TR 2000/D8 - Fringe benefits tax: the operation of the new fringe benefits tax gross-up formula to apply from 1 April 2000

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Taxation Ruling

Fringe benefits tax: the operation of the new fringe benefits tax gross-up formula to apply from 1 April 2000

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Preamble

Draft Taxation Rulings (DTRs) represent the preliminary, though considered, views of the Australian Taxation Office. DTRs may not be relied on by taxation officers, taxpayers and practitioners. It is only final Taxation Rulings that represent authoritative statements by the Australian Taxation Office of its stance on the particular matters covered in the Ruling.

What this Ruling is about

Class of person/arrangement

1. This Ruling applies to employers that provide **fringe benefits** and have to determine their fringe benefits tax liability.

2. The purpose of this Ruling is to explain the operation of the new fringe benefits tax (FBT) gross-up formula that applies from 1 April 2000. The new gross-up formula was introduced, under the *A New Tax System (Fringe Benefits) Act 2000*, to take into account the effect of **input tax credits** being able to be claimed, where applicable, in respect of goods and services tax (GST) paid on some fringe benefits.

3. Refer also to Draft Goods and Services Tax Ruling GSTR 2000/D17 'Goods and Services Tax: GST and how it applies to supplies of fringe benefits'.

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

5. Unless otherwise stated, all legislative references in this Ruling are to the *Fringe Benefits Tax Assessment Act 1986 (FBTAA)*.

Ruling

Fringe Benefits Taxable Amount From 1 April 2000

6. From the 2000-2001 FBT year an employer will calculate the employer's **fringe benefits taxable amount** by classifying **fringe benefits** into 2 types of **aggregate fringe benefits amounts**, grouped according to whether GST **input tax credits** were available. The first type will be known as an 'employer's type 1 aggregate fringe benefits amount', where a GST **input tax credit** is available to the provider. The second type will be known as the 'employer's type 2 aggregate fringe benefits amount'. The employer's type 1 aggregate fringe benefits amount will be grossed-up using a new gross-up formula. The employer's type 2 aggregate fringe benefits amount will be grossed-up using the former gross-up formula. For those employers that are **public benevolent institutions** or are certain non-profit, non-government employers, they will have to calculate the **employer's type 1 and type 2 'individual base non-exempt amounts'** and **'individual base non-rebateable amounts'** respectively.

The employer's fringe benefits taxable amount is calculated using the new methodology. The amount of fringe benefits tax payable is arrived at by applying the FBT tax rate.

Employer's Type 1 Aggregate Fringe Benefits Amount

7. The 'type 1 aggregate fringe benefits amount' represents the total taxable values of fringe benefits (including any **excluded fringe benefits**) that are '**GST-creditable benefits**' under section 149A (see paragraph 120 for the meaning of an 'excluded benefit').

8. A **GST-creditable benefit** arises in either of the situations where:

- The person, or another member of the same GST group, who provided the fringe benefit (or **excluded fringe benefit**) is entitled to an **input tax credit** for that benefit by the operation of Division 111 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).
- The fringe benefit (or **excluded fringe benefit**), is a '**thing**', that was acquired or imported by the person, or another member of the same GST group, and either that person or that member of the same GST group is entitled to a GST **input tax credit** because of that acquisition or importation of the **thing**.

9. The classification of a fringe benefit (or **excluded fringe benefit**) as a (type 1 benefit) does not depend on the actual amount of

the GST **input tax credit** available to the provider but merely on the basis that there is, in fact, an entitlement to some amount of GST **input tax credit**.

New Gross-up Formula

10. Type 1 benefits are grossed-up to a tax inclusive value by applying the new FBT gross-up formula. The new FBT gross-up formula results in a gross-up rate of 2.1292 where the FBT rate is 48.5% and the GST rate is 10%.

Employer's Type 2 Aggregate Fringe Benefits Amount

11. The (type 2 aggregate fringe benefits amount) represents the total taxable values of all other fringe benefits (or **excluded fringe benefits**) provided to employees, or their associates, that do not fall within the classification of type 1 fringe benefits. A type 2 benefit is one where the provider was not entitled to a GST **input tax credit**.

Type 2 Gross-up Formula

12. Type 2 benefits are grossed-up using the former FBT gross-up formula. The former FBT gross-up formula results in a gross-up rate of 1.9417 where the FBT rate is 48.5%.

Employer's Type 1 and Type 2 Individual Base Non-Exempt Amounts and Employer's Type 1 and Type 2 Individual Base Non-Rebateable Amounts

13. The new gross-up provisions also impact on the calculation of fringe benefits eligible for exemption under section 57A and the amount of rebate available to certain non-profit, non-government employers under section 65J. For those situations the employer needs to calculate the type 1 and type 2 individual base non-exempt amounts, as outlined in subsections 5B(1H) and 5B(1J), for each employee using the same categorisation rules as above and subsequently applying the new or former gross-up formulas as appropriate. The employer is required to follow essentially the same procedure for the type 1 and type 2 individual base non-rebateable amounts as outlined in subsections 65J(2E) and 65J(2F).

GST-Free and Input Taxed Benefits

14. Fringe benefits (including **excluded fringe benefits**) that are either wholly **GST-free** or **input taxed**, or for which the provider is

not otherwise entitled to an **input tax credit**, cannot be classified as a type 1 benefit and consequently must be a type 2 benefit.

Value of Fringe Benefits

15. When calculating the taxable value of either a type 1 benefit or a type 2 benefit the value of the fringe benefit (or **excluded fringe benefit**) will be the **GST-inclusive value**, as appropriate.

Value of Employee Contributions

16. When calculating the taxable value of either a type 1 or a type 2 benefit the value of the employee's contribution will be the **GST-inclusive value**, as appropriate.

Reportable Fringe Benefits Amounts

17. The new FBT gross-up formula will not affect the calculation of an **employee's reportable fringe benefits amount** for a year of income. An employer will continue to gross-up the employee's individual fringe benefits amount using the former gross-up formula when determining the amount to be shown on the employee's group certificate or withholding summary. The new FBT gross-up formula only applies to the calculation of an employer's FBT liability.

Income Tax and Fringe Benefits From 1 July 2000

18. Income tax deductions for the cost of the fringe benefits will be at the **GST-exclusive value** where a GST **input tax credit** was available in respect of the fringe benefit. If no GST **input tax credit** was available, in respect of the fringe benefit, the income tax deduction will be the full amount paid or incurred on the relevant acquisition.

19. Where either a '**recipient's payment**' or a '**recipient's contribution**', that is a contribution for a **taxable supply**, is added to an employer's assessable income, such payment or contribution will be added for income tax purposes at the **GST-exclusive value**.

20. Where the '**otherwise deductible rule**' applies, the calculation of the taxable value of a fringe benefit is reduced by the hypothetical deduction to which the employee would have been entitled had the employee incurred the expense. In these situations, the employer takes into account their **GST-inclusive value**, as applicable.

Date of effect

21. This ruling applies from 1 April 2000 onwards.

Explanations

Fringe Benefits Taxable Amount Prior To 1 April 2000

22. Prior to the 2000 – 2001 FBT year an employer's fringe benefits taxable amount was calculated using the following formula:

$$\text{Aggregate fringe benefits amount} \times \frac{1}{(1 - \text{FBT rate})}$$

23. The **aggregate fringe benefits amount** above consisted of the sum of the **employee's individual fringe benefits amounts** plus the taxable values of all **excluded fringe benefits** (see paragraph 120 for the meaning of an '**excluded fringe benefit**') relating to the employees of the employer.

24. The former FBT gross-up formula of:

$$\frac{1}{(1 - \text{FBT rate})}$$

resulted in a former gross-up rate of 1.9417. The FBT rate is 48.5%, being the highest marginal tax rate plus the medicare levy. The amount of fringe benefits tax payable was arrived at by applying the FBT tax rate of 48.5% to the employer's fringe benefits taxable amount.

Fringe Benefits Taxable Amount From 1 April 2000

25. Under subsection 5B(1A), an employer's fringe benefit taxable amount for the FBT year of tax 2000-2001 and later years is the sum of amounts calculated under subsections 5B(1B), 5B(1C) and, where applicable, 5B(1D).

26. The subsection 5B(1B) amount is worked out using the formula:

$$\text{Type 1 aggregate fringe benefits amount} \times \frac{\text{FBT rate}}{\text{1 - FBT rate}} + \frac{\text{GST rate}}{\text{1 + GST rate}} \times \text{FBT rate}$$

27. The subsection 5B(1C) amount is worked out using the formula:

$$\text{Type 2 aggregate fringe benefits amount} \times \frac{1}{\text{1 - FBT rate}}$$

28. Under subsection 5B(1D) an employer's fringe benefits taxable amount may be increased when benefits provided in respect of an employee's employment with the employer are exempt under section 57A.

Employer's Type 1 Aggregate Fringe Benefits Amount

29. Subsection 5C(3) contains the method statement of how to work out an employer's type 1 aggregate fringe benefits amount. Steps 1 and 3 in that method statement require the employer to identify the fringe benefits and **excluded fringe benefits** that are **GST-creditable benefits**.

30. (a) Section 5E sets out how to work out an **employee's individual fringe benefits amount**. This amount is then grossed-up to determine the total of the **employee's reportable fringe benefits amount** to be disclosed on the employee's group certificate or withholding summary.

(b) However, under subsection 5E(2) certain benefits, called **excluded fringe benefits** are not included in the **employee's reportable fringe benefits amount** disclosed on the employee's group certificate or withholding summary.

(c) It should be noted that '**excluded fringe benefits**' are only 'excluded' from being reported on the employee's group certificate or withholding summary and not also 'excluded' from being part of the **employer's aggregate fringe benefits amount** on which the employer's ultimate FBT liability is based.

31. Section 149A defines a **'GST-creditable benefit**' as being a benefit that meets either of the following:

- where the person who provided the benefit was entitled to a GST **input tax credit** for that benefit under Division 111 of the GST Act.
- where a '**thing**' (meaning 'anything that can be supplied or imported' as defined in section 195-1 of the GST Act) was acquired or imported and the person who provided the benefit was entitled to a GST **input tax credit** because of the acquisition or importation.

Where the person who was entitled to the GST **input tax credit** is or was a member of the same GST group (as defined in the GST Act) as the person who provided the benefit and either of the above dot points were also satisfied.

32. Division 111 of the GST Act potentially applies where an employee *incurs* an expense. This can involve the employee paying the expense but does not necessarily require the employee to pay the provider prior to reimbursement. For Division 111 of the GST Act to apply, it must be the employee that incurs the expense. Some payments incurred by an employee may be as the agent for an employer.

33. To be entitled to **input tax credits** under Division 111 of the GST Act, the employer is required to reimburse the employee for an expense that is related directly to his or her activities as an employee. Provided that the reimbursement is partly for a creditable purpose (as defined in the GST Act) 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 of the GST Act will apply to **creditable acquisitions** (being reimbursements) that are **fringe benefits**.

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

Example

35. Floria is on a business trip for her employer, Tossca Pty Ltd, who is registered for GST purposes. She is accompanied on this trip by her husband, Gilberto, who does not work for Tossca Pty Ltd. Tossca Pty Ltd reimburses Floria, in full, for the $330 (including GST) she spent on the motel accommodation that she shared with her husband on the trip. As Tossca Pty Ltd would be entitled to a full GST **input tax credit** of $30 ($1/11^{th}$ of $330) under Division 111 of

the GST Act it will use the new gross-up rate when calculating the fringe benefits taxable amount of the expense payment fringe benefit.

36. Floria and her husband, Gilberto, subsequently went on a holiday to North Queensland. Tossca Pty Ltd reimbursed Floria for all of the $2,200 (including GST) she spent on the holiday. As the holiday was not to any extent 'directly related to Floria's activities as an employee', being wholly private, Tossca Pty Ltd is not entitled to a GST **input tax credit** of $220 under Division 111. Therefore, Tossca Pty Ltd will use the former gross-up rate when calculating the fringe benefits taxable amount of the expense payment fringe benefit.

37. The reimbursement payment must be paid to the employee. The payment could be deposited into a bank account of the employee, or similar facility.

38. Division 111 of the GST Act currently can only apply where the employee is paid by the employer, (rather than the employer paying the third party directly). This particular restriction in Division 111 is proposed to be removed by legislation currently before Parliament. The Indirect Tax Legislation Amendment Bill 2000 proposes to insert section 111-25 into the GST Act, so that payments made by employers to third parties, on behalf of employees, will be treated as if they are reimbursements.

39. Paragraph 149A(2)(a) makes it clear that the application of the gross-up provisions is not limited to only those situations where the benefit is the '**thing**' that has been acquired or imported. The gross-up provisions apply to all the types of benefits that may arise, depending on the way in which the '**thing**', that has been acquired or imported, is made available to the employee (or employee's associate). The provisions would, therefore, cover benefits that arise from the employee's use of a '**thing**' such as a car.

40. The '**thing**' referred to in subparagraphs 149A(2)(a)(i) to (vi) inclusive must have been acquired or imported.

Example

41. Pterodactyl Pty Ltd is a company registered for GST that manufactures ultra-light aircraft. The company, on 5 August 2000, provides one of its aircraft to Icarus, its company manager. The aircraft provided is identical to those normally sold to the public. As Pterodactyl Pty Ltd has manufactured the relevant item it has not, therefore, either 'acquired' or 'imported' the aircraft for the purposes of section 149A. The in-house property fringe benefit provided can't be a '**GST-creditable benefit**' and should be grossed-up at the former rate as a 'Type 2 benefit'.

42. The provisions of section 149A also apply to GST group arrangements and ensure that a benefit may also be a **GST-creditable benefit** where another member of a GST group, rather than the person who is providing the benefit, is entitled to GST **input tax credits** in respect of the benefit being provided.

New Gross-up Formula

43. The new gross-up formula to be applied to type 1 benefits is:

$$\frac{\text{FBT rate} + \text{GST rate}}{(1 - \text{FBT rate}) \times (1 + \text{GST rate}) \times (\text{FBT rate})}$$

44. Where the FBT rate is 48.5% and the GST rate is 10% the formula becomes:

$$\frac{0.\ 485 + 0.\ 1}{(1 - 0.\ 485) \times (1 + 0.\ 1) \times (0.\ 485)}$$

$$= \frac{0.\ 585}{0.\ 2747525}$$

$$= 2.\ 1292$$

45. The new gross-up rate is therefore 2.1292.

Employer's Type 2 Aggregate Fringe Benefits Amount

46. Subsection 5C(4) contains the method statement of how to work out an employer's type 2 aggregate fringe benefits amount. Steps 1 and 3 in that method statement require the employer to identify the **fringe benefits** and **excluded fringe benefits** that are other than type 1 benefits. Consequently, if a **fringe benefit** or **excluded fringe benefit** is not a type 1 benefit it must be a type 2 benefit.

Former Gross-up Formula

47. The former gross-up formula to be applied to type 2 benefits is:

$$\frac{1}{(1 - \text{FBT rate})}$$

48. Where the FBT rate is 48.5% the formula becomes:

$$\frac{1}{(1 - 0.\ 485)}$$

$$= \frac{1}{0.\ 515}$$

$$= 1.\ 9417$$

49. The former gross-up rate is therefore 1.9417.

Employer's Type 1 and Type 2 Individual Base Non-Exempt Amounts and Employer's Type 1 and Type 2 Individual Base Non-Rebateable Amounts

50. The calculations for type 1 and type 2 individual base non-exempt amounts are outlined in subsections 5B(1F) and 5B(1G) respectively and are similar to the calculations under subsections 5B(1B) and 5B(1C).

51. The calculations for type 1 and type 2 individual base non-rebateable amounts are outlined in subsections 65J(2C) and 65J(2D) respectively and are also similar to the calculations under subsections 5B(1B) and 5B(1C).

GST-Free and Input Taxed Benefits

52. The supply of **fringe benefits** that are either **GST-free** or **input taxed** under the GST Act do not entitle the provider of the benefit to a GST **input tax credit.**

53. Some other **fringe benefits** may also be supplied that do not entitle the provider of a **fringe benefit** to GST **input tax credits** under the GST Act. These are **fringe benefits** where their acquisition does not meet the requirements for being a **creditable acquisition** under section 11-5 of the GST Act.

54. For those **fringe benefits** that are either **GST-free**, **input taxed** or otherwise do not meet the requirements of being a **creditable**

acquisition, they cannot be a 'type 1 benefit'. This is because there is no GST input credit available to the provider and therefore they must always be a 'type 2 benefit' that is grossed-up at the former rate.

Example

55. Best Ltd is a public company that pays for long-term residential accommodation in a major city for its senior executives. The senior executives do not make any contribution towards the cost of the accommodation. As the cost of the residential accommodation is **input taxed** no GST **input tax credit** is available. As the benefit provided is a 'type 2 benefit', Best Ltd will gross-up the benefit at the former rate in arriving at the fringe benefits taxable amount.

56. 'Lilliputte Pty Ltd' provides each employee with a new television set each year. The company neither makes nor sells television sets. 'Lilliputte Pty Ltd' has an annual turnover of under $50,000 and has decided not to register for GST. As the company is not registered it is not entitled to claim GST **input tax credits** on the televisions it provides as property fringe benefits. The benefits provided are 'type 2 benefits', and 'Lilliputte Pty Ltd' will 'gross-up' the property fringe benefits at the former rate in arriving at the fringe benefits taxable amount.

Value of Fringe Benefits – GST-inclusive or GST-exclusive ?

Car Fringe Benefits

57. The taxable value of a car fringe benefit may be calculated by either the 'statutory method' or the 'operating cost method'. Under the statutory method the taxable value is principally calculated on a percentage of the car's base value which, in turn, is derived from the *cost price* of the car as defined in subsection 136(1). The taxable value under the operating cost method is a percentage of the total costs of operating the car. Under the operating cost method there are 'deemed operating costs' where the car is owned. *Cost price* is also used when determining 'deemed depreciation' and 'deemed interest', under the operating cost method.

58. The definition of *cost price* has not altered as a result of the introduction of GST, although those parts of the definition that refer to sales tax will become redundant, in most cases, after the start of GST. Where businesses have been charged sales tax on goods they held for sale or exchange at the start of 1 July 2000 they can claim a credit for that stock if they are registered for GST (however, this does not apply to stocks held for manufacturing, stocks of most second-hand goods, goods held for lease or hire, business consumables such as stationery or alcoholic beverages).

59. In the *cost price* definition, the phrase 'the amount for which the car could reasonably have been expected to have been sold by the person by wholesale' is used for circumstances where the car is owned and manufactured by the same person. As car manufacturers will be registered for GST it is expected that any wholesale sales made by those manufacturers will always include GST. Therefore, their **GST-inclusive value** will be 'the amount for which the car could reasonably have been expected to have been sold by the person by wholesale'.

60. In the *cost price* definition, the phrase 'the expenditure incurred by the person… that is directly attributable to the acquisition or delivery of the car' (other than expenditure in respect of registration) is used for circumstances where the car is owned but not manufactured by the person. It is expected that any retail sales of cars, from 1 July 2000, will always include GST in the retail price and therefore their **GST-inclusive value** will be 'the expenditure incurred by the person… that is directly attributable to the acquisition or delivery of the car'. For the reasons above, 'non-business accessories' fitted to the car will also be brought into account at their **GST-inclusive value** as appropriate.

61. This also means that the base value of leased cars, under the statutory method, will be as its**GST-inclusive value** as appropriate. Under the operating cost method, where the car is leased the leasing costs involved are part of the 'actual operating costs' and the phrase 'any expense incurred by the lessor pursuant to the lease agreement' is used for such cases in subsection 10(3). Most lease payments (i.e., those not under non-reviewable leasing contracts entered into before 8 July 1999) will from 1 July 2000 include GST and therefore from that date 'any expense incurred by the lessor pursuant to the lease agreement' will be as its **GST-inclusive value**. Lease payments on which GST is not chargeable will, of course, be 'costed' at the amount of the expenditure paid or incurred.

62. Where operating costs such as 'repairs', 'maintenance', 'fuel' and 'registration and insurance' are part of the operating cost method calculations their cost will also be at the **GST-inclusive value** as appropriate.

63. The base values for car fringe benefits calculated under the statutory method and operating costs for car fringe benefits under the operating cost method will be at the **GST-inclusive value** as appropriate. This is not altered by whether the car is owned, manufactured or leased or whether non-business accessories are fitted.

Debt Waiver Fringe Benefits

64. The taxable value of a debt waiver fringe benefit is the amount of the total debt released (including any interest waived where applicable). This does not alter after 1 July 2000.

Loan Fringe Benefits

65. The taxable value of a loan fringe benefit is the difference between the FBT statutory interest rate and the actual interest rate payable by the employee or his/her associate. The value of the loan fringe benefit remains the difference between the FBT 'statutory' interest rate and the 'actual' rates.

Expense Payment Fringe Benefits

66. The taxable value of an expense payment fringe benefit is either the amount of the payment directly made to a third party or the amount of the reimbursement made to the employee or his/her associate. It will be a question of fact whether GST is included. As it is the 'amount' directly paid or reimbursed that determines the taxable value of the expense payment fringe benefit then such 'amount' will be at the **GST-inclusive value** as appropriate.

Housing Fringe Benefits

67. The taxable value of a housing fringe benefit is measured by reference to the market value of the right to occupy the unit of accommodation. A housing right includes a lease or licence to occupy or use the accommodation.

68. The supply of residential premises by way of lease, hire or licence will usually be **input taxed** under the GST Act. Therefore, where the employer pays for such residential premises no GST will be in the payment. However, some GST **input tax credits** may be available for commercial residential premises or short-term accommodation provided to employees but this will be a question of fact in a particular case (refer to Goods and Services Tax Ruling GSTR 2000/20 'Goods and Services Tax: commercial residential premises').

Living-Away-From-Home-Allowance Fringe Benefits (LAFHA)

69. The taxable value of a LAFHA is the amount of the allowance paid less any parts of the allowance that are reasonable compensation for the cost of accommodation and/or increased expenditure on food. The value of the LAFHA is therefore the difference between the

amount of the allowance and the amount exempted for accommodation and/or food. The implementation of GST does not change this position.

Airline Transport Fringe Benefits

70. The taxable value of an airline transport fringe benefit is the stand-by value less any employee contribution. The stand-by value for domestic travel is based on the lowest publicly advertised economy air fare over that route and the stand-by value for international travel is based on the lowest published fare for that international route. The definitions above of what are stand-by values do not change from 1 July 2000 although the actual airfares themselves may rise due to the inclusion of GST. Such stand-by values will therefore be at their **GST-inclusive value** as appropriate. Airline transport that falls within Subdivision 38-K of the GST Act is **GST-free,** e.g., transport to, from or outside, Australia; transport of passengers on domestic legs of international flights.

Board Fringe Benefits

71. The taxable value of a board fringe benefit is $2.00 per meal per person (or $1.00 per person under the age of 12 years). The taxable values for board fringe benefits are 'statutory values' that will remain unaffected from 1 July 2000.

Meal Entertainment Fringe Benefits

72. Where expense payment, airline transport, property, tax-exempt body entertainment or residual benefits arise from the provision of meal entertainment the employer may elect to classify these fringe benefits as 'meal entertainment fringe benefits'.

73. The taxable value of meal entertainment fringe benefits may be calculated under the '50-50 split method' or the '12 week register method'. Both methods are based on the total meal entertainment expenditure. As the taxable values under either of the above methods result from the actual expenditure incurred this will result, in turn, in their value being the **GST-inclusive value** where applicable after the implementation of GST.

Tax-Exempt Body Entertainment Fringe Benefits

74. The taxable value of a tax-exempt body entertainment fringe benefit is the amount of the entertainment expenditure incurred that relates to the employee. As the taxable value results from the actual

expenditure incurred this will, in turn, result in the value being the **GST-inclusive value** where applicable from 1 July 2000.

Car Parking Fringe Benefits

75. There are 5 ways in which the taxable value of a car parking fringe benefit can be calculated:

- The commercial car parking station method which is calculated using the lowest fee charged, by any commercial parking station within a 1 kilometre radius of the premises on which the car is parked, for all day parking on that day.
- The market value method is calculated using the market value of the car parking actually provided.
- The average cost method which is calculated using the average of the lowest fees charged on relevant days by any operator of a commercial parking station within a 1 kilometre radius of the premises on which the car is parked.
- The 12-week register method utilises a register that is kept of the number of days in the period the car parking space is used multiplied by a taxable value worked out using either the commercial parking station method, the market value method or the average cost method.
- The statutory formula method involves finding the taxable value of each daily benefit as if either the commercial parking station method, the market value method or the average cost method applied and multiplying the result by the deemed number of benefits times the number of days in the relevant period of the usage of the car parking space.

76. Where either the commercial car parking station method or the average cost method is used to determine the taxable value, in any of the relevant methods above, the 'lowest fees charged' will include GST after 1 July 2000 and therefore such fees will be the **GST-inclusive value** as appropriate.

Property Fringe Benefits

77. The taxable value of an external property benefit is equal to the cost price of the property to the employer in an arm's-length transaction (or the amount the employee could reasonably be expected to pay for non arm's-length transactions).

78. The taxable value of an in-house property benefit is basically either:

- The provider's lowest arm's-length selling price for non-retail goods.
- For retail goods, it is 75% of the lowest selling price of identical goods sold to the public or 75% of the market value for similar property where the goods provided are not identical to those sold to the public.

79. Where property is provided as a fringe benefit the taxable value will be a question of fact. The value will be **GST-inclusive value** or **GST-exclusive value** depending on whether GST is payable.

Residual Fringe Benefits

80. The taxable value of an external residual benefit is equal to the cost price of the property to the employer in an arm's-length transaction (or the amount the employee could reasonably be expected to pay for non arm's-length transactions).

81. The taxable value of an in-house residual benefit is basically either:

- 75% of the lowest arm's-length price charged to the public at the time for identical benefits.
- 75% of the amount the employee could reasonably be expected to pay to acquire the benefit under an arm's-length transaction.

82. The taxable value of a residual benefit will be a question of fact. The value will be **GST-inclusive value** or **GST-exclusive value** depending on whether GST is payable.

Value of Employee Contributions for the Purpose of Reduction of FBT Taxable Values

83. The definitions of **recipient's payment**, **recipient's contribution** or **recipient's rent** in the FBTAA have not been altered.

84. The definitions of **recipient's payment** in paragraphs 9(2)(e) and 10(3)(c), which relate to an employee contribution towards a car fringe benefit, uses the phrase 'the amount of those expenses paid by the recipients'. Where the **recipient's payment** is by way of a cash amount the full cash amount paid will be the 'amount of expenses paid by the recipient' in satisfaction of the expenses incurred to the employer or provider (if you do not have any set off for reimbursed amounts).

85. The above situation does not alter after 1 July 2000. Under the GST Act such a payment will be used to arrive at what is the price of a GST **taxable supply** that is a **fringe benefit** in order to calculate the amount of GST payable on that **taxable supply** (i.e., 1/11th of that 'price'). That calculation relates only to arriving at the employer's GST liability and does not affect the amount of the payment in arriving at the employer's FBT liability (refer to Draft Goods and Services Tax Ruling GSTR 2000/D17). Consequently, a **recipient's payment** made in cash will not have GST deducted from the amount of that payment in arriving at the car fringe benefits taxable value.

Example

86. Lodewyk is provided with a car fringe benefit by his employer, Zephyr Wind Pty Ltd, who is registered for GST. Lodewyk makes a total $3,300 cash contribution (**recipient's payment**), in the period 1 July 2000 to 31 March 2001, directly to his employer towards the running costs of the car. Although Zephyr Wind Pty Ltd will have to remit $300 (1/11th of $3,300) of that contribution in respect of GST the company will deduct the full $3,300 of the contribution when calculating the taxable value of the car fringe benefit provided to Lodewyk.

87. Where the **recipient's payment** is by way of fuel, oil or servicing, which is contrasted to a cash payment to the employer, it can be expected that most, if not all, such items or services will be subject to GST at the time of purchase or provision of the service to the employee. However, a **recipient's payment** made in this way will not be contribution for the supply of the benefit, for GST purposes, but instead will have been contribution for the supply of those items or services by the third party. A **recipient's payment** that is not a contribution for the supply of the benefit will also not have GST deducted from the amount of that payment in arriving at the car benefit's taxable value.

Example

88. Using the same employee and employer as in paragraph 86 above, Lodewyk also pays some of the running costs in relation to the car. He paid $2,200 in fuel, oil and servicing in the period 1 July 2000 to 31 March 2001. This amount, although being a **'recipient's payment**' for FBT purposes, is not a payment that is contribution for the supply of the benefit for GST purposes. Zephyr Wind Pty Ltd is not required to remit 1/11th of this contribution. It will, however, still deduct the full $2,200 when calculating the taxable value of the car fringe benefit provided to Lodewyk.

89. When Zephyr Pty Ltd calculates the taxable value of the car fringe benefit provided to Lodewyk it would deduct the total of the **recipient's payments** made by Lodewyk, i.e., $3,300 + $2,200 = $5,500. That is, the amount of the **recipient's payment** to be deducted from the taxable value of the car fringe benefit will always be the amount of the contribution made by the employee whether or not the employer has to remit any GST in respect of that contribution.

90. The definition of **recipient's contribution** in subsection 136(1), which relates to an employee's contribution towards either expense payment, airline transport, board, car parking, property or residual fringe benefits, uses the phrases 'the amount of any consideration paid to the provider or to the employer by the recipient or by the employee' and 'the amount paid to the provider or to the employer by the recipient or by the employee' (if you do not have any set off for reimbursed amounts). For similar reasons to those discussed above for '**recipient's payment**', the amount of the **recipient's contribution** will not have any GST deducted from it in arriving at the taxable value of the relevant **fringe benefit** for FBT purposes.

91. The definition of **recipient's rent** in subsection 136(1), which relates to an employee contribution towards a housing fringe benefit, uses the phrase 'the amount of any rent or other consideration paid to the provider or to the employer by the recipient or the employee' (if you do not have any setoff for reimbursed amounts). As a **recipient's rent** cannot be contribution for the supply of a housing fringe benefit, for GST purposes, it is unnecessary to consider whether it will have any GST deducted from it in arriving at the taxable value of the housing fringe benefit for FBT purposes.

92. Therefore, the full amount of any employee contribution made towards a **fringe benefit** will be deducted in arriving at the relevant benefit's taxable value (if you do not have any setoff for reimbursed amounts). For GST Act purposes, however, the employer may be required to deduct GST from employee contributions or payments (refer to Draft Goods and Services Tax Ruling GSTR 2000/D17).

Income Tax and Fringe Benefits From 1 July 2000

93. Schedule 3 and Schedule 8 respectively of the *A New Tax System (Indirect Tax and Consequential Amendments) Act 1999* amend the *Income* Tax *Assessment Act 1997* (ITAA 1997) and the *Income Tax Assessment Act 1936* (ITAA 1936) to exclude GST from income derived and from deductible amounts to the extent of an entity's **input tax credit** entitlement.

94. Under section 27-5 of the ITAA 1997 an amount corresponding to the entitlement to GST **input tax credits** will be

excluded from deductible losses or outgoings that are incurred. Therefore, the costs of **fringe benefits** that qualify as income tax deductions, under the ITAA 1997, will be deductible at the **GST-exclusive value** as applicable.

Example

95. Catana Pty Ltd, a large catering company who was registered for GST, purchased on 2 July 2000 a fridge and a freezer for Manuel who was one of its employees. The total cost to Catana Pty Ltd was $4,400 (including GST). The company will therefore claim $4,000 ($4,400 - $400) as an income tax deduction.

96. However, if instead (using the same facts as in paragraph 95 above), Catana Pty Ltd had not been entitled to an **input tax credit**, because (say) it was not registered nor required to be registered, the company would claim an income tax deduction for the full amount paid of $4,400.

97. The taxable value of certain **fringe benefits** may be reduced to the extent that the employee would have been able to claim an income tax deduction if it had been the employee themselves that had incurred the expense. The '**otherwise deductible rule**' applies to expense payment fringe benefits, property fringe benefits, loan fringe benefits and residual fringe benefits. Unless an employee makes a **creditable acquisition** within the meaning of section 11-5 of the GST Act they will not be entitled to a GST **input tax credit**. Where an employee has no 'entitlement to an **input tax credit**' for the purposes of section 27-5 of the ITAA 1997 they may claim a deduction for the **GST-inclusive value** of that expenditure. Therefore, where the '**otherwise deductible rule**' applies to the calculation of the taxable value of a **fringe benefit** such 'deductible amount' will be at the **GST-inclusive value** as applicable.

Example

98. Padmavati is employed by a gardening company, Wediggit Pty Ltd, who is registered for GST. Wediggit Pty Ltd has provided Padmavati with the use of a motorised garden tiller (which it hired after 1 July 2000 for $550 including GST). Padmavati uses the tiller for purposes that are 60% work related and 40% private. Padmavati makes a contribution of $110 towards the use of the tiller. When Wediggit Pty Ltd works out the taxable value of the benefit provided to Padmavati the hypothetical hiring cost, deductible to Padmavati, would be $550 x 60% = $330 and the hypothetical deductible contribution would be $110 x 60% = $66.

99. Paragraph 17-5(c) of the ITAA 1997 excludes the GST component of any recoupment of an amount paid in acquiring something that is to be included in assessable income. Therefore, an employee contribution will be added to an employer's assessable income, under the provisions of the ITAA 1997, at the **GST-exclusive value** where such contribution is either a **recipient's payment** or a **recipient's contribution** and such **recipient's payment** or **recipient's contribution** that is contribution for a **taxable supply** for GST purposes.

Example

100. Using the same circumstances as paragraph 98 above, Wediggit Pty Ltd will include $100 ($110-$10) in its assessable income for the relevant financial year.

Examples

101. What steps does an employer (who is not a public benevolent institution nor a rebateable employer) take to calculate the employer's FBT liability from 1 April 2000?

Step 1

(i) Calculate the total of the individual type 1 fringe benefits amounts for each employee.

(ii) Calculate the total of the taxable values of all type 1 excluded benefits.

(iii) Add together the totals obtained from (i) and (ii) above to get the aggregate type 1 fringe benefits amount.

Step 2

(i) Calculate the total of the individual type 2 fringe benefits amounts for each employee.

(ii) Calculate the total of the taxable values of all type 2 excluded benefits.

(iii) Add together the totals obtained from (i) and (ii) above to get the aggregate type 2 fringe benefits amount.

Step 3

(i) Multiply the aggregate type 1 fringe benefits amount by the new gross-up rate of 2.1292.

(ii) Multiply the aggregate type 2 fringe benefits amount by the former gross-up rate of 1.9417.

(iii) Add together the totals obtained from (i) and (ii) above to get the fringe benefits taxable amount.

Step 4

(i) Multiply the fringe benefits taxable amount by the FBT tax rate (currently 48.5%) to get the FBT payable.

102. Morag and Angus are employees of Nessie Pty Ltd, a toy manufacturer, and were provided with the following types of fringe benefits by their employer in the 2001 FBT year. These were the only fringe benefits provided by Nessie Pty Ltd (who is registered for GST) in that FBT year.

- Morag was provided with the following benefits:

  (a) A holiday in the Whitsundays from 3-12 November 2000 inclusive costing $3,300. As GST, of $300, was paid on the holiday costs and Nessie Pty Ltd would be entitled to an **input tax credit** (ITC) for that amount this is a 'type 1 benefit'.

  (b) The use of a company car purchased by Nessie Pty Ltd on 17 July 2000. The taxable value of the car fringe benefit, using the statutory formula method, was $5,000. Although Nessie Pty Ltd would have paid GST on the purchase of the car it would not be entitled any ITC due to the 'phasing in rules' for car ITCs. The car fringe benefit will therefore be a 'type 2 benefit'.

  (c) The hire of a deep sea fishing boat on 30 June 2000 used for the purposes of entertaining senior staff and clients of Nessie Pty Ltd. The value of the benefit to Morag is $500. As the expenditure took place prior to 1 July 2000 no GST would have been charged on the boat hire. Also, entertainment facility leasing expenses are excluded from being a reportable fringe benefit. The fishing boat hire is therefore a 'type 2 excluded benefit'.

(d) The provision of a notebook computer purchased on 12 February 2001 costing $4,400. This benefit is an exempt benefit. Although GST, of $400, would have been paid on the purchase of the notebook and also Nessie Pty Ltd would be entitled an ITC for that amount this does not alter the FBT exempt status of the benefit. Therefore it is neither a 'type 1 benefit' nor a 'type 2 benefit'.

- Angus was provided with the following benefits:

  (a) A home entertainment system purchased on 26 March 2001 costing $5,500. As GST, of $500, was paid on the purchase of the system and Nessie Pty Ltd would be entitled to an **input tax credit** (ITC) for that amount this is a 'type 1 benefit'.

  (b) One term's tuition fees at a private school for Angus' daughter paid on 31 August 2000 and costing $2,000. As recognised education courses are **GST-free** this would be a 'type 2 benefit'.

  (c) Meal entertainment to the value of $550 provided after 1 July 2000. Meal entertainment is excluded from being a reportable fringe benefit. However, Nessie Pty Ltd would be entitled to the appropriate amount of ITCs in respect of this expenditure. This benefit is therefore a 'type 1 excluded benefit'.

  (d) Childcare, costing $1,000, provided by a registered carer at premises leased by Nessie Pty Ltd. The childcare is exempt for FBT purposes and also **GST-free**. Due to the FBT exempt status of the benefit it is neither a 'type 1 benefit' nor a 'type 2 benefit'.

Nessie Pty Ltd will work out its fringe benefits tax payable amount as follows:

Step1

(i) The individual type 1 non-excluded fringe benefits amount for Morag is $3,300.

(ii) The individual type 1 non-excluded fringe benefits amount for Angus is $5,500.

(iii) The taxable value of Angus' type 1 excluded fringe benefits amounts is $550.

(iv) The aggregate type 1 fringe benefits amount is $9,350 ($3,300 + $5,500 + $550).

Step2

(i) The individual type 2 non-excluded fringe benefits amount for Morag is $5,000.

(ii) The individual type 2 non-excluded fringe benefits amount for Angus is $2,000.

(iii) The taxable value of Morag's type 2 excluded fringe benefits amounts is $500.

(iv) The aggregate type 2 fringe benefits amount is $7,500 ($5,000 + $2,000 + $500).

Step 3

(i) Multiply the aggregate type 1 fringe benefits amount of $9,350 x 2.1292 = $19,908.

(ii) Multiply the aggregate type 2 fringe benefits amount of $7,500 x 1.9417 = $14,562.

(iii) The fringe benefits taxable amount is $34,470 ($19,908 + $14,562).

Step 4

(i) The FBT payable for the 2001 FBT year is $16,717 ($34,470 x 48.5%).

103. Which gross-up rate do you use for a car bought before 1 July 2001 and provided as a car fringe benefit by a business registered for GST?

- Section 20, of Part 5 in the 'Special transitional rules', of *A New Tax System (Goods and Services Tax Transition) Act* 1999 deals with the phasing in of **input tax credits** for motor vehicles. Under these rules, businesses will not be able to claim GST **input tax credits** for vehicles bought before 1 July 2001, registered businesses will be able to claim 50% of the **input tax credits** in the period 1 July 2001 to

30 June 2002 inclusive and be able to claim full **input tax credits** from on or after 1 July 2002.

- Most employers, or other providers, will not be entitled to a GST **input tax credit** for cars bought before 1 July 2001. This means they will need to use the former gross-up rate of 1.9417.
- Aeschylus Pty Ltd is a company registered for GST that purchased a car on 1 June 2001 for $33,000 including GST. The company provides the car as a car fringe benefit to its company accountant in the FBT year ended 31 March 2002. When Aeschylus Pty Ltd calculates its FBT liability in respect of the car fringe benefit for the 2002 FBT year it will use the former gross-up rate of 1.9417 as it is not entitled to an **input tax credit** for the $3,000 GST it paid on the car's purchase.
- If the employer, or other provider, is however, entitled to an **input tax credit** from 1 July 2000 they should use the new gross-up rate of 2.1292 for cars bought from that date.

104. Which gross-up rate do you use for a car bought after 1 July 2000 and for which the purchaser is entitled to a full input tax credit from that date?

- There are some circumstances where the purchaser of a car will be entitled to a full **input tax credit** from 1 July 2000 and these are as follows:

  (a) The purchaser would have been entitled to a sales tax exemption, had sales tax still applied.

  (b) The car acquired was a second-hand motor vehicle.

  (c) The purchaser was an insurer and was replacing a motor vehicle under an insurance policy or

  (d) The purchaser was acquiring the car to hold as trading stock (other than stock used for hire).

- Bronach Shire Council is registered for GST and was exempt from wholesale sales tax (WST) before 1 July 2000. The Bronach Shire Council purchased a car on 1 July 2000 for $33,000 including GST. The Shire Council provided the car as a car fringe benefit to its Chief Surveyor in the FBT year ended 31 March 2001. The Chief Surveyor is only allowed to

use the car privately for home to work travel. As Bronach Shire Council was previously WST exempt, for a car provided in such circumstances, it is entitled to claim the full GST **input tax credit** of $3,000 from the purchase of the car. When the Shire Council calculates its FBT liability in respect of the car benefit for the 2001 FBT year it will use the new gross-up rate of 2.1292 due to its entitlement to the **input tax credit**.

105. Which gross-up rate do you use for a car bought before 1 July 2001 but for which non-business fitted accessories were purchased after 1 July 2000 and subsequently provided with the car fringe benefit by a business registered for GST?

- Most employers, or other providers, will not be entitled to a GST **input tax credit** for cars bought before 1 July 2001. This means they will need to use the former gross-up rate of 1.9417.
- The provision of a car fringe benefit is for the 'use' of the car as transport rather than the provision of the car as an 'object'. Under those circumstances, the relevant matter is the original purchase of the car even though non-business accessories, on which GST has been paid and which may give rise to an entitlement to an **input tax credit**, may subsequently be fitted. Despite the subsequent addition of such non-business accessories the former gross-up rate of 1.9417 will still be used where the car was purchased before 1 July 2001.
- Using the facts from the example of Aeschylus Pty Ltd in paragraph 102 above, if Aeschylus Pty Ltd subsequently fitted non-business accessories it had purchased after 1 July 2000 it would still use the former gross-up rate to calculate the fringe benefits taxable amount for the car fringe benefit.

106. Which gross-up rate do you use for a car bought between 1 July 2001 and 30 June 2002 and provided as a car fringe benefit by a business registered for GST?

- The employer will use the new gross-up rate as long as the employer, or other provider, was entitled to a GST **input tax credit** at the time they bought the car.
- Most registered employers, or other registered providers, will be entitled to a 50% GST **input tax credit** for cars bought between 1 July 2001 and

30 June 2002 and therefore they will use the new gross-up rate of 2.1292 from 1 July 2001.

- Chang Yen Pty Ltd is a company registered for GST that purchased a car on 1 April 2002 for $44,000, including GST, for use by its company lawyer as a car fringe benefit. As Chang Yen Pty Ltd is entitled to claim a $2,000 GST **input tax credit** (50% of $4,000) from the purchase of the car it will use the new gross-up rate of 2.1292 when it calculates its FBT liability in respect of the car benefit for the 2003 FBT year.

107. Which gross-up rate do you use for a car bought from 1 July 2002 onwards and provided as a car fringe benefit by a business registered for GST?

- Employers will use the new gross-up rate as long as they, or other providers, were entitled to a GST **input tax credit** at the time they bought the car.
- Most registered employers, or other registered providers, will be entitled to a full GST **input tax credit** for cars bought from 1 July 2002 onwards. They will use the new gross-up rate of 2.1292 from 1 July 2002.
- Derryth Pty Ltd is a company registered for GST that purchased a car on 1 April 2003 for $33,000, including GST, for use by its senior engineer as a car fringe benefit. As Derryth Pty Ltd is entitled to claim the full $3,000 GST **input tax credit** from the purchase of the car it will use the new gross-up rate of 2.1292 when it calculates its FBT liability in respect of the car benefit for the 2004 FBT year.

108. Which gross-up rate do you use for a car leased before and after 1 July 2000 and provided as a car fringe benefit by a business registered for GST?

- Lease fees will not have GST applied before 1 July 2000 so no **input tax credit** would be available before then. This means that the former gross-up rate is to be used for any benefit provided up until 1 July 2000.
- Edon Pty Ltd, who is registered for GST, leased a car from 1 April 2000 to 30 June 2000 (when the lease ended) to provide continuously as a car fringe benefit

for the financial controller of the company. As all the lease payments were made before 1 July 2000 no GST would have been paid and therefore Edon Pty Ltd would use the former gross-up rate of 1.9417 irrespective of whether it chooses to use the 'statutory formula method' or the 'operating cost method' to calculate its FBT liability in respect of the car benefit for the 2001 FBT year.

- However, GST will be applied to lease fees from 1 July 2000, so **input tax credits** will be available to registered employers, or other registered providers, from that date. This means they should use the new gross-up rate for any car fringe benefit provided after 1 July 2000.
- If the lease spans 1 July 2000, the employer will need to divide the taxable value of the car fringe benefit into pre and post 1 July 2000 amounts. This is based on the number of days the car fringe benefit was provided between 1 April 2000 and 30 June 2000, and the number of days the car fringe benefit was provided between 1 July 2000 and 31 March 2001.
- The former gross-up rate of 1.9417 is used to work out the car fringe benefits taxable amount for the pre 1 July 2000 portion, and the new gross-up rate of 2.1292 is used to work out the fringe benefits taxable amount for the post 1 July portion.
- Filypas Pty Ltd , who is registered for GST, leased a car from 1 April 2000 to 31 March 2001 (under a leasing contract that was not a non-reviewable contract entered into before 8 July 1999) to provide continuously during that period a car fringe benefit for the advertising manager of the company. The company paid no GST on lease fees in the period 1 April 2000 to 30 June 2000, but paid GST on lease fees in the period 1 July 2000 to 31 March 2001. To determine its car fringe benefits liability for the 2001 FBT year it will do the following steps:

  (i) Calculate the taxable value of the car fringe benefit using either the 'statutory formula method' or the 'operating cost method' as it so chooses.

  (ii) Determine the number of days the car fringe benefit was provided between 1 April 2000 to 30 June 2000 and 1 July 2000 to

31 March 2001. In this case it was 91 days and 274 days respectively (i.e., 25% of the time for the earlier period and 75% of the time for the latter period).

(iii) Multiply the taxable value by 25% and 'gross-up' the result by 1.9417 to arrive at the taxable amount for the car fringe benefit provided from 1 April 2000 to 30 June 2000.

(iv) Multiply the taxable value by 75% and 'gross-up' the result by 2.1292 to arrive at the taxable amount for the car fringe benefit provided from 1 July 2000 to 31 March 2001.

(v) Add the two taxable amounts calculated above to get the total taxable amount for the car fringe benefit for the 2001 FBT year.

(vi) Apply the FBT rate of tax to the total taxable value to get the FBT payable for the 2001 FBT year.

109. Will the new gross-up rate be applied to the employee's individual fringe benefits amount to arrive at the reportable fringe benefits amount?

- The new gross-up rate will not affect an employee's 'reportable fringe benefit amount'. The employer still uses the former gross-up rate of 1.9417 to work out the **employee's reportable fringe benefits amount**. The employer will only use the new gross-up rate to calculate the employer's FBT liability where the employer, or other registered provider, is entitled to an input credit.
- Guntur works for an employer, Hesba Pty Ltd, that is registered for GST and who provided him with fringe benefits with a total taxable value of $2,200 in the 2001 FBT year. Hesba Pty Ltd was entitled to a total GST **input tax credit** of $200 for the fringe benefits provided to Guntur. Hesba Pty Ltd will use the former gross-up rate of 1.9417 to arrive at Guntor's **reportable fringe benefits amount** of $4,271 ($2,200 x 1.9417) and will not use the new gross-up rate for this even though it was entitled to an **input tax credit** in respect of the benefits provided to Guntur.

110. Which gross-up rate do you use for meal entertainment from 1 July 2000?

111. Where expense payment, airline transport, property, tax-exempt body entertainment or residual benefits arise from the provision of meal entertainment the employer may elect to classify those fringe benefits as 'meal entertainment fringe benefits'. However, if an election is not made the taxable values of benefits will be calculated under the particular rules for that type of fringe benefits.

112. The taxable value of meal entertainment fringe benefits may be calculated under the '50-50 split method' or the '12 week register method'. Both methods are based on the total meal entertainment expenditure.

113. As the taxable values under either of the above methods result from the actual expenditure incurred this will result, in turn, in their values being **GST-inclusive value** as applicable from 1 July 2000. If an election is not made, the values of the benefits will also be **GST-inclusive value** as applicable from 1 July 2000.

114. Bunter Pty Ltd, who is registered for GST, has provided staff entertainment totalling $2,200 and client entertainment totalling $3,300 in the 2002 FBT year.

- Bunter Pty Ltd has elected, under Division 9A, to value the above entertainment as 'meal entertainment' using the '50/50 split method' to work out the taxable value.
- The taxable value of the 'meal entertainment' is $2,750 (($2,200 + $3,300) x 50%).
- The fringe benefits taxable amount is calculated by multiplying the $2,750 taxable value by the new gross-up rate of 2.1292. It is assumed that Bunter Pty Ltd would have paid GST on the cost of the entertainment and been entitled to an **input tax credit**. The fringe benefits taxable amount is therefore $5,855.
- The FBT payable is $2,839 ($5,855 x 48.5%).

115. If Bunter Pty Ltd (using the example above) had not made an election under Division 9A to use the '50/50 split method' (or the '12-week register method') the taxable value would be as follows:

- The taxable value of the entertainment is $2,200 (i.e., the amount of the entertainment that was provided to the staff of Bunter Pty Ltd).
- The fringe benefits taxable amount is calculated by multiplying the $2,200 taxable value by the new gross-up rate of 2.1292. It is assumed that Bunter Pty Ltd would have paid GST on the cost of the entertainment

and been entitled to an **input tax credit**. The fringe benefits taxable amount is therefore $4,684.

- The FBT payable is $2,271 ($4,684 x 48.5%).

Definitions

116. The following terms are defined for the purpose of this ruling.

Creditable acquisition

117. There are four requirements for there to be a creditable acquisition under section 11-5 of the GST Act:

(a) the acquisition is made solely or partly for a creditable purpose; and

(b) the supply to the acquirer must be a **taxable supply.** (This rule does not apply to reimbursements**.** Different conditions apply for reimbursements); and

(c) the acquirer has to provide consideration. The provision of a fringe benefit is normally made for consideration being the supply of employee services. (For reimbursements of employee expenses that are partly or fully related directly to his/her activities as employee, the reimbursement amount is deemed to be consideration for an acquisition); and

(d) the acquirer must be registered, or required to be registered.

Employee's individual fringe benefits amount

118. An **employee's individual fringe benefits amount** for a FBT year of tax, under the provisions of 5E, is the sum of the employee's share of the taxable value of each fringe benefit provided in respect of employment that is not an **excluded fringe benefit**.

Employee's reportable fringe benefits amount

119. An **employee's reportable fringe benefits amount** for a FBT year of tax, under either the provisions of 135P or 135Q, is where the **employee's individual fringe benefits amount** or the employee's individual quasi-fringe benefits amount respectively is more than $1,000.

The **reportable fringe benefits amount** under subsection 135P(2) is calculated as follows:

$$\text{Individual fringe benefits amount} \times \frac{1}{1 - \text{Rate of tax}}$$

The reportable fringe benefits amount under subsection 135Q(4) is calculated as follows:

$$\left[\text{Individual fringe benefits amount} + \text{Individual quasi-fringe benefits amount}\right] \times \frac{1}{1 - \text{Rate of tax}}$$

Employer's aggregate fringe benefits amount

120. The methodology to work out an **employer's** aggregate **fringe benefits amount**, under section 5C, is as follows:

Method statement

Step 1. Work out under Division 3 for each of the employer's employees the individual fringe benefits amount for the year of tax in respect of the employment of the employee by the employer.

Step 2. Add up all the individual fringe benefits amounts worked out under Step 1.

Step 3. Add up the taxable value of every excluded fringe benefit (other than an amortised fringe benefit) relating to an employee of the employer, the employer and the year of tax.

Note: Subsection 5E(3) explains what is an excluded fringe benefit.

Step 4. Add the total from Step 2 to the total from Step 3.

Note: The result of Step 4 is the employer's aggregate fringe benefits amount if there are no amortised fringe benefits or reducible fringe benefits in relation to the employer.

Step 5. Add to the total from Step 4 the amortised amount for the year of tax of each amortised fringe benefit (if any) relating to an employee of the employer, the employer and any year of tax.

Step 6. Subtract from the total from Step 5 the reduction amount for the year of tax of each reducible fringe

benefit (if any) relating to an employee of the employer, the employer and the year of tax.

(1) An **employer's aggregate fringe benefits amount** for the year of tax beginning on 1 April 2000 or a later year of tax is the sum of the employer's type 1 aggregate fringe benefits amount and the employer's type 2 aggregate fringe benefits amount for the year of tax.

(2) Work out an employer's type 1 aggregate fringe benefits amount for a year of tax as follows.

Method statement

Step 1. Identify the fringe benefits in respect of each of the employer's employees that are GST-creditable benefits (see section 149A), and work out under Division 3 for each of those employees the individual fringe benefits amount for the year of tax in relation to those fringe benefits.

Step 2. Add up all the individual fringe benefits amounts worked out under Step 1.

Step 3. Identify the excluded fringe benefits for the year of tax in respect of each of the employer's employees that are **GST-creditable benefits** (see section 149A), and add up the taxable values of all those excluded fringe benefits.

Note: Subsection 5E(3) explains what is an excluded fringe benefit.

Step 4. Add the total from Step 2 to the total from Step 3. The total amount is the employer's type 1 aggregate fringe benefits amount for the year of tax.

(3) Work out an employer's type 2 aggregate fringe benefits amount for a year of tax as follows.

Method Statement	
Step 1.	Identify, in respect of each of the employer's employees the fringe benefits that are not taken into account under Step 1 in the Method statement in subsection (3), and work out under Division 3 for each of those employees the individual fringe benefits amount for the year of tax in relation to those fringe benefits.
Step 2.	Add up all the individual fringe benefits amounts worked out under Step 1.
Step 3.	Identify, in respect of each of the employer's employees, the excluded fringe benefits for the year of tax that are not taken into account under Step 3 of the method statement in subsection (3), and add up the taxable values of all those excluded fringe benefits.
Note:	Subsection 5E(3) explains what is an excluded fringe benefit.
Step 4.	Add the total from Step 2 to the total from Step 3. The total amount is the employer's type 2 aggregate fringe benefits amount for the year of tax.
Note:	Other provisions may affect the aggregate fringe benefits amount. For example, see section 67 (about arrangements to avoid or reduce tax), section 135L (about reducing the aggregate fringe benefits amount of an employer who is in business for only part of a year of tax) and section 152B (about entertainment facility leasing expenses).

Excluded fringe benefit

121. An **excluded fringe benefit** for a FBT year of tax is defined in subsection 5E(3) to be one of the following:

(a) constituted by the provision of meal entertainment (as defined in section 37AD, whether or not the employer has elected that Division 9A of Part III apply to the employer); or

(b) that is a car parking fringe benefit (see subsection 136(1)); or

(c) whose taxable value is wholly or partly attributable to entertainment facility leasing expenses; or

(d) (since repealed); or

(e) whose taxable value is worked out under section 59 (about remote area residential fuel); or

(f) whose taxable value is reduced under section 60 (about remote area housing); or

(g) that is an amortised fringe benefit (see subsection 136(1)); or

(h) that is a reducible fringe benefit (see subsection 136(1)); or

(i) that is a benefit prescribed by the regulations for the purposes of this paragraph; or

(j) that relates to occasional travel to a major population centre in Australia provided to employees and family members resident in a location that is not in or adjacent to an eligible urban area; or

(k) that relates to freight costs for foodstuffs provided to employees resident in a location that is not in or adjacent to an eligible urban area.

Fringe benefit

122. A fringe benefit as defined in subsection 136(1), in relation to an employee and the employer of the employee, as meaning a benefit provided during a FBT year of tax that is:

(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 of the 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 *Income Tax Assessment Act 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 *Income Tax Assessment Act 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 *Income Tax Assessment Act 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…

paragraphs (j) to (q†) inclusive.

GST-creditable benefit

123. Section 149A defines a GST creditable benefit as follows:

(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.

GST-exclusive value

124. **GST-exclusive value** is defined in section 195-1 of the GST Act (terms with asterisks are also defined in that subsection) as:

(a) in relation to an acquisition:

(i) other than a *luxury car - means 10/11 of the *price of the supply of the thing being acquired; or

(ii) of a *luxury car – means 10/11 of the *price of the supply of the luxury car (excluding any *luxury car tax payable on the supply); and

(b) in relation to an importation that is a *taxable importation, means the *value of the importation; and

(c) in relation to an importation that is not a taxable importation, means the amount that would be the value of the importation if it were a taxable importation.

GST-free

125. **GST-free** supplies are set out in Division 38 of the GST Act. Section 38-1 of the GST Act states what Division 38 is about, and goes on to say that if a supply is **GST-free** then no GST is payable on the supply and an entitlement to an **input tax credit** for anything acquired or imported to make the supply is not affected.

GST-inclusive value

126. There is no definition of '**GST-inclusive value**' in the GST Act (although '**GST-inclusive value** market value' is defined in section 195-1 of the GST Act). Where the term is used in this ruling it means the value of the consideration or **thing** without any reduction for the amount of GST (if any) payable on the supply.

Input tax credit

127. An **input tax credit** is defined in section 195-1 of the GST Act to mean an entitlement arising under section 11-20 or 15-15 of the GST Act.

Input taxed

128. Under subsection 9-30(2) of the GST Act 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 subparagraph (a).

Otherwise deductible rule

129. The '**otherwise deductible rule**' can apply to reduce the taxable value of either an airline transport fringe benefit, a board

fringe benefit, an expense fringe benefit, a loan fringe benefit, a property fringe benefit or a residual fringe benefit. The taxable value can be reduced by the hypothetical income tax deduction to which the employee would have been entitled had the employee incurred the expense.

Public benevolent institution

130. A **public benevolent institution** is an organisation that has as its principal objects the relief of poverty, sickness, suffering, distress, misfortune, destitution, or helplessness and its activities are carried on without the purpose of private gain for particular persons.

Recipient's contribution

131. Recipients contribution is defined in subsection 136(1) 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

132. Recipient's payment is defined in paragraph 9(2)(e) as the sum of:

> (c) the amount of the recipients 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 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; 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

133. **Recipient's rent** is defined in subsection 136(1) 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;

Taxable supply

134. Section 9-5 of the GST Act states that:

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 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.

(terms with asterisks are defined in section 195-1 of the GST Act)

Thing

135. 'Thing' is defined in section 195-1 of the GST Act as meaning anything that can be supplied or imported.

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Your comments

137. If you wish to comment on this Draft Ruling, please send your comments by 19 July 2000 to:

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- Aggregate fringe benefits amount
- Airline transport fringe benefit
- Board fringe benefit
- Car fringe benefit
- Car parking fringe benefit
- Cost price
- Debt waiver fringe benefit
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- *A New Tax System (Indirect Tax and Consequential Amendments) Act 1999* Sch3
- *A New Tax System (Indirect Tax and Consequential Amendments) Act 1999* Sch8

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