

[1]: Identify the Benefit [Car/Loan/Residual: Holiday/Spa]

Q1: Is this a Fringe Benefit?

- In order for [benefit] to be Fringe Benefit (FB) it must satisfy all the elements of the definition of FB.

ELEMENT 1: 'Benefit'

- '**Benefit**' has a very wide definition:
 - Includes any right, privilege, service or facility provided under an arrangement in relation to the performance of work: **s 136(1)**
- **It does not have to be directly from the employer (as long as the employer has connection with the provision it will suffice)**
 - **E.g.** if the employer tells Benz to give the car it would be *provided under the arrangement*
- Here the [item] is likely going to satisfy (**s 136(1)**)

ELEMENT 2: 'Provided during the year of tax'

- In relation to a benefit: includes "*allow, confer, give, grant or perform*"
- In relation to property: disposal of a beneficial interest or legal ownership of the property
- "Provided" also includes where provision of the benefit is prohibited but the prohibition is not consistently enforced: **s 148(3)**.
 - E.g. Monash give J a car to drive from clayton to caulfield. But J drives the car to his house (beyond the agreed benefits).
- Such specific exclusion (under contract law – and not provided under the contract) can still be provided under FBT purposes.

ELEMENT 3: By an employer, associate or third party

- A benefit needs to be **provided by** either:
 - (i) Employer (future, current or former);
 - (ii) Associate of employer (e.g. related party)
 - (iii) Third Party Arranger (e.g. under an arrangement with the employer)
- Future employee is a person who will go to the job in future (i.e. signed the contract already)
 - If you have already signed the contract, it will be a benefit

ELEMENT 4: To an employee or associate

- The benefit **must go to:**
 - Employee;
 - Associate (**s 318 ITAA**: an associate of natural person include, spouse, kids, grand parents)
- But is the **benefit through work?** [**Look out for nexus with employer**]
 - Redemption of Frequent Flyer Points J have accumulated through this work flying.
 - Prima facie it is between the Qantas and J's personal account

- However if Monash said to J, you going for work you should sign up for frequent flyer, we will arrange it for you and pay joining fee for you.
- Then it will fall under 3rd party

ELEMENT 5: In respect of the employment of the employee

- There must be a causal link (ie nexus) with employment
 - “In respect of” means the benefit must be provided “by reason of, by virtue of, or for or in relation directly or indirectly to, that employment”: **s 136**
 - **EXAM:** note - it will not be in respect of employment if the person who received benefit, received in the capacity as a shareholder of the company and not as an employee.
- Nexus requirement subject to judicial consideration:
- “Sufficient and material relationship”: *J & G Knowles & Associates Pty Ltd v FCT (2000)*
- Loan to company directors and shareholders not “in respect of employment”: *Starrim Pty Ltd v FCT (2000)*

ELEMENT 6: Exclusions

- The definition of a “fringe benefit” specifically excludes certain items from being a fringe benefit, including (**s 136(1)**):
 - **Salary or wages**
- **EXAM:** Once you see salary/wages, you can conclude it is not fringe benefit and then it will float to ordinary income so it will be under the taxing right of the employee (OI or SI)
 - Issue: Is this an allowance (salary/wages) or is this an reimbursement?
 - Here, the [benefit] might be argued to be salary/wages given that it is an allowance in nature and thus should be excluded from definition of FB.
 - Allowance: Employer has got no control over how the money is used
 - C.f. Where [benefit] is akin to reimbursement (**s 136(1)**), it will not constitute as ‘salary and wages’.
 - Reimbursement: you have to provide receipts and work out how its being classified.