

Fringe Benefits Tax (FBT)

Question 1

We currently provide our employees with a fringe benefits portion of their wage, in relation to this being declared on their group certificates, is it still required to be the gross up figure of this amount?

Answer

If the grossed-up value of the fringe benefits is less than \$2,000 then there is no need to include these. Otherwise, we confirm that employers are required to include the grossed-up amount of reportable fringe benefits on the payment summaries (formerly group certificates) of their employees.

Question 2

In issue 51 of the TSA newsletter, you answered a question on the limit for salary sacrifice and in the last sentence you said, “No limits as such for a normal business but Fringe Benefits Tax should be carefully considered when dealing with salary sacrifice.” Can you please elaborate on when FBT could apply to an employee who salary sacrifices less than the permitted amount for the year?

Answer

When we referred to a normal business, we meant a business that did not fall within the definition of an income tax exempt organisation.

Income tax exempt organisations and those that are only assessable on their non-mutual income generally pay FBT on the benefits they provide to their employees including associates, however there are concessions:

- The value of concessional taxed benefits (free) for the employees of public and private non-profit hospitals is limited to a grossed-up value of \$17,000 per employee.
- A \$17,000 cap may also apply to employees of public ambulance services. FBT is payable on the balance of grossed up benefits supplied in excess of the \$17,000 limit.

Concessions also apply to up to \$30,000 of grossed up benefits supplied to employees of public benevolent institutions other than hospitals.

Returning to what we termed a normal business i.e., fully taxed for FBT.

Allowing for the fact that FBT is a tax deduction, fully taxed businesses “gross up” the value of fringe benefits by a factor of \$2.0802. Allowing for the income tax deduction and claim of GST input tax credits, this also notionally taxes benefits at 47% or highest marginal income tax. Therefore, when salary packaging the FBT cost to the package needs to be closely scrutinised.

Question 3

Can you advise if an employee provided with a novated lease for a company car is able to claim car costs in their personal tax for costs incurred in running a second privately owned vehicle for work? The employee is a marketer and spends much time on the road. The employee is provided with an additional car allowance for the second car. The car provided under novated lease is used mainly by the spouse for private purposes.

Answer

On basis the employer pays the correct FBT for the car being used by the wife, the employee can claim a tax deduction for expenses incurred in earning assessable income.

The employee is not compelled to use the vehicle that is salary sacrificed.

Question 4

We are having our annual Christmas party at a restaurant this year. It is the first time we have had it outside the office, what are the requirements re: FBT etc.

Answer

We will go into considerable detail here, as it impacts almost all of our readers (*source ATO*):

If you are **not** a tax-exempt organisation and do **not** use the 50-50 split method for meal entertainment, the following explanations may help you determine whether there are FBT implications arising from a Christmas party.

Exempt property benefits

The costs (such as food and drink) associated with Christmas parties are exempt from FBT if they are **provided on a working day on your business premises and consumed by current employees**. A taxable fringe benefit will arise in respect of an associate of an employee who attends the party if not otherwise exempt under the minor benefits exemption.

Exempt benefits - minor benefits

The provision of a Christmas party to an employee may be a minor benefit and exempt if the cost of the party is less than \$300 per employee and certain conditions are met. The benefit provided to an associate of the employee may also be a minor benefit and exempt if the cost of the party for each associate of an employee is less than \$300.

Gifts provided to employees at a Christmas party

The provision of a gift to an employee at Christmas time may be a minor benefit that is an exempt benefit where the value of the gift is less than \$300.

Where a Christmas gift is provided to an employee at a Christmas party that is also provided by the employer, the benefits are associated benefits, but each benefit needs to be considered separately to determine if they are less than \$300 in value. If both the Christmas party and the gift are less than \$300 in value and the other conditions of a minor benefit are met, **they will both be exempt benefits**.

Tax deductibility of a Christmas party

The cost of providing a Christmas party is income tax deductible only to the extent that it is subject to FBT. Therefore, any costs that are exempt from FBT (that is, exempt minor benefits and exempt property benefits) cannot be claimed as an income tax deduction.

The costs of entertaining clients are not subject to FBT and are not income tax deductible.

Christmas party held on the business premises

A Christmas party provided to current employees on your business premises or worksite on a working day may be an exempt benefit. The cost of associates attending the Christmas party is not exempt, unless it is a minor benefit.

Example

A small manufacturing company decides to have a party on its business premises on a working day before Christmas. The company provides food, beer, and wine.
The implications for the employer in this situation would be as follows.

If...	Then...
current employees only attend	there are no FBT implications as it is an exempt property benefit.

current employees and their associates attend at a cost of \$180 per head	for employees - there are no FBT implications as it is an exempt property benefit, and the minor benefit exemption could also apply* for associates - there are no FBT implications as the minor benefit exemption applies.*
current employees, their associates and some clients attend at a cost of \$365 per head	for employees - there are no FBT implications as it is an exempt property benefit for associates - a taxable fringe benefit will arise as the value is equal to or more than \$300 for clients - there is no FBT payable and no income tax deduction.

* Where the benefits are indicated as qualifying for the minor benefits exemption, it is on the basis that the necessary conditions have been satisfied.

Christmas party held off business premises

The costs associated with Christmas parties held off your business premises (for example, a restaurant) will give rise to a taxable fringe benefit for employees and their associates unless the benefits are exempt minor benefits.

Example

Another company decides to hold its Christmas function at a restaurant on a working day before Christmas and provides meals, drinks and entertainment.

The implications for the employer in this situation would be as follows.

If...	Then...
current employees only attend at a cost of \$195 per head	there are no FBT implications as the minor benefits exemption applies.*
current employees and their associates attend at a cost of \$180 per head	there are no FBT implications as the minor benefits exemption applies.*
current employees, their associates and clients attend at a cost of \$365 per head	for employees - a taxable fringe benefit will arise for associates - a taxable fringe benefit will arise, and for clients - there is no FBT payable and the cost of providing the entertainment is not income tax deductible.

* Where the benefits are indicated as qualifying for the minor benefits exemption, it is on the basis that the necessary conditions have been satisfied.

Question 5

Rental property in joint names: Can I salary sacrifice for Council rates, water rates etc as these would otherwise be deductible? If yes, does it affect FBT? If yes, how does the Company treat the expense? I did a salary sacrifice course in 2006 that advised you can do the above, however my accountant says it is subject to FBT. If this is OK, then it is a way to lower my income by more than my partners (who we normally have to split all rental income and expenses equally).

Answer

Your accountant is correct – the otherwise deductible rule only applies to work related expenses and FBT would apply to these payments, meaning there would be no benefit to your salary package.

Question 6

We are a Pty Limited Company based in Sydney. We have a Company car which is used by employees for work purposes. We also have a commercial parking space near to office (within 1 KM from office) where we park our car during the day and some time at night. The parking spot is not allotted at a specific spot within a car park. Do we need to pay the Car Parking Fringe Benefits on this car? If yes, how do we calculate the taxable value of parking benefit? Can we still follow the Average cost method (page 88 of annual taxation summary) even though we have actual costs paid to commercial car park?

Answer

First of all Car Parking F.B.T. does not apply if you turn over less than \$10 million. A condition of when a daily car parking fringe benefit applies includes “the car is used on that day by the employee to commute between their place of residence and their primary place of employment.” If no-one is taking the car home, then there is no car parking F.B.T.

Question 7

FBT on Motor Vehicles: We are a training organisation. Some of our trainers do not have a base office as they train off site to our clients. They have a Motor Vehicle which is taken home. Is there FBT on the days they train and then go home? Currently we have been treating every garaged night as private use for FBT purposes.

Answer

You are correct in your treatment - they are still employees commuting to a workplace.

Question 8

XYZ Family Trust owns a 4-bedroom property. A loan facility in the name of XYZ is linked to the property. From time to time, XYZ draws down money and lends the money to the ABC Pty Ltd operating company for cash flow. XYZ Trust is the shareholder of ABC Pty Ltd. I am a beneficiary of the XYZ trust. If I live in the property with my family and pay not rent, am I subject to FBT? Or is it better that I pay rent to the XYZ trust?

Answer

The operating company ABC Pty Ltd is a fully owned subsidiary of XYZ Pty Ltd.

In the event you are an employee of ABC Pty Ltd AND you pay no rent for the house in the XYZ trust, then it is very clear that an associate of ABC is paying you a fringe benefit in consequence of your employment.

When one considers the mark-up factors, Fringe Benefits Tax is effectively paid at highest marginal tax, 47%.

In view of this, it is far better that you pay a market rental which will be assessable income to the trust. This will mean that all landlord expenses – interest, rates, insurance, repairs, and so on, will be tax-deductible in the trust as per the 1984 Janmor Nominees case.

Question 9

According to the ATO website I am allowed to pay day care fees on behalf of my employees. Here is the reference to the benefit regarding day care. Apparently, a Company can claim the expense as it is employee expense to retain employees?

<http://www.ato.gov.au/businesses/content.aspx?menuid=0&doc=/content/52017.htm&page=19&H19>

Answer

Childcare payments may be tax deductible, but they are not exempt from FBT. As outlined in our annual publication with the mark up factor for FBT equating with highest marginal tax, this is usually ineffective for an employee. However, there is concessional FBT treatment for certain employers.

Capping of concessional FBT treatment for certain employers

Employer	FBT Concession
Public benevolent institution (other than public hospitals) and health promotion charities	FBT exemption (capped at \$30,000)
Public hospitals, non-profit hospitals, and public ambulance services	FBT exemption (capped at \$17,000)
Rebatable employers – certain non-government and non-profit organisations	FBT rebate (capped at \$30,000)
Religious institutions	FBT rebate (capped at \$30,000)

Question 10

Salary Packaging – Relocation expenses exempt benefits. Please confirm if employee can salary package the incidental costs to buying a home on relocation to a new place of employment? Please confirm if the timing is calculated from signing of contract date or settlement date? Is breaking a lease break free qualify as incidental to the purchase or sale of a dwelling?

Answer

Legislative reference: section 58C of the FBTA.

It is not unusual for employers to bear the cost of various relocation expenses, be it for new employees or for existing employees who are required to change their job location.

Where these relocation expenses are incidental to the sale and/or purchase of a home by the employee, the expenses may be exempt benefits.

Costs incidental to the sale and/or purchase of a house are stamp duty, advertising, legal fees, agent commission, discharge of a mortgage, expenses of borrowing or any similar capital expenses.

The exemption applies to the home that is **sold** only if all the following apply:

- the sale is made solely because the employee changed their usual place of residence in order to carry out employment-related duties.
- the house was owned when you notified the employee of the change to the new locality.
- the house was the employee's usual place of residence.
- the sale contract was made within two years of commencing duty at the new locality.

The exemption applies to the home that is **purchased** only if all the following apply:

- the employee owned a home at the former locality.
- the purchase was made solely because of the relocation to another job locality.
- the new home was occupied as the employee's usual place of residence.
- the contract to purchase was made within four years of commencing duty at the new location.

Costs associated with the connection or reconnection of gas, electricity and telephone services to the new home are also exempt.

Several other requirements must be satisfied for the exemption to apply, namely:

- the relevant benefit must be of a type that would be an expense payment fringe benefit or a residual fringe benefit but for the exemption.
- where the benefit is of a type that would be an expense payment fringe benefit but for the exemption, you must obtain documentary evidence of the employee's expenditure.
- in the case of telephone connections, the employee must have had a telephone connected at the former residence.

From 1 April 2004, costs incidental to the purchase of a new dwelling by an employee relocating for employment purposes are FBT exempt, providing the employee sells, or proposes to sell, their old dwelling within two years after the day of commencing their new employment position. That is, the employee is no longer required to sell their old dwelling before the employer can access this exemption.

If the employee does not sell their old dwelling within two years after the day of commencing their new employment position, the benefit will become FBT liable in the year of tax in which the two-year period expires.

Question 11

Accountant advises that expenditure at a restaurant for a staff member retirement dinner where expenditure per head is less than \$300 and mostly staff members attended is an exempt minor benefit and is tax deductible as well as GST input tax credit claimable.

I agree with the exempt minor benefit but was of the understanding that due to the meal entertainment nature, that it is neither tax deductible nor GST credit claimable. Please advise.

Answer

For FBT, meal can meet the requirements as the N.T.L.G, FBT minutes for May 2009 reveal. As a number of our subscribers would be interested in what constitutes “minor and infrequent”. We enclose the query and response.

Would the minor benefit exemption infrequent and irregular rules apply if staff attend a Christmas party, half a dozen other 'group lunches', plus the odd leaving or welcome lunch during the year that is, about seven to nine meal entertainment events? Some advisors are suggesting that 12 lunches a year for staff would satisfy the minor benefit exemption infrequent and irregular requirements.

Taking this one step further, if an employee received meals as outlined above in addition to other business development lunches with clients (say one per month) would they be entitled to the minor benefit exemption?

The Tax Office responded that, as previously advised at this forum, Taxation Ruling TR 2007/12 Fringe benefits tax: minor benefits make it clear that it is not considered appropriate to stipulate the number of times associated benefits that are identical or similar to the minor benefit, or benefits in connection with the minor benefit, can be provided for the purposes of the infrequent and irregular criterion.

The following extracts from TR 2007/12 were noted:

8. A minor benefit is an exempt benefit under section 58P where:

- the notional taxable value of the minor benefit is less than \$300; and
- it would be concluded that it would be unreasonable, having regard to the specified criteria in paragraph 58P(1)(f), to treat the minor benefit as a fringe benefit.

9. In considering the application of the exemption under section 58P, it is necessary to look to the nature of the benefit provided and give due weight to each of the criteria. The weight given to each criterion will also vary depending on the circumstances surrounding the provision of each benefit.

212. Whether a benefit is provided infrequently and irregularly will depend on the circumstances, as highlighted in Case 2/96.

213. Accordingly, it is not appropriate to specify the number of times associated benefits that are identical or similar to a minor benefit, or benefits provided in connection with the minor benefit, can be provided while satisfying the 'infrequency and irregularity' criterion.

214. However, the more often and regular those benefits are provided, the less likely that this criterion would be satisfied.

It will be non-tax deductible because the expense is incurred “offsite”. As the expenditure is **not** tax deductible no input tax credit for GST purposes can be claimed.

Question 12

Can you confirm if an employee is allowed to salary package more than one car?

Answer

Yes. But it depends on your workplace policies. The implication of an effective salary package arrangement is that the employee pays income tax on the reduced salary and wages and the employer may have to pay fringe benefit tax on the car fringe benefit. We recommend that you and your employer agree on all the terms of the salary sacrifice arrangement and put them in writing.

Question 13

Our Company is a PBI and is tax-exempt and FBT-exempt. We wish to hold team-building days that include an activity, but it seems that a majority of these “activities” would be classified as recreational, and as such are a reportable benefit

for all who attend. Is there some guidance or a list of activities that would be considered acceptable for a team-building event that would not attract FBT and be reportable?

Answer

We assume that your staff are accessing the \$30,000 limit for PBI's. You may wish to consider the exemption for minor and infrequent benefits which must be less than \$300.

As the term "infrequent" suggests, these team building days cannot be a regular event to access the exemption.

Question 14

We have a dining facility located on the Campus and it is operated by one of our controlled entity. It is not an in-house dining facility as it is opened to the public. We have staff members who regularly buy and consume coffee at the facility as morning or afternoon tea. Then there are those that buy the coffee as takeaway and consume these at their workstation. To err on the side of caution, we have only been charging FBT on the former. As the coffees consumed at the dining facility are consumed on a working day at the business premises (dining facility located on Campus), should they attract FBT? I thought these cups of coffee would fall into the category of "Morning and afternoon tea including light lunches on business premises) as per the FBT table on Chapter 15.8 (NAT 1054) hence do not attract FBT except for associates.

Answer

If the staff are paying for their coffee on the same basis as members of the public, then there is no taxable fringe benefit. Given this, the second issue is irrelevant. However, in the event a staff member receives a cup of tea or coffee for morning or afternoon tea then a fringe benefit should not arise.

Question 15

One of our employees is requesting for Salary Sacrifice arrangement for school fees. How does this work? Is there any FBT on school fees salary sacrificed amount? Can we include the FBT amount to the sacrificed deduction? What is the income tax effect?

Answer

Unless you are an exempt or rebatable employer (see annual publication), FBT generally applies.

In these circumstances, it is difficult to see any tax benefit for the employee – indeed a detriment if he/she is not on highest marginal tax (47%).

Yes, the FBT is included in the salary package. The full amount paid is a tax deduction but with the exceptions mentioned above FBT applies.

Question 16

We have looking at providing a new employee with a car allowance plus a fuel card. Am I correct in saying that the allowance will form part of the PAYG through the payroll; however, we will need to include the value of the fuel card each year in the FBT return as a benefit?

Answer

You are correct, but we would strongly advise you to require the employee to keep a logbook showing the business percentage in order to reduce the FBT payable. This would involve the employee filling out an "Employee Otherwise Deductible Declaration" in the approved format.

Question 17

I have a question that relates to FBT. We currently have PBI status. Our employees are therefore able to salary sacrifice up to the capping threshold of \$30,000 grossed-up taxable value. Can you please advise whether when an employee uses a company pooled vehicle - whether this benefit counts towards the \$30,000 capping amount?

Answer

If this is a "Company pooled" vehicle remaining on the premises, then it stands to reason that any personal use is incidental and that an employee's use of that vehicle in work hours is for business.

As such it should not count for the \$30,000 (grossed up) benefit. If the employee takes the vehicle home, then clearly this is personal use and then calculations must be made toward the \$30,000 limit.

Question 18

Could you please advise on the following FBT issues?

Our Company is located in an industrial area, but we are within 1km of a public car park that is for airport parking. Does this fall under the definition of commercial car park or does it fail the test?

Answer

This is not an issue unless your turnover exceeds \$10 million. We can find nothing to indicate airport parking fails the test and have referred our subscriber to an organisation which specialises in FBT car parking issues to see if any savings are possible.

Question 19

We have traditionally paid our employees living away from home allowance (LAFHA). Such payments give rise to an FBT liability, which can be reduced if the employee meets a set of strict criteria. The problem for our Company is that we cannot tell which employees will meet the eligibility criteria and those that will not. One employee will cost us double the amount of the allowance in FBT and the next will cost us zero. To regain control, we want to pay our employees a different allowance, like LAFHA. However, this allowance would be taxed and allow our employees, if they meet the eligibility criteria, to claim a tax deduction equal to the concessional FBT treatment. We cannot see how individuals can gain access to deductions for accommodation and excess meal expenses in these circumstances. Is there a way, perhaps via an itinerant worker's classification for individuals to access this deduction?

Answer

We cover this issue in more detail in our annual publication. Crucial for the effectiveness of a LAFH allowance is the need to maintain a home (see below) unless they are fly-in fly-out workers.

As we do not have your full circumstances, the following general comments are made. It is vital that your employees provide an honest declaration about living away from home.

In the event they cannot do this you may wish to consider paying them a taxable allowance which is taxed under PAYG, meaning no FBT implications for you, but note the concessions below for fly-in fly-out and drive-in drive-out workers.

Maintaining a home in Australia that you are required to live away from

If you maintain a home in Australia available for immediate use and enjoyment at all times, and that your duties of employment require you to live away from, the employer can only receive the concessional treatment for any LAFHA they pay you for 12 months. After 12 months, the employer will have to pay fringe benefits tax (FBT) on any LAFHA they pay you or benefits they give the employee.

An employee must:

- Provide a declaration to the employer about living away from home.
- Ensure that they keep records of expenses and provide evidence of this, or provide a declaration setting out information about the expenditure to the employer.

Fly-in fly-out or drive-in drive-out

If the employee works on a fly-in fly-out or drive-in drive-out basis, you are **not** to maintain a home in Australia and the 12-month period does not apply.

You need to:

- Provide a declaration to your employee about living away from home
- Keep records of expenses and provide evidence of this, or a declaration setting out information about the expenditure to the employer.

Don't maintain a home in Australia and not working on a fly-in fly-out or drive-in drive-out basis

If you are an employee who does not maintain a home in Australia and does not work on a fly-in fly-out or drive-in drive-out basis then:

- The employer does not receive concessional treatment from FBT on any LAFHA they pay you or benefits they provide.
- The LAFHA or benefit may be a reportable fringe benefit amount on your payment summary.

Amounts that are reportable fringe benefits are used to determine the employees' entitlements to certain income-tested tax concessions and liability for income-test obligations for the year.

Given the markup factor for FBT which equates to you, the employer paying the highest marginal tax you should avoid paying non-concessional LAFHA allowances to employees.

Question 20

I am employed on salary through my own Company as a Contractor in the IT sector. I fall under PSI and thus any profit is treated as my personal income and taxed accordingly. I work in the city and commute some hours each day. If the Company was to rent a city apartment for me to stay in 4 to 5 nights a week (away from home) would that be deductible to the Company and would there be any FBT implications? Would there be any difference in the answer if the Company just paid for a hotel room instead. I would maintain my residence in the suburbs at all times.

Answer

We believe there could well be FBT implications as you appear to be making a decision based on lifestyle or domestic considerations. The fundamental question would be whether an arm's length employer would provide a city apartment for an employee living in the suburbs on the basis he/she was "living away from home." We note the time you spend commuting and you could apply for a private ruling.

Question 21

We have an employee who has a rental property, and the employee has requested we allow them to salary package their rental property loan interest and other rental property expenses such as council rates, water rates, land tax and repairs.

We will request they send us a letter stating they wish to package from their future salary, and we will obtain otherwise deductible declarations from them so that no FBT would be payable on the expenses packaged.

When we package those expenses is there payroll tax on them or do, we as an employer reduce our payroll tax liability by allowing this type of otherwise deductible items to be salary packaged?

Answer

It does sound like a lot of trouble. We suggest it might be easier for the employee to fill out an application to vary PAYG instalments. Notwithstanding if you are both happy to do it this way then the arrangement is effective for FBT under the "otherwise deductible rule."

Regarding payroll tax, you will continue to pay it on the full amount irrespective of the salary packaging.

Question 22

Fringe Benefits Tax

We have been told by our Accountant that he must pay \$8,500 for the Ford Territory SUV which is supplied by the Company (he is a director of) and is parked at his property. The business requires that if he is on call and cannot come back to the factory at various times to get the car.

This car is sign written with the Company details. He also has his own private vehicle. Can you please advise?

Answer

I think it is likely that your accountant is correct and that he is referring to an employee reimbursement for the private use of the motor vehicle by him. In so doing, there is no FBT payable on the Ford Territory SUV. In determining this amount the Accountant has either used the Statutory Formula or applied the operating cost method by using a logbook.

Question 23

A public benevolent institution owns a number of dual cab utility vehicles which are mainly used for business purposes. Staff in who are in charge of these vehicles also use these for private purposes over and above commuting to and from work and over and above incidental private use. The PBI holds an exemption from some taxes including an exemption from FBT. Should the private usage on these vehicles over and above incidental private use and home to work commuting be declared as a Fringe Benefit? The relevant staff also makes a financial contribution to the PBI for use of the vehicles via a pay deduction each fortnight.

Answer

Employees of PBI's normally receive fringe benefits of up to \$30,000 (grossed up) as part of their employment.

As long as the financial contribution covers the limited private use there should not be an FBT issue.

However, be aware that ATO have signaled practices may be changing on these vehicles and we will keep subscribers informed.

Travel in certain vehicles that are designed mainly as work vehicles is exempt if the travel is work related and any other private use by the employee or associate is **"minor, infrequent and irregular."** There is not a great deal of guidance on the meaning of 'minor, infrequent and irregular.' If the employee being provided with an eligible work vehicle does not have access to another form of transportation for private use, it is difficult to establish that any private use in the eligible work vehicle is only 'minor, infrequent and irregular.'

The vehicles that qualify are:

- A taxi, panel van or utility truck designed to carry a load of less than one tonne.
- Any other road vehicle designed to carry a load of less than one tonne.

The ATO has over the years, published updated list of exempt vehicles by way of annual Addenda to MT 2024. It is recommended that any vehicle is proposed to be treated as exempt is cross-checked against the current list on the ATO website.

Question 24

I have some questions about FBT & staff loans:

1. If you provide a staff loan, then you must charge the FBT benchmark rate of interest to avoid any FBT liability?
2. If you provide a loan to staff to buy shares as an investment, will the interest be "otherwise deductible" for FBT purposes?
3. Does it make any difference if the shares are in the employers' company?
4. If "otherwise deductible", can the interest cost be Salary Sacrificed with no FBT applying?

Answer

- 1) The answer is... generally yes unless the otherwise deductible rule applies and the benchmark rate of interest is quoted in our annual publication.
- 2) If there is a realistic expectation that the shares will derive dividends at some point, then the otherwise deductible rule will apply meaning no FBT will be payable even if the interest is not paid. What happens here is that the taxable value of the loan benefit is reduced if the funds are used to derive assessable income by the employee.
- 3) If the shares are in the employer's company, then for obvious reasons.... No employee declaration is required. The employer already knows how the funds are being used.
- 4) it is quite possible to formalise this arrangement as a salary sacrifice with the employee when negotiating their employment package.

Question 25

We are a building materials wholesales company. If we provide the company Ute to our sales rep. who need to carry the goods to customer from time to time, does it fall into the FBT?

I don't know the percentage of private use but from my understanding, at least driving between home and company will be the private use. Technically we need staff to do the logbook and pay the FBT if only small portion of private use.

Answer

As you are an associate of the employer technically it could fall within the ambit of FBT.

However, if the private use of the Utility is incidental there should not be a problem with this.

The ATO recently published guidelines on this matter. We also covered this in detail in issue #0094.

Question26

We have a construction company, and I was wondering if we were allowed to salary sacrifice mortgage repayments for some employees, and if so, would the company have to pay 40% FBT?

Answer

Your employee can certainly salary sacrifice his/her mortgage repayments. Company needs to pay 47% FBT tax.

Question 27 (a)

FBT Implications of Upgrading the Depot vehicles. Under the new ATO Ruling MT2024 we wish to confirm the FBT implications.

Key Facts

- It is proposed to change the Depot vehicles from Mitsubishi Tritons to Ford Ranger and Toyota Hilux.
- There is a new ATO ruling (MT2024) on private use of work utility vehicles.

Key Questions

1. Are the Dual cab Ford Ranger and Dual cab Toyota Hilux eligible for the FBT exemption including eligible work-related travel or private travel, which is minor, infrequent, and irregular?
2. If the vehicles are not eligible for the exemption, how is the FBT calculated?

Eligibility for FBT Exemption

The Dual cab Ford Ranger and Dual cab Toyota Hilux are eligible for the above mentioned FBT Exemption under s8. (b) of MT2040 which says:

“while having a designed load capacity of less than one tonne, they are not designed for the principal purpose of carrying passengers (sub-section 8(2))”.

The Test is:

- If the designed seating capacity and passenger weight assuming each passenger weighs 68kg, is less than the remaining load capacity of the vehicle then the vehicle is eligible for the above mentioned FBT exemption.

Ford Ranger -Dual Cab

The Ford Ranger has flexible seating and engine options but the FBT Exemption test can be shown as follows:

Ford Ranger Dual cab

Seating Capacity	5 persons	6 persons	7 persons
Gross Vehicle Weight	3,200 kg	3,200 kg	3,200 kg
Kerb weight	2,235 kg	2,235 kg	2,235 kg
Load Capacity	965 kg	965 kg	965 kg
Passenger Weight	340 kg	408 kg	476 kg
Excess Load capacity	625 kg	557 kg	489 kg
Excess load capacity > passenger weight	Yes	Yes	Yes

Note:

Ford Ranger kerb weight: Kg

As per Ford Brochure (including 1 driver 75kg): 2,260
Kerb weight without driver: 2,185
Kerb weight with canopy & tow bar (Estimate 50kg): 2,235

Kerb weight for Council vehicles: 2,235

Where the excess load capacity exceeds the passenger weight the vehicle is eligible for the above-mentioned work related FBT exemption with limited and infrequent private use.

The Ford Ranger is eligible for the Work related FBT exemption with limited and infrequent private use in all passenger configurations.

However, employees issued with these vehicles will have unlimited private use and FBT will apply.

Method of Calculating FBT

Where FBT does apply the employer has the option of using the logbook method or the statutory formula for calculating the FBT.

Council does not use the logbook method for any vehicles and will use the Statutory Method consistent with past practice.

Question 27 (b)

Could you please confirm that our calculation methodology is correct? The information regarding vehicle weight has been provided by Ford.

Are there any other considerations to take into account?

Answer

It is confirmed your analysis is correct and in full compliance with the law.

However, given the statutory method results in significant FBT and in the event the vehicle (with FBT) is salary sacrificed and costed to the employee's package, it is open for an employee to contend that personal use beyond commuting to work is indeed minor and infrequent.

This may be the case if the employee's family owns a second vehicle.

Comment from member..... *I acknowledge your note regarding employees use possibly being minor and infrequent however this is not an issue for Council or employees, as Council pays the FBT which is not costed back to the employee.*

If we thought the private use might be minor and infrequent, we could consider using the logbook to test the usage and find out. Anecdotal evidence suggests continuous private use.

Question 28

We are looking at employing someone currently living in Brisbane. Our office is in Central Queensland.

Question: Can we pay for their accommodation for 3 months without attracting Fringe Benefits Tax?

Answer

If this is "an expense payment where the recipient's expenditure is in respect of the removal or storage of household effects of the employee" FBTAA1986 section 58B(1)(a)(i) the following is required...

"Documentary evidence of the recipient's expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date".

Section 58B(1)(e)

.... Then the benefit will be exempt.

The ATO has specific guidelines to the FBT exemption for temporary accommodation. The ongoing rent as such is not FBT exempt.

The Temporary accommodation: The FBT concession reduces the taxable value of fringe benefits arising from providing temporary accommodation (including household goods) to an employee who changes their usual place of residence during employment, or to start employment.

Where the temporary accommodation is at the new location, the employee must start to make sustained and reasonable efforts to buy or lease suitable long-term accommodation as soon as reasonably practicable after starting work at the new location.

The concession is limited to an occupancy period that begins seven days before the day the employee starts work at the new location and ends when the employee could reasonably be expected to occupy the home after it has been purchased or leased.

The concession is ordinarily limited to a maximum occupancy period of four months. However, it may apply for a maximum of 12 months, as follows.

Where the employee gives you, a declaration outlining their efforts to find suitable long-term accommodation, the concession may apply for a maximum of six months.

Where the employee: Owned a home at the former location but sold it within six months of starting work at the new location and, during that period, attempted to buy a home at the new location, and

Gives you a declaration (see below) outlining their efforts to find suitable long-term accommodation.

In either case, the concession will end before the four months, six months or 12 months elapse if the employee stops making reasonable and sustained efforts to buy or lease suitable long-term accommodation.

The Temporary accommodation relating to relocation declaration must be in a form approved by the Commissioner (refer to Declaration).

Question 29

One of the employees has retired. His remuneration package included company car. On his retirement he was allowed to retain the car with a market value of \$34K as a gift. What is/are the right accounting/taxation treatment of this transaction? What is the correct treatment of the asset itself, do I write it off at the WDV or do I sell it?

Answer

Usually, the transfer to an employee of an asset of the employer for less than market value will result in a transfer property benefit for FBT purposes.

Here the taxable value is market value less any employee contribution towards the transfer.

In the event the transfer is part of the employee's termination arrangements, the transfer is considered to be an eligible termination payment (ETP) by the ATO.

Subsection 27A(8) of ITTA 1936 provides that where a transfer has been made to a person for the purposes for making an ETP, the transfer is deemed to be payment of an amount equal to the value of the property immediately before the transfer.

Subsection 136(1) of the FBTA defines 'fringe benefit' and specifically excludes ETPs (para K).

This means we have cleared the FBT issue.

However, PAYGW will be required from the "payment".

The time of the payment is when the car is transferred to the retiree.

Assuming he is over 55 then, then the ETP will be taxed at the maximum rate of 15% plus Medicare levy.

The ETP cap for 2019 FY is \$210k.

Allowance must be made for this PAYGW by grossing up the value of the car to arrive at a gross ETP amount due to the employee such that the value of the car represents the 'net' amount of the ETP.

On the basis written down value equates to market value and in line with normal practices dispose of the asset in the books at WDV.

Effectively this is a sale as title will have to be transferred.

The debit side of the journal is an expense in the P&L being Termination Payment to Mr XYZ.