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FBT & salary packaging update

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Outline

- Recent changes / trends
- Common benefit categories
- Compliance, efficiencies, FBT minimisation
- Reportable fringe benefits
- ATO activity

Rate changes

FBT year	2014/15	2015/16	2016/17	2017/18
FBT rate	47%	49%	49%	47%
Type 1 gross up rate	2.0802	2.1463	2.1463	2.0802
Type 2 gross up rate	1.8868	1.9608	1.9608	1.8868
FBT rebate	48%	49%	49%	47%
PBI/rebateable cap (grossed up)	\$30,000	\$31,177	\$31,177	\$30,000
PBI/rebateable effective Type 2 cap	\$15,900	\$15,900	\$15,900	\$15,900
Hospitals etc. cap (grossed up)	\$17,000	\$17,667	\$17,667	\$17,000
Hospitals etc. effective Type 2 cap	\$9,010	\$9,010	\$9,010	\$9,010

Salary packaging 2% differential

- 1 July 2014 – 31 March 2015 and 1 April 2017 – 30 June 2017
- Highest tax rate 49% and FBT rate 47%
- But would need to salary package a lot to have any decent saving
- Eg: Sacrifice \$100,000 – saving @ 2% = \$2,000

Proof: \$280,000 Salary

Sacrifice \$100,000 to cover:

\$53,000 benefits

Less \$4,818 GST credit ($\$53,000 \times 1/11^{\text{th}}$)

Plus \$51,818 FBT ($\$53,000 \times 2.0802 \times 47\%$)

Tax otherwise payable on \$100,000 @ 49% = \$49,000

So net salary \$51,000

Saving \$53,000 - \$51,000 = \$2,000

Some new rates and thresholds

	2014/15
LAFHA reasonable food weekly amount in Australia – 1 adult	\$236
Statutory interest rate	5.95%
Car parking threshold	\$8.26



Cars

- Policies re what's provided
 - 'Company cars' – on top of salary, or part of remuneration package
 - Salary packaged cars
 - Cents per km reimbursements
 - Car allowances
- Need policies to address who wears risk of cost fluctuations and how business use is addressed
- If moving from 'company cars' to another method, need to value car benefit and re-state employee's total remuneration package

Cars

- 'Company cars' interaction with salary packaging for not-for-profit organisations
 - Car uses part of cap, ie. restrict other salary packaging so organisation gets benefit of FBT exemption/rebate; or
 - Car on top of cap, ie. so employee gets full benefit of packaging and organisation wears FBT on car at full rate



Exempt vehicles

- Non-exhaustive list qualifying vehicles on ATO website
- Usage restrictions important – can only be used for:
 - Travel between home and work
 - Business travel
 - Minor, infrequent private travel
- ATO is auditing
- Travel where drop off family members on the way = private



Cars

- Typical statutory formula issues:
 - Base value on organisation restructures/mergers
 - No change in base value if car transferred between "associates" (control test)
 - Market value if transferred between unrelated entities
 - Statutory fraction
 - Cars first held, or with new commitment, post 10 May 2011, flat 20% - no need for odometer records
 - Cars held from before then, 'old' statutory rates apply, need odometer readings, annualise kms



Cars

- Typical operating cost issues:
 - Business percentage - estimate reasonable percentage using log book and other information, eg. change in usage patterns, employee leave, etc.
- Road tolls are separate benefit
 - Otherwise deductible?
Use reasonable basis to determine %
 - Minor?



Car parking

- Some not-for-profits exempt
- No FBT if no commercial car park within 1km charging > \$8.26 at start of FBT year
- What is a commercial car park?
 - Available to public for all day parking
 - TR 96/26 - not if penalty rates charged
 - Qantas case - argued available to public meant available to working commuters - unsuccessful
- FBT minimisation
 - Check lowest fee within 1km
 - Market valuation? Not expensive to get



Entertainment

- Think of in 3 categories:
 - Meal entertainment
 - Always exempt for FBT exempt employers
 - Always rebateable for FBT rebateable employers
 - 50/50 valuation possible



Entertainment

- Entertainment facility leasing expenses (EFLE)
 - Always exempt for FBT exempt employers
 - Always rebateable for FBT rebateable employers
 - 50/50 valuation possible – only if employer pays directly
- Other entertainment (recreation)
 - Subject to caps for exempt and rebateable employers
 - No 50/50 valuation possible



Entertainment

- Most commercial organisations now adopt 'actual method' to value meal entertainment and EFLE, since minor benefit exemption applies to most entertainment
- But minor benefit exemption limited for entertainment provided by NFPs to:
 - Incidental to provision of entertainment to outsiders and not a meal (other than light refreshments); or
 - On business premises and in recognition of employee's achievements
- Exemption for property consumed on business premises also not available to NFPs as entertainment never a "property benefit"

Business travel vs living away from home

- Current test still MT 2030 & TD 93/230
- Relevant tests:
 - Has employee moved (personal effects, etc)?
 - Has job location changed?
 - Does family accompany employee?
 - Length of time - 21 day test if in doubt
 - Has employee chosen to live near work?
 - Does employee have permanent home elsewhere?



Business travel vs living away from home

- 21 day test has been applied by ATO more broadly
- Also some private rulings for significantly higher no. days deemed travelling
- ATO consultation currently occurring



Business travel vs living away from home

- John Holland case:
 - Employees on FIFO rotational roster
 - Regular travel between home (Perth) and non-remote work location (Geraldton) provided
 - Apartment style accommodation in Geraldton
 - Transport between Geraldton and worksite provided during rostered period
 - Court held flights were travel between chosen place of residence and place of work, so not otherwise deductible



Business travel

- Travel diaries required for trips greater than 5 nights, but...
- Authorised representative of employer can sign "no private use declaration" instead where:
 - Employer pays/reimburses business portion only of employee's expenditure (not corporate card); or
 - Use of property provided for business use only



Business travel

- "Tacking on holidays" – treatment of airfares - ATO may update website soon

Apportion only if dual business/private purpose of trip

Consider:

- time spent away
- frequency of private trips
- presence of accompanying persons
- whether employer willing to pay any private costs
- any employer restriction on private travel
- whether private travel part of return trip without additional cost to employer



Living away from home

- 12 month limit and requirement to maintain home in Australia (except for FIFO/DIDO) has made LAFHA less tax effective
- FBT minimisation – consider alternatives
 - Are employees actually travelling on business?
 - Have employees relocated permanently?
 - Base salary increase? – but note on-cost effects
- ATO have taken educational approach to date – getting tougher now?



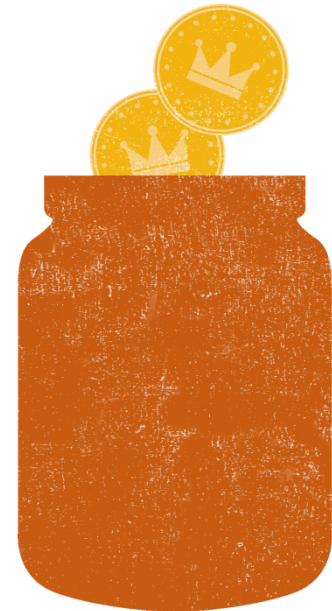
Living away from home

- Exempt accommodation – actual cost – substantiate
- Exempt food:
 - Reasonable food amount per ATO rates (NB. No longer need to reduce by statutory food amounts if allowance stated to take into account home food consumption); or
 - Actual costs above statutory amount – substantiate entire expenditure
- Ensure correct declarations:
 - One of: Transitional (final year), FIFO/DIDO & Other; and
 - Substantiation of costs maintained (where relevant)



Salary packaging

- Ensure adequate 'set up' documentation in place for tax effective arrangements
- Main benefits still:
 - Cars – novated & associate leases
 - Superannuation
 - Meal entertainment (NFPs)
 - EFLE: venue hire/holiday accommodation (NFPs)



Salary packaging

- "Lesser" benefits:
 - Portable electronic devices
 - Otherwise deductibles, eg. self education
 - Airport lounge memberships
 - LAFHA
 - Relocation benefits
 - Remote area benefits



Salary packaging

- Associate car leases
 - Associate owns (or leases) car
 - Associate pays running costs
 - Car leased to employer - fully maintained lease
 - Employer pays lease payments to Associate – can be via payroll/employee
 - Employee sacrifices salary to cover lease payments



Salary packaging

- Associate car leases have broad appeal:
 - Can create tax savings for high income earners with Associate's on lower tax brackets
 - Can create tax savings for low income earners with low value cars
- Impact for Associate:
 - Assessable on lease income
 - Deductions for running costs, depreciation
 - No tax if under tax free threshold
 - Need an ABN
 - Could register for GST, but usually wouldn't



Salary packaging

Associate lease example

Facts:

Employee taxable income between \$80k & \$180k so 39% tax rate

Associate no other taxable income

\$30,000 car owned by Associate

\$4,000 pa. running costs paid by Associate

Lease arrangement:

Lease payments to Associate \$13,000 pa. (approx. costs + 15%)

After-tax contribution by employee to eliminate taxable value

\$2,000 ($\$30,000 \times 20\% - \$4,000$)

Salary sacrifice

\$11,182 ($\$13,000 - \$2,000 + \$2,000/11$)



Salary packaging

- Associate lease example cont.

- Prior to packaging:

Employee salary	\$11,182
Tax at 39%	(\$4,360)
Car expenses	<u>(\$4,000)</u>
Net position	\$2,821

- After packaging

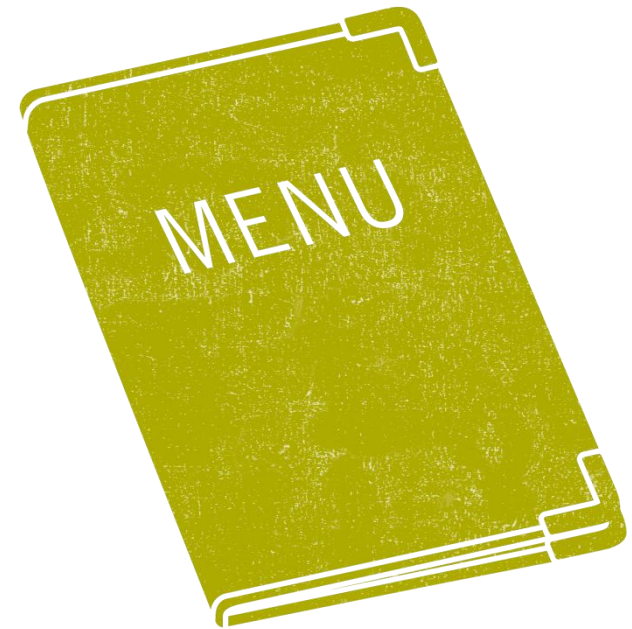
Associate income	\$13,000
Car expenses	(\$4,000)
Employee after-tax contribution	<u>(\$2,000)</u>
Net position	\$7,000

- **Saving \$4,179 pa**



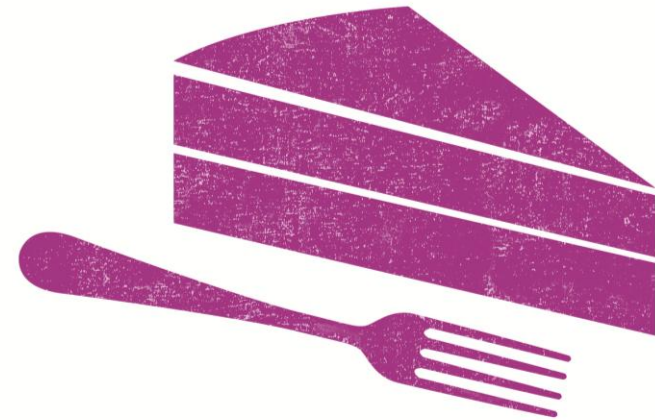
Salary packaging for NFPs

- What is meal entertainment?
Consider on balance:
 - What – light snack, elaborate meal
 - When – business hours, after hours
 - Where – business premises, offsite
 - Why – entertainment purpose?
- Meal entertainment includes:
 - Dine-in restaurant meals
 - Catering for parties
 - Transport to meal event eg. taxi, car parking (ATO ID 2014/15)



Salary packaging for NFPs

- Meal entertainment does not include:
 - Take-away meals
 - Snacks and light meals
 - Transport to holidays
 - Groceries
 - In-house café meals



Salary packaging for NFPs

- EFLE: venue hire/holiday accommodation includes:
 - Packaged holidays that include accommodation
 - Cruises
 - Function/reception centre
 - Sporting facilities



Salary packaging

- Relocation benefits
 - Incidental costs on sale/purchase home
 - Incl. stamp duty on purchase, legal fees, advertising, commission, etc.
- Remote area benefits
 - Employer owned/leased housing – exempt
 - Reimburse up to 50% of employee's rent – exempt
 - Certain other costs, taxable value = 50% of cost



Other recent issues

- Bitcoin – ATO considers to be property TD 2014/28
- Worker retraining where redundant, not FBT exempt work related counselling per ATO ID 2015/1



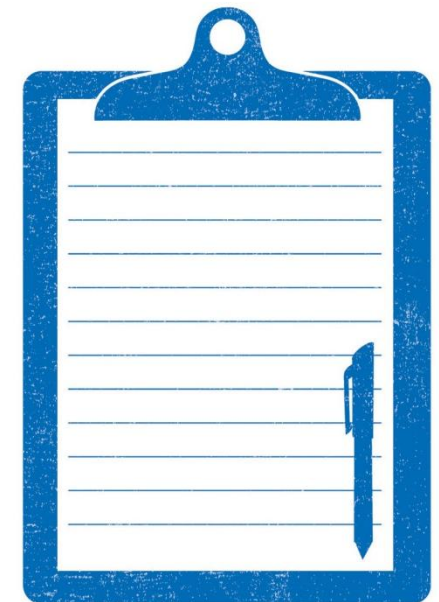
Reportable benefits

- Impact on government levies and allowances, such as:
 - Family tax benefit
 - HECS repayments
 - Child care benefit
 - Child support
 - Super co-contributions
 - Medicare levy surcharge
- Consider impact of salary packaging and compare to tax saving



Reportable benefits

- Report if taxable value for employee for FBT year \$2,000 or more
- Exclude:
 - Benefits specifically exempt, eg. laptops (additional super reported separately)
 - Car parking
 - Meal entertainment
 - Benefits wholly or partly attributable to EFLE
 - Shared cars – NB. Still subject to FBT
- Include:
 - Benefits within exempt cap



Reportable benefits

- Eg. \$105,000 salary
- Salary sacrifice \$23,691 in lieu of \$15,900 mortgage repayments (and \$7,791 rebated FBT)
- Payment summary would previously have shown \$105,000 salary
- After salary packaging will show:
- \$81,309 salary ($\$105,000 - \$23,691$) plus \$31,177 reportable fringe benefits ($\$15,900 \times 1.9608$)
- New total of \$112,486 is \$7,486 higher than before



ATO compliance activity

- Data matching with Road Traffic Authorities, vehicles worth \$10,000 and above
 - Potential issues:
 - omission of cars from FBT return
 - incorrect application of FBT exemption to certain utes etc.
 - incorrect calculation of “base value” (e.g. incorrectly including or excluding costs such as registration, stamp duty, dealer delivery, optional extras etc.)



ATO compliance activity

- Employee contributions paid to employer (eg. re cars) picked up for income tax and GST?
- Non-lodgers, late lodgers, lapsed lodgers
- Incorrect application of exemptions, valuations, reductions
- LAFH vs business travel interpretation
- Contractors who should be treated as employees
- Reportable benefits on payment summaries indicate employer underpaid FBT



Questions?



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