

Tax Alert

A focus on topical tax issues – May 2014



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Are fringe benefits slipping under the radar?

By Mike Williams

While things have been relatively quiet recently on matters to do with FBT, we shouldn't be lulled into a false sense of security that it is not a focus for Inland Revenue. Inland Revenue are still issuing payroll questionnaires and carrying out payroll audits which very much have a significant focus on fringe benefits.

With the fourth quarter FBT return due on 31 May, it is an ideal time to check that all is well on this front. In this article we highlight a few things for employers to consider this month as they wrap up that last quarter calculation.

To attribute or not, that is the question

Employers may have chosen in the first three quarters to pay FBT at the single (and highest) rate of 49.25%. This option is the easiest from a compliance point of view but employers are likely to pay more FBT than necessary in the long run under this option. However all is not lost as employers are still able to replace the fourth quarter calculation with a full year attribution calculation subtracting the FBT paid in the first three quarters.

Our experience shows employers can and do save material amounts when going through the full attribution exercise. At the very least, rather than perform the full attribution calculation, employers should consider whether it is possible to "pool" eligible benefits at the lower rate of 42.86%.

Are your processes and systems up to scratch?

In a review, Inland Revenue will ask questions about the company's processes, checks and procedures for the preparation of FBT returns. If Inland Revenue came knocking, how would your business fare in answering the following questions:

- Who can explain the processes involved in preparing FBT returns and describe the source documentation that is used to identify fringe benefits?
- What kind of checks are undertaken to ensure that all benefits are considered for inclusion in FBT returns?
- Do you have written procedures for the preparation of FBT returns?
- Are FBT returns reviewed before they are filed?

If there have been changes in staff responsible for preparing FBT returns, this can be an ideal trigger to review these matters.

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Do I deduct PAYE or pay FBT?

A common query is whether something is subject to PAYE or FBT. The general rule is that if the employee is contractually obliged to pay for something but the cost is met by the employer (excepting genuine business expense reimbursements, it is subject to PAYE. Generally where the employer is obliged to pay for the item provided to the employee, then this will be subject to FBT. One exception relates to the taxable provision of accommodation, which is always dealt with under PAYE regardless of any arrangements in place.

Is it GST on FBT or FBT on GST?

GST is payable on some fringe benefits as the employer is treated as supplying the benefit to the employee as if it was a normal sale of goods and services by the employer to the employee. The rule to remember in this regard is that what goes on the FBT return stays on the FBT return and so this GST adjustment is made in the FBT return (not the GST return). It's quite common for this to be double-counted and included in the GST return as well.

Don't miss these benefits

There are a number of unclassified benefits that may also give rise to an FBT liability when provided to employees. A few examples we've encountered include:

- Vouchers
- Flowers and Christmas gifts
- Prescription spectacles
- Leaving gifts
- Free or discounted goods and services
- Security Systems
- Use of employer's assets off the premises and for private purposes (e.g. use of employer's boat)
- Child care (not provided on premises)
- Allocation of "frequent flyer points" if the membership is in the name of the employer
- Home newspapers
- Magazine subscriptions
- Study fees (when the course is unrelated to work)
- Travel (not work related)
- Club memberships (not being work related societies and professional bodies)

Issues with motor vehicles

The provision of motor vehicles probably accounts for most of the FBT payable in returns. It is also an area where errors easily occur. Issues often arise with what cost basis is used, the tracking of private use and exempt days, what is a work-related vehicle and other such intricacies. It can be worthwhile reviewing this periodically to make sure what is recorded stacks up, that appropriate logs are kept, and that work related vehicles are treated correctly – particularly whether they are exempt from FBT or not.

Undertaking a regular health check on FBT is beneficial

We have only listed a few of the many things to watch out for with regard to FBT. We know from experience that Inland Revenue finds fewer risks with organisations that undertake a regular "health check" of their compliance processes. Not only does it reduce risk and save on potential penalties where FBT is underpaid, but savings can also be found if FBT is overpaid.

If you require assistance with your final quarter calculations or wish to explore the benefits of a FBT health check further, please contact your usual Deloitte tax advisor.



Paying your tax on time – Be aware of proposed changes to IR practice!

By *Veronica Harley and Brad Bowman*

Inland Revenue has released for comment a draft standard practice statement (“draft SPS”) outlining the Commissioner’s practice for accepting tax payments as having been made in time. The draft SPS replaces and updates SPS 07/01.

While the draft SPS is largely consistent with SPS 07/01, we wish to highlight two proposed changes to the Commissioner’s practice.

Provincial Anniversary days

Under SPS 07/01, a provincial anniversary day was considered to be a public holiday meaning that Inland Revenue accepted a payment as being in time if it was received on the next working day. This concession will no longer apply and provincial anniversary days will no longer be considered a public holiday.

Take the following example. South Canterbury has its anniversary day on Monday 22 September 2014. ABC Limited is a farming company in South Canterbury. PAYE withheld by ABC Limited during the previous month must be paid to Inland Revenue Saturday 20 September. Because this date falls on a weekend, the payment is deemed to be due on or before the next working day. Under the old statement, the anniversary day is a public holiday and the payment would be due on or before Tuesday 23 September. Whereas if the new statement applied at this date, the anniversary day would not be treated a public holiday and the payment would be due on or before Monday 22 September.

Payments by post

The current and long-standing practice simply requires payments by post to be mailed and postmarked on or before the due date for the payment to be accepted as on time. Payments by post must now be received by Inland Revenue on or before the due date. This will impact on those taxpayers still making payments by cheque.

This change in practice means taxpayers sending cheques to Inland Revenue will need to allow for any potential postal delays and not simply slip an envelope into a postal box on the same day at the payment is due. The change to a 3-day postal service in the future will no doubt amplify this issue. These changes will likely force taxpayers to make payments electronically so that payments on time can be guaranteed.

Deloitte comment

The changes remove longstanding concessions which were not supported technically and consequently it could be difficult to submit against these changes. The key point to note is that taxpayers who are caught unaware by these changes may unwittingly pay taxes late and could easily incur late payment penalties as a result.

If finalised in its current form, we think Inland Revenue will need to proactively communicate these changes to taxpayers.

The proposed changes regarding payments by post will apply from 1 October 2014. The draft SPS is silent on the application date of the change relating to provincial anniversary days; however is likely to apply from when the draft SPS is finalised.

If you would like to discuss these changes, please contact your Deloitte tax advisor.

Submissions on the draft SPS are due 30 May 2014.



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Employee allowances bill reported back

Last month the Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Bill was reported back to Parliament, having been examined by the Finance and Expenditure Committee (FEC). The bill was introduced in November (see our [special tax alert](#) which outlined the proposals).

The FEC received 97 submissions from interested groups and individuals, of which over half related to the FATCA (Foreign Account Tax Compliance Act) measures alone with many individuals concerned with New Zealand's proposed entry into an inter-governmental agreement with the United States in respect of this regime.

As the title alludes, the bill contains the proposals which amend the treatment of allowances paid to employees, particularly, significant changes regarding accommodation payments. Accordingly it is an area that will impact a lot of employers. The FEC received 25 submissions on this issue and has recommended a number of amendments to improve the workability, clarity and fairness of

the rules. The main change is to introduce further exceptions to allow for situations involving shift work or remote workplaces where it would be otherwise inappropriate to tax accommodation provided in connection with employment.

Once the bill is enacted and the rules are finally settled, we will provide a more detailed outline of the main changes readers need to be aware of.

As it is an omnibus bill, it contains quite a number of other amendments. As a reminder, we have summarised the main contents of this bill in table form below together with proposed application dates and some of the key FEC comments on submissions.

The bill was reported back somewhat earlier than the expected date of early June, which we understand is related to the FATCA measures, in particular, the need to get the rules for the reporting obligations in place. Parliament resumed sitting this week and so we expect the bill to receive its second reading shortly and progress fairly rapidly toward enactment within the next few weeks. In the meantime if you would like more detailed information regarding the contents and impact on your business, please contact your usual Deloitte advisor.



Issue	FEC comments	Application date
Employee allowances	"We propose a number of amendments to improve the workability, clarity and fairness of the rules"	Generally from the 2015-16 income year but some of the rules may be applied retrospectively in certain situations
Expansion of thin capitalisation rules	"We recommend several largely technical and drafting amendments to ensure the rules are clear and work as intended."	Beginning of the 2015-16 income year
Black hole expenditure	"We note that the proposals are generally taxpayer-friendly. We realise there could be some dissatisfaction about the items excluded from deductions, but consider that the bill strikes an appropriate balance in this respect."	Beginning of the 2014 -15 income year
Foreign account information-sharing agreement	"We considered these issues carefully...While we sympathise with the concerns, and initially shared a number of them, we have reached the view that the proposed inter-governmental agreement and the amendment proposed in this bill to implement it, are in New Zealand's best interests."	1 July 2014
Deregistration of charities	"We are recommending several changes to the proposed rules to ensure they are clear and fair and work as intended."	Generally from 1 April 2015 or 14 April 2014 for entities which choose to voluntarily deregister
Taxation of certain lease transfer payments	"As Glasgow leases are more akin to a freehold estate than normal commercial leases with a defined term we consider that they should be excluded from the ambit of the proposed changes. Any payment made on the transfer or surrender of such a lease would remain non-taxable and non-deductible." "We recommend amending [the clause making permanent easements exempt from tax] to make it clear that the exemption would apply to a one-off payment, but not to periodic payments, which are more in the nature of rental."	Lease transfer payments derived on or after 1 April 2015
Agreements for the sale and purchase of property or services in foreign currency	"We recommend a number of technical amendments; most are intended to improve and simplify the rules as they apply to smaller entities which are not required to use international financial reporting standards in their reporting"	Generally from the 2014-15 income year, although IFRS taxpayers may elect to apply the new rules earlier in certain cases
Acquisition date of land	"We are concerned that the wording in the bill introduced is insufficiently clear and recommend some amendments to convey in a less circular way how the first interests test would apply." "We also recommend the insertion of a clause to make clear the policy intention that proposed section CB 15B would apply to disposals of land from the date of the bill's introduction; so its acquisition could have taken place before the bill was introduced."	To disposals of land occurring on or after 22 November 2013

Transfer pricing documentation and country-by-country reporting – Update

In early April 2014, the OECD announced via a BEPS (Base Erosion and Profit Shifting) update webcast that tentative decisions have been taken to streamline the initial proposals for country-by-country information and transfer pricing master file documentation. This follows responses received to the Discussion Draft issued on 30 January 2014. The OECD cautioned that the Committee on Fiscal Affairs has yet to review the template, which may still be subject to change, and that further work is needed, in particular on the important issue of the mechanism for filing and sharing information.

Revisions to Proposals

The country-by-country template will be a standalone document for the purposes of risk assessment, and not part of the transfer pricing master file. Data will be included on an aggregated country-by-country (not entity-by-entity) basis, together with a list of entities and permanent establishments in each country, with activity codes. The financial data will be reduced to include revenue, profit before tax, cash taxes paid and current year tax accrual, number of employees, tangible assets and capital and retained earnings. There will be flexibility for businesses regarding the source of financial data,

provided a group adopts a consistent approach across all countries and from year to year.

There will be flexibility for businesses on whether the transfer pricing master file should be prepared on a group-wide basis or by line of business. The OECD will make clear that the master file is intended to provide a high level overview to put the business's activities in context, and that transactional information will be reserved for the local file. There will no longer be a requirement for details of the 25 highest paid employees.

Timetable and Next Steps

The OECD is keen for businesses to see these revised proposals before the public consultation meeting on 19 May 2014, which will be the last chance for comment before the final requirements are published in September 2014.

Deloitte Comments

Simplification of the data to be included and flexibility for businesses are welcomed, as is confirmation of the high-level nature of the master file. It is important that the focus is on providing useful, relevant and manageable global information for tax authorities that does not duplicate information better provided in tax returns and local transfer pricing documentation, and that this is achieved in a cost-effective and practical way for businesses. The revisions announced so far are a big step towards these objectives. Confidentiality of tax and commercial information will remain a concern for many businesses unless a mechanism for sharing the information under a treaty or information exchange agreement framework is made available.



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