GSTR 2000/D17 - Goods and services tax: GST and how it applies to supplies of fringe benefits

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There is an Erratum notice for this document.
This document has been finalised.

Draft Goods and Services Tax Ruling
Goods and services tax: GST and how it applies to supplies of fringe benefits

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Preamble

This draft may be relied on by taxation officers, taxpayers and practitioners, as it is intended to be a ruling or advice in terms of section 37 of the ***Taxation Administration Act****.*

What this Ruling is about

1. This Ruling explains the circumstances under which supplies made to employees and their associates as **fringe benefits** or **exempt benefits**, are subject to Goods and Services Tax (GST) under *A New Tax System* (*Goods and Service Tax*) *Act 1999* ('GST Act'). This Ruling sets out under what circumstances providers of such benefits are entitled to **input tax credits** in association with the provision of those benefits. The Ruling discusses which **expense payments** made by employers to employees entitle the employer to input tax credits. This Ruling also explains the **tax period** or periods to which GST payable and entitlements to input tax credits are attributed.

2. The Ruling should be read together with Draft Taxation Ruling TR 2000/D8 which discusses the Fringe Benefits Tax (FBT) consequences of making supplies by way of fringe benefits.

3. Certain terms used in this Ruling are defined or explained in the **Definitions** section of the Ruling. These terms, when first mentioned in the body of the Ruling, appear in **bold** type.

4. Unless otherwise stated, all legislative references in this Ruling are to the GST Act. References to 'FBTAA' are references to the *Fringe Benefits Tax Assessment Act 1986*. References to 'GST Transition Act' are references to the *A New Tax System (Goods and Services Tax Transition) Act 1999*.

Background

5. The fringe benefits tax legislation, when first introduced, sought to levy tax on fringe benefits provided to employees to a

similar extent to income tax that would have been payable had the benefit been paid to the employee in a monetary form.[1]

6. GST taxes the consumption of most goods, services and anything else in Australia, including things that are imported.[2] The provision of a fringe benefit may be a **supply** for the purposes of GST. So as to preserve the original purpose of FBT, and to provide a clear and efficient interaction between GST and FBT, the FBTAA has been amended, and special rules have been inserted into the GST Act.[3]

7. An **entity** may be entitled to input tax credits for **acquisitions** or taxable importations made in the course of carrying on its **enterprise**. The provision of fringe benefits may give rise to input tax credits in certain circumstances. To obtain the credit the acquisition or importation must be for a **creditable purpose**.

8. Where an input tax credit has been obtained in providing a fringe benefit, a higher gross-up factor for the fringe benefits tax calculation will apply. This is explained in Draft Taxation Ruling TR 2000/D8.

Date of effect

9. The Ruling applies on and from 30 May 2000, the date of Royal Assent to the *A New Tax System (Fringe Benefits) Act 2000*.

Ruling

Scope of GST for fringe benefit provision

10. The provision of a fringe benefit can be a supply to which the GST Act applies. In the GST Act a fringe benefit includes an exempt benefit.[4]

Supplier

11. Supply is widely defined in the GST Act**.** The supplier of a fringe benefit can include an employer or associate of the employer.

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[1] Explanatory memorandum (House of Representatives) relating to the *Taxation Laws Amendment (Fringe Benefits Measures) Act 1992*.

[2] Explanatory memorandum relating to the A New Tax System (Goods and Services Tax) Bill 1998.

[3] *A New Tax System (Fringe Benefits) Act 2000.*

[4] 'Fringe benefit' is defined in section 195-1 of the GST Act.

Recipient

12. The **recipient** of the supply of a fringe benefit is an employee, as defined in the FBTAA, or an associate of the employee.

Who is liable for the GST on the supply of a fringe benefit?

13. The entity that makes the supply of a fringe benefit is liable for any GST payable on that supply.

GST on fringe benefits

Taxable supplies of fringe benefits

14. Where an employee or associate is a recipient of a taxable supply of a fringe benefit or exempt benefit, and makes a contribution (other than a contribution of services) for the supply of the benefit, GST is payable on the supply. The contribution is the **price** for that supply. A contribution means a **recipient's payment** or a **recipient's contribution.**[5] Currently, recipient's rent is not subject to this process.

Non-taxable supplies of fringe benefits

15. Where there has not been a contribution for the supply of a fringe benefit, there is no GST payable on that supply. A contribution does not include the provision of an employee's services.

Transitional application of GST

16. A supply by way of fringe benefit will be subject to the GST rules to the extent that the GST Transition Act applies. For the supply of a fringe benefit or exempt benefit provided under a contract or arrangement spanning 1 July 2000, the GST transitional rules apply.

Input tax credits for FBT related acquisitions, importations and expense payments

Creditable acquisitions for entities providing fringe benefits

17. A registered entity that makes a supply that is a fringe benefit is entitled to an input tax credit where an acquisition or importation relating to the supply of a fringe benefit is made in carrying on the entity's enterprise and is not for a purpose as described at paragraph

[5] Refer to section 195-1 of the GST Act for the definition of recipient's payment or recipient's contribution. See the Definitions Section of this Ruling for the definition in the FBTAA of recipient's contribution.

18. However, for supplies of fringe benefits and exempt benefits made by way of expense payment, the conditions outlined in paragraph 20 also apply.

Non-creditable acquisitions for entities providing fringe benefits

18. The entity is not entitled to an input tax credit to the extent that:

- the acquisition or importation made to provide a fringe benefit relates to the making of an **input taxed** supply; or
- the acquisition or importation made to provide a fringe benefit is of a private or domestic nature.

Indirect Tax Legislation Amendment Bill 2000 proposes that an acquisition or importation that solely or partly relates to making **financial supplies** is not a creditable acquisition or importation to the extent thatthe acquisition or importation would be **a GST-creditable benefit** on the provision of which fringe benefits tax is payable.[6]

19. Acquisitions made in order to provide fringe benefits will not be of a private or domestic nature where they are made in the course of carrying on an enterprise and are for the purposes of the enterprise. Entitlements to input tax credits associated with the provision of a fringe benefit will not be denied to a fringe benefit provider merely because the benefit is partially private or non-work related in the hands of the recipient.

20. Supplies made in the form of expense payment by employers, as fringe benefits, or exempt benefits, can entitle the employer to input tax credits only where the expense payments meet the requirements of Division 111. Input tax credits for employer payment of employee expenses are allowed under Division 111 where:

- the supply to the employee by a third party was a taxable supply;
- the expense was not wholly private in the hands of the employee; and
- the reimbursed expenses relate directly to activities as an employee.[7]

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[6] Proposedsubection 71-5(1) and proposed definition of GST-creditable benefit in section 195-1.

[7] It is proposed in the Indirect Tax Legislation Amendment Bill 2000 that new section 111-25 makes payments by employers made on behalf of employees treated as if they are reimbursements, for the purposes of Division 111.

Currently, there is not a direct correlation between Division 111 and fringe benefits provided by way of expense payment.

Attribution: GST payable and input tax credits in respect of the provision of fringe benefits

21. Division 29 provides the basic attribution rules on when to account for an entity's GST liability and entitlement to input tax credits. The GST Act also provides for special attribution rules in particular circumstances. The application of the basic and special attribution rules is discussed in detail in Draft Goods and Services Tax Ruling GSTR 1999/D7.

22. For the purposes of this Ruling, a reference to consideration for the supply of a fringe benefit means a recipient's payment or recipient's contribution.

GST payable

23. The basic attribution rules set out in subsection 29-5(2) apply to entities that account for GST on a cash basis. These rules state that GST is attributable to the extent that consideration is received in a **tax period**.

24. For suppliers who do not account on a cash basis, all of the consideration for a supply is attributed to the tax period in which an invoice is issued, or any consideration is received for the supply, whichever is the earlier. There may be situations in which the full consideration for a fringe benefit being provided is not known at the time that the first amount of recipient contribution or payment is made or the invoice is issued. In these circumstances, GST is attributable to a tax period to the extent that a contribution is received in that period.[8]

Input tax credits

25. Where a creditable acquisition is made for the purpose of providing a fringe benefit by way of a taxable supply or GST-free supply, the attribution rules set out in section 29-10 apply. Where a creditable importation of goods is made for the purpose of making a taxable supply, the attribution rules set out in section 29-15 apply.

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[8] Refer to paragraphs 97–102, Draft Goods and Services Tax Ruling GSTR1999/D7. The Commissioner proposes to make a determination to this effect.

Explanations (this forms part of the ruling)

26. In providing fringe benefits, supplies and acquisitions can be made for GST purposes. Entities that are registered, or required to be registered, may remunerate parties such as employees or directors for services performed. For example, a car provided to a director in addition to his or her director's fees is a fringe benefit. This Ruling concerns the role of GST in situations where employees and other parties are remunerated other than simply by salary and wages for their services.[9]

FBT regime

27. The potential scope of qualification for something to be a fringe benefit is very wide.[10] A fringe benefit is defined in section 136 of the FBTAA as being a benefit provided in respect of the employment of the employee and can be provided to the:

- the employee; or
- an associate of the employee.

28. The benefit may be provided by:

- the employer;
- an associate of the employer;
- by a third party under an arrangement; or
- by a third party and facilitated by the employer/associate with the employer/associate's knowledge.

29. Some kinds of remuneration provided in respect of employment are not fringe benefits. A fringe benefit does not include salary and wages. It is important to note that payments made in respect of employment for employee incurred expenses and calculated by reference to those expenses, are fringe benefits, or are exempt fringe benefits, such as expense payments in Division 5 of Part III of the FBTAA. Such payments are not salary and wages.

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[9] Relationships that can establish the existence of a fringe benefit include those as employee, company director and office holder. See the definition of salary and wages in section 136 of the FBTAA for a full listing.

[10] Section 136 of the FBTAA defines a fringe benefit (see the definitions section of this Ruling).

GST on fringe benefits

30. If a recipient has contributed towards a benefit, GST can arise to the extent that the contribution is given for the supply of a fringe benefit or exempt benefit.[11]

31. In the course of its enterprise activities, an enterprise can make different categories of supplies. For entities carrying on trading activities this might include sales of trading stock. For entities providing services this would include supplies of services. Entities that provide supplies by way of fringe benefits are potentially also providing supplies.

32. The provisions in the GST Act are modified for supplies made by way of provision of fringe benefits only to the extent that the GST amount is calculated in a special way.

33. For there to be an amount of GST payable in respect of the provision of a fringe benefit, there needs to be a taxable supply, for which there has been a recipient's contribution or recipient's payment.

Supplies made by way of fringe benefits

34. The provision of a fringe benefit can be by way of supplying goods or services, or by the provision of advice or information. These forms of fringe benefit provision are included in the wide definition of supply in section 9-10. In section 9-10, a supply by way of fringe benefit can also include:

- a grant, assignment or surrender of real property;
- a creation, grant, transfer, assignment or surrender of any right;
- a financial supply;
- an entry into, or release from, an obligation:
  - (i) to do anything; or
  - (ii) to refrain from an act; or
  - (iii) to tolerate an act or situation;
- any combination of any 2 or more of the matters referred to above.

35. However, supplies of money to employees (or to third parties at the employee's direction) such as expense payments and living away from home allowances, will only be supplies for the purposes of the GST Act where the employer has supplied money as consideration

[11] The meaning of a fringe benefit in section 195-1 includes an exempt benefit for the purposes of the GST Act.

for money from the recipient.[12] It is considered that contributions from employees or associates to employers for expense payment benefits can give rise to a GST liability for the expense reimburser (see also paragraph 68).[13]

Fringe benefits as taxable supplies

36. GST applies to a fringe benefit that is provided as a taxable supply. For a supply to be taxable it needs to meet the four criteria specified in section 9-5 and not fall within the two exclusions. That is you make a taxable supply if:

(a) you make the supply for consideration;

(b) the supply is made in the course or furtherance of an enterprise that you carry on;

(c) the supply is connected with Australia; and

(d) you are registered, or required to be registered.

However, the supply is not a taxable supply to the extent that it is GST-free or input taxed.

(a) You make the supply for consideration

37. In the context of fringe benefits, an employee provides services to an employer and receives in exchange, salary and wages and/or fringe benefits to the extent of private use by the employee or associate. For GST purposes, employee services are consideration for the supply of a fringe benefit to the extent of private use. In relation to these fringe benefits there is a taxable supply made by the employer, but GST will not arise due to the operation of the definition of price in subsection 9-75(3). This subsection limits GST on fringe benefit supplies to the amount contributed by the recipient (other than employee services) that are directly attributable to the fringe benefit that has been provided.

38. For the purpose of determining price, the relevant consideration from a recipient is only the amount contributed in respect of the provision of the fringe benefit.

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[12] Subsection 9-10(4).

[13] However, this is not because there has been a supply to the employee or associate, but because there has been a reduction in consideration by the employer for a creditable acquisition.

(b) The supply is made in the course or furtherance of an *enterprise that you carry on*

39. If an employer carries on an enterprise, benefits provided to employees or their associates in respect of the employee's employment (in that enterprise) will be made in the course of carrying on that enterprise, unless made for the employer's private purpose.

(c) The supply is connected with Australia

40. To be a taxable supply, the supply needs to be connected with Australia, as defined in section 9-25.

(d) You are registered or required to be registered

41. To be a taxable supply, the supplier needs to be registered, or required to be registered.

GST-free and input taxed supplies

42. The provision of a fringe benefit is not a taxable supply where the supply is GST-free or input taxed. Examples 1 and 2 illustrate this.

Example 1

Einstein High, a private school, provides free education to children of teachers. The supply of an education course is a fringe benefit. However, the supply is GST-free.[14] *No GST arises on such a supply by the school.*

43. Where a creditable acquisition was made in providing the supply, the school would be entitled to input tax credits.

Example 2

Best Ltd is a public company that supplies houses (residential premises) for senior executives to live in on an ongoing basis. The supplied premises remain the property of Best. Because the supply of such a fringe benefit is input taxed, GST does not arise for the employer/provider. There are no input tax credit entitlements for any acquisitions relating to that supply.[15]

GST payable upon the taxable supply of a fringe benefit

44. Where the provision of a fringe benefit constitutes a taxable supply, GST arises to the extent that a recipient has made a specific

[14] Section 38-85.
[15] Section 40-35 and paragraph 11-15(2)(a).

contribution for a particular benefit or benefits that are provided as taxable supplies. The GST **value** of a fringe benefit made as a taxable supply is calculated by reference to the price, being a recipient's payment or recipient's contribution that has been contributed for the supply.

45. The value of a taxable supply is 10/11 x price.[16] The amount of GST on a taxable supply is 10% of the value of the taxable supply.[17] Subsection 9-75(3) specifies the price component of the formula for 'value' for fringe benefit supplies. The price of a fringe benefit is, in section 9-75, the amount of a recipient's contribution or recipient's payment, as defined in the FBTAA. GST payable on the taxable supply of a fringe benefit is 1/11 of the amount of recipient's payment or recipient's contribution.

Example 3

Lee is an employee of DH Ltd, a seller of hardware. During the FBT year ending 31 March 2001, Lee receives a car benefit, the FBT value of which is $7,000. Lee pays $5, 500 to DH Ltd on 15 April 2001 and $1,000 in petrol costs during the year ending 31 March 2001 to petrol stations and car insurance of $500 to an insurance company. Because the total recipient payments of $7,000 equal the FBT value of $7,000, the FBT taxable value of the benefit is zero.

As Lee has contributed $5,500 directly to DH Ltd, the company is liable for an amount of GST of 1/11 of $5,500. The price of the contribution is $5,500, because the relevant price for DH Ltd cannot exceed the amount of consideration actually paid by the employee to the employer. Lee's payments of $1,500 to third parties is treated for GST purposes by reference to the circumstances of each supplier.

Example 4

Marco is an employee of Max Ltd. Max is a registered supplier of household electrical goods. Marco purchases a television and refrigerator at the special employee rate of $3,000 in total during the FBT year.[18] In calculating GST for its tax period, Max pays GST on its supplies, including 1/11 of the $3,000, being the sale to Marco. The $3,000 is the amount of recipient's contribution, and the price, taken into account in subsection 9-75(3).

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[16] Section 9-75.
[17] Section 9-70.
[18] Marco pays $3,000 for the goods at Max Ltd store as a normal customer, but at the special employee price.

Example 5

Anna works for Johan Goods Ltd, a supplier of computers. She purchases a television and refrigerator from Matthews' Ltd, a registered group company with common ownership to Johan Goods Ltd for $3,000 during the FBT year. This amount includes GST. Included in Matthews GST for the relevant tax period is GST of 1/11 of the $3,000.[19]

Example 6 (continued from example 2 at paragraph 43)

Where a senior executive makes a payment to Best Ltd of $3,000 of recipient's rent in respect of the housing benefit there is no GST liability for Best Ltd. The imposition of GST requires there to be a taxable supply. Fringe benefits provided by way of input taxed supplies are not taxable supplies.

Example 7 (continued from example 1 at paragraph 42)

Where a teacher from Einstein High pays a fee for the education of a child, no GST is imposed on the supply of education by way of fringe benefit. Although the supply is by way of fringe benefit, this does not alter the fact that the supply is GST-free.

Transitional application of GST

46. The transitional GST rules set out in the GST Transition Act apply to certain supplies of fringe benefits. Two examples of the application of transition rules are shown in the discussion at paragraphs 47 to 48.

47. Where a fringe benefit is provided for a period or progressively during a period that spans 1 July 2000, section 12 of the GST Transition Act will apply.

Example 8

Marshall is provided with a car by way of novated lease during the whole of the FBT year ending 31 March 2001. Marshall pays an amount of $4,000 as a recipient payment to his employer on 15 March 2001. The first 91 days of supply of the fringe benefit, from 1 April 2000 to 30 June 2000, are not taxable for GST purposes. GST is payable by the employer on the supply of the car for 274 out of 365 days, while the $4,000 payment represents payment for the whole year supply of the car. GST would be calculated on 274/365 x $4,000, or $3,003.

48. Section 11 of the GST Transition Act applies to rights supplied before 1 July 2000 to the extent that a right could reasonably be expected to be exercised on or after that date.

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[19] For the period to which the sale to Gary is attributed.

Example 9

On 1 April 2000 Barthez Store gives each of its employees a family day pass to Excitement World. The pass expires on 31 March 2001. GST is payable on these supplies by Barthez Store to the extent that the passes could reasonably be expected to be used on or after 1 July where the recipient has made a contribution. [20]

Input tax credits for FBT related acquisitions, importations and expense payments

49. Where a provider of a fringe benefit makes a creditable acquisition the provider is entitled to an input tax credit.

Example 10

Harry Ltd, a registered biscuit manufacturer, provides free hot meals to its directors on its business premises, in an in-house dining facility. The meals are exempt benefits.[21] *The supply of such a meal is a taxable supply, but no GST is payable. Although the supply of the meal was a fringe benefit as defined in the GST Act (an exempt benefit under the FBTAA), no recipient contribution was received. Input tax credits are allowed on creditable acquisitions, such as catering costs, where the expense is made to provide fringe benefits for employees.*

Requirements for creditable acquisitions

50. There are four requirements for there to be a creditable acquisition in section 11-5:

(a) the acquirer must be registered, or required to be registered;

(b) the supply to the acquirer must be a taxable supply;

(c) the acquirer has to provide consideration. The provision of the private use part of a fringe benefit is normally made for consideration that includes the supply of employee services; and

(d) the acquisition is made solely or partly for a creditable purpose.

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[20] See Goods and Services Tax Ruling GSTR 2000/7 for guidance on the operation of Division 11 of the GST Transitional Act.

[21] Section 41 of the FBTAA.

Creditable purpose

51. To be for a creditable purpose, the acquisition must be made for the purpose of carrying on an enterprise.

Example 11

Mark Ltd employs staff in its manufacturing operations. A related group company, GS Ltd, operates a facility on the premises that provides meals that qualify as Board Benefits.[22] *Meals are charged at a cost of $2 each. GS must pay GST on each $2 that it receives, but receives an input tax credit for creditable acquisitions that it makes in order to supply such meals. Where Mark pays GS $7.70 for each meal provided to its employees as part of a taxable supply of catering services by GS to Mark, Mark is entitled to input tax credits of 70c per meal for the GST on the supply from GS.*[23]

52. A provider is also entitled to input tax credits in respect of creditable importations of goods made in order to supply fringe benefits. The importation must be solely or partly for a creditable purpose, must be a taxable importation and the employer must be registered, or required to be registered.

Restrictions on creditable purpose

53. There are three significant restrictions imposed on an acquisition or importation being for a creditable purpose. An acquisition or importation is not made for a creditable purpose where:

(i) the acquisition or importation relates to making an input taxed supply;

(ii) the acquisition or importation is of a private or domestic nature; or

(iii) Division 69 applies to deny certain acquisitions or importations from being creditable to the extent that such expenses are disallowed from deduction in the *Income Tax Assessment Act 1997* (ITAA 1997) or the *Income Tax Assessment Act 1936* (ITAA 1936).

These restrictions are explained in paragraphs 54 to 58.

Acquisitions and importations relating to input taxed supplies

54. Section 11-15 restricts input tax credits on acquisitions to the extent that the acquisitions relate to supplies that would be input

[22] See section 35 of the FBTAA.

[23] This example assumes that the parties have not been approved as members of a GST group as defined in section 48-5. Transactions between group members are ignored for the purposes of GST payable and input tax credits.

taxed. To the extent that acquisitions relate to taxable or GST-free supplies of fringe benefits, the acquisitions are not restricted by section 11-15.

55. The following discussion applies to entities that make input taxed supplies in the course of the enterprise. See paragraphs 64 and 65 for proposed special rules that apply to entities that make input taxed supplies that include financial supplies.

56. Where acquisitions or importations relate partly to input taxed supplies, input tax credits need to be apportioned. Apportionment of input tax credits is dealt with in Goods and Services Tax Ruling GSTR 2000/15 which provides a number of apportionment methodologies. Direct apportionment is preferred where it is possible. In the context of fringe benefits it is considered necessary to distinguish between benefits which are simply part of the business operations of the employer (internal supplies of the enterprise) and those which are external for the private benefit of the employee.

57. It is considered that the employee's services are provided for the salary provided by the employer and the external private benefits received by the employee (or associate). No consideration is provided by the employee for internal supplies of the enterprise. These are not taxable supplies. Input tax credits relating to internal supplies of the enterprise are apportioned in the same way as other inputs of the enterprise.

58. To the extent that acquisitions are related directly or indirectly to supplies for the private external benefit of employees or associates, input tax credits are determined by the nature of those supplies. Where acquisitions or importations are made to provide the private use component of a fringe benefit or exempt benefit and the supply of the fringe benefit is a taxable or GST free supply, the acquisitions or importations are creditable to that extent. The private use component of a fringe benefit is that part of the fringe benefit that is for the private use and enjoyment of the employee or associate of the employee.

Example 12

80% of the supplies made by Michael Ltd to its clients are input taxed. 20% of its supplies are taxable or GST-free. Michael Ltd contracts with the local gymnasium for the gymnasium to provide Michael's employees with the right to use the gymnasium. Michael Ltd is entitled to input tax credits on the acquisition of the right to use the gymnasium to the extent that the supply of the right is a taxable supply.

59. Some acquisitions that result in the supply of fringe benefits can relate to input taxed supplies made bythe enterprise. Acquisitions

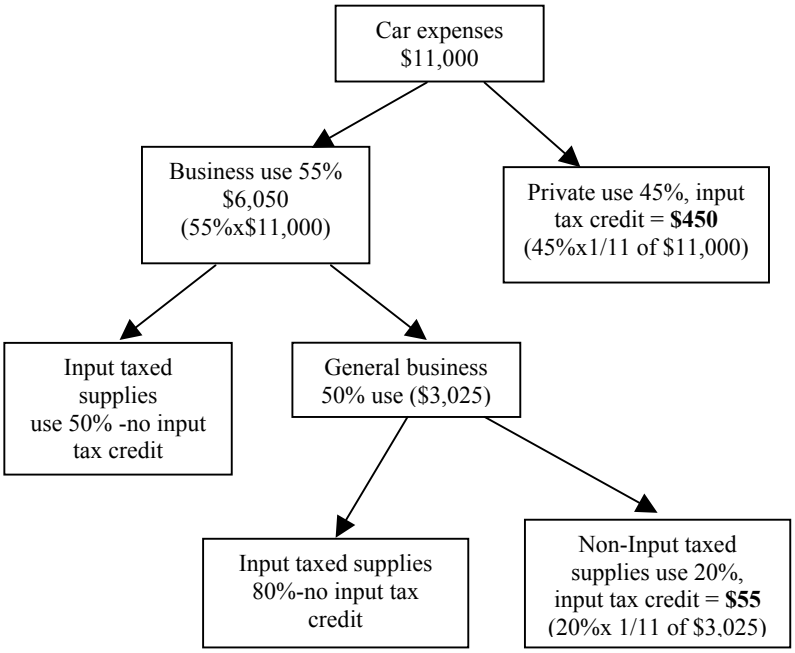
that are made for the purpose of providing the business component of an entity's fringe benefits supplies can relate to input taxed supplies that the entity makes. Such supplies include supplies made by an enterprise in the course of its business activities. If Michael Ltd purchases desks in Example 12 for the use of its employees in the course of their employment these acquisitions relate to making input taxed supplies that Michael makes to its customers. Michael is entitled to input tax credits on such acquisitions to the extent that the supplies it makes to its customers are not input taxed (using the figures in Example 12, Michael Ltd would be entitled to input tax credits of 20% of the otherwise creditable amount relating to desk acquisitions).

60. Where Michael Ltd makes acquisitions that relate to the supply by way of fringe benefit that is partly private in the hands of the employee, the private component is creditable to the extent that the acquisition relates to a taxable or GST-free supply. The business component needs to be apportioned to the extent that it relates to an input taxed supply.

61. To work out entitlements to input tax credits where an acquisition relates partly to the private use by the employee of a fringe benefit, methodologies for apportionment can include approaches such as the log book method for car fringe benefits.

62. The diagram in paragraph 63 shows how the entitlement to input tax credits would be allowed where Michael Ltd provides a car to an employee where the employer calculates its fringe benefits tax using the statutory formula method. Total expenses (being taxable supplies) incurred by the employer in providing the car benefit, including lease charges, amount to $11,000. It is assumed that the business use of the car is 55%, half of which directly relates to the making of input taxed supplies, the other half relating to the general business of the company.

63. A full input tax credit is granted to Michael Ltd to the extent of the private component of the car expenses. The business component of the expenses is allowed to the extent that the car is used for business activities that do not relate to making input taxed supplies. The input tax credit entitlements are $505, this is comprised of the private use component of $450 plus the non-input taxed component of business use of $55:



64. Under proposed legislation, where Michael Ltd makes *financial supplies* as part of its business and would pay fringe benefits tax at the higher gross up rate for the supply of the car, (because of an entitlement to input tax credits for the lease payments), there is no entitlement to such input tax credits for the acquisitions made to provide the car fringe benefit. Proposed subsection 71-5(1) provides that an acquisition that solely or partly relates to making *financial supplies is not a *creditable acquisition to the extent that the acquisition would (but for this section) be a GST-creditable benefit on which the provision of fringe benefits tax is payable. [24] However, it is important to note that the wholly private use of a motor vehicle by an employee or associate would not relate at all to financial supplies. Input tax credits would be available in this circumstance on the lease payments and the higher FBT gross up rate would apply to that car fringe benefit.

65. It is proposed that where there has been an acquisition or importation that solely or partly relates to making financial supplies, the acquisition is not creditable where:

[24] Proposed subsection 71-5(1)

- the fringe benefit to which the acquisition relates would be a GST-creditable benefit; and
- fringe benefits tax is payable on the supply of the fringe benefit.[25]

Acquisitions of a private or domestic nature

66. Acquisitions made in order to provide fringe benefits will not be of a private or domestic nature where they are made in the course of carrying on the enterprise and are for the purposes of the enterprise. In this context, it is the purpose of the acquirer in providing fringe benefits that determines the extent of creditable purpose, and not the use or purpose of the recipient of the fringe benefit.[26] If the acquisition is made for the purposes of carrying on an enterprise, the fact that the recipient has been supplied with a fringe benefit that is for the employee or associate's private purpose does not affect the purpose of the enterprise. These statements apply equally to importations.

Division 69 - denial of input tax credits

67. Division 69 denies input tax credits for various expenses that are not deductible under Division 8 of the ITAA 1997, including entertainment expenses (which are dealt with in Division 32 of the ITAA 1997). Division 32 of the ITAA 1997 does not prohibit a deduction under Division 8 of the ITAA 1997 where the expense is incurred in order to provide a fringe benefit.[27]

68. Division 69, however, does not currently apply where an entity elects for Division 9A of Part III or section 152B of the FBTAA to apply. These provisions operate where an entity has incurred **meal entertainment** expenses or entertainment leasing facility expenses. Where an entity makes such an election, it is entitled to a deduction for the expenses under sections 51AEA, 51AEB or 51AEC of the ITAA 1936. As such, Division 32 of the ITAA 1997 does not apply to deny a deduction under section 8-1 of that Act. This is because a deduction under section 8-1 of the ITAA 1997 is not allowable because another section of that Act applies. Currently, Division 69 does not apply where the taxpayer has made such an election.

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[25] See proposed Division 71.

[26] Refer to Goods and Services Tax Ruling GSTR 2000/15. Paragraph 40 states that it is the purpose of the *enterprise* that determines creditable purpose.

[27] Section 32-5 of the ITAA 1997 denies a deduction, under section 8-1 of that Act, for providing entertainment. However, section 32-20 provides an exception where the entertainment is provided by way of a fringe benefit.

Example 13

Socrates Enterprises is a registered direct marketing company that provides meal entertainment during the FBT year to employees who travel, but also provides weekly meals and alcohol at functions to both employees and clients. Socrates Enterprises has made an election under section 37AA of the FBTAA that it will apply the '50/50 split method' to apportion its fringe benefits tax liability and its allowable income tax deductions under section 8-1 of the ITAA 1997. Currently, Socrates Enterprises is entitled to input tax credits on all of its meal entertainment acquisitions, such as food, alcohol, and catering costs, in providing all of its meal entertainment for the fringe benefit year in which the election was made.

Input tax credits for benefits made by way of expense payment

69. Special rules apply for input tax credits in respect of benefits made by way of expense payment by employers. Division 111 allows input tax credits for acquisitions that are otherwise not creditable.

70. The division applies to certain reimbursements made by employers to employees for employee acquisitions. The Division operates where an acquisition has been made that was a taxable supply. It does not apply to employee importations. Reimbursements made by employers are fringe benefits where they are made in respect of employment. Input tax credits apply to the extent of 1/11 of the amount of the reimbursement for fringe benefits that meet the requirements of Division 111.[28]

Increased tax amounts because of adjustment events

71. Where an entity has been entitled to an input tax credit for an expense payment made as a fringe benefit or exempt benefit, any contributions to the employer towards the expense payment create an adjustment event if the contributions are attributable to a period later than the tax period of the expense payment.[29] If the contributions are attributable in the same tax period as the expense payment, the acquirer's consideration is reduced by the extent of the contribution.

Example 14

Karen works for the City South Hospital which is operated by a non-profit society. Karen has entered into the lease of a motorcycle with ABC Bikes and has to pay $990 each month. Karen uses the motorcycle to a small extent for work related activities. City South pays $990 each month to Karen and receives an input tax credit of $90 for each payment when making

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[28] Payments by parties other than the employer, such as associates and arrangers, are not covered by Division 111.

[29] Paragraph 19-10(1)(b) states that:
'An adjustment event is any event which has the effect of…changing the consideration for a supply or acquisition; or…'

these reimbursement payments. At the end of the FBT year, Karen contributes $1,100 to City South. The $1,100 payment is a reduction in the amount of reimbursement by City South to Karen. City South's consideration for its creditable acquisition arising from its monthly reimbursements has been reduced. An adjustment event has occurred. City South will have an increasing adjustment of $100 calculated by reference to the $1,100 paid by Karen.

Meaning of reimbursement

72. A reimbursement is a supply of money that is calculated by reference to a specified amount of an expense. It can be contrasted to a non-cash benefit and also to an allowance, which is a set amount of money payment to an employee that is not calculated by reference to the amount of expense that has been incurred. A reimbursement can be a part payment of an expense but cannot be a pre-determined fixed amount calculated irrespective of actual expenses incurred (where no later adjustment to the amount of the employer payment occurs). Set–rate allowances such as motor vehicle allowances, travel allowances and living away from home allowances are not reimbursements for the purposes of Division 111.[30]

Operation of Division 111

73. Division 111 can potentially apply where an employee *incurs* an expense. An expense can be incurred other than by payment. One prerequisite for Division 111 to apply, in respect of expense payment fringe benefits, is that it must be the employee that incurs the expense. Some amounts incurred by an employee may be incurred as agent for an employer, and reimbursements may be made for activities directly related to activities as the employer's agent. Reimbursed expenses that are incurred by the employee, and that relate directly to activities as the employer's agent, have the amount of input tax credit reduced to the extent that the incurring of the expense is not related directly to activities as the employer's agent.[31]

74. For there to be a reimbursement, the employer payment could be paid in cash or deposited into an employee's bank account, or similar facility. Alternatively, it is proposed that the party that supplied the employee can be paid directly by the employer.[32]

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[30] Refer to paragraph 3 of Taxation Ruling TR 92/15 for a discussion about the difference between an allowance and a reimbursement.
[31] Subsection 111-10(2).
[32] Proposed section 111-25 treats payments by employers made on behalf of employees as reimbursements for the purposes of Division 111.

Example 15

Mia is issued an invoice by 'Legal Monthly' for the renewal of a 12 month subscription to their business publication, and she pays the amount owing, which is $199.95 (including GST). Mia's employer, Shearer Pty Ltd, pays Mia that amount because the journal subscription expense is directly related to her activities as an employee. Shearer only makes taxable supplies in the course of its trading activities. Legal Monthly has made a taxable supply to Mia. Shearer is entitled to input tax credits in these circumstances.

Connection with business activities

75. To be entitled to input tax credits under Division 111, the employer is required to reimburse the employee for an expense that is related directly to his or her activities as an employee.

76. Provided that the reimbursement is partly for a creditable purpose and is at least partly related directly to an employee's activities as an employee, the amount of input tax credits allowed by Division 111 will apply to creditable acquisitions (being reimbursements) that are fringe benefits.

77. The creditable acquisition requirements set out in section 11-5 are modified by section 111-5. This means that a reimbursement is treated as consideration for an acquisition despite the fact that the supply by the employee is not taxable. Additionally, subsection 111-10(2) provides that input tax credits for partly employment related activities are not apportioned where the reimbursement is a fringe benefit. [33]

Example 16

Lance travels interstate on business for his employer, Maldini Pty Ltd. His wife Brandi accompanied him. They stayed an extra few days to visit their relatives. Their stay at The Vieri Motel was a taxable supply, and Lance received a tax invoice at the time he paid the account. Maldini reimburses Lance on his return by paying him the full cost of Lance and Brandi's accommodation expenses. Maldini is entitled to an input tax credit equal to the full amount of GST included in the price of the supply. Input tax credits are allowed in full because the accommodation expense was in part directly related to Lance's activities as Maldini's employee. Because the expense was a fringe benefit, it does not matter that the expense was also partly related to accommodation of a private nature.

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[33] Under Division 111, there *is* apportionment where an employer reimburses an employee acting as an agent. Unless subsection 111-10(2) applies, the amount of input tax credit is reduced by the extent equivalent to the extent to which the incurring of the expense is not directly related to those activities. Subsection 111-10(2) does not apply to fringe benefit reimbursements.

As a result of Lance's hard work on the first trip, Maldini decided to send Lance and Brandi on a short holiday. Maldini reimburses Lance in the same manner as before. Maldini is not entitled to any input tax credits in these circumstances because the expense is not directly related to Lance's activities as Maldini's employee to any extent.

Attribution: GST payable and input tax credits in respect of the provision of fringe benefits

Attribution of GST payable

78. Because consideration for the supply of a fringe benefit does not necessarily directly correspond with the GST 'value' of a supplied fringe benefit, the GST attribution rules need to be carefully considered. This is because the attribution rules are based partly on the time consideration is received, while the liability for GST for fringe benefit providers arises only upon some forms of consideration that are provided in return for fringe benefits.

79. If employee services constitute consideration for the purposes of Division 29, it could be argued that some consideration is provided at the start of the arrangement for that FBT year, and that 'any of the consideration' is received during the first GST tax period of that FBT year. If the entity making the supply does not account for GST on a cash basis, Division 156 may apply where the supply is made for a period or on a progressive basis, and the consideration is provided on a progressive or periodic basis. The effect of Division 156 is that GST and input tax credits are attributed to tax periods as if each component of the supply, or acquisition, were a separate supply.

80. However, it is considered that the better view is that the only relevant consideration for the purposes of Division 29 is the recipient contribution or recipient payment. It is not considered that the reference to 'in a tax period' in subsection 9-75(3) means that the employee contributions are always attributable to the period in which they are made.

Example 17 continued from example 3

Continuing the example of Lee, only the $500 amount of GST would be attributable to DH Ltd. Assuming that the company had not issued an invoice to Lee, it would account for GST in its tax period that included 15 April 2001. The petrol suppliers and the insurance company would account for receipts under the attribution rules that apply to each supplier (cash or non-cash) for supplies that they make.

81. Employers who account for GST on a cash basis attribute GST for a fringe benefit to the tax period in which a recipient's contribution is made.[34]

82. Where employers do not account for GST on a cash basis, GST is attributable to the tax period in which any of the consideration for the supply of a fringe benefit is received, or the time of issue of invoice, whichever is the earlier.[35]

83. Where no invoice is issued, the timing of attribution will depend on when any of the consideration is received. If the full amount of recipient's contribution or payment for an FBT year is not known at the time of payment, GST will only be attributable to the extent of the payment.[36]

Example 18

Sebastian's employer, Frank Pty Ltd, provides him with fringe benefits, being a car and a games console. The car is provided for the full FBT year commencing on the 1 April 2001. The games console costs $660 at Big Store. Sebastian has to pay 50% of the current retail price ($330) to his employer. Frank buys the console from Big Store on 30 April and Sebastian collects it on May 2. Sebastian makes three payments of $110 each during May and June to Frank. Sebastian receives a receipt from Frank which is not in the form of a tax invoice. Sebastian has promised to make a payment to Frank to reduce the taxable value of the car benefit to nil once the required amount of recipient's payment is known. On 7 May, Frank calculates that Sebastian needs to pay $5,000 to it to reduce the taxable value of Sebastian's car fringe benefit to nil. The employer reconciles its accounts at the end of June and with Sebastian's agreement does journal entries to offset Sebastian's liability to Frank with a payment from Sebastian's salary.

If Frank accounts for GST on a cash basis, each $110 payment is attributable to the tax period in which it is paid by Sebastian. If Frank does not account for GST on a cash basis, GST is attributable on $330 at the time of Sebastian's first payment. Sebastian's previously agreed promise to make the recipient's payment crystallises on 7 May, when the liability amount is known. Sebastian has provided consideration of $5,000 to Frank at this time. GST is attributable by Frank, during this tax period, on the $5,000 recipient's payment by Sebastian.

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[34] Subsection 29-5(2).
[35] Section 29-5.
[36] Draft Goods and Services Tax Ruling GSTR 1999/D7, at paragraph 98 states in part: 'If, in a tax period, you receive any consideration for a taxable supply before you can ascertain the total consideration, you attribute GST payable on the taxable supply to a tax period to the extent that you received the consideration in that tax period.'

84. It is important to note that for there to be consideration in the form of a recipient's payment or recipient's contribution, there needs to be a payment or act or forbearance.[37]

Attribution of input tax credits

85. The basic attribution rules for things acquired in order to provide fringe benefits are as set out in section 29-10. The special rules in Chapter 4 modify the basic rules in certain circumstances.[38] Input tax credits on creditable importations are attributable to the tax period in which GST is paid on the importation.[39] However, the GST credit is deferred on importations to the extent that Division 33 of the A New Tax System (Goods and Services Tax) Regulations 1999 apply to defer the payment of GST on the importation.

Definitions

86. The following terms are defined for the purposes of this Ruling. Terms with asterisks are defined in section 195-1 of the GST Act.

Acquisition

87. An acquisition is defined in section 11-10 of the GST Act as:

(1) An acquisition is any form of acquisition whatsoever.

(2) Without limiting subsection (1), acquisition includes any of these:

(a) an acquisition of goods;

(b) an acquisition of services;

(c) a receipt of advice or information;

(d) an acceptance of a grant, assignment or surrender of *real property;

(e) an acceptance of a grant, transfer, assignment or surrender of any right;

(f) an acquisition of something the supply of which is a *financial supply;

[37] Section 9-15 definition of consideration. See also Taxation Ruling MT 2050 for the requirements for there to be a recipient payment or recipient contribution.
[38] Refer to Draft Goods and Services Tax Ruling Taxation Ruling GSTR 1999/D7.
[39] Section 29-15 of the GST Act.

(g) an acquisition of a right to require another person:

(i) to do anything; or

(ii) to refrain from an act; or

(iii) to tolerate an act or situation;

(h) any combination of any 2 or more of the matters referred to in paragraphs (a) to (g).

(3) However, an acquisition does not include an acquisition of money unless the money is provided as consideration for a supply that is a supply of money.

Consideration

88. Subsections 9-15(1) and (2) of the Goods and Services Tax Act state that:

(1) Consideration includes

(a) any payment, or any act of forbearance, in connection with a supply of anything; and

(b) any payment, or any act of forbearance, in response to or for the inducement of a supply of anything.

(2) It does not matter whether the payment, act or forbearance was voluntary, or whether it was by the recipient of the supply.

Creditable purpose

89. Subsections 11-15(1) and (2) state:

(1) You acquire a thing for a creditable purpose to the extent that you acquire it in *carrying on your *enterprise.

(2) However, you do not acquire the thing for a creditable purpose that:

(a) the acquisition relates to making supplies that would be *input taxed; or

(b) the acquisition is of a private or domestic nature.

Entity

90. Section 184 states in part:

(1) Entity means any of the following:

(a) an *individual;

(b) a body corporate;

(c) a corporation sole;

(d) a body politic;

(e) a partnership;

(f) any other unincorporated association or body of persons;

(g) a trust;

(h) a superannuation fund.

Enterprise

91. Section 9-20 provides that:

(1) An enterprise is an activity, or series of activities, done:

(a) in the form of a *business; or

(b) in the form of an adventure or concern in the nature of trade; or

(c) on a regular or continuous basis, in the form of a lease, licence or other grant of an interest in property; or

(d) by the trustee of a fund that is covered by, or by an authority or institution that is covered by, Subdivision 30-B of the *Income Tax Assessment Act 1997* and to which deductible gifts can be made; or

(e) by a charitable institution or by a trustee of a charitable fund; or

(f) by a religious institution; or

(g) by the Commonwealth, a State or a Territory, or by a body corporate, or corporation sole, established for a public purpose by or under a law of the Commonwealth, a State or a Territory.

(2) However, enterprise does not include an activity, or a series of activities, done:

(a) by a person as an employee or in connection with earning *withholding payments covered by subsection (4) (unless the activity or series is done in supplying services as the holder of an

office that the person has accepted in the course of or in connection with an activity or series of activities of a kind mentioned in subsection (1)); or

(b) as a private recreational pursuit or hobby; or

(c) by an individual (other than a trustee of a charitable fund), or a *partnership (all the members of which are individuals), without a reasonable expectation of profit or gain;

(d) as a member of a local governing body established by or under a *State law or *Territory law (except a local governing body to which subsection 12-45(3) in Schedule 1 to the *Taxation Administration Act 1953* applies).

Exempt benefit

92. The FBTAA sets out what is an exempt benefit. For example, section 58H sets out that newspapers and periodicals used for business purposes are exempt.

Expense payment

93. An expense payment in this Ruling means a payment in the form described in section 20 of the FBTAA:

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.

Financial supply

94. The definition of financial supply in section 195-1 provides that financial supply has the meaning given by the regulations made for the purposes of subsection 40-5(2).

Fringe benefit

95. Section 195-1 is to be amended to include the following definition:

> Fringe benefit has the meaning given by section 995-1 of the ITAA 1997 but includes a benefit within the meaning of subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986* that is an exempt benefit for the purposes of that Act.

Subsection 136(1) of the FBTAA states in part that:

> Fringe benefit, in relation to an employee, in relation to the employer of the employee, in relation to a year of tax, means a benefit -
>
> (a) provided at any time during the year of tax; or
>
> (b) provided in respect of the year of tax,
>
> being a benefit provided to the employee or to an associate of the employee by -
>
> (c) the employer; or
>
> (d) an associate of the employer; or
>
> (e) a person (in this paragraph referred to as the 'arranger') other than the employer or an associate of the employer under an arrangement covered by paragraph (a) of the definition of 'arrangement' between -
>
> (i) the employer or an associate of the employer; and
>
> (ii) the arranger or another person; or
>
> (ea) a person other than the employer or an associate of the employer, if the employer or an associate of the employer:
>
> (i) participates in or facilitates the provision or receipt of the benefit; or
>
> (ii) participates in, facilitates or promotes a scheme or plan involving the provision of the benefit;
>
> and the employer or associate knows, or ought reasonably to know, that the employer or associate is doing so;

in respect of the employment of the employee but does not include –

(f) a payment of salary or wages or a payment that would be salary or wages if salary or wages included exempt income for the purposes of the ITAA 1936; or

(g) a benefit that is an exempt benefit in relation to the year of tax; or

(h) a benefit constituted by the acquisition by the employee, or by a relative of the employee, of a share in a company, or of a right to acquire a share in a company, under a scheme for the acquisition of shares by employees, where section 26AAC of the ITAA 1936 applies in relation to the acquisition; or

(ha) a benefit constituted by the acquisition by a person of a share or right under an employee share scheme (within the meaning of Division 13A of Part III of the ITAA 1936); or

(hb) a benefit constituted by the acquisition by a trust of money or other property where the sole activities of the trust are obtaining shares, or rights to acquire shares, in a company (the 'employer'), or a holding company (within the meaning of the Corporations Law) of the employer, and providing those shares or rights to employees of the employer; or

(j) a benefit constituted by:

(i) the making of a payment of money to a superannuation fund (as defined by subsection 6(1) of the ITAA 1936) that the person making the payment had reasonable grounds for believing was a complying superannuation fund (as defined by subsection 267 (1) of the ITAA 1936)

(ii) the making of a payment of money to a non-resident superannuation fund (within the meaning of section 6E of the Income Tax Assessment Act 1936) in respect of a person who is an exempt visitor to Australia for the purposes of section 517 of that Act in relation to the year of income in which the payment is made; or

(iii) the making of a payment of money to an RSA (within the meaning of the *Retirement Savings Accounts Act 1997*); or

(k) a payment within the meaning of Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act 1936 that would be an eligible termination payment within the meaning of that Subdivision if -

(i) subparagraphs (a)(ii), (iii), (iiia) and (iv) of the definition of 'eligible termination payment' in subsection 27A(1) of that Act were omitted;

(ii) a reference in paragraph (b) of that definition to a superannuation fund included a reference to a fund of the kind referred to in subparagraph (a)(ii) or (iiia) of that definition;

(iii) subparagraphs (b)(i), (ii) and (iii) of that definition were omitted; and

(iv) paragraph (k) of that definition were omitted; or

(ka) an 'exempt resident foreign termination payment', or an 'exempt non-resident foreign termination payment', as defined by subsection 27A(1) of the Income Tax Assessment Act 1936; or

(kb) a payment to which section 27CAA or 27CE of the Income Tax Assessment Act 1936 applies; or

(m) consideration of a capital nature for, or in respect of -

(i) a legally enforceable contract in restraint of trade by a person; or

(ii) personal injury to a person; or

(n) a payment of an amount that, under any provision of the Income Tax Assessment Act 1936, is deemed to be a dividend paid to the recipient; or

(p) a payment made, or liability incurred, to a person to the extent that the payment or liability is, by virtue of subsection 65(1A) of the Income Tax Assessment Act 1936, deemed not to be income of the person for the purposes of that Act; or

(q) a benefit constituted by the conferral of a present entitlement to, or a distribution of, income or capital to the extent that subsection 271-105(1) of Schedule 2F to the Income Tax Assessment Act 1936 would prevent the inclusion of the amount or value of the income or capital in assessable income, assuming that it would otherwise be so included.

(q†) anything done in relation to a shareholder in a private company (as those terms are defined in section 6 of the Income Tax Assessment Act 1936), or an associate of such a shareholder, that causes (or will cause) the private company to be taken under Division 7A of Part III of that Act to pay the shareholder or associate a dividend.

GST-creditable benefit

96. *Section 195-1 states that GST-creditable benefit has the meaning given by section 149A of the FBTAA. Section 149A of the FBTAA states:*

(1) A benefit provided in respect of the employment of an employee is a ***GST-creditable benefit*** if either of the following is or was entitled to an input tax credit under Division 111 of the *A New Tax System (Goods and Services Tax) Act* 1999 because of the provision of the benefit:

(a) the person who provided the benefit;

(b) a person who is or was a member of the same GST group (as defined in that Act) as the person who provided the benefit.

(2) A benefit provided in respect of the employment of an employee is also a ***GST-creditable benefit*** if:

(a) the benefit consists of:

(i) a thing (as defined in the *A New Tax System (Goods and Services Tax) Act* 1999; or
(ii) an interest in such a thing; or
(iii) a right over such a thing; or
(iv) a personal right to call for or be granted any interest in or right over such a thing; or
(v) a licence to use such a thing; or
(vi) any other contractual right exercisable over or in relation to such a thing; and

(b) the thing was acquired (within the meaning of that Act) or imported (within the meaning of that Act) and either of the following is or was entitled to an input tax credit under that Act because of the acquisition or importation:

(i) the person who provided the benefit;
(ii) a person who is or was a member of the same GST group (as defined in that Act) as the person who provided the benefit.

Input tax credits

97. An input tax credit is defined in section 195-1 to mean an entitlement arising under section 11-20 (creditable acquisitions) or section 15-15 (creditable importations).

Input taxed

98. Under subsection 9-30(2) a supply is input taxed if:

(a) it is input taxed under Division 40 or under a provision of another Act; or

(b) it is a supply of a right to receive a supply that would be input taxed under paragraph (a).

Meal entertainment

99. Section 37AD of the FBTAA states that a reference to the provision of meal entertainment is a reference to the provision of:

(a) entertainment by way of food or drink; or

(b) accommodation or travel in connection with, or for the purpose of facilitating, entertainment to which paragraph (a) applies; or

(c) the payment or reimbursement of expenses incurred in providing something covered by paragraph (a) or (b);

(d) whether or not:

(e) business transactions occur; or

(f) in connection with the working of overtime or otherwise in connection with the performance of the duties of any office or employment; or

(g) for the purposes of promotion or advertising; or

(h) at or in connection with a seminar.

Price

100. Price is defined within subsection 9-75(1) as:

…price is the sum of:

(a) so far as the *consideration for the supply is consideration expressed as an amount of money - the amount (without any discount for the amount of GST (if any) payable on the supply); and

(b) so far as the consideration is not consideration expressed as an amount of money - the *GST inclusive market value of that consideration.

Subsection 9-75(3) states:

(3) In working out under subsection (1) the value of a *taxable supply made in a *tax period, being a supply that is a *fringe benefit, the ***price*** is taken to be the sum of:

(a) to the extent that, apart from this subsection, paragraph (a) of the definition of price in subsection (1) would be applicable:

(i) if the fringe benefit is a car fringe benefit so much of the amount that would be worked out under that paragraph as represented the *recipient's payment made in that period; or

(ii) if the fringe benefit is a benefit other than a car fringe benefit so much of the amount that would be worked out under that paragraph as represented the *recipient's contribution made in that period; and

(b) to the extent that, apart from this subsection, paragraph (b) of the definition of price in subsection (1) would be applicable:

(i) if the fringe benefit is a car fringe benefit so much of the amount that would be worked out under that paragraph as represented the recipient's payment made in that period; or

(ii) if the fringe benefit is a benefit other than a car fringe benefit so much of the amount that would be worked out under that paragraph as represented the recipient's contribution made in that period.

Recipient

101. Section 195-1 defines a recipient as follows:

> Recipient, in relation to a supply, means the entity to which the supply was made.

Recipient's contribution

102. Section 195-1 defines a recipient's contribution as one that has:

> 'the meaning given by subsection 136(1) of the FBTAA 1986 of the Fringe Benefits Tax Assessment Act 1986 but includes any consideration paid in respect of the provision of a benefit that is an exempt benefit for the purposes of the Act.'

Recipient's contribution is defined in subsection 136(1) of the FBTAA as:

(a) in relation to an airline transport fringe benefit, a car parking fringe benefit, a property fringe benefit, a residual fringe benefit or a board fringe benefit, being a fringe benefit provided in respect of the employment of an employee of an employer, means the amount of any consideration paid to the provider or to the employer by the recipient or by the employee in respect of the provision of the recipients transport, the recipients parking, the recipients property, the recipients benefit or the recipients meal, as the case may be, reduced by the amount of any reimbursement paid to the recipient in respect of that consideration; and

(b) in relation to an expense payment fringe benefit provided in respect of the employment of an employee of an employer, being a fringe benefit to which paragraph 20(a) applies - the amount paid to the provider or to the employer by the recipient or by the employee in respect of the provision of the fringe benefit;

Recipient's payment

103. Section 195-1 defines a recipient's payment as one that:

> Has the meaning given by paragraphs 9(2)(e) or 10(3)(c) of the Fringe Benefits Tax Assessment Act 1986.

Paragraph 9(2)(e) of the FBTAA states:

(e) the amount of the recipient's payment is the sum of -

(i) in a case where expenses were incurred to the provider or employer during the holding period by recipients of the car fringe benefits by way of consideration for the provision of the car fringe benefits - the amount of those expenses paid by the recipients less any amount paid or payable to the recipients by way of reimbursement of those expenses;

(ia) in a case where car expenses in respect of fuel or oil for the car were incurred during the holding period by recipients of the car fringe benefits and -

(A) the persons incurring those expenses give to the employer, before the declaration date, declarations, in a form approved by the Commissioner, in respect of, those expenses; or

(B) documentary expenses is obtained by the persons incurring the expenses and given to the employer before the declaration date;

the amount of those expenses paid by the recipients less any amount paid or payable to the recipients by way of reimbursement of those expenses; and

(ii) in a case where -

(A) car expenses in respect of the car (other than car expenses in respect of fuel or oil for the car) were incurred during the holding period by recipients of the car fringe benefits; and

(B) documentary evidence of those expenses is obtained by the persons incurring the expenses and given to the employer before the declaration date,

the amount of those expenses paid by the recipients less any amount paid or payable to the recipients by way of reimbursement of those expenses.

Paragraph 10(3)(c) has identical wording.

Recipient's rent

104. Recipients rent is defined in subsection 136(1) of the FBTAA as meaning:

> In relation to a housing fringe benefit in relation to an employee of an employer in relation to a year of tax, means the amount of any rent or other consideration paid to the provider or to the employer by the recipient or the employee in respect of the subsistence, during the year of tax, of the recipients housing right reduced by the amount of any reimbursement paid to the recipient in respect of that consideration;

Reimbursement

105. The word *reimbursement* is not defined in the GST Act. Taxation Ruling TR 92/15 discusses the meaning of *reimbursement*, in contrast to an allowance:

> 'What is a reimbursement?
> 9. The word 'reimburse' is defined under subsection 136(1) of the FBTAA to include any act having the effect or result, direct or indirect, of a reimbursement. Since neither the FBTAA nor the ITAA provides a more descriptive definition beyond that, the ordinary meaning of the word applies. The Macquarie dictionary defines the word 'reimburse' as a repayment for expense or loss incurred, or a refund.
> 10. The ordinary meaning of the word 'reimburse' implies that the recipient is to be compensated exactly for an expense already incurred although not necessarily disbursed. The definition of 'reimburse' under subsection 136(1) of the FBTAA is wide enough to include payments made before expenses are incurred. However, whether payment is made before or after expenses are incurred by the recipient, it qualifies as a reimbursement when the provider considers the expense to be its own and the recipient incurs the expense on behalf of the provider. As a result, a requirement that the recipient vouch or substantiate expenses lends weight to a presumption that a payment is a reimbursement rather than an allowance. A further indication of a reimbursement is where the recipient is required to refund unexpended amounts to the provider.'

Supply

106. A supply is defined in section 9-10 as :

> (1) A supply is any form of supply whatsoever.

(2) Without limiting subsection (1), supply includes any of these:

(a) a supply of goods;

(b) a supply of services;

(c) a provision of advice or information;

(d) a grant, assignment or surrender of *real property;

(e) a creation, grant, transfer, assignment or surrender of any right;

(f) a *financial supply;

(g) an entry into, or release from, an obligation:

(i) to do anything; or

(ii) to refrain from an act; or

(iii) to tolerate an act or situation;

(h) and any combination of any 2 or more of the matters referred to in paragraphs (a) to (g).

(3) It does not matter whether it is lawful to do, to refrain from doing or to tolerate the act or situation constituting the supply

(4) However, a supply does not include a supply of money unless the money is provided as consideration for a supply that is a supply of money.

Taxable supply

107. Section 9-5 states that:

You make a taxable supply if:

(a) you make the supply for *consideration; and

(b) the supply is made in the course or furtherance of an *enterprise you *carry on; and

(c) the supply is *connected with Australia; and

(d) you are *registered, or *required to be registered.

However, the supply is not a taxable supply to the extent it is *GST-free or *input taxed.

Tax period

108. Section 27-5 states that:

> The tax periods that apply to you are each period of 3 months ending on 31 March, 30 June, 30 September or 31 December in any year, except to the extent that:
>
> (a) an election is in force under section 27-10; or
>
> (b) the Commissioner determines otherwise under this Division.

Value

109. The definition of value is found in subsection 9-75(1):

> The value of a * taxable supply is as follows:
>
> Price x 10/11

Detailed contents list

110. Below is a detailed contents list for this draft Ruling:

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Your comments

111. If you wish to comment on this Draft Ruling, please send your comments promptly by 9 August 2000 to:

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Commissioner of Taxation
30 June 2000

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Related Rulings/Determinations:
MT 2050; TR 92/15; GSTR 1999/D7; GSTR 2000/7; GSTR 2000/15

Subject references:
- Attribution rules
- creditable acquisition
- creditable purpose
- enterprise
- FBT
- fringe benefit
- fringe benefits tax
- goods & services tax
- GST
- GST consideration
- GST enterprise
- GST-free
- GST supplies and acquisitions
- GST supply
- importation of goods
- input taxed
- input taxed supplies
- input tax credit

- price
- supplies
- taxable supply

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