

## FBT on salary sacrificed donations

Under current Fringe Benefits Tax (FBT) rules, employers that have salary sacrifice arrangements with employees for donations to charities etc. are subject to FBT on the donation. Following the recent Victorian bush fire disaster many employers and employees entered in such salary sacrifice agreements for donations to the bush fire appeals. Under the current law these donations would be subject to FBT. However, the Assistant Treasurer recently announced the FBT law will be amended, effective from **1 April 2008**, to ensure donations made under salary sacrificing arrangements do not result in employers incurring an FBT liability. While this announcement was made in response to the Victorian Bush Fire Appeal, it appears the change to the law will also apply to appeals for other disasters. However it is not clear from the Assistant Treasurer's announcement whether the proposed law change will apply to all deductible gift recipient (DGR) donations (i.e. will the FBT exemption apply to salary sacrificed donations that do not specifically relate to disasters). We expect this to be clarified once the proposed Legislation has been introduced into Parliament.

### Current FBT provisions

Currently, employees entering into such salary sacrifice arrangements with their employers to provide donations to a DGR will benefit by paying less income tax on the reduced salary and wages, but the employees will not be entitled to claim a tax deduction for the donation.

The employer paying the donation to DGR may claim the tax deduction. However, the employer may also be liable for FBT. This is because the DGR is deemed to be an associate of the employee and the "otherwise deductible" rule does not apply to reduce the taxable value of the fringe benefit as the recipient of the benefit (the DGR) is not an employee of the employer.

This interpretation of the current law was confirmed by the Australian Tax Office (ATO) at a recent meeting of the National Tax Liaison Group (NTLG) FBT Subcommittee.

Salary sacrifice donation arrangements that are not covered by the proposed law change may be subject to FBT (e.g. donations made prior to 1 April 2008).

### Pre or post tax dollar donations

Not all arrangements between employees and employers to make donations to DGR are currently subject to FBT. For example, donations collected through an employer's Workplace Giving arrangement that are made from an employee's **post tax dollars do not result in the employer being subject to FBT**. These are not salary sacrifice arrangements and the before tax value of the donation would be included in the employee's assessable income. In these circumstances the employee can

claim a tax deduction for the donation but will generally have to wait to lodge their tax return to get the tax benefit (unless they have obtained a PAYG variation in relation to the arrangement).

Employers will need to determine whether the donations are being made from pre tax dollars on which they may have to pay FBT (subject to the proposed law changes) or post tax dollars which will be FBT free.

### Matching employer contributions

Where employers agree to match employee's contributions e.g. dollar for dollar, there is a question whether the employer contributions are also subject to FBT. However, at the recent NTLG FBT Subcommittee meeting the ATO indicated these matching employer contributions are not subject to FBT under the current law.

### Scope of proposed amendment

It is not clear from the Assistant Treasurer's media release whether the proposed amendments will be limited to donations for disasters such as the Victorian Bush Fire Appeal or whether it will have a wider application. It is hoped it will have wider application as the same principle applies whether the donation is for a disaster or more usual charitable work. The FBT law should not undo the intended tax benefit of tax deductible donations.

Note that the Legislation has not yet been introduced into Parliament and care needs to be taken as the proposed changes are not yet law.

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