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FBT – Pooled alternate rate option

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This special report provides early information on a new option for calculating fringe benefit tax (FBT), referred to as the “pooled alternate rate option”, ahead of an upcoming edition of the *Tax Information Bulletin*.

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FBT – pooled alternate rate option

Sections RD 50(5), (6), RD 60(3)(b), RD 61(3)(b) and RD 63(3)

Amendments enacted in the Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022 provide employers with a new option for calculating fringe benefit tax (FBT).

Background

An employer who provides a fringe benefit to an employee is liable to pay FBT. Most fringe benefits are required to be attributed to individual employees to calculate the employer's FBT liability. The following benefits must be attributed:

- making available a motor vehicle for an employee's private use
- employment-related loans
- providing certain benefits, such as subsidised transport and contributions to superannuation schemes, where each category of benefit has a taxable value of \$1,000 or more per year per employee, and
- any unclassified benefit provided with a taxable value of \$2,000 or more per year per employee.

Generally, all other fringe benefits (non-attributed benefits) must be pooled. FBT is calculated on the annual taxable value of these pooled benefits at the rate of 63.93% (for benefits provided to employees who are major shareholders or to persons associated with an employee who is a major shareholder) or 49.25% (for benefits provided to all other employees).

Before 1 April 2021, employers may have used any of the following three options to calculate their FBT liability on attributed benefits:

- the single rate option
- the full alternate rate option, and
- the short form alternate rate option.

The lowest compliance cost option, both then and now, is the single rate option. Under the single rate option, an employer pays tax at the highest FBT rate (currently 63.93%) on all fringe benefits provided (including non-attributed benefits) without having to carry out a compliance cost intensive calculation for each employee who receives a fringe benefit. Applying tax at the highest FBT rate is a deliberate policy setting that is intended to avoid the possibility of under-taxation.

The rate of FBT for the single rate option was increased from 49.25% to 63.93% when the new top personal tax rate of 39% for income over \$180,000 was introduced. However, under this tax setting,

the single rate option may have resulted in many employers generally having a significantly higher FBT liability for employees earning below \$180,000 in gross salary or wages than if the employer attributed benefits directly to the individual employees. This may be an issue when employers have no, or few, employees earning income over \$180,000.

The full alternate rate option is a more accurate alternative available to employers, but it requires calculations of the employer's FBT liability for each individual employee to be carried out, which may increase compliance costs. Under the full alternate rate option, attributed benefits provided in the first three quarters are initially taxed either at the second highest FBT rate of 49.25% or at the highest FBT rate of 63.93%. A "wash-up" calculation is then performed after the end of the fourth quarter to tax every dollar of attributed benefits provided to an employee during the year at the applicable FBT rate, which is based on the employee's "all-inclusive pay".

The short form alternate rate option is an easier option for employers, but like the single rate option, it may also result in over-taxation given the top FBT rate of 63.93%. Instead of carrying out calculations of the employer's FBT liability for each employee, under the short form alternate rate option attributed benefits are taxed at a flat rate of 63.93%. Non-attributed benefits are taxed at the 49.25% rate (except where they are provided to employees who are major shareholders or to their associates).

The new "pooled alternate rate" option aims to strike a better balance between accuracy and simplicity for many employers than the pre-existing FBT payment options. This option may appeal to employers who predominantly provide attributed benefits to employees who earn less than \$180,000 in gross cash pay, especially if all or most of those employees earn within the "safe harbour" thresholds (that is, up to \$160,000 in gross cash pay and up to \$13,400 each in attributed benefits for the year).

Key features

Many fringe benefits are required to be attributed to those employees receiving the benefits. This can make the calculation of an employer's FBT liability a complex exercise. Employers can choose different calculation options. They may choose to pay FBT at the flat maximum rate of 63.93% (49.25% before 1 April 2021) or to calculate their FBT liability for each individual employee using the applicable FBT rate for each dollar of "all-inclusive pay" received by the employee.

Under the new pooled alternate rate option, employers pay FBT on attributed benefits at the flat rate of 63.93% only for those employees that earn more than \$160,000 in gross cash pay or receive more than \$13,400 in attributed benefits over the year. FBT is payable at the flat rate of 49.25% on benefits attributed to all other employees. Employers may also choose to pay FBT at the 49.25% rate on benefits attributed to employees who receive less than \$129,681 in all-inclusive pay, even if the employee receives more than \$160,000 in cash pay or more than \$13,400 in attributed benefits.

The new pooled alternate rate option does not change the treatment of non-attributed benefits. Non-attributed benefits provided to employees who are not major shareholders are still required to be pooled and taxed at the 49.25% rate, while non-attributed benefits provided to employees who **are** major shareholders or to their associates are required to be pooled and taxed at the 63.93% rate (the same treatment as currently applies under both the full alternate rate and short form alternate rate options).

Employers previously using any of the single rate, full alternate rate or short form alternate rate options may switch to the new pooled alternate rate option. This means that employers who used another option for the first three quarters of the 2021–22 tax year can switch to the new option for the fourth quarter of the 2021–22 tax year.

Amendments have also been made to the provisions setting out the close company and small business options. The amendments allow employers using those options to pay FBT at the rate of 49.25% on benefits attributed to employees receiving remuneration within the “safe harbour” thresholds (up to \$160,000 in gross cash pay and up to \$13,400 in attributed benefits). Consistent with the approach under the new pooled alternate rate option, FBT is payable at the rate of 63.93% only for benefits attributed to employees that earn more than \$160,000 in gross cash pay or receive more than \$13,400 in attributed benefits over the year. Employers using these options may also choose to pay FBT at the 49.25% rate on benefits attributed to employees who receive less than \$129,681 in all-inclusive pay.

A similar amendment has also been made to the existing provision setting out employers’ options for paying FBT when they have stopped employing staff.

Application date

The amendments apply on and after 1 April 2021, except for the amendments to sections RD 50(5), (6) and RD 60(3), which apply for the 2021–22 and later income years.

Detailed analysis

Alternate rate options (section RD 59)

Existing section RD 59 sets out how the alternate rate options work. Most relevantly, subsection (2) provides that an employer may pay FBT for any, or all, of the first three quarters of a tax year at 49.25% of the taxable value of a fringe benefit.

Subsection (4) sets out the wash-up calculation for the final quarter of the tax year under the alternate rate options. Under subsection (4), the employer must calculate the total FBT payable for

each employee for the tax year and subtract the amount of FBT payable for the previous three quarters of the tax year. The difference is the amount payable for the final quarter.

Pooled alternate rate option (section RD 50(5) and (6))

Section RD 50(5) provides that an employer may choose to pay FBT at a flat rate of 63.93% on the taxable value of attributed benefits (rather than calculating the difference between tax on all-inclusive pay and tax on cash pay under section RD 50(2)).

New section RD 50(6) provides employers with a further option. Under the new pooled alternate rate option, an employer pays FBT at the rate of 49.25% on the total taxable value of benefits attributed to an employee whose remuneration is within the following “safe harbour” thresholds:

- Attributed benefits of up to \$13,400 (paragraph (a)(ii)).
- Cash pay of up to \$160,000 (paragraph (a)(iii)).

“Cash pay” is defined in section RD 51(3)(a) (for employees who are major shareholders) and section RD 51(4)(a) (for employees who are not major shareholders). If an employee is a major shareholder, “cash pay” is the employee’s gross cash pay for the income year in which the fringe benefit is attributed that is paid to the employee by the employer or a related employer, and includes dividends and interest derived by the employee from the employer or a related employer. For all other employees, “cash pay” is the employee’s gross cash pay for the tax year in which the fringe benefit is attributed that is paid to the employee by the employer or a related employer.

New section RD 50(6)(b)(i) provides that an employer opting to use the new pooled alternate rate option pays FBT at the rate of 63.93% on the taxable value of attributed benefits provided to employees earning above the safe harbour thresholds. This essentially requires two separate pools for attributed benefits, with one pool (for employees within the safe harbours) being taxed at a flat rate of 49.25% and the other (for all other employees) being taxed at a flat rate of 63.93%.

Example 1: Pooled alternate rate option

Company A employs full-time and part-time staff in a range of roles requiring different skill sets, qualifications, and levels of experience. Salaries range from \$30,000 to \$170,000. However, only Employee X earns \$170,000 before tax, with the next highest-paid employee earning \$120,000 before tax.

In the 2021–22 tax year, Company A provides fringe benefits totalling \$100,000 to all its staff members in the form of subsidised transport and some low interest, employment-related loans. No individual staff member received more than \$6,000 in attributed benefits, so none of Company A’s staff received anywhere near \$13,400 in attributed benefits. Employee X received attributed benefits to the value of \$5,000.

Company A has calculated its FBT liability for attributed benefits for the first three quarters of the 2021–22 tax year under section RD 59(2). This means it paid FBT at the rate of 49.25% of the taxable value of attributed benefits for those first three quarters. As fringe benefits totalling \$75,000 were provided in the first three quarters, Company A has paid FBT of \$36,937.50 for that period. Company A decides to use the pooled alternate rate option to calculate its FBT liability for the final quarter of 2021–22.

When preparing the FBT return for the final quarter, Company A identifies that only one employee earned above the safe harbour limit of \$160,000 in cash pay for the 2021–22 tax year, being Employee X. Company A accordingly pays FBT on the taxable value of fringe benefits attributed to Employee X at the top rate of 63.93%.

FBT for Employee X

Company A's FBT liability for Employee X for the 2021–22 year is \$3,196.50 ($\$5,000 \times 63.93\%$).

FBT for other employees

The total FBT payable for all other employees for the 2021–22 year is calculated by subtracting the taxable value of benefits attributed to Employee X from the taxable value of attributed benefits Company A provided to all its staff during 2021–22 and then applying the 49.25% rate to this amount.

The taxable value of attributed benefits Company A provided to all its staff during 2021–22 is \$100,000. Employee X received \$5,000 of these benefits. This means that the total FBT payable for Company A's employees (excluding Employee X) for the 2021–22 tax year is \$46,787.50 ($(\$100,000 - \$5,000) \times 49.25\%$).

Total FBT liability

Therefore, Company A's total FBT liability for all employees (including Employee X) for the 2021–22 tax year is \$49,984 ($\$46,787.50 + \$3,196.50$).

As Company A has already paid \$36,937.50 in FBT for the first three quarters of the 2021–22 tax year, the FBT payable for the final quarter is \$13,046.50 ($\$49,984 - \$36,937.50$).

Option to pay FBT at 49.25% rate for employees receiving all-inclusive pay below \$129,681

New section RD 50(6)(b)(ii) provides an exception to the rule outlined above. Under subparagraph (ii), an employer may choose to pay FBT at the 49.25% rate on the total taxable value of benefits attributed to an employee whose all-inclusive pay is less than \$129,681. Provided the requirement around the level of the employee's all-inclusive pay is met, this choice is available to an employer even if the employee earns above either of the safe harbour thresholds outlined above.

This ensures that employers with employees earning between \$160,000 and \$180,000 in cash pay but with only relatively modest fringe benefits (such that the employees each receive less than

\$129,681 in all-inclusive pay) can (if they wish to) include benefits attributed to such employees in the pool of attributed benefits taxed at the 49.25% rate.

The calculation of an employee's all-inclusive pay is set out in existing section RD 51(2). This amount is calculated as cash pay less tax on cash pay, plus the taxable value of all fringe benefits attributed to the employee (or a person associated with the employee) in the tax year.

The all-inclusive pay threshold of \$129,681 in section RD 50(6)(b)(ii) is based on the level of an employee's all-inclusive pay at which the top FBT rate of 63.93% would apply if the person's employer opted to use the full alternate rate option to calculate its FBT liability. This in turn is determined by reference to the personal income tax rates and the income brackets at which these rates apply. All-inclusive pay above \$129,681 often equates to cash pay of *more* than \$180,000, but in some cases the employee's cash pay may be less than that amount, depending on the value of fringe benefits provided to the employee.

FBT rates are based on the concept of all-inclusive pay, rather than monetary remuneration, because it is important to include the value of fringe benefits received when determining an employee's FBT rate – otherwise employers may be incentivised to provide fringe benefits instead of cash remuneration to employees earning near the personal income tax brackets. Limiting employers' ability to pay tax at the lower 49.25% rate on benefits attributed to employees earning outside the safe harbour thresholds to just those employees receiving less than \$129,681 in all-inclusive pay ensures that fringe benefits provided to employees earning near or above \$180,000 are not under-taxed.

Example 2: Employer opts to include employee receiving less than \$129,681 in all-inclusive pay in 49.25% pool

Instead of paying FBT at the 63.93% rate on benefits attributed to Employee X, Company A from Example 1 decides to include the benefits attributed to Employee X in the pool of fringe benefits taxed at the 49.25% rate. Company A can do this because it knows Employee X has \$127,980 in all-inclusive pay, which is less than the all-inclusive pay threshold of \$129,681 in section RD 50(6)(b)(ii).

Calculation of Employee X's all-inclusive pay

The calculation of the total tax on Employee X's cash pay is set out below.

Income tax thresholds	Applicable marginal tax rate	Income of Employee X taxed at marginal rate	Tax on cash pay
\$0 to \$14,000	10.5%	\$14,000	\$1,470
\$14,001 to \$48,000	17.5%	\$34,000	\$5,950
\$48,001 to \$70,000	30%	\$22,000	\$6,600
\$70,001 to \$180,000	33%	\$100,000	\$33,000
> \$180,000	39%	\$0	\$0
	Total	\$170,000	\$47,020

The total tax on Employee X's cash pay is \$47,020. As Employee X received \$5,000 in attributed benefits, Employee X's all-inclusive pay is \$127,980 ($\$170,000 - \$47,020 + \$5,000 = \$127,980$).

Total FBT liability

The total FBT payable for all employees for the 2021–22 year is calculated by multiplying the taxable value of attributed benefits Company A provided to all its staff during 2021–22 and then applying the 49.25% rate to this amount.

The taxable value of attributed benefits Company A provided to all its staff during 2021–22 is \$100,000. This means that the total FBT payable for Company A's employees for the 2021–22 tax year is \$49,250 ($\$100,000 \times 49.25\%$).

As Company A has already paid \$36,937.50 in FBT for the first three quarters of the 2021–22 tax year, the FBT payable for the final quarter is \$12,312.50 ($\$49,250 - \$36,937.50$).

Treatment of non-attributed benefits under the pooled alternate rate option (section RD53)

The amendments do not change the treatment of non-attributed benefits – non-attributed benefits are still treated in the same way under the pooled alternate rate option as they are under the pre-existing alternate rate options. This means non-attributed benefits provided to employees who are not major shareholders are still required to be pooled and taxed at the 49.25% rate, and non-attributed benefits provided to employees who **are** major shareholders or to their associates are required to be pooled and taxed at the 63.93% rate.

Changing from a pre-existing option to the pooled alternate rate option

Employers who used any of the three pre-existing FBT payment options for the first three quarters of the 2021–22 year may switch to the new pooled alternate rate option. An employer switching from one of the existing options to the pooled alternate rate option may be asked to provide the information necessary for calculating its FBT payable for the final quarter.

Example 3: Employer switches from single rate option to pooled alternate rate option

Company B did not employ any staff that earned above the safe harbour thresholds in the 2021–22 tax year. Company B used the single rate option to pay its FBT liability for the first three quarters of that year and wishes to switch to the pooled alternate rate option for calculating its FBT payable for the final quarter.

Company B provided \$50,000 in attributed benefits to its employees during the 2021–22 tax year and no non-attributed benefits. The taxable value of the benefits that were provided in the first three quarters was \$37,500. Therefore, Company B has already paid \$23,973.75 in FBT for the 2021–22 tax year using the single rate option ($\$37,500 \times 63.93\%$).

Since none of its employees received remuneration above the safe harbour thresholds, Company B calculates its FBT payable for the final quarter by simply applying the 49.25% rate to the taxable value of benefits provided to its employees during the year ($\$50,000 \times 49.25\% = \$24,625$) and subtracting from the resulting figure the amount of FBT it has already paid for the first three quarters of the year. This gives an amount of FBT payable for the final quarter of \$651.25 ($\$24,625 - \$23,973.75$).

Amendments to close company and small business options (sections RD 60 and RD 61)

Existing sections RD 60 and RD 61 set out the close company and small business options for paying FBT.

Section RD 60 applies to close companies providing fringe benefits to shareholder-employees in an income year if, in the preceding income year:

- the gross amounts of tax for both PAYE income payments and employer’s superannuation cash contributions withheld were no more than \$1 million
- the only benefit provided was making one or two motor vehicles available to shareholder-employees for their private use, or
- the company did not employ anyone.

The small business option in section RD 61 applies to employers providing fringe benefits to employees who are not shareholder-employees in a tax year if in the preceding tax year, the gross amounts of tax for both PAYE income payments and employer’s superannuation cash contributions withheld were no more than \$1 million, or the employer did not employ any employees.

Instead of paying FBT quarterly, employers using the small business option pay their FBT liability on an annual (tax year) basis, while employers using the close company option pay on an income year basis. Under both these options, an employer must either calculate its FBT liability for each individual employee under section RD 50 (and calculate the amount of FBT on non-attributed benefits under section RD 53) or pay FBT on the taxable value of all fringe benefits at 63.93%.

New sections RD 60(3)(b) and RD 61(3)(b) ensure that an employer using the close company option or the small business option can choose to pay FBT at a flat rate of 63.93% only on benefits attributed to those employees receiving remuneration above the safe harbour thresholds (that is, more than \$160,000 in cash pay or more than \$13,400 in attributed benefits), with benefits provided to all other employees taxed at 49.25%. Employers may also choose to pay FBT at the 49.25% rate on benefits attributed to employees who receive less than \$129,681 in all-inclusive pay, even if the employee earns above the safe harbour thresholds.

The words “the total pay of each employee” in each of the sections have been replaced with “their FBT liability”. This clarifies that calculating the amount of FBT for each individual employee (which involves calculating each employee’s all-inclusive pay) is not required as a practical matter if the employer opts to pay FBT at the flat rates of 63.93% on attributed benefits provided to employees receiving remuneration above the safe harbour thresholds and 49.25% on attributed benefits provided to all other employees (as provided for in new section RD 50(6)).

When an employer stops employing staff (section RD 63)

Existing section RD 63 applies to an employer who stops employing staff and does not intend to replace them.¹ Subsection (2) provides that the employer must pay FBT using section RD 59 (the full alternate rate option), treating the quarter of the tax year in which the employment ended as if it were the final quarter. Essentially this means the final quarter wash-up calculation to tax all

¹ However, the section does not apply if the employer continues to provide a fringe benefit to a former employee.

attributed benefits at the appropriate rates must be performed in the quarter in which the employment ended. However, as an alternative to *full attribution*, subsection (3) provides that the employer may choose to pay FBT under the single rate option.

An amendment has been made to the cross-references in section RD 63 to clarify that the full alternate rate and single rate options are not the only options available to employers that have stopped employing staff. The short form alternate rate and pooled alternate rate options are also available, with the quarter of the tax year in which the employment ended being treated as the final quarter under these options too.

About this document

Special reports are published shortly after new legislation is enacted or Orders in Council are made to help affected taxpayers and their advisors understand the consequences of the changes. These are published in advance of an article in the *Tax Information Bulletin*.