

## GOVERNMENT REVIEW OF FBT COMPLIANCE COSTS

### General

The legislative changes required for the measures set out in this attachment will be amendments to the *Fringe Benefits Tax Assessment Act 1986 (FBTAA)*

### After Hours Taxis

#### *Current position*

FBT applies where an employee pays for an employer's travel between home and work, including taxi travel. An exception is where the taxi travel is provided on an unexpected and infrequent basis, for instance, because the employee is ill.

#### *Change to FBT treatment*

An FBT exemption will be made available to all employer-provided taxi travel directly between home and work where the employee arrives at or leaves work before 6 am or arrives or leaves work after 8 p.m., or is sent home sick. The exemption would apply whether the taxi travel covered all of part of a direct journey between home or work.

### Car Parking

#### *Current Position*

Under the *FBTAA* a car parking fringe benefit may arise where, amongst other things, car parking is provided by an employer to employees and that parking is located within 1 kilometre of a commercial parking station.

#### *Change to reduce compliance costs*

No benefit will now arise unless a commercial parking station within a 1 kilometre radius of the employer's car parking facilities charges more than \$5 for all day parking. The valuation of the car parking benefit will remain unchanged from the current arrangements, that is, the employer can base the valuation on the lowest cost commercial car park within 1 kilometre (including any commercial car parking within 1 kilometre that charges \$5 or less).

Comparable changes will also be made to the provisions under which car parking for self employed persons is non-deductible under circumstances that would make it subject to FBT if it was employee car parking

#### *Current Position*

The *FBTAA* currently provides for a car parking fringe benefit to be valued by reference to the, lowest fee charged by a commercial parking station operator within a 1 kilometre radius of the employer's car parking facilities on a particular day.

### *Change to reduce compliance costs*

To avoid the necessity for employers to constantly monitor changes in car parking fees an alternative method of valuation will be made available. This method will allow the value of car parking to be determined by reference to an average value and will operate as follows:

- (a) The valuation of car parking fringe benefits provided by an employer over the FBT year will be based on the average of the lowest fee charged by the operator of a commercial parking station located within a 1 kilometre radius of the employer's car parking facilities on the first day of the FBT year and the first day of the next FBT year.
- (b) Where there is more than one commercial parking station within a 1 kilometre radius of the employer's premises, the lowest fee charged by any operator of a commercial parking station will be acceptable.
- (c) The fees that are used for the valuation must be representative of the fees charged during the period between the two dates.

### *Current Position*

The Commissioner of Taxation issued Taxation Ruling TR 93/18 which sets out several methods available to an employer to determine the number of car parking benefits provided to employees during the FBT year of tax.

### *Change to reduce compliance costs*

In determining how many car parking benefits are provided in an FBT year, an employer will be able to choose one of three methods of calculation. These methods are based on record-keeping over a full year, 12 weeks of record keeping, or a statutory formula:

- (a) Where an employer makes no election, the employer must determine the number of car parking benefits using actual records kept over the full year,
- (b) Where an employer elects to use, the 12 week register method, a register is to be maintained by the employer for a continuous 12 week representative period in a FBT year of tax in order to determine the number of car parking fringe benefits provided during that period. The number of benefits provided during that period can then be used to determine the total yearly number of benefits provided in the FBT year of tax. This number of benefits can be used in later years until the number of car parking spaces (or the number of employees allowed to park if this is less) increases by more than 10 per cent. In any case, a new 12 week register would be required every five years.
- (c) Where an employer elects to use the statutory formula method, the number of car parking benefits provided will be calculated by multiplying the number of spaces available to employees (or the number of employees allowed to park, if this is less) by a statutory number of days per year. The statutory number of days will be set at 240.

Entertainment provided by way of food and drink to employees and non-employees

### *Current Position*

From 1 April 1994 employers are generally liable for FBT on entertainment provided to employees and their associates and entitled to an income tax deduction for the cost of providing that entertainment. Employers are required to keep records of entertainment expenditure to, amongst other things, determine any apportionment between employees and non-employees. The Commissioner of Taxation has issued a Taxation Determination which provides that where an employee entertains non-employees the cost of the employee's meal can be determined on a 'per head' basis rather than an exact expense basis.

### *Change to reduce compliance costs*

In order to reduce compliance costs:

- (a) In determining what proportion of entertainment is provided by way of food or drink to employees and non-employees, an employer will be able to choose one of three methods of calculation.
- (b) These methods are an employee/non-employee break-up over the full year based on actual expenditure; an employee/non-employee ratio based on 12 weeks of record keeping; or a predetermined employee/non-employee ratio of 50/50:
  - (i) Re employer may determine the employee/non-employee proportion of entertainment by way of food or drink (meal entertainment) using actual records of expenditure kept over the full year (the per head basis currently available will remain).
  - (ii) Where an employer elects to use the 12 week register method, a register is to be maintained by the employer for a continuous 12 week representative period in a FBT year of tax in order to determine the employee/non-employee ratio of meal entertainment. That employee/non-employee ratio can be applied to the total yearly expenditure on meal entertainment. That ratio can continue to be used in later years until the total yearly expenditure on meal entertainment varies by more than 20 per cent from the first year in which the register is kept. In any case, a new 12 week register would be required every five years.
  - (iii) Where an employer elects to use the 50/50 split method, the total yearly expenditure on meal entertainment must be apportioned 50/50 between employees (and associates) and non-employees, with 50 per cent subject to FBT and deductible and 50 per cent non-deductible and not subject to FBT. The total yearly expenditure includes all expenditure on meal entertainment regardless of whether the expenditure is subject to Fringe Benefits Tax (FBT), is non-deductible for Income Tax purposes, or is an allowable income Tax deduction.

## **Corporate boxes**

### *Current Position*

An employer is required to keep records of entertainment provided to employees/non-employees in corporate boxes or other similar hospitality arrangements. This is necessary so the portion of hiring or leasing costs that relates to the entertainment of employees can be determined.

The term "business premises" is defined for FBT purposes in such a way that a corporate box could, in some limited circumstances, be business premises of the employer. In such cases, any food and drink provided to employees (and their associates) in the corporate box would be exempt from FBT.

### *Change to reduce compliance costs*

The changes are:

- (a) An option will be provided in relation to the hire or leasing costs of corporate boxes and other similar hospitality arrangements, so that a 50/50 split between employees and non-employees will be accepted for the purpose of determining what proportion is subject to FBT.
- (b) The definition of "business premises" for FBT purposes will be clarified to ensure that corporate boxes and other similar hospitality arrangements are not treated as "business premises". Thus, food and drink provided to employees in corporate boxes will continue to be subject to FBT.

## **Declarations**

### *Current Position*

Generally, an employer cannot reduce an FBT liability for an employee's business usage of a benefit unless the employer obtains a declaration from the employee which states the split between business and private use. A declaration must be provided every time a benefit is provided.

### *Change to reduce compliance costs*

The following measures will substantially reduce the number of declarations required:

- (a) Where a series of identical benefits is provided, a declaration need only be provided by the employee for the first benefit provided. Where there is a change in the business use by the employee for that type of benefit of more than 10 per cent a further declaration will be required. In any case, where the benefit is still being received, a further declaration will be required five years after the last declaration. This measure will apply to declarations where the business/private proportion of the benefit is the only matter required to be shown on the declaration (some declarations require more than the business/private proportion of the benefit to be shown on the declaration, eg. declarations for car benefits require details about the period of use of the car and whether log books were kept).
- (b) Where an employer has a defined policy of only reimbursing business expenses, or where the employer has in place procedures that effectively prevent private usage of a benefit, the employer can replace the employee declarations with an annual declaration that no private benefit was provided.
- (c) As a further measure, certain items will no longer be subject to FBT. These benefits are:
  - (i) laptop and other portable computers
  - (ii) protective clothing (required for employment)
  - (iii) briefcases
  - (iv) calculators
  - (v) tools of trade
  - (vi) subscriptions to trade and professional journals
  - (vii) airport lounge memberships

- (viii) business related software
  - (ix) electronic diaries and similar items
  - (x) corporate credit card membership fees
- (d) Car phones and mobile phones will not be subject to FBT where private use is only minor or incidental to the primary business use.

### **Period for Keeping Records**

#### *Current Position*

An employer is required to keep FBT records for a minimum period of 7 years.

#### *Change to reduce compliance costs*

To bring FBT record keeping requirements into line with Income Tax record keeping requirements, employers will be required to keep FBT records for a minimum of 5 years.

#### Living-away-from-home Allowances (LAFHA)

#### *Current Position*

A LAFHA is an allowance paid by an employer to an employee to compensate for additional expenses incurred or other disadvantages suffered for living away from his or her 'usual place of residence'. The taxable value of the benefit provided is reduced by any reasonable amounts paid in compensation for accommodation and for increased expenditure on food.

The Commissioner has issued guidelines as to when an employee is taken to be living away from his or her usual place of residence. These guidelines have been difficult for employers to apply in practice.

#### *Change to reduce compliance costs*

Under the new arrangements, an allowance will only be a LAFHA subject to FBT where:

- (a) the allowance is paid by the employer to the employee to compensate the employee for expenditure on food, drink, accommodation and other disadvantages which the employee may incur while living away from his or her usual place of residence., and
- (b) the employer provides a declaration that it is intended that the employee will be employed in the new location for a set period of time (supported by appropriate documentation). With respect to appropriate employer documentation, the following documentation will be accepted:
  - (i) an employment contract where the length of the contract does not exceed 12 months; or
  - (ii) where the employee is not employed under a contract, a written agreement between the employer and the employee that the employee will be away from their usual place of residence for a period not exceeding 12 months', or
  - (iii) documentation that it is the usual practice for a class of employees of the employer to be employed away from their usual place of residence for a period not exceeding 12 months.

- (c) the employee provides a declaration to his or her employer stating that he or she is living away from his or her usual place of residence; and
- (d) the employee is living away from his or her usual place of residence. An employee will be taken as living away from his or her usual place of residence where the employee is away from his or her usual place of residence for a period which does not exceed 12 months.

If the employee is in Australia on a temporary work visa, or is an Australian resident for tax purposes and is working overseas, the periods mentioned above will be 4 years.

Where an allowance is not a LAFHA, it is subject to Income Tax in the employee's hands.

The employer's liability to FBT on LAFHA benefits can be reduced by the following amounts:

- (a) The amounts actually expended by the employee on accommodation while living away from his or her usual place of residence; and
- (b) Reasonable amounts to cover the additional cost of food. The Commissioner has advised that he will issue a Taxation Determination setting out what is considered to be a reasonable food component for a particular FBT year. This Determination will generally be issued at the beginning of each FBT year