**Article FBT 2018**

**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
* New safe harbour for utes and commercial vehicles
* Car parking – are you really declaring the true cost of parking?
* The living away from home allowance – the common errors
* Salary sacrifice or employee contribution – where employers are getting it wrong
* Housekeeping essentials – FBT rates and how to save some time
* Not registered for FBT – the areas where the ATO’s view might differ
* Crackdown on salary sacrifice calculations

## 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 Australian Tax Office (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 sites 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.

## 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 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. 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](https://www.ato.gov.au/general/fringe-benefits-tax-(fbt)/in-detail/exemptions-and-concessions/fringe-benefits-tax---exempt-motor-vehicles/?page=3#Eligible_vehicles).
* 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 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 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.

## 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.

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 non-deductible expenses they incur, and any disadvantages 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. The ATO has released updated guidance in this area in [TR 2017/D6](https://www.ato.gov.au/law/view/document?DocID=DTR/TR2017D6/NAT/ATO/00001).
* Failing to obtain the declarations required from employees who have been provided with a LAFHA.
* Claiming a 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 (SSA), 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 salary sacrifice arrangement doesn’t actually 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.

### 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.

## Housekeeping

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), 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.

### 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. The FBT rate was brought into line with the Debt Tax to discourage high income earners from using the FBT system to lower their taxable income.

Remember to review salary packaging arrangements to ensure they remain effective.

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

## Should I be registered for FBT?

If you have employees (including Directors of a company) then it’s 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. So, if you provide cars, car spaces, reimburse private (not business) expenses, provide entertainment (food and drink), employee discounts etc., then you are likely to be providing a fringe benefit.

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), protective clothing, tools of trade etc. If your business only provides these exempt items, or items that are infrequent and valued under $300, then you are unlikely to have to worry about FBT.

## Crackdown on salary sacrifice calculations

A loophole in the superannuation guarantee legislation allows unscrupulous employers to reduce their superannuation guarantee (SG) obligations when employees salary sacrifice contributions into superannuation. The loophole occurs when employers calculate SG on the post salary sacrifice earnings base. This method of calculation may reduce the contribution being made by the employee.

Legislation currently before Parliament will prevent contributions made as part of a salary sacrifice arrangement from satisfying an employer’s SG obligations by specifically including salary sacrificed superannuation in the base for calculating an employer’s SG obligations.