

What's up in fringe benefits tax?

By Paul Mather CA

If you weren't already aware, preparing the fringe benefits tax (FBT) return for 2013 and individual employee reportable fringe benefit amounts is likely to be far more challenging than usual. With significant reform over the past few years, including measures targeting the effectiveness of salary packaging, the checklist of things to watch out for and things to do is longer than ever.

Ironically, many employers, particularly in relation to the Living Away From Home (LAFH) benefit changes, may find themselves a bit like the government with a budget deficit, once they've prepared the FBT returns.

This article will look at the key law changes, the challenges faced, how to manage these changes when preparing the FBT return, and a recap on what the ATO is up to.

The changes

Living Away From Home Allowances (LAFHAs)

After the rollercoaster of announcements since November 2011 about changes to the LAFHA laws, the government finally provided some certainty in September 2012. However it didn't allow employers and their employees (or the ATO for that matter) much time to understand, absorb, manage and communicate the changes.

From 1 October certain LAFHAs became taxable to the employer. The law changes limit the concessional tax treatment of living-away-from-home (LAFH) allowances and benefits to those provided to employees (other than those working on a 'fly-in fly-out' or 'drive-in drive-out' basis) for a maximum period of 12 months who maintain a home in Australia (at which they usually reside) for their immediate use and enjoyment at all times while living away from that home for their work; and have provided their employer with a declaration about living away from home.

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Special rules apply to employees who are working on a fly-in fly-out or drive-in drive-out basis. Certain conditions must be satisfied to be one of these employees, and to receive the concessional tax treatment. These employees do not have to maintain a home in Australia and the 12-month time limit on concessional tax treatment does not apply.

What are the transitional rules?

Transitional rules apply to permanent residents who have employment arrangements for LAFH allowances and benefits in place prior to 7.30pm (AEST) on 8 May 2012. These employees are not required to maintain a home in Australia for their immediate use and enjoyment at all times for the concessional treatment to apply, and the concession is not limited to a maximum period of 12 months until the earlier of 1 July 2014 or the date a new employment contract is entered into, or the existing contract is varied in a material way.

Transitional rules also apply to temporary residents who maintain a home in Australia for their immediate use and enjoyment at all times and has employment arrangements for LAFH allowances and benefits in place prior to 7.30pm (AEST) on 8 May 2012. These employees will have until the earlier of 1 July 2014 or the date a new employment contract is entered into or the existing contract is varied in a material way before the concessional treatment is limited to a maximum period of 12 months.

What are the compliance challenges?

While the government has tightened the eligibility rules, it has also restricted the exemption basis for accommodation and increased the substantiation requirements for accommodation and food.

1. Accommodation

By ensuring that the FBT exemption

applicable to accommodation is limited to the actual employee expense, the reasonableness test that existed prior to 1 October 2012 has been removed. In addition, it is necessary for substantiation to be maintained by the employee or the employer. This may be problematic and, at this early stage, it would appear preferable for the employer to maintain the supporting evidence of accommodation expenses and to retain for the required five years.

2. Food

Where an employer provides a LAFH food benefit in excess of the ATO reasonable amount, it will be necessary for the employee to provide substantiation to support all of the food expenses, not just the excess.

3. Employee agreements

By now most employers should have considered the LAFH arrangements for each employee, including the application of the transitional rules, and determined what would be paid or provided to the employees from 1 October 2012. Contractually, whether by individual or collective agreement, many employers will be left with a FBT liability.

What are the FBT return challenges?

In respect of the LAFHA changes, the following require consideration when planning for and preparing the 2013 FBT returns:

1. The application or not of the transitional rules (generally only applies to permanent residents)
2. In relation to accommodation, the substantiation requirements are such that it will be necessary to obtain evidence of actual payment
3. Where the accommodation allowance is greater than the actual expense, the excess is subject to FBT
4. Contracts will need to clearly show the split between accommodation & food components

5. Where the food component is greater than the ATO reasonable amounts, it will be necessary to obtain full substantiation from the employee

6. Where the food component is greater than the ATO reasonable amounts, future restructuring should be contemplated

7. Where the accommodation component is greater than the actual expense, future restructuring should be contemplated. Finally, obtaining a declaration from each employee prior to lodging the FBT returns is a must. And don't forget, a declaration is required from those whose LAFHA may have ended on 30 September 2012.

Salary packaged in-house benefits – removal of concession

From 22 October 2012, the government removed the concessional FBT treatment for in-house fringe benefits accessed by way of a salary sacrifice arrangement. A transitional measure will allow salary sacrifice arrangements already in place at 22 October 2012, to access the concession up to and including 31 March 2014.

In-house fringe benefits arise when employees receive goods or services from their employer or an associate of their employer that are identical or similar to those provided to customers by the employer or an associate of the employer in the ordinary course of business. Under the existing FBT concession, the taxable value of in-house fringe benefits is 75 per cent of either the lowest price at which an identical benefit is sold to the public or under an arm's length transaction, depending on the nature of the benefit, reduced by a further \$1000.

Cars in transition and under attention

Cars remain the largest single FBT revenue item for the government and usually represent the biggest risk area for employers. With a continuing and

Thresholds	Grandfathered Rates	Transitional Rates
0 – 14,999 kms	26 per cent	20 per cent
15,000 – 24,999 kms	20 per cent	20 per cent
25,000 – 40,000 kms	11 per cent	17 per cent
More than 40,000 kms	7 per cent	13 per cent

elevated level of attention from the ATO, management of cars from a FBT perspective must always be a priority.

Car reform & transition

While the car reforms commenced on 10 May 2011, we mustn't lose sight of the transitional rules and these will require continued monitoring through until 1 April 2014 when the flat rate of 20 per cent applies. Therefore, only two FBT return periods (2013 and 2014) remain where employers (and employees) will need to worry about such things as odometer readings and annualising of kilometres.

Cars provided prior to 10 May 2011, or where a pre-existing commitment was in place prior to that date, will continue to use the old statutory fractions (grandfathering) unless there has been a change in commitment. Changes made after 10 May 2011 to commitments existing prior to 10 May 2011, such as refinancing a car, altering the duration of an existing contract or changing employers, are new commitments and will therefore be subject to the new arrangements. Under the transitional rules, if the amendments (new commitments) do not apply at the start of an FBT year (or from the time the car was first held if that happens after the beginning of the FBT year), the amendments will instead begin to apply from the start of the next FBT year. Therefore, the key point is that while a car may be subject to the new rates, the application of the new rate may not occur until the first day of the next FBT year. This requires the 2013 FBT return preparers to flag these changes for the 2014 FBT return.

When preparing your 2013 FBT return, the choice of rates will depend

upon whether the old grandfathered rates continue to apply as a pre 10 May 2011 contract or if the car is included in the new transitional rates.

ATO focus

As mentioned, cars remain a major ATO focus. The ATO are targeting cars on a number of fronts.

Luxury cars and use of logbook

The ATO has focused closely on the use of logbooks in respect of luxury vehicles, especially high-end luxury sports cars.

Exempt cars

The ATO has undertaken a campaign targeting employers who have claimed exemption for vehicles and are not lodging FBT returns.

Employee contributions project

ATO analysis has identified that a high percentage of employers who report employee contributions in their FBT returns with the effect of reducing the taxable value of benefits, are failing to report those employee contributions as assessable amounts in their income tax returns and related GST liabilities in the periodic BAS. 

FBT GUIDANCE

Check out the Institute's online *FBT & Salary Packaging Series on LiveOne:*

- ▶ 6 March – Cars and salary packaging
- ▶ 13 March – Entertainment and LAFHA and other relocation related benefits.

Details at charteredaccountants.com.au/fbt2013