

## Fringe Benefits Tax

Fringe benefits tax (FBT) is paid on particular benefits employers provide to their employees or their employees' associates instead of salary or wages. Benefits can be provided by an employer, an associate of the employer, or a third party by arrangement with the employer. An employee can be a former, current, or future employee.

FBT is separate from income tax and based on the taxable value of the various fringe benefits provided. The FBT year runs from 1 April - 31 March.

The following categories of fringe benefits apply, with specific valuation properties applicable to each category:

- **Car** – e.g. letting employees use a work vehicle for a private purpose
- **Car parking**
- **Debt waiver**
- **Entertainment** – e.g. food, drink, recreation
- **Expense payment** – e.g. reimbursing an expense incurred by an employee such as school fees
- **Home phone and internet**
- **Housing**
- **Living Away From Home Allowance** – there have been significant changes to the Living Away From Home Allowance rules. Please contact us for further details
- **Loan** - e.g. granting an employee a cheap loan
- **Property**
- **Residual**

The following are NOT fringe benefits (so are exempt):

- Approved employee share acquisition schemes
- Employer contributions to complying superannuation funds
- Employment termination payments - e.g. company car given or sold to employee when they leave
- Certain benefits provided by religious institutions to their religious practitioner
- Taxi travel expenses (NB – Ride Sharing services like Uber are NOT considered exempt for FBT)

You can reduce the amount of FBT you pay by:

- Replacing fringe benefits with a cash salary
- Providing benefits that your employees would be entitled to claim as an income tax deduction if they had paid for the benefits themselves
- Providing benefits that are exempt from FBT
- Using employee contributions

Fringe Benefits Tax is always paid by the employer, not the employee.

## Current year FBT hotspots:

### Car Parking

There is a draft ruling about changes to car parking fringe benefits, these still only apply to large employers, however. If you are concerned about car parking fringe benefits, please contact one of the team to discuss it.

### Motor 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 a 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.

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.

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.

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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.

### **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.

### **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 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.

### **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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## FBT – Home phone and internet expenses

It's quite common for employers to pay a third party or reimburse their employees for home phone and internet costs. This may result in an expense payment fringe benefit.

Working out the taxable value of the fringe benefit will depend on both:

- The amount you pay a third party or reimburse your employee
- The percentage of the business use of the phone and internet the employee would otherwise be entitled to claim as an income tax deduction.

There are different substantiation requirements depending on the amount you pay or reimburse your employee for home or internet costs during the fringe benefits tax year.

Where the payment or reimbursement of home phone or internet costs:

- Is up to \$50
  - limited documentation needs to be retained by the employment and expenses incurred by the employee
  - your employee will need to provide a declaration to you detailing the percentage of business use
- Exceeds \$50
  - you and your employee must keep records of the actual expenses
  - your employee will need to provide a declaration to you detailing the percentage of business use and the purpose of incurring the expense.

## Taxi travel expenses exemption

Any benefit arising from taxi travel by an employee is exempt from fringe benefits tax if the travel is a single trip beginning or ending at the employee's place of work.

Any benefit arising from taxi travel by an employee is also an exempt benefit if the travel is both:

- a result of sickness of , or injury to, the employee
- the whole or part of the journey directly between any of the following:
  - the employee's place of work
  - the employee's place of residence
  - any other place that it is necessary, or appropriate, for the employee to go as a result of the sickness or injury.

**Please note** – Uber and other ride sharing services do not count as taxi's for this. For these trips, you need to keep actual records.

The FBT rate is as follows:

49% 1 April 2015 - 31 March 2016	49% 1 April 2016 – 31 March 2017
47% 1 April 2017 – 31 March 2018	<b>47% 1 April 2018 – 31 March 2019</b>
<b>47% 1 April 2019 – 31 March 2020</b>	<b>47% 1 April 2020 – 31 March 2021</b>

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