

CIRCULAR NO.8/2005



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THE FINANCE ACT, 2005

EXPLANATORY NOTES ON THE
PROVISIONS RELATING TO
FRINGE BENEFIT TAX

CIRCULAR NO.8/2005

**F.No.142/21/2005-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes**

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Subject: The Finance Act, 2005-Explanatory Notes on the provisions relating to Fringe Benefit Tax.

The Finance Act, 2005 has introduced a new levy, namely, Fringe Benefit Tax (hereafter referred to as FBT) on the value of certain fringe benefits. The provisions relating to levy of this tax are contained in Chapter XII-H (sections 115W to 115WL) of the Income-tax Act, 1961. This circular seeks to provide a harmonious, purposive and contextual interpretation of the provisions of the Finance Act, 2005 relating to the FBT so as to further the objective of this levy.

2 Objective

2.1 The taxation of perquisites or fringe benefits is justified both on grounds of equity and economic efficiency. When fringe benefits are under-taxed, it violates both horizontal and vertical equity. A taxpayer receiving his entire income in cash bears a higher tax burden in comparison to another taxpayer who receives his income partly in cash and partly in kind, thereby violating horizontal equity. Further, fringe benefits are generally provided to senior executives in the organization. Therefore, under-taxation of fringe benefits also violates vertical equity. It also discriminates between companies which can provide fringe benefits and those which cannot thereby adversely affecting market structure. However, the taxation of fringe benefits raises some problems primarily because -

- (a) all benefits cannot be individually attributed to employees, particularly in cases where the benefit is collectively enjoyed;
- (b) of the present widespread practice of providing perquisites, wherein many perquisites are disguised as reimbursements or other miscellaneous expenses so as to enable the employees to escape/reduce their tax liability; and

(c) of the difficulty in the valuation of the benefits.

2.2 In India, prior to assessment year 1998-99, some perquisites/fringe benefits were included in salary in terms of section 17 and accordingly taxed under section 15 of the Income-tax Act in the hands of the employee and a large number of fringe benefits were taxed by the employer-based disallowance method where the quantum of the disallowance was estimated on a presumptive basis. In practice, taxation of fringe benefits by the employer-based disallowance method resulted in large-scale litigation on account of ambiguity in defining the tax base. Therefore, the taxation of fringe benefits by the employer-based disallowance method was withdrawn by the Finance Act 1997. However, the withdrawal of the provisions relating to taxation of fringe benefits by the employer-based disallowance method resulted in significant erosion of the tax base. The Finance Act, 2005 has introduced a new levy, namely, the FBT as a surrogate tax on employer, with the objective of resolving the problems enumerated in para 2.1 above, expanding the tax base and maintaining equity between employers.

3. Tax base (What is liable to FBT?)

3.1 The tax base for the purposes of FBT is the **value of fringe benefits provided or deemed to have been provided** by an employer to his employees during the previous year. The determination of the tax base comprises three elements:

- (a) the scope of the term 'fringe benefits provided';
- (b) the scope of the term 'fringe benefits deemed to have been provided'; and
- (c) the basis of valuation of (a) and (b)

It is based on a presumptive method applied to certain heads of expenditure as a measure/indicator of fringe benefits.

3.2 The **scope** of the term '**fringe benefits provided**' is defined in sub-section (1) of section 115WB to mean *any consideration for employment* provided by way of –

- (a) 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 employee or employees);
- (b) any free or concessional ticket provided by the employer for private journeys of his employees or their family members; and
- (c) any contribution by the employer to an approved superannuation fund for employees.

3.3 As pointed out in para 2.1, many perquisites are disguised as reimbursements or other miscellaneous expenses so as to enable employees to escape/reduce tax on their real income. There are two alternate methods to identify such disguised payments to employees: the presumptive method and the discretionary method. Under the presumptive method, the FBT base can be estimated on a presumptive basis by using certain indicators like sales, number of employees, number of cars, number of houses, certain items of expenses, etc. Such a method has the virtue of simplicity, minimum disputes, low compliance cost, and less administrative burden. Accordingly, the **scope** of the term '**fringe benefits deemed to have been provided**' is defined in sub-section (2) of section 115WB so as to provide that fringe benefits shall be deemed to have been provided by the employer if he has incurred any expense on, or made payment for, the purposes summarized below:-

- (A) entertainment;
- (B) provision of hospitality of every kind to any person, whether by way of food or beverages or in any other manner **excluding** food or beverages provided to the employees in the office or factory or non transferable paid vouchers usable only at eating joints or outlets;
- (C) conference **excluding** fee for participation by the employees in any conference;
- (D) sales promotion including publicity but **excluding** specified expenditure on advertisement;
- (E) employee welfare **excluding** any expenditure or payment made to fulfill any statutory obligations or mitigate occupational hazards or provide first aid facilities in the hospital or dispensary run by the employer;
- (F) conveyance tour and travel (including foreign travel);
- (G) use of hotel, boarding and lodging facilities;
- (H) repair, running (including fuel) and maintenance of motorcars and the amount of depreciation thereon;
- (I) repair, running (including fuel) and maintenance of aircrafts and the amount of depreciation thereon;
- (J) use of telephone (including mobile phone) other than expenditure on leased telephone lines;
- (K) maintenance of any accommodation in the nature of guest house other than accommodation used for training purposes;
- (L) festival celebrations;
- (M) use of health club and similar facilities;
- (N) use of any other club facilities;

- (O) gifts; and
- (P) scholarships.

3.4 The method of computation of the **value of 'fringe benefits provided or deemed to have been provided'** for purposes of levy of the FBT is provided for in sub-section (1) of section 115 WC. In terms of the said provision, the value of the fringe benefits provided or deemed to have been provided shall be the *aggregate* of:-

- (a) cost of free or concessional ticket for private journeys of the employees or their family members as provided by the employer to the general public as reduced by the amount, if any, paid by, or recovered from, his employee or employees;
- (b) the actual amount of contribution made by the employer to an approved superannuation fund for the employees; and
- (c) a specified percentage of each of the expenses enumerated as items (A) to (P) in the earlier paragraph. In case of the items (A) to (K), the specified percentage is 20% and for items (L) to (P) it is 50% of the expenses referred to therein, subject to the following exceptions,-
 - (i) Where the employer is engaged in the business of hotel, a lower rate of 5% of the expenses incurred on hospitality have been specified for purposes of calculating the liability under the FBT.
 - (ii) Where the employer is engaged in the construction business, 5% of the expenses in the nature of conveyance, tour and travel (including foreign travel) have been specified;
 - (iii) In the case of an employer engaged in the manufacture or production of pharmaceuticals or computer software, the value of fringe benefit under the heads conveyance, tour and travel (including foreign travel) and use of hotel, boarding and lodging facilities is restricted to 5% of such expenses;
 - (iv) Where the employer is engaged in the carriage of passengers or goods by motor car, a lower rate of 5% of expenses on repair, running (including fuel) and maintenance of motor cars and depreciation thereon has been specified.
 - (v) In the case of an employer engaged in the carriage of passengers or goods by aircraft, the value of fringe benefits under the head expenses on repair, running (including fuel) and maintenance of aircrafts and depreciation shall be 'Nil'.

3.5 Further, sub-section (3) of section 115WB provides that the privilege, service, facility or amenity referred to in sub-section (1) of the said section does not include perquisites in respect of which tax is paid or payable by the employee.

4. Taxable Entities (Who is liable to pay the tax?)

4.1 The FBT is payable by an employer who is,-

- (i) a company;
- (ii) a firm;
- (iii) an association of persons or a body of individuals, excluding any fund, trust or institution eligible for exemption under clause(23C) of section 10 or registered under section 12AA;
- (iv) a local authority; or
- (v) an artificial juridical person.

4.2 The tax on fringe benefits is payable by the employer even if he is not liable to pay income tax on his total income computed in accordance with the provisions of the Income tax Act other than the provisions of Chapter-XIIH.

5. Tax Rate

FBT shall be payable at the rate of 30% of the value of fringe benefits computed in the manner provided in section 115 WC.

6. Payment of FBT.

6.1 The FBT is to be paid in advance during any financial year in respect of the current fringe benefits which would be chargeable to tax in the assessment year following that financial year. The employer is required to pay advance tax at the rate of 30% of the current fringe benefits paid or payable in each quarter. The advance tax is to be paid on or before the 15th of the month following that quarter. However, in the case of the last quarter ending on the 31st of March of the financial year, the advance tax shall be payable on or before the 15th day of March of that year. The advance tax for the first three quarters is to be paid on the basis of actual expenditure incurred in each quarter. However, the last installment of the advance tax may be paid on an estimate basis, as the same has to be paid before the closure of the financial year.

6.2 Failure to pay advance tax for any quarter, or payment less than 30% of the value of fringe benefits in that quarter, will attract interest at the rate of 1% on the shortfall, for each month or part of the month for which such shortfall continues.

7. Return of Fringe Benefits

7.1 An employer who has paid or made provision for payment of fringe benefits to his employees during the previous year is required to furnish a return of fringe benefits in the prescribed form and manner to the Assessing Officer before the due date. In the case of a company or an employer other than a company whose accounts are required to be audited, the due date is the 31st of October of the assessment year. In the case of any other employer, the due date for filing the return of fringe benefits is the 31st of July of the assessment year. After the due date, the Assessing officer may issue a notice to the assessee requiring him to furnish a return in the prescribed form and manner within a period of thirty days.

7.2 Failure to furnish a return of fringe benefits or delayed filing of such return will result in the levy of interest at the rate of 1% for each month of delay or till the assessment is made, on the amount of tax on the value of fringe benefits.

8. Assessment

8.1 The Assessing Officer is required to make an assessment of the return of fringe benefits furnished by the employer under section 115 WE and determine the tax or interest payable by him or refund due to him. The procedure for assessment under this section is similar to the corresponding provisions for assessment of a return of income under section 143 of the Act.

8.2 Where the employer fails to furnish a return of fringe benefits or fails to comply with the terms of a notice issued under section 115WE(2), the Assessing Officer is required to make the assessment to the best of his judgement, after giving the assessee a reasonable opportunity of being heard. The provisions of section 115WF correspond to the provisions of section 144 in relation to assessment of a return of income.

8.3 Where the Assessing Officer has reason to believe that any fringe benefits chargeable to tax have escaped assessment for any assessment year, section 115WG provides for the reassessment of

such fringe benefits which have escaped assessment. This provision corresponds to section 147 of the Act in relation to Income escaping assessment.

8.4 Section 115WH requires the Assessing Officer to serve a notice on the assessee before making an assessment or reassessment under section 115WG requiring the assessee to file a return in the prescribed form and manner. The notice can be issued after the Assessing Officer records his reasons in writing for doing so. However, no notice can be issued for an assessment year beyond 6 years from the relevant assessment year. Further, in a case where the assessment has been completed under sub-section (3) of section 115WE or section 115WG for the relevant assessment year, the Assessing Officer cannot issue a notice for reopening the assessment after the expiry of 4 years, without the approval of the Chief Commissioner or the Commissioner.

9. Application of other provisions of the Act.

9.1 All other provisions of the Act relating to income-tax authorities, appeal, collection and recovery of taxes, penalties, prosecution, etc, shall apply to fringe benefits also, unless otherwise provided in Chapter XII-H.

10. Treatment of FBT

10.1 The FBT shall not be allowed as a deduction in computing the income chargeable under the head 'profits and gains of business or profession'.

11. Frequently asked questions

11.1 A number of issues were raised by the trade and industry at different fora after the presentation of the Finance Bill, 2005 and also after its enactment. The questions and answers in the following section seek to clarify these issues.

1. What are the prerequisites for the levy of FBT?

Ans. FBT is payable by a person if he satisfies the following conditions:-

- (i) He is an employer;
- (ii) He has employees based in India;

- (iii) He is a company or a firm or an association of persons or a body of individuals or a local authority or an artificial juridical person;
- (iv) His income is not exempt under section 10(23C) of the Income-tax Act or he is not registered under section 12AA;
- (v) He has provided the following fringe benefits:-
 - (a) contributes to an approved superannuation fund for employees;
 - (b) provides free or concessional tickets for private journeys of employees or their family members;
- (vi) He has, during the course of his business or profession (including any activity whether or not such activity is carried on with the object of deriving income, profits or gains) incurred any expense on, or made any payment for, the purposes referred to in clauses (A) to (P) of sub-section (2) of section 115WB of the Income-tax Act. These purposes are enumerated in para 3.3 of this circular.

2. Whether employer-employee relationship is a pre-requisite for the levy of FBT?

Ans. Yes.

3. Whether FBT is payable by an entity having no employee? For example, will law firms having retainer-relationship arrangements and no employees be liable to pay FBT?

Ans. An entity, which does not have any employee on its rolls, will not be liable to FBT. Therefore, law firms having retainer-relationship arrangements and no employees will not be liable to FBT.

4. Whether FBT is leviable on a company (registered under section 25 of Companies Act) even if it is registered u/s 12AA or its income is exempt u/s 10(23C)?

Ans. FBT is not payable by a trust, fund or institution if its income is exempt under section 10(23C) or it is registered under section 12AA of the Income-tax Act. Therefore, a company registered under section 25 of the Companies Act will also not be liable to FBT if its income is exempt under section 10(23C) or such company is registered under section 12AA of the Income Tax Act.

5. FBT is a presumptive tax. Is the presumption rebuttable?

Ans. FBT is payable by an entity if it is an employer. There is no presumption in law regarding an entity being an employer. Therefore, whether an entity is an employer or not **is rebuttable**.

The value of fringe benefit is determined by a presumptive method by applying the proportions specified in section 115WC to the fringe benefits provided and deemed to have been provided by the employer and enunciated in section 115WB. The presumption implicit in the proportions specified in section 115WC **is not rebuttable**. However, the amount of expense incurred or payment made, for the purposes listed in clauses (b) and (c) of sub-section (1) and clauses (A) to (P) of sub-section (2), of section 115WB, is to be determined according to the books of account.

6. What happens if the value of fringe benefits is more than determined on presumptive basis? Will the assessee not be obliged to pay tax on the actual expenditure on fringe benefits?

Ans. The tax base relating to FBT is calculated on a presumptive basis as a proportion of the expenses incurred for the purposes referred to in sub-section (2) of section 115WB. Whether the actual expenditure on fringe benefits is more or less than the value of the fringe benefits calculated on the presumptive basis is of no consequence/relevance.

7. Whether the deeming provisions of sub -section (2) of section 115WB quantify the fringe benefits referred to in clause (a) of sub -section (1) of section 115WB? If not, how are the benefits referred to in the said clause to be valued?

Ans. In terms of the provisions of sub-section (1) of section 115WA, an employer in India is liable to FBT in respect of the **value of fringe benefits**—

- (a) **provided** by him to his employees; **and**
- (b) **deemed to have been provided** by him to his employees.

The scope of fringe benefits provided or deemed to have been provided is defined in section 115WB. Sub-section (1) of the said section defines the scope of fringe benefits **provided** by the employer to his employees. Similarly, sub-section (2) of the said section defines the scope of fringe benefits **deemed to have been provided** by the employer to his employees. Therefore, sub-section (2) expands the scope of sub-section (1) through a deeming provision.

The provision relating to the computation of the value of the fringe benefits is contained in section 115WC. It is a settled principle of law that where the computation provision fails, the charging section cannot be effectuated. Therefore, if there is no provision for computing the value of any particular fringe benefit, such fringe benefit, even if it may fall within clause (a) of sub-section (1) of section 115WB, is not liable to FBT.

8. Whether the value of any benefit provided by the employer to its employees by way of allotment of shares, debentures, or warrants directly or indirectly under any Employees Stock Option Plan or Scheme of the company, is liable to FBT?

Ans. The value of any benefit provided by the employer to its employees by way of allotment of shares, debentures, or warrants directly or indirectly under any Employees Stock Option Plan or Scheme of the company is a fringe benefit within the meaning of clause (a) of section (1) of section 115WB. However, in the absence of a computation provision in respect of such benefits, the charging section fails. Therefore, the value of such benefits is not liable to FBT.

9. Whether reimbursement of expenditure to an employee purely of a business nature is liable to FBT? (For example, payment of sales tax or stamp duty paid on behalf of the employer and reimbursed later to him).

Ans. Reimbursement of expenditure to an employee is a fringe benefit provided to an employee within the meaning of the clause (a) of sub-section (1) of section 115WB. However, the FBT is payable only in respect of such reimbursements which are for the purposes listed in clauses (A) to (P) of sub-section (2) of section 115WB and for which the computation is provided in section 115WC. If computation is not provided in

respect of any fringe benefit provided or deemed to have been provided, such benefit is not liable to FBT.

10. Does section 115WB create two classes of fringe benefits under sub-section (1) and (2) i.e., fringe benefits and deemed fringe benefits?

Ans. Section 115WB defines 'fringe benefits'. Sub-section (1) refers to the specific fringe benefits provided by the employer to employees, whereas sub-section (2) provides that fringe benefits shall be deemed to have been provided by the employer to his employees if the employer incurs any expense on or makes any payment for the purposes enumerated in clauses (A) to (P).

11. What is the meaning of the word 'purposes' in the term 'for the following purposes' referred to in sub-section (2) of section 115WB?

Ans. The word 'purposes' in the term 'for the following purposes' referred to in sub-section (2) of section 115WB refers to the proximate purpose and not the distant purpose. For example, if expenditure is incurred on travel for discussing an advertisement plan for a product, such expenditure shall be construed to have been incurred for the proximate purpose of traveling and not the ultimate purpose of advertisement and accordingly liable to FBT.

12. If a company incurs expenditure on travelling, hotel etc. wholly and exclusively for executing an assignment for its client and the client reimburses the company for such 'out of pocket' expenses, whether the company would be liable for FBT in respect of such 'out of pocket' expenses?

Ans. Since the expenditure on travelling, hotel etc is incurred by the company and not by the client, the company is liable to FBT in respect of such expenditure. However, the client will not be liable to FBT in respect of payment for such expenditure.

13. Whether expenditure incurred by a professional like a lawyer or auditor on conveyance, tour and travel, and reimbursed by the client, is liable to FBT in the hands of the client?

Ans. The reimbursement of expenditure incurred for the purposes of conveyance, tour and travel is essentially a component of professional fee paid by the client to the lawyer or auditor. Accordingly, such expenditure is not liable to FBT in the hands of the client.

14. Do the words 'any expense' in sub-section (2) of section 115WB refer to all expenses or restricted to those incurred on the employees and their families?

Ans. Under sub-section (2) of section 115WB, fringe benefits shall be deemed to have been provided by the employer to his employees, if the conditions specified therein are satisfied. Hence, if the employer has incurred any expense for any one of the purposes enumerated in clauses (A) to (P) of sub-section (2) of section 115WB, the whole of that expense falling under the relevant head shall be deemed to have been provided. No segregation as 'expenses incurred on employees' or 'expenses incurred on others' is permissible.

15. Whether the expenses need to be segregated into those incurred for official purposes and those for personal purposes?

Ans. Fringe benefit is deemed to have been provided if the employer has incurred expenses for any of the purposes referred to in sub-section (2) of section 115WB. A proportion (20% or 50% or 5% as the case may be) of the whole of the expenses falling under the relevant head in sub-section (2) of section 115WB will be taken as the taxable value of the fringe benefits. There is no requirement to segregate the various expenses referred to in section 115WB, between those incurred for official purposes and personal purposes.

16. Whether pre-operative expenses falling within the categories specified in section 115WB (2) would be covered in the scope of fringe benefits?

Ans. Any expenditure incurred for the purposes referred to in clauses (A) to (P) of sub-section (2) of section 115WB is liable to FBT irrespective of whether such expenditure is incurred prior to commencement of the business or thereafter.

17. Whether FBT needs to be shown 'above the line' or 'below the line' in the profit and loss account?

Ans. For the purposes of computation of total income under the Income tax Act, FBT is not an allowable deduction under sub -clause (ic) of clause (a) of section 40 of the Income-tax Act. However, the accounting treatment of FBT 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.

18. Whether FBT would apply to payment of advance towards expenses to be incurred in the future?

Ans. FBT would be payable in the year in which the expenditure is incurred. Therefore, FBT would not be payable on payment of advance towards expenses to be incurred in the future.

19. In a case where the expenses are capitalized and amortized over a period, whether FBT will be payable over the whole of the amount capitalized or restricted to the amount amortized during the year?

Ans. FBT is payable in the year in which the expenditure is incurred irrespective of whether the expenditure is capitalized or not. However, the same expenditure will not be liable to FBT again in the year in which it is amortized and charged to profit.

20. Is FBT payable by an Indian company having employees based both in and outside India on its total (global) expenditure incurred by it for the purposes referred to in clauses (A) to (P) of sub -section (2) of section 115WB?

Ans. FBT is payable on the value of fringe benefits provided or deemed to have been provided to employees based in India and determined on a presumptive basis in accordance with the provisions of section 115 WC of the Income tax Act. The value of such fringe benefits is determined, inter alia, as a proportion of the total amount of expenses incurred for some identified purposes. In the case of an Indian company having employees based both in India and in a foreign country, FBT is payable on the proportion (50 per cent, 20 per cent or 5 per cent, as the case may be) of the total amount of expenses incurred for the purposes referred to in clauses (A) to (P) of sub-section (2) of section 115WB and attributable to the operations in India. If the company maintains separate books of accounts for its Indian and foreign operations,

FBT would be payable on the amount of expenses reflected in the books of accounts relating to the Indian operations. If however, no separate accounts are maintained, the amount of expenses attributable to Indian operations would be the proportionate amount of the global expenditure. Further, such proportionate amount shall be determined by applying to the global expenditure the proportion which the number of employees based in India bears to the total worldwide employees of the company.

21. Whether an Indian company carrying on business outside India would be liable to FBT even though none of its employees in such business may be liable to pay income tax in India?

Ans. An Indian company would be liable to the FBT in India if it has employees based in India. Therefore, if an Indian company carries on business outside India but does not have any employees based in India, such company would not be liable to the FBT in India.

22. Does FBT apply to foreign companies?

Ans. FBT will apply to foreign companies if it has employees based in India.

23. Whether FBT is chargeable from an entity even if its income is exempt under a Double Taxation Avoidance Agreement (DTAA)?

Ans. Exemption, if any, under a DTAA is only in respect of income of the entity. However, FBT is a liability of an entity qua employer. Therefore, FBT is payable by a non-resident employer if it fulfills the various conditions relating to its chargeability laid down in Chapter XII-H of the Income tax Act.

24. Whether foreign companies sending their employees on 'tour' to India required to pay FBT on their travel cost particularly when they are not subject to income tax in India?

Ans. If a foreign company is not an employer in India (i.e. it does not have any employees based in India), it is not liable to FBT in India. However, if a foreign company is an employer in India (i.e. it has employees based in India), it will be liable to FBT in respect

of the fringe benefits provided or deemed to have been provided within the meaning of section 115WB of the Income tax Act.

25. Whether a foreign company not having any PE in India and doing business promotion through an Event Manager or a Liaison office is liable to FBT?

Ans. A foreign company not having any permanent establishment in India and doing business promotion through an event manager or a liaison office would not be liable to the FBT in India if it does not have any employees based in India.

26. Does FBT apply to liaison offices?

Ans. FBT will apply to liaison offices of foreign companies in India if the liaison offices have employees based in India.

27. If foreign company has a permanent establishment (PE) in India and it incurs expenditure outside India, which is claimed as a deduction in computing the income of the PE in India, whether FBT would be payable on the expenses incurred outside India?

Ans. In a case where a foreign company has a permanent establishment in India, FBT is payable on the expenditure incurred or payment made for the purposes referred to in clauses (A) to (P) of sub-section (2) of section 115WB and attributable to the operations of the permanent establishment of the foreign company in India irrespective of whether the expenditure attributable to the operations of the permanent establishment are incurred in India or outside India.

28. Whether credit for FBT would be available in the foreign country of residence?

Ans. The credit for FBT paid in India may be available in the foreign country of residence on the basis of the tax laws prevailing in that foreign country and in the light of the provisions of the Double Taxation Avoidance Agreement between India and that foreign country.

29. Salary allowance/benefits to persons posted in overseas countries attract tax in those countries. However, such persons are exempt from taxation in India. Would the introduction of FBT change the situation?

Ans. The introduction of FBT will have no adverse effect on the tax liability of persons posted in overseas countries. Such persons will continue to pay tax in the foreign countries and enjoy the benefit of DTAA, if any, in India.

30. Whether FBT is payable by foreign companies deputing personnel to India for short duration under technical supervision contracts? Whether expenses incurred for the various purposes enumerated in clauses (A) to (P) of sub-section (2) of section 115WB is liable to FBT if such expenses are reimbursed by the Indian entity to the foreign company or the Indian entity directly bears the expenses incurred by the expatriates?

Ans. A foreign company deputing personnel to India for short duration under a technical supervision contract is liable to FBT in India if –

1. the salary, as defined in section 17 of the Income-tax Act, of such employees is liable to income tax in India; or
2. the company has employees based in India other than those deputed to India for a short duration.

Further, if the foreign company incurs expenditure and claims reimbursement for such expenditure, the foreign company would be liable to FBT on expenditure so incurred for the purposes enumerated in sub-section (2) of section 115WB. However, if the Indian entity bears the expenses of such personnel deputed by the foreign company and includes those expenses under the appropriate head in clauses (A) to (P) of sub-section (2) of section 115WB, such expenses will be subjected to FBT since it is a presumptive tax.

31. Whether FBT is payable by a foreign company even if its employee(s) are not taxable in terms of the Article relating to dependent personal services in any treaty?

Ans. If a foreign company has employees based in India and the remuneration received by all its employees is not taxable in India in terms of the Article relating to dependent

personal services in any treaty, such foreign companies would not be liable to FBT in India.

32. Whether gross expenses or net expenses (i.e. net of recovery) are to be considered for the purposes of FBT? For example, part of the expenses on various items like travel, may be recovered from the employees. Therefore, whether FBT would be levied on the gross travel expenditure or on the 'net' travel expenditure'?

Ans. Where the employer recovers from its employees, any amount of expenditure incurred for the purposes listed in clauses (A) to (P) of sub-section (2) of section 115WB, the value of the fringe benefits shall be determined with reference to the net expenditure and not gross expenditure. For example, if an employer incurs a total expenditure of Rs. 10 lakhs on repair, running and maintenance of motor-cars, and recovers Rs. 1 lakh from its employees, the value of the fringe benefit in respect of repair, running and maintenance of motor-cars shall be calculated on the basis of the net expenditure of Rs. 9 lakhs (i.e., Rs. 10 lakhs minus Rs. 1 lakh.).

33. At times, an employer could have cost sharing agreement with its group companies wherein a particular item of cost will be shared in an agreed proportion. In such a case, for administrative convenience, the employer may pay for the total cost and claim reimbursement from other group companies. Whether the employer making the payment is liable to FBT on the whole amount or only in respect of his share?

Ans. The share of each of the group companies in the total expenditure is the expenditure incurred by the respective company though the payment is made by one company. Hence, the company making the payment shall be liable for FBT only in respect of its share. Similarly, the other group companies will be liable to FBT in respect of their respective shares.

34. Section 115WC(1)(a) provides for valuation of fringe benefits referred to in section 115WB(1)(b), at cost at which such benefits is provided by the employer to the general public. Does section 115WB(1)(b) therefore, apply only to a situation where the employer is in the business of carrying passengers, i.e., airline companies, surface transport companies, etc?

Ans. The provisions of clause (b) of subsection (1) of section 115WB read with the provisions of clause (a) of subsection (1) of section 115WC make it clear that they are intended to apply only to employers engaged in the carriage of passengers or goods or to agents of such employers. These provisions are not applicable to any other employer.

Expenditure on free or concessional ticket by such other employers will fall within the scope of clause (F) of subsection (2) of section 115WB and will be liable to FBT.

35. Whether expenses disallowed under section 37 of the Income-tax Act on the plea that the expenses are personal in nature, would also be liable to FBT?

Ans. Section 37 of the Income-tax Act provides that any expenditure laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head 'profits and gains of business or profession'. Accordingly, any expenditure that is incurred for personal purposes is not allowable as deduction. Sub-section (2) of section 115WB provides for a levy on fringe benefits estimated on a presumptive basis using certain expenses as a measure. To the extent the expenses incurred by the employer are personal in nature and have, therefore, been disallowed under section 37 of the Income-tax Act, such disallowance would not be liable to FBT. For example, let us assume a firm, being an employer, has incurred an expenditure of Rs. 100/- towards tour and travel, of which Rs. 40/-, is personal in nature. Therefore, the amount of Rs. 40/-, being personal in nature, will be disallowed under section 37 of the Income-tax Act, and FBT will be levied on 20 per cent of the amount of Rs. 60/- (Rs. 100-Rs.40/-).

36. Whether expenditure identified as bogus expenditure in income tax assessment will be liable to FBT?

Ans. Sub-section (2) of section 115WB provides that fringe benefits shall be deemed to have been provided by the employer to his employees if the employer incurs any expense on or makes any payment for the purposes referred to in clauses (A) to (P) of the said sub-section. If an expenditure is found to be 'bogus' on the plea that it has not been actually incurred, the same is not allowed as a deduction under section 37 of the Income-tax Act. Accordingly, FBT will be levied only on such expenditure as is actually incurred for the purposes referred to in sub-section (2) of section 115WB. For example, if an employer

has incurred Rs. 1000/- towards travel, of which Rs. 200/- is disallowed under section 37 of the Income-tax Act on the plea that it is 'bogus', FBT will be payable on 20 per cent. of Rs. 800/- (Rs. 1000 minus Rs. 200/-).

37. Whether, for the purposes of payment of advance tax, depreciation should be taken on a pro-rata basis or lumped in the last quarter?

Ans. For the purposes of payment of advance tax on fringe benefits, tax depreciation should be taken on a pro-rata basis for payment of advance FBT.

38. Would contributions to approved gratuity fund or provident fund attract FBT?

Ans. Section 115WB read with section 115WC does not specifically contain any provision for chargeability of contribution to approved gratuity fund or provident fund to FBT. Accordingly, the contribution to the aforesaid funds would not attract levy of FBT.

39. Whether the provisions of FBT will apply to an assessee who has practically closed the business but is in the process of winding up?

Ans. Every employer, who incurs any expenditure of the nature referred to in sub-section (1) or sub-section (2) of section 115WB, would be liable to FBT.

40. Whether the FBT will be applicable to a company or a firm which is deriving income from house property like warehouses, IT park etc. and provides lot of other facilities in the course of letting out?

Ans. FBT is payable in respect of the fringe benefits provided or deemed to have been provided by an employer to his employees. Accordingly, every company or firm, being an employer is liable to FBT.

41. What should be the basis for allocating common expenditure in the case of an employer having multiple businesses including specified business such as hotels, construction, and pharmaceuticals which attract lower rate of FBT?

Ans. FBT is payable by an entity qua employer. Therefore, the expenditure incurred or payment made, for the various purposes referred to in clauses (A) to (P) of sub-section (2) of section 115WB, should be attributed to the various businesses on the basis of the share of the expenditure on wages and salaries in a particular business in the total expenditure on wages and salary in all businesses. Where separate books of account are maintained for different business activities, the expenditure of the nature referred to in clauses (A) to (P) of sub-section (2) of section 115WB shall be taken with reference to each business activity.

42. How should the accounting records be modified in order to comply with the FBT?

Ans. There are no special requirements for accounting records under the FBT. However, the Institute of Chartered Accountants of India have advised Government that they will be issuing separate Accounting Standards to facilitate compliance with the provisions of the FBT.

43. Whether an employer is liable to FBT only if it is engaged in business and profession?

Ans. An employer is liable to FBT if it is engaged in business or profession or any activity, whether or not such activity is carried on with the object of deriving income, profits or gains.

44. Whether payment of leave travel concession or assistance to employees is liable to FBT?

Ans. The value of any travel concession or assistance received by an employee normally fall within the meaning of 'salary' as defined in clause (1) of section 17 of the Income-tax Act. These benefits are taxable under the head 'Salaries' subject to the exemption under clause (5) of section 10 of the Income-tax Act. Accordingly, it would not be liable to FBT. However, if the leave travel concession/assistance is not included in 'salary' as defined in section 17 will be classified as an expense for the purposes referred to clause (F) of sub-section (2) of section 115WB and will accordingly be liable to FBT.

45. How will the value of a free air ticket provided by an employer engaged in the business of carriage of passengers or goods by aircraft be taken e.g., normal fare or concessional

fare e.g. apex fare or senior citizen's concessional fare or the actual cost of the ticket to the employer?

Ans. In terms of the provisions of clause (a) of sub-section (1) of section 115WC, the value of a free or concessional ticket is the cost at which the ticket is provided by the employer to the general 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.

46. Whether section 115WB (1)(b) covers only **free or concessional ticket** and **not** leave travel **assistance**?

Ans. Section 115WB (1)(b) covers only free or concessional ticket provided by the employer for the private journeys of his employees or their family members.

47. Whether expenditure incurred by way of allowance to the employees, of the nature referred to in sub-clause (ii) of clause (14) of section 10 and specified in sub-rule (2) of rule 2BB like children education allowance, transport allowance (Rs. 800/-) granted to employees, which are exempt in the hands of the employee, liable to FBT?

Ans. The allowances granted to the employees, of the nature referred to in sub-clause (ii) of clause (14) of section 10 and specified in sub-rule (2) of rule 2BB of Income Tax Rules are neither contributions to an approved superannuation fund nor represent the cost of free and concessional tickets for private journeys of employees or their family members. These allowances fall within the meaning of 'salary' as defined in clause (1) of section 17 of the Income tax Act and, any expenditure incurred for the purposes of salary, does not fall within the scope of sub-section (2) of section 115WB. Therefore, the allowances of the nature referred to in sub-clause (ii) of

clause (14) of section 10, fall outside the scope of clauses (b) and (c) of sub-section (1) as well as sub-section (2), of section 115WB.

48. Whether lease rent paid or payable for lease of accommodation for staff (including brokerage paid for the same), against a fixed sum recoverable from employees, is liable to FBT?

Ans. The perquisites in the nature of accommodation taken on lease or rent by the employer is neither contribution to an approved superannuation fund nor represent the cost of free and concessional tickets for private journeys of employees or their family members. Such perquisites fall within the meaning of 'salary' as defined in clause (1) of section 17 of the Income tax Act and, any expenditure incurred for the purposes of salary, does not fall within the scope of sub-section (2) of section 115WB. Therefore, such perquisites fall outside the scope of clauses (b) and (c) of sub-section (1) as well as sub-section (2) of section 115WB.

49. What is the scope of the expression 'entertainment' in clause (A) of section 115WB(2)?

Ans. The meaning of the word 'entertainment' in clause (A) of sub-section (2) of section 115WB is of wide import. It includes all expenditure in connection with exhibition, performance, amusement, game or sport, for affording some sort of amusement and gratification.

50. An employer has an exclusive training centre which is used to train its employees on various topics. Would any expenditure in the nature of food or beverages provided by the employer at such training centre to the employees attending the training be excluded from 'fringe benefits' by virtue of the exception provided by section 115WB(2)(B)(i) or (ii)?

Ans. If an employer owns an exclusive training centre used to train its employees, such training centre shall be construed as an 'office or a factory' within the meaning of the exclusion provided in sub-clause (i) of clause (b) of sub-section (2) of section 115WB. Accordingly, any expenditure on food or beverages provided by the employer at such training centre to the employees is not liable to FBT. However, if the exclusive training centre is hired by the employer on a temporary basis, such training centre cannot be

construed as an office or a factory within the meaning of the exclusion provided in sub-clause (i) of clause (b) of sub -section (2) of section 115WB. Therefore, any expenditure on food or beverages provided by the employer at such training centre to the employees is liable to FBT.

51. Whether expenditure incurred during in-house employee training would be considered as conference expense and liable to FBT?

Ans. The FBT is not envisaged for levy on the expenditure incurred for the purposes of imparting in-house training to employees. However, FBT would be payable on any expenditure incurred towards food and beverage, tour and travel, and lodging and boarding in connection with such in-house training of employees.

52. At times, employees order for food and beverages in the office premises while working after office hours. The employer reimburses the cost of such food and beverages to the employee. Would such reimbursement be considered as 'any expenditure on, or payment for food or beverages provided by the employer to his employees in office or factory as per the exceptions provided by section 115WB (2)(B) (i) so as to be excluded from 'fringe benefits'? In other words, for the exclusion to operate is it necessary that the employer has to pay to the supplier directly and not reimburse the employee?

Ans. The provisions of sub-clause (i) of clause (B) of sub -section (2) of section 115WB of the Income-tax Act provide for exemption from FBT only in respect of expenditure incurred on food or beverages procured by the employer for providing to his employees in an office or factory. Therefore, if an employer reimburses to the employee expenditure on food or beverages consumed by the employee in the office, such reimbursement would not fall within the scope of sub-clause (i) of clause (B) of subsection (2) of section 115WB of the Income-tax Act and will be liable to FBT.

53. Whether expenditure on food vouchers would be liable to FBT?

Ans. In terms of the provisions of sub -clause (ii) of clause (B) of sub-section (2) of section 115WB, any expenditure on or payment made through paid vouchers which are not transferable and used only at eating joints or outlets, is not liable to FBT.

54. Whether expenditure incurred for attending training programmes organized by trade bodies or institutions is liable to FBT?

Ans. A training programme entails congregation of a number of persons for discussion or exchange of views. Therefore, expenditure incurred for attending training programmes organized by trade bodies or institutions or any other agency falls within the scope of the provisions relating to expenditure incurred for the purposes of conference contained in clause (C) of sub-section (2) of section 115WB and will be liable to FBT.

55. Whether expenditure in the nature of fee for participation by the employees in any conference is liable to FBT?

Ans. In terms of the provisions of clause (C) of sub-section (2) of section 115WB, expenditure in the nature of fee for participation by the employees in any conference is not liable to FBT. However, if the participation fee includes any expenditure of the nature referred to in clauses (A), (B), and (D) to (P) of sub-section (2) of section 115WB, such expenditure will be liable to FBT.

56. Whether FBT will apply to the expenditure incurred for the purposes of conferences of the agents or dealers or development advisors?

Ans. In terms of the provisions of clause (C) of sub-section (2) of section 115WB, any expenditure incurred for the purposes of conference is liable to FBT irrespective of whether the conference is of agents or dealers or development advisors or any other persons. Therefore, the expenditure incurred for the purposes of agents or dealers or development advisors is liable to FBT.

57. Whether payment, for use of 'brand' or to a 'brand ambassador' or for 'celebrity endorsement' would be expenditure on sales promotion and publicity and therefore liable to FBT?

Ans. All expenditure incurred for the purposes of sales promotion and publicity would fall within the scope of clause (D) of sub-section (2) of section 115WB other than any expenditure on advertisement referred to in clauses (i) to (vi) of the proviso to the said clause. Since the expenditure on 'brand' or 'brand ambassador' or 'celebrity

endorsement' does not fall within the scope of the proviso to clause (D) of sub -section (2) of section 115WB, such expenditure is liable to FBT.

58. Whether “sales promotion expenses” includes brokerage and selling commission in relation to sales paid to direct selling agents/direct marketing agents and, if so, whether FBT is payable thereon?

Ans. Brokerage and selling commission paid for selling goods have been held by Courts to be in the nature of ordinary selling expenses. Therefore, the expenditure on brokerage and selling commission is not expenditure for the purposes of ‘sales promotion including publicity’ within the meaning of clause (D) of sub -section (2) of section 115WB. Accordingly, FBT is not payable on brokerage and selling commission paid for selling goods.

59. Whether FBT is leviable on expenditure relating to salesmen appointed by distributors for company’s products reimbursed through credit notes?

Ans. If the salesmen are the employees of the distributors, reimbursement (by whatever means) of expenses relating to such salesman, is a component of commission/brokerage/service charges/margin to distributors and therefore in the nature of ordinary selling expenses. Such selling expenses do not fall within the meaning of ‘sales promotion including publicity’ referred to in clause (D) of sub-section (2) of section 115WB and, therefore, not liable to FBT.

60. Whether ‘sales promotion’ includes sales discount or rebates to wholesalers or customers or bonus points given to credit card customers and, if so, whether FBT is payable thereon?

Ans. Sales discount or rebates allowed to wholesale dealers or customers from the listed retail price merely represent lesser realization of the sale price itself. The bonus points given to credit card customers are also in the nature of deferred sale discount. Therefore, discounts or rebates or bonus points allowed to customers or wholesale dealers are in the nature of selling expenses and outside the scope of the provisions of clause (D) of sub -section (2) of section 115WB of the Income-tax Act. Accordingly, such discounts or rebates are not liable to FBT.

61. Whether expenditure on incentives given to distributors for meeting quantity targets (including free goods for achieving certain sales target like, 100 free televisions for achieving a target sale of 10,000 televisions and cash incentives adjustable against future supplies) is liable to FBT?

Ans. Incentives given to distributors for meeting sales targets (including free goods given as incentive to distributors for achieving certain sales and cash incentives adjustable against future supplies) are in the nature of performance-based commission. Such performance-based commission is in the nature of ordinary selling cost. Therefore, expenditure incurred for the purpose of providing incentives given to distributors for meeting sales targets (including free goods for achieving certain sales target and cash incentives adjustable against future supplies) do not fall within the scope of clause (D) of sub-section (2) of section 115WB and, therefore, not liable to FBT.

62. Whether product marketing research expenses will be covered under sales promotion?

Ans. The expenditure incurred on product marketing research is in the nature of expenditure for the purposes of testing the efficacy of the product. Therefore, such expenditure is outside the scope of the provisions of clause (D) of sub-section (2) of section 115WB relating to sales promotion. Accordingly, expenditure incurred on product-marketing research is not liable to FBT.

For example, if an employer undertakes a product marketing research through a separate marketing agency, the employer is not liable to FBT on payment (including reimbursement) to the marketing agency. However, if the employer carries out the research through its own employees, the expenditure falling under any of the clauses (A) to (P) of sub-section (2) of section 115WB will be liable to FBT in view of the legal maxim that a specific provision in law will override the general provisions of the law. This will be so, notwithstanding the expenditure is for the ultimate purpose of conducting product-marketing research.

63. Whether expenditure in the nature of call centre charges for canvassing sales (cold calls) or carrying out post-sales activities is liable to FBT?

Ans. Any expenditure in the nature of call centre charges for canvassing sales (cold calls) and carrying out post-sale activities is in the nature of selling cost and therefore, outside the scope of the provisions of clause (D) of sub-section (2) of section 115WB relating to sales promotion. Accordingly, such expenditure is not liable to FBT.

64. Whether expenditure on distribution of free medical or other product samples is liable to FBT?

Ans. The term 'sales promotion and publicity' has not been defined in the Income-tax Act and hence, it should be given its natural meaning. The term is of wide import. Following Hon'ble Supreme Court's decision in the case of Eskayef Ltd. Etc. (245 ITR 116), any expenditure on free medical samples distributed to doctors is in the nature of sales promotion. Therefore, it would be liable to FBT. Similarly, any expenditure on free samples of other products distributed to trade or consumers would also be liable to FBT.

65. Whether expenditure on making ad-film is liable to FBT?

Ans. An ad-film is a medium for advertisement and therefore falls within the scope of clause (i) of the proviso to clause (D) of sub-section (2) of section 115WB. Therefore, any expenditure on making an ad -film is not liable to FBT.

66. Whether expenditure on free offers (with products) such as freebies like tattoos, cricket cards or similar products, to trade or consumers (excluding employees) is liable to FBT? Further, whether expenditure incurred on the artwork or for payment of royalty charges in respect of such freebies is liable to FBT?

Ans. Any expenditure (including expenditure on artwork and royalty charges) on free offers (with products) such as freebies like tattoos, cricket cards or similar products, to trade or consumers (excluding employees) is for the purposes of sales promotion and, publicity and accordingly, liable to FBT.

67. Whether expenditure incurred for hotel stay, air ticket charges etc. in relation to customer/ clients is liable to FBT?

Ans. Any expenditure incurred for the purposes of lodging and boarding or travel of customer/ clients could be classified either under the provisions of clause (D) or clause (G) of sub-section (2) of section 115WB and, accordingly, liable to FBT.

68. Whether FBT is payable on payment by the employer for Group Personal Accident/Workman Compensation Insurance?

Ans. If the expenditure incurred or payment made by the employer for the purpose of Group Personal Accident/ Workman Compensation Insurance is a statutory obligation in terms of the provisions of the Explanation to clause (E) of sub-section (2) of section 115WB, such expenditure will not be liable to FBT. However, if such expenditure is not a statutory obligation, the same would be liable to FBT.

69. Whether medical reimbursement upto Rs. 15,000/- (exempt in the hands of the employees) and medical reimbursement over Rs. 15,000/- (taxed as perquisite in the hands of the employee) is liable to FBT?

Ans. At present, if any sum is paid by the employer for expenditure actually incurred by the employee for medical treatment in an unapproved hospital and it exceeds Rs. 15,000/- during the year, such sum is 'salary' as defined in clause (1) of section 17 of the Income-tax Act and liable to income-tax in the hands of the employee. There is no change in this position. Since such sum is taxable in the hands of the employee, the same is not liable to FBT.

However, if any sum is paid by the employer for expenditure actually incurred by the employee for medical treatment in an unapproved hospital and it does not exceed Rs. 15,000/- during the year, such sum does not fall within the meaning of 'salary' as defined in clause ((1) of section 17 of the Income-tax Act and not liable to incometax in the hands of the employee. There is no change in this position. Since such sum is not taxable in the hands of the employee, the same is liable to FBT.

70. Whether expenditure by the employer on Group Health Insurance or Group Medical Insurance or Group Life Insurance is liable to FBT?

Ans. Expenditure by the employer on Group Health Insurance or Group Medical Insurance or Group Life Insurance is for the purposes of employee welfare and, therefore, falls within the scope of clause (E) of sub-section (2) of section 115WB of the Income-tax Act. Accordingly, such expenditure is liable to FBT. However, if such expenditure is a statutory obligation, the same would not be liable to FBT.

71. Whether expenditure incurred at a hospital/dispensary, not maintained by the employer, for injuries incurred during the course of employment, is liable to FBT?

Ans. In terms of the Explanation to clause (E) of sub-section (2) of section 115WB, any expenditure incurred or payment made to provide first aid facilities in a hospital or dispensary **run by the employer** is not considered as expenditure for employees' welfare. Therefore, if the expenditure is incurred for treatment of injuries suffered in the course of performance of duties but the treatment is at a hospital/dispensary not maintained by the employer, such expenditure is liable to FBT. However, if such expenditure is pursuant to a statutory obligation, it will not be liable to FBT.

72. Whether subsidy provided to a school not meant exclusively for employees' children is liable to FBT?

Ans. Any subsidy provided to a school not meant exclusively for employees' children is in the nature of expenditure incurred for the proximate purposes of promoting employee welfare. Therefore, such subsidy falls within the scope of clause (E) of sub-section (2) of section 115WB relating to employees' welfare and accordingly liable to FBT.

73. Whether expenditure incurred on provision and maintenance of facilities like garden, site cleaning, light decoration, school, library, mess, television, cable connection etc. in employees' colonies is liable to FBT?

Ans. Any expenditure incurred for the provision of facilities like garden, site cleaning, light decoration school, library, mess, television, cable connection etc in employees' colonies is for the purposes of promoting employee welfare. Therefore, such expenditure falls within the scope of clause (E) of sub-section (2) of section 115WB relating to employees' welfare and accordingly liable to FBT.

74. Whether FBT is payable on expenditure incurred on providing safety shoes or uniforms or equipments to the employees or for the purposes of reimbursement of washing charges?

Ans. Any expenditure incurred for meeting the employer's statutory obligations under the Employment Standing Orders Act, 1948, fall within the scope of the exclusion in the Explanation to clause (E) of sub-section (2) of section 115WB. Therefore, expenditure incurred on providing safety shoes or uniform or equipment to the employees or incurred for the purposes of reimbursement of washing charges, is exempt from FBT to the extent such expenditure is incurred to meet such statutory obligation.

75. Whether reimbursement of expenditure on books and periodicals to employees is liable to FBT?

Ans. Any reimbursement of expenditure on books and periodicals to employees is in the nature of expenditure for the purposes of employee welfare and, accordingly, falls within the scope of clause (E) of sub-section (2) of section 115WB. Hence, such reimbursement is liable to FBT.

76. Whether expenditure incurred on prizes/rewards to employees for achievements is liable to FBT?

Ans. Any expenditure incurred on prizes/rewards to employees for achievements would fall within the scope of clause (E) of sub-section (2) of section 115WB relating to employee welfare and accordingly be liable to FBT.

77. Whether expenditure incurred on transportation facility provided to the children of employees is liable to FBT?

Ans. The expenditure incurred for the purpose of providing transport facility to the children of employees is in the nature of expenditure on employees' welfare within the meaning of clause (E) of sub-section (2) of section 115WB. Accordingly, such expenditure is liable to FBT.

78. Whether the reimbursement in respect of car expenses on the basis of bills submitted and driver's salary on the basis of a declaration provided, booked as 'salary', though treated as non-taxable reimbursement, attract FBT?

Ans. The reimbursement in respect of car expenses on the basis of bills submitted and driver's salary on the basis of declaration provided fall outside the scope of 'salary' within the meaning of clause (1) of section 17 of the Income-tax Act. Therefore, any expenditure towards such reimbursement is effectively expenditure incurred by the employer for the purposes of conveyance, tour and travel. Since the expenditure for such reimbursement is for the purposes referred to in clause (F) of sub-section (2) of section 115WB relating to conveyance, tour and travel, and is liable to FBT.

79. On some occasions, employers prefer to give a per-diem allowance for meeting the expenditure on lodging and boarding rather than making payments on actual basis. The per-diem allowance is exempt from tax under section 10(14). Would this be subject to FBT?

Ans. Since the per-diem allowance is paid for the purposes of use of hotel, boarding and lodging facilities, it would fall within the scope of clause (G) of sub-section (2) of section 115WB. However, the employees will not be liable to pay income tax on any surplus accruing to him from such allowance.

80. Where the business consists partly of software development and partly of manufacture of say, FMCG products, whether the benefit of valuation at a lower rate of 5% instead of 20% of conveyance and travel expenditure for charge of FBT be available, and if yes, on what quantum?

Ans. FBT is a tax qua employer. Therefore, the expenditure of the nature referred to in clauses (A) to (P) of sub-section (2) of section 115WB is to be taken into account with reference to nature of the business. Accordingly, the expenditure relatable to the business of manufacture or production of computer software would alone qualify for lower rate for valuation of fringe benefits relating to expenses referred to in item (F) and (G) of sub-section (2) of section 115WB. Expenditure relating to manufacture of FMCG products would be liable to FBT in accordance with sub-section (1) of section 115WC of the Income-tax Act.

81. Whether employees will be liable to income tax on the perquisite value of motor car provided by the employer in terms of rule 3(7)(vii) of the Income tax Rules relating to use of 'movable asset'.

Ans. Since expenditure on running and maintenance of motor cars is liable to FBT, the employees will not be liable to income tax on the perquisite value of motor car provided by the employer in terms of rule 3(7)(vii) of the Income tax Rules relating to use of 'movable asset'.

82. Whether FBT is payable on any rent paid or payable for hiring or leasing of motor-cars?

Ans. Rent paid or payable for an operating lease of a motor-car is expenditure for the purposes of conveyance, tour and travel. Accordingly, it shall be treated as expenditure within the scope of clause (F) of sub-section (2) of section 115WB. However, rent paid or payable for a financial lease of a motor-car is in the nature of expenditure on running or maintaining of a motor-car. Therefore, such rent shall be treated as expenditure within the scope of clause (I) of sub-section (2) of section 115WB.

83. Whether the amount of depreciation on motor-car or any other asset should be the amount calculated as per the Income-tax Act or as per commercial accounting? If tax depreciation, how is the same to be computed in view of the concept of block of assets?

Ans. The depreciation on motor-car or any other asset for the purposes of FBT shall be the depreciation computed under the provisions of section 32 of the Income-tax Act. Further, such amount shall be the whole of the amount of depreciation in respect of the relevant block of assets. For example, for the purposes of depreciation on motor-car, the amount of depreciation relating to the block of assets – motor-cars – shall be included within the scope of clause (H) of sub-section (2) of section 115WB.

84. Whether expenditure by way of interest on loans taken for purchase of cars is liable to FBT?

Ans. Interest on loans taken for purchase of cars falls within the scope of clause (H) of sub-section (2) of section 115WB relating to repair, running and maintenance of motor cars.

Accordingly, expenditure by way of interest on loans taken for purchase of cars is liable to FBT.

85. Whether expenditure on repair, running and maintenance of delivery/ display vans, trucks/lorries, ambulances and tractors is liable to FBT?

Ans. Delivery/ display vans, trucks/lorries, ambulance and tractor are not “**motorcars**” within the meaning of clause (H) of sub-section (2) of section 115WB. Therefore, expenditure on the running, repair and maintenance of such vehicles is not liable to FBT.

86. Whether the amount of depreciation on the club building is liable to FBT?

Ans. Where the legislature has intended to subject the amount of depreciation on any capital asset to FBT, it has specifically provided for it as in clauses (H) and (I) of sub-section (2) of section 115WB. Therefore, in the absence of any legislative intent to subject the amount of depreciation in respect of the club building to FBT, such depreciation amount is not liable to FBT.

87. Whether salary paid to a driver of a motorcar or a pilot of an aircraft is liable to FBT?

Ans. The salary paid to a driver of motor car or a pilot of an aircraft is for the purposes of running and maintenance of motor car or aircraft as the case may be and accordingly such payment of salary would have to be classified either in clause (H) or clause (I), as the case may be, of sub -section (2) of section 115WB. Therefore, it would be liable to FBT.

88. Will fringe benefits include rent paid for garages or parking slots or airport tarmac/hanger charges?

Ans. The rent paid for garages or parking slots or airport tarmac or hanger is for the purposes of running and maintenance of motorcar or aircraft as the case may be and accordingly such payment of rent would fall within the scope of clauses (H) or (I) of sub-section (2) of section 115WB. Therefore, it would be liable to FBT.

89. Whether capital expenditure falling within the categories specified in section 115WB (2) would be covered in the scope of fringe benefits?

Ans. Expenditure on any capital asset in respect of which depreciation is allowable u/s 32 of the Income-tax Act does not fall within the scope of sub-section (2) of section 115WB of the Income-tax Act since the proximate objective of incurring such expenditure is the acquisition of a capital asset. Therefore, such expenditure is not included in reckoning the value of fringe benefits [except depreciation on motor cars or aircrafts referred to in clauses (H) and (I) of sub-section (2) of section 115WB] and is not liable to FBT.

90. Whether expenditure for use of telephone includes (i) expenditure for use of telephone installed in the office and (ii) payment of telephone (including mobile phone) bills in the name of the company directly made by the company?

Ans. In terms of the provisions of clause (J) of sub-section (2) of section 115WB, expenditure incurred or payment made for the purposes of use of telephone (including mobile phone) other than expenditure on leased telephone lines is liable to FBT. Therefore, expenditure on use of telephones (including mobile phones) installed in the office is liable to FBT. This is so, irrespective of whether the telephone is in the name of the company or not and also whether payment for its use is made directly or indirectly by the company.

91. Will expenditure on capital items (e.g., fridges, TVs) in a guesthouse be liable for FBT?

Ans. Expenditure on items like refrigerators, televisions, furniture and similar items in a guesthouse would not fall within the scope of clause (K) of sub-section (2) of section 115WB since the proximate objective of incurring such expenditure is the acquisition of a capital asset. Further, depreciation on these assets would also not be liable to FBT in the absence of any specific charge.

92. Would maintenance of a guesthouse include payment of rent for the guesthouse?

Ans. Any rent paid for maintaining a guesthouse would fall within the scope of clause (K) of sub-section (2) of section 115WB and, accordingly, is liable to FBT.

93. Whether expenditure on all guesthouses is liable to FBT or restricted to expenditure on holiday homes?

Ans. In terms of the provisions of clause (K) of sub-section (2) of section 115WB, FBT is payable on expenditure incurred for the purposes of maintenance of any accommodation in the nature of guest house other than accommodation used for training purposes. Therefore, expenditure on all guest houses is liable to FBT irrespective of whether they are used as holiday homes or not.

94. Whether the following expenses are liable to FBT:

- expenditure on provision of food at the guest house maintained by the employer;
- contract charges paid to guest house staff; and
- depreciation/rent of guest house building

Ans. In terms of the provisions of clause (K) of sub-section (2) of section 115WB, any expenditure incurred for the purposes of maintaining any accommodation in the nature of guest house other than accommodation used for training purposes is liable to FBT. Since the expenditure on provision of food at the guest house maintained by the employer, contract charges paid to guest house staff and rent paid or payable in respect of the guest house building, are all for the purposes of maintenance of the guest house, such expenses are liable to FBT.

As regards the taxability of the amount of depreciation on the guest house building, where the legislature has intended to subject the amount of depreciation on any capital asset to FBT, it has specifically provided for it as in clauses (H) and (I) of sub-section (2) of section 115WB. Hence, in the absence of any legislative intent to subject the amount of depreciation in respect of the guest house building to FBT, such depreciation amount is not liable to FBT.

95. Whether expenditure on meeting of employees and their families on the occasion of a festival like 'Navratri' would be expenditure on festival or expenditure on employee welfare?

Ans. Expenditure on meeting/ get-togethers of employees and their family members on the occasion of any festival like 'Navratri', 'Diwali' 'Id', 'Christmas' or 'New Year' is expenditure on festival celebrations. Such expenditure would, therefore, fall within the scope of clause (L) of sub-section (2) of section 115WB. Expenditure on meeting/get-togethers of employees and their families on non-festival occasions (including annual day), may be classified as expenditure on entertainment within the meaning of clause (A) of sub-section (2) of section 115WB or as expenditure on employees' welfare within the meaning of clause (E) of sub-section (2) of section 115WB of the Income-tax Act. Such expenditure is liable to FBT.

However, expenditure on celebration of Independence Day and Republic Day will not be liable to FBT because they are not 'festivals' as normally understood.

96. Whether payment of entrance or membership fee of a club or health club or similar facility would be expenditure incurred on use of such facilities?

Ans. Entrance or membership fee of a club or health club or similar facility is a fixed levy allowing for use of some basic club facilities (like the lounge facilities). Therefore, such payments are also expenditure incurred on use of club or health or similar facilities and accordingly liable to FBT.

97. Whether expenditure on gifts under trade schemes or for promotion of company's products to distributors/retailers is liable to FBT?

Ans. Ordinarily, a gift is defined as anything given or presented without consideration. Therefore, expenditure on gifts under trade schemes or for promotion of company's products to distributors/retailers, falls within the scope of the provisions of clause (O) of sub-section (2) of section 115WB and, accordingly, is liable to FBT.

98. Does a gift to customer fall under 'sales promotion' or 'gift'?

Ans. In terms of the rules of interpretation of a statute, a specific provision in law overrides a general provision. Therefore, a gift to a customer, even though for the purposes of sales promotion, would fall within the scope of the specific provision of clause (O) of sub-section (2) of section 115WB relating to 'gift'.

99. Whether expenditure incurred on gifts provided to employees, on the occasion of marriage, liable to FBT?

Ans. Any expenditure incurred on gifts provided to employees, whether on the occasion of marriage or otherwise, falls within the scope of clause (O) of sub-section (2) of section 115WB and, accordingly, is liable to FBT.

100. Is a gift in kind excluded? If included, how is its valuation to be done?

Ans. As per provisions of clause (O) of sub-section (2) of section 115WB any expenditure incurred or payment made for the purposes of gift is liable to FBT. The cost to the employer of the gift would be taken into account for the purposes of valuation of such fringe benefit.

101. If, say, 8 employees are sent to an educational institution – whether the expenditure on their education will fall within the scope of employee welfare or scholarship?

Ans. Ordinarily, scholarship is defined as payments to a person for pursuing education. Further, in terms of the rules of interpretation of a statute, a specific provision in law overrides a general provision. Therefore, expenditure on the education of employees sent to an educational institution, even though for the purposes of promoting employee welfare, would fall within the scope of the specific provision of clause (P) of subsection (2) of section 115WB relating to 'scholarships'.

102. Whether FBT is payable on scholarships awarded to students and trainees?

Ans. FBT is payable on the expenditure incurred or payment for the purposes of scholarship irrespective of whether the recipient is an employee or his relative or any other person.

103. Whether FBT would be allowable deduction while computing 'book profit' under section 115JB?

Ans. FBT is a liability qua employer. It is an expenditure laid out or expended wholly and exclusively for the purposes of the business or profession of the employer. However,

sub-clause (ic) of clause (a) of section 40 of the Income tax Act expressly prohibits the deduction of the amount of FBT paid, for the purposes of computing the income under the head 'profits and gains of business or profession'. This prohibition does not apply to the computation of 'book profit' for the purposes of section 115JB. Accordingly, the FBT is an allowable deduction in the computation of 'book profit' under section 115JB of the Income tax Act.

104. Whether expenditure incurred by the employer for the purposes of providing free or subsidized transport for journeys to employees from their residence to the place of work or such place of work to the place of residence would attract FBT?

Ans. The free or subsidized transport provided to employees for journeys from their residence to the place of work or such place of work to the place of residence is in lieu of conveyance/transportation allowance, which is not liable to FBT. Accordingly, the expenditure incurred by the employer for the purposes of providing free or subsidized transport for journeys to employees from their residence to the place of work or such place of work to the place of residence will not be liable to FBT.

105. What is the meaning of the term 'computer software' as referred to in section 115WC? Will it include information technology enabled services?

Ans. Clause (d) of sub-section (2) of section 115WC provides for a lower percentage for valuation of fringe benefits for the purposes referred to in clauses (F) and (G) of sub-section (2) of section 115WB in the case of an employer engaged in the business of manufacture or production of computer software. In the absence of a specific definition in the said clause, the term 'computer software' will assume its natural meaning i.e., recording of programmes on any disc, tape or perforated media or other information storage device. Accordingly, information technology enabled services will not fall within the scope of the term 'computer software' for the purposes of section 115WC of the Income-tax Act.

106. What is the meaning of the term 'business of construction' – whether only civil construction or even other construction work like construction of plants, telecommunication infrastructure, etc. are also covered?

Ans. The term 'business of construction' must be understood by giving the ordinary English language meaning to the words. Hence, all activities involving construction would be covered within the scope of the term 'business of construction' referred to in section 115WC of the Income-tax Act.

107. Whether excess advance tax paid for the preceding quarter can be adjusted against advance tax for the subsequent quarter(s)?

Ans. Any excess advance tax paid for the preceding quarter can be adjusted against the advance tax for the subsequent quarter(s).

Sd/-
(Pragya S. Saxena)
Director

Copy to:-

1. All Chambers of Commerce/Industry/Trade Associations.
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Sd / -
(Pragya S. Saxena)
Director