



Office of State Revenue
NSW TREASURY

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Payroll Tax Act 2007

Revenue Ruling No. PTA003

Fringe Benefits

Ruling history

Ruling no.	Issued date	Dates of effect		Status
		From	To	
PTA003	12 July 2007	1 July 2007	-	Current

Preamble

The *Payroll Tax Act 2007* (the Act), which commenced on 1 July 2007, rewrites the *Pay-roll Tax Act 1971* (the 1971 Act) and harmonises the payroll tax legislation in Victoria and NSW. One of the areas that has been harmonised is the value of fringe benefits to be declared for payroll tax purposes.

This revenue ruling addresses the following points:

- calculating the value of fringe benefits for payroll 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 NSW component of fringe benefits when they are not readily identifiable
- and
- the adoption of Australian Taxation Office (ATO) fringe benefits tax rulings.

Ruling

Value of Fringe Benefits for payroll tax purposes

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

Prior to harmonisation, the value of the fringe benefit for payroll 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 2007, section 15 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 payroll 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 payroll 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 payroll tax where the benefit also falls within another part of the definition of wages under the Act.

Section 14(2) of the 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 Act. Deposits to a Superannuation Holding Account Special Account within the meaning of the *Small Superannuation Accounts Act 1995* (Cth) are an exception to this rule, as specified in section 14(2) of 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 16 of the Act allows employers to make a formal election to adopt an alternative method, whereby the amounts declared are based on the FBT returns.

Where such an election is made, employers must include in each monthly payroll 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:

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 2007, the total taxable value of the fringe benefits grossed-up by the Type 2 factor is \$100 000. Accordingly, ABC Pty Ltd would declare \$8 333 of fringe benefits in each payroll tax return for July 2007 to May 2008 (i.e. $1/12 \times \$100\,000 = \$8\,333$).

In its FBT return for the year ended 31 March 2008, 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 2007-08 Annual Adjustment return.

Where an employer had made an election to adopt the alternative method of declaring fringe benefits under the provisions of the 1971 Act, that election remains in force under the Act. Such an employer is not required to make a further election under the Act.

Under the Act an employer may only take advantage of the formal election where:

- the employer was liable to pay FBT for a period of not less than 15 months prior to the commencement of the relevant tax year
- and
- the Chief Commissioner is notified of the election in the approved form.

An employer who does not meet these requirements must return the actual value of the fringe benefits paid during the relevant return period or make a written request for another method for declaring the fringe benefits.

Once an election is made, an employer will not be permitted to revert to declaring the actual value of fringe benefits in monthly payroll tax returns, unless approval is given in writing by the Chief Commissioner. 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. (For example, the employer provides fewer benefits during the current financial year compared with the previous FBT year.)

Where an employer ceases to be liable for payroll tax, regardless of whether or not the election has been made, the amount of fringe benefits declared in the employer's final payroll tax return is to be as follows:

- the actual value of the NSW 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 NSW fringe benefits declared in payroll tax returns during that period.

Determination of NSW 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 NSW component of the fringe benefits.

In such circumstances, the NSW 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 NSW 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 NSW
- and
- the employer has formally elected to declare fringe benefits based on the alternative method.

The approved method of calculating the NSW 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 NSW 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 NSW taxable wages to Australian taxable wages, for the current financial year.

The NSW 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 NSW wages.

Step one

\$300 000

$\$600\,000 \times \$120\,000 = \$60\,000$ estimated NSW fringe benefits.

Therefore, $\$60\,000 \div 12 = \$5\,000$ of fringe benefits is to be declared in each monthly NSW payroll 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 NSW taxable wages.

Step two

\$600 000

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

The amount of NSW fringe benefits to be declared in the 2008 Annual Adjustment return is \$135 000.

Employers who are unable to calculate the actual NSW component of fringe benefits and are unable to adopt the approved method or believe they would be disadvantaged by adopting the approved method, should make a written submission to the Chief Commissioner detailing another method.

Adoption of ATO fringe benefits tax rulings

In order to follow as closely as possible the effect of the FBT Act, the Chief 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).

Please note that rulings do not have the force of law. Each decision made by the Office of State Revenue is made on the merits of each individual case having regard to any relevant ruling.

Tony Newbury
Chief Commissioner of State Revenue
12 July 2007