

Sample Letter for Employer

Allowing an employee to salary sacrifice is an excellent way of increasing their effective take home pay without it costing you an extra cent. The trick is to utilise concessional or exempt benefits so you do not have a FBT liability.

If an employee receives goods or has an expense paid by their employer it is not taxable to them because it is not cash received. But the FBT laws would normally catch this as a fringe benefit which would be subject to tax at 48.5% after grossing up, payable by the employer. Accordingly, even if the employee is in the maximum tax bracket of 48.5% there is nothing to be gained unless the benefit is exempt or concessional.

If you are a Public Hospital or Public Benevolent Institution (PBI) your employees are entitled to a limited amount of benefits without you incurring a FBT liability. The expenses salary sacrificed in this kit should not be included in that limited amount. Other benefits that are neither concessional or exempt in their own right should be sacrificed up to the exempt limit, then this kit used. At our web site www.bantacs.com.au you can find a free booklet on this topic called FBT for Public Hospitals and PBIs.

This kit is about benefits that are exempt from FBT because they would have been deductible anyway. A tax deduction removes that amount from taxable income so it is the same as not paying tax on that amount of money. The trick here is that the expense does not have to be otherwise deductible to your employee it can be otherwise deductible to an associate of your employee. This interpretation of FBTAA Section 24, was verified in *National Australia Bank v FCT* 1993 ATC 4914. The case resolved that a loan provided jointly to an employee and associate was 100% exempt from fringe benefits under the otherwise deductible rule even though the employee would have only been entitled to 50% because the other 50% was in regard to an associate of the employee i.e. a spouse. We have prepared this kit so that each employer's accountant does not need to reinvent the wheel. Using this kit should mean that you can give your employee this benefit without any extra costs to you. What You Need To Do To Maximise You Employee's Package And Protect Yourself:

1. Apply for you own personalise ATO ruling as attached so that you can be sure you will never be stuck with the FBT. Please take care to check that the circumstances described in the Enclosure for Ruling Application apply to you and your employee. If not a disk is included for you to edit these details. The rest of the form can be completed by following the instructions on the —How to Complete Ruling Application“ sheet.
2. As you are not required to pay workcover or superannuation on the portion of your employee's package that has been sacrificed you need to negotiate with your employee whether they are entitled to a larger package as compensation.
3. Make sure you have all of the agreement between you and the employee in writing.
4. Do not package the principle portion of the repayments on the loan or non cash flow items on the property such as depreciation.
5. Make sure the employee completes the declaration that declares that the amount is otherwise deductible. This has been included in the kit.
6. In future your employee's wage should be calculated as follows:
Gross Wages Earned
Less Rental Property Expenses Paid by Employer during the period _____
Wages Subject to Income Tax _____
Income Tax On * Above _____
Net Wages - Cash Paid Directly To Employee
7. Making this arrangement does not require you to lodge an FBT return as the taxable value of the benefit is zero. So you do not need to do any FBT calculations as a result of using this kit.
8. As the benefit your employee is receiving is exempt because it is otherwise deductible there is no requirement to include this amount on their group certificate/PAYG Summary under reportable benefits.
9. Please send your e-mail address to admin@bantacs.com.au so we can put you on our e-mail list to receive our free e-mail Newsflash. This will ensure you are kept up to date on any changes.
10. Enclosed in the kit is an Accountant's letter that explains everything in full. If the ATO rings you regarding the ruling request don't answer more than simple questions such as your ABN without speaking to your Accountant or us first.
11. This kit will not work if the Employee's Spouse is also your Employee.
12. The enclosure for the ruling application form states that the property is jointly owned by the employee and spouse. We recommend this as it will align you as much as possible with the precedent case. If this is not the case you will need to use the CD included in the kit to change the wording of the enclosure and re print it.
13. Make sure you get receipts/invoices etc from the Employee for all the expenses you pay.
14. This kit is a guide as to how the ATO has reacted in the past. We can't guarantee the ATO will act consistently. Though if they don't we suggest you pursue the issue. We just can't take responsibility for any difficulties you may have with the ATO.

On our Web Site, www.bantacs.com.au, there is a calculator that shows how much the employee can gain from this arrangement there is also information on how you can acquire more of these kits. If you have any questions and want to contact us the best person to speak to is Julia Hartman 0428 381 864, probably the best method of contact is e-mail julia@bantacs.com.au.