

QUESTION WE'VE BEEN ASKED

QB 19/12

What is the fringe benefit tax, GST and income tax treatment of an employee contribution to a fringe benefit?

This item will be of interest to employers who provide fringe benefits to their employees, where the employees contribute to the value of the benefit. Employees may make a full or partial contribution to the value of the fringe benefit. Employee contributions may affect the GST, fringe benefit tax (FBT) and income tax returns of employers.

Key provisions

Goods and Services Tax Act 1985: ss 2A, 8(1), 9(2) and (3), 10(2), 211(1) and (2), 23A

Income Tax Act 2007: ss CA 1(2), CB 1, CX 20, RD 54-57

Tax Administration Act 1994: ss 46B(2), 46C

Question

What is the FBT, GST and income tax treatment of an employee contribution to a fringe benefit?

Answer

The answer depends on:

- whether the employee makes a full or partial contribution to the value of the fringe benefit; and
- who the employee makes the payment to.

The consequences are summarised below:

	Partial contribution	Full contribution
Fringe benefit tax	The taxable value of the fringe benefit is reduced by the contribution. The reduced taxable value of the benefit is subject to FBT and is included in the employer's FBT return.	The taxable value of the fringe benefit is reduced to nil so there is no FBT liability.
GST on the fringe benefit	GST is imposed on the taxable value of the fringe benefit (the value of the fringe benefit less the contribution). This amount is paid in the employer's FBT return and is deemed to be FBT.	The taxable value of the fringe benefit is reduced to nil so there is no GST liability.
GST on contributions to employers	A contribution made to the employer is consideration for a supply by the employer and must be accounted for in the employer's GST return. A contribution to a third party will not be consideration for a supply by the employer.	
Income tax	A contribution made to the employer is income of the employer and must be included in the employer's income tax return, net of GST. The employer may claim relevant deductions relating to the fringe benefit. A contribution to a third-party will not be income of the employer.	

Key terms

Employee contribution: an amount an employee pays for receiving a fringe benefit

Taxable value: the value of a fringe benefit for income tax and GST

Explanation

1. This Question We've Been Asked explains how an employer must treat an employee contribution to a fringe benefit for FBT, GST and income tax purposes.

Employee contributions

2. An employee contribution is an amount an employee, including a shareholder-employee, pays for receiving a fringe benefit. It includes any amount a person associated with that employee pays for receiving a fringe benefit. Where an employee (or associate) pays an amount for receiving a fringe benefit, the taxable value of that benefit is reduced by the amount paid up to the value of the benefit (s RD 54(1) and (2) of the Income Tax Act 2007).
3. An employee may make a partial contribution or a full contribution to the value of the fringe benefit.
4. An employee contribution may be made in different ways. For an employee, payment might involve meeting an expense that would otherwise be an expense of the business. For example, an employee with a company vehicle might sometimes pay for petrol for that vehicle. For a shareholder-employee, payment might occur by debiting the shareholder-employee's current account with the employer company.
5. An effective salary sacrifice arrangement is not treated as an employee contribution to a fringe benefit. An effective salary sacrifice arrangement is where an employee agrees to reduce their salary by an agreed amount in recognition of their employer providing them with a fringe benefit.

FBT treatment of contributions

6. The taxable value of a fringe benefit is the value of the benefit, less any employee contributions (s RD 54(1) and (2) of the Income Tax Act 2007).
7. If the employee contribution is a partial contribution, the taxable value of the fringe benefit is the value of the fringe benefit, less the amount of the contribution. The reduced taxable value of the benefit is subject to FBT and must be included in the employer's FBT return.
8. If an employee contribution is 100% of the taxable value of the fringe benefit, then the value of the fringe benefit is reduced to nil so the FBT liability is nil. However, a nil FBT return must be filed as a fringe benefit has still been provided (ss 46B(2) and 46C of the Tax Administration Act 2004).

GST treatment of contributions

9. When an employer supplies an employee with a fringe benefit, that supply is deemed to be a supply of goods and services by the employer in the course or furtherance of their taxable activity (s 211(1) of the Goods and Services Tax Act 1985 (GST Act)). The supply will be valued under s 10(7) of the GST Act using the FBT taxable value. However, the provision of a fringe benefit will be a supply only to the extent that the employee has not paid an amount for the receipt or enjoyment of the fringe benefit (s 211(2) of the GST Act).
10. There will also be no supply of a fringe benefit for GST purposes if the fringe benefit arises out of an exempt or zero-rated supply (s 211(2)(b) and (c) of the GST Act and Example 2).

Partial contribution

11. If an employee makes a partial contribution to the employer for receiving the fringe benefit, the supply must be split into two supplies – a supply of a fringe benefit and a supply of the good or service the employee has paid for (a "general supply").

12. This occurs because s 211(1) of the GST Act deems the provision of a fringe benefit to be a supply of goods and services. However, s 211(1) does not apply to the extent that the employee pays an amount for the receipt or enjoyment of the fringe benefit (s 211(2)). This means s 211(1) does not apply to the general supply.

The supply of a fringe benefit

13. The value of the supply of a fringe benefit under s 211(1) is its taxable value under the FBT rules (see s 10(7)(a) of the GST Act and s CX 20 and ss RD 54 to 57 of the Income Tax Act 2007). The GST on the taxable value of the fringe benefit is paid in the employer's FBT return and is deemed by s 23A of the GST Act to be a payment of FBT for the purposes of filing the FBT return.

The general supply

14. The employee contribution (if paid to the employer) is treated as consideration for a separate supply by the employer under the GST Act. The contribution is GST-inclusive. As a result, the employer must include any contributions received from the employee in their GST return.
15. If the employee contribution is consideration for an exempt or zero-rated supply, no GST needs to be returned on this general supply and the employer cannot claim any input tax on this supply. However, a contribution that is consideration for a zero-rated supply will still need to be included in the employer's GST return.
16. If the employee contribution is paid directly to a third-party it will not be consideration for a supply by the employer for GST purposes. Also, the employer cannot claim any input tax on this supply as there was no cost incurred by the employer.

Full contribution

17. If an employee makes a full contribution to the employer for receiving the fringe benefit there will be no deemed supply of a fringe benefit under s 211(1) of the GST Act.
18. However, the employee contribution (if paid to the employer) is treated as consideration for a general supply by the employer under the GST Act. The contribution is GST-inclusive. As a result, the employer must include any contributions received from the employee in their GST return (see Example 5).
19. If the employee contribution is consideration for an exempt or zero-rated supply, the employer will not be able to claim any input tax on this supply as it would not have paid any GST on the supply. A contribution that is consideration for a zero-rated supply will still need to be included in the employer's GST return.
20. If the employee contribution is paid directly to a third-party it will not be a consideration for a supply by the employer for GST purposes. Also, the employer cannot claim any input tax as there was no cost incurred by the employer.

Associated supplies

21. Where an employer and an employee are associated, the supply of a fringe benefit by the employer is an "associated supply" (ss 2(1) and 2A(1) of the GST Act). It might be assumed that the associated supply is valued at open market value, rather than taxable value. This is not the case. Section 10(3)(c) of the GST Act excludes the provision of a fringe benefit from the valuation rules for associated supplies. Therefore, the value of a supply of a fringe benefit between associated parties is its taxable value (s 10(7)). The time of supply is when the fringe benefit is or is deemed to be provided (s 211(3)).
22. Similarly, where the employer and the employee are associated, any general supply (for which an employee contribution is consideration) is valued under the general GST valuation rules (s 10(2)). It might be assumed that as the supply is an "associated supply" it should be valued under s 10(3). However, the associated supply valuation rules in s 10(3) do not apply, because the goods or services being supplied are still a

fringe benefit under the Income Tax Act 2007 (even where a full contribution is made), so s 10(3)(c) is not satisfied (see “The meaning of “benefit” for FBT purposes” *Tax Information Bulletin* Vol 18, No 2 (March 2006):26).

23. The time of supply of an associated supply will be determined under either ss 9(2) or 9(3) of the GST Act, depending on whether the supply is a supply of goods or a supply of services and whether those goods or services are supplied periodically or progressively. Where goods are supplied under an agreement to hire or where services are supplied under any agreement or enactment which provides for periodic payments, the time of supply is generally when a payment becomes due or is received.

Income tax treatment of contributions

24. If an employer receives an employee contribution, the amount will be either business income of the employer (s CB 1 of the Income Tax Act 2007) or income under ordinary concepts (s CA 1(2) of the Income Tax Act 2007). The amount is consideration received by the employer for the provision of a fringe benefit to the employee. It must be included as income in the employer’s income tax return, net of GST. The employer may claim relevant deductions relating to the fringe benefit. If the employer does not receive the contribution, (because it is paid directly to a third party) the amount will not be income of the employer and should not be included in the employer’s income tax return (see Example 3).

Examples

Example 1 – Partial contribution towards the cost of a fringe benefit

Marjorie is the top salesperson at Bob’s Discount Furniture Ltd for 2018. As part of an incentive programme, Marjorie is to be awarded a brand new 49-inch TV, valued at \$2,000 (GST inclusive). However, Marjorie would like something a little larger. She has her eye on a 65-inch smart TV currently selling for \$3,000 (GST inclusive). Before Bob goes to purchase the TV for Marjorie (from a third-party supplier) she asks if she can pay the difference, so she can get the TV of her dreams. Bob is happy to oblige, so Marjorie transfers \$1,000 into the company account and Bob buys her the \$3,000 TV.

FBT: Bob’s accountant takes the total amount of Marjorie’s employee contribution (\$1,000, GST-inclusive) and deducts this from the value of the TV fringe benefit (\$3,000, GST-inclusive). She then calculates both GST and FBT payable on the taxable value of the fringe benefit less the contribution and includes both the GST and the FBT in the FBT quarterly return. Bob’s Discount Furniture files quarterly using the single rate option so the FBT payable on this fringe benefit is \$985 ($\$2,000 \times 49.25\%$). The GST payable is \$260.87 ($\$2,000 \times 3 \div 23$).

GST: Marjorie’s contribution is consideration for the general supply of the TV. Bob’s Discount Furniture can claim GST back on the full price of the TV (\$3,000). The accountant then includes the GST-inclusive amount of Marjorie’s employee contribution (\$1,000) as income in the company’s next GST return.

Income Tax: The accountant claims a deduction for \$2,608.70, being the full GST-exclusive cost of the TV and includes the GST-exclusive amount of Marjorie’s contribution as income of the company for income tax purposes.

Example 2 – Partial contribution towards the cost of a zero-rated fringe benefit

Gustaf is the top salesperson at Gianni’s House of Wigs for 2018. To recognise this stellar achievement, the company has decided to award him an overseas holiday. The award includes return flights for two and five nights’ accommodation at a luxury resort in Fiji. The total cost of the award is \$2,500. Gustaf is delighted at this recognition but would like to know if he could stay a bit longer. Gustaf asks the Managing Director if he could pay for an extra five nights’ accommodation. The Managing Director agrees, and Gustaf pays Gianni’s the difference which works out to be a further \$1,500. There is no

GST component to this contribution because the supply of accommodation takes place offshore and is therefore zero-rated.

FBT: The overseas travel is a fringe benefit. The taxable value of the fringe benefit is \$2,500 (being the total cost of \$4,000 less Gustaf's contribution of \$1,500). This amount needs to be returned in Gianni's quarterly FBT return. No GST is paid in the FBT return because the supply is zero-rated and therefore s 211(2)(c) of the Act applies. The provision of the overseas travel is not treated as a supply of a fringe benefit for GST purposes.

GST: For GST purposes, Gustaf's employee contribution (paid to Gianni's) is consideration for a zero-rated supply of overseas travel and accommodation. The zero-rated amount will still need to be included in Gianni's next GST return. However, Gianni's cannot claim any input tax on the cost of the holiday as it did not pay any GST on the supply.

Income Tax: The accountant claims a deduction for \$4,000 being the total cost of the holiday package and includes Gustaf's contribution of \$1,500 as income of the company for income tax purposes.

Example 3 – an employee pays a third-party for petrol

Supreme Carpet Ltd allows its employee Tony to take home a work van for private use in the weekend as long as he pays for his own petrol. Tony must fill up on the business account on Friday night and then fill up again using his own funds on Sunday evening. He records the value of his petrol payments in a log book.

FBT: The taxable value of the fringe benefit is the value of the benefit as determined under the motor vehicle fringe benefit rules in sch 5 of the Income Tax Act 2007. This value is an approximation of the capital and running costs of the vehicle and includes petrol. Therefore, when Tony pays for petrol (either directly to Supreme or to a third party like a petrol station), this will reduce the value of the benefit.

The Supreme accountant takes Tony's petrol payments (including GST) and deducts this from the value of the van that has been made available to him for private use over the quarter. She then calculates both FBT and GST payable on the taxable value and includes both the FBT and GST in the FBT quarterly return.

GST: Supreme providing the van to Tony is a fringe benefit and is treated as being a supply of goods and services under s 211(1). However, it is not treated as a supply to the extent that Tony paid an amount for the receipt or enjoyment of the benefit (s 211(2)(a)). Further, there is no supply between Supreme and Tony for which the petrol payments could be consideration for GST purposes. Supreme cannot claim any input tax on the cost of the petrol paid by Tony as that was a cost that was incurred by Tony and was not reimbursed by Supreme.

Income Tax: The payments made by Tony to the petrol station for petrol are not included in Supreme's income tax return. Supreme did not receive or otherwise earn this amount, so it is not Supreme's income.

Example 4 – an employee pays for petrol on a work petrol card and then reimburses the employer

The facts are the same as above, however instead of using his own money, Tony fills up the van with petrol using a work petrol card and then reimburses Supreme for the petrol.

FBT: The FBT outcome is the same as in example 3. The payment made by Tony to Supreme to reimburse them for the petrol used is deducted from the taxable value of the van that has been made available to Tony for private use over the quarter. The Supreme accountant then calculates both FBT and GST payable on the taxable value less the petrol reimbursement and includes both the FBT and GST in the FBT quarterly return.

GST: Supreme can claim input tax on the petrol charged to the work petrol card. However, Supreme must account for output tax on the reimbursement payment made by

Tony in its next GST return. This is because the reimbursement payment is part consideration for the supply of the fringe benefit.

Income Tax: The reimbursement payment made by Tony to Supreme is income for income tax purposes and must be included in Supreme's income tax return. However, the income is effectively cancelled out, because Supreme can claim an income tax deduction for the petrol payment.

Example 5 – Shareholder-employees make a 100% contribution towards the cost of the fringe benefits and are not associated persons

Anton is one of five shareholder-employees who own Zanadoo Construction Ltd. Anton and Zanadoo are not associated persons for the purposes of s 2A(1)(b) of the GST Act. The five shareholders agree that the business will make available to each of them a ute of their own choosing. To equalise matters, they agree to each pay an annual amount equivalent to the taxable value of their vehicle to Zanadoo for FBT purposes.

The accountant advises the five shareholder-employees what the FBT taxable value is for each ute. This amount is then debited from their current accounts and credited to Zanadoo. The accountant makes the appropriate journal entries to document this transaction.

FBT: The accountant files the annual FBT return, including a nil value for the five utes.

GST: For GST purposes, the contribution paid by Anton and the other shareholder-employees is consideration for a general supply of the use of a ute. The accountant includes the total amount of the five contributions in the next GST return for Zanadoo.

Income Tax: He also includes that amount as income in the tax return, after deducting the GST returned on the contributions made.

The accountant had previously factored in an estimate of the contributions into the income budget when considering provisional tax options for the relevant tax year.

Example 6 – Shareholder-employees make a 100% contribution towards the cost of the fringe benefit and are associated persons

The facts are the same as in Example 5, however Anton is now one of three shareholder-employees who own Zanadoo Construction Ltd. Anton and the other two shareholder-employees are associated persons of Zanadoo Construction Ltd for the purposes of s 2A(1)(b) of the GST Act.

The outcome for FBT and income tax is the same as in Example 5.

For GST purposes, the contribution paid by Anton and the other shareholder-employees is consideration for a general supply of the use of a ute. The supply is also an associated supply.

The value of this supply is determined under s 10(2). The value of the supply of the use of a ute is the consideration paid by the employee (which is the taxable value for FBT purposes). The associated supply valuation rules in s 10(3) do not apply, because the supply of the use of the ute (a motor vehicle) is still a fringe benefit under the Income Tax Act 2007, so s 10(3)(c) is not satisfied. The time of supply for the supply of the use of the ute is when the payments made by Anton and the other shareholder/employees are due and received under the agreement with Zanadoo.

The accountant then includes the total amount of the three contributions in the next GST return for Zanadoo.

Example 7: An effective salary sacrifice is not an employee contribution

George is due to start work at Business Co. He has been offered a starting salary of \$150,000 or \$145,000 plus a car park, valued at \$5,000 per annum. George needs to commute from the country so gladly takes up the offer that includes the carpark, agreeing to forgo \$5,000 of his salary in exchange for the car park. The car park is in a public car park building near the offices of Business Co. It is accessed with a parking permit and there are no designated spaces for permit holders.

The agreement between George and his employer is an effective salary sacrifice arrangement. George's salary is reduced by an agreed amount in recognition of Business Co providing him with a car park. As the car park is offsite and not owned or leased by Business Co, it is a fringe benefit and is not excluded under s CX 23. However, George's salary sacrifice is not treated as an employee contribution to that fringe benefit so Business Co must return FBT on the \$5,000 cost of the car park.

References

Subject references

Employee contribution
Fringe benefit
Fringe benefit tax
GST
Salary sacrifice
Shareholder-employee
Taxable value of a fringe benefit

Legislative references

Goods and Services Tax Act 1985: ss 2A, 8(1), 9(2) and (3), 10(2) and (3), 10(7), 21I, 23A
Income Tax Act 2007: ss CA 1(2), CB 1, CX 20, RD 54-57
Tax Administration Act 1994: ss 46B(2), 46C

Other references

"The meaning of "benefit" for FBT purposes" *Tax Information Bulletin* Vol 18, No 2 (March 2006): 26.