

Minor benefits exemption from FBT

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Late last year, the ATO released draft *Taxation Ruling* TR 2007/D6 setting out its views on the exemption from FBT for minor benefits in section 58P of the FBT Act.

Introduction

For a minor benefit to be exempt from FBT, two conditions must be met:

Condition in section 58P(1)(e) of FBT Act	
1	It must have a notional value of less than \$300
Condition in section 58P(1)(f) of FBT Act	
2	It would be concluded that it would be unreasonable, having regard to the following criteria, to treat the minor benefit as a fringe benefit
i	Infrequency and irregularity with which associated identical benefit or similar benefits are provided
ii	Sum of the notional taxable values of the minor benefit and associated benefits which are identical or similar to the minor benefit
iii	Sum of the notional taxable values of any other associated benefits
iv	Practical difficulty in determining the notional taxable values of the minor benefit and any associated benefits
v	Circumstances surrounding the provision of the minor benefit and any associated benefits

Specific exclusions

There are specific exclusions that restrict what minor fringe benefits are exempt from FBT. These are listed in sections 58P(1)(b), 58P(1)(c) and 58P(1)(d) being the following:

- airline transport benefits;
- expense payment benefits where, if the benefit was an expense payment fringe benefit, it would be an in-house fringe benefit;
- property benefits where, if the benefit was a property fringe benefit, it would be an in-house fringe benefit; and
- residual benefits where, if the benefit was a residual fringe benefit, it would be an in-house fringe benefit (TR 2007/D6, paragraphs 11 and 135 to 144).

In addition, the minor benefits exemption does not apply in relation to benefits provided to an employee under a salary sacrifice arrangement (**SSA**) (TR 2007/D6, paragraphs 15 and 217).

Each benefit is considered separately under the threshold test

In determining whether a benefit is exempt from FBT under the minor benefits exemption, the value of each benefit provided to an employee or their associate in an income year is mutually exclusive to any other benefit provided in determining the threshold test.

Therefore, the number of benefits provided to an employee or their associate does not matter in determining the threshold test (TR 2007/D6, paragraphs 16, 130 and 154). However, this may become a factor to be taken into account in applying the 'reasonable person test'.

Example

Jack is an employee of Bill and Western Pty Ltd (BW). Gifts provided to Jack during the income year are:

- one tie bought for \$299 by BW for Jack's birthday; and

- one MP3 music player bought for \$280 by BW for Jack for Christmas.

Although the total value of benefits received by Jack in the income year is \$579 (which exceeds the \$300 threshold value), this is not a problem as the value of each benefit **separately** is less than \$300.

Threshold test

The 'threshold test' applies to each separate minor benefit that must have a value of less than \$300. It is not a limit on the total value of minor benefits that can be provided to an individual employee or an associate of the employee during an income year (TR 2007/D6, paragraphs 16, 130 and 152 to 162).

Reasonable person test

All 5 requirements in section 58P(1)(f) of the FBT Act need to be considered regarding each benefit. No single criterion will determine whether the exemption applies. The weight given to each criterion will vary depending on the circumstances surrounding the provision of the benefit (TR 2007/D6, paragraphs 9 and 132).

Having considered all 5 requirements, a 'reasonable person test' must be applied to determine what a reasonable person would conclude having regard to all the relevant circumstances surrounding the provision of the benefit. Only if it would be concluded that it would be unreasonable to treat the minor benefit as a fringe benefit, will the minor benefit be exempt (TR 2007/D6, paragraph 132).

Factors considered in applying reasonable person test

Factor 1: Infrequency and irregularity

Whether a benefit is provided infrequently and irregularly will depend on the circumstances of each case as indicated in *Case 2/96 96 ATC 131*. It is not appropriate to specify the number of times associated benefits that are identical or similar to a minor benefit, or benefits provided in connection with the minor benefit, can be

provided while satisfying the 'infrequency and irregularity' criterion. However, the more often and regular benefits are provided, the less likely that this requirement will be satisfied (TR 2007/D6, paragraphs 88 to 90).

Example

If an employee is provided dinner to the value of \$50 every working day it becomes unlikely that the benefit is infrequent or irregular even though the value of each provision is well below the threshold.

Factor 2: sum of total minor benefits

This requirement is given weight in situations where there are many occasions where associated benefits are provided to an employee.

The higher the value of the minor benefit and the greater the number of identical or similar benefits, the less likely it is the minor benefit will qualify as an exempt benefit. The value of the benefits in the current year and in any other year is taken into account in determining the total value of the benefits for the purposes of this criterion. This applies to related benefits provided in the past and that are likely to be provided in the future (TR 2007/D6, paragraphs 198 and 199).

Although the value of each benefit may be below the minor benefits threshold, the sum of the values of the benefits provided, being identical benefits in the current year of tax, the previous year and those that reasonably expected to be provided in the future, are all taken into account for this requirement.

Example

Continuing the previous example, if the employee is provided with 240 dinners per income year, the total value of all the dinners provided is \$12,000. If the employee is also provided with taxi fares of \$10 (an associated benefit) every working day the total value of \$2,400 is added to the value of \$12,000. If this behaviour is reasonably

expected to continue into the future or is continuing from previous years, the value expected or already spent on such benefits is also added.

Factor 3: sum of values of associated benefits

Other associated benefits include benefits that may themselves be minor fringe benefits. These benefits do not have to be identical or similar to the minor benefit and includes associated benefits which are provided in connection with the minor benefit and benefits which are identical or similar to a benefit provided in connection with the minor benefit (TR 2007/D6, paragraph 203).

Example

An employee is provided with dinner (being a minor benefit), one night of accommodation and taxi travel (being associated benefits).

It is the total value of the night's accommodation and taxi travel for the previous and current years of tax and those that may reasonably be expected to be provided in the future that are considered.

The associated benefits (the accommodation and taxi travel) do not have to be provided in connection with the dinner. They only have to be identical or similar benefits to the accommodation and taxi fare provided in connection with the dinner (the minor benefit).

The greater the total value of the other associated benefits (the accommodation and the taxi travel), the less likely it is that the meal (the minor benefit), will be exempt.

Factor 4: practical difficulty in valuing

Keeping in mind that it is a requirement of the FBT Act that an employer keep records that trace and explain all transactions and acts that are relevant for the purposes of determining the employer's liability under the Act (section 132 of the FBT Act); the fourth requirement is the practical difficulty for the employer in determining the

notional taxable values of the minor benefit and any associated benefits (where both the former and latter benefits are not car benefits).

Case law shows that there is no practical difficulty for an employer in determining the notional taxable value of taxi travel benefits (*Case 2/96 96 ATC 131* and *NAB v FC of T 46 FCR 252*)

Factor 5: circumstances surrounding provision of benefit and associated benefits

Simply put, this requirement involves an examination of whether the benefit is being provided as a result of an unexpected event and whether or not it could be regarded as principally a reward for services.

The first arm of this requirement (whether the benefit provided as a result of an unexpected event) will always be a question of fact. An example of an unexpected event would be where an employer makes a loan to their employee to pay an unexpected debt.

The second arm of the requirement (whether the benefit provided as a reward principally for services) may prove difficult in determining. Whether a benefit has been provided wholly or principally for services rendered or to be rendered will depend on the circumstances of the provision.

However, it is the Commissioner's view that where there is a SSA in place; it is clear that any benefits provided under the agreement by the employer to the employee are wholly or principally a reward for services rendered (TR 2007/D6, paragraph 217).

Conclusion

The new draft ruling on minor benefits goes into some length in providing guidance on the type of benefits that might be exempt from FBT. In particular, the ruling indicates that benefits such as the following may be exempt from FBT:

- a one-off welcome gift to a new employee;
- impromptu meals provided to an employee a few times a year;

- tolls provided to an employee through an e-tag on an ad-hoc basis, which is not part of an SSA or in connection with such an agreement;
- stationery that an employee is permitted to use for private purposes; and
- allowing staff to have waste or left-over materials of a business, such as packing cases or fabric remnants.

However, there will still be many instances where taxpayers will confront difficulty in determining whether the provision of certain benefits, in the context of the provision of other benefits, will be FBT exempt. Unfortunately, in respect of these situations the ruling provides little more reassurance than that the provisions will be applied in accordance with their terms.