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Client Information Newsletter - Tax & Super March 2015

# Fringe benefits tax — your business basics

If you own a business that employs staff, and provide remuneration to your employees in a form other than straight salary, you may be up for fringe benefits tax (FBT). The upside for your workers is that they do not then have to pay income tax on the value of the benefits provided to them.

FBT is separate to income tax. The FBT regime has its own tax year, from April 1 to March 31 (with the FBT return lodgement deadline being May 21, but longer if you use the services of this office).

FBT is calculated using a "grossed-up taxable value" of the relevant benefit provided. It is payable at the current FBT rate of 47% for the FBT year ended March 31, 2015. Note that the rate increases to 49% as a result of the Temporary Budget Repair Levy for the 2016 and 2017 FBT years.

Under the FBT law, a fringe benefit typically arises when one of the categories of benefits (see below) is provided by an employer, an "associate" of an employer, or a third party under arrangement with either of the former.

An employer is providing a fringe benefit if, for example:

- it allows a staff member to use a work vehicle for private purposes
- provides a loan to the employee with interest charged (even a minimal level of interest), or
- reimburses a worker for a private expense, such as school fees.

## Fringe benefit categories

The FBT law has several different categories of fringe benefits, which include:

- car fringe benefit
- debt waiver
- loan fringe benefit
- expense payment
- housing fringe benefit
- living away from home allowance
- airline transport
- board (accommodation)
- entertainment
- tax-exempt body entertainment
- car parking
- property fringe benefit, and
- residual benefits (that is, other benefits not covered by the above).

Salary of course is not a fringe benefit, and neither is a super contribution. Entitlements under employee share acquisition schemes are not deemed to be a fringe benefit, nor are termination payments.

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Fringe benefits tax — your business basics (cont)




## Calculating FBT

The rules for calculating the grossed-up taxable value of a fringe benefit are subject to two separate "gross-up" rates – a higher and a lower gross-up rate.

Grossing-up means increasing the taxable value of benefits you provide to reflect the gross salary employees would have to earn at the highest marginal tax rate (including Medicare levy) if they were to buy the benefits after paying tax.

The higher gross-up rate (2.0802 for the 2014-15 FBT year, and 2.1463 for the 2015-16 FBT year) is used where you are entitled to claim a GST credit for GST paid on benefits provided to an employee, known as GST-creditable benefits. The lower gross-up rate (1.8868 for 2014-15 and 1.9608 for 2015-16) is used where there is no entitlement to a GST credit.

## Consequences of increased FBT and gross-up rates

With the temporary increase to the FBT rate, there could be a case for employers to reconsider their current fringe benefit arrangements with affected employees in light of the increase.

For employees on packages of less than $180,000 a year, it may end up that upon examination from April 1, 2015 it will be more beneficial to provide remuneration via salary and allowances rather than fringe benefits. Where employers provide fully taxable benefits, such as paying for an employee's private health insurance, it may be a better option to provide additional salary, which would be taxed at a substantially lower rate than 49%.

The increase in both the FBT rate and the gross-up factors means that employers should reconsider all current fringe benefits arrangements with their staff to limit the impact of possible additional costs and ensure that any arrangement is still as beneficial as possible for both employee and employer. Employers should also note that the value of taxable fringe benefits once grossed-up are included in the calculation of taxable wages for payroll tax purposes.

## Exemptions from FBT

### *Minor benefits*

Minor benefits (that is benefits that have a GST-inclusive value of $300 or less) are generally exempt from FBT. However one of the conditions to maintain this exemption is that minor benefits must be offered with "infrequency and irregularity". There can also be other conditions (check with us). Examples of minor benefits can include the occasional lunch, birthday gifts, flowers on special occasions, the Christmas party, or a one-off interest free loan. Note also that there can be multiple minor benefits (that is, each can have a value of less than $300).

### *Certain exempt vehicles*

There are also circumstances when private use of a car may be exempt from FBT. An employee's private use of a taxi, panel van or a utility designed to carry less than one tonne, or any other road vehicle designed to carry a load of less than one tonne (that is, one not designed principally to carry passengers) is exempt if their private use of such a vehicle is limited to:

- travel between home and work
- travel that is incidental to travel in the course of performing employment-related duties
- non-work-related use that is minor, infrequent and irregular – for example, occasional use of the vehicle to remove domestic rubbish.

### *Certain work-related items*

Providing certain work-related items to staff will not make a business liable for FBT. These include protective clothing, a briefcase, calculator or tools of trade, portable computer (limited to one per year for each employee) and other items. There are other benefits that escape the FBT net, which you can ask this office about, but generally a condition of exemption is that the benefit or item is primarily used to enable your employee to do their job.

### *Record keeping*

The Tax Office has relaxed the FBT record keeping regime for small businesses to some extent by creating a value of benefits threshold under which full records need not be kept. You will still however need to show the value of benefits on employee payment summaries.

The threshold for the 2014-15 FBT year is $7,965, but it increases each year. As long as benefits paid do not exceed 20% on top of the previous year, the exemption can still apply for subsequent years.

For businesses, it makes no difference whether you are a sole trader, partnership, trustee, corporation,

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## Fringe benefits tax — your business basics (cont)

unincorporated association or government body, or whether you pay other taxes such as income tax – as an employer providing taxable benefits by way of remuneration to an employee, you are required to cover FBT. And remember your business will be liable even if that benefit is provided by an associate or by a third party – for example, you may deal with a supplier that, in turn, provides free goods to your employees.

All that is required is that the employee receives the benefit in their capacity as an employee of the business. Also an employee is deemed to have received a fringe benefit if that benefit is directly received by the employee's "associate" – in the main, these would be family members and relatives. So this catches the school fees paid for an employee's children or the interest-free loan made out in a spouse's name.

While an item's "primary use" is important to determine if a taxable benefit has been provided, the Tax Office bases its decisions on the employee's "intended use" at the time the benefit is provided. This means that you do not have to record the actual use of every item – you must however be able to provide a "reasonable basis" that would show that a benefit has been provided to facilitate employment; for example via job descriptions, duty statements or employment contracts.

Other documentation and declaration requirements can seem very particular. For travel, for example, a diary of the trip will need to be kept only if the employee is away for six continuous nights or more, but documentary evidence of travel expenses need to be kept no matter the duration of travel. If the trip is within Australia and not entirely for business purposes, receipts must be kept for food, drink, accommodation and incidentals. But if the trip is deemed to be entirely for business, these are not needed. And if the trip is overseas and solely for business, only accommodation receipts are required.

### Can you pay less FBT?

There are options for businesses wanting to reduce the amount of FBT they are required to pay. The most obvious of course is to replace fringe benefits with straight salary, or simply focus on providing only those fringe benefits that are deemed exempt under FBT law.

Alternatively, FBT could be reduced if the employee shares some of the cost of the benefit provided with their employer. This is commonly referred to as an "employee contribution".

With a car fringe benefit, for example, an employee could agree to contribute to some of the operating costs, such as fuel, that you do not then reimburse. This then reduces the taxable value of the fringe benefit to the business.

You can also provide a benefit that your employee would normally be able to claim as an income tax deduction, had they paid for it themselves. Referred to as the "otherwise deductible" rule, you can reduce the taxable value of the fringe benefit by the amount your employee would have been able to claim. Say a staff member incurs a work expense, for example, that would have been a one-off wholly deductible amount for the employee in their own tax return. If you reimburse the employee for this expense (as an expense fringe benefit) the taxable value would be nil (but the employee won't get the deduction).

### Common mistakes

The Tax Office has released what it says are the most common mistakes regarding FBT obligations:

- business vehicles garaged at an employee's residence may be a car fringe benefit
- you must keep logbooks when using the operating cost method for calculating vehicle benefits
- when you use the operating cost method, the luxury car tax threshold does not apply when calculating the deemed interest and depreciation
- contributions an employee makes to the employer to reduce the taxable value of a fringe benefit:
  - are assessable income for income tax purposes, and
  - are possibly taxable supplies for GST purposes
- if your employees have incurred any fuel and oil expenses they need to provide you with a declaration to substantiate these expenses
- directors running their business through a company may be regarded as employees. This may mean that fringe benefits provided to directors result in the company having FBT obligations, and
- when you include reportable fringe benefits on an employee's payment summary, you must lodge an FBT return.

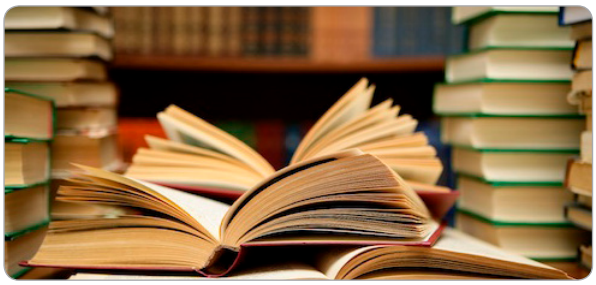
Note also that while the Tax Office has in the past published an annual "compliance program" spelling out areas of tax it deems to be complex or where it has detected a lot of errors being made, this is no longer available. Guidance on issues of concern can now be found through its communications to consultation panels and notices issued to taxpayers.

The latest consultation with key stakeholders with regards to FBT concerns guidance around travel versus living-away-from-home allowance claims. The "21-day rule" is of particular focus, with attention being given to whether this still fits with current work trends. Consult this office if this is an area of concern. ■



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# The deductibility of self-education expenses



To get ahead of the game and stay there, you need to flex your grey matter as often as possible. Self-education is one way of ensuring you keep up to speed with developments and methods relating to either your business or your field of employment.

To help encourage employers and employees alike to undertake educational programs, there are a number of self-education tax breaks available.

Self-education expenses are deductible provided that a direct connection can be demonstrated between the education being undertaken and how one derives assessable income.

Included in the definition of self-education are courses undertaken at an educational institution (whether leading to a formal qualification or not), attendance at work-related seminars or conferences, self-paced learning and study tours (overseas or within Australia).

However certain self-education expenses may be subject to a limit. Where the expenses would otherwise be deductible under general tax laws, a deductibility limit applies. In this case only amounts greater than $250 can be claimed (or in other words, the first $250 is not deductible).

## General conditions for deductibility and non-deductibility

In general terms, it is necessary to satisfy any of the following tests to be entitled to a tax deduction for self-education:

- the expense has a relevant connection to the taxpayer's current income earning activities (that is, the course must be relevant or incidental to how the taxpayer derives his/her assessable income)
- the self-education program being undertaken enables the taxpayer to maintain or improve the skills or knowledge necessary to carry out his/her income earning activities, or
- the self-education leads to, or is likely to lead to, an increase in the taxpayer's income from his/her current income earning activities in the future.

Deductions for self-education expenses are not allowed if the course of study is designed to:

- get employment in a new field of endeavour (for example, a teacher studying law to become a lawyer)
- get employment or obtain a qualification to enable the taxpayer to enter a restricted field of endeavour (for example, obtaining a degree to be able to practice as a surveyor), or
- open up new income earning opportunities in the future (whether in business or in the taxpayer's current employment) because they are incurred "at a point too soon" to be regarded as being incurred in gaining or producing the assessable income of the individual.

It is possible for courses to have both deductible and non-deductible elements (for example a plumber who runs his own business who undertakes a business management course to enable the plumber to also practice as a qualified business administrator). In that situation, the deductibility of the expenses will be determined by the intention of the taxpayer when the course was undertaken.

If the taxpayer can show that the course is incidental and relevant to his or her existing income earning activities, the cost will generally be deductible. Creation of other opportunities is irrelevant. If the course was undertaken with the specific intention of changing the taxpayer's income earning activity, such expenses would however not be allowed as a deduction.

## Expenses that are tax-deductible

Subject to the general tax law tests for tax deductibility, these expenses are allowable:

- course or tuition fees (including student union fees)
- textbooks, professional or trade journals, technical instruments and clerical expenses such as word-processing or photocopying
- depreciation on professional libraries, desks, computers and filing cabinets, etc
- fares, accommodation and meals incurred on study tours, work-related seminars or conferences away from the taxpayer's home
- interest on money borrowed to pay the above expenses or to purchase plant or equipment on which depreciation is allowable, and
- travel costs (including motor vehicle and fares and so on — see below).

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## The deductibility of self-education expenses (cont)

### Expenses that are not tax-deductible

- education expenses against income received under various Commonwealth educational assistance schemes, such as the Youth Allowance
- meals purchased while on normal travel between home and an educational institution
- travel expenses between home and an educational institution at which the taxpayer works
- contributions made under the *Higher Education Support Act 2003* and *Student Assistance Act 1973*, such as HELP (previously HECS) payment.

***TIP:*** *Unless paid or reimbursed by the employer, HELP payments are generally not tax deductible, however if they are paid or reimbursed by an employer they are tax deductible to the employer but FBT is payable.*

### Travel expenses

The cost of travel between the taxpayer's home and place of work is not allowable. Claims are generally allowed for travel between:

- the taxpayer's home and an educational institution (including a library for research), and
- the taxpayer's place of employment and an educational institution (that is, school).

Note that travel expenses (and/or fares) between the taxpayer's home and an educational institution are not allowable if the taxpayer carries out income-earning activities at the institution. Such expenditure becomes travel expenses between home and work (not self-education expenses) and may or may not be allowable depending on the circumstances (see table below).

### Work-related education programs

As a general rule, costs of certain education programs (such as seminars, professional development courses, and tertiary studies while in employment) are deductible provided the requisite connection to the earning of assessable income can be established. However, the costs of certain tertiary studies undertaken before the commencement of any employment (at a point too soon) are generally not deductible. ■

| **Travel expenses: Deductible as self-education expense?** | | | | |
|---|---|---|---|---|
| Home | Yes → | Place of education | Yes → | Home |
| Home | Yes → | Place of education | No → | Work |
| Work | Yes → | Place of education | No → | Home |
| Work | Yes → | Place of education | Yes → | Work |
| Home | ← No → | Work | ← Yes → | Place of education |

# SuperStream: A guide for small business and for SMSF trustees

### For small businesses

The government wants to improve the superannuation system and bring it into the modern electronic world through the introduction of SuperStream, and this includes for SMSFs.

Under the new system, employers must interact electronically using approved software. Employers with 20 or more employees should have already started using SuperStream from July 1 last year, but smaller employers (those with 19 or fewer employees) have until July 1, 2015 to start to comply. Small business owners need to get their skates on to be ready in time. One relatively easy option for small employers is to use the Small Business Superannuation Clearing House to do all your superannuation for you. This online government service is already SuperStream-ready, so small employers can save themselves the hassle of implementing SuperStream.

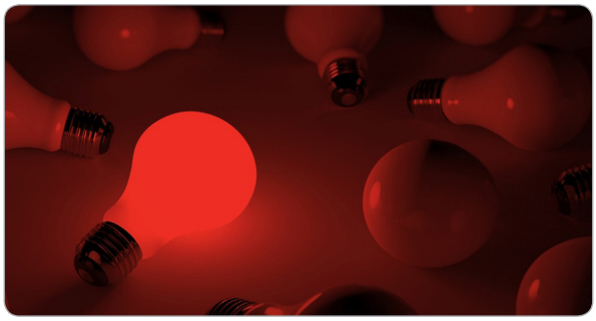
The Tax Office has set out a nine-step process to help small employers. You are not required to follow all nine steps, but it helps get your head around what needs to be done.

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## Small business guide to SuperStream (cont)



***Step 1: Assess your options***

Find the solution that suits you best. Potential solutions identified by the Tax Office include:

- if you have a payroll system, you should look for updated or new SuperStream-compliant products coming on to the market
- if you rely on external partners, check what they are planning to do and scan the market for emerging products or opportunities
- speak to your payroll software provider or clearing house about their SuperStream plans
- if you are outsourcing, speak to your payroll or accounting services provider
- if you rely on your default super fund for assistance with contributions, you should speak to them.

***Step 2: Set a target start date***

You must begin implementing SuperStream from July 1, 2015 onwards, but the Tax Office will provide flexibility for you on your start date, provided you are doing your best to implement and have a firm plan to do so by June 30, 2016.

***Step 3: Collect new information***

There is some new data you need to collect. Some relates to all funds, some to APRA funds (retail and industry funds) and some only apply to SMSFs. You need to collect:

| Information required | Type of fund |
|---|---|
| Fund ABN | All funds (including SMSFs) |
| Unique superannuation identifier (USI) | APRA funds (not SMSFs) |
| Bank account details | SMSFs only |
| Electronic service address | SMSFs only |
| Employee TFN | All funds (including SMSFs) |

The APRA funds will provide employers with their USI, but if not contact APRA for the information.

For existing employees, where you are paying contributions to their SMSF, your employees will need to supply the information specific to their fund. This includes the SMSF's bank account details and their electronic service address.

***Step 4: Update your payroll records***

Once you've collected the new information, you'll need to update your payroll records.

***Step 5: Upgrade your payroll system***

If you use payroll software, your software provider will be able to tell you whether an upgrade is required and, if so, when it intends to release a SuperStream-compliant version of their product.

***Step 6: Connect to your provider***

Depending on the solution you choose, you may need to arrange connections and security log-in credentials with your service provider or default super fund.

***Step 7: Undertake a trial***

Once you have done the above your service provider may provide an opportunity to test your solution.

***Step 8: Make your first SuperStream contribution***

You will need to:

- run a trial payroll balance for your contributions with a subtotal for each fund
- process your payments and generate a unique reference number associated with each payment
- copy these reference numbers and add them back into your contribution files before you send the files as data messages.

***Step 9: Refine your process***

Review your process and determine if you need to make changes. Also keep abreast of any developments in SuperStream.

You need not follow all nine steps or the order suggested by the Tax Office, but it is a useful checklist.

## For SMSF trustees

SMSFs that receive employer contributions are caught by the new SuperStream requirements and must comply with the new requirements. SMSFs that only receive contributions from members do not need to comply.

There are three key pieces of information that an SMSF that receives employer contributions must provide to that employer. These are:

- the fund's ABN
- the fund's bank account details (BSB, bank name and account number)
- an electronic service address (more below).

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Nearly all SMSFs will have an ABN, so this should not be too difficult, and most have a bank account that can receive electronic payments, so these shouldn't be a problem. What SMSF trustees will need to do however is get an "electronic service address". This is more than simply an email address. It must comply with the data and payment standards.

The best way to get the electronic service address is to use one of the providers vetted by the Tax Office. The main requirements of the address are that the system must be able to receive and host data messages from super funds, and translate those messages into a format that people can read. There are also requirements about system certification, operational performance and information security.

Potential benefits for SMSFs include:

- providing a more timely and reliable flow of contribution payments and data
- improving electronic record-keeping for tax and audit purposes, and
- fewer data and payment errors.

These changes also help your employer manage contributions by providing:

- a consistent and simplified way of meeting their superannuation guarantee obligations, irrespective of type of fund
- better integration to employer payroll systems
- consistent and lower cost payment methods
- a single distribution channel for dealing with multiple funds.

The Tax Office has a register of all the approved SuperStream electronic service address. Ask this office if you are interested in seeing it.

Most of the fund administrators will already have a solution for those that use them, and BGL and Class Super will provide a free electronic service address to those that use their systems. Some providers are open to all comers while some others will only deal with clients they already have. Some will be at a cost and others for free. However be wary of those offering a free service because they may be seeking access to your SMSF for other purposes. ■

# Your practical CGT framework

The term "capital gains tax" (CGT) is perhaps the biggest misnomer in tax. It is not its own, separate tax on capital gains per se. For an individual, it is included as part of that person's assessable income and subject to tax at their marginal tax rate. When a taxing point for CGT happens (referred to as a CGT event) there is a torrent of rules that taxpayers must adhere to so they can fulfil their tax obligations correctly.

Knowing where to start is the hardest part.

The most common CGT event which happens is when a taxpayer disposes of a CGT asset (such as shares or real estate). Assuming that an asset has been disposed of, there's a step-by-step framework to consider. The framework for working out the capital gain in the law looks curly, but is simple when broken down. So here it is, broken down and mapped out.

## Has there been a capital gain?

Figuring out if a capital gain has resulted from the sale of an asset is the first step. To do this, there are certain steps, as determined under the relevant legislation:

- work out your capital proceeds from the disposal
- work out your "cost base" for the CGT asset (or "reduced cost base" if a capital loss arises)
- Subtract the cost base from the capital proceeds.

If the capital proceeds exceed the cost base, the difference is a capital gain. Conversely, a capital loss arises where the asset's "reduced cost base" exceeds the capital proceeds.

## Working out discount percentages

Tax legislation sets aside some rules that allow you to apply discount percentages to a capital gain. The discount is limited to certain CGT events (such as a disposal CGT event "A1"). Further, you must be an eligible resident taxpayer and have held the CGT asset for at least 12 months. The applicable discounts include:

- a 50% discount if the gain is made by an individual, or by certain trusts. This also includes gains made by a partner in a partnership (eg an individual)
- a $33^{1}/_{3}$% discount if the gain is made by a complying superannuation entity, by a First Home Saver Account (FHSA) trust, or by a life insurance company from a CGT asset that is a "complying superannuation/FHSA" asset.

A capital gain that is eligible for discount is generally referred to as a "discount" capital gain.

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Your practical CGT framework (cont)




## Working out your net capital gain

Say you've had three assets disposed of during an income year. What you must do is perform three separate capital gains tax calculations (including determining any discount capital gains) and then amalgamate any capital gains and capital losses to figure out your total net capital gain for that year. To do that, you must:

1. Reduce your capital gains for the given income year, in the order you choose, by your current year capital losses. Note that you can choose to apply capital losses to either discountable or non-discountable capital gains. (If the capital losses for the income year exceed the capital gains, the difference is your net capital loss.)
2. Reduce any remaining capital gains, in the order you choose, by any unapplied net capital losses for previous income years. Again noting that you can choose to apply these unapplied capital losses to either discount or non-discount capital gains.
3. Reduce any remaining discount capital gains by the relevant discount percentage (see above).
4. If you are eligible for special small business CGT concessions, apply the small business concessions to further reduce your capital gains (whether or not the gains are discount capital gains).
5. Add up any remaining capital gains that are not discount capital gains, and any remaining discount capital gains.

The total is your total net capital gain. This is included in your assessable income.

Note that if you have incurred "revenue" losses from other sources, you may be able to deduct "revenue" losses from a net capital gain that has been included in assessable income. Before that time, revenue losses are unable to be applied to capital gains. Note that certain losses are subject to special rules before they can be applied (especially for companies and trusts).

A case study can help explain.

***CASE STUDY***

*Sophia bought three parcels of various listed shares in August 2014. Each cost her $5,000 (including brokerage). In September 2015, Sophia sold two of the parcels of shares for $6,000. In October 2015, she sold the remaining parcel for $9,000.*

*On each sale (or "event"), Sophia calculated her capital gains as follows:*

***Event 1***

*Cost base = $5,000*
*Proceeds from sale = $6,000*
*$6,000 – $5,000 = capital gain of $1,000*

***Event 2***

*Cost base = $5,000*
*Proceeds from sale = $6,000*
*$6,000 – $5,000 = capital gain of $1,000*

***Event 3***

*Cost base = $5,000*
*Proceeds from sale = $9,000*
*$9,000 – $5,000 = capital gain of $4,000*

***Total discount capital gain = $6,000***

*At the end of the 2016 income year, Sophia calculated her net capital gain. She recalled a sale from earlier in the year, however, where she sold shares which gave rise to a capital loss of $1,000. She also had incurred a "revenue" loss from operating her rental property of $800.*

*Assume that she derived no other assessable income or incurred any other allowable deductions during the income year.*

*Sophia calculated her net capital gain for the 2016 financial year as follows:*

1. *Application of capital loss to discount capital gain as follows:*
   *(Discount capital gain – capital loss) ($6,000 – $1,000) = $5,000.*
2. *Apply 50% discount: $5,000 x 50% = $2,500.*
3. *The net capital gain above is included in her assessable income. The revenue loss from the rental property can be applied as follows:*
   *Net capital gain included in assessable income – current year loss = taxable income $2,500 – $800 = $1,700.*

Be mindful that this example is general in nature. CGT assets may be treated differently depending upon both the type of taxpayer as well as the type of CGT asset. This makes it necessary to consult a professional when determining capital gains as part of your taxation affairs. ■



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# Proposed changes to employee share schemes

While it is generally accepted that business owners are the most driven to see their business succeed, the same sort of vested interest can also give staff a sense of participation and a solid reason to see the company become profitable. Having a real stake in a company through owning shares in it is an incentive that some companies, particularly those listed on the stock exchange, have utilised.

Employee share schemes (ESSs) are a way to give staff a financial share of a company's potential success, and as such have long been recognised as being a valuable tool to help companies attract and retain high-quality staff. Proposed changes to the law will make it more beneficial for start-up companies to remunerate staff in this manner.

## 2009 changes to ESS rules for tax purposes

Under an ESS, a company can offer its employees, as a form of remuneration and incentive, shares in the company or alternatively, an option/right to acquire such shares.

Since changes were made to the employee share scheme regime in 2009, fledgling enterprises and start-up businesses have been avoiding making ESSs available to staff due to the complex nature of the arrangements. Due to this, the changes have made ESSs less appealing for start-ups and smaller businesses.

The main reason is that the 2009 reforms taxed employees at the point of issue of the shares or options. In other words, the employee is taxed upfront unless special rules for deferral at the time of issue apply.

The drawback of this is that employees can become liable for significant tax based on the value of the shares or options for the income year in which they are issued, even if they are not earning any income or before this value is realised by selling. One online retailing executive described the present structure as being "like paying tax on the winnings of the lotto ticket before you win the lotto".

## Proposed ESS changes

To enhance the system, the government is going to amend the ESS rules. This is planned to come into operation for shares and rights that are granted on or after July 1, 2015. At this stage the proposed changes are still in draft legislation, and it is yet to be introduced into Federal Parliament.

Under the revised ESS regime, some key amendments include:

- *Taxation of rights at exercise*: Companies will be able to give employees discounted rights or options to acquire shares, which will be taxed when they are exercised rather than when they are received. This means that those in receipt of such options will only have to take care of tax liabilities when they actually receive value. Other conditions may apply however.




- *Concessions for start-ups*: Start-ups will also be given some concessions under the ESS rules in an attempt to bolster the Australian innovation sector. This will apply to companies that have an aggregate turnover of less than $50 million, are unlisted and have been incorporated for less than 10 years. It is also necessary that the shares or rights are held for at least 3 years. Specifically, for eligible start-ups:
  - *For shares*: An income tax exemption will be allowed for the issue of shares to employees which have a small discount (the rules propose discounts of up to 15%).
  - *For options*: The discount on the issue of options will not be taxed upfront but rather will be subject to the capital gains tax regime at the time that the share acquired from the exercise of the option is disposed of.
- *Changes for deferred-taxing arrangements*: The government has also proposed that the maximum time for tax deferral for the receipt of such options or shares be extended from seven to 15 years.

It is worth noting however that where an employee is subject to the discount up-front under an ESS, the concession that exempts from income tax the first $1,000 of share scheme interests given to an employee who earns less than $180,000 a year, will still be retained. The government had introduced this measure in 2009 to prevent highly paid executives from benefiting from a reduction to their tax liability if they were to be remunerated with shares or options. ■



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