

TAX ALERT: FBT YEAR END IS FAST APPROACHING!

Introduction

The end of the Fringe Benefits Tax (FBT) year is fast approaching on **31 March 2018**, so we take this opportunity to revisit some hot FBT issues for both employers and employees.

Motor Vehicles – using the company car outside of work

The fact that a business buys a motor vehicle and it is used as a work vehicle, of itself does not mean that the car is exempt from FBT. If the car is used for private purposes (such as picking up the kids from school, doing the weekly shopping, using it freely on weekends, parking it at home), FBT is likely to apply.

It is important to note that the private use of work vehicles is firmly in the sites of the Australian Tax Office (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 a 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.

Confirming a car has been used for non work-related purposes is not that difficult. Often, the odometer readings do not match the work schedule of the business. These are areas the ATO are monitoring.

Housekeeping Tip

If your business has cars, it is a requirement to record odometer readings at the first and last days of the FBT year (31 March and 1 April). An easy way to substantiate this is to have your employees take a photo on their phone and email it through to a central contact person. This should save one person having to physically visit each car on those two dates.

Utes and commercial vehicles – the new safe harbour to avoid FBT

When an employer provides an employee with the use of a car or other vehicle, this would generally be treated as a car fringe benefit and could potentially trigger an FBT liability.

However, the FBT Act contains certain exemptions for certain vehicles (ie. utes and other commercial vehicles) and the private use of the vehicles is limited to work-related travel, and any other private use that is “minor, infrequent and irregular”.

One of the practical challenges when applying the exemption is how to determine if private use has been “minor, infrequent and irregular”. The ATO recently released a compliance guide that spells out what they will look for when reviewing the eligibility of this exemption.

The ATO has indicated that, in general, private use by an employee will qualify for the exemption where:



- 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.
- The employer takes reasonable steps to limit private use and have measures in place to monitor this, which could include a company policy on the private use of vehicles (ie. monitored by 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 (ie. 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 2017-18 and \$65,094 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, they travel no more than 750 km in total for each FBT year for multiple journeys taken for a wholly private purpose and, no single, return journey for a wholly private purpose exceeds 200 km.

If an employee meets all of these conditions, 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 these conditions have been satisfied and to show that private use is “minor, infrequent and irregular”.

Employers who do not take active steps to check the way commercial vehicles are being used are at higher risk of the ATO imposing significant FBT liabilities.

Car parking

It is widely recognised that commercial car parks are expensive, particularly in large cities. 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 would be expected to pay under an arm’s length arrangement.

Common errors associated with car parking fringe benefits include:

- Market valuations being 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.

Living away from home allowances (LAFHA)

LAFHA is a fringe benefit which continues to cause confusion for both employers and employees.

A LAFHA is an allowance paid to an employee by their employer, to compensate for additional non-deductible expenses they incur, and any disadvantages suffered, because the employee's employment requires them to live away from their normal residence.



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The International Accounting Group
worldwide network of independent accounting firms

Level 7 616 St Kilda Road Melbourne
 Victoria Australia 3004
 (PO Box 130 St Kilda Vic 3182)
 T 61 (03) 9525 3777
 F 61 (03) 9537 1104
 E office@lowelippmann.com.au
 W www.lowelippmann.com.au

Where a LAFHA benefit is provided, FBT applies to the full amount of the allowance that has been paid. However, if certain strict conditions can be satisfied, the taxable value of the LAFHA fringe benefit can be reduced by the exempt accommodation and/or food component.

Common errors associated with LAFHA fringe benefits include:

- Mis-characterising an employee as living away from home when they are really just travelling in the course of their work.
- Failing to obtain the declarations required from employees provided with a LAFHA benefit.
- Claiming a reduction in the taxable value of the LAFHA benefit for exempt accommodation and food components in circumstances that do not meet the criteria.
- Failing to substantiate accommodation expenses and (where relevant) food or drink. Verifying accommodation expenses is important as it is likely the ATO will look for circumstances where employees are paid an allowance, but go and stay with family/friends or stay somewhere cheaper and pocket the difference. The expense has to be actually incurred and substantiated.

FBT rate change

The FBT rate decreased on 1 April 2017 when the 2% debt tax on high income earners ended on (Temporary Budget Repair Levy) 30 June 2017. We recommend that where you offer salary packaging arrangements, review them to ensure they remain effective.

FBT year	FBT Rate	Type 1 Gross Up rate	Type 2 Gross Up rate
1 April 2017 onwards	47%	2.0802	1.8868

Should you be registered for FBT?

If you have employees (including Directors of a company) then it is possible your business needs to register for FBT. Generally, your business needs to register for FBT if you are providing any benefits to employees that are not exempt from FBT.

If you provide cars, car spaces, reimburse private (not business) expenses, provide entertainment (ie. food and drink), offer employee discounts - then it is likely you are providing a fringe benefit and you should register the business entity.

There is a list of exemptions that are considered exempt from FBT, such as portable electronic devices like laptops and iPads (although there are rules around how many can be exempt per year), protective clothing, tools of trade etc.

If your business only provides these exempt items, or items that are infrequent and valued under \$300 - then it is unlikely you are providing a fringe benefit and you should not have to worry about registering for FBT.

Please do not hesitate to contact your Lowe Lippmann Relationship Partner if you wish to discuss any of these matters further.



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