



# ***PS LA 2001/9 (Withdrawn) - Capping of exemption for hospitals under the Fringe Benefits Tax Assessment Act 1986 (FBTAA)***

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 Law Administration Practice Statement PS LA 2001/9 is withdrawn on 11 June 2013 without replacement because it only applies to the FBT Transitional Allowance Scheme which ceased on 31 March 2003.

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# ATO Practice Statement

## Law Administration

**PS LA 2001/9**

Law Administration Practice Statement PS LA 2001/9 is withdrawn on 11 June 2013 without replacement because it only applies to the FBT Transitional Allowance Scheme which ceased on 31 March 2003.

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**FOI status: may be released**

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*This Practice Statement is issued under the authority of the Commissioner and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by ATO officers unless doing so creates unintended consequences. Where this occurs ATO officers must follow their Business Line's escalation process.*

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**SUBJECT:**        **Capping of exemption for hospitals under the *Fringe Benefits Tax Assessment Act 1986* (FBTAA)**

**PURPOSE:**      **To outline the ATO approach to which organisations will be treated as hospitals for FBT capping purposes.**

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### STATEMENT

1. Under provisions of the *A New Tax System (Fringe Benefits) Act 2000* (ANTSFA), the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) was amended to place a cap on the previous FBT exemptions available to public hospitals under section 57A of the FBTAA. The concession has also been extended to private-not-for-profit hospitals. On 13 April 2000, the Treasurer announced that grants will be made available to public and not-for-profit hospitals under the FBT Transitional Allowance Scheme. To achieve uniformity between this scheme and the operation of the FBTAA as amended, a common definition of a hospital will be used. This definition is reproduced in paragraphs 3 and 4.
2. The Commissioner will use the definition set out in paragraphs 3 and 4 below in deciding whether an employer will be subject to the \$17,000 capping under subsection 5B(1E) of the FBTAA. This provision will apply to those employers described in subsections 57A(2), 57A(3) and 57A(4) of the FBTAA. The definition will only be used for this purpose. As such, it will not be used in the interpretation of the term hospital in section 30-20 of the *Income Tax Assessment Act 1997* (ITAA 1997), nor will it be used in determining whether an institution is a public benevolent institution (PBI). It is intended to review the definition of the term 'hospital' after the FBT Transitional Allowance Scheme ceases to operate (after 31 March 2003).
3. For the purposes of this Law Administration Practice Statement, an institution will be treated as a hospital where:
  - it is operated:
    - by or on behalf of a State, or Territory Government or instrumentality/agency of a State or Territory Government; or

- by a body corporate, society, or association carried on not for the profit or gain of its members; and
  - its predominant objective is:
    - the provision of acute medical, psychiatric, surgical or obstetric care and associated accommodation and nursing services on the premises of the institution; or
    - the provision of accommodation and nursing services associated with the provision of acute medical, psychiatric, surgical or obstetric care by private medical practitioners on the premises of the institution.
4. Further, for the purposes of this Law Administration Practice Statement ‘acute care’ means:
- manage labour (obstetric);
  - cure illness or provide definite treatment of injury;
  - perform surgery;
  - relieve symptoms of illness or injury (excluding palliative care);
  - reduce severity of an illness or injury;
  - protect against exacerbation and/or complication of an illness and/or injury which could threaten life or normal function; and/or
  - perform diagnostic or therapeutic procedures.<sup>1</sup>
5. Accordingly, where the predominant objective of the organisation is the provision of acute care, the organisation will apply the \$17,000 cap in determining its FBT liability from 1 April 2000.
6. Where the predominant objective of the organisation is not the provision of acute care, the organisation will not have the \$17,000 cap applied in determining its FBT liabilities.
7. If the employer is a government body and it has one or more employees that are employed in a manner outlined in paragraph 57A(2)(b) of the FBTAA, then all employees of that employer are liable to a cap of \$17,000.

## EXPLANATION

8. Under provisions of the *A New Tax System (Fringe Benefits) Act 2000* (ANTSFBA), the FBTAA was amended to place a cap on the previous FBT exemptions available to public hospitals under section 57A of the FBTAA. The concession has also been extended to private-not-for-profit hospitals. Where it is obvious that the

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<sup>1</sup> As defined in the National Health Data Dictionary, Version 9 at page 337.

predominant objective of the organisation is the provision of acute care, then the organisation will have the \$17,000 cap applied to its FBT obligations from 1 April 2000. The organisation will also be eligible for funding under the FBT Transitional Allowance Scheme.

9. Prior to the introduction by the ANTSFBA of subsections 5B(1A) – 5B(1L) of the FBTAA, benefits provided by a PBI were exempt from FBT under subsection 57A(1) of the FBTAA.
10. Under the former subsection 57A(2) of the FBTAA, an employer that was a government body was exempt from fringe benefits tax for benefits provided to those employees whose duties of employment were exclusively performed in or in connection with a public hospital that was a PBI.
11. Under the former paragraph 65J(1)(c) of the FBTAA, a rebate of FBT was available to a public hospital (other than a hospital of the Commonwealth, a State or a Territory), where the hospital was not a PBI.
12. Under the former paragraph 65J(1)(d) of the FBTAA, a rebate of FBT was available to a hospital which was carried on by a non-profit society or a non-profit association, where the hospital was not a PBI.
13. The ANTSFBA amended the FBTAA to limit the FBT exemption available to a PBI, other than hospitals, to a grossed up taxable value of \$30,000 per employee from 1 April 2001. This is achieved through the interaction of subsections 5B(1E) and 57A(1) of the FBTAA.
14. From 1 April 2000, an employer that is a government body with employees whose duties of employment are exclusively performed in or in connection with a public hospital that is a PBI, or a public hospital that is not a hospital of the Commonwealth, a State or a Territory, or a hospital carried on by a non-profit society or association, has its previous FBT exemption limited to a grossed up taxable value of \$17,000 per employee. This is achieved through the interaction of subsection 5B(1E) and paragraph 57A(2)(b) of the FBTAA.
15. From 1 April 2000, a public hospital other than a hospital of the Commonwealth, a State or a Territory, is exempt from FBT up to a cap of \$17,000 grossed up taxable value per employee. This is achieved through the interaction of subsections 5B(1E) and 57A(3) of the FBTAA.
16. From 1 April 2000, a hospital carried on by a non-profit society or a non-profit association is exempt from FBT up to a cap of \$17,000 grossed up taxable value per employee. This is achieved through the interaction of subsections 5B(1E) and 57A(4) of the FBTAA.
17. Section 57A of the FBTAA as amended provides:  
  
*57A(1) Where the employer of an employee is a public benevolent institution, a benefit provided in respect of the employment of the employee is an exempt benefit.*

*57A(2) Where:*

- (a) *the employer of an employee is a government body; and*
  - (b) *the duties of the employment of the employee are exclusively performed in, or in connection with:*
    - (i) *a public hospital that is a public benevolent institution; or*
    - (ii) *a public hospital that is not a hospital of the Commonwealth, a State or a Territory and is not established by a law of the Commonwealth, a State or a Territory; or*
    - (iii) *a hospital carried on by a society that is a non-profit society for the purposes of section 65J or by an association that is a non-profit association for the purposes of section 65J;*
- a benefit provided in respect of the employment of the employee is an exempt benefit.*

57A(3) *A benefit provided in respect of the employment of an employee is an exempt benefit if the employer of the employee is a public hospital other than a hospital:*

- (a) *of the Commonwealth, a State or a Territory; or*
- (b) *established by a law of the Commonwealth, a State or a Territory.*

57A(4) *A benefit provided in respect of the employment of an employee is an exempt benefit if the employer of the employee is a hospital carried on by:*

- (a) *a society that is a non-profit society for the purposes of section 65J; or*
- (b) *an association that is a non-profit association for the purposes of section 65J.*

18. The relevant subsections of section 5B of the FBTAA are subsections (1D) and (1E). Subsection 5B(1D) reads as follows:

*If any benefits provided in respect of the employment of an employee of an employer are exempt benefits under section 57A, the employer's fringe benefits taxable amount for the year of tax beginning on 1 April 2000 or a later year of tax as worked out under subsection (1A) is increased by the employer's aggregate non-exempt amount for the year of tax concerned.*

19. The provisions of subsection 5B(1E) read as follows:

*An employer's **aggregate non-exempt amount** for the year of tax is worked out as follows.*

*Method statement*

*Step 1. For each employee, add:*

- (a) *the individual grossed-up type 1 non-exempt amount (see subsection (1F)) in relation to the employer for the year of tax; and*
- (b) *the individual grossed-up type 2 non-exempt amount (see subsection (1G)) in relation to the employer for the year of tax.*

The result is the **individual grossed-up non-exempt amount** for the employee.

Step 2. If:

- (a) the employer is a public hospital that is a public benevolent institution; or
- (b) the employer is a government body and the duties of the employment of one or more employees are as described in paragraph 57A(2)(b) (which is about duties of employment being exclusively performed in or in connection with certain hospitals); or
- (c) the employer is a public hospital described in subsection 57A(3) (which is about public hospitals other than hospitals connected with the Commonwealth, a State or a Territory); or
- (d) the employer is a hospital described in subsection 57A(4) (which is about hospitals carried on by non-profit societies and associations);

subtract \$17,000 from the individual grossed-up non-exempt amount for each employee of the employer referred to in paragraph (a), (c) or (d), or each employee referred to in paragraph (b), for the year of tax. However, if the individual grossed-up non-exempt amount for such an employee is equal to or less than \$17,000, the amount calculated under this step for the employee is nil.

Step 3. If step 2 does not apply in respect of one or more employees of the employer:

- (a) reduce the individual grossed-up non-exempt amount for each such employee for the year of tax beginning on 1 April 2000 to zero; and
- (b) reduce the individual grossed-up non-exempt amount for each such employee for a later year of tax by \$30,000, but not below zero.

Step 4. Add together the amounts calculated under steps 2 and 3 in relation to the employees of the employer. The total amount is the employer's **aggregate non-exempt amount** for the year of tax.

20. If an employer is a government body and it has one or more employees that are employed in a manner as mentioned in paragraph 57A(2)(b) of the FBTAA, then the effect of subsection 5B(1E) of the FBTAA is that all employees of that employer are liable to a cap of \$17,000 on their fringe benefits. The \$30,000 cap mentioned in

step 3 in subsection 5B(1E) of the FBTAA only applies where Step 2 does not apply in respect of one or more employees.

21. The Federal Treasurer announced on 13 April 2000 a measure now known as the FBT Transitional Allowance for public hospitals and not-for-profit hospitals. To assist with the transition to the \$17,000 cap, the Government will provide grants to eligible hospitals of \$88 million in 2000-01, \$80.5 million in 2001-02 and \$72 million in 2002-03. By reducing to zero in 2003-04, the grant will effectively phase out over the life of the current Medicare Agreement. The measure was included in the 2000/2001 Budget announcements and is being administered by the Commonwealth Department of Health and Aged Care (DOHAC). Eligible hospitals have made applications to DOHAC in late 2000, with the first payments to be made before the end of the 2001 financial year.
22. In order to achieve uniformity between the application of the relevant sections of the FBTAA (being sections 5B and 57A of the FBTAA), and the allocation of the FBT Transitional Allowance, a working party comprising representatives from the Australian Taxation Office, Treasury and the Commonwealth Department of Health and Aged Care reached an agreement on a definition of a hospital.
23. The definition of a hospital that was agreed to by the working party is reproduced at paragraphs 3 and 4 of this practice statement. The interpretation of 'hospital' as discussed in this Law Administration Practice Statement will not be used by the Commissioner to assist in the interpretation of the term hospital as it appears in section 30-20 of the ITAA 1997. It will not be used by the Commissioner to determine whether an institution is a PBI in terms of section 30-45 of the ITAA 1997.

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*subject references:* Fringe Benefits Tax; FBT Public Benevolent Institutions; exempt benefits

*legislative references:* FBTAA 1986 5B(1D)  
FBTAA 1986 5B(1E)  
FBTAA 1986 57A(1)  
FBTAA 1986 57A(2)  
FBTAA 1986 57A(3)  
FBTAA 1986 57A(4)  
FBTAA 1986 65J(1)(c)  
FBTAA 1986 65J(1)(d)  
ITAA 1997 30-20  
ITAA 1997 30-45

*related public rulings:* MT 2021; TD 93/11; TD 94/73; TR 2000/D14

*file references:* 99/18270-9; 2001/8235

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