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News

FBT season 2022: annual compliance update

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CCH Learning (<https://www.cchlearning.com.au/>) recently hosted the *Fringe Benefits Tax 2022 – Annual FBT Compliance Update with the ATO* webinar in which Assistant Commissioner, Jenny Lin, was joined by a panel of experts to provide an update on a range FBT matters. The main points of discussion included the continued impact of COVID-19 on FBT liabilities, law and policy updates, the ATO's compliance focus and emerging issues, and 2022 FBT returns.

Continued impact of COVID-19 on FBT liabilities

FBT on COVID-19 testing under current law

Whether FBT applies to COVID-19 testing under the current law, depends on how and where the tests are provided and their frequency and purpose.

A **work-related medical screening exemption** applies (*Fringe Benefits Tax Assessment Act 1986* (FBTAA) s 58M (/resolve-citation/XATAGNEWS_HANDLE%20io704893sl24497284)) if specific requirements are met, ie testing is carried out by, or on behalf of a legally qualified medical practitioner or nurse, and is available to all employees. An employer simply providing rapid antigen tests (RATs) to an employee would not normally fall within this exemption.

Under the current law, the **minor benefits exemption** will only apply if RATs are provided on an infrequent or irregular basis, and the total value of the tests provided to an employee during the year does not exceed \$300. The **otherwise deductible rule** might also apply if the employee is travelling on work, the test is required by the destination jurisdiction or state and for the employee to return to Australia or their home state or territory.

The government has recently [announced](#) (<https://ministers.treasury.gov.au/ministers/michael-sukkar-2019/media-releases/tax-deductibility-covid-19-test-expenses>) measures to ensure that COVID-19 testing (Polymerase

Chain Reaction (PCR) and RATs) are tax deductible and exempt from FBT for businesses, where they are purchased for work-related purposes (see *Measures announced but not yet enacted* below). The ATO will provide more detailed advice and guidance when the measures are enacted. In the meantime, it is important that employers keep records of how much is spent on RATs.

Vaccine incentives and rewards

The ATO has recently published the [COVID-19 vaccination incentives and rewards – your tax and super obligations](https://www.ato.gov.au/law/view/document?DocID=AFS/VACC_INC-COVID-19) (https://www.ato.gov.au/law/view/document?DocID=AFS/VACC_INC-COVID-19) factsheet which provides guidance on the tax and superannuation consequences for providing employees with incentives or rewards for having their COVID-19 vaccinations or booster dose. The FBT and other consequences will differ depending on how the employer provides the incentive eg cash, paid leave, or non-cash benefit.

Working from home

Where an employer provides support equipment to employees to help them work from home, these will generally be fringe benefits. However, there are exemptions that may apply. There are also other instances where the otherwise deductible rule may apply.

Exemption for specific work-related items

The following items are usually [exempt from FBT](https://www.ato.gov.au/general/fringe-benefits-tax-(fbt)/fbt-exemptions-and-concessions/work-related-items-exempt-from-fbt/) ([https://www.ato.gov.au/general/fringe-benefits-tax-\(fbt\)/fbt-exemptions-and-concessions/work-related-items-exempt-from-fbt/](https://www.ato.gov.au/general/fringe-benefits-tax-(fbt)/fbt-exemptions-and-concessions/work-related-items-exempt-from-fbt/)) (FBTAA s 58X ([/resolve-citation/XATAGNEWS_HANDLE%20io704906sl24497527](https://www.ato.gov.au/general/fringe-benefits-tax-(fbt)/fbt-exemptions-and-concessions/work-related-items-exempt-from-fbt/))) if they are primarily used by employees for work:

- portable electronic devices (laptops, tablets, smartphones, calculators)
- computer software
- protective clothing
- briefcases, and
- tools of trade.

This is a defined list and does not include a desktop computer.

The exemption is limited to just one of each of these items where it carries out a substantially identical function. The only exception is if the item is a replacement for one that perhaps has been destroyed or lost.

Starting from 1 April 2021, small businesses with aggregated turnover of less than \$50 million have access to the exemption for multiple portable electronic devices.

Minor benefits exemption and otherwise deductible rule

The minor benefits exemption (FBTAA s 58P ([/resolve-citation/XATAGNEWS_HANDLE%20io704895sl24497319](#))) may apply for minor, infrequent and irregular benefits under \$300. Provided the benefit is a “once-off” provision of office equipment eg monitors, computer mouse and keyboards to set up a working from home arrangement, the ATO will generally accept that as infrequent and irregular.

The “otherwise deductible” should also be considered. Under this rule the taxable value for certain benefits may be reduced by the amount that the employee would be entitled to claim as a deduction in their income tax return had they incurred the expense themselves.

Ongoing work from home arrangements

The ATO recognises that with longer term ongoing working from home (WFH) arrangements, equipment loaned to employees to support these arrangements are unlikely to meet the FBT exemption that applied to temporary WFH arrangements, ie in terms of the equipment being ordinarily located on business premises.

However, the equipment might still be exempt if it is provided solely for WFH. The equipment would need to be subject to a consistently enforced policy in terms of WFH home and how it is used at home. Provided the equipment is used solely for work or with some incidental private use, the ATO will accept that the requirements of the exemption are met. If the equipment is provided for alternate purposes, or if the employee does end up using it significantly for private purposes, this will need to be apportioned and a declaration and evidence will be required in terms of the work-related use.

Cars and car parking

Cars garaged and business premises

Changes in the use of cars provided by employers to employees over the last year may affect the method that an employer chooses to calculate FBT. Where a car was returned to the employer’s business premises, the employee could not gain access to the car and the employee had relinquished access to use the car for private purposes, the ATO accepted that during periods of COVID-19 restrictions, the car would not be available for private use and there would be no FBT payable.

Cars garaged at an employee’s home

Generally, if a car is garaged at, or near the employee's home it is considered to be available for private use. There is a specific exemption for certain types of vehicles including taxis, panel vans or utility vehicles designed to carry less than one tonne, provided the private use is limited to travel between home and work, incidental travel in the course of performing employment duties and non-work use that is minor, infrequent and irregular.

Where a car has not been driven, or has only been driven for maintenance purposes, the ATO has accepted that the car is not being used. In these circumstances if an election is made to use the operating cost method and odometer readings for the car have been kept for the period the car is garaged, this should reduce the taxable value to nil and there is no FBT liability.

Where a car is being driven, but for business purposes, then the private use can be reduced by the business use percentage. If the car has only been driven for work, then the taxable value could be reduced to nil. Taxable value can only be reduced if appropriate records are kept establishing usage.

There is no requirement for a new logbook if it is not a logbook year. Where there is a logbook for the period the car is being garaged at home, eg during a period of COVID-19 restrictions, the logbook, odometer records and any changes in car usage must be considered to work out the appropriate business use percentage.

Car parking

The ATO recognises that car park closures during periods of COVID-19 restrictions may have impacted whether an employer is providing a car parking fringe benefit. No car parking benefits are provided on a particular day where the work car park is closed on that day, or all commercial parking stations within 1km radius of the work car park are closed on that day.

Comprehensive collection of evidence and data around whether car parking benefits are actually being provided on a particular day, eg boom gate data, swipe key data, or evidence that the office is officially closed may assist in significant FBT savings for organisations.

Entertainment

The ATO expects to see lower levels of entertainment than normal because of the continued impact of COVID-19 over the past year. This will in turn impact which method employers may want to elect to work out their fringe benefits, eg 50:50 split method or actual cost method. The key point to note is that if the 50:50 method is being used, other exemptions like the

minor benefits exemption cannot be factored in. Depending upon the nature and frequency of the benefit that has been provided, employers may want to review and change the method they might ordinarily use for calculating the taxable value of entertainment benefits.

Another change in this space is the extension of the ATO's compliance approach for not-for-profit salary packaging in relation to entertainment. The ATO will not apply compliance resources to scrutinise expenditure under these arrangements for the FBT year ending 31 March 2022 for meals provided by a supplier that was authorised as a meal entertainment provider from 1 April 2021, and while restaurants and public venues were required to be closed to dine-in service due to a COVID-19 state public health order.

There is a comprehensive [landing page \(http://www.ato.gov.au/covidFBT\)](http://www.ato.gov.au/covidFBT) on the [ATO's website \(https://www.ato.gov.au/\)](https://www.ato.gov.au/) containing the ATO's most up to date information for employers on the provision of fringe benefits relating to COVID-19 (see [www.ato.gov.au/covidFBT \(http://www.ato.gov.au/covidFBT\)](http://www.ato.gov.au/covidFBT)).

FBT law and policy updates

Car parking

[TR 2021/2 \(/resolve-citation/XATAGNEWS_HANDLE%20io3385035sl1257287978\)](#) sets out the Commissioner's view on when the provision of car parking is a car parking benefit for the purposes of the FBTA. The finalised ruling provides clarification on when a parking facility is a "commercial car parking facility".

The view expressed in [TR 96/26 \(/resolve-citation/XATAGNEWS_HANDLE%20io563631sl17255329\)](#) (withdrawn) that car parking facilities with a primary purpose other than providing all-day parking were not commercial parking stations, eg facilities that usually charge penalty rates significantly higher than rates chargeable for all-day parking at commercial all-day parking facilities, has not been retained in [TR 2021/2 \(/resolve-citation/XATAGNEWS_HANDLE%20io3385035sl1257287978\)](#). This view ceases to apply for car parking benefits provided on or after 1 April 2022.

[TR 2021/2 \(/resolve-citation/XATAGNEWS_HANDLE%20io3385035sl1257287978\)](#) provides that where a parking facility is not managed by a car parking operator, it may nevertheless be a commercial car parking facility if it displays 3 hallmark characteristics, namely, if the parking facility:

- has clear signage visible from the street advertising that paid parking is available
- has mechanisms to control who can enter and/or exit the parking facility, or park at the facility. This may include boom gates, or “pay and display” ticketing machines
- charges more than a nominal fee (usually a significantly lower rate than the local market rate) for paid parking. This includes charging a user for parking which is not all-day parking (such as parking at an hourly rate).

Generally, if a parking facility displays 2 or more of these characteristics, it is a commercial car parking facility.

[TR 2021/2 \(/resolve-citation/XATAGNEWS_HANDLE%20io3385035sl1257287978\)](#) does not address the meaning of “primary place of employment” confirmed by the Full Federal Court in *Virgin Australia Regional Airlines Pty Ltd & Anor v FC of T* [2021 ATC ¶20-807 \(/resolve-citation/XATAGNEWS_HANDLE%20io3448958sl1304361961\)](#) (*Virgin Australia Airlines*) and discussed immediately below. The ATO will amend the ruling to include further guidance on the court’s decision.

Virgin Australia Airlines decision

In *Virgin Australia Airlines*

[\(/https://iknow.cch.com.au/document/atagUio3448958sl1304361961/fc-of-t-v-virgin-australia-regional-airlines-pty-ltd-amp-anor\)](https://iknow.cch.com.au/document/atagUio3448958sl1304361961/fc-of-t-v-virgin-australia-regional-airlines-pty-ltd-amp-anor) the Full Federal Court confirmed the Commissioner’s position regarding the meaning of “[primary place of employment \(/resolve-citation/XATAGNEWS_HANDLE%20io705099sl644044253\)](#)” in s 136(1) [\(/resolve-citation/XATAGNEWS_HANDLE%20io705099sl644043828\)](#) of the FBTA for aircraft crew (for car parking fringe benefits purposes) is the airport terminal and not the aircraft.

A Decision impact statement is due to be published on 3 March 2022 outlining the ATO’s response to the court’s decision concerning the interpretation of “primary place of employment” in s 136(1) [\(/resolve-citation/XATAGNEWS_HANDLE%20io705099sl644043828\)](#) when read with the extended meaning of “[business premises \(/resolve-citation/XATAGNEWS_HANDLE%20io705099sl644043905\)](#)” in s 136(2) [\(/resolve-citation/XATAGNEWS_HANDLE%20io705099sl644044414\)](#) of the FBTA.

Further reading: “[FBT: car parking fringe benefits no longer up in the air](#)

[\(/https://iknow.cch.com.au/document/xatw1Uio3449946sl1305349783/fbt-car-parking-fringe-benefits-no-longer-up-in-the-air\)](https://iknow.cch.com.au/document/xatw1Uio3449946sl1305349783/fbt-car-parking-fringe-benefits-no-longer-up-in-the-air)”, Issue 46, 2021 of *CCH Australian Tax Week*.

Travel and Living-away-from-home allowance

Three key guidance products that were finalised in 2021 relating to employee travel expenses and employee living-away-from-home expenses and allowances include:

[TR 2021/1 \(/resolve-citation/XATAGNEWS_HANDLE%20io3339950sl1230770931\)](#) – Income tax: when are deductions allowed for employees' transport expenses?

[TR 2021/4 \(/resolve-citation/XATAGNEWS_HANDLE%20io3408186sl1273905235\)](#) – Income tax and fringe benefits tax: employees: accommodation and food and drink expenses, travel allowances and living-away-from-home allowances, and

[PCG 2021/3 \(/resolve-citation/XATAGNEWS_HANDLE%20io3407561sl1273310042\)](#) – Determining if allowances or benefits provided to an employee relate to travelling on work or living at a location – ATO compliance approach.

FBT exemption for retraining and reskilling

For benefits provided from 2 October 2020, there is a specific exemption for employees who are providing training or education to redundant or soon to be redundant employees (s 58ZE ([/resolve-citation/XATAGNEWS_HANDLE%20io33394687sl1262052228](#)) FBTA). Those who have already lodged their 2021 FBT return and paid FBT owing can amend their 2021 FBT return to reduce the FBT paid for retraining and reskilling, provided they have the relevant supporting documents and evidence.

There are no limits on the number of training or education courses employees may undertake, or on the cost of the education or training.

Measures announced but not yet enacted

The following measures have been announced but are not yet enacted:

Changes to FBT record keeping: Employers will be allowed to use existing corporate records rather than employee declarations and other prescribed records to comply with their FBT obligations. The measure will have effect from the start of the first FBT year (starting on 1 April) after the date of assent of the enabling legislation (Budget 2020-21).

Work related COVID-19 testing: The government has recently [announced](#) (<https://ministers.treasury.gov.au/ministers/michael-sukkar-2019/media-releases/tax-deductibility-covid-19-test-expenses>) that it will introduce legislation to make clear that COVID-19 test costs (PCR and RATs) are tax deductible when incurred for work-related purposes. This will apply both when an individual is required to attend a physical workplace or has the option to work remotely. Employers will also be exempt from FBT for the cost of COVID-19 testing provided to employees for work-related purposes.

The amendments will take effect from the beginning of the 2021–22 tax year.

Minor technical amendment: The *Treasury Laws Amendment (Enhancing Tax Integrity and Supporting Business Investment) Bill 2022* (https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6844) amends the FBTA to restore access to FBT exemptions for certain tax exempt not-for-profit societies and associations inadvertently excluded by previous amendments made to the FBTA.

ATO compliance focus and current and emerging issues

ATO compliance focus

The ATO continues to engage with employers to review and assist their understanding of and compliance with their FBT obligations. Areas of ATO compliance focus include car fringe benefits for small businesses and when reportable fringe benefits are reported where no FBT return has been lodged.

Emerging issues

The ATO's FBT Stakeholder Group

(<https://www.ato.gov.au/General/Consultation/Consultation-groups/Stakeholder-relationship-groups/Fringe-Benefits-Tax-Stakeholder-Group/#Members>) works with agents and advisers to understand and address emerging issues impacting employers. Some topics currently being worked through by the group include:

- electric vehicles – car fringe benefits – how to calculate home electricity as “fuel” costs for electric vehicles
- novated leases / bona fide leases
- tax-exempt body entertainment fringe benefits (updates to FBT guide for employers), and
- car fringe benefits (updates to FBT guide for employers).

Recent High Court decisions on worker classification

The High Court recently handed down the following 2 decisions on the classification of “employee” and “independent contractor”:

- *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* [2022] HCA 1 (<http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2022/1.html>), and
- *ZG Operations Australia Pty Ltd v Jamsek* [2022] HCA 2 (<http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2022/2.html>).

The decisions are important and relevant for FBT in terms of the FBTAA applying to employees.

Further reading: “[High Court ruling highlights the importance of employment contracts](https://iknow.cch.com.au/document/xatw1Uio3473791sl1322372932/high-court-ruling-highlights-the-importance-of-employment-contractsarticle) (<https://iknow.cch.com.au/document/xatw1Uio3473791sl1322372932/high-court-ruling-highlights-the-importance-of-employment-contractsarticle>)”, Issue 5, 2022 of *CCH Australian Tax Week*.

FBT returns 2022

The ATO has asked employers that are registered for FBT to complete a [Notice of non-lodgment – Fringe benefits tax form](https://www.ato.gov.au/uploadedFiles/Content/SME/downloads/PHG16542FBT.pdf) (<https://www.ato.gov.au/uploadedFiles/Content/SME/downloads/PHG16542FBT.pdf>) if they do not need to lodge an FBT return for the year.

The statutory due dates this year for lodgment and payment are still 21 May 2022 for self-preparers and tax agents who lodge by paper, or 25 June 2022 for agents that lodge electronically. However, as both these days are Saturdays, the ATO will accept the due date for lodgment and payment on the next business day, ie **Monday, 23 May 2022** and **Monday, 27 June 2022** respectively.

There will be no bulk lodgment concessions or deferrals this year.

*If you missed the webinar, you can access the **CCH Learning** recording [here](https://wolterskluwer.cchlearning.com.au/learn/course/internal/view/elearning/1309/fringe-benefits-tax-2022-annual-fbt-compliance-update-with-the-ato) (<https://wolterskluwer.cchlearning.com.au/learn/course/internal/view/elearning/1309/fringe-benefits-tax-2022-annual-fbt-compliance-update-with-the-ato>).*

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2 March 2022

[COVID-19: determination on SMSF in-house assets](/news/xatagnewsUio3481326sl1328443807/covid-19-determination-on-smsf-in-house-assets) (</news/xatagnewsUio3481326sl1328443807/covid-19-determination-on-smsf-in-house-assets>)

2 March 2022

[Superannuation: excess non-concessional contribution determination affirmed](/news/xatagnewsUio3481284sl1328366849/superannuation-excess-non-concessional-contribution-determination-affirmed) (</news/xatagnewsUio3481284sl1328366849/superannuation-excess-non-concessional-contribution-determination-affirmed>)

2 March 2022

[Class rulings issued \(/news/xatagnewsUio3481255sl1328311463/class-rulings-issued\)](/news/xatagnewsUio3481255sl1328311463/class-rulings-issued)

2 March 2022

[ATO website updates – super; complaint resolution \(/news/xatagnewsUio3481254sl1328311026/ato-website-updates-super-complaint-resolution\)](/news/xatagnewsUio3481254sl1328311026/ato-website-updates-super-complaint-resolution)

2 March 2022

[Consultation on deductible gift recipient category for pastoral care services \(/news/xatagnewsUio3481227sl1328242840/consultation-on-deductible-gift-recipient-category-for-pastoral-care-services\)](/news/xatagnewsUio3481227sl1328242840/consultation-on-deductible-gift-recipient-category-for-pastoral-care-services)

2 March 2022

[February exchange rates \(/news/xatagnewsUio3481218sl1328216002/february-exchange-rates\)](/news/xatagnewsUio3481218sl1328216002/february-exchange-rates)

1 March 2022

[Section 100A: the sleeper awakes! \(/news/xatagnewsUio3480880sl1327839981/section-100a-the-sleeper-awakes\)](/news/xatagnewsUio3480880sl1327839981/section-100a-the-sleeper-awakes)

1 March 2022

[COVID-19 \(NSW\): payroll tax reduction \(/news/xatagnewsUio3480849sl1327813090/covid-19-nsw-payroll-tax-reduction\)](/news/xatagnewsUio3480849sl1327813090/covid-19-nsw-payroll-tax-reduction)

1 March 2022

[FBT season 2022: annual compliance update \(/news/xatagnewsUio3480784sl1327810050/fbt-season-2022-annual-compliance-update\)](/news/xatagnewsUio3480784sl1327810050/fbt-season-2022-annual-compliance-update)

1 March 2022

[Bankruptcy & Insolvency – Amendments to Insolvency Practice Rules for electronic communications \(/news/xatagnewsUio3480774sl1327790330/bankruptcy-insolvency-amendments-to-insolvency-practice-rules-for-electronic-communications\)](/news/xatagnewsUio3480774sl1327790330/bankruptcy-insolvency-amendments-to-insolvency-practice-rules-for-electronic-communications)

28 February 2022

[ASIC consultation paper on Financial Services and Credit Panel regulatory guidance \(/news/xatagnewsUio3480350sl1327366114/asic-consultation-paper-on-financial-services-and-credit-panel-regulatory-guidance\)](/news/xatagnewsUio3480350sl1327366114/asic-consultation-paper-on-financial-services-and-credit-panel-regulatory-guidance)

28 February 2022

[Company law – Case analysis – ASIC imposes penalty for failure to provide financial services \(/news/xatagnewsUio3480062sl1327038922/company-law-case-analysis-asic-imposes-penalty-for-failure-to-provide-financial-services\)](/news/xatagnewsUio3480062sl1327038922/company-law-case-analysis-asic-imposes-penalty-for-failure-to-provide-financial-services)

25 February 2022

[Company law – Case analysis – A freeze on assets for potential CGT liability on a Scheme of Arrangement \(/news/xatagnewsUio3479552sl1326604989/company-law-case-analysis-a-freeze-on-assets-for-potential-cgt-liability-on-a-scheme-of-arrangement\)](/news/xatagnewsUio3479552sl1326604989/company-law-case-analysis-a-freeze-on-assets-for-potential-cgt-liability-on-a-scheme-of-arrangement)

25 February 2022

[OECD update: tax incentives; Secretary-General tax report; Pillar One consultation document \(/news/xatagnewsUio3479520sl1326576399/oecd-update-tax-incentives-secretary-general-tax-report-pillar-one-consultation-document\)](/news/xatagnewsUio3479520sl1326576399/oecd-update-tax-incentives-secretary-general-tax-report-pillar-one-consultation-document)

25 February 2022

[ATO website updates – FBT; excise duty rates; Tax Help program \(/news/xatagnewsUio3479519sl1326575699/ato-website-updates-fbt-excise-duty-rates-tax-help-program\)](/news/xatagnewsUio3479519sl1326575699/ato-website-updates-fbt-excise-duty-rates-tax-help-program)

25 February 2022

[Tax agent's registration terminated and maximum prohibition period imposed \(/news/xatagnewsUio3479475sl1326554721/tax-agent-s-registration-terminated-and-maximum-prohibition-period-imposed\)](#)

25 February 2022

[Public ancillary fund guidelines remade \(/news/xatagnewsUio3479474sl1326554135/public-ancillary-fund-guidelines-remade\)](#)

24 February 2022

[APRA publishes new FAQs on outcomes assessment \(/news/xatagnewsUio3479173sl1326320922/apra-publishes-new-fags-on-outcomes-assessment\)](#)

24 February 2022

[Duties \(Vic\): duty concession for acquisitions arising from reorganisation of listed stapled entities \(/news/xatagnewsUio3479186sl1326320640/duties-vic-duty-concession-for-acquisitions-arising-from-reorganisation-of-listed-stapled-entities\)](#)

24 February 2022

[ATO website updates – tax avoidance; withholding tax; super; eInvoicing \(/news/xatagnewsUio3479171sl1326319916/ato-website-updates-tax-avoidance-withholding-tax-super-einvoicing\)](#)

24 February 2022

[Guidance on administrative penalties for electronic sales suppression tools finalised \(/news/xatagnewsUio3479088sl1326319889/guidance-on-administrative-penalties-for-electronic-sales-suppression-tools-finalised\)](#)

23 February 2022

[Luxury car tax – determining the principal purpose of a vehicle \(/news/xatagnewsUio3478765sl1326133128/luxury-car-tax-determining-the-principal-purpose-of-a-vehicle\)](#)

23 February 2022

[Deductibility of expenses in establishing employee share schemes \(/news/xatagnewsUio3478735sl1326114458/deductibility-of-expenses-in-establishing-employee-share-schemes\)](#)

23 February 2022

[ATO alert on parents benefiting from trust income of children aged over 18 years \(/news/xatagnewsUio3478736sl1326114464/ato-alert-on-parents-benefiting-from-trust-income-of-children-aged-over-18-years\)](#)

23 February 2022

[Rulings and addendum issued \(/news/xatagnewsUio3478737sl1326114467/rulings-and-addendum-issued\)](#)