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Chartered Accountants

+ 2022 December Tax Update

Electric Vehicle ('EV") Fringe Benefits Tax ("FBT") exemption

For employers who provide vehicles to employees and employees who do or might otherwise salary sacrifice for a car the EV FBT exemption is a new initiative to consider.
The EV FBT exemption applies to cars (motor vehicles, including four-wheel drives, designed to carry a load less than one tonne and fewer than nine passengers) provided by an employer to an employee under the following conditions:

Low and zero emission cars	• Battery EVs; • Hydrogen fuel cell EVs; and • Plug-in hybrid EVs ie. must be able to be fuelled by a battery that can be recharged by an off-vehicle power source.
The car was first held and used on or after 1 July 2022	The car must be first held and used on or after 1 July 2022. This may include and EV ordered prior to 1 July 2022, but delivered after, but not a car delivered to you prior to 1 July 2022. A second-hand EV may qualify provided it was first purchased new on or after 1 July 2022.
Value below luxury car tax threshold for fuel efficient vehicles	The EV's first retail sale value must be below the luxury car tax threshold ($84,916 in 2022-23 including GST and customs duty but not service plans, warranties, stamp duty and registration)) for fuel efficient vehicles.

If an electric car qualifies for the FBT exemption, then associated benefits relating to running the car for the period the car fringe benefit is provided, can also be exempt from FBT.

Government modelling states that if an EV valued at about $50,000 is provided by an employer through this arrangement, the FBT exemption would save the employer up to $9,000 a year.

While the measure provides an exemption from FBT, the value of that fringe benefit is still taken into account in determining the reportable fringe benefits amount of the employee and the value of the benefit is reported on the employee's PAYG Summary. This increases the employee's adjusted taxable income and can impact on their Medicare levy surcharge, private health insurance rebate, employee share scheme reduction, and social security payments.

Can I salary sacrifice an electric car?

Assuming your employer agrees, and the car meets the criteria, you may salary packaging an EV. For a salary sacrifice arrangement to be effective for tax purposes, it needs to be agreed, documented, and in place **prior** to the employee earning the income that they are sacrificing.

Government modelling suggests that for individuals using a salary sacrifice arrangement to pay for a $50,000 electric vehicle, the employee would save up to $4,700 a year.

Who cannot access the FBT exemption

Your business structure makes a difference
By its nature, the FBT exemption only applies where an employer provides a car to an employee. Partners of a partnership and sole traders will not be able to access the benefits of the exemption as they are not employees of the business. When it comes to beneficiaries of a trust and shareholders of a company it will be important to determine whether the benefit will be provided to them in their capacity as an employee or director of the entity.

Additional SA Government EV support
The SA Government provides a limited $3,000 subsidy and a 3-year registration exemption on eligible new battery electric and hydrogen fuel cell vehicles first registered from 28 October 2021.

Trust distributions and s100A anti-avoidance provision

Section 100A of the Income Tax Assessment Act 1936 is an anti-avoidance rule. It applies to an agreement, arrangement or understanding (called a 'reimbursement agreement') where:

1. The benefit of a trust distribution to a particular beneficiary is provided to another. A benefit can take the form of a transfer of trust property, a payment or loan of money or provision of services.

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2. At least one party had a purpose of reducing or deferring income tax: and

Where section 100A applies, the beneficiary's trust distribution entitlement is taken to be disregarded and the trustee is instead assessed on the beneficiary's share of the trust's taxable income at the top marginal rate.

Exceptions to a reimbursement agreement are where:

- the arrangement is 'entered into in the course of ordinary family or commercial dealing';
- the beneficiary is a child under 18 years old (they are taxed heavily on unearned income) or under a legal disability; and
- at the time the beneficiary became presently entitled, there was no agreement, arrangement or understanding to provide a benefit to someone else. However, a repeated pattern may lead to an inference there was an understanding.

Most small business trust arrangements simply involve presently entitled beneficiaries receiving their entitlement, or controllers re-investing the profits of the trust into the working capital of the business and are at a very low risk of section 100A applying.

The ATO consider low risk arrangements to include:

- where a beneficiary simply uses their entitlements to benefit themselves/their spouse/dependents; or
- the beneficiary's entitlement is retained by the trustee for use in commercial or income earning operations of the trust, provided that either the beneficiary:
  - is employed in managing the business conducted by the trustee or their spouse controls the trustee; or
  - is a private company that enters into a loan agreement with the trustee that complies with Division 7A.

High risk arrangements commonly have elements of contrivance, undue complexity, lack commerciality and shelter income from higher rates of tax, eg. a university student who has no other sources of income, is made presently entitled to $180,000 and agrees to pay the $180,000 less tax to reimburse their parents for the costs their parents incurred when the student was a minor, or a circular distribution where a company is made presently entitled to income each year and, all or part of that income includes a dividend sourced from that company.

Accordingly, particularly from 1 July 2022, great care needs to be taken so beneficiaries who are distributed trust income actually receive or are provided with benefits of the same or similar value.

Protection from scams

A reminder of ways to reduce your chances of being scammed:

- Always use the primary website or app of your suppliers rather than a link from a text or email (unless absolutely certain of the source); Remember to hover over the name of a sending email account to check if it's from the company domain;
- Never click on links purporting to be from a bank, ATO or Government department. Go to your bank, use the banks website or MyGov for government services;
- Confirm payment details with your suppliers by phoning them, especially when their payment details have changed;
- Recognize the importance of and don't share log ins, passwords and password security;
- Ensure staff only have access to the business systems and information they need;
- Work with your computer support to complete a risk assessment of your systems and add cybersecurity to your risk management framework;
- Understand your organisation's legal obligation which can extend beyond the Privacy Act;
- Use multifactor authentication on your systems and third-party systems;
- Update software and devices regularly;
- Back-up data and have backup protocols in place;
- Only collect the customer data you need; and
- Remember to secure the hardware – laptops, computers and phones.

The material and contents provided in this publication are informative in nature only. It is not intended to be advice and you should not act specifically based on this information alone. Please contact our office with any specific accounting or taxation questions.

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