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# FBT season 2024: ATO compliance update

With the FBT season upon us again, Wolters Kluwer recently hosted the *Fringe Benefits Tax 2024 — Annual FBT Compliance Update with the ATO* webinar in which Jennifer Madigan, Director, FBT Risk & Governance at the ATO and a panel of experts provided an update on a range of FBT matters. This article summarises the main topics of discussion, which included law and policy updates, the ATO's compliance focus and education programs and key dates for FBT returns in 2024.

## Law and policy updates

### Electric vehicles FBT exemption

Electric cars have been exempt from FBT since 1 July 2022. Employers do not pay FBT if they provide private use of an electric car that meets all the following conditions:

- The car is a zero or low emissions vehicle. A zero or low emissions vehicle is a battery electric vehicle, a hydrogen fuel cell electric vehicle, or a plug-in hybrid electric vehicle.
- The first time the car is both held and used is on or after 1 July 2022.
- The car is used by a current employee or their associates (such as family members).
- Luxury car tax (LCT) has never been payable on the importation or sale of the car.

The exemption only applies to vehicles that are cars for FBT purposes, ie designed to carry a load of less than one tonne and fewer than 9 passengers (including the driver). Other types of electric vehicles, such as electric motorcycles and scooters, do not qualify for the exemption.

Benefits provided under a salary packaging arrangement are included in the exemption.

### Associated car expenses

Car expenses provided for an eligible electric vehicle are exempt from FBT where they are provided in connection with a car fringe benefit. Expenses for electric vehicles include:

- registration and road user charges
- insurance
- repairs or maintenance
- fuel (including electricity to charge and run electric vehicles).

Note that providing an employee with a home charging station is a fringe benefit, not an exempt running cost.

### **Second hand electric vehicles**

An emerging issue is whether a second hand or used electric vehicle qualifies for the exemption. Questions might arise in proving when that vehicle was first held and used and whether LCT was payable.

Reasonable efforts should be made to obtain relevant records to support the exemption. If relevant records are not available, registration details might provide a reasonable estimate of when the vehicle may have been first held and used. Also, consider using publicly available information to check the value of the new vehicle when it was first purchased to determine whether LCT would apply.

### **Electric vehicles FBT exemption – key steps for employers**

Although the private use of an eligible electric vehicle is exempt from FBT, the value of the benefit must be included when working out whether an employee has a reportable fringe benefits amount. Employers need to:

1. **Calculate** the notional taxable value of the benefit for reportable fringe benefits purposes.
2. **Report** the amount on the employee's income statement or payment summary if the taxable value of the employee's aggregated reportable fringe benefits is more than \$2,000 in an FBT year.

### **Guidance finalised on the EV home charging rate**

*Practical Compliance Guideline [PCG 2024/2](#)* provides a cents per kilometre rate of 4.20 cents (the EV home charging rate) that can be applied to calculate the electricity costs of charging an electric vehicle at an employee's or individual's home. The rate is multiplied by the total number of kilometres travelled by the electric vehicle in the relevant FBT or income year. This rate is effective from 1 April 2022 for FBT purposes, and from 1 July 2022 for income tax purposes.

The methodology provided in the Guideline is a shortcut method which applies the EV home charging rate only to vehicles that are solely fuelled by electric power. The Guideline does not

apply to an electric vehicle that is a plug-in hybrid vehicle which has an internal combustion engine. Employers and individuals cannot rely on the Guideline for such vehicles because they operate on a combination of petrol-driven and electricity-driven kilometres. Currently there is no ATO guidance regarding electricity costs for plug-in hybrid vehicles. This raises questions around how to calculate such costs.

Key points:

- The Guideline applies for FBT and income tax purposes.
- The Guideline does not apply to plug-in hybrid vehicles, electric motorcycles, or electric scooters.
- Where the home charging percentage can be accurately determined electric vehicle charging costs can include both home charging and commercial charging station costs.
- The transitional arrangement regarding odometer readings has been extended to 2023 year end (FBT and income tax).
- The home charging rate can be relied on for the reimbursement of electricity charging costs by leasing companies.
- It is the employer's or individual's choice to either use the methodology outlined in the Guideline or determine the cost of the electricity by determining its actual cost. The choice is per vehicle and applies for the whole income or FBT year. However, it can be changed by the employer or individual from year to year.

### **Further information**

The ATO has published the [Electric vehicles and fringe benefits tax](#) fact sheet to help employers determine their FBT obligations where they provide their employees with electric vehicles for their private use and associated car expense benefits.

Also see [Electric cars exemption](#) on the ATO's website.

### **Car parking benefits**

The ATO has recently completed updating [Chapter 16 – Car parking fringe benefits](#) of the [Fringe benefits tax — a guide for employers](#) following the finalisation of *Taxation Ruling TR 2021/2 Fringe benefits tax: car parking benefits*.

The updated chapter reflects the Commissioner's views expressed in [TR 2021/2](#) which expanded the interpretation of what constitutes a "commercial parking station" for FBT purposes to include special purpose car parks that charge penalty rates for all-day parking to the public (eg car parks at suburban shopping centres, universities and hospitals).

The updated chapter also provides further guidance regarding “primary place of employment” for the purposes of the car parking benefit provisions, following the decision in *FC of T v Virgin Australia Regional Airlines Pty Ltd & Anor* [2021 ATC ¶20-807](#); [\[2021\] FCAFC 209](#) (also see [addendum to TR 2021/2](#)). Further guidance is also included on when a benefit is provided “in respect of employment”. Note that the ATO is currently determining its position on the definition of “members of the public” with respect to car parking and FBT.

The car parking threshold for the FBT year ending 31 March 2024 is \$10.40.

## Case update

In *Bechtel Australia Pty Ltd v FC of T* [2023 ATC ¶20-869](#); [\[2023\] FCA 676](#), the Federal Court found in favour of the Commissioner and held that the taxable value of travel expenses incurred by a taxpayer in relation to its “Fly In Fly Out” (FIFO) employees for travel before and after the employees began and finished duties should not be reduced to nil, as the relevant travel did not occur in the course of employment and thus did not satisfy the “otherwise deductible” test in the *Fringe Benefits Tax Assessment Act 1986* (FBTAA). The taxpayer’s appeal to the Full Federal Court was heard in November 2023, however, the court’s decision is yet to be handed down. In the meantime, there is no change to the Commissioner’s current view regarding the deductibility of travel expenses for FIFO workers.

Further reading: “[Navigating the skies – a new tax dilemma for FIFO workers and their employers](#)”, Issue 33, 2023 of *CCH Australian Tax Week*.

## Alternative records

In our “FBT season 2023: ATO compliance update”, we reported on the [Treasury Laws Amendment \(2022 Measures No 4\) Bill 2022](#) which proposed to amend the *FBTAA* to provide the Commissioner with the power to allow employers to rely on alternative records (including existing corporate records where they are adequate) to finalise their FBT returns. This measure is now [law](#) and applies from the 2025 FBT year (1 April 2024 to 31 March 2025).

For certain benefits, employers will have a choice to use existing records in place of travel diaries or employee declarations. This will only apply if the Commissioner has made a legislative instrument prescribing the adequate alternative records. To date, the following 11 draft legislative instruments have been released:

- Fringe Benefits Tax Assessment – Adequate Alternative Records (Travel Diaries) Determination 2022 ([LI 2022/D28](#))

- Fringe Benefits Tax Assessment – Adequate Alternative Records (Relocation Transport) Determination 2022 ([LI 2022/D29](#))
- Fringe Benefits Tax Assessment (Adequate Alternative Records – Overseas Employment Holiday Transport) Determination 2023 ([LI 2023/D3](#))
- Fringe Benefits Tax Assessment (Adequate Alternative Records – Car Travel to Employment Interview or Selection Test) Determination 2023 ([LI 2023/D4](#))
- Fringe Benefits Tax Assessment (Adequate Alternative Records – Remote Area Holiday Transport) Determination 2023 ([LI 2023/D5](#))
- Fringe Benefits Tax Assessment (Adequate Alternative Records – Car Travel to Certain Work-Related Activities) Determination 2023 ([LI 2023/D6](#))
- Fringe Benefits Tax Assessment (Adequate Alternative Records – Temporary Accommodation Relating to Relocation) Determination 2023 ([LI 2023/D18](#))
- Fringe Benefits Tax Assessment (Adequate Alternative Records – Otherwise Deductible Benefits) Determination 2023 ([LI 2023/D19](#))
- Fringe Benefits Tax Assessment (Adequate Alternative Records – Living-Away-From-Home Allowance – Maintaining an Australian Home) Determination 2023 ([LI 2023/D20](#))
- Fringe Benefits Tax Assessment (Adequate Alternative Records – Fly-in Fly-out and Drive-in Drive-out Employees) Determination 2023 ([LI 2023/D21](#)), and
- Fringe Benefits Tax Assessment (Adequate Alternative Records – Private Use of Vehicles Other Than Cars) Determination 2023 ([LI 2023/D22](#))

Consultation has finished on the draft legislative instruments which the ATO expects will be finalised and published by 1 April 2024.

Note – if an employer chooses to use alternative records, the information they are required to keep to support their FBT return remains unchanged. Employers should consider their own circumstances and whether they can benefit from using alternative records.

## **ATO approach to education and compliance**

The ATO's focus is to help employers understand and comply with their FBT obligations using its communication, education and guidance materials. Through its compliance activities, the ATO also focuses on correcting employers who do not meet their FBT obligations.

Over the last year the ATO has sought to increase general awareness of employers' FBT obligations through compliance campaigns like [Know Your FBTs](#), which is primarily targeted at educating small businesses where the ATO has observed an increase in employers offering benefits for the first time to attract and retain employees.

The ATO has also worked on busting some common FBT “myths”. One such myth is the belief that an employee’s weekend personal use of a ute provided by an employer for work does not attract FBT. For guidance on the ATO’s approach to determining private use of vehicles and what is considered minor, infrequent and irregular use, see *Practical Compliance Guideline PCG 2018/3*.

Further reading: [How fringe benefits tax works](#), ATO website.

## Random enquiry program

The ATO is undertaking both risk based and random reviews of employer obligations with respect to superannuation, PAYG and FBT. The increased compliance focus ensures that employees receive their entitlements under the superannuation guarantee and non-compliant employers do not have an unfair advantage over those employers who meet their employment tax obligations.

## What attracts the ATO’s attention?

Employers who do not keep appropriate records to confirm their FBT position attract the attention of the ATO, as do those who do not lodge FBT returns or pay FBT by the due date.

## Common errors

**Motor vehicles** is the most common area in which the ATO sees errors, including:

- incorrect classification of vehicles as cars
- not keeping appropriate records, eg valid logbooks, and
- providing employees with motor vehicles for private use but treating them as 100% business use.

Other areas where the ATO commonly sees errors in reporting are:

- **Employee contributions**

Where employee contributions are not reported correctly, ie not reported or reported at the wrong label. Also, where employers incorrectly apply employee contributions.

- **Reportable fringe benefits amounts**

Where amounts are not included or are reported incorrectly, eg where employers do not include the amount on the employee’s annual income statement but include it in the FBT return, or vice versa.

Note that employee salary sacrificed superannuation contributions under an effective

salary sacrifice arrangement and made to a complying superannuation fund do not need to be included as a reportable fringe benefits amount.

- **Consolidated FBT returns**

Where employers that are part of a larger consolidated group only lodge one FBT return.

The obligation is to lodge one FBT return per employer.

## Key compliance takeaways

1. **Identify** the types of fringe benefits provided.
2. **Calculate** the taxable value.
3. **Lodge** an FBT return on time and report each employee's fringe benefits on their payment summary.
4. **Keep records** to demonstrate calculations.

Where an employer becomes aware that a mistake has been made in reporting, prompt action in contacting the ATO may avoid or minimise any penalties that may be imposed.

## FBT returns 2024

The due dates this year for lodgment and payment are:

- **21 May 2024** for employers and tax agents who lodge by paper, or
- **25 June 2024** for tax agents who lodge electronically.

The ATO also reminds employers registered for FBT to complete and lodge a [Notice of non-lodgment – Fringe benefits tax form](#) if they do not need to lodge an FBT return for the year.

## More information

Useful information on FBT can be accessed using the following ATO links:

- [ato.gov.au/FBT](https://ato.gov.au/FBT)
- [ato.gov.au/FBTelectriccars](https://ato.gov.au/FBTelectriccars)
- [tv.ato.gov.au](https://tv.ato.gov.au)

*If you missed the webinar, you may access the recording [here](#).*

