

Monthly Newsletter

March 2018



The ATO's FBT Hot Spots

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

Motor Vehicles - using the company car outside of work

Just because your business buys a motor vehicle and it is used 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. While we're sure the old, "what the ATO doesn't know won't hurt them" mentality often applies when the FBT returns are completed, it might not be enough.



The private use of work vehicles is firmly in the sights of the Australian Taxation 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 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 that ATO will be looking at.

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 then this would generally be treated as a car fringe benefit or residual fringe benefit and could potentially trigger an FBT liability.

However, the FBT Act contains some exemptions which can apply in situations where certain vehicles (utes and other commercial vehicles for example) are provided and the private use of the vehicles is limited to work-related travel, and other private use that is 'minor, infrequent and irregular'. One of the practical challenges when applying the exemption is how to determine if the private use has been minor, infrequent and irregular. The ATO recently released a compliance guide that spells out what the regulator will look for when reviewing the use of the 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.

- The employee takes reasonable steps to limit private use and they have measures in place to monitor this.
- The vehicle has no non-business accessories – for example a child safety belt.
- The value of the vehicle when it was acquired was less than the luxury car tax threshold.
- 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 750kms 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 200km.

Car parking

We all know how expensive commercial car parks can be. 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.



Knowledge Shop Disclaimer

Liability limited by a scheme approved under Professional Standards Legislation. The material and contents provided are informative in nature only. It is not intended to be advice and you should not act specifically on the basis of this information alone. If expert assistance is required, professional advice should be obtained.

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.



Living away from home allowances

Living Away From Home Allowances (LAFHA) continue to cause confusion for both employers and employees.

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

As a starting point, 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 include:

- Mischaracterising 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 who have been provided with a LAFHA.
- Claiming the reduction in the taxable value of the LAFHA benefit for exempt accommodation and food components in circumstances that don't meet the criteria.

- Failing to substantiate accommodation expenses and, where required, food or drink. Verifying accommodation expenses is important as the ATO will look closely for scenarios where employees are paid an allowance but go and stay with friends or relatives or stay somewhere cheaper and pocket the difference. The expense actually has to be incurred and substantiated.

Salary sacrifice or employee contribution?

One 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.

Salary sacrificing for a fringe benefit

To be an effective salary sacrifice arrangement, 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 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.

What is an employee contribution?

An employee contribution is made from post-tax income and will often form part of arrangements relating to car fringe benefits. The employee recognises the gross salary and wages as income in their tax return. However, the payment of an after-tax employee contribution would generally have the effect of reducing the taxable value of the fringe benefit that was provided to them by the employer.

The employer would still be subject to the 'standard' PAYG withholding and superannuation contribution obligations in relation to the gross salary and wages amount.

The ATO is looking for discrepancies with contributions paid by an employee to ensure that these have been treated consistently for income tax and GST purposes as well as on the FBT return. This is really an issue for the employer and a discrepancy may mean that there is an FBT exposure or that the employer has paid less GST or income tax than what they should have.