

# **A COMPARATIVE ANALYSIS OF THE TAXATION OF FRINGE BENEFITS IN THE SOUTH AFRICAN INCOME TAX WITH THE AUSTRALIAN INCOME TAX**

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## ABSTRACT

# A COMPARATIVE ANALYSIS OF THE TAXATION OF FRINGE BENEFITS IN THE SOUTH AFRICA INCOME TAX WITH THE AUSTRALIAN INCOME TAX

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Fringe benefits are the largest source of tax collection in South Africa, and a major change to the Income Tax Act has affected Fringe Benefit Tax. Virtually every year in the budget speech, the Minister of Finance introduces changes to the legislation, with the concomitant effect on individuals. In the last speech, the use of travel allowances and medical schemes, to name only two, were mentioned as being under constant review. In the budget speech of 2011, delivered by Pravin Gordhan on 23 February 2011, he announced that the employer's contribution to retirement funds on behalf of employees will constitute a Taxable Fringe Benefit with effect from 1 March 2012.

This study intends to establish, by means of a comparison between the South African and Australian Income Tax Acts, whether the taxation of fringe benefits, as set out in the Act in South Africa, is still appropriate. This will be done by evaluating the Australian system of taxing fringe benefits and comparing this with the taxation of the fringe benefits listed in the Act in SA. The study also discusses the various categories of fringe benefits listed in the Act. It will analyse and compare these with the fringe benefits in the Australian tax system. No similar research has been carried out from the South African perspective.

Keywords:

*Fringe Benefit Tax*

*Employees*

*Employment*



*Employers  
Employees' Tax.*

## **OPSOMINGS**

# ***‘N VERGELYKENDE ANALISE VAN DIE BELASTING OP BYVOORDELE IN SUID-AFRIKAANSE INKOMSTEBELASTING MET DIE AUSTRALIESE INKOMSTEBELASTING***

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**GRAAD:**

**MAGISTER COMMERCII**

Byvoordeel bestaan die grootste gedeelte van die bron van belasting invordering. Daar is 'n groot verandering in die Inkomstebelastingwet wat die byvoordeel belasting geaffekteer het in Suid Afrika. Byna elke jaar in sy begrotingsrede het die Minister van Finansies veranderinge aangekondig in die wetgewing wat individue raak. In die begrotingsrede van 2011, vrygestel op 23 Februarie 2011 deur die Minister van Finansies, Pravin Gordhan, sal die werkgewer se bydrae tot aftreefondse namens werknemers ,met ingang 1 Maart 2012 as 'n belasbare byvoordeel graag word.

Die doel van hierdie studie is om vas te stel, deur middel van 'n vergelykende studie met Australiese Inkomstebelastingwet, of die wet op belasting op byvoordele in Suid-Afrika nog toepaslik is. Die doelwitte van die studie is om die Australiese stelsel te evalueer in vergelyking met die belasting op byvoordele in SA. Hierdie studie bespreek die verskillende kategorieë van byvoordele soos tans van toepassing op Suid-Afrika; an word ontleed en vergelyk met die byvoordele in die Australiese belasting stelsel. Daar is geen vorige navorsing uitgevoer in hierdie gebied vanuit 'n Suid-Afrikaanse perspektief nie.

*Sleutelwoorde:*

*Byvoordele belasting*

*Werknemers*



*Indiensnemer*

*Werkgewer*

*Werknemer se belasting.*

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# A COMPARATIVE ANALYSIS OF THE TAXATION OF FRINGE BENEFITS IN THE SOUTH AFRICA INCOME TAX WITH THE AUSTRALIAN INCOME TAX

## CHAPTER 1: INTRODUCTION

### 1.1 BACKGROUND

Paragraph (i) of the definition of gross income in section 1 of the Income Tax Act 58 of 1962 (the Act) includes the cash equivalent of the value of a taxable benefit as defined in the Seventh Schedule to the Act (Van Schalkwyk, 2010:323). The Seventh Schedule to the Act regulates the taxation of fringe benefits in South Africa. Fringe benefits are “non-cash” compensations provided to employees in addition to their normal salary and wages (Van Schalkwyk, 2010:315). Most countries tax these benefits to some degree, which poses challenges for both employers and employees. Some countries encourage collectively-arranged benefits so that they cannot be attributed to individual employees.

Employers have made extensive criticism of this because the liability for Fringe Benefit Tax (FBT) falls to them as an obligation which should rightfully belong to the employees who actually receive the benefit (Lehmann & Coleman, 1994:786). Though the main purpose of this research is not about compliance issues, the FBT tax has been perceived as imposing a considerable compliance burden for most employers, and some countries have considered abolishing the FBT altogether. With the objectives of the employers in mind and the introduction of National Health Insurance, the government will require funding, which means a review of the National Income Tax might be possible and key focus area been Fringe benefits as the alternative option to maximise revenue collection.

In the Second Budget Speech of President Zuma’s administration, dated 23 February 2011, the Minister of Finance, Mr Pravin Gordhan, stated: “We will consider and consult on options for meeting the funding requirement, including a payroll tax payable by employers...”. This emphasizes the importance of revenue collection, including FBT.



Changes to the tax treatment of employers' contributions to retirement funds were also proposed. There was further a proposal to treat employers' contributions to provident and pension funds as a fringe benefit, which will become reality with effect from 1 March 2012.

## **1.2 PURPOSE STATEMENT**

With a view of revisiting the Income Tax Act, this research's main purpose is to establish by means of a comparative study between Australia and South Africa whether the taxation of fringe benefits according to the Act in SA is still appropriate.

## **1.3 RESEARCH OBJECTIVES**

The research objectives of this study are:

- To analyse the FBT in SA in terms of description and taxation of each fringe benefit;
- To analyse the FBT in Australia in terms of description and taxation of each fringe benefit;
- To compare the FBT in SA to that of Australia;
- To evaluate whether FBT in SA is still appropriate and economically viable.

## **1.4 IMPORTANCE AND BENEFITS OF THE PROPOSED STUDY**

The challenges associated with compliance costs, administration and financial impact compel employers to review their remuneration and reward structures. Findings from the analysis of this study will assist the South African Revenue Services (SARS) and the National Treasury to make an informed decision on the relevance of taxation on fringe benefits in the Act.

## **1.5 DELIMITATIONS AND ASSUMPTIONS**

### **1.5.1 DELIMITATIONS**

This study is conducted to analyse whether the taxation on fringe benefits is still relevant in the Act and will be:

- limited to a comparison between the South African and Australian Income Tax systems and will not consider the application of tax practice in other geographical areas;
- subject to guidelines as set out in the Seventh Schedule to the Act and practices as applicable in the Australian Income Tax system; and
- representing a comparative analysis of the South African Income Tax system of taxing fringe benefits and the Australian Income Tax system as contained in their Act. The study will not consider any implications of FBT on Value Added Tax (VAT), Capital Gain Tax (CGT) and Donation Tax.

### **1.5.2 ASSUMPTIONS**

The study takes the form of a literature review. The purpose is not to generalise any findings regarding Fringe Benefit Taxation. In this study it is assumed that:

- The Fourth and Seventh Schedules to the Act will both be used;
- The implication of other taxes, such as VAT, Donation Tax and CGT affected by the Fringe Benefit Taxation will not be discussed.

### **1.6 DEFINITION OF KEY TERMS**

The study depends on a number of key concepts, namely but not limited to, consideration, employer, employee, employment, month, associated institution and taxable benefit. These definitions were taken from both the Seventh and the Fourth Schedules to the Act and the Australian Fringe Benefit Tax Assessment Act of 1986 (FBT Act) was referred to.

#### **Assessment:**

Assessment, as defined in section 136 of the FBT Act, means ascertaining the amount of taxable fringe benefit due by an employer during the taxation year and the tax payable on that amount.

**Associated institution:**

Paragraph 1 of the Seventh Schedule to the Act defines “associated institution” in relation to any single employer as any company or connected company or any company forming the same group of companies as defined in the Companies’ Act No 61 of 1973.

**Commissioner:**

The Commissioner in this study is the Commissioner of SARS.

**Consideration:**

Paragraph 1 of the Seventh Schedule to the Act defines consideration as any amount given to an employee.

**Current employer:**

Current employer, as defined in section 136 of the FBT Act means a person who is paying any amount to an employee in the form of salary or remuneration or wages.

**Employer:**

For the purpose of this study, employer means any person who pays remuneration as defined in paragraph 1 of the Fourth Schedule and includes:

- any company; and
- for the purpose of paragraph 1 and the determination of the cash equivalent of the value of any taxable benefit granted to any person who derives remuneration as defined in the said paragraph from employment in the public service or any administration or undertaking of the state or who holds office under the Republic.

**Employment:**

Paragraph 1 of the Seventh Schedule to the Act defines employment as office or employment. It means the holding of any office, or appointment, the performance of any functions, or duties or the doing of any acts that result or will result in the person been treated as an employee

**Employees’ Tax:**

For the purpose of this study, Employees' Tax refers to the tax that the employer withholds or deducts upon payment of remuneration. Employees' Tax consists of PAYE, and throughout the literature study the terms PAYE and Employees' Tax will be used interchangeably as referring to one and the same thing.

**Employee:**

For the purpose of this study and as per paragraph 1 of the Seventh Schedule to the Act, the term employee, in relation to any employer, means a person who is hired to provide a service to a company in exchange for reward, whether in cash or otherwise.

**Emergency:**

An emergency as defined in section 136 of the FBT Act means an emergency involving any of the following:

- (a) a natural disaster;
- (b) a conflict involving an armed force;
- (c) a civil disturbance;
- (d) an accident;
- (e) a serious illness; or
- (f) any similar matter.

**Emergency assistance:**

In terms of section 136 of the FBTA Act, emergency assistance in relation to a person means assistance granted to the person where:

(a).The assistance is in respect of all or any of the following matters:

- (i) first aid or other emergency health care;
- (ii) emergency meals or food supplies;
- (iii) emergency clothing;
- (iv) emergency transport;
- (v) emergency accommodation;
- (vi) emergency use of household goods, temporary repairs or any similar matter.

(b).The person is or is at immediate risk of becoming the victim of an emergency;

(c) The assistance is granted to the person solely to provide immediate relief.

## **Fringe Benefit Tax ( FBT)**

FBT means the tax imposed by the Fringe Benefit Tax Act of 1986.

### **Former employer:**

A former employer is a person who has been a current employer.

### **Future employer:**

A future employer is a person who will become a current employer.

### **Income Tax:**

Any references in this study to the Income Tax Act No.58 of 1962 as used by the researcher will be referring to the Seventh Schedule to the Act and no other taxes, such as VAT, Donation Tax and CGT, will be mentioned.

### **IRP5:**

An IRP5 is an Employees' Tax certificate issued by an employer to employees, reflecting the details of all (including employee's personal details) remuneration, salaries, value of taxable fringe benefit and the amount of tax charged.

### **Month:**

Paragraph 1 of the Seventh Schedule to the Act defines month as any of the twelve portions into which any calendar year is divided.

### **Provider:**

The provider, in relation to the benefit, means the person who provides the benefit.

### **Recipient:**

The recipient, in relation to the benefit, means the person who receives the benefit.

### **Taxable benefit:**

Paragraph 1 of the Seventh Schedule to the Act defines taxable benefit as any kind of advantage granted to an employee over and above the normal salary, whether in cash or otherwise, but excluding:

- any benefit, the amount or value of which is exempt from normal tax under the provisions of section 10 of the Act; or
- any benefit, by any benefit fund in respect of medical, dental and similar services, hospital services, nursing services and medicines; or
- any lump sum benefit payable by a benefit fund, pension fund, pension preservation fund, provident fund, and provident preservation fund, being a benefit referred to in the definition of benefit fund;
- any benefit or privilege received by or accrued to a person contemplated in section 9(1)(e) of the Act stationed outside the Republic which is attributable to that person's services rendered outside the Republic.

**TABLE 1: ABBREVIATIONS**

<b>Abbreviation</b>	<b>Meaning</b>
Act	Income Tax Act, No. 58 of 1962
CGT	Capital Gain Tax
CMA	Cost and Management Accountants
FBT	Fringe Benefit Tax
FBTA	Fringe Benefit Tax in Australia
FBTA Act	Fringe Benefit Tax Assessment Act 1986
IIA	Institute of Internal Auditors
PAYE	Pay- As-You-Earn
RAF	Retirement Annuity Fund
SA	South Africa
SAICA	South African Institute of Chartered Accountant
SARS	South African Revenue Services
UNISA	University of South Africa
VAT	Value Added Tax

## **1.7 RESEARCH DESIGN AND METHODS**

Qualitative, Non-empirical research design.

A literature study will be conducted to establish the theoretical and practical platform for the research. This documentary study will also contribute to establishing an understanding of some of the basic problematic areas, ranging from employees, employers and the government in relation to the use of fringe benefits. Throughout the study, the researcher will consult library books at the University of Pretoria and UNISA, as well as journals and catalogues.

## **1.8. BRIEF OVERVIEW OF THE CHAPTER**

The chapter shows that the Fringe Benefit Taxable amount is included in the gross income of the employee in terms of the definition of gross income in section 1 of the Act. The researcher has also briefly outlined the main purpose of the study, its objectives and its importance and benefits to the reader. The researcher also presented brief definitions of some of the key terms to be used throughout the study. The research methods and design were unpacked. In Chapter 2, the researcher will conduct a literature study on the taxation of fringe benefits in the Act in SA. Chapter 3 of the study will focus on the taxation of fringe benefit in the Australian Income Tax system. Chapter 4 of the study will provide a comparative analysis of the taxation on fringe benefits in the two countries, along with any similarities and differences.

## CHAPTER 2: FRINGE BENEFITS IN SOUTH AFRICA

In Chapter 1 the researcher indicated the contents of the study. Key definitions and abbreviations in the study were discussed. This chapter will focus on fringe benefits in South Africa.

### 2.1 Introduction

The literature study discusses and analyses the various types of fringe benefits listed in the Act. The study is carried out with close reference to the Act and the Seventh Schedule to the Act as its basis. Before the introduction of the Seventh Schedule to the Act, which came into effect only during the 1984 tax year, the taxation of so-called “perks”, now commonly known as fringe benefits, offered to employees in lieu of cash, was a very uncertain area of taxation. Fringe benefits are remuneration made by employers to employees in a form other than cash. The main purpose of the introduction of fringe benefits was to keep employees happy and to provide them with some form of economic security. However, many challenges and administrative burdens have become associated with fringe benefits from the tax perspective. The definition of gross income in section 1(i) of the Act, which includes fringe benefits in the gross income, reads as follows:

*The cash equivalent, as determined under the provisions of the Seventh Schedule, of the value during the year of assessment of any benefit or advantage granted in respect of employment or to the holder of any office, being a taxable benefit as defined in the said Schedule, and any amount required to be included in the taxpayer's income under section 8A.*

The provisions of the Act, in terms of which a fringe benefit in the broad sense of the word may be subject to income tax, are as follows:

- The fringe benefit may fall within the general definition of ‘gross income’ in section 1 of the Act;
- The benefit may fall within paragraph (c) of the definition ‘gross income’ in section 1 of the Act;



- The benefit may be included in the taxpayer's gross income by virtue of some special provision in the Act, for example, an annuity.

## **2.2 The liability to Fringe Benefit Tax**

In terms of paragraph (i) of the definition of gross income in section 1 of the Act, the cash equivalent of the value of any taxable benefit granted in respect of employment or holder of any office must be included in the taxpayer's income. This makes the employer liable and responsible for withholding tax on the benefit. Paragraph 2 of the Fourth Schedule to the Act states that the employer who pays or becomes liable to pay any amount by way of remuneration to any employee shall deduct or withhold Employees' Tax, and this, together with the tax on taxable fringe benefits, must be paid over to SARS within seven days after the end of the month. The word "employment" must be read in the context of paragraph (c) of the gross income definition, which means "in respect of or by virtue of any employment or the holding of an office". The benefit granted to the employee of the associated institution will be taxed by the employer, who is liable for deducting or withholding Fringe Benefit Tax on the amount. Statistics released by SARS for tax on persons and individuals for 2002/03 to 2007/08 showed that tax on PAYE increased from R90,388.3 million to R158,106.2 million. The taxation on fringe benefits as per SARS' statistics rose from R7,794 million during 2005 to R10,167 million during the 2008 tax collection. The figures speak for themselves - the collection of tax on PAYE and fringe benefits plays an important role in government revenue collection.

## **2.3 The valuation of fringe benefits**

Paragraph 3 of the Seventh Schedule to the Act requires that the cash equivalent of the value of the taxable benefit shall be determined by the employer. However, in terms of paragraph 3(2) of the Seventh Schedule to the Act, SARS may, if such determination appears incorrect, re-determine such a cash equivalent upon assessment of the liability for normal tax of the employee to whom such taxable benefit has been granted. The employer must decide whether the value of the cash benefits should be the cost of acquisition of the assets, that is, the market value at the time of distributing the asset to the employee, or whether he should use the standard value of the benefit. In *Delfos, CIR v 1933 AD 242, 6*

SATC 92, it was held that the tax is to be assessed on all receipts or accrual having a money value. If a benefit has no value or cannot be turned into money, it is not to be regarded as income. In *Butcher Bros (Pty) Ltd, CIR v 1945 AD 301, 13 SATC 21*, the view was that the onus of establishing amounts rests with the Commissioner. These principles illustrate the challenges and difficulties facing SARS when it comes to the use of fringe benefits in the Act. Determining the cash equivalent of the taxable benefit to be included in the gross income is still a challenge to both SARS and the employer.

## **2.4 Fringe benefits and Employees' Tax**

There is no doubt that fringe benefits were introduced because of their favourable tax treatment for employees. However, taxing fringe benefits not only creates administrative burdens for employers and SARS, but it also creates huge cash-flow problems and tax liabilities for employees at the end of tax periods. The cash equivalent of any fringe benefits employees receive is included in their remuneration and is currently subject to Employees' Tax. The employer must deduct the applicable amount of PAYE from the total remuneration received by the employee, including both cash and noncash (fringe benefits). Failure to withhold Employees' Tax is a violation of paragraph 2 of the Fourth Schedule to the Act. Employees' Tax is the largest contributor to the government's income and one of the greatest Companies' Tax liabilities facing taxpayers. Without doubt, employers are facing major challenges of non-compliance.

This is not a challenge for employers alone, bearing in mind that the fringe benefit included in the remuneration is not actual cash. It is also a problem for the recipients of such remuneration. The money to pay the tax is financed from the employees' cash remuneration, so this is an additional tax that cash-strapped workers have to pay to SARS without an actual increase in cash earning. This surely creates a major cash-flow problem when it comes to fringe benefits in the Income Tax system.

The following sections present an analysis of various fringe benefits listed in the Act. Each fringe benefit analysis will consist of a description of the benefit together with its tax implications.

### **2.4.1 Housing subsidies**

Paragraph 2(g) of the Seventh Schedule to the Act provides that a taxable benefit arises from employment whenever an employer has paid any subsidy in respect of capital or interest on any loan due by the employee. In addition, the payment of an amount by the employer to a third party in respect of the granting by that third party of a low interest or interest-free loan to an employee of the employer is deemed to be a subsidy if the amount paid by the employer, together with the interest paid by the employee, exceeds the amount of interest on the loan calculated at the official rate of interest (Venter, Hamel & Stiglingh, 2008:184). In terms of paragraph 12 of the Seventh Schedule to the Act, the cash equivalent of this benefit is the amount of the subsidy.

The cash equivalent of the taxable benefit in respect of housing subsidy is subject to the deduction of Employees' Tax as it accrues each month. The tax rate applicable to natural persons is applied to deduct the amount of Employees' Tax (Van Schalkwyk, 2011:337). The amount must be reflected on the IRP5 certificate as per paragraph 13 of the Fourth Schedule.

### **2.4.2 Free or cheap services**

Paragraph 2(e) of the Seventh Schedule to the Act provides that a taxable benefit arises when a service has been rendered to the employee at the expense of the employer (directly or indirectly by some other person) for his private or domestic purposes, either for no consideration or for a consideration less than the cost to the employer in rendering the services at an employer's or his associated institution's expense (Van Schalkwyk, 2011:334). The cash equivalent of the value of any taxable benefit derived from the rendering of a service in terms of paragraph 10 of the Seventh Schedule to the Act is subject to PAYE deduction and must be reflected on the employee's IRP5 certificate in terms of paragraph 13(1) of the Fourth Schedule to the Act. The following benefits have proved more beneficial, as the Commissioner for SARS regards them as benefits with nil value:

- services rendered by an employer to his employee at their place of work, such as free parking facility for the convenience of employees in large cities;
- a place of recreation facility used by employees in general, such as a gym;
- provision of a day-care facility for the children of the employees in general;
- a transport service rendered by an employer to his employees for their conveyance from home to their place of employment and vice versa; and
- a travel facility granted by an employer to enable an employee or his spouse or minor child to travel to any destination in the RSA (Venter *et al*, 2008:180).

The cash equivalent of the value of any taxable benefit derived from the rendering of a service in terms of paragraph 10 of the Seventh Schedule to the Act must be subject to the deduction of Employees' Tax at the month. The tax rate applicable to natural persons must be used to calculate the tax on the fringe benefit. The amount of the cash equivalent must be reflected on the employee's IRP5 certificate in terms of paragraph 13(1) of the Fourth Schedule to the Act.

### **2.4.3 Residential and holiday accommodation**

Another area where there has been widespread abuse is in the provisions relating to the determination of the taxable value of the residential accommodation provided to employees by an employer or by a connected person in relation to the employer (Manuel : Budget Speech,1997:16). Paragraph 2(d) of the Seventh Schedule deems it to be a taxable benefit where residential accommodation is provided for an employee either free of charge or for a consideration that is less than its rental value (Van Schalkwyk, 2011:330). It is immaterial whether or not the employer owns the accommodation. The Seventh Schedule also provides that holiday accommodation supplied by an employer to an employee at either a low or no rental will be regarded as a taxable benefit (Venter *et al*, 2008:177). The cash equivalent of the taxable benefit of holiday accommodation if it is hired by the employer will be the cost borne by the employer, including any cost in respect of meals, refreshment and any other services. In any other cases, the employee will be taxed on the prevailing rate per day at which the accommodation could normally be let out to a person who is not an employee (Huxham & Haupt, 2008:521). Most employees,

particularly those in the Defence Force and mining industry, welcome the benefit, as it is convenient for them to work close to home and the PAYE implications are, in most cases, disregarded. However, it is doubtful whether the tax contribution of residential accommodation is increasing, as more people now tend towards ownership of property.

The amount of Employees' Tax to be deducted depends on whether full ownership is vested in the employer or the associated institution. If ownership is vested in the employer or associated institution, the rental value for the purpose of calculating Employees' Tax is determined in accordance with the formula. In any other cases, the rental value is the greater of the amounts determined in accordance with the formula or the total amount paid by the employer or associated institution for the accommodation in the form of rentals and other expenditure. The amount of the cash equivalent is fully taxable and, for Employees' Tax purposes, an appropriate portion of the cash equivalent of the value of the taxable benefit derived from the occupation of residential accommodation must be apportioned to each period during the year of assessment, in respect of which any cash remuneration is paid or becomes payable by the employer to the employees (Van Schalkwyk, 2011:333). The amount must be reflected on the IRP5.

#### **2.4.4. Assets acquired at less than actual value**

In terms of paragraph 2(a) of the Seventh Schedule to the Act, a taxable benefit arises where an employee acquires an asset (other than money) from his employer, his employer's associated institution or any person by arrangement with his employer, either for no value or an amount less than the value of the asset (Van Schalkwyk, 2011:322-3). The cash equivalent to be placed on the taxable benefit as determined in terms of paragraph 5 is the difference between the market value of the asset at the time the employee acquired the asset less the consideration given (if any) by the employees (Venter *et al*, 2008:164). The cash equivalent is subject to the deduction of PAYE in terms of paragraph 2(1) of the Fourth Schedule and the amount must be reflected on the IRP5 in terms of paragraph 13(1) of the Fourth Schedule. Where an asset other than money is presented to an employee as an award for bravery or long service, its value must be reduced by the lesser of the cost to the employer of all such assets so awarded to the employee during the year of assessment or R5000. In other words, the maximum of the

first R5000 of the value is exempt from tax (Van Schalkwyk, 2011:322). Long service is taken as indicating an initial unbroken period of service of no less than 15 years or any subsequent unbroken period of service of no less than 10 years (Van Schalkwyk, 2011:322).

Employees' Tax must be deducted from the full cash equivalent of the value of the taxable benefit enjoyed by an employee who has acquired an asset for no consideration or for a consideration that is less than its value. The tax rate applicable to natural persons must be used to calculate the tax. The amount of this cash equivalent must be reflected on the IRP5 certificate. The Employees' Tax must be deducted in the month in which the asset is acquired by the employee. If the amount of tax is excessive in relation to the employee's remuneration for the month, the deduction may be spread over the balance of the year of assessment in which the benefit arose (Van Schalkwyk, 2011:323).

#### **2.4.5. The right of use of a company car**

Paragraph 2(b) of the Seventh Schedule to the Act provides that a taxable benefit arises where an employee is granted the right to use for private purposes a motor vehicle which is owned by his employer. The private use of a motor vehicle includes travelling between the employee's place of residence and his place of work (Van Schalkwyk, 2011:324). The cash equivalent of the taxable benefit is the value of private use as determined under paragraph 7 less any consideration paid by the employee for the use of the motor vehicle during the period. Paragraph 7(10) of the Seventh Schedule to the Act provides that the private use by an employee of a company car shall be deemed to have no value, if:

- the vehicle is available to and is used by other employees of the employer in general and the private use of the vehicle by the employee is infrequent; or
- the private use is merely incidental to the business use; and the vehicle is not normally kept at or near the residence of the employee concerned when not in use outside business hours; or
- the nature of the employee's duties are such that he or she is regularly required to use that vehicle for the performance of such duties outside his or her normal hours of

work and he or she is not permitted to use such vehicle for private purposes other than travelling between his or her place of residence and place of work.

For the purpose of calculating the Employees' Tax, the value to be placed on the private use of a motor vehicle is 2.5% of the determined value for each month or part of a month during which the employee is entitled to use it for private purposes as required by paragraph 7(4)(a) of the Seventh Schedule to the Act. The rate for further vehicle use by an employee is 4% per month. The determined value is defined as (Clegg, 2009:33):

- 1) the original cost of the vehicle, excluding VAT (under a bona fide arm's length sale), or when the employer manufactures the motor vehicle, the dealer's billing price less 20%, according to SARS' practice;
- 2) the cash value as defined in the Value-Added Tax Act when it is or was held under a financial lease or an instalment credit agreement respectively;
- 3) the retail market value when it was hired under any other lease; and
- 4) the market value when it was obtained by the employer in any other situation.

With effect from 1 March 2011, the fringe benefit value of a company car is calculated at 3.5% if the vehicle was not subject to a maintenance plan at the time it was acquired by the employer and 3.25% if it was subject to a maintenance plan. The value will be the cost of the car excluding finance and interest charges, but including VAT and any maintenance plan purchased. The fringe benefit calculated must be reduced by any payment made to the employer by the employee other than the cost of licenses, insurance, fuel and maintenance costs, and provided there was no allowance for the expenses concerned. For Employees' Tax purposes, the cash equivalent of the value of the taxable benefit accrues monthly, and Employees' Tax must therefore be deducted monthly. The full amount of the value of the benefit must be reflected on the IRP5.

#### **2.4.6. Low interest or interest-free loans**

Where the employer or any associated institutions make any arrangement for a loan that bears no interest or interest lower than the official rate, the employee or his relative will be deemed to have received a fringe benefit (Van Schalkwyk, 2011:335). The cash equivalent



of the taxable benefit, as determined in terms of paragraph 11 of the Seventh Schedule to the Act, is the amount of the interest which would have been paid on the loan during the year of assessment, if interest had been paid at the official rate, less the amount of interest (if any) actually paid by the employee during the year (Venter *et al*, 2008:181). Despite the tax implications, the fringe benefit is welcome, as its main purpose is to encourage further training and hence alleviation of the skills shortage. However, there will be nil taxable benefit value attached to a casual loan not exceeding R3000 I intended to further own studies, provided the employee is required to repay the loan at some future stage.

The Employees' Tax applies to this benefit on a pro rata basis at the end of each month that a salary is paid if no interest is payable or interest is payable at irregular intervals. If interest is paid at regular intervals, the employee is taxed on the dates on which interest becomes payable (Van Schalkwyk, 2011:335). The amount must be reflected on the IRP5 certificate.

#### **2.4.7. Discharge or release of payment of obligation**

Where the employer or associated institution settles a debt for the employee or in some way releases an employee from the obligation to pay an amount, the employee is deemed to have received a fringe benefit in terms of paragraph 2(h) of the Seventh Schedule to the Act. The cash equivalent of the taxable benefit as determined in terms of paragraph 13(1) of the Seventh Schedule to the Act is the amount paid by the employer, or the amount owed by the employee. Examples of payment by the employer falling within the ambit of paragraph 2(h) are the payment of an employee's mortgage loan, the amount due on a credit card account or his or her clothing account. The payment of an employee's RAF contributions by an employer is also a release from an obligation, because the amount is due by the employee to the fund (Van Schalkwyk, 2011:337). Section 11(n)(ii) deems the payment to have been made by the employee to the extent that it is taxed as a fringe benefit in terms of the Seventh Schedule. The same applies where a new employer releases an employee from an obligation towards the previous employer. In *Kotze, CIR v, 1992(1) SA 825, 54 SATC 149*, it was held that, where a new employer releases an employee from an obligation the employee had towards a previous employer, it constitutes a fringe benefit in terms of paragraph (i) of the Seventh Schedule to the Act. Currently an



employer's contributions to a pension fund or provident fund on behalf of his employees is the amount which the employer is due to the specific fund in terms of the rules of the fund, and therefore does not represent the amount due by the employee. There is therefore no taxable benefit in respect of these contributions.

The Minister of Finance, Mr Pravin Gordhan, in his 2011 budget speech, announced changes that would lead to treating them as fringe benefits with effect from 1 March 2012. Paragraph 13 (2)(b) provides that there will be no taxable fringe benefit in respect of an employee's subscriptions paid by an employer to a professional body, membership of which is a requirement of the employment. The exemption will apply to contributions such as contributions to, inter alia, IIA, SAICA and CMA. With effect from 1 March 2011, insurance premiums paid by an employer indemnifying an employee solely against claims arising from negligent acts or omissions on the part of the employee in rendering services to the employer will have no fringe benefit consequences in terms of paragraph 13(2)(bA) of the Seventh Schedule to the Act.

Employees' Tax must be deducted from the full cash equivalent of the taxable benefit enjoyed by an employee whose employer has paid an amount owing by him or who has been released by him from an obligation to pay an amount. The amount of this cash equivalent must be reflected on the IRP5. Employees' Tax must be deducted in the month in which the benefit accrues to the employee, unless the deduction of tax is excessive in relation to his remuneration for that month, in which event the deduction of tax may be spread over the balance of the year of assessment during which the benefit accrued (Van Schalkwyk, 2011:338).

#### **2.4.8. The use of sundry assets**

Paragraph 2(b) of the Seventh Schedule to the Act provides that the employee is deemed to have received a taxable benefit when an employee has been granted the private use or domestic use of an asset either free of charge or for consideration payable by him that is less than the cash equivalent of the private use of the asset. Paragraph 6(1) of the Seventh Schedule to the Act determines that the cash equivalent of the value of the taxable benefit shall be as much of the value of the private use or domestic use as

exceeds any consideration given by the employee for the use of such asset. The fringe benefit is reduced by any consideration being paid by the employee. There shall be no taxable benefit in any of the following circumstances (Venter *et al*, 2008:166):

- the private use is incidental to its business use;
- the private use may only be enjoyed at the place of employment;
- the private use is related to recreational facility;
- the private use related to the equipment is available to all employees for a short period of time;
- the asset consists of books, literature, recordings or works of art.

The cash equivalent is apportioned over the same period that cash remuneration is paid to the employee and Employees' Tax is withheld accordingly. When the employee is given the use of an asset over its useful life, Employees' Tax must be deducted from the full cash equivalent in the month during which the benefit is deemed to accrue to the employee. The cash equivalent of the benefit must be reflected on the IRP5 certificate (Van Schalkwyk, 2011:324).

#### **2.4.9. Free meals, refreshments and meals and refreshment vouchers**

Paragraph 2(c) of the Seventh Schedule to the Act provides that a taxable benefit arises when an employer has provided his employees with meals or refreshments or vouchers either free of charge or for a consideration which is less than the value of the meal or refreshment (Venter *et al*, 2008:174). The cash equivalent of the meal, refreshment or vouchers as determined in terms of paragraph 8 of the Seventh Schedule to the Act is the actual cost to the employer reduced by any consideration paid by the employee. However, as some kind of encouragement and motivation to employees, there shall be a nil value fringe benefit in the following circumstances:

- a meal or refreshment provided to employees in a canteen, cafeteria or dining room operated by or on behalf of the employer;
- a meal or refreshment provided to employees on the premises of the employer;
- a meal or refreshment provided to employees during business hours or extended hours, such as working late;

- a meal or refreshments provided to employees on a special occasion;
- a meal or refreshment enjoyed by an employee in the course of providing a meal or refreshment to someone who he is required to entertain on behalf of the employer.

The full cash equivalent of the taxable benefit enjoyed by an employee who has been provided with a meal, refreshment or voucher is subject to the deduction of Employees' Tax. The amount of the cash equivalent must be reflected on the IRP5 certificate (Van Schalkwyk, 2011:330).

#### **2.4.10. Medical aid contributions and costs relating to medical services**

A taxable benefit arises in terms of paragraph 2(i) of the Seventh Schedule to the Act when an employer contributes directly or indirectly to a medical aid scheme on behalf of employees and the contributions exceed the amount stipulated in paragraph 12A of the Seventh Schedule to the Act. The cash equivalent of the taxable benefit is the amount by which the contribution or payment by the employer exceeds the prescribed limits in relation to such employee or dependents of such employee to such fund during the year (Venter *et al*, 2008:186). Paragraph 2(j) also provides that a fringe benefit arises when an employer has incurred an amount in respect of any medical, dental or similar services, or hospital services, nursing services or medicines supplied to an employee, his or her spouses, child, relative, or dependant (Van Schalkwyk, 2011:340-41). The cash equivalent of the value of the taxable benefit is the amount incurred by the employer during the month (Venter *et al*, 2008:192). However, no value is placed on the taxable benefit derived from an employer in terms of paragraph 12A read with paragraph 12B of the Seventh Schedule to the Act in the following circumstances (Van Schalkwyk, 2010:341):

- a person who has retired from the employ of that employer on the grounds of age, ill health or other infirmity;
- the dependants of a deceased employee who was in the employ of such employer at the date of death;
- the dependants of a former employee after his death, if the employee had retired from the employ of that employer by reason of age, ill health or other infirmity;
- a person is entitled to the over 65 rebate.

Employees' Tax must be deducted monthly on the cash equivalent of the taxable benefit arising from medical aid contributions and costs relating to medical services incurred by the employer. The amount of the cash equivalent must be reflected on the IRP5 certificate (Van Schalkwyk, 2010:340-41).

#### **2.4.11. Benefits granted to relatives of employee**

Paragraph 16 of the Seventh Schedule to the Act provides that an employee is deemed to have been granted a fringe benefit by his employer if for reward or for services by the employee:

- the employer has granted a benefit or advantages directly or indirectly to a relative of the employee; or
- anything is done by the employer under any agreement so as to confer any benefit or advantages upon any person other than the employee, whether directly or indirectly; and
- the benefit or advantage would have been a taxable benefit if it had been granted to the employee.

The taxable amount of the benefit is equivalent to the cost incurred by the employer and must be subject to Fringe Benefit Tax. The amount of the value of the taxable benefit must be reflected on an IRP5 certificate. There will be further discussion on this under the heading "Bursaries and scholarships".

#### **2.4.12. Relocation benefits**

In terms of section 10(1)(nB ) of the Income Tax Act, where an employer has incurred certain expenses upon relocation of any employee, any benefits arising will mean nil taxable fringe benefit for an employee. The expenses incurred may arise as consequences of:

- the transfer of the employee from one place of employment to another place of employment;

- the appointment as an employee by the employer;
- the termination of the employee's employment.

The expenses normally borne by the employer that will be exempt from Employees' Tax consist of the following:

- the expense of transporting the employee, members of his household and their personal goods and possessions from his previous place of residence to his new place of residence;
- the expenses of hiring residential accommodation in a hotel or elsewhere or the members of his household for a maximum period of six months after his transfer has taken effect or after he has taken up his appointment (Van Schalkwyk, 2010:95).

In practice, SARS grants an exemption for the reimbursement of expenditure incurred by the employee for the following costs:

- new school uniforms;
- the replacement of curtains;
- the registration of a mortgage bond and legal costs;
- transfer duty;
- motor vehicle registration fees;
- telephone, water and electricity connection;
- the cancellation of a mortgage bond; and
- an agent's fee on the sale of the employee's previous residence.

Any relocation benefits which meet the requirements of section 10(1)(nB) will be exempt from PAYE and there will be no liability for Employees' Tax. However the amount of the benefits must be reflected on the IRP5 certificate clearly indicated as exempt.

#### **2.4.13. Uniforms benefits**

The definition of gross income in paragraph (i) of section 1 of the Income Tax Act mentions the cash equivalent of benefits granted by an employer to an employee in terms of gross

income. Therefore, if an employer supplies an employee with a special uniform in terms of a service agreement and the uniform is clearly distinguishable from normal clothes, the cash equivalent of the uniform as determined in accordance with Seventh Schedule to the Act will be included in the gross income of the employee (Van Schalkwyk, 2010:94). However, section 10(1)(nA) of the Income Tax Act exempts the value of a special uniform or any allowance granted by an employer to an employee in respect of the uniform, provided the employee is required to wear the special uniform while on duty and the uniform is clearly distinguishable from normal clothing.

No Employees' Tax deduction is required in respect of a uniform allowance. However, the amount of the benefit must be reflected on the IRP5 certificate.

#### **2.4.14. Bursaries and scholarships**

To the extent that a bursary or a scholarship does not meet certain requirements, it may be regarded as a taxable benefit in terms of the provisions of the Seventh Schedule to the Act. Any bona fide bursary or scholarship granted to enable or assist any person to study at a recognised educational or research institution may be exempt from tax. However, section 10(1)(q) of the Income Tax Act contains the following requirements to be met before a bursary or scholarship will be exempt from tax:

- The award must be a bona fide scholarship or bursary; and
- It must be granted to enable or assist a person to study; and
- That person must study at a recognised educational or research institution.

The general principles of Fringe Benefit Tax as applicable in terms of the Seventh Schedule to the Act will apply to scholarships or bursaries. Whether scholarships or bursaries give rise to taxable benefit depends on the following circumstances (Van Schalkwyk, 2010:87):

- If the bursary is granted to an employee where the employee does not agree to repay the money if he fails to complete the studies for any reason other than ill health or injury;
- If the employee earns more than R100 000 per year;

- If the bursary exceeds R10 000 for the year, the additional amount must be taxed.

The extent of the requirements depends on whether the bursary or scholarship is awarded to a non-employee, an employee or a relative of the employee:

- Scholarships or bursaries granted to non-employees (open system):

These are often referred as open-scheme, and the scholarship or bursary granted under these circumstances is competed for by, or is awarded on merit to anyone applying for it and is not to any extent confined to the employees or relatives of the employees of a particular employer (Van Schalkwyk, 2010:87). Such scholarships or bursaries are exempt from taxation in terms of section 10(1)(q).
- Scholarships or bursaries awarded to employees or relatives of the employees of an organisation:

These are referred to as closed system, and the resulting Fringe Benefit Tax will be explained under the following two headings:

- A. Scholarship or bursary by employers to employees.
- B. Scholarship or bursary by employers to relatives of employees.

#### **A. Scholarship by employers to employees**

The award of a scholarship or bursary by an employer to any current and prospective employees will be exempt from taxation as long as the employee agrees to pay the amount back to the employer if he or she fails to complete his or her studies other than for reasons mentioned above (Van Schalkwyk, 2011:86).

#### **B. Scholarship or bursary by employers to relatives of employees**

The award of a bursary to a relative of an employee may escape the Fringe Benefit Tax. However, the exemption is limited as follows (Van Schalkwyk, 2011:86):

- If the remuneration received by the employee during the year of assessment exceeded R100 000, no exemption is available and any bursary granted to relatives of the employee will be subject to Fringe Benefit Tax and the employee concerned is deemed to have received the benefit, and the cash equivalent of the bursary will be subject to Employees' Tax (Van Schalkwyk, 2011:86).

- If the employee's remuneration does not exceed the maximum R100 000, any award of a bursary in excess of R10 000 will be subject to Employees' Tax.

Bursaries and scholarships granted to non-employees are exempt from tax and where any bursary and scholarship is granted to relatives of the employees, the amount exceeding R10 000 during the year of assessment will give rise to a taxable fringe benefit and should be included in the calculation of Employees' Tax.

#### **2.4.15. Burglar alarms, bodyguards and similar systems**

It has become the norm for numerous employers whose executives frequently travel away from home to pay for the installation of burglar alarm systems in their executives' homes. There is no question that the employee or his family makes use of this asset for private purposes (Clegg, 2009:53). The fact that the alarm system is seen as an essential service is immaterial from the point of view of Fringe Benefit Tax and, on the basis that the ownership passes to the employee, it is quite clear that the total cost of installation and any annual monitoring services would be fully taxable (Clegg, 2009:53). Paragraph 2(e) of the Seventh Schedule to the Act is a guide in this instance, as it states that a taxable benefit arises when, at the employer's expense, a service has been rendered to an employee by the employer or by any other person, and that service has been utilised by the employee for his private or domestic purposes.

The cash equivalent of the installation and monitoring costs will be subject to Employees' Tax by the executives. The amount of the cash equivalent must be reflected on the IRP5 certificate.

#### **2.4.16. Use of tickets**

Occasional use by employees of, for example, game tickets at a sports ground results in the taxable benefit of the use of an asset hired by the employer in the hands of the employees unless it forms part of the entertainment of customers or clients or is available to employees in general (Clegg, 2009:53). In terms of paragraph 6(1) of the Seventh Schedule to the Act, where an employee has been granted the right to use any asset, the



cash equivalent of the value of the taxable benefit shall be so much of the value of the private or domestic use of such asset as exceeds any consideration given by an employee for the use of such asset during the period. However, paragraph 6(4)(a) of the Seventh Schedule to the Act creates that there shall be no value on the private use or domestic use of an asset by an employee if such use is incidental to the use of the asset for purposes of the employer's business and the use is for employees in general at a place of work.

Provided that paragraph 6(4)(a) applies, the cash equivalent of the taxable benefits is subject to the deduction of Employees' Tax and the rate applicable to natural persons must apply during the month in which the amount accrues to the employee.

#### **2.4.17. Benefits granted by service enterprises**

The position is unclear when an employee, for example a legal firm, has legal work performed by the firm at no cost to him. However, it appears that no taxable benefit arises from the failure of his employer to charge for the work done (Clegg, 2009:53). Paragraph 2(e) of the Seventh Schedule to the Act, which deals with free or cheap services, provides that a taxable benefit arises when, at the expense of the employer, a service has been rendered to the employee, either for no consideration or for a consideration less than the cost to the employer.

SARS maintains that the difference between the market premium and the amount actually charged to an employee is a taxable benefit. The difference represents the cash equivalent subject to the deduction of Employees' Tax at the rate applicable to natural persons (Clegg, 2009:53). The amount must be shown on the IRP5 certificate.

#### **2.4.18. Contributions to retirement funds by employers as a fringe benefit**

With effect from 1 March 2012, the new legislation proposed that there should be a taxable fringe benefit on so much of the employer's contributions to retirement funds on behalf of the employees. There is no specific section in the Seventh Schedule to the Act. However, in his Budget Speech, the Minister of Finance, Mr Pravin Gordhan, indicated that the employee will be allowed to deduct up to 22, 5% of the taxable income for contributions to

approved retirement funds. This will effectively reduce the taxable value of the fringe benefit (Budget Speech, 2011:29). The Draft Taxation Law Amendment Bill of June 2011 also proposed that a company's contribution to a group long-term life policy scheme for the benefit of employees' beneficiaries should become a taxable fringe benefit in the hands of the employee. The value of the taxable benefit will be the contribution by the employer divided by the number of employees for whom the benefits arose.

#### **2.4.19. Long-term life insurance contributions as a fringe benefit**

Currently, employers can provide employees with death or permanent disability group long-term insurance cover, with the pension or provident fund as the policy holder (approved plan). Alternatively, employers can take the group life or disability policy as the policyholder for the benefit of these employees or their dependants (unapproved plan). Each of these policies makes payment in the event of death or disability. The policy can now be structured so that the proceeds are paid directly to the employees or their dependants, or to the employer. Where the payout is made to the employer, he is obliged to turn over the insurance proceeds to the employees or their dependants (National Treasury: Draft Taxation Laws Amendment Bill, 2011:17).

It is proposed that paragraph 12B of the Seventh Schedule to the Act be amended for employer-provided long-term insurance. The employer-premiums or similar payments made to group long-term insurance will be treated as a fringe benefit if the insurance is for the direct or indirect benefit of the employees or their dependants. The value of the fringe benefits to be included will be equal to the employer-premium contributions, subject to the deduction of employees' terms (National Treasury: Draft Taxation Laws Amendment Bill, 2011:18).

#### **2.5. Records and administration**

In terms of paragraph 17 of the Seventh Schedule to the Act, every employer is required to deliver to employees a certificate such as an IRP5 or an IT3(a) within 30 days after the end of any year or period of assessment. The nature of the taxable value of the fringe benefit and cash equivalent of the value thereof must be reflected on those certificates.

Paragraph 17(4) of the Seventh Schedule to the Act provides that any employer who fails to comply with this requirement shall pay to the Commissioner a penalty equal to 10% of the cash equivalent of the value of the taxable benefit, or, where the cash equivalent is understated, 10% per cent of the amount by which the cash equivalent is understated. Paragraph 18 of the Seventh Schedule requires that every employer must declare that all taxable fringe benefits granted to their employees are included in the certificate issued to them.

## **2.6 Conclusion**

In this chapter, the researcher conducted an extensive literature review of various categories of fringe benefits in the Act. Some fringe benefits are exempt, while others are taxable. How the taxable amounts of fringe benefit are determined was also discussed in the chapter. The tax implications of various fringe benefits were also discussed, as were aspects relating to the records and administration. In the next chapter, the researcher will conduct a literature study on the taxation of fringe benefits in the Australian Income tax system.

## CHAPTER 3: THE AUSTRALIAN PERSPECTIVE

### 3.1. Introduction

Taxation on fringe benefits is not a purely South African phenomenon. Fringe Benefit Tax in Australia (FBTA Act) was introduced in 1986 with the creation of the Fringe Benefit Tax Assessment Act of 1986. FBT is payable by employers and is designed to tax the wide range of benefits provided by employers, or on their behalf, to employees or their associates (Baker, Cliff & Deane, 2010:428). The tax applies to benefits for employees who are residents of Australia, except where the salary or wage of the employee is exempt from income tax, and to non-resident employees whose salaries or wages from employment have an Australian source (Marks, 1986:1-20).

### 3.2. The liability to Fringe Benefit Tax

Employer liability to pay is imposed by section 66(1) of the Fringe Benefit Tax Assessment Act of 1986, which provides that:

*Subject to this Act, tax imposed in respect of the Fringe Benefit Taxable amount of an employer of a year of tax is payable by the employer (Marks, 1986:2-50).*

Accordingly, there has to be an employer/employee relationship for the FBT to be payable by the employer. In terms of the FBTA Act, only fringe benefits, in the broad sense, provided by an employer to an employee as a result of the employment relationship are subject to the FBT (Marks, 1986:2-90). The FBT is not just a tax on fringe benefit provided by an employer, but it also requires a necessary relationship between the provider and the recipient. The right to control the employee is critical in establishing the employment relationship (Lehmann & Coleman, 1991:773).

In *Zuijs v Wirth Brothers Pty Ltd (1955) 93 CLR 561*, it was held by the High Court that a circus acrobat was an employee, because the employer had the right to control, although the employer was powerless to control the precise details of the employee's performance.

An independent director of a company may be an employee for FBT purposes, although he may fall outside the control test and will not be an employee at common law (Lehmann & Coleman, 1989:774). A benefit provided by an employer to an employee which is not in respect of employment will therefore fall outside the FBT provisions (Lehmann & Coleman, 1989:666).

The phrase “*employment of an employee*” includes the suggestion of by reason of, by virtue of, or for, or in relation directly or indirectly to that employment (Lehmann & Coleman, 1989:666). The FBT is levied by the employer even where the provider of the benefit is an associate or arranger (Lehmann & Coleman, 1991:774). Another major reason for the FBT being levied on employers is the requirement by the Australian revenue law for the declaration which must be lodged by employees with employers, whereby the value of the fringe benefit is subject to reduction on the declaration date (Lehmann & Coleman, 1994:787).

### **3.3. The valuation of fringe benefits**

The over-valuation of fringe benefits leads to the employee expressing his dissatisfaction with the tax system or with the fringe benefit. On the other hand, the under-valuation, which seems to be the greatest challenge to the revenue authority, leads to a huge loss in tax revenue. The benefits could be valued in a number of ways (Waincymer, 1993:136). They could be valued by reference to the cost incurred by the provider, by the fair market value of the benefit, by the cost that the employee would have incurred if they had been acquired in the market place, or by some designated formula (Waincymer, 1993:136).

### **3.4. The fringe benefit and Employees’ Tax**

A failure to tax fringe benefits means that both horizontal and vertical equity are lost. However, like any other country, Australia has a number of problems in administering rules dealing with benefits in kind, for example, determining whether there really has been a benefit to the employee (Waincymer, 1993:135). This section will explain how the taxation of fringe benefits in Australia compares with the taxation of fringe benefits in South Africa. If the tax on fringe benefits is to be applied in Australia, there has to be an employer

employee relationship, as in South Africa. The liability of employers to pay FBT is imposed by section 66(1) of the FBTA Act No. 48 of 1986, which obliges the employer to deduct PAYE on the taxable benefits. Section 136(1) of the FBTA Act No.48 of 1986 defined “employer” as meaning:

- a current employer;
- a future employer;
- a former employer.

Although in practice the nature of fringe benefits differs from employer to employer and from industry to industry, in the following sections an analysis of various fringe benefits listed in the Australian Act will be provided. Each fringe benefit analysis will consist of a description of the fringe benefit as well as its tax implications.

#### **3.4.1. Employer-provided child care facility**

In terms of section 47(2) of the FBTA Act, where any benefit is provided to current employee in respect of his or her employment and that benefit consists of the provision of or the use of child care facility and that facility is located on the business premises of the employer that benefit is an exempt benefit. The key factor is that the facility must be located on the premises of the employer of for the benefit to be exempt.

A child-care facility is defined as a facility for the purpose of minding, caring for or educating children under the age of six (Kluwer,1993:55). The taxable amount is either the cost if the equipment has been specifically purchased for the child-care facility or the rental amount incurred by the employer if the premises are leased. In terms of section 20 of the FBTA Act, a benefit arises when an employer directly or indirectly pays or reimburses an expense incurred by an employee. The benefit of the right of free use of a child-care facility constitutes a fringe benefit. The rental amount or any costs incurred by the employer will be the taxable value in terms of section 23 of the FBTA Act. However, the taxable benefit has a nil value if the child-care facility is enjoyed by and is for the convenience of employees in general, and the facility is on the employer’s premises. These benefits provide employees with some degree of comfort and have a positive effect on productivity.

In terms of section 23 of the FBTA Act, the taxable value of the benefit for Employees' Tax calculation is the amount incurred by the employer on behalf of the employees and any costs incurred by the employees will reduce the value of the taxable benefit.

### **3.4.2. The private use of company car**

The benefits in respect of the private use of a company car have historically made it the most popular fringe benefit in Australia. Section 7(1) of the FBTA Act creates a benefit where an employee has been given the private or domestic use of company car. In terms of section 7(2) (b), a car benefit arises where the car is for private use or is available for the private use of an employee or his associate, and the provider of the car is either the employer, or the associate of the employer. The car is also garaged at or near an employee's place of residence or is in the employee's custody or control. Where the circumstances mentioned above exist at any time of the day, and they are in respect of the employee's employment, the application or availability of the car constitutes a car benefit provided on that day (Marks, 1989:12-20).

Section 136(1) of the FBTA Act defines the term "car" to mean:

- a motor car, station wagon, panel van, utility truck or similar vehicle; or
- any other road vehicle designed to carry a load of less than 1 tonne or fewer than 9 passengers, but this does not include a motor cycle or similar vehicle.

The taxable fringe benefit on the company car is determined by using the operating cost method and the statutory formula method (Kluwer, 1993:57). In terms of the operating cost method, the actual cost or rental amount if the car is leased is used, while the percentage is used to calculate the monthly value of the private use as a taxable benefit.

Section 9(1) of the FBTA Act provides that the value of taxable benefit as determined by either the statutory method or the operating cost method must be included in the employee's taxable fringe benefit amount. Using the operating cost method, the value of the taxable fringe benefit amount is determined by apportioning the cost of total private kilometres travelled in proportion to the total kilometres recorded in the log book. In terms

of section 10 (2) the value of car fringe benefits determined according to the operating cost method is as follows:

$$(C \times (100\% - BP)) - R$$

Where:

- C is the operating cost of the car during the holding period;
- BP is the business use percentage applicable to the car for the holding period;
- R is the amount, if any, paid by the employee.

The timing of the benefit is deemed to be any day during which a car is in private use or is taken to be available for private use, and Employees' Tax must be determined accordingly.

The value of the car benefits calculated according to the statutory formula is as follows:

$$ABC/D-E$$

Where-

- A is the base value of the car;
- B is the statutory fraction;
- C is the number of days during the year of tax on which the car fringe benefits were provided by the employer;
- D is the number of days in that tax year
- E is the amount (if any) paid by the employee.

### **3.4.3. Housing subsidy**

Section 25 of the FBTA Act creates a benefit where, by virtue of employment, a housing benefit is granted to an employee by the employer. Employer-subsidized housing schemes have long been a common fringe benefit in Australia. This was mainly owing to the economy being dependant on mining, oil prospecting and farming in the remote areas. The housing benefits enable employees in remote areas to take up employment. The fringe benefits and the intended benefits have equal treatment, as in South Africa.

In terms of section 26(1) of the FBTA Act, the taxable value of the housing benefits provided in respect of an employee's employment in relation to the tax year will be subject to the deduction of Employees' Tax during the month in which the housing benefit is



granted to the employee. The taxable value to be included in an employee's taxable fringe benefit is calculated according to this formula:

$AB/C$

Where-

- A is the statutory annual value of the employee's current housing right;
- B is the number of whole days in the tenancy period; and
- C is the number of days in the year of tax.

#### **3.4.4. Low interest loan or interest free loan**

In terms of section 16(1) of the FBTA Act, where a person referred to as the "provider" makes a loan to another person referred to as the "recipient", the making of the loan shall be taken to constitute a benefit provided to the recipient and that benefit shall be taken to be provided in respect of each tax year during the whole or part of which the recipient is under an obligation to repay the whole or any part of the loan. The value of the benefits is the difference between the interest charged to the employee and the benchmark interest rate as defined in section 136(1) of the FBTA Act. If any interest payment is deferred for a period of six months or longer, the deferred amount is deemed to be a loan.

Section 18(1) of the FBTA Act provides that the taxable value in relation to a year of tax of a loan fringe benefit provided in respect of the year of tax is the amount (if any) by which the notional amount of interest in relation to the loan in respect of the year of tax exceeds the amount of interest that has accrued on the loan in respect of the year of tax. The difference must be included in the calculation of Employees' Tax during that month.

#### **3.4.5. Meals, refreshment or vouchers**

The general principle is that a taxable benefit arises in terms of the FBTA Act when an employer provides food and drink for his employee either free of charge or for consideration less than the value of the food and drink. However, the provision of food or drink may be exempt in certain cases. In terms of section 54 where-

- a Board Fringe Benefit as it relates to the employer is provided on a particular day;

- on that day, the provider of the fringe benefit also provides food or drink (not a meal) for the recipient of the fringe benefit, and
- the food or drink:
  - (i) is provided for, and consumed, by the recipient on that day on eligible premises of the employer; and
  - (ii) is not provided at a party, reception or other social function,

the provision of the food or drink is an exempt benefit.

Unless the provisions of section 54 of FBTA Act as mentioned above apply, the general requirements of section 66(1) will be applicable and the actual costs paid by employer in providing that food will be subject to the deduction of Employees' Tax.

#### **3.4.6. Debt waiver benefit**

In terms of section 14 of the FBTA Act where, at a particular time, a person (in this section referred to as the provider) waives the obligation of another person (in this section referred to as the recipient) to pay or repay to the provider an amount, the waiver shall be taken to constitute a benefit provided at that time by the provider to the recipient. In terms of section 136(1) of the FBTA Act, where an employer makes a payment to or reimburses an employee, for example, payment of school fees in respect of the employee's children, this is equally referred to as debt waiver or release from an obligation, and the cash equivalent of the benefit is the amount of the debt or the cash cost incurred by the employer. The waiver must be in connection with the employment of the employee for the benefit to arise and, if an employee is released from an obligation to pay for reasons unrelated to employment, such as bankruptcy, no benefit arises (Deutsch, Friezer, Fullerton, Gibson, Hanley & Snape, 2005:1869).

In terms of section 15 of the FBTA Act, the taxable value in relation to a year of tax of the debt waiver fringe benefit provided in the year of tax is the amount the payment or repayment of which is waived. The amount released or cancelled will be subject to the deduction of Employees' Tax during the month the debt is waived.

### **3.4.7. Motor vehicle parking**

In terms of section 20 of the FBTA Act, where a person (referred to as the provider) makes a payment in discharge, in whole, or in part, of an obligation of another person (referred to as the recipient) to pay an amount to a third person in respect of expenditure incurred by the recipient, the making of the payment shall constitute the provision of expense payment benefit. Section 58G(1)(a) of the FBTA Act provides an exempt expense payment benefit where the expenditure is in respect of the provision of a motor vehicle parking facility, provided the benefit is not an eligible car parking expense payment benefit.

Unless stated otherwise, section 23 of the FBTA Act provides that the taxable value of the expense payment benefit must be included in the taxable amount of the employer's fringe benefit amount and be subject to the deduction of Employees' Tax.

### **3.4.8. Recreational facility**

In terms of section 47(2) of the FBTA Act, where any benefit is provided to a current employee in respect of his or her employment and that benefit consists of the provision of or the use of recreational facility and the recreational facility is located on the premises of the employer, that benefit is an exempt benefit. The taxable value of the benefits in respect of the use of recreational facility which is outside the ambit of section 47(2) will be included in the taxable amount of the employer's fringe benefits in terms of the provision of section 48, 49, 51 and 52 of FBTA Act.

### **3.4.9. Personal security or alarm facility or bodyguard's services**

In terms of section 20 of FBTA Act read with section 136(1) of the FBTA, a taxable benefit arises when a service has been employee at the expense of the employer, directly or indirectly by some arrangement with the employer and such service has been utilised by the employee for his or her private or domestic purposes free of charge, or insufficient consideration has been given by the employees. Although the essential nature of the employment is immaterial in some instances, the nexus between the work of a bodyguard

and the employee must be established. If the employee could show that protection was necessary to carry out his or her activities and the need for protection arose out of employment rather than other circumstances, such as the inherent health of the employee, the cost of protection should, in theory, be deductible, and accordingly such protection would be a non-taxable benefit in the hands of the employee (Kluwer, 1993: 64).

In terms of section 23 of the FBTA Act, the taxable value of such expense payment benefit is the amount paid by the employer. The value must be included in the employee's earning and be subject to deduction of Employees' Tax during the month in which the payment is made.

#### **3.4.10. Residential accommodation**

Section 25 of the FBTA Act provides that a housing fringe benefit arises when an employee is granted the right to occupy, as a usual place of residence, a unit of accommodation provided by an employer. If the accommodation is outside Australia, the taxable value is the market value of the accommodation for the time it is occupied, less any rent or other consideration paid (section 26(1)). For accommodation inside Australia, the taxable value is calculated on the basis of the statutory annual value of the accommodation (determined on the basis of the market value of the right to occupy the accommodation for a full year in the year when the accommodation is first used to provide a housing fringe benefit) less the amount of any consideration paid by the employee (Mannix & Mannix, 1987:815). However, concessional treatment may be available where the unit of accommodation is a caravan, mobile home, hotel, motel or guesthouse (Deutsch *et al*, 2005:1879).

Section 26 of the FBTA Act creates that the value of the taxable housing benefit is the cost paid by the employee. Where the housing benefit is rented by the employer, the taxable value of the benefit in relation to the year of assessment is the difference between market value and the rental paid by the employee. The amount is subject to deduction of Employees' Tax and must be reflected on the file number of the employers.

#### **3.4.11. Health services/medical services**

Any health-care services provided by an employer or any reimbursement of health-care expenses by the employer will constitute a taxable fringe benefit in the hands of the employee. However, section 58M of the FBTA Act provides that health-related services will be non-taxable benefits if the medical services include, inter alia:

- on-site medical services provided principally for work-related injuries;
- occupational health and counselling benefits;
- the payment of hospital and medical treatment provided for a work-related injury;
- work-related medical screening of the employee;
- work-related preventive health care of the employee.

In terms of section 58K, any benefit consisting of the provision of health care in respect of the employment of the employee, with the health care provided in an in-house health care facility of the employer or by a member of the staff of an in-house health care facility of the employer in the performance of his or her duties as such member, the benefit shall be exempt.

Unless otherwise stated, any costs incurred by employers in terms of section 58M, read with section 58K of the FBTA Act, will not be subject to deduction of Employees' Tax in terms of section 66(1). However, the value of the expense payment benefit must be reflected on an employee's certificate along with the file numbers of the employers.

### **3.4.12. Relocation expenses**

Relocation expenses incurred by an employee transferred from one location to another on behalf of his employer are exempt from taxation if :

- the costs are paid by the employer. Section 58B of the FBTA Act provides that, if the employee is reimbursed for expenditure in respect of the removal of household effects, that expenditure will not create taxable benefit in the hands of the employee;
- the employee is required to live away from home or his usual place of residence as required in terms of sections 58B(1)(b)(ii);(1)(c) (ii);

- the employee is required to return home, having lived away from the usual place of residence;
- the employee is required to change his usual place of residence to perform the duties of his employment.

Section 58F of the FBTA Act provides that, where an employee and his family members are required to move from one locality to another on either a temporary or permanent basis for employment purposes, the relocation transport expenditure incurred by the employer on his behalf is exempt from FBT.

The value of the expense payment benefit will have a nil value and will not be subject to the deduction of Employees' Tax. However the amount of benefit must be shown on the employee's records.

### **3.4.13. Property benefits**

Section 40 of the FBTA Act creates that when an employer provides any property free of charge or at a discount in respect of a person's employment, a benefit arises. The word property can mean both tangible and intangible property and it also means in-house property and external property benefits. Section 42 of the FBTA Act states that the taxable value of the benefits for an in-house property, if it is property that is normally sold to the public (trading stock), is equivalent to 75% of the lowest price charged reduced by any consideration paid by the employee. In terms of section 43 of the FBTA Act, the taxable value of the external property benefit, if the property is acquired at arm's length transaction by the employer or associate of the employer, is the cost price reduced by any amount paid by the employee.

The property benefits discussed above are similar to the benefit granted in terms of paragraph 2(a) of the Seventh Schedule to the Act, whereby the movable property acquired by the employer in order to be disposed to an employee is valued at cost to the employee (Van Schalkwyk, 2010:325). However, movable property, such as trading stock disposed of to an employee, is valued at the lower of its cost to the employer or its market value (paragraph 5 of the Seventh Schedule to the Act). The marketable securities

disposed to employees are always valued at market value for fringe benefit purposes (Van Schalkwyk, 2010:325).

Section 42 provides that the taxable value of the property fringe benefit must be included in the employer's fringe taxable amount at the time the property benefit arose. The amount must be subject to the deduction of Employees' Tax. Section 41 of the FBTA Act provides an exemption in respect of property where benefit is provided to, and consumed by, the employee on a working day and on the business premises of the employer.

#### **3.4.14. Expense payment benefit**

Section 20 of the FBTA Act provides that, where an employer pays for or reimburses an expense incurred by an employee or an associate employee, an expense payment benefit arises. The benefits may arise in different ways, such as when an employer pays a bill on behalf of its employee for something like, inter alia, a home telephone or mobile calls. An expense payment benefit must be provided in respect of employment of an employee, which is when:

- an employer, an associate of the employer, or an arranger, makes the payment or reimbursement;
- the payment is made in respect of an expenditure incurred by an employee or an associate or the reimbursement is made to an employee, or an associate, in respect of an amount of expenditure incurred by the employee or an associate (Marks,1989:11-94). An expense payment benefit, which is not the same as debt waiver benefit (section 14) is defined in terms of section 136(1) as an expense where either:
  - one person (referred to as the provider) makes a payment in discharge, in whole or part of an obligation of another person (referred to as the recipient) to pay an amount to a third person in respect of expenditure incurred by the recipient; or
  - one person (referred to as the provider) reimburses another person (referred to as the recipient), in whole or in part, in respect of an amount of expenditure incurred by the recipient (Marks,1989:11-30).

The taxable value of the benefit is the actual amount paid or reimbursed by the employer.

Unless the expense payment benefit is specifically exempt, section 23 provides that the taxable value of the benefit must be included in the employer's fringe benefit taxable amount and be subject to the deduction of Employees' Tax.

#### **3.4.15. Airline transport fringe benefit**

In terms of section 32 of the FBTA Act, an airline transport benefit arises where:

- an airline operator provides transport in its own passenger aircraft to another person who is an employee or associate of that employee;
- the transportation is provided in respect of the employment of that employee;
- the employer or an associate of the employer is either:
  - 1) an airline operator; or
  - 2) a travel agent.
- the transport is provided subject to the stand-by restrictions that customarily apply in relation to the provision of airline transport to employees in the airline industry.

Section 33 of the FBTA Act provides that the taxable value of airline transport fringe benefits must be included in the employer's taxable amount. The taxable value in relation to the year of tax is the stand-by value of the employee reduced by the contribution made by the employee. The amount must be subject to the deduction of Employees' Tax.

#### **3.4.16. Board Fringe Benefits**

The provision of meals on board creates a taxable fringe benefit. Section 35 of the FBTA Act provides that, where at a particular time the employer provides a board meal to an employee, the provision of the meal shall constitute a benefit provided by the employer at that time.

The taxable value of the benefit shall be determined in terms of section 36 of the FBTA Act. The value of the benefit in relation to a year of tax shall be calculated as follows:

- in a case where the recipient had attained the age of 12 years before the beginning of the year of tax - \$2.00; or



- in any other case - \$1.00

reduced by the amount of the recipient's contribution.

### **3.4.17. Residual fringe benefits**

Section 45 of the FBTA Act creates a taxable benefit where an employee has been granted any private use of assets of an employer or an associate of an employer at the expense of the employer. A residual fringe benefit also arises when an employer such as a University provides discounted study fees for its current staff.

The taxable amount of the benefit is equivalent to the cost incurred by the employer less any consideration paid by the employee, and is subject to the deduction of Employees' Tax. However section 47(1) of the FBTA Act provides exempt residual benefits where, in respect of the employment of the employee, the residual benefit consists of:

- the transport of employee between the place of residence of the employee and the place of employment; or
- the transport to any other place where an employee performs duties of that employment.

### **3.4.18. Miscellaneous exempt benefits**

In the following paragraphs, different types of fringe benefits that are specifically and categorically exempt from Fringe Benefit Tax in terms of the FBTA Act will be discussed.

#### **3.4.18.1 Employees of religious institutions**

Section 57 of the FBTA Act provides that any benefits provided to an employee of a religious institution as a religious practitioner is exempt from FBT. The benefits may include food provided to spouses or children of the religious practitioner, any benefits provided principally in respect of duties related to the practice, study, teaching or any pastoral duties.

#### **3.4.18.2 Employment interviews**

Any benefits relating to travel by current or future employees for the purpose of attending a job interview or section test are specifically exempt in terms of section 58A of the FBTA Act.

#### **3.4.18.3 Emergency assistance**

Where an employee or his family members are provided with benefits such as food, clothing and shelter at the time of an emergency, the benefits are exempt in terms of section 58N of the FBTA Act.

#### **3.4.18.4 Compassionate travel**

Section 58LA of the FBTA Act provides that where employees or relatives of employees are provided with travel facilities, including necessary accommodation and meals at a time of serious illness or death in the family, such benefits are specifically exempt from FBT.

#### **3.4.18.5 Military compensation and other benefits**

Any benefits provided to Commonwealth employees who receive payment under the Military Rehabilitation and Compensation Act 2004 and health care provided to members of the Defence Force are exempt from FBT.

#### **3.4.18.6 Long service awards**

Section 58Q of FBTA Act provides that benefits provided to employees as awards for long service of at least 15 years for not more than \$1000 and subsequently \$100 for each additional year are exempt from FBT.

#### **3.4.18.7 Transport for police force**

Section 47(1A) of the FBTA Act provides that when a person is an employee of a government body and that person's duties are performed in the police service and the benefit is provided for the purpose of travel between the place of residence and the primary place of employment, the benefit is exempt from FBT.

#### **3.4.18.8 Safety awards benefits**

Section 58R of FBTA Act provides that where employee is provided with a safety awards benefit related to an occupational safety awards achievement in respect of employment of an employee, such benefits are exempt from FBT.

#### **3.4.18.9 Newspapers and periodicals**

Where benefits such as newspapers and periodicals are provided to employees for business purposes, any private or domestic use is exempt from FBT in terms of section 58H of the FBTA Act.

#### **3.4.18.10 Certain travel for medical treatment**

In terms of section 58L of the FBTA Act where travel, including meals and accommodation, are provided to employees or their family members in respect of an employee's travelling from a foreign country in order to obtain medical treatment, such benefits are exempt from FBT.

#### **3.4.18.11 Australian trainee scheme**

Section 58S of the FBTA Act provides that, where an employee is a trainee employed under a training agreement as part of the scheme known as the Australian Traineeship Systems, benefits such as food, drink and accommodation are exempt from FBT.

#### **3.4.18.12 Worker entitlement contributions**

In terms of section 58PA of the FBTA Act, where an employer makes a contribution to an approved worker entitlement fund and the contribution is made under an industrial instrument and the contribution is either:

- made for the purposes of ensuring that an obligation under the industrial instrument to make leave payments (including payments in lieu of leave) or payments when an employee ceases employment is met; or
  - for the reasonable administrative costs of the fund,
- the contribution is exempt from FBT.

#### **3.4.18.13. Compensable work-related trauma**

Section 58J of FBTA Act provides an exempt benefit where a benefit is provided in respect of the employment of an employee for compensable work-related trauma suffered by the employee.

#### **3.4.18.14. In-house health care facilities**

Section 58K of the FBTA Act provides an exempt benefit where a benefit consists of the provision of health care in respect of the employment of an employee and the health care is provided in an in-house health care facility of the employer or the health care is provided by a member of the staff of an in-house health care facility of the employer in the performance of his or her duty as such member.

#### **3.4.18.15. Minor benefits**

Section 58P of the FBTA Act provides an exempt benefit in respect of the employment if the benefit is infrequent and irregular, but can reasonably be expected to be provided by the employer, and such benefits are taxi fare for employees in case of urgency or having to work late.

### **3.5 Records and administration**

In terms of section 68 of the FBTA Act, employers are required to lodge an annual return or declaration setting out the value of all fringe benefits paid or given to all employees during the year or period of assessment. The date of submission of the declaration is usually 21 May following the end of the year of assessment, although the Commissioner may grant an extension of time. Section 69 of the FBTA Act provides that the Commissioner may, by notice in writing, require a person, whether an employer or not, to furnish to the Commissioner a return in relation to a year of tax, and that person shall furnish the return in the manner and within the time specified in the notice. In terms of section 70, such return must be in an approved form and specify the fringe benefit taxable amount of the employer for the year of tax concerned and the amount of tax payable on that amount. Section 72 provides that where, at a particular time, the return in relation to an employer in relation to a year of assessment is furnished and before that time no return has been furnished and no FBT assessment has been made, the Commissioner shall be deemed to have made an assessment. Where an employer has furnished a return in

respect of any year of assessment, and the Commissioner is of the opinion that the employer is liable to pay tax in respect of that year, the Commissioner is empowered by section 73 to make an assessment of the fringe benefit taxable amount of the employer for the year of tax and the amount of tax payable on that fringe taxable amount. Should the employer be dissatisfied with the assessment, such employer may, within 60 days after service of the notice of assessment, lodge with the Commissioner an objection in terms of section 80 of the FBTA Act. In terms of section 74, any request to amend the original assessment after a three years' period, the Commissioner may not issue any amendment unless it is deemed necessary. In other words, the prescription period to revise the original assessment is three years.

The Commissioner is authorised to raise a penalty in terms of section 90 of the FBTA Act. In terms of section 132, the employers are required to keep records of all transactions relating to fringe benefits granted to employees, in the English language or in any form including computer, but readily accessible and convertible into English. The records must be retained for a period of five years.

### **3.6 Conclusion**

This chapter focused on the taxation of fringe benefits in the Australian Income tax system. Various categories of fringe benefits as applicable in the Australian Act were analysed, with the key focus on the liability to deduct FBT. Matters relating to the taxability of fringe benefits were also discussed. How the value for FBT purposes is determined was also discussed, as were also aspects of recording and administration. The submission and objection by employers in the case of dissatisfaction were mentioned in the chapter. In Chapter 4, a comparative analysis of the FBT in the Act in SA and that of Australia will be provided. Aspects relating to the similarities and differences will be discussed.

## CHAPTER 4: CONCLUSION

In the previous chapters, the researcher conducted an extensive literature study on the fringe benefit taxation in the Act in SA and the Australian Income tax system. Various categories of fringe benefits in both countries were studied, with the particular purpose of establishing whether the FBT in the Act in SA is still appropriate when compared with that in Australia. In this chapter, the researcher will summarise the findings from the study.

SA Fringe Benefits	Reference to Seventh Schedules	Australian Fringe Benefits	Reference to FBT Act	Tax treatment
Housing subsidies(refer 2.4.1)	Paragraph 2(g)	Expense payment benefit(refer 3.4.14)	Section 25	Similar
Residential and Holiday accommodation(refer.2.4.3)	Paragraph.2(d)	Property benefits(3.4.13)	Section 40	Similar
Asset acquired at less than cost(refer 2.4.4)	Paragraph 2(a)	Property benefits(3.4.13)	Section 40	Similar
Low or interest free loan(refer 2.4.6)	Paragraph 2(f)	Low or interest free loan(refer 3.4.4)	Section 16	Similar
Discharge of obligation(refer 2.4.7)	Paragraph 2(h)	Debt waiver benefit(refer 3.4.6)	Section 14	Similar
Use of sundry assets(refer.2.4.8)	Paragraph 2(b)	Child care facility, Recreational facility, Motor vehicle parking (refer 3.4.1, (refer 3.4.7),(refer 3.4.8)	Section 47	Similar
Meal, refreshments and meal and refreshment vouchers(refer 2.4.9)	Paragraph 2(c)	Meal, refreshment or voucher(refer 3.4.5)	Section 54	Similar
Medical aid contributions(refer 2.4.10)	Paragraph 12A	Health services or medical services(refer 3.4.11)	Section 58M	Similar
Costs relating to medical services(2.4.10)	Paragraph 12B	Health services or medical services(refer 3.4.11)	Section 58M	Similar
Relocation costs(refer 2.4.12)	Section10(1)(nB)	Relocation costs(refer 3.4.12)	Section 58B	Similar
Uniform benefit(refer 2.4.13)	Section10(1)(nA)	Expense payment benefit(refer 3.4.14)	Section 20	Similar
Bursary and scholarship(refer 2.4.14)	Section10(1)(q)	Expense payment benefit(refer 3.4.14)	Section 20	Similar



SA Fringe Benefits	Reference to Seventh Schedules	Australian Fringe Benefits	Reference to FBT Act	Tax treatment
Personal body guard and security services(refer 2.4.15)	Paragraph 2(e)	Personal body guard and security services(refer 3.4.9)	Section 20	Similar
Use of tickets(refer 2.4.16)	Paragraph 2(b) and 6	Expense payment benefit(refer 3.4.14)	Section 20	Similar
benefit granted to relatives(refer 2.4.10)	Paragraph 16	Expense payment benefit(refer.3.4.14)	Section 20	Similar
Benefits granted by service enterprise(refer 2.4.17)	Paragraph 2(e)	Expense payment benefit(refer 3.4.14)	Section 20	Similar
SA Specifically exempt fringe benefits	Reference to seventh schedule	Australian specifically exempt fringe benefits	Reference to FBT Act	Tax treatment
No specific section in the Act		Employees of religious institutions(refer 3.4.18.1	Section 57	
No specific section in the Act		Cost of employment interviews(refer 3.4.18.2)	Section 58A	
No specific section in the Act		Emergency assistance(refer 3.4.18.3)	Section 58N	
No specific section in the Act		Compassionate travel costs(refer 3.4.18.4)	Section 58LA	
No specific section in the Act		Military compensation benefits(refer.3.4.18.5)		
not specifically provided but covered under paragraph 2(a):	Paragraph 2(a)	Long service awards(refer.3.4.18.6)	Section 58Q	similar
No specific section in the Act		Transport for police force(refer 3.4.18.7)	Section 47(1A)	
No specific section in the Act		Safety awards benefits(refer 3.4.18.8)	Section 58R	
No specific section in the Act		Newspaper and periodicals(refer 3.4.18.9)	Section 58H	
No specific section in the Act		Travel for medical treatment(refer 3.4.18.10)	Section 58L	

SA Specifically exempt fringe benefits	Reference to seventh schedule	Australian specifically exempt fringe benefits	Reference to FBTA Act	Tax treatment
No specific section in the Act		Australian trainee scheme(refer 3.4.18.11)	Section 58S	
No specific section in the Act		Workers entitlement contributions(refer.3.4.18.11)	Section 58PA	
No specific section in the Act		Compensable work related trauma(refer 3.4.18.12)	Section 58J	
No specific section in the Act		In-house health care facilities(refer.3.4.18.14)	Section 58K	
No specific section in the Act		Minor benefits(refer 3.4.18.15)	Section 58P	

The above findings indicate that there are a number of similar categories of fringe benefits in the FBTA Act in Australia and the Seventh Schedule to the Act in the SA. There might be differences in wording, but the interpretation is the same. The similar key definitions in the administration of fringe benefits are, inter alia, “Employer”, “employee, ”employment”, “benefit”, “fringe benefit” and “remuneration”. Although the tax rates may differ, the taxable amount of the fringe benefit is calculated as the cost incurred by the employer less any consideration paid by the employee. In the Australian FBT system, the tax treatment of certain fringe benefits like the private use of a company car, the discharge of obligation, low interest or interest-free loan, housing subsidy, free meals, refreshment or vouchers and residential accommodation are treated in the same way as in SA, and the same wording is used. FBT in the Australian Tax Act does not use the same wording for “free or cheap services” as found in the Seventh Schedule to the Act in SA but instead uses words like “child care facility benefits” and “recreational benefits”, which are nevertheless treated similarly when it comes to taxation. The costs incurred by an employer in respect of the relocation of an employee upon a new appointment, termination or transfer are exempt from FBT and are treated similarly in both countries.

FBT in the Act in SA refers to “uniform benefit” while the Australian Act uses the words “protective clothing benefits”. These are exempt from FBT in both SA and Australia if the benefits meet certain requirements. The Seventh Schedule to the Act in South Africa creates a benefit in terms of paragraph 2(b) referring to the use of “sundry assets”, while



section 40 of the FBTA Act creates a benefit referred to as “property benefit”. Both sections contain similar provisions for a benefit to be exempt if enjoyed at the place of work or by employees in general. Under the FBTA Act, exempt property benefits are specifically provided for in terms of section 42. FBT in SA does not specifically provide for this. Not all fringe benefits are subject to withholding of tax. Certain fringe benefits are exempt from FBT in both countries, such as free meals, refreshments, loans, relocation expense payment benefits and medical costs incurred by the employer.

There is a fringe benefit created in terms of section 45 of FBTA Act referred to as residual benefit. This benefit is similar to the fringe benefit created in terms of paragraph 2(b) of the Seventh Schedule to the Act in SA, referred to as the use of sundry assets. The fringe benefit referred to as expense payment benefits in terms of section 20 of the FBTA Act is also similar to a discharge of payment or debt waiver benefit and the tax implications are the same in both countries. There are clear guidelines in terms of the administration and recording of the FBT system in the Act in both SA and Australian, such as the requirements and format for record-keeping. Certificates of source of information must be produced by the employer and submitted by a certain date, as stipulated by the Acts in both countries. It is also clear that after declaration has been submitted by the employer, an assessment of FBT is issued. There is provision for penalties in case of default assessments and the Commissioner is empowered by the Act to take appropriate steps. There is a provision for objection by the employer in the case of dissatisfaction. The provision applies to the procedure of lodging an objection and the time-frame for doing so.

#### **4.2. Concluding remarks**

This study has revealed some of the similarities and differences in respect of the FBT in the Acts in the South African and Australian tax systems. When it comes to FBT in SA, various categories of fringe benefits in the Seventh Schedule to the Act are analysed with reference to the description of the benefits, their taxation treatment and the principles. The value of the FBT amount is the cost incurred by the employer reduced by any amount paid by employees. The taxable fringe benefit must be included in the taxable amount for the employee, and must be subject to Employees’ Tax. The study revealed that not all fringe benefits are subject to Employees’ Tax. Benefits such as, inter alia, relocation fringe

benefits and free meals and refreshments are exempt under certain circumstances. The first research objectives were adequately answered.

In Chapter 3, various categories of fringe benefits in Australia were analysed in terms of description and taxation treatment and the analysis revealed that, unless specifically mentioned, the taxable amount of the fringe benefits is the cost incurred by employer less any consideration paid by the employee. The value of the taxable amount must be included in the calculation of Employees' Tax during the month. The analysis adequately answered the second research objectives.

The various fringe benefits indicated in the Seventh Schedule to the Act in SA were compared with the fringe benefits listed in the FBT Act in Australia to evaluate whether fringe benefits in SA are still appropriate. Table 4 above clearly indicates the results of this study and shows the similarities and differences between the two countries. It can therefore be concluded that the FBT system in South Africa, when compared with that of Australia, is in line with international standards. The South African fringe benefit system clearly corresponds to that of Australia. The table of specifically exempt fringe benefits also indicates the shortcomings of FBT as regulated in the Seventh Schedule to the Act. An example of such shortcomings is the long service awards. These are exempt if they are in excess of R5000, according to the Seventh Schedule, but they are not specifically discussed. This is in contrast with section 58Q of the FBT Act. Any fringe benefit enjoyed by employees in respect of travelling for purposes of employment interviews is exempt but this is not specifically mentioned in the Seventh Schedule to the Act in SA, unlike section 58A of the FBT Act. This is a shortcoming in the Seventh Schedule to the Act.

### **4.3. Recommendations**

Although the FBT system contained in the Act in SA is of a high standard, comparable with that of Australia, the Seventh Schedule has limitations, in the sense that it is not as detailed as its Australian counterpart. In order to avoid requests for rulings from SARS for certain benefits, FBT, as set out in the Act in SA, should be expanded to include a range of fringe benefits that are specifically exempt. It is recommended that new sections should be inserted into the Seventh Schedule to include various fringe benefits which are currently

provided for under paragraphs 2(a)-(j) and paragraphs 12A and 12B, but which are currently not set out under separate headings.

#### **4.4. Future Research**

There has been limited research into the fringe benefits in the Act in South Africa. It is therefore imperative that the National Treasury, in collaboration with SARS and the taxation academic community conduct intensive research into Fringe Benefit Tax as set out in the Act in South Africa.

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