



Nexia Edwards Marshall

Fringe Benefits Tax: Expense Payment Benefits

An expense payment benefit arises where an employer pays or reimburses expenses incurred by an employee.

It is important to distinguish between a reimbursement and an allowance paid by the employer to the employee, as the latter is not subject to fringe benefits tax, but constitutes assessable income of the employee.

A fringe benefit may be provided by an associate, on behalf of an employer. It may also be provided to a person other than an employee, at the employees direction

Taxable Value - External Benefits

The taxable value of the benefit is usually the amount of the expenditure incurred by the employee which is paid or reimbursed by the employer, (inclusive of GST where applicable), reduced by any amount paid by the employee towards the benefit, and any other reductions (such as under the otherwise deductible rule) and exemptions.

In-House Benefits

Special valuation rules apply to in-house benefits.

An in-house expense payment fringe benefit arises where the expenditure paid for or reimbursed by an employer is in relation to the purchase of goods or services that are normally purchased or produced by the employer (or an associate) for resale to its customers or clients in the ordinary course of business.

There are two types of in-house expense payment fringe benefits; an in-house property expense payment fringe benefit and an in-house residual expense payment fringe benefit.

What is an In-house Property Expense Payment Fringe Benefit?

A property benefit arises when an employee (or an associate) is provided with property at less than market value by their employer. Property can mean both tangible and intangible property, including goods, animals, real property, shares or bonds, gas and electricity (other than provided through a reticulation system).

An in-house property expense payment fringe benefit arises when the expenditure is incurred in relation to the provision of tangible property by the property provider, where:

- if the provider of the property is the employer or an associate – the property provider carried on a business that consisted of or included the provision of identical or similar property principally to outsiders at or about the same time;
- if the provider of the property is not the employer or an associate, the property was acquired by the property provider from the employer or an associate (the 'seller') and at or about the time the benefit is provided, both the provider and the seller carried on a business that consisted of or included the provision of identical or similar property principally to outsiders; and
- documentary evidence of the expenditure (or a copy) is obtained that is given to the employer before the lodgement of the FBT return.



What is an In-house Residual Expense Payment Fringe Benefit?

A residual benefit arises when an employee (or an associate) is provided with any form of fringe benefit that is not captured under any other fringe benefit categories and includes any right, privilege, service or facility. Examples include the provision of free or discounted services, the right to use of property, travel and the provision of insurance cover.

An in-house residual expense payment fringe benefit is an expense payment fringe benefit where the expenditure was incurred in relation to the provision of a residual benefit (other than a contract of investment insurance) by the residual benefit provider where:

- if the provider of the residual benefit is the employer or an associate – the residual benefit provider carried on a business that consisted of or included the provision of identical or similar benefits to outsiders at or about the same time;
- if the provider of the residual benefit is not the employer or an associate, the residual benefit was acquired by the provider from the employer or an associate (the 'seller') and at or about the time the benefit is provided, both the residual benefit provider and the seller carried on a business that consisted of or included the provision of identical or similar benefits principally to outsiders; and
- documentary evidence of the expenditure (or a copy) is obtained that is given to the employer before the lodgement of the FBT return.

Taxable Value of In-House Benefits

In-house Property Expense Payment Fringe Benefits – Refer Appendix A

In-house Residual Expense Payment Fringe Benefits – Refer Appendix B

Note that the first \$1,000 of the total taxable value of in-house property, residual and expense payment benefits provided to an employee and/or their associate in an FBT year are exempt from fringe benefits tax.

Exemptions

Specific exemptions exist to exempt reimbursement of car expenses if based on the distance travelled (cents per kilometre) and accommodation expenses which an employee incurs solely because they are required to live away from a usual residence to carry out employment duties.

Expense payment benefits that are covered by a 'no private use declaration' are also exempt. This applies where employers only reimburse employment related expenses that would have a taxable value of nil under the 'otherwise deductible rule' (refer page 3). This must be declared, by the employer, before lodgement of the FBT return. The advantage of this form of declaration is that it can avoid having to obtain numerous declarations from employees under the otherwise deductible rule, where only work related expense payment benefits are provided.

Portable electronic devices which are used primarily in the employee's employment are exempt from FBT for items acquired after 13 May 2008. This replaces the exemption for items under s.58X including laptops, portable printers, mobile phones, calculators etc. The ATO has released ID 2008/133 to provide guidance as to what items will be included.

The FBT exemption generally doesn't apply in respect of an eligible work-related item ('later item') where, earlier in the FBT year, the employee was provided with another item (as an expense payment benefit or a property benefit) that has substantially identical functions to the later item.

In practical terms, this basically means that the FBT exemption will generally be limited to one item per employee per FBT year, for items with substantially identical functions which are provided as expense payment or property benefits. The exception to this rule is when the item is lost, stolen, destroyed or is replaced due to technology developments.

The 'Otherwise Deductible' Rule

Where a once-only tax deduction would have been available to the employee for the benefit, had the employer not paid the expense or provided the benefit, the taxable value of the benefit may be reduced by the amount of that notional deduction. This concession however, does not apply where the employee's notional deduction would have been for depreciation or some other deduction spread over more than one year.

The employer must normally obtain a written declaration and documentary evidence from the employee concerned before the date the fringe benefits tax return is lodged, to reduce the taxable value of the benefit.

Where identical recurring expense payment benefits are being provided, a single declaration can be made. This declaration will remain in force until any of the following occur:

- it is revoked by the making of a subsequent declaration;
- five years pass from the date on which the declaration was originally made; or
- where the percentage of business use falls by more than 10 percentage points.

Identical benefits are ones which are the same in all respects except for any differences that are minimal or insignificant, or that relate to the value of the benefits, or that relate to a change in the deductible proportion of 10 percentage points or less.

An employee declaration is not required in respect of exclusive air line transport, exclusive employee expense payment, exclusive employee property or exclusive employee residual benefits, i.e. benefits which relate exclusively to gaining or producing salary or wages of the recipient in respect of the employment to which the fringe benefit relates and which is not expenditure in relation to interest. It isn't sufficient that the expenditure was in respect of gaining or producing assessable income of the recipient generally, it must relate to the employment to which the fringe benefit relates.

Exclusive benefits are still subject to the requirement to obtain documentary evidence of the expense and travel diaries where applicable.

Depreciation rules effectively deny depreciation claims in respect of depreciable assets that are FBT exempt under s.58X as eligible work-related items. This means, therefore, that the opportunity for an employee to 'double dip' has effectively only been removed for depreciable assets that are FBT exempt under s.58X. The opportunity for an employee to double dip continues to apply however; in respect of those depreciable assets which are subject to the 'otherwise deductible rule' (i.e. eligible for an immediate write-off in the year of purchase) and that are not FBT exempt under s.58X.

Hence, where an employee is able to claim an immediate write-off (i.e. a 100% deduction) for the entire cost of a depreciable asset that is not FBT exempt under s.58X, they can continue salary packaging the asset through their employer and retain their right to claim depreciation.

The employee may claim an outright deduction for the GST-inclusive cost of the depreciable asset (in the year of purchase) under either of the following two concessions (even though the employer has reimbursed the entire cost of the asset):

- The \$300 immediate write-off for non-business assets under s.40-80(2) of ITAA 1997; or
- The \$1,000 immediate write-off for the business assets of an employee who is also, from 1 July 2007, a Small Business Entity (SBE), and has chosen to apply the simplified depreciation rules in Subdivision 328-D.

Changes were made to the way in which the otherwise deductible rule applies in respect of benefits which are provided jointly (joint benefits) to an employee and their associate (e.g. a spouse) from 13 May 2008. These include joint loan benefits, joint expense payment benefits, joint property benefits and joint residual benefits. Common examples of these types of benefits include salary packaging deductible expenses that relate to a jointly owned negatively geared investment such as a jointly owned rental property or share investment.

Previously the otherwise deductible rule applied to a benefit that was provided jointly to an employee and their associate, or spouse, because of s.138(3) which treats the benefit as if it were only solely provided to the employee.

Under the current rules, the otherwise deductible rule will only apply to reduce the taxable value of the relevant benefit by the employee's percentage of interest in the income producing asset or thing to which the benefit relates s.24(9). That is, in effect, the taxable value of the benefit is only reduced by the employee's share of the benefit. As a result, the otherwise deductible rule will not apply (in which case, FBT will generally be payable) in respect of the associate's share of the relevant joint benefit, unless they are also an employee of the same employer.

How can Nexia Edwards Marshall help you?

If you have any questions relating to expense payment benefits, or any other FBT related topic, please contact Raoul Stevenson or your Nexia Edwards Marshall Advisor.



Key contact: Raoul Stevenson

Raoul is a Senior Manager in Nexia Edwards Marshall's Business Consulting and Taxation divisions.

As Senior Manager of the Fringe Benefits Tax (FBT) team, Raoul provides valuable expertise to both the firm and its clients, including schools where he has hosted FBT presentations. His knowledge has helped clients and their staff optimise the benefits of salary sacrifice arrangements.

Contact Raoul

t +61 8139 1138

e rstevenson@nexiaem.com.au

APPENDIX A: Taxable Value of In-house Property Expense Payment Fringe Benefits

Identical property was manufactured, produced, processed or treated by the Benefit Provider			Identical property was not manufactured, produced, processed or treated by the Benefit Provider	
Property was sold by provider to manufacturers, wholesalers or retailers at or about the time the benefit was provided	Property was sold by provider to the public at or about the time the benefit was provided under similar terms and conditions (other than price)	In any other case	Property was acquired by the provider	In any other case
<p>Taxable Value = the lowest price at which identical property was or could reasonably be expected to have been sold under an arm's length transaction at or about the same time.</p> <p>Reduced by the amount of any recipient contribution and any other reductions (such as under the otherwise deductible rule).</p>	<p>Taxable Value = 75% of the lowest price at which that property was sold to the public at or about the same time.</p> <p>Reduced by the amount of any recipient contribution and any other reductions (such as under the otherwise deductible rule).</p>	<p>Taxable Value = 75% of the amount that the person could reasonably be expected to pay to obtain the property from the provider under an arm's length transaction.</p> <p>Reduced by the amount of any recipient contribution and any other reductions (such as under the otherwise deductible rule).</p>	<p>Taxable Value = the lesser of the arm's length price in relation to the acquisition of the property by the provider and</p> <p>the amount that the person could reasonably be expected to pay to obtain the property from the provider under an arm's length transaction.</p> <p>Reduced by the amount of any recipient contribution and any other reductions (such as under the otherwise deductible rule).</p>	<p>Taxable Value = 75% of the amount that the person could reasonably be expected to pay to obtain the property from the provider under an arm's length transaction.</p> <p>Reduced by the amount of any recipient contribution and any other reductions (such as under the otherwise deductible rule).</p>

APPENDIX B: Taxable Value of In-house Residual Expense Payment Fringe Benefits

<p>Identical benefits provided by the benefit provider in the ordinary course of business to members of the public under arm's length transactions under similar circumstances and under identical terms and conditions (other than price) at or about the time the benefit was provided.</p>	<p>In any other case</p>
<p>Taxable Value = 75% of the lowest price at which that identical benefit was sold to the public at or about the time.</p> <p>Reduced by the amount of any recipient contribution and any other reductions (such as under the otherwise deductible rule).</p>	<p>Taxable Value = 75% of the amount that the person could reasonably be expected to pay to obtain the benefit from the provider under an arm's length transaction.</p> <p>Reduced by the amount of any recipient contribution and any other reductions (such as under the otherwise deductible rule).</p>