

Industry Insider

Not-for-profit

April 2011

It's FBT time!

With 31 March having just come and gone we take a look at some of the key areas the Australian Taxation Office will be monitoring in relation to 2011 FBT returns.

These are:

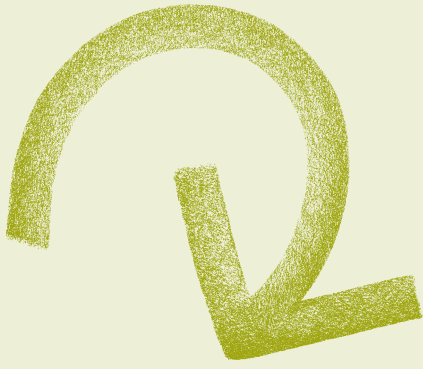
- car fringe benefits
- failure to correctly value fringe benefits
- failure to lodge FBT returns; and
- accuracy of employee contributions amounts



Car fringe benefits

There are several planning opportunities to minimise FBT on car fringe benefits, which have been widely published. To quickly summarise, some strategies applicable to the use of the statutory formula method include:

- consider rotating cars between high and low use employees to minimise the statutory fractions applicable to each
- minimise cars' base values by going back to purchase/lease documents and excluding components such as insurance and registration
- determine whether any cars were not available for private use on any particular days, for example if they were garaged at the business premises while the employee was travelling; and
- don't forget the 1/3rd reduction in base value in the year the car was first held for more than four years at the beginning (1 April) of that year



Substantiation – being organised

Now is a good time for employers to begin reviewing general ledger accounts to identify possible benefits (eg. expense payments, reimbursements, gifts, entertainment, etc) and determine whether any specific substantiation will be required. Many fringe benefits require employees to make declarations, and employers need to ensure that these are in the approved format and have been received prior to lodgment of the FBT return (or by 21 May 2011 if no FBT return needs to be lodged).

It is good practice to obtain declarations at the time the benefit is provided, rather than waiting until the end of the FBT year by which time the employee may have left the organisation. This is especially relevant for living away from home declarations, which can be hard to obtain from someone who has returned overseas. These declarations should be obtained as part of the exit procedures for relevant employees.

In recent years there has been ATO activity around travel diaries and car log books. Maintenance of these documents does not need to be onerous. For instance, a detailed travel itinerary can be sufficient to show that travel was for work purposes and meet the requirements for a travel diary. Further, where cars are used for the same type of work travel consistently, consider using a key code for the entries regarding the purpose of each journey. That is, provide one full description of each relevant type of trip at the beginning of the log book and use a code to indicate all subsequent trips of each type.

Where the operating cost, or log book, method is adopted:

- ensure a value log book is maintained every five years
- and only include running costs in the taxable value calculation and not, for instance, improvements to the capital value of the car that go beyond being repairs

The taxable value under both calculation methods can be reduced by any unreimbursed costs, such as fuel, so employers should make sure they ask employees for these details.

Note that car fringe benefits are calculated on a per car basis – not per employee – which is important in ensuring the correct statutory fraction or log book percentage is adopted.

It should be noted that road tolls are considered a separate benefit to car fringe benefits and a declaration in relation to business use should be obtained to minimise FBT on these.

The ATO has also indicated that they will be looking at luxury cars and the determination of private usage, as well as cross checking vehicle registrations to FBT returns. Employers should ensure all vehicles garaged at employees' homes are included in FBT returns, unless they qualify for exemptions, and ensure that all required log books are maintained to an adequate standard.

In relation to employee contributions, the ATO is focusing on whether they have been treated as subject to income tax and GST, where relevant, by the employer. This is obviously not relevant in situations where, for instance, employees pay directly for the running cost of a car. However, where employees

pay an amount directly to the employer – such as by way of an after-tax salary deduction – then the income tax and GST consequences are important.

Entertainment fringe benefits

Section 152B provides employers with the election to use the 50/50 method for entertainment facility leasing expenditure. However, it should be noted that where this method is to be adopted, the ATO's view is that this calculation method is only available where the expenditure is incurred directly by the employer. That is, if the employer reimburses employees for such expenditure then they must use the actual method when calculating the taxable value of that entertainment facility leasing expenditure.

Living away from home allowance

Provided the correct declarations are in place, a living away from home allowance (LAFHA) can actually be paid in relation to a previous period in which the employee was living away from home. This is useful where an employer had not realised that it was possible to provide a LAFHA to a particular employee. A living away from home declaration is required in the year in which the allowance is paid, and must clearly state the (prior) period in which the employee was living away from home.

Work related items exemptions

Section 58X allows for up to one of each of the following items to be provided, exempt from FBT, to an employee each FBT year, provided that they are primarily for use in the employee's employment:

- Portable electronic devices, different

devices can be provided in the same year so long as they do not have substantially identical functions

- Computer software
- Items of protective clothing
- Briefcases
- Tools of the trade

“Primarily for use” indicates intention. This means that there is no requirement to track the actual use or obtain declarations. However some employers still ask employees to sign declarations to assist in ensuring the organisation complies with these requirements.

It can be argued that an iPad and a laptop do not have substantially identical functions and therefore an employee may be provided with both in the same FBT year provided they meet the primarily for use definition.

Overseas employees

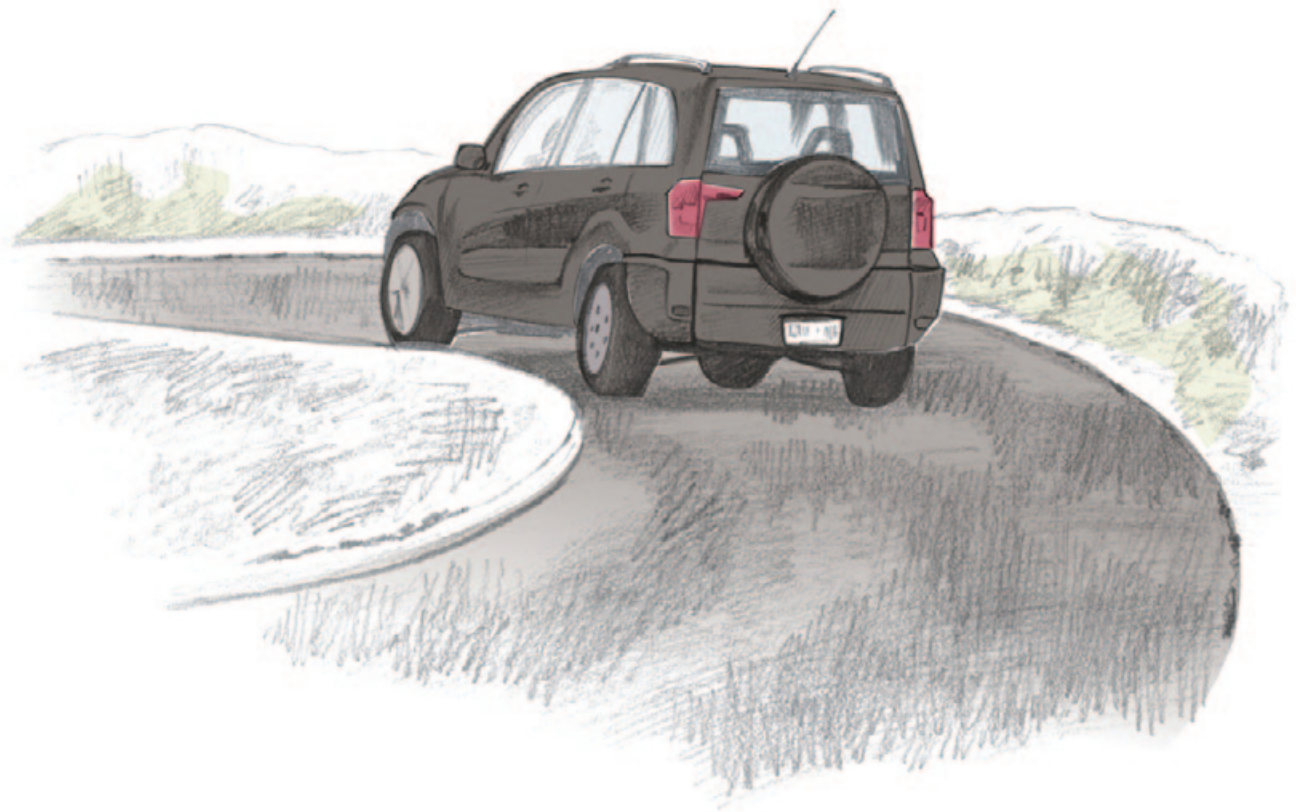
Effective 1 July 2009, the government removed the Section 23AG Income Tax Assessment Act 1936 (ITAA 1936) exemption from income tax of the foreign employment earnings of Australian tax residents living offshore for at least 90 days, except for a range of charity workers. This change has a flow on effect for FBT purposes.

Previously there was no FBT on benefits provided to employees who were working overseas and eligible for a tax exemption in Australia under section 23AG. This was because those individuals were not “employees” for FBT purposes due to having no assessable salary or wages in Australia. For those employees who are no longer exempt from tax on foreign salary income, FBT can now apply to any

benefits that they receive.

Of course there is a jurisdictional issue where the employer is based offshore. The ATO has addressed this by determining that where the employer has no presence in Australia, they are not required to withhold PAYG from the employee’s salary. If no PAYG is required to be withheld, this means that no FBT will apply. On the other hand, where a non-resident employer is required to withhold PAYG in respect of an employee’s income then they are also liable for FBT on any benefits provided to the employee.

Notably, where PAYG and FBT are not required, the employee’s salary is still taxable in Australia and they may also be personally liable for tax in Australia on any non-cash benefits received in certain circumstances.



New regulator on the horizon

On 25 February 2011 submissions to the Government's Consultation Paper (CP) on its plan for a national not-for-profit regulator closed. The key elements of the paper discussed areas of best practice for a regulatory framework and sought stakeholder views in relation to:

- the goals of national regulation
- the scope of national regulation
- the functions of a national regulator, and
- the form of a national regulator

We were pleased to provide Treasury with comments on the CP as part of our continued endeavours to be a voice for the NFP sector. Our responses to the key consultation questions are noted below:

The goals of NFP regulation

1. Are these goals appropriate and adequate for national regulation?

Which of these are most important?

We support the goals as set out in paragraphs 37 to 41, and believe that they are all important, namely the promotion of NFP activities, minimal costs to NFPs, a one-stop shop, appropriate monitoring and one national and focused NFP regulator.

2. Are there any other goals for national regulation?

We suggest that reference should be made to NFP regulation and work being done in this area in overseas jurisdictions and having particular regard to the need to ensure consistency where possible with

New Zealand given the Government's closer economic relations policy. We also see a need for increased and on-going education for the sector particularly given what are often quite small organisations that lack such resources.

Scope of the national regulator

3. What should the scope of a national NFP regulator be? What types of entities should be regulated by a national NFP regulator?

We support a newly established, focused national regulator that has sole responsibility for all NFPs.

4. Should some legal forms be treated differently? If so why?

We see no reason why NFPs should be treated any differently due to differences in legal form. However we do believe that the relative size of NFPs does need to be taken into account for regulatory purposes. For instance a single purpose sole location small NFP will require less regulatory overview compared to a major national charity.

5. Should the supervision of charitable trusts be moved from the state Attorneys-General to a national regulator?

Yes, all NFPs should come within the scope of the NFP regulator.

6. Should regulation of incorporated associations (including reporting and governance) be moved to a national

regulator? Should there be a residual role of the states in regulating incorporated associations?

Yes, and as detailed in our comments at Q5, we believe that all NFPs including incorporated associations that are mostly NFP should be within the scope of the national regulator. We don't see a residual role for the states as this would involve duplication of activities.

Functions the national regulator may undertake - access to taxation concessions

7. What impacts would simplifying and streamlining mechanisms for the assessment, granting and monitoring of concessional tax treatment have on the NFP sector? In particular, what impacts would this have on small and new NFP entities?

We support streamlining the tax treatment of NFPs and the benefit will be most obvious for smaller and new NFPs that do not have the resources to manage the various tax treatments available to NFPs.

8. What are the likely compliance cost savings from improvements to taxation arrangements?

We believe that there will significant compliance cost savings but it will also encourage NFPs to obtain the concessional tax treatments that they are entitled to but often are unable to access due to the complexities of seeking tax concessions.

9. Does the current complexity of the taxation framework discourage entities from applying to access tax concessions? If so, what elements of the framework are most problematic?

As detailed in our comments at Q8, the complexity of the tax framework does discourage the use of tax concessions across the board.

Regulation and supervision

10. What value would educational and compliance initiatives managed by a new national NFP regulator provide to NFP entities?

We support the initiatives as identified in paragraphs 66-70 of the CP's description of the role of an education function within the national regulator. The obvious benefit is that the new national NFP regulator would be much more in touch with the needs of NFPs.

11. What benefits would a 'report-once, use-often' model of reporting offer?

We support the benefits identified in paragraphs 71-101 of the CP. Clearly the use of technology initiatives such as SBR's XBRL reporting and standard Chart of Accounts that enables a 'report once-use often', will be of significant benefit to both NFPs and the regulator.

12. What information do NFP entities currently provide to government agencies? Do these include general purpose financial reports and fundraising reports? What other reports are currently required? What do the reporting requirements involve? What information is required for the purposes of grant acquittals?

There is a myriad of reporting that presently occurs that is both costly and inefficient, ranging from annual financial reports, BAS statements, payroll, FBT, grant acquittals, fundraising reports, etc, all of which will benefit from a 'report once-use often' model. In particular there is significant duplication around grant reporting and acquittals. Many NFPs are required to complete significant documentation and have separate programs audited even for some low value funding and often requests are in conflict

with legal structures and other financial reporting and auditing frameworks.

13. How significant is the compliance burden imposed by requirements for acquittal of grants? Where could these be simplified?

These requirements are inconsistent between granting organisations and a 'report once-use often' model using a standard Chart of Accounts and SBR/XBRL technology would allow significant simplification.

14. What benefits would the establishment of a NFP sector information portal have for the public, the sector and governments? What information should be available on the portal?

We see the benefits being a significant reduction in costs for both NFPs and these government agencies and others who monitor NFP activities

15. What information might need to be provided to a national regulator but not made public through a NFP information portal?

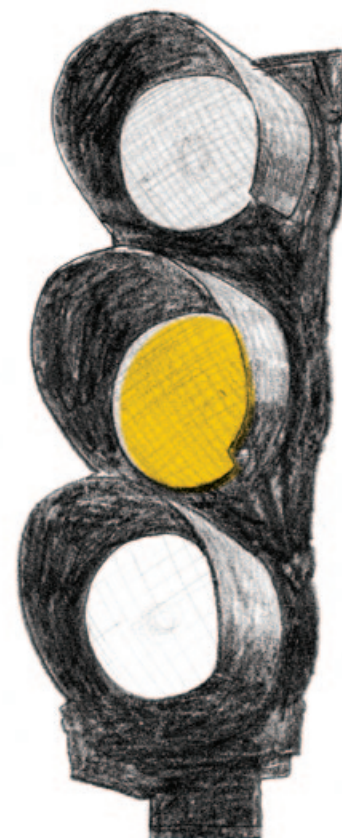
We believe that all information should be publicly available.

16. What benefits would be provided by the application of SBR to the NFP sector, following the implementation of the SCOA so as to minimise any additional compliance costs?

As detailed in our earlier comments the 'report once, use often' model will significantly reduce costs to NFPs, after some initial set up costs and allow greater transparency and accountability for NFPs.

17. Given its voluntary nature, are many NFP entities likely to use SBR? What barriers, such as preferences for providing reports in paper form or reluctance to upgrade accounting software, might reduce usage of SBR by NFP entities?

There is sufficient overseas evidence and now Australian evidence that the use of SBR/XBRL technology does result in significant cost savings. We do however agree that there are some initial set up costs



that will particularly impact smaller NFPs and we would support public funding to encourage NFPs to adopt this technology.

18. Are the suggested core rules and regulatory framework adequate?

We support the core rules and framework as set out in paragraphs 107-112.

19. What powers does the regulator require to improve governance and regulatory oversight?

We support the proposed powers in the CP and as a benchmark the current Australian Securities and Investments Commission's (ASIC) powers are worth considering.

20. What role should a national regulator play with respect to fundraising?

We support the national regulator having total fundraising monitoring and compliance.

Constitutional and jurisdictional issues

21. What problems arise from the complex interrelationship between Commonwealth, State and Territory responsibilities in this area?

We see the benefits significantly outweighing the costs and on that basis would hope that the various levels of Government are able to work together for the establishment of a new national regulator that is in the best interests of both NFPs and society generally.

22. What might be the implications of the different approaches of referral of powers or harmonisation of legislation?

As detailed in our comments at Q21 we believe that it is in the best interests of NFPs and society generally to have a single national regulator. We note that anecdotally the current state based regulation does not work as it adds complexity for NFPs operating nationally and state based bodies have been under resourced to properly monitor it.

The form of the national regulator

23. What form of the national regulator best meets the objectives

of simple, effective and efficient regulation of the NFP sector?

As detailed in our earlier comments we believe that a new single, focused national regulator is needed to achieve the reforms needed for the NFP sector. Inevitably other existing bodies such as the Australian Taxation Office (ATO) or the ASIC already have a particular focus and the NFP sector is too important to have to be shared with another existing regulator's activities.

24. Would a Commonwealth only regulator provide sufficient benefits to the sector?

No. NFPs operate around Australia and just having NFPs that are currently within the Commonwealth jurisdiction would not deliver the needed benefits that State based NFPs need.

25. Are there benefits from establishing an interim regulator through an existing Commonwealth regulator, to undertake immediate reform?

Perhaps, but this should not be used to delay the establishment of a new national regulator. Any interim solution does seem to be at odds with the Government's 'eagerly awaited reform' objective. What is needed is a national, Commonwealth structured regulator that has responsibility for all NFPs that operate in Australia, whether they currently be under Commonwealth, State or Local Government legislation.

Sector specific issues

26. What would be the advantages and disadvantages of incorporating the functions of ORIC and the proposed housing regulator into a national regulator? What alternative approaches are available to avoid duplication?

We see significant advantages outweighing any disadvantages in having all NFPs under the auspices of a single national NFP regulator rather than maintaining the Office of the Register of Indigenous Corporations (ORIC).

27. What benefits could flow from a national regulator maintaining a

dedicated subsection focusing on Indigenous corporations and/or housing?

We suggest that within the single national register there may be a need to have separate sections dealing with particular types of NFPs but generally we would support consistent regulation applying to all NFPs.

Funding

28. What level of contribution should NFP entities make to the cost of the national NFP regulator?

Given the value that the NFP sector makes to the welfare of the wider community, philosophically we believe that NFPs should generally be fully funded from a national regulator perspective. In any case we would not support filing fees being in excess of what the New Zealand position is (see paragraph 163 being NZ\$51.11 for online filing).

29. Should there be a differential cost for smaller NFP entities?

We don't believe, as detailed in our comments at Q28 that NFPs should pay regulator costs, however if there is a cost, then clearly we would support smaller NFPs paying reduced fees.

Definitional Issues

30. Would a statutory definition of charity achieve the goals of greater certainty and administrative efficiency in relation to the determination of charitable purpose, particularly in relation to determining access to taxation concessions and across different jurisdictions and laws?

We would support a definition that is arrived at after appropriate consultation.

31. Is Parliament a more appropriate body to define charitable status than the courts, given its ability to be more responsive to changing community needs and expectations?

Yes and is accountable to the public which the Courts are not.

New Zealand survey highlights – Disaster recovery plans more important than ever

New Zealand organisations appear lax in their approach to disaster recovery plans, judging by the response to a recent survey of the Not for Profit sector by Grant Thornton's New Zealand member firm.



The 2011 survey of 243 organisations in the sector was conducted before the most recent Christchurch earthquake but after that of 4 September 2010.

Brent Kennerley from Grant Thornton New Zealand said that less than half those surveyed had a formal disaster recovery plan in place.

“Whether or not they had a local or a national profile, seemed to make little difference. This needs to change. In light of everything that’s happened in Christchurch since our last survey, these plans are far more than just an academic exercise. It could end up being the difference between the on-going success or failure of such organisations.”

Kennerley said that although members of the governing bodies Grant Thornton surveyed indicated they were spending noticeably more time considering the consequences of recent disasters at their meetings, taking the next step of introducing a formal disaster recovery plan was not top of the priorities list.

“Recovery plans are vital for any entity in the event of an emergency but even so, according to our survey respondents, 52% stated their organisation did not have a recovery plan in place. Given recent events, the need for a disaster recovery plan is brought closer to home and should now be a priority.”

Only one-third (36%) of respondents believed their organisation had a recovery plan. Their recovery plan predominantly covered key contacts (employees),

backup of important documents, and procedures for restoring IT.

Those who had a recovery plan in place usually updated them annually. A third of the respondents’ recovery plans were not circulated to Board members or employees, and a quarter believed their recovery plan was never tested for compliance.

“If this is the case, it raises the question of why have a recovery plan? Our recommendation is to distribute the recovery plan as widely as possible and to ensure that it is readily available for implementation should disaster strike,” Brent Kennerley said

Disaster recovery, along with operational risk management, funding and fundraising, remuneration of Board’s, and compliance with legislation have all been highlighted as key areas of concern among New Zealand NFP’s.

To view or download a full copy of the complete survey report, including a useful self-assessment tool, please click [here](#).

Grant Thornton Australia recognises that while many of the trends identified in New Zealand’s NFP sector are equally applicable in Australia, the two environments differ economically, demographically, socially, culturally and legislatively. We are therefore considering conducting a similar survey of the Australian NFP landscape and seek your feedback as to whether this would be welcome. Please contact your usual Grant Thornton advisor to share your view.

NSW Clubs rejoice as O'Farrell gains the Premier's office

New South Wales Clubs would consider themselves winners as a result of the recent state elections. Prior to the election Liberal leader Barry O'Farrell and Andrew Stoner, leader for the Nationals signed a Memorandum of Understanding (MOU) with Clubs NSW to establish the club policy agenda and key measures under a new Liberal state government. The key commitments made by Mr O'Farrell under the MOU are as follows:

- Effective 1 September 2011 a reduction in club gaming machine tax rates for clubs that generate greater than \$1 million from gaming machines
- Rename CDSE as ClubGRANTS and increase the claimable rate from 1.5% to 2.25% of gaming machine (taxable) revenue
- Change the planning system to encourage the establishment of Clubs and streamline processes/encourage proactive club mergers
- Remove the requirement to forfeit gaming machine entitlements on transfers between premises of amalgamated clubs regardless of location.
- Commit to further reducing the prevalence of problem gambling by developing effective and evidence based measures in consultation with clubs
- Uphold existing smoking restrictions
- Introduce a licensing and compliance regime for the sale and consumption of alcohol that directs enforcement activity and applies special license

- conditions to troublesome venues
- Implement key recommendations of the 2009 iPART Report including the establishment of a Club Viability Panel (CVP)
- Remove the ability of government to hold royal commission style investigations into clubs and immediately rescind section 41X of the Registered Clubs Act
- Limit the increases in rent on those operating from Crown Land to CPI

- and review the circumstances of clubs that have recently received significant rent increases
- Increase competition in the provision of worker's compensation insurance by allowing the industry to establish its own insurance scheme

We will be closely monitoring the progress of the state government in the delivery of its key promises to the club industry.



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