

Fringe Benefits Tax update

Year ending 31 March 2015



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Fringe Benefits Tax (FBT) rate change

The FBT rate increased from 46.5% to 47% with effect from 1 April 2014 and as a consequence, the gross-up rates to be applied in determining the FBT payable on different categories of fringe benefit have increased for the 2015 FBT year as follows:

- Type 1 fringe benefits: FBT gross-up rate of 2.0802 (previously 2.0647)
- Type 2 fringe benefits: FBT gross-up rate of 1.8868 (previously 1.8692)

Please note: it was announced in the 2014/15 Federal Budget that the FBT rate will increase to 49% for the 2016 and 2017 FBT years in view of the introduction of the 2% Temporary Budget Deficit levy.

Annual changes: rates and thresholds

Living Away From Home Allowance (LAFHA)

The following amounts are acceptable as a food component for a LAFHA fringe benefit provided to an employee who is Living Away From home (LAFH) within Australia during the FBT year commencing 1 April 2014:

One adult	\$236
Two adults	\$354
Three adults	\$472
One adult and one child	\$295
Two adults and one child	\$413
Two adults and two children	\$472
Two adults and three children	\$531
Three adults and one child	\$531
Three adults and two children	\$590
Four adults	\$590
Each additional adult	\$118
Each additional child	\$ 59

Source: *Taxation Determination (TD) 2014/9*, which also provides details of the Tax Office's reasonable amounts for food and drink for a LAFHA paid to an employee who is LAFH in certain overseas countries.

Motor vehicles other than cars

These rates are to be applied where the cents per kilometre basis is used to value motor vehicle-related fringe benefits (not involving cars) in the FBT year commencing 1 April 2014:

Engine capacity	Rate per kilometre
0 – 2,500cc	50 cents
Over 2,500cc	60 cents
Motor cycles	15 cents

Source: TD 2014/6.

Non remote area housing (indexation factors)

These indexation factors are to be applied in valuing non remote area housing fringe benefits for the FBT year commencing 1 April 2014:

New South Wales	1.037
Victoria	1.020
Queensland	1.022
South Australia	1.024
Western Australia	1.067
Tasmania	1.010
Northern Territory	1.076
Australian Capital Territory	1.017

Source: TD 2014/3.

FBT exemption threshold

The FBT record keeping exemption threshold for the FBT year commencing 1 April 2014 is \$7,965.

Source: TD 2014/4.

Benchmark interest rate

The benchmark interest rate for the FBT year commencing 1 April 2014 is 5.95%.

Source: TD 2014/5.

Car parking threshold

The car parking threshold for the FBT year commencing 1 April 2014 is \$8.26.

Source: TD 2014/11.

Car fringe benefits statutory formula rates

A flat statutory rate of 20%, regardless of the distance travelled, should be used in valuing car fringe benefits under the statutory formula method for the 2015 FBT year in connection with a particular car, where there was a new financial commitment in respect of the provision of car fringe benefits entered into after 7:30 PM AEST on 10 May 2011, or a change to a 'pre-existing commitment' (ie. a financial commitment made on or before 10 May 2011 in respect of the car) after this date.

Where a pre-existing commitment to provide car fringe benefits has not changed since 10 May 2011, the following statutory rates (which vary with the distance travelled during the FBT year) should be used:

Distance travelled during the FBT year (1 April – 31 March)	Statutory rate
0 – 15,000 km	0.26
15,000 – 25,000 km	0.20
25,000 – 40,000 km	0.11
More than 40,000 km	0.07

Please note, if a change in a pre-existing commitment occurs during the 2015 FBT year the applicable statutory rate in the above table will apply for the 2015 FBT year and the flat statutory rate of 20% will commence to apply from the beginning of the 2016 FBT year.

Legislative changes

Australian Charities and Not for Profits Commission (Repeal) (No 1) Bill 2014 **Bill (No 1) 2014 is currently before the House of Representatives**

A Bill to abolish the Australian Charities and Not for profits Commission ('ACNC') is currently before the House of Representatives.

The ACNC was initially established in order to be the single reporting point for charities and as a result, certain regulatory functions were transferred to the ACNC from the Tax Office and the Australian Securities and Investment Commission. The Government has announced that it has decided to abolish the ACNC in order to remove unnecessary regulatory control over the Not for Profit (NFP) sector as part of a move towards self-management by NFP entities. The Bill includes transitional arrangements for the transfer of matters to the organisation(s) which will succeed the ACNC.

Transitional measures for the treatment of LAFH-related benefits

Generally, as a result of FBT law changes which took effect from 1 October 2012, the FBT concessional treatment of LAFH-related benefits is only available for the first 12 months that an employee is LAFH in a particular location.

However, where a LAFH arrangement was first entered into by an employee prior to the 2012/13 Federal Budget on 8 May 2012 and that arrangement had not been materially varied by 1 October 2012, transitional measures contained in the FBT laws potentially applied to extend the FBT concessional treatment of the employee's LAFH benefits until 30 June 2014. Therefore, from 1 July 2014, the concessional FBT treatment of LAFH arrangements entered into prior to 8 May 2012 is no longer available.

Transitional measures for the treatment of 'in-house' salary sacrificed fringe benefits

Generally, as a result of FBT law changes which took effect from 22 October 2012, in-house fringe benefits (i.e. benefits which are identical or similar to those provided to the public by the employer (associate) in the ordinary course of business) obtained by an employee under salary sacrifice arrangements ceased being eligible for concessional FBT treatment from that date.

However, where a salary sacrifice arrangement for the provision of in-house fringe benefits was in existence immediately prior to 22 October 2012 transitional measures contained in the FBT laws potentially applied to extend the FBT concessional treatment of these fringe benefits until 31 March 2014. Therefore, for the 2015 FBT year, the concessional FBT treatment of in-house fringe benefits is no longer available.

Australian Taxation Office (ATO) releases

Important ATO FBT policy and guidance documents issued during the 2015 FBT year include:

ATO ID 2014/9 - Remote area holiday transport fringe benefits: reduction in value

Section 60A of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) provides for a 50% reduction in the 'gross taxable value' of a 'remote area holiday transport fringe benefit'. Broadly, a remote area holiday transport fringe benefit arises where an employer provides, or meets the cost of, holiday transport (and meals and accommodation on route) for:

- an employee who resides and works in a remote area for FBT purposes; and/or
- the employee's family members

This ATOID confirms that in determining the taxable value of this type of fringe benefit, any 'recipients contribution' made by the employee towards the cost of the fringe benefit is taken into account before applying the 50% valuation reduction.

ATO ID 2014/12 - Car parking fringe benefits: all-day parking

In this ATOID, the Tax Office examines whether a fee charged by the operator of a commercial car parking station for vehicles entering the station from 1 p.m. represents a fee charged for 'all-day parking' as defined in subsection 136(1) of the FBTAA and as a consequence, can be taken into account in the valuation of car parking fringe benefits.

In concluding that it cannot, the ATO explains that for FBT purposes, 'all day parking' involves the parking of a car on a particular day for a continuous period of at least six hours during a 'daylight period' on that day (commencing after 7 am and ending before 7 pm). Therefore, where a car is first parked at, or after, 1 pm on a given day it cannot satisfy this continuous six hour requirement and as a result, the fee is not for all-day parking.

ATO ID 2014/15 - Meal entertainment fringe benefit: travel - reimbursement of car parking fees

This ATOID considers whether car parking fees incurred by an employee (and reimbursed by the employer) in travelling to a venue where the employee receives meal entertainment benefits, are costs which need to be taken into account in valuing the resultant meal entertainment fringe benefits.

The concept of 'meal entertainment' for FBT purposes encompasses travel undertaken in connection with, or for the purpose of facilitating, entertainment by way of food or drink. In this ATOID, the Tax Office refers to the ordinary meaning of the term 'travel' as *to make a journey* and concludes that as the car parking fees were incurred as part of the employee's journey to the entertainment venue, they form part of the travel costs for the purpose of valuing the employee's meal entertainment fringe benefits.

ATO ID 2014/17 - Property fringe benefits: redemption of voucher/coupon by a retail store employee for merchandise retailed by their employer

In this ATOID, the Tax Office examines whether an 'in-house property fringe benefit' arises when a retail store employer provides an employee with a free voucher/coupon which can be redeemed for specified merchandise sold at participating stores operated by the employer.

The vouchers/coupons are individually numbered and recorded against the relevant employee's name and are forfeited if not redeemed by the employee by the applicable expiry date and the merchandise involved can only be obtained by the employee in person.

In referring to the FBT meaning of 'benefit' and 'property benefit' and observing that the provision of a voucher/coupon and the later redemption of that voucher/coupon to obtain the merchandise involve two distinct actions, the ATO concludes that in this scenario:

- the issue of the voucher/coupon does not constitute a fringe benefit, but is an administrative aid in facilitating the later provision of merchandise to the employee; and
- an 'in-house property fringe benefit' will arise when the employee redeems the voucher/coupon for merchandise at a participating store.

CR 2014/73 - Employer clients of Toyota Finance Australia Limited who provide car fringe benefits under novated lease arrangements incorporating the payment of insurance premiums

This Class Ruling applies to employer clients of Toyota Finance Australia Limited who provide car fringe benefits under novated lease arrangements and examines the FBT implications involved where various insurance products (including motor vehicle comprehensive insurance and lease protection insurance) are made available as optional extras in a novated lease arrangement.

Where an insurance option is taken up, the full costs of the insurance premiums are incorporated into the novated lease repayments to the lessor and the lessor in turn pays the insurance premiums to the insurer.

The ATO has ruled that:

- the payments of the insurance premiums to the insurers by the lessor do not form part of the base value of a car under the statutory formula valuation method for valuing the car fringe benefits involved;
- although the insurance premiums do not directly form part of the operating cost of the car for the purposes of the operating cost valuation method, the increased novated lease costs (incorporating the insurance premiums) are taken into account in valuing the car fringe benefits under this method; and
- the payment of the insurance premiums by the lessor to the insurer represent exempt benefits for FBT purposes.

Other Tax Office releases

Reference No	Topic
ATOID 2014/18	Car expense - cost of map update of in-built satellite navigation system
ATOID 2015/1	Work-related counselling - training courses or activities for employees being made redundant
TD 2014/28	Is the provision of bitcoin by an employer to an employee in respect of their employment a property fringe benefit for the purposes of s 136(1) of the FBTAA?
Draft TD 2014/D17	When are the duties of the employment of an employee of a government body exclusively performed in, or in connection with, a public hospital or "non-profit hospital" for the purposes of para 57A(2)(b) of the FBTAA?
CR 2014/26	Employer clients of Universal Gift Card Pty Ltd (UGCPL) who make use of UGCPL's Minor expenses card
CR 2014/27	Employer clients of LogbookMe Pty Ltd who use the LogbookMe In Car Logbook Solution for car logbook and odometer records
CR 2014/56	Corporate clients of Dell Australia Pty Ltd (Dell Australia) who participate in the Dell Australia employee purchase program (EPP)
CR 2014/60	Customers of Procon Telematics Pty Ltd who use the FleetLocate/Easy2log Vehicle Logbook Report for their log book records
CR 2014/69	Employers who use the TomTom Telematics system for car log book and odometer records
CR 2014/74	Employer clients of Emerchants Payment Solutions Limited (Emerchants) who are subject to the provisions of either s 57A or s 65J of the FBTAA and make use of the Emerchants' Meals and Entertainment Card (and Living Expenses Card) facilities
CR 2014/75	
CR 2014/94	Employers of employees who take out a health insurance policy under a Health Link Consultants Employee Health Plan
CR 2015/1	Customers of Fleet Partners Pty Ltd who use the Fleet Partners Vehicle Log Book (Privacy Protected) report for their log book records
CR 2015/2	Clients of LogbookMe Pty Ltd who use the LogbookMe In-Car Logbook Solution to calculate the total number of car parking benefits
CR 2015/9	Health and fitness equipment services provided by EFM Corporate Pty Ltd
CR 2015/10	Provision of accommodation by Shell Korea Ltd to employees who are residents of Australia for tax purposes
PR 2014/16	Tax consequences for Employees and Employers under a LeasePlan novated vehicle lease

Cases

Qantas Airways Ltd v FC of T; 2014 ATC 10-360

FC of T v Qantas Airways Ltd; 2014 ATC 20-477

These Administrative Appeals Tribunal (AAT) and Full Federal Court decisions relate to the provision of free car parking by Qantas to certain employees in short and long term car parks at or in the vicinity of various airports around the country, including those at many of the State capitals and at a number of regional centres. The main issue for determination was whether the car parks involved represented commercial parking stations for FBT purposes.

Qantas contended that they did not, primarily because the car parks involved were not principally, or primarily, for use by commuters driving their cars to and from work. Alternatively, Qantas considered that the car parks at certain airports were not commercial parking stations as the excessive fees charged for parking were such that they were not car parks intended for all-day parking. Further, Qantas considered the Canberra airport car park was not a commercial parking station for the additional reason that as a result of a contractual restriction imposed by the parking station operator, car spaces in this car park were only available for use by airline travellers and meeters and greeters of airline travellers and as a consequence, those spaces were not available to members of the public in the required sense to result in car parking fringe benefits.

The AAT held that the car parks at all airports under consideration (with the exception of the Canberra airport) represented commercial car parking stations for FBT purposes on the basis that they were available to the public for all-day parking for a fee that exceeded the car parking threshold for the relevant FBT year. With respect to the Canberra airport, the AAT accepted the Qantas contention that as the car spaces at this airport were only available to travellers and meeters and greeters and were not intended to be used by Qantas employees, this car park did not represent a commercial car parking station for FBT purposes.

Both Qantas and the Commissioner subsequently appealed against the AAT decision and the Full Federal Court ultimately decided that the car parking provided by Qantas to employees at all airports, including Canberra, represented car parking fringe benefits.

John Holland Group Pty Ltd & Anor v Commissioner of Taxation; [2014] FCA 1332

This decision of the Federal Court has cast doubt on whether travel provided to fly-in-fly-out (FIFO) employees falls within the 'otherwise deductible' FBT rule and is consequently not subject to FBT.

The case considered whether employees of the John Holland Group would have been entitled to an income tax deduction for their FIFO flights between their home city and work site, in the following circumstances:

- the employees were employed on a FIFO, rostered basis to provide rail construction and maintenance services at a project in the mid-west region of Western Australia (Midwest Project).
- the employees typically worked a two or four weeks on: one week off roster and were provided with:
 - return flights between Perth and Geraldton (not a remote area for FBT purposes);
 - apartment style accommodation in Geraldton during their rostered time on; and
 - transportation between Geraldton and the Midwest Project site throughout their rostered on period.

The Federal Court held that the flights represented travel by the employees between their chosen permanent place of residence (in or around Perth) and their work place at the Midwest Project site and, consequently, that the employees would not have been entitled to an income tax deduction for the cost of the flights. This decision is currently the subject of an appeal by the John Holland Group to the Full Federal Court.

FC of T v The Hunger Project Australia; 2014 ATC 20-458

In this case, the Full Federal Court considered whether The Hunger Project Australia (HPA), which is an Australian Not for Profit company that is predominantly involved in the conduct of fund raising activities for the benefits of overseas members of an international project for the relief of global hunger, represents a public benevolent institution (PBI) within the meaning of subsection 57A(1) of the FBTAA.

The ATO contended that as HPA merely engaged in fund raising activities and did not materially perform charitable works directly for the benefit of the public, it was not a PBI. However, in finding against the ATO, the Full Federal Court concluded that :

- the common understanding of a PBI as an institution which is organised, or conducted for, or promotes the relief of poverty or distress is broad enough to encompass an institution, like HPA, which raises funds for provision to associated entities for use in programs for the relief of hunger in the developing world; and
- as such, HPA is capable of being considered a PBI.

Other ATO announcements

Motor vehicle registries: ATO data matching program

The ATO has advised that it will acquire certain motor vehicle information from State and Territory motor vehicle registries for the 2013-14, 2014-15 and 2015-16 financial years. In particular, under the program the ATO will obtain details of motor vehicles which were sold/transferred or newly registered in each year having a transfer and/or market value of \$10,000 or greater.

Among other comments, the ATO has announced that it will use the data to identify and deal with those taxpayers who may not have met their obligations with regard to GST, FBT, luxury car tax, fuel schemes and income tax.

Lodgement date for all tax agent prepared FBT returns extended

The ATO has announced the lodgment due date for 2015 FBT returns lodged electronically by all tax agents is 25 June 2015, regardless of the number of FBT clients the tax agent has. The due date for payment of any FBT owing on lodgement of these returns is 28 May 2015. The ATO has advised tax agents to ensure that clients are added to their FBT lodgement lists by 21 May 2015, to ensure they are eligible for this lodgement extension.

For FBT returns lodged by paper, the due date reverts back to the statutory lodgment date of 21 May 2015.

ATO compliance enforcement: key focus areas

The Tax Office has highlighted in its *Compliance in focus: 2014-15* publication that its Employer Obligations teams are focussing attention on a wide range of perceived FBT compliance risk areas during the 2014/15 FBT year, including:

- Lapsed lodgement cases - the ATO has increased its scrutiny of employers who have not lodged FBT returns and is taking firmer action, including imposing penalties, against those that choose not to comply.
- Employers who incorrectly apply FBT valuation, exemption and reduction rules.
- Whether taxpayers correctly understand the distinction between LAFH and travelling on business and the different income tax and FBT implications of each of these scenarios. In particular, the ATO is keen to ensure that taxpayers are correctly applying the FBT law changes involving LAFH-related benefits which took effect from 1 October 2012.
- Increased scrutiny by the ATO of entities incorrectly treating workers as independent contractors rather than employees for FBT (and other employment tax) purposes.
- Instances where the reportable fringe benefits amounts reported by Not for Profit (NFP) entities on PAYG payment summaries suggest that the NFP entity has underpaid FBT, either by incorrectly claiming an exemption or rebate, or by incorrectly calculating its employee's concessional caps.
- Enhanced data-matching exercises, including continuing to examine vehicle licensing records in order to detect omitted car fringe benefits (particularly involving 'luxury cars') and the misinterpretation by employers of the exempt car/vehicle benefit provisions.
- Employee contributions – focussing on the reporting of employee contributions in the income tax returns of recipient employers.

More information

The contents of this paper are for general information only. They are not intended as professional advice and should you want to discuss any of the items addressed in this paper, have a general FBT query, or require 2015 FBT compliance assistance, please contact Grant Thornton.

The paper is general in nature and its brevity could lead to misrepresentation. No responsibility can be accepted by Grant Thornton for those who act on its content without first consulting us and obtaining specific FBT advice.

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