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INTELLIGENT ACCOUNTING

What employers need to know about FBT 2017

We know that no one likes to pay tax and certainly no more tax than they should. But very few people want to be on the wrong side of an Australian Taxation Office (ATO) audit where fees and penalties are paid for neglecting your obligations.

The Fringe Benefits Tax (FBT) year ends on 31 March which means the ATO will be looking closely at whether or not every employer who should be paying FBT is, and whether they are paying the right amount.

Should I be registered for FBT?

If you have employees (including Directors of a company) then it's possible your business needs to register for FBT. Generally, your business needs to register for FBT if you are providing benefits to employees that are not exempt from FBT. So, if you provide cars, car spaces, reimburse private (not business) expenses, provide entertainment (food and drink), employee discounts etc., then you are likely to be providing a fringe benefit.

There are exemptions to FBT, such as portable electronic devices like laptops and iPads (although there are rules around how many), protective clothing, tools of trade etc,. If your business only provides these exempt items, or items that are infrequent and valued under $300, then you are unlikely to have to worry about FBT.

The FBT rate is changing

The FBT rate will decrease on 1 April 2017. The rate change is because of the 2% Debt Tax (Temporary Budget Repair Levy) on high income earners which imposes a 2% levy on every dollar of a taxpayer's annual taxable income over $180,000 from 1 July 2014 until 30 June 2017. The FBT rate was brought into line with the Debt Tax to discourage high income earners from using the FBT system to lower their taxable income. Assuming the Debt Tax does end on 30 June 2017 as anticipated and not extended, the FBT and gross up rates will decrease to previous levels from 1 April 2017.

FBT year	**FBT** Rate	**Type 1** Gross Up rate	**Type 2** Gross Up rate
1 April 2015 to 31 March 2017	49%	2.1463	1.9608
1 April 2017 onwards	47%	2.0802	1.8868

Housekeeping

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), 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.

Managing the log book just got easier

Log books need to be kept by employers using the operating cost method for FBT purposes so that they can estimate and validate the business use percentage of a car. The more personal use the more tax paid. Anyone who has been through this process knows it is time consuming, particularly where there are multiple cars. The ATO has now made the process simpler where employers have 20 or more 'tools of trade' cars. A tool of trade car is a car required for the job – like for a sales representative required to travel extensively for business purposes.

There are a few conditions to access the simplified method:

- Valid log books need to be kept for at least 75% of the cars in the log book year;
- The employer (not the employee) chose the make and model of the car;
- Each car in the fleet has a value less than the luxury car limit when purchased;
- The cars are not provided as part of an employee's remuneration package (e.g., under a salary packaging arrangement); and
- Employees cannot elect to receive additional remuneration in lieu of the use of the cars.

If these conditions are met, the employer can apply an average business use percentage to all 'tool of trade' cars held in the fleet in the log book year and the following four years. Employers who can access this simplified method can apply this approach for 5 years assuming the key details remain the same.

"FBT is a tax that few business owners really understand or manage well. The statistics tell us that only a small proportion of businesses in Australia are registered with the ATO for FBT. This is fuelling the ATO's belief that FBT is a soft target for audit activity – and the amount of data available to the ATO now to identify targets for audit is extraordinary. While you may not actually need to lodge an FBT Return each year, having the appropriate documentation to prove to the ATO that you don't have an FBT liability is critical. Now is the perfect time to review your benefits and ensure that appropriate documentation is in place for the FBT year ending 31 March 2017."

JULIAN NICHOLS

Review salary packaging & the opportunity for high-income earners

Salary packaging has been less attractive over the last few years with the higher FBT rate and restrictions being placed on some of the popular FBT concessions. With the FBT rate changing again on 1 April 2017, it's important to review all existing arrangements and make sure that everyone understands - employers and employees - what the package looks like once the rate decreases. In general, salary packaging will become less expensive to provide once the FBT rate goes down again, so look for the opportunities to save.

For high income earners earning above $180,000, you have a one-off opportunity to reduce your taxable income when the FBT rate is reduced from 1 April 2017 until the Debt Tax is removed on 30 June 2017 (see The FBT rate is changing). Just be certain that any arrangements put in place are executed correctly. The ATO will be looking closely at any packaging arrangements that drop an individual's income below the Debt Levy threshold level.

Briefly, an effective salary sacrifice arrangement is one that:

- Forms part of the employee's remuneration, i.e. the benefits are replacing amounts that would have been payable as salary.
- Is documented in writing. The employee needs to agree in writing to forgo a certain amount of income before that income has been earned, in return for benefits of a similar value. If the ATO want to clarify this point there will need to be documentation and a trail - paperwork and transactions - backing it up.
- Is not reimbursed to the employee's bank account. The salary sacrificed amount needs to come out of the salary or wages.

What the ATO are targeting this FBT year – businesses that have bought cars and living away from home allowances

Datamatching has become more sophisticated over the years to the point where there very few transactions you can make without the ATO knowing about it. While the team at the ATO don't go through data line by line they do look at anomalies. These anomalies, or exception reports, narrow down who should come under scrutiny. If you or your business comes up on one of these lists the first thing that will happen is that the ATO will reach out and start asking for more information to validate your position. This is why having your documentation in place is so important. If you don't have records validating your position the next step might be an audit.

One of those anomalies this FBT year is where a business has purchased vehicles but fringe benefits have not been reported to the ATO. While this position might be legitimate, it's important to have the documentation backing up your position.

While the changes to the living away from home allowance (LAFHA) rules have been in place for a number of years, it's an area of continued consternation for the ATO. One of the key issues is whether the employee is actually living away from home, as opposed to simply travelling in the course of their work or relocating. If you provide these benefits to employees, you need to ensure you have sufficient evidence to support any exemption claimed and that the employee has met the relevant conditions. It's up to the employer to not only obtain the signed LAFHA declaration from the employee, but also to verify and maintain records to evidence that the employee or their spouse has retained an ownership interest (i.e. ownership of or a lease agreement over) in the home that they are living away from and that it remains available to them while they were required to work in another location by the employer.