

FRINGE BENEFITS

The *Pay-roll Tax (Harmonisation Project) Amendment Act 2008*, which was assented to on 26 June 2008 and comes into operation on 1 July 2008, makes amendments to the *Pay-roll Tax Act 1971* (the "Act") to harmonise legislative and administrative arrangements with other States and Territories. One of the areas that has been harmonised is the value of fringe benefits to be declared for pay-roll tax purposes.

This Circular addresses the following points:

- calculating the value of fringe benefits for pay-roll tax purposes;
- clarifying the treatment of fringe benefits with a nil taxable value and exempt benefits where such benefits also fall within another part of the definition of wages;
- explaining the requirements of the alternative method of declaring fringe benefits;
- explaining the method of calculating the South Australian component of fringe benefits when they are not readily identifiable; and
- the adoption of Australian Taxation Office ("ATO") fringe benefits tax rulings.

Value of Fringe Benefits for pay-roll tax purposes

The definition of wages in section 3 of the Act, includes fringe benefits as defined in the *Fringe Benefits Tax Assessment Act 1986* (the "FBT Act"), but does not include tax-exempt body entertainment fringe benefits.

Prior to harmonisation, the value of the fringe benefit for pay-roll tax purposes was the grossed up value of the fringe benefit as calculated under the FBT Act. Under the FBT Act, fringe benefits are categorised into two types depending on the GST implications. The Type 1 fringe benefits for which the employer can claim a GST input tax credit are grossed up by a factor of 2.0647 and Type 2 fringe benefits for which the employer cannot claim a GST input tax credit are grossed up by a factor of 1.8692.

From 1 July 2008, section 3(1c) of the Act requires employers to gross up all fringe benefits by using only the Type 2 factor of 1.8692.

Fringe Benefits with a nil taxable value

Where a benefit has a nil taxable value under the FBT Act, some uncertainty may exist as to whether or not such benefits will be subject to pay-roll tax where the benefit also falls within another part of the definition of wages under the Act. Fringe benefits which have a nil taxable value under the FBT Act will also have a nil taxable value for pay-roll tax purposes.

Exempt benefits

The FBT Act provides specific exemptions for certain types of benefits. Such exempt benefits are not fringe benefits for the purposes of the FBT Act. Some uncertainty may exist as to whether or not such benefits will be subject to pay-roll tax where the benefit also falls within another part of the definition of wages under the Act.

Such exempt benefits are not fringe benefits for pay-roll tax purposes even where the exempt benefit would also fit within another part of the definition of wages under the Act.

Election for alternative method to declare fringe benefits

Employers are required to declare in their monthly returns the actual value of total fringe benefits (grossed up by the Type 2 factor) provided in each month. For administrative ease, section 15(4) of the Act allows employers to make a written request for another method for declaring the fringe benefits, whereby the amounts declared are based on the FBT returns.

Where such a request is made, employers must include in each monthly pay-roll tax return from July to May, one-twelfth of the total taxable value of fringe benefits in the FBT return for the year ending 31 March immediately preceding the start of each financial year, grossed up by the Type 2 factor. The Annual Adjustment return for each financial year should include the total taxable value of fringe benefits declared in the FBT return ending 31 March immediately before the Annual Adjustment return, grossed up by the Type 2 factor.

Example

XYZ Pty Ltd made a request to adopt an alternative method of declaring fringe benefits for pay-roll tax purposes. In the FBT year ended 31 March 2008, the total taxable value of the fringe benefits grossed up by the Type 2 factor is \$100,000. Accordingly, XYZ Pty Ltd would declare \$8,333 of fringe benefits in each pay-roll tax return for July 2008 to May 2009 (i.e. $1/12 \times \$100,000 = \$8,333$).

In its FBT return for the year ended 31 March 2009, the total taxable value of the fringe benefits grossed-up by the Type 2 factor is \$105,000, which is the amount that would be declared as the fringe benefits amount in the 2008-09 Annual Adjustment return.

Once an alternative method of declaring fringe benefits is requested, an employer will not be permitted to revert to declaring the actual value of fringe benefits in monthly pay-roll tax returns, unless the Commissioner gives approval in writing. Note: an employer must not use a combination of methods.

Employers seeking such approval must lodge an application in writing which explains why termination of the election is sought. (e.g. the employer has provided fewer benefits during the current financial year compared with the previous FBT year).

Where an employer ceases to be liable for pay-roll tax, regardless of whether or not an alternative method of declaring fringe benefits has been requested, the amount of fringe benefits declared in the employer's final pay-roll tax return is to be as follows.

- the actual value of the South Australian fringe benefits paid or payable by the employer for the period from the preceding 1 July to the cease date, grossed up by the Type 2 factor; less
- the value of the South Australian fringe benefits declared in pay-roll tax returns during that period.

Determination of South Australian component of fringe benefits

In relation to employers who employ in more than one state, it is recognised that existing FBT record-keeping systems may not allow an employer to identify the South Australian component of the fringe benefits.

In such circumstances, the South Australian component of the fringe benefit amount may be declared on an apportionment basis, calculated in accordance with the approved method.

The approved method of estimating the South Australian component of the total value of fringe benefits is only available where:

- existing records do not allow the identification of the actual fringe benefits which relate to South Australia, and
- the employer has formally requested to declare fringe benefits based on the alternative method.

The approved method of calculating the South Australian component of total fringe benefits involves two steps.

Step one — July to May monthly returns

The amount to be declared in each of the monthly returns July to May, is one twelfth of the total value of the fringe benefits declared in the FBT return for the year ending 31 March (immediately preceding the current financial year) grossed up by the Type 2 factor, adjusted by the ratio of total South Australian taxable wages, to total Australian taxable wages, for the full financial year (immediately preceding the current financial year).

Step two — Annual Adjustment return

The amount to be declared in the Annual Adjustment return is the total value of fringe benefits declared in the FBT return for the year ending 31 March, immediately preceding the Annual Adjustment return grossed up by the Type 2 factor, adjusted by the ratio of South Australian taxable wages to Australian taxable wages, for the current financial year.

The South Australian taxable wages and the Australian taxable wages in the above two steps should not include fringe benefits.

Example

The value of fringe benefits of XYZ Pty Ltd in its 31 March 2007 FBT return after grossing up by the Type 2 factor is \$120,000. XYZ Pty Ltd paid a total of \$600,000 (excluding fringe benefits) in taxable wages for the 2006-07 financial year, of which \$300,000 (excluding fringe benefits) were South Australian wages.

Step one

\$300,000

$\$600,000 \times \$120,000 = \$60,000$ estimated South Australian fringe benefits

Therefore, $\$60,000 \div 12 = \$5,000$ of fringe benefits is to be declared in each monthly South Australian pay-roll tax return from July 2007 to May 2008.

The value of fringe benefits of XYZ Pty Ltd in its 31 March 2008 FBT return after grossing up by the Type 2 factor is \$180,000. The total Australian taxable wages for the 2007-08 financial year were \$800,000 (excluding fringe benefits), of which \$600,000 (excluding fringe benefits) were South Australian taxable wages.

Step two

\$600,000

$\$800,000 \times \$180,000 = \$135,000$

The amount of South Australian fringe benefits to be declared in the 2007-08 Annual Adjustment return is \$135,000.

Employers who are unable to calculate the actual South Australian component of fringe benefits and are unable to adopt the approved method or believe they would be disadvantaged by adopting the approved method, should seek approval from the Commissioner to adopt alternative method.

Adoption of ATO fringe benefits tax rulings

In order to follow as closely as possible the effect of the FBT Act, the Commissioner will adopt all rulings issued by the ATO which relate to fringe benefits tax (with the exception of rulings relating to employee share schemes).

This Circular is effective from 1 July 2008.

Please note that circulars do not have the force of law.

FURTHER INFORMATION

Further information regarding these amendments may be obtained from RevenueSA.

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COMMISSIONER OF STATE TAXATION

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