

THE REPORT

March 2006

Tax News, Views & Clues

DIRECTORS

Paul Fiumara CA

Paul Haupt CA

Robert Schoenmaker CA

Gavin Johns CA

MONTHLY REPORT

☛ Salary Packaging Opportunities

- Superannuation
- Laptops, electronic diaries and PDAs
- Cars — novated and associate leases
- Policy manual

☛ Sale subject to Anti-avoidance

☛ GST and Residential Renovations

FBT RETURN ~ ACTION CHECKLIST

☛ Gross-up Rates

- Type 1 gross-up rate
- Type 2 gross-up rate

☛ Checklist — Types of Benefits

- Motor vehicles
 - Statutory formula method
 - Statutory Car Rates
 - Operating cost method
- Log book records
- Car parking
- Loans and debt waivers
- Expense payments/ reimbursements
- Housing and board
- Living-away-from-home allowance (LAFHA)
- Property fringe benefits
- Entertainment
- Residual benefits

Salary Packaging Opportunities

A common misconception is that salary packaging is only worth-while in the not-for-profit sector. However, employers in the commercial and government sectors should be aware that they can pass on significant savings to their employees through salary packaging, with very little effort.

These days employees expect to be offered salary packaging, and given the importance of staff retention in today's competitive employment market, having a salary packaging policy can be crucial.

Provided below is an outline of basic salary packaging strategies that all employers can consider, with some tips on keeping administration to a minimum.

Superannuation

Employees who wish to invest in extra superannuation will find that salary packaging additional contributions is extremely tax effective.

The salary to be sacrificed, or given up, for additional superannuation is simply the amount of the contribution, since no fringe benefits tax (FBT) applies.

The immediate saving for the employee will be the difference between the employee's marginal tax rate, say 48.5%, and the contributions tax of 15% deducted from salary packaged superannuation contributions.

The employee also benefits very significantly over time from the earnings on the higher amount after tax invested in the fund.

Laptops, electronic diaries and PDAs

These items are specifically exempt from FBT and are useful to salary package, as the effective cost to the employee is halved. This applies for personal digital assistants (PDAs) from 1 April 2006. Packaging laptop computers is particularly attractive for employees who need them for school children.

Packaging of these items is simple to administer. The simplest process is where the employee purchases the item and then seeks reimbursement from the employer. The reimbursement can be paid with the employee's salary in the normal pay cycle.

That is, the employee's gross salary is reduced by the amount of the reimbursement and the reimbursement amount is added to the employee's net pay as a tax-free amount. The total is paid to the employee, normally by way of direct debit into the employee's bank account. The reimbursement and corresponding reduction in salary can occur in one pay cycle, or can be spread over a period.

Where employees purchase PDAs prior to 1 April 2006, the cost can be reimbursed after this time as part of a salary packaging arrangement and still qualify for FBT exemption.

Cars — novated and associate leases

Cars can provide terrific tax savings for employees in many cases. The FBT legislation assumes an element of business travel and therefore operates on a concessional basis. Consequently tax savings can typically arise, particularly where the kilometres travelled exceeds 15,000. Naturally, the tax outcome should be reviewed in each case in light of the employee's particular circumstances.

Novated leases involve leasing a car through an external financier. Associate leases involve the employer leasing a car from the employee's associate (usually spouse). Associate leases are therefore very useful where the employee or spouse currently owns an existing car, as this car can be used in the associate lease arrangement.

Associate leases have an additional benefit over novated leases where the associate is on a lower marginal tax rate than the employee, as they have an income-splitting type effect. Specifically, the employee's assessable income is reduced in favour of the spouse who receives the lease payments.

From the employer's perspective, the arrangement is simple. The employer pays lease payments to the financier or associate and any FBT that arises. The employee sacrifices salary equivalent to these costs. All the running costs and other associated obligations remain with the employee under the novated lease scenario and with the associate under the associate lease scenario. As a result, the administration for the employer is minimal.

Policy manual

As the first step in implementing or updating a system to incorporate the above benefit offerings, we recommend the introduction of a salary packaging policy manual. This document should describe the practical aspects of the system and double as a guide for employees wishing to participate. It should include:

- outline of the key concepts;
- menu of benefits, including full details;
- example calculations of potential savings;
- the impact of reportable benefits;
- related policy considerations, e.g. basis for compulsory superannuation, arrangements for when employees take unpaid leave, basis for accrued leave calculations;
- instructions for employees wishing to participate; and
- standard documentation for implementation.

Sale subject to Anti-avoidance

In a recent case, the Federal Court held that the sale of shares from one family discretionary trust (Trust No. 1) to another family discretionary trust (Trust No. 2) was subject to the anti-avoidance provisions.

The taxpayer was a family trust that originally purchased shares between July and October 1997. The purchase of the shares was financed by a bank loan. The terms and conditions of the loan stated that the shares could not be sold without the bank's approval. Failure to gain approval from the bank would result in a default of the loan.

In June 1998, Trust No. 1 sold the shares to Trust No. 2 at their market value. The share sale agreement was not executed and the bank's approval was not sought. The sale agreement provided that the transfer would take place even if the funds were not provided by Trust No. 2. Trust No. 1, however, would be entitled to interest on the balance of the unpaid funds.

The sale gave rise to a capital loss of \$800,000.

The Administrative Appeals Tribunal (AAT) held that the sale was subject to anti-avoidance provisions. The transaction was entered into so Trust No. 1 could realise a capital loss. The AAT held that in the circumstances it was unreasonable to expect that the applicant would have incurred the capital loss had the transaction or scheme not been carried out. The capital loss was therefore denied to Trust No. 1. The Federal Court agreed with the AAT decision.

- **CAUTION:** Transactions which create a deduction or capital loss between related entities may be subject to Tax Office review.

GST and Residential Renovations

The Tax Office recently released two GST 'advices' on whether certain additions to houses constitute 'substantial renovations' making the premises 'new residential premises' for the purposes of the GST law.

In these advices, the Tax Office explains its view that the addition of a second storey to a single storey house or the addition of four rooms to a six-room house does not constitute 'substantial renovations'.

Accordingly, the sale of the premises will not be taxable supplies of new residential premises. Instead, they will be input taxed supplies.

As a result, taxpayers will be able to apply the principles expressed in the Tax Office's ruling to determine the correct GST treatment of supplies of residential premises.

[RETURN TO CONTENTS](#)

FBT RETURN ~ ACTION CHECKLIST

Gross-up Rates

To ensure the neutrality between an employee receiving a fringe benefit or cash salary taxed at the highest marginal rate within the context of the GST system, employers need to allocate taxable fringe benefits into either Type 1 fringe benefits or Type 2 fringe benefits.

Which gross-up rate to apply depends on whether the provider of the fringe benefit (generally the employer) was entitled to input tax credits for the acquisition of the benefit.

Type 1 gross-up rate

If the provider is entitled to an input tax credit, the Type 1 gross-up rate will apply (2.1292).

Type 2 gross-up rate

If no input tax credits are available to the provider, then the Type 2 gross-up rate will apply (1.9417).

This was the only gross-up rate that applied before the introduction of the GST.

After applying the correct gross-up rate, the FBT rate for the year ending 31 March 2006 is 48.5%.

Only the Type 2 gross-up rate will apply for reporting amounts on employees' PAYG payment summaries (formerly group certificates), regardless of the gross-up rate used for the FBT return.

Checklist — Types of Benefits

Motor vehicles

- Was the employer entitled to input tax credits for the purchase of the vehicle?

Statutory formula method

- What is the cost price of the vehicle (or lease value) and on-road costs GST inclusive?
- What are the costs of any fitted accessories?
- What were the opening and closing odometer readings for the current FBT year?
- How long has the vehicle been owned or leased? (If owned for more than four years on 1 April 2005, the cost base can be reduced by one-third.)
- Were there any days during the year when the vehicle was unavailable for private use? Check that the number of days the 'car was used or available for private use' is correct.
- What running costs have been paid by the employee? Have appropriate evidentiary documents been maintained?
- Confirm the vehicle is a car as defined in subsection 136(1) of the Fringe Benefits Tax Assessment Act 1986.
- Cars acquired on or after 1 July 2002 depreciated at the deemed rate of 18.75%.

Statutory Car Rates

Kilometres travelled	Statutory %
Less than 15,000	26
15,000 – 24,999	20
25,000 – 40,000	11
Above 40,000	7

Operating cost method

- Is this the first year the car was held? If so, has a log book been kept for a minimum continuous period of 12 weeks?
- What were the opening and closing odometer readings for the current FBT year?
- Have you made a reasonable estimate of the business kilometres travelled and the business use percentage? (This must be in writing.)
- Where the employer already owned the vehicle at the start of the FBT year, what is its written down value on 1 April 2005?
- What are the total running costs of the vehicle?

Log book records

These records must be maintained for a minimum continuous period of 12 weeks. This will generally be in the first year of the vehicle's use.

A new log book will need to be kept every five years. The log book must at least include:

- the date the business journey began and ended;
- the odometer reading at the beginning and end of the business journey;
- the purpose of the journey; and
- the number of kilometres travelled in the course of the journey.

It is imperative that all entries in the log book are made at the end of the journey or as soon as reasonably practicable after the journey.

Car parking

- Have car parking benefits been provided? If so, the three different methods for valuing the taxable car spaces will need to be considered.
- For 2005/06 the car parking threshold is \$6.43 per day.
- Was the employer entitled to input tax credits for providing the car parking?

Loans and debt waivers

- For 2005/06 the benchmark interest rate is 7.05%. What is the interest rate charged on the loan?
- Has the loan been used for income-producing purposes by an employee?
- What is the loan balance at the beginning of the FBT year and has the balance changed during the year?
- What documentation is available for the loan?
- When was the loan granted and was the loan wholly for private purposes?
- Have any employee debts been waived or released since 1 April 2005?

Expense payments/ reimbursements

- Have any expense payments/reimbursements been made on behalf of or to employees?
- Would any of the expenses or reimbursements have been tax deductible to the employee if they were paid for by the employee?
- If so, have appropriate declarations been obtained to substantiate the reduction in taxable value?
- Was the employer entitled to input tax credits for the expense?

Housing and board

- Has the employee been granted a right to occupy a unit of accommodation as the employee's usual place of residence?
- Is board provided to employees where two or more meals per day are provided by the employer on the employer's premises to employees?
- Was the employer entitled to input tax credits for providing housing and meals?

Living-away-from-home allowance (LAFHA)

- What is the value of LAFHAs paid to employees?
- Has the employee provided a declaration confirming that they are living away from their usual place of residence for housing and meals?

Property fringe benefits

Property includes goods, shares and real property.

- What goods are provided to each employee, excluding goods provided for business purposes?
- What amounts are paid by the employee for goods provided?
- Would the goods have been tax deductible to the employee had they been purchased by the employee?
- Identify employer-provided goods and those provided from other sources.
- Has an allowance for the \$500-exemption for in-house benefits been made?
- Was the employer entitled to input tax credits for providing the property?

Entertainment

The provision of employee entertainment may result in a number of fringe benefits, e.g. a property, expense payment or residual benefit with the taxable value calculated as per the rules of the benefit concerned.

Employers who provide meal entertainment benefits can elect to calculate their FBT liability using the 50/50 split method or 12-week register method.

Residual benefits

- If there are any additional benefits provided to employees, determine the value and amount, if any, paid by the employee.
- Would any of these benefits have been tax deductible to the employee if they were paid for by the employee?
- Was the employer entitled to input tax credits for providing the benefit?

[RETURN TO CONTENTS](#)

Important: This is not advice. Clients should not act solely on the basis of the material contained in this Bulletin. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The Bulletin is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.