

Questions and Answers

Fringe benefit tax – options for change

Inland Revenue has prepared some questions that explain some common scenarios and questions that may arise from the officials' issues paper.

Purpose of the consultation

1 Why has Inland Revenue issued this document now?

Fringe benefit tax (FBT) was introduced in 1985 and since then it has become increasingly complex, with stakeholders continuing to raise problems with its design and operation. In 2022, Inland Revenue conducted a regulatory stewardship review of FBT and found that FBT does not function well, has lost its connection to remuneration and imposes a high administrative and compliance burden. This issues paper aims to address these issues by reimagining how the FBT regime could work. The principles and proposals set out in the issues paper focus on how a reimagined FBT regime could be less complex and more targeted to the benefit being received and the remuneration being substituted.

2 When do these proposed changes come into effect?

This is just public consultation at this stage. The proposals have been developed by Inland Revenue to seek feedback from the public on the appetite for change and the workability of the proposals. After submissions and advice are received, the Government will decide whether to proceed with any of these changes. If the Government decides to adopt any of the proposals, they would be included in a future taxation Bill.

3 Who has Inland Revenue consulted with in developing these proposals?

Inland Revenue officials have been working with a group of private sector FBT experts to refine and develop the proposals for more extensive consultation. This work has helped refine the proposals that are outlined in the issues paper, but these are at a stage where wider consultation will inform any recommendations to Government.

Proposals relating to motor vehicles

4 I provide my employees vehicles for private use, how would the proposals affect me?

Under the proposals, the FBT rules for motor vehicle are simplified and employers would only be required to classify the vehicle based on their permitted private usage. There are three categories:

- Vehicles predominantly available for employee's unrestricted private use (perk vehicle),
- Vehicles predominantly for business use, with restricted private use such as home to work (the same workplace) (i.e., tool of trade),
- Vehicles solely for business use with no personal usage other than for commuting to and from work (multiple workplaces/worksites) with no personal usage (other than incidental use).

These rules would remove the need to keep logbooks to track days the vehicle is unavailable for private use, as it focuses on the intended use of the vehicle and builds these days into the set rates. This should save compliance costs for employers.

The proposal also introduces the concept of incidental use that ignores non-regular use of a vehicle for private use from the FBT rules.

If there is a material change in the intended use once a category has been selected, employers would need to review the categorisation.

5 I currently have a work-related vehicle that is exempt from FBT – does this change anything?

Work-related vehicles are a motor vehicle that is not a car and has the employer's identification on the exterior. These vehicles do not incur a FBT in certain circumstances, however, if the vehicle is available for the employee's private use, outside permitted private use, an FBT liability will arise for that day. For example, travel to and from their home that is necessary in, and a condition of their employment is permitted. However, travel on the weekends would not be permitted and an FBT liability arises on that day.

The issues paper asks the question that given there is a move to measuring the level of private use of vehicles rather than an availability test, is there still a need for the work-related vehicle exemption.

The proposed categories (outlined at question 4) would require employees to look at the intended use of the vehicles and then apply the relevant rate to each vehicle. If there is only incidental private use, this is likely to be a category three vehicle where no FBT is payable. This should mean removing the exemption will not change the overall tax liability of these vehicles.

For a work-related vehicle that is fully exempt from FBT under the current rules there should be no change under the category proposal.

6 I am a self-employed sole trader and have a vehicle that I use for my business. How will the proposals affect me?

Currently FBT does not apply to your vehicle, but rather you would make an apportionment of their motor vehicle expenses between private and business use, and the proposed changes would not affect you.

7 How do I apply the categories if the level of private use changes?

The proposals apply a “close enough is good enough” approach. Employers would be required to make a reasonable attempt to classify the vehicle according to the permitted and actual private usage. If there was a material change in the amount of use, we would expect the category the employer applies to the vehicle to be updated.

8 Will the proposals to the FBT motor vehicle rules mean I have to pay more tax?

The proposals should mean that taxpayers’ compliance costs are substantially reduced from the current rules and this is the objective of the FBT review.

However, depending on the facts and circumstances relating to the use of vehicles the FBT motor vehicle rule proposals may have an impact. The proposals update the taxable value calculations to better reflect current motor vehicle values and allow employers to select a rate that aligns with the fuel source of the vehicle (standard, hybrid or electric).

There is also an update to the way the fringe benefit value is calculated for motor vehicles. Instead of working this out as days the motor vehicle is available for private use, this is replaced by three categories that have default values determined by how the vehicle is used.

While some people might pay a little more, others might pay less so the proposals are broadly fiscally neutral.

9 Are the proposals imposing tax on work-related vehicles?

No. FBT was always payable on the private use of work-related vehicles. If a vehicle that meets the definition of a “work-related vehicle” is made available for private use that is beyond limited permitted private use, it is subject to FBT under the current rules. The proposals in the issues paper don’t change this treatment but propose simplification of the rules and a reduction in compliance costs over the current rules. The FBT rules simply aim to ensure that a person receiving their salary in cash has the same tax treatment as a person receiving part of their salary as a non-cash benefit such as a vehicle.

Proposals relating to unclassified benefits and information requirements

10 I have to track flowers and small gifts I give to my employees for FBT, will the proposals change this?

Currently, the unclassified benefit FBT rules require employers to keep track of the unclassified benefits they provide (e.g., what they are, the values and who they were provided to) and compare them to the statutory thresholds. This imposes a large compliance burden on employers for things like flowers that are captured under the definition of unclassified benefit. There are two options for changing this.

Option one is a remuneration test that would replace the current rules. Flowers/small gifts will be exempt if the employer believes these were not provided in substitution for remuneration and if the taxable value is less than \$200. These benefits will not need to be tracked by employers.

Option two is to create a list of benefits that are automatically excluded from the rules. Flowers or cards provided as one-off gifts, token gifts or one-off prizes for employee events under \$200 would all be on the list and therefore excluded and employers would no longer need to track these. However, employers would still need to track all other benefits provided.

11 Will I have to provide more information to Inland Revenue?

Currently, Inland Revenue only requires employers to provide very minimal information about the FBT they pay. This provides Inland Revenue very little information to allow analytical work to determine potential non-compliance or monitor the health of the regime.

To improve this, we are proposing that employers provide more information about the benefits they provide. This would include a breakdown of the taxable benefits into the various categories and the applicable FBT. We will also look to enable employers to be able to file their FBT return through their software, to make this process simpler.

Proposals relating to the entertainment rules

12 How will the new entertainment rules work if they are included in FBT?

The current limitation on the deduction of entertainment expenditure would be removed. A new category of fringe benefits would be created called entertainment, which would be treated the same as unclassified benefits. Proposed exemptions such as the low value unclassified benefit rules or a wider exemption on food and beverages (unless those are provided at a party or other social occasion) may apply, meaning those benefits would not be subject to FBT.

Taxpayers would be allowed a full deduction for the FBT amount and the underlying entertainment expenditure. The GST adjustment would now be made as part of the FBT return.

13 What about entertainment expenditure and non-employees?

Currently the entertainment rules do not distinguish between employees and non-employees because the rules are focused on expenditure whereas FBT is focused on "employees". One potential way to deal with this is to deem non-employees to be "employees" for the purposes of FBT. This would simplify the current rules and still seek to bring the private element of the expenditure to tax.

Examples of how FBT treatment applies to vehicles under current rules and under the proposals in the issues paper

Example 1: Farmer provides a ute to an employee for use on the farm

Neil is a farmer who operates Finns Farm Limited, a sheep farm in Southland. He has an employee working for him, Sue, whom he provides a vehicle for use on the farm and for some limited private use.

Sue has been allocated a single cab ute that is sign written with the Finns Farm logo. She uses this vehicle on the farm and for travel into town on farm business. While she travels to and from town she quite often stops into the supermarket or other stores in town to pick up supplies for her home which is located on the farm.

She rarely uses the ute for other private use but does, on occasion, use it to go hunting. She has done this once or twice a year.

Current FBT rules

As the vehicle fits within the definition of work-related vehicle no FBT would be applicable except for the days where Sue uses the ute for private use that is not permitted private use (i.e., private use that arises incidentally to the business use).

As the days when Sue takes the vehicle hunting are not permitted private use or are incidental for business use, FBT must be paid in respect of those days. Farmer Neil must return FBT on the vehicle in respect of those private use days.

Proposed Rule

Under the proposed rules, the work-related vehicle exemption is removed but because there is no private running of the vehicle other than incidental private use, the vehicle is a category 3 vehicle with no FBT applicable. The private use where Sue takes the vehicle for hunting on rare occasions is also incidental as it is not regular. The only change is that Neil doesn't have to track private days of use in this case. In this case Neil will pay less FBT than under current rules as well as saving compliance costs of having to track the use of the vehicle.

Example two: Tradie with a double cab ute

Dan's Doors Limited is a joinery company owned by Dan. Dan has an employee, Steve, who he provides a branded double cab ute to use in the business. Dan allows Steve to use the vehicle for private use on any day of the year with no restrictions. Steve does this and uses the vehicle to take his kids to school and back, tow his boat to the marina at weekends and to go on holiday a couple of times a year. Dan has been told by a friend that FBT doesn't apply to double cab utes that are branded and thus does not pay FBT on the vehicle. This is not correct.

Current FBT rules

As the vehicle is not a "car" and would otherwise fit within the definition of work-related vehicle no FBT would be applicable except for the days where the private use is not permitted private use that is incidental to business operations.

Because Steve uses the vehicle extensively for private use on most days with no restrictions and outside the permitted private use it will be subject to FBT on most days and these days must be counted by Dan and FBT paid in respect of the vehicle.

Proposed Rule

The vehicle is no longer a work-related vehicle and because there is extensive private running which is more than incidental use the vehicle will be a category 1 vehicle with full FBT applicable due to the extensive nature of the private use. The only change is that Dan doesn't have to track private days of use in this case.

Examples of how proposed FBT treatment might apply to unclassified benefits

Example three: small benefits provided to employees

Bling and Kicks Limited (Bling) is a business specializing in jewellery and fashion. Bling has a team of 15 employees, and they will sometimes provide their employees with small gifts or merchandise. This month, Bling launched a new range of branded vintage baseball caps, so each employee got to pick one.

Kaitlyn, one of their employees, just got engaged, so Flav, the owner of Bling gave her some flowers and a card to celebrate. Further, as part of their wellness policy, Flav pays for their employees' gym memberships.

Current FBT rules

All benefits provided above are unclassified benefits". All benefits given must be tracked (what it is, their value and who it was provided to) and then the thresholds need to be applied to determine whether FBT is payable. Under the rules, if Bling provides more than \$300 of benefits to an employee per quarter, or more than \$22,500 to all employees in one year, FBT is payable.

In the first quarter, Kaitlyn received a branded cap (\$40), flowers and a card (\$120), three months of a gym membership (\$320) and a bar of chocolate for employee of the month (\$10). The taxable value of all benefits exceeded \$300, so FBT is payable on all benefits. Bling must undertake this calculation for all 15 employees.

Proposed option one – Remuneration approach

Following the remuneration approach, each benefit is assessed on its own. A benefit will be exempt if it is not provided in substitution for remuneration and the taxable value is less than \$200.

FBT is not payable on:

- Flowers: **Not provided in substitution for remuneration** (provided infrequently and irregularly, employee is not entitled, and benefit is not promoted in employment package) and **<\$200**.
- Chocolate: **Not provided in substitution for remuneration** (provided infrequently and irregularly, employee is not entitled, and benefit is not promoted in employment package) and **<\$200**.
- Cap: (assuming it is not provided in substitution for remuneration – not regular or frequent). Benefit is under \$200.

FBT is payable on:

- Gym membership: **In substitution for remuneration** (frequent and regular, employee can expect and is likely entitled, and benefit may be promoted in employment package).

Proposed option two – List approach

Following the list approach, the flowers, card and chocolates are excluded from the FBT calculation. As the remaining total of benefits still exceeds \$300, FBT remains payable on those items.