

# Important year-end updates for Fringe Benefits Tax

28 February 2020

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## ***In brief***

With the 2019-20 Fringe Benefits Tax (FBT) year-end approaching on 31 March 2020, now is the time to take note of the updates and developments throughout the year.

For instance, during the 2020 FBT year, there have been a number of proposed developments which may cause some uncertainty amongst taxpayers in relation to their FBT positions. Furthermore, 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.

This TaxTalk Alert outlines some of the key FBT developments over the last year that employers should take note of when undertaking the annual FBT compliance process.

## ***In detail***

### ***Matters currently under consideration by the ATO***

#### *Deductible transport expenses*

During the 2020 FBT year, the ATO released Draft Taxation Ruling [\*TR 2019/D7 Income tax: when are deductions allowed for employees' transport expenses?\*](#). This draft ruling is intended to provide the ATO's updated interpretation of when an employee's work-related transport expenses are deductible for income tax and FBT purposes.

Importantly, TR 2019/D7 only partially replaces its predecessor TR 2017/D6. While TR 2017/D6 covered the deductibility of both transport and other travel expenses (such as accommodation and incidentals), TR 2019/D7 provides updated guidance in relation to transport expenses only. Transport expenses may relate to costs incurred for travel by airline, train, taxi, car, bus, boat or other vehicles.

Other travel costs, such as accommodation and incidentals, or other transport situations, such as for self-education or itinerant workers, continue to be addressed in other relevant ATO rulings (including TR 2017/D6).

While the relevant factors for determining deductibility of transport expenses in TR 2019/D7 are not wholly consistent with the equivalent factors contained in TR 2017/D6, TR 2019/D7 reaffirms the following general principles, which were established in TR 2017/D6:

- An employee's costs of travelling between home and a regular place of work are not deductible;
- Travel expenses incurred in the performance of an employee's employment duties are deductible.

TR 2019/D7 also clarifies the application of these general principles, indicating that employers should look beyond the categories of travel established within TR 2017/D6 to consider the nature of the

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relationship between an employee's employment and the relevant travel expense, so as to make an appropriate conclusion regarding the deductibility of a travel expense.

Once finalised, the views expressed in TR 2019/D7 are proposed to apply to income years and FBT years commencing before and after its date of issue.

For more information about the above, please see our [TaxTalk Alert](#) dated 18 December 2019.

#### *Deductibility of work expenses*

On 6 November 2019, the ATO released Draft Taxation Ruling [TR 2019/D4 Income tax: employees: deductions for work expenses under section 8-1 of the Income Tax Assessment Act 1997](#). Due to the application of the 'otherwise deductible' for FBT purposes, it is recommended that this ruling be considered in undertaking the annual FBT compliance process.

This draft ruling sets out the requirements for deductibility of work expenses, and also includes a comprehensive list of related ATO taxation rulings, interpretative decisions and law administration practice statements covering specific rules for the deductibility of a range of different work-related expenses.

Importantly, this draft ruling includes the ATO's current view on the apportionment of expenses that are partially work-related and partially private in nature. The ATO suggests that "where there is no obvious method of apportionment, it is to be done on a fair and reasonable basis", which depends on the facts and circumstances relating to the expense. A time-based apportionment is mentioned as a common approach in such circumstances. This appears to be inconsistent with previous commentary by the ATO in TR 98/9 which addressed the deductibility of self-education expenses incurred by an employee or a person in business, where the ATO's position was that travel expenses could be considered deductible if the predominant purpose of the travel was work-related and any private portion was merely incidental to the work-related purpose of the travel.

Submissions in response to this draft tax ruling were due by 6 December 2019, and the ATO is currently considering these submissions before releasing the final taxation ruling.

#### *Car parking*

The ATO has [indicated](#) that from February 2020, it may begin contacting employers who have engaged an arm's length valuer as required under the market value method to determine the taxable value of car parking fringe benefits. The ATO has observed that in some instances, valuers have prepared reports using a daily rate that does not reflect the market value.

In addition, last year the ATO has issued Draft Taxation Ruling [TR 2019/D5: Fringe benefits tax: Car parking benefits](#) which sets out the Commissioner of Taxation's preliminary views of when the provision of car parking to employees will constitute a car parking benefit for the FBT purposes.

A previous ruling TR 96/26, which is now withdrawn, expressed the view that car parking facilities that have a primary purpose other than providing all-day parking (for example, hourly parking at a hospital, university, shopping centre or airport car park), were not commercial parking stations for FBT purposes.

TR 2019/D5 brings the Commissioner's view in line with the *Qantas Airways* and *Virgin Airlines* decisions in the Administrative Appeals Tribunal and Federal Court, in that, if a car park allows all-day parking but this is discouraged due to its higher fee structure, the car park may still be considered a commercial parking station if it satisfies the other relevant FBT requirements. Accordingly, there is now potentially a greater FBT exposure on employer-provided car parking where such a special purpose car park is located within a one-kilometre radius.

When this ruling is finalised, it will broadly apply to car parking benefits provided in FBT years commencing before and after its date of issue. However, an exception applies given the changed

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interpretation of special purpose car parking, where the updated view will only apply to car parking benefits provided from 1 April 2020. The period for providing comments on the draft ruling closed on 17 January 2020 and the ATO is currently considering the submissions, before it will release the final ruling.

For more information concerning the ATO's draft ruling on car parking, please see our [TaxTalk Alert](#), dated 20 November 2019.

### ***Proposed legislative amendments – FBT definition of a 'taxi'***

[Legislation](#) is currently before Federal Parliament to amend the existing FBT exemption for certain taxi travel to include a broader range of transport services including ride sharing services. Specifically, a Bill proposes to amend the FBT law to replace the references to a 'taxi' with 'a motor vehicle used for taxi travel (other than a limousine)'.

The term 'taxi travel' is defined as having the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*, namely, 'travel that involves transporting passengers by taxi or limousine, for fares'.

The change is proposed to apply to the 2019-20 FBT years and later FBT years. It is hoped that the measure will have completed its passage through Parliament and have commenced by the time that the 2019-20 FBT returns are being completed.

### ***Remote area tax concessions and payments***

On 26 February 2020, the Productivity Commission [released its report](#) into remote area tax concessions and payments. The report considered the effect of the zone tax offset, remote area allowance and remote area concessions for FBT on individuals and businesses in remote areas and made a number of recommendations in relation to whether these remote area tax concessions and payments should continue in their current form.

The report found that while some of the remote area FBT concessions were justified, a number of the current concessions err on the side of being overly generous. As a result, the Productivity Commission proposed a number of significant changes in relation to remote area FBT concessions, including changes to the FBT exemption for remote area housing whereby the exemption would be replaced by a 50 per cent reduction.

Following the release of this report, the Federal Government has [issued its response](#) to the report and recommendations made by the Productivity Commission:

*Were they to be implemented, the Productivity Commission's recommendations would result in significant disruption to existing arrangements. This was confirmed by the volume of submissions which the Productivity Commission received in response to its draft report, the overwhelming majority of which were not supportive of the proposed changes.*

*Given the challenges faced by regional Australia, including as a result of the impacts of the recent drought, bushfires and now Coronavirus, the Government will not be acting on the Productivity Commission's recommendations.*

*The most important thing we can do at this time is continue to provide certainty and confidence to those living in regional areas that the Government remains fully committed to supporting the growth of our regions and their continued success into the future.*

As such, it appears that the recommendations of the Productivity Commission will not be implemented at this stage, and there will not be any changes to the remote area FBT concessions for the foreseeable future.

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## ***Automation of FBT***

The availability of technologies such as Machine Learning, Artificial Intelligence, Robotic Process Automation, etc. continues to improve and have increasing relevance 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 [\*2020 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 for lodgment.

The ATO is attempting to provide guidance in the areas of FBT that it has identified to be areas that cause uncertainty for taxpayers to help simplify and reduce compliance costs. Technological solutions for FBT compliance 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 is also becoming more commonplace in allowing a move away from positions that would otherwise lead to additional costs or risks under audit.

The 2019-20 FBT return is due to be lodged on 21 May 2020. 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 lodgment capability, an extension of time until 25 June 2020 is available for lodging the return, with the balance of any 2019-20 FBT liability due on 28 May 2020.

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## ***Let's talk***

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

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