FBT exemptions under the radar

Providing fringe benefits goes hand-in-hand with the task of retaining good and loyal employees as well as attracting new talent for your business. However the types of benefits provided can sometimes relieve the compliance headache.

About this newsletter

Welcome to **AV Chartered Accountants** client information newsletter, your monthly tax and super update keeping you **abreast of** current issues, news and changes you need to know about.
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Now that we have entered into the new fringe benefits tax year (which began on April 1), business owners are reminded that not all of the benefits that can be provided to employees attract FBT.

For example, there are minor benefits (valued at less than $300 and that are provided on an irregular and infrequent basis) that may be exempt from FBT. An example of a minor benefit that escapes FBT is a gift or meal provided by the boss at Christmas time.

But there are also other benefits that can be provided to your employees that are specifically exempted from fringe benefits tax.

Small business owners can now provide their employees with multiple work-related electronic devices without incurring FBT liabilities

PORTABLE ELECTRONIC DEVICES — AN EXTENDED EXEMPTION

As of the current FBT year (from April 1, 2016), small business owners can now provide their employees with multiple work-related electronic devices without incurring FBT liabilities. This applies even if the devices have similar functions.

The devices can include:

- laptops
- tablets
- calculators
- GPS navigators, and
- mobile phones.

Items bought before April 1, 2016, but supplied to the employee after this date are eligible for the exemption. Multiple devices bought and given to the employee before April 1, 2016, (that is, during the just-passed FBT year) are not eligible. In these cases, the exemption only applies to one item for that FBT year.

Note that eligible small businesses must have aggregated annual turnover of less than $2 million. Those businesses that aren't eligible must still follow the existing rules (that is, one device per year).

NUTRITION AND EXERCISE GUIDANCE

Where an business has arranged for a program to be made available to its employees to learn how to eat better and exercise properly, for the purpose of assisting them with managing their health, fitness and stress, and the employer allocates time during the working day, the cost of this benefit is FBT free. The ATO requires that the employer must have an objective, plan or policy in place to improve or maintain the quality of employee performance.

CASH AWARDS IN THE WORKPLACE

Genuine safety awards made to an employee in an FBT year up to a total value of $200 are exempt, but once over $200 the whole amount is subject to FBT.

Long service awards for service of more than 15 years is usually FBT exempt (for example, an item such as a watch) but there is a value threshold, which is $1,000 for 15 years of service and $100 for each additional year. If the employer provides another benefit following additional years of service, the benefit is exempt if it is no more than $100 for each year of service in excess of those years for which a benefit was previously provided. If in excess of either the $1,000 or $100 limits, no exemption applies.

The ATO accepts that employee contributions are usually not counted towards the value of the benefit. Further, a separate benefit provided by work colleagues in an arm's length situation would not be subject to FBT.

HANDS ACROSS THE OCEAN

If an employee has been posted overseas, FBT exemptions might include:

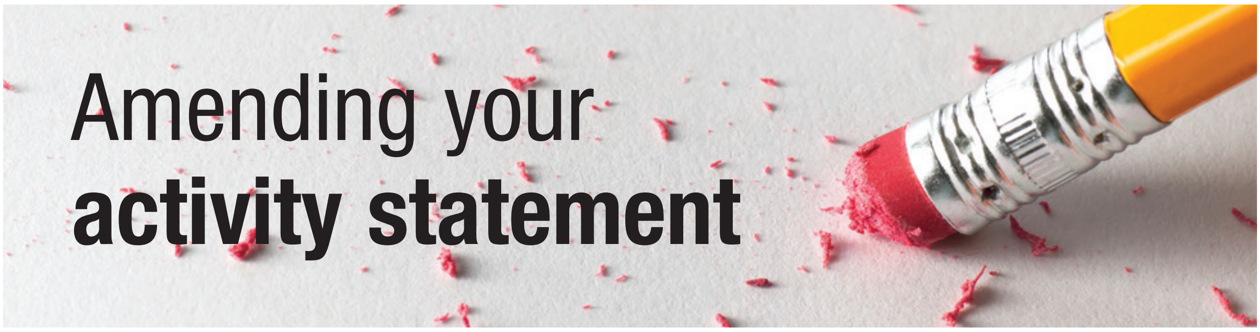
- 50% of the cost of one return trip per year for the employee and family, and
- there is no FBT on the cost of education for that staff member's children (subject to conditions).

Where an employee from overseas is working for an Australian business (in Australia) and is a temporary resident at the time, the making of a contribution to a foreign superannuation fund for the purpose of providing superannuation benefits escapes FBT liability. This is much like superannuation guarantee payments made for a resident.

NOT ONLY, BUT ALSO…

Also exempt from FBT are the following:

- compassionate travel by employees while travelling or living away from home on employment duties to attend the funeral of a close relative or to visit a close relative who is seriously ill
- disabled person car parking
- newspapers and periodicals provided to employees for business purposes. ■



Amending your **activity statement**

Once we have lodged your latest activity statement, you may realise that something has been left out or you have neglected to include a particular item. The Australian tax system is based on “self assessment”, which means the ATO generally takes your word, under our guidance, and bases its assessment on the information it has been provided.

But this is not to say that the ATO may not check the information it has been given if, for example, its data matching activity flags a concern. If an inadvertent error slips past the keeper, there are options to make it right.

Making changes

It is not all that uncommon for business owners to want to make a change to a business activity statement (BAS) that has already been lodged — often there can be an unclaimed credit that simply slipped your mind, or you remember that you received some other form of income.

For example, a not uncommon situation arises when a business owner has already claimed fuel tax credits based on the intention to use the fuel in a certain way, but subsequently uses it in a different way. An error can be either on the credit or debit side. Again using fuel tax credits as an example, a credit error means you claimed less fuel tax credits than you were entitled to — for example, you used a lower rate than you were entitled to.

A debit error means you claimed more tax credits than you were entitled to. This can occur if you:

- made clerical errors, for example, double counting some fuel purchases
- over calculated your eligible quantity of fuel
- used a higher fuel tax credit rate than you were entitled to
- claimed fuel tax credits for all fuel you acquired, not only the fuel intended for use in an eligible activity.

If you did not make an adjustment in the BAS period in which you become aware an adjustment was required, it becomes an error. If you made multiple errors in a BAS period, you must treat each error individually when determining if it can be corrected and how to correct it. Apart from these specific circumstances, there are also those straight-out mistakes that we all make from time to time, or you could have forgotten to tell us something about your tax affairs at our appointment.

How we can help

We can use your current activity statement to correct many previous GST and fuel tax credit errors, to make claims for previous periods or to vary a PAYG instalment. A four year time limit applies to claiming refunds and credits, and this “period of review” commences from the day you were required to lodge the activity statement.

If you can’t make such corrections on your current activity statement, we may have to revise the original BAS for you. Note that the process for correcting mistakes and making claims for previous periods can depend on the specific tax or type of credit involved, so you may need to check with us.

If you need to correct information you provided on a BAS and are not eligible to correct it on a later statement, you may need us to complete a revised activity statement. The important thing is to make sure that as soon as you realise that the information you have reported to the ATO is incorrect or incomplete, that you ask us to take actions to correct it.

And the way we can do this is to revise a BAS or apply to make an amendment (in fact the ATO generally treats a revised activity statement as an application to amend an assessment).

If the ATO accepts your revised amount in full and the amendment is made within the period of review, the revised statement will be taken to be a notice of amended assessment. The date of effect of the amended assessment is the day it is adjusted on your running balance account. However if the ATO does not accept the revised amounts in full, it will issue a notice of amended assessment.

If your revision increases the tax you owe or reduces your credit, the ATO will generally treat your revised activity statement as a voluntary disclosure of unpaid tax or over-claimed credits. This means you’re likely to receive concessional treatment for any penalties and interest charges that may apply. (You will still have to pay any outstanding tax or overpaid credits, and we may have to ask for a reduction in interest charges for you.) ■

Can your summer holiday house be turned into a tax advantage?

Now that summer has come and gone, the ATO has been active in issuing reminders about the taxation issues surrounding holiday homes.

The fact the ATO issues reminders is a sure sign that the topic is continuing to be a concern.

Even though it is still some time before the owners of beach shacks or bush retreats will be making an appointment to see their tax agents, it can only be assumed that the ATO is wary that these taxpayers are most likely expecting to make certain related claims come tax time.

What's the tax treatment for holiday homes?

If your holiday house is just used by yourself, and your family and friends (that is, it is not rented out), then there is generally nothing to include in your tax return in terms of income or deductions until the property is sold.

But when that time comes, you will need to have kept records of all expenses and outgoings from the time you bought the holiday house until the day it is sold. This will enable us to be able to accurately work out any capital gain (or perhaps loss) when you sell.

However if it has been leased or rented out, the principles that apply to an investment rental property also apply to a holiday house from an income tax point of view. Owners are therefore eligible to claim expenses for the property based on the proportion of the income year when it was rented out or, alternatively, based on when it was "genuinely available" for rent (see panel on page 5).

What expenses can I claim?

Deductible expenses can include interest on funds borrowed to buy the house, property insurance, an agent's commission, repairs and maintenance costs (such as materials, mower fuel, council tip fees, trailer hire), council rates, the decline in value of depreciating assets such as a stove, and capital works. Check with us if you want to make sure an expense is eligible for a deduction.

As noted, if you rent out your holiday home, you can claim reasonable costs that relate to you inspecting, maintaining and making repairs to the property. But if you are primarily visiting the property to have a holiday, and while there make repairs or do some maintenance, you generally can only claim repair and maintenance costs based on the proportion of the income year the property was rented out or was genuinely available for rent. Note also that you cannot claim travel costs to and from the property on such cases.

Don't forget to apportion for private use

It will be necessary to apportion expenses if the house has been used:

- for private purposes for part of the year – such as when you use it yourself, or allow your family, relatives or friends to use it free of charge
- by family or friends for part of the year and you charge them less than market rent.

So if for example the house is made available to renting holiday makers for most of the year, but you reserve three weeks over an off-peak period to use it yourself, that three week period needs to be ignored when calculating deductions. This also includes use by other family members, relatives and friends.

Example: Private use by owner

James McGill and his partner Kim have a holiday home, which is rented at market rates. They have a real estate agent advertise it for rent during the year. James and Kim use the property themselves for four weeks during the year.

During the year, their expenses for the property are $34,802. This includes interest on the funds borrowed to buy the holiday home, property insurance, the agent's commission, maintenance costs, council rates, the decline in value of depreciating assets and capital works deductions.

James and Kim receive $25,650 from renting out the property during the year. However no deductions can be claimed for the four weeks they used the property themselves.

James and Kim can claim deductions for their expenses based on the proportion of the income year the property was rented out or was "genuinely available" for rent (more below).

James and Kim's rental income and deductions for the year are as follows:

Rent received	$25,650
Rental deductions (48/52 x $34,800)	$32,124
Rental loss	($6,474)

As they are joint owners, they claim a rental loss of $3,237 each in their tax returns.

James and Kim need to keep records of their expenses. If they make a capital gain when they sell the property, the proportion of expenses (interest, insurance, maintenance costs and council rates) that they could not claim a deduction for might in certain cases be taken into account in working out their capital gain.

Special rule for non-arm's length dealings

If your holiday home is rented out to family, relatives or friends below market rates, your deductions are limited to the amount of rent received for that period. For example, if your holiday house is used by your sibling's family for a week, and they pay a token $100 for the privilege, even though expenses such as those mentioned above may be calculated to add up to say $200, a claim for expenses is capped at the amount of rent received (that is, $100). ■

GENUINE AVAILABILITY FOR RENTAL

If the holiday house is really available to be rented out, but you or your real estate agent have simply not been able to attract renters, then the ATO will still generally allow deductions for that property.

However the ATO is wary that some less-than-scrupulous holiday home owners may try to make expense claims for their property while not really intending to rent it out to others.

The ATO has outlined various factors that it believes may indicate that a holiday house is not "genuinely available" to be rented — leaving the property owner ineligible to make expense claims.

Factors that the ATO can be on the lookout for include a holiday house that is:

- advertised in ways that limit its exposure to potential tenants – for example, the property is only advertised at a workplace, by word of mouth, or outside annual holiday periods when the likelihood of it being rented out is very low
- the location, condition of the property, or accessibility to the property, mean that it is unlikely tenants will seek to rent it
- you place unreasonable or stringent conditions on renting out the property that restrict the likelihood of the property being rented out – such as:
  - setting the rent above the rate of comparable properties in the area
  - placing a combination of restrictions on renting out the property – such as requiring prospective tenants to provide references for short holiday stays and having conditions like "no children" and "no pets", and
- you refuse to rent out the property to interested people who have applied to rent the property without adequate reasons.

Considerations if your employee wants to salary package

Salary packaging is one way for an organisation to increase the take-home pay of its employees — and if done correctly, at no extra cost to the business but with a tax advantage to the employee.

WHAT'S SALARY PACKAGING?

Basically, an employee agrees with their employer to forego part of their future salary or wages in return for the employer providing benefits of a similar value. By paying for items out of pre-tax salary the employee can reduce taxable income. Benefits typically provided include cars by way of novated lease, provision of property (such as a computer) or payment or reimbursement of expenses.

For the employer, salary packaging has some advantages, such as the ability to attract employees, and it may also act as an incentive to reward employees.

Benefits that employees can package can be dependent on the type of organisation as well as the items the employer is willing to consider. There can however be additional administration costs to the employer in making sure that it is all processed correctly.

CONSIDER FRINGE BENEFITS TAX

The ATO says employers need to be very aware of fringe benefits tax (FBT) when working out what can be provided to replace the income in a typical salary sacrifice arrangement. Sometimes it can cost employers more in remuneration if salary packaging is done incorrectly because of FBT being levied.

For an employer, if an FBT liability is generated through a salary sacrifice arrangement, that cost can be passed on to the employee by reducing their total remuneration by the same amount. There may be extra paperwork, but an employer should be no worse off when they provide taxable benefits under a salary sacrifice arrangement.

Benefits provided that would typically be subject to FBT include property (such as goods) and expense payments (such as loan repayments, school fees, child care costs and home internet connection).

So for example if an employee salary packages golf club membership worth $2,000 (including GST), the amount sacrificed from their salary will generally be that amount plus any FBT liability.

CARS A PERENNIAL FAVOURITE

Including a car in a salary package is very popular, and doing so as part of a salary sacrifice arrangement will often raise the topic of "novated leases". Costs in operating the vehicle can also be salary sacrificed. This is typically referred to a fully novated lease.

What's a novated lease and its benefits?

A novated lease is a three-way deal – between an employee, a financier, and the employer. The employee owns the car, and the employer agrees to make lease repayments to the financier plus pay for any running costs for that car as a condition of employment.

One obvious such condition is to remain an employee. In the event that employment ceases, the obligations and rights under the lease revert to the (former) employee. This can suit the person involved, as they keep the car, but can also suit the employer as they are not saddled with an extra vehicle or a financial commitment for it.

What are the tax implications to the employer?

During the period of the novated lease, the employer is entitled to a deduction for lease expenses where the car is provided as part of the salary sacrifice arrangement.

It does give rise to a car benefit under the FBT rules and is subject to FBT. The complication is that the taxable value for FBT purposes can be arrived at by varying methods, so consultation with this office is recommended.

To reduce the FBT, an employee can also make contributions towards the running of the vehicle from their after tax income. Ideally employees should seek advice from their tax agent to ensure that novated leasing suits their financial circumstances.

SUPERANNUATION A COMMON CHOICE

Salary sacrificed super contributions are treated as employer contributions, and if made to a "complying super fund" the sacrificed amount is not considered a fringe benefit for tax purposes — which means employers will not be liable to pay FBT on the super contributions. Further, these will not be included as a reportable fringe benefit amount on the employee's payment summary.

However salary sacrificed super contributions in excess of mandated contribution caps must be reported on the employee's payment summary as reportable employer super contributions. Note however that salary sacrificed super contributions made to a non-complying super fund will be a fringe benefit.

Can a deduction be claimed by the employer?

If the employee is younger than age 75, you can claim a deduction on all employer super contributions, including salary sacrificed contributions, you make to their super fund. After age 75, only mandated employer contributions can be accepted by the super fund and a deduction claimed.

Note also that while reportable employer superannuation contributions are not included in the employee's assessable income, the amount can be included in the income tests applicable for some benefits and obligations, such as:

- deductions for personal super contributions and non-commercial losses
- the super co-contribution
- the Medicare levy surcharge threshold calculation
- a range of Centrelink and child support benefits and obligations.

Salary sacrificed contributions to a super fund form part of the employee's "concessional contributions" for the financial year, on top of superannuation guarantee (SG) payments. There is a cap on the amount of concessional contributions that an individual can make each financial year before paying extra tax. For the 2016-17 financial year, this is $30,000, or $35,000 if the employee is aged 49 or over on June 30, 2016.

Note that the employer SG obligation amount of 9.5% is based on the reduced salary (that is, post the amount sacrificed). Also note that some awards or agreements may stipulate the amounts of super, so the salary sacrificing arrangement will not affect SG obligations.

FBT EXEMPTIONS

Certain fringe benefits are specifically exempt from FBT. Note that the exemption applies if the items are primarily for work-related use. Some common items include:

- portable electronic device (such as a mobile phone or tablet)
- an item of computer software
- an item of protective clothing
- tools of trade
- a briefcase.

Alternatively, there is an "otherwise deductible" rule, which works by allowing an employer to avoid an FBT liability on an item to the extent that if the employee would have been eligible to claim the item as a deduction in their own tax return had they bought this item themselves.

Specifically, there will be no FBT on the item purchased if an employee uses it solely for work purposes. There may be some apportionment, and therefore an FBT liability, if it is not fully being used for work purposes.

Contact this office for other exemptions and ways to reduce your FBT liability. ■

TIP

A legitimate salary sacrifice arrangement cannot be made retrospectively for salary or wages that have already been earned.

SMSF trustees: Don’t let “cognitive decline” sneak up on you

As the Australian population ages, and retirees become either fully or partially reliant on their own retirement savings instead of the government pension, the ability to manage those funds may be affected by one of the possible downsides of a long life.

The possibility of declining health, both physical and cognitive, may be uncomfortable to think about, but it’s important to ensure all your SMSF’s administrative bases are covered. Whatever happens, obligations always need to be met.

The ATO regularly encourages SMSF trustees to plan for “cognitive decline” because mental health issues – like dementia, which now affects one in 10 people over 65, and three in 10 over 85 – are becoming more common.

The ATO has stated in the past that it is generally recognised that SMSFs are usually managed by one trustee, and require a high level of financial decision making. While many trustees remain perfectly capable of effectively managing their financial affairs well past retirement age, there is a risk that some with diminished capacity to effectively manage their fund may nevertheless continue to do so.

The ATO recommends trustees make arrangements about wills, consider nominating guardians and enduring powers of attorney, both medical and financial.

Getting an SMSF ready to be wound up

Preparing an SMSF for the possibility of an unexpected wind up is relatively simple once key decision makers (powers of attorney and so on) have been appointed. According to the ATO, to wind up your fund you must:

- complete any wind up requirements specified in the trust deed
- pay required minimum pensions for the year
- pay out or rollover all super (leaving a sufficient amount to pay final tax or expenses if required)
- appoint an SMSF auditor to complete the final audit
- complete and lodge the final SMSF annual return and pay any outstanding tax
- after all expected liabilities have been settled and requested refunds are received, close the fund’s bank account.

Of course, you need to have a legal personal representative, with an enduring power of attorney, ready to perform these tasks if the need arises.

There are also a few “exit strategies” you can use to dissolve your fund, or change its structure so it becomes a different type of fund. For instance you can set up your SMSF so it rolls over into a public offer fund (an option, however, likely to trigger a CGT event) or convert it into a small APRA fund, which generally costs more to administer compared to an SMSF.

The ATO believes too many SMSF trustees and members are ignoring increasing trends of cognitive decline – dementia prevalence is projected to increase from a recent estimate of about 350,000 people to around 1.13 million people by 2050 (and 131.5 million worldwide). So don’t leave it to the last minute, and don’t leave it to someone is not prepared to shoulder the burden when you unexpectedly find you no longer can. Contact us if you require assistance. ■