YOUR Knowledge

On the fringe: top FBT myths & opportunities

Fringe benefits tax (FBT) exists to ensure that employees are not getting income disguised in another form and avoiding income tax. But such a broad concept has its problems. With the FBT year ending on 31 March, it's a good time to explore the myths and realities of fringe benefits and why so many employers get it wrong.

Myth 1 Motor Vehicles

You don't pay FBT on company cars. As soon as your team start taking the company car home at night, use it to travel to and from work, use it on weekends, or generally use it for their own purposes, then FBT will apply. Even if the team member doesn't actually use the car on weekends and it stays in their garage, the fact that it is available for their use would generally mean that FBT applies. Similarly, if the place of business is the same as your place of work, fringe benefits tax generally applies.

FBT also generally applies to road tolls paid by the business and incurred by team members travelling to and from work, or when travelling for private purposes.

The ATO has recently announced a new data matching program for high value vehicles. We presume they are trying to identify luxury vehicles within business where no FBT has been declared on their use.

Myth 2 Directors

FBT does not apply to directors who are also shareholders. If you receive benefits in connection with your role as a director then the FBT rules treat you just like any other employee. If you take a company car home or one is available to you, then FBT applies. If you don't pay for the business' products and services that you use or pay a discounted rate, then FBT applies. Don't forget, even though you might own the company, if you are employed by the company, then the same rules apply to you.

The same goes for associates of Directors. If you pick up expenses for your spouse, kids or relatives, or they benefit from discounted goods and services sold by the business, then FBT will apply.

In some situations you might be able to argue that you have received a benefit in your role as a shareholder of the company rather than as a director. While this might stop FBT from applying, it will trigger another set of rules which will tax you personally on the value of the benefit you have received.

Myth 3 Staff benefits

You don't pay FBT if something is salary packaged. While salary is not subject to FBT, additional benefits such as health insurance packaged into an employee's salary can trigger FBT. This is even in industries where employees are required to undergo medical testing. In fact, pretty much anything given to staff with a value of $300 or more is likely to incur FBT. There are a number of exceptions but these are very limited.

Salary packaged in-house fringe benefits, where businesses supply staff and their associates with discounted goods and services that are the same as those provided to the customers of the business – such as private schools providing discounted school fees for teachers' kids or retailers packaging employee discounts – have traditionally been subject to more favourable FBT treatment. However, in the Federal Budget the Government announced they were scrapping the FBT concessions that apply to these benefits. In changes before Parliament, salary sacrificed in-house fringe benefits will be subject to FBT based on the full value of the goods or services from 22 October 2012. The changes are not yet law.

Myth 4 Loans

Advances and loans given to staff don't incur FBT. Let's say an administrative error means that a team member has been overpaid by quite a large amount for the last 12 months. The employee can't afford to repay the whole amount in one go so a repayment plan is agreed to. No interest is charged as it wasn't the employee's fault and this wouldn't be fair. The ATO would consider the overpayment a loan. The fact that no interest is being charged means that FBT would apply. Loans need to be charged interest of at least the ATO's published interest rate, for 2012/2013 its 7.40%, to avoid paying FBT.

Advances in pay can also be considered a loan fringe benefit.

The most common scenario however, is shareholders being loaned money by the business. In other words, when

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one of the business owners or their associate (for example a spouse), need some cash and take it out of the business. There are two ways these loans are treated. If the loan is made in connection with the person's role as a shareholder of a company, then as long as the loan is repaid before the company is due to lodge its tax return for that year, then there are generally no carry over tax issues. However, in some situations these loans can be subject to FBT if they are made to a business owner in their role as an employee regardless of whether they are paid back by the end of the financial year.

Another problem area is when debts are not required to be repaid. If the employer agrees to forgive a loan, then this can also trigger FBT.

Myth 5 Meals

Meals provided to employees are not subject to FBT. While there are some exceptions that apply to meals provided to employees, there are many situations where the provision of food and drink to an employee or their associate is subject to FBT.

The risk of FBT applying increases when you are entertaining, rather than just proving sustenance. For example, food and drink provided at a social function or in a restaurant generally has the character of entertainment and will normally be subject to FBT.

The main exceptions from FBT in relation to food and drink are where the meal is consumed by an employee while travelling for business purposes or where the meal is consumed on the employer's business premises (for example, a working lunch in the office). Food and drink provided to employees and their associates at a Christmas party or other special occasion can be exempt from FBT if the cost per head is under $300.

The advantage of having food and drink being subject to FBT is that the costs are generally deductible and GST credits can be claimed. Food and drink that gives rise to entertainment but is not subject to FBT is not deductible to the business.

FBT opportunities

On the flip side of FBT compliance are the opportunities that exist:

Relocation expenses

Moving an employee from one location to another? Then, there are some FBT breaks to help. There are a number of items that are completely excluded from FBT or where the taxable value is reduced if certain conditions are met:

- Relocation consultants to help employees move to a new location by organising removalists, finding accommodation, providing school information etc.
- The costs of removal and storage of household effects.
- The incidental costs of selling the employee's home and buying a new one in the new location such as stamp duty, advertising, legal expenses, agent commission, discharge of a mortgage, borrowing expenses and other similar capital expenses.
- The costs of connecting or reconnecting gas, electricity and telephone services to the new place of residence or the former place of residence.
- Temporary accommodation, including the costs of acquiring household goods.
- Visa application fees and associated medical examination costs.

A number of conditions apply but if they are met, the tax savings can be well worth the effort. Make sure you get advice before acting.

Bringing your spouse to conferences

If your spouse comes with you to a work conference, the cost of the conference accommodation is not subject to FBT as long as there are no additional charges. For example, where the hotel room is sold on a per room basis. If however, there is an additional person charge, FBT applies to just that additional room cost.

FBT exempt utes

While FBT generally applies to work vehicles, if the motor vehicle is a ute, panel van, or any other vehicle designed to carry less than one tonne and not designed principally to carry passengers, then it might be exempt from FBT. For example, a ute could be garaged at an employee's home without incurring FBT if the personal use of the ute was only incidental.

Laptops, iPads & computers

Employees can salary sacrifice the cost of a laptop computer and software as long as it is predominantly used for work purposes without incurring FBT. The exemption is limited to one laptop per employee per year and means that the laptop is purchased using pre tax income.

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