

Fringe Benefits Tax (FBT) 2021: What You Need to Know

Is your business at risk of a nasty FBT surprise? We have outlined the important FBT issues and ATO's "red flags" for employers and employees:

- Covid-19 assistance and benefits.
- Motor vehicle problem areas.
- ATO "red flags":
 - Where deductions claimed do not match what is reported for FBT purposes.
 - Mismatched FBT and income tax amounts.
- When business assets are used personally by owners and staff.
- Not lodging FBT returns.
- Salary sacrifice problem areas.
- Car parking under scrutiny.
- Housekeeping essentials.

Covid-19 Assistance and Benefits

Many businesses are likely to have provided different types of benefits and assistance to their employees because of Covid-19. For many of these benefits, it can be challenging to work out whether FBT should apply.

In general, minor benefits should be FBT exempt where their individual cost is under \$300 and it is reasonable to treat the benefit as minor (e.g. it is provided infrequently).

Outside of this and in many cases, there are specific FBT concessions that could be available, but it is important to work through these concessions carefully.

Working from Home

Covid-19 related office and site closures have meant that many employees worked from home for most of the FBT year. To assist with the transition, employers often provided work-related items such as computer monitors, printers and other equipment to assist with transition.

Where common work related items such as laptops and mobile phones have been provided to team members, it is unlikely an FBT liability will be triggered as long as the equipment is primarily used for work purposes. The situation gets more complex, however, if multiple similar items have been provided during the FBT year.

Emergency Assistance

If your business provided emergency assistance to employees because of Covid-19, then FBT is unlikely to apply. While we doubt anyone would be thinking about FBT during a crisis, it is good to know that the tax system does not disadvantage your generosity.

Examples of the kinds of benefits that are exempt from FBT include immediate relief your business provides to an employee:

- For them to relocate back to Australia, including flights and transport of household goods (e.g. due to health risks around Covid-19); and
- On clothing, food and temporary accommodation if an employee is stranded due to travel restrictions or is required to self-isolate or quarantine.

First aid or other emergency health care provided to an employee is also exempt if the treatment is provided by another 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.

Protective Equipment

Many businesses increased their workplace health and safety processes and infrastructure in response to Covid-19.

If your business provided protective equipment to allow your employees to safely continue to work, this benefit may be exempt from FBT. Unfortunately, this does not seem to be available for all employers.

Typically, an FBT exemption would be available if your employees are involved in cleaning premises or required to be in close proximity with customers or clients. For example, the ATO suggests that this should include hairdressers, cleaners and medical practitioners and hospitality workers.

Motor Vehicle Problem Areas

Private Use of Work Vehicles

Just because your business buys a motor vehicle and it is used almost exclusively for work, 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 and has been for some time.

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

While there are two methods to calculate the FBT liability on the private use of a car, the choice of method can result in very different FBT liabilities. For example, using the logbook method may provide a better result especially this year if the work vehicle has not been used at all and garaged at or near the employee's home. This is because if your business keeps a valid logbook or odometer records and is eligible to use the logbook method, the ATO will accept that an FBT liability will not arise if the car:

- Has not been driven at all during the period even if it has been garaged at home; or
- Has only been driven briefly to maintain the car.

In comparison, if the statutory method is used, the FBT liability could be much higher. This is because the FBT calculation under this method will include the days that the car has been garaged at home and is taken to be available for private use of the employee (regardless of whether or not the employee has 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.

ATO "Red Flags"

One of the easiest ways for the ATO to pick up on problem areas is where there are mismatches.

Where Deductions Claimed do not Match what is Reported for FBT Purposes

When it comes to entertainment, employers are often keen to claim a deduction, but often this is not then recognised as a fringe benefit provided to employees.

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 have 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 clients 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.

Mismatched FBT and Income Tax Amounts

Another area where the ATO is picking up errors is when the amount reported as an employee contribution on an FBT return does not match the income amounts on the employer's tax return. In particular, what concerns the ATO is where an employer overstates employee contributions received on their FBT 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 what the business is claiming.

When Business Assets are Used Personally by Owners and Staff

Private use of business assets is an area that cuts 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 for the upkeep and running of the boat. On review, the ATO discovered the boat was used by the director and other

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employees for private trips and to host parties for people who had paid to attend the company's property seminars.

When looking at the activities of the business overall, the ATO determined that 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. While we hope the ATO understands that this was a difficult year for many businesses, it is likely the ATO will still pay close attention to any employer that:

- Is registered for FBT but lodges late - if your business is likely to face delays lodging the FBT return, it is a good idea to contact us as early as possible and we will get in touch with the ATO to request an extension.
- Is not registered for FBT but employs staff (even closely held staff such as family members), and is not registered for FBT – it is essential you have reviewed your position and are certain that you do not have an FBT liability. If your business provides cars, car spaces, reimburses private (not business) expenses, provides entertainment (food and drink), employee discounts, etc. then it is likely you are 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 came 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.

Previously, some employers were paying SG on the salary less any salary sacrificed contributions of the employee. Employers could choose whether or not to include the salary sacrificed amounts in ordinary time earnings (OTE). That is, some employers were reducing the amount of SG payable by excluding the salary sacrificed amounts from the OTE calculation.

Now, the SG contribution is 9.5% of the employee's "ordinary time earnings (OTE) base". The OTE base is 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 (i.e. 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 does not 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.

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 (\$9.15 for the year ended 31 March 2021),

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

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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:

- Are certain you are able to access the small business exemption (which has a more generous turnover threshold of less than \$50m from 1 April 2021 onwards); *or*
- Understand the implications of the ruling to the car park facilities you provide.

Housekeeping

It can be difficult to ensure 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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