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Fringe benefits tax manual

Policy & Guidelines Paper

Preface

This Fringe Benefits Tax manual is issued as a NSW Treasury policy and guidelines paper which outlines legislation, rulings, determinations and other relevant information relating to Fringe Benefits Tax (FBT).

The manual has been prepared to assist NSW Government agencies to comply with the requirements of the FBT regime.

This FBT manual outlines how to identify and value each type of fringe benefit and includes discussion of the interaction between FBT and GST. Users should refer to the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) for specific details and rules.

This FBT manual was updated in January 2012 with the assistance of Deloitte Touche Tohmatsu Ltd (Deloitte). It is now reissued in September 2013 with updates to Chapter 8: Living Away from Home Allowance, as a result of the *Tax Laws Amendment (2012 Measures No. 4) Act* 2012 which became effective from 1 October 2012.

For ease and convenience this manual has been prepared for access via the NSW Treasury website. Included in the left margins of this guide are a number of references to relevant rulings and legislation on the Australian Taxation Office (ATO) website, www.ato.gov.au as well as chapter references to ***FBT A Guide for Employers*.**

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For Secretary
NSW Treasury
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This publication can be accessed from Treasury's website [www.treasury.nsw.gov.au].

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Please note: A detailed table of contents is available at the beginning of each chapter.

Executive Summary

Since disaggregation of the Fringe Benefits Taxation (FBT) for the NSW Government, NSW Government agencies assumed direct responsibility for FBT compliance in activities such as:

- registering their Department for FBT purposes
- preparing and lodging annual FBT returns with the Australian Taxation Office (ATO)
- reporting quarterly instalments on their own Business Activity Statements (BAS)
- being directly answerable to the ATO for compliance.

NSW Treasury re-appointed Deloitte Touche Tohmatsu Ltd (Deloitte) in November 2011 to assist with the update of the NSW Treasury Fringe Benefits Tax manual.

Deloitte was also appointed to conduct half day FBT educational seminars annually on FBT compliance issues for NSW Government agencies over a two year term commencing March 2012. The seminars will give agencies an opportunity to enhance their FBT knowledge and to be kept informed on legislative and administrative changes that may occur. NSW Treasury envisages this process will assist agencies with compliance issues.

Chapter 1: Operation of the FBT Regime

Contents

1.1 What is FBT?

Ch1 - FBT: A Guide for Employers

FBT is a tax payable by employers based on the value of "benefits" (specifically defined) provided to employees. In broad terms, fringe benefits are 'payments' to employees other than salary and wages.

The FBT rules are set out in the *Fringe Benefits Tax Assessment Act 1986* (FBTAA). While FBT is a separate tax regime, it operates in conjunction with the *Income Tax Assessment Act 1997* (ITAA 97). For example, certain terms within the FBTAA are defined with reference to the ITAA 97. The FBTAA seeks to ensure that tax is paid where an employee is remunerated in a manner which is in lieu of, or in addition to, their salary or wages.

1.2 Who pays the tax?

FBT is a tax paid by employers regardless of whether the employer is the actual provider of the fringe benefit.

For example, where a benefit is provided to an employee of a NSW Agency by a third party under an arrangement with that Agency, the Agency may still be liable to pay the tax.

1.3 FBT year

The FBT year covers the twelve-month period beginning 1 April and ending 31 March each year.

1.4 Rate of tax

s6

The FBT rate of tax may vary from year to year. Section 6 of the Fringe Benefits Act 1986 is amended when the tax rate changes. The current FBT rate is 46.5%.

1.5 Lodgement

s68

The FBTAA requires an annual return to be lodged with the ATO by **21 May**. The Australian Taxation Office (ATO) may provide an extension of time for lodging the annual FBT return where it is lodged through a registered tax agent. This date of lodgement is determined annually by the ATO.

1.6 Assessment

FBT is a self assessment tax. The ATO does not usually issue an assessment notice in relation to FBT as any tax outstanding is due and payable when the return is lodged. An assessment notice is usually only issued where a refund is payable or where an employer requests an amended assessment.

1.7 Payment of FBT

s103

Quarterly instalments of FBT are due for payment on 21 July, 21 October, 21 January and 21 April. Instalments are not required if the FBT liability in the previous year was less than $3,000.

Quarterly instalments are based on the notional tax, which is equal to the tax payable for the prior year, provided a variation request has not been lodged. A final balancing amount (if necessary) is paid when the return is lodged on 21 May.

Where the return is lodged through a registered tax agent, the final payment (as necessary) is due for payment at that date of lodgement unless the ATO requires the payment earlier as part of the tax agent extended lodgement program.

1.8 Objections, appeals and amendments

1.8.1 Objections

If a NSW Agency is not satisfied with an FBT assessment, it may lodge an objection against the assessment. The objection must be in writing and must clearly set out the reason for the objection.

s78A An objection must be made within **four years** of the FBT return being lodged.

1.8.2 Appeals

s14ZZ If the ATO disallows an objection, the NSW Agency may request that the matter be referred to the Administrative Appeals Tribunal or the Federal Court.

This request must be in writing and must be made within 60 days after notice of the ATO's decision in relation to the objection.

1.8.3 Amendments

s74 Circumstances under which the assessment of FBT may be amended include:

- where an audit by the ATO reveals undisclosed or wrongly valued benefits
- where an employer later requests an amendment to the amount of tax payable (e.g. because they discover that tax has been over or under paid).

Usually an amendment may only be made within a period of **three years** after the original assessment date, being the date that the FBT return has been lodged with the ATO. However, in a case where tax has been avoided, the amendment may be made by the ATO within **six years** of lodgement.

In cases of fraud or evasion there is no time limit in which the ATO can amend an assessment.

1.9 Penalties and tax audits

s113A, s114, s115, s115A, s115B, s116, s117 Penalties by way of additional tax can be imposed where an incorrect FBT return is lodged, records are falsified, or incorrect information is supplied to the ATO. Late lodgement of a return or late payment of tax can also incur a penalty.

The penalties that can be imposed can be substantial, up to 200% of the relevant tax. The Commissioner of Taxation has the power to exercise his discretion in determining the amount of the penalty. In particular, where a taxpayer has a well-reasoned argument as to how a law should operate, the penalty may be reduced to nil.

FBT returns can be subject to audit by the ATO within a period of up to six years from the date of lodgement of the FBT return.

1.10 What is a fringe benefit?

s136(1) Broadly, the FBTAA defines a fringe benefit to be a benefit:

- which is provided to an employee or an associate of an employee (see 1.12)
- in respect of the employee's employment
- by an employer, an associate of the employer or a third party under an arrangement
- which is not specifically excluded from the definition of fringe benefit.

Fringe benefits do not include:

- salary or wages as defined for income tax purposes
- allowances (apart from some living away from home allowances)
- exempt benefits (see 1.18)
- contributions to complying superannuation funds
- most employment termination payments
- benefits under qualifying employee share acquisition schemes
- capital payments for restraint of trade or personal injury
- deemed dividends for income tax purposes.

To correctly identify and account for fringe benefits the following questions need to be asked:

- is there a benefit?
- is it a fringe benefit?
- what type of fringe benefit is it?
- what is the taxable value of the benefit?
- can the taxable value be reduced?
- what substantiation is required?
- have the gross-up rules been correctly applied in the calculation of FBT?
- are the fringe benefits correctly reported on the employee’s payment summary?

1.11 What is a benefit?

s136(1) A benefit can include any right, privilege, service or facility. The term benefit is defined very broadly, and is not necessarily limited to benefits as conventionally understood.

For example, a benefit would include:

- providing somebody with the use of something (e.g. a car)
- giving somebody ownership of something (e.g. a uniform)
- permitting somebody to enjoy a privilege (e.g. concessional use of public transport)
- providing somebody with a service (e.g. free advice)
- payment/reimbursement of an expense item (e.g. education fees).

1.12 Employees and associates

s136(1) The definition of an employee contained in the FBT legislation includes:

- present/current employees
- former employees
- future employees.

Sch1 s12-35 TAA A person is an employee if they receive or are entitled to receive 'salary or wages.' Salary or wages means payments from which PAYG must be withheld under Schedule 1 of the *Taxation Administration Act 1953* (TAA).

A number of individuals are specifically deemed to be employees. These include:

- a person who holds or performs the duties of an appointment, office or position under the law of the State, for example, Ministers of the Crown and staff in the Minister's office as well as Commissioners or other appointed office holders in New South Wales
- a person who is in the service of the State
- a member of Parliament
- a member of a board or a commission.

Associates of an employee are defined to mean:

- a relative of the employee
- a partner of the employee or a partnership in which the employee is a partner
- the trustee of a trust to which the employee or associate of the employee is a potential beneficiary
- a company controlled by the employee or associate of the employee.

A person may be deemed an associate where they are provided with a benefit under an arrangement between:

- the provider, the employer or associate of the employer
- the employee or associate of the employee.

1.13 Provider of the benefit

s136(1) The benefit must be provided by:

- the employer
- an associate of the employer
- a third party under an arrangement.

1.13.1 Employer

The term 'employer' is defined to mean a current, future or former employer.

As with the definition of an employee, the definition of an employer in the FBTAA is wide and includes past, current and future employers. The definition of employer in the FBTAA is also defined by reference to the liability to pay salary and wages.

1.13.2 Associate

The definition of associate is extremely wide (as with the definition of employee).

1.13.3 Third parties

A benefit provided to an employee or associate by a third party will amount to a fringe benefit where:

- the benefit is provided under an arrangement between the third party and the employer or associate of the employer
- the employer participates in the provision of the benefit and knows or should know that they are doing so.

The Commissioner of Taxation considers an employer is deemed to have entered into an arrangement in incentive award cases where it actively or passively participates in the provision of the benefit. The ATO has indicated that passive participation includes situations where an employer fails to take authoritative action prohibiting employees from accepting any benefits that arise in connection with their employment.

TR 97/17 Further, the Commissioner of Taxation considers an employer is deemed to have entered into an arrangement where an employee is provided with a benefit in the form of entertainment if the employer knows of, or consents to the provision of the entertainment to the employee by the third party.

For example an employee of a NSW Agency attends a function hosted by a major contractor to the NSW Agency. Notwithstanding that the NSW Agency does not provide the entertainment to its employee, an FBT liability may arise where there exists an arrangement between the NSW Agency and the host for such benefits to be provided. Another example may be the provision of free or concessional air travel to all NSW Agency employees.

1.14 Employment relationship

s148(1) A fringe benefit will arise when a benefit is provided by a NSW Agency to an employee in respect of the employee's employment. Employment includes the holding of any office or appointment, or the performance of any duties or functions which result in a person being treated as an employee.

Stevens v Brodribb Sawmilling Company P/L The definition of employee in the FBTAA is the same as the definition in the ITAA. However the tax legislation does not adequately define who is an employee, but relies on the general meaning of the term as interpreted by the courts (the common law). The various issues relevant to determining whether or not a worker is an employee under the common law are discussed below.

1.14.1 Employees or Contractors

In most instances, a worker engaged by a NSW Agency will clearly be an employee or an independent contractor (i.e. not an employee). In some instances however, it may be difficult to determine whether a worker is really an employee and subject to FBT (and PAYG withholding) or should be correctly treated as an independent contractor.

TR 2005/16 Under the common law an employee relationship exists where there is a master-servant relationship. This terminology is now rather out dated. Courts now look at a number of key factors in making a determination. These are briefly outlined below:

- the degree of **control** that the employer has over the manner in which work is performed. (Does the employer have the power to determine how, when and where the work should be performed?)
- the **integration** or **organisation** test – does the worker operate on their own account or in the business of the employer?
- if the contract is **results based**. When the worker contracts to achieve a specific result (as opposed to being paid by the hour) this is a strong indicator that the worker is truly an independent contractor.
- if the person engaged has the **power to delegate**, the tasks to another person, this will generally indicate he/she is not an employee.
- if the worker bears **little or no risk** for the work performed they are likely to be an employee.
- the provision of **tools and equipment** - the provision of assets, equipment and tools by an individual and the incurring of expenses and other overheads is an indicator that the individual is an independent contractor.
- finally, the terms of the **contract or conditions of engagement** are relevant. This issue will not be determined solely because the worker is referred to as a contractor. The substance of the relationship will prevail over the form of the contract.

In most instances, determining whether an individual is a true contractor or is an employee will be a matter of fact and degree of the particular case.

If you are unsure if an individual is an employer or a contractor you should seek specialist advice.

1.15 Types of fringe benefits

The FBTAA divides fringe benefits into different types for the purposes of determining the taxable value of the fringe benefits concerned.

As noted in later chapters of this FBT Manual, different benefits have different valuation methods. Accordingly, correct classification of the benefit is very important.

The different types of fringe benefits are set out in the FBTAA and are dealt with in detail in later chapters of this FBT Manual as follows:

Type of fringe benefit	Chapter number
▪ Car fringe benefits	3
▪ Debt waiver fringe benefits	4
▪ Loan fringe benefits	5
▪ Expense payment fringe benefits	6
▪ Housing fringe benefits	7
▪ Living away from home allowance	8
▪ Board fringe benefits	9
▪ Tax Exempt Body Entertainment	10
▪ Car parking fringe benefits	11
▪ Property fringe benefits	12
▪ Residual benefits	13

Where a benefit is subject to FBT, it will not be taxable in the hands of the employee. However, it may be required to be reported on an employee's payment summary and is then used to determine entitlements to certain tax concessions and benefits or liability to certain surcharges (i.e. social security benefits, Medicare levy surcharge etc).

1.16 Taxable value

The taxable value of a fringe benefit is an attempt to quantify (in monetary terms) the value of the benefit being provided, and is established from a series of valuation rules.

Benefits that do not fall into any of the specific categories may be taxed under the general category of "residual fringe benefits".

1.16.1 Correctly valuing the benefit

For some types of fringe benefits, the value of the fringe benefit is relatively straightforward (e.g. expense payment fringe benefits where the value is based on evidence of actual expenses) while in other cases, this is more difficult (e.g. car fringe benefits where there are a range of different valuation approaches).

The FBTAA specifies how to determine the taxable value of different types of fringe benefits.

In quantifying the taxable value of a fringe benefit, in many cases it is possible to reduce the taxable value through the following methods:

- recipient's contribution or
- the otherwise deductible rule.

These are discussed further below.

1.16.2 Recipient's contribution

In many cases, the legislation provides for the taxable value of a fringe benefit to be reduced by the after-tax contribution to the cost of the benefit made by the recipient of the benefit. This ensures that only the net amount of the fringe benefit is taxable.

For example, where an employee makes an after-tax contribution towards the cost of leasing a motor vehicle, the amount of the contribution will be deducted from the taxable value, and therefore reduce the total FBT payable.

The same method applies to after-tax contributions made by the employee in relation to most benefits received, and is used to reduce the taxable value of the fringe benefit accordingly. Reference should be made to the calculation of the category of each type of fringe benefit to determine when the taxable value of the benefit can be reduced by application of a recipient contribution.

The taxable value of the fringe benefit can only be reduced to zero. In limited circumstances, however, where the fringe benefit is recurring (i.e. spans at least two FBT years) *and there is an appropriate agreement in place*, it may be possible to apply the excess employee contribution (i.e. excess amount left once applied to the taxable value of the fringe benefit in the current FBT year) to the fringe benefit provided in the subsequent FBT year (refer to ATO ID 2005/210).

Note: Salary sacrifice amounts are not considered to constitute recipient's contributions as they are made from an employee's pre-tax income.

For GST purposes, where the recipient's contribution is made directly to the employer and not to a third party, the employer is generally required to remit $1/11^{th}$ of an employee's cash contribution to the ATO (the exception will be where the supply is deemed to be GST-free or input-taxed, for example, the provision of health insurance to an employee would be treated as GST-free and therefore there would be no requirements to remit $1/11^{th}$ of any contribution as GST to the ATO in such circumstances). The GST-inclusive contribution amount, however, may be deducted when calculating the taxable value of a fringe benefit.

For income tax purposes, the receipt of any recipient contribution will be treated as income of the employer and must be disclosed appropriately.

1.16.3 Otherwise Deductible Rule

Another way in which the taxable value of particular fringe benefits may be reduced is by the amount that the employee would normally be able to claim as an income tax deduction if the employee were to acquire the benefit themselves.

For example, if an employee of a NSW Agency was provided with airline tickets to travel in order to perform employment related duties, the cost would be wholly deductible for income tax purposes to the employee, if they had incurred the cost themself.

Accordingly, the otherwise deductible rule provides that where a NSW Agency provides a ticket to an employee under such circumstances, the taxable value of the fringe benefit would be reduced to nil as the cost of the ticket would have been otherwise deductible to the employee if they had paid for the ticket.

A further example is where a NSW Agency reimburses an employee for the work-related telephone calls made from an employee's home phone. In this situation, the otherwise deductible rule provides that the taxable value of the reimbursement by the NSW Agency would be reduced to nil, as the employee would otherwise be entitled to claim the cost as an income tax deduction.

Note: In order to claim this exemption, the relevant substantiation documentation must be completed (see 1.19).

1.17 Exemptions

The FBTAA exempts a range of benefits from the scope of the legislation.

Several exemptions exist because the related benefit (such as exempt in-house health care facilities) is seen as socially worthwhile. Other benefits (such as relocation benefit exemptions) exist to prevent a tax liability arising where benefits are provided to offset amounts that would not ordinarily be considered 'salary or wages' of the employee.

There are also exemptions/concessional treatment available for specified classes of employers (e.g. educational institutions, hospitals, etc.).

1.18 Substantiation

The FBTAA specifies that certain documentary evidence must be kept in relation to the provision of fringe benefits. These requirements can broadly be divided into the general record keeping and substantiation requirements.

1.18.1 General Record Keeping

In accordance with the general record keeping requirements, NSW Agencies must keep records to identify and explain all transactions and acts relevant to ascertaining their FBT liability. Types of general records include source documents to calculate the FBT, receipts, invoices and computer records.

General records are required to be kept for **five years** after completion of the relevant transaction or event. Failure to comply with these requirements is an offence.

1.18.2 Substantiation

The FBTAA also details specific record keeping requirements that must be satisfied if the NSW Agency wishes to take advantage of various exemptions or concessions which reduce their FBT liability. The types of substantiation requirements differ depending on the type of fringe benefit provided. The substantiation requirements for each fringe benefit are outlined in the appropriate chapters of this FBT Manual.

It is extremely important that the substantiation requirements are met. Failure to comply may result in a NSW Agency being liable to pay FBT where it would otherwise have been entitled to an exemption or a reduction in the taxable value of the fringe benefits. Documents that substantiate reductions in the taxable value or exemption from FBT must be retained for **five years** from the date of the original assessment to which the document relates.

The onus for substantiation is on the taxpayer. If a NSW Agency is subject to an audit by the ATO, the burden of proof in relation to demonstrating the method by which the FBT liability is calculated lies with the agency. Failure to comply with one requirement may result in the record being disregarded and it being treated as if it never existed.

Note: The substantiation requirements are a major area of non-compliance in relation to FBT. The ATO has stated that FBT substantiation will remain an area of focus for ATO audits.

1.19 Determining the FBT liability

FBT liability is calculated under the 'grossing-up' method. The grossing-up method was introduced to restore the similarity in tax treatment between salary and fringe benefit remuneration of an employee.

The gross-up calculations convert the taxable value of a fringe benefit to its gross or pre-tax equivalent value, to arrive at the 'Fringe Benefits Taxable Amount'. FBT is then levied on the Fringe Benefits Taxable Amount at the current rate of 46.5%.

Two different gross-up factors are applied to the taxable value of benefits, depending upon whether the provider is **entitled** to GST input tax credits in respect of the benefit. The provider will usually be the employer but could also be an associate of the employer or third party where there is an arrangement in place.

A higher gross-up factor is applied to benefits for which the provider is **entitled** to input tax credits to allow for an employee that would not ordinarily be entitled to an input tax credit had they purchased the goods or services directly. The input tax credit obtained by the provider is effectively recouped through higher FBT to restore neutralities. These benefits are classified as Type 1 benefits.

All other benefits (i.e. those for which the provider is not entitled to input tax credits or benefits which are not subject to GST) are classified as Type 2 benefits and have a lower gross-up factor applied.

Type 2 benefits include:

- GST-free or input taxed supplies (e.g. private school fees or residential rent)
- those provided by small business employers who have chosen not to register for GST
- benefits that were not acquired by the employer (e.g. those manufactured by the employer and provided as in-house fringe benefits).

GSTR 2001/3
TR 2001/2

Determining whether input tax credits are available to a provider in respect of goods or services acquired and subsequently provided as fringe benefits to employees is not always straightforward. Use of the Type 1 FBT gross-up factor does not depend on the actual amount of the input tax credit available to or claimed by the employer, but that there is an **entitlement** to some amount of GST input tax credit.

Input tax credits are denied for an acquisition or importation that is provided as a fringe benefit where the acquisition or importation also relates solely or partly to making supplies that are input taxed. Where a partial entitlement to an input tax credit might have otherwise arisen in these circumstances, the input tax credit is denied in full. Accordingly, the Type 2 FBT gross-up factor will be applied in these circumstances.

The gross-up factors for Type 1 benefits and Type 2 benefits are currently as follows:

Type 1 benefits	2.0647
Type 2 benefits	1.8692

Accordingly, the Fringe Benefits Taxable Amount is calculated as follows:

Fringe benefits taxable amount	=	Total taxable value of all Type 1 benefits x 2.0647	+	Total value of all Type 2 benefits x 1.8692

The amount of FBT payable is then calculated as follows:

FBT Payable = Fringe Benefits Taxable Amount x 46.5%

Certain non-profit employers (referred to as “rebatable” employers) are entitled to a rebate of FBT calculated at 48% of the FBT otherwise payable.

A different calculation is required for private not-for-profit hospitals, public hospitals, and public benevolent institutions.

1.19.1 Example

An employer provides employees with fringe benefits with the following taxable values. The employer is entitled to GST input tax credits for the motor vehicle and some expense payments, but not for the Living Away From Home Allowance (LAFHA) and the remainder of the expense payments.

Type 1 benefits:	
Motor vehicle – statutory value	$5,355
Expense payment	$7,229
Aggregate fringe benefits amount	$12,584
Type 2 benefits:	
Expense payment	$2,345
LAFHA	$4,420
Aggregate fringe benefits amount	$6,765
Type 1 grossed up taxable value:	
$12,584 x 2.0647	$25,982
Type 2 grossed up taxable value:	
$6,765 x 1.8692	$12,645
Total grossed up taxable value:	$38,627
FBT liability:	
$38,627 x 46.5%	$17,962

1.19.2 Capping limits

The concessional FBT treatment of **public benevolent institutions** (PBIs), **other than hospitals** and certain other not-for-profit-organisations is limited to $30,000 of grossed-up taxable value per employee per FBT year. Any amount above this limit will be subject to the normal FBT treatment.

The concessional FBT treatment of public and not-for-profit hospitals is limited to $17,000 of the grossed-up taxable value per employee per FBT year. Any amount above this limit will be subject to the normal FBT treatment.

The concessional FBT treatment of certain non-government, non-profit organisations (**rebatable employers**) is limited to $30,000 of the grossed-up taxable value per employee per FBT year. Any amount above this limit will be subject to the normal FBT treatment.

The above cap calculations necessarily require a per-employee calculation. Certain benefits that are excluded benefits (i.e. not reportable) are not included in the capping calculation. These benefits include:

- the provision of meal entertainment
- car parking fringe benefits
- entertainment facility leasing expenses.

Due to this, the above excluded benefits do not give rise to an FBT liability. Refer to Chapter 16 for a comprehensive list of excluded benefits

.

Chapter 2: GST and FBT

Contents

2.1 Overview

Ch2 - FBT: A Guide for Employers

The introduction of the GST from 1 July 2000 on most goods and services supplied in Australia has impacted on the calculation of an employer's FBT liability.

The main points are:

- the taxable value is calculated using the GST-inclusive amount.
- if the provider (generally the NSW Agency) is entitled (irrespective of whether it is actually claimed or not) to a GST input tax credit on the provision of a benefit, the benefit is a Type 1 benefit and the relevant gross-up rate is 2.0647. Otherwise it is a Type 2 benefit and the relevant gross-up rate is 1.8692.
- an employee contribution towards a fringe benefit can be a taxable value for GST purposes and give rise to a GST liability for the NSW Agency providing the benefit.

2.2 GST and the gross-up rates

FBT is calculated under a gross-up method, primarily to restore the similarity in tax treatment between remuneration provided in the form of cash salary and non-cash benefits.

The gross-up calculation converts the taxable value of a fringe benefit to its gross or pre-tax equivalent value to arrive at the **fringe benefits taxable amount** (this amount is commonly referred to as the **grossed up taxable value**). FBT is then levied on the fringe benefits taxable amount at the current rate of 46.5%.

Two gross-up rates exist, and the one which applies to a particular benefit will depend upon whether the provider is entitled to any GST input tax credits.

The gross-up rates are:

Type 1 benefits (when GST is 10% and FBT is 46.5%)	**2.0647**
Type 2 benefits	**1.8692**

The Type 1 gross-up rate applies to benefits in respect of which the provider is **entitled** to claim GST input tax credits. These benefits are called **Type 1 benefits**. This rate accommodates for the fact that an employee would not ordinarily be entitled to a GST input tax credit had they purchased the goods or services themselves.

The use of the Type 1 gross-up rate does not depend on the actual amount of the GST input tax credit available to or claimed by the provider, but that there is an **entitlement** to **some** amount of GST input tax credit.

TR 2001/2

The ATO in *Taxation Ruling TR 2001/2 Fringe benefits tax: the operation of the new fringe benefits tax gross-up formula to apply from 1 April 2000* advises that the:

"The classification of a fringe benefit (or excluded fringe benefit) as a type 1 benefit does not depend on the extent of the GST input tax credit entitlement to the provider. Nor does the classification as a type 1 benefit depend on whether the input tax credit is subsequently claimed. The test is whether there is any entitlement to a GST input tax credit" (paragraph 14).

Importantly, GST input tax credits are denied for an acquisition or importation that is provided as a fringe benefit where the acquisition or importation also relates solely or partly to making supplies that are **input taxed**. Where a partial entitlement to an input tax credit might have otherwise arisen in these circumstances, the GST input tax credit is denied in full. Accordingly, the Type 2 gross-up rate will apply to benefits which are input taxed for GST purposes.

Benefits for which the provider is not entitled to GST input tax credits are classified as **Type 2 benefits** and have a lower gross-up rate applied. Common Type 2 benefits include:

- benefits provided before the introduction of GST (i.e. pre 1 July 2000)
- GST-free or input taxed supplies (e.g. private school fees or residential rent)
- those provided by small business employers who have chosen not to register for GST
- benefits that were not acquired by the employer (e.g. those manufactured by the employer and provided as in-house benefits).

2.2.1 FBT liability

As a result of the GST, an employer's fringe benefits taxable amount is calculated as follows:

$$\text{Fringe benefits taxable amount} = \left(\text{Total taxable value of all Type 1 benefits} \times 2.0647\right) + \left(\text{Total value of all Type 2 benefits} \times 1.8692\right)$$

For most employers, the amount of their FBT liability is then calculated as the **fringe benefits taxable amount x 46.5%**. A different calculation is required for private not-for-profit hospitals, public hospitals, public benevolent institutions and certain non-profit employers who are treated concessionally for FBT purposes.

Example

An employer provides employees with fringe benefits with the following taxable values. The employer is entitled to GST input tax credits for the motor vehicle and some expense payments, but not for the Living away From Home Allowance(LAFHA) and the remainder of the expense payments.

Type 1 benefits:	
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$12,584 x 2.0647	$25,982
Type 2 grossed up taxable value:	
$6,765 x 1.8692	$12,645
Total grossed up taxable value:	$38,627
FBT liability:	
$38,627 x 46.5%	$17,962

2.2.2 Reportable fringe benefits

As discussed in Chapter 16, employers are required to report the grossed-up taxable value of the aggregate of fringe benefits on payment summaries of any employee who receives relevant benefits with an aggregate taxable value above $2,000. For this purpose, the Type 2 **gross-up rate of 1.8692 always applies**, irrespective of whether the benefits provided are Type 1 or Type 2 benefits.

2.3 GST and taxable value

The GST-inclusive value is used to calculate the taxable value of a benefit.

2.4 GST and employee contributions

The provision of a fringe benefit by an employer may constitute a taxable supply for GST purposes.

GST is usually assessed as $1/11^{th}$ of the price of a taxable supply, however, subsection 9-75(3) of the *A New Tax System (Goods and Services Tax) Act 1999* ("GST Act") states that the value of a taxable supply of a fringe benefit is the amount of the after-tax contribution or payment made by the recipient, rather than the cost of the benefit. This means $1/11^{th}$ of any employee contribution made directly to the employer is the GST payable by the employer.

The supply of goods or services which are themselves GST-free or input taxed will not give rise to a GST liability even where an employee makes an after-tax contribution towards the benefit. No GST is payable by the employer on employee after-tax contributions made in respect of GST-free or input taxed supplies.

Payments made by the employee to a third party do not represent consideration for the provision of the fringe benefit and therefore no GST is payable by the employer. Such payments are considered employee contributions for FBT purposes.

The total (i.e. GST-inclusive) amount of any employee after-tax contribution is used to reduce the taxable value of the relevant benefit, regardless of whether it is a Type 1 or Type 2 benefit.

Example

Cheryl is an employee of a NSW Agency who provides her with a car fringe benefit with an FBT value of $5,500. Cheryl pays an after-tax contribution of $1,100 to her employer and a further payment of $400 directly to her local service centre for fuel and servicing costs. Total payments made by Cheryl are $1,500 all of which go towards reducing the taxable value of the fringe benefit provided to $4,000 ($5,500 - $1,500).

As Cheryl has made a contribution of $1,100 to her employer, the NSW Agency is liable for an amount of GST of $1/11^{th}$ of $1,100 or $100.

2.5 GST and non-deductible expenses

Section 69-5(4) of the GST Act

Some expenses are specifically not deductible under the income tax legislation – usually because there is a private or quasi-personal element. Under Division 69 of the GST Act, input tax credits are not available on certain acquisitions to the extent that they are non-deductible expenses under the income tax legislation. These provisions apply equally to NSW Agencies despite the fact that they are exempt from income tax.

Importantly, however, if an FBT liability arises from the expense, Division 69 does **not** apply, so the portion of the expense for which an FBT liability arises is creditable and the Type 1 gross-up rate applies.

Examples of where an acquisition will prima facie not qualify as a creditable acquisition include:

- entertainment
- relative's travel when accompanying an employee travelling on business
- recreational clubs and leisure facilities or boats
- non-compulsory uniform expenses.

Where these items are provided as a benefit and an FBT liability arises in relation thereto, GST input tax credits will be available to that extent. For example, if a NSW Agency elects to apply the 50/50 split method in calculating their FBT liability for meal entertainment expenses, 50% of the GST can be claimed back as a GST input tax credit.

Chapter 3: Car Fringe Benefits

Table of Contents

3.1 Overview

Ch 3 - FBT: A Guide for Employers

NSW Agencies own and lease a significant number of motor vehicles which are used for general and specific purposes in accordance with the objectives and policies of the various Agencies.

Division 2

To comply with the requirements of the FBT legislation, it is essential to accurately categorise these as follows:

- which vehicles are deemed to provide a “car fringe benefit” on the basis that the cars are made available for employees’ private use
- which vehicles are exempt for FBT purposes and
- which vehicles may give rise to a “residual benefit” because they do not fall into the FBT definition of a “car”.

To identify and correctly account for car fringe benefits, the following questions need to be asked:

- is the motor vehicle a car for FBT purposes ?
- is the car available for private use or applied to private use ?
- is the car an exempt motor vehicle ?
- what is the taxable value of the car fringe benefit ?
- what is the correct gross-up rate?

Each of these issues are discussed in this chapter.

In the public sector, “cars” for FBT purposes also fall into one of two broad categories:

Packaged vehicles: Previously only available to CES/SES Officers and Ministers, but now available more generally through salary packaging arrangements, often as novated lease vehicles.

Pool vehicles: Theoretically for business use of the Agency, with a restrictive policy on private usage. Practically, pool vehicles may be and often are applied to private use or available for private use. A common misconception is that where a “take home” policy is applied for Agency purposes, no fringe benefit arises. However, Agency cars garaged at home may in fact be subject to FBT.

Where the employee is paid an allowance or a reimbursement on a cents-per-kilometre basis for the use of his or her car, the allowance is generally not subject to FBT. The allowance is generally assessable as ordinary income to the employee but with deductions available to the employee for business use. (Note: there are certain cents-per-kilometre reimbursements that are subject to FBT. As this area of law can be complex, you should seek further specialist advice).

If the employer pays for, or reimburses, actual expenses of the employee in respect of the employee's car, that payment is an expense payment fringe benefit and may be subject to FBT under specific provisions (refer Chapter 6 of this FBT Manual).

Similarly, where the car is leased in the employee's name and the employer pays all the operating costs (including leasing charges), the benefit will generally be regarded as an expense payment fringe benefit, and as such, the vehicle will not be subject to the car FBT valuation rules. However, a car provided under a novated lease arrangement will be a car fringe benefit and the relevant car FBT valuation rules are applicable.

Where the provision of a vehicle for the private use of an employee does not give rise to an FBT liability as a car fringe benefit, it may still be subject to FBT under other provisions as a residual fringe benefit (refer Chapter 13 of this FBT Manual).

3.2 When does a car fringe benefit exist?

A car fringe benefit will arise in respect of any day where (at any time) a car is provided to an employee or their associate, by the employer, the employer's associate or under an arrangement with a third party, and the car is **applied** to a private use, or is taken to be **available** for the private use, of an employee or an associate of an employee.

A car will be taken to be **available** for the private use of an employee where:

- the car is garaged at or near the employee's home or
- the car is not on the employer's business premises and the employee or an associate is entitled to use the car privately or has custody or control of the car while not performing employment duties.

A car fringe benefit may still arise where the car is provided to an employee by a third party under an arrangement with the employer or an associate of the employer.

Div 2, s7 A car fringe benefit most commonly arises when a car that is held by an employer is made available for the private use or is applied to the private use of an employee in connection with employment and the car is not an exempt motor vehicle (see 3.5).

s162(1), s7(1)(b) The term "held by an employer" is defined to mean the employer owns, leases or has the car under hire purchase, or the car is otherwise made available, but does not include cars on short term hire (i.e. less than twelve weeks). Such short term hire cars need to be considered under the residual fringe benefit provisions.

The terms "available for private use" and "applied to private use" are discussed below at 3.6.

3.3 Motor vehicles that are not cars for FBT

The provision of a motor vehicle which is not a "car" for FBT purposes will not give rise to a car fringe benefit. However, the provision of such a vehicle may give rise to residual fringe benefit (refer Chapter 13 of this FBT Manual).

s47(6) Similar to the "work-related" use exemption for cars, an exemption from residual fringe benefits applies to commercial vehicles, where used by an employee or associate for work-related travel or other private use that was minor, infrequent and irregular. This applies where a vehicle is designed to:

- carry a load of one tonne or more or
- carry nine or more passengers.

For these purposes work related travel includes travel between home and work for this type of vehicle.

TD 94/19

Note: TD 94/19 provides detail of what factors should be considered in determining whether any "other road vehicle" is designed for the principal purpose of carrying passengers.

The most common method for valuing a residual fringe benefit in respect of a motor vehicle which is not a car for FBT purposes is to multiply the number of private kilometres travelled by vehicle in an FBT year by the per kilometre rates provided in the ruling (which is based on 46 cents for a motor vehicle with an engine capacity of 0-2,500cc).

MT 2034
TD 2011/5

Note: The ATO has issued a taxation ruling (MT2034) which provides an outline of appropriate methods for valuing a motor vehicle which is a residual benefit. The current rates for the cents per kilometre valuation method were issued in TD 2011/5.

3.4 Is the motor vehicle a car for FBT purposes?

MT2024,

For FBT purposes a car is defined to include a:

s136(1)

- passenger car
- station wagon
- 4WD vehicle
- panel van
- utility truck
- any other road vehicle designed to carry a load of less than 1 tonne or fewer than 9 passengers.

A motor cycle or similar vehicle is **not** considered to be a car for FBT purposes.

3.5 Are there any exemptions?

s8(2)

A vehicle, being:

- a taxi, panel van or utility truck designed to carry a load of less than one tonne or
- any other vehicle designed to carry a load of less than one tonne (other than vehicles designed principally for carrying passengers)

will be exempt from FBT where the private travel is limited to work-related travel (i.e. travel between home and work) or minor, infrequent and irregular private use by the employee or associate of the employee.

Note: An example of minor, infrequent and irregular private use of an exempt vehicle would be occasionally taking rubbish to the tip, or stopping off on the way home from work to buy dinner.

TD 94/19

Taxation Determination TD 94/19 outlines the factors that should be considered in determining whether any "other road vehicle" is "designed for the principle purpose of carrying passengers". A list of current makes and models of single and dual cab vehicles, 4 wheel drives and vans that qualify as "commercial vehicles" is available on the ATO website at http://ato.gov.au/businesses/content.asp?doc=/content/00167339.htm

MT 2024

3.5.1 Work related Travel

A commercial vehicle is considered to be used for work related travel where the private use of the vehicle by the employee is restricted to travel between home and work.

3.5.2 Unregistered Vehicles

Motor vehicles, which are unregistered for a full FBT year and are used principally for business purposes are also exempt from FBT. Also, for FBT purposes, even when a car is unregistered, it will be taken to be registered if it may be driven on a public road without contravening the law.

3.6 Is the car available for private use or applied to private use?

s7(1)(a) For a car fringe benefit to arise on any particular day, a car must be

- available for the private use or
- applied to the private use of an employee on that day.

These terms are not mutually exclusive.

s136 Private use essentially means any use of a car by an employee other than in relation to performing duties of employment and is determined on a daily basis.

Note: For FBT purposes, a day is considered to be any time within a 24 hour period commencing at midnight. This means that even if a car is only available for private use for a period from just before midnight till just after midnight the car will be considered to be available for private use for two days.

The distinction between available for private use and applied to private use is critical to being able to correctly identify and calculate car fringe benefits.

MT 2021 If an employer prohibits employees from using the cars for private purposes, no private use will generally arise. However, if this prohibition is not consistently enforced, the employee will be deemed to have been able to use the car for private purposes, notwithstanding the prohibition. Any prohibition must be clearly expressed and enforced, if necessary, with disciplinary action where breached. An instruction without a means of checking for and deterring breaches will not be acceptable.

s7(3) A car is considered to be **available** for private use by an employee on a particular day when:

- the car is actually used for private purposes by the employee
- the car is garaged or kept at the employee's residence
- the employee is deemed to have custody and control of the car or
- the car is not garaged or kept at the employer's premises and the employee is allowed to use the car for private purposes.

3.6.1 Emergency Services Vehicles

s7(2A) The provision of a car will not be taken to be available for private use where the car is garaged at or near the employee's residence and the car is:

- used by an ambulance service, a fire fighting service or a police service
- is visibly marked on its exterior as being for use by any of these emergency services and
- fitted with flashing warning lights and sirens.

3.6.2 Examples – Car Available for Private Use

- A car is garaged or kept at or near an employee's place of residence overnight. The car is considered to be available for private use for two days regardless of whether the car is used by the employee for private purposes or not.
- An employee is on-call for periods over weekends. The employee takes a pool car home on Friday night and returns it on Monday morning. The employee is not called out and the vehicle is not driven over the weekend period. The fact that the car is garaged at the employee's premises will mean that the car is available for private use on Friday, Saturday, Sunday and Monday. The fact that the car is not driven is irrelevant.
- An employee takes a car on a business trip and parks the car at a hotel overnight. In this case the car will be taken to be available for private use if the employee is free to use the vehicle for private purposes.
- An employee takes a car to the airport and travels interstate, carrying the keys with him. The car is deemed to be in his control and therefore available for private use.

MT 2027 Note: The ATO has released Taxation Ruling MT 2027 which discusses in detail the FBT implications of home to work travel.

By contrast a car is only considered to be **applied** to private use on a particular day when the car is actually used for private purposes by the employee on that day.

3.6.3 Examples – Car Applied to Private Use

- A car is used by an employee to travel to and from work and the employee is not performing duties of employment. Travel between home and a person's regular place of employment or business is ordinarily private travel.
- Home to work travel in situations where an employee is on-call or on stand-by duty. The trips home and back to work are considered private use and any travel if called out is also considered to be private travel if the employee's duties do not actually commence until they arrive at work.

- Where an employee commences duties of employment as soon as they receive the call the travel may be considered to be for business purposes. This will be the case where an employee is on-call and is required to receive emergency telephone calls and give instructions via telephone prior to travelling to their place of work so that their responsibility for carrying out their duties of employment commences with the call. Note the trip home at the start of on-call duty and trip back to work at the end of the on-call duty are considered to be private travel.

- Where an employee chooses to work at home and has to travel to an office / workplace to perform particular duties on occasion, the travel will be private in nature.

- Travel between two places of employment, two places of business, or a place of employment and a place of business will generally be accepted as business travel where the person does not live at either of the places and the travel has been under taken for income-producing purposes.

- In the case of employees, such as commercial travellers, whose work is inherently itinerant, travel from home to work will be business travel where:

    - the travel is a fundamental part of the work
    - it is impractical not to use a car for the work
    - terms of employment require duties to be performed in more than one place each work day
    - the nature of the job makes travel in performing duties essential and
    - it can be said that the employee is travelling in performance of duties from the time of leaving home.

- Where such employees periodically call in at the employer's office (e.g. once a week) the travel from home to the office will be accepted as business travel.

- Where an employee makes a business call on the way to or from work, the whole home/work trip may in some cases be accepted as a business trip. This is where the employee has a regular place of employment, the travel concerned is to an alternative destination which is not a regular place of employment, and the employee performs substantial employment duties at the destination. A call to pick up mail on the way to work would not qualify.

- Where an employer provides an employee with a car solely for the purposes of undertaking a business journey from the employee's home the next morning, the trip home on the preceding night will be accepted as business travel, being incidental to the next morning's journey. The incidental use of the vehicle being the return of the car to the employer's premises is treated the same way. However, this would not apply when an employee has regular use of the car for private purposes.

3.7 What is the taxable value?

The taxable value of each vehicle subject to FBT must be calculated in accordance with the rules defined in the legislation. Packaged vehicles have salary sacrifice "estimates" calculated by payroll personnel. This is not the amount to be used for FBT returns.

Once it has been determined that a car fringe benefit exists, the method of valuing the benefit needs to be considered.

The legislation provides two ways that the taxable value of a car fringe benefit can be calculated:

- statutory formula method (where the measure is days **available** for private use) and
- operating cost method (where the measure is kilometres **applied** to private use).

The statutory formula method will apply unless the employer makes an election to use the operating cost method. The election is made on an individual car basis and is revocable each year. The decision to use the operating cost method must be made no later than the day on which the FBT return is due to be lodged with the Tax. There is no need to notify the Tax Office of the method chosen, as the employer's records are sufficient.

Note: Where an employer elects to use the actual operating cost method and the statutory formula method would produce a lower taxable value, the election is deemed not to have been made and the statutory formula method will apply.

3.8 Can the taxable value be reduced?

s10 The taxable value of the car fringe benefit will be reduced by any amounts paid to the employer for the right to use the car, and/or any un-reimbursed car expenses incurred by the employee in operating the car.

If an employee contributes towards the benefit provided, the value of the employee's contribution will be the GST-inclusive value, as appropriate. If the after-tax contribution is made to the employer, $1/11^{th}$ of that contribution must be remitted to the ATO as GST, by the NSW Agency.

Documentary evidence of all such expenses, excluding petrol and oil, incurred by an employee must be supplied to the NSW Agency. For un-reimbursed expenses in respect of petrol and oil, a declaration of the amount of the employee's expenditure may be supplied in place of documentary evidence.

Statutory formula method

The statutory formula method calculates the taxable value of a car fringe benefit as a percentage of the car's value. Prior to the changes announced in the 2011 Federal Budget, this percentage would vary depending on the total number of kilometres travelled by the car in the FBT year. Following the 2011 Budget, changes were made to the statutory formula method which has resulted in the old statutory rates being replaced with a single statutory rate of 20% (subject to transitional rules), which applies regardless of the kilometres travelled. This rate applies to all car fringe benefits provided after 7.30pm AEST on 10 May 2011, except where there is a 'pre-existing commitment' in place to provide the car.

Common features of the Statutory Formula method include:

- it only considers whether or not the car was available for private use;
- it does not pay any attention to whether the car was actually applied to private use;
- it is easier to administer than the operating cost method as a log book is not required;
- the taxable value provides a less accurate reflection of the benefits provided; and
- it is an advantage where the vehicle is used mainly for private purposes

The taxable value is calculated by the formula $\frac{ABC}{D} - E$

where: A = Base value of vehicle

B = Statutory fraction

C = No. of days in period in which the car was held and was used or available for private use

D = No. of days in FBT period

E = The amount of the recipient's payment

Each of these elements is explained in detail below.

3.8.1 A - Base value of the car

The base value of the car represents the original cost of the car to the employer. Data about the base value will generally be provided to Agencies by the leasing company. The base value should include:

- Where the **car is owned**, the cost of the vehicle to the Government excluding stamp duty, transfer fees and registration costs (the fleet discount should not be added back).
- Where the **car is leased**, its market value at the time of commencement of the lease which is broadly the cost price to the lessor.
- All costs associated with the delivery and acquisition of the car.

- The cost of non-business accessories fitted to the car at or about the time of purchase, e.g. an air-conditioner or a radio cassette player.

- If, at the beginning of an FBT year, a car has been held (i.e. either owned or leased) for more than four years, the base value of the car is reduced by one-third of its original value.

- The cost base of the car is determined at the earliest time that the vehicle was owned by the NSW Government. This will be relevant where a car is acquired by one agency from another agency; as part of a sale and lease-back arrangement; or where a second-hand vehicle is acquired under a packaged novated lease where the employee has transferred from one agency to another.

The original cost of the car purchased after 1 July 2000 will include GST in the retail price of the car, and therefore the GST-inclusive price will be used.

A non-business accessory means any accessory fitted (at factory or otherwise) to the car, other than an accessory required to meet the special needs of any business operations for which the car is used.

The cost of any non-business accessory that is fitted to the car after the time of purchase will be added to the base value of the car in the year in which the accessory was fitted. In such a case the new base value of the car becomes the base value for subsequent years.

Note: The ATO's view is that a two-way radio or car telephone used in a business would be a business accessory, but an air conditioner or a radio cassette player with or without dictating facilities would be non-business accessories and would be included in the cost price of the car. Bull-bars, tow-bars and windscreen protecting screens on vehicles used in rural industries would usually be regarded as business accessories on this basis.

The ATO has also confirmed that the cost of tinting windows could be a non-business accessory depending on the facts relating to the business operations in relation to which the car is used. Car detailing would be a car maintenance expense and rust proofing or water proofing would generally be a non-business accessory.

3.8.2 B – Statutory fraction

A flat statutory rate of 20% applies (subject to transitional rules), regardless of the distance travelled, to all car fringe benefits provided after 7.30pm AEST on 10 May 2011 (except where there is a pre-existing commitment in place to provide a car).

The move to one statutory rate of 20% will be phased in over four years. There will be transitional arrangements that apply to any new commitments entered into from 10 May 2011 to 31 March 2015. Where there is a change to a pre-existing commitment these transitional arrangements will also apply. The following statutory rates should be used:

Total kms travelled during FBT year	**Statutory rate**			
	From 10 May 2011	From 1 Apr 2012	From 1 Apr 2013	From 1 Apr 2014
Less than 15,000	0.20	0.20	0.20	0.20
15,000 to 25,000	0.20	0.20	0.20	0.20
25,000 to 40,000	0.14	0.17	0.20	0.20
Over 40,000	0.10	0.13	0.17	0.20

The statutory percentages for car fringe benefits provided prior to 7.30pm AEST on 10 May 2011, or where a pre-existing commitment is in place to provide the car after this time, are as follows:

Total kilometres travelled during the year	Statutory rate
Less than 15,000	.26
15,000 to 24,999	.20
25,000 to 40,000	.11
Over 40,000	.07

3.8.2.1 Skipping the transitional arrangements

For any new commitments entered into during the transitional period, you can choose to skip the transitional arrangements and apply the 20% statutory rate. This choice is subject to certain conditions mentioned below.

You cannot skip the transitional arrangements where an employee would be worse off as a result of this choice. That is, the employee cannot be placed at a direct financial disadvantage as a result of this choice, unless you have obtained the consent of the employee.

For example, you cannot require an employee to bear the financial impact of skipping the transitional arrangements by charging the employee a higher salary packaging amount as a result of an increase in FBT payable merely to save on compliance costs, unless you have obtained the consent of the employee to do so.

The choice to skip the transitional arrangements is on a car by car basis.

3.8.2.2 Meaning of the term commitment

A 'commitment' is entered into at the point there is a financially binding commitment to a transaction on one or more of the parties and it cannot be backed out of. The commitment needs to be one that relates to the application or availability of the car to an employee or associate.

For example, there are a number of steps involved where you negotiate with an employee and a salary packaging provider to put in place a novated lease arrangement in relation to a car. A commitment would generally be entered into, and would be financially binding, when the car that is to be provided by way of a novated lease arrangement is ordered and there is a financial penalty if the order is cancelled.

The term 'pre-existing commitment' means a commitment to the application or availability of the car that was made prior to 7.30pm AEST on 10 May 2011.

Where a NSW Agency or an employee or their associate, has committed to the car before 7.30pm AEST on 10 May 2011, but provision of the car fringe benefit does not take place until after 7.30pm AEST on 10 May 2011, the old statutory rules will apply.

3.8.2.3 Change to a pre-existing commitment - same employer

Alterations to a pre-existing commitment can result in the application of the new 20% flat rate (or transitional rate). Examples of such alterations include:

- refinancing the car

- alterations to existing lease contracts such as changing the duration of an existing lease contract and changes to a lease to reflect a revised residual value

- where accessories (such as window tinting, DVD players, luggage racks or bull bars) are fitted to a leased car after the lease commenced, the lease is altered and lease payments are increased to reflect this change.

3.8.2.4 Change of employer or change of car

Any change of an employer, even within the NSW government, will constitute a new commitment to the application or availability of the car by the new employer. This means the statutory rate of 20% (or applicable transitional rate) will be used by the new employer immediately.

Likewise, any change of car (after 7.30pm AEST on 10 May 2011) will always be a new commitment to which the 20% flat rate (or applicable transitional rate) will apply immediately, even where the employer stays the same.

3.8.2.5 Alterations that would not be considered to be changes to a pre-existing commitment

Any alterations that do not result in a change to the financially binding commitment to the application or availability of the car will not be considered to be changes to a pre-existing commitment and the old statutory rates can continue to be applied. Examples of alterations that would not be considered to be changes to a pre-existing commitment include:

- more or fewer kilometres travelled resulting in a change to the amount of FBT payable and subsequent payments by the employee to the employer under a salary packaging arrangement, but does not involve an amendment or change to the lease contract

- adjustments to salary packaging arrangements which alter post-tax employee contributions

- use of an employer's 'fleet car' by different employees (not involving any salary sacrifice arrangements).

3.8.2.6 Annualised kilometres

If the vehicle is purchased or sold during the year, then the annualised number of whole kilometres must be calculated. This is done by applying the following formula.

$$\text{Annualised number of whole kilometres} = \frac{X \times Y}{Z}$$

Where: **X**: Number of kilometres travelled while car held

Y: Number of days in the FBT year

Z: Number of days in year the car was actually held

Note: Odometer records must be maintained to record the number of kilometres travelled in an FBT year. This must be completed **every year** for every car. An example of an odometer declaration form is attached at Appendix 2.

3.8.3 C - Number of days the car is available for private use

The number of days that a car is available for private use is important when determining the taxable value of a car fringe benefit using the statutory formula method. For most CES/SES and salary packaged cars, this will generally be the number of days the car is held in the FBT year.

3.8.4 D - Number of days during the year

This is the actual number of days during the FBT year concerned (i.e. 365 except for leap years).

3.8.5 E - Recipient's payment

s9(2)(e) This is equal to the total amount of any un-reimbursed operating cost of the car paid by the employee or any amounts paid by the employee to the employer for the right to use the motor vehicle. Documentary evidence (e.g. invoices, receipts) of expenses must be provided to the employer. In the case of petrol and oil costs only, a statutory declaration would be sufficient for this purpose.

Note: Employee contributions do not include salary sacrifice amounts. Contributions must come from after tax dollars.

If an employee makes an after-tax contribution towards the benefit, $1/11^{th}$ of that contribution must be remitted to the ATO as GST, by the NSW Agency. For the purposes of calculating the taxable value of the car fringe benefit, the full employee contribution can be used to reduce the taxable value (i.e. the GST-inclusive amount).

3.8.6 Example – Statutory Formula

Assumptions:

- a car is purchased on 1 April 2011 for $25,000 (GST-inclusive cost price less stamp duty and registration costs). The car was provided to the employee by an employer as a car benefit during the FBT year ending 31 March 2012.
- a tow bar and CD costing $1,500 are added to the car at the time of purchase.
- the car is not available for private use on seven days during the year.
- 20,000 kilometres were travelled during the period.
- the employee incurred car expenses of $500 (GST-inclusive cost) for which he was not reimbursed (all documentary evidence has been supplied).

The taxable value of the car benefit for the FBT year ended 31 March 2012 is calculated as follows:

Base value - $25,000 + $1,500 = $26,500

Annualised kilometres - 20,000

Statutory fraction - 20%

$$\text{Taxable value} = \left(26{,}500 \times 20\% \times \frac{358}{365}\right) - 500$$

$$= 5{,}198 - 500$$

Taxable value = $4,698

FBT - $4,698 x 2.0647 x 46.5%

= $4,510

Notes

- A GST input tax credit would be available on the purchase price (if owned) or the lease fees (if leased)
- Employer does not have to remit any GST to the ATO in relation to the recipient's payment of $500 as it is made directly to a third party

3.9 Operating cost method

s10(2) The operating cost method (often referred to as the log book method) calculates the taxable value of a car fringe benefit as a percentage of the car's total operating cost reduced by any amount paid by an employee as consideration for the use of the car. The percentage varies with the amount of actual private use.

s10(1) An Agency may use the operating cost method regarding a particular car. This election is made by including that car in the entry recorded against Item B of the FBT return form.

Common features of the operating cost method include:

- it considers whether the car was actually applied to private use
- the lower the incidence of actual private use, means the lower the taxable value
- it is more difficult to administer than the Statutory Formula method
- an employee must maintain a detailed log book in relation to using the car
- the taxable value provides a more accurate reflection of the benefit provided
- it is an advantage where the vehicle is used mainly for business purposes and
- it is an advantage where the annual number of kilometres travelled is low.

The taxable value is calculated as follows:

Taxable Value = (C x (100% - BP) – R

Where: **C:** the operating costs of the car;

BP: the business percentage applicable to the car;

R: the amount of the recipient's payment (if any).

Each of these terms is detailed below.

3.9.1 C - Operating costs of the car

Total operating costs of a car may include some actual costs and some deemed costs. Operating costs include:

- where the car is owned**,** deemed depreciation and notional interest payments (details of calculating these deemed costs are shown in Appendix 1);
- where the car is leased**,** the lease costs that relate to the year
- repairs (see below)
- maintenance
- registration
- insurance and
- fuel and oil.

Car parking expenses should NOT be included in operating costs.

The operating costs of the car will be at their GST-inclusive values, as appropriate.

For a car owned by the employer, notional interest costs (calculated by applying a statutory interest rate (7.8% for year ending 31 March 2012) to the depreciated value of the car are taken into account. The operating cost of the car owned by the employer will also include notional depreciation (calculated at the rate of 22.5% for cars purchased before 1 July 2002 and 18.75% for cars purchased on or after 1 July 2002 to May 2006. Cars purchased after 10 May 2006, 25% - based on the depreciated value of the car). The motor vehicle depreciation cost limit adopted for income tax purposes is ignored for FBT purposes.

Repairs: An insured repair expense is not generally a car expense. This is where the accident repair expenses are paid by an external insurer or by the party responsible for the damage. As a result of disaggregation, most NSW Agencies are members of the NSW Treasury Managed Fund. This is a self-insurance arrangement and it is more accurate to include as car expenses the cost of repairs incurred for specific cars.

Note : Details of car expenses must be maintained on an individual basis for each and every car in the Agency's fleet. Car expenses cannot be grouped into a total which is then apportioned or pro-rated across all cars. Methods of estimating car expenses such as average costs published by industry journals or motor vehicle associations (for example the NRMA) are <u>not acceptable</u> as evidence of car expenses **for FBT purposes.**

3.9.2 BP - Business percentage

The business kilometres travelled are compared with total kilometres travelled to determine the business percentage.

$$\text{Business percentage} = \frac{\text{Total business kilometres travelled}}{\text{Total kilometres travelled}}$$

The business kilometres are established by the use of log book records (see below). An employee must record a log book entry detailing each business journey undertaken. These log book records must be maintained for a consecutive 12 week period and will generally be required during the first year a car is held and then every sixth year provided the pattern of usage does not change materially in the interim. A NSW Agency may change between the operating cost method and the statutory formula method without establishing a new log book, unless the five year limit is reached.

s162F The twelve-week period selected for maintaining a log book must be representative of typical usage. The temptation to use a heavy business usage period as the log book period should be avoided. Variations in the pattern of use of the car are taken into account (e.g. a one-off business trip for ten weeks would not be representative).The 12-week period may overlap two FBT years.

Log book entries must be made soon after the end of the relevant journey - or after the end of the last of consecutive business journeys undertaken on a day.

The employer must keep a record of total kilometres travelled each year (including non-log book years).

Log book records: An understanding of requirements of log book records is critical to correctly account for car fringe benefits under the operating cost method.

To comply with the legislative requirements, a log book must record the following information for each business journey:

- date(s) on which the journey began and ended
- the purpose of the journey (note that “business only” is not an acceptable description)
- odometer reading at beginning and end of journey
- total kilometres travelled in journey

These are the minimum legislative requirements. It is recommended NSW Agencies also require the driver’s name and signature to be recorded to help calculate reportable fringe benefits amounts and to allocate any parking and speeding fines etc.

Note: Unless all details are completed correctly, the log book will not be valid. If the log book is not valid then the business percentage will be treated as if it were zero. An example of a log book is included at Appendix 4.

3.9.3 R - Recipient Payment

s10 The taxable value of the car benefit calculated under the operating cost method will be reduced by any amounts paid to the employer for the right to use the car, and/or any un-reimbursed car expenses incurred by the employee in operating the car.

If an employee contributes towards the benefit provided, the value of the employee's after-tax contribution will be the GST-inclusive value, as appropriate. If the contribution is made to the employer, $1/11^{th}$ of that contribution must be remitted to the ATO as GST, by the NSW Agency.

Documentary evidence of all such expenses, excluding petrol and oil, incurred by an employee must be supplied to the NSW Agency. For un-reimbursed expenses in respect of petrol and oil, a declaration of the amount of the employee's expenditure may be supplied in place of documentary evidence.

Note: Employee contributions do not include salary sacrifice amounts. Contributions must come from after tax dollars.

3.9.4 Example – Operating Cost

Assumptions:

- car is used privately during period 1 April 2011 to 31 March 2012;
- total actual operating costs incurred by the employer for the year were $3,000 (GST-inclusive cost);
- the car was purchased for $25,000 on 1 April 2011;
- the percentage of business use determined by maintaining a log book is 80%; and
- the employee expended $500 on petrol and oil and has provided the necessary declaration (see Appendix 3 for an example). The payment was made directly to a third party.

The taxable value of the car benefit for the year ended 31 March 2012 is calculated as follows:

Depreciation - 25,000 x 25%

= $6,250

Deemed interest - 25,000 x 7.8%
= $1,950

Operating costs - 3,000 + 6,250 + 1950 + 500
= $ 11,700

Taxable value - (11,700 x (100% - 80%)) - 500

= $1,840

FBT - $1,840 x 2.0647 x 46.5%

= $1,766.56

Notes:

- the NSW Agency does not have to remit any GST to the ATO in relation to the recipient's payment as it is made directly to a third party.

3.10 Substantiation

The nature of the record keeping requirements varies depending on whether the statutory formula method or the operating cost method is adopted.

3.10.1 Statutory Formula Method

It is essential to retain records evidencing the purchase price of the car where it is owned by the employer or the car's market value at the time it was first held if the car is leased. This substantiates the base value.

Odometer records must also be maintained which contain the following details:

- odometer reading at commencement of the FBT period;
- odometer reading at end of the FBT period.

TD 94/26 The Commissioner of Taxation has advised that he will accept alternative odometer readings which are close to the beginning and end of the year (e.g. repairs invoice showing reading).

Finally, it is necessary to substantiate any recipient payments that reduce the taxable value. For fuel and oil expenses, the employee need only sign a declaration in an approved format indicating the total amount paid.

All other employee payments to third parties must be substantiated by receipt, invoice or similar document showing the:

- date the expense was incurred
- name of the supplier of the goods and/or services
- amount of the expense (in the currency in which it was incurred)
- nature of the goods and/or services and the
- date the document was made out.

3.10.2 Operating Cost Method

The employer should keep detailed records of operating costs incurred relating to each car provided to employees. It will also be necessary to substantiate the depreciation and interest charges calculated. The car's cost price should be recorded together with its written down value on an on-going basis.

It is necessary to obtain a log book for a continuous period of twelve weeks to substantiate the business percentage use of the car.

As a general rule, the business percentage can be used in the log book year and the next four years provided there has not been a substantial fall (10% or more, e.g., from 50% to 40%) in the business usage. If there is a substantial fall, a new log-book is required. So a new log book will need to be kept for a twelve-week period.

If the business usage increases, the employee can maintain a new log book to substantiate a higher business usage.

As well as the log book records, odometer records must also be maintained.

With the statutory formula method, it is necessary to substantiate employee contributions through a declaration, receipt, invoice or similar document.

3.11 Managing the costs

Car fringe benefits are the most significant FBT cost for almost all agencies in the NSW Budget Sector. The actual liability to tax may vary depending on the usage pattern of the motor vehicle under consideration, and the type and quality of information maintained in respect of the provision of the particular benefit.

While NSW Agencies have functional responsibility for determining and managing the provision of benefits to staff, the onus is on agencies to:

- ensure efficient and cost-effective administration
- strive for best practice management of those fringe benefits provided.

3.11.1 Review the costs included in the FBT return

For packaged vehicles, the taxable amount must be calculated in accordance with the FBT legislation – not as calculated for establishing the salary package.

Pool cars cannot be arbitrarily excluded. Records must be maintained to substantiate that the vehicle was fully used for business, or conversely that the vehicle was neither available for private use nor applied to private use.

s53 Where a car fringe benefit is provided and accounted for in the return, reimbursement or payment of car expenses does not constitute an additional benefit. These expenses are explicitly exempted.

With the changes made to the statutory formula, it may be worthwhile for some agencies to consider using the operating cost method to value car fringe benefits if the vehicle travels a large number of business kilometres.

3.11.2 Monitoring vehicle usage

Where the Statutory Formula method is used (for those vehicles that fall under the old statutory formula rates), the kilometres travelled should be monitored in respect of the statutory fraction band-widths especially around February. Pool vehicles should be rotated between cost centres which have different levels of usage. Alternatively, where odometer readings are nearing upper band levels, increased kilometres travelled would lead to lower FBT costs.

For example, a vehicle with a base value of $30,000 will incur FBT of around $7,489 if it travels 14,500 kilometres per annum. If the same car travels 15,000 per annum, it will incur FBT of around $5,761. This is a saving of $1,728 which would outweigh the incremental costs of travelling the extra distance. In this way, monitoring vehicle usage could lead to significant savings.

s9(2) Check the date the car was first owned/leased by the NSW Government (any agency). Where the owned or leased car has been held at the commencement of a standard FBT year for at least four years, the car's cost price for purposes of applying the Statutory Formula valuation method will be reduced to 2/3 of actual cost.

3.11.3 Replacement Cars

Where a car is replaced by another car, the business use percentage established on the basis of log books in relation to the original car may apply to the replacement car.

An employer is required to nominate the make, model and registration number of the original and replacement car in writing before the FBT return is lodged.

3.11.4 Determining the Method to be Applied

As noted earlier, the taxable value of car fringe benefits may be calculated by either of two methods – Statutory Formula or Operating Cost. Either method may be applied to a particular car for a particular year, provided the appropriate information has been maintained.

The most significant cost savings may be achieved by using the lower of Statutory Formula or Operating Cost to value the car fringe benefit.

- Statutory Formula tends to be better where private usage is high and/or kilometres travelled are high.

- Operating cost tends to be better where business usage is high and/or kilometres travelled are low.

These are general indications only and do not override actually calculating the taxable value under each method to determine the lower cost.

In theory, NSW Agencies should calculate the taxable value for each car using each of the methods allowed and the lower taxable value should be used. In practice, however, log book records are not adequately maintained in all cases.

Pool vehicles are driven by various officers and may be taken home on occasions. Log books must record business usage (not private) to allow the agency to benefit from the lower cost method of calculating the taxable value.

Savings may accrue to officers with packaged vehicles if log book records were maintained for a twelve week period. The difference between estimated and actual FBT costs could be quite high.

3.11.5 Record Keeping and Substantiation

If employees incur any un-reimbursed car expenses, receipts should be maintained. This will become an employee contribution. For fuel and oil, a declaration will suffice.

Log book records must be kept in the form approved by the Commissioner of Taxation and retained for five years. If records are inaccurate, incomplete or missing, s123 deems they were never maintained and all kilometres should be regarded as private.

APPENDIX 1
Calculation of depreciation imputed interest in respect of the operating cost method

Depreciation

Depreciation on the car is included in the operating cost of the car where the provider owns the car. This bears no relationship to the depreciation on motor vehicles in the employer's accounts, and is a rate set within the FBT legislation.

If any non-business accessory has been fitted to the car the provider purchased or is deemed to have purchased the car, depreciation on that accessory has to be calculated separately.

Depreciation is calculated using the following formula:

$$\frac{A\ B\ C}{D}$$

where:

A	=	(i) 'depreciation value' of the car if the employer already owned the car at the beginning of the year; or (ii) 'cost price' of the car in other cases;
B	=	0.25 (giving a depreciation rate of 25% for cars purchased on or after 10 May 2006);
C	=	number of days during the FBT year on which the employer held the car; and
D	=	number of days in the FBT year.

The effect of components C and D in the depreciation formula is to reduce the depreciation proportionately where the employer did not own the car for the whole of the year concerned.

Where the employer did not hold the car at the beginning of the year concerned (i.e. where the car was purchased during the year), component A in the depreciation formula is the cost price. Refer to discussion on "statutory formula" for the meaning of cost price.

Where the employer held the car at the beginning of the year concerned, component A in the depreciation formula is the "depreciated value" of the car.

The "depreciated value" of a car is the cost price of the car to the provider, less depreciation calculated using the above depreciation formula from the time when the provider first held the car to the beginning of the FBT year concerned.

Imputed Interest

An imputed interest cost on the value of the car is included in the operating cost of the car where the provider owns the car.

The formula for calculating imputed interest is similar to the depreciation formula, except that component B is a statutory interest rate, rather than the rate of depreciation. Imputed interest is calculated on the same cost price or depreciation value as is used for calculating depreciation.

The statutory interest rate is the standard variable rate for owner-occupied housing loans of the major banks, last published by the Reserve Bank of Australia before the commencement of the year of tax. For the year ended 31 March 2012 the rate is 7.8%.

APPENDIX 2
Odometer declaration for use in respect of statutory formula and operating cost method

I, ……declare that

the car provided to me……had an
(make, model, registration number)

odometer reading of …..……kms as at 31 March……
(number of kilometres) (year)

I did / did not *replace a previous car with the above car during the year ended 31 March ……
(year)

Signed: ……..

Dated: ……...

*If this did occur, please provide the following details for the old car:

- Make, model, registration……
- Date of change over…….
- Odometer reading at change over…….
- Plus the following details of the new car:
- Date of delivery…….
- Odometer reading at delivery……..

APPENDIX 3
Petrol and oil declaration

I, …….…… declare that……expenses
(state whether petrol and/or oil)

of $…….. were incurred by me during the period from ……..

to…….

In respect of ……..……, registration number……
(make and model of car)

Signed……

Date……

If the employee is responsible for all fuel and/or oil costs, a declaration based on a reasonable estimate derived from the total kilometres travelled, average fuel costs and fuel consumption will be acceptable. In these cases the declaration should be extended as follows:

'I also declare that the total kilometres travelled during the period

was……'

APPENDIX 4
Log book for use in respect of operating cost method

Vehicle registration no. ..... Year ended 31 March 20 ..... Page ..... of .....

Date of trip		Purpose of trip	Odometer Reading		Kms	Name
Start	Finish		Start	Finish		

Chapter 4: Debt Waiver Fringe Benefits

Contents

4.1 Overview

Ch8 - FBT: A Guide for Employers

Broadly, a debt waiver fringe benefit arises when an employer waives, forgives, releases or cancels a debt owed to it by an employee.

4.2 When does a debt waiver fringe benefit exist?

DIV 3 s14

DIV 3 s15

A debt waiver fringe benefit arises where, in respect of an employment relationship, an employer releases an employee or an associate of an employee from an obligation to pay or repay an amount of money owing to the employer. The waiving of debts, whether for compassionate reasons or otherwise, is subject to FBT.

For example, if an employer sells goods on credit to an employee and later tells the employee to not worry about payment, then the employer has provided a debt waiver fringe benefit.

TD 2008/11

A further example arises where an employer mistakenly pays an employee an amount they are not legally entitled to (i.e. overpays their salary and wages), and waives the obligation of the employee to repay that amount. In those circumstances, the waiver of the obligation to repay constitutes a debt waiver fringe benefit

The benefit arises at the time the debt is waived.

s147

There must be an **obligation** to pay or repay an amount of money. A person is deemed to be under an obligation even if the amount is not yet due for payment.

The obligation to pay or repay an amount must relate to a sum of money. The waiver of a property obligation will consist of some other kind of benefit.

s136(1)

There is no requirement that the obligation be enforceable by legal proceedings.

A **waiver** may only occur by a written or verbal release from payment. That is, there must be an actual act to release the debt, not a mere failure to collect.

A waiver exists where it is evident that there is no future expectation of the employer that the payment obligation be fulfilled.

If a debt remains unpaid past its due date (i.e. there is still an obligation to pay or repay the amount) a loan fringe benefit will arise and not a debt waiver fringe benefit. A loan fringe benefit will continue until payment of the debt is made, or the debt is waived. It is only at that point of the waiver that a debt waiver fringe benefit arises.

4.3 Are there any exemptions?

There are no exceptions or exemptions. However, there may be circumstances where a debt waiver does not come into existence. These include:

MT 2021

- where the debt is a genuine bad debt. For example, if it cannot be recovered because the employee is bankrupt and has no assets and the debt is waived for non-employment reasons.
- where it can be established that the debt waiver was not related to the employment relationship.

4.4 What is the taxable value?

s15 The taxable value of the benefit is equal to the full amount of debt that is released from repayment.

4.5 Can the taxable value be reduced?

The taxable value cannot be reduced. Any consideration which the employee provides is ignored. For example, if an employee gives up a valuable right (e.g. the right to sue) in order to have their debt waived, the value of this right does not reduce the debt waiver amount.

For example, where an amount waived by an employer includes an amount of principal and interest accrued ($200 principal and $20 interest), the taxable value is the entire amount waived ($220). This is the case even if the $20 interest would have been “otherwise deductible’.

4.6 Which gross-up rate?

The waiver of a debt constitutes an input taxed supply. This means that the employer has no entitlement to claim any input tax credits in respect of this benefit. Accordingly, the Type 2 gross-up rate (1.8692) always applies.

Chapter 5: Loan Fringe Benefits

Contents

5.1 Overview

Ch8 - FBT: A Guide for Employers

Broadly, a loan fringe benefit arises when an employee is under an obligation to pay (or repay) an amount to their employer.

A loan fringe benefit exists for as long as the loan remains unpaid.

Division 4

An FBT liability arises in each FBT year that the employee is under an obligation to repay either the whole or part of the loan **and** the interest rate charged is less than the statutory interest rate.

Certain types of loans are exempt from FBT.

The taxable value may be reduced in certain circumstances provided that adequate documentary evidence is obtained.

5.2 When does a loan fringe benefit exist?

s16, 17

A loan fringe benefit arises when:

- a NSW Agency provides an employee or associate with a loan
- the loan is not exempt
- the rate of interest charged on the loan is lower than the statutory interest rate.

s136

For a loan fringe benefit to exist there must firstly be a **loan** for FBT purposes. The definition of a loan is broad under the FBTAA and includes:

- an advance of money (e.g. cash to purchase a laptop)
- the provision of credit (e.g. allowing time to repay an amount, unpaid interest on an existing loan)
- the payment of an amount on account of, on behalf of, or at the request of the employee where there is some sort of obligation to repay the amount or
- any other transaction which, in substance, affects a loan.

Further examples:

- where a NSW Agency purchases a travel pass for an employee (or reimburses an employee for the cost of a travel pass) and the employee is required to repay the Agency over a period of 12 months
- where a NSW Agency allows a debt owed by an employee to run past the due date for payment and an obligation for repayment remains.

Note:

The loan may be a minor benefit and accordingly may be exempt from FBT.

5.2.1 Deferred (i.e. deemed) interest loans

s16(3), (4) A loan on which interest is payable but where the interest is not **due at least every six months** is deemed to give rise to a new loan. That is, any unpaid amount of interest is treated at the end of each six month period as being a new loan taken out at a nil rate of interest. The period of the deemed loan is from the end of the six month period until the interest is paid or becomes payable.

5.2.2 Salary overpayments repaid over time

TD 2008/10 Where NSW Agencies enter into an agreement with an employee for the employee to repay overpaid salary over a period of time, a loan fringe benefit will arise. The loan fringe benefit will arise at the time the repayment agreement is entered into with the employee and will end at the time the overpayment has been fully repaid.

It should be noted that a loan fringe benefit only arises in cases where the recipient, be they a current employee or former employee, has an *arrangement* with a NSW Agency to repay the overpaid salary and the NSW Agency *allows* the employee or former employee time to repay the overpayment. Where there is no arrangement entered into, a loan fringe benefit does not arise.

Such arrangements generally do not attract interest so the taxable value will be calculated by reference to the statutory interest rate. Where the taxable value of the loan is less than $300 in an FBT year, the NSW Agency can apply the minor benefit exemption available (see below).

5.3 Are there any exemptions?

- Subject to various conditions, the following loans are specifically exempt from FBT:

s17(4)
- a temporary advance to enable an employee to pay a security deposit/rental bond or similar amount in connection with temporary accommodation paid for by a NSW Agency where the accommodation is required because the employee is living away from home or has relocated for employment reasons. The employee must repay the advance within twelve months for the exemption to apply.
  Please note that this treatment may change from 1 July 2012. See Chapter 8 for more detail regarding this benefit type.

s17(3)
- a loan to a current employee to meet employment-related expenses, which will be incurred within six months of the date of the loan being granted (e.g. a business travel advance).

TD 95/18 If, however, an employer makes a loan to an employee at a reduced rate of interest that is not available to other members of the public, then the making of such a loan cannot be an exempt benefit under subsection 17(1) or 17(2).

s58P
- Often, a loan fringe benefit is exempt from FBT by virtue of the minor benefit exemption.

5.4 What is the taxable value?

s18 The taxable value of a loan fringe benefit is not the amount of the loan itself. It is the difference between a notional amount of interest calculated on the **daily balance** of the loan during the year at the **statutory interest rate** and the amount of interest actually accruing on the loan.

TD2011/6 The statutory interest rate is set by reference to the standard variable rate for owner occupied housing loans of the major banks, and is published by the ATO prior to the start of every FBT year.
For the year ended 31 March 2012 the statutory interest rate is **7.8%.**

s136(1) Where a fixed interest loan was provided to an employee prior to 1 July 1986 (the commencement of FBT), the statutory interest rate is not necessarily the amount set each year by the ATO. The rate is the lesser of the annual statutory interest rate and the statutory interest rate set at the time the loan was taken out.

TD 95/17 The ATO states that the taxable value of a loan fringe benefit is to be determined by reference to the whole period in the FBT year during which the loan existed. It is not merely calculated for those periods in the FBT year during which the interest rate on the loan was below the statutory interest rate.

5.4.1 Example

- On 1 April 2011 a NSW Agency purchases a twelve month travel pass for an employee at a total cost of $2,736. The employee arranges to repay the NSW Agency as follows:
- Twelve monthly instalments of $228 each.
- Instalments are paid on the last day of each month.
- The first instalment is due on 30 April 2011 and the last on 31 March 2012.
- No interest is to be charged on the monthly outstanding balance.
- As the NSW Agency is purchasing the travel pass for the employee, the employee is obliged to repay the amount. Further, as the amount of interest being charged by the NSW Agency is less than the statutory interest rate, a loan fringe benefit exists for FBT purposes,

- The taxable value of the loan fringe benefit is calculated as follows:

Mth Ended	Opening Balance (1)	Repay -ments	Closing Balance	Interest Rate (2)	Calculation	Interest
30 April 11	2,736	228	2,508	7.8%	(1) x (2) x (30/366)	17.49
31 May 11	2,508	228	2,280	7.8%	(1) x (2) x (31/366)	16.57
30 June 11	2,280	228	2,052	7.8%	(1) x (2) x (30/366)	14.58
31 July 11	2,052	228	1,824	7.8%	(1) x (2) x (31/366)	13.56
31 Aug 11	1,824	228	1,596	7.8%	(1) x (2) x (31/366)	12.05
30 Sep 11	1,596	228	1,368	7.8%	(1) x (2) x (30/366)	10.29
31 Oct 11	1,368	228	1,140	7.8%	(1) x (2) x (31/366)	9.04
30 Nov 11	1,140	228	912	7.8%	(1) x (2) x (30/366)	7.29
31 Dec 11	912	228	684	7.8%	(1) x (2) x (31/366)	6.03
31 Jan 12	684	228	456	7.8%	(1) x (2) x (31/366)	4.52
29 Feb 12	456	228	228	7.8%	(1) x (2) x (29/366)	2.82
31 Mar 12	228	228	0	7.8%	(1) x (2) x (31/366)	1.51
Taxable Value						115.66

As the taxable value of the loan fringe benefit is $115.66, the minor benefit exemption may apply.

Notes: The notional amount of interest calculated using the statutory interest rate for the year ended 31 March 2012 was 7.8%. As no interest was actually charged on the loan, the notional amount of interest is equal to the taxable value of the loan.

5.5 Can the taxable value be reduced?

s19

The taxable value of a loan fringe benefit can be reduced under the **otherwise deductible rule**. The rule applies where interest on a loan, even though it is charged at a concessional rate, would be deductible to the employee where it is used for income-producing purposes (e.g. a loan used by an employee to acquire shares in a public company since the interest would be fully deductible for income tax purposes).

As a general rule, the extent of the reduction in taxable value which can be made to a loan fringe benefit under this rule will depend on whether the loan is applied partly for income-producing purposes and partly for private purposes. That is, in cases:

- where part of a loan is applied for private purposes, whether the employer took account of this when setting the interest rate; or
- where the loan is applied wholly for income-producing purposes, a full reduction in the taxable value will be available and no FBT will arise;
- in all other cases, a proportionate reduction in taxable value can be claimed.

Taxation Laws Amendment (2008 Measures No. 5) Act 2008

From 13 May 2008, where a fringe benefit is provided jointly to an employee and their associate, the employer's FBT liability on the taxable value of the fringe benefit will only be reduced to the extent that the employee's share of the fringe benefit is used for income producing purposes.

s138(3) / ATO ID 2005/219

The use of the otherwise deductible rule must be supported by the relevant declaration. This declaration is needed to substantiate the extent to which the loan's interest would have been "otherwise deductible" to the employee. The declaration must be in an approved format and must be provided to the Agency by the employee concerned prior to the FBT return for that year being lodged. An example of an employee declaration is attached (see Appendix 1 section A).

5.5.1 Car loans

s19(3)

Where the loan is used to purchase a car, the taxable value can be reduced to reflect business use of the car.

The reduction requires a declaration from the employee, and depends on the employee's compliance with substantiation rules (refer Appendix 1 sections B to D). There are three alternative scenarios:

(1) Where a logbook and odometer records are maintained in accordance with the relevant substantiation rules, the amount of the reduction will be calculated as the notional amount of interest multiplied by the estimated business use percentage. As well as the declaration, the employee must provide the NSW Agency with copies of odometer readings and logbook records for the year during which they are compiled.

(2) Where the substantiation rules are not complied with and the estimated average weekly kilometres are **less than 96**, the employee must provide the NSW Agency with certain details. The available reduction will be the lesser of 33.33% of the notional amount of interest and the estimated business percentage use.

(3) Where the substantiation rules are not complied with and the estimated average weekly business kilometres **exceed 96**, the amount of the reduction will be 33.33% of the notional amount of interest. The employee must provide the NSW Agency with a statement confirming the level of business use.

5.5.2 Remote area housing loans

s60 Remote area housing loans may qualify for the 50% reduction in taxable value if the necessary conditions are satisfied. Broadly these conditions are the same as those required for the remote area housing fringe benefit exemption.

5.5.3 Example

Greg, an employee of a NSW Agency was provided with a loan of $20,000 on 1 April 2011 at an interest rate of 2% per annum with the interest payable monthly. No repayments of principal are made before 31 March 2012. Greg applied $16,000 (80%) of the loan to refurbish a rental property. The balance was used to build a sunroom at Greg's home.

The taxable value of the loan fringe benefit before reduction for business element is:

($20,000 x 7.8%) x 366/366 days	$1,560
less: ($20,000 x 2%) x 366/366 days	(400)
	$1,160

The amount of notional income tax deduction that Greg would have obtained if he had incurred interest on the loan at the notional statutory rate of 7.8% (referred to as a gross deduction) is $1,560 x 80% = $1,248.

If the NSW Agency did not take account of the business use element of the loan, the income tax deduction available to the employee would be:
$400 x 80% = $320.

The taxable value of the loan benefit is now reduced by the amount by which the gross deduction exceeds the actual amount deductible to the employee for income tax purposes.

Taxable value	$1,160
less: ($1,248 - $320)	($928)
Reduced taxable value for FBT purposes	232

Note that the reduced taxable value is equivalent to the difference between the actual and statutory interest rates (7.8% - 2% = 5.8%) multiplied by the portion of loan used for private purposes ($4,000 x 5.8% = $232).

5.6 Which gross-up rate?

The GST does not affect the taxable value calculation of a loan fringe benefit. A loan fringe benefit constitutes an input taxed supply and the employer would not be entitled to claim any input tax credits. Accordingly, the Type 2 gross-up rate of 1.8692 applies.

There may be non-interest charges associated with the loan (e.g. application fees) that incur GST. The Type 1 gross-up rate of 2.0647 would apply, however such benefits would likely constitute a property fringe benefit or an expense payment fringe benefit, rather than a loan fringe benefit.

5.6.1 Example

An employee is given a housing loan of $50,000 at an interest rate of 5.25% on 1 October 2011. Interest is charged to the loan and paid each six months. No repayment of principal will occur until 2013. The actual interest charged on the loan during the year ended 31 March 2012 will be $1,309 (i.e. $50,000 x 5.25% x 182/365 days).
The taxable value of the loan benefit for the 2011/2012 FBT year is:

Statutory interest (50,000 x 7.8% x 182/365 days)	$1,944.66
Less: interest charged	$1,309.00
Taxable value	$ 635.66
FBT liability ($635.66 x 1.8692 x 0.465)	$ 552.50

5.7 Substantiation

s19 For a reduction in the taxable value of a loan fringe benefit to be available, an employee must provide the NSW Agency with a loan fringe benefit declaration prior to the FBT return for that year being lodged.
Refer Appendix 1 – section A.

A loan fringe benefit declaration is **not** required where the loan consists of a provision of credit to an employee for the purchase of goods or services used exclusively in the employee's employment.

Division 15 Additional disclosures are required in the declaration to enable the reduction of a loan fringe benefit where the loan is used to purchase a car.
Refer Appendix 1 – sections B, C and D.

APPENDIX 1
Approved Format for Loan Fringe Benefit Declaration

Section A

I, _____ declare that the loan of
(name of employee)

$_____ made to
(amount in words)

me by _____on _____ 20 _____ was used by me
(name of person who lent the money) (date)

during the period from _____ 20 ____to _____ 20 ____
(date) (date)

for the following purpose(s):

_____

_____

_____

(Please give sufficient information to demonstrate the extent to which the loan was used for earning your assessable income.)

I also declare that had I paid interest at a commercial rate on the loan for the above period, I would have been entitled to claim an income tax deduction equal to

_____% of the interest on that loan.

Signature _____

Date _____

Approved Format for Loan Fringe Benefit Declaration

Section B

(To be completed where the necessary log book records and odometer records have been maintained.)

I declare that -

(i) the period of the FBT year the car was in use by me for business purposes

was _____ to _____ ;

(ii) log books and odometer records for the car (or a car which this car replaces) were kept for a minimum of 12 consecutive weeks during that period and have been given to the employer; or

(iii) log books and odometer records for the car (or a car which this car replaces) were kept for a minimum of 12 consecutive weeks in an earlier year, and odometer records were kept this year and have been given to the employer; or

(iv) the car business percentage for the period mentioned in item (i) above was

_____ %.[1]

[1] The percentage of business use is the proportion of business kilometres to total kilometres. The percentage of business use stated should be determined by taking into account the business use in the log book records and variations in the pattern of business use throughout the year.

Approved Format for Loan Fringe Benefit Declaration

Section C

(To be completed where the benefit relates to a car that travelled more than an average of 96 business kilometres per week and Section B has not been completed).

I declare that the period of the FBT year during which the car was in use by

me for business purposes was _____to _____and that an average of more than 96 business kilometres per week was travelled in that period.

Approved Format for Loan Fringe Benefit Declaration

Section D

(To be completed where the benefit relates to a car and neither Section B nor Section C is applicable.)

I declare that:

the period of the FBT year the car was in use by me for business purposes was

_____ to _____;
(Date) (Date)

the total number of kilometres travelled by the car in that period was

_____;

the number of business kilometres travelled by the car in that period was

_____.

Signature _____

Date _____

Approved Format for Loan Fringe Benefit Declaration

Explanatory Notes

If Section B is completed, the tax-deductible percentage stated in Section A should equal the percentage of business use shown at item (iv) of Section B.

If Section C is completed, the tax-deductible percentage stated in Section A should be 33.33 %.

If Section D is completed, the tax deductible percentage stated in Section A should be the lesser of 33.33 % and the proportion of business kilometres to total kilometres as shown in Section D.

The percentage of business use is the proportion of business kilometres to total kilometres. The percentage of business use stated in Section A and at item (iv) of Section B should be determined by taking into account the business use in the log book records and variations in the pattern of business use throughout the year, due to things like holidays or seasonal factors.

Chapter 6: Expense Payment Fringe Benefits

Contents

6.1 Overview

Ch9 - FBT: A Guide for Employers

Division 5

An expense payment benefit arises where an expense is incurred by an employee or an associate of the employee and is paid for or reimbursed by the NSW Agency or another person under an arrangement with the NSW Agency. As the name implies, "expense payment" fringe benefits are concerned with payments, not with the provision of goods or services.

Typical examples include the payment or reimbursement of home telephone expenses, school fees, medical insurance contributions, credit cards and the payment of entertainment expenses.

6.2 Fringe benefit or allowance?

It is important to distinguish between fringe benefits for which the employer is liable to tax and allowances which are taxable in the hands of the employee.

TR 92/15

The ATO takes the view that, where an employee is paid a definite pre-determined amount to cover an estimated expense, and is not required to vouch or acquit the allowance, this is an allowance to be included on the employee's Payment Summary rather than be treated as an expense payment fringe benefit.

Such amounts are usually paid regardless of whether expenses are actually incurred. For this reason, allowances are usually treated as salary or wages and form part of the employee's taxable income (unless the allowances are exempt). There are a significant number of such allowances provided in relation to the various awards relevant to NSW Agencies.

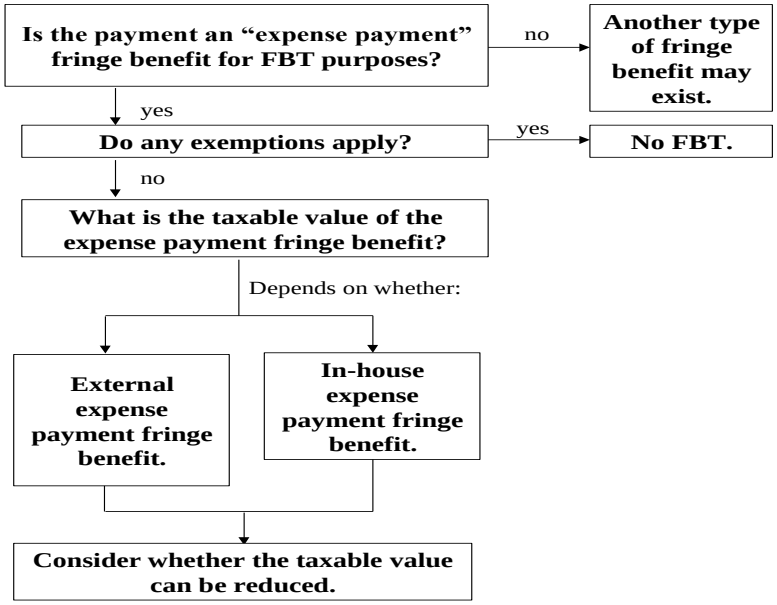
One exception is a living away from home allowance, which despite the name, is a specific type of fringe benefit (please note that this treatment may change from 1 July 2012). See Chapter 8 for more detail regarding this benefit type.

6.3 Decision making process

The following questions need to be asked in order to be able to identify and value expense payment fringe benefits:

- Is there an "expense payment" fringe benefit?
- Do any exemptions apply?
- What is the taxable value of the expense payment fringe benefit?
- Can the taxable value be reduced?

The following diagram illustrates this decision making process:



6.4 When does an expense payment fringe benefit arise?

s20 More technically, an expense payment fringe benefit may arise in either of two ways, where:

- a person (the "provider") reimburses another person (the "recipient") (either wholly or in part) for expenses incurred by the recipient or
- the provider makes a payment to a third party which extinguishes (either wholly or in part) the recipient's liability.

In either case, the expenses may be "business" expenses, a private expense or a combination of the two.

Note: The "provider" of the benefit must be a NSW Agency, an associate of the Agency, or a third person who provides the benefit under an arrangement with the Agency or the associate of the Agency. The "recipient" of a benefit must be an employee or an associate of the employee.

6.5 Common expense payment fringe benefits

Examples of common expense payment fringe benefits provided by NSW Agencies include the following:

- telephone rentals
- taxi fares
- Higher Education Loan Programme payments
- other self-education expenses.

SES officers and other employees may also elect to package certain expenses that may qualify as an expense payment fringe benefit, including housing payments, child care expenses, health fund premiums, aged care expenses, transport expenses and education expenses.

Note: An expense payment fringe benefit will not arise where goods and services are purchased by NSW Government Agencies and provided to employees. However, a property fringe benefit may arise.

6.5.1 Telephone rentals

TD 93/96

Expense payments in respect of an employee's telephone rental cost and telephone calls will not be subject to FBT to the extent that the:

- telephone is used for the purposes of the NSW Agency (e.g. to receive calls while on call-out duty) and the
- employee provides a declaration setting out the percentage of telephone use that is business-related (see Appendix 1 – Section A).

Such a declaration must be provided by the employee to the NSW Agency before lodgement of the FBT return for the relevant year and retained in the Agency's working papers file.

6.5.2 Taxi fares

s58Z

Expense payments in respect of an employee's taxi fares will not be subject to FBT provided that the:

- travel is a single trip beginning or ending at the employee's place of work, or
- the trip is provided to a sick or injured employee to travel between the work place and the employee's place of residence or to any other place where care can be obtained, or
- the payments are minor (i.e. less than $300 GST-inclusive), infrequent and irregular (s58P).

6.5.3 Higher Education Loan Programme (HELP) payments

Expense payments in respect of an employee's HELP liability will be fully subject to FBT.

6.5.4 Other self-education expenses

s82A ITAA 36

s24(1)(b)(iii)

Where self education expenses form part of the packaged component of total remuneration, the first $250 incurred by the employer may be treated as exempt fringe benefits. Under s82A ITAA 1936, the first $250 is not deductible to the employee. However, if the NSW Agency allows the employee to package the total of self education expenses there will be no fringe benefits tax payable. The otherwise deductible rule is not limited by s82A of the ITAA because of the application of s24(1)(b)(iii) of the FBTAA.

6.6 Are there any exemptions?

A number of different types of exemptions may be applicable to expense payment fringe benefits, subject to certain conditions and depending on the NSW Agency's individual circumstances. A more comprehensive list of exempt fringe benefits is included in Chapter 14.

6.6.1 Work Related Items

s58X

An expense payment is exempt from FBT where it relates to certain work related expenses that are primarily for use in the employee's employment. These items include:

ATO ID 2008/133

- a portable electronic device. This can include a mobile phone, calculator, an electronic diary, a personal digital assistant or similar item, a notebook computer, laptop computer or similar portable computer or a portable printer. Other devices that may also satisfy this exemption are devices that have the following characteristics:
  - easily portable and designed for use away from an office environment
  - small and light
  - can operate without an external power supply and
  - designed as a complete unit.
- protective clothing that is required for the employment of the employee
- a briefcase
- a tool of trade
- an item of computer software

6.6.2 Other Items

Other common exemptions include:

- a subscription to a trade or professional journal
- an entitlement to use a corporate credit card
- an entitlement to use an airline lounge membership
- certain taxi travel reimbursements

s21

- certain accommodation and meal expenditure while living away from home (please note that this exemption may change from 1 July 2012. See Chapter 8 for more detail regarding this benefit type).
- expenses incurred by a current employee on accommodation while living away from home for employment reasons and the employee provides the NSW Agency with a declaration in the format approved by the ATO (this treatment may change from 1 July 2012 so please refer to Chapter 8 more detail regarding this benefit type).

s22

- where an employer reimburses an employee for the costs of using his/her car and the reimbursement is determined with reference to the number of kilometres travelled.

However, not all cents per kilometre payments are exempt. The FBT exemption does not include travel in respect of relocation transport, employment interview or selection tests, work-related medical examinations/screening, work related preventative health care, work related counselling and certain other benefits. However, for travel associated with these activities, the taxable value will generally be reduced to nil, if paid at the ATO's published rates, under other provisions of the FBTAA. For example, s61B specifically reduces the taxable value of relocation transport.

s20A

- where the NSW Agency has completed a no private use declaration in the form approved by the ATO (refer Appendix 1) and enforces a policy that benefits only be used for employment-related expenses.

6.7 What is the taxable value?

The taxable value of expense payment fringe benefits will depend on whether they are external expense payment fringe benefits or in-house expense payment fringe benefits.

As the taxable value of an expense payment fringe benefit is the 'amount' of the expenses paid or reimbursed, that 'amount' will be the GST-inclusive value, if any GST was charged.

In most cases, the taxable value of an expense payment fringe benefit will be equivalent to the amount of expenditure that is discharged or reimbursed by the NSW Agency and will be the GST-inclusive value, where the supply includes a GST component.

Where the benefit arises through the discharge of expenditure and the NSW Agency receives an after-tax contribution from the employee, the contribution (being the GST-inclusive amount, where applicable) can be applied to reduce the taxable value of the expense payment fringe benefit.

s23

6.7.1 External expense payment fringe benefits

s136(1)

These are expense payment fringe benefits where the expenses being paid are in respect of goods or services of a type not normally sold by the NSW Agency.

The taxable value of this type of expense payment fringe benefit will, depending on whether there is a payment or reimbursement, is:

- the amount of the payment made by the NSW Agency to a third person, reduced by the recipient's contribution, or
- the amount of the NSW Agency's reimbursement.

s22A

6.7.2 In-house expense payment fringe benefits

s136(1)

These are expense payment fringe benefits where the expenses being paid or reimbursed are in respect of goods or services of a type normally sold by the NSW Agency to "outsiders".

There are two types of in-house expense payment fringe benefits: an in-house property expense payment fringe benefit and an in-house residual expense payment fringe benefit.

6.7.2.1 In-House Property Expense Payment Fringe Benefit

s136(1) An in-house property expense payment fringe benefit will exist where a NSW Agency or an associate of a NSW Agency pays an amount or reimburses an employee or an associate of an employee in respect of tangible property acquired by the employee from the NSW Agency or some other person such as a distributor.

As discussed, to be classified as "in-house", the property must be of a type that is normally sold to "outsiders" by the NSW Agency.

s22A(1) The method of calculating the taxable value of an in-house property expense payment fringe benefit varies according to a number of factors:

- if the NSW Agency is the manufacturer and wholesaler of identical property - the taxable value is equal to the lowest arm's length selling price.
- If the NSW Agency is the manufacturer and retailer of identical property - the taxable value is 75% of the lowest arm's length selling price.
- If the NSW Agency is the manufacturer and sells similar property - the taxable value is equal to 75% of the amount that the recipient could reasonably be expected to pay to obtain the property from the provider under an arm's length transaction.
- If the property acquired by the recipient is acquired by the NSW Agency - the taxable value is the lower of the arm's length price paid by the NSW Agency; or the amount that the recipient reasonably could be expected to have paid to obtain the property from the NSW Agency under an arm's length transaction.

If a situation arises, that is not captured by the above alternatives, the taxable value is 75% of the amount that the recipient could reasonably be expected to have been required to pay to acquire the property from the NSW Agency.

Note:

> "Identical property" is defined in s136 to mean property that is the same in all respects, including physical characteristics, quality and reputation except for differences (if any) that are minimal or insignificant and don't affect the value of the property.

Example

A NSW Government Agency purchases books wholesale from a publisher to be re-sold to the general public. The Agency sells the books for 10% more than the wholesale purchase price.

The Agency offers to reimburse employees for the cost of books that they purchase from the Agency up to a value of $1,000 per employee per year.

For FBT purposes, the reimbursement of the employee's expenses is an in-house expense payment fringe benefit.

As the books were acquired by the Agency for re-sale, the taxable value will be the lower of:

- the arm's length price paid by the Agency for the books, or
- the amount that the employee could be expected to pay for the books.

If an employee purchases $110 worth of books and is subsequently reimbursed by the Agency, the taxable value will be $100 (that is, the cost of the books to the Agency). Consideration, however, should be given to whether the employee is eligible for a reduction in taxable value of up to $1,000 for in-house fringe benefits (see Chapter 15).

6.7.2.2 In-House Residual Expense Payment Fringe Benefit

s22A(2) This is identical to in-house property expense payment fringe benefits, except the benefit provided is a residual benefit rather than a property benefit.
An example is the supply of a service which does not involve property.

The taxable value of in-house residual expense payment fringe benefits is calculated in the same manner as the in-house property expense payment fringe benefit, discussed above.

There is no difference in the taxable value of an in-house fringe benefit provided directly as a property or residual fringe benefit, or indirectly as an expense payment fringe benefit.

6.8 Can the taxable value be reduced?

As with most fringe benefits, the taxable value of expense payment fringe benefits can be reduced by:

- applying the otherwise deductible rule and/or
- the amount of the recipient's contribution.

s24 The otherwise deductible rule only applies to items that would have been fully deductible to the employee had they not been reimbursed for the expenditure or had it not been discharged on their behalf.

However, where the cost of a capital item is reimbursed (i.e. a computer), the employee would only have been entitled to depreciation over a number of years rather than a once-off deduction. In this case, the "otherwise deductible" rule would not apply.

Where a benefit is only partly business or employment-related, the reduction which can be made to the taxable value of the benefit will depend on whether the amount of expenditure which was reimbursed or discharged by the employer (where this is less than 100% of the employee's expenditure), was designed to cover only the business-related component of the expenditure.

s62 In the case of in–house fringe benefits, an additional $1,000 reduction in taxable value is available in respect of the **total taxable value** of in-house fringe benefits provided per employee per FBT year (i.e. reduction of $1,000 is not applied to each benefit, only against the total).

A list of reductions in taxable value that may apply is provided at Chapter 15 of this FBT Manual.

6.8.1 Example

Lisa, an employee of a NSW Agency, seeks reimbursement for the cost of an airfare from Melbourne to Sydney where she attended a business meeting. The taxable value of the benefit will be reduced to nil since Lisa would have been entitled to a full income tax deduction in respect of the airfare.

6.8.2 Example

Brian, an employee of a NSW Agency, has a home telephone account of $200. He estimates that 25% (i.e. $50) of the account relates to business calls.

The NSW Agency reimburses him $50 for the business portion of the account. The taxable value of the benefit is reduced to nil.

If the NSW Agency's reimbursement did not exclusively relate to the business portion of the account, an expense payment fringe benefit would arise. The taxable value would be calculated as follows:

= $50 – ($50 x 25%)

= $37.50

6.9 Which gross-up rate?

Where the acquisition of the benefit attracts GST, and the employer is entitled to an input tax credit, a Type 1 benefit will exist and the higher gross-up rate of 2.0647 will be applicable. Alternatively, where an input tax credit is not available to the employer, a Type 2 fringe benefit will exist, attracting the lower gross-up rate of 1.8692.

6.10 Substantiation

6.10.1 Documentary evidence

The type of evidence that must be obtained will depend on the amount and the nature of expenditure. In the majority of cases, the following documentary evidence must be obtained:

An invoice, receipt or similar document containing the following information will usually be adequate:

- the date on which expenditure was incurred
- the name and address of the provider/supplier
- the amount and currency of expenditure
- the description of goods or services
- the date of the document.

The document should be made out as soon as possible after the expenditure has been incurred.

It is acceptable for an employee to use a bank statement or other independent evidence to substantiate the date the expense was incurred or to specify the nature of the goods or services on the receipt or invoice, where this information is missing. Note however that tax invoices are required to claim input tax credits.

Where a NSW Agency is unable to claim an input tax credit due to loss of the tax invoice, but is entitled to an input tax credit, the Type 1 gross-up factor will be applicable. This is particularly an issue in relation to credit card expense payment reimbursements. Accordingly, it is important to ensure appropriate tax invoices are collected and retained.

6.10.2 Exemptions

Documentary evidence, such as receipts or invoices, is not required from the employee in relation to the following expenditure:

- reasonable costs of accommodation, meals or other incidentals of travel within Australia and the reasonable costs of meals or other incidentals of travel outside Australia, in the course of performing duties of employment (expenditure on accommodation while travelling outside Australia is not exempted from the documentary evidence requirements) and
- reasonable cost of meals in connection with overtime worked by the employee.

TD 2011/17

The expenditure is considered reasonable if it would not require substantiation under the income tax law when met out of a reasonable travel or overtime meal allowance. Refer to Taxation Determination TD 2011/17 for what is considered a 'reasonable' travel or overtime meal allowance for the 2011/2012 year.

6.10.3 Declarations

Use of the "otherwise deductible" rule must be supported by certain documentation. Documentation is needed to substantiate the extent to which the purchase price of the property would have been "otherwise deductible" to the employee.

Where the documentation is a declaration by the employee it must be in an approved format and must be provided to the Agency by the employee concerned prior to the FBT return for that year being lodged. An example of an employee declaration in respect of expense payment fringe benefits is attached (see Appendix 1 – Section A).

s24(1)(e)
s152A

The requirement to obtain an employee declaration is waived if the provision of the fringe benefit is covered by a recurring fringe benefit declaration provided by the employee (see Appendix 2). A fringe benefit may be covered by a **recurring fringe benefit declaration** if:

- it is provided no later than five years after the declaration was made
- the deductible proportion of the benefit is not significantly less than the deductible proportion of the benefit for which the declaration was first provided (>10% is significant) and
- it is identical to the fringe benefit in relation to which the declaration was first made.

No declaration is required if the expense is wholly work related (e.g. reimbursement of an airfare incurred to attend a business meeting).

Set out below are some concessions and special requirements in relation to particular types of expense payments.

6.10.4 Car expense payments

s24 Where a car expense payment benefit is substantiated by the log book rules, the recipient must give to the NSW Agency a car substantiation declaration (see Appendix 1 – Section B) for the car for the year, together with a copy of the log books and odometer records as required. This is required to substantiate any reduction claimed in relation to business use of the car.

Where a car expense payment benefit is not substantiated in accordance with the log book rules, the recipient must give the employer a declaration which sets out the period the car was held, the total kilometres travelled, and the business kilometres travelled by the car in the holding period (Appendix 1 – Section D).

The NSW Agency can use this information to arrive at an estimate of the proportion of business use relating to the car which will determine the reduction in the taxable value of the expense payment benefit. The reduction may not exceed 33.3%.

If the car travels more than 96 kilometres per week on average during the FBT year, the recipient may choose instead to give the NSW Agency a declaration that sets out the holding period, and states that the average number of business kilometres travelled by the car per week exceeds 96 kilometres (Appendix 1 – Section C). Under this method, the employer is entitled to make a flat rate reduction of 33.3% of the taxable value.

6.10.4.1 Example

A NSW Agency reimburses an employee for all motor vehicle petrol costs. For the FBT year ended 31 March 2012, the total value of these reimbursements was $200. For FBT purposes the reimbursement of the employee's petrol costs is an expense payment fringe benefit.

The employee provides the NSW Agency with a declaration setting out the period that the car was held for and stating that the car travelled 1,000 kilometres in the last FBT year, 500 of which were for business purposes.

The taxable value of the benefit is calculated as 33.3% of $200 being $66.60: The employee is unable to claim the full 50% (i.e. 500 kilometres/1000 kilometres) as they do not have a completed log book.

6.10.5 Small expense items and undocumentable expense payment fringe benefits

s24(3), s24(3A) Small expense items are expense claims that are less than $10 each and which in total for an employee do not exceed $200 per annum. Undocumentable expense payments are those types of expenditure that would be unreasonable to expect the recipient to have obtained documentary evidence of (e.g. train fares, telephone calls from public phones).

For both small expense items and undocumentable expense payment fringe benefits, it is sufficient if appropriate entries are made in a petty cash book or similar document.

In respect of fuel and oil expenses for a car, an approved declaration may be filled out (see Appendix 3), or if the expenses qualify as small expense items or undocumentable, the above documentary evidence requirements may be applied.

6.10.6 Extended travel expenses

s24(1)(d) Where the employee travels:

s136(1)

- overseas for more than five nights, or
- within Australia for more than five nights, where the travel does not exclusively relate to employment duties,

the employee must give the NSW Agency a travel diary, in order to substantiate a reduction of the taxable value of any associated fringe benefit.

The employee's travel diary must set out the particulars of:

- the place where the activity was undertaken
- the date and approximate time the activity commenced
- the duration of the activity
- the nature of the activity.

If a travel diary is kept and submitted to the NSW Agency, there is no requirement to also obtain an employee declaration.

APPENDIX 1
Expense payment fringe benefit declaration

Section A

I, _____ declare that:

_____

(show nature of expenses reimbursed)

were reimbursed to me by on behalf of my employer during the period

1 April _____ to 31 March _____and that the expenses were incurred by me for the following purposes:

_____

_____

_____

(show sufficient detail to enable identification of the relevant benefits)

I also declare that had the expenses not been reimbursed that I would

have been entitled to claim an income tax deduction equal to _____ % of the expenses.

Signature: _____

Date: _____

Expense payment fringe benefit declaration

Section B

I, _____declare that a car that is owned or leased by me was used for business purposes and that:

i) the period of the FBT tax year the car was in use by me for business purposes was

_____ to _____
(date) (date)

ii) log books and odometer records for the car (or a car which this car replaces) were kept for a minimum of 12 consecutive weeks during that period have been given to the employer; or

iii) log books and odometer records for the car (or a car which this car replaces) were kept for a minimum of 12 consecutive weeks in an earlier year, and odometer records were kept this year and have been given to the employer;

iv) the car business percentage for the period mentioned in item (i) above

was _____%.

Signature: _____

Date: _____

Expense payment fringe benefit declaration

Section C

I, _____declare that a car that is owned or leased by me was used for business purposes and that the period of the FBT year during which the car was in use by me for business purposes

was _____ (date) to _____ (date)

and that an average of more than 96 business kilometres per week was travelled in that period.

Signature: _____

Date: _____

Expense payment fringe benefit declaration

Section D

I, _____declare that a car that is owned or leased by me was used for business purposes and that the period of the FBT year the car was in use by me for business purposes

was _____ to _____ ;
(date) (date)

the total number of kilometres travelled by the car in that period was

_____; and the number of business kilometres travelled by the car

in that period was: _____.

Signature: _____

Date: _____

APPENDIX 2
Recurring expense payment fringe benefit declaration

I, _____ declare that:

_____
(show nature of expenses reimbursed)

were reimbursed to me by on behalf of my employer during the period

1 April _____ to 31 March _____and that the expenses were incurred by me for the following purposes:

_____

_____

(show sufficient detail to enable identification of the relevant benefits)

I also declare that had the expenses not been reimbursed that I would have been entitled to claim an income tax deduction equal to _____ % of the expenses.

I understand that this declaration is to apply to the above stated benefit and to any identical benefit for a period up to five years from the date of this declaration or until the stated percentage incurred in earning my assessable income decreases by more than ten percentage points. This declaration will also be revoked if another recurring expense payment fringe benefit declaration is provided in respect of a subsequent identical benefit.

Signature: _____

Date: _____

APPENDIX 3
Fuel expenses declaration

I, _____ declare that

_____ expenses of
(state whether fuel and/or oil)

$_____ were incurred by me during the period from

_____ to _____
(date) (date)

in relation to _____
(make/model/registration number of car)

Signature: _____

Date: _____

If the employee is responsible for all fuel and/or oil costs, a declaration based on a reasonable estimate derived from the total kilometres travelled, average fuel costs and fuel consumption will be acceptable. In these cases the declaration should be extended as follows:

'I also declare that the total kilometres travelled during the period was

_____.'

Chapter 7: Housing Fringe Benefits

Contents

7.1 Overview

Ch10 - FBT: A Guide for Employers

Generally, a housing fringe benefit arises when a NSW Agency provides residential accommodation to an employee and their family.

Division 6

Where the accommodation is located in a remote area, the benefit will be exempt from FBT.

Where the accommodation is located in a non-remote area, the taxable value of the benefit is the amount of the rental subsidy – that is, it is the difference between the market or statutory annual value (depending on the method used) less any rent actually paid by the employee.

If the accommodation is of a kind ordinarily provided by the NSW Agency to the public (e.g. a state-owned caravan park), the market value is reduced by 25%.

Where the accommodation is located outside Australia, the value of the benefit is the difference between the market value of the rent less any rent paid by the employee. There is no statutory annual value.

7.2 When does a housing fringe benefit arise?

s25

A housing fringe benefit arises when a NSW Agency grants its employee (or an associate of an employee) the right to use a unit of accommodation as its usual place of residence.

Housing fringe benefits often arise when employees are transferred from one location to another location as a direct result of their employment with a NSW Agency.

The housing right must be provided to the employee (or associate) by the employer, i.e. not by a third party. This would arise where a NSW Agency owns, leases or licences the accommodation that is provided to the employee. Alternatively, the Agency can arrange with a third party (such as a hotel proprietor) to provide the unit of accommodation.

Not all benefits relating to accommodation are housing fringe benefits. For example, the reimbursement of rental costs will generally be expense payment fringe benefits (see Chapter 6 of this FBT Manual) while rent allowances may qualify as living-away-from-home allowances (see Chapter 8 of this FBT Manual). In these instances, the FBT outcome could vary.

TD 93/55

A housing allowance subsidy given to an employee who already owns their own home would not be subject to FBT. However, the amount of the subsidy is viewed by the ATO as an allowance given in respect of employment or services rendered and is assessable income to the employee.

7.3 What is a unit of accommodation?

s136(1)

A unit of accommodation includes:

- a house, flat or home unit
- accommodation in a house, flat or home unit
- accommodation in a hotel, motel, guesthouse, bunkhouse or other living quarters
- a caravan or mobile home
- accommodation in a ship or other floating structure

The employee's use of the unit of accommodation need not be exclusive (for example, the use of shared accommodation as a usual place of residence is nonetheless a housing fringe benefit).

7.4 Meaning of "usual place of residence"

s136(1) The FBTAA does not define the term **usual place of residence**. It does however contain a definition of the term **place of residence** which is described as:

- a place at which a person resides, or
- a place at which the person has sleeping accommodation whether on a permanent or a temporary basis and whether or not on a shared basis.

The FBTAA contemplates that a place of residence can change frequently or at least as frequently as the employee moves from one temporary unit of accommodation to the next.

The word usual takes its ordinary meaning, being habitually or customary. So the phrase, usual place of residence, has a more permanent dimension to it.

The determination of whether an employee is provided with accommodation which is his or her usual place of residence (i.e. a housing right) has important tax implications. It may constitute a housing, residual or expense payment fringe benefit depending on the circumstances.

MT 2030 The question of when an employee is occupying accommodation as a usual place of residence is considered in MT 2030, which deals with living-away-from-home allowances (LAFHA). The ruling indicates that the question of whether an employee is living away from their usual place of residence will largely depend on whether the employee has changed residence only in order to work for the NSW Agency for a temporary period at another location. In answering this question, the Commissioner states that it will be relevant that an intention or expectation exists that the employee will return to live at the former (or usual) place of residence when the responsibilities at the temporary job location cease.

Special considerations arise in cases of employees who have itinerant working lifestyles and employees who are provided with accommodation at permanent work locations in remote regions but who return to an alternative usual place of residence during days off.

As a general rule accommodation which is provided to an employee will be treated as constituting a usual place of residence where:

- the employee resides there while working at a permanent job location or
- the employee is working at a temporary job location but the nature of the lifestyle suggests that the employee does not have a usual place of residence elsewhere.

Please note that the treatment of living away from home benefits may change from 1 July 2012. See Chapter 8 for more detail regarding LAFHA.

MT 2021 The Commissioner suggests that a NSW Agency can determine whether an employee is living at or away from his usual place of residence by obtaining relevant information from the employee. A NSW Agency is entitled to rely on representations made by their employee. Where the employee represents that he or she is living away from their usual place of residence they must provide the Agency with a declaration to this effect (See Appendix 1 of Chapter 8). As discussed above, please note that the treatment of living away from home benefits may change from 1 July 2012. See Chapter 8 for more detail regarding this benefit type.

7.5 What is the taxable value?

s26, 29 The taxable value is the difference between the market (or statutory) value of the housing right and the amount of rent actually paid by the employee or their associate.

Taxable value = rental subsidy = market or statutory annual value, less any recipient's rent

The recipient's rent is the employee's after-tax contribution. It means any rent or other consideration paid to the employer (not paid to any third party). Complying with any conditions in the agreement (e.g. maintaining the gardens) does not constitute an employee contribution and does not reduce the taxable value.

The diagram below provides an overview of the calculation of the taxable value under the various scenarios.

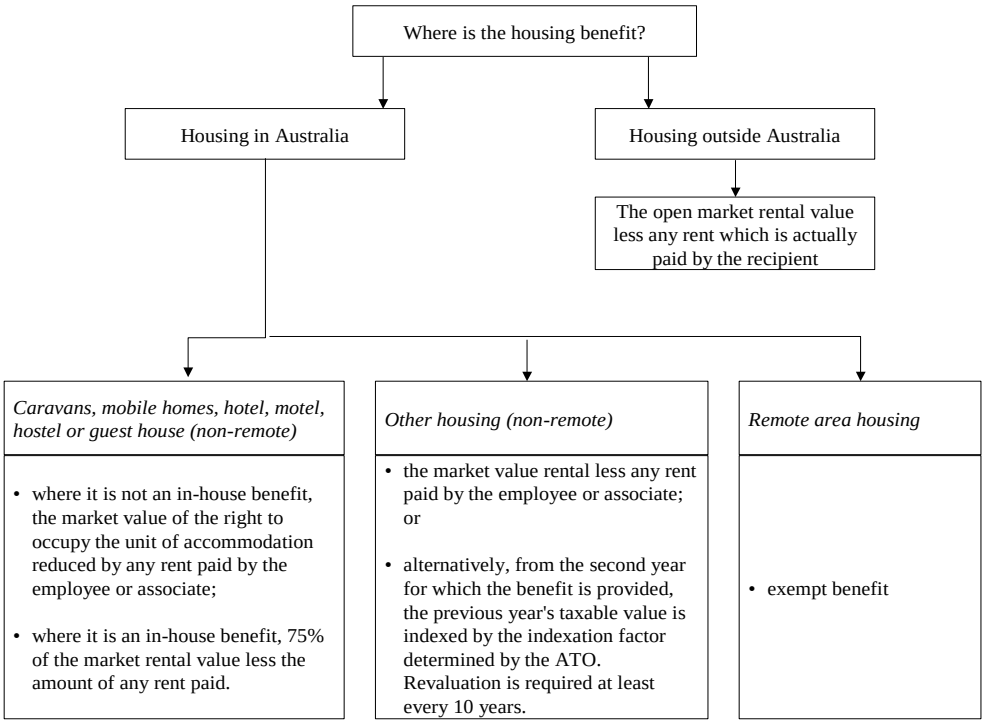


Diagram: Overview of calculation of taxable value under scenarios listed

7.6 Are there any exemptions?

All remote area housing fringe benefits are exempt from FBT.

Note: The exemption does not extend to the reimbursement of rental costs for accommodation (expense payment fringe benefit). If the benefit is an expense payment fringe benefit, the taxable value can be reduced by 50%.

PS LA 2000/6 The Commissioner of Taxation has published a listing of remote areas in each State (see Appendix 1 for a list of NSW towns in remote areas).

s58ZC The provision of accommodation will be a remote area housing fringe benefit where:

- during the whole of the tenancy period, the unit of accommodation was located in a remote area
- during the whole of the tenancy period, the recipient was a current employee of the NSW Agency and the usual place of employment was in a remote area
- it is customary for employers in the particular industry to provide employees with free or subsidised accommodation
- it is necessary for the NSW Agency to provide or arrange for the provision of residential accommodation for one of the following reasons:
  - the employees are liable to change location frequently due to the nature of the employer's business, or
  - the employment is undertaken in an area where there was insufficient other suitable residential accommodation available, or
  - the housing right is provided under an arm's length arrangement that was not entered into for obtaining the concessionary treatment afforded to a remote area housing fringe benefit.

7.6.1 Certain regional employers

s140(1B) The definition of a remote area is extended for the following types of employers:

- public hospital that is a Public Benevolent Institution (PBI)
- government body where the duties of the employee are exclusively performed in, or in connection with, a public hospital that is a PBI
- public hospital other than a government hospital
- hospital carried on by a non-profit society or a non-profit association
- charitable institution
- police service.

PS LA 2000/6 The Commissioner of Taxation has published a listing of remote areas in each State (see Appendix 2 for a list of NSW towns in remote areas for these types of employers).

7.7 Valuation of non-remote area housing

The taxable value of a housing fringe benefit provided in respect of non-remote area housing in Australia will depend on whether or not the provider carries on a business of providing the same accommodation to the public (in which case, the benefit will be an in-house benefit).

7.7.1 Hotels, motels, hostels, guesthouses, caravans or mobile homes

s26(1)(c) Where the unit of accommodation is a caravan or mobile home or is in a hotel, motel or guesthouse in Australia, the taxable value is the **market value less any rent paid by the person** receiving the benefit.

s26(1)(b) If during the whole or part of the tenancy period the NSW Agency carried on a business consisting of (or including) the provision to the public, of identical or similar units of accommodation in the hotel, motel, etc. (i.e. it is an **in-house benefit**), the taxable amount is calculated by multiplying the market value of the recipient's housing benefit by 0.75.

In determining the market rental value in these cases it is not appropriate to use the daily rate charged to customers. Rather, a long-stay occupancy rate needs to be established which is why the concession exists.

Example

An employee is provided with a housing fringe benefit in a hotel room for three months. The cost of the room is $2,000 per month. The employee pays a total of $2,500 rental for the room for the three months, and the NSW Agency pays the rest.

The taxable value of the housing fringe benefit is $3,500 (i.e. $6,000 - $2,500).

Assume the hotel is owned and operated by the NSW Agency. The market value of the room remains at $2,000 per month, and the employee contributes $2,500.

The taxable value of the housing fringe benefit is $2,000 [i.e. (75% x $6,000) - $2,500)].

7.7.2 Other units of accommodation

s26(2)(b) For any other unit of accommodation, the taxable value of the benefit is the **statutory annual value** of the recipient's current housing right multiplied by the number of days in the tenancy period divided by the number of days in the FBT year.

The statutory annual value of a unit of accommodation is equal to:

- in the first year that the benefit is provided – the market value of the unit of accommodation.
- in the second and subsequent years that the benefit is provided - either the market value of the unit of accommodation in the current year or the market value in the first (i.e. base) year multiplied by the current year indexation if the NSW Agency so elects.

TD 2011/3 Where the NSW Agency elects to use the statutory method, the market value in the first year can be used as the basis of indexation for a maximum of nine years (that is, the market value only needs to be re-determined in the tenth year). The indexation factor depends on the State in which the accommodation is situated, and the year concerned. For the 2012 FBT year, the indexation factor for NSW is 1.049.

s28(5) For the purposes of applying the indexation factor, Jervis Bay is deemed to be part of NSW.

If an employee occupies the accommodation for only part of a year, then the market rental value must be annualised before applying the indexation factor.

A new valuation must be obtained in the following circumstances:

- no housing fringe benefit was provided by the employer in the previous FBT year, or
- a valuation on the unit of accommodation has not been obtained in any of the previous nine years (i.e. a new valuation must be obtained every ten years).

s26(5) Note: Where there are substantial improvements to the particular unit of accommodation such that the market rental could be expected to have increased by at least 10%, the value of the housing benefit must be determined by reference to the "new" market rental value. A "new" market rental value must also be determined if alterations have the effect of reducing the market value by at least 10%.

Example 1

A NSW Agency provides a housing fringe benefit in NSW for 91 days in the FBT year ended 31 March 2012. That benefit was valued at $5,000 for that period in that year. The employee pays $2,000 rent.

The statutory annual value is $20,054.94 (i.e. $5,000 x 365 ÷ 91).
The taxable value is $3,000 (i.e. ($20,054.94 x 91 ÷ 365) - $2,000).

Example 2

A NSW Agency provides a housing fringe benefit in Queensland for 182 days in the FBT year ended 31 March 2012. The provision of that unit of accommodation over a 91-day period was valued at $5,000 in the FBT year ended 31 March 2011. The employee pays $4,000 rent.

The statutory annual value is $20,737 (i.e. $5,000 x 1.034x 365 ÷ 91).
The taxable value is $6,340 (i.e. ($20,737x 182 ÷ 365) - $4,000).

Example 3

A NSW Agency provides a housing fringe benefit in NSW for 182 days in the FBT year ended 31 March 2011.
The provision of that unit of accommodation over a 91-day period was valued at $5,000 in the FBT year ended 31 March 2005. The employee pays $4,000 rent.

Year Ended	Market Value	Indexation Factor	Indexed Market Value
31/3/05	5,000	N/A	N/A
31/3/06		1.018	5,090.00
31/3/07		1.015	5,166.35
31/3/08		1.023	5,285.17
31/3/09		1.045	5,523.00
31/3/10		1.068	5,898.57
31/3/11		1.049	6,187.60

Therefore, the statutory annual value of the housing benefit for the FBT year ended 31 March 2011 is $6,187.60 x 365/91 = $24,818.41

The taxable value is $8,375.20 (i.e. ($24,818.41x 182/365) - $4,000).

7.8 What is the market value?

s27, MT2021 The market value of the right to occupy a unit of accommodation is basically the amount of rent that an arm's length (that is, an unrelated) tenant would pay for the right. Accordingly, any associated expenses and onerous conditions (e.g. a requirement that the employee be on-call) attached to the housing fringe benefit are disregarded in determining the market value.

The market value of the right to occupy a unit of accommodation can normally be ascertained by comparing the rent obtained for comparable properties in the locality.

MT 2025 MT 2025 outlines the ATO's view on determining the market value of housing rights generally and valuation issues for specific types of accommodation (e.g. dormitory housing).

7.9 Can the taxable value be reduced?

There are a number of housing related reductions available:

s60
- 50% reduction in the taxable value of remote area housing assistance applies where a NSW Agency pays or reimburses interest on a housing loan, sells a house with interest free or low interest instalments, sells a house below value, reimburses an employee for expenses connected with a home, or pays or reimburses rent.

s65CA
- A further concession is afforded to certain remote area housing scheme fringe benefits. This scheme provides for the spreading, or amortisation, of the taxable value over the duration of the benefit (in which the benefits are effectively enjoyed).

s59
- Where a NSW Agency supplies, or pays for, or reimburses the cost of electricity, gas or other residential fuel for an employee in a remote area, the value of the benefit is reduced by 50%.

s60A
s61

- Remote area holiday transport reduction - where an employee working in a remote area is given transport (including accommodation and meals en-route) provided in connection with a holiday of three days or more under an award or industry custom, the taxable value of the fringe benefit will qualify for up to a 50% reduction.

s47(7)

- The provision of transport to and from an employee's home base and a remote area worksite is an exempt benefit (subject to certain conditions being satisfied).

7.9.1 Temporary accommodation

s61C

The taxable value of a housing fringe benefit may be reduced to nil where the benefit being provided is in respect of temporary accommodation (including the leasing of household goods) provided to an employee who is required to permanently move away from their usual place of residence:

- in the course of their employment, or
- in order to commence employment.

Appendix 4 summarises in a flowchart the provisions in relation to temporary accommodation provided to an employee relocating.

Such temporary accommodation may be provided in respect of either:

- temporary accommodation located at or near the employee's former usual place of residence. The concession will only apply where the temporary accommodation is required because the employee's former accommodation is unable to be occupied (for example, because furniture is being removed or new tenants have moved in). The accommodation can be provided for a maximum of 21 days (ending on the day the employee starts work at the new location).
- temporary accommodation located at or near the employee's new place of employment. The employee must begin to make sustained and reasonable efforts to buy or lease suitable long term accommodation as soon as is practical after starting work at the new location. The concession is limited to an occupancy period that begins seven days prior to the day when the employee starts work at the new location and ends when the employee could reasonably be expected to be able to occupy their new accommodation.

The concession is normally limited to a period of four months except where:

- The employee provides the NSW Agency with a declaration detailing the efforts that are being undertaken to find suitable long term accommodation (see Appendix 3). This may extend the period to six months; or

Where the employee:

- owned a home at the former location but sold it within six months of starting work at the new location and during that time was attempting to buy a new home at the new location and
- provides the NSW Agency with a declaration detailing the efforts that are being undertaken to find suitable long term accommodation (see Appendix 3. This may extend the period to twelve months.

In either case, the concession will end before the four, six or twelve months elapse if the employee ceases to make reasonable and sustained efforts to buy or lease suitable long term accommodation.

7.10 Which gross-up rate?

The provision of a housing fringe benefit constitutes a supply of residential premises. The supply of residential premises by way of lease, hire, or licence will usually be input-taxed (i.e. the provider of the benefit cannot charge GST in respect of the supply, nor are they entitled to claim input tax credits on acquisitions made in the provision of the benefit). No GST is payable on the supply of this accommodation which means the Type 2 gross-up rate of 1.8692 will apply.

A NSW Agency may be entitled to claim input tax credits for GST paid for commercial residential premises or short-term accommodation provided to employees (e.g. hotel accommodation). This will need to be considered in each particular case. In these circumstances, an input tax credit is available and therefore the Type 1 gross-up rate of 2.0647 must be applied.

7.11 Substantiation

To obtain the benefit of the reductions in taxable value, substantiation (in the form of a declaration and, usually, documentary evidence) is required to be provided to the NSW Agency before lodgement of the employer's annual FBT return.

To obtain the temporary accommodation concession, the employee must complete a declaration (see Appendix 3) and provide it to the NSW Agency prior to the FBT return for the relevant year being lodged.

APPENDIX 1
List of NSW towns in remote areas

Aberdeen
Balranald
Barham-Koondrook
Barraba
Bateman's Bay
Batlow
Bega
Bermagui
Berridale
Berrigan
Bingara
Boggabri
Bombala
Boorowa
Bourke
Brewarrina
Broken Hill
Broulee
Burrill Lake
Byron Bay
Canowindra
Cobar
Condobolin
Cooma
Coonabarabran
Coonamble
Cootamundra
Corowa-Wahgunyah
Cowra
Crescent Head
Crookwell
Culcairn
Dalmeny
Deniliquin
Denman
Dorrigo
Eden
Evans Head
Ewingsdale
Finley
Forbes
Gilgandra
Glen Innes
Gloucester
Grenfell
Griffith
Gulgong
Gundagai
Gunnedah
Harden
Hay
Hillston
Holbrook
Iluka
Inverell
Jerilderie
Jindabyne
Junee
Kandos
Kempsey
Kootingal
Kyogle
Lake Cargelligo
Leeton
Lightning Ridge
Lithgow
Lord Howe Island
Macksville
Maclean
Malua Bay
Manilla
Merimbula
Milton
Moama-Echuca
Moree
Moruya
Mossy Point
Mudgee
Mulwala-Yarrawonga
Murrumburrah
Muswellbrook
Nambucca Heads
Narooma
Narrabri
Narrandera
Nyngan
Parkes
Peak Hill
Perisher Village
Portland
Quirindi
Satur
Scone
South-West Rocks
South Golden Beach
Suffolk Park
Tathra
Temora
Tenterfield
Thredbo Village
Tocumwal
Tumbarumba
Tumut
Tura Beach
Tuross Heads
Ulladulla
Walcha
Walgett
Wallerawang
Warialda
Warren
Wee Waa
Wellington
Werris Creek
West Wyalong
Yamba
Yenda
Young

Source: ATO Practice Statement PS LA 2000/6

APPENDIX 2
Extended list of NSW towns in remote areas for particular employers

Aberdeen	Albury-Wodonga	Armidale	Arrawarra
Ballina	Balranald	Bangalow	Barham-Koondrook
Barraba	Basin View	Bateman's Bay	Bathurst
Batlow	Bega	Bellingen	Bermagui
Berridale	Berrigan	Blackheath	Blayney
Bingara	Boggabri	Bombala	Bonny Hill
Boorowa	Bourke	Bowral	Brewarrina
Broken Hill	Broulee	Bundanoon	Bungendore
Burrill Lake	Byron Bay	Callala Bay	Camden Haven
Canowindra	Casino	Cobar	Coffs Harbour
Colo Vale	Coolamon	Condobolin	Cooma
Coonabarabran	Coonamble	Cootamundra	Coraki
Corowa-Wahgunyah	Cowra	Crescent Head	Crookwell
Culburra	Culcairn	Dalmeny	Deniliquin
Denman	Dorrigo	Dubbo	Eden
Emerald Beach	Estella	Evans Head	Finley
Forbes	Forest Hill	Forster	Gilgandra
Glen Innes	Gloucester	Grafton	Greenwell Point
Grenfell	Griffith	Gulgong	Gundagai
Gunnedah	Guyra	Harden	Harrington
Hay	Hillston	Holbrook	Howlong
Huskisson	Iluka	Inverell	Jerilderie
Jindabyne	Junction Hill	Junee	Kandos
Katoomba	Kempsey	Kootingal	Korora Bay
Kyogle	Lake Cargelligo	Lake Cathie	Leeton
Lennox Head	Lightning Ridge	Lismore	Lithgow
Macksville	Maclean	Malua Bay	Manilla
Merimbula	Milton	Mittagong	Moama-Echuca
Molong	Moree	Moruya	Mossy Point
Mudgee	Mulwala-Yarrawonga	Murrumburrah	Muswellbrook
Nambucca Heads	Narooma	Narrabri	Narrandera
Narromine	Nyngan	Oberon	Old Bar
Orange	Orient Point	Parkes	Peak Hill
Perisher Village	Portland	Port Macquarie	Quirindi
Sanctuary Point	Sandy Beach	Satur	Sawtell
Scone	South-West Rocks	South Golden Beach	St George Basin
Suffolk Park	Sussex Inlet	Tamworth	Taree
Tathra	Temora	Tenterfield	Thredbo Village
Tocumwal	Tumbarumba	Tumut	Tuncurry
Tura Beach	Tuross Heads	Ulladulla	Uralla
Urunga	Wagga Wagga	Walcha	Walgett
Wallerawang	Warialda	Warren	Wauchope
Wee Waa	Wellington	Wentworth	Werris Creek
West Wyalong	Windermere Park	Wingham	Wollongbar
Woolgoolga	Yamba	Yenda	Young

Source: ATO Practice Statement PS 2000/6

APPENDIX 3
Temporary accommodation declaration

Sections A and D of the form must be completed plus either of Sections B and C

Temporary Accommodation Relating to Relocation Declaration

Section A

I, _____
(employee name)

declare that for the purpose of commencing employment with

_____
(name of employer)

at _____
(locality/address of employer)

that I commenced sustained efforts to acquire a long-term place of residence on

_____
(date search commenced).

(complete either Section B or Section C, whichever is applicable, where a period in excess of four months has elapsed since the search commenced)

Section B

If the employee did not have a proprietary interest in his or her former residence

(where the unit of accommodation is occupied on a date subsequent to completion of the initial four month search period, but prior to six months after commencement of the initial search period).

I entered into a contract to permanently occupy a unit of accommodation on

_____ and commenced occupation (on a date
(date)

subsequent to the completion of the initial four month search period but prior to six months after the commencement of the initial search period)

of the unit of accommodation on _____; or
(date)

(where the employee is unable to locate a suitable permanent unit of accommodation after six months from the commencement of the initial search period):

as at _____
(date six months from the commencement of the initial search period)

despite sustained efforts, I have been unable to locate a suitable permanent unit of accommodation; or

Section C

If the employee held a proprietary interest in his or her former residence: I entered into a contract to sell my former residence on

_____;
(date within six months of the commencement of the initial search period) either (indicate whichever is appropriate):

commenced occupation of a unit of accommodation on

_____
(date)

which I intend to occupy as my new long-term residence; or despite sustained efforts, I have been unable to locate suitable long term accommodation within a period of 12 months from when my initial search commenced.

Section D

Temporary accommodation at

_____
(address)

was required for the period _____ to _____

(dates)

solely because I was required to change my usual place of residence in order to perform the duties of my employment.

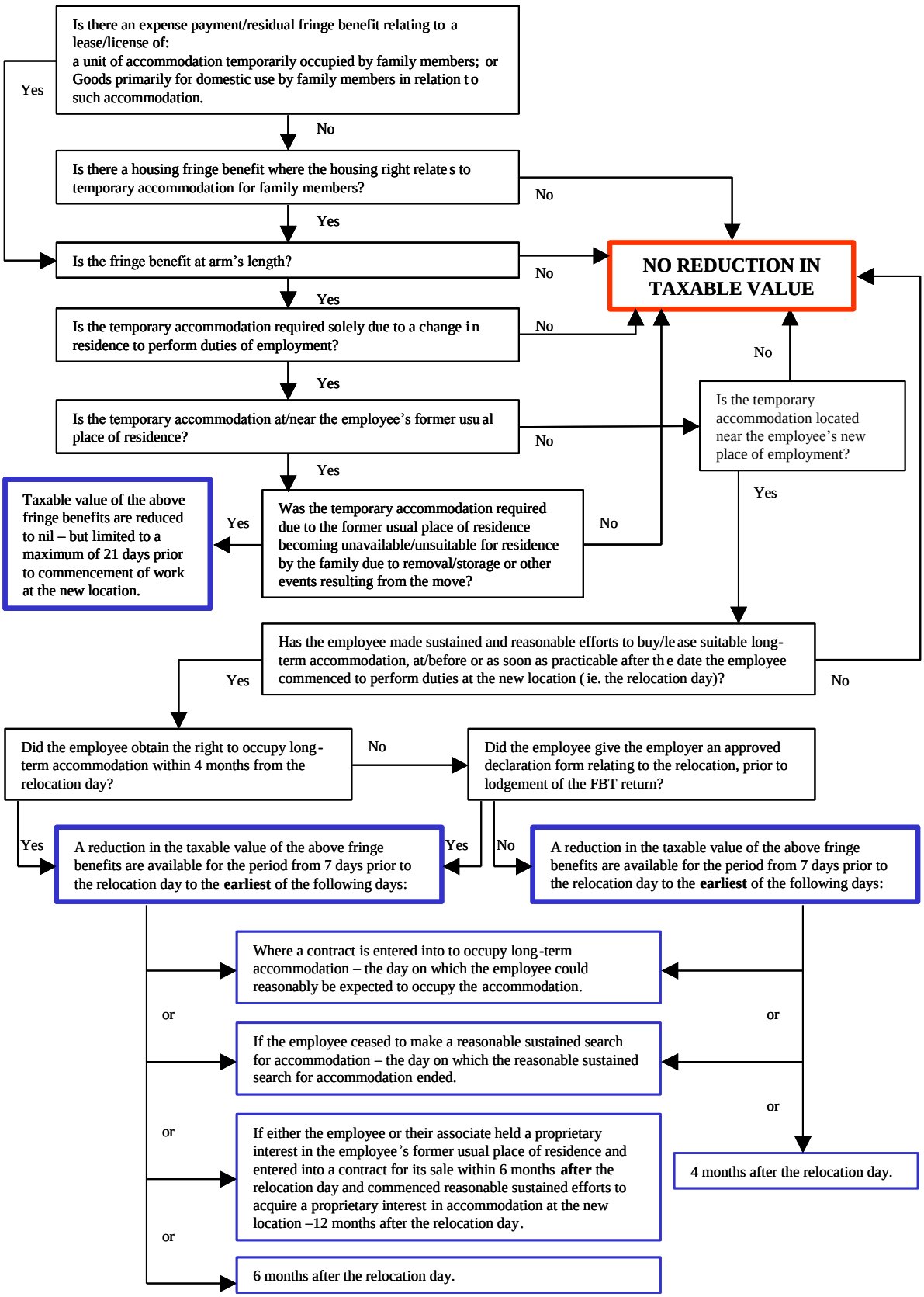
_____
(name of employee)

_____
(signature of employee)

_____
(date)

APPENDIX 4
Reduction in taxable value - temporary accommodation relating to relocation

(Note – do not use this flowchart for accommodation provided to an employee considered to be living away from home. Reductions are only available where declarations are held by the employer)



Chapter 8: Living-Away-From-Home-Allowance Fringe Benefits

Contents

8.1 Overview

Ch11- FBT: A Guide for Employers Division 7

Please note that the rules in relation to the taxation of living away from home benefits have changed with effect from 1 October 2012. In addition, there are transitional rules that apply to certain employment arrangements in place prior to 8 May 2012. This chapter has been updated to reflect the rules that apply from 1 October 2012. This chapter also includes information in respect of the transitional rules.

A living-away-from-home allowance (LAFHA) fringe benefit is an allowance paid to an employee as compensation for additional expenses and/or other disadvantages associated with having to live away from their usual place of residence in order to perform duties of employment.

Where a payment qualifies as a LAFHA, certain components of the payment may be exempt from FBT. From 1 October 2012, only some LAFHAs are concessionally taxed.

8.2 When does a LAFHA fringe benefit exist?

s136(1) A LAFHA benefit arises where:

s30

- an allowance is paid to an employee by their employer because the duties of that employment require the employee to live away from his or her normal residence; and
- the allowance is made to compensate the employee for expenses incurred in relation to this period which relate to either:
  - additional non-deductible expenses (e.g. meals, phone calls to home, laundry, rent); or
  - additional non-deductible expenses and other additional disadvantages suffered (e.g. meals, rent, plus compensation for isolation).

8.2.1 Common LAFHAs

Certain types of payments are **not** considered to be LAFHAs. These include:

- direct reimbursements of expenses incurred by the employee
- travel allowances
- relocation allowances
- board fringe benefits
- housing fringe benefits.

The allowance must be paid in respect of **additional** non-deductible expenditure to be incurred by the employee (usually accommodation and meals at the temporary job location) AND for other disadvantages that are not necessarily pecuniary in nature (such as remoteness or changed lifestyle). An allowance that is intended only to compensate for disadvantages will not be regarded as a LAFHA.

As the payment is intended to be an allowance it should be based on some reasonable estimate of expenses and disadvantages which will be incurred by the employee. It is possible that a payment of an allowance which bears no relationship to expenditure likely to be incurred in an employee's particular circumstances could be regarded by the Commissioner as not constituting a LAFHA, in which case it will be treated as salary and wages.

8.3 What does LAFH mean? Overview

MT 2030 In general, an employee will be considered to be living away from their usual place of residence when:

- there is a change of job location (and the family may follow);
- the employee intends to return to their original location after time away;
- the period away exceeds 21 days (ATO 'rule of thumb').

For an employee to be **living away from home** for FBT purposes, they would be living away from their usual place of residence in order to perform their duties of employment. The employee would have remained at their usual place of residence but for the temporary change in their job location. For example:

- construction workers living in camps, barracks or huts;
- trainee employees (e.g. teachers) who are living away from home in order to undergo training courses of an extended duration.

An employee is generally **not** considered to be living away from their usual place of residence in the following situations:

- they are itinerant workers who are required to follow the job around or required to transfer regularly (for example, members of construction gangs, police officers, school teachers, etc.);
- employees on short term training courses (considered to be travelling);
- employees who do not change job locations, but simply travel in order to carry out the requirements of the job;
- an employee who is away from home for less than 21 days.

There is an important distinction to be made between living away from home, relocation and travelling. This is a question of fact.

8.3.1 Travelling on business

A person who is **travelling on business** does not generally change their place of residence. They are usually only away from their residence in order to perform some part of their employment duties. For example, the following employees are travelling on business and not living away from home (LAFH):

- an employee who is away from home for two weeks in Wollongong to perform an internal audit review on a branch of the agency.
- an employee who is asked to move from Newcastle to Sydney to assist with a staff shortage for three weeks. As the employee's spouse is not working, they also travel with the employee.

8.3.2 Relocation

When an employee has relinquished their usual place of residence in another location (within Australia or in another country) and intends to stay in the new location indefinitely, they are considered to have relocated.

An employee is either LAFH or relocated, the employee cannot be both, as the two concepts are mutually exclusive.

The following scenarios illustrate the concept of relocation:

- an employee who worked for a NSW Agency accepts a permanent position with the Victorian Public Service. The position requires that the employee move to Melbourne.
- an employee takes up a non- fixed term contract with another NSW Agency. The place of employment is Newcastle where the employee moves with their family from Sydney.
- a department moves from Sydney to Albury. In order to retain his or her position, the employee moves with their family. The employee retains their home in Sydney as they consider it a good ongoing investment.

8.4 When does the benefit arise?

The LAFHA benefit arises at the time the employer makes the payment, regardless of the period the payment relates to.

8.5 Who is eligible for a LAFHA concession?

A LAFHA may be paid for both international and domestic transfer situations where the employee moves away from their usual place of residence for a finite period for the purposes of working. Generally, all LAFHA paid from 1 October 2012 are subject to FBT except where certain conditions are satisfied or where the transitional rules apply.

8.5.1 Exceptions to the general rule

The taxable value of LAFHA paid after 1 October 2012 may be reduced (by actual accommodation and/or food and drink expenses incurred) for the first 12 months that the employee is required to live away from home if all the following conditions are satisfied by the employee:

- maintains a home in Australia at which the employee usually resides and is available for his/her immediate use and enjoyment during that period;
- can substantiate all expenses incurred on accommodation (if the LAFHA is paid to cover accommodation expenses);
- can substantiate all expenses incurred on food and drink in accordance with the requirements of TD 2013/4 (if the LAFHA is paid to cover food and drink expenses); and
- provides a declaration in the approved form (refer to section 8.13).

(Refer to section 8.6 for information regarding the reductions available).

8.5.2 Maintaining a home in Australia

s31C To maintain a home in Australia, the employee must satisfy all three conditions:

- have an ownership interest in the home (or the employee's spouse has an ownership interest in the home);
- the home must be available for the employee's immediate use and enjoyment at all times while he/she is living away from it; and
- the employee must expect to resume living at that home when the employee returns.

Generally adult children who live in a family home do not have an ownership interest in the home. Consequently, the LAFHA concessions would not apply to an employee if they are classified as an adult child and the employee is required to live away from home for work purposes.

In order for a home to be available for the immediate use and enjoyment at all times, the employee:

- cannot rent out or sub-let the home while they are living away from it;
- must incur the ongoing costs of maintaining the home such as mortgage payments, rental payments, rates, utility bills; and
- must be able to return to the home at any time to take up immediate occupancy.

8.5.3 12 month period rule

s31D

The maximum period for which a LAFHA reduction/concession can be claimed is 12 months for both international transfers and domestic transfers (unless an employee's circumstances and intentions change prior to the end of this time period).

An employer may pause the 12 month period because the employee returns to their normal home when they are taking leave, such as annual, long service or sick leave.

A new 12 month period can start if an employee's work location changes, e.g. an employee moves from one location to another location to perform their duties and both locations are not where the usual place of residence is located nor easily accessed.

8.5.4 Fly-in fly-out and drive-in drive-out requirements

s31E

Special rules apply to employees who are working on a fly-in fly-out (FIFO)/ drive-in drive-out (DIDO) basis and who receive a LAFHA. Generally, the taxable value of a LAFHA provided to these employees will be reduced by actual accommodation and/or food or drink expenses incurred and they:

- do not have to maintain a home in Australia for their own use and enjoyment; and
- the reduction is not limited to a 12 month period.

However the employee must still:

- substantiate the expenses incurred on accommodation and food or drink (if the food or drink expenses are more than the Commissioner's reasonable amounts); and
- provide a declaration relating to living away from home (refer to section 8.13).

For FIFO and DIDO status, all of the following conditions must be satisfied:

- the employee works for a number of days on a regular and rotational basis and has a number of days off that are not the same days in consecutive weeks, such as a standard five day working week and weekend.
- the employee returns to the employee's normal residence during the days off.

- it is customary in the industry for employees performing similar duties to work on a rotational basis and return home during days off and the work duties continue to be undertaken by other employees on a rotational basis while any particular employee is on their days off.

- it is unreasonable to expect the employee to travel to and from work and the usual residence on a daily basis given the locations of the employment and their home.

- it is reasonable to expect that the employee will resume living at the usual residence when the employment duties no longer require them to live away from home.

8.5.5 Transitional rules

Transitional rules apply to employment contracts that were in place before 7.30pm (AEST) on 8 May 2012.

8.5.5.1 Permanent residents

The requirement to maintain a home in Australia and the 12 month limit for claiming LAFHA concessions do not apply until 1 July 2014 if the employee is a permanent resident and:

- they have an employment contract in place before 7.30pm on 8 May 2012; and

- the employment contract has not been materially varied or renewed between 8 May 2012 and 30 September 2012.

If there is a material variation or a renewal that fundamentally changes the employment contract between 1 October 2012 and 1 July 2014, the rules about maintaining a home in Australia and the 12 months limit apply from the date of the change or renewal.

8.5.5.2 Temporary or foreign residents

The 12 month limit for claiming LAFHA reductions does not apply until 1 July 2014 for temporary or foreign residents who:

- have an employment contract in place before 7.30pm on 8 May 2012;

- the employment contract was not materially varied or renewed between 8 May 2012 and 30 September 2012; and

- are maintaining a home in Australia for their immediate use and enjoyment at all times.

If there is a material variation or a renewal that fundamentally changes the employment contract between 1 October 2012 and 1 July 2014, the 12 months limit for claiming LAFHA reductions applies from the date of the change or renewal.

A *material variation* does not include:

- an annual salary review;

- an employee who receives a promotion and the underlying terms of the engagement contract remain the same;

- an annual adjustment to reflect annual adjustments to the food component of a LAFHA.

8.6 What is the taxable value?

s31H
s136(1)

The taxable value of a LAFHA is generally the amount of the allowance actually paid. However, as discussed in 8.5, there are certain employment arrangements that allow for reductions in the taxable value of a LAFHA. In these instances, the taxable value of a LAFHA is the amount of the allowance actually paid reduced by:

- the exempt accommodation component; and/or
- the exempt food component.

8.7 What is the exempt accommodation component?

s136(1)

The exempt accommodation component is so much of the accommodation component as is equal to the total of the expenses that are incurred by the employee for that accommodation where the accommodation is for the employee and members of the employee's family for the period the employee is required to live away from his/her usual place of residence. To be eligible for a reduction, the employee must provide the employer with documentary evidence/declaration to substantiate the accommodation expenses actually incurred for that period (refer to 8.12).

8.8 What is the exempt food component?

s31H
s136(1)

The exempt food component is the amount of the food component that equals the food or drink expenses actually incurred by the employee and members of the employee's family for the period they are required to live away from their usual place of residence minus the applicable statutory food total.

There is a requirement for the employee to substantiate all of the actual food or drink costs incurred for that period, if the food or drink expenses are more than the Commissioner’s reasonable amounts.

The Commissioner has issued TD 2013/4 which sets out the amounts that the Commissioner considers reasonable for food and drink expenses incurred by employees receiving LAFHA for the FBT year commencing on 1 April 2013. The Commissioner has provided reasonable food amounts where the employee is living in a location within Australia and for overseas locations.

If an employee incurs expenditure on food and drink (and the employer provides an allowance to compensate for the cost of that food and drink) that is equal to or less than the reasonable amount shown within TD 2013/4 then no substantiation is required by the employee and the employer is entitled to reduce the taxable value of the LAFHA by the exempt food component.

If however the employee incurs expenditure on food or drink (and the employer provides an allowance to compensate for the cost of that food or drink) which is in excess of the Commissioner’s reasonable food component, then the employee must provide substantiation for all food and drink costs. Where the appropriate substantiation is not provided, the employer will be subject to FBT in respect of any excess paid to the employee over the reasonable amount (exempt food component).

8.8.1 Applicable Statutory Food Total

The FBTAA assumes that an employee would normally spend a certain amount on food when not living-away-from-home. This amount is referred to as the applicable statutory food total and is subject to FBT if the meals component of the allowance is designed to cover total food costs and not just additional food costs. Only the amount of the food component over and above the amount assumed to be normally spent on food can be treated as exempt**.**

The amount assumed to be normally spent on food is set at **$21 per week per child** under 12 years old at the start of the FBT year and **$42 per week per adult**. Thus, a $233 per week food component of a LAFHA designed to cover total food paid to a single adult would only attract a $191 exemption (i.e. $233 - $42).

The reasonable food and drink components for employees living within Australia are included in TD 2013/4 as follows:

TD 2013/4	Amount per week
One adult	$233/week
Two adults	$350/week
Three adults	$467/week
One adult and one child	$292/week
Two adults and one child	$409/week
Two adults and two children	$468/week
Two adults and three children	$527/week
Three adults and one child	$526/week
Three adults and two children	$585/week
Four adults	$584/week

In relation to larger family groupings, the ATO will accept additional food components based on the above figures plus $117 for each additional adult and $59 for each additional child.

It should be stressed these amounts are not the amounts which are exempt. To ascertain the exempt amount, the statutory food amounts must be deducted. For example, if the family comprises two adults and two children, the amount which would be exempt would be $344 (i.e. $468 – [(2 x $42) + (2 x $21)]).

TD 2013/4 also sets out reasonable food and drink components for employees living overseas.

It is the employer's responsibility to determine and substantiate the reasonable cost of food and drink that the employee would have incurred while living away from home, given their particular circumstances. If an employer is seeking to use higher amounts than the rates above, independent confirmation should be sought to ensure that the rates used are reasonable. Please note that the reasonable food and drink amounts outlined in TD 2013/4 will be updated by the ATO on an annual basis.

8.9 Which gross-up rate?

The GST does not affect the taxable value calculation of a LAFHA fringe benefit. The Type 2 gross-up rate of 1.8692 (1.8868 from 1 April 2014) always applies to LAFHA because there are no input tax credits available in relation to the payment of the LAFHA.

8.10 Examples

For each situation below:

- calculate the taxable value of any fringe benefits provided during the year ended 31 March 2014;
- specify what documentation, if any, is required.

8.10.1 Part A

Jack normally works in Sydney and is seconded to Newcastle from 1 January 2013 to 30 June 2013. In addition to paying him a salary of $5,000 per month, the Agency pays him a monthly allowance of $1,000 as an inducement to take up the secondment. Jack pays $600 per month renting a unit and estimates that he spends $600 per month on food.

The allowance does not fit the definition of a LAFHA as it not designed to compensate Jack for any disadvantages suffered as a result of the temporary change of his employment location. On the contrary, the allowance has specifically been provided as an inducement to take up the secondment. In this situation, the allowance will be assessable salary and wages and it will be subject to PAYG withholding and included on Jack's payment summary.

8.10.2 Part B

Karen, a teacher in the United States, was sent to work in Australia for a NSW Agency on a two-year work visa. Under the agreement, Karen was entitled to receive a food allowance of $155 per week. This allowance was calculated as follows:

Estimated gross food expenses for Karen, her husband, and 2 children (aged 15 and 10 years)	$280
less: adjustment for normal food costs in US	($125)
Total amount of allowance	$155

Karen does not maintain a home in Australia for her use and enjoyment hence the entire food allowance paid is subject to FBT.

8.10.3 Part C

William's usual place of residence is in Sydney and he is required to live away from home in Melbourne for 6 months to perform his employment duties. During the FBT year commencing 1 April 2013, the NSW Agency pays him $250 per week to compensate for the expenses that he incurs on food and drink while he is required to live away from home.

If the NSW Agency's policy is to compensate employees for all food costs, then if William maintains the appropriate substantiation (i.e. receipts, invoices etc.) for all food costs, the NSW Agency will be subject to FBT on $42 per week only. If no substantiation is maintained, then the NSW Agency will be subject to FBT on $42 per week and $59 per week which is the amount in excess of the exempt food component (i.e. $250 – ($233 – $42)).

If the NSW Agency's policy is to compensate employees for additional food costs only, then if William maintains the appropriate substantiation (i.e. receipts, invoices etc.) for additional food costs, the NSW Agency will not be liable to FBT in respect of the LAFHA. If no substantiation is maintained, then the NSW Agency will be subject to FBT on $59 per week, which is the amount in excess of the exempt food component (i.e. $250 – ($233 – $42)).

8.11 Are there any other LAFH exemptions?

Rather than paying a cash LAFHA while an employee is required to live away from their usual place of residence, a NSW Agency (the employer) may provide accommodation and/or food to the employee, or they may reimburse the employee for these expenses. In these instances, although the benefits must be valued by reference to the valuation rule for the particular type of benefit, the FBT liability is essentially the same.

The following reduction and exemptions may apply in these circumstances.

8.11.1 Living-away-from-home – food provided

s63 Rather than paying a cash LAFHA while an employee is required to live away from their usual place of residence, a NSW Agency (the employer) may reimburse the employee's food costs (giving rise to an expense payment fringe benefit), or provide the food to the employee (giving rise to a property fringe benefit).

The taxable value of the expense payment fringe benefit or property fringe benefit may be reduced to the equivalent of $42 per week for each adult and $21 per week for each child for a maximum period of 12 months (refer to section 8.5.3) if the NSW Agency can show that:

- the employee satisfies the conditions to be eligible for concessional FBT treatment i.e. maintains a home in Australia (refer to section 8.5.2) and meets the 12 months requirement (refer to section 8.5.3); and
- the appropriate declaration and substantiation is obtained from the employee (refer to section 8.12 and 8.13).

8.11.2 Expense payments – living-away-from-home accommodation

s21 Rather than paying a cash LAFHA while an employee is required to live away from their usual place of residence, a NSW Agency may prefer to reimburse the employee for the accommodation expenses or pay these expenses on behalf of the employee (i.e. as an expense payment fringe benefit). In these circumstances, when a NSW Agency (the employer) can show that:

- the accommodation is required solely because the employment duties of the employee require them to live away from home;
- the employee satisfies the conditions to be eligible for concessional FBT treatment i.e. maintains a home in Australia (refer to section 8.5.2) and meets the 12 months requirement (refer to section 8.5.3); and
- the appropriate declaration and substantiation is obtained from the employee (refer to section 8.12 and 8.13);

then the Agency's payment is an exempt benefit.

8.11.3 Accommodation – residual benefits

s47(5) Where an employee, who is required to live away from their usual place of residence in order to perform their employment duties, is provided with the use of a unit of accommodation, such use may be treated as an exempt benefit when the NSW Agency (the employer) can show that:

- the accommodation is required solely because the employment duties of the employee require them to live away from home;
- the employee satisfies the conditions to be eligible for concessional FBT treatment i.e. maintains a home in Australia (refer to section 8.5.2) and meets the 12 months requirement (refer to section 8.5.3); and
- the appropriate declaration is obtained (refer to section 8.13) from the employee.

s58E

8.11.4 Household goods leasing benefit

Where a NSW Agency provides an employee with a household goods leasing benefit (i.e. leases goods on behalf of an employee or reimburses an employee for the cost of goods that the employee leases); and:

- the goods are primarily for domestic use by, and in connection with accommodation for, the employee and their family; and
- either an expense payment fringe benefit or a residual benefit in respect of accommodation is also provided to the employee in the same FBT year;

then the household goods leasing benefit is an exempt fringe benefit.

8.11.5 Fly-in fly-out arrangements

s47(7)

PS LA 2000/6

A special exemption is provided for “fly-in fly-out” arrangements for employees whose usual place of employment is at sea on an oil rig or other installation, or at a remote location.

Where these employees are provided with residential accommodation at or near their work site on working days and are returned to their usual residence on days off. The provision of transport to and from their home is exempt from FBT if it would be unreasonable to expect the employee to travel to and from work on a daily basis.

On 3 November 2011 legislation was enacted that extends the exemption from FBT for travel between home and work sites for fly-in fly-out employees working in remote locations overseas (subject to certain conditions being met). The change removes the possibility of double taxation of fly-in fly-out benefits received by Australians working in remote locations overseas.

8.12 Substantiation

Certain substantiation requirements must be met, in order for a NSW Agency (the employer) to be eligible for the reduction in taxable value of certain LAFHA and expense payment fringe benefits (in respect of accommodation and/or food and drink provided to employees who are classified as living away from home).

8.12.1 Accommodation component

s31G

Accommodation expenses of employees classified as living away from home must be substantiated in full, regardless of the amount. The employee must provide the NSW Agency (the employer) with either:

- documentary evidence of the expenses (e.g. lease agreement, mortgage documents, credit card statements, bank statements, tax invoices); or
- a declaration about the expense in the approved form (whilst retaining documentary evidence for a period of five years)

8.12.2 Food component

s31G

If the employee's food or drink expenses are more than the Commissioner's reasonable amount, then all of their food or drink expenses incurred must be substantiated in full. The employee must provide the NSW Agency with either:

- documentary evidence of the expenses (e.g. tax invoices, credit card statements, bank statements); or
- a declaration about the expense in the approved form (whilst retaining documentary evidence for a period of five years) .

If the food or drink expenses are less than the Commissioner's reasonable amount, the employee does not have to substantiate any of the expenses.

8.13 Employee Declarations

s31F

In order for a NSW Agency to access the tax concessions applicable to certain living away from home benefits employees must provide declarations about living away from home.

The declaration must be in the approved form and this will vary depending on whether the:

- employee maintains a home in Australia at which they usually reside and the fringe benefit relates to the first 12 month period
- transitional rules apply and the employee either is not required to maintain a home in Australia and/or the 12 month limit does not apply
- employee is working on a fly-in fly-out or drive-in drive-out basis
- employee's food or drink expenses are more than the Commissioner's reasonable amount and they have not provided documentary evidence of the accommodation expenses and/or the excess food and drink expenses.

Situation	**ATO Declaration Form**
Employee received a LAFH allowance or benefit before 1 October 2012 Employee is a permanent resident who qualifies for the transitional rules from 1 October 2012	Living-away-from-home declaration (refer to Appendix 1)
Employee received a LAFH allowance or benefit from 1 October 2012 and they are required to maintain a home in Australia at which they usually reside and the fringe benefit relates to the first 12 month period	Living-away-from-home declaration – employees who maintain an Australian home (refer to Appendix 2)
Employee received a LAFHA from 1 October 2012 and chooses to provide the employer with a declaration about their accommodation and food or drink expenses	Living-away-from-home declaration – employee related expenses (refer to Appendix 3)
Employee received a LAFH allowance or benefit from 1 October 2012 and works on a FIFO or DIDO basis	Living-away-from-home declaration – employees who fly-in fly-out or drive-in drive-out (refer to Appendix 4)

Generally, the employee must give the NSW Agency (the employer) the applicable declaration before the date of lodgement of the FBT return for the year in which the benefit was provided.

APPENDIX 1 – Living away from home declaration – from 1 October 2012 under transitional rules

I, _____
(Name of employee)

Day Month Year Day Month Year

declare that from _____ to _____

I was required to live away from my normal residence in order to perform the duties of my employment and I expect to resume living at my normal residence when my living-away-from-home period ends.

During that period, my normal residence was

_____

_____

_____

(Address of employee)

The nature of that residence was

_____

During the period, I actually resided at the following addresses

_____

_____

_____

(State the address of each place where you actually resided during the period stated above)

Signature: _____

Date: _____

APPENDIX 2 – Living away from home declaration – employees who maintain an Australian home

I, _____
(Name of employee)

declare that the address I usually reside at in Australia is

_____;

(Address of employee)

Either myself or my spouse have an ownership interest in the unit of accommodation located at the address stated above. This residence continues to be available at any time for my immediate use and enjoyment during the period that the duties of my employment require me to live away from it and where I expect to resume living when that period ends; and

Day Month Year Day Month Year

from _____ to _____

when the duties of my employment required me to live away from where I usually reside when in Australia, I actually resided at the following address(es)

_____

_____

_____

_____

_____

(State the address of each place where you actually resided during the period stated above)

Signature _____

Date: _____

APPENDIX 3 – Living away from home declaration – employee related expenses

I, _____
(Name of employee)

Day Month Year Day Month Year

declare that from _____ to _____

I have incurred the following expenses for which a living-away-from-home allowance fringe benefit has been provided

1. Accommodation

The total amount of accommodation expenses which I can substantiate with documentary evidence is $_____ (including accommodation expenditure for all eligible family members living with me during the above period).

2. Food or drink

I have incurred expenses which exceed the amount that the Commissioner of Taxation considers reasonable for the above period. The total amount of my food or drink expenses which I can substantiate with documentary evidence is $_____ (including food or drink expenditure for all eligible family members living with me during the above period).

Note: You must retain documentary evidence of these expenses for a period of five years starting from the declaration date.

Signature _____

Date: _____

APPENDIX 4 – Living away from home declaration – employees who fly-in fly-out or drive-in drive-out

I, _____,

(Name of the employee)

declare that my usual place of residence is

_____

_____;

(Address of employee)

I expect that I will resume living at my normal residence when my duties of employment no longer require me to live away from that place; and

Day Month Year Day Month Year

from_____ to _____,

when the duties of my employment required me to live away from where I usually reside, I actually resided at the following address(es)

_____

_____

_____

_____

_____

(State the address of each place where you actually resided during the period stated above)

Signature _____

Date: _____

Chapter 9: Board Fringe Benefits

Contents

9.1 Overview

Ch13 - FBT: A Guide for Employers

A **board fringe benefit** arises in certain circumstances where an employee or an associate of an employee is provided with meals **and** accommodation. The benefit is the provision of the **board meal**. The accommodation is generally considered to be a housing fringe benefit.

Div 9

9.2 When does a board fringe benefit arise?

s136(1)

A board fringe benefit will arise when the following conditions are satisfied:

s35

- there is an entitlement under an industrial award or other employment arrangement for the employee to be provided with a least two meals a day
- the meal is supplied by the NSW Agency, and
- the meal is supplied and prepared on the NSW Agency's premises or on a worksite or near the place where the employee works.

9.3 Are there any exemptions?

PS LA 2000/6

s58ZD

Board meals provided on a working day to employees of a primary producer in a remote area are exempt from FBT, provided the provision of the meal does not amount to a meal entertainment benefit. Such meals provided to the employee's associates are also exempt.

9.4 Examples

Provision of the following meals will generally be considered board fringe benefits:

- meals provided to farm hands in non-remote areas
- meals provided in a dining facility of a remote construction site, oil rig or ship
- meals provided to a live-in housekeeper
- meals provided to a resident teacher at a boarding school

Note**:** Where a NSW Agency contracts an employee's services to another person who provides the employee with board meals on their premises, the meals are board fringe benefits and the NSW Agency still has the FBT liability.

Provision of the following meals will generally **not** be considered board fringe benefits (but may be tax-exempt body entertainment fringe benefits):

- meals provided at a party, reception or social function
- meals provided at a dining facility open to members of the general public (except where the employees concerned are employees of a restaurant, hotel etc.)
- meals provided in a facility primarily used by a particular recipient
- refreshments of a sustenance nature, such as morning and afternoon teas
- meals provided by employees of primary producers in remote areas.

9.5 What is the taxable value?

s36 The taxable value of a board fringe benefit is:

- $2 per meal per adult; and
- $1 per meal per child under 12 years old at the start of the FBT year,
- reduced by the amount (if any) of the employee's after-tax contribution made towards this benefit.

9.6 Can the taxable value be reduced?

s37 The taxable value of a board fringe benefit can be further reduced by the application of the **otherwise deductible rule.**

The otherwise deductible rule only applies to items that would have been fully deductible to the employee had they not been reimbursed for the expenditure or had it not been discharged on their behalf.

Where a benefit is only partly business or employment-related, the reduction which can be made to the taxable value of the benefit will depend on whether the amount of expenditure which was reimbursed or discharged by the employer (where this is less than 100% of employee's expenditure), was designed to cover only the business-related component of the expenditure.

The use of the "otherwise deductible" rule must be supported by the relevant declaration. This documentation is needed to substantiate the extent to which the purchase price of the property would have been "otherwise deductible" to the employee. The declaration must be in an approved format and must be provided to the Agency by the employee concerned prior to the FBT return for that year being lodged. An example of an employee declaration is attached (see Appendix 1).

9.7 Which gross-up rate?

GST does not affect the taxable value calculation of a board fringe benefit because the taxable values are calculated using statutory amounts, rather than the cost incurred in providing the board meals. As there are no input tax credits that the NSW Agency is entitled to claim, the Type 2 gross-up rate of 1.8692 always applies.

APPENDIX 1
Otherwise deductible declaration

I, _____ on behalf of:
(name of person authorised to make declaration)

_____, declare that the benefits described
(name of employer)

below, and provided during the FBT year from 1 April _____ to

31 March _____ are payments or reimbursements of expenses which, under the 'otherwise deductible' rule, would have a taxable value of nil.

_____

_____

_____

_____

(show sufficient detail to enable identification of the relevant benefits)

Signature: _____

Date: _____

Chapter 10: Tax-Exempt Body Entertainment Fringe Benefits

Contents

10.1 Overview

Ch15 - FBT: A Guide for Employers

Entertainment is one of the most complex concepts in relation to determining whether a fringe benefits tax liability exists. This is particularly so for employers in the public sector such as NSW Agencies.

Entertainment provided to employees and their associates is subject to fringe benefits tax (FBT) but difficulties arise with the following issues:

- What constitutes “entertainment”?
- What is the appropriate treatment?
- What are the specific issues for the public sector?

The provision of entertainment can include:

- food, drink or recreation
- accommodation or travel provided in connection with, or to facilitate the provision of such entertainment.

There is no single category of “entertainment fringe benefits” and benefits associated with providing entertainment may give rise to different types of fringe benefits depending on the circumstances under which the entertainment is provided. The different types of fringe benefits that may arise include:

- expense payment fringe benefits
- property fringe benefits
- residual fringe benefits
- tax exempt body entertainment fringe benefits
- meal entertainment fringe benefits.

Where a benefit falls within a specific FBT provision (e.g. tax exempt body entertainment) then the taxable value of the benefit is determined under that specific provision rather than the more general provisions (e.g. expense payment and property fringe benefits).

10.2 Public vs Private Sector

The provision of entertainment is treated differently in the public sector when compared to the private sector. The reason for this difference in the treatment of fringe benefits is related to the interaction between the ITAA and the FBTAA and to the concept of the “deductibility” of entertainment expenditure.

A specific regime in relation to entertainment fringe benefits applies to the public sector such that “non-deductible” entertainment expenditure provided by NSW Government Agencies to employees and their associates are classified as “tax-exempt body entertainment fringe benefits”. The “non-deductible” entertainment expenditure for a tax-exempt body is the amount that would have been non-deductible for income tax purposes if the employer had been subject to income tax.

It is important to realise that certain exemptions from FBT which are available to the private sector are of no consequence to the public sector.

The two most common situations where the public sector will be treated differently from the private sector in respect of the provision of entertainment expenditure are:

- where meals are provided to employees and consumed on employer's premises – these will be exempt from FBT for the private sector but subject to FBT for the public sector
- in relation to exemptions for minor benefits – additional conditions imposed on the public sector mean that these exemptions are more limited and more difficult to 'claim' in the public sector.

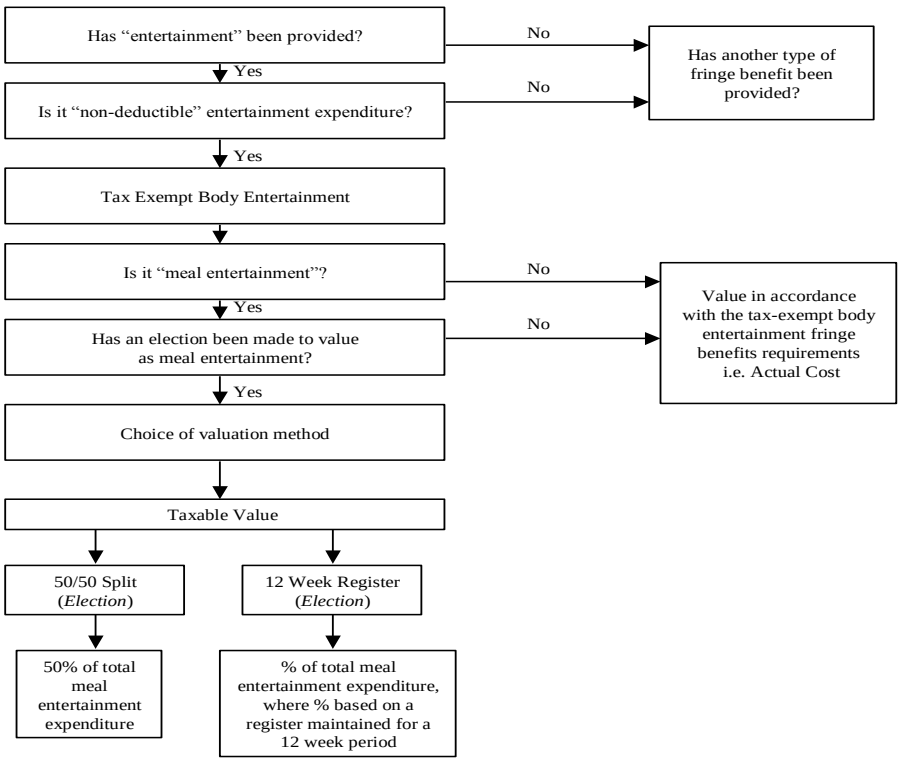
For example, meals provided to employees and consumed on the business premises of an employer constitute property fringe benefits in the private sector. Section 41 of the FBTAA provides an exemption for a property fringe benefit provided to, and consumed by, the employee on a working day on the business premises of the employer. In the public sector, however, this expenditure is generally classified as a "tax-exempt body entertainment".

The section 41 exemption is not available to tax-exempt employer fringe benefits, which results in the different outcome for the public sector. NSW Agencies should bear in mind that most media articles about the FBT treatment of entertainment concentrate on the private sector only. It can be dangerous to rely on them without understanding the differences between public and private sector entertainment.

TR 97/17 The table at Appendix 2 provides a checklist of the circumstances in which specific expenditure incurred will be considered to be entertainment for FBT purposes.

Diagram 10.2.1 summarises the decision making process that needs to be followed in the public sector in order to be able to identify and value entertainment fringe benefits:

10.2.1 Diagram: Public Sector Entertainment



10.3 When does an entertainment fringe benefit exist?

s32-10 ITAA 97

For the purposes of the FBTAA, "entertainment" is defined as:

- entertainment by way of food, drink or recreation (including amusement, sport or similar leisure-time pursuits)
- accommodation or travel provided in connection with (or to facilitate the provision of) such entertainment.

Due to the subjective nature of the term, it is often difficult to determine when "entertainment" has been provided and therefore, whether a fringe benefit exists.

TD 94/55

The provision of food or drink is the provision of property. In determining whether providing an item of property constitutes entertainment, regard should be had to all the circumstances. In particular, regard should be given to the character of the entertainment to be derived from the item of property provided. An objective consideration of the circumstances in which food or drink is provided is necessary to determine whether it constitutes entertainment.

For example, business lunches with drinks, cocktail parties and staff social functions are viewed as entertainment. Entertainment is also provided by way of access to sporting or theatrical events, sightseeing tours, holidays and the like.

IT 2675

Conversely, providing morning or afternoon teas and light meals, such as sandwiches or other "finger food" with soft drinks during a working lunch is not considered to be the provision of entertainment.

10.3.1 Meal entertainment criteria

Meal entertainment is a particular type of entertainment expense. Importantly, recreation entertainment is not meal entertainment and therefore cannot be valued under the meal entertainment provisions of the FBTAA.

TR97/17

The definition of "entertainment" contained in section 32-10 of the ITAA 97 and adopted by the FBTAA in the definition of entertainment in s136(1), does not prescribe that entertainment occurs every time food or drink is provided.

To determine when the provision of food or drink results in entertainment, NSW Agencies should consider the following four criteria:

- What type of food or drink is provided?
- When is the food or drink being provided?
- Where is the food or drink being provided?
- Why is the food or drink being provided?

These factors should be considered collectively and in terms of a continuum, such that the more characteristics a particular item/event possesses that are representative of entertainment, the more likely it is to be considered to be entertainment for FBT purposes.

These factors are discussed further below.

10.3.2 What type of food and drink is being provided?

Morning and afternoon teas and light meals are not considered to be entertainment by the ATO. If light meals become more elaborate, they bear more entertainment characteristics and there is a greater likelihood of entertainment arising from the consumption of the meal. If alcohol is provided with these events, the ATO deems this to be of the nature of entertainment (IT 2675)

10.3.3 When is the food and drink being provided?

The ATO considers that the provision of food and drink during the work day, during overtime and while the employee is travelling is less likely to have the character of entertainment. In the majority of these cases food provided is for sustenance purposes rather than for entertainment purposes.

10.3.4 Where is the food and drink being provided?

Food and drink which is provided on the business premises of a NSW Agency or at the employee's usual place of employment is less likely to have the characteristics of entertainment than that provided in a restaurant. However as discussed above at paragraph 10.2, the section 41 exemption for property provided to, and consumed by, the employee on the employer's business premises is unavailable for tax-exempt employer fringe benefits.

10.3.5 Why is the food and drink being provided?

Food and drink provided for the purpose of refreshment or sustenance does not generally have the characteristics of entertainment. Food and drink provided at a social function will have the characteristics of entertainment.

Food or drink which is determined by these criteria to constitute entertainment is taken to be 'meal entertainment'.

Note: The ATO has issued Taxation Ruling TR 97/17 which looks at the concept of entertainment as it relates to the provision of food and beverages.

10.3.6 Treatment of meal expenditure while travelling

TR97/17 Determining the treatment of meal expenditure incurred while employees are travelling for business purposes also relates to what is provided and why.

Where an employee is travelling for a business-related purpose and consumes a meal, in the absence of supplementary entertainment, the meal is considered to be sustenance and not entertainment. It will not be subject to FBT.

Appendix 2 provides a checklist of the circumstances where specific meals are considered entertainment and may create a liability for NSW Agencies as tax-exempt bodies.

10.3.7 Board meals

s35 Meals provided by a NSW Agency to an employee or associate may be deemed to be a "board benefit". In general terms, a board benefit is the provision of a "board meal" to an employee or an associate of an employee, who also is entitled to be provided with residential accommodation as their usual place of residence.

Board meals are not entertainment. Generally, Division 9 of the FBTAA provides that meals which qualify as "board meals" have their taxable value for FBT purposes ascertained in accordance with specific concessional valuation rules. Refer to Chapter 9.

10.4 Are there any exemptions?

Various reductions in the taxable value of entertainment fringe benefits are available for certain “deductible” entertainment expenditure listed in sections 32-20 through to 32-50 of the ITAA 97. As these expenses are “deductible”, they fall outside the tax-exempt entertainment fringe benefit requirements and are classified as other types of fringe benefits.

Depending on the circumstances, “deductible” entertainment expenditure may result in an exempt property fringe benefit (section 41) and/or may result in the taxable value being reduced to nil, in accordance with the otherwise deductible rule.

The following are examples of “deductible” entertainment expenditure:

- provision of food and drink at an “in-house dining facility”
- provision of food and drink at a “dining facility”
- provision of food and drink at a “seminar”
- provision of food and drink to an employee pursuant to an industrial agreement relating to overtime. (The payment of a meal allowance to employees under an award is not entertainment, nor is it entertainment where it takes the form of an allowance that is included in the employee's assessable income).

In addition, other exemptions include:

- provision of entertainment in respect of “minor fringe benefits”
- provision of entertainment where “other miscellaneous exemptions” apply.

Each of the terms mentioned above are defined below.

s24 The otherwise deductible rule only applies to items that would have been fully deductible to the employee had they not been reimbursed for the expenditure or had it not been discharged on their behalf.

Where a benefit is only partly business or employment-related, the reduction which can be made to the taxable value of the benefit will depend on whether the amount of expenditure which was reimbursed or discharged by the employer (where this is less than 100% of employee's expenditure), was designed to cover only the business-related component of the expenditure.

The use of the “otherwise deductible” rule must be supported by the relevant declaration. This documentation is needed to substantiate the extent to which the purchase price of the property would have been “otherwise deductible” to the employee. The declaration must be in an approved format and must be provided to the Agency by the employee concerned prior to the FBT return for that year being lodged. An example of an employee declaration is attached (see Appendix 3).

10.4.1 In-house dining facility

s32-55 ITAA 97

An "in-house dining facility" is defined to mean a canteen, dining room or similar facility which is:

- located on property occupied by a NSW Agency
- operated mainly for providing food or drink to employees of the NSW Agency
- is not open to the public.

Expenditure in relation to the provision of food or drink to employees and non-employees in an in-house dining facility is "deductible" entertainment expenditure and therefore not subject to FBT.

10.4.2 Dining facility

s32-60 ITAA 97

A "dining facility" is defined to mean:

- a canteen, dining room or similar facility; or
- a cafe, restaurant or similar facility;
- located on property occupied by a NSW Agency.

Provision of food and drink by the NSW Agency to employees (other than in relation to parties and social functions) whose employment consists of, or consists principally of, duties to be performed in connection with an eligible dining facility (e.g. waiters, cooks), is "deductible" entertainment expenditure and therefore not subject to FBT.

10.4.3 Seminar

s32-65 ITAA 97

To meet the definition of a "seminar", the following conditions must be met:

- there must be a conference, convention, lecture, meeting, award presentation, speech, question and answer sessions, training session or educational course
- it must have a continuous duration of four hours or more (not including breaks for meals, rest or recreation)
- the seminar cannot be for the sole or dominant purpose of enabling discussions on the affairs of a NSW Agency
- the sole or dominant purpose of the seminar must not be the promotion or advertising of the business or the goods and services of the NSW Agency
- the sole or dominant purpose of the seminar must not be for the provision of entertainment.

A “training seminar” is a seminar that fulfils the requirements outlined above for “seminars”, but in addition:

- is organised by or on behalf of a NSW Agency solely for training employees in matters relevant to a NSW Agency's business, and/or enabling employees to discuss general policy issues relevant to the internal management of a NSW Agency; and
- is conducted in conference facilities operated by a business operation unrelated to a NSW Agency.

Provision of food, drink, accommodation or travel to an individual that is reasonably incidental to the individual attending a “seminar” that goes for at least 4 hours is “deductible” entertainment expenditure and therefore not subject to FBT.

10.4.4 Minor benefits

s58P

There are a number of additional conditions imposed on the public sector in relation to the application of the section 58P minor benefits exemption for tax-exempt body entertainment benefits. For this reason, this exemption is of very limited application to a NSW Agency. The conditions that need to be met for this exemption to apply are:

- the entertainment fringe benefit must be of a small value (generally less than $300 GST inclusive); and
- provided infrequently and irregularly; and
- provision of the entertainment to employees is incidental to the provision of entertainment to non-employees (or non-associates) and the entertainment does not consist of a meal (other than light refreshments); or
- the entertainment is provided to the employee on the premises of a NSW Agency and is provided solely as a means of recognising the special achievements of an employee (for an employment-related matter).

10.4.4.1 Example

A tax-exempt NSW Agency provides a social function for outsiders and its employees to announce a major policy initiative. The main purpose is to entertain the visitors and create good relations. The function is exempt from FBT provided that the provision of entertainment to the employees is merely incidental to the provision of entertainment to the outsiders and only light refreshments are served.

If the NSW Agency takes the outsiders and the employees to a restaurant for dinner, the entertainment consists of a meal provided to the employees and the benefit is not exempt as a minor benefit.

10.4.5 Other miscellaneous exemptions and reductions

The following examples will give rise to property fringe benefits and / or other types of fringe benefits that will result in the taxable value being reduced to nil as a result of the application of the “otherwise deductible” rule:

- expenditure on entertainment which would be “otherwise deductible” to the recipient. For example, the cost of an employee's meals while travelling in the course of employment; and

s32-50 ITAA

- costs associated with entertainment provided to members of the public who are sick, disabled, poor or otherwise disadvantaged. For example, a NSW Agency sponsors a party in a children's hospital.

10.5 What type of entertainment fringe benefit is it?

Having determined that entertainment has been provided, the benefit must be classified correctly. In the NSW Government sector, all non-deductible "entertainment" should be classified as a "tax-exempt body entertainment fringe benefit" unless an election is made to use one of the two valuation methods in Division 9A, "Meal Entertainment" fringe benefits (see section 10.7).

Each employer (i.e. nominated NSW Agency or group of agencies filing an FBT return) is able to elect which method it uses for valuing entertainment benefits. This election must cover all meal entertainment provided in that FBT year. A NSW Agency cannot elect one method for a particular class of entertainment and another method for another class of entertainment. In the past, NSW Treasury has determined that the "actual" method provided the most cost effective result for the Government as a whole.

If no election is made to use the meal entertainment valuation methods, all non-deductible entertainment expenditure is to be treated as tax-exempt body entertainment fringe benefits and valued accordingly.

10.6 Tax-exempt body entertainment fringe benefits

s38

As discussed previously at 10.2, a specific regime in relation to entertainment fringe benefits applies to the public sector such that "non-deductible" entertainment expenditure provided to employees and associates of the employees of NSW Agencies will give rise to "tax-exempt body entertainment fringe benefits".

10.6.1 Calculating the taxable value

The taxable value of a tax-exempt body entertainment fringe benefit is so much of the non-deductible exempt entertainment expenditure incurred by an income tax-exempt NSW Agency as is attributable to the provision of entertainment to the employee or associate concerned. This will be at the GST-inclusive values, where appropriate.

The benefits will be classified as Type 1 benefits attracting a gross-up rate of 2.0647 where the NSW Agency, or provider of the entertainment is entitled to input tax credits. However, where the NSW Agency or provider of the entertainment is not entitled to input tax credits the benefits will be classified as Type 2 fringe benefits and the lower gross-up rate of 1.8692 is applied.

Where the non-deductible exempt entertainment expenditure is partly attributable to the provision of entertainment to the employee or associate concerned, and partly to the provision of entertainment to outsiders, an apportionment is required to arrive at the taxable value. To help reduce the compliance costs inherent in such an exercise, the Commissioner of Taxation will accept apportionment on a 'per head' basis.

10.6.2 Examples

a) An employee of a NSW Agency entertains two clients by taking them to lunch at a restaurant. The meal cost is $150. The employee paid for the meal by charging it to the NSW Agency's credit card account (i.e. the meal is paid for by the NSW Agency). The meal provided to the employee is a tax-exempt body entertainment fringe benefit. The taxable value of the fringe benefit, using a "per head" apportionment, is one-third of the total cost of the meal (i.e. $50).

(b) An employee takes several clients of a NSW Agency on a sightseeing tour of local attractions. The NSW Agency pays the total cost of the trip directly to the tour agent. The provision of the trip to the employee is a tax-exempt body entertainment fringe benefit by way of recreation. The taxable value of the fringe benefit is the cost of one ticket for the trip.

(c) An employee entertains two clients of his NSW Agency by taking them to lunch. The meals cost $50 each. The employee paid for the meals out of his own pocket (a total of $150). The NSW Agency later reimbursed him for the cost of the meals. This reimbursement gives rise to a tax-exempt body entertainment fringe benefit. Only that portion of the reimbursement that relates to the entertainment of the employee (or associates) is subject to FBT. In this case the taxable value of the expense payment fringe benefit is $50 unless the NSW Agency elects to use the 50/50 split method in which case $75 will be subject to FBT.

10.7 Entertainment leasing facilities

An employer may elect that the total taxable value of tax exempt body entertainment fringe benefits arising from the use of entertainment facilities that are hired or leased by the employer is 50% of all entertainment facility leasing expenses for the year after deducting 5% for advertising if applicable. Assuming the NSW Agency is income tax-exempt, this will be irrelevant as the 5% advertising will not be otherwise deductible.

Entertainment facility leasing expenses means expenses incurred by a NSW Agency in hiring or leasing:

- a corporate box
- boats or planes, for the purpose of the provision of entertainment, or
- other premises, or facilities, for the purpose of the provision of entertainment.

The following expenses, or part expenses, are not entertainment facility leasing expenses:

- expenses attributable to the provision of food or beverages at the corporate box
- expenses attributable to advertising which are an allowable income tax deduction
- provision of a block of tickets to a performance (this is tax-exempt body entertainment).

For example, where a NSW Agency hires a facility, for example a golf course, the Agency can elect to include 50% of the expenses as the “aggregate fringe benefits amount”, without maintaining detailed records to determine what proportion of the total hiring or leasing costs is subject to fringe benefits tax.

Where an election has not been made, the NSW Agency is required to determine the taxable value of the fringe benefits arising in respect of the provision of the entertainment facilities on the basis of actual expenditure, by making an apportionment between facilities provided in respect of employees and associates, and other persons.

10.7.1 Example

A NSW Agency incurs $15,000 to have the use of a corporate box for the FBT year. $3,000 of this expenditure relates to the provision of food and drink in the box, and the remainder relates to the use of the box.

Assuming the NSW Agency is income tax-exempt, the taxable value of the amount attributable to food (i.e. $3,000) will be determined using the normal entertainment fringe benefit provisions. The remainder of $12,000 will be attributable to the corporate box. Using the 50% valuation method, the taxable value attributable to the corporate box would be $6,000.

If the Agency did not elect the 50% valuation method, they would need to ascertain the number of employees/associates and the number of outsiders who utilised the corporate box during the FBT year and apportion the $12,000 on this basis to ascertain the taxable value.

10.8 Meal entertainment fringe benefits

s37AD A meal entertainment fringe benefit arises when a NSW Agency provides "meal entertainment" and elects to use one of the Division 9A valuation methods available.

For a discussion on the criteria for determining whether meal entertainment has been provided, see 10.2.

Expenditure relating to the leasing or hiring of a corporate box or other entertainment facilities is subject to separate rules (refer 10.6).

10.8.1 Calculating the taxable value

Apart from the actuals method under tax-exempt body entertainment, there are two methods that may be used to calculate the taxable value of meal entertainment fringe benefits, these are:

- 50/50 Split Method
- 12-Week Register Method.

The taxable value of entertainment will be the GST-inclusive value of the entertainment. Where the provider is entitled to an input tax credit in respect of one or more meal entertainment benefits, the benefit will be classified as a Type 1 benefit attracting a gross-up rate of 2.0647. This is regardless of the number of benefits provided where an input tax credit entitlement does not exist. Where the provider is not entitled to an input tax credit for all meal entertainment benefits, a Type 2 benefit will exist and the lower gross-up rate of 1.8692 will apply.

Employee after-tax contributions are excluded from the calculation of meal entertainment fringe benefits.

s37AE Meal entertainment fringe benefits only arise if the NSW Agency is the provider of the benefit. No meal entertainment fringe benefit arises where the employer in relation to whom the benefit would otherwise arise is not the provider of the benefit. Such benefits are residual, property or expense payment benefits (depending on how the entertainment was provided).

10.8.2 The 50/50 split method

A NSW Agency may elect that the total taxable value of meal entertainment fringe benefits is 50% of the actual expenses incurred by the employer in providing meal entertainment for the FBT year to all persons (whether employees, clients or otherwise).

For example, suppose a NSW Agency incurs total expenditure on meal entertainment of $20,000 in an FBT year. This expenditure has been incurred on employees entertaining clients at restaurants, a Christmas party and the provision of food and drink for staff social club functions. The NSW Agency elects to use the 50/50 split method. Meal entertainment benefits of $10,000 will be subject to FBT.

With respect to this valuation method, please note that:

- the NSW Agency cannot rely on specific FBT exemptions which would otherwise be available under another valuation method. For example, they cannot first exclude any minor benefits before calculating the 50% taxable value
- the 50% rate applies to all meal entertainment, not just that provided to employees and associates (e.g. client entertainment costs are included in the FBT calculation).

Accordingly, the 50/50 split method may disadvantage NSW Agencies in the following circumstances where the agency provides meals:

- in an in-house dining facility
- mainly to non-employees, or
- at a subsidised cost to employees.

Care should be exercised when deciding to elect to use this method. An election is required but does not need to be lodged with the ATO.

10.8.3 The 12-week register method

Alternatively, a NSW Agency may elect for the taxable value of meal entertainment fringe benefits to be calculated by reference to a register maintained for a continuous 12-week period. The register must set out the date the meal entertainment was provided for each recipient, whether the recipient is an employee/associate or outsider, the cost and kind of meal entertainment provided, whether the entertainment was provided and if the meal entertainment is provided in an eligible ‘in-house dining facility’. These expenses exclude any contribution by an employee or associate.

The NSW Agency’s total meal entertainment expenditure includes expenditure that might otherwise be exempt from FBT or not normally subject to FBT.

A sample copy of a 12-week register is included at Appendix 1 to this Chapter of the FBT Manual.

This register is designed to provide enough information to calculate a register percentage. The register percentage will be the total value of meal entertainment fringe benefits provided during the 12 weeks to employees and associates divided by the total value of meal entertainment provided during the 12 weeks to all persons (whether employees, clients or otherwise) and multiplied by 100%.

This percentage will then determine the percentage of the value of meal entertainment that is to be treated as fringe benefits for the entire year according to the following formulas:

$$\text{Register Percentage } C = \frac{A}{B} \times 100\%$$

Where:

A = the total value of meal entertainment fringe benefits provided to employees or their associates during the 12-week period.

B = the total value of meal entertainment provided to all persons (whether employees, clients or otherwise) during the 12-week period.

$$\text{Taxable Value of Meal Entertainment} = C \times D$$

Where:

C = the register percentage.

D = the total value of meal entertainment in the FBT year.

Provision of meal entertainment during the 12 weeks must be representative of the meal entertainment provided during the first FBT year for which the register is valid. A false or misleading entry will invalidate the register. The register may commence in one FBT year and conclude in the following year, however, the register can only be used for the second year and the following four years.

Note: The register percentage may be used for the following four FBT years, without keeping another register provided that total expenses incurred in providing meal entertainment in later years is not more than 20% higher than the total for the first FBT year in which the register was valid.

10.9 Can the taxable value be reduced?

The taxable value of meal entertainment fringe benefits may not be reduced by any employee (or associate) after-tax contribution that has not, or will not be, reimbursed by the NSW Agency.

10.10 Which gross-up rate?

The taxable value of entertainment will be the GST-inclusive value of the entertainment. Where the provider is entitled to an input tax credit in respect of one or more meal entertainment benefits, the benefit will be classified as a Type 1 benefit attracting a gross-up rate of 2.0647. This is regardless of the number of benefits provided where an input tax credit entitlement does not exist. Where the provider is not entitled to an input tax credit for all meal entertainment benefits, a Type 2 benefit will exist and the lower gross-up rate of 1.8692 will apply.

10.11 Examples

10.11.112-Week Register Method

A NSW Agency elected to use the 12-week register method and maintained a valid register from 1 January 2012 to 26 March 2012.
During the 12-week period, the employer incurred meal entertainment expenditure totalling $20,000, while meal entertainment fringe benefits totalled $8,000.
The register percentage is 40% ($8,000/20,000 x 100%).
If the NSW Agency's total meal expenditure for the 2011/2012 FBT year is $80,000, the taxable value of the meal entertainment fringe benefits provided during the 2011/2012 FBT year is $32,000 ($80,000 x 40%).

Suppose the total meal entertainment expenses incurred by the NSW Agency in the 2012 FBT year amount to $100,000 and a valid register was maintained in that FBT year. The register may be relied on in 2012 and in the following four FBT years (unless the expenses in any of those years exceed $120,000).
If in 2016 the meal entertainment expenses totalled $119,500 and the employer decided to maintain a new 12-week register, the old register ceases to be valid as there is a new register for the 2016 FBT year.

10.11.2 12-week register and 50/50 split methods

A NSW Agency has incurred the following expenses during the 2011/2012 FBT year in respect of employees and clients:

(a) End of financial year cocktail party for customers (50) and employees (20) held in the office boardroom on a Friday night. Lavish food and substantial quantities of alcohol were consumed at the function at a total cost of $2,800.

(b) A Senior Manager of the NSW Agency has spent $1,500 during the year on entertaining customers at restaurants on ten separate occasions. The costs were paid on the Agency's credit card. No other employees attended the lunches.

(c) Catering costs for food and alcohol for the annual staff Christmas party cost the Department $1,900. A total of 40 employees attended the function held at a restaurant. Costs also included taxi fares for attendees to and from the function.

(d) Staff training is held every month in a NSW Agency's training room. At each training session, sandwiches, hamburgers and drinks are provided. The cost is $60 per session.

(e) The Secretary of the NSW Agency travelled to Adelaide to liaise with potential investors with a view to establish a new investment opportunity in NSW. As a result of this one-week trip, the NSW Agency reimbursed her for accommodation ($1,400), food and drink while entertaining potential investors ($400) and food and drink (wine) when dining alone ($250).

10.11.2.1 No election made to apply either the 50/50 split or 12-week register method

(a) The food and drink provided to employees would be a tax exempt body entertainment fringe benefit. FBT will apply to the employee's share, i.e. 20/70 x $2,800 = $800.

Note: Where the entity is a fully taxable entity an exemption exists for meal entertainment provided on business premises on a working day. This exemption does not apply to tax-exempt NSW Agencies.

(b) Food and drink consumed by the Senior Manager would be a tax exempt body entertainment fringe benefit. It would be necessary to ascertain the cost of each meal provided to the Senior Manager. The Commissioner of Taxation accepts a per head apportionment. It would be necessary to identify how many attended each occasion and calculate the taxable value as that attributable to the Senior Manager.

(c) The food and drink provided to employees would be a tax exempt body entertainment fringe benefit. Payment of taxi fares to and from the function would be a tax exempt body entertainment fringe benefit as it is travel in connection with the entertainment. The taxable value is $1,900.

Note: Where the entity is a fully taxable entity an exemption exists for entertainment under the minor benefit rule. A minor benefit will not occur in this instance for a tax-exempt body (refer to section 10.3.4 in relation to minor entertainment benefits for tax-exempt employers).

TR 97/17 (d) Provision of the food or drink in this situation would not be classified as "entertainment" as it is provided as "sustenance". There are no FBT implications.

(e) Expenditure on the accommodation is an expense payment fringe benefit. The taxable value of the benefit would be nil due to the "otherwise deductible" rule in the FBTAA. The employee is not required to provide a declaration or travel diary even if they are away for more than five nights if the trip was wholly for business.

Food and drink consumed by a travelling employee who dines alone is not entertainment (TR 97/17).The "otherwise deductible" rule would apply to reduce the taxable value of this expense payment benefit to nil.

Where the employee dines with a potential investor (who is not travelling), the investor's meal is entertainment. No fringe benefit arises in relation to the NSW Agency for the provision of the meals to the potential investors as the investor is not an employee or associate.

Food and drink in the form of sustenance consumed by the travelling employee is not classified as entertainment (TR 97/17). The "otherwise deductible" rule would apply to reduce the taxable value of this expense payment benefit to nil. An FBT liability may arise for the investor's employer if the meals are provided under an "arrangement".

Note: The taxable value for all entertainment benefits will be the GST-inclusive amount and the applicable gross-up rate is 2.0647 (assuming that an input tax credit entitlement arises).

10.11.2.2 Where an election is made to value meal entertainment benefits under the 50/50 split method, the following treatment occurs:

(a) The entire $2,800 is included in meal entertainment.

(b) The entire amount ($1,500) is included in meal entertainment.

(c) The minor benefit exemption is not applicable, regardless of the situation surrounding the provision of the benefit. $1,900 is included as meal entertainment.

(d) A light lunch is not classified as entertainment. Nothing is included as meal entertainment.

(e) Potential investor's meals are included as meal entertainment. Where the travelling employee's meals are sustenance, however, they are not included as they are not entertainment. Assuming the employee dines with one potential investor at a time, $200 would be included as meal entertainment.

50/50 method: 50% x ($2,800 + $1,500 + $1,900 + $200) = $3,200

Note: The taxable value for all entertainment benefits will be the GST-inclusive amount and the applicable gross-up rate is 2.0647 (assuming that an input tax credit entitlement arises).

10.12 Managing the costs

To manage the costs associated with providing entertainment fringe benefits:

- Remember that the treatment of entertainment fringe benefits provided by the public sector is different from the treatment of the same benefits provided by the private sector. Caution must be exercised when considering the FBT impact of these benefits.

- There are four criteria to be taken into account when determining if an entertainment fringe benefit exists. Statements such as “entertainment fringe benefits exist whenever alcohol is provided” are not correct. Small amounts of alcohol provided at functions that would not otherwise be subject to FBT, do not necessarily result in an FBT liability. Each function, event, meal, etc, must be judged on a case by case basis.

- When organising seminars it is important to note that the same seminar may be treated differently for FBT purposes depending on where it is conducted. Some seminars will be subject to FBT when held on the premises of the NSW Agency organising the seminar. The same seminar may be exempt when conducted in the conference facilities of an outside party (for example, a hotel). Care should be taken to ensure that the FBT saved by outsourcing the seminar is not outweighed by the additional costs involved (for example, the cost of hiring the hotel).

- Account codes can be used to monitor entertainment expenses of NSW Agencies (for example, charging all meal entertainment costs that are subject to FBT to a particular account in the general ledger). These account codes may even be cross-referenced to forms used by NSW Agencies (for example, expense claim forms) to ensure that expenses are coded correctly. These measures may help to reduce the compliance costs associated with documentation/record keeping requirements.

10.13 Substantiation

In accordance with the general record keeping requirements under the FBTAA, NSW Agencies must keep records to identify and explain all transactions and acts relevant to ascertaining their FBT liability. Types of documentation/record keeping required in connection with entertainment fringe benefits include:

- copies of receipts in relation to meal expenses at restaurants, etc as well as details of who was entertained. These records need to distinguish between employees (and associates) and non-employees.
- copies of invoices (tax invoices where applicable) from function centres, hotels, etc as well as lists of attendees. These records also need to distinguish between employees (and associates) and non-employees.
- where the 12-Week Register Method is used, copies of these registers.
- where exemptions in respect of “seminars” and “training seminars” are being claimed, copies of agendas, etc., that document the purpose and length of the seminar.
- any other documentation/records necessary to determine the nature and amount of any entertainment expenditure and to allow an allocation between amounts spent on employees (and associates) and non-employees.

Where the 50/50 split method (refer 10.7) has not been elected, employers are required to distinguish between entertainment that is provided to non-employees (normally non-deductible and not subject to FBT) and entertainment that is related to the provision of an employee fringe benefit (which is deductible but subject to FBT). Separate general ledger accounts should be set up to record the following classes of entertainment expenditure:

Non-Meal Entertainment:

- tax deductible and subject to FBT
- tax deductible and **not** subject to FBT
- **not** deductible and **not** subject to FBT.

Meal Entertainment:

- tax deductible and subject to FBT
- tax deductible and **not** subject to FBT
- **not** deductible and **not** subject to FBT.

Appendix 1
Meal entertainment – 12 week register

NSW Government

Year Ended 31 March _ _ _ _

Page _ _ _ of_ _ _

Date the Meal Entertainment was Provided	Recipient: Employee or Non-Employee	Cost of Meal Entertainment	Nature of Meal Entertainment	Location where Meal Entertainment was Provided

Appendix 2
Meal entertainment fringe benefits

Circumstances in Which Food or Drink Provided	ME Y/N	Tax-exempt Body FBT (Y/N)
Food or Drink Consumed on the Employer's Premises		
1 By employees		
(a) at a social function	Y	Y
(b) in an in-house dining facility – not at a social function	Y/N	N
(c) in an in-house dining facility – at a social function	Y	Y
(d) morning and afternoon teas and light lunches	N	N
2 By Associates		
(a) at a social function	Y	Y
(b) in an in-house dining facility – not at a social function	Y/N	Y
(c) in an in-house dining facility – at a social function	Y	Y
(d) morning and afternoon teas and light lunches	N	Y
3 By Clients		
(a) at a social function	Y	N
(b) in an in-house dining facility – not at a social function	Y/N	N
(c) in an in-house dining facility – at a social function	Y	N
(d) morning and afternoon teas and light lunches	N	N
Food or Drink Consumed off the Employer's Premises		
1 At a social function or business lunch		
▪ (a) by employees or associates	Y	Y
▪ (b) by clients	Y	N
Alcohol		
1 Employee travelling – wine with evening meal	N	N
2 Alcohol provided at the conclusion of a CPD seminar with finger foods	N	N
Food/Drink Consumed by Employees While Travelling		
1 Employee travels and dines alone	N	N
2 Two or more travelling employees dine together	N	N

Circumstances in Which Food or Drink Provided	ME Y/N	Tax-exempt Body FBT (Y/N)
3 Travelling with client and dine together	N	N
4 As in 3, except employer pays for all meals		
▪ (a) employee's meal	N	N
▪ (b) client's meal	N	N
5 Dines with client who is travelling separately	N	N
6 Dines with employee not travelling		
▪ (a) only employee's meal provided	N	N
▪ (b) both employee's meals provided:		
▪ travelling employee's meal	N	N
▪ non-travelling employee's meal	Y	Y
7 Dines with client who is not travelling		
▪ (a) only employee's meal provided	N	N
▪ (b) employee's and client's meals provided:		
▪ employee's meal	N	N
▪ client's meal	Y	N
Employees Dining With Other Employees of the Same Employer or With Employees of Associates of the Employer		
1 Employee entertains another employee and is reimbursed by the employer	Y	Y
2 Employee entertains an employee of an associated company of the employer and is subsequently reimbursed		
▪ (a) employer's employee (expense pmt)	Y	Y
▪ (b) associate's employee (property)	Y	Y
Meal Consumed by Employees While Attending Seminar		
1 Provided incidental to a seminar that satisfies Section 32-35 and is not held on the employer's premises	Y/N	N
2 Light breakfast provided at a CPD seminar that does not satisfy Section 32 - 35	N	N
3 Light refreshments including moderate amount of alcohol provided immediately after a CPD seminar that does not satisfy Section 32-35	N	N

Circumstances in Which Food or Drink Provided	ME Y/N	Tax-exempt Body FBT (Y/N)
Food or Drink Consumed by Employees at Promotions		
1 Function not held on employer's premises and is open to the general public	Y	Y
Meals Provided Under an Arrangement		
1 Employer is not aware or does not consent to employees being taken out to dinner by clients:		
▪ (a) employees	Y	Y
▪ (b) client's employee	Y	N
Use of Corporate Credit Card		
1 Employees dine together at a restaurant and the meal is paid for with the credit card	Y	Y
Restaurant Discount Cards		
1 Employee who holds a restaurant discount card entertains a client		
▪ (a) employee – ½ total discounted price	Y	Y
▪ (b) client – ½ total discounted price	Y	N
Meals for Accompanying Spouses		
1 With employee travelling on business		
▪ (a) employee	N	N
▪ (b) spouse	Y	Y
Food or Drink Provided by Tax-exempt Bodies		
1 "Non-deductible" meal entertainment provided to employees, whether or not on employer's premises	Y	Y
2 Meals provided to employees in an in-house dining facility	Y/N	N
3 Non meal entertainment provided to employees on employer's premises	N	N

Appendix 3
Otherwise deductible declaration

I, _____ on behalf of:
(name of person authorised to make declaration)

_____ , declare that the benefits described
(name of employer)

below, and provided during the FBT year from 1 April _____ to 31 March _____ are payments or reimbursements of expenses which, under the 'otherwise deductible' rule, would have a taxable value of nil.

_____

_____

_____

_____

(show sufficient detail to enable identification of the relevant benefits)

Signature: _____

Date: _____

Chapter 11: Car Parking Fringe Benefits

Contents

11.1 Overview

Ch16 - FBT: A Guide for Employers

In certain circumstances, car parking facilities provided to NSW Agency employees may give rise to car parking fringe benefits.

When determining whether a car parking fringe benefit exists, consider if the vehicle using the car parking space is a "car" for FBT purposes (see Chapter 3 of this FBT Manual). Parking provided for vehicles other than cars will not give rise to a fringe benefit.

11.2 What is a car parking fringe benefit?

A car parking fringe benefit arises if the following conditions are satisfied, in relation to a period, or combination of periods on a particular day:

- a car is parked on "business premises" or "associated premises" (or a combination) of a car parking provider. This can be a NSW Agency or an independent car parking operator.
- a "commercial parking station" that charges a representative fee more than the "car parking threshold" for "all day parking" is located within a one kilometre radius of the premises on which the car is parked.

TD 2011/14

Note: Each year the threshold will be subject to changes in the inflation rate. For the FBT year ended 31 March 2012, the threshold amount is $7.71 per day.

- the car is parked on the premises for more than four hours in total between the hours of 7 a.m. and 7 p.m. on that day
- the car is owned by, leased to, or otherwise under the control of an employee or an associate of the employee, or it is provided by the NSW Agency
- the provision of the car parking facilities is "in respect of the employment of the employee"
- the employee has a "primary place of employment" on the day in question
- the parking is at or in the "vicinity of the primary place of employment"
- on the day in question the car is used in connection with travel between home and work
- no "exclusions" apply to the parking.

The above "terms" are explained further below.

11.2.1 Business and associated premises

s136(1)

TR 2000/4

"Business premises" include premises which are occupied by a NSW Government agency for the purpose of conducting the business operations of the agency. For example, this would apply to parking spaces in a government office block. It also includes the business premises of a car parking provider, where an arrangement is made between the employer and the car parking provider to provide car parking fringe benefits to NSW Government Agency employees.

The definition in the FBTAA, in essence, is a two-fold test.

The first test requires interpretation of the words "premises, or a part of premises, of the person" leading to a conclusion that the NSW Agency, or car parking station (as relevant) must have either ownership or exclusive occupancy rights in respect of the premises or part of the premises. Any lesser interest, for example a licence, would not be sufficient to create this relationship.

The second test requires that the premises be used "for the purposes of business operations of the person". That is, to satisfy the second limb it must be the Agency or car parking provider (as relevant) who occupies the premises for the exclusive purpose of carrying on their business operations.

s136(1) "Person" is defined to include a body politic, a body corporate and any other unincorporated association or body of persons.

s136(1) "Associated premises" include premises that are owned by, leased by or otherwise under the control of an agency. This would apply to parking spaces leased by an agency at a commercial car parking station.

Where an employee leases a parking space or alternatively pays for parking and is then reimbursed by the NSW Agency for these costs, this does not constitute the provision of a car parking fringe benefit. However, an expense payment fringe benefit may arise.

Note: Expense payment fringe benefits are discussed in Chapter 6 of this FBT Manual.

11.2.2 Commercial parking station

s136(1) A "commercial parking station" is a permanent commercial car parking facility that is available to members of the public and charges a fee for "all-day parking" (that is, a continuous period of six hours or more between 7 a.m. and 7 p.m.).

s39A To qualify as a car parking fringe benefit, the fee for "all day parking" must be representative and more than the "car parking threshold". For the FBT year ending on 31 March 2012 the threshold is $7.71. The car parking threshold is indexed in line with CPI movements and is updated each year by way of a Taxation Determination.

The fee for any particular day is not representative if it differs substantially from the average lowest fee ordinarily charged for all-day parking. For this purpose, the employer may compare the fee for a particular day with the average fee charged during either of the four-week periods beginning or ending on that particular day.

The ATO does not regard the following parking arrangements as constituting commercial parking stations:

- a car park that is not run with a view to making a profit or which charges a nominal fee (usually a significantly lower rate than the current market value) for example, all-day parking for $1.00.
- car parking facilities (such as those provided for short term shoppers and hotel guests) with a primary purpose other than providing all-day parking, that usually charge penalty rates which are significantly higher than the rates which would be charged at commercial parking facilities.
- car parking that is established for a short period to cater for a special function.

- car parking facilities provided by a sporting venue to persons associated with the venue where such facilities are usually available after 5 p.m., or where parking is available only for a specified daytime event, or parking is available to the public only during sporting events.

- a kerbside parking meter, even where it is possible to purchase all-day parking at the meter in a single transaction.

For the car parking fringe benefit rules to apply the commercial car parking station under consideration must be within a one kilometre radius of the premises on which the car is parked. This distance is measured not by the actual radius, but by the shortest practicable route from the motor vehicle entrance of the commercial car parking station and the business or associated premises of the employer. This route can be travelled by whichever means (foot, car, train, boat, etc.).

11.2.3 More than four hours per day

s39A(1)(b) A car must be parked in the parking space for more than four hours per day between the hours of 7 a.m. and 7 p.m. for there to be a car parking fringe benefit. This period need not be continuous. All of the parking periods between the relevant hours for each vehicle must be added together to determine if a car parking fringe benefit exists.

11.2.4 In respect of employment

For the provision of car parking facilities to constitute a car parking fringe benefit it must be in respect of the employment of the employee. The employee must be provided with the use of the car parking facilities because they are an employee of a NSW Agency. If this is not the case then no fringe benefit will arise.

For example, if an employee of the NSW state rail authority parks at a railway station that provides all day free parking to members of the public then the use of the parking facility will not constitute a fringe benefit. The employee is being provided with the free parking as a member of the general public rather than as an employee of the rail authority. If specific spaces are reserved for the rail authority employees, however, these would be provided in respect of employment.

11.2.5 Primary place of employment

s136(1) In most cases the primary place of employment will be the same as the business or associated premises of the NSW Agency at which the employee normally performs their duties.

Where the employee carries out employment duties at more than one place on a particular day, the primary place of employment would be the place where most of the time is spent or where the more substantive duties are carried out.

11.2.6 The vicinity of the primary place of employment

This term is not defined in the FBT legislation but is generally taken to mean the area near a place of employment.

For example, if a NSW Agency leases parking spaces at North Sydney station so that employees can park there and take a train to the city to work, a car parking fringe benefit will not arise as the parking space would not be considered to be in the vicinity of the NSW Agency offices which are located in the CBD.

11.2.7 Exclusions

reg 3A The only exclusions available in respect of car parking fringe benefits are where car parking is provided for a disabled person holding a disabled person permit.

s58G, s58GA Car parking fringe benefits may be exempt from FBT if they are:

- benefits provided by certain non-profit bodies (certain scientific institutions, charitable institutions and public educational institutions)
- benefits provided by Government public educational institutions
- residual benefits: employer provided parking that is not a car parking fringe benefit is a residual benefit that is exempt from FBT
- expense payment benefits: the payment or reimbursement by an employer of a car parking expense incurred by an employee is exempt from FBT if the expense is not a car parking expense payment fringe benefit
- minor benefits: car parking of more than four hours provided to an employee on an infrequent basis may be exempt where the value is minor (i.e. less than $300 GST-inclusive) and the benefit is provided infrequently
- one or more of the conditions necessary for a car parking benefit is not met (see 11.2 above)
- the parking is provided for a motor vehicle which is not a car.

11.3 What is the taxable value of the car parking fringe benefit?

Once determined that a car parking fringe benefit has arisen, the taxable value is calculated as (number of car parking benefits multiplied by value of benefits) less employee contribution. There is a two stage process involved in determining the taxable value of the benefit.

First, the total number of benefits provided must be determined, then the total value of those benefits is calculated.

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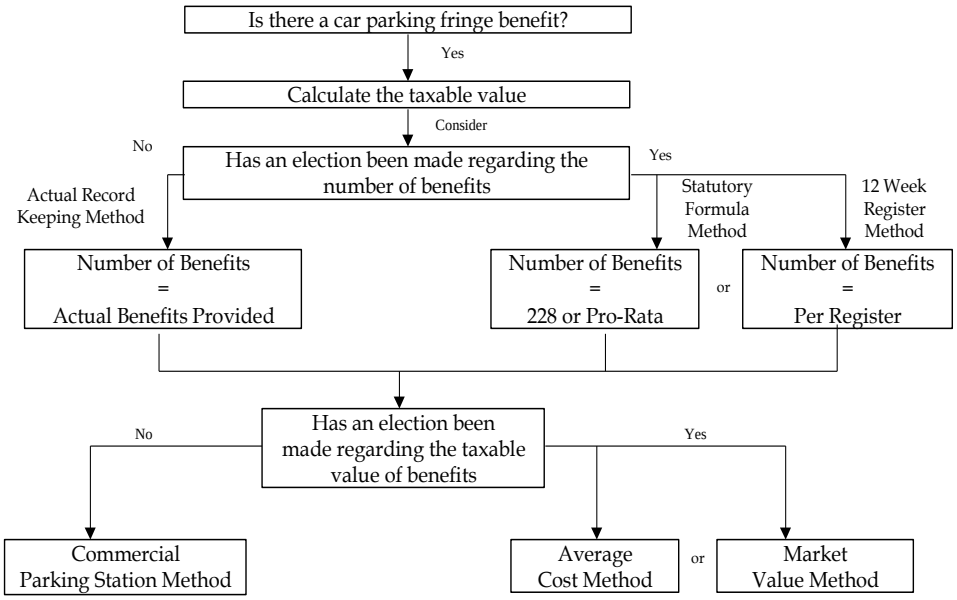
Where no election is made the Actual Record Keeping Method must be used with the Commercial Parking Station Method of valuing benefits.

The following flowchart outlines the steps involved.



11.4 Total number of benefits

Section 39A of the FBTAA provides that FBT is levied in respect of actual car parking benefits provided to employees or their associates if certain criteria are met. Based on those criteria, one car parking space can give rise to more than one benefit on a day if more than one car is parked in a space for more than four hours in total. This may occur as vehicles are coming and going from the car park during a day, where cars are made available to employees for use on a pool basis or where employees work in shifts.

The number of car parking spaces is not restricted to physically marked car parking spaces, but includes all spaces which could reasonably be taken up by a car in an employer's car parking facility.

ss39C, 39D
39DA, 39F
39G

A NSW Agency may use three methods to determine the **total number** of benefits relating to a car parking space during a year:

- Actual Record Keeping Method
- 12 Week Register Method
- Statutory Formula Method

The NSW Agency providing the benefit may use any of the above methods. If the 12 Week Register or the Statutory Formula Method is used, an election must be made which documents in writing the decision to use the particular alternative method. This election should be retained with all other FBT documentation for the FBT year but is not required to be lodged with the ATO. Election forms are attached at Appendix 1.

11.4.1 Actual record keeping method

Where the NSW Agency calculates the taxable value of car parking fringe benefits based on the actual number of car parking benefits provided, they are required to keep sufficient records to establish the actual number and value of car parking benefits provided during an FBT year.

The number of car parking benefits is calculated on a daily basis. It can be reduced by allowing for days on which the parking space is not used by an employee or an associate of the employee (e.g. sick days, annual leave days, weekends, days on which the relevant employee is interstate or overseas on business) or on any day the space is not used by a car which has travelled between home and work (e.g. where an employee leaves a car at work while travelling on business).

The minimum records that should be maintained by an employer consist of a declaration stating the:

- number of car parking spaces available to be provided to employees and/or their associates
- value of those spaces based on either the commercial parking station method, the market value method or the average cost method
- number of days in the year which are business days of the employer
- method of valuation that the employer has chosen to use.

If no further information is provided, the employer will be subject to FBT on the basis that one car parking benefit arose on each business day in respect of all the available car parking spaces.

Where an employer wishes to reduce the number of car parking benefits by allowing for days on which the parking space is not used by an employee or an associate of the employee, an employer may make an additional declaration stating:

- the actual number of employees who park on the premises (if less than the number of available parking spaces)
- the number of car parking spaces not occupied for a total of more than four hours
- the business days that certain car spaces were unoccupied due to staff absence
- occasions when more than one car parking benefit arises in respect of a particular car parking space, such as with shift workers
- occasions where the car parking benefits are provided to employees outside normal business hours (for example, weekends).

As this method is particularly onerous in terms of the record-keeping obligations, it is recommended that NSW Agencies make an election to use one of the alternative methods detailed below.

11.4.2 12 week register method

s39GB Under this method a register is kept for a continuous period of 12 weeks to record the actual movement of vehicles in and out of the parking spaces under consideration. This register can then be used as an indication of the usage of the parking spaces for the whole year (that is, not just the 12 week period).

s39GF This register can also be used for the following four FBT years. If, however, the 12 week period falls across two FBT years, the register is only valid for the second and subsequent four years.

s39GA An employer who elects to use the 12 week register method must hold a valid register and specify in the written election if the election covers all or a particular class or specific employees. The election is to be retained with other documentation in the FBT year folder.

s39GG The following details must be recorded in a valid register for each car parking space:

- the date on which a car is parked in the space
- whether the car is parked for more than four hours on that day (between 7am and 7pm)
- whether the car travelled between the place of residence of the relevant employee and his or her place of employment of that day
- the location of the car space.

Note: A register will not be valid for FBT purposes if the details recorded are false and / or misleading in any material respect.

In setting up the register the agency must choose a 12-week period for recording the actual movement of vehicles. The period must be representative of the benefits provided over a full year. Compilation of the register over the Christmas period when employees may be on leave would not be considered to be a representative period.

The register will cease to be valid at the end of the FBT year if the number of benefits provided increases by more than 10% on any day in that FBT year.

11.4.3 Statutory formula method

Under this approach, the legislation deems the Agency to have provided a total of 228 car parking fringe benefits for each parking space provided over the year. The figure of 228 represents the number of working days in a year, less four weeks of annual leave and 12 days of State and Federal public holidays. Where the car space is not available for the full FBT year (e.g. NSW Agency moves into or out of the premises during the FBT year) this figure of 228 days is pro-rated.

s39FA The employer must elect this method to apply and must specify the ‘scope’ of the election – e.g. that it applies to:

- all employees
- a particular class of employee, or
- particular employees.

As compared to the other two methods, the record keeping requirements under this approach are the least onerous. This method does not require any detailed record keeping in relation to usage of any particular space, only the identification of the spaces which would give rise to a car parking fringe benefit.

11.4.3.1 Reduction of the total statutory benefit where the number of car spaces exceeds the number of employees

s39FB In situations where the number of employees is less than the average number of parking spaces provided, the statutory formula would unfairly result in a higher taxable value being calculated. FBT legislation allows an adjustment to the total statutory benefit in accordance with the following formula:

Formula:

$$\text{Total statutory benefit} \times \frac{\text{Average number of employees}}{\text{Average number of eligible spaces}}$$

Where:

- the average number of employees is:

$$\frac{\text{Number of employees at the beginning of the parking period} + \text{Number of employees at the end of the parking period}}{2}$$

- the average number of eligible spaces is:

$$\frac{\text{Number of eligible spaces at the beginning of the parking period} + \text{Number of eligible spaces at the end of the parking period}}{2}$$

The number of employees and spaces used for this method must be representative. On any particular day the number of employees and spaces is representative if it is substantially the same as the average number of employees and spaces covered by the election during either of the four week period ending on the first day of the parking period or beginning on the last day of the parking period.

Note: In the above discussion reference to employees means employees covered by the election.

11.5 Value of benefits

Once the method for calculating the number of benefits arising has been determined, the NSW Agency may use one of the following methods to work out the dollar value of each of those benefits:

- Commercial Parking Station Method
- Average Cost Method
- Market Value Method.

The NSW Agency providing the benefit may use any of the above methods. If the Average Cost Method or the Market Value Method is used an election must be made which documents in writing the decision to use the particular alternative method. This election should be retained with all other FBT documentation for the FBT year but is not required to be lodged with the ATO.
Election forms are attached at Appendix 1.

11.5.1 Commercial parking station method

This method requires the NSW Agency to keep track of the lowest fee charged by any commercial parking facility located within a one kilometre radius of the parking spaces in the ordinary course of business to members of the public for all day parking on a particular day.

All-day parking is defined to mean the parking of a single car for a continuous period of six hours or more between 7am and 7pm. This may include a daily "early bird" rate where the commercial parking station charges for early bird parking and a number of parking spaces are set aside for that purpose.

Fees calculated on a weekly, monthly or other periodic basis are converted to a daily rate equivalent by the following formula:

$$\frac{\text{total fee}}{\text{business days in period}}$$

s136(1)
s39AA
s39AB

The taxable value of a car parking fringe benefit on a particular day is then calculated as that lowest fee less any costs paid by the employee in relation to the parking spaces. This fee must be "representative". The fee will not be representative if it is substantially greater or less than the average fee charged on each day during a four week period commencing or ending on the first FBT business day.

This determination must be carried out for each day on which a car parking fringe benefit arises.

NSW Agencies should be aware that where the 12 week Register Method is used with the Commercial Parking Station Method, the Agency is allowed to keep a record of the lowest fee charged by any commercial parking facility over the 12 week period (rather than over the whole year) **for the first year that the register is maintained.**

In subsequent years, however, the agency must keep track of the lowest fee charged by any commercial parking facility each day throughout the whole year. So while the calculation of the number of benefits is based on the actual number of car parking fringe benefits recorded in the register in the initial year, the value of those benefits is calculated in relation to the current year (and this may be a subsequent year to the year in which the register was originally kept).

11.5.2 Average cost method

s39DA

Under this method the taxable value of a car parking fringe benefit is determined by reference to an average of the lowest fees charged by any operator of a commercial parking station within a one kilometre radius of the NSW Agency premises on particular days.

The average of lowest fees is usually determined by calculating the average of the fees charged on the first and last days of the FBT year in which the benefit is provided.

An election to use the average cost method will not be effective unless the fees charged by the commercial car parking station are in the ordinary course of business and are representative of the daily fees usually charged during the preceding or subsequent four weeks.

11.5.3 Market value method

s39D The market value method should generally be used where the standard of employer-provided parking facilities is lower than that offered by commercial parking stations within one kilometre. This method allows a NSW Agency to use a qualified valuer to calculate the value of parking spaces.

39D(3) The Valuer's report, in a form approved by the Commissioner, must be provided by a suitably qualified valuer before the declaration date (generally the date of lodgement of the FBT return for the year). The NSW Agency must retain a copy of the report as part of their FBT work-papers.

TR96/26 The valuation report must include:

- the date of the valuation
- the precise description of the location of the car parking facilities valued
- the number of car parking spaces valued and the value of the car parking spaces based on a daily rate
- the full name of the valuer and a description of the valuer's qualifications
- the valuer's signature
- a declaration stating that the valuer is at arm's length in relation to the valuation.

The value as determined by a valuer should be the amount that the employee could reasonably be expected to pay for the parking space if they were dealing with the NSW Agency at arm's length (that is, if they were unrelated parties). The taxable value is then the market value of the car parking, less any amount paid by the employee towards its cost.

A valuer will not be considered to be at arm's length in relation to a valuation if the valuer is:

- the NSW Agency obtaining the valuation or the provider of the car parking facilities to be valued or an employee of that Agency; or
- an associate of the NSW Agency or of the provider of the car parking facilities to be valued or an employee of that employer.

It should be noted the valuation only applies for that FBT year and therefore annual valuations will be required if a NSW Agency wants to continue to use this method.

11.6 Examples

The following methods are applied to the facts set out below in 11.6.1:

- 12-Week register system with Average Cost Method
- 12-Week register system with Market Value Method
- 12-Week register system with Commercial Parking Station Method
- Statutory formula with Average Cost Method
- Statutory formula with Market Value Method
- Statutory formula with Commercial Parking Station Method

11.6.1 Facts

On 30 September 2010 a NSW Agency begins providing employees with free parking at a parking facility which has 20 car parking spaces and which is leased by the Agency. Assume a car parking fringe benefit exists.

The car park is located within a one km radius of two commercial car parking stations, "A" and "B". Station "A" charges $8.00 for all day parking from 30 September 2010 to 31 December 2010 and $9.00 for all day parking from 1 January 2011 to 31 March 2011. Station "B" charges $8.00 for all day parking from 30 September 2010 to 31 December 2010 (i.e. same as "A"). For all day parking from 1 January 2011 to 31 March 2011, "B" charges $7.50.

A register has been kept for each of the available spaces for a 12 week period (within the period 30 September 2010 to 31 December 2010) as outlined above. This register indicates that there are 45 usages per space during that period. An independent valuation of the spaces indicates that they have a market value of $4.50.

11.6.2 12-Week Register System with Average Cost Method

Under this system you are required to determine the "total value of car parking benefits" to calculate the fringe benefits taxable value. The total value of car parking fringe benefits is equal to the total number of car parking benefits provided in a representative 12 week period, multiplied by the value of the spaces In this case:

Total value of car parking benefits:

= 20 car spaces x 45 usages per space x $7.75 per space (i.e. ($8.00+7.50)/2)

= $6,975

The Fringe Benefits Taxable value is then calculated as follows:

Total value of car parking fringe benefits x (52/12) x (number of days available/366)

= $6,975 x (52/12) x (183/366)

= $15,112.50

Note: Under the average cost method, the lowest commercial parking fee should be noted at the beginning and at the end of the period in which a car parking fringe benefit is provided, rather than at the beginning and end of the 12 week register period.

11.6.3 12-Week Register System with Market Value Method

This calculation is the same as the above calculation, but the value per space is taken to be the market value.

Total value of car parking benefits:

= 20 car spaces x 45 usages per space x $4.50 per space

= $4,050.

The Fringe Benefits Taxable value is then calculated as follows:

Total value of car parking fringe benefits x (52/12) x (number of days available/366)

= $4,050 x (52/12) x (183/366)

= $8,775.

11.6.4 12-Week Register System with Commercial Parking Station Method

This calculation is the same as above calculation, but the value per space is taken to be the lowest fee charged by the operator of the parking station in the ordinary course of business to members of the public for all-day parking.

Total value of car parking benefits:

= [20 car spaces x 45 usages per space x $8.00 per space x 91/183] + [20 car spaces x 45 usages per space x $7.50 x 92/183]

= 3,580 + 3,393

= $6,973

The Fringe Benefits Taxable value is then calculated as follows:

Total value of car parking fringe benefits x (52/12) x (number of days available/366)

= $6,973 x (52/12) x (183/366)

= $15,108

Note*:* The lowest fee used in the calculation is $8.00, not $7.50. $8.00 is the lowest fee charged in respect of the 12 week period in which the Register was made and deemed by the legislation to be representative of the whole year. In subsequent years the agency must keep track of the lowest fee charged by any commercial parking facility each day throughout the whole year.

11.6.5 Statutory Formula Method with Average Cost

Under this method, the taxable value would be calculated as follows:

Total value of car parking fringe benefits:

= average cost x (number of days available/366) x 228 x number of spaces

= $7.75 x (183/366) x 228 x 20

= $17,670.

11.6.6 Statutory Formula Method with Market Value

Under this method, the taxable value would be calculated as follows:

Total value of car parking fringe benefits:

= market value x (number of days available/366) x 228 x number of spaces

= $4.50 x (183/366) x 228 x 20

= $10,260.

11.6.7 Statutory Formula Method with Commercial Parking Station Method

Under this method, the taxable value would be calculated as follows:

Total value of car parking fringe benefits:

= commercial rate x (number of days available/366) x 228 x number of spaces

= [$8.00 x (183/366) x 228 x 20 x (91/183)] + [$7.50 x (183/366) x 228 x 20 x (92/183)]

= $9,070 + $8,597

= $17,667.

11.6.8 Further Examples

A NSW Agency has recently entered into a lease for six undercover car park spaces in North Sydney. The car parking facilities are to be used by four designated senior staff and the remaining two spaces are set-aside for customer/visitor use.

The NSW Agency pays $100 per week for each car space. The local public car park (not undercover) across the road charges $4.00 per hour for casual parking, up to a maximum of $15 per day. There are all-day parking meters located within one kilometre of the NSW Agency's car parking facilities that only charge $6 per day and another car park which charges $6.50 early bird parking.

It is expected that a few of the Agency's employees who frequently travel will sometimes park in the customer car parking spaces when they periodically call into the office (usually after 4.00 pm) to check messages, etc., before going home.

Employees do not contribute to the cost of employer provided parking.

11.6.9 What is the taxable value of this benefit using the different methods?

A car parking fringe benefit will prima facie arise in respect of an employee, as there is a commercial car parking station located within one kilometre of the NSW Agency provided parking facilities, i.e. the public car park across the road that charges as its lowest fee more than $7.46 per day (as at 1 April 2011), a charge of $15 per day.

No car parking benefit arises when the employees who travel park in the car spaces for less than four hours on any day between 7 am and 7 pm.

The taxable value of the four car parking spaces that are provided as fringe benefits (car parking provided to customers/visitors is not a fringe benefit) can be determined using the methods below (as illustrated above). The following information is derived through each method:

Commercial parking station method - based on lowest fee charged for all-day parking by a commercial parking station on each day a car parking fringe benefit arises, valued at $6.50 day (parking meters are not commercial parking stations and the $6 rate cannot be used).

Market value method - by election - need a valuer's report.

Average cost method - based on the average of the lowest fee charged by a commercial parking station within a one kilometre radius on the first and last days of the FBT year. It can be assumed to be $6.50 per day if the rate does not vary from the first and last days of the FBT year.

Statutory formula method - a consideration that should be taken into account is if the space is provided to the relevant employee(s) for less than 228 days in the FBT year.

12 week register - may only be utilised if a register setting out the appropriate information is maintained for continuous 12 week period that is representative of parking usage of the particular space over the FBT year.

11.7 Substantiation

s132(1) As with other benefit types, appropriate records, which form the basis upon which FBT liability is determined, must be kept by each agency providing car parking fringe benefits.

Note: See the record keeping and substantiation general discussion in Chapter 1 of this FBT Manual.

In general the specific record keeping required for car parking fringe benefits relates to the method of determining the number of benefits and is explained along with each of the methods available.

It is also essential to document and retain in your records the calculation of the taxable value.

11.8 Managing the costs

The NSW Agency's FBT liability in relation to car parking fringe benefits may vary depending on the method which the Agencies elect to adopt in calculating the FBT liability.

There are three methods allowed to determine the total number of benefits provided and three methods in determining the dollar value of those benefits. A lower FBT liability may be achieved by adopting a combination of these methods.

Below is a summary to assist in managing a FBT liability.

11.8.1 12 Week Register

The details recorded in the 12 Week Register must be accurate and representative of the usage of the car parking facilities for the whole of the year.

Incomplete entries in the 12 Week Register will invalidate the Register in calculating the FBT liability.

11.8.2 Commercial Car Parking Method with 12 Week Register and Statutory Formula method

The NSW Agency must note the requirements to substantiate the lowest fee charged by the commercial car parking station for the subsequent years after the Register is made and for each year if the statutory formula method is used.

11.8.3 Other

In determining the dollar value of the benefits, the NSW Agency should always check for the cheapest car parking rate offered by the commercial parking station within a one kilometre radius of the business premises.

Several FBT calculations may be made in each year under each of the methods to determine the lowest FBT liability for the NSW Agency. An Agency may use different methods to calculate the taxable value of car parking fringe benefits for particular classes of employees or particular employees.

Provided the substantiation requirements are satisfied, the NSW Agency may also elect to adopt different methods for different years.

Where benefits are only provided for part of a FBT year, the taxable value may need to be apportioned pursuant to the relevant formula.

All the necessary paper work should be completed.

Appendix 1
Car Parking Elections

Car Parking Fringe Benefits

Election that the market value basis apply

_____ elects that the market value basis for calculating the taxable value of car parking fringe benefits apply to the following car parking fringe benefits (specify exact location of all benefits):

_____

_____

_____

_____

in accordance with Section 39D of the Fringe Benefits Tax Assessment Act.

Attached in a form approved by the Commissioner, is a report by a suitably qualified valuer acting at arm's length in relation to the valuation on which this FBT valuation has been based.

Signature: _____

Date: _____

Car Parking Fringe Benefits

Election that the average cost method apply

_____ elects that the average cost method for calculating the taxable value of car parking fringe benefits apply to the following car parking fringe benefits (specify exact location of all benefits):

_____

_____

_____

_____

in accordance with Section 39A of the Fringe Benefits Tax Assessment Act.

Signature: _____

Date: _____

Car Parking Fringe Benefits

Election that the statutory formula method apply

_____ elects that the statutory formula method for calculating the taxable value of car parking fringe benefits apply to the following:

- all employees provided with car parking*
- all employees of a particular class*

Name of class:

_____

- Particular employees*

Name of employees:

_____

*delete category not applicable

in accordance with Section 39FA of the Fringe Benefits Tax Assessment Act.

Signature: _____

Date: _____

Car Parking Fringe Benefits

Election that the 12 week record keeping method apply

_____ elects that the 12 week record keeping method for calculating the taxable value of car parking fringe benefits apply to the following:

- all employees provided with car parking*
- all employees of a particular class*

Name of class:

_____

- particular employees*

Name of employees:

_____

*delete category not applicable

in accordance with Section 39GA of the Fringe Benefits Tax Assessment Act.

Signature: _____

Date: _____

Chapter 12: Property Fringe Benefits

Contents

12.1 Overview

Ch17 - FBT: A Guide for Employers

A property fringe benefit arises where an employee or their associate is provided with property for free or at a discount by a NSW Agency.

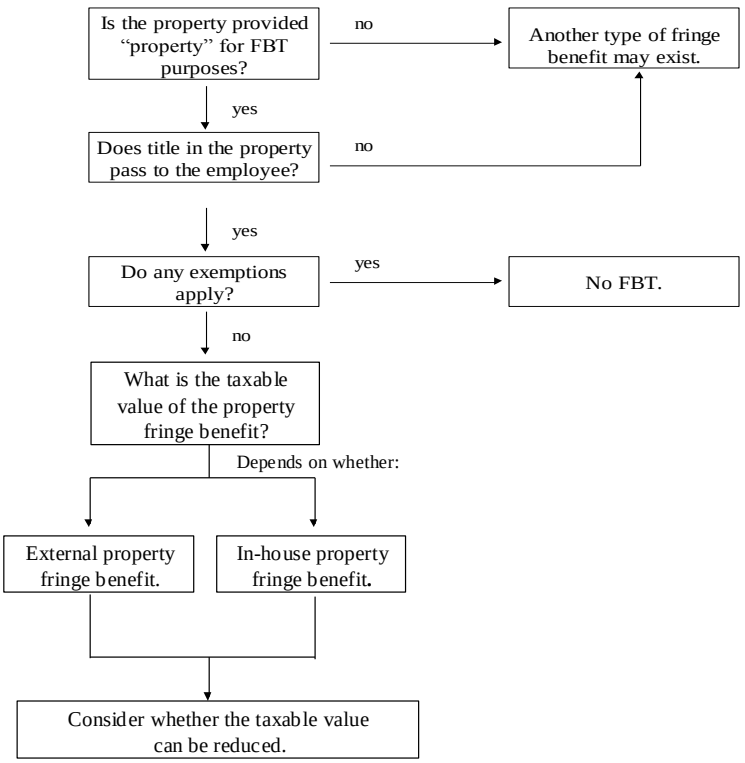
s40

12.2 Decision making process

The following questions need to be asked to identify and value property fringe benefits:

- Is the property provided "property" for FBT purposes?
- Does title in the property pass to the employee?
- Do any exemptions apply?
- What is the taxable value of the property fringe benefit?
- Can the taxable value be reduced?

The following diagram illustrates this decision making process.



12.3 Is the property provided 'property' for FBT purposes?

s136(1) For FBT purposes, property includes both tangible and intangible property including:

- goods (including gas, electricity and animals)
- real property such as land and buildings
- choices in action (such as shares or bonds).

"Property" does not include a right arising under a contract of insurance or a lease or licence in respect of real property or tangible property.

Where a benefit provided would also be considered to fall within any of the other specific categories of fringe benefits (i.e. all benefits other than residual benefits), the benefit is not a property fringe benefit. The other specific categories take priority.

12.4 Does title in the property pass to the employee?

s155 For a property fringe benefit to exist, the ownership of the property in question must pass to the employee (that is, the employee must become the owner of the property). A property fringe benefit will not arise where an employee is merely allowed to use the property (although this may result in another type of fringe benefit being provided).

Where property is provided under an agreement which states that title will pass after a specified period, a property fringe benefit is deemed to have been provided from the date that the property was first used by the person.

12.5 Are there any exemptions?

12.5.1 Work related benefits

s58X The following items of property are exempt from FBT where they are provided to an employee primarily for use in the employee's employment:

- a portable electronic device. This can include a mobile phone, calculator, an electronic diary, a personal digital assistant or similar item, a notebook computer, laptop computer or similar portable computer or a portable printer. Other devices that may also satisfy this exemption are devices that have the following characteristics:
  - easily portable and designed for use away from an office environment
  - small and light
  - can operate without an external power supply
  - designed as a complete unit.
- an item of computer software
- an item of protective clothing
- a brief case
- a tool of trade

s41

12.5.2 Property consumed on an employer's premises

Property provided to and consumed by an employee on a working day on the "business premises" of a NSW Agency (or an associate entity) is exempt from FBT. This exemption is intended to cover the provision of food and drink to employees during working hours. This provision also covers entertainment functions held on the employer's premises on a business day. These expenses are exempt from FBT and are not deductible for income tax purposes.

Where the provision of the property benefit constitutes entertainment, NSW Agencies that are tax exempt entities cannot utilise this exemption. See Chapter 10 for more detailed discussion.

s62

12.5.3 'In house' property benefits (up to a specified value)

The first $1,000 of the aggregate value of 'in-house' property, residual and expense payment fringe benefits provided to an employee are exempt from FBT. The aggregate value means the sum of all the taxable values for each 'in-house' property benefit provided to a particular employee in the FBT year. The total taxable value of all in-house benefits provided to an employee should be calculated and the $1,000 taken off the total.

12.5.4 Acquisition of cars at residual value

Where an employee acquires property such as a car under an (define)arrangement with a NSW Agency, a property fringe benefit arises. The value of the fringe benefit will be 'nil' because the employee's contribution will equal the market value. If, however, the car is not acquired under an arm's length transaction, the taxable value of the property benefit is the difference between the car's market value at the time the employee acquires it and the amount of the employee's contribution.

TD 95/63

The ATO accepts that where an employee acquires a car for its residual value at the end of a lease, the taxable value of the property fringe benefit may be reduced to nil, provided the lease is a bona fide lease.

12.6 What is the taxable value?

s42, 43

The taxable value of the property fringe benefit will depend on whether the property fringe benefit is an "external" property fringe benefit or an "in-house" property fringe benefit.

Where the taxable value is based on cost or market value, the Commissioner of Taxation considers that GST-inclusive values should be used where applicable. If an employee contributes towards the benefit provided, the value of this contribution will be the GST-inclusive value, as appropriate.

Where the NSW Agency or the provider is entitled to an input tax credit in relation to the purchase of the item, the benefit will attract the higher gross-up rate of 2.0647. Where the NSW Agency or the provider is not entitled to an input tax credit, the lower gross-up rate of 1.8692 will apply.

12.6.1 External property fringe benefits

s43 These are property fringe benefits where the property being provided is of a type that is not normally sold by the NSW Agency to manufacturers, wholesalers, retailers, the general public, etc.

The taxable value of this type of property fringe benefit is calculated as follows:

- where the provider was the NSW Agency or an associate entity and the property was purchased by the provider under an arm's length transaction – the cost price of the property to the provider, reduced by any employee after-tax contribution.
- where the provider was not the NSW Agency or an associate entity and the NSW Agency or an associate entity incurred expenditure to the provider under an arm's length transaction – the amount of that expenditure reduced by any employee after-tax contribution.
- where neither of the above apply – the amount that the employee could reasonably be expected to pay to obtain the property under an arm's length transaction.

12.6.2 In-house property fringe benefits

s42 These are property fringe benefits where the property being provided is of a type that is normally sold by the NSW Agency to manufacturers, wholesalers, retailers, members of the general public etc.

If the property is provided by a person other than the NSW Agency or an associate entity, then providing such property to outsiders must form part of the provider's business activities as well as the NSW Agency's business.

The method of calculating the taxable value of an in-house property fringe benefit varies according to a number of factors, including:

- where the NSW Agency is the manufacturer and wholesaler of identical property - the taxable value is equal to the lowest arm's length selling price.
- where the NSW Agency is the manufacturer and retailer of identical property - the taxable value is 75% of the lowest arm's length selling price.
- where the NSW Agency is the manufacturer and sells similar property - the taxable value is equal to 75% of the amount that the recipient could reasonably be expected to pay to obtain the property from the NSW Agency under an arm's length transaction.
- where the property acquired by the recipient is acquired by the NSW Agency - the taxable value is the lower of the arm's length price paid by the NSW Agency; or the amount that the recipient reasonably could be expected to have paid to obtain the property from the NSW Agency under an arm's length transaction.
- If a situation arises that is not captured by the above alternatives, the taxable value is 75% of the amount that the recipient could reasonably be expected to have been required to pay to acquire the property from the NSW Agency.

Note: "Identical property" is defined in s136 to mean property that is the same in all respects, including physical characteristics, quality and reputation, except for differences (if any) that are minimal or insignificant and don't affect the value of the property.

12.7 Can the taxable value be reduced?

As with most fringe benefits, the taxable value of property fringe benefits provided to an employee can be reduced by either:

- application of the otherwise deductible rule; and/or
- the amount of the recipient's contribution.

s62 In the case of in-house fringe benefits, an additional $1,000 reduction in the taxable value is available in respect of the total taxable value of in-house fringe benefits provided per employee per FBT year (see Chapter 15).

s44 The otherwise deductible rule only applies to items that would have been fully deductible to the employee had they not been reimbursed for the expenditure or had it not been discharged on their behalf.

Where a benefit is only partly business or employment-related, the reduction which can be made to the taxable value of the benefit will depend on whether the amount of expenditure which was reimbursed or discharged by the employer (where this is less than 100% of employee's expenditure), was designed to cover only the business-related component of the expenditure.

12.7.1 Documentation requirements

To reduce the taxable value of property fringe benefits under the otherwise deductible rule, a declaration must be provided to the NSW Agency by the employee concerned prior to the FBT return for that year being lodged (see Appendix 1 – Section A).

As with expense payment fringe benefits, the requirement to obtain an employee declaration is waived if the provision of the fringe benefit is covered by a recurring fringe benefit declaration provided by the employee (Appendix 2).

The "otherwise deductible" rule will only apply where a NSW Agency obtains appropriate documentary evidence from the employee. The type of evidence that must be obtained will depend on the nature of the benefit.

(a) For wholly employment-related expenditure:

Normally no documentation will be required from the employee in this case as the NSW Agency will have details of the cost of the benefit. An example would be the supply of overalls or tools to an employee.

(b) Where property is provided in respect of travel:

A travel diary or similar document is required.

(c) Benefits which are not wholly employment-related:

A declaration in an approved format or a recurring fringe benefit declaration is required.

(d) Car-related benefits:

A declaration in an approved format is required.

12.7.2 Clothing and uniforms

TR 97/12 / TR 2003/16

In relation to the otherwise deductible rule, Taxation Ruling TR97/12 deals with the circumstances where work related clothing, uniform and footwear expenses are allowable deductions. The Ruling states that where financial or property support provided on clothing is deductible, the otherwise deductible rule operates to reduce the taxable value of the fringe benefit to nil.

The Ruling states that a deduction is allowable for the cost of a compulsory and distinctive uniform/wardrobe under s8-1 of the ITAA 97. A compulsory uniform/ wardrobe must be prescribed by the NSW Agency in an expressed policy which requires a particular class of employees to wear that uniform while at work. The policy must also identify the relevant Agency. The NSW Agency's compulsory uniform/wardrobe policy guidelines should stipulate the characteristics of the colour, style and type of the clothing and accessories that qualify them as being a distinctive part of the compulsory uniform/wardrobe. Wearing the uniform/wardrobe generally should be strictly and consistently enforced.

You can deduct the expenditure of a non-compulsory uniform if the design of the uniform is registered with AusIndustry. This will be the case even where the clothing would otherwise be regarded as conventional in nature. Characteristics of a non-compulsory uniform/wardrobe under subdivision 34B are:

- the wearer has to be an employee, or recipient of a prescribed payment
- the uniform has to identify the wearer distinctively as associated with the NSW Agency
- it is not compulsory to wear the uniform/wardrobe, or, if compulsory, the wearing of the uniform is not consistently enforced
- the uniform/wardrobe design has been entered on the Register.

TR97/12

A deduction is also allowable for the cost of occupation specific clothing that is "necessary and peculiar" to a particular occupation (e.g. chefs' uniform, boilermakers' overalls, etc.).

TR 2003/16

A deduction will be allowed for sun protection equipment such as sunscreen, sunglasses and hats for outdoor workers. Provision of these items to employees will be otherwise deductible.

12.7.3 Car property fringe benefits

s44

Where a property fringe benefit is provided in relation to a car owned or leased by the employee, special rules determine how much, if any, of the NSW Agency's expenditure would have been "otherwise deductible" to the employee.

Where a car property benefit is substantiated by the log book rules, the recipient must give to the NSW Agency a car substantiation declaration (see Appendix 1 – Section B) for the car for the year and a copy of the log books or odometer records as required. This is required to substantiate any reduction claimed in relation to business use of the car.

Where a car property benefit is not substantiated in accordance with the log book rules, the recipient must give the NSW Agency a declaration which sets out the period during which the car was held, the total kilometres travelled, and the business kilometres travelled by the car in the holding period (Appendix 1 – Section D).

If the car travels more than 96 kilometres per week on average during the FBT year, the recipient may give the NSW Agency a declaration that sets out the holding period, and states that the average number of business kilometres travelled by the car per week exceeded 96 (Appendix 1 – Section C).

12.8 Which gross-up rate?

Where the NSW Agency or third party provider is entitled to an input tax credit in relation to the purchase of the item, the benefit will attract the higher gross-up rate of 2.0647. Where the NSW Agency or third party provider is not entitled to an input tax credit, the lower gross-up rate of 1.8692 will apply.

Where the taxable value is based on cost or market value, the Commissioner of Taxation considers that you should use GST-inclusive values where applicable. If an employee contributes towards the benefit provided, the value of this contribution will be the GST-inclusive value, as appropriate.

12.9 Examples

12.9.1

An employee of a NSW Agency is provided with tools to perform the duties of their employment. The employee is allowed to take the tools home with them but must return the tools to the Agency if they resign from their current position or are otherwise requested to do so.

The provision of the tools will not constitute a property fringe benefits as they are exempt from FBT pursuant to section 58X of the FBTAA. They are regarded as a tool of trade and are exempt as the provision of certain work related items.

12.9.2

A NSW Agency provides an employee with gym equipment for home use under a healthy employee promotion scheme. The employee obtains ownership of the equipment. The NSW Agency obtained the gym equipment for $500 using a buying discount offered by the supplier. If the employee had purchased the gym equipment themselves they would have paid $600.

The taxable value is the amount paid by the NSW Agency to acquire the gym equipment ($500), assuming the NSW Agency acquired the equipment at or about the same time they provided it to the employee.

12.9.3

A NSW Agency sells NSW maps to tourists in a shopfront located in Sydney. A particular map of southern NSW costs the NSW Agency $5 from the wholesaler. This map is sold to tourists for $8. An employee of the NSW Agency is able to buy maps for 50% of cost. John acquires the southern NSW map by paying the NSW Agency $2.50.

Prima-facie, the taxable value of the benefit is calculated as the lesser of the arm's length cost price paid by the NSW Agency and the arm's length retail price, less any employee contribution (i.e. lesser of $5 and $8) less John's contribution = $5 - $2.50 = $2.50. Such a small benefit is likely to be exempt under the minor benefit provision or, the taxable value of this and any other fringe benefits provided to John can be reduced by up to $1,000 and no FBT liability would arise.

Appendix 1
Property fringe benefit declaration

Section A

I, _____ declare that:

_____

(show nature of goods)

was provided to me by on behalf of my employer during the period

1 April _____ to 31 March _____and that the property was used by me for the following purposes:

_____

_____

_____

(show sufficient detail to enable identification of the relevant benefits)

I also declare that had I purchased the property for its market value that I would have been entitled to claim an income tax deduction equal to _____ % of the purchase price.

Signature: _____

Date _____

Property Fringe Benefit Declaration

Section B

I, declare that a car that is owned or leased by me was used for business purposes and that:

i) The period of the FBT tax year the car was in use by me for business

purposes was _____ to _____

ii) Log books and odometer records for the car (or a car which this car replaces) were kept for a minimum of 12 consecutive weeks during that period have been given to the employer; or

iii) Log books and odometer records for the car (or a car which this car replaces) were kept for a minimum of 12 consecutive weeks in an earlier year, and odometer records were kept this year and have been given to the employer;

iv) The car business percentage for the period mentioned in item (i) above was _____%.

Signature: _____

Date: _____

Property Fringe Benefit Declaration

Section C

I, declare that a car that is owned or leased by me was used for business purposes and that the period of the FBT year during which the car was in use by me for business purposes was_____ to _____ and that an average of more than 96 business kilometres per week was travelled in that period.

Signature: _____

Date: _____

Property Fringe Benefit Declaration

Section D

I, declare that a car that is owned or leased by me was used for business purposes and that:

The period of the FBT year the car was in use by me for business purposes

was _____ to _____ ;

The total number of kilometres travelled by the car in that period was _____ ; and

The number of business kilometres travelled by the car in that period was: _____ .

Signature: _____

Date: _____

Appendix 2
Recurring property fringe benefit declaration

I, _____ declare that:

_____

(show nature of goods)

was provided to me by on behalf of my employer during the period

1 April _____ to 31 March _____and that the property was used by me for the following purposes:

_____

_____

(show sufficient detail to enable identification of the relevant benefits)

I also declare that had I purchased the property for its market value that I would have been entitled to claim an income tax deduction equal to _____ % of the purchase price.

I understand that this declaration is to apply to the above stated benefit and to any identical benefit for a period up to five years from the date of this declaration or until the stated percentage incurred in earning my assessable income decreases by more than ten percentage points. This declaration will also be revoked if another recurring property fringe benefit declaration is provided in respect of a subsequent identical benefit.

Signature: _____

Date: _____

Chapter 13: Residual Fringe Benefits

Contents

13.1 Overview

Ch18 - FBT: A Guide for Employers

Residual fringe benefits are any benefits that are not captured by any other category in the FBTAA.

Div 12

The taxable value of a residual fringe benefit depends upon whether it is an in-house or external residual fringe benefit. As with other fringe benefits, the taxable value of residual fringe benefits may be reduced in certain circumstances if they are adequately substantiated.

13.2 When does a residual fringe benefit exist?

s136(1)

A residual benefit exists when the benefit:

- is provided which satisfies the definition of a fringe benefit
- cannot be categorised as any other type of fringe benefit
- is not an exempt benefit.

13.2.1 Common residual benefits

Common residual benefits include:

- provision of free or discounted services (e.g. travel or the performance of professional or manual work)
- rights relating to the use of property (as opposed to the provision of property)
- provision of insurance coverage
- provision of motor cycles or other motor vehicles not within the definition of a car
- provision of taxis (where not otherwise exempt) and rental cars leased on short-term hire and accommodation that do not qualify as car or housing benefits respectively
- any other benefits (e.g. private use of a telephone where the account is held in the employer's name).

13.2.2 When is a residual fringe benefit received?

s149(1)

Residual fringe benefits are generally treated as having been received at the time when, or over the period during which, the particular benefit is provided. For example, where the benefit is provided for a period of six months, the benefit will be treated as having been received over that period.

s46(2)

An exception is where the benefit is provided in return for payments made on a regular basis. For example, where discounted services are provided to an employee on the basis of regular billing, and identical services are provided to members of the general public on the same basis, the services provided during each period are treated as a benefit provided when the periodic payment is due.

s46(1)

Where the benefit is provided for a period which extends beyond the end of the FBT year, the taxable value must be apportioned to the period in the year of tax during which the benefit was provided.

13.3 Are there any exemptions?

As outlined in Chapter 14, some residual fringe benefits are specifically exempt from FBT, including:

- provision of recreational or child-care facilities on NSW Agency business premises. The ATO has confirmed that this exemption does not apply to the cost of instructors (e.g. personal trainers or gym instructors) used by employees on the NSW Agency's premises using the Agency's facilities.
- where a current employee is allowed to use equipment (other than a car) which is ordinarily located on the NSW Agency's business premises and used principally in connection with the Agency's business, the benefit is exempt (e.g. use of a photocopier owned by the NSW Agency for private purposes).
- a lease or licence of residential accommodation provided to an employee who is required to live away from his or her usual place of residence in order to perform employment duties.
- use of a motor vehicle (that is not a "car") by an employee where there is no private use other than work-related travel or other private use which is minor, infrequent and irregular for travel to and from work.
- where a motor vehicle provided to a current employee is unregistered during the whole year of tax and is used principally in connection with the NSW Agency's business.
- certain payments made by a NSW Agency to ensure "priority of access" in relation to certain family day care, care outside school hours and care in school vacations.
- provision of free or discounted travel (other than in an aircraft), to current employees (not associates) on a regular and scheduled service, where the NSW Agency carries on the business of providing like transport to members of the public (e.g. free rail travel to and from work to railway workers).

13.4 What is the taxable value?

The taxable value of a residual fringe benefit will depend on whether it is an in-house or external residual fringe benefit (as follows in 13.5 and 13.6). Regardless, the taxable value is calculated using **GST-inclusive** amounts.

MT 2034 — Special rules apply in relation to the taxable value of residual benefits that are motor vehicles (other than cars). Taxation Ruling MT2034 outlines the appropriate methods for valuing the provision of motor vehicles that are not "cars" for FBT purposes.

TD2011/5
MT 2034 — The most common method for valuing a residual fringe benefit in respect of a motor vehicle which is not a car for FBT purposes is to multiply the number of private kilometres travelled by the vehicle in an FBT year by the cents per kilometre rates prescribed annually by the ATO. Please note that this method is only available to be used where there is extensive business use of the vehicle.

13.5 In-house residual fringe benefits

s136(1) A residual fringe benefit will be an in-house residual fringe benefit where:

- the provider is the NSW Agency or an associate of the Agency (but not a third party); and
- the benefit is of a kind normally provided by the NSW Agency to the public as part of their business; or
- a third party provided the benefit after acquiring it from the NSW Agency or an associate of the Agency; and
- the benefit is of a kind normally provided by both the provider and the NSW Agency to the public as part of their businesses.

For example, an in-house residual fringe benefit arises where a NSW Government-operated bus service allows employees to use the bus service for free.

s62 An annual reduction of $1,000 can apply to the total taxable value of all in-house fringe benefits (including in-house residual fringe benefits).

13.5.1 In-house non-period residual fringe benefit

Where a NSW Agency provides an in-house benefit to an employee on a **single day** (i.e. non-period), the taxable value of the residual fringe benefit is calculated as follows:

- where identical benefits are provided to the general public, 75% of the **lowest arm's length price** charged to the general public for an **identical** benefit less any amount actually paid by the recipient for the benefit; or
- where **no identical** benefits are provided to the general public, 75% of the **amount which the employee could be reasonably expected to pay** to acquire the benefit under an arm's length transaction less any amount actually paid by the recipient for the benefit.

13.5.2 In-house period residual fringe benefit

Where the NSW Agency provides an in-house benefit **over a period**, the taxable value of the benefit is determined at **75% of the market value**, less the amount paid by the employee. Where the period during which the benefit is provided extends past the end of the FBT year, the taxable value must be apportioned between the two years on a pro-rata basis.

13.6 External residual fringe benefits

s50, 51 An external residual fringe benefit is a residual fringe benefit other than an in-house residual fringe benefit.

Commonly, an external residual fringe benefit arises where:

- the residual fringe benefit is provided by the NSW Agency or associate but the benefit is not of a kind provided to the public in the ordinary course of business; or
- the NSW Agency or associate arranges for the residual fringe benefit to be provided by a third party and the benefit is **not** of a kind provided by **both** the provider and the NSW Agency to the public as part of their business.

13.6.1 External non-period residual fringe benefit

Where the NSW Agency provides an external residual benefit on a single day, the taxable value is calculated as follows:

- if f the NSW Agency purchased the benefits under an (define) transaction to provide to the employee, the taxable value is the cost price to the NSW Agency less any amount paid by the employee
- otherwise, the taxable value is the amount the employee could reasonably be expected to pay to obtain the item, less any amount paid by the employee.

13.6.2 External period residual fringe benefit

Where the NSW Agency provides an external benefit over a period, the taxable value of the benefit is determined on the cost to the employer of providing the benefit, less the amount paid by the employee. Where the period during which the benefit is provided extends past the end of the FBT year, the taxable value must be apportioned between the two years on a pro-rata basis.

13.7 Can the taxable value be reduced?

As with most fringe benefits, the taxable value of residual fringe benefits can be reduced by the:

- application of the otherwise deductible rule; and/or
- amount of any recipient's contribution.

Additionally, a summarised list of specific reductions that may apply are discussed at Chapter 15 of this FBT Manual.

s52 The otherwise deductible rule applies where the employee would be entitled to a once-only income tax deduction had they obtained the benefit themselves.

Where a benefit is only partly business or employment-related, the reduction that can be made to the taxable value of the benefit is dependent on the amount of expenditure reimbursed or discharged by the employer. Where the employee reimburses 100% of the employee's expenditure, the reduction would be limited to the business portion of the expense.

13.8 Which gross-up rate?

The applicable gross-up rate depends on whether the NSW Agency or third party provider is entitled to an input tax credit in respect of the acquisition of the benefit.

Generally, where the supply is not purchased or imported from a third party (e.g. performance of services, manufactured), no input tax entitlement exists for the NSW Agency. The benefit will be a Type 2 benefit and attract the Type 2 gross-up rate of 1.8692.

Where the supply is purchased or imported and the employer is entitled to an input tax credit in respect of GST paid, the benefit will be a Type 1 benefit and attract the Type 1 gross-up rate of 2.0647.

13.9 Substantiation

To reduce the taxable value of residual fringe benefits under the otherwise deductible rule, a declaration must be provided to the NSW Agency by the employee concerned prior to the FBT return for that year being lodged (see Appendix 1).

The requirement to obtain an employee declaration is waived if the provision of the fringe benefit is covered by a recurring fringe benefit declaration obtained from an employee (see Appendix 2) or where there is a requirement to obtain a travel diary from the employee.

13.9.1 Exceptions

Declarations are not required for expenses that are incurred exclusively in producing salary or wages as an employee. For example, a declaration would not be required where an employee pays by CabCharge for taxi fares to attend meetings in the course of his or her duties.

TD 2011/17

Receipts and invoices are not required as evidence of particular types of employee expenses that may be paid by the NSW Agency. These are the reasonable costs of accommodation, meals and other incidentals of travel within Australia. The reasonable allowance amounts in respect of the 2011-2012 income year are contained in TD 2011/17.

Note: Receipts and tax invoices may be required in order for the NSW Agency to substantiate their claim for any GST input tax credits.

13.9.2 Special rules

A general declaration is not required where the recipient's expenditure is on travel within or outside Australia involving more than five nights away from home. For overseas travel, a travel diary is required in all cases where the travel involves more than five nights. For domestic travel, a travel diary is only required where the travel is for more than five nights, is not wholly for business purposes and the amounts claimed are in excess of the reasonable allowance amounts.

The travel diary must record all business activities on the trip to substantiate the deductible nature of the expenditure. The record must be made before, at the time of, or as soon as reasonably practicable after, the conclusion of the activity. The diary entry must contain sufficient detail to give a reasonable guide as to the extent to which the trip was undertaken for deductible purposes.

NTLG FBT minutes 12 August 2010

The ATO has recently confirmed that an annual no-private-use declarations can be relied upon in circumstances where employees travel overseas on business that extends for more than five nights and in circumstances where an employer has strict policies in place that the employer will only ever pay for work-related expenses. While a no-private-use declaration does not require employers to obtain travel diaries from employees, an employer may find it prudent to do so in order to satisfy themselves that they can in fact make a no-private-use declaration.

Appendix 1
Residual fringe benefit declaration

I, _____declare that
(name of employee)

_____

_____

_____
(show nature of benefit)

was provided to me by or on behalf of my employer during the period from

_____ 20_____ to _____ 20_____

and that the benefit was used by me for the following purpose(s)

_____

_____

_____

(please give sufficient information to demonstrate the extent to which the benefit was used by you for the purpose of earning your assessable income)

I also declare that had I purchased the service or the privilege, etc, for its market value, I would have been entitled to claim an income tax deduction equal to _____ % of the interest on the loan.

Signature: _____

Date: _____

Appendix 2
Recurring residual fringe benefit declaration

I, _____ declare that:

_____
(show nature of benefits)

was provided to me by on behalf of my employer during the period

1 April _____ to 31 March _____and that the benefit was used by me for the following purposes:

_____

_____

(show sufficient detail to enable identification of the relevant benefits)

I also declare that had I purchased the service or privilege for its market value that

I would have been entitled to claim an income tax deduction equal to

_____ % of the purchase price.

I understand that this declaration is to apply to the above stated benefit and to any identical benefit for a period up to five years from the date of this declaration or until the stated percentage incurred in earning my assessable income decreases by more than ten percentage points. This declaration will also be revoked if another recurring residual fringe benefit declaration is provided in respect of a subsequent identical benefit.

Signature: _____

Date: _____

Chapter 14: Exempt Benefits

Contents

14.1 Overview

Ch20 - FBT: A Guide for Employers

Not all benefits are subject to FBT. This chapter briefly explains some of those exempt benefits. Refer to the relevant section of the Fringe Benefits Assessment Act (FBTAA) to note the conditions attached to each particular exemption.

Please note the distinction between exempt benefits and fringe benefits subject to concessional treatment (i.e. where the taxable value may be reduced), which are separately discussed at Chapter 15.

14.2 What is an exempt benefit?

s136(1)

Exempt benefits are not fringe benefits and are not subject to FBT. Exempt benefits are specifically identified in the FBTAA, either within the division of the relevant category of fringe benefit or in Division 13, which contains miscellaneous exemptions.

14.3 Specific Exemptions

14.3.1 Superannuation contributions

s136(1)

No FBT liability arises in respect of superannuation contributions made to a complying fund because such contributions are excluded from the definition of a fringe benefit.

14.3.2 Emergency services vehicles

S7(2A)

Unlike other vehicles, the home garaging of certain emergency service (e.g. police, ambulance or fire fighting service) vehicles will not be deemed to be “available for private use” and a FBT liability will not arise from merely home garaging the vehicle. The vehicles must have the appropriate exterior markings, flashing lights and sirens.

It should be noted that any actual private use of that vehicle will **not** be exempt from FBT.

14.3.3 Use of cars

s8

The provision of a motor vehicle to an employee will either be a car fringe benefit where the motor vehicle fits within the definition of “car” in section 136(1), or a residual fringe benefit if the vehicle provided to an employee does not meet the definition of a “car” for FBT purposes.

A “car” is defined as:

- a motor car, station wagon, panel van, utility truck or similar vehicle designed to carry a load of less than one tonne; or
- any other road vehicle designed to carry a load of less than one tonne and fewer than nine passengers.

For an employee’s use of a “car” to be an exempt benefit, the car must be a panel van, utility or other commercial vehicle (i.e. a vehicle not designed principally to carry passengers) or a taxi. The employee’s private use of the car must be restricted to:

- travel between home and work
- use which is incidental to travel in the course of duties of employment
- non-work related use that is minor, infrequent and irregular.

Private use of an unregistered car will also be an exempt benefit in circumstances where the car is unregistered at all times during the year when it is held by the provider of the benefit and where it is held principally for use in business operations. An unregistered car is one that cannot be legally driven on a public road.

s47(6), MT 2024

Pursuant to section 47(6), an FBT exemption can apply to the provision of a motor vehicle (not a car) where it is provided as a work use vehicle. The exemption only applies if there is no private use of the vehicle other than detailed above.

14.3.4 Loans

s17

Subject to various conditions, the following loans are specifically exempt from FBT:

s17(4)

- a temporary advance to enable an employee to pay a security deposit (e.g. a rental bond) in connection with temporary accommodation provided by the NSW Agency where the need for the accommodation arises because the employee is required to live away from home or to relocate for employment reasons. The employee must repay the advance within 12 months.

s17(4)

- A loan to a current employee to meet employment related expenses, which will be incurred within six months of the date of the loan being granted.

14.3.5 Expense payments – no private use declaration

s20A

An expense payment fringe benefit will be an exempt fringe benefit if covered by a no-private use declaration. Such a declaration may be made in respect of expense payment fringe benefits where the NSW Agency reimburses only employment-related expenses (e.g. substantiated business calls from an employee's home telephone) or where the Agency enforces a policy that benefits be used only for employment-related expenses. The declaration must be made in writing by the declaration date and in the form approved by the Commissioner (see Appendix 1).

14.3.6 Expense payments – living-away-from-home accommodation

s21

Expenses incurred by an employee on accommodation for themselves and any spouse and children normally living with them, solely because the employee is required to live away from their usual place of residence to carry out employment duties, will be an exempt fringe benefit (please note that the treatment of living-away-from-home benefits may change from 1 July 2012). See Chapter 8 for more detail regarding this benefit type).

To obtain the exemption, the NSW Agency must obtain a declaration from the employee on an approved declaration form stating that the employee had to live away from home for employment reasons, the period involved, the usual place of residence and the actual place of residence during that period (refer to Chapter 8 of this FBT Manual).

14.3.7 Expense payments – car payments

s22, s61B

Car expense payments will be exempt if they relate to an employee's car expenses where the car is owned or leased by the employee. Where expenses are reimbursed according to the cents-per-kilometre rate, the rates utilised must be in line with the benchmark rates, which are adjusted annually by the Commissioner.

TD 2011/5 The rates applicable to the FBT year commencing 1 April 2011 are:

Engine Capacity	Rate per Kilometre
0 – 2500cc	46 cents
Over 2500 cc	55 cents
Motor Cycles	14 cents

14.3.8 Property consumed on business premises

s41, IT 2675 Goods that are supplied to an employee on a working day which are consumed on the NSW Agency's premises or premises of a related Agency are an exempt property benefit.

s39, TR 97/17 For tax-exempt bodies, this exemption is limited to property other than food and drink.

14.3.9 Residual benefits - public transport

s47(1) Free or discounted transport (except air transport) provided to employees in the course of the Agency's business of providing such transport to the public will be an exempt benefit. This exemption extends to police officers travelling on public transport to and from duty.

14.3.10 Residual benefits - recreational facilities, child care facilities

s47(2), TR 2000/4 Certain recreational or childcare facilities located on the Agency's business premises provided for the benefit of employees will be exempt fringe benefits.

14.3.11 Residual benefits - Use of property

s47(3), (4), The use of equipment owned by the NSW Agency (other than a motor vehicle) by an employee will be an exempt residual fringe benefit. For example, a computer taken home by an employee for personal use overnight or on weekends.

14.3.12 Residual benefits - Accommodation

s47(5), TD 96/7 Living-away-from-home accommodation provided to an employee who is required for work purposes to live away from their usual place of residence will be an exempt fringe benefit.

This exemption will only apply provided the employee gives the NSW Agency an appropriate declaration (see Appendix 1 of Chapter 8 of this FBT Manual). As discussed above, treatment of living-away-from-home benefits may change from 1 July 2012. See Chapter 8 for more detail regarding this benefit type.

14.3.13 Residual benefits - Fly-in-fly-out arrangements

s47(7), TD 95/49 Certain "fly-in-fly-out" travel arrangements for employees in designated remote areas or working on oil rigs and other off-shore installations will be exempt benefits.

On 3 November 2011 legislation was enacted that extends the exemption from FBT for travel between home and work sites for "fly-in-fly-out" employees working in remote locations overseas (subject to certain conditions being met). This change removes the possibility of double taxation of "fly-in-fly-out" benefits received by Australians working in remote locations overseas.
The measure applies from 1 July 2009.

14.3.14 Residual benefits - No private use declaration

s47A

A residual fringe benefit covered by a "no-private use declaration" will be exempt. A "no-private use declaration" can be made where a benefit is solely provided for employment-related purposes (see Appendix 2).

14.3.15 Operating costs of motor vehicles

s53

Where a motor vehicle gives rise to a car fringe benefit, any benefits associated with operating that car (e.g. payment of registration, insurance, repairs, fuel costs) will be exempt from FBT. They are effectively represented in the value of any resultant car benefit because the valuation rules for car fringe benefits takes operating costs into account.

14.3.16 Food and drink

s54

Where employees receive board fringe benefits, any additional food and drink supplied (such as morning and afternoon tea) is exempt if it is provided on the employer's premises or work site. Food and drink supplied at a party, reception or other social function is not exempt.

14.3.17 International organisations and diplomatic and consular immunities

s55, 56

There are specific provisions exempting international bodies from taxation. Foreign government representatives are exempt under the *Consular Privileges and Immunities Act 1972* or the *Diplomatic Privileges and Immunities Act 1967*.

14.3.18 Religious institutions

s57, TR 92/17

Benefits provided by religious institutions to a minister or full-time member of a religious order in respect of that person's religious work are generally exempt.

14.3.19 Public Benevolent Institutions

s57A, TR 2003/5

Benefits provided by public benevolent institutions (PBIs) are exempt up to a limit of a grossed up taxable value of $30,000 (or $17,000 grossed up taxable value if the institution is a hospital) per employee per FBT year.

14.3.20 Live-in residential care workers

s58

Where an employee of a government, religious institution or non-profit body provides live-in care for people who are elderly or are mentally or physically handicapped or in necessitous circumstances, benefits provided to the employee are generally exempt. The exemption extends to the spouse and children of the employee, and covers the supply of items such as residential fuel, meals or other food and drink, and electricity.

14.3.21 Employment Interviews

s58A, 61E, 143D

Travel benefits (including meals and accommodation en route) provided to a current or future employee for the purpose of attending a job interview or selection test, are an exempt fringe benefit. Where the benefit is of a type that would be an expense payment fringe benefit but for the exemption, documentary evidence of the employee's expenditure must be obtained by the NSW Agency.

14.3.22 Relocation – removals and storage

s58B

The payment or reimbursement of an employee's costs for the removal and storage of household effects will be an exempt benefit if the removal takes place, or the storage commences within twelve months of the employee starting work at the new location.

- The exemption applies to the costs of removal, storage, packing, unpacking and insurance of household effects (including pets) kept primarily for the personal use of the employee or family.
- The exemption applies regardless of whether the employee is moving permanently or living away from home.

14.3.23 Relocation - engagement of relocation consultant

The engagement of a relocation consultant will be exempt from FBT when helping an employee who is required to move either permanently or temporarily from their usual place of residence to perform their new employment duties. .

Assistance which can be provided by the consultant and treated as exempt includes:

s58AA

- finding, or providing information to the employee or family member about, accommodation; or

s136(1) - family member

- providing information to the employee or family member about education facilities or other community amenities and services.

It does not include paying expenses on behalf of the employee or family member.

14.3.24 Relocation – sale or acquisition of dwelling

s58C

Home sale and purchase incidental costs may be an exempt benefit (e.g. stamp duty, legal fees, borrowing costs, advertising costs and estate agent's commission). There are many conditions attached to these exemptions including:

House sold

- the sale is made solely because the employee changed their usual place of residence to carry out the employment duties
- the house was owned when the employee notified the employer of the change in new locality;
- the house was the employee's usual place of residence
- the sale contract was made within two years of commencing duty at the new locality.

House purchased

- the employee owned a home at the former locality
- the employee must sell or propose to sell their former home within two years of commencing duty
- the purchase was made solely because of the relocation to another job locality

- the new home was occupied as the employee's usual place of residence
- the contract to purchase was made within four years of commencing duty at the new location
- If the employee does not sell their former home within two years of commencing duty, the benefit will become subject to FBT in the year in which the two-year period expires.

14.3.25 Relocation – connection of utilities

s58D Costs of connecting utilities such as telephone, electricity or gas services may be exempt when they relate to an employee's relocation. The exemption applies regardless of whether the employee is moving permanently or living away from home.

The connection or re-connection of services must be made within twelve months after the day on which the employee commenced working at the new employment location.

To apply the exemption, documentary evidence of the employee's expenditure must be obtained by the Agency.

14.3.26 Relocation - leasing of household goods while living away from home

s58E A benefit that consists of the leasing of household goods primarily for domestic purposes may be an exempt benefit. For the exemption to apply, the employee must be living away from home and concurrently be provided with accommodation which is an exempt benefit as a result of section 21 or sub section 47(5) of the FBTAA (these sections refer to living away from home exemptions for accommodation provided as either an expense or residual fringe benefit respectively). As discussed above, please note that the FBT treatment of living-away-from-home benefits may change from 1 July 2012. See Chapter 8 for more detail regarding this benefit type.

14.3.27 Relocation - transport costs (other than cents per kilometre)

s58F Relocation transport costs (including meals and accommodation en route) of the employee and family members are exempt:

- Where the relocation transport is by car and the employee is reimbursed on a cents per kilometre basis, the benefit is not exempt. However, a reduction of the taxable value may be available (see Chapter 15).

14.3.28 Newspapers and periodicals

s58H Newspapers and periodicals provided to employees for use for business purposes are exempt benefits.

14.3.29 Workers compensation

s58J Providing workers compensation insurance coverage and actual compensation for work-related injuries will be exempt benefits.

14.3.30 Worksite medical facilities

s58K Health care services provided in a work-site such as first-aid posts and medical clinics are exempt benefits.

14.3.31 Travel for medical treatment

s58L Travel (including accommodation and meals en route) to obtain medical treatment for an employee or family member from a foreign country, may be an exempt benefit provided it is at the least cost necessary.

14.3.32 Compassionate travel

s58LA Travel (including accommodation and meals en route) provided to an employee (or close relative in certain circumstances) to visit a close relative in a time of serious illness or to attend their funeral may be an exempt benefit when the employee is living away from home, travelling in the course of employment or the employee lives in a remote area.

14.3.33 Occupational health and counselling

s58M, 143E Work-related medical tests (including pre-employment tests), preventive health care, work-related counselling (including the provision of out-placement services to former employees made redundant) and migrant language training may be exempt benefits.

"Work-related preventative health care" is defined in section 136 to generally mean any form of care provided by a medical professional to prevent work-related trauma to employees who:

- are likely to be at risk from a work-related trauma;
- are likely to be at risk from a similar work-related trauma;
- work in close proximity to those employees who are suffering from the trauma; or
- perform similar duties to those employees who are suffering from the trauma.

The ATO has held the provision of free flu vaccinations will be an exempt benefit under section 58M as the definition of "Work-related trauma" includes the contraction of a disease that is related to the employment of the employee.

ATO ID 2004/557 The ATO has held that reimbursements made to a certain class of employees for the cost of corrective optical aids could not be treated as exempt benefits as the benefits were not made generally available to all employees of the employer who were likely to be at risk of suffering from a similar work-related trauma.

14.3.34 Emergency assistance

s58N Benefits such as food, clothing and shelter provided to employees and family members at a time of emergency may be exempt benefits

14.3.35 Minor benefits

s58P Benefits with a total taxable value of less than $300 (GST inclusive) which are provided infrequently and irregularly and/or are difficult to value will be exempt benefits.

In assessing whether a benefit meets the minor benefits requirements, the following must be considered:

- Is the notional value of the benefit less than $300?
- Would it be unreasonable to treat the minor benefit as a fringe benefit?
- Is it provided on an infrequent and irregular basis?
- Are there other benefits which are "associated benefits" (i.e. Identical or similar benefits which are provided in connection with the minor benefit)?
- Is the sum of the value of the minor benefit and associated benefits considered to be substantial?

The FBTAA provides little guidance with respect to the meaning of the term "infrequent" and the public rulings which are available do not define the time-frames associated with irregular use. The ATO has been reticent in providing a definitive guide as to how the term should be practically interpreted, other than to say that it is a question of fact to be determined within the specific context of the benefit being provided.

TR 2007/12

In applying the 'infrequency and irregularity' criterion, the ruling does not stipulate the maximum number of times associated benefits that are identical or similar to a minor benefit, or benefits in connection with the minor benefit, can be provided before the criterion would not be met. The more often and regularly those benefits are provided, the less likely it is that this criterion would be met.

TR 2007/12

Taxation Ruling TR 2007/12 provides further guidance on the ATO's view of what is considered to be "infrequent" along with examples of where the minor benefit exemption can apply. Examples include the provision of a Christmas party, gifts to employees by a tax-exempt body and the provision of movie vouchers.

The $300 threshold applies to ***each*** benefit provided to an individual employee and/or ***each*** benefit provided to an associate of an employee. The ATO has broadened its view so that each benefit needs to be considered for exemption separately, rather than grouped together with any associated benefits.

There are a number of additional conditions imposed on the public sector relating to application of the minor benefits exemption for tax-exempt body entertainment benefits. To qualify for the minor benefits exemption, the entertainment must be provided to:

- employees incidentally to the provision of entertainment to non-employees (or non-associates) and the entertainment must not consist of a meal (other than light refreshments); or
- employees on NSW Agency premises and must be provided solely as a means of recognising the special achievements of an employee (for an employment related matter).

The exemption for minor benefits can be applied in very limited circumstances to tax exempt bodies when they are providing tax-exempt body entertainment benefits.

14.3.36 Long service awards

s58Q Awards for long service of at least 15 years will be exempt benefits, subject to a maximum exemption of $1,000 (taxable value) for 15 years of service and increased by $100 for each additional year of service. Where the value of the award(s) is in excess of the maximum, no part of the award(s) is exempt (i.e. no reduction available for the maximum amount).

If the employee has received a previous long service award, the maximum value of any subsequent award is $100 for each year in excess of 15 years that is being recognised by the additional award.

Example

An agency provides Anne with a gift to recognise 15 years of service. The value of the gift is $500.

As the value of the gift is less than the $1,000 cap, this will be an exempt benefit.

If Anne was to remain with the agency for another 5 years and the agency gives her a gift worth $750 to recognise her 20 years of service, this would not be an exempt benefit as it exceeds the cap. As Anne received a gift in recognition of her 15 years of service, the maximum value of the gift she could receive for 20 years of service that would be exempt from FBT would be $500 (i.e. $100 x 5 years). As the 20 year gift exceeded $500, the full value of the $750 gift would be taxable.

14.3.37 Safety awards

s58R Awards given which genuinely related to occupational safety achievements will be exempt provided that the taxable value is $200, or less, per recipient. Where the $200 limit is exceeded, no part of the award(s) is exempt.

14.3.38 Australian Traineeship System

s58S Food, drink and accommodation provided to trainees engaged under the above scheme will be an exempt benefit.

14.3.39 Superannuation deposits

s58W Deposits made to the Superannuation Holding Accounts Reserve under the *Small Superannuation Accounts Act 1995* will be exempt.

14.3.40 Certain work-related items

s58X The following items of property are exempt from FBT where they are provided to an employee primarily for use in the employee's employment:

- a portable electronic device. This can include a mobile phone, calculator, an electronic diary, a personal digital assistant or similar item, a notebook computer, laptop computer or similar portable computer or a portable printer. Other devices that may also satisfy this exemption are devices that have the following characteristics:
    - easily portable and designed for use away from an office environment
    - small and light
    - can operate without an external power supply
    - designed as a complete unit.

ATO ID 2008/133

- an item of computer software
- an item of protective clothing
- a briefcase
- a tool of trade.

14.3.41 Membership fees and subscriptions

s58Y An employee's subscription to a trade or professional journal, membership fees for a corporate credit card and membership fees for an airport lounge membership will be exempt from FBT.

14.3.42 Taxi travel

s58Z Taxi travel provided by NSW Agencies to employees for travel beginning or ending at work is exempt from FBT.

Taxi travel between home, work or any other place necessary (e.g. doctor) is exempt where the travel is undertaken by the employee as a result of their illness or injury.

14.3.43 Remote area housing

s58ZC Provision of housing in a remote area is an exempt benefit.

ATO ID 2005/158 Where an employer also provides an employee with water as agreed under a residential tenancy agreement, this will constitute part of the exempt benefit.

Appendix 1
No private use declaration – expense payment benefits

I, _____ on behalf of

_____

(name of employer)

declare that the expense payment benefits described below, and provided during the FBT year from 1 April _____ to 31 March _____are payments or reimbursements of expenses which, under the 'otherwise deductible' rule, would have a taxable value of nil.

_____

_____

_____

(show sufficient detail to enable identification of the relevant benefits)

Signature: _____

Date: _____

Appendix 2
No private use declaration – residual benefits

I, _____ on behalf of

_____
(name of employer)

declare that the residual benefits described below, and provided during the FBT year from 1 April _____ to 31 March _____arise from the use of property which is subject to a consistently enforced prohibition on the private use of that property and which, under the 'otherwise deductible' rule, would have a taxable value of nil.

_____

_____

_____

(show sufficient detail to enable identification of the relevant benefits)

Signature: _____

Date: _____

Chapter 15: Concessions and Reductions in Taxable Value

Contents

15.1 Overview

Ch19 - FBT: A Guide for Employers

The taxable value of many fringe benefits may be reduced in certain circumstances.

This chapter briefly explains some of the concessions and reductions in taxable value. Consult the relevant section of the FBTAA for details of the specific conditions attached to each particular reduction. The various concessions and reductions are specifically identified in the FBTAA, either within the division of the relevant category of fringe benefit or in Division 14 (Reduction of Taxable Value of Miscellaneous Fringe Benefits).

15.2 How can the taxable value be reduced?

The taxable value of many fringe benefits may be reduced by:

- the amount of the recipient's contribution (see discussion at Chapter 1 of this FBT Manual)
- the otherwise deductible rule, and/or
- other specific provisions/concessions.

15.2.1 Otherwise deductible rule

s24

The otherwise deductible rule applies to specific benefits where the employee would have been entitled to a once-only income tax deduction had they acquired the benefit themselves. This rule applies to most categories of fringe benefits (e.g. property, expense payment and residual fringe benefits).

If the employee would only be entitled to a tax deduction for a decline in value (depreciation) over a number of years, this will mean no reduction is available under the otherwise deductible rule as decline in value deductions are not once-only deductions.

Where a benefit is only partly business or employment-related, the reduction that can be made to the taxable value of the benefit is dependent on the amount of expenditure reimbursed or discharged by the employer. Where the employee reimburses 100% of the employee's expenditure, the reduction would be limited to the business portion of the expense.

15.3 Specific provisions/concessions

15.3.1 Remote area residential fuel

s59

Where the NSW Agency supplies, pays for or reimburses the cost of electricity, gas or other residential fuel for an employee in a remote area, the value of the benefit can be reduced by 50%. The employee must also be receiving a remote housing, remote housing loan or remote housing rental benefit. The concept of remote area is discussed in Chapter 7 of this Manual.

15.3.2 Remote area housing assistance

s60

The taxable value of certain benefits arising from housing assistance provided to an employee in a remote area can be reduced by 50% (e.g. the payment or reimbursement of rent or repayments towards a housing loan, provision of land, or house and land, etc.). Provision of a remote area housing fringe benefit is exempt from FBT. The concept of remote area is

further discussed in Chapter 7 of this Manual.

15.3.3 Remote area holiday transport

s61, 60A

Holiday travel provided to employees working in a remote area is given concessional FBT treatment in certain circumstances. The concept of remote area is discussed in Chapter 7 of this Manual.

Where an employee working in a remote area is provided with, or reimbursed for the costs of transport from the remote area, the taxable value of the benefit may be reduced by 50% if:

- the employee travels from the work locality to the town where he or she lived before being engaged to work at that remote locality; or
- the employee travels to the capital city of the State or Territory in which the work place is located.

Other conditions require the travel to be part of an award agreement or customary within the employee's industry. Further, where the transport is provided to the employee the transport must be for a holiday of at least three working days.

Where the travel is **not** to either of the destinations set out above but all other conditions are satisfied, the taxable value will be the lesser of:

- 50% of the taxable value
- 50% of the **benchmark travel amount** (i.e. the usual cost of return travel between the remote area locality and the capital city of the State/Territory in which the workplace is located).

This concession also applies to members of the employee's family who usually live with the employee and extends to accommodation and/or meals en route.

Where the benefit is an expense payment fringe benefit, proof of the expenditure must be provided to the NSW Agency.

Where car expenses are reimbursed that have been calculated on a cents-per-kilometre basis, a declaration must be obtained (see Appendix 1). The maximum reduction is 50% of the amount that would be paid if the reimbursement were to be calculated on a cents-per-kilometre basis per the rates used by the ATO.

This concession is not restricted to one trip per year for the employee and their family.

15.3.4 Overseas employment holiday transport

s61A

Holiday travel provided to employees posted overseas is given concessional FBT treatment in certain circumstances.

Where the benefit is provided as part of an award agreement or is customary within the employee's industry and is provided for at least three working days, the taxable value of the benefit may be reduced as follows:

- where the travel is to the employee's home country, 50% of the actual cost of the travel; or

- where the travel is not to the employee's home country, 50% of the **benchmark travel amount** (i.e. the cost of a return economy airfare to the home location at the time of commencement of the holiday).

The employee must be living away from home to qualify for the concession.

This concession also applies to members of the employee's family who usually live with the employee and extends to accommodation and/or meals provided en route.

The concession also applies where the travel is for a spouse or child who does not live with the employee. The travel can be between any place and the place at which the spouse or child meet the employee.

Where the benefit is an expense payment fringe benefit, proof of the expenditure must be provided to the NSW Agency.

Please note that this treatment may change from 1 July 2012.
See Chapter 8 for more detail regarding this type of benefit.

15.3.5 Relocation transport

s61B Where an employee undertakes relocation transport using their own car and is reimbursed on a cents-per-kilometre basis, the total amount reimbursed can be reduced by the amount which would have been reimbursed as calculated in accordance with the ATO's prescribed cents-per-kilometre benchmark rates, which are adjusted annually by the Commissioner.

TD 2011/5 The rates applicable to the FBT year commencing 1 April 2012 are:

Engine Capacity	Rate per Kilometre
0 – 2500cc	46 cents
Over 2500 cc	55 cents
Motor Cycles	14 cents

To qualify for the concession, a declaration must be provided (see Appendix 3).

15.3.6 Relocation - temporary accommodation

s61C The taxable value of a fringe benefit provided as temporary accommodation (including the leasing of household goods) may be reduced to nil if it is provided to an employee who is required to change their usual place of residence for employment reasons.

This reduction is discussed further in Chapter 7.

15.3.7 Relocation - meals

s61D The payment or reimbursement of an employee's expenses (including expenses for family members) for meals while they are staying in a hotel, motel, hostel or guesthouse (where the accommodation qualifies for the temporary accommodation exemption explained above) will be concessionally taxed at a value of two dollars per meal (or one dollar if the family member is under twelve years of age).

15.3.8 Employment interview and selection test expenses

s61E A reduction applies where an employee travels in their own car solely for the purpose of attending an interview or selection test in connection with an application for a new job, promotion or transfer in employment and is reimbursed on a cents-per-kilometre basis for the car expenses incurred.

The total amount reimbursed can be reduced by the amount which would have been reimbursed as calculated in accordance with the benchmark rates, which are adjusted annually by the Commissioner. The rates have been set out in 15.3.5 above. A declaration also must be completed (see Appendix 4).

15.3.9 Work-related medical screening, preventative health care, counselling or migrant work training

s61F Where a cents-per-kilometre reimbursement is provided for the use of an employee's car to attend a work-related medical examination or screening, preventative health care, counselling session or migrant language training the taxable value is calculated by reducing the reimbursement amount by the motor vehicle expenses calculated using the ATO's prescribed cents-per-kilometre rates.

The total amount reimbursed can be reduced by the amount which would have been reimbursed as calculated in accordance with the benchmark rates, which are adjusted annually by the Commissioner. The rates have been set out in 15.3.5 above.

A declaration must also be completed (see Appendix 5).

15.3.10 In-house fringe benefits

s62 If during an FBT year, a NSW Agency provides one or more in-house fringe benefits to an employee, the aggregate taxable values of these benefits may be reduced by $1,000.

In-house benefits are generally those which are identical or similar to the benefits provided to customers in the NSW Agency's ordinary course of business.

Specific records of these fringe benefits provided need not be maintained if the employer is satisfied that the value of the benefits provided in the year is expected not to exceed the $1,000 limit.

15.3.11 Living-away-from-home-allowance fringe benefits

s63 A living-away-from-home allowance (LAFHA) fringe benefit is an allowance paid to an employee as compensation for additional expenses and other disadvantages associated with having to live away from the employees usual place of residence in order to perform duties of employment.

Potential reductions in the taxable value of a LAFHA are discussed at Chapter 8 of this FBT Manual.

Please note that this treatment may change from 1 July 2012.
See Chapter 8 for more detail regarding this type of benefit.

15.3.12 Education of children of overseas employees

s65A

The reimbursement by the NSW Agency of the full-time education costs of an overseas employee's children, including school fees, school uniforms, textbooks and school excursions, during the employee's Australian assignment will be an exempt benefit for FBT purposes, provided that the employee is living away from home and the following conditions are satisfied:

- the employee's children are less than 25 years of age on the day the benefit was provided
- the education is full-time, and provided either at an educational institution or by a tutor
- it is customary for the industry in which the NSW Agency operates in to provide these education benefits to employees in similar circumstances
- documentary evidence of the expenditure is given to the NSW Agency.

There is no requirement for the employee's children to be studying in Australia.

Please note that this treatment may change from 1 July 2012. See Chapter 8 for more detail regarding this type of benefit.

15.3.13 Remote area home ownership schemes

s65CA, 65CC

Concessions may apply to allow for the amortisation of fringe benefits that are provided in connection with remote area home ownership schemes. The amortisation period is generally five to seven years.

Such benefits may be:

- a discount on the purchase of a home or of land on which to build a home
- a reimbursement of the cost of buying land and/or building a home; or
- an option fee entitling the NSW Agency to first choice in repurchasing the home.

To obtain the concession, there must be a restriction on the employee's freedom to sell the house during the amortisation period and the remote area home ownership scheme must be genuine.

If the home is repurchased by the NSW Agency during the amortisation period, then the unamortised balance is brought to account in that year's FBT return.

Where an employee suffers a loss in selling the home back to the NSW Agency as a result of a contractual buy-back arrangement, then 50% of that loss may be deducted from the NSW Agency's aggregate taxable values in that FBT year.

Appendix 1
Otherwise deductible declaration

I, _____ on behalf of
(name of person authorised to make declaration)

_____ , declare that the benefits
(name of employer)

described below, and provided during the FBT year from 1 April _____ to 31 March _____ are payments or reimbursements of expenses which, under the otherwise deductible rule, would have a taxable value of nil.

_____

_____

_____

_____

(show sufficient detail to enable identification of the relevant benefits)

Signature: _____

Date: _____

Appendix 2
Remote area holiday transport declaration

Section A

I, _____ declare that, for the purposes of having a holiday of not less than three days

_____

(state who travelled eg, self, self and family)

travelled on _____20___ by_____
(state mode of transport)

from _____ to _____
(place of departure) (destination)

I also declare that expenses of $ _____ were incurred by me on transport, accommodation and meals in undertaking that holiday travel; and I returned to my work location on _____ 20 _____

(delete if the travel was not undertaken by self)

Section B

(Complete if some or all of the transport expenses reimbursed by the employer were car expenses and the reimbursement was calculated on a cents-per-kilometre basis)

I declare that the travel was undertaken in my car (or a car leased by me) and that:

The car is _____

(state make and model of car and whether rotary engine or not)

with an engine capacity (in cubic centimetres) of_____

The total number of kilometres travelled in the car between the places of departure and destination (including the return journey) was_____.

The number of family members (apart from myself) travelling in the car

was_____.

The amount of the cents-per-kilometre car expenses reimbursed included in the total expenses declared above is $_____.

Signature: _____

Date: _____

Appendix 3
Relocation transport declaration

I, _____

declare that, for the purposes of relocating my place of residence,

_____

(state who travelled eg, self, self and family, etc)

travelled in my car from _____
(state place of departure)

to _____ on _____ 20_____

(destination)

The car is _____
(state make and model of car and whether rotary engine or not)

with an engine capacity (in cubic centimetres) of _____.

The total number of kilometres travelled in the car between the places of departure and destination was _____and the number of family members (apart from myself) travelling in the car was _____ .

Signature: _____

Date: _____

Appendix 4
Declaration for car travel to employment interview

I, _____

declare that on _____ 20 ____

I travelled in my car for the purpose of attending an employment

interview/employment selection test (delete whichever is not applicable) from _____ to _____
(state place of departure) (destination)

The car is _____

(state make and model of car and whether rotary engine or not)

with an engine capacity (in cubic centimetres) of _____.

The total number of kilometres travelled in the car on the journey (including any return trip) was _____

Signature: _____

Date: _____

Appendix 5
Declaration for car travel to work-related medical examination, medical screening, preventative health care, counselling or migrant language training

I, _____declare that

on _____20_____

_____

(state who travelled eg, self, self and family, etc)

travelled in my car to attend:

- work-related medical examination;
- work-related medical screening;
- work-related preventative health care;
- work-related counselling;
- migrant language training.

(delete those that do not apply)

The travel was from _____ to _____

(state place of departure) (destination)

The car is _____

(state make and model of car and whether rotary engine or not)

with an engine capacity (in cubic centimetres) of _____.

The total number of kilometres travelled in the car on the journey (including any return trip) was _____.

Signature: _____

Date: _____

Chapter 16: Reportable Fringe Benefits

Contents

16.1 Overview

Ch 5 - FBT: A Guide for Employers

The grossed-up taxable value of most fringe benefits provided to an employee during an FBT year are required to be reported on that employee's annual payment summary for the financial year in which the FBT year ends.

Part XIB

For example, when an employee receives fringe benefits between 1 April 2011 and 30 June 2012, they will receive a payment summary in July 2012 showing the reportable fringe benefits received up to 31 March 2012 (i.e. the end of the FBT year). In the following July 2013 they will receive a payment summary showing the reportable fringe benefits received during the period 1 April 2012 to 30 June 2013.

The grossed-up taxable value is only reported if the employee's individual fringe benefits amount (IFBA) is more than $2,000. The IFBA is the employee's total aggregate taxable value of all fringe benefits for the year, except for the taxable value of any excluded fringe benefits.

ATO Fact Sheet: Reportable fringe benefits – facts for employees

The amount reported is called the employee's reportable fringe benefits amount (RFBA).

Whilst the employee does not pay personal income tax on the reportable fringe benefits amount, it will be used for income-tested government benefits and obligations, such as:

- Medicare levy surcharge
- Medicare levy surcharge lump sum payment in arrears tax offset
- deductions for personal super contributions
- super co-contribution
- tax offset for contributions to the employee's spouse's super
- mature age worker tax offset
- Higher Education Loan Program (HELP) and Financial Supplement repayments
- various dependent tax offsets
- housekeeper tax offset
- senior Australians tax offset
- pensioner tax offset
- child support obligations
- entitlement to certain income-tested government benefits.

16.2 Are any benefits excluded from the reporting requirement?

The taxable values of all fringe benefits are included in an employee's individual fringe benefits amount, unless they are **excluded fringe benefits**.

S5E(3)

16.2.1 Excluded fringe benefits

Excluded fringe benefits continue to be subject to FBT but are not required to be reported on an employee's payment summary. Excluded fringe benefits include:

- car parking fringe benefits (but not car parking expense payments)
- meal entertainment (and any associated travel and accommodation)
- benefits that have a taxable value that is is wholly or partly attributable to entertainment leasing facilities
- remote area residential fuel
- remote area housing assistance
- freight costs for food provided to employees living in a remote area
- costs of occasional travel to a major Australian population centre by employees and their families living in a remote area
- benefits provided to address a security concern relating to the personal safety of an employee, or an associate of the employee that arises in respect of the employee's employment

Fringe Benefits Tax Regulations 1992

There are also a number of other benefits that are excluded from being reported on an employee's payment summary through the FBT regulations. These include, for example, certain benefits provided to members of the police force. Each agency should review these specific exclusions to determine whether they apply to their agency.

From 1 April 2007, where a car is provided by an employer and the provision of this car gives rise to a car fringe benefit for more than one employee, those car fringe benefits will be excluded fringe benefits.

The reporting exclusion only applies to a car that is provided to employees under direction and consent of the employer. As such, a car that is provided to an employee under a novated lease arrangement will not satisfy this reporting exclusion as the employer and the employee enter into the novated arrangement, but where the employee then provides the car to another employee, this is not under the direction and consent of the employer.

16.3 What amount is reported on the payment summaries?

s135P If an employee's IFBA (i.e. the taxable value of all benefits except excluded fringe benefits for the FBT year) is more than $2,000, the payment summary will report the employee's RFBA.

The RFBA is calculated by grossing up the employee's IFBA by 1.8692.

If the employee's IFBA is $2,000 or less, there will be no RFBA.

RFBA = IFBA x 1.8692

For example:

If the IFBA is…	x 1.8692 =	The RFBA will be…	And therefore, reportable?
$2,500	$4,854	$4,673	Yes
$1,500	$2,803	Nil (because IFBA < $2000)	No

s135P(2) The gross-up rate of 1.8692 is used to convert the benefit into a gross salary equivalent at the top marginal tax rate.

The gross-up rate is 1.8692 regardless of whether the fringe benefit provided was a Type 1 or Type 2 benefit.

16.4 What happens if an employee ceases employment?

Where an employee in receipt of reportable fringe benefits ceases employment between 1 April and 30 June, the employee will receive a payment summary in July of that year showing the reportable fringe benefits received up to 31 March (i.e. the end of the FBT year). In the following July the employee will receive a payment summary showing the reportable fringe benefits received during the period 1 April to the date employment ceased.

For example, if an employee ceases employment on 15 June 2011 and received fringe benefits from April 2011 to 15 June 2011 such that the RFBA was $4,500, the employee would receive a payment summary for the year ended 30 June 2011as well as a payment summary for the year ended 30 June 2012 disclosing only the $4,500 RFBA (i.e. no salary or wages).

If a departing employee requests a payment summary, the NSW Agency is normally required to issue a payment summary within 14 days of termination. Where the employee has a RFBA for the year, the NSW Agency is not required to issue a payment summary prior to the standard date of issue (usually 14 July). The allocation of the taxable value will only need to be undertaken at year-end, even in the case of terminated employees.

16.5 Shared benefits

s5F

Where the fringe benefit is provided to two or more individuals a shared fringe benefit will arise. Common examples are cars (especially pool cars) and housing. Please note that the shared car reporting exclusion discussed above at 16.2.1 may apply to certain cars.

s5F(4)

The reportable fringe benefit provisions state that the allocation of such shared benefits to employees must reasonably reflect the benefits received by each employee, taking account of all relevant matters. NSW Agencies will need to take into account all relevant factors, such as usage of the benefit, to determine the most equitable method of allocation.

The sum of the employees' shares of the taxable value of the benefit must equal the total taxable value of the benefit. No portion of the taxable value of the fringe benefit can remain unallocated between employees.

It is desirable (but not required within the tax law) for the NSW Agency and its employees to agree to a reasonable method of apportionment prior to the employees receiving a fringe benefit. If the NSW Agency independently selects an allocation method, it is imperative they communicate the details to the relevant individuals as soon as possible to avoid employee grievances in the future.

16.6 Substantiation

NSW Agencies will need to ensure sufficient records are maintained to verify the allocation and calculations of all reportable fringe benefits to employees. These records may also be required in the event of an ATO audit.

Chapter 17: Salary Packaging

Contents

17.1 Overview

This chapter provides generic information about the FBT aspects of salary packaging. The extent to which an employee can salary package is a policy decision made by each NSW Agency.

Salary packaging can be advantageous from both employer and employee perspectives. From an employer's perspective, it assists in attracting and rewarding staff without necessarily increasing the cost of employment. From an employee's perspective, it offers flexibility in remuneration and potential tax savings.

A successful salary package needs to be appropriately designed for the particular employee's personal circumstances. The employee should seek independent financial advice before entering into any salary packaging arrangements.

17.2 What is salary packaging?

Salary packaging is the process of arranging, on a prospective basis, an employee's total remuneration between cash salary and fringe benefits. Cash salary is subject to Pay As You Go Withholding, while non-cash benefits are generally subject to FBT.

Where an employee chooses to take advantage of salary packaging, the employee's gross (i.e. pre-tax) salary for income tax purposes is reduced by the value of the chosen benefits and the associated FBT. Cash salary is sacrificed for non-cash benefits.

17.3 Effective and valid salary packaging

TR 2001/10

Salary packaging must occur on a **prospective** basis. Once an employee has earned an amount of income, that income is taxable in the recipient employee's hands and cannot then be taken in a non-cash form.

As a general rule, there are no limitations imposed by either the legislation or the ATO on the amount of salary that can be packaged. For the majority of employees, salary packaging below a certain level will become uneconomic as the cost of the FBT associated with fringe benefits will exceed the employee's marginal tax rate.

Employers generally will not accept packaging cash salary below the relevant industrial award (or other instrument) minimum salary level.

17.4 What items should be packaged?

While dependent upon the individual employee's personal circumstances, it is usually beneficial to salary package items that receive concessional FBT treatment, such as:

- benefits that are specifically exempt from FBT (e.g. superannuation)
- benefits where the taxable value is calculated using a concessional formula (e.g. cars)
- benefits where the taxable value is specifically reduced (e.g. remote area holiday transport)
- benefits where the taxable value can be reduced by the otherwise deductible rule (e.g. self-education expenses, income protection insurance, tax agent fees).

In the situation where the employing NSW Agency is a concessionally taxed employer (e.g. a hospital), it is usually beneficial for employees to package any items up to the limit of the cap (refer to Chapter 1 for further information).

Exempt benefits are discussed in Chapter 14.

Miscellaneous concessions are discussed in Chapter 15.

17.5 Salary packaging employee contributions

Any amount salary sacrificed by an employee towards a fringe benefit (i.e. paid out of pre-tax income) is **not** considered to be an employee contribution for FBT purposes.

Any employee contribution for FBT purposes must be paid out of the employee's after-tax income.

17.6 Reportable fringe benefits

As discussed in Chapter 16, employers are required to report the grossed-up taxable value of fringe benefits on the payment summary of any employee who receives relevant benefits with a total taxable value in excess of $2,000. Benefits are reported irrespective of whether they are provided under, or addition to, a salary package.

While the employee does not pay personal income tax on the reportable fringe benefits amount, it will however be used for income-tested government benefits and obligations, such as:

- Medicare levy surcharge
- Medicare levy surcharge lump sum payment in arrears tax offset
- deductions for personal super contributions
- super co-contribution
- tax offset for contributions to the employee's spouse's super
- mature age worker tax offset
- Higher Education Loan Program (HELP) and Financial Supplement repayments
- various dependent tax offsets
- housekeeper tax offset
- senior Australians tax offset
- pensioner tax offset
- child support obligations
- entitlement to certain income-tested government benefits.

17.7 Reconciliations

Salary packages need to be reconciled at least annually and prior to an employee's termination of employment with the NSW Agency. This process involves reconciling the estimated amounts made by the employee at the start of the salary package with the actual charges (costs and FBT) made against it.

Any over/under packaged amount will usually be paid out to the employee as salary or recovered from the employee's pre-tax salary in a subsequent pay-run.

There is a need to establish effective and reliable communication procedures between the Package Administration Officer, the Fringe Benefits Tax Officer, the Accounts Payable area and the Payroll area in regard to salary packaging information flow. This is important to ensure compliance with the FBT legislation and accuracy of the reconciliation process.

The end of the FBT year or the end of the financial year are appropriate times for the annual reconciliation to occur. This allows the accounts to be cleared prior to year end and allows for actual FBT details to be used. Responsibility for this procedure rests with the Package Administration area, and the process is based on actual FBT data provided by the Fringe Benefits Officer. Information should flow to the NSW Agency's general ledger to clear the salary sacrifice suspense account.

17.8 Administration Costs

Salary packaging arrangements are time-consuming to administer. They involve managing, tracking and processing expenses and adjusting payroll details, as well as maintaining sufficient data to comply with the employer's various tax obligations.

The administration of salary packaging arrangements is often outsourced to a specialist third party provider.

An administration fee may be charged to employees who have salary packaging arrangements. These fees can also be salary packaged.