

FBT: the danger zones

Many business operators are risking an Australian Taxation Office (ATO) audit and penalties because they don't think FBT applies to them and don't really understand the rules. It's hardly surprising given the FBT legislation is complex and can affect almost every element of your business operation and interaction with staff.

Benefits provided to an employee by an employer or a third party under an arrangement with an employer are subject to FBT. The taxable value is the arm's length cost of providing the benefit.

A recent report released by the Australian National Audit Office reveals a high level of complexity in the FBT legislation, non-compliance and errors. In response, the ATO has initiated a new audit program tackling FBT compliance.

With the FBT year ending last month on 31 March, now is a good time to make sure you are up to speed on what the ATO will be looking for:

Does FBT affect your business?

The Audit Office report revealed that many businesses that should be registered for FBT aren't. Many work on the basis that since they didn't need to register in the previous year, they don't need to register this year. The tests for FBT apply year to year.

As soon as you provide a benefit to employer, you are liable to FBT. A common misconception is that if you don't claim the expense as a tax deduction then FBT does not apply. This is incorrect. FBT is triggered regardless of whether you claim a deduction for the expense or not.

A benefit can be as simple as an employee attending a business lunch paid for by the company, using a company car for private use, parking a company car at home (even if they are only travelling to and from work), and giving an employee a product that your company produces.

Parties at your office

If you provide a benefit to employees such as Friday night drinks or lunches at your business premises, then FBT does not generally apply. For example, if you host your Christmas Party at your office the consumables for that party would be exempt from FBT.

Staff discounts

As an employer, if you have arranged for a staff member to receive a special discount on goods and services sold by your business or those of a third party, then FBT applies. FBT applies to the difference between the discounted price and the normal retail price of the product. If however the discount is also given to other business employees it will not be an issue.

Laptops

Notebook computers, a laptop computer or a similar portable computer - a computer is 'portable' if it is small enough to be operated while held on your knees - are exempt from FBT. The exemption also extends to portable printers for laptops.

The exemption applies whether the employer purchases the computer and gives it to the employee or if the employee purchases it and is reimbursed by the employer. The exemption allows for one laptop per year per employee.

The exemption will not apply if the employee finances the purchase of the computer and the employer makes the loan repayments on the employee's behalf. This is because the payment is not for an eligible work related item; rather it is the payment of a loan obligation.

Built in internal modems, fax cards and pre-loaded or 'bundled' software (as part of an offer by the retailer, including games) forms part of the computer and are exempt from FBT. Additional accessories which are not necessary for the basic operation of the computer such as external floppy disc drives and additional memory are not exempt. Be careful of what is bundled into the purchase.

Mobile phones

Mobile phones are only exempt from FBT if the phone is primarily used during the course of the employees work. If the phone is also an electronic diary it may either be exempt from FBT as a mobile phone or an electronic diary. The best way of determining which exempt category it falls into, check the product marketing. If it is marketed as a mobile phone, it is likely to be a phone, albeit with advanced features.

Salary packaging

Under a salary sacrifice arrangement an employee agrees to sacrifice part of their future entitlement to salary or wages in return for the employer providing them with benefits. An effective salary sacrifice arrangement must be in place before the salary has been earned. For example, an employee is paid at the end of March for working the month. If the employer and employee agree to put a new salary sacrifice agreement in place at the end of March, the arrangement can only apply to income received from 1 April onwards (salary paid at the end of April). Many employers are inadvertently applying the salary sacrifice arrangement immediately to income already earned, in this case applying the arrangement to the salary paid at the end of March.

Be careful about superannuation. If the salary sacrificed is directed into an employee's superannuation, then the payment is counted as a contribution by the employer not by the employee. If the employee does not negotiate their remuneration package to include the additional superannuation contribution that would otherwise be payable if a sacrifice arrangement has not been entered into, the employee is likely to be worse off.

A little know fact is that an employee has the ability to package joint expenses. Let's look at an example:

Will and Grace jointly own a negatively geared rental property. Grace is a stay at home mum raising the couple's kids and is earning no income. As Grace is not working her share of the rental loss cannot be utilised, and is therefore accumulating. Will is earning \$150k a year and paying the top marginal rate of tax.

After discussing the issue with us, Will goes to his employer and salary sacrifices the joint rental property expenses of \$30k (excluding depreciation). The gross rental income of \$20k is split 50/50 according to their ownership interest.

<i>Before salary sacrifice arrangement</i>			<i>After salary sacrifice arrangement</i>		
	Will	Grace		Will	Grace
Salary	150,000	0	Salary	150,000	0
Gross rent	10,000	10,000	Gross rent	10,000	10,000
Less rental expenses	-15,000	-15,000	Less rental expenses salary sacrificed	-30,000	0
Taxable income	145,000	-5,000	Taxable income	130,000	10,000
Tax payable	53,862		Tax payable	46,812	680

By salary sacrificing the rental expenses, the couple save \$6,370 in tax. They have transferred the tax deductions to the highest income earner and allowed the wife to derive a small income, which is taxed at low marginal rates.

Gifts under \$100

Just when you thought the hardest part of buying a gift for an employee is choosing what to buy, along comes FBT.

In general, benefits provided to employees such as gifts under \$100 are exempt from FBT. However, there are a few tricks and traps that apply.

The benefit must be provided infrequently and the aggregate of the benefits provided must be less than \$100. Let's say you host a Christmas party for staff. If the cost per head is \$90 and only employees attend the party, then the cost of the function is exempt from FBT. However, if you give your employees a \$50 gift voucher each at the party as well, the function and the gift voucher are subject to FBT. This is because the combined value is \$140.

Also, if the benefit is provided to an employee and their associate (their spouse or child), the combined value of the benefit must be less than \$100, not \$100 each. For example, if spouses are invited to the same Christmas party, the total benefit provided to the employee is \$180 if their spouse attends. As a result, the cost is subject to FBT.

Employee contributions

Employee contributions to reduce the taxable amount of a fringe benefit have to be made with after tax dollars. Many employers calculate the estimated contribution required by the employee for the FBT year and withhold an amount from each salary payment.

Quote of the month

To err is human - and to blame it on a computer is even more so.

Robert Orben