

**NOTE ON FRINGE BENEFITS TAX (FBT)****Objective of FBT**

To tax benefits / perquisites / privileges which are enjoyed collectively by the employees and are difficult to segregate and may involve a personal benefit in the hands of the employees.

**Employer**

Whether or not carrying on business or profession, "Employer" as per section 115W (a) of the Act means and would be restricted to:

- a) company <sup>x</sup>®
- b) a firm <sup>x</sup>
- c) an association of persons or a body of individuals, whether incorporated or not <sup>x</sup> but excluding any fund or trust or institution eligible for exemption under clause (23C) of section 10 or registered under section 12AA of the Act.
- d) a local authority.
- e) every artificial juridical person, not falling within any of the preceding clauses <sup>x</sup>.

**Notes:** <sup>x</sup> Words used to give meaning to "person" as per section 2(31) of the Act.

® The CBDT has powers to declare any institution, association or body to be a company.

**Applicability**

FBT is applicable for the financial year 2005-06 relevant to Assessment Year 2006-07 onwards and is payable by all assesseees except:

- Individuals, whether or not having income under the head Business or Profession
- HUF and
- Fund, trust or institution **eligible** for exemption under Section 10(23C) of the Act or registered under section 12AA of the Act.

Notwithstanding that the above- mentioned categories of assesseees may be employers, fringe benefit tax is not payable by them.

**Comments**

FBT is payable irrespective of the fact whether the employer is otherwise liable to income tax or not. Even foreign entities, not having / earning or even permitted to earn income in India (e.g. Liaison office), will be liable to pay FBT, if its employees are enjoying fringe benefits. Further, Section 25 Companies, although chargeable and registered u/s 12AA, may be liable to pay FBT as the status of these companies does not change after registration u/s 12AA of the Act.

**Approach**

**Directly attributable benefits** – these are taxable as perquisites in the hands of employees

**Benefits which are not directly attributable** – taxable as FB in the hands of the employer

**Relevant Sections**

Provisions are contained in Chapter XII-H, which is divided into three parts:

Part I – Meaning (Section 115W)

Part II – Basis of Charge (Section 115WA to 115WC)

Part III – Filing of return, assessment and payment of tax (Section 115WD to 115WL)

**Part I & Part II**

**Meaning of Fringe Benefits**

Section 115WB(1) Clause	Nature of Fringe Benefit	Value of Fringe Benefit
(a)	any privilege, service facility or amenity, directly or indirectly, provided by an employer, whether by way of reimbursement or otherwise, to his employees (including former employee or employees)	No basis provided <i>and therefore whether the rate will be zero or 100% is still an issue which is open for debate.</i>
(b)	any free or concessional ticket provided by the employer for private journeys of the employees and their family members	100% of cost to the general public <i>net</i> of amount recovered from the employees
(c)	any contribution by the employer to an approved superannuation fund for employees	100% of actual contribution

There is a deeming clause as per which certain specified items of expenditure, if incurred by the employer, are deemed to be provided as fringe benefits.

**Deemed fringe benefits - Section 115 WB(2) of the Act**

Section 115WB(2) Clause	Nature of Fringe Benefit	Value of Fringe Benefit
(A)	Entertainment	20%
(B)	Hospitality (Refer Note 1)	20% (5% of expenses in case of employer engaged in hotel business)
(C)	Conference (other than fee for participation by the employees in the conference)(Refer Note 2)	20%
(D)	Sales promotion including publicity (Refer Note 3)	20%
(E)	Employees welfare (Refer Note 4)	20%
(F)	Conveyance	20% (5% of expenses in case of employer engaged in construction business or manufacture or production of computer software or pharmaceuticals)
(G)	Use of hotel, boarding and lodging facilities	20% (5% of expenses in case of employer engaged in manufacture or production of computer software or pharmaceuticals)
(H)	Repair, running (including fuel), maintenance of motor cars and the amount of depreciation thereon	20% (5% of expenses in case of employer engaged in carriage of passengers or goods by motor car)
(I)	Repair, running (including fuel), maintenance of aircrafts and the amount of depreciation thereon	20% (NIL in case of employer engaged in carriage of passengers or goods by aircraft)

(J)	Use of telephone (including mobile phone) other than expenditure on leased telephone lines	20%
(K)	Maintenance of any accommodation in the nature of guest house other than the accommodation used for training purposes	20%
(L)	Festival celebrations	50%
(M)	Use of health club and similar facilities	50%
(N)	Use of any other club facilities	50%
(O)	Gifts	50%
(P)	Scholarships	50%
(Q)	Tour, Travel, Foreign Travel from 2007-08	5%

**Notes**

1. Hospitality means 'provision of hospitality of every kind by the employer to any person, whether by way of provision of food or beverages or in any other manner whatsoever and whether or not such provision is made by reason of any express or implied contract or custom or usage of trade but does not include -
  - (i) any expenditure on, or payment for, food or beverages provided by the employer to his employees in office or factory;
  - (ii) any expenditure on or payment through paid vouchers which are not transferable and usable only at eating joints or outlets
2. Any expenditure on conveyance, tour and travel (including foreign travel) on hotel, or boarding and lodging in connection with any conference shall be deemed to be expenditure incurred for the purposes of conference
3. In case of publicity, the following advertisement expenditure shall not be considered as a fringe benefit:
  - (i) expenditure (including rental) on advertisement of any form in any print (including journals, catalogues or price lists) or electronic media or transport system
  - (ii) expenditure on the holding of, or the participation in, any press conference or business convention, fair or exhibition
  - (iii) expenditure on sponsorship of sports event or any other event organized by any government agency or trade association or body
  - (iv) expenditure on the publication in any print or electronic media of any notice required to be published by or under any law or by an order of a court or tribunal
  - (v) expenditure of advertisement by way of signs, art work, painting, banners, direct mail, Electric spectacles, kiosks, hoardings, bill boards or by way of such other medium of advertisement
  - (vi) expenditure by way of payment to any advertising agency for the purposes of clauses (i) to (v) above.
4. Any expenditure incurred on payment made to fulfill any statutory obligation or mitigate occupational hazards or provide first aid facilities in the hospital or dispensary run by the employer shall not be considered as expenditure for employee's welfare.

**Perquisites vis-à-vis FBT**

NATURE	WHETHER STILL A PERQUISITE AND TAXABLE IN THE HANDS OF EMPLOYEE	REMARKS
Rent free accommodation	Yes	Hotel accommodation to employee exceeding 15 days on a transfer is a perquisite and not a FB.

Perquisite of car	No	Now FB(u/s 115 WB(2) H
Sweeper, gardener, watchman etc	Yes	
Gas electricity and water	Yes	
Free or concessional education	Yes	
Provision of benefit by an undertaking engaged in the carriage of passenger or goods	No	FB under 115WB (1) (b) – but this appears to be for all undertakings.
<b>Prescribed Fringe benefits or u/s 17(2)(vi)</b>		
i. Interest free/concessional loan		
ii. Value of traveling paid for or borne or reimbursed by employer	Yes No	FB(U/S 115WB(1)(b)
iii. Free meals		
iv. Gifts	No	FB u/s 115WB(2) B
v. Credit card fees and payment	No	FB u/s 115WB(2) O
vi. Club membership and expenses	No	FB u/s 115WB(2)
vii. Benefit of use of movable assets	No	FB u/s 115WB(2) N
viii. Transfer of movable asset	Yes Yes	

### Part III

#### Returns

- Annually
- Due dates are the same as provided under section 139
- Provisions for filing late returns and revised returns are the same as under section 139

#### Payment of tax

- Quarterly
- 15<sup>th</sup> of the month following the quarters ending June, September and December. The advance FBT is payable on or before 15<sup>th</sup> July, 15<sup>th</sup> October and 15<sup>th</sup> January.
- 15<sup>th</sup> of March for the quarter ending on March 31st

#### Interest for default

- Simple interest @ 1% per month on short fall in payment of advance tax
- Simple interest @ 1% for every month or a part of a month for the default in furnishing return of fringe benefits.

#### Assessment

Provisions for assessment and re-assessment are similar to those applicable to Income tax.