

Fringe Benefits Tax Hotspots 2020

The Fringe Benefits Tax (FBT) year ends on 31 March. We've outlined the hot spots for employers and employees.

FBT updates and problem areas

- Car parking under scrutiny
- Motor vehicle problem areas
- Mismatched FBT and income tax amounts
- Mismatched information for entertainment claimed as a deduction and what is reported for FBT purposes
- Business assets personally used by owners and staff
- Not lodging FBT returns
- Salary sacrifice problem areas
- Did you provide assistance to employees during a crisis?
- Housekeeping essentials

Important FBT issues

Car parking under scrutiny

Important impending changes

A controversial draft ruling from the ATO could expand the scope of the FBT rules dealing with car parking benefits. This is because the draft ruling changes the ATO's view on what constitutes a commercial parking station. Where an employer provides:

- Car parking facilities for employees within 1km of a commercial parking station, and
- That commercial car park charges more than the car parking threshold (\$8.95 for year ended 31 March 2020)

a taxable car parking fringe benefit will arise unless the employer is a small business and able to access the car parking exemption.

The draft ruling is not finalised as yet but the ATO has stated it intends to apply the new definitions from 1 April 2021. If you provide car parking facilities to team members, it is important that you either have certainty that you are able to access the small business exemption or understand the implications of the ruling to the car park facilities you provide.

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Common errors

The ATO has noticed that where car parking benefits are being declared (that is, where an employer provides parking to an employee), the value of what is being declared is significantly less than what you would expect to pay.

Common errors include:

- Market valuations that are significantly less than the fees charged for parking within a one kilometre radius of the premises on which the car is parked;
- Using parking rates or facilities not readily identifiable as a commercial parking station;
- Rates charged for monthly parking on properties purchased for future development that do not have any car parking infrastructure; and
- Insufficient evidence to support the rates used as the lowest fee charged for all day parking by a commercial parking station.

Motor Vehicle problem areas

Private use of work vehicles

Just because your business buys a motor vehicle and it is used almost exclusively as a work vehicle, that alone does not mean that the car is exempt from FBT. If you use the car for private purposes - pick the kids up from school, do the shopping, use it freely on weekends, garage it at home, your spouse uses it - FBT is likely to apply. The private use of work vehicles is firmly in the sights of the ATO.

Private use is when you use a car provided by your employer (this includes directors) outside of simply travelling for work related purposes.

If the work vehicle is garaged at or near your home, even if only for security reasons, it is taken to be available for private use regardless of whether or not you have permission to use the car privately. Similarly, where the place of employment and residence are the same, the car is taken to be available for the private use of the employee.

Finding out that a car has been used for non-work-related purposes is not that difficult. Often, the odometer readings don't match the work schedule of the business. These are areas the ATO will be looking at.

When is the motor vehicle exempt from FBT?

A motor vehicle is exempt from FBT when:

- The vehicle is a taxi, panel van, utility or other commercial vehicle that is not designed principally to carry passengers; and
- The private use of the vehicle is limited to:
 - Travel between home and work;
 - Travel that is incidental to travelling in the course of performing employment-related duties; and Non-work related use is minor, infrequent and irregular.

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The ATO also provides a 'safe harbour' for employers to help overcome the issues of deciding when private use is minor, infrequent and irregular. To qualify for the exemption:

- The employer provides an eligible vehicle to the employee to perform their work duties. An eligible vehicle is generally a commercial vehicle or one that is not designed mainly for carrying passengers. The requirements are very strict and guidance on this is published on the ATO website.
- The employer takes reasonable steps to limit private use and they have measures in place to monitor this – this might be a policy on the private use of vehicles that is monitored using odometer readings to compare business kilometres and home to work kilometres travelled by the employee against the total kilometres travelled.
- The vehicle has no non-business accessories – for example a child safety seat.
- The value of the vehicle when it was acquired was less than the luxury car tax threshold (\$75,526 for fuel efficient vehicles in 2019-20 and \$67,525 for other vehicles).
- The vehicle is not provided as part of a salary sacrifice arrangement; and
- The employee uses the vehicle to travel between their home and their place of work and any diversion adds no more than two kilometres to the ordinary length of that trip. If there is some purely private travel using the vehicle, the total distance for the FBT year must be no more than 1,000 km and no single return journey for a wholly private purpose can exceed 200 km.

If you meet all these specifications, the ATO has stated that it will not investigate the use of the FBT exemption further. However, the employer will still need to keep records to prove that the conditions above have been satisfied and to show that private use is restricted and monitored.

If these conditions are not met then this doesn't necessarily prevent the exemption from applying, but you can expect that the ATO would devote more time and resources in checking whether the conditions have actually been met. Employers who do not take active steps to check the way commercial vehicles are being used are at high risk of significant FBT liabilities.

Mismatched FBT and income tax amounts

Another area the ATO is picking up is mismatches between the amount reported as an employee contribution on an FBT return compared to the income amounts on an employer's tax return.

The ATO focuses on mismatches between the employee contributions relating to the fringe benefits, which are reported on the employer's fringe benefits tax return, and reporting those contributions as income on their income tax return or where the employer has incorrectly overstated the employee contributions that they have received on their fringe benefits tax return to reduce the taxable value of the fringe benefits provided (and thereby, the employer's FBT liability).

The ATO's approach is very evidence-based, there needs to be documentation to back up whatever the business is claiming.

Mismatched information for entertainment claimed as a deduction and what is reported for FBT purposes

One of the easiest ways for the ATO to pick up on problem areas is where there are mismatches. When it comes to entertainment, employers are keen to claim a deduction but this is not recognised as a fringe benefit provided to employees.

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Expenses related to entertainment such as a meal in a restaurant are generally not deductible and no GST credits can be claimed unless the expenses are subject to FBT.

Let's say you taken a client out to lunch and the amount per head is less than \$300. If your business uses the 'actual' method for FBT purposes then there should not be any FBT implications. This is

because benefits provided to client are not subject to FBT and minor benefits (i.e., value of less than \$300) provided to employees on an infrequent and irregular basis are generally exempt from FBT. However, no deductions should be claimed for the entertainment and no GST credits would normally be available either.

If the business uses the 50/50 method, then 50% of the meal entertainment expenses would be subject to FBT (the minor benefits exemption would not apply). As a result, 50% of the expenses would be deductible and the company would be able to claim 50% of the GST credits.

Business assets personally used by owners and staff

Private use of business assets is an area that crosses across a whole series of tax areas: FBT, GST, Division 7A and income tax.

Take the ATO's example of the property company that claimed deductions for a boat on the basis that it was used for marketing the company. Large deductions were claimed relating to running the boat. This attracted the ATO's attention and a review was carried out.

The ATO discovered the boat was used by the director and other employees for private trips, and to host parties for people who had paid to attend the company's property seminars.

When looking at the overall business activities, the ATO determined the director had purchased the boat primarily for their own private use. As a result, they disallowed the deductions and the private use of the boat was a fringe benefit for the employees of the company. The company had to lodge an FBT return and pay the resulting FBT liability, as well as the income tax shortfall, interest and penalties.

Not lodging FBT returns

The ATO is concerned that some employers are not lodging FBT returns or lodging them late to avoid paying tax. Given late FBT returns are a problem, it's likely the ATO will place close attention to any employer that:

- Is registered for FBT but lodges late; or
- Is not registered for FBT. If your business employs staff (even closely held staff such as family members), and is not registered for FBT, it's essential you have reviewed your position and are certain that you do not have an FBT liability. If the business provides cars, car spaces, reimburses private (not business) expenses, provides entertainment (food and drink), employee discounts etc., then you are likely to be providing a fringe benefit. Make sure you have reviewed the FBT client questionnaire we sent you!

Salary sacrifice problem areas

Calculating superannuation guarantee on salary sacrifice

From 1 July 2020, new rules will come into effect to ensure that an employee's salary sacrifice contributions cannot be used to reduce the amount of superannuation guarantee (SG) paid by the employer.

Under current rules, some employers are paying SG on the salary less any salary sacrificed contributions of the employee. Currently, employers must contribute 9.5% of an employee's Ordinary

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Time Earnings (OTE) and they choose whether or not to include the salary sacrificed amounts in OTE.

Under the new rules, the SG contribution is 9.5% of the employee's 'ordinary time earnings (OTE) base'. The OTE base will be an employee's OTE and any amounts sacrificed into superannuation that would have been OTE, but for the salary sacrifice arrangement.

Employee contributions for FBT purposes and salary sacrifice

An issue that frequently causes confusion is the difference between the employee salary sacrificing in order to receive a fringe benefit and making an employee contribution towards the value of that fringe benefit

To be an effective salary sacrifice arrangement (SSA), the agreement must be entered into before the employee becomes entitled to the income (e.g., before the period in which they start to perform the services that will result in the payment of salary etc.).

Where an employee has salary sacrificed on a pre-tax basis towards the fringe benefit provided – laptop, car, etc., they have agreed to give up a portion of their gross salary on a pre-tax basis and receive the relevant fringe benefit instead.

As a starting point, the taxable value of the fringe benefit is the full value of the expense paid by the employer. The salary sacrifice arrangement doesn't actually reduce the FBT liability for the employer.

The employer recognises a lower cost of salary and wages provided to the employee as their 'cost saving', which results in lower PAYG withholding and superannuation contribution obligations, but they still recognise the full value of the fringe benefit as part of their taxable fringe benefit which is subject to FBT.

The employee recognises that they have a reduced amount of salary and wages, and a non-cash benefit in the form of the fringe benefit.

Did you provide assistance to employees during a crisis?

If your business assists employees during an emergency, for example floods, bushfires etc., then fringe benefits tax is unlikely to apply to the assistance you provide. While we doubt anyone would be thinking about FBT during a crisis, it's good to know that the tax system does not disadvantage your generosity.

Examples of the kinds of benefits exempt from FBT include immediate relief you provide to an employee in the form of:

- emergency meals or food supplies
- clothing, accommodation, transport or use of household goods
- temporary repairs, for example on the employee's home or car. Long-term benefits are not exempt from FBT, such as providing a new house or car to replace one destroyed in the emergency event.

First aid or other emergency health care you provide to an employee is also exempt if it is provided by an employee (or a related company employee), or is provided at your premises (or those of a related company), or at or near an employee's worksite.

The exemption applies in a range of scenarios including natural disasters, accidents, serious illness, armed conflict, or civil disturbances.

Just check that your region is listed as one of the affected areas before assuming the exemption applies.

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Housekeeping

It can be difficult to ensure the required records are maintained in relation to fringe benefits – especially as this may depend on employees producing records at a certain time. If your business has cars and you need to record odometer readings at the first and last days of the FBT year (31 March and 1 April), remember to have your team take a photo on their phone and email it through to a central contact person – it will save running around to every car, or missing records where employees forget.

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