TR 2007/12 - Fringe benefits tax: minor benefits

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Taxation Ruling

Fringe benefits tax: minor benefits

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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, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are 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 views on the application of the minor benefits exemption in section 58P of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA).[1]

2. In this Ruling all legislative references are references to the FBTAA unless otherwise indicated.

3. This Ruling clarifies that a minor benefit that satisfies the 'less than $300'[2] threshold criterion contained in paragraph 58P(1)(e) is not necessarily an exempt benefit. Other criteria must be considered before it can be concluded that the minor benefit is an exempt benefit.

4. This Ruling also discusses the interpretation, interaction and application of these criteria.

5. For the purposes of this Ruling a 'Salary Sacrifice Arrangement' (SSA) is an arrangement as explained in Taxation Ruling TR 2001/10 Income tax: fringe benefits tax and superannuation guarantee; salary sacrifice arrangements.

[1] Section 58P is reproduced at Appendix 3, paragraph 278 of this Ruling.
[2] The 'less than $300' threshold applies in respect of the FBT year starting on 1 April 2007 and all later FBT years. Prior to this, the threshold was 'less than $100'.

Class of entities

6. This Ruling applies to employers where their employees (or associates of their employees) are provided with benefits in respect of their employment.

Previous Rulings

7. Miscellaneous Taxation Ruling MT 2042, Taxation Determination TD 93/76 and Taxation Determination TD 93/197 were withdrawn on and from 27 June 2007. To the extent that the Commissioner's views in those rulings continue to apply, they have been incorporated in this Ruling.

Ruling

8. A minor benefit is an exempt benefit under section 58P[3] where:

- the notional taxable value of the minor benefit is less than $300;[4] and
- it would be concluded that it would be unreasonable, having regard to the specified criteria in paragraph 58P(1)(f), to treat the minor benefit as a fringe benefit.

9. In considering the application of the exemption under section 58P it is necessary to look to the nature of the benefit provided and give due weight to each of the criteria. The weight given to each criterion will also vary depending on the circumstances surrounding the provision of each benefit.

10. Section 58P does not apply to exempt all benefits that have a notional taxable value of less than $300.

11. First, there are certain benefits that are specifically excluded from section 58P. These are:

- airline transport benefits;
- expense payment benefits where, if the benefit was an expense payment fringe benefit, it would be an in-house fringe benefit;
- property benefits where, if the benefit was a property fringe benefit, it would be an in-house fringe benefit; and

[3] Section 58P is reproduced at Appendix 3, paragraph 278 of this Ruling.
[4] The 'less than $300' threshold applies in respect of the FBT year starting on 1 April 2007 and all later FBT years. Prior to this, the threshold was 'less than $100'.

- residual benefits where, if the benefit was a residual fringe benefit, it would be an in-house fringe benefit.

12. Secondly, where:

- tax-exempt body entertainment is provided, and
- the provider incurs non-deductible exempt entertainment expenditure that is wholly or partly in respect of the provision of entertainment to an employee or an associate of the employee,

such benefits are excluded from consideration for exemption under section 58P, except in two limited circumstances.

13. It should be noted that the provision of meal entertainment is exempt from fringe benefits tax (FBT) when provided by public benevolent institutions, health promotion charities, public hospitals, non-profit hospitals and public ambulance services. Therefore the minor benefits exemption does not need to be considered when these organisations provide meal entertainment.

14. Where an employer elects to use the 50-50 split method under Division 9A of Part III (Division 9A) to value meal entertainment fringe benefits, the minor benefits exemption cannot apply to reduce the taxable value of the fringe benefit. Similarly, if an employer elects to use the 50-50 split method for valuing entertainment facility leasing expenses, the minor benefits exemption cannot apply.

15. Where an employer elects to use the 12 week register method under Division 9A to value meal entertainment fringe benefits, any minor benefits will reduce the total value of the meal entertainment fringe benefits that are used for the calculation under section 37CB.

16. The minor benefits exemption in section 58P does not apply to benefits that are provided to an employee under a SSA.

17. Paragraph 58P(1)(e) places a threshold of 'less than $300'[5] on the notional taxable value of a minor benefit. This threshold test applies to *each* benefit provided to an individual employee, and/or *each* benefit provided to an associate of an employee, to which section 58P may apply. The threshold test is not an upper limit on the total value of minor benefits that any individual employee may receive.

18. The value of a minor benefit must relate to the 'current year of tax'. Where a benefit is provided over a period which covers two or more FBT years, only the benefit provided in the current year of tax is considered in determining the notional taxable value.

19. The words 'infrequency and irregularity' and 'identical or similar' are not defined in the FBTAA and therefore take on their ordinary meaning.

[5] The 'less than $300' threshold applies in respect of the FBT year starting on 1 April 2007 and all later FBT years. Prior to this, the threshold was 'less than $100'.

20. In having regard to the criteria contained in paragraph 58P(1)(f), the 'infrequency and irregularity' with which associated benefits have been or can reasonably be expected to be provided (subparagraph 58P(1)(f)(i)) is only **one** of the criteria that must be considered.

21. Even where identical or similar associated benefits have been provided infrequently and irregularly, it may nonetheless be concluded that it is reasonable to treat the minor benefit as a fringe benefit when consideration is given to the other specified criteria in paragraph 58P(1)(f).

22. In applying the 'infrequency and irregularity' criterion, it is not appropriate to stipulate the maximum number of times associated benefits that are identical or similar to a minor benefit, or benefits in connection with the minor benefit, can be provided before the criterion is not met. However, the more often and regularly those benefits are provided, the less likely it is that this criterion would be met.

23. The minor benefits exemption in section 58P can apply to car benefits provided the requisite conditions are satisfied. For the purposes of determining whether the car benefit satisfies the minor benefits threshold test, the statutory formula method and the operating cost method under Division 2 of Part III (Division 2) do not apply. For the purposes of the threshold test, the value of the benefit must be calculated by assuming the car benefit is a residual benefit.

Examples

Example 1: gift provided at Christmas time

24. An employer provides each of its employees with a modest gift at Christmas time. The range of gifts provided by the employer includes a bottle of whisky, perfume or a store voucher.

25. It is the employer's policy to provide gifts to employees on only a few special occasions throughout the year. The gifts provided to each employee are always valued at less than $300.

26. The value of the gift to an employee is below the minor benefits threshold and therefore it is necessary to consider the criteria listed in paragraph 58P(1)(f) to determine if it would be unreasonable to treat the minor benefit as a fringe benefit.

27. The Christmas gifts are provided infrequently but on a regular basis (being every Christmas). However the sum of the value of all gifts, where they are identical or similar benefits, in this year and all other years is not considered to be substantial, and there are no other associated benefits provided in connection with the gift.

28. There would be no difficulties in determining the value of the benefit and the benefit was not provided to assist the employee deal with an unexpected event. On the facts, it is not wholly or principally a reward for services.

29. On balance, having regard to the various criteria in paragraph 58P(1)(f), it would be concluded that it would be unreasonable to treat the benefit as a fringe benefit.

30. Accordingly, the gift provided to the employee is an exempt benefit.

Example 2: Christmas party

31. An employer, which is not a tax-exempt body, invites its employees to attend a Christmas party at a local restaurant.

32. It is the employer's policy to provide employees with only one social function for the year. Employees' partners and children are also able to attend.

33. An employee attends and is accompanied by their partner and two children.

34. Whilst the total cost to the employer for the employee, partner and two children far exceeds the minor benefits threshold, the cost per person attending the Christmas party is less than $300.

35. The value of the benefit to the employee is below the minor benefits threshold and therefore it is necessary to consider the criteria listed in paragraph 58P(1)(f) to determine if it would be unreasonable to treat the minor benefit as a fringe benefit.

36. The provision of the associated benefits, being those benefits provided to the employee's partner and children, which would be considered to be in connection with the employee's benefit, and identical or similar benefits in this year and all other years all need to be considered in determining whether those benefits have been provided infrequently and irregularly.

37. The Christmas party is provided infrequently but on a regular basis (being every Christmas). However regard must also be had to the remaining criteria.

38. The sum of the values of the benefit being the consumption of food and drink at the Christmas party by the employee and all associated benefits in this year and all other years is not considered to be substantial.

39. There would be no difficulties in determining the value of the benefit and the benefit was not provided to assist the employee deal with an unexpected event. On the facts, it is not wholly or principally a reward for services.

40. On balance, having regard to the various criteria in paragraph 58P(1)(f), it would be concluded that it would be unreasonable to treat the benefit as a fringe benefit.

41. Accordingly, the benefit provided to the employee is an exempt benefit. Similarly given the facts in this example the benefits provided to each of the employee's partner and children are also exempt benefits.

42. It should be noted that the same outcome would apply to any annual party/celebration, for example, an end of financial year party. This is because the minor benefits rules that apply to Christmas parties are no different from those that apply to any other benefit.

Example 3: Christmas party and gift

43. An employer, which is not a tax-exempt body, provides each of its employees with a Christmas gift of less than $300 in value. The gifts are distributed at the annual staff Christmas party, which also has a value of less than $300 per employee.

44. It is the employer's policy to only provide gifts to employees at Christmas time.

45. Even though the employee is provided with a gift and attends a Christmas party, the gift needs to be considered separately to the Christmas party when considering the minor benefits threshold.

46. In considering whether the gift is a minor benefit in these circumstances the value of the benefit to the employee is below the minor benefits threshold. It is necessary to consider the criteria listed in paragraph 58P(1)(f) to determine if it would be unreasonable to treat the minor benefit as a fringe benefit.

47. The provision of a Christmas gift to the employee is infrequent but regular (being every Christmas). However the sum of the value of gifts in this year and all other years, where they are identical or similar benefits, is not considered to be substantial.

48. The gift to the employee is provided in connection with the Christmas party. However the total value of the minor benefit and associated benefits in this year and all other years is not considered to be substantial.

49. There would be no difficulties in determining the value of the benefit and the benefit was not provided to assist the employee deal with an unexpected event. On the facts, it is not wholly or principally a reward for services.

50. On balance, having regard to the various criteria in paragraph 58P(1)(f), it would be concluded that it would be unreasonable to treat the benefit as a fringe benefit.

51. Accordingly, the gift provided to the employee is an exempt benefit. The conclusion that would be reached with regards to the Christmas party, being a separate benefit, would be the same as that reached in Example 2 at paragraph 31 of this Ruling.

Example 4: Christmas party and gift - tax-exempt body

52. An employer, who is a tax-exempt body, provides a Christmas party for employees and their partners. The cost to the employer is less than $300 for each person attending. At the party, each employee and their partner is also provided with a gift.

53. The gift to the employee is a hamper of food. Each partner attending is also provided with a bottle of wine. The hamper of food and bottle of wine are not regarded as being the provision of entertainment and each is valued as less than $300.

54. An employee attends the party with their partner.

55. The Christmas party would be considered to be the provision of non-deductible exempt entertainment and therefore tax-exempt body entertainment. This would be the case regardless of whether the party was held on the business premises or off the business premises. It is therefore excluded from consideration as a minor benefit.

56. The employee and the partner do not receive gifts from the employer on a frequent and regular basis.

57. Even though the employee and the partner are provided with a gift and also attend the Christmas party, the gifts need to be considered separately when applying the minor benefits threshold.

58. In considering whether the gift is a minor benefit in these circumstances the value of the benefit to the employee and the benefit provided to the partner are each below the minor benefits threshold. It is necessary to consider the criteria listed in paragraph 58P(1)(f) to determine if it would be unreasonable to treat each of the minor benefits provided as fringe benefits.

59. The gift to the employee and the gift to the partner have been provided infrequently but regularly. However the sum of the value of gifts provided to the employee and the sum of the value of gifts provided to the partner in this year and all other years, where there are identical or similar benefits, is not considered to be substantial.

60. The gift to the employee and the gift to the partner are provided in connection with the Christmas party. However the total value of the minor benefit and associated benefits in this year and all other years is not considered to be substantial.

61. There would be no difficulties in determining the value of the benefit and the benefit was not provided to assist the employee or the partner deal with an unexpected event. On the facts, the gifts are not wholly or principally a reward for services.

62. On balance, having regard to the various criteria in paragraph 58P(1)(f), it would be concluded that it would be unreasonable to treat the benefit provided to the employee and the benefit provided to the partner in the form of the gifts as fringe benefits.

63. Accordingly, the gift provided to the employee and the gift provided to the partner are both exempt benefits.

64. Note: the provision of meal entertainment, for example a Christmas party, is exempt from FBT when provided by public benevolent institutions, health promotion charities, public hospitals, non-profit hospitals and public ambulance services (see paragraph 13 of this Ruling). Therefore the minor benefits exemption does not need to be considered when these organisations provide Christmas parties. The outcome given in this example for gifts would also apply to these organisations.

Example 5: gifts

65. An employer has a policy of providing flowers to its employees on special occasions, such as the birth of a child, family funeral or as a get-well gift. The flowers are always valued at less than $300.

66. An employee is provided with flowers as a get-well gift while the employee is in hospital.

67. The value of the benefit to the employee is below the minor benefits threshold and therefore it is necessary to consider the criteria listed in paragraph 58P(1)(f) to determine if it would be unreasonable to treat the minor benefit as a fringe benefit.

68. Flowers given to the employee on such special occasions, being associated benefits that are similar or identical, would be considered to be provided on an irregular and infrequent basis.

69. There are no other associated benefits provided with the flowers and it is rare for the employee to receive flowers on more than a couple of occasions in any year.

70. There would be no difficulties in determining the value of the benefit and the benefit was not provided to assist the employee deal with an unexpected event. On the facts, it is not wholly or principally a reward for services.

71. On balance, having regard to the various criteria in paragraph 58P(1)(f), it would be concluded that it would be unreasonable to treat the benefit as a fringe benefit.

72. Accordingly, the benefit provided to the employee is an exempt benefit.

Example 6: car

73. An employer allows its employee occasional use of one of its cars for a special purpose. This included rubbish removal following a storm and travel from home to work during a 3 day transport strike. The employee does not have a general entitlement to use the car for private purposes.

74. The employer calculates that the notional taxable value of each of the benefits provided in the FBT year are all less than $300 using the appropriate cents per kilometre valuation for the car.

75. The value of each benefit to the employee is below the minor benefits threshold and therefore it is necessary to consider the criteria listed in paragraph 58P(1)(f) to determine if it would be unreasonable to treat the minor benefits as fringe benefits.

76. The car benefits are provided infrequently and irregularly and the sum of the value of all car benefits provided is not substantial. There are no other associated benefits provided with the car benefits.

77. The employer has provided these benefits to assist the employee to deal with unexpected events. The special purposes for which the car can be used as a result of unusual and unexpected events, particularly where it relates to events outside the control of the employer and employee, makes it less likely to be wholly or principally a reward for services.

78. On balance, having regard to the various criteria in paragraph 58P(1)(f), it would be concluded that it would be unreasonable to treat these minor benefits as fringe benefits.

79. Accordingly, these benefits provided to the employee are exempt benefits.

Example 7: ad hoc road tolls

80. An employer allows an employee to use a car to travel to and from work on an ad-hoc basis during the FBT year.

81. The employee travels on a toll road on the way to and from work. An electronic toll tag (where the account is held in the employer's name) is attached to the car and records all road toll expenditure for that car. The employee takes the car home overnight 10 times during the FBT year (which is 20 tolls). The cost of each toll is well below the minor benefits threshold.

82. In considering whether each road toll is a minor benefit in these circumstances the value of the benefit to the employee is below the minor benefits threshold. It is necessary to consider the criteria listed in paragraph 58P(1)(f) to determine if it would be unreasonable to treat the minor benefits as fringe benefits.

83. The road tolls are provided infrequently and irregularly, and the sum of the value of all road tolls, being identical or similar benefits, in this year and all other years is not considered to be substantial.

84. The use of the car is provided in connection with the road tolls, but the sum of the value of the associated benefits is not considered to be substantial.

85. There would be difficulties in determining the value of the benefit, and on the facts it is not clear if the benefit was provided to assist the employee deal with an unexpected event. On the facts, it is not wholly or principally a reward for services.

86. On balance, having regard to the various criteria in paragraph 58P(1)(f), it would be concluded that it is unreasonable to treat the benefit as a fringe benefit.

87. Accordingly the benefits provided to the employee are exempt benefits.

Example 8: staff incentive scheme

88. An employer operates a monthly Sales Incentive Scheme for the benefit of its employees. Employees who achieve their monthly sales targets are rewarded with store vouchers having a face value of less than $300 which are redeemable for goods or services at the nearby shopping centre. There is an expectation from past experience that most employees will achieve this target.

89. An employee does achieve this target and is provided with a store voucher. The employee has achieved the target on a number of occasions and has received other store vouchers both in the current and previous years of tax.

90. The value of the store voucher is below the minor benefits threshold and therefore it is necessary to consider the criteria listed in paragraph 58P(1)(f) to determine if it would be unreasonable to treat the minor benefit as a fringe benefit.

91. Vouchers, which are identical or similar, can reasonably be expected to be provided to the employee on a frequent and regular basis.

92. Even though the value of each benefit is below the minor benefits threshold, the sum of the values of the associated benefits in this year and other years is considered to be substantial.

93. There would be no difficulties in determining the value of the benefit; the benefit was not provided to assist the employee deal with an unexpected event; and the benefit is wholly or principally a reward for services rendered.

94. On balance, having regard to the various criteria in paragraph 58P(1)(f), it would be concluded that it would not be unreasonable to treat the benefit as a fringe benefit.

95. Accordingly, the benefit provided to the employee is not an exempt benefit.

Example 9: staff recognition

96. An employer recognises the effort of an employee who has worked diligently over a period of time and who has met a particularly tight work project deadline. The benefit provided as a result of this recognition is not part of any formal staff incentive scheme.

97. The employer provides the employee with a store voucher with a value of less than $300.

98. The employee had also been recognised on another occasion in the current year and a previous year and was provided with similar store vouchers, each with a value of less than $300.

99. The value of the store voucher is below the minor benefits threshold and therefore it is necessary to consider the criteria listed in paragraph 58P(1)(f) to determine if it would be unreasonable to treat the minor benefit as a fringe benefit.

100. Due to the ad hoc nature of the recognition by the employer, vouchers which are identical or similar are not reasonably expected to be provided to that employee on a frequent and regular basis.

101. The sum of the values of the minor benefit and any associated benefits in this year and other years would not be substantial.

102. There would be no difficulties in determining the value of the benefit, the benefit is not provided to assist with an unexpected event and the benefit is provided wholly or principally as a reward for services rendered.

103. On balance, having regard to all of the criteria in paragraph 58P(1)(f), it would be concluded that it is unreasonable to treat the benefit as a fringe benefit.

104. Accordingly, the benefit provided to the employee is an exempt benefit.

Example 10: gym membership

105. An employer decides to provide each of its employees with a three month membership at the local gym. The cost of each membership is less than $300 per employee.

106. The value of each membership is below the minor benefits threshold and therefore it is necessary to consider the criteria listed in paragraph 58P(1)(f) to determine if it would be unreasonable to treat the minor benefit as a fringe benefit.

107. The employer has not provided a gym membership to the employee in the past, and does not intend to provide these memberships on an ongoing basis; therefore it is considered that they are provided on an infrequent and irregular basis.

108. Even though the total value of the memberships provided to all of the employees might be substantial, this is not a criterion under paragraph 58P(1)(f). The sum of the value of the benefit to each employee is not substantial (being a one-off benefit).

109. There would be no difficulties in determining the value of the gym membership. On the facts, it is difficult to determine if the benefit is wholly or principally a reward for services.

110. On balance, having regard to the various criteria in paragraph 58P(1)(f), it would be concluded that it would be unreasonable to treat the benefit as a fringe benefit.

111. Accordingly, the gym membership provided to the employee is an exempt benefit.

Example 11: babysitting expenses

112. An employer unexpectedly requests one of its staff to work overtime. The employer reimburses the employee for the babysitting expense incurred by the employee while working overtime. The cost incurred by the employee for the babysitting expense is less than $300.

113. The value of the babysitting expense is below the minor benefits threshold and therefore it is necessary to consider the criteria listed in paragraph 58P(1)(f) to determine if it would be unreasonable to treat the minor benefit as a fringe benefit.

114. The employer only pays for the employee's babysitting expenses a few times in any year. It is considered that this benefit and identical associated benefits (other babysitting expenses) are provided infrequently and irregularly.

115. The sum of the value of all babysitting expenses is not considered to be substantial and there are no other benefits provided in association with the babysitting expenses.

116. There would be no practical difficulties in determining the value of these benefits. However, the benefit was provided to assist the employee because of an unexpected event (the request to work overtime on that same day). On the facts, it is not wholly or principally a reward for services

117. On balance, having regard to the various criteria in paragraph 58P(1)(f), it would be concluded that it would be unreasonable to treat the minor benefit as a fringe benefit.

118. Accordingly, the reimbursement of the babysitting expense provided to the employee is an exempt benefit.

Example 12: movie vouchers – non-profit organisation

119. A non-profit organisation that is a tax-exempt body has provided an employee with 2 movie tickets in recognition of achieving a particular work target.

120. The section 58P minor benefit exemption cannot apply to this benefit as the tax-exempt body employer has incurred non-deductible exempt entertainment expenditure that is in respect of the provision of entertainment (refer to paragraph 58P(1)(d)).

121. As the benefit is specifically excluded from the minor benefits exemption there is no need to consider whether the benefit satisfies either the less than $300 threshold or the criteria in paragraph 58P(1)(f).

122. Accordingly, the benefit provided to the employee cannot be an exempt benefit under section 58P.

Example 13: salary packaging arrangement

123. An employee enters into a SSA with their employer, where the employee agrees to forego part of their salary in return for the use of a novated lease car and other benefits.

124. The employer finds that one of the other benefits provided under the SSA is less than $300 in value.

125. The value of the benefit to the employee is below the minor benefits threshold and therefore it is necessary to consider the criteria listed in paragraph 58P(1)(f) to determine if it would be unreasonable to treat the minor benefit as a fringe benefit.

126. It is determined that there are no other associated benefits which have been provided. As there are no other associated benefits only the value of the minor benefit needs to be considered and this is not substantial. It should be noted that the car and other benefits are not associated with this benefit just because they are provided as part of the same SSA.

127. There are no difficulties in determining the value of the benefit because the benefit is provided as part of a SSA; the benefit was not provided to assist the employee to deal with an unexpected event; and the benefit is clearly wholly or principally a reward for services.

128. On balance, having regard to the various criteria in paragraph 58P(1)(f), it would be concluded that it would not be unreasonable to treat the benefit as a fringe benefit.

129. Accordingly, the benefit provided to the employee is not an exempt benefit.

Date of effect

130. This Ruling applies to FBT years commencing both before and after its date of issue. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation
19 December 2007

Appendix 1 – Background

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.

Legislation

131. The FBTAA was enacted with effect from 1 July 1986. Following the enactment of the FBTAA, *Taxation Laws Amendment (Fringe Benefits and Substantiation) Act 1987* gave effect to a large number of FBT concessions that were announced by the Treasurer on 26 August 1986 and 29 October 1986. A proposal to exempt certain minor benefits was included in these announcements.

132. Section 58P is the relevant provision enacted to exempt benefits that could, by the tests specified therein, be characterised as minor. It was acknowledged by the Government at that time '…that some benefits – particularly those of a minor or compassionate kind – which were technically taxable should have been exempt …'.[6]

133. As noted in the Explanatory Notes (EN)[7] to Taxation Laws Amendment (Fringe Benefits and Substantiation) Bill 1987:

> the exemption will not extend to airline transport benefits or other in-house fringe benefits. … Nor will it apply to minor entertainment benefits provided to employees etc of tax-exempt organisations

except in limited circumstances.

134. The EN also provided some practical guidance as to how section 58P would apply by way of reference to particular examples. This included a discussion on gifts provided to employees at Christmas time, transport to and from work on an occasional basis because of particular contingencies and the occasional use of an employer's vehicle for a special purpose such as rubbish removal or travel from home to work during a transport strike (provided an employee did not have a general entitlement to use the vehicle for private purposes). On the other hand a 'one-off' loan of a four-wheel drive vehicle to enable an employee to travel cross-country during an extended holiday break may not be exempt under section 58P because the value of such a benefit is not small.

135. Subject to satisfaction of the basic condition that the value of the benefit was small, some further examples of where section 58P was likely to apply included:

- stationery that an employee is permitted to use for private purposes;
- a short-term advance to help an employee pay unexpected debts;

[6] Second Reading Speech to Taxation Laws Amendment (Fringe Benefits and Substantiation) Bill 1987.
[7] Clause 34 – section 58P: exempt benefits – minor benefits.

- the recovery of overpaid salary by instalment arrangements;
- the use of office staff to type essays or assignments; and
- permitting staff to have waste or left-over materials of a business such as packing cases or fabric remnants.

136. As originally enacted, the basic condition required to be satisfied for the purposes of section 58P was that the notional taxable value of the minor benefit was 'small'. The term 'small' was not further defined.

137. To provide administrative assistance in determining what the term 'small' meant, and to recognise the practical difficulties that employers faced in this regard since the introduction of section 58P, the Commissioner issued Taxation Determination TD 93/197 (now withdrawn) which advised 'that a benefit with a notional taxable value in excess of $50 is unlikely to be small for the purposes of paragraph 58P(1)(e)'.

138. The term 'small' was removed from the legislation in 1996 by *Taxation Laws Amendment Act (No. 2) 1996* and was replaced by 'less than $100' with effect from 18 December 1996.

139. Explanatory Memorandum (EM) to Taxation Laws Amendment Bill (No. 2) 1996 states:

> [The] purpose of this amendment is to remove the present uncertainty as to what is the upper limit of the value of a benefit that can qualify for the exemption for minor benefits. This will result in a small reduction in compliance costs to employers who provide minor benefits to employees.[8]

140. It was also stated, following acknowledgement of Tax Office advice that a benefit with a notional taxable value in excess of $50 was unlikely to be considered small, that:

> [The] practical effect of the amendment, therefore, will be to increase the upper monetary limit for minor benefits that can qualify for exemption.[9]

141. Following an announcement from the Treasurer and the Prime Minister[10] the minor benefits exemption threshold was increased from less than $100 to less than $300 with effect from 1 April 2007.[11]

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[8] Paragraph 9.2.
[9] Paragraph 9.5.
[10] Joint Press Release No. 019 on 7 April 2006 as part of the Government's response to the *Report of the Taskforce on Reducing the Regulatory Burdens on Business – Rethinking Regulation*, and in the 2006-07 Budget.
[11] *Tax Laws Amendment (2006 Measures No. 5) Act 2006*.

142. The EM to Tax Laws Amendment (2006 Measures No. 5) Bill 2006 stated that:

> paragraph 58P(1)(e) of the FBTAA 1986 is amended so that a minor benefit will qualify for the exemption if the notional taxable value of the benefit is less than $300, where the other conditions in section 58P of the FBTAA 1986 are satisfied.[12]

Judicial review

143. Since its introduction, there has been limited judicial review of the operation of section 58P.

144. In *National Australia Bank Ltd v. Commissioner of Taxation* (1993) 46 FCR 252; 93 ATC 4914; (1993) 26 ATR 503 (*NAB case*) Ryan J held that expenditure on taxi fares by the employer in relation to shift employees travelling to and from work were not exempt benefits.

145. Ryan J held on the facts before the Court that even accepting that the notional taxable value of each taxi cab trip was 'small', the benefit was nevertheless not an exempt benefit under section 58P. It was not unreasonable to treat the presumptively minor benefit provided to the employee as a fringe benefit, as it was necessary to regard each journey by taxi cab undertaken in similar circumstances in the relevant year as an associated benefit. The sum of the presumptively minor benefits was substantial.

146. In *Case 2/96* (1995) 32 ATR 1099, 96 ATC 131; (*Case 2/96*) the Administrative Appeals Tribunal (AAT) held that a company provided taxi travel for employees in circumstances distinguishable from those in the *NAB case*, and on the facts before it, held that the taxi travel benefits would be exempt benefits where the number of total trips was less than 48 or, on a monthly averaging basis, less than four per month in relation to any given employee in an FBT year.

147. In reaching its conclusion, the AAT acknowledged that this view was somewhat arbitrary but having regard to the ad hoc nature of the employer's requirements the employee could not have expected the benefits. It was also stated that:

> [it] is in the end result necessary to draw a line at some point, in each case in relation to particular facts. We consider that in this case the line can appropriately be drawn, in relation to each employee, on this basis.

148. The relevance of the decisions and the factual arrangements in both the *NAB case* and *Case 2/96* are somewhat limited although the discussion on 'infrequent and irregular' is still relevant. Both decisions were based on the originally enacted section 58P, where the threshold test required that the notional taxable value of the minor benefit be 'small'.

[12] Paragraph 1.13.

149. Also, section 58Z has been enacted[13] which now specifically exempts any benefit arising from taxi travel by an employee where there is a single taxi trip beginning or ending at the employee's place of work (refer to paragraphs 266 to 268 of this Ruling for further explanation of taxi travel).

[13] *Taxation Laws Amendment Act (No. 3) 1998* with effect from 23 June 1998.

Appendix 2 – Explanation

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.

The operation of the minor benefits exemption contained in section 58P

150. Section 58P[14] provides that a minor benefit *may be* an exempt benefit.

151. However, there are specific exclusions contained in subsection 58P(1) and accordingly section 58P does not apply to exempt all minor benefits.

152. Noting the specific exclusions, section 58P may apply to each minor benefit provided to an individual employee.

153. To be considered an exempt benefit for the purposes of section 58P the benefit must first have a notional taxable value of less than $300.[15]

154. This 'threshold test' applies to each minor benefit. It is not a limit on the total value of minor benefits that can be provided to an individual employee.

155. A benefit that satisfies the threshold test will not always be an exempt benefit.

156. Whether a minor benefit that has satisfied the threshold test is an exempt benefit can only be determined by considering the five criteria stipulated in paragraph 58P(1)(f) and then reaching a conclusion that it would be unreasonable to treat that minor benefit as a fringe benefit.

A benefit that is a minor benefit (paragraph 58P(1)(a))

157. Under paragraph 58P(1)(a) a benefit that is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer, is called a 'minor benefit' for the purposes of section 58P.

158. Paragraph 58P(1)(a) requires the tests outlined in subsection 58P(1) be applied to *each* benefit provided to any particular employee. It is not applied to the total value of benefits provided to an employee, nor does it apply to the total value of benefits provided by any employer.

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[14] Section 58P is reproduced at Appendix 3, paragraph 278 of this Ruling.
[15] The 'less than $300' threshold applies in respect of the FBT year starting on 1 April 2007 and all later FBT years. Prior to this, the threshold was 'less than $100'.

Specific exclusions from the minor benefits exemption (paragraphs 58P(1)(b), (c) and (d))

159. As mentioned previously in paragraph 11 of this Ruling, certain benefits are specifically excluded from the minor benefits exemption.

160. Paragraph 58P(1)(b) states that where the benefit is an 'airline transport benefit' it is specifically excluded from the possible application of the minor benefits exemption provided by section 58P.

161. Paragraph 58P(1)(c) also excludes from the possible application of the minor benefits exemption expense payment, property or residual benefits where, if the benefits were fringe benefits, they would be 'in-house fringe benefits'.[16]

162. It should be noted that 'eligible fringe benefits',[17] being airline transport fringe benefits or in-house fringe benefits, are otherwise subject to concessional treatment under the FBTAA including up to a $1000 reduction in the aggregate taxable value of such benefits.[18]

163. Paragraph 58P(1)(d) specifically excludes from the minor benefits exemption many minor entertainment benefits provided by tax-exempt bodies to their employees (or associates of their employees). As noted in paragraph 13 of this Ruling the provision of meal entertainment is exempt from FBT when provided by public benevolent institutions, health promotion charities, public hospitals, non-profit hospitals and public ambulance services. Therefore the minor benefits exemption does not need to be considered when these organisations provide meal entertainment.

164. The EN provides that the minor benefits exemption will not:

> apply to minor entertainment benefits provided to employees, etc of tax exempt organisations unless they are incidental to the provision of entertainment to persons who are neither employees of the employer nor associates of the employees but, in any case, will not apply to meals or benefits provided in connection with meals.[19]

165. The EN further states:

> This latter exclusion would not prevent minor entertainment benefits provided by a tax exempt organisation to recognise a special achievement of an employee from being exempt under section 58P as long as they were provided on the employer's premises or where the employee performs his or her employment duties.[20]

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[16] Refer subsection 136(1) definition 'in-house fringe benefit'.
[17] Refer subsection 62(2).
[18] The $1,000 reduction in the aggregate taxable values of eligible fringe benefits in relation to a particular employee has effect from 1 April 2007. Prior to this, the reduction amount was $500.
[19] Explanatory Notes to Taxation Laws Amendment (Fringe Benefits and Substantiation) Bill 1987, Clause 34 – section 58P: exempt benefits – minor benefits.
[20] Explanatory Notes to Taxation Laws Amendment (Fringe Benefits and Substantiation) Bill 1987, Clause 34 – section 58P: exempt benefits – minor benefits.

166. A meal[21] for these purposes does not include light refreshments.[22]

167. In those cases where the minor benefits exemption can apply because the entertainment has been provided to recognise a special achievement of an employee, section 58P will only apply to exempt the minor benefits provided to that employee and his or her associates.

168. It will also be necessary for the entertainment to take place on the eligible premises[23] of the employer, being premises of the employer (or a related company) including a location at or adjacent to a site at which the employee performs duties of that employment.

Example 14: provision of light refreshments incidental to provision of entertainment to outsiders

169. A tax-exempt body hosts a morning tea at a local café for its sponsors. Finger food, tea, coffee and soft drinks are provided. Some employees attend to thank the sponsors on behalf of the tax-exempt body for their assistance throughout a particularly difficult year.

170. It is unusual for the tax-exempt body to host this type of function. The cost per head is $15.

171. Providing morning tea to the employees in these circumstances would satisfy the requirement contained in subparagraph 58P(1)(d)(i). It is incidental to the provision of entertainment to an 'outsider'[24] and does not consist of, nor is provided in connection with, a meal. These benefits may be considered for exemption under the minor benefits provisions.

Example 15: function recognising special achievements of employee

172. A project manager, who is an employee of a tax-exempt body, is awarded 'Project Manager of the Year' by an external organisation.

173. A dinner, which is valued at $60 per head, is held on the tax-exempt body's premises to celebrate the presentation of the award.

174. Senior management of the tax-exempt body, the employee receiving the award and his or her family (spouse and 2 children) and representatives from the external organisation presenting the award attend the dinner.

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[21] Refer subsubparagraph 58P(1)(d)(i)(B).
[22] As to what may constitute 'light refreshments' as opposed to a 'meal', reference can be made to Income Tax Ruling IT 2675; morning and afternoon teas; light meals and in-house dining facilities and Taxation Ruling TR 97/17 Income tax and fringe benefits tax: entertainment by way of food or drink.
[23] Refer subsection 136(1) definition of 'eligible premises'.
[24] Refer subsection 136(1) definition of 'outsider'.

175. Only the dinner provided to the employee and his or her family, in these circumstances, would satisfy the requirement contained in subparagraph 58P(1)(d)(ii), which only allows for entertainment of the employee and their associates. These benefits may be considered for exemption under the minor benefits provisions.

Minor benefits threshold test (paragraph 58P(1)(e))

176. Only a benefit which has not been specifically excluded, as discussed at paragraphs 159 to 175 of this Ruling, and that has a notional taxable value of less than $300[25] can be considered for exemption under section 58P.

177. What is commonly referred to as the 'minor benefits threshold test' is contained in paragraph 58P(1)(e). This test requires that the minor benefit, in relation to the current year of tax, has a notional taxable value of less than $300.

178. The threshold test applies to each separate minor benefit provided to the particular employee, or provided to an associate of an employee.

179. The value of a minor benefit, it should also be noted, must relate to the 'current year of tax'.[26] Where a benefit is provided over a period which covers two or more FBT years, only the benefit provided in the current year of tax is considered in determining the notional taxable value.

180. The term 'notional taxable value' is defined in subsection 136(1):

> **'notional taxable value'**, in relation to a benefit provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer, means the amount that, if it were assumed that:
>
> (a) in the case of a car benefit – the car benefit was a residual benefit; and
>
> (b) in all cases – the benefit was a fringe benefit in relation to the employer in relation to the year of tax;
>
> would be the taxable value of the fringe benefit in relation to the year of tax.

181. The term 'notional taxable value' was added to the definitions in subsection 136(1) as part of the set of amendments that introduced section 58P.

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[25] The 'less than $300' threshold applies in respect of the FBT year starting on 1 April 2007 and all later FBT years. Prior to this, the threshold was 'less than $100'.

[26] 'Year of tax' is defined in section 136(1) to mean the year of tax starting on 1 April.

182. When determining the notional taxable value of a car benefit, the rules in Division 12 of Part III (residual fringe benefits) apply to determine whether the value is less than $300. That is, the notional taxable value is not calculated by reference to either of the methods of calculating the taxable value of car fringe benefits under Division 2 (car fringe benefits).

183. The calculation of the notional taxable value of a car benefit by reference to residual benefits rules requires an employer to measure the value of each individual car benefit provided to each employee for the purpose of determining if the benefit is valued at less than $300. Further discussion of the application of the minor benefits exemption with regards to car benefits is contained in paragraphs 246 to 261 of this Ruling.

184. In all other cases, the minor benefit is to be treated as if it was a fringe benefit for the purposes of ascertaining the taxable value of the minor benefit.

185. Broadly, this means that the normal valuation rules that apply to each benefit type are applied in ascertaining the taxable value of each minor benefit. This will include consideration of the otherwise deductible rule and any reduction for employee contributions.

186. In most cases, noting the exception above for minor car benefits, the notional taxable value of the minor benefit will be what the employer has incurred in obtaining the benefit.

Associated benefits (subsection 58P(2))

187. When having regard to each of the five criteria set out in paragraph 58P(1)(f), discussed below, reference is made to 'associated benefits'.

188. For the purposes of the minor benefits exemption the term 'associated benefits' is defined in subsection 58P(2) to mean a benefit that is any of the following:

- identical or similar to the minor benefit;
- provided in connection with the provision of the minor benefit; or
- identical or similar to a benefit provided in connection with the provision of the minor benefit.

189. In addition:

- the associated benefit and the minor benefit must relate to the same employment of a particular employee, and
- an associated benefit does not include a benefit that is an exempt benefit under any provision of the FBTAA other than this section (that is, section 58P).

190. A benefit that is provided 'in connection with' the minor benefit is one that is provided in conjunction with the minor benefit. For example if accommodation, board and electricity benefits are provided in conjunction with the payment of minor telephone expenses, these benefits are provided in connection with the telephone expense payment benefit.

191. The term 'in connection with' is potentially wide but it is to be interpreted in the context of the statute in which it is contained: see Davies J in *Hatfield v. Health Insurance Commission* (1987) 15 FCR 487 at 491; 77 ALR 103 at 106-107. Wilcox J also stated in *Our Town FM Pty Ltd v. Australian Broadcasting Tribunal (No. 1*) (*Our Town FM case)* 16 FCR 465 at 479; 77 ALR 577 at 591-592 in the context of paragraph 5(1)(b) of the *Administrative Decisions (Judicial Review) Act 1977* that:

> The words 'in connection with' have a wide connotation, requiring merely a relation between one thing and another. They do not necessarily require a causal relationship between the two things: see *Commissioner for Superannuation v. Miller* (1958) 8 FCR 153 at 154, 160, 163.

192. In determining whether a benefit provided to an employee qualifies for the minor benefits exemption in section 58P, the criteria set out in paragraph 58P(1)(f) requires a consideration of any other associated benefits that have been provided before concluding whether it would be unreasonable to treat the minor benefit as a fringe benefit. Interpreting the words 'in connection with' broadly is consistent with the purpose of section 58P where it is necessary to consider all other benefits that have been provided in conjunction with the minor benefit to determine whether the exemption under section 58P applies.

The criteria used to determine if it is unreasonable to treat the minor benefit as a fringe benefit (paragraph 58P(1)(f))

193. Where a benefit has satisfied the minor benefits threshold test discussed at paragraphs 176 to 186 of this Ruling, further analysis is required to determine if it would be concluded that it would be unreasonable to treat the minor benefit as a fringe benefit.

194. Paragraph 58P(1)(f) contains five specific criteria to which regard must be had in reaching such a conclusion (see Appendix 3 at paragraph 278 of this Ruling).

195. All five criteria must be considered. No single criterion on its own will determine whether it is unreasonable to treat the benefit as a fringe benefit.

196. In considering the scope of the exemption it will be necessary to look to the nature of the benefit provided and give due weight to each of the criteria.

197. The weight given to each criterion will vary depending on the circumstances surrounding the provision of each benefit.

198. The conclusion that must be reached after having considered the five criteria is an objective one. It is a 'reasonable person' test. That is, what would a reasonable person conclude after having regard to all the relevant circumstances surrounding the provision of the minor benefit. The provision does not give the Commissioner a discretion.

199. An explanation of each of the five criteria follows.

Infrequency and irregularity with which associated identical or similar benefits are provided (subparagraph 58P(1)(f)(i))

200. The first criterion to be considered is the infrequency and irregularity with which associated benefits, being benefits that are identical or similar to the minor benefit or benefits that are given in connection with the minor benefit, are provided, or can reasonably be expected to be provided.

201. It is important to note that although this is the first criterion listed, it is not the main, or only, criterion and 'regard must be had to all factors, even if only to consider that a particular factor is irrelevant in the circumstances'.[27]

202. 'Infrequency and irregularity' and 'identical or similar' are not defined in the FBTAA and therefore take their ordinary meaning.

203. The Macquarie Dictionary[28] defines 'infrequent' as:

> 1. happening or occurring at long intervals or not often
>
> 2. not constant, habitual or regular

and 'irregular' as:

> 2. not characterised by any fixed principle, method or rate: *irregular intervals*

204. The Macquarie Dictionary defines 'identical' as:

> 1. (sometimes followed by *to* or *with*) corresponding exactly in nature, appearance, manner, etc.: *this leaf is identical to that*.
>
> 2. the very same: *I almost bought the identical dress you are wearing*

and 'similar' as:

> 1. having a likeness or resemblance, especially in a general way.

[27] *Case 2/96*, paragraph 23.
[28] Macquarie Dictionary, [Multimedia], version 5.0.0, 1/10/01.

205. The decision in the *NAB case* is of some assistance in interpreting the meaning of the words 'infrequency and irregularity', as they are used in section 58P. In reaching a conclusion under section 58P, Ryan J said that the notional taxable value of the minor benefit, being the travel by taxi on a particular day was 'small'. Ryan J then held that:

> … on a broad view of the matters specified in paragraphs (F) of s58P(i) of the Act I am not able to conclude that it would be unreasonable to treat the presumptively minor benefit provided to Mr Brewster on 29 March 1988 as a fringe benefit in relation to the relevant year of tax.[29]

206. Ryan J was able to find, on the evidence, that the associated benefits, being each journey by taxi cab undertaken in similar circumstances in the relevant tax year, were not provided infrequently or irregularly to the employee. This was based on the facts before the Court, including the facts that the employees were 'shift workers' and that they were entitled to the provision of transport by taxi cab at the end of afternoon shifts, both before and after night shifts, and before and after weekend shifts.

207. In *Case 2/96* the term 'infrequent and irregular' was considered further. The AAT stated:

> 27. We do not think that the examples set out in the Draft Taxation Determination TD 94/D33 are of much assistance. Those examples focus on the 'infrequency and irregularity' factors set out in the section. Example 1 would have it that one taxi fare home (costing between $10 and $15) in each month would be sufficiently frequent and regular [sic] we think that this example is unlikely to be correct. It seems to us that there is a clear distinction to be drawn between benefits which are isolated or rare and benefits which are infrequent and irregular, and that the worked examples may have equated these concepts.
>
> 28. Taxation Determination TD 93/76 issued on 29 April 1993 focus [sic] on each of the tests in 58P(1)(f) in relation to redeemable vouchers; we do not think that the worked examples are of assistance in the present case.
>
> 29. Nor do we consider that, while accepting that the relevant employees are not shift workers, the 'balance of probabilities' test contended for by the Applicant can be the correct test; the wording of paragraph (f)(i) does not suggest to us that such a test was intended for this purpose. There were some employees who performed overtime work regularly, and must reasonably have expected that taxi fares would be provided; they would naturally have been aware of the fact that they were covered for this purpose by a relevant award.
>
> …

[29] 46 FCR 252 at 288; 93 ATC 4914 at 4942; 26 ATR 503 at 536.

> 34. The Tribunal has come to the conclusion having regard to the tests laid down in section 58P(1) that a benefit and its associated like benefits will be minor if, in relation to any given employee and in respect of each FBT year, the number of Total Trips is less than 48, or, on a monthly averaging basis, less than 4 per month. This view (which is inevitably somewhat arbitrary) is based on the view that that number of trips is likely to be infrequent, and having regard to the evidence as to the ad hoc nature of the applicant's requirements, irregular; further the employee could not reasonably have expected them.

208. Having regard to the above, it is clear that the words 'infrequent and irregular' do not mean 'isolated or rare'.

209. Furthermore, the Commissioner agrees that it is incorrect to say that a benefit can only be provided once a month to be considered as satisfying the meaning of 'infrequent'.

210. On the other hand, the view has often been expressed that the Commissioner should accept from the decision of the AAT in *Case 2/96* that 48 times a year, or 4 times a month, would in any circumstances be considered 'infrequent and irregular'.

211. The Commissioner does not consider this would be appropriate. In fact the decision of the AAT was that:

> This view (which is inevitably somewhat arbitrary) is based on the view that that number of trips is likely to be infrequent, and having regard to the evidence as to the ad hoc nature of the applicant's requirements, irregular; further the employee could not reasonably have expected them.[30]

212. Whether a benefit is provided infrequently and irregularly will depend on the circumstances, as highlighted in *Case 2/96*.

213. Accordingly, it is not appropriate to specify the number of times associated benefits that are identical or similar to a minor benefit, or benefits provided in connection with the minor benefit, can be provided while satisfying the 'infrequency and irregularity' criterion.

214. However, the more often and regular those benefits are provided, the less likely that this criterion would be satisfied.

215. The term 'identical benefit' is defined in section 136(1), *in relation to residual fringe benefits*, to mean:

> another benefit that is the same in all respects, except for differences (if any) that are minimal or insignificant and do not affect the value of the other benefit.

216. Although this definition does not apply to section 58P, it assists in understanding the meaning of the term and is not inconsistent with the ordinary (dictionary) meaning of 'identical'.

217. In giving meaning to the words 'identical' and 'similar', it is clear that the dictionary meanings, in the context of section 58P and its intended operation, are both appropriate and applicable.

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[30] *Case 2/96* at paragraph 34.

Sum of the notional taxable values of the minor benefit and associated benefits which are identical or similar to the minor benefit (subparagraph 58P(1)(f)(ii))

218. The second criterion to be considered is the amount that is, or might reasonably be expected to be, the sum of the notional taxable values of the minor benefit and any associated benefits, being benefits that are identical or similar to the minor benefit, in relation to the current year or any other year of tax.

219. This criterion addresses the situation where there are multiple occasions where identical or similar benefits are provided to an employee.

220. In the *NAB case* Ryan J found that:

> The sum of the presumptively minor benefit and all the associated benefits to Mr Brewster both in the current year of tax (amounting on the evidence to about $8,000) was substantial in the current tax years and might reasonably be expected to be similarly substantial in subsequent tax years.[31]

221. The greater the value of the minor benefit and identical or similar benefits, the less likely it is the minor benefit will qualify as an exempt benefit.

222. The value of the benefits in the current year as well as in any other year must be taken into account when determining the total value of benefits for the purposes of this criterion.

223. This will apply to identical or similar benefits that have been provided in the past and are likely to be provided in the future.

224. Even if the value of each benefit is below the minor benefits threshold, the sum of the values of the benefits provided, being identical benefits in the current year of tax, the previous year and those that are reasonably expected to be provided in the future, are all taken into consideration under this criterion.

Sum of the notional taxable values of any other associated benefits (subparagraph 58P(1)(f)(iii))

225. The third criterion to be considered is the amount that is, or might reasonably be expected to be, the sum of the notional taxable values of any other associated benefits provided in relation to the current year of tax or any other year of tax.

226. Other associated benefits will include benefits which themselves may also be minor benefits.

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[31] 46 FCR 252 at 289; 93 ATC 4914 at 4943; 26 ATR 503 at 536.

227. This criterion has regard to any other associated benefits; that is, associated benefits which are not identical or similar to the minor benefit. This will include those associated benefits which are provided in connection with the minor benefit and benefits which are identical or similar to a benefit provided in connection with the minor benefit.

Example 16: other associated benefits

228. A meal, which is a minor benefit, is provided in connection with a night's accommodation and taxi travel.[32] Each benefit under these circumstances is a separate benefit.

229. The total of the taxable values of the night's accommodation and taxi travel, and any other accommodation or taxi travel provided in the current year, in a previous year and those that are reasonably expected to be provided in the future must be considered.

230. The 'any other accommodation and taxi travel' being identified as associated benefits for this purpose do not have to be provided in connection with meals. They only have to be identical or similar benefits to the accommodation and taxi travel that is provided in connection with the meal (minor benefit).[33]

231. The greater the total value of the other associated benefits, in this case being the accommodation and the taxi travel, the less likely it is that the minor benefit, being the meal, will qualify as an exempt benefit. The other criteria used to determine if it is unreasonable to treat the minor benefit as a fringe benefit would need to be considered before any conclusion could be reached that the benefit is a minor benefit.

Practical difficulty in determining the notional taxable values of the minor benefit and any associated benefits (subparagraph 58P(1)(f)(iv))

232. The fourth criterion to be considered is the practical difficulty for the employer in determining the notional taxable values of the minor benefit (if it is not a car benefit) and any associated benefits (also if they are not car benefits).

233. This includes consideration of the difficulty for the employer in keeping the necessary records in relation to the minor benefit and any associated benefits.

234. It should be noted that section 132 requires that an employer keep records that record and explain all transactions and acts that are relevant for the purposes of ascertaining the employer's liability under the FBTAA.

[32] Where the taxi travel is not exempt under section 58Z.
[33] Refer to subparagraph 58P(2)(a)(iii).

235. In both the *NAB case* and *Case 2/96*, it was held, in relation to taxi travel benefits, that there was no practical difficulty for the employer in ascertaining the notional taxable values as referred to in subparagraph 58P(1)(f)(iv).

Circumstances surrounding the provision of the minor benefit and any associated benefits (subparagraph 58P(1)(f)(v))

236. The fifth criterion requires consideration of the circumstances surrounding the provision of the minor benefit. Without limiting the generality of the circumstances to be considered surrounding the provision of the benefit, it is necessary to consider specifically whether the benefit was provided as a result of an unexpected event and whether or not it could be regarded to be provided wholly or principally as a reward for services rendered, or to be rendered, by the employee.

237. Whether a benefit is provided to assist the employee to deal with an unexpected event will always be a question of fact. The EN[34] included an example of an employer providing a short term loan to an employee to pay unexpected debts. This would be an example where this requirement of this criterion would be satisfied.

238. Whether a benefit was provided otherwise than wholly or principally by way of a reward for services rendered, or to be rendered, by the employee, will in some instances be clear (for example where the benefit is provided as part of a SSA). In other instances, whether a benefit has been provided wholly or principally as a reward for services will be less clear.

239. The difficulties associated with reaching a decision on this point are highlighted in the *NAB case* and *Case 2/96*. As noted by Ryan J in the *NAB case*, it can be difficult to determine whether the requirements of this criterion are satisfied in some situations:

> It is debatable whether the aggregate of such benefits was provided wholly or principally by way of a reward for services to Mr Brewster but however the consideration indicated in s. 58P(2)(f)(v)(B) [sic] be evaluated, it would not in view of the preponderance the other way of the considerations to which I have just adverted, lead to the conclusion that it would be unreasonable to treat the benefit of 29 March 1988 as a fringe benefit in relation to Mr Brewster for the relevant tax year.[35]

240. Also in *Case 2/96*, whilst the AAT was inclined to the view that taxi fares are likely to relate to services rendered or to be rendered, the AAT noted that this conclusion was debatable.

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[34] Clause 34 – section 58P: exempt benefits – minor benefits.
[35] 46 FCR 252 at 289; 93 ATC 4914 at 4943; 26 ATR 503 at 537.

241. Whether a benefit has been provided wholly or principally for services rendered or to be rendered will depend on the circumstances. As the two cases illustrate, this can be difficult to determine and that it should be noted that this is merely one criterion to be considered when determining whether a benefit is a minor benefit. The Commissioner's view is that where a SSA is in place it is clear that any benefits provided under the SSA by the employer to the employee are wholly or principally by way of a reward for services rendered because the benefits have been provided in substitution for salary and wages. On the other hand, although a Christmas party provided to employees and their families may be considered to be a reward for services rendered or to be rendered, it would not necessarily be considered to have been provided wholly or principally by way of a reward for services rendered or to be rendered by the employee. In most instances a Christmas party would not be considered to be provided to an employee as a substitute for salary, wages or bonuses.

242. The definition of a 'salary sacrifice arrangement' as per TR 2001/10 paragraph 19 is:

> …an arrangement under which an employee agrees to forego part of his or her total remuneration, that he or she would otherwise expect to receive as salary or wages, in return for the employer or someone associated with the employer providing benefits of a similar value.

243. The provision of benefits through a SSA forms part of the total remuneration package of an employee. Therefore, it is clear that, under these arrangements, benefits (together with salary) are provided wholly or principally as a reward for services rendered.

244. In considering the criteria in paragraph 58P(1)(f), and in particular the circumstances in which a benefit is provided under a SSA, a reasonable conclusion would be that all such benefits are not exempt benefits under section 58P.

Examples: general

245. Subject to the consideration of the five criteria discussed above, the following are examples of benefits where it could be concluded that it would be unreasonable to treat them as fringe benefits and accordingly they would likely be exempt benefits:

- a one-off welcome gift, for example a food hamper, provided to a new employee on commencement of employment;
- meals provided on an ad hoc basis to an employee a few times a year;
- tolls provided to an employee through an e-tag facility on an ad-hoc basis, which is not part of a SSA or in connection with a SSA;
- the occasional use of the employer's car for a special purpose;

- a short-term advance to help an employee pay unexpected debts;
- the recovery of overpaid salary by instalment arrangements;
- stationery that an employee is permitted to use for private purposes;
- the use of office staff to type essays or assignments; and
- permitting staff to have waste or left-over materials of a business, such as packing cases or fabric remnants.

Application of the minor benefits exemption to car benefits

246. The minor benefits exemption does not apply to car benefits that are provided as part of a SSA. The application of section 58P in situations where a SSA is in place has been discussed at paragraphs 241 to 244 of this Ruling.

247. However, the minor benefits exemption can generally apply to car benefits, as they are not one of the excluded benefits mentioned under subsection 58P(1). The EN states that:

> the occasional use of an employer's vehicle by an employee for a special purpose such as rubbish removal or travel to or from work during a transport strike would be exempt benefits provided the employee in question did not have a general entitlement to use the vehicle for private purposes.[36]

248. In applying the minor benefits provisions to car benefits the minor benefits threshold test requires a determination of the 'notional taxable value of the minor benefit' (being the car benefit). This is a different calculation from that made to calculate the taxable value of a car fringe benefit under Division 2 (see paragraphs 182 and 183 of this Ruling).

249. 'Notional taxable value' is defined in subsection 136(1) in relation to car benefits as:

> the amount that if it were assumed that (a) in the case of a car benefit – the car benefit was a residual benefit

250. Miscellaneous Taxation Ruling MT 2034 provides for 2 methods that can be used for calculating the taxable value of a residual fringe benefit arising from the private use of a motor vehicle other than a car. It is considered appropriate to apply this methodology for the purpose of calculating the notional taxable value of a car.

[36] Clause 34 – section 58P: exempt benefits – minor benefits.

251. The first method outlined at paragraph 12 of MT 2034 looks to the operating cost of the particular vehicle to the employer, that is, this is to calculate the operating costs such as fuel, repairs and maintenance, registration, insurance and leasing charges (or depreciation and imputed interest) for the relevant period.

252. The alternative method set out in paragraphs 15 and 16 of MT 2034 is to use the cents per kilometre as appropriate for the vehicle engine capacity.[37]

253. As for any other minor benefit, once it is determined that the notional taxable value of the minor benefit (being the car benefit) is less than $300, using either of the methods discussed at paragraphs 250 to 252 of this Ruling, then the criteria under paragraph 58P(1)(f) need to be examined to determine if it is unreasonable to treat the minor benefit as a fringe benefit.

254. If it is concluded that it is unreasonable to treat the minor benefit as a fringe benefit, and so the minor benefit is an exempt benefit, then it needs to be considered how this impacts on the calculation of the taxable value of a car fringe benefit.

Operating cost method

255. Where an election is made to use the cost basis (or operating cost method) of calculating the taxable value of a car fringe benefit under section 10, then the 'business use percentage' applicable to the car needs to be determined. The term 'business use percentage' is defined under subsection 136(1) by way of a formula which takes account of the number of business kilometres travelled by a car during a holding period as a percentage of the total number of kilometres travelled.

256. In turn, the term 'business kilometre' is defined in subsection 136(1) as '… a kilometre travelled by a car in the course of a business journey.' Most relevantly, the term 'business journey' is defined in subsection 136(1) to mean:

> for the purposes of the application of Division 2 of Part III in relation to a car fringe benefit in relation to an employer in relation to a car – a journey undertaken in a car otherwise than in the application of the car to a private use, **being an application that results in the provision of a fringe benefit** in relation to the employer; or … (emphasis added).

[37] Each year the Commissioner releases a Taxation Determination that sets the rates for the relevant FBT year. For example TD 2007/8 sets the rates for the FBT year commencing 1 April 2007 as $0.41 for vehicles with an engine capacity of 0 - 2500cc and $0.49 for vehicles with an engine capacity greater than 2500cc.

257. Where a journey is considered to be a minor benefit and it is concluded that it is an exempt benefit, it meets the definition of a 'business journey' as it is not private use that results in the provision of a fringe benefit, but rather it is private use that results in the provision of an exempt benefit. The employer should therefore record any journeys that are determined to be minor benefits as business journeys and therefore such journeys will not result in any increase in the taxable value of a car fringe benefit under the operating cost method.

Statutory formula method

258. Where the statutory formula method is used to calculate the taxable value of car fringe benefits, the formula under subsection 9(1) has regard to 'the number of days during that year of tax on which the car fringe benefits were provided by the provider'.

259. The use of a car that is determined to be a minor benefit is an exempt benefit and not a fringe benefit. This means that where a car is only used for the purpose of providing a minor benefit on any given day this will not be counted as a day where the car is used or available for private use.

260. Where a car is used for the purpose of providing a minor benefit to an employee on a particular day and other car benefits which are not minor benefits arise on the same day in relation to that car, the provision of the minor benefit will have no effect on the calculation of the taxable value under the statutory formula method.

261. It should be kept in mind that the statutory formula method of calculating car fringe benefits is a concessionary method that relieves employers from the need to keep many records, such as logbooks. It is acknowledged that use of this method will not always provide users with the best outcome when calculating the taxable value of a car fringe benefit. It is open to employers to elect to use the operating cost method if they consider that will give them a better outcome.

Application of the minor benefits exemption to meal entertainment

262. An employer may elect to classify the provision of meal entertainment as a meal entertainment fringe benefit under Division 9A.

263. There are two methods which can be used to calculate the taxable value of meal entertainment fringe benefits. They are the 50-50 split method and the 12 week register method.

264. Where the employer elects to use the 50-50 split method then the minor benefits exemption cannot apply to reduce the taxable value of the meal entertainment fringe benefits. This is because under section 37BA the total taxable value of meal entertainment fringe benefits of the employer for the FBT year is 50% of the expenses incurred by the employer in providing meal entertainment for the FBT year.

265. However, if the employer uses the 12 week register method any minor benefits will reduce the total value of the meal entertainment fringe benefits that are used for the calculation under section 37CB. This is because the minor benefits, while being meal entertainment, are not fringe benefits.

Taxis (section 58Z)

266. Section 58Z was inserted into the FBTAA by *Taxation Laws Amendment (FBT Cost of Compliance) Act 1995* (and amended by *Taxation Laws Amendment Act (No. 1) 1999*) to exempt from FBT certain taxi travel. Subsection 58Z(1) exempts a benefit that arises from taxi travel provided to employees (but not associates) where the travel is a single taxi trip beginning or ending at the employee's place of work. Subsection 58Z(2) exempts a benefit that arises where a taxi is provided for a sick or injured employee to travel between the workplace, home or any other place that is necessary for the employee to go as a result of sickness or injury.

267. Section 58Z reduces the need for employers to rely on the minor benefits provisions for taxi travel by widening the circumstances in which taxi travel may be an exempt benefit.

268. Taxi travel that is an exempt benefit by virtue of section 58Z will not be an associated benefit for the purposes of subsection 58P(2).[38]

Minor benefits and Christmas parties

269. The minor benefits exemption may apply to a Christmas party provided by an employer who is not a tax-exempt body, and does not use the 50-50 split method for valuing meal entertainment.

270. In any case, where food and drink (such as that provided at a Christmas party) is provided by an employer, not being a tax-exempt body, on a working day, on the business premises of the employer, to current employees, the benefit will be an exempt property benefit under section 41. In these circumstances it is unnecessary to consider the minor benefits exemption.

[38] Refer paragraph 58P(2)(c).

271. However, section 41 has no application to associates of the employee and therefore consideration should be given to the minor benefits exemption where associates of employees attend a Christmas party at the business premises of the employer.

272. The minor benefits rules that apply to Christmas parties are no different from those that apply to any other benefits. First, the notional taxable value of the benefit must be less than $300. The threshold applies to each benefit provided, not to the value of all associated benefits.

273. This means that where an employer provides a Christmas party for employees and their partners the benefit to the employee and the benefit to the partner are looked at individually for the purposes of the $300 threshold. It is only when having regard to the criteria under paragraph 58P(1)(f) that the total value of all associated benefits, including the benefit provided to partners, needs to be considered.

Christmas gifts

274. The provision of a gift to an employee at Christmas time may be a minor benefit that is an exempt benefit where the value of the gift is less than $300.

275. Like any other benefits, once it is determined that the value of the benefit is below the threshold amount, then the five criteria under paragraph 58P(1)(f) need to be considered.

276. Where a Christmas gift is provided to an employee at a Christmas party that is also provided by the employer, the benefits are associated benefits, but each benefit needs to be considered for exemption separately. Provided that the gift is less than $300 in value and the Christmas party is less than $300 in value, they may both be exempt benefits.

277. For a tax-exempt body the minor benefits exemption is only relevant where, the gift, is not in relation to the provision of entertainment (see Example 4 at paragraph 52 of this Ruling).

Appendix 3 – Legislation

278. The following is an extract of the relevant legislation.

SECTION 58P EXEMPT BENEFITS – MINOR BENEFITS

58P(1) [Tests for exemption]

Where:

(a) a benefit (in this section called a **'minor benefit'**) is provided in, or in respect of, a year of tax (in this section called the **'current year of tax'**) in respect of the employment of an employee of an employer;

(b) the benefit is not an airline transport benefit;

(c) in the case of an expense payment benefit, a property benefit or a residual benefit - if the minor benefit were an expense payment fringe benefit, a property fringe benefit or a residual fringe benefit, as the case may be, in relation to the employer, the expense payment fringe benefit, the property fringe benefit or the residual fringe benefit, as the case requires, would not be an in-house fringe benefit;

(d) in the case of a tax-exempt body entertainment benefit where the provider incurs non-deductible exempt entertainment expenditure that is wholly or partly in respect of the provision of entertainment to the employee or an associate of the employee:

(i) the provision of entertainment to the employee or the associate of the employee, as the case may be:

(A) is incidental to the provision of entertainment to outsiders; and

(B) neither consists of, nor is provided in connection with, the provision of a meal (other than a meal consisting of light refreshments) to the employee or the associate of the employee, as the case may be; or

(ii) the entertainment is provided to the employee or the associate of the employee, as the case may be:

(A) on eligible premises of the employer; and

(B) solely as a means of recognising the special achievements of the employee in a matter relating to the employment of the employee;

(e) the notional taxable value of the minor benefit in relation to the current year of tax is less than $300; and

(f) having regard to:

(i) the infrequency and irregularity with which associated benefits, being benefits that are identical or similar to:

(A) the minor benefit; or

(B) benefits provided in connection with the provision of the minor benefit;

have been or can reasonably be expected to be provided;

(ii) the amount that is, or might reasonably be expected to be, the sum of the notional taxable values of the minor benefit and any associated benefits, being benefits that are identical or similar to the minor benefit, in relation to the current year of tax or any other year of tax;

(iii) the amount that is, or might reasonably be expected to be, the sum of the notional taxable values of any other associated benefits in relation to the current year of tax or any other year of tax;

(iv) the practical difficulty for the employer in determining the notional taxable values in relation to the current year of tax of:

(A) if the minor benefit is not a car benefit – the minor benefit; and

(B) if there are any associated benefits that are not car benefits - those associated benefits; and

(v) the circumstances surrounding the provision of the minor benefit and any associated benefits including, but without limiting the generality of the foregoing:

(A) whether the benefit concerned was provided to assist the employee to deal with an unexpected event; and

(B) whether the benefit concerned was provided otherwise than wholly or principally by way of a reward for services rendered, or to be rendered, by the employee;

it would be concluded that it would be unreasonable to treat the minor benefit as a fringe benefit in relation to the employer in relation to the current year of tax;

the minor benefit is an exempt benefit in relation to the current year of tax.

58P(2) [Associated benefit]

For the purposes of this section, a benefit is an associated benefit in relation to a minor benefit if, and only if:

(a) any of the following subparagraphs applies:

- the benefit is identical or similar to the minor benefit;
- the benefit is provided in connection with the provision of the minor benefit;
- the benefit is identical or similar to a benefit provided in connection with the provision of the minor benefit;

(b) the benefit and the minor benefit both relate to the same employment of a particular employee; and

(c) the benefit is not an exempt benefit by virtue of a provision of this Act other than this section.

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References

Previous draft:

TR 2007/D6

Related Rulings/Determinations:

IT 2675; MT 2034; TD 2007/8; TR 97/17; TR 2001/10; TR 2006/10

Previous Rulings/Determinations:

MT 2042; TD 93/76; TD 93/197

Subject references:

- airline transport fringe benefits
- associated benefits
- eligible fringe benefits
- exempt benefits
- expense payment benefits
- fringe benefits
- fringe benefits tax
- in respect of employment
- in-house fringe benefits
- minor benefits
- property benefits
- residual benefits
- tax-exempt body entertainment benefits

Legislative references:

- FBTAA 1986
- FBTAA 1986 Pt III Div 2
- FBTAA 1986 9(1)
- FBTAA 1986 10
- FBTAA 1986 Pt III Div 9A
- FBTAA 1986 37BA
- FBTAA 1986 37CB
- FBTAA 1986 41
- FBTAA 1986 Pt III Div 12
- FBTAA 1986 58P
- FBTAA 1986 58P(1)
- FBTAA 1986 58P(1)(a)
- FBTAA 1986 58P(1)(b)
- FBTAA 1986 58P(1)(c)
- FBTAA 1986 58P(1)(d)
- FBTAA 1986 58P(1)(d)(i)
- FBTAA 1986 58P(1)(d)(i)(B)
- FBTAA 1986 58P(1)(d)(ii)
- FBTAA 1986 58P(1)(e)
- FBTAA 1986 58P(1)(f)
- FBTAA 1986 58P(1)(f)(i)
- FBTAA 1986 58P(1)(f)(ii)
- FBTAA 1986 58P(1)(f)(iii)
- FBTAA 1986 58P(1)(f)(iv)
- FBTAA 1986 58P(1)(f)(v)
- FBTAA 1986 58P(2)
- FBTAA 1986 58P(2)(a)(iii)
- FBTAA 1986 58P(2)(c)
- FBTAA 1986 58Z
- FBTAA 1986 58Z(1)
- FBTAA 1986 58Z(2)
- FBTAA 1986 62(2)
- FBTAA 1986 132
- FBTAA 1986 136(1)
- Taxation Laws Amendment (Fringe Benefits and Substantiation) Act 1987
- Taxation Laws Amendment (FBT Cost of Compliance) Act 1995
- Taxation Laws Amendment Act (No. 2) 1996
- Taxation Laws Amendment Act (No. 3) 1998
- Taxation Laws Amendment Act (No. 1) 1999
- Tax Laws Amendment (2006 Measures No. 5) Act 2006

Case references:

- Case 2/96 (1995) 32 ATR 1099, 96 ATC 131
- Commissioner for Superannuation v. Miller (1958) 8 FCR 153
- Hatfield v. Health Insurance Commission (1987) 15 FCR 487; 77 ALR 103
- National Australia Bank Ltd v. Commissioner of Taxation (1993) 46 FCR 252; 93 ATC 4914; (1993) 26 ATR 503
- Our Town FM Pty Ltd v. Australian Broadcasting Tribunal (No. 1) 16 FCR 465; 77 ALR 577

Other references:

- Explanatory Memorandum to Tax Laws Amendment (2006 Measures No. 5) Bill 2006
- Explanatory Memorandum to Taxation Laws Amendment Bill (No. 2) 1996

- Explanatory Notes to Taxation Laws Amendment (Fringe Benefits and Substantiation) Bill 1987
- Report of the Taskforce on Reducing the Regulatory Burdens on Business – Rethinking Regulation
- Second Reading Speech to Taxation Laws Amendment (Fringe Benefits and Substantiation) Bill 1987
- Macquarie Dictionary, [Multimedia], version 5.0.0, 1/10/01

ATO references

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