Fringe Benefits Tax update and year-end reminders

28 February 2017

In brief

With the 2016-17 Fringe Benefits Tax (FBT) year-end fast approaching, now is the time to begin preparations for completing your organisation's annual FBT return. The lead up to the 31 March year-end requires detailed planning and appropriate resourcing to ensure that relevant data is captured and available to you to enable the return to be lodged on time.

Whilst, relative to previous years, there has been a limited level of FBT reform to be abreast of in preparing this year's return, there still are a few legislative and administrative changes to bear in mind. Additionally, recent case law has bought with it the need to review historical tax positions and in particular, consider whether any of these need to be revised. Indeed, behind the scenes, the Australian Taxation Office (ATO) is currently preparing draft Public Rulings to provide updated guidance on a range of benefits. In particular, living-away-from-home assignments, business travel and car parking are being reviewed to reflect modernised arrangements.

Outlined below are some issues employers need to give particular attention to this FBT season.

In detail

Legislative and administrative changes

- **Salary packaged meal and other entertainment benefits:** From 1 April 2016, for employers that provide meal entertainment and entertainment facility leasing expense benefits through salary packaging, the following changes apply:
    - all relevant packaged entertainment benefits are now considered to be reportable benefits;
    - the 50-50 split method and 12-week register method cannot be used for valuing the packaged entertainment benefits; and
    - for FBT-exempt and rebateable employers, relevant packaged entertainment benefits will be included in existent capping, however to the extent that the capping is breached, the applicable caps can be increased by the lesser of $5,000 and the total grossed-up value of relevant packaged entertainment benefits.

- **Otherwise deductible rule and work-related car expenses:** From 1 April 2016, for work-related expenses when using a private car, the previous declaration method that provided a fixed 33.33 per cent otherwise-deductible reduction, based on a car exceeding on average 96 business kilometres a week, has been removed.
    - Employers are still able to apply the otherwise deductible rule using the 'logbook method', and where logbooks have not been maintained, by using the alternative 'business use declaration

method' which provides a deduction based on the business use of the car which is capped at 33.33 per cent of the taxable value of the fringe benefit.
    - The key change therefore is the removal of the automatic/fixed 33.33 per cent previously available where a car exceeded 96 business kilometres per week, noting that in the absence of logbooks, employees can still declare a relevant business use percentage up to a maximum value of 33.33 per cent.

- **Safe harbour to apply the operating cost method to fleet cars:** From 1 April 2016, for employers with a fleet of 20 or more 'tool of trade' cars, provided that the cars are employer-chosen, not packaged and cost less than the luxury car limit, where valid log books are held for at least 75 per cent of the fleet, an average business use percentage can be applied to the fleet. It is important to note that this is an optional approach. If chosen, some cars may have a higher taxable value due to the averaging approach, which may result in higher reportable-fringe-benefit-amounts for the employee driver. We recommend consideration of all aspects before choosing this approach.

Review of tax positions based on recent case law

- **The *John Holland* decision, modernised tax deductible travel and a new draft Public Ruling 'in the wings':**
    - Back in 2014, the ATO had consulted with industry bodies to review the need to provide detailed guidance in relation to the distinction between 'travelling' and 'living-away-from-home'. The consultation process identified the need for a Public Ruling that provides certainty on the deductibility implications of travel expenses for current day work practices, noting in particular the often-stringent application of the '21 day' rule and the associated impact.
    - More recently, the Full Federal Court in *John Holland Group Pty Ltd & Anor v. Commissioner of Taxation* [2015] FCAFC 82 found that employees engaged on a short-term project (in Geraldton) on a Fly-In-Fly-Out basis (including some on Monday-Friday rosters) would have been able to claim a personal tax deduction for the flights costs (to travel between the project location and the home location airport) had they incurred those costs directly.
    - Given the above, and in the knowledge that public guidance that is more in keeping with modern day business travel is forthcoming, employers should be reviewing current and historical tax positions to ascertain in particular whether there is an opportunity to treat travel benefits provided to employees as otherwise-deductible (including where previously not done so).

- **Continued applicability of TR 96/26 and modern day car parking alternatives:**
    - The Full Federal Court's decision in *Commissioner of Taxation v. Qantas Airways Ltd* [2014] FCAFC 168 concluded that a car parking station will be considered to be 'available in the ordinary course of business to members of the public' where the ordinary meaning of the phrase is met and in particular, it is only required that one space is in fact available for 'all-day parking'.
    - Following the decision, the ATO had flagged in late 2015 that there would be a rewrite of Taxation Ruling TR 96/26 to provide more clarity given the large array of car parking alternatives that may be considered to be a 'commercial parking station', including modern-day, technology-enabled parking availability (for example, single space residential options). However, TR 96/26 continues to remain in force and can be relied upon until withdrawn or amended.
    - Nonetheless, it is clear that the above decision has clarified the circumstances in which a parking station will be viewed as 'available in the ordinary course of business to members of the public' (and therefore potentially considered to be a 'commercial parking station'). In particular parking provided at hospital, shopping centre, university, school, hotel, etc. car parks should be reviewed to consider whether car parking fringe benefits result for an employer (i.e. where the relevant car parking is located within a kilometre of spaces provided to employees).

- **Is Uber travel applicable for the 'taxi travel' exemption in section 58Z of the FBT Act?**
    - On 17 February 2017, the Federal Court concluded that for GST purposes the terms 'taxi' and 'limousine' should adopt their ordinary meanings being a vehicle/luxury vehicle available for hire by the public and which transports a passenger at his or her direction for the payment of a fare.

Relevantly, Griffiths J reasoned that Uber/UberX services will be considered to be 'taxi travel' for GST purposes.

- For FBT purposes, this raises the question of whether the taxi travel exemption (which exempts travel beginning/ending at a work place, or sickness/injury taxi travel between work-home-other appropriate place) will also apply to an Uber/UberX service. An important distinction thought is that the definition of 'taxi' in the FBT legislation requires that the vehicle is licensed to operate as a taxi.
- Notwithstanding, where employers have provided Uber/UberX travel benefits to employees in the 2017 FBT year, consideration should be given to this recent decision in determining the taxability (or otherwise) of any relevant benefits provided. Due to licensing differences across Australian jurisdictions, this may lead to varying treatment.

The takeaway

Whilst relative to recent years that have seen a number of significant FBT reforms (for example, application of a universal 20% statutory fraction for car fringe benefits, tightening of concessions available for living-away-from-home benefits, etc.), there has been a limited level of reform relevant to the 2017 FBT return. Nonetheless, there are still a number of legislative and administrative changes to be aware of in preparing the return, and additionally and equally importantly, recent case law has necessitated a review of historically-maintained tax positions that may require revision. Also, technology and the use of analytics is providing employers with greater opportunities to prevent the overpayment of FBT, particularly in the areas of cars, car parking and entertainment.

Forward planning to ensure appropriate distribution of resources and availability of documentation is pivotal to enabling timely lodgment of the FBT return. In particular, where additional research is required to review historical positions, the planning phase becomes particularly important to ensure that relevant due diligence is completed in time.

Note that 2017 FBT returns are due to be lodged on, and payment of the balance of any FBT liability (if required) is due to be made by, 21 May 2017. However, for organisations that lodge through PricewaterhouseCoopers' electronic lodgement capability, an extension until 25 June 2017 is available, with the balance of any FBT liability due on 28 May 2017. In the event that the due date of any of the above is on a day other than a business day, it is general ATO practice that the due date is moved to the next business day.

Let's talk

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

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

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

Penelope Harris, Perth
+61 (8) 9238 3138
penelope.harris@pwc.com

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

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