

## Income Tax – FBT

Fringe benefit tax (FBT) is a tax imposed on employers who provide fringe benefits to employees. FBT is intended to tax fringe benefits that had previously been received free of tax and encourage a switch from remuneration paid in the form of non-taxable benefits to cash remuneration, which is subject to tax in the hands of the employee.

### What are fringe benefits?

Some fringe benefits included in the legislation are:

- The provision of a motor vehicle;
- Employment-related loans;
- Subsidised transport;
- Discounted goods and services;
- Other fringe benefits;
- Sickness, accident, or death benefit fund contributions if exempt income;
- Certain superannuation contributions after 15 December 1989;
- Any specified insurance premium or contributions to any insurance fund of a friendly society if not gross income;
- Non-cash dividends; and
- Entertainment provided to an employee where it may be enjoyed at a time chosen by the employee, or if the entertainment is enjoyed or consumed outside New Zealand and other than in the course of employment duties.

### Who has to pay?

The liability to pay FBT is dependent on the existence of an employment relationship.

A benefit is not a fringe benefit for FBT purposes unless it is provided or granted by an employer to an employee 'directly or indirectly, in relation to, in the course of, or by virtue of the employment of the employee'.

### **Example 1**

Jim works full-time in his father's motorcycle repair shop. His father, who operates his business as a sole trader, gives Jim a motorbike for his 21st birthday.

Although Jim is an employee of his father, no FBT liability arises because the gift was not given to Jim by virtue of the employment relationship but rather out of natural love and affection for a family member.

(If Jim's father operated his business as a company, instead of as a sole trader, the provision of the free motorbike to Jim would still not be subject to FBT, but it would constitute a dividend, being company property distributed for less than market value to an associated person of a shareholder.)

### **Example 2**

Jim (from the previous example) purchased a new set of bike leathers from his father's business at 20% discount. The same discount is available to all employees. In this case an FBT liability arises because the benefit was provided by virtue of the employment relationship.

## **Other fringe benefits**

In addition to benefits provided by employers directly to current employees, the following are also subject to FBT:

- Fringe benefits provided to employees who have not yet commenced working for the employer;
- Fringe benefits provided to former employees;
- Fringe benefits provided to associated persons of employees; and
- Fringe benefits provided to employees by third persons with whom the employer has entered into an arrangement.

### **Car parks**

Benefits provided and enjoyed on the employer's premises are exempt from FBT. The exemption includes a car park provided to an employee where:

- The car park is on land or in a building owned or leased by the employer;
- There is an exclusive right to occupy the property; and
- There is a legal estate or interest in that property.

The exemption also applies to a space in a public car park where the space is subject to a lease between the employer and the proprietor of the car park. This ruling applies to 31 March 2005 and includes the following examples.

### **Example 1**

Employer provides employees with car parks on land across the road from where the employer conducts its business. The employer leases the land under a written and enforceable lease agreement. The leased land is part of the employer's premises. The car parks are exempt and no FBT liability arises. It does not matter that the employer carries out no business on the leased land.

### **Example 2**

Employer arranges parking at a commercial car park for three employees. No particular spaces are designated for them, but they are able to park in a reserved area in which spaces are always available for the three employees. The car park is not part of the employer's premises because the employer does not have ownership or legal possession of the car parks. Specific car parks are not allocated to the employer. The car parks are not exempt and are subject to FBT.

### **Example 3**

Employer arranges parking at a commercial car park for three employees. The employer is allotted three specific parking spaces. The car park proprietor bills the employer directly. The car parks are not subject to a lease or rental agreement. Although the employees have exclusive use of three specific spaces, the car park is not part of the employer's premises because the employer does not have ownership or legal possession of the car parks. The employer merely has the right to use them. The car parks are not exempt and are subject to FBT.

### **Example 4**

A company with many employees enters into a written and enforceable agreement to lease the whole of the top floor of a nearby car park building. Only the company's employees can access the car parks. The leased car parks are part of the employer's premises. The car parks are exempt and no FBT liability arises.

## **Payment of FBT**

FBT is collected each quarter – a quarter being the 3 months ending on the last days of March, June, September, and December.

Within 20 days from the end of the quarter, every employer must file an FBT return showing the details requested in the return, and must pay the due amount of FBT within the same period.

The time for filing the return for the fourth (March) quarter is extended to 31 May.

Where no fringe benefit has been provided, a nil return is required. There is provision for this requirement to be waived by the CIR.

Where FBT is paid on an annual basis, it is calculated in the same manner as it would be calculated for fringe benefits provided or granted in the four consecutive quarters that comprise that year.

The annual FBT return is due by 31 May following the year end, together with the FBT and any use of money interest owing. Use of money interest is calculated from the day a quarterly FBT payment would have been due, to the day of annual payment.

No interest is payable where an employer pays FBT on an annual basis.

## See Us First

If you consider that any of the issues contained in this fact sheet may affect you.

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