bO2™ Corporate Essentials

Tax Smart Australia

Issue
#0107

# Tax Essentials
# Tax Effective Shares & Property Investment

OCTOBER | 2020

**THE NEWSLETTER**

Recent Tax Developments

**MICHAEL'S CORNER**

Fair Work Act 2009 Changes and What Has Not Changed...?

*Article No. 007*

**SPECIAL BONUS ISSUE**

Tax Effective Shares & Property Investment


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- We provide further guidance on the tax implications of renovating and then selling your principal place of residence.
- New ATO guidance on capital/ revenue in property developments.
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# The Newsletter

## RECENT TAX DEVELOPMENTS

### AMENDMENTS TO FAIR WORK ACT UNDER JOBKEEPER 2.0

As part of the Federal Government's Coronavirus Economic Response Package (JobKeeper Payments) Amendment Bill 2020, new amendments have been made to the Fair Work Act 2009.

This creates two tiers of employers: -

- Employers who meet (or continue to meet) the criteria to receive JobKeeper payments after 28 September 2020 (Qualifying Employers); and
- Employers who previously met the criteria under 'JobKeeper 1.0' to access JobKeeper payments, but who do not quality for such payments after 28 September 2020 (Legacy Employers).

For Qualifying Employers, the proposed amendments generally extend the existing rights and obligations that were available under 'JobKeeper 1.0' in relation to employees who receive JobKeeper payments (Eligible Employers), for the period until 29 March 2021 (with only minor modifications).

The general payment obligations for Qualifying Employers continue to apply, including that such employers much satisfy the 'wage condition' and must meet the 'minimum payment guarantee' for each Eligible Employee.

The new provisions for Legacy Employers stipulate they must hold a valid '10 percent decline in turnover certificate' (Deadline in Turnover Certificate), in order to be eligible to issue or seek JobKeeper enabling directions or agreements, at a particular time.

To hold this certificate, a Legacy Employer must satisfy the '10 percent decline in turnover test' for a quarter (relevantly, the 3-month periods ending on 30 June, 30 September, and 31 December). While adopting the definition used in the JobKeeper Rules, this test only requires a 10 percent reduction of projected GST turnover for the relevant period. Decline in Turnover Certificates must be issued: -

- By an 'eligible financial service provider' (such as registered auditor, tax agent or accountant) who is not associated with the Legacy Employer (unless the Legacy Employer is a small business employer under the FW Act, in which case statutory declaration can be made for the Legacy Employer); and
- For each relevant quarter. New Decline in Turnover Certificates are required to subsequent quarters.

There will be significant penalties for Legacy Employers who purport to give a JobKeeper enabling direction, if they do not satisfy the 10 percent decline in turnover test at the time the direction was given, and the Legacy Employer knew or was reckless to that fact. Penalties also apply for providing false or misleading information to an eligible financial service provider, for the purpose of obtaining a Decline in Turnover Certificate.

In addition, the Federal Court will have powers to terminate a JobKeeper enabling direction or agreement, if a Legacy Employer who holds a Decline in Turnover Certificate did not in fact satisfy the 10 percent decline in turnover test, at the particular time that the direction was issued or agreement was made.

#### JobKeeper enabling directions

- Eligible Legacy Employers will be able to issue or seek certain JobKeeper enabling directions or agreements, however these will be in more limited form than for Qualifying Employers and subject to additional conditions. Employers should take advice in the key differences between the JobKeeper enabling directions available to Qualifying Employers and Legacy Employers.

## COVID-19 AND CAR FRINGE BENEFITS

This ATO guidance is on determining how your FBT obligations relating to work cars may be impacted by the COVID-19 pandemic, and how to calculate your FBT liability.

#### Key points

- Your fringe benefits tax (FBT) obligations may be affected if your employees have been garaging work cars at their homes due to the impacts of COVID-19.
- Where a car is not being driven at all, or is only being driven for maintenance purposes, it is accepted that you are not holding the car for the purposes of providing fringe benefits. If you elect to use the operating cost method, and maintain appropriate records, you may not have an FBT liability for a car.

- Certain kinds of cars may also be exempt from FBT even where they are garaged at employee homes.
- If an exemption does not apply and a work car is garaged at your employee's home, it will be deemed to be available for private use and you may have an FBT liability.
- You can take into account the impact of COVID-19 on the business use of a car if it is being driven during the period it is garaged at home. This will require you to maintain a logbook (or to have kept a logbook in any of the previous four years) which will enable you to calculate your FBT liability.
- Your logbook-keeping requirements will depend on whether you are already maintaining an existing logbook for the year.
- For any car fringe benefits calculated using the operating cost method, you may adjust your business use estimates to reflect changes in your employees' driving patterns due to COVID-19.

### Garaging a car at an employee's home

Generally, a car fringe benefit will arise where you make a car you own or lease available for the private use of an employee. Where your employee is garaging a work car at home, you may be providing them with a car fringe benefit.

For FBT purposes, a car is a motor vehicle (except a motorcycle or similar vehicle) designed to carry a load of less than one tonne and fewer than nine passengers.

If an exemption does not apply, you need to determine the taxable value of the car fringe benefit. It is calculated using either the: -

- **statutory formula method** - the taxable value is a set formula based on the car's cost price
- **operating cost method** - the taxable value is based on the operating costs of the car, reduced by any business use.

### Exemption for certain car benefits

In some cases, the use of a car is exempt from FBT. An employee's private use of a taxi, panel van, or utility vehicle designed to carry less than one tonne is exempt from FBT if its private use is limited to: -

- travel between home and work
- incidental travel in the course of performing employment-related travel; and/or
- non-work-related use that is minor, infrequent, and irregular (such as occasional use of the vehicle to remove domestic rubbish).

### If a home-garaged car is not being driven

Where a car has not been driven at all during the period it has been garaged at home, or has only been driven briefly for the purpose of maintaining the car, it will be accepted that you don't hold the car for the purpose of providing fringe benefits to your employee.

In these situations, provided you elect to use the operating cost method, there will be a nil taxable value for the car and no FBT liability. You need to elect to use the operating cost method in writing before you lodge your FBT return for the year. You should maintain odometer records to show that, during the period the car is garaged, it has not been driven, or has only been driven briefly for the purposes of maintaining the car.

If you do not elect to use the operating cost method, or do not have odometer records, the statutory formula method applies, and you will have an FBT liability for the year. This is because the car is garaged at the employee's home and is taken to be available for private use.

### If a home-garaged car is being driven

If an employee is driving a car for business purposes, and you elect to use the operating cost method, you may be able to reduce the taxable value of the car fringe benefit to take into account this business use. This may include reducing the taxable value to nil if the car is only being used for business travel.

You will only be able to reduce the taxable value if you have logbook records and odometer records for the period in question. If you have not previously maintained a logbook for the car, the logbook will need to be for at least: -

- 12 continuous weeks; or
- until the car stops being garaged at home if this is less than 12 weeks.

### Logbook requirements for car fringe benefits

Your logbook requirements will vary depending on whether: -

- you already use the operating cost method and have an existing logbook in place; or
- it is your first time electing to use the operating cost method or it is a logbook year for you.

Generally, if you have used a logbook for the car before, it will be a logbook year if you have not kept a logbook for the car in the previous four years.

### If COVID-19 has impacted driving patterns and you have an existing logbook

Where you are already using the operating cost method, you may have an existing logbook in place. You can still rely on this logbook, despite changes in driving patterns due to COVID-19. You must keep odometer records for the year, and these will show how much the car has been driven during the year, including any lockdown period.

You need to make a reasonable estimate of the percentage of business use of the car, taking into account logbooks, odometer records and any changes in the pattern of business use throughout the year, including changes due to COVID-19.

Where your driving patterns and business-use percentage are impacted by COVID-19, you can choose to keep a new logbook provided that the period is representative of your usage throughout the year. This is so, even if it is not a logbook year. This may provide a more accurate base to estimate the business use of the car.

**Example 1 - FBT year ended 31 March 2020 - new logbook not kept**

An employer uses the operating cost method to value their car fringe benefits. They kept a logbook in the FBT year ended 31 March 2018.

For the FBT year ended 31 March 2020, there is no requirement for the employer to keep a new logbook.

The employees' driving patterns were not impacted significantly by COVID-19 across the 2020 FBT year, with any impact occurring in March 2020, so the employer decides not to keep a new logbook.

They use the existing logbook, odometer records, employee fuel card records, plus client records to estimate the business use percentage for the year.

**Example 2 - FBT year ended 31 March 2021 - new logbook kept**

An employer uses the operating cost method to value their car fringe benefits and kept a logbook in the FBT year ended 31 March 2018.

For the FBT year ended 31 March 2021, there is no requirement for the employer to keep a logbook.

However, employee driving patterns have been significantly impacted by COVID-19, and so the employer chooses to keep a new logbook as it provides a more accurate base to estimate the business use of the car. Odometer records of the total kilometres travelled during the logbook period and during the FBT year are also kept.

If it is your first time using the operating cost method, or it is a logbook year for the car

Where it is your first time using the operating cost method or it is a logbook year, you must: -

- keep a logbook recording details of business journeys undertaken in the car for a continuous period of at least 12 weeks (the logbook period must also be recorded in the logbook)
- keep odometer records of the total kilometres travelled in the logbook period, and the total kilometres travelled during the year; and
- estimate the number of kilometres travelled on business journeys during the FBT year.

For this estimate, you must consider all relevant matters including logbook and odometer records, any other records, and any variations in the pattern of business use throughout the year.

If the car was not driven for a period due to COVID-19 impacts, it is recommended that you also keep odometer records to show this.

### If COVID-19 impacted driving patterns during the period, you were maintaining a logbook

You may have been in the middle of maintaining a logbook for a 12-week period at the time the COVID-19 pandemic impacted driving patterns. You may be concerned that the resulting logbook does not reflect the business use of the car for the 2020 FBT year.

If you are making a reasonable estimate of the business use, you can adjust the use indicated from the logbook to account for the change in driving patterns from COVID-19 impacts.

However, you must ensure that the logbook still records a period of at least 12 weeks - if the logbook does not reflect a 12-week period you cannot apply it to reduce the taxable value to take business use into account.

**Example 3 - FBT year ended 31 March 2020 - logbook impacted by COVID-19**

An employer uses the operating cost method to value their car fringe benefits, and the 2020 FBT year is a logbook year. They begin maintaining a logbook on 2 February 2020, meaning the logbook must run for at least a 12-week continuous period to 26 April 2020.