

FRINGE BENEFITS TAX

Introduction

4.1 The FBT is administered under the *Fringe Benefit Act 1986* and is a tax payable by employers on the value- of certain fringe benefits. A fringe benefit is a benefit which is provided to an employee or an associate of an employee, in an employment context, by the employee's employer, by an associate of the employer, or by a third party under an arrangement with the employer or an associate of the employer. A 'benefit' includes any right (including any property right), privilege, service or facility.

4.2 In other words, FBT is designed to tax non-pecuniary remunerations, or salary sacrificing arrangements, which would otherwise not be subject to tax. Some examples include private school fees, cars, subsidised loans, and free or cheap travel for the employee and the employee's family. Before FBT, these benefits were generally provided in the area of executive rewards, both in the public and the private sector, particularly in the latter, although one early commentator noted that '...even ... the Taxation Commissioner seem[ed] to benefit from untaxed remuneration.

4.3 The FBT is assessed annually. it is paid by three quarterly instalments during each year which are due on 28 July, 28 October, and 28 January for the quarters ending on 30 June, 30 September and 31 December. The balance is due on 28 April. An employer with an FBT liability of less than \$3,000 need only pay on an annual basis.

4.4 The FBT year usually runs from 1 April to 31 March. Like sales tax, the FBT is not an income tax and is levied at 48.475 per cent from 1 April 1995, and will increase to 48.5 per cent from 1 April 1996, irrespective of the level of business income. An income tax deduction is allowed to employers for the amount of FBT paid.'

Government Review of the Costs of FBT

4.5 The Government recently completed a review of the compliance costs of the FBT and the Treasurer announced new measures in a Press Release on 24 February 1995. These included:

- (a) exempting a range of items that appear to be used primarily for business purposes, including car phones and mobile phones;
- (b) reducing the number of employee declarations required by an employer to reduce certain FBT liabilities;
- (c) simplifying the valuation of entertainment meals;
- (d) changes to rules concerning car parking; and
- (e) a range of other measures.

A copy of the results of the Government's review of FBT compliance costs appears at Appendix V.

FBT Issues Raised in Evidence

4.6 In evidence to the Committee, FBT was subject to numerous complaints about its complexity and associated compliance costs. Issues raised included:

- FBT is a measure designed for large organisations with small businesses 'caught in the web' and that small businesses with less than 10 employees should be exempted from its requirements;
- the complexity and the frequency of change has resulted in the FBT becoming one of the more onerous taxes for small business to COMPLY with, causing excess paperwork and resulting in many companies overpaying FBT to avoid penalties,
- a business meal at which wine is served should not be automatically deemed to be entertainment.
- areas of FBT that are not salary packaging items but are should necessary due to award or general industry practice should not be subject to FBT;
- the change in the 1993 Budget, which grossed up the amount against which the FBT is calculated, disadvantages businesses making losses because they cannot take advantage of the income tax deductions available on the increased FBT;
- Tax Ruling TD931149 discriminates against travel agents who do not operate trust accounts or otherwise holds money on trust for a service provider
- A legislative anomaly exists between the tax treatment of independent travel agents and airline owned in independent travel agents in relation to the provision of free or discounted 'firm space' (as opposed to stand-by)
- the \$3,000 threshold be increased to \$8,000 to align it with the company tax threshold;
- FBT should apply only to items of genuine remuneration and not to items that are part of the process of conducting legitimate business activity;
- the FBT year be aligned with the financial Year;
- FBT is levied regardless of profits or losses made;
- FBT compliance costs should not be out of proportion revenue, and
- FBT exemption on child care applies only to businesses large enough to run a child care centre. Several small businesses pooling their resources to do the same would not be eligible for the exemption.

Some of these issues are discussed in detail below.

Broadening the FBT Base

4.7 In evidence to the Committee, the Motor Traders Association of Australia (MTAA) and the Queensland Chamber of Commerce and Industry (QCCI) argued that the taxation base for the FBT had expanded too much and was taxing not only items of remuneration, but also legitimate business costs⁷ In addition, the MTAA remained opposed to entertainment expenses being subject to FBT, and continued to maintain that the FBT should be paid by the beneficiary, that is, the employee.

Fringe Benefits Tax

4.8 They argued that the FBT would be fairer if the employee were required to pay the liability, since fringe benefits are a form of income received by the employee, and should therefore be subject to tax at the employee's marginal rate. The fact that it is not a progressive tax on income has created

complications, including the fact that it is levied at a rate higher than the marginal rate paid by many taxpayers on income tax. (see also Compulsory Benefits below).

4.9 Along with many others, the South Australian Employers Chamber of Commerce and Industry (SAECCI), submitted that the FBT should not be applied to areas that are genuine business expenses. The problem is, as outlined by SAECCI, distinguishing between personal benefits that accrued to the employee and legitimate business expenses. For example, as pointed out by SAECCI, entertainment can be a necessary part of business dealings:

If you are trading with Japan and you have Japanese guests here, you simply have to entertain them. It is as important as sitting down and talking about business that morning.

4.10 The difficulty for the Government is in distinguishing between entertainment which is for a genuine business purpose and entertainment which goes beyond that purpose. Much of the complexity of the FBT that annoys small business arises from rules concerning entertainment.

Compliance Costs

4.11 The recent Government review of FBT compliance costs reduced the complexities of FBT to some degree, but this was achieved by trading off reduced compliance requirements against higher imposts. The TIA suggested in evidence that if FBT payers take the option which results in the lowest compliance in terms of paperwork, they will end up paying 21. An example provided by the TIA was that if the 50/50 option (the simplest option) in relation to entertainment was taken, more FBT will be paid.

4.12 In a slightly different context, Bowman Manser & Associates, an accounting firm which services mainly very small businesses, also used the example of the 50/50 option exercised by a taxpayer with an entertaining expense of \$500, relating to an event such as a shearer's cutout or a picker's breakup. Using the 50/50 option, and assuming the taxpayer has an income between \$20,000 and \$35,000, the net cost to the taxpayer is \$43. The taxpayer:

... has got to file a... tax return or else break the law and, if he comes to any accountant who costs it properly, it is going to cost him somewhere between \$100 and \$150 to prepare the return.

4.13 Further evidence indicated that the cost of preparing returns by an accountant working for one of the national accounting firms could be considerably higher.

Complexity of FBT and Lack of Understanding

4.14 Another issue raised related to the inability of many, and some evidence suggests most small business operators to understand how FBT operates, leaving it to their accountants to sort out the complexities. Not only does this result in compliance costs, but generates another consequence:

Very few small businesses do their fringe benefits return or know how it operates. The accountants do that, and they are probably the ones who have complaints because they are the ones who have to deal with the law. This is sad in a way because it is the small business people who are going to make the business decisions whether to lease or buy a company, whether to buy a car or a truck, whether to drive it home or park it at home. They are the ones who are going to make decisions which will expose them to a liability and yet they probably have no hope of understanding it.

4.15 When asked why small business operators could not work in conjunction with the accountant, Professor Walischutzky replied that:

They know every time they ring an accountant that the clock starts ticking.

4.16 Mr Wayne Heathcote, National Director, Indirect Taxes, BDO Nelson Parkhill (Chartered Accountants), an adviser to PATEFA commented similarly. When asked if his firm had pro forma forms that are sent out to clients to ensure correct record keeping in relation to potential FBT liabilities, he commented that there were no such forms, because FBT '... is so wide that it is difficult to cover all aspects'. Nelson Parkhill relied on newsletters and information in letters to clients to advise them of what they should be doing:

Then we try to liaise with the clients to get it correct. But, once again, they are having to pay us to assist them."

Exemption Threshold

4.17 The Committee considered that FBT policy and the benefits to revenue from collecting the FBT from the smaller end of the scale should be weighed against the costs incurred by small businesses in preparing and lodging returns relating to small liabilities.

4.18 Figures supplied by the ATO and the Treasury reveal that in the year ended 31 March 1994, a total of 71,506 private companies and 'other business taxpayers' remitted \$696 million in FBT. Just over 20,000 of these taxpayers remitted less than \$1,000 each, totalling \$10 million, representing 1.42% of revenue collected from this group of taxpayers. Given the extraordinary complexity of the FBT, and the very high relative compliance costs associated with their collection from small business, the Committee considers that a threshold exemption should apply to the collection of small amounts. At the least, this threshold should reflect the cost of employing a large accounting firm to prepare an FBT return.

Recommendation 4.1:

The Committee recommends that small business be exempt from annual FBT liabilities of \$200 or less.

Compulsory Benefits

4.19 The fact that some award benefits are subject to FBT is a cause for concern. One example provided to the Committee during its hearings was supplied by the Australian Society of Certified Practising Accountants. Under a certain award, children in the theatrical and entertainment industry

must be provided with transport to and from the place of business. The value of this transport is subject to FBT by the employer paying for the transport, frequently a taxi fare, thereby subjecting the employer to a further impost. The Committee does not consider this to be an appropriate use of the FBT, as the employer does not have the option of cashing out of the award.

4.20 When questioned about the practice of taxing compulsory benefits, the Treasury responded that this was not inconsistent with the tax treatment of other compulsory benefits, such as wages. This, however, misses the point that the FBT has not been constructed as an income tax, and is levied at the highest marginal rate, reflecting its function as a tax on 'lurks and perks'. This example highlights the fact that FBT has expanded its base well beyond the earlier non-salary items which it was designed to catch. The Committee believes that any tax on compulsory benefits should be treated as part of an employee's income, instead of being included in an employer's FBT liability, and should therefore be levied at the employee's marginal rate.

Recommendation 4.2:

The Committee recommends that statutory and compulsory award obligations from which an employer is prohibited from cashing out into salary or wages be exempt from FBT.

Car Parks

4.21 An area of considerable concern to small business is the application of the FBT to car parking. A number of submissions have pointed out that car parking facilities are a requirement of local councils yet simultaneously subject to FBT. In the words of the Queensland Chamber of Commerce and Industry:

The company has built a car park. It can provide that facility. It is then taxed on that facility. It is taxed by the city council if it does not have it.

4.22 The QCCI amplified this comment as follows:

You are really compounding the situation. Many of our small businesses, for example, service the import-export industry, They are constantly in and out. Yes, there is a public car park that they could access but in reality, it is always full. Therefore they have to provide their own parking, yet they will be deemed to be getting a benefit from this. We feel that it is splitting hairs down to the point that the cost to the business of generating the return for government outweighs the advantage you are receiving. It is a negative factor for the business itself."

4.23 The Printing and Allied Trades Federation of Australia (PATEFA) similarly submitted that..

The provision of employee car space which is now subject to FBT is at odds with council building approvals which are increasingly based on buildings having adequate parking facilities. Businesses are thus forced to provide facilities only to be taxed later on.

4.24 While not all car parking FBT is subject to these kinds of council on car parking seems to have regulations, the general issue of onerous burden of compliance. The Governments recent review on the issue has simplified the treatment of car parking considerably

created confusion and an on

4.25 Nevertheless, the Committee considers that the fundamental issue at stake is the provision of the car itself as a fringe benefit, and that the extension of the FBT to car parking arrangements adds unnecessary complications and therefore a compliance burden upon small businesses. In common with other 'fringe benefits', the cost of providing car parking facilities will in most cases have already been borne by employers. However, it is not a benefit which can easily be cashed out by employers,

and nor would it appear to be a benefit of which an employee could readily make private use. In many cases, car parking facilities are part of the structural assets of a business or its premises and as noted above, their existence can be a local government prerequisite for building approvals. While acknowledging that car parking facilities in CBDs constitutes a real and tangible 'benefit', the Committee does not believe that the cost to small business employers should be increased by imposing FBT on their use by employees.

Recommendation 4.3:

The Committee recommends that car parking be exempt from the FBT.

Child Care

4.26 The Committee received evidence that FBT exemptions on child care were unfairly applied. Included in the evidence was the following comment:

Child care is one of the very few employee benefits not subject to FBT. However, the exemption only applies to a business large enough to operate the child care centre itself. A group of small businesses which combine to jointly operate a centre would not be eligible for the exemption."

4.27 The Committee does not consider that industry based child care should be discouraged or burdened with FBT in this fashion, particularly if small businesses are offering the benefit.

Recommendation 4.4:

The Committee recommends that child care be exempt from the FBT where a number of small businesses combine to provide child care exclusively for the children of the personnel employed by those businesses.