

A critical analysis of fringe benefits in South Africa

BY

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Table of Contents

Chapter 1

1.1 Introduction	1
1.2 Background of Taxation of Fringe Benefits in S A	3
1.3 Definition of key Concept	4
1.4 Hypothesis	5
1.5 Significance of the study	6
1.6 Format and Chapter sequence	7
1.7 Summary	7

Chapter 2

2. Literature Review	8
2.1 Introduction	8
2.2 Global view on Fringe Benefits	10
2.2.1 Australia	10
2.2.1 Introduction	10
2.2.2 Legislation Background to Fringe Benefit Taxation	10
I. 2.2.3 Key design Feature of the Fringe Benefit Taxation Legislation	11
2.2.4 Structure of the Fringe Benefits Tax Assessment Act	13
2.2.5 Calculation of Fringe Benefits Liability	13
2.2.6 Specific Fringe Benefits	16
2.2.6.1 Car Fringe Benefit	17
2.2.6.1.1 Calculation of the Taxable Value of Car Fringe Benefit	17
2.2.6.2 Debt Waiver Fringe Benefit	19
2.2.6.2.1 Calculation of the Taxable value of Debt Waiver Benefit	19
2.2.6.3 Loan Fringe Benefit	20
2.2.6.3.1 Calculating the Taxable value of Loan Fringe Benefit	20
2.2.6.4 Expense payment Fringe Benefit	22
2.2.6.4.1 Calculating the Taxable value of Expense payment Benefit	22

2.2.6.5 Housing Fringe Benefit	23
2.2.6.5.1 Calculating the taxable value of Housing Benefit	24
2.2.6.5.2 A Remote area Housing Fringe benefit	24
2.2.6.5.3 Non-remote Housing Fringe Benefit	26
2.2.6.6 Living Away from home allowance Fringe Benefit	26
2.2.6.6.1 Calculating the Taxable value Living-away-from home Allowance Fringe Benefit	26
2.2.6.7 Air Transport Fringe Benefit	27
2.2.6.7.1 Calculating the Taxable value of Air transport Fringe Benefit	27
2.2.6.8 Board Fringe Benefit	30
2.2.6.8.1 Calculating the Taxable value of Board Fringe Benefit	30
2.2.6.9 Car parking Fringe Benefit	31
2.2.6.9.1 Calculating the Taxable value of Car parking Fringe Benefit	32
2.2.7 Summary	
2.3 Fringe Benefits in USA	33
2.3.1 Introduction	33
2.3.2 General Valuation Rule	34
2.3.3 Fringe Benefit overview	34
2.3.4 Are Fringe Benefits Taxable?	35
2.3.5 Fringe Benefit valuation rules	35
2.3.5.1 Fair Market value	35
2.3.6 Rules of Withholding, Deposit and Reporting	36
2.3.7 Types of Fringe Benefits in USA	37
2.3.8 Summary	38
2.4 Fringe Benefits in New Zealand	39
2.4.1 What is a Fringe Benefit Tax?	39
2.4.2 What is a Fringe Benefit?	39
2.4.3 What are categories of Fringe Benefit?	39
2.4.3.1 Motor Vehicle	40
2.4.3.1.1 General Principles for Fringe Benefit Tax on Motor vehicles	40

2.4.3.1.2 General Exemptions from FBT on motor vehicles	40
2.4.3.2 FBT on low-interest loans	41
2.4.3.2.1 How is FBT applied on low-interest loans	41
2.4.3.2.1.1 What is a loan	41
2.4.3.2.1.2 Calculation based on the prescribed rate of interest	41
2.4.3.2.1.3 Types of loans subject to FBT	42
2.4.3.2.1.4 Exempt from FBT on low-interest loans	43
2.4.3.3 Fringe Benefit on goods	44
2.4.3.3.1 Goods subject to FBT	44
2.4.3.3.2 Goods not subject to FBT	44
2.4.3.4 Fringe Benefit Tax on Services	45
2.4.3.4.1 Services that are not subject to FBT	45
2.4.3.4.2 What is the Taxable value of the services subject to FBT?	45
2.4.3.4.3 Which services are not subject to FBT	46
2.4.3.4.4 Exemption from FBT on goods and services	46
2.4.3.4.5 General exemption when the quarterly return is filed	46
2.4.3.4.6 General exemption when an annual or income year return is filed	47
2.4.3.4.7 FBT in relation to Goods and Services Tax	47
2.4.3.4.8 Does the taxable value include GST?	47
2.4.3.4.9 How is GST on Fringe Benefit is calculated?	48
2.4.3.5 FBT on employer contribution to funds, insurance and superannuation schemes	48
2.4.3.5.1 Which employer's contributions are subject to FBT?	49
2.4.3.5.2 What is a taxable value of these Fringe Benefits?	49
2.4.3.5.3 FBT on life insurance contributions	50
2.4.3.5.4 Which life insurance contributions are liable for FBT	50
2.4.3.5.5 Which life insurance contribution are not liable for FBT	50
2.4.3.5.6 Record keeping for employer contributions to funds insurance and superannuation schemes.	51

2.4.3.5.6.1 Requirements for all records	51
2.5 Summary	51

Chapter Three

3 Broad Fringe Benefit in SA, the legislation that govern the fringe benefits and how are taxable	52
3.1 Introduction	52
3.2 The provisions of Income Tax Act dealing with the taxation fringe benefits may be summarised as follows.	55
3.2.1 Gross Income definition paragraph C	56
3.2.2 Entertainment allowances and deductions	58
3.2.2.1 Entertainment expenditure definition	59
3.2.2.2 Section 11(u) deduction	60
3.2.3.3 Reimbursive allowances	61
3.2.3.3.1 Section 8(1)	61
3.2.3.3.2 Travel Allowance	61
3.2.3.3.2 Subsistence Allowance	65
3.2.3.3.2.1 Bursaries	67
3.2.3.3.2.2 Long services and bravery awards	67
3.2.3.3.2.3 Allowances to public officers	68
3.3 Taxable benefits derived by reason of employment or the holding of any office	69
3.3.1 Seventh Schedule	69
3.3.1.1 Acquisition of an asset at less than market value	71
3.3.1.2 Right of use of any asset (other than residential accommodation or any motor vehicle)	73
3.3.1.3 Right of use of a motor vehicle	75
3.3.1.3.1 Leased motor vehicle	77
3.3.1.3.2 Used of motor vehicle plus a travel allowance	77

3.3.1.3.3 Temporary breaks in private use	78
3.3.1.3.4 More than one vehicle	78
3.3.1.4 Meals, refreshments and meal and refreshments voucher	79
3.3.1.5 Residential Accommodation	80
3.3.1.5.1 Holiday Accommodation	83
3.3.1.6 Deemed Housing loans	84
3.3.1.7 Services provided by the employer	85
3.3.1.8 Free or low interest loans	87
3.3.1.9 Subsidies	88
3.3.1.10 Payment of employee's debt or release employee from obligation debt	89
3.3.1.11 Medical Aid contribution	92
3.3.2 Summary	93
Chapter four	
4. Conclusion	94

CHAPTER ONE

1.1 Introduction

The Republic of South Africa currently imposes income tax (which the Income Tax Act¹ calls 'normal tax') on individuals, companies and other taxable entities (such as deceased and insolvent estates, trusts, associations and clubs)

All types of income payable by an employer to an employee are subject to income tax, for example, salary, bonus, leave pay, and other no cash benefits (fringe benefits). The fringe benefits are either partially or fully taxable.

The term 'fringe benefit' is usually taken to mean employment-related benefits over and above the taxpayer's basic wage or salary. Such benefits may be in cash (for an example, a low-interest loan or a cash allowance) or in kind (for example, free or subsidised accommodation or meals or the use of a car). The tax value of the fringe benefits is included in taxable income through the application of paragraph © and (i) of the definition of 'gross income'² in section 1 of Income Tax Act no 58, of 1962, as well as section 8 (1) of the Act. Paragraph © (iii) of the definition includes in gross income the amount of any entertainment allowance that has been granted to an employee or holder of an office, other than reimbursive allowances.

The Seventh Schedule of the Income Tax Act 58 of 1962 is a mini-code within the Act, which provides for the taxation of fringe benefits or, as the schedule calls them,

¹ Act 58 of 1962

² 'In relation to any year or period of assessment means in the case of any person, the total amount, in cash or otherwise, received by or accrued to or in favour of such person during such a year or period of assessment from a source within or deemed to be within the Republic, excluding the receipts or accruals of a capital in nature...'

'taxable benefits'. The Fringe Benefits referred to in the Seventh Schedule are as follows:

- ❖ Assets acquired at less than actual value.
- ❖ Right of use of an asset (other than a motor vehicle or residential accommodation).
- ❖ Right of use of company-owned motor vehicle.
- ❖ Meals, refreshments or vouchers.
- ❖ Residential accommodation.
- ❖ Free or cheap services.
- ❖ Low-interest loans.
- ❖ Housing subsidies.
- ❖ Payment of an employee's debt or release from an obligation to repay a debt.
- ❖ Medical Aid contribution.

The taxable amount of a fringe benefit is referred to as cash equivalent. Where the benefit is an actual amount, such amount is included in the remuneration of the employee. Should the employee bear any cost in respect of a benefit, the value of the benefit must be reduced by such an amount.

1.2 **Background of taxation of fringe benefits in South Africa.**

In the past Fringe Benefits of various kinds were tax- free or were taxed in the preferential way. Although the taxation of Fringe Benefits was introduced in the 1917 Act (paragraph (i) of the gross income, its implementation was never effective as it sought to tax value of a benefit derived by a person.

The taxation of Fringe Benefits in South Africa, being highly subjective, the question of 'value' to the taxpayer was never satisfactorily resolved. The government tried to investigate by staging or forming of the Commissions to try and solve the taxation of fringe benefits in South Africa. The Franzen Commission, in 1970, was the first of many attempts to improve the situation; in 1979 report by the Standing Commission of Inquiry with regard to the taxation policy of the Republic on Fringe Benefits; in 1981, Commission of Inquiry to investigate the determination of Fringe Benefits; in 1982 Draft Bill identifying and valuing benefits arising from Employment; in 1984, Commission of Inquiry in regard to the Determination, for income tax purpose of the value of benefits (including allowances) arising from Employment or Holding of an Office and related matters. The recommendations of the 1984 Commission were adopted and included in the 1984 Income Tax Act, but only took effect as from the commencement of years of assessment ending on or after 1 March 1985.

Seventh Schedule of Income Tax Act, no 58 of 1962, provides for the taxation of Fringe Benefits in South Africa. The Seventh Schedule has three principal objectives:

- (i) To define what benefits are taxable
- (ii) To lay down criteria by which such benefits are valued, in other words, to establish their cash value.

- (iii) To impose the obligations on employers to withhold employee's taxes on taxable benefits and give information to the revenue authorities.

The cash equivalent of a taxable benefit, determined in accordance with the Seventh Schedule, is included in the taxpayers 'gross income'. The benefits, which fall outside scope of the Seventh Schedule, will nevertheless be taxed if they fall within the 'gross income'.

1.3 Definition of key Concepts

Employee means: -

- (a) Any person (other than a Company) who receives any remuneration or to whom any remuneration accrues;
- (b) Any person who receives any remuneration or to whom any remuneration accrues by reason of any services rendered by such person to or on behalf of a labour broker;
- (c) Any labour broker; and
- (d) Any person or class or category of person whom the Minister of Finance by notice in the Gazette declares to be an employee for the purpose of this definition;
- (e) Any personal service company; and
- (f) Any personal service trust. (Fourth Schedule: Income Tax Act, No. 58 of 1962)

Employer means: -

Any person (excluding any person not acting as a principal, but including any acting in a fiduciary capacity or in his capacity as a trustee in an insolvent estate, an executor or administrator of a benefit fund, pension fund, provident fund, retirement annuity fund or any other fund) who pays or is liable to pay to any person any amount by way of remuneration, and any person responsible to the payment of any amount by way of remuneration to any person under the provision of any law or out of public funds (including the funds of any provincial council or any administration or undertaking of the state) or out of funds voted by Parliament or provincial council. (Fourth Schedule: Income Tax Act, No. 58 of 1962)

Remuneration

Means any amount of income which is paid or is payable to any salary, leave pay, allowance, wage, overtime pay, bonus, gratuity, commission, fee, emolument, pension, superannuation allowance, retiring allowance or stipend, whether in cash or other wise and whether or not in respect of services rendered.

1.4 Hypothesis

Fringe benefits are still integral part of employment contracts and there is a need to revisit the way the fringe benefits are structured and taxable in South Africa as compared to other selected countries.

1.5 Format and chapter sequence.

Chapter One

The first chapter will consist of the introduction, background on the topic, and why the researcher chose to do this topic. The hypothesis, i.e. the key question that the research tends to answer and the limitation of the study.

Chapter Two

It will consist of the literature review. This chapter will look at the fringe benefits worldwide, how they are structured and how they are taxable and summary.

Chapter Three

It will consist of the broad fringe benefits in South Africa, the legislation that governs the fringe benefits and also how they are taxable.

Chapter Four.

This chapter will consist of the conclusion and comments.

1.7 Limitations of the study

The study is limited in the sense that it only studies or covers only the textbook on fringe benefits and what the Internet was able to provide. Fringe benefits are integral part of the employment contract and the employees either are benefiting or affected, where the study is limited. In the changing world of economy in South Africa most employers use fringe benefits to attract the most qualified personnel to their business.

1.8 Summary

This chapter forms the introductory part of the dissertation. It has taken a look at the background on the topic, why the researcher is interested in it and the hypothesis to be approved or disapproved. He has elaborated on the format and chapter sequence and the limitations of the study.

CHAPTER TWO

2. LITERATURE REVIEW

2.1 Introduction

It is important for the researcher to review the literature related to their research problems because the more researchers know about previous investigations concerning their study, the easier it will be for them to solve problems regarding their own research. (Leedy; 1997: 71)

The need for researchers to possess thorough background knowledge of the phenomenon under review in order to conduct a meaningful piece of research is very essential in this instance.

According to As de Vos (1998: 65) there are three function of the literature study. Firstly, it may happen that someone has conducted a research on that particular subject, for example, a researcher may choose another subject or conduct a similar one but in a completely different setting. The present researcher can identify some deficiencies in the previous research and argue that the proposed study will fill a demonstrated need. Secondly, a literature review helps the researcher to review the problem in different angles and in a better way. It is so unlike starting from scratch on something you know nothing about. A thorough literature study demonstrates that the researcher is duly knowledgeable about related research and intellectual traditions that surround and support the study.

The third function is that a literature review equips the researcher about basic steps to be followed and importance of undertaking research. As de Vos (1998:65) mentions, most researchers start by doing other chapters and compile the literature review at the end. This can cause the researchers to re-investigate or re-do the previous mistakes.

Leedy shares similar views with As de Vos and according to this “those who do research belong to a particular community of scholars, each of whom has journeyed into the unknown to bring a fact, truth and point of light what they have recorded of their journeys and their findings will make it easier for other to explore the unknown, discover facts or bring back a point of light” (Leedy, 1997:71).

In all, it can be said that primary purpose of literature review is to help the researcher to attack problems in each and every research undertaken; the research problem is central (Leedy, 1997:7).

The review also refines and redefines the research questions and related hypotheses.

The research idealises the problem and locates it in a body theory. Assumptions should be identified and stated in a theoretical framework. Literature review points at the area of knowledge that the study is intended to expand.

The main focus of this literature review is on the Fringe Benefits in South Africa and how are they taxable. The Income Tax Act, 58 of 1962, governs Fringe Benefits in South Africa in Section 1 general definition of ‘gross income’, Section 8A and the Seventh Schedule of the Act.

2.2 Global view on Fringe Benefits

2.2.1 Australia

2.2.1. Introduction

In practice, the tax laws have been able to deal adequately with cash benefits (e.g. bonuses) provided in respect of employment, but have had difficulty in dealing with the provisions of other benefits such as the personal use of a car or the supply of free or low cost goods or accommodation. The difficulties faced in connection with Section 26(e) of Income Tax Assessment Act 1997. These other benefits may be referred to generally as “fringe benefits”.

2.2.2 Legislative background to Fringe Benefit Taxation

It must be emphasised that the difficulties which section 26(e) experienced, related not so much to “loopholes” in its structure, but to its administration. Consequently, one option for dealing with fringe benefits identified in the Draft White Paper³ was to enforce the existing law more rigorously. This was rejected as being an administrative impossibility, as it would involve detecting non-cash benefits provided to some two million employees, ascertaining their taxable values according to the section’s subjective valuation rule and resolving the large number of disputes which would inevitably arise over taxable values.

The Draft White Paper went on to identify two main alternatives for dealing with fringe benefit:

- (1) The introduction of objective valuation rules accompanied by a system of compulsory reporting by employees; or
- (2) Imposing a tax on employers in respect of fringe benefits provided

The Government preferred the second option largely on the grounds that it was easier to administer and comply with. Consequently, a package of legislation was introduced applicable to fringe benefits provided on or after 1 July 1986. The principal Act is the Fringe Benefits Tax Assessment Act of 1986 (Cth) (“FBTAA”), which assesses a taxpayer’s liability to Fringe Benefit Tax. Accompanying Acts include the Fringe Benefits Tax Act (Application to the Commonwealth) Act 1986, which provides for the notional application of FBT to benefits provided in respect of Commonwealth employees.

2.2.3 Key design features of the Fringe Benefits Tax legislation⁴

- (a) The Fringe Benefits Tax Assessment Act establishes a separate statutory regime for the taxation of fringe benefits.
- (b) FBT is imposed on the employer (even though a third party might actually provide the benefit). This is intended to overcome the disclosure problems identified above and therefore ensure greater compliance.
- (c) The FBT year of tax runs from 1 April to 31 March⁵

³ The Treasurer, Reform of the Australian Tax System (Canberra: AGPS, 1985 at p 88.

⁴ The Treasurer, Reform of the Australian Tax System (Canberra: AGPS, 1985) at p 88.

⁵ J Elmgreen, Reform of Fringe Benefits Taxation (Sydney: Australian Tax Research Foundation, 1986) at 37-41

- (d) The Fringe Benefits Tax Assessment Act adopts objective rules for determining the “taxable benefits” of fringe benefits (e.g. market value, cost to the employer, statutory formulas or a combination of these).
- (e) The taxable values of fringe benefits are reduced by contribution made by the recipient of the benefit.
- (f) There are reconciliation rules with the income tax law to prevent double taxation.
- (g) The rate of FBT is pinned to the highest individual marginal rate of income tax plus Medicare levy: the FBT rate was 48.475%⁶
- (h) FBT is self-assessed. Employers are required to lodge annual returns and pay their tax by 28th day after the end of the FBT year⁷.
- (i) The FBTAA contains provisions similar to those under Income Tax Assessment Act 36 relating to assessments, binding public and private rulings⁸ and powers of investigation⁹.

⁶ Section 6, Fringe Benefits Tax Act

⁷ Section 68 and 72.

⁸ Section 68 to 78

⁹ Section 127 and 128

2.2.4 Structure of the FBTAA.

The central provisions of the FBTAA are found in Pt III. Divisions 2 to 12 currently identify 13 categories of fringe benefit. The first 12 of these relate to specific fringe benefits, while the final category is a general one. The respective categories are:

- ❖ Car fringe benefits (Div 2, Section 7 to 13);
- ❖ Debt waiver fringe benefits (Div 3, Section 14 to 15);
- ❖ Loan fringe benefits (Div 4, Section 16 to 19);
- ❖ Expense payment fringe benefits (Div 5, Section 20 to 24);
- ❖ Housing fringe benefits (Div 6, Section 25 to 29A)
- ❖ Living-away- from-home allowance fringe benefits (Div 7, Section 30 to 31)
- ❖ Airline transport fringe benefits (Div 8, Section 32 to 34);
- ❖ Board fringe benefits (Div 9, Section 35 to 37);
- ❖ Meal entertainment fringe benefits (Div 9A, Section 37A to 37 CF);
- ❖ Tax exempt body entertainment fringe benefits (Div 10, Section 38 to 39);
- ❖ Car parking fringe benefits (Div 10A, Section 39A to 39E);
- ❖ Property fringe benefits (Div 11, Section 40 to 44);
- ❖ Residual fringe benefits (Div 12, Section 45 to 52)

2.2.5 Calculation of FBT Liability.

Section 66 is the FGTAAs charging provision and imposes FBT on employers in respect of their “fringe benefits taxable amount”. Before 1 April 1994, an employer’s fringe benefits taxable amount was determined by simply adding together the taxable values of fringe benefits provided during the year. From 1 April 1994, the meaning of fringe benefits taxable amount embodies a grossing up method of calculation to take into account the fact that FBT is now deductible. It is defined in Section 136AA as the amount worked out using the following:

$$\begin{array}{rcl}
 \text{Fringe benefits} & \text{Aggregate fringe} & 1 \\
 & & \\
 = & & \times \left[\frac{\quad}{\quad} \right] \\
 \text{taxable amount} & \text{benefit amount} & 1 - \text{FBT rate}
 \end{array}$$

The “aggregate fringe benefits amount” is the sum of the taxable values of all fringe benefits provided during the year, together with the value of the amortised fringe benefits amounts included in the year reduced by any reduction amounts for the year¹⁰

The gross-up factor depends on the FBT rate for the relevant year. For the 1994/95 FBT year the gross-up factor was 1.9379 (based on the 48.4% rate of FBT); for the 1995/96 year was 1.9408 (based on the 48.475% rate of FBT); and for the 1996/97 and subsequent FBT years it is 1.9417 (based on 48.5% rate of FBT. The gross-up

ensures that the employee is treated as having received both the relevant benefit and the FBT. The rationale for this is to bring the treatment of fringe benefits more into line with the treatment of ordinary salary and wages.

Example

During the 1998/99 FBT years, ABC Co provides 10 fringe benefits to its employees. Each fringe benefit has a taxable value of \$1,000. ABC Co's fringe benefits taxable amount is calculated as follows:

$$\begin{aligned}
 \text{Fringe benefits} &= \text{aggregate fringe} && 1 \\
 &= && \times \left[\frac{\quad}{\quad} \right] \\
 \text{Taxable amount} &= \text{benefits amount} && 1- \text{FBT rate} \\
 &= (10 \times \$ 1,000) && \times 1.9417 \\
 &= \$ 19,417
 \end{aligned}$$

ABC Co's FBT liability for the year is therefore calculated as follows:

$$\begin{aligned}
 \text{Fringe benefits} &= \text{Fringe benefit} && \times 48.5\% \\
 &= \text{Taxable amount} \\
 &= \$ 19,417 \times 48.5\% \\
 &= \$ 9,417
 \end{aligned}$$

NB example taken from 1999 Australian TAXATION LAW, 9th Edition

¹⁰ Section 136(1)

In calculating the net cost of a “fringe benefits package”, employers need to take into account not only the cost of paying fringe benefits tax but also the cost of providing the benefit. Like fringe benefits tax, the cost of providing a fringe benefit will generally be deductible to an employer under Section 8-1 ITAA 97. There are, however, certain cases where Section 8-1 will not apply to provide a deduction for the cost of a benefit. For instance, an employer would not be entitled to claim a deduction under Section 8-1 for the cost of purchasing a house which it makes available for the private use of an employee as the cost would be regarded as capital in nature.

2.2.6 Specific Fringe Benefits.

- 2.2.6.1 Car Fringe Benefit**
- 2.2.6.2 Debt waiver Fringe Benefit**
- 2.2.6.3 Loan Fringe Benefits**
- 2.2.6.4 Expense payment Fringe Benefits**
- 2.2.6.5 Housing Fringe Benefits**
- 2.2.6.6 Living-Away-From-Home allowance Fringe Benefits**
- 2.2.6.7 Airline transport Fringe Benefit**
- 2.2.6.8 Board Fringe Benefits**
- 2.2.6.9 Car parking Fringe Benefit**

2.2.5.1 Car Fringe Benefit.

According to Section 7(1) and 136(1), a “car benefit” arises on any day, if:

- ❖ In respect of employment
- ❖ A car¹¹
- ❖ Is “held” by an employer (or associate or third party arranger),¹²
- ❖ Is applied to or available for the private use of an employee (or associate)¹³

2.2.5.1.1 Calculating the taxable value of a car fringe benefit.

Two alternatives bases may be used to calculate the taxable value of a car fringe benefit:

- ❖ The statutory formula basis under section 9; or
- ❖ The operating cost basis under section 10

The statutory formula applies automatically unless the employer elects for the operating cost method to apply: section 10(1), (4).

Under the statutory formula, the taxable value of a car fringe benefit is ascertained by the formula:

$$\frac{ABC}{D} - E$$

¹¹ Defined in Sec 136(1) to mean a motor car, station wagon, panel van, utility or similar vehicle, or any other road vehicle designed to carry a load of less than one tonne or fewer than nine passengers, other than a motor cycle or similar vehicle. See Taxation Rulings MT 2021, MT 2024

¹² A car which is owned by, leased to or otherwise made available to the employer or associate of the employer is deemed to be “held” for the purposes of the subsection: section 162(1); section 7(6)

Where:

A is the base value of the car when first held by the provider: Section 9(2)(a)(i), (ii);

B is the statutory fraction: Section 9(2)©;

C is the number of days the vehicle is privately used or available for privately used or private use;

D is the number of days in the tax year; and

E is the recipient's payments: i.e. amount of any payment made by the employee towards the expenses.

Example

(i) Statutory formula basis: Sec 9(1)

$$\begin{aligned}\text{Taxable value} &= \frac{ABC}{D} - E \\ &= \frac{\$25,000 \times 0.20 \times 365}{365} - \$1,000 \\ &= \$5,000 - \$1,000 \\ &= \$4,000\end{aligned}$$

(ii) Operating cost basis: Sec 10

$$\begin{aligned}\text{Taxable value} &= C \times (100\% - BP) - R \\ &= (\$4,000 + \$5,625 + \$1,675) \times (100\% - 25\%) - \$1,000 \\ &= \$11,300 \times 75\% - \$1,000 \\ &= \$7,475\end{aligned}$$

¹³ A car is deemed to be applied by a person where it is applied in accordance with that person's directions, instruction or other wishes: Sec 7(5)

2.2.5.2 Debt waiver Fringe Benefit

A debt waiver benefit arises where a “provider” waives the obligation of the “recipient” to pay or repay an amount owing to the provider: section 14 and 136(1)¹⁴. A debt waiver fringe benefit arises where the circumstances in which the debt is waived satisfy the definition of the fringe benefit¹⁵

2.2.5.2.1 Calculating the taxable value of a debt waiver fringe benefit.

The taxable value of a debt waiver fringe benefit is “the amount the payment or repayment of which is waived.”¹⁶ Accordingly, where only part of a debt is waived in a given year, the taxable value of the debt waiver fringe benefit is limited to such amount.

¹⁴ Fringe Benefit Tax Assessment Act

2.2.5.3 Loan fringe benefit.

A loan benefit arises where a “provider” makes a loan to a “recipient”. The benefit is taken to have been provided in each year in which the recipient is under an obligation to pay the whole or part of the loan¹⁷.

2.2.5.3.1 Calculating the taxable value of a loan fringe benefit.

The taxable value of a loan fringe benefit is equal to “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”¹⁸.

The “notional amount of interest” is calculated on daily balances and depends on the category of loan provided and the “statutory interest rate”. The way in which the notional amount of interest is calculated is set in the following table:

¹⁵ Section 136(1)

¹⁶ Section 15

¹⁷ Section 16(1) and 136(1)

¹⁸ Section 18

Table 1.¹⁹

Category of loan	Notional amount of interest
Fixed interest loan made before 1 July 1986	The lesser of: (i) Interest at the statutory interest rate at the time the loan was provided (these rates are to be found in the Schedule of the FBTAA); and (ii) Interest at the statutory interest rate for the year of tax in which the benefit is provided.
Variable interest housing loan made before 3 April 1986	The lesser of: (i) Interest at the statutory interest rate for the year of tax in which the benefit is provided; and (ii) 13.5%
Other types of loan	Interest at the statutory interest rate

¹⁹ 1999 Australian TAXATION LAW, 9th Edition, Woeller Vella Burns, Barkocy Krever, p, 1485

2.2.5.4 Expense payment fringe benefit.

An expense payment benefit arises where a person either:

- ❖ Pays an amount of expenditure incurred by the recipient to a third party²⁰ . ;

Or

- ❖ Reimburses an amount of expenditure incurred by the recipient²¹

An expense payment benefit therefore arises where his or her employer for debts incurred as well as where the employer pays the employee's creditor directly reimburses an employee. However, an expense payment benefit will not arise where goods or services are purchased directly by the employer and then provided to the employee. In such a case the benefit is either a property or residual benefit.

2.2.5.4.1 Calculating the taxable value of an expense payment fringe benefit.

The taxable value of an expense payment fringe benefit depends on whether the benefit provided is "in-house" or "external".

There are two kinds of in-house expense payment fringe benefit:

- ❖ "In-house property expense payment fringe benefit"

An in-house property expense payment fringe benefit arises where the expense relates to the acquisition of property of a kind provided by the employer or an associate of an employer in the ordinary course of the employer.

²⁰ Section 20(a)

The taxable value of “in-house expense payment fringe benefit” is determined in accordance with the evaluation rule in Section 42.

❖ “In-house residual expense payment fringe benefit”

An in-house residual expense payment fringe benefit arises where the expense relates to the acquisition of other benefits of a kind provided by the employer or an associate of the employer in the ordinary course of their businesses.

The taxable value of an “in-house residual expense payment fringe benefit” is determined in accordance with the evaluation rules in Section 48.

2.2.5.5 Housing fringe benefit

A “housing benefit arises where a “housing right”²² has been provided²³. The grant of a commercial lease is therefore not a “housing right” but rather a residual benefit. A housing benefit is a “house fringe benefit” where it meets the requirement of a fringe benefit in Section 136(1)

Where a government, religious body or non-profit company involved in caring for the elderly or disadvantage provides residential accommodation to an employee who cares for and lives with such people in order to perform his or her duties, the benefit is an exempt benefit²⁴.

²¹ Section 20(b)

²² A lease or license granted to a person to occupy or use a unit of accommodation as the person’s usual place of residence.

2.2.5.5.1 Calculating the taxable of a housing fringe benefit.

The taxable value of a housing fringe benefit depends upon whether it is a “remote area housing fringe benefit” or “non-remote area housing fringe benefit”.

2.2.5.5.1.1 A remote area housing fringe benefit

A remote area-housing fringe benefit arises where:

- ❖ The accommodation is not in, or adjacent to, an “eligible urban area”²⁵;
- ❖ The employee’s usual place of employment is in such an area;
- ❖ It is customary in the relevant industry for free or subsidised accommodation to be provided to employees;
- ❖ The housing right was not provided pursuant to a non-arm’s length arrangement²⁶.

Where a remote area housing fringe benefit is provided, the employer may calculate the taxable value of the fringe benefit using either the “statutory amount method” or the “50% discount method”

²³ Section 25 and 136(1)

²⁴ Section 58

²⁵ Section 140

²⁶ Section 29(4)

Under the statutory amount method, the taxable value of the fringe benefit is calculated according to Section 29(1)(a) and can be expressed by the following formula:

$$\text{Statutory amount} \times \frac{\text{Number of days in the tenancy period}}{\text{Number of days in the FBT year}} - \text{Rent paid}$$

For the 1998/99 FBT years, the statutory amount was \$1,391 for single quarters and \$5,578 for standard accommodation.

Under the 50% discount method the taxable value of a remote area housing benefit is calculated under either Section 29(1)(b) or Section 29(1)(c). According to Section 29(1)(b), the taxable value of the fringe benefit is 50% of the market value of the housing right less any rent paid by the recipient. In any other case, the taxable value of the fringe benefit is calculated under Section 29(1)(c) as follows:

$$\frac{\text{Statutory annual value of the housing right} \times 50\% \times \text{Number of days in the tenancy period}}{\text{Number of days in the FBT year}} - \text{Rent paid}$$

2.2.5.5.1.2 Non- remote area housing fringe benefit

Where the benefit is a non-remote area housing fringe benefit and the accommodation is located outside Australia, the taxable value of the benefit is the “market value” of the housing right less any rent paid by the recipient²⁷.

2.2.5.6 Living-away-from-home allowance fringe benefit.

A “living-way-from-home allowance benefit” arises where, in respect of the employment of an employee, an employer pays an allowance to an employee, which is in the nature of compensation for either additional non-deductible expenses or additional non-deductible expenses and additional disadvantages incurred by reason that the employee is required to live away from his or her usual place of residence to perform the employment duties²⁸.

2.2.5.6.1 Calculating the taxable value of a living-away-from-home allowance fringe benefit.

The taxable value of a living-away-from-home allowance fringe benefit is the amount of the allowance reduced by any “exempt accommodation component” and any “exempt food component”²⁹. These are the amounts of allowance, which represent reasonable compensation to the employee for the cost accommodation and for the increased cost of food as a result of the employee being required to live away from home.

²⁷ Section 26(1)(a)

2.2.5.7 Airline transport fringe benefit

An airline transport benefit arises where, in respect of the employment of an employee, an airline operator provides transport subject to stand-by restriction in its passenger aircraft to an employee (or associate) of an employer who either an “airline operator”³⁰ or “travel broker”. An airline transport benefit arises even though the employer of the employee does not provide the transport.

2.2.5.7.1 Calculating the taxable value of an airline transport fringe benefit.

The taxable value of an airline transport fringe benefit is the “stand-by value: of the recipient’s transport reduced by an amount of the “recipient’s contribution”³¹. The stand-by value of the recipient’s transport can be summarised in the following tables:

²⁸ Section 30(1)

²⁹ Section 136(1)(2) and Section 31(a)

³⁰ Section 32

³¹ Section 33

Table 2.1³²

Airline transport provided on a domestic route	
(i) Where the recipient's transport is provided on a scheduled passenger air service-	37.5% of the lowest publicly advertised economy airfare charged by the provider at the time to the public.
(ii) Where the recipient's is not on the scheduled passenger air service and a carrier operates a scheduled passenger air service over that route-	37.5% of the lowest publicly advertised economy airfare charged by a carrier over that route.
(iii) Where neither (i) nor (ii) applies and a combination of scheduled service operated by carrier would enable the recipient to travel between the embarkation and disembarkation ports-	37.5% of the lowest combination economy airfare charged by the carriers, which would enable the person to travel between those ports.
(iv) In any other case-	75% of the amount that the person could reasonable have been expected to be required to pay for the transport.

³² 1999 Australian Taxation Law, 9th Edition, Woellner Vella Burns, Bakoczy Krever; at p 1494

Table 2.2³³

Airline transport provided on an international route	
(i) where the transport is on a scheduled passenger air service and there is a provider's published airfare in respect of that route-	37.5% of the lowest provider's published airfare.
(ii) Where (i) does not apply and a carrier operates a scheduled service over the route-	37.5% of the lowest economy airfare charged by the carrier operating such service.
(iii) where neither (i) nor (ii) applies and if a combination of scheduled services operated by s carrier would enable the recipient to travel between the embarkation and disembarkation ports-	37.5% of the lowest combination economy airfares charged by carriers for travel between such ports.
(iv) In any other case-	75% of the amount that the person could reasonably have been expected to be required to pay for the transport.

³³ 1999 Australian Taxation Law; 9th Edition; Woellner Vella Burns and Barkoczy Krever

2.2.6.8 Board fringe benefit.

The provision of a “board meal”³⁴ on a “meal entitlement day” constitutes a “board benefit”³⁵. The meal must be prepared on the eligible premises- essentially the employer’s (or related company’s) premises- or at a location at or adjacent to a work site³⁶.

2.2.6.8.1 Calculating the taxable value of a board fringe benefit.

The taxable value of a board fringe benefit is \$2 per meal (where the recipient is 12 years of age or over prior to the beginning the relevant FBT year) or \$1 per meal (in other cases) reduced by the recipient’s contribution³⁷.

³⁴ A meal provided, in respect of the employment of an employee, by the employer (or a related company) to either the employee or his or her associate under either an industrial award or employment agreement pursuant to which there is a requirement to provide at least two meal per day.

³⁵ Section 35

³⁶ Taxation Ruling TR 94/1 and Taxation Determination TD 94/47

³⁷ Section 36

2.2.6.9 Car parking fringe benefit.

According to Section 39A³⁸ and Section 136(1)³⁹, a car parking benefit arises where, on a particular day between the hours of 7am and 7pm:

- ❖ Car parking is provided on the “business premises” or “associated premises” of the provider for a total duration exceeding four hours;
- ❖ A commercial parking station is located within a one-kilometre radius of the premises.⁴⁰
- ❖ The provision of the parking facilities is in respect of the employment of the employee;
- ❖ The provision of parking facilities is not excluded by the regulation⁴¹.

Taxation Laws Amendment Bill (No. 6) 1997 proposed to insert section into FBTAA to exempt car parking benefit provided by small business employers.

³⁸ Fringe Benefit Tax Assessment Act 1986.

³⁹ Income Tax Assessment Act 36.

⁴⁰ Taxation Determinations TD 93/71 and TD 93/107

⁴¹ See Regulation 3A, which excludes car parking provided to a disable employee who has a “disable person’s car parking permit”.

2.2.6.9.1 Calculating the taxable value of a car parking fringe benefit.

An employer may elect to use one of the following methods⁴² to calculate the taxable value of a car parking fringe benefit:

- (i) The commercial parking station method⁴³;
- (ii) The market value method⁴⁴;
- (iii) The average cost method⁴⁵;
- (iv) The statutory formula method⁴⁶; or
- (v) The 12-week record-keeping method⁴⁷.

2.2.7 Summary

Fringe benefits in Australia are easily identifiable as they are governed by the Fringe Benefits Tax Assessment Act 1986. With the introduction of this piece of legislation the difficulties that were faced by the employer and employee, even the government of Australia by the section 26(e)⁴⁸ were relaxed.

⁴² Taxation Ruling TR 96/26.

⁴³ Section 39C

⁴⁴ Section 39D

⁴⁵ Section 39DA

⁴⁶ Section 39FA

⁴⁷ Section 39GB

⁴⁸ INCOME TAX ASSESSMENT ACT NO. 36 OF 1997

USA

2.3 **Fringe benefits in United States of America.**

2.3.1 **Introduction.**

Fringe benefits are received in connection with the performance of services, are included in income as compensation unless a pay of fair market value for them or law specifically excludes them.

The employer has an option to report taxable non-cash fringe benefits by using either of the following rules:

1. The general rule: the benefits are reported for a full calendar year (January 1 – December 31).
2. The special accounting period rule: benefits provided during the last 2 months of the calendar year (or any shorter period) are treated as paid during the following calendar year. For example, each year the employer reports the value of benefits provided during the last 2 months of the prior year and the first 10 months of the current year.

2.3.2 **General Valuation Rule.**

The general valuation rule to determine the value of most fringe benefits. Under this rule, the value of a fringe benefit is its fair market value. The fair market value of a fringe benefit is the amount an employee would have to pay to a third party in an arm's-length transaction to buy or lease the benefit. This amount is determined on the basis of all the facts and circumstances.

2.3.3 **Fringe benefits overview**

A fringe benefit is a form of a pay for the performance of services given by the provider of the benefit to the recipient of the benefit. For example, an employer provides an employee a fringe benefit by allowing the employee to use a business vehicle to commute to and from work:

Performance of services. A person who performs services for any one does not have to be an employee of that person. A person may perform services for any one as an independent contractor, partner, or director. Also, for fringe benefit purposes, treat a person who agrees not to perform services (such as under a covenant not to complete) as performing services.

Provider of benefit: an employer is a provider of a fringe benefit if it is provided for services performed for him. The person can be a provider of a fringe benefit even if actually furnished by another person.

Recipient of benefit: the person who performs services for an employer is the recipient of a fringe benefit provided for those services. That person may be a recipient even if the benefit is provided to someone who did not perform services for an employer, i.e. the employee can be a recipient of a fringe benefit that an employer is providing to a member of the employee's family.

2.3.4 Are fringe benefits Taxable?

Any fringe benefit that the employer is providing is taxable and must be included in the employee's pay unless the law specifically excludes it.

The employer must include in employee's pay the amount by which the value of a fringe benefit is more than the sum of the following amounts:

- ❖ Any amount the law excludes from pay
- ❖ Any amount the recipient paid for the benefit

2.3.5 Fringe benefits Valuation Rules

The value of a fringe benefit is a fair market value

2.3.5.1 Fair market value

The fair market value of a fringe benefit is the amount an employee would have to pay a third party in an arm's length transaction to buy or lease the benefit. The amount is determined on the basis of all the facts and circumstances. Neither the amount the employee considers being the value of the fringe benefit nor the cost the employer incurs to provide the benefit determines the fair market value.

2.3.6 Rules of Withholding. Deposit and reporting

Valuation of fringe benefit; generally the employer must determine the value of non-cash fringe benefits no later than January 31 of the next year. Prior to January 31, the employer may reasonably estimate the value of the fringe benefit for the purpose of withholding and depositing time.

For employment tax and withholding purposes, the employer can treat fringe benefits as paid on a pay period, quarter, semi-annual, annual, or any other basis. But the benefits must be treated as paid no less frequently than annually. The employer does not have to choose the same period for all employees. The employer can treat the value of a single benefit as paid on one or more dates in the same calendar year, even if the employee receives the entire benefit at one time. For example, if an employer receives a fringe benefit valued at \$1,000 in one pay period during 2002, the employer can treat it as made four payments of \$250, each in a different pay period of 2002.

The value of a fringe benefit to regular wages for a payroll period and figure Income Tax withholding on the total or the employee can withhold Federal Income tax on the value of a fringe benefit at the flat rate 27% applicable to supplemental wages.

2.3.7 Types of fringe benefits in USA

1. Accident and health benefits
2. Achievement awards
3. Adoption assistance
4. Athletic facilities
5. De minimis benefits
6. Dependant care assistance
7. Employee discount
8. Employee stock options
9. Group-term life insurance coverage
10. Lodging on your business premises
11. Meals
12. Moving expenses reimbursements
13. No-additional-cost services
14. Personal use of motor vehicle
15. Transporting (commuting) benefits
16. Tuition reduction
17. Working condition benefits

2.3.8 Summary

The regulation dealing with taxation of fringe benefits in USA, clearly shows the procedure that the employer should take when dealing with the Income Tax Withholding under Employment Taxes.

NEW ZEALAND

2.4 Fringe benefits in New Zealand.

2.4.1 What is a fringe benefit tax

Fringe benefit tax (FBT⁴⁹) is a tax on benefits that employees receive as a result of their employment, including those benefits provided through someone other than an employer.

2.4.2 What is a Fringe Benefit?

Fringe benefits include most benefits given to employees in addition to their salary or wages. Employees may be past employees, as well as the present or future employees. As an employer you are liable to pay fringe benefit tax on fringe benefits that are given to employees who are working in the company.

2.4.3 What are the categories of Fringe Benefits

There are four main groups of fringe benefits:

18. Motor vehicles
19. Low-interest loans
20. Free, subsidised or discounted goods and services.
21. Employer contribution

⁴⁹ Fringe Benefit Tax

2.4.3.1 Motor Vehicles

2.4.3.1.1 General principles for Fringe Benefit Tax on motor vehicles.

- ❖ As long as a vehicle is available for private use (for example, travel between home and work) by employees, including shareholders-employees must pay fringe benefit tax. The liability of the employer does not depend on whether the employees actually use the vehicle.
- ❖ There are some general exemption and some daily exemption from fringe benefit tax on motor vehicles.
- ❖ Sole traders or partners in the partnership are not required to pay fringe benefit tax on a business vehicle for private use.

2.4.3.1.2 General exemptions from FBT on motor vehicles

General exemptions apply to:

- ❖ Work-related vehicles not available for private use
- ❖ Work-related vehicles with limited to private use
- ❖ Vehicles stored on the employer's premises.
- ❖ Vehicles over 3,500 kilograms.

2.4.3.2 FBT on low-interest loans

Low-interest loans form one category of fringe benefit liable to fringe benefit Tax.

2.4.3.2.1 How is FBT applied to low-interest loans?

When an employer provides a low-interest loan to an employee, that loan is subject to fringe benefit Tax. But the tax is not charged on the actual loan.

2.4.3.2.1.1 What is a loan

A loan includes:

- ❖ All advances (for example, salary advances)
- ❖ Deposits
- ❖ Money lent in any way
- ❖ Any credit given, including a delay in recovering an debt and the debit balance in the current account of a shareholder-employee

When another person (for example, an associated company) provides a loan on behalf of the employer, the loan will be subject to fringe benefit tax.

2.4.3.2.1.2 Calculation based on the prescribed rate of interest.

The prescribed rate of interest is a standard rate set by regulation under Income tax Act. The prescribed rate of interest may change at one or two times:

- ❖ If the rate increases, it will do so at least one month before the start of the quarter in which the new rate applies.
- ❖ If the rate falls, it will do so at least one month before the end of the quarter in which the new rate applies.

fringe benefit tax may be charged if the interest on the loan is less than the interest calculated using the prescribed rate on the daily balance of the loan. Fringe benefit Tax is charged on the difference

2.4.3.2.1.3 Types of Loans subject to FBT.

1. Current account debit balances

Where there is a debit balance in a current account of a shareholder-employee, fringe benefit tax is charged on the difference between:

- ❖ The prescribed rate of interest calculated on a daily basis on the amount overdrawn, and
- ❖ The actual interest charged and debited to the account.

2. Expense accounts

- ❖ Fringe benefit tax is payable on the interest-free expense accounts that the employer provides to employees when they can use those accounts to buy goods and services for their private use

3. Loans to life insurance policy holder

- ❖ Where the holder of a life insurance policy receives a loan from that life insurer, fringe benefit tax is payable as though the life insurer were the employer of the policyholder, and the loan was an employment-related loan.

2.4.3.2.1.4 Exempt from FBT on low-interest loans.

A low-interest loan to employees may not be subject to fringe benefit tax under the following circumstances.

❖ **Loan credit is the same as normal commercial credit.**

If an employer gives credit to an employee that is the same as the normal commercial credit that the employer business offers the general public, this low-interest loan is subject to fringe benefit tax,

❖ **Employee share-purchase schemes.**

An employee share-purchase scheme may be exempted from fringe benefit tax, provided it meets all the following conditions.

- For the period that the loan is not outstanding and the exemption is used, the sole purpose of the loan is to enable the employee to acquire shares or rights, or option to shares, in the company of the employer (or their associate), and the loan is used only for this purpose.
- The employee must beneficially own the share, rights or option at all times for the period of the loan.
- A condition of the loan is that it must be repaid in full if the employee ceased to be the beneficial owner of the shares, rights or options.
- The company issuing the shares, rights or options is not a qualifying company.
- The employer and the employee are not associated persons.

- The company issuing the shares, rights or options maintains a divided paying policy for the period of the loan.
- The employer has not received written approval from Inland Revenue to claim a notional interest expense.

2.4.3.3 Fringe benefit Tax on goods.

Free, subsidised or discounted goods subject to fringe benefit tax and their taxable value. Also there are goods that are not subject to Fringe Benefit Tax.

2.4.3.3.1 Goods that are subject to FBT.

Goods are subject to fringe benefit tax if any employer (or someone on the employer's behalf) provides them to an employee at the less than the cost to the employer. The "cost to the employer":

- ❖ Is usually the price paid to buy those goods, or
- ❖ If the employer manufactured, produced or processed the goods, is the lowest price at which the employer sells identical goods to the other customers (wholesalers or retailers)

2.4.3.3.2 Goods not subject to FBT.

Fringe benefit tax is not levied if the sale price of the goods to the employee is more than the cost to the employer.

If an item that usually retails for \$200 or less and is on special to the public is sold at the discount to an employee at the nominal staff discount rate, it is not considered to be a fringe benefit. This applies only if the price paid by employee is more than the lesser of:

- ❖ 95% of the cost price to the employer, or

- ❖ 95% of the selling price to the public if a reasonable quantity of identical goods are available on special to the public.

2.4.3.4 Fringe Benefit Tax on services.

There are services that are subject to FBT and their taxable value and also those that are not subject to FBT.

2.4.3.4.1 Services that are subject to FBT.

Fringe benefit tax is charged on services that an employer (or someone on the employer's behalf) provides to an employee at a less than normal cost to the public.

Examples of fringe benefits that are liable for fringe benefit tax are:

- ❖ Gifting schemes, e.g., long-service awards, incentive vouchers, gifts
- ❖ Club membership
- ❖ Accompanying travel by the employee's spouse or family

2.4.3.4.2 What is the taxable value of the services subject to FBT?

The taxable value of the fringe benefit is the normal market price of the service provided, less any employee contribution. Use the GST⁵⁰-inclusive price of the service.

If someone else provides the service on behalf of the employer, the taxable value is:

- ❖ The amount paid by the employer to that person, where the transaction is at arm's length (that is, not between associated person), or
- ❖ The value of those services to the public, where the transaction is between associated persons.

2.4.3.4.3 Which services are not subject to FBT?

Fringe Benefit Tax is charged on:

- ❖ A car park provided to the employee. If the car park is on the employer's premises or the employer leases it with exclusive right to the property (just having a licence to occupy does not qualify for an exemption)
- ❖ Frequent flier and membership reward schemes where employees join the scheme for their own use (but Fringe benefit tax may apply where the employer enters into an arrangement with the promoter of the scheme to benefit employees)

2.4.3.4.4 Exemption from FBT on goods and services.

The general exemption on goods and services, as well as the procedure for claiming it, based on which type of the FBT return is filed.

2.4.3.4.5 General exemption when the quarterly return is filed.

If an employer is filling the quarterly return, he has:

- ❖ A \$75 exemption per employee per quarter for goods and services that are fringe benefits.
- ❖ A maximum exemption of \$450 per quarter. If he is a large organisation

NB. If the value of an employee's fringe benefits goes over \$75 or the total value for all employee goes over \$450 for a quarter, the full value of the goods and services benefits is subject to FBT. He cannot deduct the exemption first.

⁵⁰ Goods and Services Tax

2.4.3.4.6 General exemption when an annual or income year return is filed.

If an employer is filling annual or income year returns, he has:

- ❖ An exemption of \$300 for each employee per year
- ❖ A maximum exemption for all employees of \$1, 800 per year. If he is a large organisation.

If the period covered by the return is less or more than normal income, the employer has to make this adjustment:

Days covered by return / 365 X \$300

2.4.3.4.7 Fringe Benefit Tax in relation to Goods and Services Tax.

Relevant GST issues are the taxable value of fringe benefits, and the adjustments that may be necessary on FBT returns.

2.4.3.4.8 Does the taxable value include GST?

Calculate FBT on the GST-inclusive value of any fringe benefits. This requirement will not affect all fringe benefits.

Fringe benefits that are GST-exempt supplies will not include any GST component, so their taxable value is GST-exclusive. Examples are low-interest loan, overseas travel and life insurance.

2.4.3.4.9 How GST on fringe benefits is calculated?

To calculate the GST on fringe benefits, the following steps are considered.

1. The total taxable value of all fringe benefits from box 3 of the return.
2. Subtract the value of any benefits that are exempt or zero-rated for GST (for example, low-interest loans). The result is the amount of fringe benefits liable for GST.
3. Divide the result by nine and put this adjustment figure in:
 - ❖ Box 7 of the quarterly FBT return (IR 420) for quarterly filers.
 - ❖ Box 6 of the annual (IR 422) and income year (IR 421) FBT returns for annual and income year filers.

2.4.3.5 FBT on employer contribution to funds, insurance and superannuation schemes.

Employer contribution to funds, insurance and superannuation schemes form one category of fringe benefit liable for Fringe benefit tax. The following will be dealt with under this heading:

- ❖ Identify the employer contribution subject to FBT, and their taxable value
- ❖ Details when life insurance is liable for FBT (including for life insurance agents) and when it is not liable.
- ❖ Explain the attributed and non-attributed benefits in relation to employer contributions to funds, insurance and superannuation schemes
- ❖ Identify requirements for record keeping.

2.4.3.5.1 Which employer contributions are subject to FBT?

Any contribution made by an employer for his or her employee to any of the following categories of superannuation scheme and insurance funds are subject to FBT:

1. Category 1: contribution to sick, accident or death benefit funds
2. Category 2: insurance fund of a friendly society, life pension, personal accident or sickness policies.
3. Category 3: superannuation schemes to which Specified Superannuation Contribution Withholding Tax (SSWCT) does not apply.

2.4.3.5.2 What is a taxable value of these fringe benefits?

The taxable value of fringe benefits that are employer contributions is:

- ❖ The total premium the employer contributed or paid
- ❖ GST-inclusive, unless the goods and services provided are exempt from GST.

2.4.3.5.3 FBT on life insurance contributions.

Only some employer contributions to life insurance are subject to Fringe benefit tax.

2.4.3.5.4 Which life insurance contributions are liable for FBT?

Fringe Benefit Tax is charged for:

- ❖ An insurance policy where an employer takes it out for an employee and pays the premiums/
- ❖ An insurance policy of a life insurance agent or their family, where there is a discounted premium. For Fringe benefit tax purposes, the life insurer is liable for FBT and self-employed commission agents are employees.

2.4.3.5.5 Which life insurance contributions are not liable for FBT?

Fringe Benefit Tax is not charged for:

- ❖ An insurance policy where the employee or family member takes it out and the employer pays the premium- in this case, the payments are taxable income in the hands of an employee
- ❖ An insurance policy where an employer takes it out for an employee, pays the premium and gains the benefit from the policy (while the employee does not benefit). In this case, the payments are not subject to FBT, and are not taxable in the hands of the employee.

2.4.3.5.6 Record keeping for employer contributions to funds, insurance and superannuation schemes.

To meet the requirements for FBT on employer contribution to funds, insurance and superannuation schemes of employees, the employer must keep the records.

2.4.3.5.6.1.1 Requirements for all records

With all the records for the employer contributions are liable for FBT, include:

- ❖ The date of the transaction
- ❖ The name of the employee receiving the benefit
- ❖ A description of the benefit provided
- ❖ The cost to the employee
- ❖ The cost to the employer

2.5 Summary.

The legislation in New Zealand by the government is the Fringe Benefits Act. This piece of legislation clearly outlines the types of fringe benefits, how are they taxable using the required rate and how the fringe benefits are calculated.

CHAPTER THREE

The broad fringe benefits in South Africa, the legislation that govern

The fringe benefits and also how they are taxable

3.1 Introduction

The term fringe benefits refers to payments made to employees usually in a form other than cash. For an example an employee may be offered the use of a company car in lieu of a portion of his cash salary. The employer will reduce the employee cash salary by an amount equivalent to the cost of providing the car. From the employer's point of view offering employees fringe benefits instead of cash has no effect on the after tax cost. The fringe benefits may, however, be beneficial to the employee because the amount, which is included in his income, may be lower than a cash salary and consequently his or her after tax position improves.

The provisions of the Act⁵¹ in terms of which a fringe benefit may be subject to income tax are as follows:

- (a) The benefit may fall within the general definition of 'gross income' in section 1 of the Act.
- (b) The benefit may fall within paragraph(c) of the definition of 'gross income' in section 1 of the Act.
- (c) The benefit may be included in the taxpayer's 'gross income' by virtue of some special provision in the Act i.e. Section 8A.

⁵¹ Income Tax Act, No. 58 of 1962

(d) The benefit may fall within the scope of the Seventh Schedule to the Act.

The necessity for the Seventh Schedule came about because of the inadequacies of category (a) and (b). Their adequacies are illustrated by two English cases.

- ❖ In **Tennant vs. Smith [1892] AC 150** a bank permitted one of its managers to live rent-free in a house owned by the bank, subject to two stipulations: he was not permitted to sublet the house and he was not permitted to use the house to transact any business except bank business. The revenue authorities unsuccessfully attempted to assess him for income tax on the rental value of the house. It was held that the benefit was not 'income'. Income, said the court, is money or that which can be turned into money. On the facts, the benefit was not capable of being turned into money.

If this principle were allowed to stand, almost any fringe benefit could be made tax-free by making it subject to a contractual stipulation preventing the taxpayer from converting it to cash. By contrast, where benefits fall under the Seventh Schedule, their convertibility to cash is irrelevant.

- ❖ In **Wilkins vs. Rogerson [1961] Ch 133** an employer, seeking to give an employee a benefit, authorised the latter to instruct a tailor to make up a suit of clothes, the bill for which would be settled by the employer. The revenue authorities sought to tax the employee on the value of a new suit of clothes. It was held that this benefit was in nature of 'income' because it could be turned into money, but that its value was the cash amount into which the taxpayer could have converted it.

Hence the amount to be included in the taxpayer's income was the second-hand value of the suit of the clothes- fraction of the cost. By contrast, the Seventh Schedule imposes its own criteria for valuing a non-monetary benefit.

3.2 The provisions of the Income Tax Act⁵² dealing with the taxation of fringe benefits may be summarised as follows.

Table 3.1⁵³

Income Tax Act reference	Subject
Section 1 - gross income (par©), - Entertainment expenditure definition.	Entertainment
Section 11 (u)	Entertainment deduction
Section 23 (i)	Entertainment deduction
Section 8 (1)	Reimbursive allowances
Section 1 - gross income definition, paragraph (i) Seventh Schedule	Taxable benefits derived by reason of employment or holding of an office
Sec 10(1)(nA), (nB), (nC), (nE), (nG), (nH), (q)	Exemption

⁵² Act no. 58 of 1962

3.2.1 Gross income Definition- Paragraph ©

Paragraph © of the gross income act brings into gross income all amounts received for the services rendered as well as entertainment allowances paid to employees or holders of office.

In terms of this paragraph, the following are included in the taxpayer's "gross income"-

- ❖ Any amount
- ❖ Including any voluntary awards
- ❖ Received or accrued in respect of services rendered or to be rendered
- ❖ Or any amounts (other than an amount referred to in section 8(1) received or accrued in respect of or by virtue of any employment or holding of any office.

There must be an amount received or accrued.

In **W.H. Lategan vs. CIR**⁵⁴(1926 CPD⁵⁵) an opinion was expressed by the court that the term 'amount' usually meant an amount of money and that unless the word amount meant something more than an amount of money it would not be wide enough to include the value of the property or rights. The court considered, therefore, that 'amount' included the value of all property and rights received.

In **CIR vs. Butcher Brothers (Pty) ltd (1945 AD**⁵⁶) Carlisle referred to the word 'amount' as meaning an amount having an ascertainable money value.

⁵³ Notes on SOUTH AFRICAN INCOME TAX 2002, TAX; 21st Edition; Keith Huxham and Philip Haupt, p 391.

⁵⁴ Commissioner for Inland Revenue Services

Voluntary awards are included.

It was as a result of an Appellate Division case, CIR vs. Lunnon (1924 AD), that paragraph © was introduced. In that case the court decided that a voluntary payment made to an employee some months after the termination of his services did not fall into the gross income because it was of capital in nature.

As a result of the introduction of paragraph © the capital or revenue nature of the payment is now irrelevant. As long as it is paid for services rendered it fell into the gross income.

There are six provisions of paragraph ©

- (i) Paragraph © does not apply to benefits or advantages dealt in paragraph (i) of the gross income definition.
- (ii) If a person renders services and another person receives an amount in respect of such service, the person who rendered the service will have the amount included in his or her gross income. This proviso links that taxation of the amount to the rendered service rather than to the receipt of payment.

⁵⁵ Cape Town Provincial Division

3.2.2 ENTERTAINMENT ALLOWANCES AND DEDUCTIONS.

The only fringe benefit dealt with in paragraph © of the gross income definition is an entertainment allowance.

The taxation of entertainment allowances paid to employees and holders of office is dealt with in provisos (iii) to (vi) of paragraph ©

- (iii) If an employee or office holder receives an allowance or advance to be utilised in whole or in part for defraying entertainment expenditure, such amount will be deemed to have been received for services rendered, and will be included in gross income.
- (iv) Paragraph (iii) does not apply if the Commissioner is satisfied that the allowance does not relate to entertainment expenditure.
- (v) The Commissioner's decision under paragraph (iv) is subject to objection and appeal.
- (vi) Paragraph (iii) does not apply if the amount is an advance for, or a reimbursement of, entertainment expenditure actually incurred or to be incurred during the year by the employee or office holder, on the instructions of his employer or principle. The employee or office-holder must produce proof and account to his employer or principal for such expenditure.

⁵⁶ Appellate Division

3.2.2.1 Entertainment expenditure definition⁵⁷

‘Entertainment expenditure’ means expenditure incurred in providing hospitality of any kind, including, without limiting the scope of this definition, expenditure incurred in providing and supplying-

- (a) Food, drink or accommodation; or
- (b) Any ticket or voucher entitling any person to admission to any theatre, exhibition or club or to attend any show, display or performance or to use or enjoy any sporting, recreational or other facility; or
- (c) Any gift of goods intended for the personal use or enjoyment of any person; or
- (d) Any travel facility; or
- (e) Any voucher entitling the recipient or any holder thereof to exchange it for food, drink or accommodation or any such ticket, voucher or travel facility,

And expenditure which is incidental to or is incurred in connection with the provision or supply of any such hospitality, food, drink, accommodation, ticket, voucher, gift or travel facility, but excluding such expenditure in respect of hospitality as is referred to in section 8(1)(d).

If the employee is given an entertainment allowance and he is not required to account (to his employer) for actual expenditure incurred, the amount is included in his or her gross income. It will then be the employee’s responsibility to claim a deduction (in terms of section 11(a) or 11(u)) in respect of expenditure actually incurred.

If the employee is given an amount, where in advance or in arrears, to cover entertainment expenditure, which he has, or will, incur on the instruction of his employer and for which he is accountable to his employer, the amount does not fall

⁵⁷ Section 1 of Income Tax Act No. 58 of 1962

into his or her gross income. As a result the employee is not permitted to claim any deduction in respect of the expenditure.

3.2.2.2 Section 11(u) deduction

Entertainment expenditure (including club subscriptions) incurred by a taxpayer, (who is a natural person), during the year of assessment, is deductible under section 11(u) if the Commissioner is satisfied that such expenditure was incurred directly in connection with the taxpayer's trade.

The section 11(u) deduction is, however, limited to a maximum of the lesser of:

- ❖ R2500.00 or
- ❖ R300 plus 5% of taxable income (before the s11 (u) deduction) from the trade, in respect of which the entertainment expenditure is incurred, less R6000.

The taxpayer cannot deduct more than what he has actually spent on entertainment.

3.2.3 Reimbursive allowances

3.2.3.1 Section 8(1)⁵⁸

Any allowance or advance paid to a director, holder of any office, manager, employee or other person in respect of any:

- Travelling on business, or
- Other service, or
- Expenses incurred by reason of the holding of any office

Is included in the taxpayer's taxable income to the extent that it is not actually spent on business travel or in performing such service, or by reason of the office-holder.

3.2.3.2 Travel Allowance

Where an allowance or advance is paid to the recipient to defray expenditure in respect of any motor vehicle used by him, the portion of the allowance that is expended for the business purposes is effectively tax free. Only part of the allowance or advance associated with private use will fall into the recipient's taxable income.

The portion of the allowance or advance expended by the recipient during the year of assessment for the business purpose is calculated in one of the three ways:

1. Actual distance travelled during the year for business purposes, other than private travelling, multiplied by a rate per kilometre, which by reference to a table. This method may only be used where the taxpayer has kept accurate records of his business travel.

⁵⁸ Income Tax Act, No. 58 of 1962

2. Deemed distance travelled during the year for the business purpose multiplied by a rate per kilometre, which is determined by reference to a table.
3. Expenditure actually incurred for business purposes where the recipient is able to provide accurate information to substantiate this.

Private travelling includes travelling by the recipient between his place of residence and his place of employment or business, as well as any other travelling done for his private or domestic purposes⁵⁹.

The business use of the motor vehicle is deemed to be equal to the difference between the total number of kilometres travelled by the recipient in the vehicle during that year, up to a maximum of 32 000 kilometres, and a distance of 14 000 kilometres⁶⁰, unless it can be shown that actual business mileage exceeds this figure. When the vehicle has been used for business purposes for a period that is less than a full year, the distance of 32 000 kilometres and 14 000 kilometres are reduced proportionately to the period of use for business purposes, expressed as a ratio of twelve months.⁶¹ Where the recipient has interchangeably used more than one vehicle for business purposes during the year of assessment, the provisions of paragraph (aa) and (bb) applies separately to each vehicle⁶².

⁵⁹ Section 8(1)(b)(i)

⁶⁰ Section 8(1)(b)(ii)(aa)

⁶¹ Section 8(1)(b)(ii)(bb)

⁶² Section 8(1)(b)(ii)(cc)

Table 3.2⁶³⁶⁴**The table of rates**

Where the value of the vehicle	Fixed cost R	Fuel cost c	Maintenance cost c
Does not exceed R30 000	16 916	23,1	17,1
Exceeds R30 000 but does not exceed R35 000	18 984	23,5	17,3
Exceeds R35 000 but does not exceed R40 000	21 051	23,8	17,8
Exceeds R40 000 but does not exceed R45 000	23 116	24,3	18,5
Exceeds R45 000 but does not exceed R50 000	25 197	24,8	19,2
Exceeds R50 000 but does not exceed R55 000	27 670	25,3	19,9
Exceeds R55 000 but does not exceed R60 000	29 778	25,5	20,6
Exceeds R60 000 but does not exceed R70 000	33 873	25,9	21,3
Exceeds R70 000 but does not exceed R80 000	38 102	26,1	22,2
Exceeds R80 000 but does not exceed R90 000	40 538	26,3	22,7
Exceeds R90 000 but does not exceed R100 000	44 535	26,5	23,4
Exceeds R100 000 but does not exceed R110 000	48 533	26,8	24,1
Exceeds R110 000 but does not exceed R120 000	51 110	27,5	24,8
Exceeds R120 000 but does not exceed R130 000	54 990	28,1	25,5
Exceeds R130 000 but does not exceed R140 000	58 803	28,9	26,2
Exceeds R140 000 but does not exceed R150 000	62 677	29,4	26,9

⁶³ SILKE: South African INCOME TAX, 2001; J A Arendse, K Jordaan, M A Kolitz and M L Stein; Butterworths Tax Publication.

Where the value of the vehicle exceeds R150 000-

- (a) The fixed cost shall be R62 677 plus R3 874 for every R10 000 or part thereof by which the value exceeds R150 000**
- (b) The fuel cost shall be 29,4 cents per kilometre**
- (c) The maintenance cost shall be 26,9 per kilometre.**

Where business kilometres during the year of assessment do not exceed 8 000

kilometres, and no other travel allowance is paid a rate of 153 cents per kilometre may be used for a reimbursive allowance.

A travelling allowance can be a fixed amount or a fluctuating allowance based on the number of kilometres travelled for business purposes, or a combination of the two. In the case of a fixed allowance, 40% (50% from 1 April 1998) of such allowance constitutes remuneration, and will be subject to the deduction of employee's tax. In the case of an allowance based on kilometres travelled for business purposes, 40% (50% from 1 April 1998) of such allowance will be subject to employee's tax if the rate per kilometre exceeds R1, 30.

The employee may set off his or her expenses incurred in respect of his or her business travel against such allowance. He or she can claim his or her actual expenses by submitting acceptable records and proof, or use the table provided by SARS. The tables make provision for the fixed, fuel and maintenance cost per kilometre, which are required to keep a car of specified cost on the road. If no records were kept of actual kilometres travelled, the first 14 000kms would be deemed as private. If the vehicle has been used for a period of less than 12 months during the year, the figures of 14 000kms and 32 000kms are reduced in the same ratio as the period of use bears to 12 months.

⁶⁴ Notes on SOUTH AFRICAN INCOME TAX, 2002, 21st Edition; Keith Huxham and Phillip Haupt.

As from 1 March 1999 Section 8(1)(b)(ii)(cc) of the income tax has been amended to provide that where the recipient of a travelling allowance interchangeably uses more than one vehicle for business purposes and one or more of such vehicle were not used primarily for business purposes, the provisions pertaining to the 14 000 deemed private kilometres and 32 000 kilometres shall apply separately to each vehicle which was not used primarily for business purposes. In order to prove that the any vehicle was primarily used for business purposes, the taxpayer will have to keep an accurate record of total distance travelled for business purposes.

3.2.3.3 Subsistence Allowance.

A subsistence allowance paid to an employee or holder of office is taxed to the extent that the Commissioner considers it is not expended on the employee or office-holder's subsistence while he is away from his home in the Republic on business, for at least one night.

Unless the office-holder or employee proves otherwise, he will be deemed to have spent the following amounts on business:

- ❖ R150 per day, all inclusive (accommodation, meals and other costs).
- ❖ R 65 per day if the accommodation is paid by the employer or if the employer bears portion of the costs.
- ❖ Such amount as the Commissioner may allow in respect of accommodation and meals outside the republic. The current allowance is US \$ 120 per day.

This does not apply in the Rand Monetary Area.

- ❖ As far as overseas travel is concerned, there is no distinction made between the situation where the employee bears all the costs and the situation where the accommodation and meals are paid for by the employer. As \$ 120 is very low when the cost of accommodation and meals in some countries is taken into account (such as in Britain and the countries in the Western Europe) it is submitted that the \$ 120 per day should be in addition to the employer paying for meals and accommodation. There is no practice note setting out the \$ 120 allowance, but it is believed that this is in addition to accommodation paid by the employer.
- ❖ It is believed that the South African Revenue Services only applies the subsistence allowance for continuous periods not exceeding six weeks away from home.

This subsection does away with the need to continually produce proof of actual expenditure for income tax purposes. However, the employee may be able to prove that business expenses actually incurred by him exceed the above amount. If he can do so the actual expenditure and not the R150 (or R65, of \$120) will be deducted from his subsistence allowance. Where an allowance exceeds these amounts, the full amount of the allowance must be included in the employee's income, and he or she must claim his or her actual expenses incurred against such an allowance.

An employee is deemed to have expended R65 per day for personal subsistence and incidental cost while away on business and is not taxed on such allowance. The previous R150 a day expenditure provision, which included accommodation cost, has been eliminated with effect from 1 March 2002. Employees may still be

reimbursed for actual accommodation and incidental expenses while away on business.

3.2.3.4 Bursaries and Scholarships.

Bursaries and scholarships for further education are exempt from tax in the hands of employees where:

- ❖ The employee's salary is not reduced.
- ❖ The employee's salary does not exceed R60 000 a year,
- ❖ The bursary does not exceed R2 000 a year.

The thresholds were R50 000 and R1 600, respectively, prior to 1st March 2002.

3.2.3.5 Long service and bravery awards.

A de minimus exemption of R5 000 is available for bravery and long service awards (R2 000 prior to 1st march 2002).

3.2.3.6 Allowances to public officers

Section 8(1)(d) provides, briefly that an allowance paid to the holder of a public office is deemed to be expended by him to the extent that he has incurred expenditure for the purpose of his office in respect of certain items.

3.3 TAXABLE BENEFITS DERIVED BY REASON OF EMPLOYMENT OR THE HOLDING OF ANY OFFICE.

3.3.1 The Seventh Schedule

In the past, fringe benefits of various kinds were tax-free or were taxed in a preferential way. The Seventh Schedule is a mini-code within the Act, which provides for the taxation of fringe benefits or, as the schedule calls them, 'taxable benefits'.

The Seventh Schedule has three principal objectives:

- (i) To define what benefits are taxable;
- (ii) To lay down the criteria by which such benefits are valued, in other words, to establish their cash equivalent; and
- (iv) To impose obligation on employers to withhold employees' tax on taxable benefits and to give information to the revenue authorities.

The cash equivalent of a taxable benefit, determined in accordance with the Seventh Schedule, is included in the taxpayer's 'gross income'⁶⁵. Benefits, which fall outside the scope of the Seventh Schedule, will nevertheless be taxed if they fall within 'gross income'

Taxable benefits granted to a taxpayer in respect of employment or the holding of an office are included in his gross income and form part of "remuneration" from which employee's tax must be deducted. Taxable benefits do not include medical aid benefits or lump sums derived from benefit, pension or provident funds.

An "associated institution" in relation to any employer may also award fringe benefits and these are deemed to have been granted by the employer. Fringe benefits, which

would have been taxable, if granted to an employee but which are granted to his “relative”, will be included in the gross income of the employee.

⁶⁵ Section 1 sv ‘gross income’ para (i)

The following is a summary of the Seventh Schedule benefits

Table 3.3⁶⁶

Paragraph (2)	Fringe benefit	Valuation paragraph
(a)	Acquisition of an asset (other than money) for no consideration or for an inadequate consideration	5
(b)	Right of use of an asset other than residential accommodation or a motor vehicle	6
(b)	Right of use of a motor vehicle	7
©	Meals and refreshments and meal and refreshment vouchers	8
(d)	Residential accommodation	9, 10A
(e)	Free or cheap services	10
(f)	Low interest loans	11
(g)	Housing subsidies	12
(gA)	Housing subsidy schemes	12
(h)	Payment of employee debts or release of an employee from an obligation to pay a debt	13
(i)	Medical aid fund contribution	12A

⁶⁶ NOTES ON SOUTH AFRICAN INCOME TAX 2002; 21ST EDITION; Keith Huxham, Phillip Haupt; p 400- 401.

3.3.1.1 Acquisitions of an asset at less than market value.⁶⁷

Where an employee acquires any asset (consisting of any goods, commodities, marketable securities or property of any nature other than money) from his employer, an associated institution or any person by arrangement with the employer for no consideration or for a consideration which is less than the value of the asset, the difference between the value of the asset and the consideration given is a taxable benefit.⁶⁸

The cash equivalent of assets acquired by an employee is determined as follows:

- ❖ Market value at the time the asset is acquired by the employee,

Or

- ❖ Cost to the employer if the asset is movable property (other than marketable securities or any asset which the employer had the use of prior to acquiring ownership thereof) which was acquired by the employer to give to the employee,

Or

- ❖ The lower of cost or market value if the asset is trading stock (other than marketable securities)

	XXX
Less: Amount paid by the employee for the asset	(XXX)
Amount taxed in employee's hands	XXX

⁶⁷ Paragraph 2(a) and 5

⁶⁸ Paragraph 2(a)

The Receiver of Revenue regards the following arrangements as giving rise to taxable fringe benefits:

- (a) Prizes given by employer or any other person by arrangement with the employer for sales performance, outstanding work, etc;
- (b) Benefits whereby employees are provided with credit cards and may purchase goods for which the employer pays;
- (c) Cases where the employer arranges for the employee to acquire an asset from any other person at a discount.
- (d) Provision of security in the form of fences, burglar bars, alarm systems or the provision of armed response at the home of an employee.

Where an asset is given to an employee as a long service award or a bravery award the value of the benefit is the market value or cost to the employer of acquiring the asset, whichever is appropriate, reduced by the lesser of R2 000 or the aggregate cost of all such awards given to the employee during the year.

In the following cases no taxable benefit will arise:

- (a) On that portion of the cost of any assets given/ awarded for bravery to the extent that the cost of all such assets awarded to the employee during the year of assessment does not exceed R2 000;
- (b) On that portion of the cost of any assets given for long service⁶⁹ to the extent that the cost of all such assets given to the employee during the year of assessment does not exceed R2 00;
- (c) Fuel or lubricants supplied for use in a motor vehicle where the private use of such vehicle is brought into account as a taxable benefit;

⁶⁹ Means an initial unbroken period of service of not less than 15 years or any subsequent unbroken period of service of not less than ten years.

- (d) Meals, refreshments, vouchers, board, fuel, power or water which are brought into account as taxable benefits under other provisions;
- (e) Marketable securities, acquired by the employee exercising any right to acquire such marketable security.

3.3.1.2 Right of use of any asset (other than residential accommodation or any motor vehicle)⁷⁰

In terms of paragraph 2(b) a taxable benefit arises whenever an employee is granted the right of use any asset (other than residential accommodation) for his private or domestic purposes either free of charge or for a consideration which is lower than the value of use. The difference between the value of the private use of the asset and the consideration given by the employee or the amount he spent on maintenance or repair of the asset is a taxable benefit.

The value to be placed on the private use of the asset is as follows:

- (a) Where the employer is leasing the asset, the amount of rental payable by the employer for the period the employee has the use of the asset;

Rent paid by employer for the period	XXX
Less: Amount paid employee for the period	XXX
Amount taxed in employee's hands	<u>XXX</u>

- (b) Where the employer owns the asset, 15% per annum the lesser of the cost of the asset to the employer or the market value at the commencement of the period of use, calculated for the period during which the employee has the use

of the asset. However, where an employee is granted the sole right of use of the asset for a period equal to the useful life of the asset or a major portion thereof, the value is the cost of the asset to the employer. In such cases the taxable benefit will be deemed to have accrued to the employee on the date on which he was granted the right to use such asset.

Cost to employer multiplied by 15% per annum multiplied by portion of the year asset is used by employee	XXX
Less: Amount paid by employee	(XXX)
Amount taxed in the employee's hands	<u>XXX</u>

© Where the employee is granted the sole use of an asset for a major portion of its useful life, the value on which the employee will be taxed will not be determined as the above but will be the cost of the asset to the employer. The benefit will be deemed to have accrued to the employee on the date that he was first granted the right of use of the asset.

No value is placed on the private use of the asset if:

- (a) The private use is incidental to the use of asset for the employer's business;
- (b) The asset is provided by the employer as an amenity to be enjoyed by the employee at his place of work or at a place of recreation provided by the employer for the use of his employees in general;
- (c) The asset consists of any equipment or machine which the employer allows his employees in general to the use from time to time for short periods and the value of the private use of the asset is negligible; or

⁷⁰ Paragraph 2(b) and 6

(d) The asset consists of books, literature, recordings or works of art.

3.3.1.3 Right of use of a motor vehicle.⁷¹

The private use by an employee of an employer's motor vehicle is a taxable benefit.

The method used to calculate the taxable benefit is based on the "determined value" of the motor vehicle. The monthly value of the benefit is 1,8% of the determined value of the car. The value of the first company vehicle made available to an employee, which is to be included in his or her gross income as a fringe benefit, is presently at 1,8 % per month of the determined value and 4% per month in respect of any other vehicle made available to such an employee.

Value of the benefit = Cost X 1,8%

Cost represents the purchase price less any taxes, interest or finance charges, or otherwise the market value.

The value of the benefit may be reduced by R120 and R85 if the employee bears the full cost of fuel and maintenance respectively.

"Determined value" in paragraph 7(1) means-

- (a) Where the motor vehicle was acquired by the employer under a bona fide agreement of sale or exchange, concluded at arm's length
 - Cost, excluding finance charges, interest, value-added tax, or sales tax.

⁷¹ Paragraph 2(b) and 7

(b) Where the motor vehicle is held by the employer under a lease or was held under a lease and ownership was acquired by the employer on the termination of the lease

- Retail market value at the time the employer first obtained the right of use of the vehicle, or
- Where the lease is an instalment credit agreement for VAT purposes; the cash value in terms of the Value-Added Tax Act (excluding VAT), i.e.

(i) Where lessor is a banker or financier, the cost to him of the leased property;

(ii) Where the lessor is a dealer, the price at which the leased property is normally sold by him for cash or may normally be acquired from him for cash.

© In any other case, the market value (excluding VAT) of the motor vehicle at the time when the employer first obtained the vehicle or the right of use.

If the employee is first granted the use of the vehicle 12 months or more after the employer first acquired the vehicle or the right of use of the vehicle the determined value is reduced. The reduction in the determined value is by means of a depreciation allowance of 15% for each completed 12 month period from the date on which the employer first obtained the vehicle or right of use to the date on which the employee is first granted the right of use. The depreciation allowance is calculated on the reducing balance method. This would happen, for example, where a vehicle is taken from one employee and given to another for his use. The depreciation allowance is not claimable where the vehicle (or its right of use) was acquired from an associated institution, and the employee had, prior to the acquisition, enjoyed the right of use of the vehicle.

Cash equivalent – paragraph 7(2)

Value of private use	XXX
Less: Consideration paid by employee	(XXX)
Amount payable	<u>XXX</u>

Where any employee has the benefit of a company vehicle and at the same time receives an allowance in respect of transport in relation to another vehicle (excluding an allowance contemplated in section 8(1)(b)(iii)⁷²) the value of such first mentioned vehicle will be determined at the rate of 4% per month of the determined value of the vehicle.

3.3.1.3.1 Leased motor vehicle⁷³

Where the employer cedes or delegates his rights and obligations under a lease to his employee, the employer shall (for the purposes of the 7th Schedule) be deemed to have granted the employee the right to use the motor vehicle for the remainder of the period of the lease.

The rental paid by the employee will be the consideration paid by him.

3.3.1.3.2 Use of motor vehicle plus a travel allowance

In terms of a 1995 amendment an employee will not be permitted to deduct any consideration paid for the use of a motor vehicle if he also receives a travel allowance, as contemplated in Section 8(1)(b), for that car. This amendment was aimed at combating a scheme in which employee was given both the use of an employer owned motor vehicle and a travel allowance in respect of such motor vehicle.

⁷² Income Tax Act 58 of 1962

In terms of a 1997 amendment where an employee is given the use of a motor vehicle and is also paid a travel allowance in respect of another vehicle the value of the benefit is determined by using a rate of 4% instead of 1,8%.

These provisions will not apply if the allowance in respect of the other vehicle is a payment in respect of actual business travel.

3.3.1.3.3 Temporary breaks in private use.⁷⁴

The employee will not reduce the value of private use where the vehicle is temporarily not used for private purposes.

3.3.1.3.4 More than one vehicle⁷⁵

If an employee, primarily for business purposes, uses more than one motor vehicle the value of private use will be based on the vehicle with the highest value of private use unless the Commissioner directs otherwise. Where the employee is given the use of more than one vehicle at the same time and the provisions of paragraph 7(6) are not applicable, the value will be determined by using 1,8% for the vehicle with the highest determined value and 4,0% for all other vehicles.

⁷³ Paragraph 7(3)

⁷⁴ Paragraph 7(5)

⁷⁵ Paragraph 7(6)

3.3.1.4 Meal and refreshments vouchers⁷⁶.

A benefit arises if an employee has been provided with any meal or refreshment or voucher entitling him to any meal or refreshment (other than as part of residential accommodation) for free or a consideration, which is lower than the value of the benefit.

The employee is taxed as follows:

Cost to employer of providing the meal, refreshment or voucher

XXX

Less: Amount paid by employee

(XX)

Amount included in employee's income

XXX

The following are not taxed:

- ❖ Meals or refreshments supplied in a canteen, cafeteria or dining room operated by or on behalf of the employer and patronised wholly or mainly by employees,
- ❖ Meals and refreshments supplied during business hours or extended working hours or a special occasion,
- ❖ Meals enjoyed by an employee in the course of providing entertainment on behalf of the employer.

⁷⁶ Paragraph 2© and 8

3.3.1.5 Residential Accommodation⁷⁷.

The value of the taxable benefit in respect of residential accommodation is calculated by means of a formula, and any rental paid by the employee is deducted from the amount so determined:

The formula for the determination of the rental value is:

$$(A-B) \quad X \quad \frac{C}{100} \quad X \quad \frac{D}{12}$$

A represents the 'remuneration factor' as determined in relation to the year of assessment.

- ❖ Including amounts paid to a director for services rendered or as director's fees whether paid by the employer or associated institutions in relation to the employer
- ❖ Excluding the taxable benefit from the use of a motor vehicle or occupation of residential accommodation
- ❖ Excluding travel allowances
- ❖ Excluding entertainment allowances
- ❖ Excluding remuneration from an associated institution if the employee is not one of the controlling shareholders of the employer company and the Commissioner is satisfied that the employee's employment with the employer is not and was not in any way connected with the employee's employment with such associated institution.

⁷⁷ Paragraph 2(d) and 9

If the employee was only employed by his current employer or an associated institution for part of the preceding year, “A” is his remuneration for that year grossed up to what it would have been for a full year.

If the employee was not employed by his current employer or an associated institution in the previous year, “A” will be his first month’s remuneration, divided by the number of days in that month, multiplied by 365.

B represents an abatement of R20 000.

In the following situations B is nil:

- ❖ Where the employer is a private company controlled directly or indirectly by the employee or his spouse. This provision applies even if the employee is only one of the persons controlling the company; or
- ❖ Where the employee or his spouse or his minor child has a right of option or pre-emption where any of them may become the owners of the accommodation whether directly or indirectly by virtue of a controlling interest in a company or otherwise. This right must be granted by the employer or by another person by arrangement with the employer or by any associated institution for this restriction to apply.

C represents a quality increased to 17, or

= 18 if such accommodation is unfurnished and power or fuel is supplied by the employer, or

= 18 if such accommodation furnished but power and fuel are not supplied by employer, or

= 19 if such accommodation is furnished and power or fuel is supplied by the employer.

D represents the number of months in the year of assessment during which the employee was entitled to occupation of the accommodation.

As from the 1999 tax year of assessment paragraph 9 of the Seventh Schedule of the Income Tax Act has been amended whereby the taxable value of residential accommodation which is not owned by the employer or associated institution in relation to the employer, be the greater of the value determined in accordance with the formula, or an amount equal to the cost to the employer (i.e. rentals paid and other expenses defraying in order to provide such accommodation).

The valuation based on the cost to the employer will not apply where:

- ❖ It is customary for an employer in the industry concerned to provide free or subsidised accommodation to its employee;
- ❖ It is necessary for the particular employer, having regard to the kind of employment, to provide free or subsidised accommodation
 - For the proper performance of the duties of the employee;
 - As a result of the frequent movement of employees; or
 - Due to the lack of employer-owned accommodation; and
- ❖ The benefit is provided for bona fide business purposes other than the obtaining of a tax benefit.

When all three of the criteria have been met, the formula-based value will be included in the taxable income of the employee, even though the employer does not own the accommodation.

The percentage which is applied to the formula in determining the taxable value of the housing benefit, will increase by one percent from 16, 17 and 18 percent to 17, 18 and 19 percent, respectively as from 1 March 1999.

3.3.1.5.1 Holiday accommodation.

The cash equivalent of the taxable benefit arising from accommodation occupied temporarily for the purposes of a holiday is determined as the rental value of the accommodation less any consideration given by the employee.

The rental value is:

- ❖ The cost of the accommodation borne by the employer where the accommodation is hired by the employer from a person other than his associated institution. These costs include the rental payable and the amounts chargeable for meals, refreshment or services related to the accommodation.
- ❖ The prevailing rate per day at which the accommodation could normally be let to a person who is not an employee of the employer or of the employer's associated, if the accommodation was not hired or was hired from the employer's associated institution.

For employee's tax purpose an appropriate portion of cash equivalent of the value of the taxable benefit derived from the occupation of holiday 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 employee.

The amounts of the cash equivalent is taxable and therefore subject to the deduction of employee's tax. It is this amount that must be reflected on the employee's tax certificate.

3.3.1.5.6 Deemed Housing loans⁷⁸

This paragraph is aimed at countering arrangements where the employee has a right to acquire residential accommodation at a future date in terms of an agreement entered into with his employer, in such situations the value of the accommodation is not determined by means of formula in paragraph (9). The employee is deemed to have been granted a loan equivalent to the agreed-upon purchase price.

Paragraph 10A provides that where any employee has been granted the right:

- ❖ To occupy residential accommodation owned by the employer or an associated institution, and
- ❖ In terms of an agreement with the employer or associated institution the employee or his spouse or minor child are entitled or obliged to acquire the residential accommodation
- ❖ At a future date, at a stated price, and
- ❖ The employee is required to pay rent in respect of such accommodation, calculated wholly or partly as a percentage of the stated price

The employee will be deemed to have received a loan from the employer or associated institution, equal to the price stated in the agreement. Any rental paid by the employee will be deemed to be interest paid by him.

⁷⁸ Paragraph 10A

The employee's taxable benefit is calculated as follows:

Interest at the official interest rate per annum on the stated price	XXX
Less: Rental paid by employee	XX)
Taxable benefit	<u>RXXX</u>

3.3.1.6 Services provided by the employer⁷⁹

A taxable benefit arises when, at the employer's expense, a service has been rendered to the employee by the employer or by any other person and that service has been utilised by the employee for his private or domestic purposes, either for no consideration or for a consideration less than:

- ❖ The amount of the lowest fare referred to in Paragraph 10(1)(a) or
- ❖ The cost referred to in Paragraph 10(1)(b)

There are no taxable benefits in respect of the following:

- (a) Any travel facility granted by an employer engaged in the business of conveying passengers for reward by land, sea or air to enable any employee, his spouse or minor child to travel
- (j) To any destination in South Africa or travel overland to any destination outside South Africa; or

⁷⁹ Paragraph 2(e) and 10

- (ii) To any destination outside South Africa if such travel was undertaken on a flight or voyage made in the ordinary course of business of the employer and such employee or his spouse or minor child were not permitted to make a firm advance booking, or if the lowest fare payable for the travel facility does not in normal circumstances exceed R500;
- (b) Any transport service rendered to employees in general for the conveyance of such employees between their home and place of employment;
- (c) Any services rendered to employees at their place of work for the better performance of their duties, or as a benefit to be enjoyed by them at their place of work, or for recreational purpose at work or a place of recreation other than at the place of work that is for the use of employees in general;
- (d) Other occasional services if the cost of rendering the services or having them rendered does not in total exceed the sum of R500 during the year of assessment.

The Receiver of Revenue has stated the provision of parking for motor vehicles of personnel at their work will not be a taxable benefit.

3.3.1.7 -Free or low interest loans⁸⁰.

The taxable benefit arises when a loan has been granted to an employee:

- ❖ Either by the employer or by any other person by arrangement with the employer or by arrangement with an associated institution in relation to the employer,
- ❖ With no interest being payable by the employee, or with interest at a rate lower than the official rate of interest.

The cash equivalent of the taxable benefit derived in consequence of granting of a loan to an employee is the amount of interest that would have been payable for the year of assessment on the amount of the loan outstanding if the employee had been obliged to pay interest on the outstanding amount at the official rate of interest less the interest actually incurred by him on the loan for that year.

Where the interest is payable by the employee at regular intervals, a portion of the cash equivalent will be deemed to have accrued to him on each date during the year of assessment on which interest becomes payable by him for a part of that year.

If no interest is payable by employee on loan or if interest is payable at irregular intervals, a portion of the cash equivalent will be deemed to have accrued to the employee on the last day of each period in the year of assessment for which any cash remuneration becomes payable by the employer to him.

No taxable benefit will arise on any benefit derived in consequence of:

⁸⁰ Paragraph 2(f) and 11

- (a) The grant by an employer of any casual loan or loans if the aggregate of such loans does not exceed the sum of R3 000 at any time. A taxable benefit will arise if the loans are granted on a regular basis to all employees or a certain class of employees notwithstanding the fact that the amount loaned is less than R3 000;
- (b) The grant of any loan for the purpose of enabling the employee to further his own studies.

3.3.1.6 Subsidies.⁸¹

The full amount of any subsidy paid by the employer to an employee in respect of interest or capital repayments will be a taxable benefit.

Two taxable benefits are identified in relation to subsidies:

- ❖ A subsidy paid by an employer in respect of the interest or capital repayments payable by the employee in terms of a loan. The cash equivalent of the value of this taxable benefit is simply the amount of the subsidy.
- ❖ A subsidy paid by an employer to the lender who has granted the employee a loan, if the sum of the employer's subsidy and the interest paid by the employee on the loan exceeds the amount of interest that would have been payable on the loan using the official rate of interest.

The view of SARS is that, if the sum of the subsidy and interest is less than, or equal to, interest calculated at the official rate, this comprises a loan, which should be dealt with under paragraph 2(f). If the sum of the subsidy and interest exceeds

⁸¹ Paragraph 2(g), 2(gA) and 12

the amount of interest calculated at the official rate, the cash equivalent of the value of the taxable benefit is the amount of the subsidy.

The cash equivalent of the value of the taxable benefit consisting of a subsidy of interest or capital repayments as determined under paragraph 12 is subject to the deduction of employee's tax as it accrues each month. This must be reflected on the employee's tax certificate.

3.3.1.7 Payment of employee's debt or release of employee from obligation debt.⁸²

A taxable benefit is deemed to have been granted to an employee if the employer has paid any amount owing by the employee to a third person, whether directly or indirectly, without requiring the employee to make any payment, or if the employer has released the employee from the obligation to pay any amount owing to the employer.

Where any debt owing by an employee to an employer is extinguished by prescription, the employer shall be deemed to have released the employee from his obligation to pay his debt unless it can be shown to the satisfaction of the Commissioner that it was not the intention of the employer to confer a benefit on the employee.

The cash equivalent of the taxable benefit is the amount payable by the employer or the amount of the debt from which the employee has been released.

⁸² Paragraph 2(h) and 13

The cash equivalent of the benefit is either the debt paid by the employer or the debt owed by the employee to the employer, which has been written off.

The following is not taxable:

- ❖ Payment of the employee's subscription to a professional body, if the body is a condition of the employee's employment.
- ❖ As a result of **KOTZE vs. KBI**⁸³ in which it was held that an amount paid by employer to his employee's previous employer in settlement of a debt was a taxable benefit, paragraph 13 has been amended. The facts of the case were that Kotze had received a bursary from the Department of Post and Telecommunications on the understanding that he would work for them for three years after he had completed his studies. In terms of the bursary agreement he would be required to compensate the Department if he terminated his services without fulfilling his obligations. Shortly after commencing his employment with the Department he was offered employment by CSIR who undertook to settle his obligation to the Department. The amount paid was held to be a taxable benefit in terms of paragraph 13.

⁸³ 1991 TPD; 54 SATC 149

A value will be placed on:

- (a) Any telephone service at the employee's residence borne by the employer if, owing to the nature of the employee's duties, he is required to be on call during his off-duty hours or the telephone is required for the purpose of services rendered by the employee to his employer at the place of his residence; and
- (b) The release by the employer of an obligation to pay an amount owing by an employee to the employer if such release is made after the death of the employee, unless the employer is a private company and the employee was at the time, the amount became owing by him or any time thereafter a shareholder in that company.

With effect from 1 March 1992, the payment of telephone accounts by employers described above, and the release by the employer of a debt owing to him by an employee will no longer be free of tax.

The employee will place no value on subscription to a professional body due, which is paid by the employer if membership of such body is a condition of the employee's employment.

Payment by employers of a portion or the whole of an employee's mortgage bond payment, credit card account or any other obligation is fully subject to tax despite the fact that payment is made by the employer directly to the institution or supplier.

3.3.1.8 Medical Aid contribution⁸⁴

As from 1 April 1998 a fringe benefit arises when an employer has directly or indirectly made any contribution or payment to medical aid scheme registered under the provisions of the Medical Schemes Act,⁸⁵ for the benefit of an employee or the dependants of an employee, if such contribution exceeds two thirds of the total contribution (in relation to the employee to the fund).

The cash equivalent of the fringe benefit is the amount by which the employer's contribution to the fund exceeds two thirds of the total contribution to the fund in respect of the employee. The employer's contribution is made in such a manner that an appropriate portion thereof cannot be attributed to a particular employee, the cash equivalent for each employee is determined in accordance with the following formula:

$$A = \frac{B + C}{3 \times D} - E$$

Where:

A = the value of the taxable benefit

B = the total contribution to the fund, by the employer, which cannot be attributed to a specific employee

C = contribution made by all employees contemplated in B

⁸⁴ Paragraph 2(i) and 12A

⁸⁵ No. 72 of 1967

D= the number of employees contemplated in B

E= the contribution by the relevant employee

Paragraph 12A contains certain exclusions, in terms of the subparagraph no value shall be placed on the taxable benefit derived from an employer by-

- ❖ A person who by reason of superannuation, ill-health or other infirmity retired from the employment of such employer; or
- ❖ The dependents of an employee (who was employed at the date of death) after such employees death; or
- ❖ The dependants of a deceased retired employee

Summary

Fringe benefits in South Africa can be divided into two: there are those, which the provisions of the Income Tax specifically, covering Act 58 of 1962 and there are those which are covered by the Seventh Schedule in details.

CHAPTER FOUR

CONCLUSION

In taxing the fringe benefits in the countries like USA, Australia, New Zealand and South Africa, there are similarities in the taxation system. One of the fringe benefits that is common is a Car Fringe Benefit. In USA, a vehicle is available for private use (for example, travel between home and work) by employees, including shareholder-employees who must pay fringe benefit tax. The liability of the employer does not depend on whether the employee actually uses the vehicle.

In Australia, Car benefit arises on any day, if in respect of employment, a car, is held by an employer (associate or third party) in terms of section 7(1) and 136(1) of Fringe Benefit Tax Act of 1986. The calculation of the taxable value of a car fringe benefit is based on the statutory formula basis under Section 9 or the operational cost basis under Section 10.

In South Africa, the private use by an employee of an employer's motor vehicle is a taxable benefit. The method used to calculate the taxable benefit is based on the "determined value" of the motor car. The monthly value of the benefit is 1,8% of the determined value of the car. The value of the first company vehicle made available to an employee, which is to be included in his or her gross income as a fringe benefit, is

presently 1,8% per month of the determined value and 4% per month in respect of any other vehicle made available to such employee.

The taxation of Fringe Benefits is based on the scale that a person has to be employed by an employer before they can be taxed for fringe benefits. The issue of the different salary or wages is the one, which is applicable when considered a non-cash benefit.

The fringe benefits are the non-cash payment to the employees, this is done by almost every employer in South Africa. The reason, which can be stated, is that the employers are reducing the tax on their side and placing the burden on the employees.

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TABLE OF STATUTES

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