Fringe Benefit Tax (FBT)

Purna Chandrarao P
Asst secretary
FAPCCI

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Introduction

- Fringe Benefit Tax may seem new to India, but its not a novel concept.
- This tax is already levied in the United States, UK, Canada, Australia, New Zealand, Japan, and some other nations
- The Fringe Benefit Tax rules propped in the Budget by the finance minister are modeled on the Australian system.

The need for FBT

- The Taxation of perquisite or fringe benefits provided by an employer to his employees, in addition to the cash salary or wages paid is subject to varying treatment in different countries.
- These benefits are either taxed in the hands of the employees themselves or the value of such benefits is subject to a “fringe benefit tax in the hands of employer.
- The rationale for levying a fringe benefit tax on the employer lies in the inherent difficulty in isolating the **personal element** where there is collective enjoyment of such benefits and attributing the same directly to the employee.

Finance Act 2005 approach

- Finance Act 2005 has adopted the following two approach for the taxation of fringe benefits under the Income Tax Act.
- (1) Perquisites which can be directly attributed to employees.
- (2) Perquisites which cannot be directly attributed to the employee or for some reason it is not feasible to tax the benefit in the hands of the employee.

Perquisites directly attributed to employees :-

- Such perquisites will continue to be taxed in the hands of the employees in accordance with the existing provisions of section 17(2) of the Income Tax Act and subject to rule 2A, rule 2B, rule 2BB and rule 3 of the Income Tax Rules.

Perquisites which cannot be directly attributed to the employees :-

- Where attribution of the personal benefit poses problems, or for some reasons, it is not feasible to tax the benefits in the hands of the employee, the Finance Act 2005 has levied a separate tax known as **Fringe Benefit Tax** on the employer on the value of such benefits provided or deemed to be provided to the employees.

Chapter –XII-H

- A new chapter –XII-H has been inserted in the Income Tax Act containing sections 115W to 115WL, which provides for levy of additional income tax on fringe benefits known as Fringe Benefit Tax. The chapter is divided into three parts.
- Part-A which has only one sections i.e. section 115W gives the meaning of certain expressions used in the chapter.
- Part-B enumerates the basis of charges and consists of three section viz section 115WA to 115WC.
- Part-C delineates the procedures for filling of return, assessment and payment of tax and consists of section 115WD to 115WL.

Fringe Benefit tax payable by employer

- Fringe Benefit Tax is payable by an employer on the fringe benefits provided or deemed to have been provided by him to his employees.
- Although the word used in section 115WA (1) is “employees” but as per section 13(2) of General Clauses Act, 1897 “words in the singular shall include the plural, and vice versa”.

Meaning of employer [section 115W(a)

- <u>Employer means</u>
- A company
- A firm
- An association of person or body of individuals, whether incorporated or not
- A local authority; and
- Every artificial juridical person not falling within any of the preceding sub-clauses.

Employer not required to pay FBT

- An individual
- HUF
- Funds or trust or institutions eligible for exemption under section 10(23C) or registered under section 12AA
- Central Government
- A State Government
- A political party registered under section 29A of the Representation of People Act, 1951.

Position of Foreign Charitable Institution

- Since a foreign charitable institution incorporated outside India are (a) not eligible tax exemption under section 10(23C) or (b) not registered under section 12AA, it cannot avoid liability for the fringe benefit tax, though it has no taxable income in India. [Population Council Inc, In re (2006) 286 ITR 243 (AAR)].

Charge of Fringe Benefit tax [section 115WA(1)]

- Fringe Benefit Tax is payable by an employer
- FBT is payable w.e.f. assessment year 2006-07
- FBT is payable in addition to the income tax.
- FBT is payable in respect of fringe benefits provided or deemed to have been provided by the employer to his employees during the previous year.
- There must be at least one employee in the concern before an employer can be charged to FBT.

FBT shall be Payable even if there is no Taxable Income :-

- FBT shall be payable by all those employer who falls within the definition of employer although such employer may not be liable to pay income tax on his total income.
- Even loss making concern will have to pay FBT.
- An employer who is eligible for deduction under section 10A,10AA,10B,10BA shall also be liable to pay FBT even though he is allowed deduction/exemption under the aforesaid sections.

What are Fringe Benefits

a. Any privilege, service, facility or amenity, directly or indirectly provided by an employer, whether by way of reimbursement or otherwise to his employees or former employees.
b. Any free or confessional ticket provided by the employer for private journeys of his employees or their family members.
c. Any contribution by the employer to an superannuation fund for the employees; and
d. Any specified security or sweat equity shares allotted or transferred directly or indirectly by the employer free of cost or at confessional rate to his employees or former employees.

Avoidance of Double Taxation

- The privilege service facility or amenity does not include perquisites in respect of which tax is paid or payable by employees or any benefit or amenity in the nature of free or subsidized transport or any such allowance provided by the employer to his employee for the journeys by the employees from their residence to the place of work or such place of work to the place of residence.
- There exists mutual exclusion, what is taxable in the hands of the employee cannot be taxed as fringe benefits in the hands of employer and what is taxable as fringe benefits in the hands of employer cannot be taxed in the hands of the employees.

Items of expenditure of deemed fringe benefits as per section 115WB(2)

(A) Entertainment : It does not include fixed entertainment allowance given to employees /directors. However it includes the following :-

A.1 Reimbursement of entertainment expenditure by an employer to employees /director/others.

A.2 Expenditure on meeting /get together of employees and their family members on non-festival occasions including annual day.

(B) Provision of hospitality of every kind by the employer to any person. But does not include :-

B.1 any expenditure on or payment for food or beverage provided by the employer to his employees in the office or factory.

B.2 any expenditure on or payment through paid vouchers which are not transferable and usable only at eating joints or outlets

B.3 *any expenditure on or payment through prepaid electronic meal card.*

Points for action

- For a better control expenses incurred on the food and beverages provided to the employees may be debited to a separate account example “employees food and beverages account” such amount should not be debited to employees staff welfare account.

- Further paid vouchers can be given to any person and not necessarily the employees.

Hospitality includes

- Expenditure on food/meals incurred by the employees and later on reimbursed by employer (even if such expenditure is incurred by the employees in office after duty hours).
- Expenditure on food and beverage provided by employer at a training centre taken on hire by employer.

Conference (other than fee for participation by the employees in any conference)

- For the purpose of this clause any expenditure on conveyance tour and travel (including foreign travel) on hotel or boarding and lodging in connection with any conference shall be deemed to be expenditure for the purpose of conference.
- Fee for participation by the employee in any conference should be separately debited to avoid FBT.

Sales Promotion including Publicity

- It does not include the following :-
- (i) Being the expenditure (including rental) on advertisement of any form in any print (including journals, catalogues or price lists) or electronic media or transport system.
- (ii) Being the expenditure on holding of or the participation in any press conference or business convention, fair or exhibition.
- (iii) Being the expenditure on sponsorship of any sports event or any other event organized by any government agency or trade association or body.

- (iv) Being 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 court or tribunal.
- (v) Being the expenditure on advertisement by way of signs, art work, painting, banners, awnings, direct mail, electronic spectaculars, kiosks, hoardings, bill boards, *display of products* or by way of such other medium of advertisement; and
- (vi) Being the expenditure by way of payment to any advertising agency for the purposes of clauses (i) to (v) above.

- (vii) expenditure on distribution of samples *either free of cost or at confessional rate*, (previously it was only in respect of samples given to doctors); and
- (viii) payments to any person of repute for promoting the business of the employer.
- All the above expenses should be debited to advertisement and not to the sales promotion or publicity account.
- The assessee should not give any free offers (with products) such free offers may be charged at a nominal rate.

Employee Welfare

- For the purpose of this clause, any expenditure incurred or payment made to fulfill any statutory obligation or mitigate occupational hazards or provide first aid facilities in the hospital or dispensary run by the employer shall not be considered as expenditure for employees' welfare.

Employee Welfare includes

- Payment of group personal accident /workmen compensation insurance not under a statutory obligation.
- Medical expenditure reimbursement up to Rs.15000 (However if it is a statutory obligation, it will not be liable for FBT).
- Expenditure on garden, site cleaning, light decoration etc in the employees colony.
- Expenditure at hospital/dispensary for injuries incurred during course of employment (hospital not run by employer) not under a statutory obligation.

- Subsidy provided to school not meant exclusively for employees' children.
- Reimbursement of expenditure on books/periodicals to employees.
- Expenditure incurred on prizes/awards to employees.
- Expenditure on providing transport facility to employees' children.
- Expenditure on meeting /get together of employees and their family members on non-festival occasions including annual day.

Employees' Welfare does not include

- Any expenditure incurred or payment made to fulfill any statutory obligation.
- Any expenditure incurred or payment made to mitigate occupational hazards
- Any expenditure incurred or payment made to provide first aid facilities in a hospital or dispensary run by the employer.
- 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.
- Payment of group personal accident /workmen compensation insurance under a statutory obligation.

- Medical expenditure reimbursement above Rs.15000/-
- Expenditure on group health insurance under a statutory obligation.
- Employers' contribution towards recognized provident fund /approved gratuity fund.
- Employers' contribution towards unrecognized provident fund /unapproved gratuity fund.
- Fixed medical allowance.
- Fixed lunch allowance
- Expenditure on providing rent-free house or house at confessional rent to employees.

- Fixed allowances exempt under section 10(14)
- *Expenditure incurred or payment made to provide crèche facility for the children of the employee.*
- *Sponsor a sportsman being an employee*
- *Organize sports events for the employees.*
- Expenditure incurred for providing and maintaining uniform shall be exempt from FBT if it is an obligation under the Employment Standing Orders Act , 1948

Conveyance

- It includes the following
- Reimbursement of car expenses including driver salary to employees on the basis of declaration or on the basis of bills submitted by the employees.
- Traveling expenditure /conveyance expenditure /tour or travel expenditure incurred in respect of a project assigned by a client which is later on reimbursement by the client.
- Per-diem allowances for meeting lodging and boarding given to employees.

Conveyance does not include

- Reimbursement of traveling expenditure /tour or travel expenditure to a consultant in respect of a project assigned to him.
- Fixed conveyance allowance /traveling allowance /transport allowance given to employees / director.
- Expenditure for providing leave travel concession (LTC) to employees.

Use of hotel, boarding and lodging facilities.

- It includes any expenditure on use of hotel, boarding, and lodging facilities (whether it is incurred for the employees or any other person). It also includes reimbursement of hotel bills to employees /directors.
- However, it does not include fixed hotel allowance to employees /director.

Repair running and maintenance of car

- 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 car.
- Interest on loan taken to purchase motor cars.

Point for action

It does not include any expenditure on running, maintenance of delivery vans, display vans, lorries, ambulances, tractors, buses, trucks, tempos, etc.

Repair running and maintenance of aircrafts

- It includes
- Expenditure on repair of aircrafts.
- Expenditure on running of aircrafts including fuel.
- Maintenance expenditure of aircrafts.
- Depreciation of aircrafts (as per Income Tax Act)
- Lease Rent of aircrafts.
- Salary paid to pilots of aircrafts.
- Rent of garage parking slots or airport tarmac or hanger.
- Interest on loan taken to purchase aircrafts.

Telephone

- It includes any expenditure on use of telephone including mobile phones (installed any where).
- It does not include
- Any expenditure on leased telephone line.
- Fixed telephone allowance to employees.

Guest House

- Clause K has been omitted, w.e.f assessment year 2009-10. Hence any expenditure on or payment made for the maintenance of any accommodation in the nature of guest house shall not be included for valuation of fringe benefits.

Festival Celebration

- It includes any festival celebration expenditure. E.g.,. Expenditure on meeting get together of employees and their family members on the occasion of any festival like ‘Navratra’, ‘Diwali’, ‘Id’, ‘Christmas’ or ‘New Year’. However it does not include expenditure on celebration on Independence Day and Republic Day.

Health club

- It includes any expenditure on providing health club facility. It includes the following
- Reimbursement of health club expenditure to employees /directors
- Payment of entrance fees

- It does not include
- Depreciation on club building
- Fixed club allowance to employees /directors

Any other club facility

- It includes any expenditure on providing any other club facility. It includes the following
- Reimbursement of club expenditure to employees
- Payment of entrance fees to club
- It does not include the following
- Depreciation on club building
- Fixed club allowance to employees /directors

Gifts

- It includes the following
- Expenditure on gifts in kind [exempt in the hands of employee. However if the employer is not liable to FBT the value of gift exempt shall be Rs.5000/-]
- Expenditure on gift under trade scheme or promotion of company’s product to distributors /retailers
- Expenditure on gift to customers
- Expenditure on gift to employees on occasion like marriage
- Expenditure on giving any gift to any other person

Point for action

- If gifts are given with logo of the employer it will come under sale promotion and publicity.

Scholarship

- It includes the following
- Expenditure on training of employees in an education institute.
- Scholarship awarded to students and trainees.
- Any other scholarship.

Tour and Travel (including foreign travel)

- W.e.f assessment year 2007-08 tour expenses shall have to be divided into the following four parts
- Traveling expenses
- Daily allowance which will fall under boarding and lodging
- Conveyance expenses incurred within the city where the person is posted
- Telephone expenses if reimbursed.

Advance Tax –for Company Assesses

	Due date of Installment	Amount Payable
01	On or before 15th June	Not less than 15 % of advance tax liability
02	On or before 15th September	Not less than 45 % of advance tax liability, as reduced by the amount, if any paid in the earlier installment
03	On or before 15th December	Not less than 75 % of advance tax liability, as reduced by the amount, if any paid in the earlier installments
04	On or before 15th March	The whole amount of advance tax liability, as reduced by the amount, if any paid in the earlier installments

Advance Tax –for Non-Company Assesses

	Due date of Installment	Amount Payable
01	On or before 15th September	Not less than 30 % of advance tax liability
02	On or before 15th December	Not less than 60 % of advance tax liability, as reduced by the amount, if any paid in the earlier installment
03	On or before 15th March	The whole amount of advance tax liability, as reduced by the amount, if any paid in the earlier installments

Interest for deferment of Advance FBT -In case of Companies

Circumstances in which interest is payable u/s 115WJ(3)	Rate of Interest	Period	Amount on which interest is paid
Paid before 15th June is less than 15 % of Advance Tax Payable	Simple Interest @ 1% P.M.	Three Months	15 % of advance tax payable minus advance tax paid up to 15th June
Paid before 15th Sep is less than 45 % of Advance Tax Payable	Simple Interest @ 1% P.M.	Three Months	45 % of advance tax payable minus advance tax paid up to 15th September
Paid before 15th Dec is less than 75 % of Advance Tax Payable	Simple Interest @ 1% P.M.	Three Months	75 % of advance tax payable minus advance tax paid up to 15th December
Paid before 15th Mar is less than 100 % of Advance Tax Payable	Simple Interest @ 1% P.M.	One Month	100 % of advance tax payable minus advance tax paid up to 15th March

Interest for deferment of Advance FBT – In case of assesses other than Companies

Circumstances in which interest is payable u/s 115WJ(3)	Rate of Interest	Period	Amount on which interest is paid
Paid before 15^{th} September is less than 30% of Advance Tax Payable	Simple Interest @ 1% P.M.	Three Months	30 % of advance tax payable minus advance tax paid up to 15^{th} September
Paid before 15^{th} Dec is less than 60 % of Advance Tax Payable	Simple Interest @ 1% P.M.	Three Months	60 % of advance tax payable minus advance tax paid up to 15^{th} December
Paid before 15^{th} Mar is less than 100 % of Advance Tax Payable	Simple Interest @ 1% P.M.	One Month	100 % of advance tax payable minus advance tax paid up to 15^{th} March

Interest payable for default of advance FBT [section 115WJ(5)]

- The assessee is liable to pay interest in the following cases
- Advance tax payable by him during the financial year has not been paid by the assessee ; or
- The advance tax paid by the assessee during the financial year is less than 90% of the "assessed tax" [assessed tax means tax assessed u/s 115WE or section 115WF or section 115WG]

- Rate of Interest :- simple interest @ 1% per month or part thereof
- Period for which interest is payable:- Interest will be payable from 1st April next following such financial year to the date of assessment of tax u/s 115WE or section 115WF or section 115WG
- Amount on which interest is payable :- interest is payable on “assessed tax” if no advance tax has been paid. However if any advance tax has been paid, interest will be payable on assessed tax minus advance tax paid.

Return of Fringe Benefit

- The last date for filling return where the employer is (a) a company; or (b) a person (other than a company) whose accounts are required to be audited under this Act or under any other law for the time being in force :- shall be 30th September of the assessment year.
- In case of any other employer :- 31st July of the assessment year.

Belated Return [section 115WD(3)]

- Any employer responsible for paying fringe benefit tax who has not furnished a return within the time allowed under sub-section (1) or within the time allowed under a notice issued under sub-section (2), may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment whichever is earlier.

Revised Return [section 115WD(4)]

- If any employer having furnish a return under sub-section (1) or in pursuance of notice issued under sub-section (2), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of assessment , whichever is earlier.

Interest for default in furnishing return of fringe Benefits

- Where the return of fringe benefits for any assessment year under sub-section (1) or sub-section (3) of section 115WD or in response to a notice under sub-section (2) of that section is furnished after the due date, or is not furnished, the employer shall be liable to pay simple interest @ 1% for every month or part of a month comprised in the period commencing on the date immediately following the due date :-

- Where the return is furnished after the due date, ending on the date of furnishing of the return; or
- Where no return has been furnished, ending on the date of completion of the assessment under section 115WF, on the amount of tax on the value of fringe benefits as determined under sub-section (1) of section 115WE or regular assessment as reduced by the advance tax paid under section 115WJ.

No segregation as ‘expenses incurred on employees’ or ‘expenses incurred on others’

- Under section 115WB(2), 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 carried any expenses for any one of the purposes enumerated in clauses (A) to (Q) of section 115WB(2) , 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.

Capital or Revenue expenditure

- 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

Pre-operative expenses

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

Expenditure to be calculated on due basis.

- FBT would be payable in the year in which expenditure is incurred.
- FBT would not be payable on the payment of advance towards expenses to be incurred in the future.
- In other words expenditure would be considered on due basis (not on payment basis)

Points for action

- Net expenses to be considered in case of recovery from employees.
- Costing sharing agreement with group companies.
- Disallowance under section 37,40,40A and 43B.
- Bogus expenditure.

- Reimbursement of expenditure by client.
- An entity having no employee but retainer.
- Company registered u/s 25
- Indian company having employees based both in and outside India.

- Indian company does not have any employee based in India.
- Applicability of FBT to Foreign Company
- Applicability of FBT to an entity if its incomes is exempt under Double Taxation Avoidance Agreement (DTAA).
- Applicability of FBT to an assessee who has practically closed the business but is in the process of winding up.

- Allocation of common expenditure in case of employer having multiple business including specified business such as hotels, construction and pharmaceuticals which attracts lower rate of FBT.
- Value of a free air ticket provided by an employer engaged in the business of carriage of passengers or goods by aircraft.

- Employer having exclusive training centre which is used to train its employees , any expenditure in the nature of food or beverage provided by the employer at such training centre to the employees attending the training – applicability of FBT.
- Reimbursement of food and beverage expenditure incurred by employee while working after office hours. Applicability of FBT

- Applicability of FBT to the expenditure incurred for the purpose of conference of the agents or dealers or development advisors.
- Product marketing research expenses.
- Expenditure in nature of call centre charges for canvassing sales (cold calls) or carrying out post sales activities .
- Expenditure in making ad-film.

- Expenditure incurred for hotel stay, air ticket charges etc in relation to customer/client .
- Whether FBT would be allowable deduction while computing book profit under section 115JB.

Tax Planning with FBT

- The Fringe Benefits may be blended with salary to bifurcate the CTC to get the best and minimize the tax effect in Toto.
- The effect of corporate tax on FBT in paying the fringe benefits to employee in lieu of salary should be taken into consideration.

Thanks for sparing your valuable time for this.

Purna Chandrarao P

Asst secretary

FAPCCI