

Important year-end updates for Fringe Benefits Tax

21 March 2019

Explore more insights 

In brief

With the 2018-19 Fringe Benefits Tax (FBT) year end approaching on 31 March 2019, now is the time to take note of the updates and changes that have occurred, or have been proposed, throughout the year.

Throughout the 2019 FBT year, the focus has been on FBT compliance costs and uncertainty amongst taxpayers in relation to FBT positions. The Australian Taxation Office (ATO) has continued to seek consultation from the community and consider the possibility of simplifying compliance in many areas of FBT. Separately the Board of Taxation is undertaking a review of the costs in relation to FBT compliance and is seeking to provide recommendations to the Government in this regard.

This TaxTalk Alert outlines some of the key developments over the last year in relation to FBT.

In detail

Practical compliance guideline for exempt cars

On 11 July 2018, the ATO released [Practical Compliance Guideline PCG 2018/3 Exempt car benefits and exempt residual benefits: compliance approach to determining private use of vehicles](#) (PCG 2018/3).

This Practical Compliance Guideline (PCG) has been updated from the previously released draft PCG 2017/D14 and allows taxpayers to apply a practical compliance approach to determine the private use of an eligible exempt car or residual benefit for FBT purposes. PCG 2018/3 provides increased certainty and transparency for employers that claim FBT exemptions for minor, infrequent and irregular private use of exempt vehicles by employees and allows more taxpayers to benefit from reduced record keeping and reduced risk on audit.

To know more in relation to the practical compliance guidelines for exempt cars please refer to our [Tax Talk Alert](#), published on 18 June 2018.

Matters currently under consideration by the ATO

Deductible travel expenses and living away from home

During the 2018 FBT year, the ATO had released Draft Taxation Ruling [TR 2017/D6 Income tax and fringe benefits tax: when are deductions allowed for employee' travel expenses?](#). The intention of this draft ruling was to provide the ATO's updated interpretation of when an employee's travel expenses are deductible for income tax and FBT purposes, particularly when travel expenses could be considered 'otherwise deductible' for FBT purposes, and when an employee is living away from home (LAFH).

The ATO has now consulted with taxpayers and tax agents in regards to the draft ruling and having considered the comments received, it has announced that it intends to issue another revised draft ruling for further consultation. Although the release of another draft ruling suggests significant changes to the initial version, the ATO has not provided any indication of what changes may be made. It is understood that taxpayers are to rely on the current version of the draft ruling when preparing their 2019 FBT return, while the ATO is working on the updates.

For more information about travel expenses and LAFH, please see our [TaxTalk Alert](#), which was published on 28 June 2017.

Car parking

The ATO has flagged its intention to rewrite Taxation Ruling [TR 96/26](#), which deals with car parking benefits, to provide greater clarity to taxpayers following the decision of the Full Federal Court in *Commissioner of Taxation v Qantas Airways Ltd [2014] FCAFC 168*. The ATO has now reviewed the consultation received from stakeholders and identified issues for suitable inclusion into the rewrite of TR 96/26 and has announced that they [expect to release the draft ruling in early 2019](#).

FBT definition of a taxi

The ATO has flagged its intention to change its interpretation of the definition of 'taxi' contained within the *Fringe Benefits Tax Assessment Act 1986*, as part of its [Discussion Paper 2017/2 Fringe Benefits Tax – Definition of Taxi](#) (TDP 2017/2).

The issues identified in TDP 2017/2 consist of the limited definition of 'taxi', not including ride-sourced vehicles and its impact on the application to the FBT exemption for taxi travel undertaken to, or from, work, or due to illness. Following the decision of the Federal Court in *Uber B.V. v Commissioner of Taxation [2017] FCA 110*, and the proposed changes to taxi licensing, the ATO has stated that it considers it appropriate to review its interpretation of the definition of 'taxi' in the FBT Act and to adopt an interpretation that accepts that a taxi may include a ride-sourcing vehicle or other vehicle for hire.

Currently, the definition of taxi excludes ride-sourcing vehicles and hence is not able to qualify for the taxi travel exemption. However, the application of the minor benefits exemption may be considered for these expenses, subject to satisfying the minor benefit requirements.

Board of Taxation review of FBT compliance costs

In February 2018 the Board of Taxation (**the Board**) was tasked with a review of the compliance costs in relation to FBT in Australia, and sought to compare the results to those of other countries that have similar regimes.

The review has now progressed to the analysis phase after having received input from employer focus groups, multiple online surveys, interviews with employers in Australia, tax authorities and employers in comparable countries. As part of the responses the Board is considering issues such as: benefits provided to employees because they are necessary for the employees to be able to carry out their jobs, perception of taxpayers and tax agents towards compliance processes, and feedback from taxpayers on the aspects of FBT considered 'unreasonable'.

Based on the results of the above surveys and the insights found, the Board will be focusing on ways that the compliance process could be simplified, and compliance costs and red tape reduced.

Broadening the meaning of the phrase “permanent place of abode” in regards to the tax residency rules

[Harding v Commissioner of Taxation \[2019\] FCAFC 29](#) addressed the question of an individual's Australian tax residency for expatriates working overseas for an extended period of time. This is particularly relevant for the FBT treatment of benefits provided to such expatriates.

Mr. Harding had lived in the Middle East for more than 15 years, before returning to Australia in 2006. Three years later he took up a position in Saudi Arabia, where he occupied a fully furnished apartment as his temporary accommodation while he waited for his wife to join him. A few years later he separated from his wife who continued to stay in their family home in Australia. Mr. Harding then continued to live in Bahrain moving between a series of furnished apartments in the same residential complex.

At first instance, the Federal Court held that Mr. Harding was a resident of Australia, considering that the transient and temporary nature of his series of furnished apartments did not constitute a “permanent place of abode” outside Australia. This decision was overturned on appeal by the Full Federal Court which held that the reference to “place” in the “permanent place of abode test” was not strictly a reference to a person’s specific dwelling, but could instead be the town or country in which a person is permanently residing.

The Full Court accordingly concluded that Mr Harding’s “place of abode” was Bahrain, hence ruling that he was not a resident of Australia for tax purposes in the relevant income year.

As Australian non-residents for tax purposes may not be considered an ‘employee’ for the purposes of the *Fringe Benefits Tax Assessment Act 1986*, this decision may have a significant impact on the treatment of benefits provided to employees who have been living overseas for a significant period of time, but continue to reside in accommodation typically considered as being ‘temporary’ in nature, or are regularly moving between places of accommodation within a particular town or country.

For more information about tax residency for expatriates, refer to our [Tax Talk Alert](#) published on 25 February 2019.

Automation of FBT

The availability of technologies such as Machine Learning, Artificial Intelligence, Robotic Process Automation, etc. have recently proved to be relevant in tax compliance activities. Automating previously tedious and time consuming tax processes reduces the time and cost of compliance activities, and also helps manage large amounts of data more efficiently in order to arrive at the most appropriate tax position for each transaction.

The [2019 Paying Taxes](#) global report by PwC and the World Bank investigated and compared tax regimes across 190 economies worldwide and highlighted key insights in regards to technology leading to a significant decrease in the average time taken to comply with various taxes requirements. The report also identifies that the high performing economies are already utilising Machine learning and Artificial Intelligence algorithms along with real time, pre-populated tax returns to ease the compliance burden.

Given the complexity and administrative burden generally associated with FBT compliance, FBT has been an obvious target for automation. PwC has developed a suite of products to provide end-to-end FBT automation in order to help taxpayers with their FBT preparation processes, along with other solutions in the broader employment taxes area.

To learn more about the PwC suite of employment tax technology services, please [click here](#).

The takeaway

The FBT compliance process tends to be time consuming and stressful for employers given the amount of data that needs to be collated from different data sources, changes in positions and guidance provided by authorities, and the tight timelines that employers are expected to adhere to.

The ATO is attempting to provide guidance in the areas of FBT that it has identified to be areas that cause uncertainty for taxpayers, and the Board of Taxation is looking to provide recommendations to the Government to help simplify and reduce compliance costs. Technological solutions in the FBT space have

gone a long way to achieving time and cost efficiencies in the FBT preparation process and is viewed positively by the tax authorities. The use of analytics accordingly is becoming more commonplace in allowing a move away from positions that would otherwise lead to additional costs or risks under audit.

The 2018-19 FBT return is due to be lodged on 21 May 2019. Payment of the balance of any FBT liability (if required) is also required by this date. However, for organisations that lodge through PwC's electronic lodgement capability, an extension of time until 25 June 2019 is available, with the balance of any FBT liability due on 28 May 2019.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

Katie Lin, Sydney
+61 (2) 8266 1186
katie.f.lin@pwc.com

Greg Kent, Melbourne
+61 (3) 8603 3149
greg.kent@pwc.com

Stephanie Males, Canberra
+61 (2) 6271 3414
stephanie.males@pwc.com

Maria Ravese, Adelaide
+61 (8) 8218 7494
maria.a.ravese@pwc.com

Paula Shannon, Brisbane
+61 (7) 3257 5751
paula.shannon@pwc.com

Lisa Hando, Perth
+61 (8) 9238 5116
lisa.hando@pwc.com

© 2019 PricewaterhouseCoopers. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers a partnership formed in Australia, which is a member firm of PricewaterhouseCoopers International Limited, each member firm of which is a separate legal entity. This publication is a general summary. It is not legal or tax advice. Readers should not act on the basis of this publication before obtaining professional advice. PricewaterhouseCoopers is not licensed to provide financial product advice under the Corporations Act 2001 (Cth). Taxation is only one of the matters that you need to consider when making a decision on a financial product. You should consider taking advice from the holder of an Australian Financial Services License before making a decision on a financial product.