


CR 2011/105 - Fringe benefits tax: Pinpoint Pty Ltd employee benefit program: laptop computers

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Class Ruling

Fringe benefits tax: Pinpoint Pty Ltd employee benefit program: laptop computers

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① This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision identified below applies to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision

2. The relevant provision dealt with in this Ruling is:

- Section 58X of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA).

Note: all legislative references in this Ruling are to the FBTAA unless otherwise stated.

Class of Entities

3. The Class of Entities to which this Ruling applies are employers who participate in the employee benefit program administered by Pinpoint Pty Ltd (Pinpoint).

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.
5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 9 to 74 of this Ruling.
6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:
 - this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
 - this Ruling may be withdrawn or modified.
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Date of effect

8. This Ruling applies from 1 April 2011. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

9. The following description of the scheme is based on information provided by Pinpoint. The following documents, or relevant parts of them form part of and are to be read with the description:
 - Class Ruling application dated 18 March 2011; and
 - updated Class Ruling application received on 6 June 2011.

Common conditions of the Scheme

10. Pinpoint is an Australian resident private company.

11. Pinpoint administers an employee benefits program (the Program). The Program facilitates and administers salary sacrifice arrangements (SSA) between employers in the Class of Entities and their employees for the provision of expense payment benefits to employees in order to facilitate the employee's purchase of a laptop computer.

12. In this scheme 'desktop computer' means a computer that is not easily portable, can be said to be fixed in its location of use, requires an external power supply, and is designed as a complete unit.

13. In this scheme 'laptop' means a computer that is a device that is small and light (compared to a desktop computer), easily portable, designed for use both inside and outside an office environment, can operate without an external power supply, and is designed as a complete unit.

14. In this scheme Functions/Characteristics of a Smartphone compared to a laptop are represented by the following table.

Functions/characteristics	Smartphone	Laptop
Make and receive mobile phone calls	Yes	No
Send and receive emails	Yes	Yes
Create documents	No	Yes
View documents	Yes – but limited view	Yes
Detailed editing of documents	No	Yes
Pocket-sized	Yes	No
Calendar & diary function	Yes	Yes
Large keyboard	No	Yes
Internet access	Yes	Yes
Create/Edit Excel Worksheets	No	Yes
Create/Edit PowerPoint Presentations	No	Yes

15. An employer engages Pinpoint to implement and administer the Program.

16. Pinpoint outlines the process involved and explains the general application of the fringe benefits tax (FBT) rules. Pinpoint explains the need for the employer to identify those employees who require a laptop primarily for use in their employment and asks the employer to consider the following:

- (a) the reasons the laptop is to be provided to the employee;
- (b) the nature and scope of the employee's role and their employment duties; and
- (c) the employer's intention in relation to providing the laptop.

17. Under the Program, participating employees individually enter into a SSA with their respective employer. A SSA administered under the Program qualifies as an Effective Salary Sacrifice Arrangement, as described in Taxation Ruling TR 2001/10 Income tax: fringe benefits tax and superannuation guarantee: salary sacrifice arrangements.

18. Under the Program participating employees are required to select from a list of laptops which have been specifically identified by the respective employer to fit the business needs of the employer's business operations.

19. Employees are notified of those specified laptop brands and models available under the Program. The employee then selects their preferred laptop from the list and can choose to either:

- (a) directly purchase the laptop outright from the vendor then provide their proof of purchase and payment (a receipt etc.) before they can be reimbursed by the employer for the purchase price of the laptop, and authorise the employer to recover amounts under the SSA; or
- (b) directly purchase the laptop from the vendor and have the employer make payment direct to the vendor, and authorise the employer to recover amounts under the SSA.

20. Participating employees are required to provide a declaration to their employer stating that the laptop is to be used primarily in the employee's employment.

21. Under the Program, laptops are limited to one per employee, per FBT year, or more frequently where a laptop is required to be replaced due to damages etc.

22. Under the Program, a laptop purchased by an employee under a SSA will remain the property of the employee on termination of their employment.

Scenario One

23. Scenario 1 follows the Common Conditions described in paragraphs 10 to 22. In Scenario 1, Employee 1 is employed by Employer 1 who is an employer in the Class of Entities. The employee and employer participate in the Program.

24. Employee 1 is provided with a laptop for use at the Employer's office premises (the Onsite Laptop). The Onsite Laptop remains the property of Employer 1 at all times.

25. Employer 1's policy is that the Onsite Laptop is to remain at the Employer's office premises at all times and must not be taken offsite.

26. Employee 1 is required to perform their employment duties onsite at the Employer's office premises and also offsite, including, but not limited to at the client premises, during work related travel periods and at Employee 1's home.

27. Employee 1's employment duties are to be performed during normal business hours and outside of normal business hours, as required.

28. Employee 1's employment duties may cover a wide range of responsibilities according to their role, level of seniority and industry sector. By way of example Employee 1's duties may include a combination of the following activities (but are not limited to):

- (a) recording prospective and actual client communications electronically (meeting notes, phone conversations, emails, proposals) in a timely manner;
- (b) working on proposals and presentations for the employer inside and outside of work hours as necessary;
- (c) communicating remotely with other colleagues electronically via email and intranet platforms;
- (d) updating business files and records with call history information and client communication in a timely manner;
- (e) preparation of documentation in relation to business development strategies and workplace controls; and
- (f) timely completion of activity reports for business analysis and performance monitoring.

29. Employer 1 acknowledges that Employee 1 requires a second laptop to fulfil their employment duties. However Employer 1 does not wish to fund the purchase of a second laptop for financial reasons. Therefore Employer 1 would like to facilitate Employee 1 acquiring a laptop under a SSA, (the Offsite Laptop).

30. Employer 1 and Employee 1 enter into a SSA under the Program, and Employee 1 acquires the Offsite Laptop.

31. Employee 1 is expected to transport the Offsite Laptop with them as required to perform their employment duties. The Offsite Laptop will be transported with Employee 1 for use at the employer's office premises or at various offsite locations as required.

32. When not in use as described above, the Offsite Laptop is to either remain at Employee 1's home or at the employer's office premises.

33. The employer acknowledges that there may be incidental personal use of the Offsite Laptop both at the onsite and offsite locations including at Employee 1's home.

Scenario Two

34. Scenario 2 follows the Common Conditions described in paragraphs 10 to 22. In Scenario 2, Employee 2 is employed by Employer 2 who is an employer in the Class of Entities. The employee and employer participate in the Program.

35. Employee 2 is provided with a desktop computer (the Desktop Computer) for use at the Employer's office premises. The Desktop Computer remains the property of Employer 2 at all times.

36. Employee 2 is required to perform their employment duties onsite at the Employer's office premises and also offsite, including, but not limited to at client premises, during work related travel periods and at Employee 2's home.

37. Employee 2's employment duties are to be performed during normal business hours and outside of normal business hours, as required.

38. Employee 2's employment duties may cover a wide range of responsibilities according to their role, level of seniority and industry sector. By way of example Employee 2's duties may include a combination of the following activities (but are not limited to):

- (a) recording prospective and actual client communications electronically (meeting notes, phone conversations, emails, proposals) in a timely manner;
- (b) working on proposals and presentations for the employer inside and outside of work hours as necessary;
- (c) communicating remotely with other colleagues electronically via email and intranet platforms;
- (d) updating business files and records with call history information and client communication in a timely manner;
- (e) preparation of documentation in relation to business development strategies and workplace controls; and

- (f) timely completion of activity reports for business analysis and performance monitoring.

39. Employer 2 acknowledges that Employee 2 requires, in addition to the Desktop Computer, a laptop to fulfil their employment duties, However Employer 2 does not wish to fund the purchase of a laptop for financial reasons. Therefore, Employer 2 would like to facilitate Employee 2 acquiring a laptop under a SSA, (the Laptop).

40. Employer 2 and Employee 2 enter into a SSA under the Program, and Employee 2 acquires the Laptop.

41. Employee 2 is expected to transport the Laptop with them as required to perform their employment duties. The Laptop will be transported with Employee 2 for use at the employer's office premises or at various offsite locations as required.

42. When not in use as described above, the Laptop is to either remain at Employee 2's home or at the employer's office premises.

43. The employer acknowledges that there may be incidental personal use of the Laptop both at the onsite and offsite locations including at Employee 2's home.

Scenario Three

44. Scenario 3 follows the Common Conditions described in paragraphs 10 to 22. In Scenario 3, Employee 3 is employed by Employer 3 who is an employer in the Class of Entities. The employee and employer participate in the Program.

45. Employer 3 is a large corporation that employs a large number of employees in varying roles, levels of seniority and responsibilities.

46. Under Scenario 3, the Program is not offered to all employees of Employer 3, only to those employees whose circumstances, role and seniority as determined by Employer 3, qualify them to participate in the Program.

47. Employee 3 is required to perform their employment duties onsite at the Employer's office premises and also offsite, including, but not limited to at client premises, during travel periods and at Employee 3's home.

48. Employee 3's employment duties are to be performed during normal business hours and outside of normal business hours, as required.

49. Employee 3's employment duties may cover a wide range of responsibilities according to their role, level of seniority and industry sector. By way of example Employee 3's duties may include a combination of the following activities (but are not limited to):

- (a) recording prospective and actual client communications electronically (meeting notes, phone conversations, emails, proposals) and in a timely manner;

- (b) working on proposals and presentations for the employer inside and outside of work hours as necessary;
- (c) communicating remotely with other colleagues electronically via email and intranet platforms;
- (d) updating business files and records with call history information and client communication in a timely manner;
- (e) preparation of documentation in relation to business development strategies and workplace controls; and
- (f) timely completion of activity reports for business analysis and performance monitoring.

50. Employer 3 acknowledges that Employee 3 requires a laptop to fulfil their employment duties. However Employer 3 does not wish to fund the purchase of the laptops for financial reasons. Therefore Employer 3 would like to facilitate Employee 3 acquiring a laptop under a SSA (the Laptop).

51. Employer 3 and Employee 3 enter into a SSA under the Program, and Employee 3 acquires the Laptop.

52. Employee 3 is expected to transport the Laptop with them as required to perform their employment duties. The Laptop will be transported with Employee 3 for use at the employer's office premises or at various offsite locations as required.

53. When not in use as described above, the Laptop is to either remain at Employee 3's home or at the employer's office premises.

54. The employer acknowledges that there may be incidental personal use of the Laptop both at the onsite and offsite locations including at Employee 3's home.

Scenario Four

55. Scenario 4 follows the Common Conditions described in paragraphs 10 to 22. In Scenario 4, Employee 4 is employed by Employer 4 who is an employer in the Class of Entities. The employee and employer participate in the Program.

56. Employee 4 is provided with a desktop computer (the Desktop Computer) for use at the Employer's office premises. The Desktop Computer remains the property of Employer 4 at all times.

57. Employee 4 finds it efficient to check work emails after work hours from home in order to prepare their workload for the following day and manage their workflow effectively.

58. Employee 4 is not otherwise required to work offsite from the Employer's office premises as part of their role, although they may wish to do so at times as a sign of diligence or voluntary initiative.

59. Employer 4 acknowledges and allows Employee 4 to perform voluntary work activities outside of normal business hours and at Employee 4's home. However, Employer 4 does not wish to fund the purchase of a laptop for financial reasons. Employer 4 would like to facilitate Employee 4 acquiring a Laptop under a SSA (the Laptop) in order that Employee 4 can undertake their voluntary work activities from home.

60. Employer 4 and Employee 4 enter into a SSA under the Program, and Employee 4 acquires the Laptop.

61. Employee 4 has the choice to transport the Laptop with them to the Employer's office premises or leave the Laptop at Employee 4's home when not in use.

62. The employer acknowledges that there may be incidental personal use of the Laptop both at the onsite and offsite locations including at Employee 4's home.

Scenario Five

63. Scenario 5 follows the Common Conditions described in paragraphs 10 to 22. In Scenario 5, Employee 5 is employed by Employer 5 who is an employer in the Class of Entities. The employee and employer participate in the Program.

64. Employee 5 is provided with a desktop computer (the Desktop Computer) for use at the Employer's office premises. The Desktop Computer remains the property of Employer 5 at all times.

65. Employee 5 is required to perform their employment duties onsite at the Employer's office premises and also offsite, including, but not limited to at the client premises, during work related travel periods and at Employee 5's home.

66. To enable Employee 5 to perform their employment duties, Employer 5 provides Employee 5 with a Smartphone, to use while Employee 5 is working offsite from Employer 5's office premises.

67. Employee 5's employment duties are to be performed during normal business hours and outside of normal business hours, as required.

68. Employee 5's employment duties may cover a wide range of responsibilities according to their role, level of seniority and industry sector. By way of example Employee 5's duties may include a combination of the following activities (but are not limited to):

- (a) recording prospective and actual client communications electronically (meeting notes, phone conversations, emails, proposals) in a timely manner;
- (b) working on proposals and presentations for the employer inside and outside of work hours as necessary;

- (c) communicating remotely with other colleagues electronically via email and intranet platforms;
- (d) updating business files and records with call history information and client communication in a timely manner;
- (e) preparation of documentation in relation to business development strategies and workplace controls; and
- (f) timely completion of activity reports for business analysis and performance monitoring.

69. Employer 5 acknowledges that Employee 5 requires, in addition to the Desktop Computer and the Smartphone, a laptop to fulfil their employment duties. The laptop is required for tasks including downloading large amounts of data, drafting and reviewing documents, and preparing presentations and excel spreadsheets. Employee 5 requires a laptop to enable them to perform their employment duties when working offsite from Employer 5's office premises.

70. Employer 5 does not wish to fund the purchase of a laptop in addition to the Smartphone it has already provided due to financial reasons. Therefore Employer 5 would like to facilitate Employee 5 acquiring a laptop under a SSA (the Laptop).

71. Employer 5 and Employee 5 enter into a SSA under the Program, and Employee 5 acquires the Laptop.

72. Employee 5 is expected to transport the Laptop with them as required to perform their employment duties. The Laptop will be transported with Employee 5 for use at the employer's office premises or at various offsite locations as required.

73. When not in use as described above, the Laptop is to either remain at Employee 5's home or at the employer's office premises.

74. The employer acknowledges that there may be incidental personal use of the Laptop both at the onsite and offsite locations including at Employee 5's home.

Ruling

75. In Scenario 1, the provision of the expense payment benefit provided by Employer 1 to Employee 1 in respect of the employee's employment is an exempt benefit under section 58X.

76. In Scenario 2, the provision of the expense payment benefit provided by Employer 2 to Employee 2 in respect of the employee's employment is an exempt benefit under section 58X.

77. In Scenario 3, the provision of the expense payment benefit provided by Employer 3 to Employee 3 in respect of the employee's employment is an exempt benefit under section 58X.

78. In Scenario 4, the provision of the expense payment benefit provided by Employer 4 to Employee 4 in respect of the employee's employment is not an exempt benefit under section 58X.

79. In Scenario 5, the provision of the expense payment benefit provided by Employer 5 to Employee 5 in respect of the employee's employment is an exempt benefit under section 58X.

Commissioner of Taxation

7 December 2011

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

80. Section 58X provides:

58X. Exempt benefits—provision of certain work related items

58X(1). Any of the following benefits provided by an employer to an employee of the employer in respect of the employee's employment is an exempt benefit:

- (a) an expense payment benefit where the recipients expenditure is in respect of an eligible work related item;
- (b) a property benefit where the recipients property is an eligible work related item;
- (c) a residual benefit where the recipients benefit consists of the making available of an eligible work related item.

58X(2). Subject to subsection (3), each of the following is an **eligible work related item** if it is primarily for use in the employee's employment:

- (a) a portable electronic device;
- (b) an item of computer software;
- (c) an item of protective clothing;
- (d) a briefcase;
- (e) a tool of trade.

58X(3). An item (the **later item**) listed in subsection (2) is not an **eligible work related item** if, earlier in the FBT year, an expense payment benefit or a property benefit of the employee has arisen in relation to another item that has substantially identical functions to the later item.

58X(4). However, the rule in subsection (3) does not apply if the later item is a replacement for the other item.

Example: The later item would be a replacement for the other item if the other item were lost or destroyed, or needed replacing because of developments in technology.

81. In general terms, the employer is seeking exemption for an expense payment benefit where the recipients expenditure (the employee's expenditure) is in respect of a laptop computer. In order to qualify for exemption under section 58X the employer would need to satisfy the following requirements:

- the benefit is provided in respect of the employee's employment;
- the benefit is an expense payment benefit;

- the expense payment benefit is one where the recipients expenditure is in respect of an 'eligible work related item' under paragraph 58X(1)(a).
82. An item is an 'eligible work related item' where:
- the recipients expenditure is on a 'portable electronic device';
 - there is no other expense payment benefit or property benefit provided earlier in the FBT year in relation to an additional portable electronic device with substantially identical functions as the laptop;
 - the laptop is primarily for use in the employee's employment.

The benefit is provided in respect of the employee's employment

83. Under the Program the employee and the employer enter into a SSA. As described in the Common Conditions at paragraphs 10 to 22 the employer participates in the Program in order that the employee can acquire a laptop to be used primarily in the employee's employment.

84. The employee provides a declaration to the employer stating that the laptop is to be used primarily in the employee's employment.

85. The benefit provided under the SSA is provided in respect of the employee's employment.

The benefit is an expense payment benefit

86. Section 20 of the FBTAA provides:

Where a person (in this section referred to as the 'provider'):

- (a) makes a payment in discharge, in whole or in part, of an obligation of another person (in this section referred to as the 'recipient') to pay an amount to a third person in respect of expenditure incurred by the recipient; or
- (b) reimburses another person (in this section also referred to as the 'recipient'), in whole or in part, in respect of an amount of expenditure incurred by the recipient;

the making of the payment referred to in paragraph (a), or the reimbursement referred to in paragraph (b), shall be taken to constitute the provision of a benefit by the provider to the recipient.

87. Under the Program the employee selects their preferred laptop and purchases the laptop from the vendor.

88. The employer reimburses the employee expenditure. Alternatively, the employer makes direct payment to the vendor for the employee expenditure.

89. The payment made by the employer, either by reimbursement to the employee or direct payment to the vendor, is taken to constitute the provision of an expense payment benefit provided by the employer to the employee under section 20.

The laptop is a portable electronic device

90. The recipients expenditure incurred by the employee is in respect of the purchase of a laptop.

91. The term 'portable electronic device' is not defined and therefore takes on its ordinary meaning.

92. The *Macquarie concise dictionary* 5th edition 2009 defines 'portable' and 'electronic' as:

portable: 2. easily carried or conveyed by hand

electronic: 2. of, relating to, or concerned with electronics or any devices or systems based on electronics

93. That is, a portable electronic device could be a device that is easily carried by hand and is electronic.

94. A laptop computer is small, lightweight, portable, can operate without external power and is designed to operate as a complete unit.

95. The laptop is an item which is a portable electronic device under paragraph 58X(2)(a).

96. The former subsection 58X(2) referred to 'a notebook computer, a laptop computer or similar portable computer'. The current section 58X covers these former descriptions in the new term 'portable electronic device'. Refer Explanatory Memorandum to the Tax Laws Amendment (Budget Measures) Bill 2008. The treatment of a laptop computer as a portable electronic device is consistent with the intended policy of section 58X.

One laptop per FBT year

97. In Scenario 1 the employee is provided with use of the Onsite Laptop. In Scenario 2, 4 and 5 the employee is provided with the use of the Desktop Computer.

98. The Desktop Computer and the Onsite Laptop are the property of the employer, and any use of these items by an employee results in a residual benefit only. There is no expense payment benefit or property benefit that arises earlier in the FBT year under subsection 58X(3) because of the provision of the Desktop Computer or Onsite Laptop.

99. In Scenario 5 the employee is provided with the use of the Smartphone. Where the Smartphone is the property of the employer, then the use of the Smartphone is a residual benefit only. There is no expense payment benefit or property benefit that arises earlier in the FBT year under subsection 58X(3) because of the provision of the Smartphone.

100. Alternatively, the Smartphone is not the property of the employer and the 'benefit' is provided by way of an expense payment benefit or property benefit. In this case subsection 58X(3) can potentially apply if the Smartphone has 'substantially identical functions' to the Laptop and the Smartphone is provided earlier in the FBT year.

101. The phrase 'substantially identical functions' is not defined and therefore takes on its ordinary meaning.

102. The *Macquarie concise dictionary* 5th edition 2009 defines 'identical', 'substantial' and 'function' as:

identical: 1. corresponding exactly in nature, appearance, manner etc

substantial: 7. relating to the substance, matter, or material of a thing; 8. of or relating to the essence of a thing; essential, material or important

function: 1. the kind of action or activity proper to a person, thing or institution

103. As described in paragraph 14, there are material differences between the functions of a Smartphone and the functions of a laptop. The Smartphone and the Laptop do not have 'substantially identical functions'. Section 58X(3) does not apply because of the provision of the Smartphone.

104. The Program as applied in Scenario's 1 to 5 inclusive is limited to one laptop, by expense payment, for each employee for each FBT year unless the laptop is being replaced due to damage or loss. There is no expense payment benefit or property benefit which arises earlier in the FBT year in relation to another item under subsection 58X(3). Subsection 58X(3) does not apply.

Whether the laptop is primarily for use in the employee's employment

Scenario One

105. In Scenario 1, Employee 1 incurs recipients expenditure for the purchase of the Offsite Laptop.

106. Scenario 1 sets out the intended use of the Offsite laptop at the time Employer 1 provides the expense payment benefit to Employee 1.

107. Employee 1 transports the Offsite Laptop with them for use at Employer 1's office premises or for use at offsite locations. Offsite locations include a client's premises, during work related travel periods or at the employee's home.

108. The Offsite Laptop is used in performing the employee's duties both at the onsite and offsite locations and both inside and outside of working hours. Activities may include using the Offsite Laptop in performing duties at a client's premises during working hours or working on proposals and presentations at home outside work hours.

109. Employer 1 acknowledges that there may be incidental personal use of the Offsite Laptop at the onsite and offsite locations including at Employee 1's home.

110. In Scenario 1 the Offsite Laptop is used in a range of work activities including performing work duties during working hours and what could be described as conducting work-related activities on a voluntary basis, such as using the Offsite Laptop for work-related research or preparation activities outside of work hours and at home.

111. When considering an expense payment benefit under paragraph 58X(1)(a), any conclusion on whether a laptop is an eligible work related item can only be based upon the intended use of the laptop at the time the benefit is provided to the employee. Regard must be had to the detailed description of the intended use of the laptop in each Scenario which forms part of the Program. The motive expressed in the declaration made by the employee may not be decisive of the matter.

for use in the employee's employment

112. The term 'employment' is defined in subsection 136(1) which provides:

employment, in relation to a person, means the holding of any office or appointment, the performance of any functions or duties, the engaging in of any work, or the doing of any acts or things that results, will result or has resulted in the person being treated as an employee.

113. This definition of employment looks to all activities of a person (past, present and future) that result in the person being treated as an employee. The definition is capable of a broad application when considering what activities would fall within aspects of the employment relationship.

114. In *Smith v. FC of T* (1987) 164 CLR 513; 87 ATC 4883; (1987) 19 ATR 274 the High Court considered whether a gift to an employee was subject to income tax under the former paragraph 26(e) of the *Income Tax Assessment Act 1936*. Brennan J said at CLR 523; ATC 4888; ATR 280:

Employment is more than the activity for which an employee is remunerated: employment comprehends all aspects of the relationship of employer and employee in the particular case save those aspects which are merely personal. If a distinction is to be drawn between the income-producing activity which is an aspect of employment and the entirety which constitutes employment, sec. 26(e) looks to the relationship between the entirety and the payment of the allowance.

115. It is considered that what is 'the employment of the employee' or 'the employee's employment', for example when considering the definition of 'fringe benefit', has a consistent meaning throughout the FBTA. What is 'the employment of the employee' should be interpreted to include activities for which an employee is remunerated and also voluntary activities such as work related research and preparation activities conducted at home.

116. Therefore, a use of a laptop, 'for use in the employee's employment' under section 58X, can include both activities for which the employee is remunerated and voluntary work activities.

117. The intended use of the Offsite Laptop as described in Scenario 1 includes activities such as when visiting client's premises or conducting work related preparation at home. These activities would fall within being 'for use in the employee's employment'.

118. The intended use of the Offsite Laptop as described in Scenario 1 for incidental personal use would not fall within being 'for use in the employee's employment'.

119. Note: section 58X has its origin (Taxation Laws Amendment (FBT Cost of Compliance) Bill 1995) in providing an exemption to reduce compliance costs for employers who were using the 'otherwise deductible rule' in the FBTA. The inclusion of voluntary work activities in section 58X is comparable to inclusion of expenses on voluntary work activities in the 'otherwise deductible rule', refer also Taxation Ruling IT 2198 Income Tax: Allowable deductions: expenses voluntarily incurred by employee taxpayers. The inclusion of voluntary work activities as being an aspect of the employee's employment is consistent with the intended policy of section 58X.

primarily

120. The term 'primarily' is not defined and therefore takes on its ordinary meaning. The *Macquarie concise dictionary* 5th edition 2009 defines 'primarily' as:

1. in the first place; chiefly; principally
2. in the first instance; at first; originally

121. The *Oxford Dictionary of English* 3rd Edition 2010 defines 'primarily' as:

for the most part; mainly: around 80 per cent of personal computers are used primarily for word processing

122. Whether a laptop is intended primarily for use in the employee's employment will depend on whether the laptop is used for the most part, mainly or principally for use which is in the employee's employment. That is where the dominant or prevailing use of the laptop over any other competing use would be for use in the employee's employment.

123. Under Scenario 1 the dominant or prevailing use of the Offsite Laptop is for activities which can be described as being for use in the employee's employment. These activities are a substantial use of the Offsite Laptop and prevail over any other use including incidental personal use.

124. Under Scenario 1 the Offsite Laptop is primarily for use in the employee's employment.

125. The recipients expenditure in purchasing the Offsite Laptop is in respect of a portable electronic device under paragraph 58X(2)(a). As described at paragraph 104, subsection 58X(3) does not apply.

126. The Offsite Laptop is an eligible work related item under subsection 58X(2).

127. The benefit is an expense payment benefit where the recipients expenditure is in respect of an eligible work related item under paragraph 58X(1)(a).

128. In Scenario 1, the provision of the expense payment benefit provided by Employer 1 to Employee 1 in respect of the employee's employment is an exempt benefit under section 58X.

Scenario Two

129. In Scenario 2, Employee 2 incurs recipients expenditure for the purchase of the Laptop.

130. Scenario 2 sets out the intended use of the Laptop at the time Employer 2 provides the expense payment benefit to Employee 2.

131. In Scenario 2 the intended use of the Laptop is for the same purposes as that described for the Offsite Laptop in Scenario 1. That is the dominant or prevailing use of the Laptop in Scenario 2 is for activities which can be described as being for use in the employee's employment. These activities are a substantial use of the Laptop and prevail over any other use including incidental personal use.

132. Under Scenario 2 the Laptop is therefore primarily for use in the employee's employment.

133. The recipients expenditure in purchasing the Laptop is in respect of a portable electronic device under paragraph 58X(2)(a). As described at paragraph 104, subsection 58X(3) does not apply.

134. The Laptop is an eligible work related item under subsection 58X(2).

135. The benefit is an expense payment benefit where the recipients expenditure is in respect of an eligible work related item under paragraph 58X(1)(a).

136. In Scenario 2, the provision of the expense payment benefit provided by Employer 2 to Employee 2 in respect of the employee's employment is an exempt benefit under section 58X.

Scenario Three

137. In Scenario 3, Employee 3 incurs recipients expenditure for the purchase of the Laptop.

138. Scenario 3 sets out the intended use of the Laptop at the time Employer 3 provides the expense payment benefit to Employee 3.

139. In Scenario 3 the intended use of the Laptop is for the same purposes as that described for the Offsite Laptop in Scenario 1. That is the dominant or prevailing use of the Laptop in Scenario 3 is for activities which can be described as being for use in the employee's employment. These activities are a substantial use of the Laptop and prevail over any other use including incidental personal use.

140. Under Scenario 3 the Laptop is therefore primarily for use in the employee's employment.

141. The recipients expenditure in purchasing the Laptop is in respect of a portable electronic device under paragraph 58X(2)(a). As described at paragraph 104, subsection 58X(3) does not apply.

142. The Laptop is an eligible work related item under subsection 58X(2).

143. The benefit is an expense payment benefit where the recipients expenditure is in respect of an eligible work related item under paragraph 58X(1)(a).

144. In Scenario 3, the provision of the expense payment benefit provided by Employer 3 to Employee 3 in respect of the employee's employment is an exempt benefit under section 58X.

Scenario Four

145. In Scenario 4, Employee 4 incurs recipients expenditure for the purchase of the Laptop.

146. Scenario 4 sets out the intended use of the Laptop at the time Employer 4 provides the expense payment benefit to Employee 4.

147. In Scenario 4 the intended use of the Laptop is for Employee 4 to check work emails after work hours from home in order to prepare their workload for the following day and manage their workflow effectively.

148. Employee 4 is not otherwise required to work offsite by using the Laptop.

149. Employer 4 acknowledges that there may be incidental personal use of the Laptop.

150. The intended use of the Laptop as described in Scenario 4 for activities such as checking work emails would fall within being 'for use in the employee's employment'.

151. The intended use of the Laptop as described in Scenario 4 for activities which fall within personal use would not fall within being for use in the employee's employment.

152. Under Scenario 4 there are two competing uses of the Laptop neither of which appear to be a dominant or prevailing use. It is not possible to conclude that the employment related use of the Laptop dominates or prevails over any incidental personal use.

153. Under Scenario 4 it cannot be concluded that the Laptop is primarily for use in the employee's employment.

154. The Laptop is not an eligible work related item under paragraph 58X(1)(a).

155. In Scenario 4, the provision of the expense payment benefit provided by Employer 4 to Employee 4 in respect of the employee's employment is not an exempt benefit under section 58X.

Scenario Five

156. In Scenario 5, Employee 5 incurs recipients expenditure for the purchase of the Laptop.

157. Scenario 5 sets out the intended use of the Laptop at the time Employer 5 provides the expense payment benefit to Employee 5.

158. In Scenario 5 the intended use of the Laptop is for the same purposes as that described for the Offsite Laptop in Scenario 1. That is the dominant or prevailing use of the Laptop in Scenario 5 is for activities which can be described as being for use in the employee's employment. These activities are a substantial use of the Laptop and prevail over any other use including incidental personal use.

159. Under Scenario 5 the Laptop is therefore primarily for use in the employee's employment.

160. The recipients expenditure in purchasing the Laptop is in respect of a portable electronic device under paragraph 58X(2)(a). As described at paragraph 104, subsection 58X(3) does not apply.

161. The Laptop is an eligible work related item under subsection 58X(2).

162. The benefit is an expense payment benefit where the recipients expenditure is in respect of an eligible work related item under paragraph 58X(1)(a).

163. In Scenario 5, the provision of the expense payment benefit provided by Employer 5 to Employee 5 in respect of the employee's employment is an exempt benefit under section 58X.

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

IT 2198; TR 2001/10; TR 2006/10

Subject references:

- exempt benefits
- fringe benefits
- Fringe Benefits Tax

Legislative references:

- FBTA 1986 20
- FBTA 1986 58X
- FBTA 1986 58X(1)(a)
- FBTA 1986 58X(2)
- FBTA 1986 58X(2)(a)
- FBTA 1986 58X(3)
- FBTA 1986 136(1)

- Copyright Act 1968

Case references:

- Smith v FC of T(1987) 164 CLR 513; 87 ATC 4883; (1987) 19 ATR 274

Other references:

- Explanatory Memorandum for the Tax Laws Amendment (Budget Measures) Bill 2008
- The Macquarie Concise Dictionary 5th Edition 2009
- Oxford Dictionary of English 3rd Edition 2010
- Taxation Laws Amendment (FBT Cost of Compliance) Bill 1995

ATO references

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