

FRINGE BENEFIT TAX

Employer gives various benefits to employees. The benefits which are individually given to employee can be identified with the particular employee and taxed in his hands. However, where benefits are given collectively and it is difficult to identify individual employee, these should be taxed at the hands of employer.

FBT (Fringe Benefit Tax) has been introduced with this idea in mind w.e.f. 1-4-2005 (AY 2006-07).

However, practically, some benefits which can be identified with individual employee are taxable under FBT. Similarly, some expenses incurred by employer which hardly benefit employees are also taxed under FBT.

1.1 Who is 'employer'?

Employer means a company; a firm; an association of persons or a body of individuals; a local authority; and every artificial juridical person, not falling within any of the above. However, "employer" does not include (a) a political party, or (b) a person who is eligible for exemption under section 10(23C) or registered under section 12AA of Income Tax Act [section 115W(a) of Income Tax Act]

Thus, **a proprietary firm or HUF is not liable to pay FBT.** Similarly, Central Government; a State Government and a political party is not 'employer' and not liable to pay FBT.

Fringe benefit tax will apply to foreign companies if it has employees based in India. Fringe benefit tax will apply to liaison offices of foreign companies in India if the liaison offices have employees based in India - CBDT Circular No. 8/2005 dated 29-8-2005.

1-2 When FBT is payable?

As per section 115WA(1), fringe benefit tax is applicable if — (a) Fringe benefits are provided or deemed to be provided (b) These are provided by an "employer" as defined in section 115W(a) and (c) These benefits are provided to his employees.

1-3 Quantum of FBT

FBT is in addition to income tax. FBT is payable by employer. FBT is calculated at the rate of **30 per cent** on the "value" of fringe benefits. Surcharge is as follows – (a) In case of AOP/BOI -10% of tax if fringe benefit is above Rs 10 lakhs (b) In case of firm, company or artificial judicial person – 10% of tax irrespective of amount of fringe benefit (c) In case of non-domestic company – 2.5% and (d) In case of local authority and cooperative society - Nil.

In addition education cess @ 2% and SAH education cess @ 1% is payable.

Thus, total FBT payable is as follows, for Assessment Year 2008-09 and 2009-10 –

Employer is AOP/BOI and fringe benefit is upto Rs 10,00,000 30.9%	
Employer is AOP/BOI and fringe benefit exceeds Rs 10,00,000 33.99%	
Employer is cooperative society or local authority 30.9%	
Employer is non-domestic company 31.6725%	

Return of FBT – Return has to be filed by 30th September.

2 Meaning of Fringe Benefit

Fringe Benefits are defined in two parts - (a) Fringe Benefits as defined in section 115WB(1) (b) Deemed Fringe Benefits as defined in section 115WB(2).

Valuation of each fringe benefit is to be done as per provisions of section 115WC.

Perquisites taxable at hands of employees - Perquisites in respect of which tax is paid or payable by the employee are not taxable as perquisites under FBT.

Transport to employees to and from home - Free or subsidised transport or allowance provided by the employer to his employees for journeys by the employees from their residence to the place of work or such place of work to the place of residence will also not be taxable under FBT.

2-1 Defined fringe benefits

“Fringe benefits”, as defined in section **115WB(1)**, means any consideration for employment provided by way of the following -

Privilege or facility to employees - It covers any privilege, service, facility or amenity, directly or indirectly, provided by an employer, whether by way of reimbursement or otherwise, to his employees (including former employees). If any

amount is recovered from employee, it will be deducted.

Free or concessional ticket for travel - It covers any free or concessional ticket provided by the employer for private journeys of his employees or their family members. It includes free or concessional tickets given by a transport undertaking to its employees and family members. It is not applicable if such tickets are given by an employer who is not engaged in the business of transport undertaking. Leave travel assistance or leave travel concession given by an employer to his employees is not covered by section 115WB(1)(b). In respect of transport facility provided by a transport undertaking to its employees, the value of fringe benefit shall be calculated at "cost" of which the same benefit is provided by the employer to the public as reduced by the amount, if any, paid by, or recovered from his employees. The cost at which the ticket is provided by the employer to the general public shall be the price of the ticket which an ordinary passenger is expected to pay on the date of purchase of the ticket for the date, time and the class of travel. Similarly, in a case where an open ticket is issued a number of days in advance but the reservation is generally confirmed a few hours before departure, the value of the free or concessional ticket shall be the cost of the ticket which an ordinary passenger seeking reservation a few hours before departure is liable to pay as reduced by the amount, if any, paid by or recovered from the employees - CBDT Circular No. 8/2005 dated 29-8-2005.

Contribution to superannuation fund - It covers contribution by the employer to an approved superannuation fund for employees. It may be noted that Employers' contribution to an approved superannuation fund is subject to fringe benefit tax. However, employers' contribution to gratuity fund/provident fund is not subject to fringe benefit tax. **Value of fringe benefit will be 100% of amount in excess of Rs 1,00,000** for each employee. Thus, **contribution upto Rs 1,00,000 per employee will not be considered as fringe benefit**. Upto 1,00,000 is considered as salary income of the employee.

Security or sweat equity to employee(ESOP) - It covers any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer free of cost or concessional rate to his employee and former employees. **Value of fringe benefit will be 100% of fair market value of security or sweat equity on the date on which the option vests with the employee, less amount paid by employee.** Specified security includes employee's stock option. Tax will be on securities allotted under the option and not on option itself.

2-2 Deemed Fringe Benefits

Following benefits shall be deemed to have been provided by the employer to his employees if the employer has in the course of his business and profession incurred these expenses [section 115WB(2) of Income Tax Act]

Entertainment - 20% of expenditure will be considered as value of 'fringe benefit'. It includes the reimbursement of entertainment expenditure by an employer to employees/directors/others and also expenditure on meeting/ get-togethers of employees and their family members on non-festival occasions including annual day.

Provision of hospitality - 20% of expenditure will be considered as value of 'fringe benefit'. In case of **hotels** and **carriage of passenger or goods by air/cargo**, value of

fringe benefits will be only **5%**.

It covers provision of hospitality of every kind by the employer to any person, whether by way of provision of food or beverages or in any other manner whatsoever. It includes expenditure on food/meals incurred by employees and later on reimbursed by employer and expenditure on food and beverages provided by employer at a training centre taken on hire by employer. However, it does not include any expenditure on, or payment for, food or beverages provided by the employer to his employees in office or factory and any expenditure on or payment through paid vouchers which are not transferable and usable only at eating joints or outlets.

From Assessment Year 2009-10, it will not include pre-paid electronic meal cards issued to employees.

Conferences - **20%** of expenditure will be considered as value of 'fringe benefit'. In case of construction, pharma and software industries, value of fringe benefit will be 5%.

It covers any expenditure on conveyance, tour and travel, on hotel, or boarding and lodging in connection with any conference shall be deemed to be expenditure incurred for the purposes of conference. It includes expenditure on attending training programmes organized by trade bodies and on conferences for agents/dealers/development advisor. However, it does not include the fixed conference allowance to employees/directors, fees for participation by employees in any conference (excluding travelling, boarding and lodging expenses) and expenditure on in house training of employees (excluding travelling, boarding and lodging expenses).

Sale promotion - **20%** of expenditure will be considered as value of 'fringe benefit'. It covers sales promotion including publicity. It includes payment for use of brand/brand ambassador/celebrity endorsement but not payment to a person of repute for promoting sales. It expenditure on free offers (with products) such as freebies like tattoos, cricket cards or similar products, to trade or consumers, but does not include expenditure on free samples of products distributed to any person. Expenditure on product marketing research carried on through its own employees is includible.

It does not include the following - (a) Expenditure (including rental) on advertisement of any form in any print (including journals, catalogues or price lists) or electronic media or transport system (b) Expenditure on the holding of, or the participation in, any press conference or business convention, fair or exhibition (c) Expenditure on sponsorship of any sports event or any other event organized by any Government agency or trade association or body (d) Expenditure on the publication in any print or electronic media of any notice required to be published by or under any law or by an order of a court or tribunal (e) Expenditure on advertisement by way of signs, art work, painting, banners, awnings, direct mail, electric spectaculars, kiosks, hoardings, bill boards or display of products or by way of such other medium of advertisement (f) Expenditure by way of payment to any advertising agency for the above purposes (g) Brokerage and selling commission paid for selling goods (h) Expenditure relating to salesmen appointed by distributors for companies' products reimbursed through credit notes (i) Sale discount to wholesalers/customers or bonus points to customers (j) Expenditure on incentives given

to distributors for meeting quantity targets (k) Expenditure on product marketing research paid to an outside agency (l) Expenditure in the nature of call centre charges for canvassing sales (cold calls) or carrying out post sales activities (m) Expenditure on making ad-film.

Employees' welfare - 20% of expenditure will be considered as value of 'fringe benefit'. Employees' welfare. It includes the following - (a) Payment for group personal accident/workman compensation insurance not under a statutory obligation (b) Medical expenditure reimbursement **up to Rs. 15,000** (c) Expenditure on garden, site cleaning, light decoration etc. in employees colony (d) Expenditure on group health insurance not under a statutory obligation (e) Expenditure at a hospital/dispensary for injuries incurred during course of employment (hospital not run by employer) not under a statutory obligation (f) Subsidy provided to a school not meant exclusively for employees' children (g) Reimbursement of expenditure on books/periodicals to employees (h) Expenditure incurred on prizes/awards to employees (i) Expenditure on providing transport facility to employees' children (j) Expenditure on meeting/ get-togethers of employees and their family members on non-festival occasions including annual day.

This does not cover any expenditure incurred or payment made to fulfil any statutory obligation or mitigate occupational hazards or provide first aid facilities in the hospital or dispensary run by the employer. It also does not include medical facilities, reimbursement of medical expenses etc. which are not considered as perquisites of an employee.

From Assessment Year 2009-10, Employees' welfare will not cover (a) crèche facility for children of employees (b) Sponsorship of a sportsman who is employee and (c) Organise sports events for employees.

Conveyance - 20% is treated as Fringe Benefit. It includes (a) Reimbursement of car expenses including driver salary to employees on the basis of declaration or on the basis of bills submitted by employees (b) Travelling expenditure/conveyance expenditure/tour or travel expenditure incurred in respect of a project assigned by a client which is later on reimbursed by the client (c) allowances for meeting lodging and boarding given to employees.

It **does not** include Reimbursement of **travelling** expenditure/conveyance expenditure/tour or travel expenditure to a consultant in respect of a project assigned to him, **fixed conveyance allowance**/travelling allowance/transport allowance given to employees/director and expenditure for providing leave travel concession (LTC) to employees.

Hotel and lodging - 20% of expenditure will be considered as value of 'fringe benefit'. In case of carriage of passenger/goods by air/ship, pharma and software industries, value of fringe benefit will be **5%**.

It covers use of hotel, boarding and lodging facilities. It includes any expenditure on use of hotel, boarding and lodging facilities. It also includes reimbursement of hotel bills to employees/directors. However, it does not include fixed hotel allowance to employees/directors

Repairs and maintenance of motor cars - 20% of expenditure will be considered as value of 'fringe benefit'. In case of carriage of passenger/goods by car business, value of fringe benefit will be 5%.

It covers repair, running (including fuel), maintenance of motorcars and the amount of depreciation thereon. It includes expenditure on repair of motor car, expenditure on running of motor car including fuel, maintenance expenditure of motor car, depreciation of motor car (as per Income-tax Act), lease rent of motor car, salary paid to drivers of motor cars, rent of garage for motor cars and interest on loan taken to purchase motor cars. However, it does not include any expenditure on running, maintenance of delivery vans, display vans, lorries, ambulances, tractors, buses, trucks, tempos, etc.

Repairs and maintenance of aircrafts - It covers repair, running (including fuel) and maintenance of aircrafts and the amount of depreciation thereon. It includes all expenses as applicable to repair and maintenance of motor cars. 20% of expenditure will be considered as value of 'fringe benefit'. In case of carriage of passenger/goods by air business, value of fringe benefit will be Nil.

Telephones - It covers use of telephone (including mobile phone) other than expenditure on leased telephone lines. 20% of expenditure will be considered as value of 'fringe benefit'.

Guest house accommodation - It covers maintenance of any accommodation in the nature of guest house (other than accommodation used for training purposes). 20% of expenditure will be considered as value of 'fringe benefit'. This has been excluded from fringe benefit from Assessment Year 2009-10.

Festival celebrations - It includes any festival celebration expenditure but does not include expenditure on celebration on Independence Day and Republic Day. 50% of expenditure will be considered as value of 'fringe benefit' for AY 2008-09 and 20% for AY 2009-10.

Use of health club and similar facilities - It includes reimbursement of health club expenditure to employees/directors and payment of entrance fees. It does not include depreciation on club building and fixed club allowance to employees/directors. 50% of expenditure will be considered as value of 'fringe benefit'.

Use of any other club facilities - It includes payment for entrance fees to a club and reimbursement of club expenditure to employees. 50% of expenditure will be considered as value of 'fringe benefit'.

Gifts - Gift may be in cash or kind. Even gifts on promotion of company's products to distributors/ retailers are covered under fringe benefit. 50% of expenditure will be considered as value of 'fringe benefit'.

Scholarships - It includes expenditure on training of employees in an educational institute. 50% of expenditure will be considered as value of 'fringe benefit'.

Tour, travel, foreign travel - 5% of expenditure will be considered as value of 'fringe benefit'.

3 Other provisions

Advertisement not as deemed benefit - The following expenditure on advertisement shall not be taken as "deemed fringe benefit" * the expenditure (including rental) on advertisement of any form in any print (including journals, catalogues or price lists) or electronic media or transport system * the expenditure on the holding of, or the participation in, any press conference or business convention, fair or exhibition * the

expenditure on sponsorship of any sport event or any other event organized by any Government agency or trade association or body * the expenditure on the publication in any print or electronic media of any notice required to be published by or under any law or by an order of a court or tribunal * the expenditure on advertisement by way of signs, art work, painting, banners, awnings, direct mail, electric spectacles, kiosks, hoardings, bill boards or by way of such other medium of advertisement * the expenditure by way of payment to any advertising agency for the purposes of above * the expenditure on distribution of free samples of medicines or of medical equipment, to doctors * the expenditure by way of payment to any person of repute for promoting the sale of goods or services of the business of the employer.

No segregation of capital/revenue/preoperative expenses - All specified expenses are covered under fringe benefit, whether capital or revenue nature - CBDT Circular No. 8/2005 dated 29-8-2005.

Fringe benefit is not allowable as expense under income tax but can be shown as expense in P&L account - For the purposes of computation of total income under the Income-tax Act, fringe benefit tax is not an allowable deduction by virtue of section 40(a)(ic). However, the accounting treatment of fringe benefit tax for the purposes of reporting to shareholders and complying with the obligations under the Companies Act will be governed by the Accounting Standards issued by the Institute of Chartered Accountants of India - CBDT Circular No. 8/2005 dated 29-8-2005.

FBT is deductible for computing book profit - The fringe benefit tax is an allowable deduction in the computation of 'book profit' under section 115JB - CBDT Circular No. 8/2005 dated 29-8-2005.

3-1 Advance payment of fringe benefit tax

Every employer shall pay advance tax on his current fringe benefits. The advance tax shall be payable on basis similar to one under which advance income tax is payable. The only difference is that advance FBT is payable even if tax is less than Rs 5,000.

Interest - For non-payment/short payment of advance fringe benefit tax, interest will have to be paid. The mode of computation of interest as provided in section 115WJ(3)/(4)/(5) is similar to the provisions regulating interest for non-payment or short payment of advance income-tax given in sections 234B and 234C.

4 Fringe Benefit Tax on ESOPs

The Finance Act, 2007 has introduced FBT on ESOPs (Employees Stock Option Plan) w.e.f. Assessment Year 2008-09. The salient features of these provisions are:

(i) FBT shall apply in all cases where any specified security or sweat equity shares has been allotted or transferred by the employer to his employees;

(ii) FBT shall be payable in the previous year in which such allotment or transfer has taken place;

(iii) the provisions of this new clause shall apply irrespective of the

allotment or transfer being direct or indirect;

(iv) the provisions of this new clause shall apply irrespective of the allotment or transfer being free of cost or at concessional rate;

(v) the provisions of this new clause shall apply irrespective of the allotment or transfer being to current or former employee or employees;

(vi) the provisions of this new clause shall apply in cases where the allotment or transfer is on or after 1st day of April, 2007.

(vii) the value of fringe benefit in such cases shall be determined in accordance with the formula

A-B

Where, A = the Fair Market Value (FMV) of the specified security or sweat equity shares on the date of vesting of the option; and

B = the amount, if any, actually paid by, or recovered from the employee;

FBT is payable only if A exceeds B. No FBT is payable where B exceeds A.

The expressions specified security and sweat equity shares have also been defined. The value of fringe benefit is subjected to FBT at the prevailing rate, which is currently 30% plus surcharge plus education cess.

The expression fair market value has been defined to mean the value determined in accordance with the method as may be prescribed by the Board. Option has been defined to mean a right but not an obligation granted to an employee to apply for the specified security or sweat equity shares at a predetermined price.

The Central Board of Direct Taxes (CBDT) vide notification S.O. No. 1805(E) dated 23rd October, 2007 has inserted Rule 40C in the income-tax Rules; which has prescribed the method for determination of fair market value of specified security or sweat equity share, being a share in the company. Salient features of this rule are:

(i) In a case where, on the date of the vesting of the option, the share in the company is listed on a recognized stock exchange, the fair market value

shall be the average of the opening price and closing price of the share on that date on the said stock exchange;

(ii) If on the date of vesting of the option, the share is listed on more than one recognized stock exchanges, the fair market value shall be the average of opening price and closing price of the share on the recognised stock exchange which records the highest volume of trading in the share;

(iii) If on the date of vesting of the option, there is no trading in the share on any recognized stock exchange, the fair market value shall be,-

(a) the closing price of the share on any recognised stock exchange on a date closest to the date of vesting of the option and immediately preceding such date; or

(b) the closing price of the share on a recognised stock exchange, which records the highest volume of trading in such share, if the closing price, as on the date closest to the date of vesting of the option and immediately preceding such date, is recorded on more than one recognized stock exchange.

(iv) In a case where, on the date of vesting of the option, the share in the company is not listed on a recognized stock exchange, the fair market value shall be such value of the share in the company, as determined by a Category 1 Merchant Banker registered with the Security and Exchange Board of India, on the specified date.

(v) The specified date has been defined as to mean,-

(i) the date of vesting of the option; or

(ii) any date earlier than the date of the vesting of the option, not being a date which is more than 180 days earlier than the date of the vesting

Further, the Central Board of Direct Taxes has inserted a new rule 40D in the Income-tax Rules, vide notification S.O. No. 113(E), dated 18-01-2008, prescribing the method for determination of fair market value of specified security, not being an equity share in the company. Through the same notification, rule 40C has been amended to omit the definition of equity share.

A new section 115WKA has also been inserted enabling the employer to recover the fringe benefit tax from the employee in respect of specified security or sweat equity shares, if such security or shares are transferred or allotted to the employee on or after 1st April, 2007. It has been prescribed that the employer can vary the agreement or scheme under which such specified security or sweat

equity shares has been allotted or transferred. The agreement or scheme can be varied with a purpose to recover from the employee the fringe benefit tax to the extent to which such employer is liable to pay the fringe benefit tax in relation to the allotment or transfer of such specified security or sweat equity shares to such employee.