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2022 FBT Year End is Fast Approaching

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The end of the Fringe Benefits Tax (FBT) year is fast approaching on 31 March 2022, so we take this opportunity to revisit some hot FBT topics for both employers and employees, including:

- Assistance and benefits provided due to COVID-19
- Motor vehicle problem areas
- Mismatched FBT and income tax amounts
- Business assets personally used by owners and staff
- Not lodging FBT returns
- Salary sacrifice and superannuation guarantee
- Car parking changes
- Travelling or living away from home
- Retraining and reskilling benefits
- Housekeeping essentials

Assistance and benefits provided due to COVID-19

Many businesses are likely to have provided different types of benefits and assistance to their employees because of COVID-19. For many of these benefits, it can be challenging to work out whether FBT should apply.

In general, minor benefits should be FBT exempt where their individual cost is under \$300 and it is reasonable to treat the benefit as minor (for example, it is provided infrequently).

Outside of this and in many cases, there are specific FBT concessions that could be available, but it is important to work through these concessions carefully.

Working from home

COVID-19 related office and site closures have meant that many employees worked from home for most of the FBT year. To assist with the transition, employers often provided work-related items such as computer monitors, printers and other equipment to assist with transition.

Where common work related items (such as laptops and mobile phones) have been provided to team members, it is unlikely an FBT liability will be triggered as long as the equipment is primarily used for work purposes.

Where multiple similar items have been provided during the FBT year, the situation becomes more complex unless your business has an aggregated turnover of less than \$50m (previously, this threshold was less than \$10m).

If an FBT exemption is not available, it is often worthwhile instead considering whether the FBT liability of such items could be reduced to the extent the employee could claim a once-only deduction in their personal return (ie. had they purchased the item themselves).

Emergency assistance

If your business provided emergency assistance to employees because of COVID-19, then FBT is unlikely to apply. While we doubt anyone would be thinking about FBT during a crisis, it's good to know that the tax system does not disadvantage your generosity.

Examples of the kinds of benefits that are exempt from FBT include immediate relief your business provides to an employee:

- for them to relocate back to Australia, including flights and transport of household goods (eg. due to health risks around COVID-19); and
- on clothing, food and temporary accommodation if an employee is stranded due to travel restrictions or is required to self-isolate or quarantine.

First aid or other emergency health care provided to an employee is also exempt if the treatment is provided by another employee (or a related company employee), or is provided at your premises (or those of a related company), or at or near an employee's worksite.

Protective equipment

Many businesses increased their workplace health and safety processes and infrastructure in response to COVID-19.

If your business provided protective equipment to allow your employees to safely continue to work, this benefit may be exempt from FBT. Unfortunately, this does not seem to be available

for all employers.

Typically, an FBT exemption would be available if your employees are involved in cleaning premises or required to be in close proximity with customers or clients. For example, the ATO suggests that this should include hairdressers, cleaners, medical practitioners and hospitality workers.

Rapid antigen testing

With the use of rapid antigen tests becoming more common, it is important to keep across the proposed changes in this area.

Under the current rules, if your business regularly provides your employees with rapid antigen tests so that they can attend their regular place of work, a FBT liability may potentially arise.

The good news is that the government has proposed changes to the rules to make it clear that such work-related COVID-19 testing benefits would be FBT exempt. If the rules are passed, the changes are intended to apply retrospectively to include benefits provided in the 2022 FBT year.

Motor Vehicle problem areas

Private use of work vehicles

Just because your business buys a motor vehicle and it is used almost exclusively for work, 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. The private use of work vehicles is firmly in the sights of the ATO and has been for some time.

Private use is when you use a car provided by your employer (this includes directors) outside of simply travelling for work related purposes.

While there are two methods to calculate the FBT liability on the private use of a car, the choice of method can result in very different FBT liabilities. For example, using the logbook method may provide a better result especially this year if the work vehicle has not been used at all and garaged at or near the employee's home. This is because if your business keeps a valid logbook/odometer records and is eligible to use the logbook method, the ATO will accept that a FBT liability won't arise if the car:

- Has not been driven at all during the period even if it has been garaged at home; or
- Has only been driven briefly to maintain the car.

In comparison, if the statutory method is used, the FBT liability could be much higher. This is because the FBT calculation under this method will include the days that the car has been garaged at home and is taken to be available for private use of the employee (regardless of whether or not the employee has 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.

Mismatched FBT and income tax amounts

The ATO is picking up mismatches between the amount reported as an employee contribution on an FBT return compared to the income amounts on an employer's tax return.

The ATO focuses on mismatches between the employee contributions relating to the fringe benefits, which are reported on the employer's fringe benefits tax return, and reporting those contributions as income on their income tax return. In particular, what concerns the ATO is where the employer has incorrectly overstated the employee contributions that they have received on their fringe benefits tax return to reduce the taxable value of the fringe benefits provided (and thereby, the employer's FBT liability).

The ATO's approach is very evidence-based, there needs to be documentation to back up whatever the business is claiming.

When business assets are used personally by owners and staff

Private use of business assets is an area that crosses across a whole series of tax areas; FBT, GST, Division 7A, and income tax.

Take the ATO's example of the property company that claimed deductions for a boat on the basis that it was used for marketing the company. Large deductions were claimed for the upkeep and running of the boat. On review, the ATO discovered the boat was used by the director and other employees for private trips and to host parties for people who had paid to attend the company's property seminars.

When looking at the activities of the business overall, the ATO determined that the director had purchased the boat primarily for their own private use. As a result, they disallowed the deductions and the private use of the boat was a fringe benefit for the employees of the company. The company had to lodge an FBT return and pay the resulting FBT liability, as well as the income tax shortfall, interest and penalties.

Not lodging FBT returns

The ATO is concerned that some employers are not lodging FBT returns or lodging them late to avoid paying tax. While we hope the ATO understands that this was a difficult year for many businesses, it's likely the ATO will still pay close attention to any employer that:

- Is registered for FBT but lodges late - If your business is likely to face delays lodging the FBT return, it's a good idea to contact us as early as possible and we will get in touch with the ATO to request an extension.
- Is not registered for FBT but employs staff (even closely held staff such as family members), and is not registered for FBT - it's essential you have reviewed your position and are certain that you do not have an FBT liability. If your business provides cars, car spaces, reimburses private (not business) expenses, provides entertainment (food and drink), employee discounts etc., then it is likely you are providing a fringe benefit.

Salary sacrifice and superannuation guarantee

Calculating superannuation guarantee on salary sacrifice

From 1 January 2020, new rules came into effect to ensure that an employee's salary sacrifice contributions cannot be used to reduce the amount of superannuation guarantee (SG) paid by the employer.

Previously, some employers were paying SG on the salary less any salary sacrificed contributions of the employee. Previously, employers were required to contribute a percentage (from 1 July 2021, this is 10.0%) of an employee's ordinary time earnings (OTE) and they could choose whether or not to include the salary sacrificed amounts in OTE.

Now, the SG contribution is 10.0% (from 1 July 2021) of the employee's 'OTE base'. The OTE base is an employee's OTE and any amounts sacrificed into superannuation that would have been OTE, but for the salary sacrifice arrangement.

Car parking changes

A controversial ruling from the ATO could expand the scope of the FBT rules dealing with car parking benefits. This is because the draft ruling changes the ATO's view on what constitutes a commercial parking station. Where an employer provides:

- Car parking facilities for employees within 1km of a commercial parking station, and
- That commercial car park charges more than the car parking threshold (\$9.25 for the year ended 31 March 2022),

a taxable car parking fringe benefit will arise unless the employer is a small business and able to access the car parking exemption.

The ruling is now finalised but the ATO has stated it will apply the new expanded definition of a commercial parking station from 1 April 2022. If you provide car parking facilities to team members, it is important that you either:

- Are certain you are able to access the small business exemption (which has a more generous turnover threshold of less than \$50m from 1 April 2021 onwards); or
- Understand the implications of the ruling to the car park facilities you provide.

Travelling or living away from home

Historically, travel allowances have caused confusion for many businesses.

Also with the ATO recently finalising its key guidance on travel costs the ATO is likely to focus on benefits relating to transport, meals and accommodation. .

If your business provides travel allowances to its employees, you will normally need to consider whether they are living away from home or just travelling overnight in the course of work.

Where your employees are travelling overnight in the course of work, travel allowances paid in relation to such travel are normally assessable to your employees. However, they might be entitled personally to claim deductions for some of their travel expenses.

For employees that are living away from home, these living away from home allowances are dealt with instead through the FBT system as a fringe benefit.

While the taxable value of the benefit is usually the amount paid, there are some generous concessions that can allow for some or all of the allowance to be FBT exempt if certain conditions are met.

Therefore, making this distinction is important.

The ATO has recently finalised its guidance in Taxation Ruling [TR 2021/4](#) on when allowances should be classified as a travel allowances or a living away from home allowance. Helpfully, the ATO has also finalised a 'safe harbour' style approach in Practical Compliance Guideline [PCG 2021/3](#) which can be used specifically for this purpose.

Retraining and reskilling benefits

Recognising that there is a change in the mix of skills required in the modern labour force, the Government has passed new rules that provide a specific FBT exemption for employers that provide retraining and reskilling benefits to their employees.

If the conditions are met, a FBT exemption is available for education or training benefits (such as course fees) provided by your business to your employees whose jobs are redundant (or soon to be redundant). Importantly, this FBT exemption can apply even if your employees are being redeployed to another part of your business.

The rules apply retrospectively to education or training benefits provided on or after 2 October 2020, which means it is relevant to the 2022 FBT year.

Housekeeping

It can be difficult to ensure records are maintained in relation to fringe benefits – especially as this may depend on employees producing records at a certain time. 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), remember to 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, or missing records where employees forget.

Please do not hesitate to contact your Lowe Lippmann Relationship Partner if you wish to discuss any of these matters further.