

Australian taxation law case study examples

[Business](#), [Employee](#)



1. Methods to calculate taxable value of fringe benefits: Australian Taxation law allows some benefits to the employees by their employers in the form of different services, benefits, privileges or rights. Under fringe benefits tax act, 1986 the fringe benefit may include cheaper loans to employees by the employer, to allow employees of the company to use Employer's car, look after medical or legal problems etc. if a person works somewhere for anybody or in a company, the general concept is that the worker will get remuneration in cash but a new concept recognized by Australian taxation law is an agreement popularly known as Salary sacrifice arrangement between the employer and employees. This concept is not confined to Australia only but it is now found everywhere in the world.

The provisions of Salary Sacrifice arrangement can be made fully or partly as agreed between the employer and employee, even it can be conditional and terminated automatically as soon as the ascertained and agreed condition is completed. Salary sacrifice arrangement is basically a provision of salary or remunerations arrangement which helps employees in saving their taxes as it does not come in the periphery of salary, wages etc as according to the provisions of Australian contract law. though there are many benefits of this salary sacrifice arrangement but there are instances where due to unclear and intermittent arrangements between the employer and employees several disputes arose and ultimately matter went into litigation. The terms and conditions must be very clear and acceptable to both the parties of such arrangements to prevent further disputes and to look after the interests and conveniences of each other.

Service providers who work themselves prefer to render their services to

their employees instead of paying them in cash, several legal provisions are made for the convenience of such employers and employees and to deal with all the complexities that may arise during dealing with such transactions under this law, idiosyncratically known as Salary Sacrifice Arrangement. In cases where salary sacrifice arrangements has been arranged between the employer and employee, employee agrees to get lesser salary in lieu of the ascertained benefits getting presently or promised in future by the employer.

In such provisions both employer and employee see their interests and are benefited according to the facts and circumstances. Where salary sacrifice provisions are made between employer and employee, employee pays his income tax on reduced salary which gives benefit to him in course of saving income taxes. However the employer possibly will have to pay the fringe benefit tax on the benefits provided by him to his employees.

Superannuation paid by the employer is a kind of contribution made by him on the behalf of the employee, in some cases the employer can claim benefits for it.

A new tax system act, 1999 also known as Fringe benefits reporting act, suggests employers to calculate the total value of benefits provided by them to employees and when this amount per employee crosses \$ 1000 in a fringe benefit tax assessment year, this amount should be grossed up in payment summary of the employee for the current tax assessment year. The employer contributes the superannuation to the tax department on behalf of the employees, the employer may claim for the some tax benefits under sections 82AAC to 82AAF of the Income Tax Assessment Act, 1936.

As per facts of the case Penny is working in a law firm as secretary and in her salary package the law firm is providing 60 percent discounts to her. Apart from this the firm gives her a plasma TV set worth \$ 5500.

Penny is working in a law firm and in lieu of her services she does not get any salary but gets 60 percent discount in the legal services in her ongoing divorce case. Since the legal services or benefits given to penny by her employer are not assessable under sections 6-5 or 6-10 of the income tax assessment act, 1936 and being exempted under section 23 L of the same act, penny's income is not taxable. Fringe benefit taxes if any are normally paid by the employer but employee also should keep looking into all the records, terms and conditions of the salary sacrifice arrangement made between employee and the employer. The Plasma TV set worth \$ 5500 probably would not be considered the part of this salary sacrifice agreement and penny will have to pay taxes on that amount.

Penny would get the benefits of provisions of sub section 136 (1) of Fringe benefits assessment act which says that Benefits, services or rights provided under Salary Sacrifice Arrangement between the employer and employee should not be treated as salary. This concept is very good in respect of the rights and interests of the employees and equally good for the employers especially service providers. There are many other benefits of the salary sacrifice arrangement if the employer and employee are mutually agreed to abide by the provisions of such arrangements under the Australian taxation law.

Employer pays Fringe benefit tax at a rate of 46.5 percent which is fixed by the government's tax department though several other legal provisions are

there which affect this law and one has to look into all the facts and circumstances of the case simultaneously before assessing a case under this law. According to the provisions of Taxation Laws Amendment (Superannuation Contributions) Act 2001, of Australian taxation law the superannuation contribution made by the employer is ultimately meant for the benefits of the associates.

1. Advise for Angelina and Bradley on the capital gains tax consequences regarding the abovementioned transactions for the 2010/2011 income year: From the facts of the case I have observed that Angelina and Bradley both nominated one house on their name. House A where both were having 50% interest, nominated by Angelina and house B nominated by Bradley where he was having 80% interest. Now we have to closely analyze the consequences of Capital gains tax on these transactions. Capital gains tax applies on most of the transactions where the owner made some profit on selling of some assets. As per Australian Taxation System few transactions are exempted from Capital gains tax, family home falls under the same category. Owner need not to pay any Capital gains tax if the house is main residence of owner or if house is family house and getting transferred in case of death or by mutual consent.

Capital Gain Tax is also a part of income tax in Australian taxation system and as its name reveals one pay capital gain tax when he or she gains money by selling house, land, share or other assets. It is advised to the people who acquire and own capital gains assets that they should always keep the relevant records, documents regarding their assets so that in future if any circumstance comes they could claim the advantage and avoid the

loss of their hard earned money. This is more important for the people who inherit properties from their ancestors because to prove their ownership becomes a bit complicated and lack of paper may create further problems for such people..

Law of capital gains tax under Australian tax law was enacted in the year 1985 and each and every property of the land comes into periphery of this law if sold or purchased after the enactment of this act. The basic idea of this law is that if anybody is selling his or her house, land or any other assets above the base cost, he will have to pay the taxes to the government on additional price that seller is getting. Question may arise that what if the seller is not getting any benefit and instead of gains he suffers losses. For such instances, there is provision of capital loss also and a person may claim capital loss if he has sold his property below the base cost of the house or property. In cases of capital gain several exceptions are there which allows a person not to pay capital gain taxes even though he has made financial gains after selling the property, it depends upon the facts and circumstances of the case and it may vary case to case. Capital gain tax is normally very high if somebody is selling the property in the same year of purchasing the same property. The normal presumption is that if a genuine buyer buys any property, he holds the same for a long time and these are the traders who keeps buying and selling frequently and use properties for the commercial purpose. So where the term commercial is involved the taxes are very high. As per the facts given in the case the advice to Angelina and Bradley is that they can claim benefits under the exemptions of the capital gains tax of Australian taxation law. Though general perception in the case of owning a

house is that one person can own one house and second unit will not be considered the main house and would come in the periphery of capital gains tax if it would be sold but in the present case there are two persons having shares in both the houses. So ultimately there is only one house in the name of one person because both have certain percentage of shares in both the houses but none house is absolutely owned by any one from them. Having share is a different issue but having home is important here. One can say that both of them used to travel and rarely used to reside in their house but it was the professional compulsion of both of them. If both would have started residing in the house just to show that they love their house and that they own the house for the residential purpose, it would have been a trouble to arrange bread and butter for themselves..

Several cases have been decided by several Australian courts considering such issues, facts and circumstances of the case. Angelina and Bradley used their house for the residential purpose and their two houses could be considered one unit as both houses were not only close but both husband and wife had share in the houses as if both are the owner of both the houses. There was no any commercial classification or use of their property. They never rented their house or used the same ever for any commercial purpose. They always used their house as a residence for themselves. All the situations leads towards a conclusion that they always used their house for strictly own residential purpose and they were the legitimate users of the house.

Angelina and Bradley can transfer their shares to each other and once their shares are transferred in respect to their house A and B, they would become

sole owners, after that they can declare the house A and B as their main house depending upon their choice. There are various provisions of transferring their rights to each other and they can use these options to transfer their rights in both properties and claim the benefits under capital gains law. They can transfer their shares using rollover and other available options under the provisions of Australian contract law. After transferring their owned shares of their properties to one another they can be sole owners and after that they have all the legal rights to sell their property and exempt from paying capital gain tax. Though these provisions are very complicated and should be cautiously exercised by the people who want to claim any tax benefits using capital gain or loss under Australian tax law. One should keep in mind that these cases are not very easy to decide so there should be no hurry in making any decision in such complicated cases.

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