**FBT 2016: The top 5 things every business needs to know**

If your business is in the hospital/non-profit sector and uses salary packaging for team members, is a small business, or provides team members with a gym or space to do yoga, then there are a few things you need to know beyond the basic Fringe Benefits Tax (FBT) changes when the new FBT year starts on 1 April 2016.

**1. Your business will pay more FBT**

The FBT rate is currently 49%. The rate increased from 47% on 1 April 2015 in conjunction with the introduction of the 2% debt tax on high income earners (Temporary Budget Repair Levy). The FBT year that just ended is the first year at the higher tax rate which means if your business has an FBT liability, it will pay more tax.

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| **FBT year** | **FBT rate** | **Type 1 gross up rate** | **Type 2 gross up rate** |
| 1 April 2015 to 31 March 2017 | 49% | 2.1463 | 1.9608 |
| 1 April 2017 onwards | 47% | 2.0802 | 1.8868 |

The FBT rate will stay at 49% until 31 March 2017 when the impact of the debt tax is scheduled to be removed.

**2. Meal entertainment crackdown – medical professionals beware**

If your business is an FBT exempt entity (public and not-for-profit hospitals, public benevolent institutions, health promotion charities, public ambulance service) or qualifies for the FBT rebate then there are significant changes that come into play on 1 April you need to be across.

In the past, employees of FBT exempt and rebatable entities have been able to salary sacrifice an unlimited amount of meal entertainment expenses (eg, restaurant meals) with no impact on their existing annual caps. But, this will all change on 1 April 2016. From this date, a separate single grossed-up cap of $5,000 for salary sacrificed meal entertainment benefits for employees of exempt and rebatable employers will apply.

To give you some idea of the impact let’s look at the example of a doctor employed by a public hospital who salary sacrifices $32,000 of meal entertainment benefits. If the doctor salary sacrificed these benefits in the 2015-16 FBT year, the full $32,000 would be exempt from FBT and he has nothing to report in his tax return. If the doctor salary sacrifices these benefits in the 2016-17 FBT year, then only the first $5,000 will not count towards his annual exemption cap. However, the balance will be taken into account in determining whether he exceeds his annual exemption cap for the year. If this excess amount causes him to exceed his annual exemption cap then an FBT liability will arise. In addition, the entire amount (including the first $5,000) will also be included in his reportable fringe benefits amount for the year which could impact his ability to satisfy other income based tests within the tax system, as well as eligibility for certain benefits (e.g., family assistance benefits) and certain liabilities (e.g., child support payments).

As an employer, it will be essential to review the existing salary packages of team members affected by the changes as someone will be paying the extra FBT that arises as a result of the new cap being introduced. If your agreements don’t enable your business to recover the additional FBT liability from the employee then your business will be stuck with the additional cost.

**3. Salary sacrificing may not be worth it**

By now you should have reviewed any salary sacrifice agreements to ensure that they are still viable at the higher 49% FBT rate. In some cases, salary sacrifice agreements may no longer achieve the intended goals and simply create an administrative burden for little to no benefit.

For high income earners (above $180k) however, the difference in timing between the FBT year and the income year means that there will be a planning opportunity between 1 April 2017 when the FBT rate reduces back to 47% and 30 June 2017 when the 2% debt tax is removed.

With any salary sacrifice agreement just be aware that certain rules must be followed for the agreement to be effective. This means that the employee should agree in writing to forgo an amount of salary and wages *before* that entitlement has been earned. If it’s after, it’s not valid and the employee will simply be taxed on that amount. The business would also be liable for obligations such as PAYG withholding and superannuation guarantee amounts.

Be aware that the ATO is likely to pay close attention to the validity of salary sacrifice agreements over the next few years where the arrangements are being used to reduce the taxable income of high income earners below $180,000.

**4. Two laptops are better than one for small business**

If your business is a small business (turnover under $2m), from 1 April 2016 the FBT exemption on portable electronic devices will be extended. From this date, your business can offer employees more than one work-related portable electronic device, such as a mobile phone, laptop and tablet and not have to pay FBT on it even if the device is the same or similar to other devices already provided in that same FBT year. All other businesses are limited to one device that is identical or similar to another.

**5. Yoga or gym classes at the office?**

Wondering what to do with that extra office space? Put in gym facilities for the team? Use a room for a yoga class or personal trainer perhaps? A recent ATO decision confirmed that the FBT implications of these two options are quite different. The reason is the definition of a “recreational facility.” A recreational facility is exactly that, a facility for recreation. Recreational facilities can be exempt from FBT if certain conditions can be met. However, a fitness class or a personal trainer is not a recreational facility and therefore, FBT would generally apply.

**Where the ATO is taking an active interest**

**Travelling or living away from home ‑ what’s the difference?**

An issue that often comes up is determining whether someone is living away from home, relocating or just travelling. The ATO is looking closely at Australian taxpayers claiming living away from home (LAFH) allowances to make sure they are not incorrectly accessing the FBT concessions. If somebody is living in Sydney but travelling to Melbourne on an ad hoc basis every other week for work, they are probably just travelling. They may be entitled to travel deductions but are not entitled to the FBT concessions that can apply to LAFHAs. If the person sets up a home temporarily in Melbourne, keeps their home in Sydney for their use (can’t be rented out), then it’s more likely they can access the living away from home allowance concessions. You need to double check to get the distinctions right.

There are also special rules where transport is provided by employers to fly-in-fly out workers to ensure the travel is exempt from FBT.

**Motor vehicles**

Where a motor vehicle owned or leased by the business is used by an employee for private purposes (including travelling between home and the workplace), then FBT is an issue that needs to be managed. The ATO is conducting a data matching program that is aimed at motor vehicles to try and capture benefits that are not currently being reported through the FBT system.

**Interaction between FBT, income tax and GST**

If your business pays FBT on a benefit relating to entertainment then it can generally claim a deduction for the costs associated with providing the entertainment as well as the GST credits. However, if FBT does not apply to the benefit then no deduction or GST credits can generally be claimed.   Entertainment can be almost anything from food, drink, recreation such as movie tickets, to non‑work based travel. If your business provides any entertainment benefits to employees, such as an employee attending a business lunch, then FBT might apply.

**Structuring employee salaries through a unit trust**

The ATO has warned employers against complex structuring arrangements designed to channel benefits to employees using an employee remuneration trust. The most recent ATO alert looks at arrangements where the employer repays an employee’s loan through a trust. Under these arrangements, employees acquire units in a unit trust funded by a loan from the trustee. The loan is repaid by the employer using amounts salary sacrificed by employees. The result is that the taxable value of the benefit provided to the employee skirts the FBT system – a big no, no from the ATO’s point of view.

**How do I know if I need to pay FBT?**

If you are not sure whether your business is providing fringe benefits to its employees, here are some key questions you should ask yourself:

* Does your business make vehicles owned or leased by the business available to employees for private use?
* Does your business provide loans at reduced interest rates to employees?
* Has your business forgiven or released any debts owed by employees?
* Has your business paid for, or reimbursed, any private expenses incurred by employees?
* Does your business provide a house or unit of accommodation to employees?
* Does your business provide employees with living‑away‑from‑home allowances?
* Does your business provide entertainment by way of food, drink or recreation to employees?
* Do any employees have a salary package (salary sacrifice) arrangement in place?
* Has your business provided employees with goods at a lower price than they are normally sold to the public?

**What is exempt from FBT?**

Certain benefits are excluded from the scope of the FBT rules. The following work related items are exempt from FBT if they are provided primarily for use in the employee’s employment:

* Portable electronic devices (e.g. laptop, tablet, mobile, PDA, electronic diary, notebook computer, GPS navigation device) that are provided primarily for use in the employee’s employment (limited to the purchase or reimbursement of one identical or similar portable electronic device for each employee per FBT year. Small business employers will be able to provide more than one identical or similar device to employees from 1 April 2016;
* An item of computer software;
* Protective clothing required for the employee’s job;
* A briefcase;
* A calculator;
* A tool of trade.