

### Massive change to treatment of FBT on car fringe benefits

(see detailed expose at end of Newsletter)

*The government has decided to bring forward the commencement of the carbon emissions trading scheme to 1 July 2014, and as part of this they have announced other changes, including to the FBT treatment of car fringe benefits.*

*Of course, whether or not these changes actually become law (despite the announced start dates) depends on the government passing the legislation, which depends on them getting re-elected. . .*

The government intends to ensure the FBT "exemption" for cars is targeted to actual business use, rather than including personal use, by removing the statutory formula method for both salary-sacrificed and employer-provided cars for new contracts entered into after 16 July 2013, with effect from 1 April 2014.

All car fringe benefits for *new* leases (i.e., those entered into after 16 July 2013) will be calculated using the operating cost (i.e., log book) method from 1 April 2014, which is based on the actual business use of the car.

Existing contracts materially varied after 16 July 2013 will also fall under the new arrangements, but existing contracts that are not varied will continue to have access to the existing statutory rate throughout the contract.

This reform will not affect:

- employees and sole traders who claim deductions for work-related travel expenses when they use their own car for work reasons;
- the existing exempt car benefit concessions that apply to certain uses of taxis, panel vans, utes and other non-car road vehicles; and
- employers who provide a work car to employees for occasional private use (for example, weekend travel) and use the operating cost method.

### New reporting requirements for BCI taxpayers

The ATO is reminding contractors in the building and construction industry (or 'BCI') to take extra care with their returns this year.

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Also, businesses in the building and construction industry are now required to report to the ATO the total amount they paid to each contractor for any building and construction services in 2012/13 on a 'Taxable payments annual report'.

Taxable payments annual reports are ordinarily required to be lodged by 21 July, but the ATO has provided a concession for taxpayers lodging via a tax agent – tax agents have until 25 August to submit the report (for this year only).

*Editor: If you are in the BCI and have paid contractors, we can help you work out your lodgment obligations.*

Since this new reporting regime makes it easier for the ATO to cross check the returns of contractors in the industry (whether they work for a large building company or in a smaller domestic operation), it is important that they include all income in their tax returns.

### ATO's 2013 Compliance Program

As usual, the ATO has released its annual Compliance Program, and following are some of the main 'highlights' that will attract their attention in the coming year, including:

- ◆ High **work-related expenses claims**, particularly those made by:
  1. building and construction labourers, construction supervisors and project managers; and
  2. sales and marketing managers;
- ◆ **Wealthy individuals** and people who may be using secrecy jurisdictions (i.e., tax havens) to avoid paying tax;
- ◆ **Employers** who intentionally try to avoid their tax and super obligations by **improperly treating workers as contractors** rather than employees;
- ◆ Small businesses that **overclaim concessions**, attempt to hide income and operate in the **cash**

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**economy, and claim CGT concessions** they are not entitled to;

- ◆ **Businesses with outstanding returns**, particularly trusts, partnerships and companies and entities with privately owned groups;
- ◆ **Fraudulent phoenix activity**, particularly by property developers; and
- ◆ **SMSFs** that misuse the concessional tax environment deliberately **or unintentionally**.

The ATO has also advised that they investigate **every time** an employee tells them that their employer has not paid their superannuation guarantee entitlement. The ATO will also specifically audit employers in the cafes and restaurants, carpentry services, and real estate services industries, due to these industries presenting a higher risk of employers not complying with their superannuation guarantee obligations.

In addition, more than 640 million transactions are reported to the ATO annually from sources such as banks, share registries, employers, merchants, states and territories and other government departments, and the ATO uses this information to detect people trying to avoid their tax and superannuation obligations.

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#### **CGT: Keep the right records**

The ATO has reminded taxpayers that they should keep all records of purchases or acquisitions of assets that may be subject to CGT, and records relating to their sale or disposal, including details of the nature of the act, transaction, event or circumstance, how it resulted in a capital gain or loss, the date it occurred, and the parties involved.

The records used to work out the amount of the capital gain or capital loss should also be kept, which may include:

- receipts of a purchase or transfer;
- details of interest on money borrowed relating to the asset;
- records of agent, accountant, legal and advertising costs;
- receipts for insurance costs;

- receipts for rates, land tax and stamp duty;
- any market valuations;
- receipts for the cost of maintenance, repairs or modifications;
- accounts showing brokerage on shares; and
- records from the previous owner – for example, for inherited assets.

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#### **Car depreciation limit for 2013/14**

The ATO has advised that the car depreciation limit for the 2013/14 financial year is \$57,466 (unchanged from the 2012/13 year).

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#### **Reasonable Overtime Meal Allowance Amounts – 2013/14**

The reasonable amount for overtime meal allowance expenses, where an allowance is paid under an award, order, determination, industrial agreement or a Commonwealth, State or Territory law, is \$27.70 per meal for 2013/14.

An overtime meal allowance (being an allowance paid for food and drink in connection with overtime worked) which does not exceed the reasonable amount does not need to be shown on the payment summary, and the employee may not need to show it on their tax return if it has been fully spent on deductible expenses.

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#### **Removal of Statutory Formula Method for Motor Vehicle Fringe Benefits (Further detail-continued from opening paragraph)**

The proposed reform will remove the statutory formula method for both salary-sacrificed and employer-provided car fringe benefits for new contracts entered into after the announcement on 16 July 2013, with effect from 1 April 2014.

These changes will significantly impact fleet cars and the ability to salary sacrifice from 1 April 2014.

All car fringe benefits for new leases will be calculated using the operating cost method from 1 April 2014. The operating cost method

is based on the actual business use of the car. FBT is payable on the portion of operating costs attributable to private use.

### **Will there be any transitional measures?**

The removal of the statutory method will apply to all contracts entered into on or after 16 July 2013. The effective date for these changes will be 1 April 2014.

The statutory method will continue to apply to existing contracts entered into prior to the announcement made on 16 July 2013.

Changes made to existing contracts after this date will be viewed as a material variation and trigger the new rules i.e. change in employment, releasing the existing vehicle at end of existing lease.

### **How will this impact you?**

It is anticipated that this change will create a significant increase in costs and a substantial FBT compliance burden for providers of car fringe benefits.

The compliance costs associated with the operating cost are significantly more onerous than those required for the statutory method. Under the operating cost method employers are required to calculate the total operating cost and the business usage on a vehicle by vehicle basis. The total operating cost will include calculation of the cost of all repairs, maintenance, fuel, registration, insurance, leasing costs, depreciation (which is subject to a changing rate each year) and the cost price in respect of every single vehicle.

In addition, the operating cost method requires calculation of the business usage. For this purpose log books must be kept for a period of 12 weeks in respect of each arrangement with each vehicle. These log books must clearly detail which kilometres are business kilometres and which kilometres are private kilometres as tax will only be payable on the private use portion. The logbooks must then be kept by the employer for a period of 5 years. If there is a material change in use of a vehicle such as an increase in their usage or a change of user then a new log book will be required.

In the Government's press release the Treasurer implied that the availability of new mobile phone applications and other device applications will make maintaining logbooks a simple approach. However employers must ensure that these electronic logbooks are ATO compliant. Traditionally the process of attaining compliance is a complex one. Again, these logs must be kept for each vehicle and each arrangement.

Going forward the provision of salary sacrificed vehicles will become too costly for businesses to sustain as these vehicles are predominantly for private use.

The only good news is that the proposed arrangements only apply to 'cars'. Many dual cabs will fall outside the scope of these changes.

The proposed changes will significantly impact upon automotive dealers as specific car valuation rules (see MT 2023) historically applied to these taxpayers using the statutory rate. These changes will doubly impact the automotive industry with the onerous reporting requirements and potential loss of sales.

### **What next?**

The proposed reform is just that and is conditional upon Federal Labor being re-elected.

Employers will need to ensure that their existing salary sacrifice policies allow the additional FBT costs post 1 July 2014 to be passed on to the employees.

Employers will need clear guidelines as to constitute a 'business journey' for FBT purposes post 1 April 2014. Getting this wrong increases your FBT liability.

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