

March 2018

Car Parking and Fringe Benefits Tax...

Car Parking is often overlooked (or undercooked!) when businesses assess their FBT obligations... in this FBT Talk, we discuss why, outline some of the practical challenges and provide an update on the car parking FBT reform.

This issue provides an analysis of car parking and FBT to help you prepare for the upcoming 2018 FBT Return season.

We often refer to car parking as the biggest “under and over” fringe benefit. What we mean by that is:

Under – employers are **understating** the number of benefits they have, most commonly through not recognising correctly that there is a commercial parking station within the 1 kilometre radius that charges above the daily threshold (currently \$8.66 per day). Many employers may not understand that the threshold test must be undertaken on the first day of the FBT year (1 April 2017 for the 2018 FBT Return). This error in our experiences has led to significant shortfalls in payment of FBT liabilities.

The above is especially true where organisations have multiple business locations across Australia.

Over – in our experience some employers misunderstand certain areas of the car parking rules and the resultant outcome of which results in an **overpayment** of FBT. Thankfully for some of our clients, we have been able to resolve this by obtaining an FBT refund from the ATO.

Here are the five key areas of misunderstanding:

1. The definition of a commercial car parking station

Generally speaking, shopping centre car parks are not considered commercial car parking stations. Therefore, if a shopping centre car park is the only car parking facility within the 1km radius, FBT will not apply.

We have seen instances where employers have incorrectly calculated and paid FBT based on a fee charged at a shopping centre car park that is above the threshold.

2. Not using the lowest daily rates when valuing car parking under the average cost method

The FBT law allows employers to use the lowest daily rates available, both to determine if a FBT liability exists, and then to value the FBT liability if one exists.

The most common valuation method is average cost, where the lowest rates at 1 April and 31 March are identified. This is often the start of the problem as employers are trying to work this out following the FBT year end. It can be difficult to assess what the lowest rate was at 31 March, let alone over a year ago at 1 April.

We often see “guess work” employed to identify the lowest rate and in most cases, the outcome is a rate that is significantly above the lowest rates available.

3. Not applying the vicinity test

One of the mandatory requirements for a car parking benefit to exist is that the car parking facility provided by the employer is in the vicinity of the employee’s place of work.

The definition of vicinity was tested in the Virgin Blue FBT case back in 2010. In that case, the employees parked approximately 2 kilometres from their place of work. Virgin Blue were successful in arguing that a distance of 2 kilometres, together with employees being required to catch shuttle buses, was not considered to be in the vicinity.

In summarising the judgment, FBT was not payable on the car parking benefits.

4. Assuming that car parking spaces were used all year

We have identified a number of instances where car parking spaces have not been used due to the employer having excess spaces.

Don’t pay FBT if there is no benefit provided.

5. Not realising that certain car parking bays are for visitors only

Parking reserved for visitors is not subject to FBT.

Why is Car Parking overlooked?

An even more fundamental issue is failing to identify business and work locations. Based on our experience, where organisations have multiple entities and numerous business locations across Australia, many of these are overlooked or an assumption is made that:

- I don’t think parking is provided at that location – so we can ignore them for the FBT return;
- I don’t really know who to ask at that / those locations about parking - so we can ignore them for the FBT return;
- There may be parking but it’s not provided in a “proper” parking facility – so we can ignore them for the FBT return; or
- I don’t think there are any commercial parking stations near that / all of those locations – so we can ignore them for the FBT return.

Some other flawed reasoning includes:

1. We only provide parking to our employees at Head Office, I don't know what happens at our other business locations;
2. The parking is only provided for work purposes; therefore, it does not attract FBT;
3. We only pay FBT on car parking that is salary packaged. Any other parking provided is a work benefit and not subject to FBT; and
4. We reimburse employees for the monthly car parking contracts they have with commercial parking stations, we don't actually provide parking to our employee's. (in this scenario, the amounts reimbursed are fully subject to FBT and are reportable fringe benefits).

All of the above are real situations where employers and their FBT return preparers have misunderstood the FBT rules for car parking or have not acted diligently in finding out the correct information.

Car Parking FBT reform

As you may be aware, the ATO have been reviewing the car parking FBT ruling TR 1996/26. The review has been ongoing since 2014.

On Wednesday 7 March 2018, we were advised of the following from the ATO via email in respect of the revised ruling TR 1996/26:

*"The updated product is currently going through the required internal review and sign-off points. Given the timeframes involved with these processes, a draft won't be published prior to the end of the current FBT year; however, we are **working towards a mid-year publication date for the Draft updated product**. The updated ruling will incorporate recent court decisions and include updated examples to address contemporary commercial car parking arrangements. Please check our consultation webpage on further updates on the products."*

Based on the above, the ATO are ***working towards*** issuing a draft ruling around mid-year not sure if that is mid calendar year or mid FBT year. We wait with interest on the ATO's view on car parking and FBT.

Obtaining an FBT Refund from the ATO

FBT is part of the self-assessment tax regime. If you believe you've paid too much FBT on your car parking in the past, then you can claim back a refund from the ATO. We have assisted many clients with this process and successfully claim refunds.

Car Parking and FBT – is there an easier way?

We have a low-cost solution that is ATO compliant and will solve your 2018 FBT car parking challenge.

To see how we can help, we need you to identify all your business locations and places of work across Australia. Send us the list of addresses for each location, and we'll tell you which locations are caught (FBT taxable) by the FBT rules (as determined at 1 April 2017)

and which locations are FBT free (not caught by the FBT rules). For those locations that are taxable, we will provide the lowest FBT valuation available for you.

You can order your 2018 FBT car parking rates report online [here](#) or contact us at info@fbtsolutions.com.au for more information.

Later this month on FBT Talk

In our next two editions of FBT Talk, we will be discussing:

1. **Small Business and FBT** – small business do it tough with FBT but in this edition of FBT Talk, we highlight how many small businesses make FBT a lot tougher than it needs to be; and
2. **Key FBT & Salary Packaging Year End Tips** – with the FBT New Year near, we will share with you a bunch of FBT and Salary Packaging tips to help you close out FBT 2018 with a bang and welcome in FBT 2019.

If you are looking for FBT assistance, FBT Solutions is Australia's only dedicated FBT practice offering end-to-end FBT and Salary Packaging services including:

- FBT Return Full Outsource / Review and Lodgement
- Car Parking Valuations
- Electronic Logbook Solution
- FBT Advisory and Consulting
- Managing FBT Audits
- FBT Training
- Salary Packaging Outsource

Please let us know if you would like your colleagues or others added to our FBT Talk & FBT Alerts distribution list.

Additionally, we are running full day 2018 FBT workshops in March 2018, providing you and your team with the knowledge and tools to efficiently and effectively prepare the 2018 FBT return. The locations and dates for the upcoming workshops are as follows:

1. Melbourne: Tuesday 13 March 2018 [Find out more](#)
2. Perth: Thursday 15 March 2018 [Find out more](#)
3. Canberra: Tuesday 20 March 2018 [Find out more](#)
4. Sydney: Thursday 22 March 2018 [Find out more](#)

If you wish to discuss anything further, please reach out to our office on 02 8079 2924 or contact our team directly at info@fbtsolutions.com.au.