

Community Legal Centres

Fringe Benefits Tax Booklet

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## 1 Introduction

The purpose of this booklet is to outline the salary packaging options available to community legal centres (**Community Legal Centres**) that have employees in Australia, particularly those that are public benevolent institutions.

In addition to the rules imposing income tax on salary and wages that employers pay employees, whenever an employer and employee negotiate a salary package, they must consider the rules that tax other types of benefits that employers provide to their employees. In particular, in Australia an employer must pay fringe benefits tax (**FBT**) on certain specified benefits provided to an employee in respect of their employment.

However, there are various exemptions and concessions available to all employers depending upon the type of fringe benefits provided. There are also additional benefits available to charitable institutions that are exempt from income tax. Most importantly though, even more concessional FBT treatment is available for certain fringe benefits provided to an employee where the Community Legal Centre that employs the employee is a public benevolent institution (**PBI**).

The first part of this booklet summaries how the FBT rules operate in Australia. This includes explaining how the various exemptions and concessions can benefit Community Legal Centres where the remuneration provided to employees is packaged. Broadly, the idea of 'packaging' remuneration means that, instead of being comprised solely of salary or wages, the remuneration that the employer provides the employee will include certain types of fringe benefits (usually in a non-monetary form).

The second part of the booklet contains sample calculations to illustrate the benefits of salary packaging having regard to these FBT concessions and exemptions. The third part of the booklet is a broadsheet that summarises the FBT concessions and exemptions and outlines to employees the advantages of salary packaging. This broadsheet is in a form that can be distributed to employees of Community Legal Centres to help them understand the salary packaging options that are available.

**REMEMBER – an employee of a Community Legal Centre can benefit significantly if they agree with their employer to package the employee's remuneration by replacing some salary and wages with certain types of fringe benefits.**

## 2 Fringe Benefits Tax

### 2.1 Benefit provided by employer to employee

An employer must pay FBT on the value of certain benefits that the employer (or an associate) provides to an employee (or to an associate of that employee) in respect of their employment. This means that, subject to any relevant exemption or concession that might be available, an employer will be liable to pay FBT in relation to benefits provided in respect of an employee's employment regardless of whether that benefit is provided:

- by the employer, an associate of the employer or under an arrangement that the employer has with a third party; or
- to the employee or an associate of that employee.

An 'associate' for FBT purposes is defined broadly and can include natural persons, companies, partnerships and trustees that are connected, related or associated with the relevant employer or employee. For instance, an associate of an employee includes (amongst other things) the employee's spouse (married, de facto or same sex), children, parents and a company in which the employee has a 'majority voting interest'<sup>1</sup> or that is 'sufficiently influenced'<sup>2</sup> by the employee, a trustee of a trust in respect of which the employee benefits and a partner in a partnership of which the employee is a partner.

Before an employer (or the employer's associate) provides a benefit to an entity other than an employee, close regard must be paid to the associate definition to determine whether FBT must still be paid (because the relevant entity is an associate of the employee in respect of whom the benefit has been provided). Certain FBT exemptions and concessions are also only available where the employee (rather than an associate) receives the benefit.

**REMEMBER – an employer can be liable to pay fringe benefits tax in respect of certain benefits that the employer provides to an employee other than as salary or wages.**

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<sup>1</sup> A majority voting interest in a company exists where an entity is in a position to cast (or control the casting of) more than 50% of the maximum number of votes that might be cast at a general meeting of the company.

<sup>2</sup> An company will be sufficiently influenced if the company or its directors are accustomed to act in accordance with the directions, instructions or wishes of another entity or are under an obligation (formal or informal) to do so (or might reasonably be expected to do so).

## 2.2 Benefit provided in respect of employment

It is important to remember that the benefit must be provided 'in respect of employment' before an employer can be liable to pay FBT. It is not enough merely for there to be an employer and employee relationship as the benefit must also be provided, directly or indirectly, in relation to or by reason of this employment relationship. If this connection does not exist, the employer cannot be liable to pay FBT.

For example, a benefit provided to a volunteer (ie, an entity that provides to another services of their own free will and not because of any contractual obligation to do so) should not be subject to FBT. This is because of the absence of any employment relationship in respect of which the benefit has been provided. However, an employer should expect the Commissioner of Taxation to examine closely the basis upon which that employer determines it has no liability to pay FBT. Appropriate records should be retained to help prove that a benefit has been provided to a true volunteer worker rather than an employee.

Finally, it does not matter that the employer may itself be exempt from income tax. A tax-exempt employer can still be liable to pay FBT in respect of benefits it provides to employees. However, as noted in heading 1, there are a variety of exemptions and concessions available to tax-exempt employers that are not available to other employers. The most important concessions for a Community Legal Centre that is a PBI are that it can provide employees with salary packaged meal entertainment and entertainment facility leasing benefits having a gross-up value of \$5,000<sup>3</sup> and other benefits having a grossed-up value of up to \$31,177<sup>4</sup> per year free of FBT (see *headings 2.14 and 2.10 respectively*).

**REMEMBER – FBT is not payable if a benefit has no connection with any employment relationship, such as where a gift is provided to a volunteer.**

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<sup>3</sup> Prior to 1 April 2016, there was no cap on the value of meal entertainment and entertainment facility leasing benefits that could be provided free of FBT to employees of public benevolent institutions, health promotion charities and employees of public and not-for-profit hospitals and public ambulance services (and nor were these benefits reportable for FBT purposes). However, from 1 April 2016, salary packaged meal entertainment and entertainment facility leasing benefits are reportable on an employee's annual PAYG payment summary and the maximum that an employee can salary sacrifice free of FBT in respect of these benefits is \$2,549.98 per FBT year (assuming that the employee has already salary sacrificed for other benefits to the maximum \$15,900.14).

<sup>4</sup> This cap should decrease to \$30,000 for the FBT year commencing on 1 April 2017 as the 2% Temporary Budget Deficit Tax is only proposed to apply for the 2014/2015 to 2016/2017 income years.

## 2.3 Taxable value of fringe benefits

FBT is generally payable by employers in 4 instalments on an annual basis. The FBT year runs from 1 April to 31 March. Employers are required to lodge an annual FBT return and pay any FBT liability by 28 May following the end of the FBT year (or 21 May if the employer is not on a Tax Agent's Lodgement Program).

FBT that an employer must pay is calculated based upon the employer's 'fringe benefits taxable amount'. This is the amount that is calculated by 'grossing-up' the taxable values of fringe benefits that the employer has provided to all its employees during the FBT year (see *heading 2.4*). There are different valuation rules to determine the taxable values of the various types of fringe benefits (see *heading 2.8*).

This gross-up process ensures that FBT is calculated based upon the value of the fringe benefits that the employer provides inclusive of the employer's FBT liability. This is necessary because the employer can claim an income tax deduction for the cost of providing the fringe benefits and for the amount of any FBT that is incurred. This income tax deduction is available notwithstanding that the employee may not have been entitled to a deduction if it had incurred the relevant expenditure on the benefit that the employer has provided to the employee.

**REMEMBER – an employer must 'gross-up' the taxable values of fringe benefits provided to all employees during an FBT year to calculate the employer's FBT liability.**

## 2.4 FBT Gross-up Formulae

There are two gross-up formulae and which formula is to be used depends upon whether the employer is entitled to claim an input tax credit to offset the goods and services tax payable in respect of the consideration that the employer provides to acquire the relevant benefit. For those benefits in respect of which an employer is entitled to claim input tax credits ('type 1 benefits') the current gross-up rate is 2.1463<sup>5</sup>.

The gross-up rate for those benefits where there is no input tax credit entitlement ('type 2 benefits') is 1.9608<sup>6</sup>. Type 2 benefits include those benefits that are wholly GST-free, where the benefit is represented by goods and services that have not been acquired by the employer, benefits provided by an employer who is not registered for GST or where the employer's activities are wholly input taxed.

The total of these grossed-up type 1 and type 2 benefits will generally equal the fringe benefits taxable amount of an employer, except where the employer is a qualifying public or non-profit hospital, public ambulance service, health promotion charity or PBI. The fringe benefits taxable amount for an entity of this type, including a Community Legal Centre that is a PBI, will also include its 'aggregate non-exempt amount' – see *heading 2.10*).

The way in which an employer's aggregate non-exempt amount is calculated ensures that, in addition to the employer being able to provide its employees with benefits that are exempt from FBT, the employer can provide an employee with the following additional benefits free of any liability for FBT:

- salary packaged meal entertainment and entertainment facility leasing benefits having a grossed-up fringe benefits amount of not more than \$5,000 (ie, each year the maximum that an employee can salary sacrifice in respect of these benefits free of FBT will be \$2,549.98 ); and
- any other types of benefits (or any part of a salary packaged entertainment benefit exceeding the \$5,000 cap) having a grossed-up fringe benefits amount of not more than \$31,177 (this cap should reduce to \$30,000 for the FBT year commencing on 1 April 2017 as the 2% Temporary Budget Deficit Tax measure is only proposed to apply in the 2014/2015 to 2016/2017 income years).

**REMEMBER – each year a PBI can provide an employee with salary packaged meal entertainment and entertainment facility leasing benefits (with a grossed-up value up to \$5,000) and other benefits having a grossed-up value of up to \$31,177 free of FBT.**

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<sup>5</sup> The gross-up rate for the FBT year commencing 1 April 2016 (and ending 31 March 2017) for type 1 benefits is calculated as  $(\text{FBT rate} + \text{GST rate}) / ((1 - \text{FBT rate}) * (1 + \text{GST rate}) * \text{FBT rate})$ . As the FBT rate is equal to the highest marginal income tax rate, currently 49% (including the Medicare levy and the 2% Temporary Budget Deficit Tax), this means that the gross-up rate is calculated as  $(0.59) / ((1 - 0.49) * 1.1 * 0.49) = 2.1463$ . The gross-up rate should decrease to 2.0802 from the FBT year commencing on 1 April 2017 as the 2% Temporary Budget Deficit Tax measure is only proposed to apply in the 2014/2015 to 2016/2017 income years.

<sup>6</sup> The gross-up rate for the FBT year commencing 1 April 2016 (and ending 31 March 2017) for type 2 benefits is calculated as  $1 / (1 - \text{highest marginal income tax rate})$ . The current tax rate of 49% (including the Medicare levy and the 2% Temporary Budget Deficit Tax) means that the gross-up rate is calculated as  $1 / (1 - 0.49) = 1.9608$ . The gross-up rate should decrease to 1.8868 from the FBT year commencing on 1 April 2017 as the 2% Temporary Budget Deficit Tax measure is only proposed to apply in the 2014/2015 to 2016/2017 income years.

## 2.5 Effective salary sacrifice arrangements

As explained in heading 1, an employer and employee can negotiate a remuneration package that is not limited to cash benefits in the form of salary and wages. Employers and employees can agree on a salary package that includes certain non-cash benefits. An employee's after-tax position can be improved if the employer provides the employee with benefits that are concessional tax or exempt from FBT.

This advantage exists because the rules that apply to tax employees in respect of salary and wages that they derive differ from the rules that tax employers on other types of non-cash benefits provided to employees (ie, FBT)<sup>7</sup>. However, the FBT rules ensure that the ability to salary package is not unlimited. Although it is possible for an employee to lower their income tax liability by reducing or 'sacrificing' the salary and wage component of their remuneration package (in return for some other non-cash fringe benefits), an employer will generally take into account any FBT payable when determining the amount of salary that can be sacrificed and the value of the benefits provided.

It is important to remember that salary packaging is limited to future entitlements to salary or wages that the employee sacrifices in return for the employer providing a fringe benefit (ie, the employee's remuneration package must be arranged in relation to salary or wages to which the employee is not yet entitled). The Commissioner of Taxation (**Commissioner**) refers to these remuneration packaging arrangements as 'effective salary sacrifice arrangements'. In other words, an employee cannot forego salary and wages that it has already derived (the Commissioner refers to this as an 'ineffective salary sacrifice arrangement').

The Commissioner accepts that an employer and employee can negotiate a remuneration package that has a salary and wage component but which also provides the employee with other cash and non-cash benefits. The purpose of this booklet is to explain the types of benefits an employer can provide that will improve the employee's after-tax position compared with a remuneration package comprised solely of salary and wages.

**REMEMBER – to be effective for FBT purposes, an employee's remuneration package must be arranged in relation to salary or wages to which the employee is not yet entitled (ie, an employee cannot forego salary and wages already derived).**

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<sup>7</sup> This is especially true for employers in the charitable and non-profit sector as there are a number of FBT exemptions and concessions to which they are entitled that are not available to ordinary 'taxable' employers (see headings 2.10 and 2.14).



## 2.6 Fully taxable fringe benefits

Subject to the qualifications noted below, because FBT is payable by employers at the highest marginal income tax rate (currently 49% including the Medicare levy and the 2% Temporary Budget Deficit Tax<sup>8</sup>), generally there is no benefit in providing an employee with a benefit that is not either exempt or concessionally taxed under the FBT regime. This is because the employee's after-tax position will be no better than if it was paid salary and wages as FBT is calculated based upon the grossed-up value of the benefit provided (*see heading 2.4*) and the employer will generally reduce an employee's remuneration package by an amount equal to the FBT payable.

In fact, if the employee is not taxed at the highest marginal rate, the employee's after-tax position will generally be worse if it receives a non-cash benefit instead of salary and wages paid in cash<sup>9</sup>. This is because the FBT that an employer must pay will exceed the amount of income tax that the employee would have otherwise paid on the salary and wages derived to pay for the benefit in question. This is demonstrated by the example below.

<b>Tax Savings Calculator (2016/2017)</b>	<b>Without Salary Packaging</b>	<b>With Salary Packaging</b>
<b>Total Cash Available After Tax</b>	<b>\$45,493</b>	<b>\$44,612</b>
Gross/Pre-Tax Salary	\$61,000	\$54,936
Income Tax Payable	(\$12,507)	(\$10,324)
Non-Exempt Benefits (type 1)	(\$2,000)	(\$2,000)
Non-Exempt Benefits (type 2)	(\$1,000)	(\$1,000)
FBT Payable	\$0.00	(\$3,064)
<b>Net Detriment by Salary Packaging</b>		<b>(\$881)</b>

However, from a non-tax perspective, an employer may obtain other intangible benefits by agreeing to provide certain types of benefits to employees. It is often thought that where an employer pays, for instance, school fees, health insurance premiums, home loan repayments or other personal expenses that an employee would otherwise need to pay, this may help the employer to retain, reward and motivate valued employees (even if the benefit is subject to FBT).

**REMEMBER – unless a fringe benefit is exempt from FBT or taxed concessionally, an employee's after-tax position will generally be worse if the employee is not taxed at the highest marginal rate and the employee sacrifices salary and wages for that benefit.**

<sup>8</sup> As the 2% Temporary Budget Deficit Tax measure is only proposed to apply in the 2014/2015 to 2016/2017 income years, the FBT rate should revert to 47% from the FBT year commencing on 1 April 2017.

<sup>9</sup> There is an exception to this principle for certain types of fringe benefits where the employee provides the employer with a contribution equal to the FBT taxable value of the relevant fringe benefit as no FBT will be payable in that situation (because the contribution from the employee's after-tax salary and wages will reduce the taxable value of the fringe benefit to nil).

## 2.7 Otherwise deductible rule

There is an exception to the principle that an employee will generally be no better off if they sacrifice cash for a fringe benefit that is not exempt from FBT or taxed concessional (even where that employee is not taxed at the highest marginal rate). Specifically, it can be beneficial for an employer to provide an employee with benefits in respect of which that employee would be entitled to claim a one-off tax deduction if the employee had paid for the benefit itself (this is referred to as the 'otherwise deductible rule')<sup>10</sup>.

Since FBT is not payable where the otherwise deductible rule applies to a benefit that an employer provides to an employee, the employee obtains a timing benefit compared with a remuneration package where the employee only receives salary and wages. This is because the employee only obtains the 'benefit' of the relevant tax deduction at the end of the income year when the employee lodges its tax return.

In other words, because the pay-as-you-go (PAYG) withholding rules require an employer to remit tax to the Commissioner periodically throughout an income tax year in respect of an employee's salary and wages, the employee can only recover a refund of that tax (or a reduction in the amount of tax that the employee would otherwise pay) after the employee has lodged its annual tax return. The example below demonstrates the monthly timing benefit for an employee with a pre-tax/gross annual salary of \$51,000 and an interest-only investment loan where the monthly interest payments of \$1,000 are fully tax deductible to the employee.

<b>Tax Savings Calculator (2016/2017)</b>	<b>Without Salary Packaging</b>	<b>With Salary Packaging</b>
Monthly Salary	\$4,250	\$3,250
Monthly PAYG Withholding	(\$763)	(\$416)
Fringe Benefits Tax	\$0	\$0
Expense Payment Fringe Benefit	\$0	\$1,000
<b>Monthly Surplus Cash</b>		<b>\$347</b>
<b>Reconciliation</b> - Refund after yearly tax return lodged (\$4,569 = \$405 + (12 * \$347))	\$4,569	\$405

**REMEMBER – the otherwise deductible rule can make it beneficial for an employer to provide an employee with a fringe benefit that is not exempt from FBT where that employee would have been entitled to claim a tax deduction in respect of the benefit.**

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<sup>10</sup> In some cases the employer must obtain from the employee a declaration in the approved form substantiating the income producing nature of the benefit.

## 2.8 Twelve categories of fringe benefits

There is virtually no limit to the types of benefits that an employer can provide to an employee. However, the fringe benefits tax legislation lists 12 different categories of benefits. The category into which a benefit falls will determine how the value of that benefit is calculated for FBT purposes (see *Schedule 1* for more detail regarding the different types of fringe benefits and how they are valued). The 12 categories of fringe benefits can be described briefly as follows:

- **car benefits** – the employer has a car that it makes available to the employee for private use (including pursuant to a novated car lease);
- **car parking benefits** – the employer provides the employee with car parking in the vicinity of the employee's place of employment and there is a commercial parking station available for all-day parking within a one-kilometre radius of the premises on which the car is parked (and that station charges a fee for all-day parking that exceeds a specific car parking threshold published yearly);
- **debt waiver benefits** – the employer waives or forgives an employee's debt;
- **loan benefits** – the employer provides the employee with a loan having a rate of interest less than a statutory minimum (including a no interest loan);
- **expense payment benefits** – the employer reimburses an employee, or pays a third party, for expenses incurred by that employee;
- **property benefits** – the employer provides an employee with free or discounted property;
- **housing benefits** – the employer provides the employee with a right to use a unit of accommodation that is the employee's usual place of residence;
- **living-away-from-home allowance benefits** – the employer pays the employee an allowance to compensate the employee for the additional expenses incurred in living away from home;
- **board benefits** – meals provided in circumstances where the employer provides the employee with accommodation and an entitlement to at least two meals a day;
- **entertainment benefits provided by tax exempt bodies** – the employer is wholly or partly exempt from income tax and provides the employee with entertainment by way of food, drink or recreation;
- **meal entertainment benefits** – special valuation rules designed to reduce compliance costs apply where the employer provides the employee with entertainment by way of food or drink<sup>11</sup>; and
- **residual benefits** – a benefit that an employer provides an employee that does not fit within any of the valuation rules for the other 11 categories of benefits (such as free or discounted services that the employer provides to its employees).

**REMEMBER – the category into which a fringe benefit falls determines how the value of that benefit is calculated for FBT purposes.**

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<sup>11</sup> Apart from a tax-exempt body entertainment fringe benefit, there is no general category of fringe benefit called an entertainment fringe benefit, however, the following types of fringe benefits may arise from providing entertainment:

- expense payment fringe benefit – employer reimburses employee for cost of theatre tickets that employee purchased;
- property fringe benefit - providing food and drink; or
- residual fringe benefit - providing accommodation or transport in connection with entertainment.

## 2.9 FBT exempt benefits

In addition to the \$31,177 FBT exemption for an employer that is a PBI (see heading 2.10), there are a variety of benefits that fall outside the definition of fringe benefit because they are 'exempt benefits'. Accordingly, an employer can provide an employee with an exempt benefit free of FBT. The list below outlines some of the more common exempt benefits, however, the list is not exhaustive. If a Community Legal Centre provides an employee with a form of benefit that it has not previously provided, and that is not listed below, the employer should obtain advice at that time regarding the appropriate FBT treatment of the benefit.

- Certain work related items primarily for use in the employee's employment such as portable or laptop computers and mobile phones (except for certain small businesses, this is limited to one of each item per year per employee).
- Travel for an employee when there is the death of or serious illness to a family member.
- Awards for long service of at least 15 years up to \$1,000 plus \$100 per year of service in excess of 15 years of service.
- Certain benefits relating to the relocation of an employee between localities for employment purposes.
- Minor benefits with a value of less than \$300 where it would be unreasonable to treat it as a fringe benefit having regard to, for instance, the infrequency and irregularity with which such benefits are provided or the practical difficulty in valuing the relevant benefit (such as minor Christmas gifts for employees).
- Taxi travel beginning or ending at the employee's place of work.
- Membership and subscription fees for professional journals, corporate credit cards and airport lounge membership.
- Car parking benefits provided by a PBI.
- Expense payment benefits or residual benefits where the employer makes a 'no private use declaration' – this declaration must be made by the employer in the approved form before it lodges its FBT return and it must relate to all benefits of a particular type (and the employer should have defined policies and procedures in place that prevent private usage of the benefit).
- Employer contributions to a complying superannuation fund on behalf of an employee (but not the spouse of an employee) are excluded from the definition of fringe benefit and, accordingly, an employee can sacrifice part of their salary in return for the employer making additional superannuation contributions and these contributions will not be subject to FBT and will not be included in the employee's taxable income<sup>12</sup>.

**REMEMBER – an exempt benefit is excluded from the definition of fringe benefit and can be provided to an employee free of FBT.**

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<sup>12</sup> Provided that the contributions made do not exceed the employee's concessional contributions cap, the benefit to the employee is that the contributions to the complying superannuation fund are taxed at the rate of 15% (compared with tax at the employee's marginal rate if the employee did not sacrifice part of their salary and wages), however, as these contributions generally cannot be accessed by the employee until retirement, whether this strategy is suitable for an employee depends upon their own particular circumstances and is an issue that the employee should discuss with their financial advisor.

## 2.10 \$31,177 FBT exemption for PBI employers

Where an employer is a PBI, its fringe benefits taxable amount is the sum of its type 1 and type 2 benefits and its 'aggregate non-exempt amount'. This aggregate non-exempt amount is the sum of the grossed-up value of benefits that the employer provides to each employee that exceeds, in the case of a PBI, \$31,177<sup>13</sup>. To the extent that this cap is exceeded because the aggregate non-exempt amount includes (from 1 April 2016) the value of salary packaged entertainment benefits, the cap is raised by the lesser of \$5,000 and the total grossed-up taxable value of these salary packaged entertainment benefits.

In effect, the formula to calculate the fringe benefits taxable amount for an employer that is a PBI means that the PBI will not have an FBT liability to the extent that the grossed-up amount of the taxable fringe benefits<sup>14</sup> that the employer provides to an employee does not exceed \$31,177 in an FBT year (in addition to up to \$5,000 of salary packaged entertainment benefits). This is demonstrated by the example below<sup>15</sup>.

<b>Tax Savings Calculator (2016/2017)</b>	<b>Without Salary Packaging</b>	<b>With Salary Packaging</b>
Gross/Pre-Tax Salary	\$51,000	\$35,100
Income Tax Payable	(\$8,907)	(\$3,468)
Total Living Expenses	(\$34,000)	(\$34,000)
Expense Payment Fringe Benefit	\$0	\$15,900
Surplus Cash Available	\$8,093	\$13,532
<b>Net Benefit with Salary Packaging</b>		<b>\$5,439</b>

The \$31,177 exemption applies to each employee in respect of which the employer provides fringe benefits. The exemption is not pro-rated and is available regardless of the length of time that an employee is employed during the FBT year. Nor is the exemption limited to a single employer and, therefore, an employee employed by 2 (or more) employers can be provided with benefits having a grossed-up value of up to \$31,177 by each employer without any employer having an FBT liability.

In order for a Community Legal Centre to be eligible for the \$31,177 FBT exemption, the employer must be both registered with the Australian Charities and Not-for-profits Commission (**ACNC**) as a PBI and be endorsed by the Commissioner of Taxation<sup>16</sup>.

**REMEMBER – the \$31,177 FBT exemption for a PBI applies even where the employee is only employed for part of the FBT year and even where that employee has been provided with benefits valued at up to \$31,177 by another PBI employer during that FBT year.**

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<sup>13</sup> The fringe benefits taxable amount of a qualifying public or non-profit hospital, public ambulance service or health promotion charity is calculated in the same way except that the cap is only \$17,667. The caps should decrease to \$30,000 (for a PBI) and \$17,000 for the FBT year commencing on 1 April 2017 as the 2% Temporary Budget Deficit Tax measure is only proposed to apply in the 2014/2015 to 2016/2017 income years.

<sup>14</sup> The formula to calculate the aggregate non-exempt amount excludes certain non-reportable fringe benefits (however, from 1 April 2016, salary packaged entertainment benefits are no longer excluded benefits) – see heading 2.14.

<sup>15</sup> The employer provides the employee with an expense payment fringe benefit (ie, employee sacrifices \$15,900 of salary and employer reimburses employee an equivalent amount in respect of, for instance, employee's housing loan repayments).

<sup>16</sup> More specifically, a benefit provided in respect of the employment of an employee is an exempt benefit (up to the relevant yearly cap) where the employer is both registered with the ACNC as a charity and as a PBI and is endorsed by the Commissioner of Taxation as a registered PBI

## 2.11 FBT rebate

If, for whatever reason, a Community Legal Centre is not a PBI, but it is a not-for-profit or charitable organisation that is exempt from income tax, it will be entitled to an FBT rebate equal to 49% of the gross FBT that it is otherwise liable to pay (subject to a \$31,177 capping threshold<sup>17</sup>). The FBT rebate is needed because the tax deduction for FBT that an employer must pay is of no use where that employer is tax-exempt.

Charities must be both registered with the ACNC and endorsed by the Commissioner of Taxation in order to access the FBT rebate. Organisations that qualify for an FBT rebate are referred to as 'rebatable employers'. Certain organisations are not eligible to be a rebatable employer, such as a registered PBI, and are therefore not entitled to the FBT rebate.

The \$31,177 cap applies even if the rebatable employer did not employ the employee for the full FBT year. For example, if the total grossed-up value of benefits provided to an employee was \$10,000, a rebate applies to all of the FBT payable for providing these benefits even if the employee has only been employed for part of the FBT year.

On the other hand, if the total grossed-up value of fringe benefits provided to an employee is more than \$31,177, a rebate cannot be claimed for the FBT liability on the excess amount even where the employee has been employed for the entire FBT year. Therefore, for the FBT year between 1 April 2016 and 31 March 2017, the maximum FBT rebate in this case would equal \$7,485.60 ( $49\% * (49\% * \$31,177)$ )<sup>18</sup>.

**REMEMBER - a Community Legal Centre that is not a PBI, but that is exempt from income tax, is entitled to an FBT rebate currently equal to 49% of the gross FBT that the Community Legal Centre is otherwise liable to pay (subject to a \$31,177 cap) .**

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<sup>17</sup> As salary packaged entertainment benefits count towards this cap (from 1 April 2016), the capping threshold is raised by the lesser of \$5,000 and the total grossed-up taxable value of these salary packaged entertainment benefits.

<sup>18</sup> As the 2% Temporary Budget Deficit Tax measure is only proposed to apply for the 2014/15 to 2016/17 income years, the rebate should decrease to 47% of the gross FBT payable for the FBT year commencing on 1 April 2017 (and the capping threshold should reduce to \$30,000).

## 2.12 Prepaid employee benefits cards

A popular way in which a PBI can provide its employees with fringe benefits with a grossed-up value of up to \$31,177 is by providing the employee with the use of a prepaid employee benefits card. This arrangement will involve the employer depositing funds into an account that the employer has with the bank that provides the facility and this amount will be loaded onto the employee's card (and the bank will charge fees in respect of the arrangement).

The employee can then use the card for a range of personal expenses wherever a credit card could otherwise be used. The use of the card will give rise to various types of fringe benefits, however, provided that the value of the benefits provided to an employee or their associates does not exceed the relevant capping threshold (currently \$31,177), the benefits will constitute exempt benefits and not trigger an FBT liability for the employer.

However, it is not essential for an employer to provide an employee with fringe benefits in this way. For example, a simple way in which an employer could provide an employee with \$31,177 of grossed-up fringe benefits without needing a card of this nature is for the employer to discharge the employee's home loan repayment obligations.

There are also other types of arrangements and cards that salary packaging service providers offer (for a fee) in relation to meal entertainment and entertainment facility leasing expenses. This type of arrangement or card can provide additional benefits to employees of Community Legal Centres, even where an employee has already salary sacrificed benefits up to the relevant cap. This is because the value of meal entertainment benefits provided to the employee and entertainment facility leasing expenses have a separate grossed-up cap of \$5,000 (*see heading 2.14*).

**REMEMBER – banks and salary packaging service providers offer a variety of cards and arrangements that can help a PBI to provide its employees with FBT exempt and excluded benefits, however, it is not essential for an employer to provide fringe benefits in this way.**

## 2.13 Record-keeping

An employer must retain evidence to support the calculation of its FBT liability (including any declarations made by the employer or its employees), generally for a period of 5 years, and the employer is required to retain records showing the taxable value of certain reportable benefits provided to its employees. This reporting obligation applies even if an employer is not liable to pay FBT and exists irrespective of whether these benefits may otherwise be exempt from FBT. However, there are certain 'excluded fringe benefits' that are not subject to these reporting requirements<sup>19</sup>.

The grossed-up 'reportable fringe benefits amount' of an employee, including the notional value of any exempt benefits<sup>20</sup>, is required to be recorded on that employee's payment summary except where the value of the employee's 'individual fringe benefits amount' is less than \$2,000. In other words, if the grossed-up value of fringe benefits provided to an employee (using the 1.8868 gross-up factor), other than excluded fringe benefits, is less than \$3,773.60, reporting is not required. Although these reported amounts are not included in the employee's assessable income, they are taken into account for the purposes of certain income tests for various government benefits and surcharges (including the Medicare levy surcharge, superannuation co-contribution and child support obligations).

Some of the benefits that are excluded from this reporting requirement include:

- car parking fringe benefits;
- fringe benefits attributable to either entertainment facility leasing expenses or meal entertainment that are not salary packaged; and
- a variety of benefits relating to employees in remote areas.

From 1 April 2016, the following types of benefits are no longer excluded from the requirement to be recorded on an employee's payment summary:

- salary packaged fringe benefits attributable to entertainment facility leasing expenses – this includes expenses incurred in leasing or hiring a corporate box or a boat, plane or other premises or facilities for the purpose of providing entertainment; and
- salary packaged entertainment by way of food or drink and accommodation, travel or reimbursement of expenses related to that entertainment (ie, paying for your meal at a restaurant).

**REMEMBER – an employer must retain evidence to support the calculation of its FBT liability and other records showing the taxable value of benefits provided to its employees that must be reported on each employee's payment summary.**

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<sup>19</sup> These excluded fringe benefits are still subject to FBT except for certain benefits that are provided by an employer that is a PBI – see heading 2.14.

<sup>20</sup> In other words, although the employer does not need to pay FBT when it provides exempt benefits to an employee with a grossed-up value below the relevant capping threshold, the notional value of the exempt benefits must still be allocated to that employee and reported on the employee's payment summary for the relevant income year.



## 2.14 Excluded fringe benefits

In addition to being excluded benefits for reporting purposes, the provision of benefits by a Community Legal Centre that are car parking fringe benefits or meal entertainment or entertainment facility leasing expenses (**provided that these benefits are not salary packaged<sup>21</sup>**) are specifically excluded from an employee's individual fringe benefits amount. Therefore, these amounts are not included when calculating whether that employee's \$31,177 capping threshold has been exceeded and, as such, FBT is not payable on the value of these excluded fringe benefits.

From 1 April 2016, where meal entertainment or entertainment facility leasing expenses are salary packaged, they will not be excluded fringe benefits. Instead, a separate grossed-up cap of \$5,000 will apply for salary packaged meal entertainment and entertainment facility leasing benefits provided to employees of public benevolent institutions, health promotion charities and employees of public and not-for-profit hospitals and public ambulance services. These benefits are now also reportable for FBT purposes.

Therefore, from 1 April 2016, in addition to these salary packaged meal entertainment and entertainment facility leasing benefits becoming reportable on an employee's annual PAYG payment summary, the maximum that an employee can salary sacrifice free of FBT will be \$2,549.98 per FBT year (assuming that the employee has already salary sacrificed for other benefits to the maximum \$15,900.14).

This means that a Community Legal Centre will not have to pay FBT if it reimburses an employee for the cost of meal entertainment<sup>22</sup> or holiday accommodation pursuant to an effective salary sacrifice arrangement (provided the employee has not already been provided with meal entertainment and entertainment facility leasing benefits having a grossed-up value of \$5,000). This grossed-up cap of \$5,000 is separate from and in addition to the \$31,177 general cap and any excess above the \$5,000 cap will count towards the \$31,177 general cap.

In addition to holiday accommodation, the Commissioner of Taxation accepts that the following constitute entertainment facility leasing expenses - where an employer reimburses an employee for expenses incurred in hiring a marquee (including the costs of set-up and removal) for a family wedding celebration at the employee's home and where an employee hires a private function room at a hotel.

The employer and employee must ensure that the salary sacrifice arrangement is 'effective' because the employer is able to reduce the amount of salary or wages that the employee has yet to derive in the relevant FBT year by an amount sufficient to reimburse the employee for the excluded fringe benefit in question (*see heading 2.5*).

**REMEMBER – a Community Legal Centre can provide an employee with fringe benefits in the nature of salary packaged meal entertainment and entertainment facility leasing expenses (capped at \$2,549.98 per FBT year) free of FBT even where the employee has already been provided with non-exempt benefits having a value of \$15,900.14.**

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<sup>21</sup> Broadly, a salary packaging arrangement is one under which an employee receives a benefit and either agrees to forgo salary or wages in return for a benefit or receiving the benefit is part of the employee's remuneration package and it is reasonable to conclude that the employee's salary or wages would be greater if the benefit were not provided.

<sup>22</sup> The Commissioner of Taxation will accept that, when an employer pays for an employee to have a meal at a restaurant, this will be a meal entertainment fringe benefit, however, if the employer reimbursed the employee for the cost of the employee's groceries or for a bottle of alcohol from a liquor store, that reimbursement would not be meal entertainment.

### 3 Salary packaging examples<sup>23</sup>

#### 3.1 Employee with a gross salary of \$100,000<sup>24</sup>

<b>Tax Savings Calculator (2016/2017)</b>	<b>Without Salary Packaging</b>	<b>With Salary Packaging</b>
<b>Total Cash Available After Tax</b>	<b>\$51,603</b>	<b>\$59,903.25</b>
Gross/Pre-Tax Salary	\$100,000	\$78,550
Income Tax Payable	(\$26,947)	(\$18,646.75)
FBT Exempt Expenditure - PBI	(\$15,900)	(\$15,900)
Meal Entertainment Expenditure	(\$1000)	(1000)
Entertainment Facility Leasing Expenditure	(\$1550)	(\$1550)
Other FBT Exempt Benefits	(\$3,000)	(\$3,000)
FBT Payable	\$0	\$0
<b>Net Benefit with Salary Packaging</b>		<b>\$8,300.25</b> <b>(\$159.62 per week)<sup>25</sup></b>

<sup>23</sup> The FBT and tax savings calculations for the examples in headings 3.1 and 3.2 have been prepared based upon a number of assumptions and the examples are provided for general reference purposes only. An employee should speak with a financial advisor before they negotiate a remuneration package with their employer as the employee's individual facts and circumstances need to be considered in order to determine the most appropriate remuneration package for that employee.

<sup>24</sup> The 'Income Tax Payable' amount is inclusive of the Medicare Levy less any tax offsets available (including the low income offset/rebate) and assuming that the employee has no spouse or dependants. The actual tax payable, and the net amount saved by salary packaging, may change if legislation currently before Parliament is passed that proposes increasing the \$80,000 tax threshold to \$87,000 as from the 2016-17 income year. The 'FBT Exempt Expenditure' amount is the maximum benefit that an employer can provide to an employee without triggering an FBT liability (based upon the \$31,177 FBT exemption cap and assuming that the employer has no input tax credit entitlement in respect of the relevant benefits). The \$2,550 in respect of meal entertainment and entertainment facility leasing expenditure is the maximum amount that the employer can provide free of FBT in respect of salary packaged entertainment benefits (based upon the \$5,000 cap for a PBI and assuming that the employee has already salary sacrificed for other benefits to the maximum \$15,900).

<sup>25</sup> The actual amount that an employee will save by salary packaging FBT exempt benefits will vary depending upon the amount of FBT exempt expenditure.

### 3.2 Employee with a gross salary of \$61,000<sup>26</sup>

<b>Tax Savings Calculator (2016/2017)</b>	<b>Without Salary Packaging</b>	<b>With Salary Packaging</b>
<b>Total Cash Available After Tax</b>	<b>\$28,543</b>	<b>\$35,725</b>
Gross/Pre-Tax Salary	\$61,000	\$41,050
Income Tax Payable	(\$12,507)	(\$5,325)
FBT Exempt Expenditure - PBI	(\$15,900)	(\$15,900)
Meal Entertainment Expenditure	(\$1,000)	(1000)
Entertainment Facility Leasing Expenditure	(\$1,550)	(1550)
Other FBT Exempt Expenditure	(\$1,500)	(\$1,500)
FBT Payable	\$0	\$0
<b>Net Benefit with Salary Packaging</b>		<b>\$7,182 (\$138.12 per week)<sup>27</sup></b>

<sup>26</sup> The 'Income Tax Payable' amount is inclusive of the Medicare Levy less any tax offsets available (including the low income offset/rebate) and assuming that the employee has no spouse or dependants. The 'FBT Exempt Expenditure' amount is the maximum benefit that an employer can provide to an employee without triggering an FBT liability (based upon the \$31,177 FBT exemption cap and assuming that the employer has no input tax credit entitlement in respect of the relevant benefits). The \$2,550 in respect of meal entertainment and entertainment facility leasing expenditure is the maximum amount that the employer can provide free of FBT in respect of salary packaged entertainment benefits (based upon the \$5,000 cap for a PBI and assuming that the employee has already salary sacrificed for other benefits to the maximum \$15,900).

<sup>27</sup> The actual amount that an employee will save by salary packaging FBT exempt benefits will vary depending upon the amount of FBT exempt expenditure.

## 4 FBT broadsheet for employees

When negotiating a salary package with your employer, you should consider sacrificing some part of the salary or wages that you would otherwise be paid as an employee, and replacing this with non-cash benefits that are either exempt from fringe benefits tax (**FBT**) or concessional tax. This is because, in effect, the cost of the benefit to you will be less than what it would have been if you had been required to obtain that benefit using your after-tax salary and wages.

Some of the main benefits that may interest you and which can be provided free of FBT include<sup>28</sup>:

- certain work related items primarily for use in your employment such as portable or laptop computers and mobile phones;
- membership and subscription fees for professional journals, corporate credit cards and airport lounge membership;
- employer contributions to a complying superannuation fund on your behalf; and
- any benefit in respect of which you would be entitled to claim a one-off tax deduction if you had paid for the benefit yourself.

The Commissioner of Taxation accepts that employers and employees are free to negotiate a salary package in this way provided that the employee only sacrifices future entitlements to salary or wages in return for the employer providing the relevant fringe benefits.

Additionally, there are certain FBT exemptions and concessions that are only available to particular categories of employer, such as Community Legal Centres, that are exempt from income tax. If your employer is a public benevolent institution (**PBI**), it can provide you with any type of fringe benefit, up to a grossed-up value of \$31,177, free of FBT, as well as meal entertainment and entertainment facility leasing expenditure benefits up to a grossed-up value of \$5,000 (this is in addition to any benefits that are otherwise exempt from FBT or that are otherwise excluded benefits, such as car parking fringe benefits provided by a PBI).

This means that you could arrange for your employer to, for instance, reimburse you for an amount equal to part of your housing loan repayments (up to a maximum amount of \$15,900 per FBT year<sup>29</sup>). Although your employer will reduce the cash component of your salary and wages by an amount corresponding with the reimbursement (ie, the salary sacrificed component of your remuneration package), the income tax you have to pay on your remaining salary and wages will be less than it would have been if you had not entered into this salary packaging arrangement.

A Community Legal Centre that is a PBI can also provide employees with two other types of salary packaged fringe benefits with a grossed-up value capped at \$5,000 free of FBT:

- entertainment by way of food or drink and accommodation, travel or reimbursement of expenses related to that entertainment (for instance, paying for your meal at a restaurant); and

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<sup>28</sup> There are a variety of factors that an employee must consider before they agree with their employer to replace some of their salary and wages with non-cash benefits that are taxed concessional for FBT purposes (such as where an employer provides the employee with a car), and the employee should speak with a financial advisor before agreeing to do so (these factors include the employee's marginal rate of income tax and whether the benefits are taken into account for the purposes of certain income tests for various government benefits and surcharges).

<sup>29</sup> The taxable value of the fringe benefits must be grossed-up for FBT purposes. There are 2 gross-up formulae depending upon the GST treatment to the employer of the type of benefit provided. Using the housing loan repayment example, the gross-up factor is 1.9608 and, accordingly, an employer that is a PBI can provide an employee with a fringe benefit having a taxable value of \$15,900 (ie, repaying the employee's loan) without the employer having an FBT liability (ie,  $\$15,900 \times 1.9608 = \$31,177$ ).

entertainment facility leasing expenses (for instance, paying for your holiday accommodation)<sup>30</sup>.

The example below illustrates the benefits that you can obtain from salary packaging having regard to the various FBT exemptions and concessions that are available to Community Legal Centres<sup>31</sup>. An employee is free to sacrifice salary or wages for any type of fringe benefit desired, subject to any employment policies the employer has that restrict the types of fringe benefits that it is willing to provide. You should discuss with your employer any restrictions that it has in relation to fringe benefits that can be included in your remuneration package.

#### **Tax Savings Calculator (2016/2017)<sup>32</sup>    Without Salary Packaging    With Salary Packaging**

<b>Total Cash Available After Tax</b>	<b>\$28,543</b>	<b>\$35,725</b>
Gross/Pre-Tax Salary	\$61,000	\$41,050
Income Tax Payable	(\$12,507)	(\$5,325)
FBT Exempt Expenditure - PBI	(\$15,900)	(\$15,900)
Meal Entertainment Expenditure	(\$1,000)	(\$1,000)
Entertainment Facility Leasing Expenditure	(\$1,550)	(\$1,550)
Other FBT Exempt Expenditure	(\$1,500)	(\$1,500)
FBT Payable	\$0	\$0
<b>Net Benefit with Salary Packaging</b>		<b>\$7,182</b>

<sup>30</sup> These salary packaged entertainment benefits are reportable on an employee's annual PAYG payment summary and will be taken into account for the purposes of certain income tests for various government benefits and surcharges (including the Medicare levy surcharge, superannuation co-contribution and child support obligations). If these benefits are provided by an employer otherwise than pursuant to a salary package arrangement, the benefits are not reportable and no FBT is payable (ie, they are excluded. benefits and do not count towards the \$5,000 cap that applies to salary packaged entertainment benefits).

<sup>31</sup> The FBT and tax saving calculations have been prepared based upon a number of assumptions (including that your Community Legal Centre employer is a PBI) and the example is provided for general reference purposes only. You should speak with a financial advisor before negotiating a remuneration package with your employer as your individual facts and circumstances need to be considered in order to determine the most appropriate remuneration package.

<sup>32</sup> The 'Income Tax Payable' amount is inclusive of the Medicare Levy less any tax offsets available (including the low income offset/rebate) and assuming that the employee has no spouse or dependants. The 'FBT Exempt Expenditure' amount is the maximum benefit that an employer can provide to an employee without triggering an FBT liability (based upon the \$31,177 FBT exemption cap for a PBI and assuming that the employer has no input tax credit entitlement in respect of the relevant benefits). The \$2,550 in respect of meal entertainment and entertainment facility leasing expenditure is the maximum amount that the employer can provide free of FBT in respect of salary packaged entertainment benefits (based upon the \$5,000 cap for a PBI and assuming that the employee has already salary sacrificed for other benefits to the maximum \$15,900).

## Schedule 1- Summary of Fringe Benefits Categories<sup>34</sup>

### 1 Car Benefits

A 'car benefit' arises on each day that an employer provides a car to an employee, in respect of the employment of that employee, and the car is either taken to be made available for the employee's private use or it is actually used for a private purpose. A car is defined to mean any motor powered road vehicle (including a 4 wheel drive but not a motorcycle) that is designed to carry a load of less than 1 tonne and fewer than 9 passengers.

A car will be taken to be available for private use if it is garaged at the employee's residence or if the car is not at the employer's business premises and the employee has the use, custody or control of the car. A car will be applied to a private use if it is used in accordance with the employee's directions, instructions or wishes. However, where the car is used by the employee exclusively in the course of producing assessable income of the employer, the car will not be used for a private use.

The car must be 'held' by the employer. This includes where the car is owned or leased by the employer as well as where the car is otherwise made available to the employee by another person with whom the employer has an arrangement. This includes where the employer takes over the rights and obligations pursuant to a leasing arrangement involving the employee and the lessor of the car.

The employer can choose one of 2 methods to value the car benefit – the statutory formula method or the operating cost method. Generally, the operating cost method results in a lower taxable value than the statutory formula method where the business use of the car is high.

Where the operating cost method is used, the taxable value of the car fringe benefit is calculated, broadly speaking, as the amount equal to the operating costs of the car multiplied by the percentage of non-business use of the car less any contribution that the employee makes for the provision of the car benefit or any car expenses incurred by the employee. The operating costs of a car include expenses incurred in registering or insuring the car, repairing or maintaining the car, fuel for the car, an amount of deemed depreciation (calculated at the rate of 18.75% diminishing value) and an imputed interest cost calculated by applying a statutory interest rate to the value of the car.

For cars acquired after 7.30pm AEST on 10 May 2011, the statutory formula method results in the taxable value of the car benefit being calculated, broadly speaking, as 20% of the base value of the car multiplied by the proportion of the days in year in which the fringe benefit was provided (regardless of the kilometres travelled). This amount is reduced by any payments that the employee makes for the provision of the car benefit and car expenses incurred by the employee or an associate in respect of the car fringe benefit (less any amount reimbursed to the employee).

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<sup>33</sup> The actual amount that an employee will save by salary packaging FBT exempt benefits will vary depending upon the amount of FBT exempt expenditure.

<sup>34</sup> For simplicity, this summary of the 12 categories of fringe benefits refers to benefits that employers provide to employees, however, as explained in heading 2.1, an employer will be liable to pay FBT in relation to benefits provided in respect of an employee's employment regardless of whether that benefit is provided:

- by the employer, an associate of the employer or under an arrangement that the employer has with a third party; or
- to the employee or an associate of that employee.

If the employer wishes to use the operating cost method it must lodge a written election with the Commissioner before it lodges its FBT return otherwise the statutory formula method will apply. The election can apply for a particular car for a particular year but can change on a yearly basis. However, if the election is made and the taxable value of the car under the operating cost method is higher than it would have been under the statutory formula method, the election is deemed not to have been made and the lower taxable value under the statutory formula method applies.

There are a number of exemptions available in respect of commercial vehicles that are used for work-related purposes, unregistered cars and cars held by personal services entities. Nor is FBT is payable where the employer provides a car benefit and pays for the following 'car expenses' – registration or insurance of a car, repairs, maintenance or fuel (ie, these are exempt benefits).

## **2 Car parking benefits**

The following requirements must be satisfied in order for there to be a car parking benefit:

- the car must be parked at premises used in whole or in part for the purposes of the business operations of the employer or that are otherwise owned, leased or under the control of the employer;
- there must be a commercial parking station located within a 1 kilometre radius of the employer provided parking facility;
- the lowest fee charged by the commercial parking station operator in the ordinary course of business to members of the public for all day parking on the first day of the FBT year must be more than the car parking threshold amount (\$8.26 for the FBT year ending 31 March 2015);
- the car must be parked at or in the vicinity of the employer's business premises where the employee most recently performed employment duties and those premises were the sole or primary place of employment of the employee or were where the employee performed their employment duties;
- the car must be parked at the employer's parking facilities for more than 4 hours between 7am and 7pm;
- the car must be owned or leased by the employee or be a car benefit provided by the employer;
- the car must be used in connection with the employee travelling between their primary place of employment and place of residence;
- the parking facilities must be provided in respect of the employee's employment; and
- the parking facilities are not exempted from FBT – for instance, car parking provided by certain non-profit employers such as registered charities will be an exempt benefit (this should ensure that a car parking benefit provided by a Community Legal Centre is exempt from FBT).

In other words, a car parking benefit will be exempt if the parking facility is more than 1 kilometre away from a commercial parking station or, if it is closer, the lowest fee charged is less than the car parking threshold amount or the car is parked for less than 4 hours on a particular day (ie, parking provided in country areas is likely to be exempt from FBT).

There are 5 methods for calculating the taxable value of a car parking benefit – the commercial parking station method, market value method, average cost method, statutory formula method and 12 week register method.

### **3 Debt waiver benefits**

Broadly speaking, a debt waiver benefit arises where a person (the provider), generally an employer, waives an 'obligation' of another person (the recipient), generally an employee, to pay or repay the provider an amount (and the waiver is connected with the employment of an employee). An obligation is defined to mean an obligation to pay or repay an amount, whether or not enforceable by legal proceedings, and waiver is defined to include release.

The taxable value of the debt waiver benefit equals the amount of the payment or repayment that is waived or released. There are no specific record keeping requirements and an employer is therefore only required to comply with the normal record keeping rules (ie, the records must explain all transactions and other acts engaged in by the employer for the purpose of determining the amount of FBT payable).

### **4 Loan benefits**

A loan benefit arises where a person (the provider), generally an employer, makes a loan (including an advance of money or the provision of credit, a payment on account of a person or a transaction that in substance effects a loan of money) to another person (the recipient), generally an employee, where the benefit is provided in respect of an employee's employment.

The loan benefit commences at the time the loan is made and continues to exist while the loan remains unpaid (ie, while the recipient is under an obligation to repay the whole or any part of the loan). Some loan benefits are exempt from FBT including short term employee expense advances and certain loans to facilitate the relocation of an employee.

The taxable value of a loan benefit is the difference between the amount of interest payable by the employee on the loan benefit and a 'notional amount of interest'. This notional interest is calculated based upon the daily balance of the loan using the statutory interest rate for the year in which the benefit is being valued (5.95% for the FBT year ending 31 March 2015).

The taxable value of the loan benefit is reduced if the recipient is an employee and the employee would have been entitled to a once only deduction if the employee had incurred the notional amount of interest on the loan. This is an example of the otherwise deductible rule and means that, where an employee uses borrowed money solely for income producing purposes, and so is entitled to a deduction for the interest on that loan, the taxable value of the loan benefit will generally be nil.

The employee must give the employer a declaration in the approved form in respect of the loan benefit that shows the use the employee made of the loan and the percentage of interest for which the employee would have been entitled to a deduction if interest had been paid. Where a car loan is involved, the declaration must include additional information relating to odometer and log book records relating to the business use of the car.

### **5 Expense payment benefits**

An expense payment benefit arises where an employer reimburses an employee in respect of expenditure that the employee has incurred or makes a payment to a third person in discharge of an obligation that the employee has to pay an amount to that third party. There will not be an expense payment benefit if the expenditure is incurred by an employee using a credit card issued by the employer because the employer, rather than the employee, will have incurred the relevant expenditure.

It is vital that the employee has an effective salary sacrifice arrangement in place as the FBT rules will not apply if an employee merely directs their employer to pay part of the employee's



salary or wages to discharge expenses that the employee has incurred (ie, that amount will remain subject to the ordinary income tax rules).

The expense payment benefit arises at the time the provider makes the payment or reimbursement to discharge the obligation incurred by the employee (ie, the time when the employee incurred the expense is not relevant). The taxable value of that benefit is equal to the amount of the payment or reimbursement (reduced by any payment that the employee makes to the employer) except where it is an 'in-house' expense payment fringe benefit.

The taxable value of an expense payment fringe benefit will be reduced if the otherwise deductible rule applies. This means that where an employee is entitled to a once only deduction in respect of the expenditure (ie, it does not include depreciation nor a deduction to which an associate of the employee is entitled), the taxable value of the fringe benefit will reduce accordingly. Expenditure of a private nature, such as in relation to school fees, health insurance or grocery expenditure, will not qualify because the employee would not be entitled to an income tax deduction for such expenditure. In addition to a declaration substantiating the income producing nature of the employee's expenditure, the employee needs to provide the usual documentary evidence required to substantiate the amount of the employee's expenditure the subject of the benefit (usually a receipt or an invoice).

Generally speaking, to support any reduction in the taxable value of an expense payment benefit the recipient must give the employer a declaration in the approved form in respect of that expenditure before the employer lodges its FBT return for that year. However, it is not necessary to give a declaration in respect of each and every benefit if the employee provides a 'recurring fringe benefit declaration'. This is permissible where the employee receives a series of expense payment benefits that are similar (because the benefits are the same in all respects except for differences that are minimal or insignificant, or that relate to the value of the benefits or to the deductible proportion of those benefits).

An expense payment benefit will also be exempt if the employer makes a 'no private use declaration' covering the relevant expense. The employer can make a no private use declaration for expenses that have a taxable value of nil because, for instance, the benefit is solely work-related. The employer's record keeping systems and procedures should make it clear that employees will only be reimbursed for work-related expenses.

## **6 Housing benefits**

A housing benefit arises where an employer grants an employee a lease or licence to occupy or use a unit of accommodation as the employee's usual place of residence. Unit of accommodation is defined broadly to include houses and units, as well as accommodation in hotels and motels, ships and caravans and other mobile homes. However, the accommodation must be the place at which the person either resides or has sleeping accommodation whether on a permanent or temporary basis (whether or not on a shared basis).

If an employee has more than one place of residence, the Commissioner is unlikely to accept that the unit of accommodation is the employee's 'usual' place of residence if the employee is using that residence while temporarily working for the employer at a location but where the employee intends to return to their former place of residence when the temporary period of work comes to an end.

The taxable value of a housing benefit depends upon the type and location of the accommodation and whether the employer provides identical or similar accommodation to the public. The taxable value is reduced by the employee's contribution to the housing benefit (ie, any rent paid). Some housing benefits are exempt from FBT such as remote area housing.

## **7 Living away from home allowance benefits**

A living away from home allowance benefit arises where an employer pays money to an employee in respect of their employment in order for the employee to live away from their normal residence while performing employment duties. This type of benefit must be to compensate the employee for the additional non-deductible expenses and disadvantages of living away from that residence. The employee's total remuneration must increase as a result of living away from home because, otherwise, it will not be possible to say that the allowance is for additional expenses.

The rules to determine the taxable value of a living away from home allowance benefit changed from 1 October 2012 (subject to certain transitional rules for arrangements entered into before that time). Provided certain conditions are satisfied, the allowance is subject to concessional FBT treatment for an employee that maintains a home in Australia (or that is otherwise employed on a fly-in, fly-out or drive-in, drive-out basis), otherwise, the allowance is fully taxable.

The taxable value of a living away from home allowance is reduced by the exempt accommodation and exempt food components. The exempt food and accommodation components are limited to benefits provided in the first 12 months of the employee's time required to live away from home (except in relation to employees employed under genuine fly-in, fly-out or drive-in, drive-out arrangements).

The accommodation and food components of a living away from home allowance are the amounts that might reasonably be concluded are compensation for expenses to be incurred by an employee on accommodation and food respectively for eligible family members (ie, the employee, their spouse and children living with the employee while away from home).

The part of the accommodation component that will be exempt from FBT is the actual accommodation expenditure incurred by the employee and that the employee substantiates. The exempt food component is the actual expenditure incurred on food and drink for eligible family members less an applicable statutory amount. The exempt food component must be substantiated if the food and drink expenditure exceeds an amount considered by the Commissioner of Taxation to be reasonable.

In order to be concessionally taxed on a living away from home allowance benefit, employers must obtain a declaration from the employee in an approved form (setting out certain requirements in relation to the employee's home) before the date on which the employer's FBT return is lodged.

## **8 Board benefits**

A board benefit arises where an employer provides a meal to an employee on the employer's premises on a day on which that employee is entitled to be provided with residential accommodation and meals pursuant to the provisions of an industrial instrument or under an employment arrangement (excluding meals prepared in a facility wholly or principally used to prepare meals for the employee and excluding meals provided at a party, reception or other social function). The taxable value of the board fringe benefit is \$2 per meal where the recipient is 12 years or over before 1 April and \$1 otherwise (less any contribution provided by the recipient for the board meal).

## **9 Property benefits**

A property fringe benefit arises where an employer provides an employee with tangible or intangible property in respect of their employment. The property must actually be transferred to the employee because merely allowing an employee to use an item of property will be a residual benefit.

If the property is provided to an employee on a working day and is consumed on the employer's business premises, it will be exempt from FBT (except where the property is food or drink provided under a salary packaging arrangement). There are also a number of exemptions relevant to specific types of property benefits and any minor benefit with a taxable value of less than \$300 will be exempt from FBT where it would be unreasonable to treat the relevant property benefit as a fringe benefit.

The taxable value of a property fringe benefit is the value of that benefit reduced by the recipient's contribution (ie, any amount that the employee pays to the employer for the property benefit). The way in which a property benefit is valued depends upon whether the property is an 'in-house property fringe benefit', because it is property sold by the employer as part of their business activities (in which case concessional valuation rules apply), or an external property fringe benefit. Where the employer provides an external property fringe benefit that was purchased under an arm's length transaction at or about the time the benefit is provided, the taxable value is equal to the cost price of the property. Where the property benefit is entertainment provided by way of food or drink, the employer can elect to use special valuation rules to determine the exact FBT liability.

The taxable value of the property benefit can also be reduced pursuant to the otherwise deductible rule to the extent that the employee would have been entitled to a once only income tax deduction if it had occurred expenditure in order to acquire that property. The employee must give the employer a declaration in the approved form before the employer lodges its FBT return stating that the property was used for income producing purposes. The employee can also provide a recurring fringe benefit declaration where the employee is provided with property benefits that are essentially the same, other than differences in value and proportion of business use. The declaration should detail the extent to which the property benefit is used by the employee in deriving its assessable income.

## **10 Meal entertainment benefits**

A benefit that an employer provides an employee by way of entertainment will ordinarily be an expense payment fringe benefit or property fringe benefit. However, where the benefit is meal entertainment (not provided under a salary packaging arrangement), the employer can elect to have that fringe benefit taxed in accordance with special rules to reduce compliance costs. A meal entertainment fringe benefit arises where the employer provides 'entertainment' by way of food or drink (and any travel or accommodation connected with that entertainment) or reimburses or pays expenditure in providing that food, drink, travel or accommodation.

It is critical for there to be an element of entertainment for a meal entertainment fringe benefit to arise. Food, drink, accommodation, travel or recreation will not be a meal entertainment fringe benefit if there is an absence of entertainment (this would generally be the case where an employer provides a light meal or morning or afternoon tea to employees at the employer's premises if no alcohol is served). The Commissioner of Taxation lists a number of factors in Taxation Ruling TR97/17 that are relevant in helping to determine if entertainment has been provided. These include why, what, where and when the food or drink is being provided – however, no one factor is conclusive and all the circumstances surrounding the provision of the meal need to be considered.

For instance, a business lunch or other social function (such as a cocktail party) would ordinarily constitute entertainment because the purpose of the event is for employees to enjoy themselves. On the other hand, a meal on overnight business travel generally would not be entertainment (as the meal is provided for the purpose of refreshment), unless the meal was accompanied by some form of entertainment (such as a sporting or theatrical event or where more than a small quantity

of alcohol is consumed). The more elaborate the meal the more likely it is that entertainment will be involved.

The taxable value of meal entertainment benefits will be determined based upon the category of benefit into which the benefits fall (and will generally equal the employer's actual expenditure on the meal entertainment provided to employees). However, if the benefits are not provided under a salary packaging arrangement, the employer can elect to value the benefits using either the:

- 50/50 split method - the taxable value of meal entertainment benefits is calculated as 50% of the employer's total meal entertainment expenses, for all people (not just employees), for the FBT year (although this method is simple, it is unlikely to be suitable where a large proportion of meal entertainment expenditure is either FBT exempt or not provided to employees); or
- 12 week register method - the disadvantage with this method is that it increases the employer's compliance costs because the employer must maintain a register for a 12 week period comparing the proportion of meal entertainment fringe benefits provided compared with the total value of meal entertainment (the taxable value of meal entertainment benefits is this proportion of the employer's total meal entertainment expenses for all people, not just employees, for the FBT year).

Where a PBI provides a salary packaged meal entertainment benefit, there will be no FBT liability up to a grossed-up cap of \$5,000 (however, from 1 April 2016, these benefits are not excluded benefits and they will need to be reported on an employee's payment summary).

## **11 Tax-exempt body entertainment benefits**

Expenditure on entertainment by an employer that is wholly exempt from income tax (or an employer that does not otherwise derive assessable income from the activities to which the entertainment relates) will be a tax-exempt body entertainment benefit. If that expenditure on entertainment would have been deductible for income tax purposes, if not for the rules that deny a taxpayer a deduction for most entertainment expenses, that expenditure will not be a tax-exempt body entertainment benefit (for instance, meals provided to employees in staff cafeterias or during business seminars or on business travel away from home).

A tax-exempt employer is liable for FBT when it provides tax-exempt body entertainment benefits to its employees (subject to any relevant entertainment concessions). The taxable value of a tax-exempt body entertainment benefit is the amount of actual expenditure incurred by the employer in providing the entertainment to the employee. Significantly, any contributions that an employee makes cannot reduce the taxable value of a tax-exempt body entertainment benefit.

The taxable value of the recreation component of a tax-exempt body entertainment benefit is generally equal to the cost of the recreation activity itself. However, if the expenditure relates to the hiring or leasing of corporate boxes, boats, planes or other premises or facilities for the purpose of providing entertainment (excluding any part relating to food, drink or advertising), this will be an 'entertainment facility leasing expense' and, if not provided pursuant to a salary packaging arrangement an employer can elect to apply the 50/50 method so that only half of the expenditure is subject to FBT.

## **12 Residual benefits**

A residual benefit is a benefit an employer provides an employee in respect of their employment that is not otherwise covered by a specific rule regarding categories and valuation of benefits. This would include the performance of work (including, for instance, the supply of legal services) and the use of property not otherwise amounting to a transfer of that property.

The calculation of the taxable value of the residual benefit depends upon whether the benefit is provided over a period extending beyond one day and whether it is an external residual fringe benefit or an 'in-house residual fringe benefit' (because the benefit is provided by the employer and the employer carries on a business of providing identical or similar benefits to members of the public).

There are three methods for calculating the taxable value of external residual fringe benefits depending upon whether the employer provided the benefit and whether the employer acquired that benefit from another party under an arm's length transaction. For instance, the taxable value of a residual fringe benefit provided by an employer during a one day period will equal the purchase price paid by the employer to the third party under the relevant arm's length transaction (less any contribution that the employee provided for the benefit). There are two methods for calculating the taxable value of an in-house residual fringe benefit, depending upon whether the employer provides identical benefits to members of the public in the ordinary course of its business.

A number of residual benefits are specifically exempted from FBT. It is possible for an employer to make a no-private-use declaration covering all residual benefits, provided that the benefits are covered by a 'consistently enforced policy in relation to the use of the property that is the subject of the benefit that would result in the taxable value of the benefit being nil'. If the declaration is made, the residual benefits that the employer provides will be exempt from FBT. However, the employer must ensure it has policies that prevent employees from using these benefits for any private purposes and that any use will solely be for employment-related activities. If the employer makes this declaration, employees do not need to provide their own declaration. The no-private-use declaration must be made in the approved form by the employer before the day that it lodges its FBT return.

The otherwise deductible rule can apply to residual fringe benefits. It will reduce the taxable value of a benefit by the amount of any once only tax deduction to which the employee would be entitled if it had incurred the expenditure in acquiring that benefit. The employee is required to give the employer a declaration in the approved form before the date that the employer lodges its FBT return to substantiate the deduction. Alternatively, an employee can give their employer a recurring fringe benefit declaration where the residual benefits are the same in all respects except for any differences that are minimal or insignificant, that relate to the value of the benefits or the deductible proportion of the benefits.