



FBT is off, it's back to perquisites tax

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Employees will have to pay tax on Esops, superannuation and 'other amenities'.

First, the good news. The finance minister has removed the fringe benefit tax (FBT) on the value of certain benefits like employee stock options (Esops), sweat equity and superannuation funds given to employees.

Now, the bad news. The tax burden will be borne by the employees. It's not only these three categories, the Finance Bill also says there could be "other fringe benefits or amenities that could be treated as perquisites".

This means the tax burden shifts from your employer to you. For example, companies are now paying the fringe benefit tax for an employee's paid trip abroad. From April 1, 2010, this could change. Though the Finance Bill has not yet listed the "amenities" that will be treated as perquisites, the employee may have to pay tax on the deemed benefit.

Tax experts said the inclusion of "other amenities" to be inserted in Section 17 of the Income Tax Act was more worrying. "Though the Budget does not clarify the list of other perquisites that will be taxed, the language indicates the finance minister has left the window open for taxing them," said Srinivasa Rao, National Tax Director, Ernst & Young.

Esops are given by the employer or former employer free of cost or at a concessional rate to the assessee, depending on the 'fair market value'. For the calculation of tax, Esops will be taxed in the hands of the employee in two ways. First, at the time of exercising the option, where the perquisite (to be taxed) is the difference between the market value and the grant price. The second is when the shares are sold, the difference between sale consideration and the cost would be treated as capital gains and taxed.

Also, the Budget has said any contribution by the employer in excess of Rs 1 lakh to an approved superannuation fund will be considered a perquisite and taxed accordingly. And the Central Board of Direct Taxes may also include other benefits or amenities as perquisites and tax these.

"The FBT regime was not in harmony with major international tax systems and especially created tax credit issues in cross-border Esops. It resulted in unnecessary distortions in tax law, causing much inconvenience to both companies and employees. The elimination of FBT is definitely a welcome move," said Nishith M Desai, founder, Nishith Desai Associates.

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