2017 - 18

WALGA TAX SERVICE
LOCAL GOVERNMENT OFFICERS TAX GUIDE

www.moorestephens.com.au
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This document is deemed current to the time of its release and may be updated through the course of the Tax Year to account for changes and additional issues identified.

Feedback relating to this resource and enquiries relating to the WALGA Tax Service should be directed to Andrew Blitz, Procurement and Category Manager at ablitz@walga.asn.au
Introduction

The WALGA Taxation Support and Advisory Service ("the Service") is an essential resource for West Australian Local Governments, offering up to date, relevant, and easy to understand information on all aspects of taxation that affect local government.

Subscribers to the Service have access to support on a wide range of tax issues, including Goods and Services Tax (GST), Fringe Benefits Tax (FBT) and PAYG withholding. This technical support assists your local government in being aware of changes to tax law and able to resolve tax issues efficiently and effectively.

All support requests should be submitted to the tax Service, via email (walgatax@moorestephens.com.au). To ensure all requests are dealt with effectively, and responses are of the highest quality, advice is not provided over the telephone. Subscribers are discouraged from calling the Service as it may result in delays to the support request being answered.

This guide has been prepared specifically for finance, accounting and payroll staff of Local Governments in Western Australia. The guide covers topics which the WALGA Tax Service deals with most often with the purpose being to create a reference guide local government employees can use in their day to day roles. This guide covers the following topics in detail:

<table>
<thead>
<tr>
<th>Section 1 - FBT</th>
<th>Section 2 – GST and Contributions</th>
</tr>
</thead>
<tbody>
<tr>
<td>FBT admin and record keeping</td>
<td>General principles</td>
</tr>
<tr>
<td>Exempt benefits</td>
<td>Preparation of BAS and IAS</td>
</tr>
<tr>
<td>Salary Sacrifice</td>
<td>Errors and Adjustments</td>
</tr>
<tr>
<td>Reportable fringe benefits car benefits</td>
<td>Exempt fees and charges</td>
</tr>
<tr>
<td>Car benefits/ exempt</td>
<td>Grants and contributions</td>
</tr>
<tr>
<td>Residual benefits</td>
<td>Gifts and donations</td>
</tr>
<tr>
<td>Entertainment</td>
<td></td>
</tr>
<tr>
<td>Property benefits</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Section 3 – PAYG Withholding</th>
<th>Section 4 - Superannuation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allowances</td>
<td>OTE</td>
</tr>
<tr>
<td>Payment summaries</td>
<td>Occupations and matching contributions</td>
</tr>
<tr>
<td>ETPs and Redundancies</td>
<td>Superannuation on allowances</td>
</tr>
<tr>
<td></td>
<td>Concessional contribution’s caps</td>
</tr>
</tbody>
</table>
Section 1

FRINGE BENEFITS TAX (FBT)
# Contents

1. FBT-Administration and Record Keeping .................................................................................................. 2
2. Exempt Benefits ......................................................................................................................................... 6
3. Car Fringe Benefits ................................................................................................................................. 12
4. Reportable Fringe Benefits ..................................................................................................................... 20
5. Entertainment ........................................................................................................................................... 23
6. Quick Reference Guide ............................................................................................................................ 27
1. FBT-Administration and Record Keeping

An FBT return must be lodged with the ATO by 21 May each year (e.g. for 2019, the lodgement date is 21 May 2019), unless an extension has been granted or the return is lodged via a tax agent.

Tax agents can send FBT returns directly to the ATO electronically via the Electronic Lodgement Services ELS. Alternately, a paper form can be lodged with the ATO.

1.1 FBT Assessments

The ATO do not issue FBT assessments notices as FBT is self-assessed by the employer.

If an employer does not lodge a self-assessed FBT return, the ATO may assess the FBT payable and serve notice of that assessment.

1.2 FBT Amendments

If a mistake is discovered after the FBT return has been lodged the employer must write to the ATO requesting an amendment.

The request must provide the reason for the amendment and sufficient information about the changes to the taxable values of the affected benefits. The request must be signed and contain the following information:

- Name of employer.
- The FBT year the mistake relates to.
- Employer’s tax file number.
- Reason for the amendment;
- Exact adjustment to each benefit type, including the corrected taxable value.
- Whether the benefits are type 1 or type 2.
- The amended taxable value.

The ATO may amend an FBT assessment if:

- The employer did not disclose benefits or wrongly valued benefits.
- The employer requests an amendment of their FBT payable.

An amendment can usually only be made within three years of the date an FBT year has been lodged. However, where tax has been avoided, the amendment can be made within six years of lodgement. In cases of fraud or evasion, there is no time limit on when the Commissioner can amend an assessment.

1.3 Paying FBT

If FBT has not been previously paid by the employer or was less than the instalment threshold (currently $3,000) in the previous year, any FBT due for the year is payable at the time of lodging the FBT return.

If the previous year’s FBT liability was more than $3,000, the employer will be required to pay their FBT liability in instalments. These instalments are included on each quarter’s BAS with a final payment being due, if necessary, with the lodgement of the annual FBT return.

1.4 Penalties and Interest Charges

There are penalties for lodging an incorrect return or late return, or failing to lodge a return.

These penalties are in addition to any General Interest Charge (GIC) that may apply if the tax is not paid on time.
1.5 General Record Keeping Requirements

There is a general requirement employers keep records that are adequate to enable their FBT liability to be assessed. For record keeping purposes, electronic records are subject to the same record keeping requirements as paper records.

For FBT purposes records must be kept for five years from the date they were prepared, obtained or the transactions completed, and in a form that tax officers can access and understand in order to determine the employer’s FBT liability.

In particular, employers must keep records that show the following:

- The taxable value of each fringe benefit provided to each employee e.g. invoices, receipts, travel diaries, log books, odometer readings and employee declarations.
- The method of allocating the taxable value of a fringe benefit provided to two or more employees.
- That 100% of the taxable value of the benefits has been allocated to employees. The taxable value of excluded benefits (e.g. remote area housing assistance) does not need to be allocated to individual employees.

Employers must also keep records if they want to take advantage of the various exemptions or concessions to reduce their FBT liability. These documents must be kept for five years from when the relevant FBT return is lodged. Examples of these records are:

- All documents employers are required to obtain from employees e.g. declarations, invoices and/or receipts, bills of sale, lease documents, travel diaries, copies of log book, and odometer readings.
- Where the benefit is a car fringe benefit valued under the operating cost method, fleet management records, log book records and odometer records.

For some concessions and exemptions employers must obtain ‘documentary evidence’ of expenditure by an employee. Broadly, they are required to obtain the original invoice and/or receipt from the employee. This must show the date of the invoice or receipt, the date of the expense, the name of the supplier, what was bought, and the amount paid.

Employers must make elections and declarations and obtain all employee declarations no later than the day on which their FBT return is due to be lodged with the ATO or, if a return does not need to be lodged, by 21 May. There is no need for the employer to notify the ATO of the election or declaration as their business records are sufficient evidence of this.

1.6 The ‘Otherwise Deductible’ Rule and Travel Diaries

If an employer uses the otherwise deductible rule, they must have certain documentation to substantiate the extent to which the benefit provided would have been ‘otherwise deductible’ to the employee. They must obtain the documentation from the employee before lodging the relevant FBT return.

A ‘travel diary’ must be obtained from an employee where:

- The employer provides a fringe benefit for travel within Australian for more than five consecutive nights and the travel is not exclusively for performing employment related duties.
- The employer provides a fringe benefit for travel outside Australia for more than five consecutive nights.

A travel diary shows where the activity took place, the date and the approximate time when the activity commenced, the duration and the nature of the activity.
1. FBT-Administration and Record Keeping (continued)

If the provision of the expense payment or residual benefit is subject to a consistently enforced prohibition on private use and would result in a taxable value of nil, the requirement to obtain a travel diary will be waived. In such instances, the employer will then be able to make an annual no private use declaration stating that the benefit which was provided was only for employment related purposes and there was no private portion.

1.7 Electronic Record Keeping Systems

If an employer keeps their business records electronically they must be in a format that the ATO can access and understand in order to determine the employer’s FBT liability. Employers must follow the ATO guidelines in relation to electronic record keeping, including the following:

- Record retention – electronic records should be retained for the same length of time that paper records are retained for. For FBT purposes, this is for a period of five years.
- Data security and integrity – employers should be able to demonstrate that their electronic record system is secure from both unauthorised access and data alterations.
- System documentation – the entire electronic records system should be documented, including physical and logical descriptions of the system’s structure and programs, including all inputs and outputs.
- Retaining archival copies – it is generally not necessary to keep a hard copy of the information contained in an electronic record unless a particular law or regulation requires you to keep paper copies.
- Accessibility – electronic records should be readily accessible. To this end, employers should ensure the conversion of electronic records to a compatible format when upgrading or changing data-processing capabilities.

1.8 Storing Paper Records Electronically

Where paper records are produced or received in the course of carrying on a business an employer may scan the paper records into an electronic storage medium, provided the electronic copies are a true and clear reproduction of the original paper records.

Where paper records are scanned and stored electronically, the ATO record keeping requirements are satisfied if the electronic records are:

- Not altered or manipulated once stored.
- Retained for the statutory period of five years.
- Capable of being retrieved and read at all times by the ATO – employers are expected to provide appropriate facilities for viewing electronic records kept in that format and, where necessary, for printing a paper copy or providing an electronic copy.

Paper records that can be scanned and stored include:

- Invoices, purchase orders, receipts, vouchers, credit notes, delivery dockets and other such records.
- Bank statements and other bank records and documents.
- Any other paper source documents provided or received in the course of carrying on a business.

Employers do not have to keep original paper records once they have been scanned onto an electronic storage medium.
1.9 Employee Declarations

It is not necessary for employers to send employee declarations to the ATO, however they should be kept as part of the employer’s tax records. Declarations must be in a form approved by the ATO.

Employers must obtain all employee declarations no later than the day on which their FBT return is due to be lodged with the ATO or, if they do not have to lodge a return, by 21 May.

We have included some standard declarations at Appendix 1.
2. Exempt Benefits

A number of benefits are exempt from FBT. Exempt benefits are not only exempt from FBT; they are also exempt from income tax in the hands of the employee.

2.1 Motor Vehicle / Transport Exemptions

2.1.1 Cars

An employee’s private use of a taxi, panel van or a utility designed to carry less than one tonne, or any other road vehicle designed to carry a load of less than one tonne (that is, *one not designed principally to carry passengers*) is exempt if their private use of such a vehicle is limited to:

- Travel between home and work.
- Travel that is incidental to travel in the course of performing employment-related duties.
- Non-work-related use that is minor, infrequent and irregular e.g. occasional use of the vehicle to remove domestic rubbish.

Previously, there were no clear guidelines on what is considered minor, infrequent and irregular. This generally caused confusion and incorrect application of the taxation law due to the vague nature of the provisions. This inadvertently resulted in varied and subjective views on what is considered minor, infrequent and irregular private use.

The ATO have recently published a Practical Compliance Guideline paper (PCG 2018/3) which quantifies what they consider is minor, infrequent and irregular.

Under paragraph 6 of PCG 2018/3 the ruling states:

(f) your employee uses the vehicle to travel between their home and their place of work and any diversion adds no more than two kilometres to the ordinary length of that trip, and

(g) For journeys undertaken for a wholly private purpose (other than travel between home and place of work), the employee does not use the vehicle to travel,

1. More than 1,000 kilometres in total, and
2. A return journey that exceeds 200 kilometres.

In addition to the above criteria, there are a few other requirements the employer will have to satisfy to rely on this practical compliance guideline. More notably, the following paragraph is relevant:

(e) you have a policy in place that limits private use of the vehicle and obtain assurance from your employee that their use is limited to use as outlined in subparagraphs (f) and (g) of this paragraph

This paragraph highlights the importance the ATO places on employers doing their part in enforcing limited private use to receive the benefits of qualifying for the FBT exemption.

2.2 Car Expenses – Expense Payments

An exempt benefit arises when an employer reimburses the operating expenses of an employee’s own car according to the distance travelled e.g. where expenses are reimbursed on a cents per kilometre basis.

This category of exempt benefit is unique as it is only exempt for the employer. The reimbursement is assessable income in the hands of the employee, however, the employee may be entitled to claim a deduction against this income.

The exemption is not available to car expenses that relate to any of the following:

- Transport to enable an employee to go on holiday e.g. remote area transport.
- Relocation transport.
- Transport to a work related medical examination, work-related medical screening, work-related preventative health care, work-related counselling or migrant language training.
2. Exempt Benefits (continued)

2.3 Residual Vehicles

The use of a motor vehicle that is not a car is an exempt benefit if the employee’s use of the vehicle is limited to:

- Travel between home and work.
- Travel that is incidental to travel in the course of performing employment-related duties.
- Non-work-related use that is minor, infrequent and irregular e.g. occasional use of the vehicle to remove domestic rubbish.

Please note, the same rules in relation to minor, infrequent and irregular apply to residual vehicles explained in paragraph 2.1.1.

2.4 Compassionate Travel

Certain benefits provided in connection with compassionate travel are exempt benefits if the employee is travelling in the course of employment, living away from home or living in a remote area when the travel starts.

Compassionate travel is restricted to:

- Travel by an employee for the sole purpose of visiting a close relative who is seriously ill.
- Travel by an employee for the sole purpose of attending the funeral of a close relative.
- Travel by a close relative of an employee for the sole purpose of visiting the employee, if the employee is seriously ill.
- Travel by a close relative of an employee for the sole purpose of attending the funeral of the employee.
- Travel by a close relative of an employee for the sole purpose of visiting a seriously ill close relative of the employee (the traveler must ordinarily reside with the employee).
- Travel by a close relative of an employee for the sole purpose of attending the funeral of a close relative of the employee (the traveler must ordinarily reside with the employee).

2.5 Taxi Travel

A benefit arising from taxi travel by an employee is exempt if the travel is a single trip beginning or ending at the employee’s place of work.

A benefit arising from taxi travel by an employee is also exempt if the travel is both:

- As a result of sickness or injury to the employee; and
- The whole or a part of the journey is directly between any of the following:
  - The employee’s place of work.
  - The employee’s place of residence.
  - Any other place that is necessary, or appropriate, for the employee to go as a result of the sickness or injury eg. hospital.
2. Exempt Benefits (continued)

2.6 Relocation Exemptions

A number of exemptions are available where an employee is required to relocate in order to fulfil his or her duties of employment.

These exemptions include:

- Engagement of a relocation consultant.
- Removal and storage of household effects.
- Costs incidental to the sale or acquisition of a dwelling.
- Connection or reconnection of certain utilities.
- Relocation transport.

2.6.1 Removal and Storage of Household Effects

- The costs of removal, storage, packing, unpacking and insurance of household effects (including pets) kept primarily for personal use of the employee or their family is exempt from FBT.
- The exemption is available to employees who are required to live away from home because their job location changes. The exemption also applies where the employee’s usual place of residence changes to another location if the removal takes place, or the storage commences, not more than 12 months after the employee begins employment-related duties at the new location.

2.6.2 Costs Incidental to the Sale or Acquisition of a Dwelling

The costs incidental to the sale and/or purchase of a home by an employee may be exempt from FBT where the employee is required to change their job location.

Costs incidental to the sale and/or purchase of a house are stamp duty, advertising, legal fees, agent commission, discharge of a mortgage, expenses of borrowing, or any similar capital expenses.

The exemption applies to the home that is sold if ALL of the following apply:

- The sale is made solely because the employee changed their usual place of residence in order to carry out employment-related duties.
- The house was owned when the employee notified the employee of the change to the new locality.
- The house was the employee’s usual place of residence.
- The sale contract was made within two years of commencing duty at the new locality.

The exemption applies to the home that is purchased if ALL of the following apply:

- The employee owned a home at the former locality.
- The purchase was made solely because of the relocation to another job locality.
- The new home was occupied as the employee’s usual place of residence.
- The contract to purchase was made within four years of commencing duty at the new location.
2. Exempt Benefits (continued)

2.7 Remote Area Housing

A housing benefit arises when an employee is provided with the right to use a unit of accommodation owned or leased by their employer, and the accommodation is occupied by them as their usual place of residence.

The benefit will be exempt as a remote area housing benefit where all of the following conditions are met:

- For the whole of the tenancy period the accommodation is in a remote area.
- For the whole tenancy period the accommodation is occupied by a current employee whose usual place of employment is in a remote area.
- It is necessary for the employer to provide accommodation to employees because of one of the following:
  - The nature of the employers’ business is such that employees are liable to move frequently from one location to another.
  - There is insufficient suitable residential accommodation otherwise available at or near the place where the employee is employed, or
  - It is customary for employers in the industry to provide free or subsidised accommodation for employees.
- The benefit is not provided to the employee under either:
  - A non-arm’s length arrangement,
  - An arrangement that was entered into by any of the parties for the purpose, or partial purpose, to obtain the concession.

2.8 What is a Remote Area?

A location in Western Australia is considered remote if it is both:

- At least 40 kilometres from Albany, Bunbury, Geraldton and Rockingham, and
- At least 100 kilometres from Perth.

The distance between two locations for these purposes is the ‘shortest practical surface route’.

A list of areas the ATO has determined to be remote and non-remote can be found on the ATO website.

2.9 Minor Benefits

The minor benefits exemption can be applied where the following conditions are satisfied:

- The value of the benefit is less than $300 (the notional taxable value of the benefit must be less than $300); and
- It would be unreasonable to treat the benefit as a fringe benefit.

**Warning — a common misconception is that the $300 threshold is the only condition to be met. There are other conditions that must be met for the minor benefits exemption to apply. Refer to Tax Ruling TR 2007 / 12**
2. Exempt Benefits (continued)

Where a benefit has a value of less than $300, the benefit can generally only qualify for the minor benefit exemption if it would be unreasonable to treat the benefit as being subject to FBT.

The following criteria need to be considered:

- The frequency and regularity with which similar or identical benefits are provided.
- The aggregate value of the minor benefits and any associated benefits.
- The practical difficulty in valuing the minor benefit.
- The circumstances in which the minor benefit was provided.

**IMPORTANT** – if a benefit of less than $300 is salary packaged, the minor benefit exemption cannot be used to exempt it from FBT

**WARNING** – in the case of local governments, the minor benefits exemption cannot be applied to exempt entertainment from FBT.

2.10 Provision of Certain Work Related Items

The following items are considered to be work-related and therefore may qualify for the FBT exemption.

- A portable electronic device (e.g. mobile phones, PDAs, laptops, tablets and GPS).
- An item of computer software.
- An item of protective clothing.
- A briefcase.
- A tool of trade.

The exemption is only available if the item is provided to the employee primarily for use in their employment.

Additionally, the exemption is limited to one item per FBT year that have a substantially identical function, unless the item is a replacement item.

2.10.1 Primarily for Use in Employment

The determination of whether an item is primarily for use in the employee’s employment is based on the employee’s intended use at the time the benefit is provided to them. Although an employee’s actual use of the asset over the FBT year does not determine whether an item is primarily for use in employment a reasonable basis must be used.

If an employer is aware there may be private use of an item it should document factors to determine whether an item is primarily for use in employment, such as:

- The reasons the item was provided to the employee.
- The type of work the employee will be performing.
- How the use of the item relates to the employee’s employment duties.
- The employer’s policy and any conditions relating to use of the item.
2. Exempt Benefits (continued)

2.10.2 Substantially Identical Functions

The exemption cannot apply if earlier in the same FBT year the employee was provided with an item that has substantially identical functions and this resulted in an expense payment or property benefit.

The features and design specifications of an item are relevant for determining whether items have substantially identical functions, not the intended use of the items.

Where a tablet computer can perform the functions of a laptop computer, even in a reduced capacity, it would be considered to have substantially identical functions to the laptop computer. However, where a tablet computer is designed primarily as a means of digital media consumption, rather than creation, it would not have substantially identical functions to a laptop.

**WARNING** – benefits provided to an associate of an employee are not eligible for the exemption.

2.11 Recreational and Child Care Facilities

The provision or use of a recreational facility, or the care of the children of an employee in a child care facility, is an exempt benefit where the recreational or child care facility is located on the employer’s business premises.

A ‘recreational facility’ is defined to mean a facility for recreation but does not include a facility for accommodation or a facility for drinking or dining. A gym or leisure centre is an example of a recreational facility.

‘Child care facility’ is defined to mean a facility at which a person receives, or is ready to receive, 2 or more children under the age of 6 who are not associates of the person for the purpose of minding, caring or educating them for a day or part of a day.

2.12 Long Service Awards

Items awarded in recognition of 15 years or more service are exempt from FBT provided the value of the item does not exceed the specified maximum amount.

The specified maximum amount is currently $1,000.

If the first long service award received by the employee recognises a period of service greater than 15 years, the $1,000 maximum amount increases by $100 for each additional year of service.

If the employee had previously received a long service award the specified maximum amount of any subsequent award is $100 for each year in excess of 15 years that is being recognised by the additional award.

Where the value of the award exceeds the relevant maximum value no part of the award is exempt.

2.13 Certain Property Benefits

A property benefit provided to, and consumed by, a current employee on a working day and on the business premises of their employer is an exempt benefit.

For example, morning teas provided to employees at work are exempt property benefits provided they are not considered entertainment.

2.14 No Private Use Declarations

An expense payment or residual benefit covered by a no-private use declaration is an exempt benefit.

A condition of the exemption is that the benefit arises from the reimbursement of wholly employment related expenditure or the use of property that is subject to a consistently enforced prohibition on private use and that, as such, would have a taxable value of nil under the ‘otherwise deductible rule’.

The declaration must cover all expense payment or residual benefits provided to employees where the employer can state the benefits were provided only for employment-related purposes and there was no private portion.
3. Car Fringe Benefits

3.1 What is a Car Fringe Benefit?

A car fringe benefit most commonly arises when an employer makes their own car or a leased car available for the private use of an employee.

3.2 What is a Car?

For FBT purposes, a “car” is defined in section 995-1(1) Income Tax Assessment Act 1997 (ITAA 1997) as a motor vehicle (except a motor cycle or similar vehicle):

(a) designed to carry a load of less than one tonne; and
(b) fewer than 9 passengers.

A “car” can therefore be any of the following:

- A sedan, station wagon, panel van or utility (including four wheel drive vehicles but excluding panel vans and utilities designed to carry a load of one tonne or more)
- Any other goods-carrying vehicle with a carrying capacity of less than one tonne
- Any other passenger-carrying vehicle designed to carry fewer than nine passengers.

3.3 When is a Car Available for Private Use?

A car is made available for the private use of an employee on any day that either:

- The car is actually used for private purposes by the employee; or
- The car is available for private use by the employee.

A car is deemed to be available for private use on any day that either:

- The car is garaged at, or near, a place of residence of the employee or their associate (regardless of whether they have permission to use it for private purposes); or
- The car is not on the employer’s business premises, and the employee or associate has the use, custody and control of the car.

3.4 How do you Calculate the Taxable Value of a Car Fringe Benefit?

The taxable value of a car fringe benefit is calculated using one of following two methods:

- The Statutory Formula Method.
- The Operating Cost Method.

An employer can choose the method that provides the lowest taxable value and can use a different method for any particular car from one FBT year to another.

However, if the employer does not choose to use the operating cost on or before the day on which their FBT return is due to be lodged, the statutory formula method will apply.

There is no need for an employer to notify the ATO of the method chosen as their business records are sufficient evidence of this.
3. Car Fringe Benefits (continued)

3.5 The Statutory Formula Method

The following formula is used for calculating the taxable value of car fringe benefits under the statutory formula method:

\[
\text{Taxable value} = \frac{ABC - E}{D}
\]

Where

\(A\) = the base value of the car
\(B\) = the statutory percentage
\(C\) = the number of days during the year the car was used or available for private use of employees
\(D\) = the number of days in the FBT year
\(E\) = the amount of any employee contribution

3.6 Base Value (A)

<table>
<thead>
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<th>Description</th>
<th>Does this form part of base value?</th>
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</thead>
<tbody>
<tr>
<td>Cost Price (GST inclusive)</td>
<td>Yes</td>
</tr>
<tr>
<td>Non business accessories (GST inclusive)</td>
<td>Yes</td>
</tr>
<tr>
<td>Dealer delivery (GST inclusive)</td>
<td>Yes</td>
</tr>
<tr>
<td>Stamp duty</td>
<td>No</td>
</tr>
<tr>
<td>Registration</td>
<td>No</td>
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</tbody>
</table>

Where the car is more than 4 years old before the start of the FBT year the base value is reduced by one-third. This reduction applies for the whole of the FBT year and subsequent FBT years. The reduction does not apply to non-business accessories added after the car was acquired.

3.7 Statutory Percentage (B)

A flat rate of 20% applies, regardless of the distance travelled, to all car fringe benefits provided after 7.30pm AEST on 10 May 2011 (except where there was a pre-existing commitment in place to provide a car).

The statutory percentages for car fringe benefits provided prior to 10 May 2011 are as follows:

<table>
<thead>
<tr>
<th>Annual km travelled</th>
<th>Statutory fraction</th>
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<tbody>
<tr>
<td>&lt;15,000</td>
<td>26%</td>
</tr>
<tr>
<td>15,000 – 24,999</td>
<td>20%</td>
</tr>
<tr>
<td>25,000 – 40,000</td>
<td>11%</td>
</tr>
<tr>
<td>&gt;40,000</td>
<td>7%</td>
</tr>
</tbody>
</table>

You can continue to use these statutory rates for all pre-existing commitments unless there is a change to that commitment.
3. Car Fringe Benefits (continued)

3.8 Determining the Number of Days Available for Private Use (C)

For the purposes of the statutory formula method, situations where a car is taken NOT be available for private use include:

- Days when the car is at the workshop being repaired following an accident (other than the day when the car is driven to be repaired and the day when the car is driven home).
- Days when the car is parked at the business premises of the employer (other than the day when the car is driven from the employee’s home or sleeping accommodation to the business premises and the day when the car is driven from the business premises to the employee’s home or sleeping accommodation).

For the purposes of applying the statutory formula method, situations where a car is taken to be available for private use include:

- Days when the car is garaged at the employee’s home or sleeping accommodation.
- Days when the car is parked at the airport or place other than the employer’s business premises and the employee has custody and control of the car (for example, the employee or employee’s associate has the keys).

3.9 Determining the Employee Contribution (E)

The amount that would be taxable can be reduced by an employee contribution.

An employee contribution may be an amount paid either:

- Directly to the employer by the employee for the use of the car – the employee contribution must be made from the employee’s after-tax income; or
- By the employee to a third party for some of the car’s operating costs (e.g. fuel).

An employee contribution is treated as consideration for a taxable supply for GST purposes and the employer must pay GST on the contribution.

The taxable value of the car is reduced by the GST-inclusive amount of the employee contribution.

3.10 Operating Cost Method

The following formula is used for calculating the taxable value of car fringe benefits under the operating cost method:

\[
\text{Taxable value} = (A \times B) - C
\]

Where:

- A = total operating costs
- B = percentage of private use
- C = employee contribution

In this calculation, GST inclusive amounts are to be used.

3.11 Determining Operating Costs (C)

For this particular calculation, the operating costs of a car include:

- Actual costs.
- Some deemed costs (i.e. certain costs that are considered to be incurred even if they have not been).
3. Car Fringe Benefits (continued)

3.12 Actual Operating Costs

The actual operating costs of a car include:

- Repairs (but not crash repair expenses met by insurer or another person legally responsible for the damage).
- Maintenance.
- Fuel.
- Registration and insurance.
- Leasing costs if the car is leased rather than owned.

3.13 Deemed Operating Costs

Deemed operating costs are expenses deemed to be incurred for depreciation and interest. Deemed costs are only relevant if the car is owned, rather than leased, by the employer.

**Deemed depreciation** – calculated by multiplying the depreciated value of the car at the start of the FBT year by the deemed depreciation rate that applied when the car was purchased. If the car was not provided for the full FBT year, the amount of depreciation must be apportioned to reflect the period it is provided.

The depreciated value of a car for the year in which it is acquired is the cost price (inc. non-business accessories, dealer delivery, GST and luxury car tax). In subsequent years the depreciated value of a car is the cost of the car reduced by the deemed depreciation over the ownership period. Deemed depreciation on non-business accessories fitted to the car after its purchase must also be included.

**Deemed interest** - calculated by multiplying the depreciated value of the car by the statutory interest rate. If the car was not provided for the full FBT year, the amount of interest must be apportioned to reflect the period it is provided. Deemed interest on non-business accessories fitted to the car after its purchase must also be included.

3.14 Determining the Percentage of Private Use (B)

The percentage private use of a car for a particular year is the difference between 100 and the percentage of business use.

Travel to and from work is normally private, even if the employee does minor employment related jobs on the way. There are a small number of circumstances where travel between home and work may be considered business travel.

3.14.1 Log Book Requirements

Log book and odometer records are required to be kept when an employer uses:

- The operating cost method to calculate the taxable value of a car fringe benefit.
- The first method when applying the ‘otherwise deductible’ rule to employee owned cars.

In a log book year an employer must keep both a log book and odometer records. In a year other than a log book year an employer need keep only odometer records.

A year is a logbook year if one of the following applies:

- None of the previous four years was a logbook year for that car.
- The employer elects to treat the year as a logbook year (for example, to increase the nominated percentage of business travel).
- The ATO, by written notice, requires the employer to treat the year as a logbook year.
3. Car Fringe Benefits (continued)

Log book records contain a record of business use and are usually maintained for a continuous 12-week period. Odometer records are a record of the total distance travelled during the same 12 weeks that log book records are maintained, and the total distance travelled each year. The 12-week period chosen should be representative of the car’s business use.

Employers should keep records of additional information such as the car’s make, model, registration number and percentage of business use as part of their business records.

The following details must be recorded for each business journey:

- the date on which the journey began and ended.
- the odometer reading at the start and end of each journey.
- the kilometres travelled.
- the purpose of the journey.

When recording the purpose of the journey, an entry stating ‘business’ or ‘miscellaneous business’ is not sufficient. The entry should sufficiently describe the purpose of the journey so that it can be classified as a business journey.

Log book records must be in English and entries should be made at the end of a trip or as soon as reasonably practicable afterwards.

The period during which the log book is kept must be specified. This continuous period may overlap two FBT years. A log book can be valid for up to five years (assuming there is no major change in the pattern of use). After the fifth year, you will need to keep a new log book.

Tips:

- It is important to remember to keep a declaration on file stating the opening and closing odometer readings during the FBT year.
- You must elect to use the operating cost method. Therefore, ensure a declaration is on file.
- If the pattern of usage has changed in subsequent years (e.g. different employee uses the car), the log book may be invalid and a new one should be kept if the usage of the vehicle is substantially different from the log book kept on file.

3.15 Exempt Car Fringe Benefits

Where the car has a carrying capacity of less than one tonne but is not designed to carry passengers, it may be an exempt benefit under s8 (2).

The private use of a car by an employee is exempt from FBT if:

- The car is one of the following:
  - A taxi.
  - A panel van.
  - A utility designed to carry a load of less than one tonne and is not designed principally to carry passengers; and
- The employee’s private use of the car is limited to:
  - Travel between home and work
  - Travel incidental to travel in the course of performing employment-related duties, and
  - Non-work use that is minor, infrequent and irregular (e.g. occasional use of the vehicle to remove domestic rubbish).
3. Car Fringe Benefits (continued)

3.16 Exempt Car Benefits - Flowchart

* A ‘car’ is a motor vehicle (except a motor cycle or similar vehicle) designed to carry a load of less than 1 tonne and fewer than 9 passengers.

3.17 FAQs

Utes less than one tonne

Q. We have a Utility vehicle with a carrying capacity of less than one ton. The employee has full private use of the vehicle. Since it is a utility vehicle, is it a residual motor vehicle benefit?

A. No – the benefit is a car fringe benefit and you need to use the statutory or operating cost method to determine the taxable value of the benefit provided.

Shire policy – no private use

Q. We have a policy in place which states employees cannot use the vehicle for private use during the year and only have commuting (home-work). The vehicle is not a utility vehicle. Is FBT payable on this vehicle?

A. Yes – irrespective of whether or not the employee uses the car for private journeys, the car is being made available to him for private use. Therefore, FBT is payable on the vehicle for the entire period.
3. Car Fringe Benefits (continued)

How do you calculate the carrying capacity of a car

Q. We cannot find our vehicle on the ATO list of exempt vehicles. How do we calculate the carrying capacity of the car?

A. The designed load capacity of a motor vehicle is taken to be the gross vehicle weight as specified on the compliance plate by the manufacturer (broadly the maximum all-up loaded weight), reduced by the basic kerb weight of the vehicle. Per MT 2024 para 11, this is synonymous with unladen weight, as specified in the Australian Design rules, being the weight of the vehicle with a full tank of fuel, oil and coolant together with the spare wheel, tools (including jack) and installed options. It does not include the weight of goods or occupants.

In the case of cab/chassis vehicles, the designed load capacity is to be ascertained after the body has been fitted to the vehicle, i.e. to satisfy the one tonne test, the margin between the gross vehicle weight and the basic kerb weight must not be less than one tonne plus the weight of the body which is attached to the vehicle.

Please note, even if your vehicle’s carrying capacity is less than one tonne, it may still be available for the exemption if it is not designed to carry passengers.

Is a car designed to carry passengers?

Q. How do you determine if a car is designed to carry passengers?

A. The designed passenger carrying capacity is determined by multiplying the designed seating capacity (including the drivers) by 68 kg, which is the figure adopted for these purposes. If the total passenger weight so determined exceeds the remaining “load” capacity, the vehicle is to be treated as being designed for the principle purpose of carrying passengers and as such ineligible for work-related use exemption.

By way of illustration, if a vehicle has a gross vehicle weight of 2,000kgs, a basic kerb weight of 1,400kgs, and has a designed seating capacity of five, the vehicle would be considered to be a vehicle designed principally for carrying passengers. This is because the total load capacity is 600kgs of which the majority, 340kgs, would be absorbed by its designed passenger carrying capacity.

The position of current release dual cab vehicles has been reviewed on the basis of information available to the ATO and they have prepared a list which can be found in MT2024. Therefore, if the vehicle is on the list, the vehicle will be eligible for the exemption provided the use of the car for private purposes also satisfies the tests.

Replacement cars – log books

Q. We replaced a car during the FBT year. Previously we used the operating cost method for this vehicle. We have not kept a new log book for the new car – can we continue to use the old log book?

A. If a car was replaced during a FBT year, you can treat the replacement car as though it was the replaced car for the purposes of the operating cost method i.e. you can transfer the business percentage to the new car.

The following are the record keeping requirements:

- make, model and registration of both cars; and
- replacement date
Lack of Odometer records

Q. What happens where the employees do not keep odometer readings for all trips?

A. Per ATO ID 2003/1099, the Commissioner can exercise discretion to waive the strict log book requirements. In the Interpretive Decision, the employer kept the following records:

- opening and closing odometer readings for the start and end of the 12-week period;
- the date and appointment time for each business journey;
- the purpose of each business journey (including client detail);
- precise start and end address details for each business journey; and
- the distance travelled for each business journey.

In relation to the example above, the logbook did not contain the odometer readings at the start and end of each business journey.

It is not possible to specify the nature and quality of supporting evidence that satisfies the Commissioner in all circumstances. Each case must be considered on its own merits and a common sense approach applied.

Regard has to be had to the overall purpose of a log book when calculating a car fringe benefit under section 10 of the FBTAA. The Explanatory Memorandum to the FBTAA at Clause 10 says that a ‘log book or similar document is required to be maintained to substantiate the number of kilometres on business journeys...’

Accordingly, the lack of opening and closing odometer readings for each business journey does not impact on the overall integrity of the log book. The employer has in place a system which results in the accurate calculation of business kilometres. The Commissioner’s discretion under section 123B of the FBTAA will therefore be exercised in these circumstances to waive the strict log book requirements, as the employer is able to substantiate the number of business kilometres travelled.

Therefore, even though you may not have the start and end odometer readings for each entry, you may be able to gather such evidence using calendars on Outlook or any devices (mobiles, PDAs etc.) where your employee records such information. It is important to note that you must be able to show the distance travelled and the purpose of the trip.

An employer must record the value of fringe benefits provided to each of their employees. If the value of certain fringe benefits provided exceeds $2,000 in a FBT year (1 April to 31 March), you will be required to record the grossed-up taxable value of those benefits on your employee’s payment summary for the corresponding income year (1 July to 30 June).

Benefits provided that do not give rise to a taxable value and hence FBT, do not need to be disclosed on an employee’s payment summary. These include benefits which satisfy the ‘otherwise deductible rule’ such as work related expenses. Where the fringe benefit provided is less than $2,000 or if a specific exclusion applies, which will be discussed below, you do not need to report the benefits on your employee’s payment summary.
4. Reportable Fringe Benefits

4.1 Exemptions (Benefits Not Reportable)

Fringe benefits that are excluded from the reporting requirements are still subject to FBT. You do not have to allocate the following excluded benefits to employees or report them on payment summaries. The benefits are excluded by provisions of the Fringe Benefits Tax Assessment Act 1986 (FBTAA).

The following are excluded by subsection 5E (3) of the FBTAA.

- Entertainment by way of food and drink, and benefits associated with that entertainment, such as travel and accommodation, regardless of which category is used to value the benefit.
- Car parking fringe benefits, not including car parking expense payment benefits.
- Hiring or leasing entertainment facilities such as corporate boxes.
- Remote area residential fuel where the value of the benefit is reduced in accordance with the conditions in section 19.2 of Reductions in fringe benefit taxable value (from the FBT guide for employers).
- Remote area housing assistance where the value of the benefit is reduced in accordance with the conditions in section 19.2 of Reductions in fringe benefit taxable value.
- Remote area home ownership schemes where the value of the benefit is reduced in accordance with the conditions in section 19.2 of Reductions in fringe benefit taxable value.
- Remote area home repurchase schemes where the value of the benefit is reduced in accordance with the conditions in section 19.2 of Reductions in fringe benefit taxable value.
- Costs of occasional travel, being that which occurs from time to time and not at regular intervals, to a major Australian population centre by employees and their families living in a remote area.
- Freight costs for food provided to employees living in a remote area.
- Fringe benefits provided to address certain security concerns relating to the personal safety of an employee, or an associate of the employee, arising from the employee’s employment.
- Car benefits arising from an employee’s private use of pooled or shared cars.

4.2 Individual Fringe Benefit Amount and Apportionment

You must allocate the value of all benefits subject to these reporting requirements to the relevant employees (e.g. where benefits were provided to more than one employee). The total value of all such benefits provided to a particular employee in a FBT year is known as their individual fringe benefits amount.

The legislation does not specify what method you must use to allocate the value of the benefit to each employee. It does, however, require you to reasonably allocate the taxable value between the recipient employees, taking into account all relevant factors.

The portion of the taxable value you allocate to each employee must reasonably reflect the amount of the benefit in respect of each employee's employment. In addition, you must allocate the total taxable value of the benefit among the relevant employees.

Where benefits are provided to an associate of an employee, in respect of that employee’s employment, you allocate the value to the employee, not to the associate.

4.3 Employee with Reportable Benefits Ceases Employment

Where an employee ceases employment between 1 April and 30 June in a particular year and you have provided them with reportable benefits since 1 April in that year, you must show the amount of the reportable benefit on a payment summary for that employee for the income year ended 30 June in the following year. This is the case even though you have not paid them salary or wages during that income year.
4. Reportable Fringe Benefits (continued)

4.4 Reducing Reportable Fringe Benefit

Employees can reduce their reportable fringe benefit amount if they make an employee contribution that reduces the taxable value of a fringe benefit by the amount they have contributed. Employee contributions are after tax payments an employee makes towards the cost of the fringe benefit provided.

The employee can contribute cash, or for a car fringe benefit they can contribute by paying a third party for some of the operating costs (such as fuel) that you do not reimburse.

4.5 Pooled or Shared Cars

All of the following requirements must be met in order for the benefit to be an excluded benefit:

- the benefit provided to the employee must be either a car fringe benefit or an exempt car benefit
- there must be additional use of the same car during the year which gives rise to a car fringe benefit or an exempt car benefit for a different employee
- the employer must direct, or consent to, the use of the car by each employee.

In these circumstances, the car will be a ‘pooled or shared car’ during the FBT year and the reporting exclusion will apply to an employee’s use of that car.

For example: If employees swapped their cars, it will mean the provision of the vehicle by the employer results in a car benefit for more than one employee. Accordingly, the fringe benefits reporting exclusion will operate i.e. the use of two shared cars, in the year of tax will not form part of the employee’s individual fringe benefits amount.

Please note that even if the car is made available to different employees at different times (e.g. due to an employee’s departure), the ATO still considers this as a shared vehicle. In accordance with sub-regulation 3F(2) of the FBTR, the car benefit is excluded from the reportable fringe benefits amount and not shown on the both employee’s payment summaries.

The nature of the use of the vehicle is important i.e. when the employee is on leave and the vehicle is made available to other employees, these employees must use the vehicle for private purposes (i.e. take it home, use it on the weekends etc). If the vehicle is only used during business hours for business related journey’s the vehicle will not be considered a ‘pooled’ vehicle for FBT purposes. Also, it is good practice to have sufficient documentation (e.g. a declaration) on file stating the intention to pool the vehicle is authorised by the City. Without this the vehicle will not be classified as a pooled/shared vehicle. Please note the pooled cars reporting exclusion cannot apply to residual vehicles.

We recommend having a declaration in place signed by the employer stating the vehicle was a pooled car during the year. Our template can be found at the back of this document.

4.6 FAQs

Q. RFBA and Pooled Utility Vehicles - 2 employees had private use of a utility vehicle for private purposes that was shared during the year. Is this reportable?

A. for FBT purposes, a “car” is defined in section 995-1(1) Income Tax Assessment Act 1997 (ITAA 1997) as a motor vehicle (except a motor cycle or similar vehicle):

   (a) designed to carry a load of less than one tonne; and
   (b) fewer than 9 passengers.

The reporting exclusion only applies to car fringe benefits. Utility vehicles do not meet the definition of a car, therefore the employees are in receipt of a residual fringe benefit. As the reporting exclusion for pooled vehicles does not apply to residual fringe benefits, the reportable fringe benefit amount needs to be reported on the employees PAYG payment summary if the total taxable value of all benefits received by them exceeds $2,000.
4. Reportable Fringe Benefits (continued)

Please note if the private use is limited to the following, it may be an exempt benefit:

- Travel between home and work.
- Travel incidental to travel in the course of performing employment-related duties, and
- Non-work use that is minor, infrequent and irregular (e.g. occasional use of the vehicle to remove domestic rubbish).

Q. A car was shared by two employees - do we pay FBT on this?

A. If the vehicle is treated as a car fringe benefit and is used privately by more than one employee during the FBT year at the direction of the employer, it will not be reportable on the employee’s PAYG summary. However, please note even if the vehicle is “pooled” FBT will still apply and be payable by the employer.

Q. An employee takes a car home every night. During the day its parked at the depot and other employees use this vehicle - is this excluded from being reportable?

A. Provided that the day time usage of the car is not private in nature (i.e. used for work purposes during the daytime) and the car is not being used privately by more than one employee, the car fringe benefit will not be excluded from being reportable.
5. Entertainment

5.1 What is Entertainment?

The definition of entertainment (in S 136(1)) for FBT purposes relies on the income tax definition in S32-10 (1) of ITAA 1997 which provides that entertainment means;

(a) Entertainment by way of food, drink or recreation; or
(b) Accommodation or travel to do with providing entertainment by way of food, drink or recreation.

Per the ordinary meaning, ‘something affording diversion or amusement’ may be considered entertainment.

Providing entertainment may give rise to various types of fringe benefits. For example;

- The cost of theatre tickets purchased by an employee and reimbursed by the employer may be an expense payment benefit.
- Providing food and drink may be a property fringe benefit.
- Providing accommodation or transport in connection with entertainment be a residual fringe benefit.
- Entertainment provided by an employer who is exempt from income tax may be a tax-exempt body entertainment benefit.

5.2 When is the Provision of Food or Drink Entertainment?

The Tax Office has issued guidance to assist in understanding when the provision food and drink will be considered entertainment, including Taxation Rulings IT2675, TR 97/17 and TR 97/17A.

The relevant legislative provisions, tax rulings and other Tax Office guidance require judgments to be made on a case by case basis, having regard to the particular circumstances of each activity.

In order to determine when food and drink provided to a person results in entertainment, it is necessary to examine all the circumstances surrounding the provision of the food or drink, including:

(a) Why is the food or drink being provided?

This is a purpose test. For example, food or drink provided for the purposes of refreshment does not generally have the character of entertainment, whereas food or drink provided in a social situation where the purpose of the function is for employees to enjoy themselves has the character of entertainment.

(b) What type of food or drink is being provided?

Morning and afternoon teas and light meals are generally not considered to be entertainment. However, as light meals become more elaborate, they take on more of the characteristics of entertainment. The reason for this is that the more elaborate a meal, the more likely that entertainment arises from consuming the meal.

(c) When is the food or drink being provided?

Food or drink provided during work time, during overtime or while an employee is travelling is less likely to be entertainment. This is because in the majority of cases, food provided is for sustenance rather than an entertainment purpose. However, this depends on whether the entertainment of the person is the expected outcome of the provision of the food or drink. For example, a staff social function held during work time still has the character of entertainment, and

(d) Where is the food or drink being provided?

Food or drink provided on the employer’s business premises or at the usual place of work of the employee is less likely to have the character of entertainment. However, food or drink provided in a function room, hotel, restaurant, café, coffee shop or consumed with other forms of entertainment is more likely to have the character of entertainment. This is because the provision of the food or drink is less likely to have a work related purpose.
None of these factors on their own will determine if the food and drink provided is meal entertainment, however (a) and (b) are considered the more important factors.

Generally providing light meals (e.g. sandwiches, finger foods, salads, orange juice) are treated the same as morning tea and afternoon tea and are therefore not meal entertainment. However, if alcohol is provided at the employer’s business premises or worksite, it would generally be considered meal entertainment.

The activities set out below are work functions commonly undertaken by local governments. These are not considered to be the provision of entertainment by way of food or drink.

- morning tea or light lunch, without alcohol, provided on business premises acknowledging a business milestone, at a planning day or at a Minister’s or Secretary’s/CEO’s address
- morning tea or light lunch provided on business premises, held for a visiting delegation, attended by a number of employees and where business discussions are held
- light lunch, without alcohol, provided on business premises, at a planning day, seminar or training session
- light breakfast served prior to a seminar, planning day or training session
- light lunch, without alcohol, provided on business premises during a meeting with a third party
- light take-away food, without alcohol, ordered in for lunch or dinner while working on a project with a specific deadline

5.3 Type of Entertainment and Valuing Entertainment Benefits for FBT

An employer’s entertainment expenditure should generally be classified as either:

- **Meal entertainment** which broadly arises from the provision of food and/or drink, and or related accommodation or travel
- **Recreation** which basically includes any form of amusement, sport or leisure-time pursuit (e.g. hiring a band for a social function, a game of golf, tickets to a movie, theatre or sporting event), and/or related accommodation or travel.

This separate classification is required as there are special valuation methods that apply to ‘meal entertainment’ (being the 50/50 split method), but which generally cannot be used to value ‘recreation’. Furthermore, ‘recreation’ provided to an employee may need to be reported on their payment summary while ‘meal entertainment’ is excluded from the FBT reporting and therefore is not reportable.

When using the actual method, the taxable value of the benefit is equal to expenditure paid. The expenses can be allocated per head to value the benefit provided to employee and to separate this from non-employees. The actual method applies where an employer has not elected to value their meal entertainment for FBT purposes using the 50/50 split method or the 12 week register method. It also applies to expenditure on food and drink which does not constitute meal entertainment and to recreation (except where the 50/50 split method is used for entertainment facility leasing expenses).

Using the 50/50 split method, the taxable value of benefit is 50% of expenditure incurred.

GST can generally only be claimed on the portion of entertainment expenditure where the benefit is subject to FBT.
5.4 Calculating the Taxable Value of Food or Drink that is Entertainment

The taxable value of food and drink, and the associated accommodation or travel, can be calculated in one of three ways.

**Actual method**

- Under the actual method the taxable value of the benefit is the actual expenditure incurred by the employer in providing the entertainment to employees and their associates.
- If the employer cannot easily work out the actual expenditure they can use a ‘per head’ basis of apportionment.
- The actual method applies unless the employer elects to value the food and drink as ‘meal entertainment’ and uses either the 50-50 split method or the 12-week register method.
- If a local government uses the actual method the entertainment must be declared on the FBT return as an “Income tax exempt body – entertainment” benefit.

**50-50 Split method**

- Under the 50-50 split method the taxable value of the benefit is 50% of the employer’s total expenditure incurred in providing meal entertainment to employees, their associates and non-employees.
- If a local government uses the 50-50 split method the entertainment must be declared on the FBT return as a “Meal entertainment” benefit.

**12-week register method**

- Under the 12-week register method the taxable value is calculated by applying an appropriate percentage, as evidence from the 12-week register, to the employer’s total meal entertainment expenditure.
- If a local government uses the 12-week register method the entertainment must be declared on the FBT return as a “Meal entertainment” benefit.

5.5 When the Minor and Infrequent Exemption Applies?

The minor benefits exemption can be applied to exempt the benefit from FBT if the following conditions are satisfied:

- The notional taxable value of the benefit must be less than $300.
- Having regard to the various criteria in paragraph 58P(1)(f), it would be unreasonable to treat the minor benefit as a fringe benefit.

The following five criteria need to be considered when deciding if it would be unreasonable to treat the minor benefit as a fringe benefit:

- The infrequency and irregularity with which associated benefits, being benefits that are identical or similar to the minor benefit and benefits given in connection with the minor benefit, are provided. The more frequently and regularly associated benefits are provided, the less likely that the minor benefit will qualify as an exempt benefit.
- The total of the notional taxable values of the minor benefit and identical or similar benefits to the minor benefit. The greater the total value of the minor benefit and identical or similar benefits, the less likely it is the minor benefit will qualify as an exempt benefit.
- The likely total of the notional taxable values of other associated benefits – that is, those provided in connection with the minor benefit.
- The practical difficulty is determining what would be the notional taxable value of the minor benefit and any associated benefits. This would include consideration of the difficulty for you in keeping the necessary records in relation to the benefits.
5. Entertainment (continued)

- The circumstances in which the minor benefit and any associated benefits were provided. This would include consideration as to whether the benefit was provided as a result of an unexpected event, and whether or not it could be considered principally as being in the nature of remuneration.

It should be noted, the minor benefits exemption cannot be applied to an income tax exempt body entertainment benefits unless:

- The provision of entertainment to an employee is incidental to the provision of entertainment to ‘outsiders’ and it is not a meal (other than a meal consisting of light refreshments).
- The provision of entertainment to an employee is on the employer’s premises and is provided solely as a means of recognising a special (work-related) achievement of that particular employee.

Per the ATO, the following is an example where entertainment is incidental to provision of entertainment to outsiders:

A tax-exempt body hosts a fundraising movie premiere. Staff of the tax-exempt body attend to meet and greet ticket holders, usher ticket holders to their seats and to serve light refreshments. This will be an exempt minor benefit as the provision of the recreational entertainment is incidental to the provision of entertainment to people outside of the tax-exempt body.

Christmas gifts or any other gifts less than $300, like food, beauty products, flowers, perfumes, hampers and vouchers, would be not subject to FBT (MT2042). However, any tickets to sports or entertainment events would be considered an entertainment benefit and subject to FBT.

5.6 FAQs

Q. Is the free or discounted Gym membership for a facility owned or run by the Council, subject to FBT?

A. The provision of free membership for the leisure centre will be an exempt benefit under section 47(2) FBTAA 1986 if it consists of the provision or use of a recreational facility located on the City’s business premises.

The requirements to be satisfied for both the recreational facility and the business premises of the employer are as follows:

Recreational Facility

There are two requirements to be satisfied for the facilities to qualify as a ‘recreational facility’. The first requirement is that the facility is used for recreation. The second requirement is that the facility is not used for accommodation or for drinking or dining.

Business Premises

The definition of ‘business premises’ contains a two-fold test for determining whether the premises are ‘business premises’ for the purposes of the FBTAA. The first requirement is the premises, or part of the premises, are under the control of the City. The second requirement is the premises, or part of premises, must be used by the City, in whole or in part, for the purposes of their business operations.

Therefore, where the facility is owned and run by the City, it is likely these requirements will be met and the provision of free use of the gym and pool will be an exempt benefit under section 47(2) FBTAA 1986.

The exemption contained in section 47(2) can only be applied to employees. Therefore, if discounted membership is provided to employee’s family members the in-house fringe benefit rules should be considered.
### 6. Quick Reference Guide

#### FBT Rate

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</tr>
<tr>
<td>2018-19</td>
<td>2.0802</td>
<td>1.8868</td>
</tr>
</tbody>
</table>

#### Car Fringe Benefits - Statutory Method

**Statutory Percentage**

<table>
<thead>
<tr>
<th>Kms Traveled</th>
<th>Up to and incl. 30 June 2002</th>
<th>1 July 2002 - 9 May 2006</th>
<th>After 10 May 2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-14,999</td>
<td>26%</td>
<td>20%</td>
<td>20%</td>
</tr>
<tr>
<td>15,000-24,999</td>
<td>20%</td>
<td>20%</td>
<td>25%</td>
</tr>
<tr>
<td>25,000 - 40,000</td>
<td>11%</td>
<td>20%</td>
<td></td>
</tr>
<tr>
<td>Over 40,000</td>
<td>7%</td>
<td>20%</td>
<td></td>
</tr>
</tbody>
</table>

**Car Parking Threshold**

<table>
<thead>
<tr>
<th>Year</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017-18</td>
<td>$8.83</td>
</tr>
</tbody>
</table>

#### Car Fringe Benefits - Operating Method

Deemed depreciation:
- Date Car purchased

<table>
<thead>
<tr>
<th>Statutory interest rate - TD 2018/2</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018-19</td>
</tr>
</tbody>
</table>

**Residual Fringe Benefits - Cars -TD 2016/3 2018-19**

<table>
<thead>
<tr>
<th>Type</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-2,500 cc</td>
<td>54 cents</td>
</tr>
<tr>
<td>Over 2,500 cc</td>
<td>65 cents</td>
</tr>
<tr>
<td>Motorcycles</td>
<td>16 cents</td>
</tr>
</tbody>
</table>
6. Quick Reference Guide (continued)

6.1 Cars – Carrying capacity below one ton and designed to carry passengers

Points to note:
- The employee must park the car overnight at residence for it to be considered private use
- This does not include Utes and Dual cabs which have a carrying capacity of less than one tonne and are not
designed to carry passenger
6.2 Cars – Carrying capacity above one ton

- The employee must park the car overnight at residence for it to be considered private use.
- Keep declaration of file is using exemption under s47 (6)
- Minor, infrequent and irregular defined as follows:
  - Minor: A single return journey for private purposes which does not exceed 200 kilometres
  - Infrequent and irregular: No more than 750 kilometres in total for each FBT year
  - Incidental: A single trip diversion from home to work does not add more than two kilometres to that route
6.3 Cars – Carrying capacity less than one ton and not designed to carry passengers

- **Was the car available for private use?**
  - No → Not subject to FBT
  - Yes → **Was the private use limited to home to work; other minor and infrequent private travel?**
    - No → Subject to FBT Car Fringe Benefit Operating Cost or Statutory Method
    - Yes → Exempt benefit s8 (2) (keep declaration on file)
## 6. Quick Reference Guide (continued)

<table>
<thead>
<tr>
<th>Item Name</th>
<th>Y/N</th>
<th>Type</th>
<th>Exempt/Concessional Treatment</th>
<th>Reportable</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child care facilities</td>
<td>Y</td>
<td>Residual</td>
<td>Maybe - s47(2)</td>
<td>Y – if not exempt</td>
<td>Facilities must be on employer’s business premises and satisfy certain condition for the exemption to apply (s47(2) FBTAA 1986).</td>
</tr>
<tr>
<td>Entertainment</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>The minor benefits exemption cannot normally apply to meal entertainment. There are very limited circumstances when it applies to local governments.</td>
</tr>
<tr>
<td>- Meal</td>
<td>Y</td>
<td>Income tax exempt body - Entertainment</td>
<td>Y</td>
<td>N</td>
<td></td>
</tr>
<tr>
<td>- Recreation</td>
<td>Y</td>
<td></td>
<td>N</td>
<td>Y</td>
<td></td>
</tr>
<tr>
<td>Home Mortgage Payments</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- principal</td>
<td>Y</td>
<td>Expense</td>
<td>N</td>
<td>Y</td>
<td>The taxable value of reimbursed/salary sacrificed mortgage repayments are reduced by 50% to the extent that they relate to the interest component. Taxable value is 50% of interest payments made</td>
</tr>
<tr>
<td>- interest</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Y</td>
<td>Payment</td>
<td>Y</td>
<td>N</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Housing</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Shire owned/lease under Shire name</td>
<td>Y</td>
<td>Housing</td>
<td>Y</td>
<td>N</td>
<td>The provision local government owned/leased housing in a remote area is an exempt benefit (s58ZC)</td>
</tr>
<tr>
<td>- Lease under employee name</td>
<td>Y</td>
<td>Expense</td>
<td>Y</td>
<td>N</td>
<td>The taxable value of the benefit is reduced by 50% when an employee’s rental expenses are paid/reimbursed. Taxable value is 50% of gross rent- therefore if gross rent is $10,000 and employee sacrifices $5,000, the value of reduction is $5,000 leaving no FBT payable on the provision of the benefit</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Payment</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Living Away from Home Allowance (LAFHA)</td>
<td>Y</td>
<td>Living-Away-From-Home-Allowance</td>
<td>Y</td>
<td>Y</td>
<td>From 1 October the LAFHA accommodation and food exceptions are available for employees who;</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>· Maintain a house in Australia for their immediate use and enjoyment.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>· Substantiate their expenses.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>· Provide a LAFHA deduction.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Additionally, the exceptions are only available for 12 months per location. Please note there are transitional rules for employees who received LAFHA prior to 8 May 2012.</td>
</tr>
<tr>
<td>Motor Vehicles (Provided by local government)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Car</td>
<td>Y</td>
<td>Car</td>
<td>Y</td>
<td>Y</td>
<td>Dual-cabs or UTEs may be car fringe benefits if they are designed to carry a load of less than one tonne or more or are primarily designed for the principal purpose of carrying passengers.</td>
</tr>
</tbody>
</table>

MOORE STEPHENS  
2017-18 LOCAL GOVERNMENT OFFICERS TAX GUIDE  
Section 1 | Page 31
<table>
<thead>
<tr>
<th>Item Name</th>
<th>FBT</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Y/N Type</td>
<td></td>
</tr>
<tr>
<td>Pooled or Shared Car</td>
<td>Y Car</td>
<td>Pooled or shared cars are excluded benefits and therefore not reportable. In order for the benefit to be excluded the car must be used by more than one employee during the FBT year at the direction or consent of the local government.</td>
</tr>
<tr>
<td>Not a car e.g. commercial vehicle</td>
<td>Y Residual</td>
<td>If the vehicle provided is a utility or other commercial vehicle not designed principally to carry passengers it will be exempt from FBT provided the only private use of the vehicle is limited to:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>· Travel between home and work.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>· Travel incidental to travel in course of employment duties.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>· Non–work related use that is minor, infrequent and irregular.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Dual-cabs or UTEs only qualify for this exemption if they are designed to carry a load of more than one tonne or more or are not primarily designed for the principal purpose of carrying passengers.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Pooling and reportable fringe benefits exclusion do not apply to Residual vehicles</td>
</tr>
<tr>
<td>Motor Vehicle Expenses</td>
<td>N</td>
<td>The taxable value of the benefit can be reduced under the otherwise deductible rule to the extent that the trip was for work related purposes</td>
</tr>
<tr>
<td>Reimbursement</td>
<td>Y Expense payment</td>
<td>Y Y</td>
</tr>
<tr>
<td>Uniform Provided / reimbursed by local government</td>
<td>Y Expense payment</td>
<td>Y – If not exempt</td>
</tr>
<tr>
<td></td>
<td></td>
<td>In order to be FBT exempt, the uniform must be ATO registered or a compulsory work uniform. The employee can claim these costs in their own tax returns so the uniform would be otherwise deductible</td>
</tr>
<tr>
<td>Reimbursement of Relocation Costs</td>
<td>Y Expense payment</td>
<td>Y N – if exempt</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The exemption applies to employees (both new and existing) who have to relocate away from their usual place of residence because of a change in their job location. The exemption includes the costs of removal, storage, packing, unpacking and insurance of household effects (including pets) kept primarily for the personal use of the employee or their family.</td>
</tr>
</tbody>
</table>
### 6. Quick Reference Guide (continued)

<table>
<thead>
<tr>
<th>Item Name</th>
<th>FBT</th>
<th>Y/N</th>
<th>Type</th>
<th>Exempt/Concessional Treatment</th>
<th>Reportable</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reimbursement of telephone expense</td>
<td>Y</td>
<td></td>
<td>Expense Payment</td>
<td>Y</td>
<td>Y</td>
<td>The taxable value of the benefit can be reduced under the otherwise deductible rule to the extent that the telephone is used for work-related purposes.</td>
</tr>
<tr>
<td>Reimbursement of travel expenses</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Business trip &lt; 21 days</td>
<td>Y</td>
<td></td>
<td>Expense Payment</td>
<td>Y</td>
<td>N</td>
<td>The taxable value is reduced to nil under the otherwise deductible rule.</td>
</tr>
<tr>
<td>Reimbursement of utilities</td>
<td>Y</td>
<td></td>
<td>Expense Payment</td>
<td>Y</td>
<td>N</td>
<td>Travel for compassionate reasons is exempt from FBT provided it meets the relevant conditions (s58LA FBTAA 1986).</td>
</tr>
<tr>
<td>Compassionate travel</td>
<td>Y</td>
<td></td>
<td></td>
<td>Y</td>
<td>N – if exempt</td>
<td></td>
</tr>
<tr>
<td>Assumed bills are in relation to remote area housing fringe benefits</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reimbursement of utilities</td>
<td>Y</td>
<td></td>
<td>Expense Payment</td>
<td>Y</td>
<td>N</td>
<td>The taxable value is reduced by 50%.</td>
</tr>
<tr>
<td>Work-related portable electronic device</td>
<td>Y</td>
<td></td>
<td>Expense Payment/Property</td>
<td>Y</td>
<td>N – if exempt</td>
<td>The exemption is limited to:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>- items primarily for work-related use</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>- one item per FBT year for items that have a substantially identical function, unless the item is a replacement item.</td>
</tr>
</tbody>
</table>
GOODS AND SERVICES TAX (GST)
# Contents

1. General Principles ............................................................................................................. 2
2. Tax Invoices ......................................................................................................................... 4
3. BAS Requirements ............................................................................................................. 7
4. ABN Withholding ............................................................................................................. 11
5. Exempt Fees and Charges ............................................................................................... 12
6. GST on Donations and Gifts ............................................................................................ 15
7. GST and Contributions ..................................................................................................... 17
8. GST On Real Property ..................................................................................................... 20
1. General Principles

1.1 Taxable Supply

Whether a taxable supply has been made is key to correctly dealing with the GST. If a taxable supply is not made, the supply will not be subject to GST.

To be a “taxable supply”, the following requirements must be satisfied (s9-5):

- There must be a supply (see over for an explanation)
- The supply must be for consideration (see over for an explanation)
- The supply must be made in the course and furtherance of an enterprise
- The supply must be made by an enterprise that is GST registered
- The supply must be connected with Australia

The supply must not be:

- GST free or
- Input Taxed or
- Exempt
1. General Principles (continued)

This can be summarised as follows:

<table>
<thead>
<tr>
<th>Type of supply</th>
<th>GST treatment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-taxable</td>
<td>GST is not payable on the supply.</td>
</tr>
<tr>
<td>Taxable</td>
<td>GST is payable on the supply made. GST is 10% of the price.</td>
</tr>
<tr>
<td>GST-free</td>
<td>No GST is payable on the supply of GST-free goods or services however an input tax credit may be included on the BAS for anything acquired or purchased to make the GST-free supply.</td>
</tr>
<tr>
<td>Input taxed</td>
<td>An input taxed supply is not subject to GST and no input tax credits can be included on the BAS for anything acquired or purchased to make the input taxed supply.</td>
</tr>
</tbody>
</table>
| Exempt/Outside scope   | These are mainly compulsory charges, fees and taxes which the Commonwealth Treasurer has determined as a general principal should be outside the scope of the GST legislation.  
The technical effect of the Division 81 Determination is to deem the fees and charges not to be consideration for a taxable supply.  
The practical effect is that no GST is payable on those fees and charges however input tax credits may still be included on BAS returns. It should be noted that Division 81 Fees and Charges themselves should not be included on BAS returns. |
2. Tax Invoices

2.1 Tax Invoices

Tax invoices are a vital document for the operation of the GST system. This is a special form that must be issued by a supplier that makes a taxable supply or a mixture of supplies that include some portion of a taxable supply.

Generally, you must hold a valid tax invoice to claim back any GST you have paid. However, even if you hold a document that states it is a tax invoice, you cannot claim a GST credit if the purchase did not include GST in the price.

You are not required to hold a tax invoice if the cost of the item is $75 (GST exclusive) or $82.50 (including GST) or less. There are some other circumstances where documents that do not meet all the requirements of a valid tax invoice may be treated as a tax invoice.

2.1.1 Claiming GST Credits

To claim a GST credit, you must be registered for GST and for purchases that cost more than $82.50 (including GST) you must have a valid tax invoice or Recipient Created Tax Invoice (RCTI). If you use an incorrect or incomplete tax invoice to claim a GST credit, the GST credit may be disallowed.

To claim GST credits for purchases that cost $82.50 or less (including GST), you must keep documents such as cash register docket, receipts or invoices to support your claims.

You must also keep your tax invoices and other GST records for five years.

**NB:** If you are in any doubt about the invoice, you can:
- Ask the supplier if they are registered for GST
- Check the Australian Business Register (ABR) at www.abr.gov.au
- Phone 13 72 26 to confirm the supplier’s Australian Business Number (ABN) is valid
- Phone the ATO on 13 28 66 for advice

2.1.2 Valid Tax Invoices

The Commissioner issued GST Ruling (GSTR 2013/1) on 27 March 2013 that applies retrospectively from 1 July 2010. It replaces GSTR 2012/D3.

It sets out the minimum information requirements for a tax invoice under subsection 29-70(1) of the GST Act 1999. It also explains when a document is in the approved form for a tax invoice.

The ruling also explains when a document for a supply can be treated as a tax invoice even though it does not meet all of the requirements.

2.1.3 Approved Form

A document is in the approved form for a tax invoice if it includes the information required by subsection 29-70(1) and otherwise meets the requirements of that subsection.

2.1.4 Electronic Invoice

A document in electronic form that meets the requirements of subsection 29-70(1) will be in the approved form for a tax invoice.
2. Tax Invoices (continued)

2.1.5 Information That Must Be Present in a Tax Invoice

- The supplier’s identity and the supplier’s ABN;
- What is supplied, including the quantity (if applicable) and the price of what is supplied;
- The extent to which each supply to which the document relates is a taxable supply;
- The date the document is issued;
- The amount of GST (if any) payable in relation to each supply to which the document relates;
  - Additional information required if the price of the supply exceeds $1,000
- The recipient’s identity or the recipient’s ABN;
- Additional information required if the invoice is issued by the recipient
- The recipient’s identity or the recipient’s ABN, including if the supply is less than $1,000;
- If GST is payable in relation to any supply, that the GST is payable by the supplier.

2.1.6 Taxable and Non-taxable Sales (Mixed Supplies)

Where tax invoices include mixed supplies, taxable items and either GST-free or input taxed items, the tax invoice must show the extent to which the supplies are mixed. i.e. which part of the supply is subject to GST and which part isn’t.

Possible ways of distinguishing the supplies include:

- *denotes which of the supplies is fully taxable with a reference mark;
- *denotes the supplies that are mixed supplies with a reference mark and the extent to which those supplies are taxable can be found or determined from information within the document;
- *shows the price of each supply; and shows the total amount of GST payable.

2.1.7 Recipient Created Tax Invoices (RCTI)

Recipient Created Tax Invoices (RCTI) can be issued for three broad classes of supplies:

- Agricultural products;
- Between government related entities; or
- Taxable supplies where the recipients:
  - Have a GST turnover of at least $20 million annually
  - Or are members of a group in which one or more of the participants have such a $20 million turnover.

When issuing a RCTI, there must be a written agreement specifying:

- the recipient can issue tax invoices in respect of the supplies;
- the supplier will not issue tax invoices in respect of the supplies; and
- the supplier and recipient each acknowledge that they are registered for GST when entering into the agreement and that it will notify the recipient/supplier if they cease to be registered.

In certain circumstances, a recipient may issue a document that is both a recipient created tax invoice and a tax invoice. Generally, this occurs where the recipient of a supply also makes a supply to the entity that made the initial supply. An example would be a supply of sugar cane by a cane farmer to a sugar mill and the supply of services (analysis and testing of the sugar) by the sugar mill.
2. Tax Invoices (continued)

2.1.8 When an Invoice Can Be Treated as a Tax Invoice

A document issued by the supplier that does not meet all of the tax invoice requirements may be treated by the recipient as a tax invoice if:

- It would be a tax invoice but for the missing information; and
- All of that missing information can be clearly ascertained from other documentation given to the recipient by the supplier.

An example of this would be if the ABN had a transposition error. In this situation, the recipient has the choice to treat the invoice as a tax invoice. Alternatively, the recipient can request the supplier issues a document with the error corrected. A recipient cannot treat a document that does not meet the RCTI requirements as a tax invoice by relying on other documents. Subsection 29-70(1A) only allows the entity that receives a document to treat it as a tax invoice and, in the case of a RCTI, it is the supplier that receives the document.
3. BAS Requirements

A local government will use an activity statement to report and pay their GST to the ATO. It should also be used to claim Fuel Tax Credits and to pay FBT instalments if they apply.

These notes are to assist you with the preparation of your Business Activity Statement (BAS) which can be lodged by paper (as shown below) or electronically through the Business Portal.

The following are the fields you have to complete on your BAS:

<table>
<thead>
<tr>
<th>Item</th>
<th>What to include</th>
</tr>
</thead>
<tbody>
<tr>
<td>G1</td>
<td><strong>Total Sales</strong>&lt;br&gt;Total sales to report at G1 mean all of the following:&lt;br&gt;  - your GST-free sales&lt;br&gt;  - your input-taxed sales&lt;br&gt;  - your taxable sales&lt;br&gt;  - gross fees for services&lt;br&gt;  - trade-ins&lt;br&gt;  - interest earned&lt;br&gt;  - government grants&lt;br&gt;  - sale of business assets</td>
</tr>
<tr>
<td>G2</td>
<td><strong>Export Sales</strong>&lt;br&gt;Not applicable to most Local Governments – leave blank</td>
</tr>
<tr>
<td>G3</td>
<td><strong>Other GST-free sales</strong>&lt;br&gt; GST-free sales include things such as:&lt;br&gt;  - most basic food&lt;br&gt;  - health and education services&lt;br&gt;  - certain childcare services.</td>
</tr>
<tr>
<td>G4</td>
<td><strong>Input taxed Sales</strong>&lt;br&gt; – an example would be residential rent received</td>
</tr>
<tr>
<td>G10</td>
<td><strong>Capital Purchases</strong>&lt;br&gt;Capital Purchases include items such as:&lt;br&gt;  - land and buildings&lt;br&gt;  - plant and equipment&lt;br&gt;  - computers&lt;br&gt;  - cars</td>
</tr>
<tr>
<td>G11</td>
<td><strong>Non capital purchases</strong>&lt;br&gt;Any items that are not capital. Such as:&lt;br&gt;  - repairs and maintenance&lt;br&gt;  - staff amenities&lt;br&gt;  - electricity&lt;br&gt;  - capital items costing less than $1,000</td>
</tr>
<tr>
<td>G13</td>
<td><strong>Acquisitions for making input taxed sales</strong>&lt;br&gt; – an example would be expenses related to a residential rental property</td>
</tr>
<tr>
<td>G14</td>
<td><strong>Acquisitions with no GST in the price</strong></td>
</tr>
<tr>
<td>W1</td>
<td><strong>Total salary, wages and other payments</strong>&lt;br&gt; – This includes the gross wages paid to all employees</td>
</tr>
<tr>
<td>W2</td>
<td><strong>Amounts withheld</strong> – PAYG withheld from your employees’ salary</td>
</tr>
</tbody>
</table>
3. BAS Requirements (continued)

3.1 GST Errors
A GST error is a mistake a local government makes in working out the GST net amount on the activity statement, if it was the only mistake made, results in the local government reporting or paying too much GST (credit error) or reporting or paying too little GST (debit error).

The error must relate to an amount of GST, GST credit or GST adjustment. A GST error does not include an error that relates to an amount of fuel tax credit, wine equalisation tax, or luxury car tax.

New rules took effect from 10 May 2013.

3.2 Types of Errors
There are two types of errors – a credit or a debit error.

Examples of credit errors:
- Reporting a GST sale twice.
- Overstating the GST on sales.
- Underclaiming GST on purchases.
- Omitting or understating a decreasing GST adjustment or overstating an increasing GST adjustment.

Examples of debit errors:
- Failing to include GST on a taxable sale.
- Understating the GST on sales.
- Overstating GST credits.
- Omitting or understating an increasing GST adjustment or overstating a decreasing GST adjustment.

3.3 Correcting Credit Errors
A credit error can be corrected on a later activity statement if all of the following conditions apply for each credit error:
- The credit error is within the credit error time limit; and
- The local government is not under any compliance activity; and
- The error has not been corrected in another period.

3.4 Credit Error Time Limit

On or after 1 July 2012
The error can be included on the later activity statement which starts within the four year period of review of the assessed GST net amount for the earlier reporting period that contains the GST error.

Example (from ATO website)
ABC Ltd, a monthly lodger, made a GST error in the September 2013 reporting period that resulted in an overstatement of its assessed net amount for that reporting period. As that activity statement was lodged and the net amount assessed on 1 October 2013, ABC Ltd can correct the GST error on an activity statement for a reporting period that starts between 1 October 2013 and 2 October 2017.
3. BAS Requirements (continued)

3.5 Example (from ATO Website)

Sajeev Enterprises lodges quarterly activity statements and has a current GST turnover of $4 million. In March 2014, Sajeev Enterprises carries out a review of its past activity statements and discovers the following GST errors:

Summary of Sajeev Enterprises’ GST errors:

<table>
<thead>
<tr>
<th>Reporting period</th>
<th>GST error</th>
<th>Credit error</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 2007</td>
<td>Double counted GST on taxable sales</td>
<td>$1,000</td>
</tr>
<tr>
<td>September 2010</td>
<td>Under claimed GST credits</td>
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<tr>
<td>Total</td>
<td></td>
<td>$43,000</td>
</tr>
</tbody>
</table>

Sajeev Enterprises lodges its activity statement for the March 2014 reporting period on 28 April 2014. Sajeev Enterprises did not give the Commissioner a notification of its entitlement to the refund in relation to the credit error that was made in the December 2007 reporting period. Therefore, the time limit for correcting that GST error expired on 31 December 2011. As a result, the GST error cannot be corrected.

The $22,000 error in the September 2010 reporting period can be corrected in the March 2014 activity statement. This is because the GST error is being corrected in an activity statement that is being lodged within four years from the end of the September 2010 reporting period.

Sajeev Enterprises lodges its activity statements for the September 2012 and June 2013 reporting periods on 28 October 2012 and 28 July 2013 respectively. The September 2012 and June 2013 errors, totalling $20,000, can also be corrected in the March 2014 reporting period as those GST errors are being corrected in a reporting period that starts within the four year period of review for the September 2012 and June 2013 activity statements.

3.6 Correcting Debit Errors

A debit error can be corrected on a later activity statement if all of the following conditions apply for each debit error:

- The local government is not under any compliance activity; and
- The error has not been corrected in another period; and
- The debit error was not as a result of recklessness or intentional disregard of a GST law; and
- The debit error is within the debit error time limit; and
- The debit error or net sum of the debit error is within the debit error value limit.

Example (from ATO website)

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**Debit Error Time Limit**

- An error can be corrected on a later activity statement if it is within the debit error time limit that corresponds with the GST turnover in the table below:

<table>
<thead>
<tr>
<th>Current GST turnover</th>
<th>Debit error time limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than $20m</td>
<td>The debit error must be corrected on an activity statement that is lodged within 18 months of the due date of the activity statement in which the error was made</td>
</tr>
<tr>
<td>$20m or more</td>
<td>The debit error must be corrected on an activity statement that is lodged within 12 months of the due date of the activity statement in which the error was made</td>
</tr>
</tbody>
</table>

Turnover = value of all sales (excluding GST) in the current month plus all sales made in the previous 11 months.
4. ABN Withholding

4.1 When is ABN Withholding Required?
Generally you must withhold 47% of the total payment for a supply unless:

- You have an invoice or some other documentation relating to the supply on which the supplier’s ABN is quoted;
- The ABN of the supplier’s agent is quoted (if an agent is being used); or
- One of the exceptions to withholding applies or the supplier is not entitled to an ABN.

As mentioned previously, you are required to withhold 47% from the payment if you have reason to believe the ABN quoted is invalid (for example, it belongs to another entity).

4.2 When Is Withholding Not Required?
You do not have to withhold an amount from a payment if:

- The payer is not making the payment in the course of carrying on an enterprise in Australia;
- The payment is $75 or less, excluding any GST;
- The recipient issues a Recipient Created Tax Invoice (RCTI);
- The supplier makes a supply through an agent and the agent issues the tax invoice;
- The taxable supply is solely the supply of real property under the margin scheme;
- The supply that the payment relates to is wholly input taxed; or
- The supplier is an individual and has given you a written statement which says:
  - The supply relates to a private recreational pursuit or hobby, or
  - The supply is wholly of a private or domestic nature for that supplier.

If the supplier falls into one of the last 2 categories above, you should obtain written evidence. The ATO has developed a form, Statement by a Supplier (NAT3346), which can be used.

If a supplier has applied for an ABN, they may ask you to hold payment until the ABN has been obtained. This is a matter between you and the supplier. However, unless one of the exceptions applies, you must withhold 47% if payment is made before the ABN is issued.

4.3 What Happens If You Do Not Withhold?
You may be subject to penalties if you do not withhold when you are required to. The penalty will be equal to the amount that should have been withheld. It is an offence not to withhold and the local government may be prosecuted in certain circumstances.

4.4 How Do You Report ABN Withholding?
ABN withholding is reported to the ATO by way of a PAYG payment summary (NAT 3283). The payment summary must be provided to the payee either:

- When the payment is made; or
- As soon as practicable afterwards.

An annual summary must also be provided to the ATO as per NAT 3448 – PAYG withholding when ABN not quoted – annual report.
5. Exempt Fees and Charges

5.1 Exempt Fees and Charges

On 28 June 2012, new Regulations were made for the purposes of Division 81 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). The Regulations, in conjunction with the provisions of Division 81 of the GST Act, provide a mechanism for Local Governments to determine the GST treatment of Australian taxes, fees and charges. In addition, the Regulation extends the operation of the *A New Tax System (Goods and Services Tax) (Exempt taxes, fees and charges) Determination 2011 (No. 1)* until 30 June 2013.

The new Regulations amend the list of fees and charges which constitute ‘consideration’ (in other words are payment for a service) for the purpose of determining if a taxable supply has occurred. In addition, the Regulations list fees and charges which do not constitute consideration and therefore are not subject to GST. The Regulations also contain tiebreaker rules which should be used to determine whether a fee or charge constitutes consideration.

5.2 Fees and Charges Which Constitute Consideration

The following fees and charges constitute consideration and are therefore subject to GST (provided the other requirements of a taxable supply under section 9-5 GST Act are met).

- A fee for parking a motor vehicle in a ticketed or metered parking space;
- A toll for driving a motor vehicle on a road;
- A fee for hire, use of, or entry to a facility, except for an entry fee to a national park;
- A fee for the use of a waste disposal facility;
- A fee for pre-lodgment advice if:
  - The advice relates to an application for the provision, retention, or amendment, under an Australian law, of a permission, exemption, authority or licence; and
  - It is not compulsory to seek that advice;
- A fee or charge for the provision of information by an Australian government agency if the provision of the information is of a non-regulatory nature;
- A fee or charge for a supply of a non-regulatory nature;
- A fee or charge for a supply by an Australian government agency, where the supply may also be made by a supplier that is not an Australian government agency.
5. Exempt Fees and Charges (continued)

5.3 Fees and Charges Which Do Not Constitute Consideration

The following fees and charges do not constitute consideration and therefore are not subject to GST. However, if the fee or charge is also present on the list of fees and charges which constitute consideration the tiebreaker rules should be applied.

(a) A fee or charge for:
   (i) The kerbside collection of waste; or
   (ii) The supply, exchange or removal of bins or crates used in connection with kerbside collection of waste;
(b) Royalties charged in relation to natural resources;
(c) A fee or charge imposed on an industry to finance regulatory or other government activities connected with the industry;
(d) A fee or charge imposed to compensate an Australian government agency for costs incurred by the agency in undertaking the regulatory activities;
(e) A fee or charge imposed in relation to a court, tribunal, commission of inquiry or Sheriff’s office;
(f) A fee or charge for a supply of a regulatory nature made by an Australian government agency;
(g) A fee or charge for entry to a national park;
(h) Any other fee or charge:
   (i) Specified in the A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2011 (No.1), as in force immediately before the commencement of Schedule 4 to the Tax Laws Amendment (2011 Measures No.2) Act 2011; and
   (ii) Imposed before 1 July 2013.

5.4 Tiebreaker Rules

If a fee or charge is present on the list of fees and charges which constitute consideration AND the list of fees and charges which do not constitute consideration, the following tiebreaker rules should be applied:

(i) If the payment of the fee or charge is covered by the Treasurer’s Determination for Division 81 – the payment will continue to be exempt from GST where it is imposed before 1 July 2013.
(ii) If the payment of the fee or charge is covered by both the list of fees and charges which constitute consideration (other than ‘a fee or charge for a supply of a non-regulatory nature’) and list of fees and charges which do not constitute consideration - it will be consideration for a supply.
(iii) If the payment of the fee or charge is ‘a fee or charge for a supply of a non-regulatory nature’ and covered by the list of fees and charges which do not constitute consideration - it will be exempt from GST.
5. Exempt Fees and Charges (continued)

5.5 Fees and Charges Not Covered by Either List

If the GST treatment of a fee or charge cannot be determined with reference to the list of fees and charges which do and do not constitute consideration it is necessary to consider the other provisions contained in Division 81 GST Act.

Division 81 provides that the following do not constitute consideration and are therefore not subject to GST:

- An Australian tax
- A fee or charge that relates to, or relates to an application for, the provision, retention, or amendment, under and Australian law, of a permission, exemption, authority or licence.
- A fee or charge paid to an Australian government agency if the fee or charge relates to the agency doing any of the following:
  (a) Recording information;
  (b) Copying information;
  (c) Modifying information;
  (d) Allowing access to information;
  (e) Receiving information;
  (f) Processing information; or
  (g) Searching for information.

If a fee or charge is not covered by the provisions in Division 81 it is necessary to consider general GST principles to determine the GST treatment of the fee or charge.
6. GST on Donations and Gifts

The GST treatment of donations, grants and contributions vary depending on various factors. In this newsletter, we have only consider the GST treatment of donations. We will consider the treatment of grants and contributions in the weeks to follow.

GSTR 2012/2 deals with financial assistance payments and GST. As per the ruling, a gift generally has the following characteristics:

- There is a transfer of a beneficial interest in property;
- The transfer is made voluntarily;
- The transfer arises by way of benefaction; and
- No material benefit or advantage is received by the giver (payer) by way of return.

From the conditions above, one can see that the GST treatment primarily depends on whether the organisation receiving a donation is making a taxable supply (material benefit) to the donor for consideration (transfer of beneficial interest in property). We will consider some instances where the donor may receive a material benefit by way of benefaction.

The following examples in the ruling provide further guidance on when a donor does not receive a material benefit from making a gift.

**Example 13 - no consideration - mere recognition of the gift**

76. Bruce Michael is a wealthy philanthropist. A public hospital in his area wants to build a new wing for people suffering from alcoholism. Bruce decides to give $5,000,000 to the hospital for this cause. The hospital is not obligated to provide anything to Bruce.

77. To recognise Bruce’s generosity, the hospital board decides that it will name the new wing in his honour. In further recognition, the hospital will also acknowledge the payment by placing a plaque in the foyer of the new building.

78. The payment is a gift because of the following:

- it is made voluntarily by Bruce;
- there is a transfer of the beneficial interest in property from Bruce to the hospital;
- the transfer arises by way of benefaction as the hospital is advantaged in a material sense as a consequence of the payment; and
- naming the wing after Bruce and the plaque are not considered to provide Bruce with a material benefit.

79. As the public hospital is a non-profit body and the payment is a gift, the exception in the definition of ‘consideration’ applies. Therefore, the payment has no GST consequences for either party.

If we were to change the facts of the above example and say rather than Bruce making a donation, his company Bruce Pty Ltd made the same gift. A condition attached to this gift is that the new wing be named after the company along with the company’s logo being fixed on the façade. In this scenario, although the Company is making a gift to the hospital, they are deriving a material benefit from the advertisement they will receive from making the payment. In a situation like this, GST would apply to the gift.
Example 14 - no consideration - payment is a gift

80. The Needy Persons Charity is a charity to help persons in need of shelter and food. The Charity allows persons making ‘donations’ to state a preference as to whether their funds should be applied to the provision of shelter or the provision of food. Triple A Accountants make a payment to the Charity. They state a preference that their funds be used for the provision of food.

81. The payment is a gift because:

- it is made voluntarily;
- there is a transfer of the beneficial interest in property - specifically, the amount of the payment;
- there is no material benefit to Triple A Accountants as a consequence of the payment; and
- the transfer arises by way of benefaction as the Needy Persons Charity is advantaged in a material sense as a consequence of the payment.

82. Though Triple A Accountants have specified a preference as to where their payment should be applied, this does not alter the fact that the transfer arises by way of benefaction. This is because the Needy Persons Charity receives the payment in its own right and has an unfettered discretion in deciding whether to apply the money in accordance with the preference expressed.

83. As the payment is a gift to a non-profit body, the exception in the definition of ‘consideration’ applies. There are no GST consequences for either party.

In the above example, if rather than a preference, the parties entered into a legally binding contract to use the funds for the provision of food only, GST would be applicable.

It should be noted that even your local government receives a donation, it may not be tax deductible to the donor. The organisation receiving a donation is required to be a Deductible Gift recipient (DGR) for the donor to be able to claim a deduction. The donor should obtain independent tax advice should they wish to claim a deduction.
7. GST and Contributions

7.1 Grants and Contributions

One entity may provide financial assistance to another by means of direct grants, contributions, subsidies, co-payments and by some other means.

These payments may be made by both government and private organisations and individuals.

7.2 Determining the GST Treatment

In determining whether a taxable supply is made, all the following tests need to be satisfied:

- Is there a supply for consideration?
- Is the supply made in the course or furtherance of an enterprise that is carried on by the supplier?
- Is the supply connected with Australia?
- Is the person making the supply registered for GST, or required to be registered for GST?

Grants or Contributions paid without any strings or conditions are not subject to GST as they are made where no supply is received in return.

If a grant or contribution is paid for a specific purpose or subject to conditions, it is treated as a payment for a supply by the recipient.

The GST is 1/11th of the grant or contribution.

**Important** - Where nothing is required in exchange for a payment, or there is no connection between the payment and the supply, it will not be subject to GST.

GST Ruling (GSTR 2012/2) has been published which explains the Commissioner’s views on when a financial assistance payment is consideration for a supply.

The term financial assistance payment is intended to encompass a wide range of payments. This includes payments:

- Made to provide support or aid to the payee; and/or
- Provided to support or aid in the implementation of government policy and initiatives

7.3 Establishing Sufficient Nexus

It is the Commissioner’s view sufficient nexus must exist between consideration and supply. There must be a nexus (“close connection”) between the consideration and a supply.

GSTR 2012/2 states a financial assistance payment is consideration for supply if the payment is ‘in connection with’, in ‘response to’ or ‘for the inducement of’ a supply.

Reference to all of the surrounding circumstances of the arrangement, in particular any written documentation, determines whether a financial assistance payment is ‘in connection with’, ‘in response to’ or ‘for the inducement of’ a supply.

The surrounding circumstances may include the activities which are to be undertaken by the payee and any other terms and conditions attached to the payment. If a material benefit is derived by making the payment, sufficient nexus will be established.

Remember none of these factors will be determinative on their own and the arrangement must be considered as a whole.

The ruling sets out the following rules to help establish if a grant or contribution is consideration for a supply:
7. GST and Contributions (continued)

7.4 Payment for a Supply of Rights

A supply will be made if the person making the grant or contribution expects or receives rights – such as the right to use the result of a project funded by the payment or the right to income from the sale of the results of the project. The right to commercially exploit the results will be considered to be a material benefit.

Example (taken from GSTR 2012/2):

Yearning for Learning, a non-profit organisation established to advance teaching and learning, provides financial assistance payments to enable Australian tertiary institutions to undertake research.

Yearning for Learning invites bids from Australian tertiary education institutions to receive financial assistance payments to undertake or further the institution’s innovative research.

To receive the financial assistance payment, a successful payee must enter into a written arrangement in which the payee agrees to provide Yearning for Learning with the right to use the results of the research in its own enterprise.

Under the arrangement the payee makes a supply of rights to exploit the research findings. The financial assistance payment has a sufficient nexus with this supply because the payment was made to secure the rights. Therefore, the payment is consideration for that supply.

The tertiary institution is liable for GST on the supply of the rights. Yearning for Learning is entitled to an input tax credit on their acquisition of the rights.

7.5 Payment for the Provision of Information

Providing advice or information is a supply. A financial assistance payment has sufficient nexus with the supply where the payment is made for the purpose of obtaining information.

Example (taken from GSTR 2012/2):

A university undertakes various research projects into mental illness. In order to fund its future research projects, the University sells the rights to the results of its completed studies. Previously the University carried out a one month study into the psychological impacts of chronic illness. The government pays the university to acquire the rights to use these research findings in its own review of aspects of the health system.

The payment has a sufficient nexus with the right to the research findings because the payment is made in connection with, in response to or for the inducement of that supply.

The university is liable for GST on the supply of the right to the research findings. The government is entitled to an input tax credit on their acquisition of the right to the research findings.

7.6 Payment for The Entry into an Obligation to do or Refrain from Doing Something

A supply will be made if the person receiving the grant or contribution makes an undertaking to do something in return which goes to the purpose for which the payment was made.

This is because the financial payment is made in connection with, in response to, or for the inducement of the entry into the obligation.

Where there is no obligation or undertaking to spend the grant or contribution in a particular manner, the mere expectation does not establish a supply to the grantor for which the grant is consideration.
Example (taken from GSTR 2012/2):

Snake Glass Jugglers is a commercial dance troupe that develops and presents performance art in South Australia. It enters into an arrangement with Gooseville Arts Foundation, a body that is established for the purpose of fostering the arts. Under that arrangement, in return for a financial assistance payment from the Foundation, the troupe enters into a binding agreement under which it is obligated to expand its activities by presenting three performances outside South Australia during the following year.

By entering into this obligation to present three performances outside South Australia, the troupe has made a supply to the Foundation. The payment by the Foundation has been made in connection with, in response to, or for the inducement of this supply. Therefore, there is a sufficient nexus between the entry into the obligation and the financial assistance payment such that the financial assistance payment is consideration for that supply.

Snake Glass Jugglers is liable for GST on the supply of the entry into the obligation. The Gooseville Arts Foundation is entitled to an input tax credit on their acquisition of the right to require Snake Glass jugglers to present the performances.
8. GST On Real Property

The rules for dealing with GST for property are fairly complex as special rules apply in a number of situations. Supplies of real property can include sales of freehold interests, supply of leases and a supply of any interest in or a right over a real property.

8.1 Summary

- The GST status of real estate sales depends on whether the premises are new, residential or commercial.
- Sales of existing homes are input taxed.
- GST does not normally apply to residential rent.
- Section 9-10 sets out the definition which is very broad.

The usual rules as set out earlier regarding taxable supply and consideration are important for determining whether GST is applicable.

REMEMBER: A supply will not be taxable to the extent it is GST-free or input taxed. The concepts of GST free and input taxed supplies of property are discussed below.

The lease of a commercial property, commercial residential premises or other non-residential property will generally be a taxable supply. The lease of residential property will generally be input taxed. This can be summarised as follows:
### 8. GST On Real Property (continued)

<table>
<thead>
<tr>
<th>Type of premises</th>
<th>Example</th>
<th>GST treatment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private residential</td>
<td>House</td>
<td>Input taxed</td>
</tr>
<tr>
<td>Commercial residential</td>
<td>Hotel</td>
<td>Taxable</td>
</tr>
<tr>
<td>Long term commercial residential</td>
<td>Onsite caravan</td>
<td>Input taxed or concessional</td>
</tr>
<tr>
<td>Commercial</td>
<td>Sports facility</td>
<td>Taxable</td>
</tr>
</tbody>
</table>

#### 8.2 Residential Premises

The term “Residential Premises” means land and a building that is actually occupied as a residence. It will be sufficient if the land and building is intended to be occupied as a residence, provided that it is capable of being used in that way.

This test must be satisfied at the time of the supply.

A house or an apartment block is residential premises. However, land that is not zoned for residential purposes, or has no services, would not be considered residential premises.

The supply of residential property is input taxed to the extent it is used predominately for residential accommodation. This means:

1. If only part of the residential premises is used for residential purposes — the transaction must be apportioned.
2. The supply of a residential property may be input taxed even if part of it is used for some non-residential purpose.

#### 8.3 New Residential Premises

New residential premises sold by a local government will normally be a taxable supply.

The intention here is the house, units, apartments, etc will be subject to GST the first time they are sold, but not for subsequent sales.

New premises are premises are defined under Section 40-75 to be new residential if they:

- Have not been previously sold as residential premises, or
- Have not been the subject of a long term lease, or
- Have been created through substantial renovations of a building, or
- Have been built, or contain a building that has been built, to replace demolished premises on the same land.

Residential premises are no longer new residential premises if they have been continuously rented (i.e. made input taxed supplies) for five years after first becoming new residential premises (i.e. after the completion of the construction or renovations).

They may still be considered new residential premises however, even if they have been rented out continuously for five years where they have been held for a dual purpose.

Dual purpose is where the premises are being marketed for sale while rented out as an input taxed supply. That is because they have not been held ‘solely’ for making input taxed supplies for at least five years.

Short periods of vacancy between tenants would count as continuous period of renting.

You can claim GST credits for any acquisitions you make for the sale of new residential premises (subject to the normal rules on GST credits) and you are liable for GST on the sale. If your residential premises are no longer new, for example, they have been rented for more than five years, they are input taxed. If you claimed GST credits on the acquisition or construction an amendment is required and the GST repaid.
8.4 Substantial Renovations

New residential premises can be created by substantial renovations of an existing building.

Substantial renovations are renovations in which all, or substantially all, of a building is removed or replaced. However, the renovations need not involve removal or replacement of foundations, external walls, interior supporting walls, floors, roof or staircase.

This is a “threshold” test – once you reach a point where work carried out amounts to “substantial renovations”, the entire property becomes new residential premises.

Only renovation work affecting the ‘building’ is considered

Work that affects the surrounding land (curtilage) will not be included in considering whether substantial renovations have taken place. In addition, any additions to the building are not included in considering whether substantial renovations have taken place (but if substantial renovations have been made, the whole property becomes ‘new residential premises’ and can be taxable when sold).

In the case of a strata title unit, the ‘building’ is the space enclosed within the four walls of the individual’s unit and does not include any other part of the building complex including common areas.

The renovation must affect the whole of the building or substantially the whole. If several rooms are left untouched, you cannot have substantial renovations. There must be some renovations of more than a cosmetic nature in nearly all the rooms.

Removal or replacement of substantially all of the building

- This may occur where:
  - structural components, non-structural components, or a combination of both are removed or replaced;
  - work is carried out on the structural components alone – for example, replacement of foundations; replacement, removal or alteration of floors or walls; or
  - there is substantial non-structural work carried out (see the following examples).

Substantial renovations will not occur where only ‘cosmetic’ work is carried out. Cosmetic work includes:

- Painting;
- Sanding floors;
- Removing and replacing old light fittings etc;
- Replacing curtains or carpets.

Of course, if substantial renovations are carried out, any cosmetic work will form part of the new residential premises.

8.5 Progressive Renovations

Substantial renovations can result when a series of renovations are carried out over a period of time, even if that time is several years. However, only renovations carried out by the same owner are taken into account. In essence, each time the home is sold, a new ‘base-line’ is established from which subsequent renovations are measured.

8.6 Demolition and Re-Building

The last way in which ‘new residential premises’ can be created is through the demolition of existing residential premises and the building of new premises.
8.7 Entitlement to Input Tax Credits (Aged Care Units)

Only GST credits that arise on creditable acquisitions and creditable importations can be claimed.

Under s 11-5 of the GST Act you make a creditable acquisition if:

(a) you acquire anything solely or partly for a creditable purpose; and
(b) the supply of the thing to you is a taxable supply; and
(c) you provide, or are liable to provide, consideration for the supply; and
(d) you are registered, or required to be registered.

Under s 11-15 of the GST Act you acquire a thing for a creditable purpose to the extent that you acquire it in the course of carrying on your enterprise, however you do not acquire a thing for a creditable purpose to the extent that:

(a) the acquisition relates to making supplies that would be input taxed; or
(b) the acquisition is of a private or domestic nature.

Therefore, in order to determine whether GST credits can be claimed on the construction costs, it is necessary to consider the intention of the supplies in relation to the units. We have summarised the list of the possible supplies in relation to the units in the table below:

<table>
<thead>
<tr>
<th>Supply</th>
<th>GST Treatment</th>
<th>Entitlement to Input Tax Credits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lease of Residential Units</td>
<td>Input Taxed</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>If ‘commercial residential’ – taxable supply</td>
<td>Yes</td>
</tr>
<tr>
<td>Sale of Residential Units</td>
<td>If sold within 5 years of construction and not rented out (and actively marketed during that period) - taxable supply</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>If sold within 5 years of construction with mixed use – taxable supply</td>
<td>Apportioned based on usage</td>
</tr>
<tr>
<td></td>
<td>If sold after 5 years of construction - input taxed</td>
<td>No</td>
</tr>
</tbody>
</table>

8.8 GST on Sale of Vacant Land

Vacant land is a taxable supply for a GST registered entity.

Vacant land can never be residential premises (GSTR 2012/5) – even if the land is zoned exclusively residential or has a residential development approval. The ATO’s view is that the land has to have a building affixed to it that has the physical characteristics that enable it to be occupied or be capable of occupation as a residence.

The Federal Court has decided (in agreement with the AAT) that the ATO view set out above is substantially correct, that is, that vacant land cannot be residential premises.

8.9 Sale with Development Consent

The assignment of a development consent as part of the input taxed sale of residential premises may be a separate taxable supply if it provides substantive rights to the purchaser in addition to those naturally attached to the premises.
8. **GST On Real Property (continued)**

8.10 **GST and Sale of Unimproved Land**

Under subdivision 38-N GST Act the supply by a Commonwealth, State or Territory of a freehold interest in land on which there have been no improvements will be GST-free. This treatment only applies to the first supply made by a Commonwealth, State or Territory after 1 July 2000.

The definition of ‘State’ for GST purposes has recently been amended by the ATO in an addendum to GSTR 2006/5 to include certain Local Governments. Furthermore, the ATO have communicated to Moore Stephens and WALGA their administrative position that all Western Australian Local Governments are considered a ‘State’ for GST purposes. Therefore, subdivision 38-N can be applied if the relevant conditions are met.

One of these conditions is that there have been no improvements on the land at the time of sale. GSTR 2006/6 details what the ATO considers to constitute an improvement for these purposes. Where there has been human intervention on the land that has enhanced the value of the land the ATO will consider that there are improvements on the land.

**The meaning of 'improvements on the land'**

21. The meaning of ‘improvements’ in the context of land tax has been held by the High Court in Morrison v. Federal Commissioner of Land Tax (1914) 17 CLR 498 at 503 to be:

   Any operation of man on land which has the effect of enhancing its value comes within the definition of 'improvement'.

22. Applying this principle means that, for there to be 'improvements on the land':

   - there must have been some human intervention;
   - the human intervention must have been physically located on the land; and
   - that human intervention must enhance the value of the land at the relevant date for ascertaining whether there are improvements on land.

23. Where there has been a number of human interventions on the land it is necessary to establish whether any of the human interventions enhance the value of the land. If any of the human interventions located on the land enhance its value at the relevant date, then there are improvements on the land. This is regardless of whether the net value of the human interventions enhances the overall value of the land.

24. Determining whether a human intervention enhances the value of the land entails an objective test. This means that whether an intervention enhances the value should not be determined by reference to use or intended use by either the supplier or the recipient.
8. GST On Real Property (continued)

Human interventions

25. The following are examples of human interventions that may enhance the value of land:

- houses, town-houses, stratum units, separate garages, sheds and other out-buildings;
- commercial and industrial premises;
- farm houses, farm outbuildings, internal fencing, stockyards, wells and bores, excavated tanks, dams, surface drains, culverts, bridges, sown pasture, formed internal roads, and irrigation layouts;
- formed driveways, swimming pools, tennis courts, and walls;
- any other similar buildings or structures;
- fencing - internal or boundary fencing;
- utilities, for example, water, electricity, gas, sewerage connected or available for connection;
- clearing of timber, scrub or other vegetation;
- excavation, grading or levelling of land;
- drainage of land;
- building up of soil fertility;
- removal of animal pests, rabbit burrows etc;
- removal of rocks, stones or soil; and
- filling of land.

8.11 Margin Scheme

The margin scheme provisions, contained in Division 75, can apply to the sale of land and property. When applicable, they have the effect of changing the way that the GST liability attaching to certain taxable supplies of real property are calculated such that the GST payable is 1/11th of the ‘margin for the supply’. Basically, the margin refers to the difference between the consideration for the supply and the cost of its acquisition.
8. GST On Real Property (continued)

8.11.1 Conditions to Satisfy

Pursuant to section 75-5, the margin scheme can be applied to a supply of real property when all of the following conditions are met:

• There is a taxable supply of real property;
• The supply is:
  - A sale of a freehold interest in land;
  - A sale of a stratum unit; or
  - A grant or sale of a long-term lease;
  - The vendor and the purchaser agree in writing to apply the margin scheme;
  - The agreement is made on or before the making of the supply or within such further period as the FCT allows; and
  - You have not acquired the entire freehold interest, stratum unit or long-term lease through a supply that was ineligible for the margin scheme.

Under the margin scheme the local government is only required to account for GST on the margin rather than the purchase price in full. The margin will be either:

(i) If the land was acquired before 1 July 2000 and unimproved at that time the difference between the consideration for the sale and the market value on the date of sale i.e. if the land is sold for market value the margin will be nil and no GST will be payable; or
(ii) If the land was acquired before 1 July 2000 and improved at that time the difference between the consideration for the sale and the market value on 1 July 2000; or
(iii) If the land was acquired after 1 July 2000 the difference between the consideration for the sale and the acquisition price paid by the local government.

8.11.2 Taxable Supply of Real Property

As stated above, in order to apply the margin scheme, the transaction must be the taxable supply of real property.

If the supply is input taxed, the margin scheme cannot be applied. The input taxed property transactions are:

• Supplies of residential rent; and
• Supplies of residential premises, other than commercial residential or new residential premises.

Which Supplies Are Eligible?

Under section 75-5(3), a supply of real property is ineligible for the margin scheme if:

• The entire property is acquired in a taxable supply and the GST was not worked out using the margin scheme; or
• The property is acquired by inheriting it from a deceased estate and the deceased person had acquired it in a supply that makes the property ineligible for the margin scheme (by one or more applications of these provisions); or
• The property was acquired from a member of the same GST group and the last supply was one that makes the property ineligible for the margin scheme (by one or more applications of these provisions); or
• The property was acquired from a joint venture operator when the taxpayer was a participant in the joint venture and the joint venture operator acquired the property in a supply that makes the property ineligible for the margin scheme (by one or more applications of these provisions).
8. GST On Real Property (continued)

In this guide, property acquired in this way is referred to a ‘margin scheme ineligible property’. This will mean that a taxpayer cannot sell the property under the margin scheme.

If the margin scheme is applied to land acquired before 1 July 2000 and was improved at that time, the local government will need to obtain a valuation for the land as at that date.

The result is that once property has become ineligible for the margin scheme, it will remain ineligible for the margin scheme unless there is a sale by an unregistered person or a sale as residential premises.

<table>
<thead>
<tr>
<th>Method of acquisition of the real property</th>
<th>Can margin scheme be used for subsequent sale?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxable supply, margin scheme applied</td>
<td>Yes</td>
</tr>
<tr>
<td>Taxable supply, margin scheme not applied</td>
<td>No</td>
</tr>
<tr>
<td>Input taxed supply (for example a sale of an existing house)</td>
<td>Yes</td>
</tr>
<tr>
<td>Acquired from an unregistered vendor (not subject to GST)</td>
<td>Yes</td>
</tr>
<tr>
<td>Acquired as part of the supply of a going concern (GST-free)</td>
<td>No – if the vendor was registered or required to be registered and acquired the interest through a taxable supply on which the GST was worked out without applying the margin scheme</td>
</tr>
<tr>
<td>Sale of land by an owner not in the course or furtherance of an enterprise (not subject to GST)</td>
<td>Yes</td>
</tr>
<tr>
<td>Sale of farming land to a person who intends to carry on a business of farming (GST free)</td>
<td>No – if the vendor was registered or required to be registered and acquired the interest through a taxable supply on which the GST was worked out without applying the margin scheme</td>
</tr>
</tbody>
</table>

**Calculation of Margin**

The amount of GST payable is 1/11th of the **margin for the supply**.

The **margin for the supply** is the difference between the consideration for the taxpayer’s acquisition of the interest, unit or lease and the consideration for the supply.

**Property Acquired Before 1 July 2000**

If property on which the margin scheme is to be applied was acquired before 1 July 2000, the margin is calculated differently if certain conditions are met. The intention is to ensure that only the value added from 1 July 2000 is subject to GST.

Section 75-10(3) specifies that in certain circumstances where property was acquired before 1 July 2000 and a ‘valid’ valuation has been obtained, the margin will instead be the amount by which your consideration for supply exceeds the valuation of the interest, unit or lease.

For **supplies made before 17 March 2005**, this provision is triggered only if a valuation has been made that ‘complies with any requirements determined in writing by the Commissioner for making valuations for the purposes (of the margin scheme)’.
8. GST On Real Property (continued)

From 17 March 2005, the valuation required must be an ‘approved valuation’, which is defined as one which is made in accordance with the requirements set out in a legislative Determination by the FCT.

The requirements for valuations to meet these requirements are set out in Margin Scheme Valuations Determinations (MSV).

Currently, the relevant Determinations are:

- MSV 2009/1 which applies to supplies of real property made after 1 March 2010
- MSV 2005/2 which only applies to supplies made after 1 July 2005 under contracts entered into before 1 July 2005.

Note that all other previous Margin Scheme Valuations Determinations do not apply to supplies made after 1 December 2005.

8.12 Adjustments for Change in Creditable Purpose

8.12.1 How Do You Calculate the Adjustment?

A local government that constructs new residential premises for sale will generally be entitled to claim Input Tax Credits (ITCs) under Division 11 for the acquisitions made in carrying out the construction.

A local government who constructs new residential premises for rent will not be entitled to claim ITCs.

Difficulties arise when the use of the property (sale or rent) changes after construction.

In this case, adjustments to credits claimed will need to be made in line with the requirements of Division 129.

Importantly, if you continue to try to sell houses that you are renting, the ATO accepts you have a dual purpose.

However, it was confirmed in *GXCX v FCT* that it is necessary to actively market the properties rather than have a vague intention to sell the properties at a later date.

Creditable purpose in these cases, according to the ATO, is decided by taking the sale proceeds for the taxable sale of the property and dividing it by the sales proceeds plus all rent received up to the date of the adjustment.

Thus, if you continue to rent the premises, each time you reach an adjustment period you will make an increasing adjustment under Division 129 that has the effect of paying back some of the original ITC claimed.
PAY AS YOU GO (PAYG) WITHHOLDING
## Contents

1. PAYG ......................................................................................................................... 2  
2. Allowances ............................................................................................................... 3  
3. Bonuses and Back Payments .................................................................................. 5  
4. Employment Termination Payment (ETP) ............................................................. 6  
5. Genuine Redundancy ............................................................................................... 9  
6. Annual and Long Service Leave on Redundancies ................................................. 11  

---

### 1. PAYG

- Description

### 2. Allowances

- Description

### 3. Bonuses and Back Payments

- Description

### 4. Employment Termination Payment (ETP)

- Description

### 5. Genuine Redundancy

- Description

### 6. Annual and Long Service Leave on Redundancies

- Description

### 7. Redundancy – Quick Reference Guide

- Description
1. PAYG

Under the PAYG withholding rules, the local government has an obligation to withhold tax from payments you make to employees. Generally, you must withhold the following payments from employees:

- Salary and wages.
- Allowances.
- Back payments, commissions, bonuses and similar payments.
- Long service leave and annual leave payments.
- Repayment of an overpayment.
- Employees who are made redundant.
- Employment termination payments.
2. Allowances

Allowances are separately identified payments made to an employee for:

- Working conditions - for example, height or dirt.
- Qualifications or special duties - for example, first aid certificate or safety officer.
- Expenses that cannot be claimed as a tax deduction by the employee - for example, normal travel between home and work.
- Work related expenses that may be able to be claimed as a tax deduction by the employee - for example, travel between work sites.

Allowances and reimbursements are different in that the latter are exact compensation for actual expenses incurred, and the employer may be subject to FBT. If the reimbursement is covered by FBT, the amount is not assessable income to the employee, and the employee cannot claim a deduction for the expense.

The following are the treatment of some allowances:

<table>
<thead>
<tr>
<th>Allowance type</th>
<th>Are you required to withhold?</th>
<th>Is the allowance included on payment summary? If so, how should it be shown?</th>
<th>Does super guarantee apply?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Allowances paid for working conditions, qualifications or special duties</strong></td>
<td>Yes</td>
<td>Yes (include total allowance in gross payment)</td>
<td>Yes</td>
</tr>
<tr>
<td>For example: dirt, dust, height, shift or travelling time trade or first aid officer.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Allowances for non-deductible expenses</strong></td>
<td>Yes</td>
<td>Yes (include total allowance in gross payment)</td>
<td>Yes</td>
</tr>
<tr>
<td>For example: part-day travel (no overnight absence from employee's ordinary place of residence) meals (not award overtime meal allowance or overnight travel allowance) motor vehicle for non-deductible travel - for example, home to work, including cents per kilometre payments.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Allowances for expected deductible expenses</strong></td>
<td>Yes</td>
<td>Yes (show total allowance separately in the allowance box with an explanation)</td>
<td>No</td>
</tr>
<tr>
<td>For example: tools compulsory uniform or dry cleaning motor vehicle for work-related travel, including cents per kilometre payments in excess of Australian Tax Office (ATO) rate (1) overseas accommodation for deductible travel.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>On-call allowance</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>ordinary hours</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>outside ordinary hours</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(1) Australian Tax Office rate, as of the date of publication.
2. Allowances (continued)

The following allowances have a varied rate of withholding:

<table>
<thead>
<tr>
<th>Allowance type</th>
<th>Are you required to withhold?</th>
<th>Is the allowance included on payment summary? If so, how should it be shown?</th>
<th>Does super guarantee apply?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cents per kilometre car expense payments using the approved rate</strong>&lt;sup&gt;(1)&lt;/sup&gt;</td>
<td>No</td>
<td>Yes (show total allowance separately in allowance box with an explanation)</td>
<td>No</td>
</tr>
<tr>
<td>For payments made by applying the approved rate or a lower rate, to the number of kilometres travelled up to 5,000 business kilometres.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>For payments made by applying the approved rate or a lower rate, to the number of kilometres travelled where the usage is in excess of 5,000 business kilometres.</td>
<td>Yes (from payments for the excess over 5,000 kms)</td>
<td>Yes (show total allowance separately in allowance box with an explanation)</td>
<td>No</td>
</tr>
<tr>
<td>For payments made at a rate above the approved rate, for distances travelled up to 5,000 business kilometres.</td>
<td>Yes. From the amount which relates to the excess over the approved rate.</td>
<td>Yes (show total allowance separately in allowance box with an explanation)</td>
<td>No</td>
</tr>
<tr>
<td><strong>Award transport payments</strong>&lt;sup&gt;(2)&lt;/sup&gt;</td>
<td>No</td>
<td>Yes (show total allowance separately in allowance box with an explanation)</td>
<td>No</td>
</tr>
<tr>
<td>For deductible transport expenses</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- The approved rate is 66 cents per kilometre for the year commencing 1 July 2015 to 30 June 2018.
- The approved rate commencing 1 July 2018 has increased to 68 cents per kilometre.
- An award transport payment is a payment covering particular travel that was paid under an industrial instrument (that is, an award, order, determination or industrial agreement) that was in force under Australian law on 29 October 1986.
- The current threshold amount for laundry expenses is $150. Dry cleaning allowances should have an amount withheld in accordance with Table 1.
- Each year the ATO publish a determination setting out the reasonable amounts for
  - overtime meal allowance expenses
  - domestic travel allowance expenses
  - travel allowance expenses for employee truck drivers
  - overseas travel allowance expenses
### 3. Bonuses and Back Payments

When a lump sum payment is made to an employee e.g. bonuses or payments which relate to prior payroll periods, the following method can be used.

<table>
<thead>
<tr>
<th>Step</th>
<th>Instruction</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Work out your employee’s gross earnings excluding any additional payments for the current pay period. Ignore any cents.</td>
</tr>
<tr>
<td>2</td>
<td>Use the relevant tax table to find the amount to be withheld from your employee’s gross earnings in step 1.</td>
</tr>
<tr>
<td>3</td>
<td>Add any additional payments to be made in the current pay period together and divide the total by the number of pay periods in the financial year (that is, 52 weekly pay periods, 26 fortnightly pay periods or 12 monthly pay periods). Ignore any cents.</td>
</tr>
<tr>
<td>4</td>
<td>Add the amount at step 3 to the gross earnings at step 1.</td>
</tr>
<tr>
<td>5</td>
<td>Use the relevant tax table to find the amount to be withheld from the amount at step 4.</td>
</tr>
<tr>
<td>6</td>
<td>Subtract the amount at step 2 from the amount at step 5.</td>
</tr>
<tr>
<td>7</td>
<td>Multiply the amount at step 6 by the number of pay periods used in step 3.</td>
</tr>
<tr>
<td>8</td>
<td>Multiply the additional payment being made in the current pay period by 49%.</td>
</tr>
<tr>
<td>9</td>
<td>Use the lesser amount of step 7 and step 8 for the withholding on the additional payment. Ignore any cents.</td>
</tr>
<tr>
<td>10</td>
<td>Work out the total PAYG withholding for the current pay period by adding the withholding on the additional payment (step 9) to the withholding on the gross earnings (step 2).</td>
</tr>
</tbody>
</table>
4. Employment Termination Payment (ETP)

The following payments can be included in an Employment Termination Payment (ETP):

- Unused rostered days off.
- Payment in lieu of notice.
- Unused personal / carers’ leave.
- A gratuity or golden handshake.

The following payments cannot be included in an ETP:

- Unused annual leave and/or leave loading.
- Unused long service leave.
- Salary, wages, allowances, bonuses and incentives owing to the employee for work done or leave already taken.

4.1 PAYG Withholding

Depending on whether or not a person has reached their preservation age, the withholding will vary.

The preservation age for individuals is as follows:

<table>
<thead>
<tr>
<th>Date of birth</th>
<th>Preservation Age</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before 1/7/1960</td>
<td>55</td>
</tr>
<tr>
<td>1/7/1960 – 30/6/1961</td>
<td>56</td>
</tr>
<tr>
<td>1/7/1961 – 30/6/1962</td>
<td>57</td>
</tr>
<tr>
<td>1/7/1962 – 30/6/1963</td>
<td>58</td>
</tr>
<tr>
<td>1/7/1963 – 30/6/1964</td>
<td>59</td>
</tr>
<tr>
<td>After 30/6/1964</td>
<td>60</td>
</tr>
</tbody>
</table>

The withholding on the payment would be subject to the following tax rates for the year ended 30 June 2019:

<table>
<thead>
<tr>
<th>Income component derived by your employee in the income year</th>
<th>Age at end of year of ETP payment</th>
<th>Component subject to PAYG withholding</th>
<th>Rate of withholding</th>
<th>Cap to apply</th>
</tr>
</thead>
<tbody>
<tr>
<td>Life benefit ETP – taxable component</td>
<td></td>
<td>Under preservation age</td>
<td>32%</td>
<td>Smallest of ETP cap and whole-of-income cap</td>
</tr>
<tr>
<td>Payment is:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- a ‘golden handshake’</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- non-genuine redundancy payment</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- severance pay</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- a gratuity</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- in lieu of notice</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- for unused sick leave</td>
<td></td>
<td>Preservation age or over</td>
<td>17%</td>
<td>Smallest of ETP cap and whole-of-income cap</td>
</tr>
<tr>
<td>- for unused rostered days off</td>
<td></td>
<td>All ages</td>
<td>47%</td>
<td>Smallest of ETP cap and whole-of-income cap</td>
</tr>
</tbody>
</table>
4. Employment Termination Payment (ETP) (continued)

4.2 Whole of Income Cap

On 1 July 2012, the concessional tax treatment for ETPs changed. From that date there is an additional $180,000 non-indexed whole-of-income cap (not to be confused with ETP Cap which is indexed). This cap will apply with the existing ETP cap rules on some ETPs.

The $180,000 whole-of-income cap is reduced by any other taxable income (see below) earned in the income year either before or after receiving the ETP.

Payments included in the whole-of-income cap:
The whole-of-income cap only applies to certain ETPs. These are called non-excluded ETPs. Non-excluded ETPs include:

- payments that do not meet the genuine redundancy rules.
- golden handshakes.
- payment for rostered days off.
- payment for unused personal / carers’ leave.
- gratuities.

Other taxable income for whole-of-income cap includes:
The whole-of-income cap incorporates other taxable income that you earn in the same income year. Other taxable income is simply assessable income minus deductions you are entitled to.

Taxable income includes:

- salary or wage income (including payments for overtime).
- bank interest.
- Bonuses.
- accrued leave you may have been paid when your employment was terminated.
- taxable component of other employment termination payments received earlier in the same income year.

4.3 Superannuation

Ordinarily, we see the following components in an ETP payment:

- Payment in lieu of notice – the payment is considered Ordinary Times Earning (OTE) and superannuation is payable on this component (Para 38 of SGR 2009/2).
- Severance payment of a number of weeks’ pay for each year of service – these are not considered OTE and superannuation is not payable on this component. (Para 74 of SGR 2009/2)*.
- A gratuity or ‘golden handshake’ - these are not considered OTE and superannuation is not payable on this component. (Para 74 of SGR 2009/2)*.

* Please note, you should review any agreements or contracts the employee is covered by; in spite of SGR 2009/2 the employer may have a contractual obligation to pay superannuation on those components.

Annual and long service leave payments on termination are excluded from being OTE and therefore superannuation is not payable on these components.
4. Employment Termination Payment (ETP) (continued)

<table>
<thead>
<tr>
<th>Payment Type</th>
<th>Accrual date</th>
<th>Withholding rates</th>
<th>Payment Summary</th>
<th>Superannuation payable?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Long service leave</td>
<td>Pre-16 August 1978</td>
<td>5% of total at marginal rates</td>
<td>B</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>6 August 1978 to 17 August 1993</td>
<td>32%</td>
<td>A</td>
<td>No</td>
</tr>
<tr>
<td>Post-17 August 1993</td>
<td>Marginal rates</td>
<td>Include in Salary/wages</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Annual Leave</td>
<td>Pre-17 August 1993</td>
<td>32%</td>
<td>A</td>
<td>No</td>
</tr>
<tr>
<td>Post-17 August 1993</td>
<td>Marginal rates</td>
<td>Include in Salary/wages</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Annual Leave Loading</td>
<td>Pre-17 August 1993</td>
<td>32%</td>
<td>A</td>
<td>No</td>
</tr>
<tr>
<td>Post-17 August 1993</td>
<td>Marginal rates</td>
<td>Include in Salary/wages</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

Source:

4.4 Marginal Rate Calculation
For the marginal rate calculation PAYG withholding needs to be apportioned across the full year. In order to work out the marginal rate, you must:

1. Using the relevant PAYG withholding tax table, work out the amount to withhold from your payee’s normal gross earnings for a regular pay period.
2. Divide the amount of the payment by the number of normal pay periods in 12 months (12 monthly payments, 26 fortnightly payments or 52 weekly payments).
3. Ignore any cents.
4. Add the amount at step 3 to the normal gross earnings for a single pay period.
5. Use the same PAYG withholding tax tables used at step 1 to work out the amount to withhold from the amount at step 4.
6. Subtract the amount at step 1 from the amount at step 5.
7. Multiply the amount obtained at step 6 by the number of normal pay periods in 12 months (12 monthly payments, 26 fortnightly payments or 52 weekly payments).
5. Genuine Redundancy

5.1 What is a Genuine Redundancy?

Per TR 2009/2, a genuine redundancy payment is one 'received by an employee who is dismissed from employment because the employee's position is genuinely redundant'.

There are four necessary components within this requirement:

- The payment being tested must be received in consequence of an employee's termination;
- That termination must involve the employee being dismissed from employment;
- That dismissal must be caused by the redundancy of the employee's position; and
- The redundancy payment must be made genuinely because of a redundancy.

The dismissal of the employee must be at the employer's initiative without the consent of the employee. However, in certain cases, voluntary redundancies may apply (explained below).

A genuine redundancy payment or approved early retirement scheme payment may include:

- payment in lieu of notice.
- severance payment of a number of weeks' pay for each year of service.
- a gratuity or 'golden handshake'.

Any payments which are Employer Termination Payments (ETPs) and meet the conditions for payments under a genuine redundancy or approved early retirement scheme are tax free up to a limit based on the number of years the employee has worked for their employer. The amount paid above the tax free limit is taxed as an ETP (see ETP guide for taxation of ETP payments).

5.2 Can a Redundancy be Voluntary?

Voluntary redundancy arises in circumstances where an employee resigns after being offered alternative employment with an employer following an organisational restructure. A restructure of an organisation does not necessarily include redundancy where employees are dismissed following the reallocation or restructure. In these circumstances, it is necessary to consider what impact the restructure had on the duties, functions and responsibilities formerly fulfilled by the dismissed employee.

There have been a number of cases and private binding ruling decisions on this subject. The decisions have largely rested on whether the employee had been offered some alternate position. It is only if the employer considers there is no available job for which the employee is suited that the question of redundancy arises.

In *Re Marriott and Federal Commissioner of Taxation* the employer did not see fit to dismiss the employee after a reallocation of duties, functions and responsibilities within the organisation. In this case, the employee was carrying out duties of a legal nature in the Australian Taxation Office. These duties changed upon the reorganisation, in that he was not continuing to directly negotiate settlements or train junior advocates. After carefully considering the evidence before him, Senior Member Lindsay found that there was not a dismissal (in particular there was not a constructive dismissal) and further commented that:

“Whether an employee's termination is by reason of redundancy will require an assessment of the changes to determine if they were beyond or beneath the employee's qualifications, skills or experience.”

In this case it was considered that the prevailing or most influential cause of termination was the employee's own desire not to undertake the duties, functions and responsibilities he was offered following the reorganisation.
5. Genuine Redundancy (continued)

5.3 Calculation on PAYG Withholding on Redundancy Payment?

The tax free component of a redundancy is based on the number of completed years of service. The 2018-19 tax free redundancy threshold is $10,399 plus $5,200 for each year of completed service.

5.4 Where does the Redundancy Payment get Reported on the PAYG Payment Summary?

Lump Sum D on PAYG payment summary – individual non-business

5.5 Superannuation on Components

Ordinarily, we see the following components in a redundancy payment

- Payment in lieu of notice – the payment is considered Ordinary Times Earning (OTE) and superannuation is payable on this component (Para 38 of SGR 2009/2).
- Severance payment of a number of weeks' pay for each year of service – these are not considered OTE and superannuation is not payable on this component. (Para 74 of SGR 2009/2)*.
- A gratuity or 'golden handshake' - these are not considered OTE and superannuation is not payable on this component. (Para 74 of SGR 2009/2)*.

* Please note, you should review any agreements or contracts the employee is covered by; in spite of SGR 2009/2 the employer may have a contractual obligation to pay superannuation on those components.

Annual and long service leave payments on termination are excluded from being OTE and therefore superannuation is not payable on these components.
6. Annual and Long Service Leave on Redundancies

6.1 Annual and Long service leave paid on termination (genuine redundancy)

As these are not taxed as part of a redundancy, you are required to withhold tax using the following tables:

<table>
<thead>
<tr>
<th>Payment Type</th>
<th>Accrual date</th>
<th>Withholding rates</th>
<th>Payment Summary</th>
<th>Superannuation payable?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Long service leave</td>
<td>Pre-16 August 1978</td>
<td>5% of total at marginal rates</td>
<td>B</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>6 August 1978 to 17 August 1993</td>
<td>32%</td>
<td>A</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Post-17 August 1993</td>
<td>32%</td>
<td>A</td>
<td>No</td>
</tr>
<tr>
<td>Annual Leave</td>
<td></td>
<td>32%</td>
<td>A</td>
<td>No</td>
</tr>
<tr>
<td>Annual Leave Loading</td>
<td></td>
<td>32%</td>
<td>A</td>
<td>No</td>
</tr>
</tbody>
</table>


6.2 Worked Example

The Shire of Somewhere has made an employee, Mr Pink, redundant and has offered him the following redundancy payment package:

- Salary -12 hours: $600
- Annual leave accrued: $3,800
- Long service leave accrued: $4,500
- Payment in lieu of notice: $9,375
- Gratuity payment: $5,000

Mr Pink has completed 5 years of service.

First, we need to consider which components are considered redundancy payments and receive concessional treatment.

<table>
<thead>
<tr>
<th>Description</th>
<th>Redundancy payment (Yes / No)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary -12 hours</td>
<td>No</td>
</tr>
<tr>
<td>Annual leave accrued</td>
<td>No</td>
</tr>
<tr>
<td>Long service leave accrued</td>
<td>No</td>
</tr>
<tr>
<td>Payment in lieu of notice</td>
<td>Yes</td>
</tr>
<tr>
<td>Gratuity payment</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Therefore, the total redundancy payment to Mr Pink is $14,375 i.e. payment in lieu of notice and gratuity payment. The tax free threshold is calculated as follows:

- Base rate (a): $10,399
- Number of years of service (b): 5
- Rate per year (c): $5,200
- Rate based on years of completed service (d= (b x c)): $26,000
- Total tax free threshold (a)+ (d): $36,399
6. Annual and Long Service Leave on Redundancies (continued)

The total tax free amount Mr Pink can receive is $36,399, therefore no tax is withheld from this redundancy payment.

The withholding on the leave payments is as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total leave payments</td>
<td>8,300.00</td>
</tr>
<tr>
<td>Withholding rate</td>
<td>32.00%</td>
</tr>
<tr>
<td>Tax withheld</td>
<td>2,656.00</td>
</tr>
<tr>
<td>Net</td>
<td>5,644.00</td>
</tr>
</tbody>
</table>
7. Redundancy – Quick Reference Guide

Tax free threshold

<table>
<thead>
<tr>
<th>Income year</th>
<th>Base limit</th>
<th>For each complete year of service</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018-19</td>
<td>$10,399</td>
<td>$5,200</td>
</tr>
<tr>
<td>2017-18</td>
<td>$10,155</td>
<td>$5,078</td>
</tr>
<tr>
<td>2016-17</td>
<td>$9,936</td>
<td>$4,969</td>
</tr>
</tbody>
</table>

Superannuation on ETP payments

<table>
<thead>
<tr>
<th>Redundancy component</th>
<th>OTE</th>
<th>Does superannuation apply?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payment in lieu of notice</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Severance</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Gratuity or 'golden handshake'</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

PAYG Summary - Lump Sum Code D

Tax table for withholding on leave payments on redundancy

<table>
<thead>
<tr>
<th>Payment Type</th>
<th>Accrual date</th>
<th>Withholding rates</th>
<th>Payment Summary</th>
<th>Superannuation payable?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Long service leave</td>
<td>Pre-16 August 1978</td>
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<td>B</td>
<td>No</td>
</tr>
<tr>
<td></td>
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</tr>
<tr>
<td></td>
<td>Post-17 August 1993</td>
<td>32%</td>
<td>A</td>
<td>No</td>
</tr>
<tr>
<td>Annual Leave</td>
<td></td>
<td>32%</td>
<td>A</td>
<td>No</td>
</tr>
<tr>
<td>Annual Leave Loading</td>
<td></td>
<td>32%</td>
<td>A</td>
<td>No</td>
</tr>
</tbody>
</table>
Section 4

Superannuation
1. Ordinary Time Earnings (OTE) .................................................................................................................. 2
2. Reportable Employer Superannuation Contributions .................................................................................... 5
1. Ordinary Time Earnings (OTE)

1.1 Introduction
Superannuation Guarantee law requires employers to pay a minimum amount of super for their employees. Generally you have to pay super for an employee if they:

- are over 18 years old;
- earn $450 or more (before tax) in a calendar month; and
- are employed on a full-time, part-time or casual basis (including those who are working in Australia temporarily).

1.2 How Much to Pay?
The minimum super you must pay each quarter for each eligible employee is called the Super Guarantee (SG). Currently the SG is 9.5% of an employee’s Ordinary Time Earnings (OTE). OTE is usually the amount your employee earns for their ordinary hours of work. It includes items such as commissions, shift loadings and allowances, but not overtime payments. However, the superannuation obligation is not limited to the OTE cap if the employer has a separate contractual arrangement with the employee. This should be examined to ascertain if the employer has a contractual obligation to pay Superannuation Guarantee on something like a termination payment. Additionally, the employer should review any applicable awards/agreements to ascertain if matching superannuation contributions are required.

1.3 Ordinary Time Earnings (OTE)
Ordinary Time Earnings are generally what your employees earn for their ordinary hours of work, including:

- over-award payments.
- commissions.
- shift loading.
- allowances.
- bonuses.

You are only required to pay superannuation guarantee up to the maximum quarterly contribution base. The base is indexed annual and does not apply in the case of mandated contributions such as payments under the contract/awards. The maximum quarterly contributions base for the 2016-17 year is $51,620.

Payments for work performed outside an employee's ordinary hours of work are not OTE. This applies even if:

- the payments are calculated at an hourly rate.
- the employee gets a specific loading.
- the payments are calculated as an annualised or lump sum component of a total salary package.
The following checklist shows the payments that count as salary or wages and ordinary time earnings per SGR 2009/2:

<table>
<thead>
<tr>
<th>Eg No</th>
<th>Payments to an employee in relation to...</th>
<th>Salary or wages?</th>
<th>OTE?</th>
<th>Paragraph references</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Awards and agreements</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>A simple overtime situation</td>
<td>Yes</td>
<td>No</td>
<td>13-15, 41-43, 189-202</td>
</tr>
<tr>
<td>2</td>
<td>Overtime hours - agreement prevailing over award</td>
<td>Yes</td>
<td>No</td>
<td>13-15, 41-43, 189-202</td>
</tr>
<tr>
<td>3</td>
<td>Agreement supplanting award removes distinction between ordinary hours and other hours</td>
<td>Yes</td>
<td>Yes</td>
<td>13-15, 41-43, 189-202</td>
</tr>
<tr>
<td>4</td>
<td>No ordinary hours of work stipulated</td>
<td>Yes</td>
<td>Yes</td>
<td>13-18, 203-210</td>
</tr>
<tr>
<td>5</td>
<td>Casual employee - shift-loadings overtime payments</td>
<td>Yes</td>
<td>Yes</td>
<td>13-18, 22, 189-210, 220-222</td>
</tr>
<tr>
<td>6</td>
<td>Casual employee whose hours are paid at overtime rates due to a 'bandwidth' clause</td>
<td>Yes</td>
<td>No</td>
<td>13-18, 189-210</td>
</tr>
<tr>
<td>7</td>
<td>Piece-rates - no ordinary hours of work stipulated</td>
<td>Yes</td>
<td>Yes</td>
<td>30-31, 230-234</td>
</tr>
<tr>
<td>8</td>
<td>Overtime component of earnings based on 'hourly driving rate' formula stipulated in award</td>
<td>Yes</td>
<td>No</td>
<td>30-31, 230-234</td>
</tr>
<tr>
<td><strong>Allowances</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Allowance by way of unconditional extra payment</td>
<td>Yes</td>
<td>Yes</td>
<td>27, 65, 259-270</td>
</tr>
<tr>
<td>10</td>
<td>Expense allowance expected to be fully expended</td>
<td>No</td>
<td>No</td>
<td>27, 72, 266</td>
</tr>
<tr>
<td>11</td>
<td>Danger allowance</td>
<td>Yes</td>
<td>Yes</td>
<td>27, 65, 259-267</td>
</tr>
<tr>
<td>12</td>
<td>Retention allowance</td>
<td>Yes</td>
<td>Yes</td>
<td>27, 65</td>
</tr>
<tr>
<td>13</td>
<td>Hourly on-call allowance in relation to ordinary hours of work for doctors</td>
<td>Yes</td>
<td>Yes</td>
<td>44-45</td>
</tr>
<tr>
<td><strong>Payment of expenses</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Reimbursement</td>
<td>No</td>
<td>No</td>
<td>46, 73 268-270</td>
</tr>
<tr>
<td>15</td>
<td>Petty cash</td>
<td>No</td>
<td>No</td>
<td>46, 73, 268-270</td>
</tr>
<tr>
<td>16</td>
<td>Reimbursement of travel costs</td>
<td>No</td>
<td>No</td>
<td>46, 73, 268-270</td>
</tr>
<tr>
<td>17</td>
<td>Payments for unfair dismissal</td>
<td>No</td>
<td>No</td>
<td>46, 75</td>
</tr>
<tr>
<td>18</td>
<td>Workers' compensation - Returned to work Not working</td>
<td>Yes</td>
<td>No</td>
<td>39, 46, 68, 271-273</td>
</tr>
<tr>
<td><strong>Leave payments</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>Annual leave</td>
<td>Yes</td>
<td>Yes</td>
<td>32, 67, 235-238</td>
</tr>
<tr>
<td><strong>Termination payments</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>Termination payments - In lieu of notice Unused annual leave</td>
<td>Yes</td>
<td>Yes</td>
<td>46, 74</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Yes</td>
<td>No</td>
<td>38</td>
</tr>
<tr>
<td></td>
<td></td>
<td>No</td>
<td>69</td>
<td></td>
</tr>
</tbody>
</table>

MOORE STEPHENS
2017-18 LOCAL GOVERNMENT OFFICERS TAX GUIDE
Section 4 | Page 3
## 1. Ordinary Time Earnings (OTE) (continued)

<table>
<thead>
<tr>
<th>Eg No</th>
<th>Payments to an employee in relation to...</th>
<th>Salary or wages?</th>
<th>OTE?</th>
<th>Paragraph references</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Bonuses</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>Performance bonus</td>
<td>Yes</td>
<td>Yes</td>
<td>28-29, 274-278</td>
</tr>
<tr>
<td>22</td>
<td>Bonus labelled as ex-gratia but in respect of ordinary hours of work</td>
<td>Yes</td>
<td>Yes</td>
<td>28-29, 274-278</td>
</tr>
<tr>
<td>23</td>
<td>Christmas bonus</td>
<td>Yes</td>
<td>Yes</td>
<td>28-29, 274-278</td>
</tr>
<tr>
<td>24</td>
<td>Bonus in respect of overtime only</td>
<td>Yes</td>
<td>No</td>
<td>28-29, 41-43, 274-278</td>
</tr>
</tbody>
</table>
2. Reportable Employer Superannuation Contributions

Subsection 16-182(1) of Schedule 1 to the TAA 1953 defines Reportable Employer Superannuation Contribution (RESC). Reportable employer super contributions are those contributions an employer makes for an employee where all of the following apply:

- the employee influenced the rate or amount of super contributed for them by their employer.
- the contributions are additional to the compulsory contributions the employer must make under any of the following:
  - super guarantee law.
  - an industrial instrument.
  - the trust deed or governing rules of a super fund.
  - a federal, state or territory law.

A reportable super contribution is not an assessable income. However, it will be added back into taxable income to calculate adjustable taxable income for the purpose of assessing eligibility for a variety of means-tested assistance programs including child care and family assistance benefits, HELP debt repayments, etc.

2.1 Contributions Made Under an Industrial Instrument

An 'industrial instrument' is defined in section 995-1 of the Income Tax Assessment Act 1997 ('ITAA 1997').

Industrial instrument means either:

- an Australian law.
- an award.
- an order.
- a determination.
- an industrial agreement in force under an Australian law.

The effect of the amendment is that where any employer is required to contribute an amount to a superannuation or retirement savings account by an industrial instrument or the rules of a superannuation fund, the employee is deemed to not have the capacity to influence the amount of the contribution. Such a contribution then falls outside the definition of reportable contribution in section 16-182(1) and is not counted as income for the purpose of means-tested assistance programs. Therefore, these matching contributions are not reportable on the payment summaries.

2.2 Contribution Made by Virtue of Council Policy

A number of Local Governments operate under an Award, which makes no mention of a matching contribution, and pay the additional superannuation contributions by virtue of a Policy.

Commonly, Local Governments seek to argue that the operation of a policy results in the employee not being able to influence the level of contributions. The burden of proof then remains with the employer. It would seem to us that the action of making a contribution may be considered as having the ability to influence the level of the overall contribution. Regardless, the above legislative changes do not reference contributions made under these arrangements and for these Local Governments the requirement to report the matching contributions made under a policy is unaffected by the change. It therefore remains open to interpretation by the ATO. In summary, the matching contribution is a reportable superannuation contribution.
2. Reportable Employer Superannuation Contributions (continued)

2.3 FAQS

Q. Is the after tax contribution reportable?
A. No, any extra super contribution made out of the after tax income is not reportable.

Q. Is the salary sacrifice amount a reportable contribution?
A. Yes, the salary sacrifice amount towards the superannuation would be reportable contribution and will be included on PAYG payment summary as RECS.

Q. Is any matching contribution paid under the Council’s Policy reported on PAYG payment summary as RECS?
A. Yes, the matching contribution is a reportable contribution.

If the local government seeks to argue that the operation of a Council policy results in the employee not being able to influence the level of contributions then the burden of proof remains with the employer. It would seem to us that the action of making a contribution may be considered as having the ability to influence the level of the overall contribution. Regardless, the above legislative changes do not reference contributions made under these arrangements and for these local governments, the requirement to report the matching contributions made under a Council Policy is unaffected by the change.

2.4 Super Guarantee and Elected Members

The superannuation guarantee scheme requires employers to provide a minimum level of superannuation support for each of their employees.

The term ‘employee’ for these purposes has its ordinary common law meaning but is extended by the Superannuation Guarantee (Administration) Act 1992 (SGAA) to expressly cover various other persons.

The SGAA specifically excludes a person who holds office as a member of a local government council from the definition of employee for these purposes. Therefore, the default position is an Elected Member not an employee of the local government and the local government is not required to make superannuation guarantee contributions on their behalf.

However, under the SGAA if the local government unanimously resolves, it is to be treated as an eligible local governing body an Elected Member will fall within the definition of employee for these purposes. As a consequence of any such resolution, a local government will be required to make superannuation guarantee contributions at the required percentage on behalf of the Elected Member. Where a local government is an eligible local governing body, it is deemed to have an employer / employee relationship with its elected council members and this attracts the application of a number of further statutory obligations.

2.5 Superannuation Contributions by Elected Members

An Elected Member can make personal contributions into their superannuation fund. A tax deduction for this contribution may be available. Previously, taxpayers could only claim a deduction if the contribution was less than 10% of the total of the Elected Member’s assessable income, reportable fringe benefits, and reportable employer super contributions for the income year is in respect of employment activities. However, this has now been abolished and taxpayers are no longer required to pass this test.

Additionally, an Elected Member can forego part of their remuneration in exchange for the local government making contributions to a complying superannuation fund. These contributions will not be assessable income for the Elected Member but will be assessable income in relation to the superannuation fund.
2. Reportable Employer Superannuation Contributions (continued)

This type of arrangement is commonly known as a fee sacrifice arrangement. For this sacrifice to be effective for tax purposes it must take the form of a written agreement that relates to future and prospective fees. If the agreement includes fees already earned prior to the date of the agreement it will be ineffective and the income will be assessable income for the Elected Member.

It is recommended the written agreement between the local government and the individual clearly states all of the terms under which the arrangement will take place. Critical terms are as follows:

- Percentage/amount to be sacrificed;
- Effective date;
- Name of superannuation fund; and
- Confirmation that local government is not an eligible local governing body.

2.5 Concessional Contributions

Superannuation guarantee payments, contributions made under a fee sacrifice arrangement and voluntary contributions for which the individual claims a tax deduction count towards the concessional contributions cap. The cap depends upon the age of the member and the current caps can be found in Appendix 2.

Any amount over the concessional contributions cap will be included in the individual’s assessable income and taxed at their marginal tax rate. They will also be liable for the excess concessional contributions charge. The individual will receive a 15% tax offset to account for the contributions tax that has already been paid by the superannuation fund. The individual can elect to have 85% of their excess concessional contributions released from superannuation to help pay the income tax assessment.

2.6 Non-Concessional Contributions

Voluntary contributions (which are not claimed as a tax deduction) and excess concessional contributions count towards the individual’s non-concessional cap. The consequences of breaching the cap will depend on the individual’s age.

If the individual is under 65 breaching the cap triggers the “bring forward rule” whereby the non-concessional cap becomes three times the limit over three years. Where this three-year cap is breached or, if the individual is 65 or over, the excess is subject to tax at 47 percent.

2.7 Contribution Caps

Concessional contributions cap

<table>
<thead>
<tr>
<th>Income year</th>
<th>General cap</th>
<th>Cap for those aged 50 years or over on 30 June 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016-17</td>
<td>$30,000</td>
<td>$35,000</td>
</tr>
<tr>
<td>2017-18</td>
<td>$25,000</td>
<td>$25,000</td>
</tr>
<tr>
<td>2018-19</td>
<td>$25,000</td>
<td>$25,000</td>
</tr>
</tbody>
</table>

Non-concessional contributions cap

The non-concessional contributions cap is $100,000 for the 2017-18 and 2018-19 year.