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Public Ruling Payroll Tax Act—Harmonised: FRINGE BENEFITS

A public ruling, when issued, is the published view of the Commissioner of State Revenue (the Commissioner) on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue(s) it addresses. Where a change in legislation or case law (the law) affects the content of a public ruling, the change in the law overrides the public ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant or exemption, as the case may be, in accordance with the law.

What this ruling is about

1. The purpose of this ruling is to provide guidance on the treatment of fringe benefits (as defined in the *Fringe Benefits Tax Assessment Act 1986* (Cwlth) (the FBT Act)), for the purposes of determining wages under the *Payroll Tax Act 1971* (the Payroll Tax Act).
2. The definition of 'wages' in the Schedule of the Payroll Tax Act includes fringe benefits, but does not include tax-exempt body entertainment fringe benefits and car parking fringe benefits.
3. This public ruling addresses the following points:
 - (a) calculating the value of fringe benefits for payroll tax purposes
 - (b) 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
 - (c) explaining the requirements of the alternative method of declaring fringe benefits
 - (d) explaining the method of calculating the Queensland component of fringe benefits when they are not readily identifiable
 - (e) the adoption of Australian Taxation Office (ATO) fringe benefits tax (FBT) rulings.

Ruling and explanation

Value of fringe benefits for payroll tax purposes

4. 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 higher Type 1 factor, and Type 2 fringe benefits for which the employer cannot claim a GST input tax credit are grossed up by a lower Type 2 factor.

5. Section 13(5) of the Payroll Tax Act requires employers to gross up all fringe benefits by using only the lower Type 2 factor. The Type 2 factor may be calculated as follows:

$$1 \div (1 - \text{FBT rate})$$

Fringe benefits with a nil taxable value

6. 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 payroll tax where the benefit also falls within another part of the definition of wages under the Payroll Tax Act.
7. Fringe benefits that have a nil taxable value under the FBT Act will also have a nil taxable value for payroll tax purposes.

Exempt benefits

8. 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 payroll tax where the benefit also falls within another part of the definition of wages under the Payroll Tax Act.
9. Paragraph 2 of the definition of wages in the Payroll Tax Act ensures that exempt benefits are not fringe benefits for payroll tax purposes even where the exempt benefit would also fit within another part of the definition of wages under the Payroll Tax Act.

Election for alternative method to declare fringe benefits

10. Employers are required to declare in their periodic returns the actual value of total fringe benefits (grossed up by the Type 2 factor) provided in each period.
11. For administrative ease, Part 3, Divisions 2 and 3 of the Payroll Tax Regulation 2019 (the Regulation) allows employers to make an election to adopt an alternative method, whereby the amounts declared are based on the FBT return from the previous year.
12. Where such an election is made:
 - (a) employers must include in each periodic return an estimated amount for fringe benefits, being an appropriate proportion 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 factor¹—for instance, if the employer lodges periodic returns monthly, the returns for July to May of the financial year should each include one-twelfth of the total taxable value of fringe benefits from the preceding year's FBT return, grossed up
 - (b) the annual 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 return, grossed up by the Type 2 factor.²

¹ Section 19 of the Regulation

² Section 20 of the Regulation

Example 1

ABC Pty Ltd made the election to adopt the alternative method of declaring fringe benefits for payroll tax purposes. In the FBT year ended 31 March 2020, the total taxable value of the fringe benefits grossed up by the Type 2 factor is \$100,000. If ABC lodges periodic returns monthly, ABC Pty Ltd would declare \$8,333 of fringe benefits in each periodic return for July 2020 to May 2021 (i.e. $1 \div 12 \times \$100,000 = \$8,333$).

In its FBT return for the year ended 31 March 2021, 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 2020–21 payroll tax annual return.

13. Under the Regulation, an employer may only take advantage of the election where the employer was liable to pay FBT for a period of not less than 15 consecutive months prior to the commencement of the relevant tax year.³ An employer who does not meet this requirement must return the actual value of the fringe benefits paid during the relevant return period.
14. To make the election, an employer uses the estimated amount when working out the employer's periodic liability for the first periodic return period for the financial year.⁴ In such a case:
 - (a) the consent of the Commissioner of State Revenue (the Commissioner) to the employer electing to use the estimated amount is not required
 - (b) the election will remain in force for all subsequent periodic and annual liabilities until the employer elects to use the actual value of the fringe benefits paid during the relevant return period.⁵
15. If an employer wishes to make the election during the course of a financial year, the employer must apply to the Commissioner for consent to make the election.⁶
16. Where an employer ceases to be liable for payroll tax and an election has been made, the value of fringe benefits declared in the employer's final return is the difference between the following amounts:
 - (a) the total of:
 - (i) the value of the employer's Queensland fringe benefits for the most recent prior FBT yearand
 - (ii) the value of any Queensland fringe benefits paid or payable by the employer in April, May and June of the period covered by the final return (if any)

³ Section 9 of the Regulation

⁴ Section 10 of the Regulation

⁵ See ss.12 and 13 of the Regulation for the process by which an employer may elect to use actual value amounts.

⁶ Section 11 of the Regulation

- (b) one-quarter of the FBT taxable amount of the employer's Queensland fringe benefits for the FBT year ending in the first financial year in which the employer last elected to use estimated figures for payroll tax returns.⁷

Determination of Queensland component of fringe benefits

17. 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 Queensland component of the fringe benefits.
18. In such circumstances, the Queensland component of the fringe benefit amount may be declared on an apportionment basis, calculated in accordance with the approved method.
19. The approved method of estimating the Queensland component of the total value of fringe benefits is only available where:
 - (a) existing records do not allow the identification of the actual fringe benefits that relate to Queenslandand
 - (b) the employer has elected to declare fringe benefits based on the alternative method discussed in paragraphs 10 to 16.
20. The approved method of calculating the Queensland component of total fringe benefits involves two steps:
 - (a) the amount of fringe benefits to be included in each periodic return is the proportionate amount referred to in paragraph 12(a), adjusted by the ratio of total Queensland taxable wages to total Australian taxable wages for the full financial year immediately preceding the current financial year
 - (b) the amount of fringe benefits to be included in the annual return is the amount referred to in paragraph 12(b), adjusted by the ratio of total Queensland taxable wages to total Australian taxable wages for the current financial year.
21. The Queensland taxable wages and the Australian taxable wages in the above two steps should not include fringe benefits.

Example 2

The value of fringe benefits of XYZ Pty Ltd in its 31 March 2020 FBT return after grossing up by the Type 2 factor is \$1,200,000. XYZ Pty Ltd paid a total of \$6,000,000 (excluding fringe benefits) in taxable wages for the 2019–20 financial year, of which \$3,000,000 (excluding fringe benefits) were Queensland wages.

XYZ lodges periodic returns monthly.

Step one

$$(\$3,000,000 \div \$6,000,000) \times \$1,200,000 = \$600,000 \text{ estimated Queensland fringe benefits}$$

⁷ Section 22 of the Regulation

Therefore, $\$600,000 \div 12 = \$50,000$ of fringe benefits is to be declared in each periodic Queensland payroll tax return for July 2020 to May 2021.

The value of fringe benefits of XYZ Pty Ltd in its 31 March 2021 FBT return after grossing up by the Type 2 factor is \$1,800,000. The total Australian taxable wages for the 2020–21 financial year were \$8,000,000 (excluding fringe benefits), of which \$6,000,000 (excluding fringe benefits) were Queensland taxable wages.

Step two

$$(\$6,000,000 \div \$8,000,000) \times \$1,800,000 = \$1,350,000$$

The Queensland component of fringe benefits to be declared in the 2020–21 annual return is \$1,350,000.

Adoption of ATO fringe benefits tax rulings

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

Date of effect

23. This public ruling takes effect from the date of issue.

Geoff Waite
 Acting Commissioner of State Revenue
 Date of issue: 2 September 2019

References

| Public Ruling | Issued | Dates of effect | |
|---------------|------------------|------------------|------------------|
| | | From | To |
| PTA003.5 | 2 September 2019 | 2 September 2019 | Current |
| PTA003.4 | 1 July 2016 | 1 July 2016 | 1 September 2019 |
| PTA003.3 | 21 June 2013 | 21 June 2013 | 30 June 2016 |
| PTA003.2 | 3 July 2009 | 3 July 2009 | 20 June 2013 |
| PTA003.1 | 24 February 2009 | 1 July 2008 | 2 July 2009 |