

24 February 2017

General Manager
Law Design Practice
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir / Madam

REQUEST FOR TREASURY TO CONSIDER FBT REFORMS: MODERNISING FBT EXEMPTION ON WORK RELATED ITEMS AND MINOR BENEFITS

As a world class technology company, Telstra believes that Australia's taxation provisions must be agile and reflect the economy, technology and labour environment in which it operates.

Fringe Benefit Tax (FBT) is specifically levied on employers for certain non-cash benefits provided to employees and/or their associates. FBT limits the scope for taxpayers to reduce income tax by receiving benefits in non-cash form. Exemptions are available for non-cash items which are primarily work related. However, FBT is also a tax which imposes a significant compliance burden on businesses while imposing the highest marginal rate of personal income tax (currently at 49%). We believe that there are certain provisions within the Fringe Benefits Tax Assessment Act 1986 (the Act) which have become out of date due to changes in working practices and require amendment.

Firstly, we believe that section 58X, which provides an FBT exemption for eligible work tools, be updated for clarity and completeness to reflect that any associated telecommunications and fixed or wireless internet access services provided by the employer for the purposes of operating the eligible work-related item primarily for work be also exempt from FBT. In the past eight years, significant changes in the way the workforce undertake their employment have seen many employers embracing flexible work arrangements where employees are encouraged to undertake some of their employment duties from home. The expense payment benefit of reimbursing an employee for home internet services should be treated as an exempt fringe benefit pursuant to this section if it is provided for the dominant purpose of operating an eligible work-related item (which is currently exempt under section 58X).

Secondly, we believe that section 58P, which provides a minor benefit FBT exemption for infrequent and irregular employee benefits costing less than \$300 should include in-house fringe benefits. We believe that the minor benefit FBT exemption should not distinguish between external and in-house fringe benefits.

Specific comments

1. Amend section 58X to reflect the current technology landscape

Section 58X was last amended in 2008. The Explanatory Memorandum of the Tax Laws Amendment (Budget Measures) Act 2008 stated that "the list of exempt items has also become outdated because of changes in technology, for example, many portable electronic devices have more than one function and other work-related electronic devices have become available". A generic term "portable electronic device" was inserted into section 58X to capture technological advancements bringing new portable electronic devices into existence. The services directly linked with that device, such as voice calls and data associated with a smart phone device would also be exempt under section 58X. In the past eight years, significant changes in the way the workforce undertake their employment have seen many employers embracing flexible work arrangements where employees are encouraged to undertake some of their employment duties from home. We believe that section 58X should expressly provide that any associated telecommunications and fixed or wireless internet access services provided by the employer for the purposes of operating the eligible work related item primarily for work

be also exempt from FBT. This would include the provision of voice and video call services, short messaging services, and wireless or fixed-line home broadband internet access.

We believe that an additional sub-section, together with the example shown below, should be inserted in section 58X as follows:

Section 58X(5)

Any associated expense payment benefit or residual benefit provided to the employee for the dominant purpose of operating the eligible work related item in subsection (2) is an exempt benefit.

Example:

An employee is provided with the use of a laptop to undertake their employment duties. The employee has a flexible work arrangement with the employer and works in the office three days a week and from home twice a week. The employer reimburses the employee for the costs of their home broadband internet service as access to the internet is required to operate the laptop for the dominant purpose of undertaking employment duties. The expense payment benefit of reimbursing the employee for home internet services is an exempt fringe benefit pursuant to this section as it was provided for the dominant purpose of operating an eligible work related item.

We note that the ATO had previously provided its view on whether the exemption pursuant to section 58X extends to the employer's reimbursement of an employee's home internet services bill at an FBT National Tax Liaison Group (NTLG) Subcommittee forum held on 12 August 2010. The ATO stated that providing an employee with the use of a laptop (residual benefit) inclusive of a USB modem/dongle that allows wireless broadband access to the internet would meet the requirements of section 58X but that the reimbursement of home internet broadband costs incurred by the employee would not. The ATO noted that in the latter case, the employer could consider the "otherwise deductible rule" to reduce the taxable value of the expense payment fringe benefit in those situations. In this instance, the additional compliance cost of enforcing employees to maintain records of work-related usage of home internet is inappropriate and inconsistent with the FBT treatment of other work-related items.

The above ATO view was provided over six years ago. Since then, we have seen significant changes in how Australia's employment culture has shifted towards employers embracing flexible work arrangements. Employees are able to securely log-on to their business network from anywhere, including their personal computer or laptop devices. We believe that the section 58X exemption should apply to both fixed and wireless access to the internet for the dominant purpose of operating an eligible work related item. It is unreasonable to discriminate between fixed line and wireless internet access in applying section 58X on the basis that an employee may be accessing the internet via a fixed line broadband connection more than incidentally for personal purposes. The objective test is whether the reason the employer is funding an employee's home internet service is predominantly to enable the employee to carry out their employment duties from home. An employer who implements a formal flexible work from home policy would be able to support the application of the exemption under section 58X.

2. Minor benefit exemption to include in-house fringe benefits: section 58P

The objective of the minor benefit exemption is to reduce the administrative compliance costs to businesses of tracking and paying FBT on infrequent and minor employee benefits costing less than \$300. However, the fact that the minor benefit exemption excludes in-house fringe benefits undermines this objective. The administrative costs of tracking minor benefits and then identifying which are in-house benefits to be excluded from the minor benefit exemption does not represent an appropriate balance of tax compliance costs and revenue collected. We believe that the minor benefit exemption should not distinguish between external and in-house fringe benefits in order to fully reduce the compliance burden for companies.

Telstra is a strong supporter of working towards better balancing the tax compliance burden imposed on businesses and achieving equitable tax outcomes among individual taxpayers in Australia. We would welcome the opportunity to discuss our comments in this submission by telephone or in person. If you would like to do so, please contact Rod Marshall on (03) 8649 5917.

Yours sincerely



John Burke
Director Taxation