



# FRINGE BENEFITS TAX - 2021/22 YEAR

PRESENTED BY:  
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# HOUSEKEEPING

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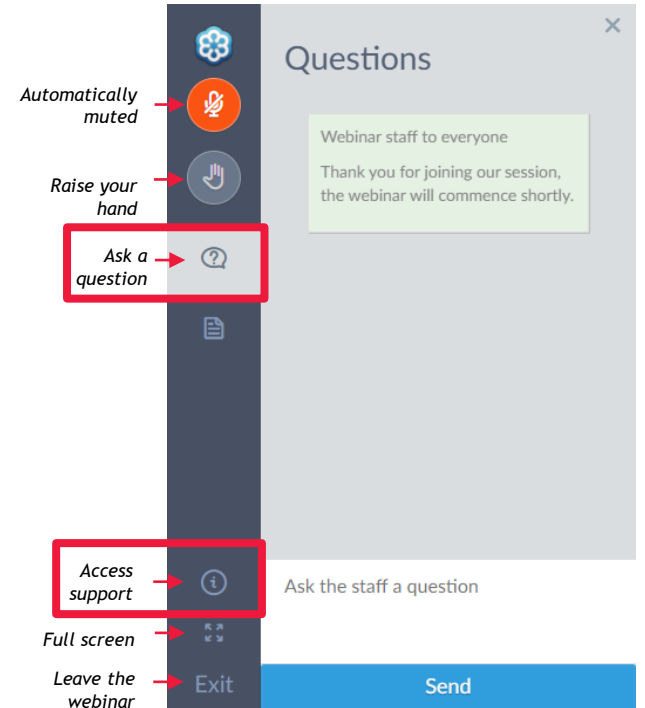
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# TOPICS

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1. FBT overview

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  2. Recent law changes

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  3. COVID 19 and FBT

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  4. ATO focus areas

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  5. Not-For-Profit employers

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  6. Rates & thresholds



# 1. FBT OVERVIEW

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## What is Fringe Benefits Tax?

Fringe benefits tax (FBT) is levied on benefits provided to employees in respect of their employment.

The FBT year is the 12 months beginning 1 April and ending 31 March.

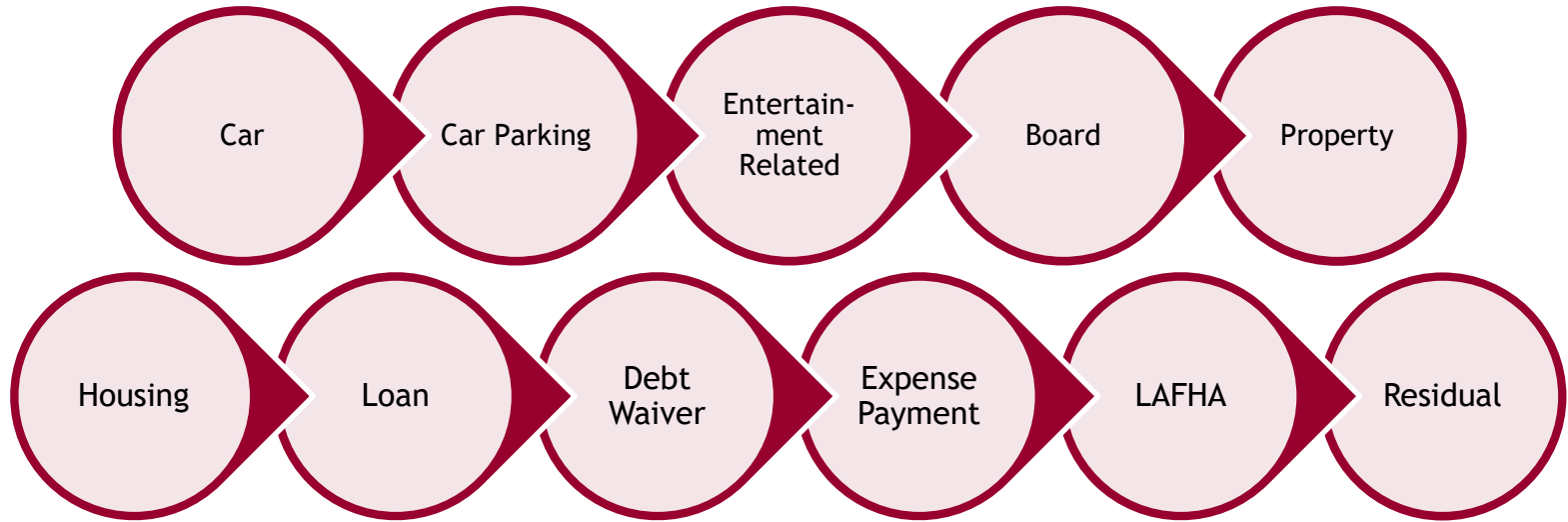
FBT is paid by the employer irrespective of who provides the benefit.

An employee for FBT purposes can be:

- A current, past or future 'common law' employee; or
- A director of a company.
- Includes benefits provided to associates of employees.

# 1. OVERVIEW

## Types of Fringe Benefits



# 1. OVERVIEW

Items excluded from the definition of ‘fringe benefit’

<b>Salary or Wages</b> Payments of salary or wages including if exempt from income tax	<b>Exempt benefits</b> Such as relocation, remote area, work related, minor & infrequent, etc	<b>Employee Share Schemes</b> ESS interests and benefits acquired by Employee Share Trust
<b>Deemed Dividends</b> Payments, loans or other items provided by a private company that are taken to be Div7A deemed dividends	<b>Superannuation Contributions</b> To an Australian complying super fund or a foreign super fund for a Temporary Resident	<b>Termination Payments</b> Employment Termination Payments, redundancy payments, early retirement scheme payments, unused leave, restraint of trade



# 1. OVERVIEW

## Salary Sacrificing Arrangements

### Purpose

Employee forgoes part of their future entitlement to salary or wages in exchange for benefits of a similar value

Common for Not-for-profit entities (FBT exempt or rebatable)

### Benefits

Superannuation

Otherwise deductible

FBT exempt

Donations

Vehicles

### Effect

The employee pays income tax on the reduced cash salary

Employer recovers any FBT from the employee

Salary sacrifice agreement is required to be applied prospectively

# 1. OVERVIEW

## Other tax implications

FBT is payable by the employer at the top marginal tax rate including Medicare Levy (47%)

The employer can claim an income tax deduction for the cost of providing fringe benefits (including entertainment which is subject to FBT) and for the FBT paid

Employee contributions from after-tax income can reduce the taxable value of the fringe benefit, noting cash contributions to the employer are typically subject to GST

If the total taxable value of certain fringe benefits received by an employee in an FBT year exceeds \$2,000, the grossed-up taxable value of benefits must be reported on the employee's PAYG Payment Summary/ Income Statement

# 1. OVERVIEW

FBT return lodgement and payment



**Employer**

**23 May 2022**

- Lodgement
- Payment



**Tax Agent**

**27 June 2022**

- Lodgement
- Payment



## 2. RECENT LAW CHANGES

## 2. RECENT LAW CHANGES

ATO guidance, case law & legislation



Car Parking Benefits

- TR 2021/2
- Virgin case



TR 2021/1: Income tax:  
When are deductions  
allowed for employee's  
transport expenses



TR 2021/4: Income tax  
and fringe benefits tax:  
employees:  
accommodation and food  
and drink expenses travel  
allowances, and living-  
away-from-home  
allowances



PCG 2021/3: Determining  
if allowances or benefits  
provided to an employee  
relate to travelling on  
work or living at a  
location - ATO compliance  
approach

## 2. RECENT LAW CHANGES

ATO guidance - TR 2021/2: Car parking benefits

### Commercial parking station

- A car park which has nil or low rate for short term parking and penalty rate for all-day parking is not precluded from being a 'commercial parking station'

### Application

- Nearby shopping centres and hospitals can trigger FBT
- Applies from 1 April 2022
- Ruling sets out objective characteristics of 'commercial'
- NB Small business car parking exemption applying for businesses with <\$10M turnover has been extended to <\$50M turnover for 2021/22 FBT year

## 2. RECENT LAW CHANGES

Case - Car parking - Virgin

### Case

- Full Federal Court decision - *FCT v Virgin Australia Regional Airlines Pty Ltd [2021] FCAFC 209*

### Application

- ATO win
- ‘Primary place of employment’ is the airport terminal, not the airplane
- ATO strict enforcement of legislation

## 2. RECENT LAW CHANGES

ATO guidance - TR 2021/1: Income tax, when are deductions allowed for employees' transport expenses

### Transport expenses

- Income tax deductions and FBT 'otherwise deductible' rule

### General principles

- Home to work - generally not deductible
- Travel within the duties of employment and not personal circumstances of employee
- Relevant to the practical demands of carrying out work duties
- Employer asks for travel to be undertaken
- Travel occurs on work time
- While travelling, employee is under the direction and control of the employer



## 2. RECENT LAW CHANGES

ATO guidance - TR 2021/4: Income tax and fringe benefits tax: employees: accommodation and food and drink expenses travel allowances, and living-away-from-home allowances

### Travelling expenses

- Whether an allowance is travel allowance or living away from home allowance
- Income tax deduction
- Application of FBT 'otherwise deductible' rule for accommodation, food and drink

### General principles

- Is travel required because of employee's personal circumstances
- Is employee living at a location (i.e. length of time, location of family and friends)
- Has employee relocated from their usual place of residence
- Deductible when 'travelling on work'

## 2. RECENT LAW CHANGES

ATO guidance - PCG 2021/3: Determining if allowances or benefits provided to an employee relate to travelling on work or living at a location - ATO compliance approach

### Allowance - income tax or FBT

- Travelling on work - travel allowance subject to PAYG withholding
- Living away from home - LAFHA subject to FBT

### Travelling for work

- Reimbursement is not part of salary packaging arrangement
- Short term period:
  - No more than 21 days at a time continuously
  - Fewer than 90 days in aggregate in same location during the FBT year
- Not FIFO or DIDO
- Return to normal residence when the period away ends

## 2. RECENT LAW CHANGES

### Legislation - Retraining and reskilling support

#### FBT exemption

- FBT exemption for employer provided retraining and reskilling benefits
- Applies to those employees who are redundant, or soon to be redundant, and where these benefits are not sufficiently connected to their current employment
- Includes employees who may be redeployed within the company and those being terminated

#### Application

- Includes course fees, books and materials, travel and accommodation
- The exemption does not extend to retraining acquired by way of a salary packaging arrangement or to costs for which an income tax deduction is specifically denied
- Benefits provided from 2 October 2020

## 2. RECENT LAW CHANGES

Announced but not enacted

### Work related COVID testing

- Government announcement to make work related COVID testing exempt from FBT
- Few Parliamentary sitting days to enact legislative changes
- For now, keep records of expenses

### Existing corporate records for FBT

- Government budget proposal to reduce FBT compliance burden by relying on existing corporate records
- Currently in ATO consultation

## 2. RECENT LAW CHANGES

### Cases - Worker classification - CFMEU and Jamsek

#### Cases

- *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* [2022] HCA 1
- *ZG Operations Australia Pty Ltd v Jamsek* [2022] HCA 2

#### Application

- Two recent High Court cases have provided guidance on whether a worker is a ‘common law’ employee
- Comprehensive written contract is persuasive...within reason
- Examination of totality of facts necessary if written contract is unclear
- CFMEU Case at 43:
  - *In cases such as the present, where the terms of the parties’ relationship are comprehensively committed to a written contract, the validity of which is not challenged as a sham nor the terms of which otherwise varied, waived or the subject of an estoppel, there is no reason why the legal rights and obligations so established should not be decisive of the character of the relationship.*



## 3. COVID-19 AND FBT

# 3. COVID-19 AND FBT

## COVID testing

### Exempt from FBT

- Testing is carried out by a legally qualified medical practitioner and available to all employees
- Testing required by employee travelling for work
- Minor benefit exemption - provided infrequently and less than \$300

### FBT

- Testing required to attend place of work (subject to legislative change)

# 3. COVID-19 AND FBT

## Vaccination incentives

Incentives	FBT	PAYGW	Super
Cash payments for getting the vaccine	No	Yes	Yes
Paid leave to get the vaccine	No	Yes	Yes
Paid leave for vaccine side effects	No	Yes	Yes
Transport to and from the vaccination	No	No	No
Goods and services (incl. vouchers)	Yes*	No	No
Competition entries given to employees	No	No	No
Prizes in competition won by employees	Yes*	No	No
Points which can be redeemed for goods and services	Yes	No	No

*\* Unless minor benefit exemption or in-house reduction applies*



# 3. COVID-19 AND FBT

## WFH expenses

### Exempt from FBT

- Eligible work related items: laptop, mobile, tablet, printer
- Protective clothing

### Minor benefits/otherwise deductible - No FBT

- Stationery and other home office consumables
- Office equipment costing less than \$300 (GST inclusive)
- Use of company owned office equipment
- Reimbursement of business portion of home internet & telephone

## 3. COVID-19 AND FBT

### Cars

#### Business premises garaged car

- Car not available for private use if all of the following apply:
  - Car returned to employer's business premises
  - Employee cannot gain access to the car
  - Employee has relinquished entitlement to use the car for private purposes

#### Factors to take into account

- Employer request to return car
- Employee does not have physical access to the car, consistently enforced policy
- If employee chooses to surrender car, they cannot change choice
- Surrendered car is applied to a different purpose

# 3. COVID-19 AND FBT

## Car parking

### Car park closures

- No benefit if car park is closed on a day
- Not part of the availability period if using statutory method (228 days)

### Reduced commercial car parking rates

- No benefit if all commercial parking stations within 1 km radius charge less than \$9.25 for all day parking on 1 April 2021, provided rate is representative
- Likely lower rates generally, so valuations may be beneficial

### Actual method

- Potential to save FBT if you have car park use records

# 3. COVID-19 AND FBT

## Entertainment

### Actual vs 50/50 method

- Consider whether actual method will result in lower FBT
- May be lesser effort with fewer transactions
- Greater scope for minor & infrequent exemption to apply
- No FBT if deposit lost for employer arranged cancelled event

### Not for profit meal entertainment salary packaging

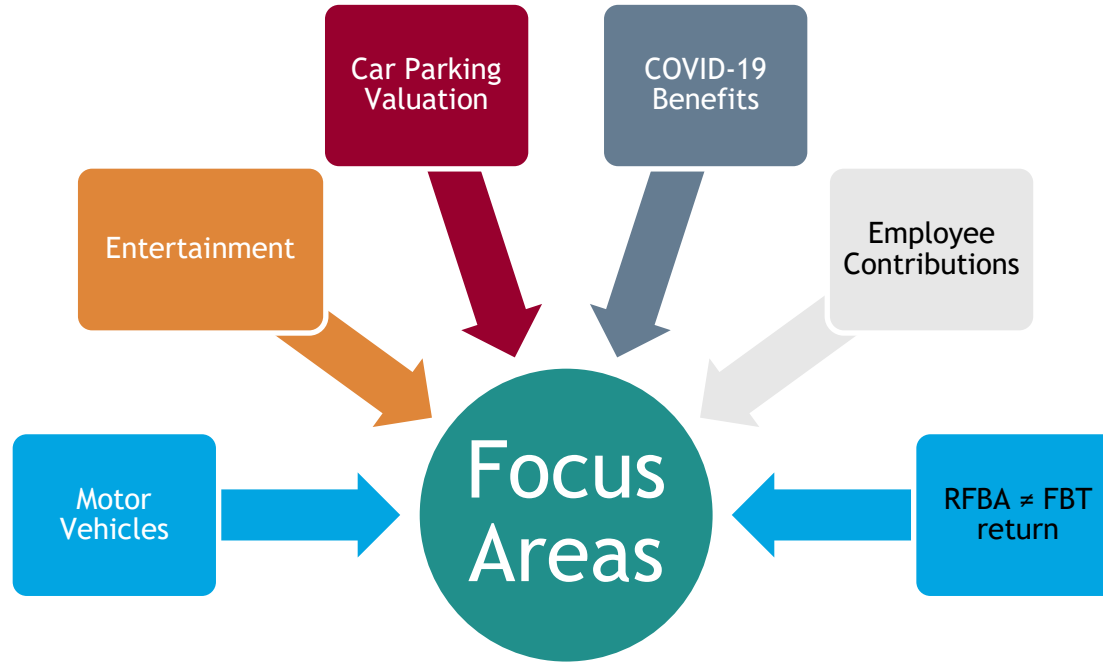
- ATO will not apply compliance resources to expenditure where meals provided by authorised supplier as at 1 April 2021; and
- Restaurants were required to remain closed



## 4. ATO FOCUS AREAS

## 4. ATO FOCUS AREAS

Current focus areas for the ATO





## 5. NOT FOR PROFIT EMPLOYERS

## 6. NOT FOR PROFIT EMPLOYERS

### FBT exemption or FBT rebate

Public benevolent institution (other than public hospitals) and health promotion charities

- FBT exemption capped at \$30,000.
- Salary packaged meal entertainment and entertainment facility leasing expense benefits capped at \$5,000.

Public hospitals, not-for-profit hospitals and public ambulance services

- FBT exemption capped at \$17,000.
- Salary packaged meal entertainment and entertainment facility leasing expense benefits capped at \$5,000.

Rebatable employers - certain registered charities, non-government and not-for-profit organisations

- FBT rebate of 47% capped at \$30,000.
- Salary packaged meal entertainment and entertainment facility leasing expense benefits capped at \$5,000.





## 6. RATES & THRESHOLDS

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### Key FBT figures

Fringe Benefit Rates & Thresholds	2021-2022 FBT Year	2020-2021 FBT Year
Tax Rate	47%	47%
Gross Up Rate Type 1	2.0802	2.0802
Gross Up Rate Type 2	1.8868	1.8868
Car Parking Threshold	\$9.25	\$9.15
Statutory or Benchmark Interest Rate	4.52%	4.80%
Record Keeping Exemption Threshold	\$8,923	\$8,853
Motor Vehicle (other than a car) - cents per kilometre rate		
0-2500cc	\$0.56	\$0.56
Over 2500cc	\$0.67	\$0.67
Motorcycles	\$0.17	\$0.17

## 6. RATES & THRESHOLDS

### LAFHA - Within Australia

Living-away-from-home allowances (LAFHA) is a fringe benefit allowance paid to employees who are required to temporarily live away from their normal residence to perform employment duties.

It is important to note that 'Adults' for this purpose are persons who had attained the age of 12 years **before** the beginning of the FBT year.

Reasonable Amount of Food & Drink	Per Week
One adult	\$283
Two adults	\$425
Three adults	\$567
One adult and one child	\$354
Two adults and one child	\$496
Two adults and two children	\$567
Two adults and three children	\$638
Three adults and one child	\$638
Three adults and two children	\$709
Four adults	\$709
- Each additional adult	\$142
- Each additional child	\$71

## 6. RATES & THRESHOLDS

### LAFHA - Overseas

International LAFHA's for food and drink expenses are calculated differently to those within Australia.

The ATO provides a list of countries with an assigned cost group to assist with calculating the allowance.

For employees who are accompanied by their families overseas, the allowance is multiplied by a listed factor prescribed by the ATO.

Cost Group	Food and Drink for one adult
1 (Eg Cambodia, Iran)	\$137
2 (Eg Argentina, Pakistan)	\$201
3 (Eg India, Vietnam)	\$273
4 (Eg Canada, NZ, Greece)	\$346
5 (Eg Japan, France, Germany, UK & US)	\$437
6 (Eg Singapore, Korea, United Arab Emirates)	\$537

# THANK YOU



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