefits that are either exempt, concessionally taxed or not reportable.

Exempt use includes "Non Cars" – Providing the following vehicles are only used for home to work travel, business purposes and other minor, infrequent and irregular travel. The benefit received is exempt, MT 2024.

- a) Motor Cycles
- b) Vehicles designed to carry a load of at least one tonne

c) Taxis, panel vans, utilities and commercial vehicles designed to carry a load of less than 1 tonne but not principally designed to carry passengers. According to MT 2024 this includes Nissan Navara Dual Cab Ute DX, Mazda Bravo 4WD Dual Cab Ute DX5, Toyota Hilux 4x2 Dual Cab Ute, Ford Courier 4x2Crew Cab pick-up GL and Holden Ute Series III 179kw V8. Other vehicles that have more load space than passenger space may well qualify.

If you have a long way to travel to work and cannot make that trip otherwise deductible (i.e. carry bulky tools due to no safe storage at work) it may be worth purchasing a vehicle that fits into one of the classes above, if you have another car to use for private. This will effectively allow you a tax deduction for your entire home to work travel. Or in dollar terms halve your costs for running the vehicle if you are at the maximum tax rate.

Salary sacrifice and employees of Hospitals or Public Benevolent Institutions (PBIs)

Employees of Hospitals and Public Benevolent Institutions can receive a limited amount of fringe benefits without their employer being liable to pay fringe benefits tax. This effectively means the benefit is received tax free just like the good old days. The limit varies depending on whether GST is applicable to the benefit you receive or not. It is around \$8,000 taxable value for hospitals and \$14,090 taxable value for Public Benevolent institutions. The taxable value is normally the actual cost of the benefit supplied. A statutory formula can be used to calculate the taxable value of a car the formula works as follows:

Statutory Fraction

Kilometres Travelled	%	Kilometres Travelled	%
Less than 15,000	26%	25,000 to 40,000	11%
15,000 to 24,999	20%	Over 40,000	7%

Statutory Formula – Taxable Value of Vehicle

$$\begin{array}{r}
 \text{GST Inclusive Cost of Vehicle} \\
 \text{Multiply by the Statutory Fraction} \quad \underline{\hspace{2cm}} \\
 \text{Taxable Value} \quad \underline{\hspace{2cm}}
 \end{array}$$

Exempt fringe benefits such as superannuation, laptops, mobile phones and minor benefits are not included in the limit and are not subject to FBT so these are effectively tax free as well, though superannuation is taxed in the hands of the superannuation fund.

If your taxable income after salary sacrifice is under \$150,000 make sure any benefits you receive over and above the exemption limit (around \$8,000 or \$14,090 for PBIs) are exempt in their own right. If you do more than this it will be necessary to make an employee contribution to cancel the taxable value of the extra benefit down to zero. Otherwise you are effectively paying the maximum tax rate on the excess benefit when if you had received the cash instead it would have been taxed at a lower rate.

Note you will not be able to claim a tax deduction in your personal income tax return for the cost of using a salary sacrificed car for your work.

Ensure the maximum benefit from packaging a car

There is no doubt that the calculations relating to salary packaging a car under the ATO formula method are complex. Unfortunately this means that many employees don't crunch the numbers. For years we have been advocating spreadsheets and crunching the numbers but nobody seems to be interested. So instead we have produced a few basic rules, that in most circumstances, will ensure you maximise the benefits provided by FBT. Note ideally you should seek professional advice in regard to your particular circumstances. But if that is never going to happen at least make sure you cover the following:

- 1) Work out the taxable value of the car and make an employee contribution of this amount this will not only ensure you get the maximum benefit but also reduce the amount of workers' compensation and superannuation contributions you lose. To calculate the taxable value of a car multiply the original GST inclusive purchase price (unless over 4 years old) by one of the following depending on the amount of kilometres the car travels within a year:

Kilometres Travelled	%	Kilometres Travelled	%
Less than 15,000	26%	25,000 to 40,000	11%
15,000 to 24,999	20%	Over 40,000	7%

- 2) If the taxable value before grossing up is more than the actual cost of running the vehicle you are in the unusual position where salary packaging the car will not benefit you.
- 3) The employee should not incur any direct costs in regard to the car or if unavoidable the employee should be reimbursed for these costs, as the employee is not permitted a tax deduction for them. To do otherwise could result in the amount effectively being taxed twice plus GST.
- 4) As the employee will not be entitled to a tax deduction for the vehicle even under, the kilometre method, careful crunching of numbers should be done before the package is taken if the car is used at all for business. If a car used for business purposes is already packaged it may be necessary, to ensure the maximum benefit, to keep a log book and use the actual costs method rather than the formula.

More FBT mistakes

Public Hospital or PBI employees who salary sacrifice into superannuation could be paying 15% too much tax.

Employees of exempt employers, which are Public Hospitals or Public Benevolent Institutions (PBIs), are entitled to receive a set amount of fringe benefits without their employers being liable to pay FBT. It is the intention of the government in providing this concession to help these employers attract staff so taking advantage of this is perfectly legitimate with the ATO. Public Hospitals are permitted to pay each employee the grossed up equivalent \$17,000 and PBIs \$30,000. Note employees of more than one PBI or Public Hospital are entitled to multiply the limit by the number of exempt employers they have.

At one of our FBT seminars I was horrified to find an employee of a PBI was using the exempt portion to salary sacrifice into Superannuation. This meant that instead of getting the amount tax free as would be the case had it been any other expense, the PBI paid, she was paying 15% tax.

I can't blame the ATO for this one other than the fact their laws are too complex for many to understand. The superannuation fund was receiving the contribution as an employer contribution so the fund was liable to pay 15% tax on it. Now if the employee in this case had used the money for any benefit other than cash or superannuation it would not have been taxed, at all, up to the exempt fringe benefit limit. It is only its entry into a superannuation fund as an employer contribution that triggered the tax.

It is also a waste to package exempt or concessional benefits into the exempt portion of the package that has resulted from an employer being a public hospital or PBI. Please don't let this discourage you from packaging as there are huge benefits if it is done right.

Please take the time to get the right advice. Even the ATO does not want to collect tax here.

FBT on Christmas parties

FBT (Fringe Benefit Tax) or the lack of a tax deduction and no GST input credit can tax a Christmas Party more than normal wages.

As a Christmas Party is considered entertainment, this can result in the expense not being tax deductible or FBT applying at the maximum tax bracket. Assuming the Christmas Party is not held in the work place on a normal working day. If the cost per employee is more than \$100 (includes cost of employee's family and amount \$300 on 1st April, 2007) FBT is payable, an input tax credit can be claimed with the net amount and FBT being tax deductible. If the total value to the family of the benefit received is under \$100 (\$300 from 1st April, 2007) no FBT is payable, but no GST input credit or tax deduction can be claimed. If clients or

customers attend there is no tax deduction, no GST input credit and no FBT payable on their share of the costs.

The above is important for you to note because it will be relevant to the preparation of your BAS and the ATO is aware that about a 1/3rd of all FBT calculations are wrong so are stepping up audit activity in that area.

Considering the paperwork involved and the application of FBT at the maximum tax bracket it may be worth considering paying a Christmas bonus and letting the employees themselves put on a Christmas Party. References – TR97/17, FBTAA 136(1) and 58P

FBT time

ON 31ST MARCH THE SPEEDO READING SHOULD BE TAKEN FOR ALL VEHICLES THAT ARE AVAILABLE FOR THE PRIVATE USE OF EMPLOYEES.

If you want the option of choosing between the statutory method and the formula method for measuring the FBT on a car supplied to an employee and a log book has not been kept for the last 5 years, the log book must be started before 31st March.

Many Employers don't realise they are required to complete an FBT return because they don't realise they provide Fringe Benefits to their employees. You don't need to be providing cars and other obvious benefits to be liable for FBT; the following also create an FBT liability:

- Christmas parties where the benefit to an employee including his or her family exceeds \$100 (\$300 from 1st April, 2007)
- Loans to employees where the deemed interest would exceed \$100 (\$300 from 1st April, 2007) this includes overpayment of wages (ID2003/233) and any advance of money or credit terms (section 136(1))
- Use of the Company Bus, Ute, Truck etc for private purposes.

Enough compliance issues now for some fun. Secret Plan & Clever Trick number 24 (Refer booklet at www.bantacs.com.au for the other 23). When an employer leases a car for an employee under an arms length novated lease with a residual value that complies with IT28 and the employee purchases the car at the end of the lease any profit the employee makes when selling the car is not subject to FBT. ID2003/320 says that the employee is also not taxed on it under Subdivision 20-B. But the ruling does not specify that the income is not assessable under section 6-5. TR 92/3 at paragraph 16 states that a transaction of a non business taxpayer is not considered income if the intention of the transaction is not profit making. Accordingly, it is not recommended that you pay the residual and sell the car immediately. It must be clear that you didn't purchase the car purely with the intention of selling it at a profit. Note this will not work for the self employed using a company or a trust, as they will be caught by Subdivision 20-B because the lease payments have been made by an associate.

FBT return time again

FBT returns are due to be lodged by 21st May. Hopefully, the following set of points cover all those little questions that will come to mind while preparing your FBT return.

- 1) The employer is required to remit 1/11th of an employee contribution as GST to the ATO but the GST inclusive value of the contribution is used to reduce the taxable value of the benefit provided.
- 2) It is always the GST inclusive price that is included in any FBT calculation. For example calculating the value of a car benefit under the operating cost method the fuel is GST inclusive.
- 3) If the amount of the benefit before grossing up is less than \$1,000 (\$2,000 from 1st April, 2007) it does not need to be reported on PAYG Summaries (Group Certificates). The gross up rate for reportable fringe benefits is 1.8692 regardless of whether the benefit was subject to GST or not.
- 4) The gross up rate for benefits that included GST or a car that was purchased after the introduction of GST is 2.0647.
- 5) The gross up rate for benefits that do not include GST or a car that was purchased before the introduction of GST is 1.8692
- 6) The car formula method rates are:

Kilometres Travelled	%	Kilometres Travelled	%
Less than 15,000	26%	25,000 to 40,000	11%
15,000 to 24,999	20%	Over 40,000	7%

- 7) Don't forget to calculate the notional interest for a car that is not under finance. The interest is calculated on the written down value of the car at the start of the FBT year.

FBT benefits of a cheaper car

Under the statutory formula method FBT is calculated by multiplying the original purchase price of the car (or two thirds of it if the car has been owned or leased for more than 4 years) by a percentage that decreases as the kilometres travelled by the car each year increases. This means a cheaper car can save you heaps in FBT even though it costs around the same to run as a more expensive car. If you travel a lot of kilometres the FBT could be insignificant and no amount may be reportable on your PAYG summary even if the car is 100% private use. For example I compare an old car, a typical new car, and a cheap new car - they all travelled 25,000km:

	New Car \$35,000	Old Car \$8,000	New Car \$14,000
Fuel	\$2,500	\$2,500	2,500
Rego & Insurance	1,200	1,000	1,100
Repairs & Maintenance	600	1,000	600
Interest @ 7%	2,450	560	980
Depreciation @ 12.5%	4,375	1,000	1,750
FBT = Cost x 11 % x 2.0647 x 46.5%	3,696	845	1,479
Total cost of providing the car per year	14,821	6,905	8,409

If an employee is concerned about the Reportable Amount that appears on their PAYG summary a car costing just \$8,000 is very attractive as the taxable amount is only \$8,000 x 11% = \$880. As this amount is under \$1,000 (increases to \$2,000 from 1st April, 2007) it is not reportable on the PAYG Summary if the employee does not receive any other fringe benefits.

In the case of the older but cheaper car an employee would have trouble finding a finance company that would provide a novated lease. If the employee was employed by his or her own company or trust the business can simply purchase the car outright. Other employees may only be able to take advantage of this strategy by taking a novated lease on a new car at the cheaper end of the market. I have heard a few advertised for around \$14,000.

A couple of FBT tips:

- 1) Purchase or lease vehicles that are subject to FBT in March. Once the vehicle has been held for more than 4 years at the start of a FBT year which is 1st April, only two thirds of the value is used to calculate the benefit received under the formula.
- 2) If you are not in the maximum tax bracket make an employee contribution to reduce the FBT to zero

The operating cost method can save a fortune in FBT

When calculating the FBT payable on a car the employer has a choice of two methods:

- 1) The operating cost method which is the actual costs apportion between business and private use according to a log book. **Or**
- 2) The formula method which is a percentage of the original price of the vehicle (unless more than 4 years old). The percentage applied depends on the number of kilometres travelled by the vehicle. The formula assumes that the more kilometres travelled by the vehicle the higher the ratio of business use to private use.

As you can see from the above if a car does not travel many kilometres yet the travel is mainly for business a better FBT result will come from a log book. This is also the case if the vehicle has a very high percentage

of business kilometres. On the other hand the formula method can allow some of the cost of a car used solely for private to be exempt from FBT.

In short, if the vehicle that is subject to FBT does below average kilometres or has a very high percentage of business use it is worth doing the calculation to see if the operating cost method gives a better result.

Don't forget that if the employee is not in the maximum tax bracket and employee contribution should be made to reduce the FBT to zero.

Wage earners with businesses on the side

Wage earners who have a business on the side that operates in a partnership or as a sole trader have to watch out for division 35 which prohibits them from offsetting the business losses against their wages income unless at least one of the division's requirements are met. There is an opportunity here to organise your affairs to meet these requirements.

High income earners such as doctors working in hospitals and building up a farm on the side should consider utilising the salary sacrifice provisions to make the farm run at a profit yet not increase their taxable income. They should ask their employer to pay the businesses expenses and reduce their wages accordingly. The otherwise deductible rule would mean their employer would not be subject to FBT on any expenses it pays for the business. As the doctor's wage has been reduced by the amount of the expenses his or her taxable income will also be reduced. These expenses would no longer be claimed against the business so the business would operate at a profit and not be caught by Division 35. The doctors taxable income would be exactly the same as if the expenses had not been sacrificed and the business loss had been allowed just as it was in the good old days. This arrangement should not be packaged as part of your exempt portion if you work for a public hospital.

Doing the Double Dip

June seems to be the silly season when people start to spend unreasonable amounts of money just for the sake of avoiding paying tax on it. This is all very well if you are buying something that you would buy anyway. But if you wouldn't normally spend your money in this way you are giving up the whole dollar to, at the very most, receive 46.5 cents back from the ATO. Under the new tax scales you will have to earn over \$150,000 this year before you even qualify for the 46.5% if your taxable income ends up under \$150,000 you may only get 41.5% or 31.5% back.

I much prefer doing the double dip. This is where you claim a tax deduction for an expense but you are not actually out of pocket because your employer has reimbursed you for it. As these expenses are tax deductible to you, your employer does not have to pay FBT on the reimbursement. This secret plan and clever trick does not work for all expenses, only items that are claimed under arbitrary methods. For example if you own a car, keep a log book of your business use and ask your employer to reimburse you for the business use portion of the running expenses of the car. Your employer does not have to pay FBT nor deduct PAYG tax from the money he or she pays you. You do not have to include this money in your tax return, not even as a reportable fringe benefit. So effectively you have that portion of your car expenses paid out of tax free dollars. Then you can use the kilometre method to claim the very same business kilometres in your personal tax return, up to 5,000kms per car. This could give you a further tax deduction of over \$3,000 despite the fact that you have been reimbursed for the cost of travelling those kilometres.

Changes to double dip

The ATO has withdrawn TD 93/145 and issued TD 2005/D17. This is a draft ruling so we cannot be sure of the final outcome. Nevertheless it is important to warn clients immediately as it is the ATO's intention to apply the ruling retrospectively.

TD 93/145 is the ruling on which we based our laptop double dip. This is where the employer reimbursed the employee for the value of the laptop but was not subject to FBT on the payment even if the employee only used the laptop for private purposes. If the employee did use the laptop for work purposes they would also be able to claim depreciation in their personal tax return. Accordingly, the employer and employee both claimed a tax deduction for the same laptop. Considering the statements made in TD 2005/D17 it would no longer be advisable for employees to claim depreciation on a laptop that their employer has reimbursed them for.

ATO is processing rulings on rental property kit

Over a year ago we created a kit that provided a simple method for employers to obtain a binding ruling from the ATO that they could pay their employee's rental property interest as an exempt fringe benefit. The ATO was refusing to answer these ruling applications but has finally started to respond, conceding that the arrangement is legal.

Any readers who have lodged an application and not yet received a response should chase it up with the ATO office that sent them the letter saying the matter was under review. If you still don't receive a response please e-mail julia@bantacs.com.au

Those not familiar with the concept should read the following, if they jointly own a rental property with their spouse and they are in different tax brackets. In short the kit effectively moves income from the high income earner to the low income earner.

The National Australia Bank (1993 ATC 4914) case resolved that the interest on a loan provided jointly to an employee and associate was 100% exempt from fringe benefits under the otherwise deductible rule even though the employee would have only been entitled to a deduction for 50% because the other 50% was in regard to an associate of the employee i.e. a spouse.

Not only does this allow a high income earner to maximise the negative gearing benefits but when the property is sold at a profit the capital gains will still be apportioned on the basis of ownership. Therefore the low income spouse receives an equal share of the gain despite the fact he or she did not claim an equal share of the expenses. Further this provides brilliant flexibility in that if the low income earner becomes the higher income earner, simply change the person who participates in the salary sacrifice arrangement.

There are many doubters that such a golden opportunity has existed since 1993 without being brought to public attention. To prove our point we applied to the ATO for a ruling. They took many months as they were reluctant to concede the case had set a precedent.

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To solve this we have prepared a kit to present to your employer. The kit explains the whole concept in detail. There is a page for the employer, the employee and the employer's accountant. There is also a checklist of dos and don'ts to make sure you stick within the bounds of the precedent case, a worked example, suggested issues for the employment agreement, an employee declaration and booklets of advice on CGT and Rental Property Taxation Issues. The kit includes a copy of the ruling we have received and all the paperwork necessary for the employer to apply for their own private ruling by simply putting in their personal details, signing and posting. At \$150 (tax deductible) the kit is considerably cheaper than your employer going through the ruling process from scratch. But more importantly it will help you explain it to your employer and accountant how simple it is for you to save tax every year.

More details of the kit are on our web site. The calculator has been updated for the 2007 tax rates. If you wish to purchase a kit please ring the Ningi office on 07 5497 6777. You may also like to visit the ATO web site and read ID 2005/219 which is a summary of a response to an application along the lines of the kit.

Leasing your car to your employer

If you are considering a novated lease arrangement with your employer you are no doubt already aware of the improvement salary packaging a car can make to your effective take home pay. But why have your employer pay interest (implied in the lease payments) to a lease company when this money can be paid to your spouse instead. With the new \$4,000 income allowed to the low income earning spouse before Part B is effected there is everything to gain and nothing to lose by this arrangement if your spouse is looking after children full time. Even if you do not have the funds to buy the car outright there is still some profit to be made by your spouse borrowing against your home to make the most of the lowest possible interest rate and then leasing it to your employer at the rate normally charged by leasing companies.

The employee cannot be the owner of the car that is leased to their employer hence the need for a spouse to own the car. The effective interest rate charged to the employer should not be more than that normally charged by the lease company and if your employer wants to be absolutely confident of the arrangement a ruling should be sought from the ATO.

Tip – If you are not earning more than \$150,000 pa make sure your employee contribution reduces the taxable value of your benefit to zero.

Christmas parties

What the ATO gives with one hand they take away with another so be careful when planning your Christmas Party.

In an attempt to minimise their Fringe Benefits Tax liability many employers are trying to keep down the cost of their staff Christmas Party. If the party costs more than \$100 per head (\$300 from 1st April, 2007) the cost will be subject to FBT, less than \$100 and it is an exempt fringe benefit. But the exempt benefit is not the most tax effective option if the employer is in the maximum tax bracket.

FBT is calculated at the maximum tax rate of 46.5% so on the surface it would seem well worth avoiding. Christmas parties are entertainment and entertainment is not tax deductible. But a Christmas party is not entertainment if it is a fringe benefit. If the party qualifies as a fringe benefit ie cost more than \$100 per employee it is tax deductible and so is the FBT that has to be paid. If the party qualifies as an exempt fringe benefit because it cost less than \$100 per employee (\$300 from 1st April, 2007), then the party is not tax deductible to the employer because it is entertainment. By the same argument a GST input credit can only be claimed for a Christmas Party to which FBT applies. That is a GST credit can only be claimed if the party cost more than \$100 per employee (\$300 from 1st April, 2007). By the way the \$100 (\$300 from the 1st April, 2007) threshold is the GST inclusive amount.

Confused? One can't help feeling that is exactly where the ATO wants you to be. Lets assume you have \$1,000 in profit that has not yet been taxed and your are in the maximum tax bracket of 46.5%. You decide to spend the profit on a Christmas party by only spending the amount left after the tax consequences are taken into account. If the party is going to qualify as an exempt benefit you have to pay tax of 46.5% on the money used to pay for the party. This leaves \$535 as long as six people (including yourself) attend the cost is less than \$100 (\$300 from 1st April, 2007) per employee so the party will be exempt from FBT. If the party cost more than \$100 per head then it is subject to FBT so the employer would not be paying income tax on the \$1,000, instead it would be spent as follows: \$465 on FBT and \$535 on the party as before but the bonus is the employer would be entitled to claim an input credit of \$48.64 on the cost of the party.

On the other hand if the employer is in the 30% bracket like companies it is better to utilise the FBT exemption ie have a Christmas party that costs less than \$100 (\$300 from 1st April, 2007) per employee. Note that is \$300 per employee so the costs must be less than \$150 per head if partners are invited.

With the new tax rates leaving most taxpayers in the 31.5% tax bracket it is worth considering giving employees a Christmas bonus instead. This would be taxed at their normal rates and tax deductible to their employer. They can then pay for their own Christmas party.

Be warned, there are many other twists and turns regarding Christmas Parties and FBT, this is just one trap. There are also issues with it is held. It really is worth discussing your Christmas plans with your accountant first.

Laptop Warning

ID 2005/149 – Employers can only provide each employee with a laptop exempt from FBT once each FBT year. If the employer is reimbursing the employee for the cost of the laptop over a period of time there can only be reimbursements for one particular laptop each FBT year. The FBT year is from 1st April to 31st March. So if for example an employer made 12 monthly payments from January to December to reimburse its employee for one laptop the employee would have to wait until April the following year before he or she could receive another laptop even though he or she received the previous laptop 16 months prior.

FBT return

On 31st March another FBT year closed and employers will be preparing their FBT returns over the next two months. Employers should take the speedo reading on all cars. It is also time for employees to think about making an employee contribution if their employer has provided them with a taxable fringe benefit.

Employers effectively pay 46.5% tax on any taxable fringe benefit. To be in the 46.5% tax bracket employees would have to have a taxable income that would exceed \$150,000. In many cases employees would be better off just taking the cash and paying maybe only 31.5% tax then buying the benefit themselves.

This is a bit more difficult if the benefit is just as a result of using a pool car. Unfortunately, if you take home a company car for the night you are considered to have that car available for private use so a fringe benefit is created. If your reportable fringe benefits exceed \$1,000 (\$2,000 from 1st April, 2007) it may affect how much you receive from Centrelink or increase your liability to the Medicare Surcharge. If this is the case you need to talk to your employer about increasing your pay by the amount of the "benefit" plus the tax you would be liable for on the grossed up amount. Then pay your employer an employee contribution equal to the extra you receive in your pay after tax. If your income is less than \$75,000 it will effectively reduce the tax payable on the benefit to 31.5% instead of 46.5%.

If you are provided with a company vehicle ie a sale representative, there is no doubt an amount will appear in the reportable fringe benefits box on your PAYG summary. This may affect your Centrelink entitlement or Medicare Surcharge as discussed above. But if your employer reduces your overall package by the amount of FBT he or she has to pay on your car, you are better off making an employee contribution that reduces the amount of FBT payable by your employer to zero, if your personal tax rate is less than 46.5%.

In short with the maximum tax bracket of 46.5% not applying until a taxpayers income exceeds \$150,000, there are huge savings for employers and employees in re accessing your fringe benefits. The government estimates that only 2% of taxpayers will be in the maximum tax bracket in 2007 so any employers who are actually paying FBT rather than cancelling it out with an employee contribution are paying more tax than they should.

Key Figures and Dates for Fringe Benefits Tax

In the May 2006 budget it was announced that the rate of tax would be reduced to 46.5%, the exempt minor fringe benefit amount increased to \$300 and the reportable benefits threshold increased to \$2,000. Both these figures are the taxable amount before grossing up. The change in the rate of FBT to 46.5% will also change the grossing up percentage. The FBT year runs from 1st April to 31st March, even though the budget came out in May the government announced that the change in the FBT rate to 46.5% would be retrospective to 1st April, 2006. Accordingly, the changes in the gross up rates will also be retrospective. All other changes don't come into effect until the next FBT year that starts on 1st April, 2007. A summary of the changes are:

Start Date:

1st April, 2006 FBT rate of tax 46.5%

Gross Up Rate for benefits not subject to FBT 1.8692

Gross Up Rate for benefits subject to FBT 2.0647

Gross Up Rate to but used on 30-6-07 PAYG Summaries 1.8692

1st April, 2007 Benefits not required to appear in RFB Box on PAYG summaries if taxable amount (ie before grossing up) under \$2,000.

Minor and irregular benefits of less than \$300 are exempt

To calculate fringe benefit tax payable you take the taxable value of the benefit (usually its cost) multiply it by the gross up percentage which is 1.8 if the benefit does not include GST ie interest payments and school fees or 2. if the benefit includes GST ie a car. To this grossed up amount you apply the 46.5% tax rate and this is the amount of tax you pay.

With only 2% of the population now in the 46.5% (maximum) tax bracket, tax can be very easily saved by making an employee contribution from after tax dollars to reduce the taxable amount (usually the cost) to zero. This will effectively reduce the tax on the benefit to the employee's marginal rate rather than the 46.5% FBT rate.

Salary packaging – Employee Contribution

If your salary package reduces your gross pay to less than \$180,000 you can improve your take home pay at the ATO's expense by making employee contributions. Fringe benefits tax is based on the assumption that if you received the money for the benefit in your pay packet all of it will be taxed at the maximum bracket. So if your salary package before the sacrifice is over \$180,000 but under \$180,000 once the sacrifice is deducted please contact our office and we will calculate the optimal employee contribution you should make as the formula is too complicated to explain here.

If your package is under \$180,000 before deducting the salary sacrifice you should make employee contributions to reduce the "taxable value" of the benefit to zero. An employee contribution is not necessary with exempt fringe benefits that are salary sacrificed such as superannuation, laptops, mobile phones, minor benefits etc. because their taxable value is already zero. The "taxable value" is normally the market value of the benefit you receive, so, if your package is under \$180,000, the only items worth salary sacrificing are the exempt benefits or in most cases a car (providing it is unlikely to have much business use and it will travel a reasonable amount of kilometres) though this can still be improved by an employee contribution.

Note you will not be able to claim a tax deduction in your personal income tax return for the cost of using a salary sacrificed car for your work.

Remote Area Housing

If your employer provides you with residential accommodation they are not subject to fringe benefits tax on the costs of providing that accommodation, if it is in a remote area. This effectively means that they can provide you with a home out of before tax dollars. Note the concession does not apply to an employer reimbursing you for rent paid in a remote area.

Now the difficult part is determining what is a remote area. The easy answer is refer to PSLA 2000/6 it has a list of these areas and is available at www.ato.gov.au To calculate whether your area qualifies make sure that it has a population of less than 14,000 people or 28,000 people if it is within a zone A or B. Then check that there are no other towns within 40kms, by the shortest practical route, that have a population of more than 14,000 people or 28,000 people if in a zone A or B. If it does not pass the 40kms test it will still be considered remote if your area is further than 100kms away from a town with a population of more than 130,000. Populations are based on Census information.

The Return of the Bonus

Many employers motivate their staff by offering non financial rewards such as holidays or outings instead of bonuses. This makes reasonable sense as if we receive extra pay there is an obligation to be responsible with it but if we receive a holiday or free dinner it becomes much more of a treat.

From the 1st July, 2006 the government expects that only 2% of the population will be in the maximum tax bracket of 46.5% yet fringe benefits such as holidays and outings are taxed in the hands of the employer at the highest tax rate. Accordingly, an employee would receive a better result if they were paid a cash bonus than to receive these gifts.

For example if you had \$1,000 with which to reward an employee you could give them a gift worth \$535 and pay FBT of \$465 or you could increase their gross pay by \$1,000 and if they are earning less than \$75,000pa they would only have to pay \$315 in tax, leaving them \$685 with which to buy their own gift.

There is a small reprieve in that from the 1st April, 2007 minor, irregular and infrequent gifts and incentives to employees that are \$300 or less will be exempt from FBT. Until the 1st April, 2007 the amount is only \$100. But be careful if the benefit is considered entertainment, such as dinner or a holiday then if it is exempt from FBT it is not tax deductible. Again you may have been better off paying a bonus as that is tax deductible.

FBT on Vehicles

Another FBT year has come to a close and once again we warn that most businesses have to consider FBT, but many think it doesn't apply to them. An FBT liability can arise simply from providing Christmas presents or a Christmas party to employees where the total of what they and their family receive exceeds \$100. Note this amount increases to \$300 for the new FBT year.

Cars are another big FBT issue. If your business owns a car and it is provided to you in relation to your employment in the business i.e. you use it in your job or it is part of your salary package then FBT is payable by the business unless you are a sole trader or in partnership. If the car is provided to you in your capacity as a shareholder, beneficiary or director FBT is not payable but it is rare that you could meet these circumstances in a normal business. Even if the business decides not to claim any expenses for the vehicle it must still pay FBT. This is the case even if you don't use the car but it is garaged near your home. So if your business is based at home, down the road or on the family farm and the vehicle is on the business premises it is considered to be available for your use. In these circumstances a log book must be kept for 3 months to prove there is no private use.

If your business owns a ute or other commercial vehicle you may think you do not have to worry about FBT. Not true, like most concessions in tax law you have to steer your way through a maze of conditions before you qualify. In the case of utes and similar vehicles most people think they do not have to pay any FBT and the expenses are fully tax deductible. In order for the vehicle to qualify for the exemption from FBT it must only be used for work related travel that is travel on the job, between home and the job and travel incidental to work eg getting your lunch. Any private use of the vehicle must be restricted to minor, infrequent and irregular. This means that if you use the vehicle to pick your children up from day care every afternoon, it will not qualify for the exemption. Also if you take the vehicle on a fishing trip and the kilometres are not minor, it will lose the exemption. Worse of all if you lose the exemption the home to work travel will no longer be exempt unless you are carrying bulky tools, or are itinerant.

References MT 2019 and MT 2021.

Claiming Your Lunches When You Work From Home

The ATO NTLG FBT sub-committee minutes for 22nd May 2003 contain some very interesting discussions on when food eaten in your home office would be tax deductible and not subject to FBT. The NTAA put forward an example of Michael who was employed by his company Michael Widgets P/L. The company's business was conducted from an office in Michael's home. The question put to the ATO was if each working day Michael purchased sandwiches and juice from the local deli and ate it in his home office while he was working would the meal be deductible and not subject to FBT. Further, what about a two to three course meal from the local restaurant purchased as a takeaway and eaten in the home office? The relevant section is 41 of the FBTA which covers meals provided on business premises.

The ATO did its usual cop out and stated each case would depend on its particular facts and each person should apply for a ruling on their particular circumstances. But they did concede that there are times when such an arrangement would result in a tax deduction. Their main area of concern was whether the office was bona fide business premises. Details of when part of your home is considered a place of business are set out in TR 93/30 and TR 2000/4 covers the definition of business premises for FBT purposes.

TR 93/30, at paragraphs 4 and 5, lists the following factors as relevant when considering if part of your home is considered business premises.

- 1) Part of the residence is set aside exclusively for the carrying on of a business by a self employed person, for example a doctors surgery. Or Part of the home is used as a taxpayer's sole base of operations for income producing activities for example where no other work location is provided to an employee by an employer.
- 2) The area is clearly identifiable as a place of residence
- 3) The area is not readily suitable or adaptable for use for private or domestic purposes in association with the home generally
- 4) The area is used regularly for visits of clients or customers.

Warning if you meet the requirements above, so part of your home is considered business premises and you purchased your home after 19th September, 1985 then your home will be subject to CGT because part of it is income producing. While only part of the gain will be taxable you need to first calculate the gain for all of

the property and then apportion it. So you now have a massive record keeping responsibility that is unavoidable whether you eat your lunch in the office or not. If the house was first used to produce income after 20th August, 1996 your cost base for the whole house will be reset at the market value at that time. If you purchased the house after 20th August, 1991 you are permitted to increase your cost base by the holding costs that you have not otherwise been able to claim a tax deduction for. The holding cost for the part of the house you use for private purposes can be used to reduce the gain on the business portion. This is because the holding costs, not previously claimed as a tax deduction, are taken into account to calculate the whole gain made on the property then this figure is multiplied by the percentage applicable to the business use. Holding costs are interest, rates, land tax, insurance, repairs and maintenance costs. This means even keeping receipts for light globes, mower fuel etc.

On the up side, if your home is considered a place of business you can claim a portion of the interest, rates, insurance, repairs and maintenance costs as a tax deduction. The portion is normally based on floor area and is also used when calculating what portion of the gain on the sale is subject to CGT.

Note it is fatal to your claim if you eat the meal anywhere else in the house other than the office. Subsection 136(1) of the FBTAA states that business premises “do not include premises, or a part of premises, used as a place of residence of an employee of the person or an employee of an associate of the person”. At first glance this may seem that home offices are excluded. But the NTAA took the view that as long as the part of the home that was being used as business premises was not in anyway used as part of the residence then it passed the test. The ATO didn’t contradict this but did do a lot of talking about the definition of business premises in TR 2000/4 and TR 93/30.

What If Your Boss Won’t Salary Sacrifice?

In this era of high employment the answer may simply be, find a boss that will allow you to salary sacrifice. Another option is to contract through your own company or trust. This will effectively make you your own employer so you can provide salary sacrificing to yourself. But as the following analysis shows you need a dominant reason other than the salary sacrifice benefits to set up the company or trust or you could be caught by Part IVA.

In the case of the high income earner who salary sacrifices 100% of expenses relating to a rental property held jointly with a spouse, there are many things to consider. For more details on how this arrangement works refer the Rental Property Salary Sacrificing Kit section on the home page of www.bantacs.com.au

Optimal tax minimisation is achieved between spouses when they are both in the same tax bracket. They do not have to have exactly the same income. If you are contracting, you may be able to split the income you earn with your spouse anyway. There are many restrictions in this regard that you need to discuss with your Accountant but if you can manage to get enough income across to your spouse so he or she can reach the same tax bracket as you, after returning the income and expenses from the rental property in the traditional way, then you do not need to worry about salary sacrificing to achieve this. On the other hand, if you cannot legally use your trust or company to pay any wages to your spouse you maybe able to use it to reimburse you for all the rental property expenses (except depreciation) and because of the otherwise deductible rule you do not have to pay FBT. This would leave your low income spouse with only the rental income and depreciation in his or her tax return.

The alienation of personal services income provisions are just one of the barriers to splitting income with your spouse. These rules may limit the amount you can pay to your spouse or prohibit you from paying any of the income, the company or trust receives from your personal services, to your spouse. If your company or trust does pay some wages to your spouse then you cannot take advantage of the salary sacrifice arrangement on a property you own with your spouse, as their share of the expenses will be considered to be part of their package not yours. But if you are so strictly caught that your spouse is not entitled to or just does not receive any wages from the company or trust you maybe able to salary sacrifice their share of the rental property expenses against your income.

At first glance this appears to be caught by section 86-60 (1997 Act) which prohibits a deduction for expenses that the individual would not be entitled to deduct in their personal tax return if they were personally in the circumstances of the company or trust. Obviously, as a part owner of the rental property the individual would not be entitled to claim all the expenses of the rental property in his or her individual tax return. So at first glance it appears that the salary sacrifice arrangement will not work if you are a contractor caught under

the personal services income rules. But TR 2003/10 states that section 86-60 has limited application (paragraph 101) and at paragraph 141 gives an example of a laptop and mobile phone being provided as part of the remuneration package of the person producing the personal services income as ok. This and statements made at 102 suggest that when looking at whether the person providing the services would have been able to claim a deduction for the expense it should be considered whether they would be able to claim the expense if they provided it to an employee who provided the services they did. Confusing? No doubt. TR 2003/10 does not directly address packaging rental property expenses. The problem here is part of the expense reimbursed is an expense of an associate and these rules prohibit a deduction for payments to an associate. So the question is, is the reimbursement part of the package of the person providing the services or a payment to an associate? Could go either way so you will need to apply to the ATO for a ruling. The next issue is the question of whether you set up the contracting arrangement with the dominant purpose of a tax benefit. If this is the case then even if the reimbursement is considered part of the salary package of the person providing the services the ATO can still throw out the whole arrangement, so in your ruling application you would need to be up front about the benefit you would receive and your reasons, other than that benefit, for setting up your company or trust. Probably the most acceptable reason for setting up a company or trust is because the business you are contracting to will not deal with individuals. So asking your employer to allow you to contract maybe the very reason why you will not be able to salary sacrifice when other contractors would be able to.

If you go down this path, don't forget when negotiating a contract for your company or trust the business that pays you will not have to pay superannuation, leave payments and in some states workers compensation so you would expect a higher rate of pay to compensate for these things. If you are going to earn over \$75,000 per year you will also have to register for GST which adds another 10% to your pay rate.

How Salary Sacrificing a Car Saves You Money

The technicalities of the following are explained in our Fringe Benefits Tax booklet. The following example is just to help employees understand why there is a saving in packaging a car and how to maximise it, without getting into too much detail.

Assume:

- The car you are purchasing costs \$30,000 and travels 25,000 kilometres a year. Its fuel consumption averages 9.1 cents a kilometre.
- The lease period is 7 years. It is necessary to purchase a new or near new car to obtain a novated lease which most employers require before you can salary package. The advantage of salary packaging a car also comes from being able to pay its expenses out of before tax dollars so the longer you can lease that vehicle the better otherwise you will have to start all over again with a new car to be able to salary package.
- After the 7 years the residual is 10% ie \$3,000.
- The implied interest rate in the lease is 9%.
- You will make an employee contribution to reduce the FBT to zero. FBT is paid at the maximum tax rate which is 46.5%. Unless your taxable income is over \$150,000 (\$180,000) you will be in the 41.5% or lower bracket. Rather than your employer paying FBT you should pay your employer an amount equivalent to the taxable value of the benefit, out of your after tax dollars. This means the value of the benefit will be reduced to zero.
- Your income is between \$75,000 and \$150,000 so your tax bracket is 46.5%.

- GST Inclusive cost of the car:	Repairs, Maintenance and Tyres	\$1,050
	Registration and Insurance	1,200
	Fuel 25,000 x 9.1 cents	2,275
	Lease Payments	<u>8,174</u>
		\$12,699

Taxable value - of the benefit $\$30,000 \times .11 = \$3,300$ so this should be the amount you contribute from after tax dollars.

Cost to Employer – The employer would be entitled to GST input credits on most of the costs of providing the car, registration does not have full GST. For the sake of simplicity

divided \$12,699 by 11 and multiply it by 10 to get the out of pocket cost to the employer of \$11,545. Now the employer has to pay GST on the \$3,300 employee contribution it receives so only \$3,000 is available to reduce the employer's out of pockets which in total will now be \$8,545. This is the amount the employer will reduce your gross salary package by.

Cost to You of the Package – \$8,545 is only \$4,999 in after tax dollars but you also have to pay the \$3,300 employee contribution out of your after tax dollars, a total of \$8,299

Cost if You Paid for the Car Yourself - You would have to pay the \$12,699 out of after tax dollars. To do so you would need to earn \$21,708 though there maybe some savings on cheaper finance and no admin fee.

In short, to salary sacrifice the car it will cost you \$8,299 in after tax dollars whereas providing the car to yourself will cost you \$12,699 in after tax dollars.

The above cost maybe a shock but that is because most of us are in denial, about how much owning a car really costs. Nevertheless, if you don't want or need a new car salary packaging may not benefit you.

Christmas in September

The ATO, in draft ruling TR 2007/D6 has given us a little Christmas present in advance. We have always consider the provision of a Christmas gift to employees, at a Christmas party to be considered one single benefit. So both the cost of the employee and his or her family attended the Christmas party plus the cost of any gifts would have to be under \$300 to be an exempt fringe benefit. In the draft ruling the ATO considers the gift to be a separate benefit from the Christmas party so as long as the total of all gifts to the employee's family is less than \$300 it will be an exempt benefit.

The draft ruling also allows occasional use of a company car for a special purpose to be an exempt benefit. Other exempt benefits listed are three months membership to a gym provided to all employees and baby sitting expenses when an employee is required to work overtime unexpectedly. On the down side it states that an exempt minor benefit can never be part of a salary package arrangement.

Much more detail about the FBT consequences of Christmas parties is available in our FBT booklet under free publications on www.bantacs.com.au

Depreciating a Laptop Provided by Your Employer

We used to call it double dipping. You ask your employer to provide you with a laptop as part of your salary package. Your employer gets a full deduction for the laptop in the year it is purchased and no FBT is payable providing you only receive one a year as it is an exempt fringe benefit. Then you can depreciate the laptop in your personal tax return up to the extent it is used for deductible purposes. Then the depreciation law was re written and we were unsure whether this little gap still existed.

In PBR 65239 the ATO has advised that the double dip is still on. All you need to do is buy a laptop and take the receipt to your employer. Ask your employer to reduce your gross wage by 10/11ths of the price of the laptop and reimburse you for the full cost of the laptop. The other 1/11th the employer will get back in GST from the ATO. On top of getting 1/11th of the purchase price paid by the ATO you do not have to pay any income tax on the money used to buy the laptop. You then keep a diary for 1 month to work out the ratio of deductible to private use of the laptop. You can then depreciate the GST inclusive price of the laptop over 3 years after adjusting for the private use portion.

Let's assume the deductible use is 60% and the laptop cost \$3,300. Using the prime rate you are entitle To claim \$1,100 per full tax year less the private use of 40% so the deduction in your tax return would be \$660. If you use the diminishing rate of depreciation the amount you can claim as a tax deduction in the first full year would be \$2,200 less the private portion. But under the diminishing method the it will take much longer than 3 years to write off the remaining \$1,100.

The Latest Salary Sacrifice Rulings

The ATO is now answering the tough questions regarding the Salary Sacrificing kit. This is where the high income earner salary sacrifices the rental property cash flow expenses. This leaves just the rental income, capital gains and depreciation to be included in the owners' tax returns so the property is running at a profit (no Centrelink add back) but the high income earner effectively received the deductions for the low income earner's expenses. This was explained in detail in our last edition where we reviewed PBR78388 which approved of the high income earner owning as little as 5% of the property.

The latest rulings from the ATO approve of the high income earner owning the property with a discretionary trust and the arrangement being used for shares instead of a rental property. The shares ruling has been approved but not yet listed on the private binding rulings register so we will advise you of that rulings number in a future issue. The ruling number for the property being co owned by a discretionary trust is PBR 77937. The reason the trust was considered an associate of the employee is because the employee was a beneficiary of the trust.

Salary Sacrificing Rental Property Expenses when Employee Only Owns 10%

Joint owners of a rental property that are in different tax brackets can gain considerable tax benefits by the high income earner salary sacrificing all the cash flow rental property expenses. This means that the high income earners package is reduced by the value of these expenses but the employer does not have to pay FBT because of the otherwise deductible rule. This is as good as the high income earner receiving a tax deduction for all the expenses with the added advantage that the employer can claim the GST back where applicable and Centrelink cannot add back the rental property loss because there is none. All that goes into the couple's tax returns is the rental income and depreciation so it is positively geared in the return. This works quite well when the property is owned 50:50, but imagine the advantage as the high income earner owns less of the property. This means the low income earner receives more of the rent and future capital gain but the high income earner still effectively claims all of the rental property expenses as a tax deduction.

Some conservative commentators have recommended that as the original test case on this type of arrangement was 50:50 ownership then investors should not vary from this. It is our opinion that as the legislation says jointly liable not equally liable then the ratio of ownership does not matter. This has now been verified by PBR78388 where 90:10 and 95:5 ownership ratios were approved. But be warned PBRs are private rulings so cannot be enforced by anyone other than those who originally applied for the ruling, so for your employer to be confident you need to apply for your own. Details of how to do this are on our web site.

Salary Sacrificing Tricks for Share Investors

The ATO has just issued a private ruling agreeing that the high income earner in a family can salary sacrifice all of the interest payments on a share portfolio they own jointly with their low income spouse and their employer does not have to pay FBT because of the otherwise deductible rule. This effectively means that the high income earner gets to deduct all of the interest expenses but gets to split the income with his or her spouse. The private ruling number is PBR 79617. PBRs are only copies of private rulings, not binding on the ATO. To be absolutely sure that your employer is protected it should get its own private ruling from the ATO.

FBT Year Draws to a Close

On 31st March the FBT year comes to a close. This unusual date was created to reduce the pressure around the 30th June. That was before reportable fringe benefits were introduced. Now the fringe benefit you calculate as at the 31st March will appear on the employee's PAYG summary for the year ending 30th June. There is no need to add on the next 3 months but the 3 months before the 30th June in the previous year is included. This also means that if an employee leaves your employment between the start of April and the end of June and they were receiving fringe benefits, you will have to provide them with a PAYG summary in the year after they leave your employ. Of course it will not include any income just the reportable fringe benefits. The good news this year is that you do not have to include in the reportable amount the value of pooled cars,

saves all that argument over who used what when. Don't forget that even if the benefit is grossed up for FBT purposes at the higher rate, for the purposes of the reportable fringe benefits box on the PAYG summary the gross up rate is 1.8692.

If this is starting to go over your head please refer our Fringe Benefits Tax booklet which is available under the free publications section of our web site and please remember we don't make the rules.

To Do before the 31st March, 2008

- 1) If it is getting close to or more than 5 years since a log book was kept on a vehicle one needs to be started before 31st March so it will cover you for all of that FBT year.
- 2) Make sure you have all the necessary written employee declarations, it may even be worth writing into your employment agreements that the employee is liable for any penalties you incur if these declarations are found to be incorrect. Employee declarations are high on the ATO audit hit list. Examples of some of the types of benefits requiring declarations are:
 - When applying the otherwise deductible rule the employee needs to declare that the expenses are deductible or work related and that there is no private use or what percentage is applicable. Likewise if you pay your employee's mobile phone bill a declaration is necessary stating that the phone is used at least 50% for business.
 - When the fringe benefit of a car is calculated on an actual cost (log book) method the employee needs to declare the period of time they used the vehicle, the total kilometres driven by the vehicle and kilometres used for business.
 - In the year that a log book is actually kept a declaration also needs to be made stating the log book was kept for 12 consecutive weeks and the percentage of business use.
 - If the 12% of cost method or 1/3rd of all expenses method is used the employee must declare that the vehicle travels more than 96 kilometres per week and the weeks the employee used the vehicle.
 - In the case of payment of a living away from home allowance the employer needs to declare the period of time away from home, why they were away from home, where home is, the type of residence, where he or she resided while away from home and the applicable time period.
 - A travel diary detailing each day's itinerary will also be necessary for overseas travel of more than 5 nights.
 - If you are providing your employee with temporary accommodation while they are relocating they need to declare the date they commenced looking for permanent accommodation, their employer's name and the new location. If it takes more than four months to find permanent accommodation a declaration also needs to be made as to whether the employee owned their previous accommodation. If they did not own their previous accommodation they can receive the exempt temporary accommodation for up to 6 months but after 4 months they have to declare that they are unable to find accommodation. If they did own their home previously but have sold it, they get 12 months with the appropriate declaration. In both cases the address of the temporary accommodation needs to be included and a statement that the move was solely for work purposes.
- 3) Make sure you take the speedo reading for all vehicles on 31st March

The basics for this year

This FBT year has 366 days so don't forget this when working out the portion of days a car was available for private use.

The benchmark interest rate for loans and deemed interest rate for cars under the actual cost method is 8.05%.

The gross up rate for fringe benefits that are subject to GST is 2.0647 and if not 1.8692

Benefits that are **not** reportable on an employee's PAYG summary include:

- Meal Entertainment
- Car Parking
- Entertainment Facility Leasing expenses ie corporate boxes
- Pooled or shared cars – really you only have to let another employee use the car once to not have to report
- Remote Area Benefits
- Protecting the personal safety of employees

- Emergency Overseas Health care
- Overseas Living Allowances
- The use of emergency vehicles or police cars (including unmarked police cars) to drive to and from work
- Defence Force Member's Benefits

A Few Tricks

If the goods your employee receives are actually part of what your business makes then the gross up rate is only 1.8692.

If the value of the fringe benefit before grossing up is less than \$2,000 it does not need to be reported on the employee's PAYG summary.

If an employee's mobile phone is used more than 50% for business purposes then the whole amount of the mobile bill can be paid with no FBT arising. If the mobile has PDA capabilities this can still apply.

Infrequent (ie less than 20) and irregular fringe benefits are not taxable and not reportable if they cost less than \$300. Note they cannot be part of a salary sacrifice arrangement and are not tax deductible to the employer if they are entertainment.

CGT on the Sale of a Business

Concessions are permitted regarding capital gains made on assets that are not plant and equipment, where the business qualifies as a small business entity under the Simplified Tax System (STS) or the Net business assets of the business and associates are less than \$6 million.

The only requirement a business needs to meet to enter the STS is to have a turnover (total sales) of less than \$2million.

The \$6 million net business asset test does not include your spouse's business assets if your businesses are not related. If an individual partner in the business owns less than 40% of the partnership then only his or her share of the net partnership assets is taken into account when calculating the \$6 million.

How the Small Business CGT Concessions work:

- a) The 50% capital gains discount - only half of the gain is included in your taxable income. This concession is not available if the asset is owned by a company. You must have held the asset for more than 12 months for this to qualify
- b) The 15 year ownership exemption. This requires you to have held the asset for more than 15 years. The asset must be an active asset. You need to satisfy the controlling individual test if the asset is owned by a company or trust. The taxpayer or the controlling individual, if a company or trust, must also be over 55 and retire or permanently incapacitated.
- c) Retirement exemption – can only apply to an active asset and the taxpayer or controlling individual must be over 55 and retire or put the funds into a super fund where they will not be taxed on entry or exit. A taxpayer can only process \$500,000 worth of capital gains this way in their life time. This does not require the asset to have been held for more than 12 months
- d) 50% discount for active business assets – can only apply to an active asset. This does not require the asset to have been held for more than 12 months.
- e) Rollover relief where an active asset can be sold and another active asset purchased or improved within two years or in the previous year. This does not require the asset to have been held for more than 12 months. From 1-7-07 if you don't spend the rollover you declare it as income or use the retirement exemption in the year the 2 years expires. Pre 1-7-07 you had to go back 2 years and amend.
- f)

Note b) to e) from 1-7-07 require your net assets and those of your associates to be less than \$6mil for the business to be a small business entity. More than one of the above can be used if you qualify. It is not that difficult to meet the retirement condition but if that is the case you would not be looking to use the rollover relief. You can use the 50% capital gain discount together with the 50% active asset discount to only pay tax on only 25% of the gain.

For example:	
Gain of	\$100,000
Less 50% CGT Disc	<u>50,000</u>
	50,000
Less 50% Active Asset Disc	<u>25,000</u>
	25,000
Purchase A New Active Asset	<u>25,000</u>
Amount subject to CGT	0

An asset is not an active asset if it is held merely for the purpose of earning rental income. From 1-7-07 to qualify as an active asset it must be used in a business, the business can be one owned by an affiliate, and it must be active for at least half the time it was owned or 7 ½ years whichever is the least.

There are problems if the asset is held in a company. Firstly the 50% capital gain discount is not available. The controlling individual test cannot be met in many circumstances so the 15 year ownership or the retirement exemption may not be available. The active asset discount stays within the company. If you try and get the money out of the company (without putting it into a superannuation fund note possible age base limit problems) every dollar you receive, including the dollars that the company did not have to pay tax on because of the discount will be fully taxable as a dividend in your hands. Using the rollover relief provisions is only useful if you are buying another business and it will force you to continue to use the company so continuing the problem next time you sell.

Changes in the 2007 budget now mean that there can be up to 8 controlling individuals in any business.

FBT – Formula Method for Cars

Just a reminder as you start preparing your FBT returns for 2008 that the 2007/2008 FBT year had 366 days in it so if you are using the formula method and the car is sometimes not available for the private use of the employee you will need to apportion these days over 366 instead of 365 this year.

All the other year end information and rates you need were in Newsflash 163.

FBT Benchmark Interest Rate

For the FBT year 1st April, 2008 to 31st March 2009 the benchmark interest rates for employee loans and car benefits calculated on an operating cost method will be 9%.

2008 Budget Cans Salary Sacrifice Trick

It looks like they will remove the otherwise deductible rule for benefits provided in regard to jointly owned assets (including shares and rental properties). The original loop hole was created to avoid problems faced by most couples when everything is in joint names. It will be interesting to see how this problem is solved so don't go jumping ship just yet. Another reason not to panic is that because this arrangement was perfectly legal there will be no retrospective claw back. Those people who have already entered into such an arrangement can continue to do so until 31st March 2009, by which time we should know the details of the new law. I think we should be happy that we got to make hay while the sun shone. It is quiet probable that as more people entered into the arrangement the government finally decided to take action. I say finally because the test case was in 1993. It is much more palatable to us that the average person gained this advantage while it was available even though this is what contributed to its demise. In summary our advice is to continue until 31st March, 2009 in any arrangements you currently have, know the budget clearly gives you permission to do so but don't enter into anymore until we see the new legislation go through parliament and don't hold your breath for another loop hole, it is clearly this trick that they are aiming to stop. In the meantime SMSF non recourse borrowings are looking very attractive. There is an article in our next edition summarising the benefits and traps

2008 Budget Limits Laptop Benefit

Laptops, Personal Digital Assistants and Tools of Trade – From 1st April 2009 you will not be able to receive these as an exempt fringe benefit unless they are used primarily for work purposes. Further the double dip will be stamped out too ie claiming depreciation on this same laptop in your personal tax return if you do use it for work purposes. Though if the item was purchased before 13th May, 2008 then you will still get the deduction for the 2007/08 year.

FBT Year Draws to a Close

On 31st March the FBT year comes to a close. This unusual date was created to reduce the pressure around the 30th June. That was before reportable fringe benefits were introduced. Now the fringe benefit you calculate as at the 31st March will appear on the employee's PAYG summary for the year ending 30th June. There is no need to add on the next 3 months but the 3 months before the 30th June in the previous year is included. This also means that if an employee leaves your employment between the start of April and the end of June and they were receiving fringe benefits, you will have to provide them with a PAYG summary in the year after they leave your employ. Of course it will not include any income just the reportable fringe benefits. The good news this year is that you do not have to include in the reportable amount the value of pooled cars, saves all that argument over who used what when. Don't forget that even if the benefit is grossed up for FBT purposes at the higher rate, for the purposes of the reportable fringe benefits box on the PAYG summary the gross up rate is 1.8692.

If this is starting to go over your head please refer our Fringe Benefits Tax booklet which is available under the free publications section of our web site and please remember we don't make the rules.

To Do Before the 31st March, 2008:

- 1) If it is getting close to or more than 5 years since a log book was kept on a vehicle one needs to be started before 31st March so it will cover you for all of that FBT year.
- 2) Make sure you have all the necessary written employee declarations, it may even be worth writing into your employment agreements that the employee is liable for any penalties you incur if these declarations are found to be incorrect. Employee declarations are high on the ATO audit hit list. Examples of some of the types of benefits requiring declarations are:
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Useful web pages

FBT Calculations

The ATO has a couple of useful calculators on its site.

At www.ato.gov.au/distributor/asp?doc=content/content/37354.htm there is a calculator that will work out the FBT payable on a car using either the statutory (formula) method or the operating cost (log book) method.

There is also a calculator to exempt and rebatable employees at

www.ato.gov.au/distributor/asp?doc=content/content/38383.htm

Boys Toys and FBT - FBT

I was surprised when a client informed me that a HQ Holden could now be worth over \$100,000. I can remember my father buying one brand new in 1972 for \$3,000. I later purchased it off him for \$1,050 (no gifts here, I had to pay \$50 more than the best offer he had to date) and thought I got a good deal when I sold it a few years later for the same price.

My client had purchased his HQ many years ago for \$14,000 and was wondering how he could claim the cost of maintaining it as a tax deduction.

This whole idea is very exciting because it works in the opposite direction to the FBT laws which are intended to not let you try and reduce the base value of a vehicle by pushing it through another entity before it reaches the company or trust you trade under, in other words, your employer.

Once the vehicle is owned by your employer all the costs associated with it are tax deductible and even the GST credits can be claimed back. When it comes to allowing for the private use of the vehicle your employer

must pay FBT or you must make an employee contribution. You can calculate the FBT using a log book to get the actual costs or the formula method which is designed to give a better tax benefit the more kilometres travelled by the car and the lower the value of the car. This is where section 318 of the 1936 ITAA comes in. You see if you are an associate of your trust or company if it is your own business. Section 9 (2) of the FBT Act specifies that the base value of the car is the value at the earliest holding time by the employer or an associate. So the value of the car for the FBT calculation is the original price you paid for it. And it gets even better than this in that if the car has been owned by the employer or an associate for more than 4 years only 2/3rds of its base value is included in the formula.

Kilometres Travelled	%	Kilometres Travelled	%
Less than 15,000	26%	25,000 to 40,000	11%
15,000 to 24,999	20%	Over 40,000	7%

So if the car originally cost \$3,000 its base value will be \$2,000. Even if the car travels less than 15,000 kilometres the taxable value (amount of employee contribution required) of the benefit would be \$2,000 $.26 = \$520$. If you utilise the tax benefits of making an employee contribution you only have to contribute \$520 to your employer from your after tax dollars to get a total deduction and GST credits for all the expenses associated with the vehicle.

The downside is your employer will have to pay income tax on the increase in the car's value (from the time your employer purchased it) when you sell it. This would not be the case if you owned the car privately. A solution may be to hold the car in your SMSF and lease it to your employer. This would be an inhouse asset so you need to make sure it's market value at the time of transfer is less than 5% of the SMSF's total assets and all the t's are crossed re your investment strategy.

Salary Sacrificing Rental Property Expenses

This lovely little trick comes to an end on the 31st March when the FBT year ends. So if you are salary sacrificing your low income spouse's share of jointly owned rental property expenses so that they are effectively deducted at the tax rate of the high income earner it is important that you start to make other arrangements. In the May 2008 budget the Rudd government announced the legislation would be changed to close this loop hole from the 1st April, 2009 and that no new arrangements were to be entered into in the interim.

It is very important that you get out of these arrangements before the end of the March because from the 1st April, 2009 you employer will be subject to FBT at the highest marginal rate on your spouse's share of the rental property expenses and it is quite possible your spouse won't be entitled to a tax deduction for the expenses.

Salary Sacrificing a Laptop

The ATO has issued a few IDs on the nitty gritty of salary sacrificing a laptop. Laptops given to an employee by an employer are exempt from FBT, there is a limit of only one laptop per year. Note any laptops purchased after 13th May, 2008 must be used primarily for employment purposes to qualify.

ID 2008/158 Points out that additional memory, a bigger hard drive, internal modem or Wireless LAN module for the laptop can be included in the exemption but cables, external modems, cradles or extended warranties do not unless they are included in the price of the laptop deal.

ID 2008/159 If an employer is reimbursing an employee over a period of time for the cost of the laptop then another laptop cannot be acquired in the same year that reimbursements are made for the original one. This is the case even if the reimbursement for the original laptop have been over a period of more than one FBT year.

ID 2008/160 States that loan repayments on a laptop do not qualify for the exemption, the employer must reimburse the employee for the actual purchase of the laptop. A method of overcoming this would be to still present the receipt for the laptop to your employer and have them reimburse you for the actual price of the laptop. This can even be done in instalments that coincide with the loan repayments.

Saving Tax on Your Investment Property – The Book

“Every investment property tax-related question you’ve ever wondered about is answered here and – perhaps more importantly – the ones you didn’t think to ask but should have! For property investors who want to refine their strategy for maximum gain, this resourceful handbook will make a great constant companion.” Eynas Brodie, Editor, Australian Property Investor magazine.

Combining Noel Whittaker’s easy reading style with Julia Hartman’s mind numbing attention to detail was a major challenge which ran way over schedule but it is finished, printed, and in the book stores. You can also purchase it online by going to: www.bantacs.com.au/property.php. The cost is \$29.95 plus \$5.95 postage – tax deductible of course!

Ask BAN TACS

For \$39.95 you can have your questions regarding Capital Gains Tax, Rental Properties and Work Related Expenses answered. For your Accountant, we will include ATO references to support our conclusion. Just go to www.bantacs.com.au and look for the Ask Bantacs link under ‘Most Popular’ on the home page.

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Alienation of Personal Services Income

Claim Your Trip Around Australia

Defence Forces [Military]

How Not To Be A Developer

Fringe Benefits Tax

Goods and Services Tax

Key Performance Indicators

Overseas Backpacker Fruit Pickers

Secret Plans and Clever Tricks

Self Managed Superannuation Funds

Buying a Business

Claimable Loans

Death and Taxes

Divorce

Investors

Overseas

Real Estate Agent

Selling a Business

Subcontractors

Wage Earners

Capital Gains Tax

Claiming a Motor Vehicle

Division 35

FBT for PBIs

Miners

Professional Practices

Rental Properties

Small Business

Teachers

Year End Tax Strategies

Disclaimer: Please note in many cases the legislation referred to above has only just passed through parliament. The full effect is not clear yet but it is already necessary to make you aware of the ramifications despite the limited commentary available. On the other side of the coin by the time you read this information it may be out of date. The information is presented in summary form and intended only to draw your attention to issues you should further discuss with your accountant. Please do not act on this information without further consultation. We disclaim any responsibility for actions taken on the above without further advice as to your particular circumstances.