



FBT ON BUSHFIRE DONATIONS?

The desire of many employees to make donations to the various bushfire appeals through salary deductions has highlighted an anomaly in the fringe benefits tax legislation. The anomaly could mean that employers have to pay fringe benefits tax on the donations.

Mark Northeast, a Tax Partner with Pitcher Partners Advisors in Melbourne has warned employers to be aware that the Australian Taxation Office has said that arrangements for employee's to make donations through pre-tax salary sacrifice arrangements are subject to fringe benefits tax.

"FBT applies even though the recipient is a deductible gift recipient and the employee would have been entitled to a tax deduction if they had made the donation from their after tax income," Mr Northeast said.

"Donations by employers from amounts salary sacrificed by employees attract fringe benefits tax because the legislation considers that a benefit has been provided at the behest of the employee," Mr Northeast said. "The fact that the employee does not directly benefit is not relevant because the Act effectively deems the charity to be an associate in much the same way as occurs with a benefit provided to an employee's spouse. Unfortunately, there is no specific exemption in the Act for donations to deductible gift recipients such as charities," he added.

Although alternative arrangements known as "Workplace Giving Programs" are explained by the ATO on their website and are relatively simple to adopt, many employers are still unaware that salary sacrifice arrangements are not effective and could be at risk of future fringe benefits tax assessments.

"While we agree that the ATO's position is technically correct, it is very frustrating for many businesses wanting to set-up a simple means of enabling employees to make donations to very worth causes and not have the hassle of having to claim tax deductions at a later date. An arrangement to salary sacrifice derives no tax benefit for employees other than they receive what amounts to an immediate tax deduction on their donation," Mr Northeast said. "To impose FBT on salary sacrifice arrangements is contrary to what these arrangements are trying to achieve. The Government should encourage any arrangements which increase the ease by which people can make donations to worthy charities rather than allowing these bureaucratic hurdles to remain."

"We would encourage the Government to amend the FBT legislation to make it clear that donations to charities made by employers on behalf of employees do not attract FBT," Mr Northeast implored. "Such an amendment would not cost the government anything by way of reduced tax collections and would enable more businesses to encourage employees to make donations through salary sacrificing. The winner will be the charity receiving the donations with no losers in the process," he concluded.

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