

client alert | explanatory memorandum

April 2021

CURRENCY:

This issue of **Client Alert** takes into account developments up to and including 19 March 2021.

It's time to consider FBT

The ATO has issued a worksheet which summarises the FBT rates and thresholds for 2021–2022 (ie 1 April 2021 to 31 March 2022). Most of the rates have been previously announced, but the worksheet helpfully puts the numbers in one place and does include two previously unannounced thresholds.

New numbers for 2021–2022 include the:

- record keeping exemption threshold of \$8,923 (up from \$8,853 for 2020–2021); and
- statutory or benchmark interest rate of 4.52% (down from 4.8% for 2020–2021).

The housing indexation figures for each state and territory are also provided, and there have been some changes since 2020–2021. However, at the time of writing the car parking threshold for 2021–2022 is still pending – it will be updated once the relevant CPI figure is available.

Other previously announced thresholds include the:

- cents-per-kilometre rate;
- living-away-from-home allowances (LAHFA) for Australia and overseas.

Other unchanged rates and thresholds listed in the worksheet include the:

- FBT rate of 47% (unchanged since 2017–2018);
- gross-up rates of 2.0802 for Type 1 benefits and 1.8868 for Type 2 benefits (also unchanged since 2017–2018);
- pay by instalment threshold of \$3,000;
- reportable fringe benefits threshold of \$2,000;
- capping thresholds for the FBT exemption and FBT rebate concessions;
- car fringe benefits statutory formula rate of 20% (unchanged since 2014–2015); and
- deemed depreciation rate of 25% for car fringe benefits valued under the operating cost method.

Lodgment dates and instructions

In a separate worksheet, the ATO advises that the due date to lodge the return and pay the liability for the FBT year is 21 May, unless either:

- the ATO accepts a request for an extension of time to lodge; or
- a registered tax agent meets the lodgment program requirements for FBT and lodges the return electronically by 25 June.

The ATO has also released its *2021 Fringe benefits tax return instructions*.

Historical rates

For the FBT historians out there, the ATO has also released a worksheet that sets out the “historical” rates and thresholds, which date back to 2012–2013.

Source: [www.ato.gov.au/Forms/2021-Fringe-benefits-tax-\(FBT\)-return/](http://www.ato.gov.au/Forms/2021-Fringe-benefits-tax-(FBT)-return/)
www.ato.gov.au/Forms/2021-Fringe-benefits-tax-return-instructions/
www.ato.gov.au/Rates/FBT/
www.ato.gov.au/Rates/Fringe-benefits-tax---historical-rates-and-thresholds/

Working from home benefits and FBT: updated ATO advice

The ATO has issued an update to its worksheet entitled *COVID-19 and working from home benefits*.

The advice is not new – much of the material already appears on a worksheet entitled *COVID-19 and fringe benefits tax*. However, given the new FBT year upon us, it's worth practitioners reminding themselves of the ATO's views (which of course they can completely disagree with).

Work laptops, other portable electronic devices and tools of trade

Given the impact of the pandemic, it would be expected that employers have given or loaned certain eligible work-related items to employees to facilitate them working at home. Alternatively, employers may have reimbursed employees for expenditure incurred on these items.

The ATO states that an eligible work-related item is exempt from FBT if it is:

- primarily for use in the employee's employment; and
- not a duplicate of something with a substantially identical function that has already been provided to the employee in the FBT year (unless it is a replacement).

An eligible work-related item is:

- a portable electronic device;
- computer software;
- protective clothing;
- a briefcase; or
- a tool of trade.

Examples of portable electronic devices include laptops, tablets, smartphones and calculators. However, the ATO states that it does not consider a desktop computer to be a portable electronic device. The ATO's reasoning for this is explained in a separate worksheet.

Small businesses

The worksheet states that a small business may be eligible for an exemption and that they can "provide multiple portable electronic devices to an employee, even where the items have substantially identical functions".

It reminds businesses that, from 1 April 2021, the turnover threshold for businesses to be eligible for this exemption will increase from \$10 million to \$50 million. Again, there is a separate ATO worksheet discussing how a business determines if it qualifies as a small business.

General office equipment

"General office equipment", as the term is used by the ATO, includes desks, chairs, cabinets, stationery, computer monitors and peripherals, and other items generally available for use in an office setting. There are different ways employers may provide such equipment to employees, which may have different FBT outcomes.

Lending office equipment

The benefit arising from lending general office equipment to employees during temporary working from home (WFH) arrangements due to COVID-19 may be exempt from FBT. However, for ongoing WFH arrangements, the benefit may also be exempt in some circumstances – and where it is not exempt, the taxable value may be reduced by the otherwise deductible rule.

Temporary WFH arrangements

During periods of temporary WFH arrangements due to COVID-19, the provision of office equipment will be exempt from FBT if it is:

- property that is ordinarily located on business premises;
- wholly or principally used directly in connection with business operations.

Office equipment is considered "ordinarily located on your business premises" if:

- the home use of the equipment by an employee is temporary; and
- there is an expectation that the equipment will be returned to the business premises when the temporary WFH arrangement ceases.

The equipment does not need to have been physically located on the business premises prior to entering into a WFH arrangement to meet the test, provided it is an item that is expected to be returned to the premises.

Ongoing WFH arrangements

Office equipment that an employer loans to an employee to support a WFH arrangement that will continue on a long-term basis is, in the ATO's view, unlikely to meet this exemption.

However, it states that the benefit may be exempt if the employer makes a "no-private-use declaration" that covers all office equipment loaned to employees to support their WFH arrangements where both of the following apply:

- the equipment is subject to a consistently enforced policy in relation to its use; and

- this use means the benefits would have a taxable value of nil.

The ATO will accept that the requirements of this exemption are met where the employer provides general office equipment to its employees solely to enable them to work from home and has a “consistently enforced policy” documenting this purpose.

In such cases, employers will not be required to provide documentation that demonstrates the employment use of the office equipment. The fact that there may be some incidental use of an item outside of work hours while it is located at an employee's home “does not prevent the benefit from meeting this exemption”.

If an employee does not complete a no-private-use declaration, the taxable value of that benefit may be reduced under the otherwise deductible rule. This applies if the employee would have received a once-only deduction had they incurred the expenditure themselves to rent the equipment solely to use for work purposes.

If it cannot be shown that the equipment still belongs to the employer and will be returned when the WFH arrangement ceases, then the provision of the equipment may be a property benefit.

Counselling and health care

Counselling services provided to support an employee's WFH arrangement may be exempt from FBT under the rules for work-related counselling. “Work-related counselling” refers to counselling that seeks to improve or maintain the quality of an employee's work performance and relates to matters such as health and safety, stress management, relationships, retirement and any other similar matters.

Similarly, health care provided to an employee to support their WFH arrangement may also be exempt from FBT if it is the provision of work-related preventative health care. “Work-related preventative health care” means any form of care that:

- is provided by or on behalf of a legally qualified medical practitioner, nurse, dentist or optometrist;
- has the principal purpose of preventing an employee from suffering from injury or disease that is related to their employment; and
- is available to all employees who are likely to suffer from similar work-related injury or disease.

Source: www.ato.gov.au/law/view/view.htm?docid=%22AFS%2FWFH-FBT-COVID-19%2F00001%22
www.ato.gov.au/General/COVID-19/Support-for-businesses-and-employers/COVID-19-and-fringe-benefits-tax/
[www.ato.gov.au/General/Fringe-benefits-tax-\(FBT\)/In-detail/Getting-started/FBT-for-small-business/?page=22](http://www.ato.gov.au/General/Fringe-benefits-tax-(FBT)/In-detail/Getting-started/FBT-for-small-business/?page=22)
www.ato.gov.au/Business/Small-business-entity-concessions/Eligibility/Work-out-if-you-re-a-small-business-for-the-income-year/

ATO reminder: lodge your TPAR

The ATO is reminding owners of businesses that provide various services to lodge their taxable payments annual report (TPAR) for the 2019–2020 income year. It estimates that around 280,000 businesses were required to lodge a TPAR for the 2019–2020 financial year, but at the beginning of March around 60,000 businesses still had not complied with the lodgment requirements. The reports were originally due on 28 August 2020. To avoid possible penalties, these businesses are encouraged to lodge as soon as possible.

The ATO notes that many businesses that have engaged delivery services (including food delivery services) though a contractor/subcontractor may not know they have to lodge a report.

The TPAR was introduced to combat the “black economy” which is estimated to cost the Australian community around \$50 billion, or 3% of gross domestic product (GDP). It is designed to help the ATO identify contractors or subcontractors who either don't report or under-report their income (eg through hiding amounts received as “cash in hand”).

“It's not fair if an honest business misses out on sales because a competitor is under-cutting them by doing things like under-declaring or not declaring income”, Assistant Commissioner Peter Holt has said. “The information we receive in the taxable payments annual report helps us shed light on this and keep things fair.”

While TPAR obligations originally only encompassed the building and construction industry, the report is now required for any businesses that make payments to contractors/subcontractors and provide any of the following services:

- building and construction including plumbing, architectural, electrical, plastering carpentry, engineering and a wide range of other activities;
- cleaning services including interior and exterior cleaning of structures, vehicles, machinery and cleaning for events/COVID-related matters;
- courier services including delivery of items or goods (ie letters, packages, food, etc) by motor vehicle or bicycle, or on foot;
- road freight services including transportation of freight by road, truck hire with driver, and road vehicle towing services;

- IT services including writing, modifying, testing or supporting software, either on site or remotely; and
- security, investigation or surveillance services including patrolling and guarding people, premises or property, or watching or observing an area or security systems.

The business doesn't need to provide the services *exclusively* to be captured under the TPAR system – if it only provides the service for a part of the year, or even if it is only a small part of the business, that business may be required to lodge a TPAR. According to the ATO, if the total payments received from the provision of any of these services equal or exceed 10% of the total annual business income, the business will be required to lodge a TPAR.

For example, during COVID, many eateries, grocery stores, pharmacies and other general retailers pivoted to providing home delivery for their customers. As such, they may have needed to engage contractors or subcontractors to provide courier services, if the total payments received for these deliveries or courier services amount to 10% or more of their total business income, they will be required to lodge a TPAR even though they may not have needed to do so previously.

If a business is required to lodge a TPAR, the details they will need to report about each contractor should be easy to find and are generally contained on the invoice the business receives from them. This includes details such as their ABN, name and address, and the gross amount paid for the financial year (including GST).

Source: www.ato.gov.au/Media-centre/Media-releases/ATO-s-taxable-payments-reporting-system-helps-tradies-compete-on-the-level/
www.ato.gov.au/Business/Reports-and-returns/Taxable-payments-annual-report/

COVID-19 stimulus and support measures winding back

A number of important stimulus and support measures are coming to an end, and some others have begun phasing out, which will occur over a slightly longer period.

The following discussion does not address the status of all Coronavirus Support measures that have been implemented. For example, it does not include the various state-based revenue concessions (eg for payroll tax), nor other measures that have already ended (eg cash flow boost payments, early access to super). Its purpose is to highlight that, as the pandemic (hopefully) recedes, so too government support winds back. Advisors and clients need to prepare for a business environment where the government safety net is not as wide.

JobKeeper ends 28 March 2021

JobKeeper Mark II operated from 27 September 2020 and, at the time of writing, is expected to finish on 28 March 2021.

The Mark II version saw some changes to what had initially been enacted:

- the introduction of two tiers of payment rates;
- the reduction in the amount of the JobKeeper payment; and
- the requirement for businesses to reassess eligibility for the JobKeeper extension with reference to their actual (rather than estimated) turnover.

A further change was that employees hired as at 1 July 2020 were also eligible to receive JobKeeper.

Certain provisions in the *Fair Work Act 2009* that were implemented in response to COVID-19 were, at the time of writing, also due to expire on 28 March 2021.

Coronavirus Supplement ends 31 March 2021

The Coronavirus Supplement was extended from 1 January 2021 to 31 March 2021 at reduced rate of \$150 per fortnight (it had been paid at \$250 from 25 September until 31 December 2020, down from the original \$550).

Other social security related measures that, at the time of writing, will stop on 31 March include:

- the temporary COVID-19 qualification rules for JobSeeker payment and youth allowance; and
- the ability of the Minister to temporarily modify certain specified provisions of the social security law by disallowable legislative instrument.

HomeBuilder ends 31 March 2021

The HomeBuilder measures are also, at the time of writing, due to end on 31 March 2021.

For all new build contracts signed between 1 January 2021 and 31 March 2021:

- eligible owner-occupier purchasers could receive a \$15,000 tax-free amount; and
- the property price caps for new builds in NSW and Victoria were set at \$950,000 and \$850,000 respectively, and \$750,000 for the other states and territories.

In addition, the construction commencement deadline was extended from three months to six months for all eligible contracts signed on or after 4 June 2020.

Apprenticeship wage subsidies end 31 March and 30 September

Under the Supporting Apprentices and Trainees wage subsidy, eligible employers could apply for a wage subsidy of 50% of an eligible apprentice or trainee's wages paid until 31 March 2021. In addition to the existing support for small businesses, medium-sized businesses may have been eligible for the subsidy, for wages paid from 1 July 2020 to 31 March 2021.

Under the Boosting Apprenticeship Commencements wage subsidy, any business or Group Training Organisation that engages an Australian Apprentice between 25 October 2020 and 30 September 2021 may be eligible for a subsidy of 50% of wages paid to a new or recommencing apprentice or trainee for a 12-month period from the date of commencement, to a maximum of \$7,000 per quarter. There is no cap on the number of eligible trainees/apprentices.

Accelerated depreciation ends 30 June 2021

An accelerated rate of depreciation is currently available, under Subdiv 40-BA of the Income Tax (Transitional Provisions) Act 1997 (TPA), to businesses with aggregated annual turnover less than \$500 million.

To be eligible for the accelerated depreciation, the depreciating asset must be:

- new and not previously held by another entity (other than as trading stock or for the purposes of reasonable testing or trialling) – this excludes most second hand assets, and the exclusion extends to a licence for an excluded intangible second-hand asset the business starts to hold on or after 7.30 pm AEDT on 6 October 2020;
- first held on or after 12 March 2020; and
- first used or first installed ready for use for a taxable purpose on or after 12 March 2020 and before 1 July 2021.

Broadly, the accelerated depreciation allows eligible entities to claim 50% of the cost of an asset, in addition to the deduction under the existing depreciation rules. Entities that use the small business pooling provisions (aggregated turnover under \$10 million) have a higher accelerated depreciation rate (57.5%).

Enhanced instant asset write-off ends 30 June 2021

A higher instant asset write-off threshold (\$150,000) is available to businesses with annual aggregated turnover below \$500 million that acquire a depreciating asset after 7.30 pm on 2 April 2019. The asset must be first used, or installed ready for use, between 12 March 2020 and 30 June 2021.

This measure is not to be confused with temporary full expensing, which ends on 30 June 2022 (see below).

JobMaker Hiring Credit eligibility ends 6 October 2021

Broadly, the JobMaker Hiring Credit is available to employers for each new job they create over a specified period for which they hire an eligible young person aged 16 to 35 years old.

Generally, the amount of the JobMaker Hiring Credit payment depends on the age of the eligible additional employee when they commence employment with the entity. An entity may receive up to \$200 per week for each eligible additional employee aged 16 to 29 years and up to \$100 per week for each eligible additional employee aged 30 to 35 years.

The JobMaker scheme commenced on 7 October 2020 and ends on 6 October 2022, but only applies to eligible individuals who commence employment between 7 October 2020 and 6 October 2021.

Temporary full expensing ends 30 June 2022

Temporary full expensing (under Subdiv 40-BB of the TPA) allows eligible businesses to deduct the full cost of eligible depreciating assets, as well as the full amount of the second element of cost.

A business qualifies for temporary full expensing if it has an annual aggregated turnover under \$5 billion. More generous rules apply to small business entities with aggregated turnover under \$10 million.

If temporary full expensing applies to work out the decline in value of a depreciating asset, no other method of working out that decline in value applies.

Temporary full expensing will cease to apply on 30 June 2022. Therefore, deductions for the decline in value of depreciating assets after that time will be worked out under the general uniform capital allowance (UCA) rules in Div 40 of the *Income Tax Assessment Act 1997* (ITAA 1997).

Loss carry-back ends 30 June 2022

Corporate tax entities with an aggregated turnover of less than \$5 billion can carry back a tax loss for the 2019–2020, 2020–2021 or 2021–2022 income years and apply it against tax paid in a previous income year – as far back as the 2018–2019 income year. In terms of the 2019–2020 income year, claims will be

processed when income tax returns are lodged for 2020–2021 and 2021–2022. Entities wishing to claim the loss carry-back tax offset prior 1 July 2021 (eg early balancers) need to use a special claim form.

Source: www.dese.gov.au/supporting-apprentices-and-trainees
www.dese.gov.au/boosting-apprenticeship-commencements

Life insurance in super: costs on the way up?

Having insurance through superannuation can be a tax-effective and cost-effective way of protecting yourself and your loved ones. Most funds offer three different types of insurance through super, each covering different contingencies: life insurance, total and permanent disability (TPD) insurance and income protection insurance.

Life cover pays a lump sum or income stream to the insurance holder's beneficiaries when the holder dies, or if they have a terminal illness. TPD insurance pays a benefit in instances where the holder becomes permanently or seriously disabled and is unlikely to work again. Income protection insurance pays the holder a regular income for a specified period if they can't work due to temporary disability or illness.

It's estimated that around 70% of Australians who have life insurance hold it through their super fund. However, the Australian Prudential Regulation Authority (APRA) has noted new and concerning developments that may see the costs of this insurance go up.

According to the data APRA has collected on life insurance claims and dispute statistics, premiums per insured member within super funds escalated during 2019 and 2020. APRA has likened this trend to what occurred between 2012 and 2016 when, after a period of significant premium reductions, insurers experienced significant losses. This led to large premium increases and more restrictive cover terms for insurance holders.

APRA notes that should this trend continue, super members are likely to be adversely affected by further substantial increases in insurance premiums and/or reductions in the value and quality of life insurance in superannuation. The regulator goes as far as saying that the ongoing viability and availability of life insurance through super may be at risk, which will impact a large proportion of the population.

It's not time to panic just yet, but it's important for your clients to regularly review what insurance they actually need, what cover they have through their super, and what they're paying for it, as premiums can add up and erode their super balance – especially if they're unnecessarily paying them to multiple funds!

Many super funds allow their members you to adjust their insurance cover (either up or down) to suit changes in their situations, with corresponding premiums. And if your clients are not happy with the prices or levels of cover they're receiving from their fund, they can always consider obtaining insurance outside of super.

For now, APRA is continuing to monitor the situation to ensure that registrable superannuation entity (RSE) licensees take appropriate steps to safeguard pricing, value and benefits for members that adequately reflect the underlying risks and expected experience.

Source:

www.apra.gov.au/news-and-publications/apra-urges-life-insurers-and-superannuation-funds-to-address-sustainability
www.apra.gov.au/sustainability-of-life-insurance-superannuation.

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