

CONSULTATION > OFFICIALS' ISSUES PAPER

# **Fringe benefit tax – options for change**

Issued: 1 April 2025

An officials' issues paper



**Inland Revenue**  
Te Tari Taake

**FIRST PUBLISHED**

April 2025 by Policy, Inland Revenue, PO Box 2198, Wellington 6140.

Fringe benefit tax – options for change



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<https://www.taxpolicy.ird.govt.nz/consultation/2025/fbt-options-for-change>

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## **CHAPTER 1 – Introduction**

### **Background**

- 1.1 Fringe benefit tax (FBT) was originally introduced to bolster the pay-as-you-earn (PAYE) system by ensuring that remuneration from employment is taxed, regardless of whether it is paid in cash or provided by way of a non-cash benefit. Since its introduction in 1985, FBT has become increasingly more complex and imposes a high administrative and compliance burden. This has been reflected in public feedback which raised problems with its design and operation. FBT was subject to a regulatory stewardship review in 2022 that concluded that FBT does not function well and that any intuitive connection FBT had with remuneration has been lost in many instances.
- 1.2 The purpose of this document is to review how FBT is assessed now, highlight current issues we are aware of with FBT and then outline some new concepts for how we could think about a reimagined FBT regime that is less complex and more targeted to the benefit being received and the remuneration substituted. We are after the public's feedback about whether these proposals are a step in the right direction to reduce compliance costs and make FBT fairer.

### **Summary of proposals**

- 1.3 The main proposals are summarised on the following pages.

## Summary of proposals

### *Motor vehicles*

This document suggests a number of changes to the way the FBT regime applies to motor vehicles to improve the logic and fairness of the rules. Collectively, these are intended to ease the compliance burden and streamline processes. These are discussed in detail in chapters 7 and 8.

- Increase the weight limit for vehicles subject to FBT from 3,500 kg to 4,500 kg.
- Exempt vehicles used for providing emergency services to the New Zealand public from FBT — such as those operated by New Zealand Police, ambulance services and Fire and Emergency New Zealand.
- Remove the ability to use tax book value as an option for valuing a motor vehicle.
- Introduce an optional valuation basis depending on fuel type of the vehicle.
- Calculate the value of a motor vehicle with reference to external sources.
- Recalculate these values every four years.
- Proposed new rates for calculating the value of a motor vehicle for FBT purposes (based on cost price of the vehicle):
  - standard default rate: 26% annually or 6.5% quarterly
  - hybrid vehicle: 22.4% annually or 5.6% quarterly
  - electric vehicles: 19.4% annually or 4.8% quarterly.
- Simplify processes to no longer require taxpayers to maintain logbooks to count days the vehicle is unavailable for private use, this would be accounted for in the four-year recalculation period.
- Adjust the traditional way of calculating a motor vehicles taxable value based on how the vehicle is used (approximating private use), rather than what type of vehicle it is. The rates apply to the FBT value calculated based on the cost price of the vehicle.

**Table 1: Categories of vehicle use**

Category	Limitations on use	Rate
1	Vehicle predominantly available for employee's private unrestricted use (i.e., perk vehicles). The provision of the vehicle is generally reflected in the employee's remuneration package.	100%
2	Vehicle predominantly for business use with restricted private use (i.e., tool of trade). The employee may use the vehicle for travel to and from work (work generally being the same workplace), but not at other times. Generally, the vehicle would be allocated to a single employee (although other employees may use the vehicle during business hours). The vehicle may have the employer branding.	35%

3	Vehicle solely for business use with no personal usage other than commuting to and from work (multiple workplaces/worksites), with no personal usage (other than incidental use). The vehicle will have employer branding.	0%
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- Introduce a concept of “incidental travel” to ensure one-off non-remunerative use of a vehicle is ignored for FBT purposes.
- Remove the current work-related and emergency vehicle exemptions because they are no longer required under the proposed approach.
- Major shareholder–employees of close companies would only be able to use category 2 or 3 when the cost base of the vehicle is less than \$80,000.
- Give the Commissioner the power to exempt certain motor vehicles that use categories 2 and 3 from the requirement to permanently affix the employer’s signage to the vehicle.

#### *Unclassified benefits*

Unclassified benefits are those benefits that do not fall into one of the listed categories of fringe benefits. It is a catch all for other benefits provided to employees. However, the compliance costs of dealing with what can be small value items can be excessive. Chapter 9 proposes some options for changing the current treatment:

- Change the way unclassified benefits are subject to FBT:
  - exclude benefits that are less than \$200 and not in lieu of remuneration
  - or**
  - introduce a list of benefits that are exempt as a schedule within legislation.
- Deem employer arranged points accrual schemes to be unclassified benefits that are in lieu of remuneration, the value of the benefit would be the cash value of the points accrued.
- Retain the on-premises exemption for unclassified benefits.

#### *Entertainment expenses*

This document contains the following options for simplifying the treatment of entertainment expenses. These are discussed more in Chapter 10.

- Integrate the entertainment deduction limitation with the FBT regime in line with the treatment in Australia and the United Kingdom.
- Either:
  - apply the unclassified benefits de minimis to those entertainment benefits, or
  - exempt food and beverages except those consumed at a party, social occasion or celebration.

#### *Miscellaneous issues*

There are a number of miscellaneous changes proposed in chapter 11:

- Change the valuation of the subsidised transport benefit from the highest fare on a particular journey to an average fare for the month of travel, to bring the New Zealand treatment more in line with the Australian treatment.
- Deem a benefit provided by an employer to an employee that has no cost to the employer to be provided at market value and not the cost.
- Deem open and closed loop stored value cards to be subject to FBT and not PAYE.
- Mandate a treatment for the calculation of FBT on global insurance policies.

#### *Data, filing and integrity*

There is a lack of information currently provided to Inland Revenue in respect of FBT. Chapter 12 suggests some changes to what and how information is provided to Inland Revenue in respect of FBT:

- Require future FBT returns to include a breakdown into categories, and sub-categories of fringe benefits.
- Allow taxpayers to file their FBT returns directly through software to Inland Revenue systems.
- Require taxpayers to declare in their income tax return that if they have claimed expenses relating to motor vehicles that they have they have complied with all FBT obligations, if any.

### **Making a submission**

- 1.4 Officials invite submissions on the proposals in this document, including the specific questions asked and any other issues raised in the document.
- 1.5 Include in your submission a brief summary of the major points and recommendations you have made. Please indicate if officials from Inland Revenue can contact you to discuss the points raised, if required.
- 1.6 The closing date for submissions is **5 May 2025**.
- 1.7 Submissions can be made:
  - by email to [policy.webmaster@ird.govt.nz](mailto:policy.webmaster@ird.govt.nz) with "FBT" in the subject line, or
  - by post to:
 

Fringe benefit tax review  
C/- Deputy Commissioner, Policy  
Inland Revenue Department  
PO Box 2198  
Wellington 6140
- 1.8 Submissions may be the subject of a request under the Official Information Act 1982. Please clearly indicate in your submission if any information should be withheld on the grounds of privacy, or for any other reason (contact information such as an address, email, and phone number for submissions from individuals will be withheld). Any information withheld will be determined using the Official Information Act 1982.



## CHAPTER 2 – Aims of the FBT review

- 2.1 This document outlines options for change for the FBT regime with the main aim of reducing taxpayer compliance costs and realigning FBT with its original policy intent, which was to equalise the tax treatment of benefits paid in cash and in kind.
- 2.2 Minimising compliance costs and simplifying the rules, is likely to lead to increased compliance with the FBT rules. The options in this document are focused on areas highlighted in the 2022 regulatory stewardship review<sup>1</sup> shown to have the most associated compliance costs and, those categories that are perceived to have lower compliance.
- 2.3 Simplification makes the rules clear and easy to understand but simplification may also result in some taxpayers paying more tax in comparison to what they pay today, although the reduction in compliance costs from simplification should offset that. The Government is not expecting, in aggregate, to raise additional tax revenue from these proposals, rather it is seeking to reconfigure the rules to address the systemic issues identified in the 2022 regulatory stewardship review.
- 2.4 This document proposes a “close enough is good enough” approach rather than the current precision that FBT requires. In large part, the compliance costs of FBT are incurred in getting to the precise measure of the provision of a benefit. This is particularly so for motor vehicles through counting days the vehicle is “available” and for employers who spend many hours identifying the attributing minor benefits, like chocolates and flowers, to employees.
- 2.5 This document seeks to remove those costs but still attempts to capture the approximate value of the benefit provided. This is likely to result in over- and under-taxation but overall the measurement of the benefit should be closer to the remuneration replacement of the provision of a non-cash benefit with much reduced compliance costs to taxpayers. Under these proposals employees would no longer need to keep detailed logbooks and finance staff would no longer have to make frequent requests for logbook data.
- 2.6 In addition to the prime focus of reducing compliance costs associated with FBT, this document seeks feedback on simplification measures to the entertainment deduction limitation, which is another area where taxpayers believe compliance costs are excessive and the rules are currently unclear and unfair. Moving from the status quo will inevitably change the tax that some taxpayers pay, either up or down, but we hope all taxpayers will save compliance costs.
- 2.7 Finally, the options in this document have been prepared with a view to ensuring the fiscal position of the changes is broadly neutral. This means that some of the options outlined in this paper may not proceed because they are unaffordable at this time or implementing some of the changes may be staggered to manage the fiscal impact of the changes.
- 2.8 In addition, some of the options outlined in the document simply cannot proceed without other options to ensure the fiscal position is balanced. One fiscal impact that is not measured in these changes is the benefit of the reduction in compliance costs for taxpayers from the changes. We expect these to be substantial and free up businesses to focus on growth and what they are good at, rather than wrestling with complicated rules and tax compliance. We

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<sup>1</sup> [Fringe benefit tax: regulatory stewardship review \(taxpolicy.ird.govt.nz\)](https://taxpolicy.ird.govt.nz) (August 2022).

are interested in feedback from taxpayers about the expected compliance cost savings which may accrue under these proposals.

- 2.9 Feedback received from this consultation will help shape final policy proposals for the Government's consideration.

## CHAPTER 3 – How FBT is assessed now

3.1 This chapter provides an overview of the current law on FBT in New Zealand.

### Background

3.2 FBT was introduced in 1985 in response to a growing trend for businesses to provide non-cash benefits in lieu of cash remuneration. Back in 1985 the top tax rate was 66% and applied at a low level<sup>2</sup>. The 1982 Task Force on Tax Reform<sup>3</sup> (McCaw report) noted:

*"The scope for avoidance through fringe benefits is wider than might generally be appreciated. They range from relatively low value items such as payment by the employer of private telephone accounts up to high value items such as motor vehicles available for private use. Many taxpayers can and do receive more than one such benefit. For example, it would be quite possible for an employee to be provided with a company car (perhaps two) and a low interest housing loan, and in addition have school fees, clothing costs, annual holidays, and child care costs all paid for by his employer. Under present tax legislation, none of these disbursements by an employer on behalf of his employee can be taxed as extra income to the employee or be treated as non deductible expenses to the employer."*

3.3 The purpose of the FBT regime is to buttress the pay as you earn (PAYE) system by ensuring that non-cash benefits provided to employees are taxed the same as benefits provided in cash. Consequently, since 1985 remuneration practices have changed so employers are more likely to provide cash and are unlikely to pay employees with multiple cars, low interest loans, school fees and holidays. To put this into context, in the year ended 30 June 2024<sup>4</sup> Inland Revenue collected over \$50 billion of tax through PAYE and less than \$1 billion of tax through FBT. FBT remains an important tax to ensure the types of substitutions seen in the 1980's don't reoccur. Cash benefits (salaries or wages) mainly fall within the definition of employment income and are taxed at the marginal rate of the employee under the PAYE system.

3.4 Non-cash benefits are generally fringe benefits that are subject to FBT and are either taxed at a flat rate or attributed to employees and taxed using multi-tiered rates. This tax is paid by the employer. A common example of a fringe benefit is an employee being provided with a motor vehicle by their employer for their private use. The exception to this rule is the provision of accommodation, which is subject to PAYE and not FBT.

3.5 This chapter primarily focuses on non-cash benefits that are subject to the FBT regime:

- motor vehicles
- low-interest loans
- other specific benefits

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<sup>2</sup> \$22,000, equivalent to \$103,000 in current day terms.

<sup>3</sup> <https://www.taxpolicy.ird.govt.nz/-/media/project/ir/tp/publications/1982/1982-other-report-task-force-tax-reform/1982-other-report-task-force-tax-reform.pdf?modified=20220327012724&modified=20220327012724> – at Page 152.

<sup>4</sup> <https://www.ird.govt.nz/-/media/project/ir/home/documents/about-us/publications/annual-and-corporate-reports/annual-reports/annual-report-2024.pdf?modified=20241016021401&modified=20241016021401> – at Page 154.

- unclassified benefits, and
- excluded benefits.

## **Motor vehicles**

- 3.6 Motor vehicles are the largest category of fringe benefits in terms of dollar value.
- 3.7 A fringe benefit arises when an employer provides a motor vehicle to an employee and that vehicle is made available for their private use. The person who makes the vehicle available to the employee does not have to be the employer for a fringe benefit to arise. The person can be someone who:
- owns the vehicle
  - leases or rents the vehicle
  - has the right to use the vehicle under an agreement or arrangement with the employee, or a person associated with the employee.
- 3.8 For FBT purposes, a “motor vehicle” takes on the same meaning that it has in the Land Transport Act 1998, but it does not include any vehicle that weighs more than 3,500 kg. This means that the definition covers vehicles such as cars and motorcycles, along with most four-wheel drives, vans and light trucks. There is an open question as to whether this weight limit is appropriate considering the growth of electric vehicles, which are often heavier than their combustion engine equivalents due to large batteries. The origin of this limit was the weight limit for a standard driver’s licence, which has now increased to 6,000kgs.
- 3.9 It is important to note that the employee does not have to actually use the vehicle for there to be a fringe benefit. Under current law, if a motor vehicle is made available for private use on a particular day then FBT will apply for that day. This causes perceived inequities in some circumstances. For example, if an employee leaves an employer-provided vehicle at the airport for a week while on holiday, FBT would be calculated based on the entire week. This is because the vehicle has been *made available* for private use for the duration of this time. It is also noted that FBT is calculated based on whole days and is not broken down further to account for part days of use.

### ***Work-related vehicle exemption***

- 3.10 The current FBT rules have a specific carve out for “work-related vehicles”. An FBT liability will not arise on any day when a vehicle provided to an employee is classified as a work-related vehicle.
- 3.11 To qualify for the work-related vehicle exemption, all four of the following criteria must be met<sup>5</sup>:
- the vehicle must meet the definition of a “motor vehicle” as set out in the Land Transport Act 1998,
  - business identification regularly used by the employer must be permanently and prominently displayed on the exterior of the vehicle,

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<sup>5</sup> A full explanation of this exemption can be found in IS 17/07: <https://www.taxtechnical.ird.govt.nz/-/media/project/ir/tt/pdfs/interpretation-statements/is-1707.pdf?modified=20200316215933&modified=20200316215933>

- employees must be notified in writing that the vehicle is not available for private use except for travel to and from their home that is necessary in, and a condition of, their employment, and any incidental travel that occurs during those journeys, and
  - the vehicle must not be a “car”.
- 3.12 A car is defined for the FBT rules to mean a vehicle designed exclusively or mainly to carry people. On the face of it, this means that vehicles such as utes, double-cab utes, and light pick-up trucks can qualify for this exemption provided all other criteria are met, but a conventional car will not.
- 3.13 It is worth noting that a vehicle can qualify for a daily exemption from FBT under the work-related vehicle criteria. This will arise if a vehicle meets the four criteria listed above, but certain days are designated as private use days (for example the weekends). FBT is paid in respect of those days.

### ***Emergency call exemption***

- 3.14 If an employee uses a vehicle to attend an emergency call, FBT will not apply for the whole day when the employee travels from their home and, in the course of their employment, provides services that are deemed essential. The types of services covered are set out in Inland Revenue’s *IR409: Fringe benefit tax guide* at page 9 and on pages 26–30 of IS 17/07.<sup>6</sup> It includes emergency services related to health and safety of a person, along with services essential to operate plant or machinery.
- 3.15 There is no restriction on the type of vehicle that may be involved, however the visit must take place between 6pm and 6am during the work week, or any time on a weekend or public holiday for the exclusion to apply. There are no time restrictions in the provision of emergency services relating to the health or safety of a person. The exemption only applies if the employee makes an emergency call-out, not if the employee is merely on-call.

### ***Business travel exemption***

- 3.16 An FBT exemption will apply in circumstances when an employee is away from home with a vehicle for at least 24 hours, if the employee is required to use a vehicle in the performance of their duties and is required to be regularly away from home. In these circumstances, the provision of the vehicle on the days that the employee is away from home will not be a fringe benefit.

### ***Calculating FBT on motor vehicles***

- 3.17 An employer can calculate FBT on motor vehicles based on either cost price or tax value. Cost price refers to the price paid for the vehicle and includes any initial costs for getting the vehicle on the road. The tax value of a motor vehicle is the original cost price less total accumulated depreciation of the vehicle. Under the tax value method, the benefit is valued at a higher rate initially but reduces in value as the car depreciates over a number of years.
- 3.18 There are specific formulae in the legislation for calculating the value of the fringe benefit depending on whether the employer is registered to file FBT returns quarterly, annually or by income year. Under these formulae, the number of days when the vehicle was not available for private use, was used for a business trip or emergency call, or was a work-related vehicle will be subtracted when determining the amount of fringe benefit. Although compliance costs can be mitigated by utilising mechanisms such as the three-

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<sup>6</sup> [IR409 Fringe benefit tax guide \(2024\)](#).

month test period (which allows you to record exemptions a vehicle qualifies for over a three-month period rather than its whole life and use this as a basis for calculating FBT), current rules very much emphasise counting days in which the vehicle was “available” for private use.

- 3.19 The taxable value of a motor vehicle may also be reduced by employee contributions or part-ownership by the employee or an associated person. These are also considered when calculating the FBT amount payable by the employer.

### **Low-interest loans**

- 3.20 Employers may provide credit to their employees or for companies, particularly closely held family companies, to make loans available to shareholder-employees.
- 3.21 FBT is charged on low-interest loans made to employees and shareholder-employees. This includes all advances (such as salary advances), deposits, money lent in any other way, overdrawn shareholder current accounts, and any credit given (including delaying the recovery of a debt). Exemptions exist for employee share loans, for exempt employee share schemes, PAYE-related overpayments, and salary advances or no more than \$2,000.
- 3.22 There is a prescribed rate of interest set by regulation under the Income Tax Act 2007 that is regularly reviewed. At time of writing, this rate is 8.41% (see the Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations (No 2) 2023<sup>7</sup>). The value of the fringe benefit in an employment-related loan situation is the difference between the market rate set by regulation<sup>8</sup> and the rate charged on the loan.
- 3.23 This area of FBT is currently working as intended and has relatively low compliance costs compared with some of the other benefits such as motor vehicles.

### **Other specific benefits**

- 3.24 In addition to motor vehicles and low-interest loans, the other specific benefits under the current FBT rules are:
- subsidised transport
  - services for members and former members of Parliament
  - contributions to superannuation schemes
  - contributions to sickness, accident, or death benefit funds
  - contributions to funeral trusts
  - contributions to life or health insurance.
- 3.25 These areas of FBT are currently working well and therefore no major reform in this area is proposed although some minor issues may be addressed.

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<sup>7</sup> [Income Tax \(Fringe Benefit Tax, Interest on Loans\) Regulations 1995 \(SR 1995/41\) \(as at 1 October 2023\)](#)

<sup>8</sup> An alternative calculation method exists in section RD 35 of the Income Tax Act 2007 for employers who are in the business of lending money to the public.

### ***Subsidised transport***

- 3.26 This FBT rule targets employers who are in the business of supplying transport to the public<sup>9</sup>. Transport in motor vehicles, which are vehicles with a weight not exceeding 3,500 kg, are excluded from this rule.
- 3.27 A fringe benefit exists when an employee receives or is entitled to receive the same transport service offered to the public at a cost less than the highest fare the employer charges to the public for that transport. The value of the fringe benefit is set at 25% of the highest fare over the period. Some consider that by using the highest fare the calculation over taxes the benefit.
- 3.28 If employers who are not in the business of transporting passengers provide subsidised transport of this nature it constitutes an “unclassified benefit” rather than subsidised transport and the value of the benefit will be the market value of the service.
- 3.29 Proposed minor changes to how the subsidised public transport rules operate are discussed in Chapter 11.

### ***Services for members and former members of Parliament***

- 3.30 Any travel, accommodation, and communication services paid to members or former<sup>10</sup> members of Parliament are subject to FBT if those benefits are exempt income under section CW 31 of the Income Tax Act 2007. The purpose of this rule is to ensure that the private element of these benefits is subject to tax.

### ***Contributions to superannuation schemes***

- 3.31 FBT applies to contributions an employer makes to certain employee superannuation schemes such as a foreign superannuation fund. FBT does not apply to contributions subject to employer superannuation contribution tax (ESCT). This effectively means that the FBT rules do not apply to New Zealand superannuation funds or a KiwiSaver scheme.

### ***Contributions to sickness, accident or death benefit funds***

- 3.32 FBT also applies to any contributions an employer makes to a sickness, accident or death benefit fund on behalf of the employee. The value of the benefit is equal to the contribution made.

### ***Contributions to funeral trusts***

- 3.33 A fringe benefit also arises when an employer contributes to certain funeral trusts. The funeral trust must also satisfy the requirements in section CW 45 of the Income Tax Act 2007. Essentially, the sole purpose of the fund must be for paying funeral expenses for employees, their partners and dependants.

### ***Contributions to life and health insurance premiums***

- 3.34 A fringe benefit arises when an employer pays a specified insurance premium or contributes to the insurance fund of a friendly society for the benefit of an employee.

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<sup>9</sup> This rule should not be confused with section CX 19C of the Income Tax Act 2007 which provides an exemption for employers to provide public transport to their employees to commute to and from work.

<sup>10</sup> FBT applies to benefits provided to past, present and future employees.

- 3.35 Generally, if the employee takes out an insurance policy and the premiums are paid by the employer on the employee's behalf, this will be subject to PAYE. This is because the premiums are expenditure on account of an employee. By contrast, if the employer takes out the insurance policy for the employee and pays the premiums, this will be subject to FBT.

## **Unclassified benefits**

- 3.36 "Unclassified fringe benefits" are all benefits provided in connection with employment that are not specifically set out in legislation. The definition is intentionally broad, but examples of benefits that typically fall within scope include free, subsidised or discounted goods and services,<sup>11</sup> and carparks. FBT is payable unless the thresholds described below apply, or the benefit is subject to a specific exclusion.

### ***Unclassified benefit thresholds***

- 3.37 Under current law, an employer is only liable for FBT on an unclassified benefit if:
- the total taxable value of all unclassified benefits provided to an employee in a quarter exceeds \$300<sup>12</sup> (per employee cap), or
  - the total taxable value of all unclassified benefits provided to all employees in the last four quarters (for quarterly filers), or income year (for annual filers) exceeds \$22,500 (per employer cap).
- 3.38 If the value of the benefits provided to an employee exceeds \$300 in a quarter, FBT applies to the full value of the benefits provided in that quarter. If the total value of benefits for all employees exceeds \$22,500 for the current and three preceding quarters, FBT applies to the full value of the benefits provided in that quarter. If the per employer cap is exceeded, FBT will be payable regardless of whether the benefits provided to each employee in a quarter are worth less than \$300.
- 3.39 These thresholds were last updated in 2009. The de minimis exemption was introduced to save compliance costs for employers, but the need to track benefits to confirm the exemption thresholds have not been exceeded, reduces the intended compliance cost savings.

## **Excluded benefits**

### ***Specific exclusions***

- 3.40 Exclusions and limitations are also set out for specific benefits provided by employers. Examples include benefits provided on-premises, benefits related to health and safety, and business tools.
- 3.41 Under the on-premises FBT exemption, a benefit<sup>13</sup> provided by an employer to their employee that is used or consumed on the employer's premises is not a

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<sup>11</sup> For more information on how free, subsidised or discounted goods are currently treated, see IR409 [Fringe benefit tax guide \(ird.govt.nz\)](http://ird.govt.nz).

<sup>12</sup> If FBT is paid on an annual or income year basis, the total taxable value of all unclassified benefits provided to an employee must not exceed \$1,200 in that year.

<sup>13</sup> Other than free, discounted, or subsidised travel, accommodation, or clothing.



fringe benefit. The exemption ensures that benefits such as the following are not subject to FBT:

- carparks provided on-premises (including leased carparks)
- barista-made coffee provided free on-premises, and
- childcare facilities provided on-premises.

3.42 The health and safety FBT exemption ensures that benefits provided by an employer to their employee are not subject to FBT if they:

- relate to the employee's health and safety
- are aimed at managing risks under the Health and Safety at Work Act 2015, and
- would be excluded under the on-premises exemption if they were provided on the employer's premises.

3.43 The health and safety exemption excludes benefits such as flu vaccine vouchers, but the exemption does not extend to gym memberships or employer-funded health insurance. This is because the benefit must relate to specific health and safety risks in the workplace.

3.44 Additionally, the private use and availability of a business tool, such as an employer-provided laptop, is not a fringe benefit if:

- the business tool is provided mainly for business use, and
- the cost of the business tool to the employer does not exceed \$5,000.

## CHAPTER 4 – FBT regulatory stewardship review

- 4.1 This chapter outlines Inland Revenue’s FBT regulatory stewardship review and summarises its key findings and recommendations.

### Background

- 4.2 Inland Revenue’s regulatory stewardship review of FBT provides a starting point for considering how the regime could be improved for current and future use. It was commissioned in June 2021, with its findings and high-level recommendations published in August 2022.
- 4.3 The approach to the review was to:
- establish the initial policy rationale for FBT and its design
  - identify milestones in the history of FBT and what policy or design features, if any, changed over time
  - identify and analyse sources of quantitative data, and
  - undertake a programme of loosely structured, participant-led interviews inside and outside Inland Revenue.

### Key findings and recommendations

- 4.4 The review team was satisfied that FBT continues to perform its primary task of ensuring that remuneration from employment is taxed whether it is paid in cash or provided by way of a non-cash benefit.
- 4.5 However, the regime’s complexity was a persistent theme. Review participants consistently stated that FBT imposes a high administrative and compliance burden relative to the tax at stake. Many felt that any intuitive connection with remuneration had been lost.
- 4.6 There were concerns that FBT is not complied with by all businesses nor enforced by Inland Revenue. This was seen as an issue from both fairness and regulatory risk perspectives in that if the view that non-compliance with the FBT rules is risk-free becomes entrenched, this perception could undermine the integrity of the tax system as a whole.
- 4.7 The review team recommended commissioning a policy project at the upper end of the spectrum. This would involve re-establishing the remuneration basis of the tax, modernising and simplifying FBT and reducing compliance costs.
- 4.8 They also recommended undertaking a communications campaign and measures aimed at addressing non-compliance.
- 4.9 In addition, any actions taken in response to the review should be monitored.

### Consistency of FBT design with original policy intent

- 4.10 The review found that FBT continues to perform its role of buttressing the PAYE system for the following reasons:
- FBT ensures that non-cash benefits are taxed and that the tax system does not favour cash or non-cash remuneration.

- FBT continues to maintain a broad base for the tax system and combats the effects of tax planning. Some in the private sector noted that while the tax implications of remuneration packages can be a main consideration for employers and employees in Australia, this is not the case in New Zealand.
- 4.11 However, the review notes that the design of FBT is not wholly consistent in capturing non-cash remuneration. The review observed the following:
- The interactions between FBT, PAYE and entertainment deduction limitation give rise to boundary issues. For example, employer-provided accommodation is captured in the PAYE system. The review also notes that the inclusion of non-cash benefits in the PAYE system can increase costs for employers, along with the tax liabilities of employees. This may result in asymmetrical outcomes, as well as complexity for taxpayers.
  - Working for Families, student loans and child support were introduced after FBT. Non-cash benefits are only accounted for to a limited extent, and not at all in the case of child support. Given a person's taxable income can be reduced through employer-related benefits, which may not be included in these social policy obligations, it is important to understand the extent and impacts of employer-related benefits on these areas.

### **Complexity of FBT design**

- 4.12 Although FBT largely achieves its policy objectives, it is not clear that the tax functions well. The review found that it is generally seen as complex, being both difficult to understand and comply with. A list of high-level design issues follows.

#### ***Broad-base approach***

- 4.13 FBT has a broad base. In this case, the approach seems to lend itself to complexity. For example, the wide definition of unclassified benefits technically captures non-remunerative benefits such as bereavement flowers. This may play a part in the intuitive link to remuneration being eroded.
- 4.14 FBT also seeks to capture the availability of a benefit for motor vehicles, rather than its use or value to the employee. Review participants indicated that this was another example of overreach and can lead to complexity and compliance costs when vehicles are temporarily unavailable.<sup>14</sup>

#### ***Motor vehicles***

- 4.15 Motor vehicles were identified as the most common area in which misconceptions arise. Inland Revenue has issued two interpretation statements since 2002:
- *IS 17/07: Fringe benefit tax – motor vehicles*,<sup>15</sup> which seeks to clarify the current law around motor vehicles (runs to 57 pages) and
  - *IS 25/02: Travel by motor vehicle between home and work*,<sup>16</sup> which covers deductibility of expenditure and FBT implication details on what is and is not considered private home to work travel (runs to 59 pages).

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<sup>14</sup> Although these compliance costs are incurred in *not* paying FBT, or paying what seems a “fair” amount of FBT, when the benefit is not available, the underlying focus on availability results in this outcome.

<sup>15</sup> [Fringe benefit tax - motor vehicles \(ird.govt.nz\)](https://www.ird.govt.nz/fringe-benefit-tax-motor-vehicles).

<sup>16</sup> [Tax Information Bulletin - Volume 37 number 1 - February 2025 \(at page 74\). This updated and replaced the previous interpretation statement – IS3448.](#)

- 4.16 The length of these two interpretation statements may suggest that the underlying law is complex and in need of review.
- 4.17 Detailed guidance on how to determine the “cost” of a vehicle was also released in 2009 *BR Pub 09/08 “Cost price of the vehicle” – meaning of the term for fringe benefit tax purposes*.

### ***Specific design areas***

- 4.18 Two specific design areas were reviewed, raising special considerations in addition to those made generally. These are:
- the respective definitions of charities and the not-for-profit sector are unclear and inconsistent,<sup>17</sup> and
  - FBT’s ability to accommodate points of cultural difference within Te Ao Māori. For example, it is not always clear when an individual is acting as an employee rather than as a member of the community.

### ***Compliance costs***

- 4.19 Many reported that the cost of compliance is out of proportion to the tax at stake. This gives rise to non-compliance, raising integrity concerns.

### ***Options and exemptions***

- 4.20 There is an inherent tension in the provision of options and exemptions. They are intended to provide flexibility and reduce costs, but costs are associated with accessing them.
- 4.21 Most review participants noted that tracking of unclassified benefits and available days for motor vehicles to access exemptions were the two main problem areas for compliance costs. While these costs are, generally, related to paying less FBT this is a result of the overall design of the FBT regime and the focus on availability of use or the disconnect with remuneration.

### ***Timing***

- 4.22 Additionally, participants felt that FBT compliance is not well integrated with GST or PAYE. The lack of coordinated deadlines for filing and payment across tax types is seen as adding another compliance burden.

### ***Software solutions***

- 4.23 Third-party software is reportedly the preferred option for employers navigating FBT compliance. It offers a greater ability to organise data and prepare returns but is not an end-to-end solution.
- 4.24 Compliance involves identification of benefits, collation and manipulation of data, and interpretation of the rules. It may also be necessary to allocate benefits to employees. It seems that third-party software is only a partial solution for employers.

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<sup>17</sup> The FBT charitable exemption is not addressed in this paper because it has been addressed in the issues paper [Taxation and the not-for-profit sector](#) (released February 2025).

## **Non-compliance**

- 4.25 Aside from the resource burden of FBT, the review found that compliance itself is a spectrum – from taxpayers who sought to do everything by the book, to those who do not try to comply at all:
- A clear message was that, due to FBT’s low status, few taxpayers were willing to incur the costs of advice to ensure fully accurate compliance with the rules.
  - The perceived low rates of enforcement likely reinforce this attitude, along with risks to the integrity of the tax system as a whole.

## **Is FBT fit for the future?**

- 4.26 The review noted that since the introduction of FBT in 1985, employment practices have changed for many businesses and employers. COVID-19 has accelerated these changes, and the review suggests that FBT may require modernising in the following areas.

### ***Flexible working trends***

- 4.27 The trend towards flexible working practices calls into question several rules that historically rested on the home/work boundary. For example:
- the continuing fitness of the “on-premises” and health and safety exclusions<sup>18</sup>
  - the limitation of the business tool exemption<sup>19</sup>
  - practical compliance with the work-related vehicle exemption<sup>20</sup>.

### ***Role of employers***

- 4.28 Participants noted that employee expectations of their working conditions are changing, and that employers themselves are more interested in wellbeing.
- 4.29 Benefits provided under the category of “wellbeing” include gym memberships and health insurance. These benefits are more general than those falling within health and safety, which is more focused on reducing harm.

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<sup>18</sup> Sections CX 23 and CX 24 of the Income Tax Act 2007.

<sup>19</sup> Section CX 21 of the Income Tax Act 2007.

<sup>20</sup> Section CX 38 of the Income Tax Act 2007.

## CHAPTER 5 – International comparisons

5.1 This chapter outlines the key differences in the way FBT rules apply in Australia and the United Kingdom.

### Australia

5.2 The Australian FBT system is similar to New Zealand's in that the tax due for a non-cash benefit is borne and paid by the employer. However, the Australian regime has two key differences:

- fringe benefits are reported in the employee's annual payment summary or income statement to enable their value to be taken into account for specific purposes (such as determining eligibility for certain social security benefits and tax concessions), and
- exemptions and concessions are a notable feature. This is at least partially because, unlike New Zealand, employees are permitted to claim tax deductions for cost associated with earning employment income.

5.3 Motor vehicles and unclassified benefits (known as minor benefits in Australia), are also treated differently from the New Zealand system.

5.4 Other major differences are that Australia also includes entertainment within its FBT regime and applies a single rate of FBT rather than having attribution options like New Zealand.

### Minor benefits

5.5 A minor benefit is exempt from FBT when it is both:<sup>21</sup>

- less than \$300 notional taxable value (as if the good was taxable),<sup>22</sup> and
- it is unreasonable for it to be treated as a fringe benefit.

5.6 While there is no maximum benefit rule, when the sum of the minor benefits provided is large, they are less likely to be considered as a minor benefit.

5.7 To determine whether it is "unreasonable for it to be treated as a fringe benefit" it is necessary to look at the nature of the benefit and apply the following criteria:

**Table 2: Criteria for fringe benefit treatment**

Criteria	Interpretation
The <b>frequency and regularity</b> with which associated benefits <sup>23</sup> are provided.	The more frequently and regularly, the less likely the minor benefit will qualify as an exempt benefit.

<sup>21</sup> Guidance can be found on the Australian Taxation Office website: [Minor benefits exemption | Australian Taxation Office](#).

<sup>22</sup> When an employee is provided with benefits that are connected (e.g., a meal, a night's accommodation and a taxi ride), the \$300 value applies to each benefit separately.

<sup>23</sup> Benefits that are identical or similar to the minor benefit and benefits given in connection with the minor benefit.

Criteria	Interpretation
The <b>total of the notional taxable values</b> of the minor benefit and identical or similar benefits.	The greater the total value, the less likely the minor benefit will qualify as an exempt benefit.
The likely total of the <b>notional taxable values of other associated benefits</b> . <sup>24</sup>	The greater the total value, the less likely it is the minor benefit will qualify as an exempt benefit.
The <b>practical difficulty</b> in determining the notional taxable value of the minor benefit and any associated benefits, including the difficulty in keeping the necessary records.	If it is practical to value the benefits and keep the necessary records, the less likely it is the minor benefit will qualify as an exempt benefit.
The <b>circumstances</b> in which the minor benefit and any associated benefits were provided.	If a benefit is not provided as a result of an unexpected event and can be considered principally as being in the nature of remuneration, the less likely it is the minor benefit will qualify as an exempt benefit.

5.8 If, after considering the five criteria, the employer concludes that it would be unreasonable to treat the benefit as a fringe benefit, the benefit itself will be an exempt benefit.

5.9 This exemption does not apply to in-house benefits, certain entertainment benefits,<sup>25</sup> and benefits provided under a salary sacrifice arrangement.

### **Motor vehicles**

5.10 A vehicle fringe benefit may arise when a car is provided to an employee for private use. FBT will not arise from private use of the vehicle if it is an exempt use of an eligible commercial vehicle, or the vehicle is an eligible electric car.

5.11 If the vehicle is an eligible vehicle,<sup>26</sup> the permitted private use includes:

- travel between home and work
- travel that is incidental to travel in the course of employment duties, and
- non-work-related use that is minor, infrequent and irregular (such as occasional use of the vehicle to remove domestic rubbish).

5.12 The Australian Taxation Office provides an online calculator where businesses can input the vehicle use to work out the taxable value of the benefit. The calculator can work out either:

- Operating cost method (requires logbooks):

<sup>24</sup> For example, when a meal, which is a minor benefit, is provided in connection with a night's accommodation and taxi travel, which themselves may or may not be a minor benefit, the total of their taxable values must be considered.

<sup>25</sup> [Minor benefits exemption | Australian Taxation Office \(ato.gov.au\)](https://ato.gov.au/Minor-benefits-exemption)

<sup>26</sup> Eligible vehicles are defined on the ATO's website: [Exempt use of eligible vehicles | Australian Taxation Office \(ato.gov.au\)](https://ato.gov.au/Exempt-use-of-eligible-vehicles).

total operating costs x % of private use – any employee contribution.

- Statutory formula, which uses the cost price of the car, the statutory percentage (currently 20%), the number of days in the FBT year when the car was used or available for private use, the total number of days in the year and the employee contribution.

5.13 Both methods require employers to keep a number of records, both of which include recording days the car is used or available for private use. The operating cost method also requires maintaining a logbook for 12 representative weeks, recording the odometer records travelled during that period and the year in total.<sup>27</sup>

## United Kingdom

5.14 Employment-related benefits and expenses (known as benefits in kind<sup>28</sup> or BIKs) are also subject to tax in the United Kingdom. However, there are key differences to New Zealand's system:

- Employers can (and must from April 2026) report the taxable expenses or benefits they provide to their employees through payroll and pay tax on them throughout the year. In New Zealand, tax on non-cash benefits is paid through a separate FBT return.
- The tax treatment of BIKs is more prescriptive, with a specific list of relevant benefits and expenses being provided.<sup>29</sup>
- National Insurance can be payable on BIKs. The obligation can fall on either the employee or the employer depending on the type of benefit. For example, employees pay National Insurance on benefits paid in cash because they are treated as earnings.

5.15 Motor vehicles and unclassified benefits (known as trivial benefits in the United Kingdom) are also treated differently from New Zealand.

### **Motor vehicles**

5.16 The employee must pay tax on the provision of a company car if it attracts a "car benefit charge" (i.e., a taxable benefit that arises from its provision). A car fuel benefit is also incurred whenever fuel is provided for a car that attracts a car benefit charge. Car and fuel benefit charges can be calculated using commercial payroll software, or HMRC's online calculator.

5.17 There are two main aspects to consider in respect of the car benefit charge:

- are the conditions present for a car benefit charge to apply, and (if yes)
- what is the amount of the cash equivalent of that benefit?

5.18 The conditions are that a car is made available to an employee (including a director), or a member of the employee's family or household, without any transfer of property in it and by reason of the employment. The car must be available for private use, and it cannot constitute earnings from the

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<sup>27</sup> More guidance on the records required can be found in the ATO guide at 7.7: Taxable value – summary of calculation methods; [Fringe benefits tax - a guide for employers | Legal database \(ato.gov.au\)](#).

<sup>28</sup> Defined as anything of monetary value you provide to your employees that is not "wholly, exclusively, and necessary" for them to perform their contractual duties.

<sup>29</sup> See [Expenses and benefits: A to Z](#).



employment by virtue of any other provision. The meaning of these conditions is set out in legislation.<sup>30</sup>

- 5.19 Broadly, the cash equivalent of the car benefit is calculated by multiplying:
- the price of the car, plus
  - the price of accessories for tax purposes, by
  - the appropriate percentage.<sup>31</sup>
- 5.20 The appropriate percentage is based on either the car's CO<sub>2</sub> emissions or engine size, depending on when the car was first registered and whether it has an approved CO<sub>2</sub> emissions figure. The relevant appropriate percentages are set out in legislation.<sup>32</sup>
- 5.21 Once the car benefit has been calculated, deductions for any periods when the car was unavailable are made. Then, any deductions in respect of payments by the employee for private use of the car are made. The result is the car benefit charge for the year.
- 5.22 When fuel is provided for a car that attracts a car benefit charge, a fuel benefit is incurred. The basic rule is that the cash equivalent for the fuel benefit is calculated by multiplying:
- a fixed sum, set for each tax year in legislation, by
  - the same appropriate percentage used to calculate the car benefit charge.<sup>33</sup>
- 5.23 The employee pays tax on the value of the car and fuel benefit charges at their personal tax rate through either payroll or the annual form completed by their employer. The employer will also pay National Insurance on the benefit.

### **Trivial benefits**

- 5.24 Trivial benefits are not taxable. A benefit is a trivial benefit if all the following criteria are met:
- costs the employer £50 or less to provide
  - is not cash or a cash voucher
  - is not a reward for the employee's work or performance
  - is not in the terms of the employee's contract.<sup>34</sup>
- 5.25 HMRC guidance provides examples of benefits that are likely to be trivial in nature, including flowers provided in recognition of a particular personal event (e.g., the birth of a child), and seasonal gifts (e.g., a bottle of wine at Christmas).

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<sup>30</sup> For more information on the conditions, see [EIM23020 – Car benefit: conditions for the charge to apply.](#)

<sup>31</sup> For more information on car benefit charge calculations, see [EIM24010 – Calculating the amount of the car benefit charge: introduction.](#)

<sup>32</sup> For more information on appropriate percentage calculations, see [EIM24500 - Car benefit calculation Step 5, appropriate percentage: introduction.](#)

<sup>33</sup> For more information on the fixed sum set annually, see [EIM25580 - Car fuel benefit: the multiplier \(section 150\(1\) ITEPA 2003 amount\).](#)

<sup>34</sup> For more information see: [Tax on trivial benefits - GOV.UK.](#)

## CHAPTER 6 – Connection with remuneration

6.1 This chapter outlines how fringe benefits are accounted for in remuneration packages with particular reference to the supply of motor vehicles.

### Background

6.2 One of the issues that came out of Inland Revenue's regulatory stewardship review of the FBT system was that FBT had lost its connection with the remuneration aspect of providing fringe benefits.

6.3 Bringing FBT closer to the remuneration foregone may be a more appropriate way of taxing fringe benefits than the current regime.

### Main types of benefits linked to remuneration

6.4 The main types of benefits that remuneration consultants currently see being provided by employers are:

- motor vehicles
- KiwiSaver contributions
- medical insurance (either provided or subsidised)
- life insurance (including funeral insurance), and
- product at discounted prices (this is generally seen more in the food and beverage industry than others).

### How benefits are factored into remuneration

6.5 In most cases, the remuneration impact of providing benefits to employees is calculated with reference to the cost of the benefit provided. This is used for most benefits except for motor vehicles, which are calculated based on a formula that accounts for the approximate cost of running the vehicle but is not based on actual costs incurred.

6.6 Discussions with remuneration consultants have indicated that although each consultant has a slightly different methodology to this calculation, they generally result in a similar outcome of the cash remuneration forgone for the provision of a motor vehicle benefit.

6.7 This calculation works based on no restrictions on the private use of the motor vehicle, which is what the consultants term a "perk" car. This "perk" value is used as the basis for the remuneration impact of the vehicle on the employee's salary.

6.8 This "perk" value is then discounted depending on the limitations of using the vehicle for private use (whether the vehicle is actually used for private use or not). So, for a vehicle classed as a "perk vehicle" with no restrictions on private use at all, the value of the benefit for remuneration purposes will be 100% of the calculation.

6.9 The percentage applied will then be reduced for factors such as:

- A limit on the make and model the employee can request.
- The type of vehicle – (e.g., in practical terms, a person is unlikely to take a single cab ute on a family holiday).

- Limitations for attaching accessories (e.g., a tow bar).
  - Company branding on the vehicle – a branded vehicle is less likely to be used for private purposes that may shine a bad light on the employer (e.g., the company branded ute with the jet ski attached at the boat ramp).
  - The employer’s policy on holiday use – can the vehicle be taken on holiday? Is the person restricted on where they can purchase fuel by location? Only being able to purchase fuel locally suggests the car cannot be taken far from home base.
- 6.10 Under one methodology these restrictions can reduce the “perk value” of the vehicle to about 15% to 20% (i.e., an 80% to 85% discount). Under another, the methodology had a sliding quarterly range (i.e., 100%, 75%, 50% 25% depending on the restrictions) to get to the reduction in employee income attributed to the provision of the vehicle.
- 6.11 For example:

**Table 3: Limitations on vehicle use**

<b>Limitations on use</b>	<b>Rate</b>
Vehicle provided predominantly for the employee’s unrestricted private use and is fully maintained by employer (i.e., perk vehicles).	100%
Vehicle provided for business and private use. There may be some restrictions on private use, such as limitations on total mileage or holiday use.	75%
Vehicle provided predominantly for business use, with restricted private use (i.e., tool of trade). The employee may use the vehicle for travel to and from work, but not on holidays. There may be a limitation on mileage, lower than the above category.	50%
Vehicle used solely for business use, with no personal usage (i.e., tool of trade). The vehicle can be used during work hours only and for commuting to and from work. This may include access as a pool car during work hours by several employees.	25%

- 6.12 Generally, these calculations are “set and forget” for the life of the vehicle given that most company owned vehicles turn over in three to five years. In some cases, employers do take into account the difference in cost structure between providing petrol powered vehicles or electric vehicles, and in others it is assumed that over the life of the vehicle the cost structure equalises (i.e., electric vehicles have a higher cost up front but less running costs whereas petrol vehicles are the opposite, but over time these even out).
- 6.13 In addition, no allowance is made for the actual use of the vehicle. This means person A who has a short commute from home to work and person B who has a long commute from home to work suffer the same reduction in remuneration even though more “benefit” accrues to person B. This method works on averages to determine the overall remuneration impact of the provision of a non-cash benefit.

- 6.14 Using remuneration consultants' methodology, the reduction in salary for someone who is provided with a perk petrol-powered vehicle with a cost of \$30,000 would be around \$17,000 in lost remuneration.
- 6.15 In contrast the current FBT and GST payable would be around \$4,700 (assuming an annual FBT calculation and using the highest FBT rate), which would equate to gross income of around \$12,150 for a person on the top tax rate. This may indicate that the current FBT rates have not kept pace with the remuneration market.

### **How FBT could be re-connected with remuneration**

- 6.16 For those benefits when cost or market value is used as a basis for the calculation of FBT it would appear that FBT and the lost remuneration are closely related.
- 6.17 Where they do not appear to be aligned is in respect of motor vehicles. There are two aspects to this. Firstly, it appears that perk vehicles are being under-taxed compared with the remuneration effect of an employee having a "perk" vehicle. Secondly, other vehicles are being over-taxed because FBT uses a one size fits all availability test for the motor vehicle, whereas the remuneration impact is determined based on allowable private running.
- 6.18 It is important to note that for remuneration purposes this is still an "availability" test. It is just that the "type of availability" is measured more closely, which affects the remuneration aspect of the provision of the motor vehicle. Using the numbers above but assuming that the vehicle is used predominately for business use (tool of trade) and the only private running permitted is home to work, Table 3 above would discount the remuneration value by 50%. This more closely reflects the actual use but still maintains an availability test in that if the vehicle can be used for home to work travel but is not, the remuneration would still be adjusted for that availability (although if that was the case it would be likely that the classification would be changed to reflect that actual use).

### ***Use of external resources***

- 6.19 Rather than setting a standardised rate, Inland Revenue could set the values of motor vehicles using information provided by remuneration consultants. These numbers are calculated annually.
- 6.20 This may provide a closer alignment to remuneration, but we consider that it may increase compliance costs of calculating the cost base of the vehicle.
- 6.21 A better way to use an external reference base might be for Inland Revenue to set the calculation of the value of a motor vehicle by reference to external information every so often (say four years). This will ensure that the FBT calculation stays relevant to the equivalent remuneration reduction on the provision of a motor vehicle and allows for some non-availability.
- 6.22 The New Zealand Automobile Association (AA) also provides a calculation for the cost of running vehicles. This could be a more accurate base to calculate the FBT benefit. This cost base is also used in setting the Inland Revenue mileage rates.

### **Questions for submitters**

- Q6.1 Should the value of a motor vehicle be determined by reference to external calculations undertaken by remuneration consultants or built up by Inland Revenue from external resources (such as the AA)?
- Q6.2 How often should these rates be set (annually or a certain number of years)?

### ***Alignment of FBT payable to permitted private use of vehicle***

- 6.23 As noted above, the way the remuneration reduction for an employee is calculated depends on the limitations imposed on the use of the vehicle. The limitations imposed reduce the amount of remuneration lost to reflect the actual benefit of the vehicle.
- 6.24 Although this is not a test based on actual use, it attempts to mimic the actual private use by reducing the value of the vehicle to reflect the limitations and therefore actual use.
- 6.25 This provides a closer alignment to the remuneration aspect of the provision of the vehicle, but it potentially increases the compliance cost of calculating the benefit of the vehicle because the limitations on the private use of the vehicle have to be determined on acquisition of the vehicle. Currently any form of availability for private use results in FBT payable. Under a remuneration approach an employer would then need to determine the limitations on private use to determine the discount to the taxable value of the motor vehicle benefit.
- 6.26 It is envisaged that an employer would only need to do this once, unless there is a material change in the private use of the vehicle. However, there would be very little ongoing compliance cost (i.e., counting days the vehicle is not available for use would not be needed because the discounts already take this into account). Once the classification is made, the FBT liability for the vehicle would remain static over the term the vehicle is used.
- 6.27 There may also need to be some restrictions on the use of any category when there is a lack of controls to police the private use of a vehicle. For example, a large employer is more likely to have controls in place to ensure that company vehicles are not used outside their permitted use. A closely held company is less likely to police prohibited private use of the vehicle.
- 6.28 Notwithstanding this, using a remuneration-based test to reflect the private use of vehicles may restore the link between FBT and remuneration. This would still rely on a "close enough is good enough" approach both in terms of using averages to assess the FBT liability and in the need to ignore incidental use of a vehicle (which is currently largely ignored for FBT purposes).
- 6.29 This issue is discussed further in Chapter 7 and 8 where potential options for FBT on motor vehicles are discussed.

### **Questions for submitters**

- Q6.3 Should FBT be calculated based on the limitation on private use of the vehicle?
- Q6.4 Do employers see the ability to categorise a vehicle at the time of acquisition of the vehicle as workable?

## CHAPTER 7 – Motor vehicles – options for change

- 7.1 This chapter (and Chapter 8) outline options for the calculation of the taxable value of a motor vehicle benefit in an effort to reduce the compliance costs associated with FBT.

### Background

- 7.2 The current FBT regime assesses liability based on “availability” for private use of a motor vehicle with no concession made for limitations imposed by the employer on the scope of that private use. For example, a vehicle that can only be used for travel from home to work incurs an FBT cost identical to a “perk” vehicle that has no restrictions on private use. This can be seen as over-taxing the remuneration aspects of the vehicle.
- 7.3 This can also result in some inefficient outcomes. For example, an employee has to travel to a depot to pick up a vehicle to take to a job first thing in the morning, when it would be more efficient for the employee to take the vehicle home for the evening to get to the job more quickly.
- 7.4 In addition, there are compliance costs associated with paying what is seen as the correct or fair amount of FBT, relying on employers counting days when vehicles are unavailable or exempt (in the case of work-related vehicles).
- 7.5 This chapter (and Chapter 8) outline options to bring the calculation of FBT closer to the remuneration aspect of the provision of the vehicle. These seek to remove the compliance burden of counting days to determine the FBT liability and remove exceptions and exemptions because these are no longer relevant to determining the application of FBT.
- 7.6 This should reduce the compliance costs of determining an employer’s FBT liability while attempting to better approximate the value of the actual private use of the vehicle to the employee. It essentially works as a hybrid test between a test based on availability and one based on actual use.

### Which vehicles should be subject to FBT?

#### *Weight limit*

- 7.7 Under the current rules, FBT applies to “motor vehicles” as defined in section 2 of the Land Transport Act 1998, which:
- (a) means a vehicle drawn or propelled by mechanical power, and
  - (b) includes a trailer, but
  - (c) does not include:
    - (i) a vehicle running on rails, or
    - (ii) a trailer (other than a trailer designed solely for the carriage of goods) that is designed and used exclusively as part of the armament of the New Zealand Defence Force, or
    - (iii) a trailer running on one wheel and designed exclusively as a speed measuring device or for testing the wear of vehicle tyres, or

- (iv) a vehicle designed for amusement purposes and used exclusively within a place of recreation, amusement, or entertainment to which the public does not have access with motor vehicles, or
  - (v) a pedestrian-controlled machine, or
  - (vi) a vehicle that the New Zealand Transport Agency has declared under section 168A of the Land Transport Act is not a motor vehicle, or
  - (vii) a mobility device.
- 7.8 In addition, the gross laden weight of the motor vehicle must be 3,500 kg or less. This weight limit was originally pegged to the weight limit that applied to the standard driver's licence requirement. The weight limit on that licence has since changed to 6,000 kg.
- 7.9 Given the change in the design of motor vehicles and the increasing use of larger and heavier electric vehicles that are still primarily designed to carry passengers, we see there is a need to adjust the current weight limit to something higher. The limit imposed on a standard passenger licence may be a useful limit, but the option outlined in this paper may be agnostic as to the weight of the vehicle provided the vehicle is not used for private use at any time. For example, a tractor could be prima-facie subject to the motor vehicle FBT rules if the weight limit was removed, but provided the tractor was not intended to have any (more than incidental) private use, the FBT liability would remain at zero.
- 7.10 Overall, we consider that a rise in the weight limit is warranted and would eliminate heavy trade vehicles automatically from FBT, but we are interested in submitters' views on what that limit should be. We consider that at a minimum the weight should be raised to 4,500 kg but pegging this to the driver licence standard may also be suitable.

### **Question for submitters**

- Q7.1 What should the weight limit be for the purposes of determining if a motor vehicle is subject to FBT?

### **Exempt vehicles**

- 7.11 There are a number of vehicles that should not be subject to FBT because of the nature of the work they are used for, which is primarily in the provision of emergency services.
- 7.12 Currently these vehicles are dealt with through the "emergency call" exemption. Under the proposal we question whether this exemption is required given that these vehicles are most likely not available for private use at any time.
- 7.13 Under the proposed options in this paper it is likely that these types of vehicles would fall out of the regime anyway. However, we consider that it may be better to remove the compliance costs for certain employers by exempting certain vehicles so the organisation does not have to consider FBT with reference to these emergency vehicles.
- 7.14 This approach is similar to that taken in the Australian FBT regime, which does not consider cars "available for private use" if that car is used by an ambulance,

police or firefighting service, is visibly marked that it is used for that purpose and is fitted with flashing lights, a horn, bell or alarm.

7.15 For New Zealand, we consider that any vehicle owned by:

- an ambulance service (including air ambulance services),
- the New Zealand Police, and
- Fire and Emergency New Zealand,

that is used for the provision of emergency services to the New Zealand public and is:

- visibly marked on the exterior of the vehicle that it is used for that purpose<sup>35</sup>, and/or
  - is fitted with flashing warning lights or other similar warning devices,
- would be exempt from FBT.

### Questions for submitters

Q7.2 Notwithstanding that most of these types of vehicles are likely to fall out of FBT naturally, is it appropriate to remove them via exemption?

Q7.3 Is the suggested exemption suitable, and does it capture all vehicles used for those services?

### Work-related vehicles

7.16 Vehicles that are considered “work-related vehicles” do not incur a liability for FBT in certain circumstances, but these vehicles are *not* exempt from FBT. This definition and the implications of having a work-related vehicle are some of the most misunderstood areas of FBT. Many consider that if a vehicle fits within the definition of a work-related vehicle, then FBT can *never* apply to the vehicle. This is not the case and when a work-related vehicle is used for private use that is outside the permitted private use outlined below, an FBT liability will arise for that day. Again, this requires employers to count days to correctly assess any liability.

7.17 The work-related vehicle exemption also does not apply to a car<sup>36</sup>. This has led to the increase in the purchase of larger vehicles that are not technically cars but can be used in a similar way to a car on the understanding that these will more easily meet the work-related vehicle exemption and do not incur an FBT liability.

7.18 A work-related vehicle<sup>37</sup> is a motor vehicle that:

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<sup>35</sup> Note there is a proposal in Chapter 8 (paras 8.53-8.56) to allow the Commissioner to exempt the requirement for the marking of vehicles, however, as this is an “or” test we don’t see emergency vehicles requiring exemption if they don’t have visible marking (e.g., an undercover police car).

<sup>36</sup> A car is defined for the FBT rules to mean a vehicle designed exclusively or mainly to carry people.

<sup>37</sup> Defined in section CX 38 of the Income Tax Act 2007.



- prominently and permanently displays on its exterior the form of identification that the employer regularly uses in carrying on their activities or undertaking, and
  - is not a car.
- 7.19 However, a motor vehicle is not a work-related vehicle on any day on which the vehicle is available for the employee's private use, except for private use that is:
- travel to and from their home that is necessary in, and a condition of, their employment, or
  - other travel in the course of their employment during which the travel arises incidentally to the business use.
- 7.20 The rule described in paragraph 7.19 is often ignored and there is a presumption that these vehicles are not subject to FBT no matter the extent of private use. This has led to the perception of non-compliance with the FBT rules.
- 7.21 Moving the FBT test to a hybrid test between availability and actual use would mean the definition of work-related vehicle could be removed or, at the least, amended to simplify the rule when a vehicle is subject to FBT and when it is not. It is the permissible private use that such a vehicle can be used for that would be important.

### **Taxable value of a motor vehicle**

- 7.22 The taxable value of a motor vehicle for FBT purposes is outlined in schedule 5 to the Income Tax Act 2007.
- 7.23 In essence the taxable value of motor vehicles differs depending on whether the employer files their FBT return quarterly or annually and whether the employer uses the cost base of the vehicle or the vehicle's tax value. While there are specific valuation rules relating to pool type vehicles the main valuation rules are 5% quarterly, or 20% annually, of the cost price of the vehicle or 9% quarterly, or 36% annually, of the tax value of the vehicle.
- 7.24 Using information from various remuneration consultants, it appears these numbers are below the current value of a vehicle.
- 7.25 These numbers were last set in 2006,<sup>38</sup> and do not necessarily reflect the current costs of running motor vehicles. In the interim, changes have occurred which are not reflected in schedule 5, namely the advent of zero emission electric vehicles that may have lower running costs, and the increase in other vehicle costs such as petrol and insurance.

### **Cost price vs tax value**

- 7.26 There are currently two options for calculating FBT on motor vehicles. One uses the cost price of the vehicle and the other uses the tax value of the vehicle. For an employer, the cost basis is the preferred option for the first three years of ownership with the tax value benefiting employers who will hold the vehicle for longer than five years.

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<sup>38</sup> In the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006.

- 7.27 This choice creates compliance costs for taxpayers in determining which option is preferred and we understand vehicles acquired for employees to use privately are only held for around three to five years.
- 7.28 Inland Revenue does not hold any data on the number of taxpayers using each option but anecdotally understands that the cost option is used by most employers.
- 7.29 Given this, the option of using the tax value of a vehicle appears to be an unnecessary compliance cost with little benefit to taxpayers and we would propose that we remove that option from the FBT regime. We are interested in submitters' comments on this proposal.

### **Questions for submitters**

- Q7.4 Would the removal of the ability to use tax value as a cost base option have any negative consequences?

### **Vehicle power**

- 7.30 One area the valuation of vehicles has not kept pace with is the emergence of alternative fuel technologies such as hybrids and electric vehicles. These vehicles have different cost profiles over their lives – they may have more of an upfront cost,<sup>39</sup> but lower running costs. These are not reflected in the blunt nature of the FBT cost.
- 7.31 We consider that there should be an option for taxpayers to use a more applicable rate for the fuel source of the vehicle. We do not propose to have a large list of every possible fuel source but do consider that taxpayers should be able to use different rates on the main vehicle types:
- the standard rate based on a petrol-powered vehicle (including petrol and diesel)
  - a rate for hybrid vehicles (either hybrid petrol or diesel)
  - a rate for fully electric vehicles.
- 7.32 Taxpayers would not be required to use these split rates but could if they wanted. Although this does increase their compliance costs, it is a factual determination between the three categories not a choice as to which has the better tax result for the employer, so we consider those costs to be relatively minor.

### **Determination of the value**

- 7.33 As noted above the current valuation has not been updated since 2006 and with the changes in the cost of running a vehicle over that period these need updating.
- 7.34 The Commissioner currently uses the running costs that are produced by the New Zealand Automobile Association (AA) as the basis for determining "milage"

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<sup>39</sup> Although the prices of electric vehicles are dropping considerably, previously they had a higher upfront purchase price with lower operating costs over time.

rates. The AA is a reputable independent third party who has no inherent bias in the calculation of the running costs of the vehicle.

- 7.35 We suggest using these as a basis for the FBT calculation rate is appropriate but, notwithstanding these are published every year, we do not propose reviewing these rates annually because that would increase compliance costs for taxpayers. We consider that these should be reviewed every four years to ensure these keep sufficiently current with the actual costs of running a vehicle.
- 7.36 Moving to a four-year recalculation period also seeks to compensate for the removal of the ability to reduce the number of "available days" again lowering compliance costs as noted below.
- 7.37 The one modification that Inland Revenue makes to these running cost calculations is to substitute the cost of petrol with fuel watch data from the Ministry of Business, Innovation and Employment (MBIE) because this is more up to date than that used by the AA. We propose continuing to mirror the calculation of the mileage rates to determine the FBT value of a motor vehicle.

### **Current rates**

- 7.38 Based on the AA and MBIE data, the following values would be applicable for the three suggested categories (all to the cost base of the vehicle):
- standard rate: 26% annual or 6.5% quarterly
  - hybrid vehicles: 22.4% annual or 5.6% quarterly, and
  - electric vehicles: 19.4% annual or 4.8% quarterly.
- 7.39 We are interested in submitters' comments around the use of AA and MBIE data to calculate the motor vehicle rates for FBT purposes and period of review of those values.

### **Availability vs actual use**

- 7.40 Under the current FBT regime vehicles are taxed based on the vehicle being "available" for private use. The regime doesn't account for actual use other than accounting for days when the vehicle is not available for private use at any time, such as when it is undergoing repairs in the garage.
- 7.41 Some argue that FBT should be applied on the "actual" use of the vehicle so that there is only a charge when the vehicle is being used for private use. However, this ignores the fact that an employee derives a benefit from having a car available to them for private use. This may mean that the employee doesn't need to have a vehicle of their own, which is in many cases a significant benefit and one that is clearly part of the person's remuneration. This benefit should be subject to tax in some way.
- 7.42 In addition, having an FBT regime that depends on accounting for "actual" use would require significant compliance costs to measure that benefit through the use of logbooks or test periods. This would be more compliance heavy than the status quo and the option outlined below.
- 7.43 However, the current "availability" test makes no allowance for the extent of private use the vehicle is available for (e.g., is it limited to home to work travel?), and this is something that could form part of a redesigned FBT regime. A vehicle that is available for a person to use at any time with no restrictions on private use must have more value than a vehicle that is only available for an employee to take from home to various worksites rather than travelling to a depot to pick up the vehicle.

- 7.44 By considering the extent of available private use, the availability test becomes more of a hybrid test that, while ultimately focused on availability, also considers the limits on that availability due to the private use restrictions on that vehicle.
- 7.45 We consider this type of test may more closely approximate the result of an actual use analysis while still recognising there is a benefit in having the vehicle available to be used for that permitted private use. In our view, this brings the regime more in touch with the remuneration aspect of the provision of a vehicle but we are interested in submitters' views on that.
- 7.46 The Australian FBT regime has an option that allows taxpayers to account for the actual private use of the vehicle, however, the compliance costs are significant. One of the aims of a redesigned FBT regime is to reduce the compliance costs around accounting for FBT, not increase them. However, as we have worked through various options, a number of people have suggested the ability to use actual costs as an option to determine their FBT liability, notwithstanding the increased compliance costs.
- 7.47 In addition, providing an option to use actual costs could result in taxpayers basing decisions on achieving the lowest FBT cost, which again would result in higher compliance costs for taxpayers.
- 7.48 We continue to believe that accounting for FBT on the availability of the vehicle with some reduction for the extent of the private use of the vehicle, is a more appropriate and low compliance cost way of bringing FBT liability closer to actual use without the associated compliance costs. However, we are interested in submitters' views on whether an option to use actual costs should be part of a redesigned FBT regime.

### **Questions for submitters**

- Q7.5 Should the FBT regime move to a more hybrid approach based on the availability for private use but also considering the permitted private use of the vehicle?
- Q7.6 Should there be an option for taxpayers to use actual costs to determine the private running of a vehicle?
- Q7.7 Should any option to use actual costs be restricted to a certain group of taxpayers or available more widely?

### **Close enough is good enough**

- 7.49 The current FBT regime relating to motor vehicles attempts to get as close as possible to the actual availability of a motor vehicle to an employee for private use. This has resulted in increased compliance costs in getting to that precise "correct" amount.
- 7.50 The option outlined in the next chapter attempts to take a different approach and work on a "close enough is good enough" approach. This approach is based on getting near enough to an approximation of the benefit rather than the actual benefit that recognises the inherent difficulties in determining the value of the benefit of a motor vehicle.
- 7.51 This can result in over- and under-taxation, but it should eliminate the compliance costs around determining the "correct" amount of a benefit. We have seen above that remuneration consultants take various routes to

approximate the value of the provision of a benefit to an employee, but they are generally educated estimates of the actual value of that benefit.

- 7.52 Officials propose that the FBT regime could follow this approach and not be focused on collecting the last dollar of benefit that accrues from having access to a motor vehicle by requiring employers to incur significant compliance costs in getting to that figure. Rather it would focus on a “close enough is good enough” approach and have general rules that approximate the amount of the benefit but are easy and intuitive to understand and comply with. Employers will be able to know the value of motor vehicle benefits at the start of each FBT period, with adjustments only required for purchases and disposals during the period. For employers with large vehicle fleets, this should be a material saving in compliance costs.

### **Question for submitters**

- Q7.8 Do submitters prefer a more exact calculation or a “close enough is good enough” approach to the calculation of motor vehicle benefits bearing in mind the latter approach could result in under- and over-taxation?

## CHAPTER 8 – Remuneration approach for motor vehicles

### Background

- 8.1 One of the criticisms of the current FBT regime in the regulatory stewardship review was the disconnection between the calculation of FBT and the remuneration impact of the provision of a benefit.
- 8.2 By bringing the calculation of FBT closer to the remuneration aspect of the provision of the benefit it may be possible to remove some of the exemptions and exclusions from the rules, as those exemptions and exclusions may naturally be superfluous.
- 8.3 By its very nature FBT is an imprecise taxation of the private benefit of a motor vehicle, particularly when the private use of the vehicle is restricted. The total focus on “availability” rather than use can also result in an over-taxation of a benefit compared to the remuneration impact of the benefit.
- 8.4 As discussed in Chapter 6, when determining the reduction in remuneration of an employee when the employer provides them with a motor vehicle there is a sliding scale depending on the permitted private use of the vehicle. This methodology could be adopted in the calculation of FBT. Again, this would be an imprecise measurement of actual use, but it is important to recognise the availability of a motor vehicle as being a benefit to an employee, not just the actual private use.
- 8.5 There are two extremes to measuring a remuneration benefit relating to the provision of motor vehicles. At one end there are those vehicles that are purely “perk” vehicles that are provided to an employee with no restrictions on the ability of the employee to use the vehicle for private purposes. There is a significant private benefit and therefore these vehicles should have FBT charged at full rates.
- 8.6 At the other end of the scale are those motor vehicles that are never used for private use (or only for incidental private use). A good example is a police car. Although that vehicle could be used to collect dinner for police officers on duty or for a visit to the school of one of the police officers’ children this is an incidental use of the vehicle and shouldn’t fall within “remuneration”.
- 8.7 In between these two extremes are the problematic vehicles when there is partial private usage permitted, such as work to home travel. These areas may require a “close enough is good enough” approach. In doing this, it is likely that some vehicles would be over-taxed, and some would be under-taxed, but overall the FBT liability should be closer to the actual use of the vehicle than it is under the current rules and the risk of over-taxation based on availability for full private use is reduced.
- 8.8 Adopting this approach would also simplify the rules and reduce compliance costs by having simple categories that a vehicle can be classified into and the elimination of the need to count days when a vehicle is unavailable for private use because these are accounted for in the categories and rates. In essence, it would be a set-and-forget system unless the use of the vehicle changed materially, in which case there would need to be some reclassification undertaken.
- 8.9 Rates under this approach would be re-evaluated periodically with reference to external benchmarks of the remuneration effect of the provision of a motor vehicle, changes would only be applied on a prospective basis.

- 8.10 As noted in Chapter 6, some remuneration consultants have an unlimited number of categories that peel away the ability to use the vehicle for private use piece by piece. This would be a complicated and compliance cost-heavy way of dealing with these restrictions and under a “close enough is good enough” approach such accuracy isn’t required.
- 8.11 In addition, the more categories there are, the more taxpayers would be able to manipulate what is essentially a perk vehicle into lower categories. As part of the development of this option, we discussed up to five different categories but as we progressed, it became apparent that there were diminishing numbers of distinguishing features between each category (which was considered a good thing).
- 8.12 In particular, we discussed a category that was between category one and two in Table 4 below that would apply to vehicles when there was limited private use but not quite fulltime availability of a vehicle. An example would be when the person was permitted to use the car from home to work travel and a small amount of other private use capped by mileage.
- 8.13 Feedback was that that particular category was too close to being a perk vehicle and taxpayers would use that as a proxy for a fulltime available vehicle and those vehicles should be classed as 100% private use vehicles. We are interested in submitters’ views on this.
- 8.14 Given this, our view would be a small number of simple categories would suffice to enable the calculation of a liability more closely related to the remuneration aspect of the provision of a motor vehicle.
- 8.15 We suggest the following categories would be the preferred option for dealing with motor vehicles:

**Table 4: Preferred categories of vehicle use**

<b>Category</b>	<b>Limitations on use</b>	<b>Rate<sup>40</sup></b>
1	Vehicles predominantly available for employee’s unrestricted private use (i.e., perk vehicles). The provision of the vehicle is generally reflected in the employee’s remuneration package.	100%
2	Vehicles predominantly for business use, with restricted private use (i.e., tool of trade). The employee may use the vehicle for travel to and from work (work generally being the same workplace), but not at other times. Generally, the vehicle will be allocated to a single employee (although other employees may use the vehicle during business hours).	35%
3	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).	0%

<sup>40</sup> The rate is the percentage of the fringe benefit taxable value that FBT will be payable on.

- 8.16 Categories 2 and 3 are similar, with one of the distinctions being whether the employee is usually travelling to the same workplace (e.g., a fixed office) each date (category 2) or if they are regularly going to different workplaces (category 3). The logic for the difference is that if an employee has a fixed place of work, the home to work travel is of a private nature, whereas a more itinerant employee (like a builder or a plumber) is travelling "on work" when they leave for their first job location.
- 8.17 We would be interested in submitters' views on the categories and the suggested percentage of FBT liability used for each category. These rates align somewhat with the way in which remuneration is calculated in respect of the provision of motor vehicles.

### **Incidental use**

- 8.18 This proposal is attempting to isolate and make subject to FBT the "remuneration" impact of the provision of a vehicle for private purposes whether that is for travelling to work or unlimited private use.
- 8.19 One of the issues with this approach is the use of the vehicles for incidental travel. From a remuneration perspective, incidental travel should be ignored but the question is how widely "incidental" should be defined.
- 8.20 Under current rules, a journey is treated as work-related travel when:
- the private benefit received is incidental, being a private benefit that necessarily results from a journey undertaken for work-related purposes, or
  - the private travel is de minimis (being a minor or insignificant proportion of a journey undertaken solely for work-related purposes).
- 8.21 With a "close enough is good enough" approach this definition may be too narrow to avoid employers having to track and account for FBT on the use of a vehicle which is a benefit to an employee but is not really remuneration to them. An example could be when an employee is moving house and asks the employer if they can use the employers' van to move over the weekend.
- 8.22 Another example could be when an employee's car breaks down and they have no other way to pick up their children from school and their employer lets them use one of the company's pool vehicles for a week until their car is fixed.
- 8.23 When the use of a vehicle is:
- unusual
  - of short duration
  - ad hoc and not regular or frequent
  - for a limited purpose, and
  - not in substitution for remuneration,
- the use of the vehicle by an employee would be considered "incidental use" and not in itself subject to FBT. Nor would it impact on the overall categorisation of the vehicle.
- 8.24 We would be interested in submitters' views on this. While we see there is a benefit being provided, it is a one-off use, which is not something the employee would expect as part of their remuneration. We should not be concerned about these minor benefits that are not considered to be part of an employee's



remuneration. This is another application of the “close enough is good enough” approach.

### **How would a taxpayer apply categories?**

- 8.25 Unlike the current regime for calculating FBT applicable to motor vehicles, which is a prescriptive calculation based on counting days, this option is more subjective in that the employer would need to classify motor vehicles according to their permitted private usage.
- 8.26 This option does not rely on precision but rather conforms to the “close enough is good enough” principle to the calculation. Taxpayers would need to make a reasonable attempt to classify vehicles within the option.
- 8.27 Although the classification is somewhat subjective, the result should be that compliance costs are reduced through not having to count days to calculate an FBT liability in respect of company vehicles.
- 8.28 Perk vehicles (Category 1 - subject to 100% of the value of the benefit) and vehicles with no private use (Category 3 subject to 0% of the rate) should be easy to classify. It would be vehicles that sit in the middle category that may be more subjective. Provided the employer has made a reasonable attempt to determine the classification of vehicles into particular categories the Commissioner should be comfortable with that outcome.
- 8.29 For vehicles owned by larger entities, the controls over the private use of company-owned vehicles are likely to be greater than those around vehicles owned by smaller entities. Due to this, limitations may be required for smaller businesses, particularly around vehicles used by major shareholder-employees.
- 8.30 In terms of applying the categories, we would envisage that various factors indicating the correct category would be listed either in guidance or in legislation. These factors would not be exclusive, and not all of them would need to be met or apply for particular vehicles, but they would be indicative of the categories we would see vehicles fitting into. Note that incidental private travel described in paragraphs 8.18 to 8.24 above are ignored for the purpose of classification of the vehicle.

**Category one:** *Vehicles predominantly for employee’s private unrestricted use (i.e., perk vehicles).*

- 8.31 Relevant factors for vehicles considered to fit within category one:
- no restrictions on private use of the vehicle, it can be used by the employee 24/7 on any day of the year
  - provision of the vehicle is considered part of the employee’s remuneration
  - no restrictions on the vehicle being used for private use on weekends, evenings, statutory holidays or when the employee is on leave
  - the employee can choose the vehicle (although this may be within a limited range)
  - no restrictions on any accessories that can be attached to the vehicle
  - private use of the vehicle is not geographically restricted.

### **Example 8.1: Category one vehicle**

AVL Inc is a multinational company that provides consulting services around the world. It provides these services through AVL NZ Limited in New Zealand. IM Gru is the managing director of AVL NZ Limited.

As part of Gru's employment package he is provided with a motor vehicle up to the value of \$100,000. Gru is a car enthusiast and purchases a highly customised vehicle. This vehicle is allowed to be used for the private use of Gru and his partner Lucy. They have use of the vehicle 24/7, with no restrictions on the private use of the vehicle other than when the vehicle is located at the AVL offices where other employees can use the vehicle for business (or private) purposes. There is no AVL signage on the car.

Gru can take the vehicle on holidays and attaches a tow bar to the car at his own cost to enable him to tow his jet ski to the boat ramp on the weekends.

Given these factors, AVL classifies Gru's vehicle as a category one vehicle.

**Category two:** *Vehicles predominantly for business use, with restricted private use (i.e., tool of trade), employee may use vehicle for travel to and from work (work generally being the same workplace), but not at other times.*

8.32 Relevant factors for vehicles considered to fit within category two:

- limitations on private use of the vehicle:
  - no private use is permitted while the employee is on leave or over weekends and evenings
  - can be used for home to work travel, and that workplace is generally the same workplace (i.e., a central office rather than different worksites)
  - can only be driven by the employee (or other employees)
- used as part of delivering the services of the employer
- generally taken home by the same employee
- may be branded with the employer's logo
- may be available to other employees during business hours.

### **Example 8.2: Category two vehicle**

Patsy Prescot is a sales representative with AVL NZ Limited. She visits potential clients with a view to selling AVL's services. AVL provides her with a Mini that is painted in AVL's trademark bright orange colour and logo to help promote AVL out in public.

Patsy often travels to client premises but she starts and finishes her day at AVL's office. Other staff can use the vehicle for client business when it is in the office.

The only private use permitted is travel from home to work or home to client premises. Patsy's partner Perry is not permitted to drive the vehicle.

This vehicle would be classed as a category two vehicle.

**Category three:** *Vehicles solely for business use, with no personal usage (other than incidental use).*

8.34 Relevant factors for vehicles considered to fit within category three:

- can be used for home to work travel, and that workplace generally varies depending on where the worker is required (i.e., different worksites rather than a central office, although this may include the same worksite when the employee is on a project of a limited duration)
- no other private use is permitted at any time
- used as part of delivering the services of the employer
- more likely to be used by multiple employees
- permanently branded with the employer's logo.

### **Example 8.3: Category three vehicle**

AVL NZ Limited has a number of supervisors. Their role is to work with clients to ensure their project works as intended by the consultants at AVL. As part of this they are constantly working at different sites, and they are provided with double cab utes to get to the worksites.

AVL provides Jerry Minion with a double cab ute to use because he is required to work on rural sites where the roads are sometimes substandard or non-existent. Jerry is not permitted to use the vehicle for any private use other than driving from home to the worksite. His partner Margo is not permitted to drive the vehicle either.

The vehicle is painted with the AVL logo in a permanent place. Other employees use the ute to collect materials, etc, while at the worksite.

This vehicle would be classed as a category three vehicle.

### **Questions for submitters**

- Q8.1 Do you think a scaled rate of FBT would bring the impact of FBT closer to actual use than is currently the case?
- Q8.2 Are the categories appropriate?
- Q8.3 Do you see any issues classifying your vehicles using these categories following the "close enough is good enough" principle?
- Q8.4 Do you think a move closer to benefit value would increase compliance with FBT?
- Q8.5 Are the proposed rules around incidental use appropriate, clear and workable?
- Q8.6 Do you think this option would lower your compliance costs for FBT and by what degree?

### **Work-related vehicles and emergency call out exemptions**

- 8.35 As noted in Chapter 7, one of the most misunderstood and, anecdotally, least complied with aspects of the current FBT regime is the concept of a work-related vehicle and whether such vehicles are totally exempt from FBT (which they are not). This is particularly evident in the proliferation of the use of double cab utes that are not considered to be a "car" for FBT purposes and therefore fit within the definition of a work-related vehicle if there is no private use other than home to work travel.
- 8.36 Moving closer to an "actual use" test for FBT would seem to remove the need for a work-related vehicle exemption because it would no longer matter what

*type* of vehicle was being used, just the *way* it was being used. For example, it would be hard to see how a forklift could be used for private use, likewise there is no difference in FBT outcomes for two vehicles which are used for private use identically but one is a ute and one is an EV.

- 8.37 In addition, the continued use of an exclusion for weight would remove heavy-duty vehicles from the FBT regime (although again it would be difficult to see how these vehicles could be used for private purposes other than some incidental use. For example, a fire truck being used to pick up the firefighters' evening meal).
- 8.38 The removal of the work-related exemption would again, in our view, simplify the FBT regime and ensure that compliance is improved because there would be a clear rule as to whether vehicles, such as double cab utes, are in or out of the regime. It would be clear that they are within the bounds of the regime and then it would just be necessary to determine the extent of private use of those vehicles and therefore the correct application of FBT.
- 8.39 We are interested in submitters' views on whether the work-related vehicle test should be retained, with examples of when the removal of that definition would result in an adverse outcome for vehicles that currently fit within this exemption. Bearing in mind that any day a work-related vehicle is available for private use (other than limited private use) that vehicle is subject to FBT under current rules. We don't believe that, ignoring any non-compliance, the FBT position for these types of vehicles would change materially from the current rules other than making it very clear that these vehicles are subject to FBT, which may improve compliance.
- 8.40 Similarly, the current exemption for emergency calls may also no longer be required under this option, again primarily because the extent of any private use would be reflected in their classification and some emergency vehicles (such as a police car) would have no private use element (other than incidental use) and automatically not have FBT charged on those vehicles.
- 8.41 Under current legislation, an emergency call is defined as a visit that an employee is required to make, to which all the following apply:
- the employee makes the visit from their home in the course of their employment, and
  - the purpose of the visit is to provide:
    - essential services relating to the operation of the plant or machinery of the employer, or of their client or customer, or
    - essential services relating to the maintenance of services provided by a local authority or a public authority, or
    - essential services relating to the carrying on of a business for the supply of energy or fuel to the public, or
    - emergency services relating to the health or safety of any person, and
  - the employer, their client or customer, or a member of the public requests the services, and
  - the services are required to be performed between the hours of 6pm and 6am on days other than a Saturday, Sunday, or statutory public holiday, and at any time on other days. However, there are no time restrictions in the case of the provision of emergency services relating to the health or safety of a person.

- 8.42 Again, moving more toward an actual use model than the current availability model, we consider these emergency type vehicles should fall into one of the lower two categories. But we would be interested in feedback from submitters of instances when they consider this would not be the case.
- 8.43 One potential issue is when a vehicle that is used for providing emergency type services to the public is required to always be with the employee for the immediate provision of emergency services in an emergency event. In this case, the vehicle is always available and being used for private purposes but needs to be available to the employee for immediate use.
- 8.44 However, we consider that moving more to an actual use model as suggested in option one should also deal with this situation, given that currently on a day when an emergency vehicle is not being used for an emergency, FBT would apply. The use of the category system should take account of this (again remembering the "close enough is good enough" principle).

#### **Example 8.4: Emergency vehicle**

Bert works for the Civic Emergency Response Unit (CERU), a government agency that provides emergency services to the public as a response to emergency events.

Bert has a ute supplied by CERU that he is required to take everywhere he goes to ensure that if an emergency event occurs, he can respond immediately. There are several limitations on the ability of Bert to use the vehicle, specifically he is not permitted to take the vehicle outside the Wellington region and must return the vehicle to the pool if he goes away. It is assumed this vehicle is not an emergency vehicle as described in paragraph 7.15.

Under current FBT rules, only the days the vehicle is used for an emergency call out is a day that the vehicle is not considered available for FBT purposes, which is about once a week. This requires the employer to track the days on which the vehicle is used for an emergency event. On the other days the vehicle is subject to full FBT.

Under the proposal, CERU classifies the vehicle as one that fits within category one. Although there are some restrictions on private use, generally, the vehicle can be used by Bert 24/7 with just a geographical constraint to the use of the vehicle. However, there is no need for CERU to monitor the days the vehicle is and isn't used, which would reduce its compliance and administration costs.

#### **Questions for submitters**

- Q8.7 Do you think the work-related vehicle exemption is still required when moving towards more of a usage test and why?
- Q8.8 Can you provide examples of when the work-related vehicle test might still be required?
- Q8.9 Are there any work-related vehicles that would be subject to FBT when there is no private usage and provide examples?
- Q8.10 How often do you have vehicles which are used for emergency call outs which are currently exempted from FBT?

## **Integrity issues**

- 8.45 We believe that this proposal removes a significant amount of complexity from the existing FBT regime while providing a closer link to remuneration, which should make the regime easier to comply with. Most importantly it removes one of the largest areas of misunderstanding with the current regime and no longer requires a definition of a "work-related" vehicle, making it clear that all vehicles need to be assessed for an FBT liability.
- 8.46 This should improve compliance with the FBT rules. However, there are two further requirements we believe should increase the integrity around the FBT regime:

### ***Shareholder-employees***

- 8.47 Shareholder-employees who have a large stake (such as the 25% association rule) in the company have more control over a vehicle than in a normal employment situation. In a lot of cases, their private use of the vehicle is likely to be at the higher end of the scale.
- 8.48 We considered whether this group of employees should be prohibited from using any category other than category one, however, this would result in potential continued over-taxation of these vehicles.
- 8.49 A good example of this is a sole trader plumber who owns 100% of their plumbing company. The van they use to undertake their work is only used for incidental travel and should fall within category three but would fall in category one, which is clearly over-taxation.
- 8.50 We consider that all shareholder-employees should be able to use any of the categories to classify their vehicles. We also believe that the integrity suggestion of requiring a declaration that a company has filed any relevant FBT returns for vehicles owned by the company would assist with compliance in this area, see Chapter 12.
- 8.51 We have also considered removing shareholder-employees from the FBT return and moving that requirement to the income tax return. However, we consider that on balance the declaration on the income tax return should suffice in providing increased integrity to the regime for this group of taxpayers, but we are interested in submitters' views on this.
- 8.52 However, we don't want shareholder-employees to purchase vehicles that are considered "luxury" for a business and claim that one of the lower FBT categories applies. We are considering a maximum value for a vehicle that is used by a major shareholder-employee of a close company when categories two and three can apply. We suggest that value be set at \$80,000. Major shareholder-employees of a close company who have a vehicle that is used for private use by them and exceeds a cost base of \$80,000 must be a category one vehicle. We are interested in submitters' views on this.

### ***Identification of vehicles***

- 8.53 For vehicles to use the bottom two categories of FBT rates, we suggest (as an integrity measure) that there be a requirement for the vehicle to be permanently branded with the employer's name much the same as the current requirement for work-related vehicles.
- 8.54 We consider this important because it is less likely that a branded vehicle would be used for purposes other than those permitted by the employer. It allows the employer to identify non-compliance if the general public see a vehicle clearly

being used for private use (such as weekend trips to the boat ramp), which may reflect on the employer and ultimately result in higher compliance.

- 8.55 Although the private use of the vehicle may be permissible or incidental, in general we consider that for the vehicle to fit within those categories it should be predominately used for business purposes and should be branded by the employer, but we are interested in submitters' feedback on this requirement.
- 8.56 There would be occasions when the branding of vehicles is inappropriate due to the sensitive nature of the work being undertaken by the employee (e.g., Oranga Tamariki – Ministry for Children). For those limited instances we would look at the ability for the Commissioner to provide exemptions from this requirement.

### ***Record keeping***

- 8.57 Taxpayers would be required to maintain records to support the classification of their vehicles into the various categories. By its very nature this option is subjective rather than trying to measure every single use of the vehicle and thus the application of the "close enough is good enough" principle would need to apply.
- 8.58 Evidence that would support the classification of a vehicle are:
- employment agreements
  - employer policy manuals that outline the permitted uses of vehicles
  - letters to employees outlining the permitted private use of a vehicle
  - guidelines around the permitted use of company vehicles.
- 8.59 This list is not restrictive and anything that clearly indicates to the employee the permitted use of the vehicle would support the categorisation of that vehicle.
- 8.60 The categorisation of a vehicle for FBT purposes would be a tax position that taxpayers would have to take reasonable care over. Inland Revenue would provide guidance as to the types of evidence that employers would need to provide and retain to determine the categorisation of vehicles.

### ***Day counts***

- 8.61 Taxpayers would no longer need to count days when vehicles are unavailable for private use. The combination of the new vehicle values, the fixing of those values for four years, the "close enough is good enough" approach and the new categories should ensure that the reasons that taxpayers had to count days previously are no longer relevant.

### ***Other FBT on motor vehicle rules***

- 8.62 All other rules around FBT and motor vehicles would remain as they are currently. This includes the rules around pool cars and other requirements. From a commercial standpoint an employer will likely want to continue to monitor who is using pool vehicles and require these to be booked etc. These records may assist employers in having the necessary information to perform FBT attribution calculations.

### **Questions for submitters**

- Q8.11 Do submitters agree with the integrity measures that are proposed?
- Q8.12 Are there any other measures that should be included to assist in the integrity of the regime?
- Q8.13 Do submitters prefer major shareholder–employees filing their FBT liability on the company income tax return or the FBT return for the company?
- Q8.14 Do submitters agree with a maximum value for a vehicle to use categories two and three when those vehicles are used by major shareholder–employees of a close company? Is \$80,000 an appropriate value?
- Q8.15 What are submitters' views on company branding on vehicles?
- Q8.16 What are submitters' views on removing the ability of taxpayers to count days when a vehicle is unavailable for private use?
- Q8.17 Do submitters anticipate any practical issues with the proposed approach? For example, are vehicles often assigned to different drivers who may use the vehicles in different ways?



## CHAPTER 9 – Unclassified benefits

9.1 This chapter outlines *two* options to simplify the unclassified benefit rules. If the Government proceeds with changes to the FBT regime, only one of these options would be implemented.

### Background

9.2 Inland Revenue’s regulatory stewardship review of FBT identified that the unclassified benefit rules impose high compliance costs and are particularly likely to capture non-remunerative items.

9.3 As explained in Chapter 3, “unclassified fringe benefits” are all benefits provided in connection with employment that are not specified in legislation. FBT is payable unless the thresholds described below apply, or the benefit is subject to a specific exclusion (e.g., the on-premises exemption).

9.4 Due to this wide definition, non-remunerative items, such as bereavement flowers, can be subject to FBT. Some participants in the regulatory stewardship review felt that the inclusion of low-value items is an over-reach. They also indicated that it can be unintuitive for employers to understand when they have incurred an FBT liability.

9.5 An employer is only liable for FBT on an unclassified benefit if:

- the total taxable value of all unclassified benefits provided to an employee in a quarter exceeds \$300<sup>41</sup> (per employee cap), or
- the total taxable value of all unclassified benefits provided to all employees in the last income year exceeds \$22,500 (per employer cap).

9.6 However, stakeholders have indicated that large employers would almost always exceed the \$22,500 total value threshold and would be required to account for FBT on *all* unclassified benefits they provide. A member survey conducted by the Corporate Taxpayer’s Group also suggested that capturing and tracking unclassified benefits is one of the biggest sources of compliance costs when preparing FBT calculations and returns.<sup>42</sup>

9.7 The options below focus on restoring the link to remuneration and ensuring that any de minimis threshold helps to reduce compliance costs.

### Which unclassified benefits should be subject to FBT?

9.8 In line with general New Zealand tax policy, FBT takes a broad-base approach. However, we acknowledge that employers should not need to account for low-value items that employees would not consider remuneration. Capturing low-value, non-remunerative items goes beyond the primary purpose of FBT, which is to ensure equity between cash and non-cash remuneration.

9.9 The regime should not be concerned with capturing the irregular provision of low-value benefits because these are not likely to be in substitution for

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<sup>41</sup> If FBT is paid on an annual or income year basis, the total taxable value of all unclassified benefits provided to an employee must not exceed \$1,200 in that year.

<sup>42</sup> [Fringe benefit tax: regulatory stewardship review \(taxpolicy.ird.govt.nz\)](https://www.taxpolicy.ird.govt.nz) (August 2022),, page 47.

remuneration. Examples of benefits that are currently subject to FBT, but should potentially not be, include:

- bereavement flowers,
- employer-branded merchandise (e.g., water bottles), and
- minor prizes for winning an employee competition.

9.10 The unclassified benefit rules should target benefits that are higher value, provided regularly, and/or promoted as part of an employment package. These may include:

- gym memberships,
- frequent non-work-related travel, and
- benefits provided within points accrual reward schemes.

9.11 The challenge is to balance simplification with ensuring that remunerative benefits are captured and that the tax base is protected.

### Australian approach to FBT on minor benefits

9.12 In developing the options, we have considered how Australia and the United Kingdom approach FBT. This is because they have tax systems comparable to New Zealand's. The options for simplifying the unclassified benefit rules draw on Australia's approach to minor benefits.<sup>43</sup>

9.13 In Australia, minor benefits are exempt benefits. A minor benefit is a benefit that is both:

- less than \$300 in notional taxable value,<sup>44</sup> **and**
- unreasonable to treat as a fringe benefit.

9.14 The following criteria are considered in determining whether it is "unreasonable" for a minor benefit to be treated as a fringe benefit:

**Table 5: Criteria of a minor fringe benefit**

Criteria	Interpretation
The <b>frequency and regularity</b> with which associated benefits <sup>45</sup> are provided.	The more frequently and regularly, the less likely the minor benefit will qualify as an exempt benefit.
The <b>total of the notional taxable values</b> of the minor benefit and identical or similar benefits	The greater the total value, the less likely the minor benefit will qualify as an exempt benefit.

<sup>43</sup> For more information, see [Minor benefits exemption](#) and [Fringe benefits tax – a guide for employers](#).

<sup>44</sup> The \$300 threshold applies separately to connected benefits (such as a meal, a night's accommodation and taxi travel), and benefits provided to associates are not included in the notional taxable value.

<sup>45</sup> Benefits that are identical or similar to the minor benefit and benefits given in connection with the minor benefit.

Criteria	Interpretation
The likely total of the <b>notional taxable values of other associated benefits</b> . <sup>46</sup>	The greater the total value, the less likely it is the minor benefit will qualify as an exempt benefit.
The <b>practical difficulty</b> in determining the notional taxable value of the minor benefit and any associated benefits, including the difficulty in keeping the necessary records.	If it is practical to value the benefits and keep the necessary records, the less likely it is the minor benefit will qualify as an exempt benefit.
The <b>circumstances</b> in which the minor benefit and any associated benefits were provided.	If a benefit is not provided as a result of an unexpected event and can be considered principally as being in the nature of remuneration, the less likely it is the minor benefit will qualify as an exempt benefit.

9.15 The Australian Taxation Office considers that the following benefits are likely to be exempt under the minor benefit test:

- A single **Christmas gift** to each employee (e.g., a bottle of wine), when the value is less than \$300. If the gift is provided at a Christmas party, it would be considered separately to the party when considering the minor benefits threshold.
- **Flowers** given to employees on special occasions (i.e., on an irregular and infrequent basis), when the value of each is less than \$300.
- **Meals** provided on an ad hoc basis (e.g., three times in the year), when the value of each is less than \$300.

### Unclassified benefits – options for change

9.16 We are proposing two options for simplifying the unclassified benefit rules and strengthening the connection to remuneration:

- Option one: remuneration test with cap per benefit, or
- Option two: a list of non-remunerative benefits.

9.17 In addition to either option, there would be a separate test that would only apply to points accrual rewards schemes.

### Option one: Remuneration test with cap per benefit

9.18 Under option one, a benefit provided to an employee would be exempt if:

- it is not provided in substitution for remuneration, **and**
- the taxable value is less than \$200.<sup>47</sup>

<sup>46</sup> For example, when a meal, which is a minor benefit, is provided in connection with a night's accommodation and taxi travel, which themselves may or may not be a minor benefit, the total of their taxable values must be considered.

<sup>47</sup> This threshold is GST-inclusive.

- 9.19 This is an “and” test, that is, both limbs must be satisfied for a benefit to be exempt from FBT. If the test is not met, the full amount is subject to FBT.
- 9.20 This test would apply on a per benefit basis. This means it does not consider the total value of identical or similar benefits provided to either one or multiple employees. If these benefits are connected, these would be grouped together under the threshold. For example, a gift basket including multiple items would be counted as one benefit. However, the test would include an anti-avoidance rule to ensure that if multiple benefits of less than \$200 are provided to individual employees with the aim of circumventing the de minimis threshold, those benefits are subject to FBT.

### **Remuneration test**

- 9.21 To determine whether something is “in substitution for remuneration”, the following factors are taken into account.
- Whether the employee has an entitlement and expectation that the benefit will be provided. If an employee can make a demand for the benefit, they have an entitlement to it and an expectation that it will be provided.
  - The frequency and regularity of the provision of the benefit to the employee. For a benefit to be provided “frequently and regularly”, it must be provided both often and at regular intervals.
  - Whether the benefit is promoted as available to an employee as part of their employment package. If a benefit is formally agreed in a contract or promoted through employment policies (e.g., on the staff intranet), it can be considered part of the employee’s employment package.
- 9.22 The benefit would not need to satisfy all three factors for it to be deemed remunerative. After considering these factors, the employer would need to decide if, on balance, the benefit is provided in substitution for remuneration. The factors are indicative, and there may be other relevant considerations.<sup>48</sup>
- 9.23 Including an “in substitution for remuneration” test would help exclude the minor and non-remunerative benefits that employers currently need to account for. However, there may be compliance costs associated with applying the factors and interpreting whether the benefit is remunerative in nature. If the Government decides to include these proposals in a taxation Bill, Inland Revenue would release guidance at introduction to assist with this exercise.
- 9.24 The proposed factors draw on those used in the Australian test. However, the focus is on whether a benefit is provided in substitution of remuneration, rather than whether it is unreasonable for a minor benefit to be considered a fringe benefit. This means that the practical difficulty in valuing the benefit and keeping records is less relevant.

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<sup>48</sup> These factors reflect what we consider would suggest a benefit is remunerative in nature, but other factors may be relevant and a “common sense” approach would be encouraged.

### **Questions for submitters**

- Q9.1 Are the three factors a sensible test for whether a benefit is provided “in substitution for remuneration”? Would any other factors be more appropriate?
- Q9.2 Would it be feasible to apply this test?
- Q9.3 Are there any unclassified benefits that would not receive the correct treatment under this test?

### **Cap per benefit**

- 9.25 Like the Australian approach, option one applies a threshold per benefit. It would replace the current \$300 per employee cap, and the \$22,500 per employer cap would also be removed.
- 9.26 The main benefit of option one (paragraph 9.18) is that employers should not need to track the total value of benefits they provide to each employee under a per benefit cap approach. This was highlighted as a compliance-heavy aspect of the rules.
- 9.27 For connected benefits, these would be grouped together under the threshold (see examples 2 and 7 in table 6 below). This would help to ensure that larger cumulative benefits are taxable. Under the Australian FBT rules, the per benefit threshold is applied separately to connected benefits. However, their total value is considered in determining whether it is reasonable to apply FBT.
- 9.28 There may still be integrity concerns in terms of employers providing different small benefits with the aim of circumventing the cap. The proposed anti-avoidance rule explained in the next section seeks to mitigate this risk.

### **Questions for submitters**

- Q9.4 Would a per benefit test help to reduce compliance costs?
- Q9.5 Is \$200 the right cap? Should it be higher/lower?
- Q9.6 Are there any unclassified benefits which are not in substitution for remuneration that would not receive the correct treatment under a \$200 per benefit cap?

### **Anti-avoidance rule**

- 9.29 To address the integrity risks associated with removing the total cap per employer, the following rule would override the main test under option one:
- If multiple benefits of less than \$200 are provided to individual employees with the aim of circumventing the de minimis threshold, these will be subject to FBT.
- 9.30 Under the per benefit cap, connected benefits would be grouped together to help ensure that large cumulative benefits are subject to FBT. For example, when non-work travel is provided, the whole trip and associated benefits (i.e., flights, meals, taxi rides) would be considered together as if it was one benefit. However, the proposed anti-avoidance rule would help to mitigate the risk of a variety of benefits under \$200 being provided to an employee with the aim to

circumvent the threshold. For example, changing from paying employee gym memberships in three-month blocks to paying weekly to remain under \$200.

**Table 6: Option one examples (all amounts are GST inclusive)**

Item	Benefit	Description	Applying option one	Treatment
1	Flowers on significant occasions	An employer provides flowers (\$100) to an employee once after the birth of a child.	<b>Not provided in substitution for remuneration</b> (provided infrequently and irregularly, employee is not entitled, and benefit is not promoted in employment package) and <b>&lt;\$200</b> .	Benefit exempt from FBT.
2	Christmas gift	Christmas basket (\$11) containing a ham (\$80), a bottle of wine (\$30) and a gift voucher (\$80).	<b>Not in substitution for remuneration</b> (provided infrequently, employee is not entitled, and benefit is not promoted in employment package), but <b>&gt;\$200</b> (total value).	Benefit subject to FBT.
3	Gym membership	An employer provides gym memberships (\$20 per week) to their employees on an ongoing basis.	<b>In substitution for remuneration</b> (frequent and regular, employee can expect and is likely entitled, and benefit may be promoted in employment package).	Benefit subject to FBT.
4	Stored value gift card <sup>49</sup>	An employer provides a one-off stored value gift card (\$150) to an employee for working overtime.	<b>Not in substitution for remuneration</b> (infrequent and irregular, employee cannot expect and is not entitled, benefit not promoted in employment package), and <b>&lt;\$200</b> .	Benefit exempt from FBT.
5	Workplace social sports team fee	An employer pays a weekly fee (\$10/employee) for a season (16 weeks) of social sport.	<b>Not in substitution for remuneration</b> (frequent and regular, but employee cannot expect and is not entitled, benefit not promoted in employment package), and <b>&lt;\$200</b> .	Benefit exempt from FBT.
6	Employer-branded merchandise	An employer provides a branded travel mug (\$30) and a backpack (\$50) to each employee once.	<b>Not in substitution for remuneration</b> (infrequent and irregular, employee cannot expect and is not entitled, benefit not promoted in employment package), and <b>&lt;\$200</b> .	Benefit is exempt from FBT.
7	Non-work-related travel	An employer pays for return flights to Auckland (\$180), accommodation	<b>In substitution for remuneration</b> and <b>&gt;\$200</b> (\$480 in total).	Benefit subject to FBT.

<sup>49</sup> There is an alternative view that stored value cards are subject to PAYE because they are cash, however, we understand that most businesses treat them as a fringe benefit. We would look to clarify that these types of benefits are fringe benefits subject to FBT, rather than PAYE (see chapter 11).

		(\$200) and a meal (\$100) to reward a high-performing employee.		
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### **Option two: A list of non-remunerative benefits**

- 9.31 Under option two, a list would be introduced through secondary legislation to exclude certain non-remunerative benefits and provide certainty about their treatment. Implementing the list through an Order in Council would allow updates to be made more easily.
- 9.32 The list could include common non-remunerative benefits such as:
- flowers or cards provided as one-off gifts for employees (e.g., bereavement or new life events)
  - one-off prizes given for employee events less than \$200 (e.g., a voucher for the employee of the month), and
  - token gifts (e.g., boxes of chocolate or employer-branded water bottles), as long as these items are not provided regularly in substitution for remuneration.
- 9.33 Option two would take a less broad approach than option one but would still help to address the over-taxation of minor and non-remunerative benefits that occurs under the current rules. It may also be simpler in some cases to exempt these items outright, rather than requiring employers to apply an interpretive test.
- 9.34 However, the per employee and per employer caps would remain in place for benefits not on the list. This means that employers would still need to track the benefits they provide, aside from those that are exempt from FBT under the list.

#### **Questions for submitters**

- Q9.7 Would a list excluding non-remunerative unclassified benefits help to reduce compliance costs?
- Q9.8 Are there any other benefits that should be included on the list?
- Q9.9 Which option would be more effective at reducing compliance costs and strengthening the link to remuneration; option one or option two?

### **Proposed test for points accrual rewards schemes**

- 9.35 In addition to the main test (either option one or two), we are proposing a specific test for points accrual reward schemes. Benefits provided within a points accrual reward scheme (either administered internally or by a third party) would be subject to this test instead of the main test.

- 9.36 Points accrual reward schemes are purpose-built to allow employers to award their employees with points at their discretion.<sup>50</sup> Employees can then accumulate points and exchange them for tangible benefits. Feedback indicates that these schemes are gaining popularity among employers in New Zealand. These schemes are inherently remunerative in nature because they are a permanent fixture of an employee's remuneration package.
- 9.37 It is understood these schemes are widely used in Australia and have specific compliance costs related to when the benefit is supplied for FBT purposes and the valuation of the benefits provided from the scheme. The proposal below attempts to reduce the compliance issues around operating these schemes while still ensuring the benefit provided is subject to FBT.
- 9.38 Under the proposed test, if the benefit is provided within a points accrual rewards scheme that permits the employee to accrue points and redeem those points for items:
- the FBT benefit will be deemed to be provided at the time the points are accrued to the employee's account
  - deemed to be in substitution for remuneration, and
  - the value of the benefit is the amount paid by the employer for points in the scheme.
- 9.39 The benefit is deemed to be provided at the time of accrual, rather than when the points are redeemed by the employee. This is because they are available for use at the time of accrual. If an employee chooses not to redeem their points, the availability is still a benefit.

### **Question for submitters**

Q9.10 Do submitters who operate such schemes see any issues with the proposed treatment?

### **On-premises exemption**

- 9.40 Under current law, benefits that are "used or consumed" by the employee on their employer's premises are exempt from FBT. There is a question of whether this exemption is still necessary if the proposed options strengthen the link to remuneration.
- 9.41 Removing the on-premises exemption may bring minor and non-remunerative items into the unclassified benefit rules. For example, if the employee can expect coffee to be available on-premises every day, it could be deemed to be provided "in substitution for remuneration" under the proposed test. Our view is that if a benefit must be used or consumed on-premises, it is not remunerative.
- 9.42 Without the exemption, employers would have to apply the main test to benefits that are likely not remunerative in nature.

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<sup>50</sup> Note that loyalty schemes such as Airpoints would not be considered points accrual reward schemes unless there is some arrangement to provide benefits under the scheme with the employer.



**Question for submitters**

Q9.11 Is the on-premises exemption still necessary under these two options?

## CHAPTER 10 – FBT on entertainment expenses

- 10.1 The FBT rules form part of a wider set of rules that govern the tax treatment of non-cash benefits provided to employees, including the entertainment rules and employee share scheme rules. The entertainment rules have significant crossover with the FBT rules yet are separate regimes, and stakeholders have noted that boundary issues between the rules create compliance costs.
- 10.2 In addition, the treatment of entertainment expenditure as an income tax adjustment to limit the deduction appears to be unusual in that other jurisdictions integrate entertainment with their FBT regimes. Integrating entertainment within FBT would align the New Zealand treatment with that in Australia and the United Kingdom.
- 10.3 The rationale for the entertainment regime is to ensure that the “private” element of entertainment expenditure is not deductible for tax. Prior to the entertainment adjustment, the expenditure was subject to the private limitation with a recognition that there was some private element to the provision of entertainment expenditure.
- 10.4 FBT recognises benefits provided to employees that are akin to remuneration. The private element of entertainment could be seen as being provided to employees as part of their remuneration on the assumption that the private element is akin to remuneration.
- 10.5 The goal of integration with FBT would be to remove the requirements to track attendees, details around length of conferences and suchlike from the regime yet still ensure that any private element was subject to tax in some form.
- 10.6 This chapter outlines two options for integrating the entertainment deduction limitation into the FBT regime with a view to lowering the compliance costs of dealing with those costs.

### Current limitation on entertainment deduction rules

- 10.7 Changes to the tax treatment of business entertainment expenses was announced as part of the 1992 Budget. The original proposal applied FBT to entertainment expenses incurred in relation to employees and treated the remainder (subject to the various exemptions) as only 50% deductible<sup>51</sup>. This was introduced as part of Taxation Reform Bill (No 6) 1992.
- 10.8 Subsequent to the introduction of the Bill, submissions on the Bill indicated that that treatment was unworkable, and the proposal was subsequently amended to largely reflect the entertainment deduction limitation we have now. All business entertainment expenditure was subject to the 50% deduction limitation and the only part subject to FBT related to when the employee was provided with entertainment that they could consume or enjoy at their discretion outside their employment duties.
- 10.9 We don't consider the unworkability of the original proposal was specific to using FBT but rather the split between employee and non-employee entertainment, which would have created significant compliance costs. Treating all entertainment expenditure in the same manner removes those original concerns.

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<sup>51</sup> For those businesses outside the FBT regime entertainment expenditure was subject to a 50% deduction limitation only.

- 10.10 The entertainment expenditure rules limit deductions to 50% on specific expenditure:
- **corporate boxes** – exclusive areas provided at cultural, sporting or other recreational activities and associated ticket costs and food and drink costs
  - **holiday accommodation** – accommodation in a holiday home or other leisure venue that is unrelated to business activities, this includes associated food and drink costs
  - **pleasure craft** – yachts or other leisure/pleasure craft and associated food and drink costs
  - **entertainment off-premises** – food and drink provided off-premises
  - **entertainment on-premises** – food and drink provided on-premises related to a celebration / social function, and that are more than light refreshments.
- 10.11 A number of exemptions narrow these limitations – primarily to entertainment provided without a connection to an income earning purpose (i.e., a stand in for the “nexus with income” test). Expenditure is not subject to the entertainment deduction limitation if it is incurred on:
- travel in the course of business (unless the travel is mainly for the purposes of entertainment, a business contact attends the consumption of the entertainment or the expenditure relates to a social function)
  - light refreshments provided at conferences
  - employee relocation and meals
  - functions promoting the business or products
  - entertainment provided by someone whose business is providing entertainment
  - a charitable purpose
  - entertainment enjoyed or consumed outside New Zealand.

### **Issues with current rules**

- 10.12 The most recent review of the entertainment expenditure rules was completed as part of the Tax Working Group’s review of compliance costs. That review found that the entertainment expenditure rules are the second-most submitted on source of compliance costs (behind FBT).
- 10.13 Businesses reported that accurately reporting entertainment expenditure required onerous manual evaluations of expenditure – not all of which would have been accurately tagged in accounts to the financial statements.
- 10.14 As a result, many businesses were taking a “close enough” approach to their compliance, treating all expenditure as 50% deductible if tagged as “entertainment” – regardless of whether the limitation should apply in all circumstances.
- 10.15 Additionally, much of the expenditure captured by the entertainment rules has a private benefit akin to many unclassified benefits, blurring the boundary between the two sets of rules (e.g., if an employer takes their employee out to a restaurant, that expenditure is subject to the entertainment rules, but if they give a voucher for that restaurant that the employee can use whenever they want instead, then it is subject to FBT). This distinction can also get complicated for example if an employer pays for employees to participate in a “fun run” and

provides a BBQ for staff at the finish line, is the cost of the fun run subject to FBT but the BBQ entertainment? This compounds the costs and difficulty in accurately reporting entertainment expenditure.

- 10.16 Finally, the entertainment rules create complexity with the GST regime, requiring manual adjustments to GST returns for the non-deductible portion of entertainment expenditure in the month they file their income tax return (or the date they must file their income tax return by, whichever is the earlier). Because income tax and GST have separate reporting dates, staff will often have to reconcile entertainment accounts multiple times per year.
- 10.17 There is good rationale to review the entertainment rules – even without the context of the FBT review. However, in the context of the proposed FBT reforms, a unique option is available that would substantially reduce compliance costs.

### **Bringing entertainment into FBT regime**

- 10.18 The current limitation on the deduction of entertainment expenditure would be removed.
- 10.19 A new category of fringe benefits could be created called “entertainment”. This would include any expenditure that falls within the definition of “entertainment” and doesn’t fall within any exemptions as noted below.
- 10.20 This category could be a non-attributable benefit (meaning you cannot attribute that benefit). It could be charged at an FBT rate of 49.25% (the same rate as pooled unclassified benefits). Taxpayers would be allowed a full deduction for the FBT amount and the underlying entertainment expenditure. Any GST adjustment would be made as part of the FBT return and no longer on the GST return.

### ***Treatment of non-employees***

- 10.21 Currently the entertainment regime limits expenditure on entertainment. This does not distinguish between employees and other persons. It is the expenditure that is the issue, not the recipient.
- 10.22 The rationale of FBT is to tax non-cash benefits provided to employees. If entertainment expenditure is brought within the FBT regime, that would suggest that taxpayers would need to apportion expenditure between employees and non-employees. This would increase compliance costs and would be difficult to do in practice.
- 10.23 An alternative would be to deem all entertainment expenditure to be incurred on “employees”. In other words, for the purposes of accounting for FBT on entertainment expenditure, non-employees would be deemed to be employees. This would simplify the rules and still seek to bring the “private” element of the expenditure to tax.

### ***What is entertainment?***

- 10.24 We are looking at two alternative options for the definition of entertainment. The difference between the options is the way in which a de minimis rule would operate.
- 10.25 The two options are:
- Option one: applying the standard de minimis rule for unclassified benefits – this will either be the existing de minimis rule or the new rules proposed in Chapter 9; or

- Option two: not applying the standard de minimis rules but instead modifying the application of inclusion of food and beverages to exempt food and beverages unless they are incurred at a party, social function or celebration.
- 10.26 In general, moving the entertainment deduction limitation to the FBT regime would make the following changes:
- Return expenditure on entertainment to the standard “nexus with income earning activity” test (i.e., removing the deduction limitation).
  - Remove the current exemptions (except the two noted below) because these will be replaced by the unclassified benefits de minimis and are no longer required.
  - Deem that all recipients of entertainment expenditure are employees for the purpose of the FBT rules (i.e., including non-employees).
  - Remove the requirement under the Goods and Services Tax Act 1985 to make a specific annual adjustment for non-deductible entertainment expenditure.<sup>52</sup>
- 10.27 In practice, this would increase the total FBT paid by businesses and subject some expenditure on non-employees to FBT. However, this would be limited to the extent that the expenditure was above the de minimis rule or is expenditure incurred on food and beverages at parties, social events or celebrations, depending on which option is preferred.
- 10.28 In return, this would reduce the compliance costs currently associated with the entertainment rules, such as those imposed by tracking that expenditure separately to FBT, and the manual adjustments made to GST returns to add-back non-deductible entertainment expenditure.
- 10.29 These rules could apply to all businesses who provide entertainment expenditure including those businesses that do not otherwise file an FBT return. However, Inland Revenue would look to simplify this process for taxpayers who do not otherwise file an FBT return and look at solutions for including this adjustment on the income tax return.

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<sup>52</sup> The GST adjustment would be made through the FBT process on the FBT return.

### Example 10.1: Entertainment – a comparison

(The example ignores GST)

Claus Ltd spends \$2,000 on a Christmas party off-premises for its 9 staff (i.e., over \$200 per person). Under the current rules, this expenditure would be subject to the 50% deduction limitation – meaning that their total terminal tax payment would reduce by  $(\$2,000 \times 50\%) \times 28\% = \mathbf{\$280}$ .

Under the new rules, Claus Ltd would pay a new net of **\$149** because Claus Ltd would treat the whole amount as subject to FBT.

This \$149 is calculated as: FBT cost - value of income tax deductions

At the standard non-attributed rate, Claus Ltd would pay  $\$2,000 \times 49.25\% = \mathbf{\$985}$ .

In its income tax return Claus Ltd would deduct the whole amount incurred and the cost of the FBT amount, income tax cost by  $(\$2,000 + 985) \times 28\% = \mathbf{\$836}$ .

This treatment would not change under the option that would exempt food and beverages because these were incurred at a party or social occasion.

### Example 10.2: Business lunch and the de minimis

(The example ignores GST)

Lunchalot Ltd regularly sends two employees to meet with clients for lunch and spends \$120 on food and drink provided off-premises 30 times over the year. Under the current rules this expenditure would be subject to the 50% limitation – meaning that the "tax cost of the entertainment is  $(\$3,600 \times 50\%) \times 28\% = \mathbf{\$504}$ .

Under the new rules, each incidence of expenditure would be subject to FBT. However, because the total expenditure is below the \$200 threshold on each occasion, no FBT is paid. Additionally, Lunchalot Ltd would now be able to claim the full **\$504** in deductions for the expenditure – reducing the total tax paid.

Alternatively, under the option that would exempt food and beverages provided that are not consumed at a party, social occasion or celebration that cost would also be exempt from FBT on that basis.

## Current exemptions

10.30 Moving to an FBT regime operating under the two options described above would provide an opportunity for further simplification as some exemptions would no longer be required. However, others may need to be retained. We welcome views on these.

- Business travel exemption can be removed – such entertainment would only be captured when the cost per person is greater than the de minimis, or travel relates to attendance at a celebration or party. All other entertainment provided is most likely connected to work and the person's employment (for example, dinner while travelling for work, lunch with a client, etc).
- Conference costs exemptions can be removed – it is likely these would be less than the de minimis or such entertainment is not at a party or social event and therefore would not fall within the regime.

- Employee relocation costs can be removed – these would likely fall under the new de minimis or such entertainment is not at a party or social event and therefore would not fall within the regime.
- Promoting the business and products – some exemption would need to be retained in relation to this type of entertainment expenditure. Either an outright exemption or exclude this type of expenditure from the definition of “celebration, social event or party”. Without this, it is arguable that such an event could be considered a “celebration” of a business or new product launch.
- Entertainment as a business exemption would need to be retained in some form to prevent the rules applying to arm’s length business transactions (such as the operation of a bar or restaurant).
- Entertainment for charitable purposes – this would need to be retained (depending on the outcome of the charities review currently being undertaken).
- Entertainment outside New Zealand will most likely need to be retained to ensure there is no incentive to provide entertainment outside New Zealand.

### **Effect on compliance costs**

- 10.31 The treatment of entertainment under the FBT rules (rather than the current treatment) should save taxpayers a significant amount of compliance costs as they would no longer have to:
- track attendees for client lunches/dinners
  - track length of conferences
  - apportion the contents of gift baskets sent to clients
  - remember to complete the GST entertainment adjustment.
- 10.32 Under option one, which uses the existing (or proposed new) de minimis rules, there are compliance costs that would be incurred in determining the total number of attendees at each event to determine if the monetary limit is breached.
- 10.33 Under option two this is not the case, and it would only be necessary for taxpayers to determine if the expenditure was incurred at a party, social event or other celebration.

### **Questions for submitters**

- Q10.1 What are submitters thoughts on moving the entertainment deduction limitation within the FBT regime?
- Q10.2 Are there any concerns submitters see with this approach?
- Q10.3 Are taxpayers comfortable with the trade-off between potentially paying more tax in respect of the adjustment and the reduction in compliance costs?
- Q10.4 Do submitters see any issues with removing the current exemptions?
- Q10.5 Which option do submitters prefer? Why?
- Q10.6 Any other issues that submitters think should be considered?



## CHAPTER 11 – Miscellaneous issues

### **FBT on subsidised transport**

- 11.1 As noted in Chapter 3, in general it is considered that the FBT rules around subsidised transport are working well and the limited number of taxpayers who supply such benefits have systems that correctly and efficiently track these benefits provided to staff.
- 11.2 However, one area of these rules has been raised with officials as potentially putting New Zealand firms at a disadvantage to offshore employers particularly those based in Australia, which can impact the ability of New Zealand-based firms to employ staff.

### ***Valuation method***

- 11.3 A specific FBT valuation rule applies in relation to subsidised transport provided by an employer in the business of providing transport to the public. The value of the transport is 25% of the highest fare the employer charges the public for the equivalent transport in terms of class, extent, and occasion within the quarter.
- 11.4 The rules around FBT on subsidised transport have not been reviewed since 1985, other than modifying the valuation of benefits provided by third parties. This valuation method is intended to represent a “stand-by” type of fare because often employees might not be guaranteed a seat until shortly before departure.
- 11.5 However, modern developments in pricing models mean this rule may require updating to reflect this intention. These developments mean that the highest fare charged for a certain route can be much higher than the average fare on the same route. This is particularly so for last minute fares in high demand seasons.
- 11.6 In the airline market, this can disadvantage domestic providers competing with offshore providers that can provide employees with more favourable subsidised transport terms. In Australia for example, the equivalent rule values subsidised transport at 37.5% of the lowest fare paid on a particular route during the year, which can result in no applicable FBT because the employee contribution to the transport will exceed that amount.
- 11.7 One alternative approach to bring the treatment more in line with offshore providers would be to use 25% of the average fare for the respective month in which the benefit is provided to determine the value of the benefit. Also, using an average fare across a month, will significantly reduce compliance costs currently incurred on investigating individual flights. We seek feedback on this approach.

### **Example 11.1: Subsidised transport**

Optimus works for Prime Airways Limited, an international airline based in New Zealand. They want to visit their family in the United Kingdom for Christmas. As an employee of Prime Airways, Optimus is entitled to one confirmed free economy air ticket to the United Kingdom flying on Prime Airways.

Prime Airways Limited operates a sophisticated revenue engine within its ticketing software that alters the prices of tickets depending on demand and the Christmas period is a period of high demand. Optimus books their confirmed flights on 12 November, departing from their home base in Christchurch on 20 December and returning from London on 10 January. At that point the highest fare paid for the same route and conditions was \$3,000.

However, during the first few days of December, Prime has an unprecedented demand for last minute tickets to the United Kingdom by fans of the Liverpool football team who are leading the premier league, which has seen the highest price paid for an equivalent ticket to Optimus' climb to \$6,000. This ticket was sold the day before the person's departure.

For FBT purposes the ticket purchased by Optimus would be subject to FBT at 25% of the highest price paid for an equivalent ticket being **\$1,500** (i.e., 25% of \$6,000). This is reflective of one ticket purchased at the last minute.

Under the proposal, the FBT would be chargeable on 25% of the \$3,750 average fare during the quarter being **\$937.50**.

### **FBT on customer rebates passed on to employees**

- 11.8 The application of FBT in relation to rebates or promotions that are provided to a customer who then passes it on to their employee may also require review. In the trade industry for example, we understand that trade suppliers may provide rebates or promotions to their trade customers to reward their loyalty and support customer retention. These rebates may include vouchers, tickets or other products. In some cases, these rebates may be passed on by trade customers to their employees.
- 11.9 Although it is a question of fact, a rebate provided by a customer to their employee would often be provided in connection with their employment. However, there may be a gap in the law in relation to the valuation of these benefits.
- 11.10 The Tax Counsel Office has recently published a draft interpretation statement on the income tax treatment of gift cards and products provided as trade rebates (PUB00462).<sup>53</sup>

### **Valuation of a product passed on to employee**

- 11.11 If a trade customer receives a power tool as a promotion for their continued purchase of goods and services from the supplier, and the customer provides the power tool to their employee, the value of the power tool for FBT purposes is nil. That is because the trade customer did not incur any cost in acquiring the power tool.
- 11.12 We consider that the appropriate valuation method for a rebate or promotion provided to a customer and then passed on to an employee should be the

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<sup>53</sup> See: [What is the income tax treatment of gift cards and products provided as trade rebates or promotions?](#)

market value of the item received. We are interested in submitters' comments on the appropriate valuation.<sup>54</sup>

### **Valuation of open-loop card/voucher passed on to employee**

- 11.13 A separate issue can also arise when the rebate or promotion provided is an open-loop card/voucher rather than a product as in the above example.
- 11.14 Under the TCO interpretation an open loop card/voucher is "money" because it can be spent widely in the same way that e-money can. This means that it is a PAYE income payment. However, paying tax on an open loop card/voucher through the PAYE regime is compliance-heavy and not necessarily appropriate given the origin of the "money". If the voucher was a closed loop card instead, such as a retailer specific card, FBT would apply as it applies in the power tool example above.
- 11.15 Applying FBT to the open loop card may be a preferable approach and we suggest that these be deemed to be fringe benefits for the purposes of accounting for tax in relation to those items. This approach would apply for all purposes, not just trade rebates.
- 11.16 We seek views on the preferred option for dealing with these types of benefits.

#### **Example 11.2: FBT and stored value cards**

No Doubt Developers Limited (NDD) purchases stored value cards to give to employees when they do something above and beyond their duties. Gwen recently provided some assistance to a neighbour of one of NDD's developments when she had a fall. NDD gives Gwen a \$50 stored value card to spend on anything she likes.

Under current law that stored value card would need to be included in Gwen's wages and have the appropriate PAYE paid on it.

Under the proposal NDD would include the provision of that card as an unclassified benefit and it would be subject to FBT (unless one of the exemptions apply).

### **FBT on global insurance schemes**

- 11.17 We are aware that in a number of cases employers provide certain types of insurance schemes based on global policies with one premium rate, no matter how many employees are covered by the policy.
- 11.18 An issue arises as to how this global cost should be apportioned across employees for FBT purposes and employers have raised this apportionment question with officials.
- 11.19 It would seem there are two possibilities for the treatment of such a global policy:
- divide the total contribution by the number of employees, or
  - treat the payment of the global policy as pooled benefit and pay FBT based on the applicable pooling rate.

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<sup>54</sup> If the proposed changes to the entertainment rules outlined in Chapter 10 are made this rule will not apply to entertainment provided to avoid double taxation.

11.20 Practically we suspect that most taxpayers will be paying FBT based on one of these options but to ensure that the rule is clear we would propose to include a specific rule in respect of these global policies and are interested in submitters' comments on a preferred option. We consider that given the nature of these policies, treating these as a pooled benefit may be the preferred option to accounting for FBT on these.

### **FBT vs PAYE vs the entertainment rules**

11.21 One of the areas of most confusion to taxpayers is the decision as to which of three regimes may apply to specific expenditure. For example, when an employer provides an employee with a meal there are potentially three different treatments:

- if the meal is provided by the employer at a certain time and place it will generally be subject to the entertainment deduction limitation,
- if the meal is provided in the form of a voucher that the employee can use whenever they want it will generally be subject to FBT, or
- if the employee goes out for dinner and the employer reimburses the cost of the dinner to the employee this will generally be remuneration and subject to PAYE.

11.22 Each of these treatments will have slightly different tax outcomes but are essentially trying to tax the same thing.

11.23 There was a change made in the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Act 2025 that equalises the treatment of the provision of a benefit in respect of benefits which are provided (or reimbursed) to employees under the health and safety exemption from FBT. While this deals with an exempt benefit and the ability to claim an exemption we don't see any reason why this concept could not be adopted for other benefits which are subject to tax.

11.24 We would propose a rule that said if a fringe benefit was accounted for in respect of benefits provided to employees (other than accommodation) there would be no PAYE liability. In addition, when an employer chose to provide a non-cash benefit to an employee by way of reimbursing that employee for the cost of the benefit, that should also be treated as a fringe benefit and subject to FBT (this approach would not apply to motor vehicles).

#### **Example 11.3: FBT treatment of reimbursements**

Spiderwebs Comix Limited is a comic shop specialising in everything spider related. Unfortunately, a water pipe in the business that occupies the second floor of its building bursts and Spiderwebs premises is flooded. Stefani is one of Spiderwebs employees and worked through the weekend on her own time to salvage the stock from Spiderwebs. Adrain, the owner of Spiderwebs tells Stefani to take her partner out for a nice dinner up to \$300 to thank her for helping out. She takes her partner out to Dumont restaurant one of the best in the area and the bill is \$280.00, which she pays herself. Adrian reimburses Stefani for the amount.

Under the proposal, Spiderwebs would pay FBT on the amount as an unclassified benefit. Previously, this would have been subject to PAYE.

11.25 The determination of whether a cost is subject to the entertainment deduction limitation or FBT in most cases is reasonably easy, but in some cases it can be more difficult.

- 11.26 Under the proposals in Chapter 10, the determination of entertainment expenses vs FBT would disappear, but if that proposal is not implemented the issue will still arise. If the proposal in Chapter 10 is not progressed, we would look to enact a stronger rule to clearly bring entertainment (when the choice of where and when to enjoy the entertainment is the employee's) under FBT, otherwise it will be subject to the entertainment deduction limitation.
- 11.27 We would be interested in submitters' views on how this could be best achieved.

### **Questions for submitters**

- Q11.1 Do submitters agree with the proposed change in calculating the value of a subsidised transport benefit?
- Q11.2 What are submitters views on the proposed valuation rules for rebates passed on to employees?
- Q11.3 Are there any issues with the proposed treatment for open loop cards in deeming these to be subject to FBT rather than PAYE?
- Q11.4 Is the proposed treatment of global insurance plans workable for employers or is there a better way to apportion these?
- Q11.5 Do submitters see any issues with the proposed deeming of certain reimbursements to be subject to FBT rather than PAYE?
- Q11.6 If the entertainment proposals in chapter 10 do not proceed how could a better boundary rule be enacted to make it clear which benefits are subject to the entertainment deduction limitation or FBT?

## CHAPTER 12 – Data, filing and integrity

### Data requirements

- 12.1 The regulatory stewardship review noted that there is lack of data available around FBT. Prior to the year 2000, the FBT return required employers to split out the taxable benefits and FBT relating to those benefits, but the new return only requires the employer to complete the total taxable benefits, the rate used, the FBT payable and the GST payable.
- 12.2 This provides Inland Revenue with very little information to allow analytical work to determine potential non-compliance. It also provides insufficient information to monitor the health of the FBT regime. This was evident as officials looked to determine the fiscal impacts of options for change to the FBT regime.
- 12.3 Currently it is possible for employers to provide further information to Inland Revenue through myIR, which does split out the FBT amounts into the various categories, but this is not compulsory, and most employers do not provide this.
- 12.4 The other issue with the provision of data around FBT is that the method of filing FBT information is basically a manual process. If taxpayers use purpose-built software to calculate their FBT liability they still must manually provide the information to Inland Revenue through a paper return or upload those figures produced by the software through myIR. This seems cumbersome, prone to transposition errors and inefficient given the software could automatically provide the information to Inland Revenue through gateway services.
- 12.5 As part of any changes, we would look to require employers to provide more information about the benefits they provide. At the least, this information would include a breakdown of the taxable benefits into the various categories and the applicable FBT charge.
- 12.6 In addition, in respect of the vehicle category and unclassified benefits, we may also require a split into various subcategories. For motor vehicles, this would be the split between categories one to three. For unclassified benefits, we may look to collect more information on the types of benefits to enable us to use for any future simplification of the rules around unclassified benefits.
- 12.7 Employers should also be provided with the ability, although not compulsion, to file their FBT return and information electronically through their software. This should reduce the compliance cost of having to manually file a return and associated information for those who use FBT software. It should also eliminate the issue of transposition errors in the current manual process.
- 12.8 Currently we are aware of a few providers of FBT software, however, allowing this may also have the spinoff benefit that more providers enter the market to assist taxpayers in meeting their obligations.

### Questions for submitters

- Q12.1 Do submitters see any issues in providing more detailed FBT information when they file their returns?
- Q12.2 Would the ability to electronically file returns via software increase the use of software to assist in FBT compliance?

## **Filing FBT returns and payment**

- 12.9 Most employers account for FBT on a quarterly basis. This requires them to file an FBT return that for the first three quarters is based on a single rate of 63.93% or an alternative rate of 49.25%. They have a choice in the last quarter of a flat rate, or to undertake an attribution of benefits that more closely aligns to the overall tax rate of employees (taking into account their cash and non-cash benefits).
- 12.10 One of the issues raised during the regulatory stewardship review was whether taxpayers could elect to calculate FBT annually in more situations to reduce the in-year cost of complying with FBT. However, quarterly returns provide both information and cashflow to the government and thus are important to the overall tax system.
- 12.11 In addition, the provision of in-year payments reduces the chance of a taxpayer ending up with a larger, unserviceable FBT debt. This is the same premise behind the provisional tax regime. However, an alternative argument is that it is good to calculate and file FBT returns quarterly because it means that an employer does not need to chase up employees for details relating to the calculation of FBT at a much later date.
- 12.12 This latter point is a good reason to retain the quarterly filing. However, that comment is probably more relevant to the current FBT regime, which requires significant input from employees (to account for days when a vehicle is not available for private use, or days when a work-related vehicle is used for private use) which, under the proposal outlined in Chapter 7 and 8 would no longer be required. That raises the question of whether that concern would be valid under a new FBT regime.
- 12.13 It is not proposed to change the final quarter attribution return. Although this task can be quite compliance cost intensive, the only way to remove this is to have a single rate but if that rate is too low it can provide an incentive to provide non-cash benefits to those employees on the top marginal tax rate.
- 12.14 Undertaking an attribution also allows taxpayers who provide benefits to taxpayers on lower tax rates to reduce the amount of FBT payable, to more closely align to the employee's actual tax rate if they had received the non-cash benefit in cash.
- 12.15 However, the returns filed in the first three quarters could be simplified for taxpayers, which may reduce their compliance costs. Instead of filing the first three quarters calculated with reference to the benefits provided during that period and then using a placeholder rate to calculate an approximate FBT liability, we would be interested in submitters' comments in allowing taxpayers to file and pay the first three quarters based on 25% of the previous year FBT liability.
- 12.16 This may be a better approximation of the FBT payable by the employer for the year, assuming the staff numbers and benefits provided are relatively stable year to year and, given the proposals suggested in Chapter 7 and 8, may not require the interaction with employees that the previous regime required.
- 12.17 We do recognise that some employers (mainly large employers) would rather complete the calculations as they are currently calculated and hence this potential option would be elective.
- 12.18 The first three quarters would then be squared up in the fourth quarter as usual. There would be no apportionment of the actual liability back to the first three quarters, akin to the way provisional tax is accounted for with taxpayers who

choose this option. Use of money interest would only apply to those three quarters if the employer made the payment due late, as is the case now.

### **Questions for submitters**

- Q12.3 Do submitters see any value in being able to file their first three quarters based on 25% of the prior year's FBT liability?
- Q12.4 Do submitters see any issues with doing this?
- Q12.5 Do submitters have other practical ideas which would make FBT return preparation easier?

### **Integrity issues**

- 12.19 Currently there is no real linkage between a taxpayer's income tax and FBT filings. In a perfect world, a taxpayer who had claimed tax deductions in respect of motor vehicles should be able to be automatically cross checked that they had also filed an FBT return. If they haven't, there is either no private use of the vehicles they are claiming tax deductions on, or they are not meeting their obligations to account for FBT on those vehicles.
- 12.20 One of the aims of modernising FBT would seek to change this and require a taxpayer on their income tax return to indicate if they have claimed tax deductions in respect of motor vehicles and that they have filed FBT returns in respect of those motor vehicles, if required.
- 12.21 Noting that the income tax return is a declaration by the taxpayer, they would need to turn their mind to whether they have met their FBT obligations in respect of the vehicles they have claimed tax deductions on.
- 12.22 This will enable Inland Revenue to automatically identify any taxpayer that has claimed tax deductions on motor vehicles but has not filed an FBT return and follow up why that is.
- 12.23 We do not see the requirement to declare that a taxpayer has claimed tax deductions on motor vehicles and filed an FBT return, if required in relation to those vehicles to increase compliance costs for taxpayers but are interested in submitters' views on this.

### **Question for submitters**

- Q12.6 Do submitters see any issue with the proposed declaration in the income tax return of the taxpayer?



## Appendix – Discussion questions

### **Chapter 6 – Connection with remuneration**

Q6.1 Should the value of a motor vehicle be determined by reference to external calculations undertaken by remuneration consultants or built up by Inland Revenue from external resources (such as the AA)?

Q6.2 How often should these rates be set (annually or a certain number of years)?

Q6.3 Should FBT be calculated based on the limitation on private use of the vehicle?

Q6.4 Do employers see the ability to categorise a vehicle at the time of acquisition of the vehicle as workable?

### **Chapter 7 – Motor vehicles – options for change**

Q7.1 What should the weight limit be for the purposes of determining if a motor vehicle is subject to FBT?

Q7.2 Notwithstanding that most of these types of vehicles are likely to fall out of FBT naturally, is it appropriate to remove them via exemption?

Q7.3 Is the suggested exemption suitable, and does it capture all vehicles used for those services?

Q7.4 Would the removal of the ability to use tax value as a cost base option have any negative consequences?

Q7.5 Should the FBT regime move to a more hybrid approach based on the availability for private use but also considering the permitted private use of the vehicle?

Q7.6 Should there be an option for taxpayers to use actual costs to determine the private running of a vehicle?

Q7.7 Should any option to use actual costs be restricted to a certain group of taxpayers or available more widely?

Q7.8 Do submitters prefer a more exact calculation or a “close enough is good enough” approach to the calculation of motor vehicle benefits bearing in mind the latter approach could result in under- and over-taxation?

### **Chapter 8 – Remuneration approach for motor vehicles**

Q8.1 Do you think a scaled rate of FBT would bring the impact of FBT closer to actual use than is currently the case?

Q8.2 Are the categories appropriate?

Q8.3 Do you see any issues classifying your vehicles using these categories following the “close enough is good enough” principle?

Q8.4 Do you think a move closer to benefit value would increase compliance with FBT?

Q8.5 Are the proposed rules around incidental use appropriate, clear and workable?

Q8.6 Do you think this option would lower your compliance costs for FBT and by what degree?

Q8.7 Do you think the work-related vehicle exemption is still required when moving towards more of a usage test and why?

Q8.8 Can you provide examples of when the work-related vehicle exemption might still be required?

Q8.9 Are there any work-related vehicles that would be subject to FBT when there is no private usage and provide examples?

Q8.10 How often do you have vehicles which are used for emergency call outs which are currently exempted from FBT?

Q8.11 Do submitters agree with the integrity measures that are proposed?

Q8.12 Are there any other measures that should be included to assist in the integrity of the regime?

Q8.13 Do submitters prefer major shareholder-employees filing their FBT liability on the company income tax return or the FBT return for the company?

Q8.14 Do submitters agree with a maximum value for a vehicle to use categories two and three when those vehicles are used by major shareholder-employees of a close company? Is \$80,000 an appropriate value?

Q8.15 What are submitters' views on company branding on vehicles?

Q8.16 What are submitters' views on removing the ability of taxpayers to count days when a vehicle is unavailable for private use?

Q8.17 Do submitters anticipate any practical issues with the proposed approach? For example, are vehicles often assigned to different drivers who may use the vehicles in different ways?

## ***Chapter 9 – Unclassified benefits***

Q9.1 Are the three factors a sensible test for whether a benefit is provided "in substitution for remuneration"? Would any other factors be more appropriate?

Q9.2 Would it be feasible to apply this test?

Q9.3 Are there any unclassified benefits that would not receive the correct treatment under this test?

Q9.4 Would a per benefit test help to reduce compliance costs?

Q9.5 Is \$200 the right cap? Should it be higher/lower?

Q9.6 Are there any unclassified benefits that are not in substitution for remuneration that would not receive the correct treatment under a \$200 per benefit cap?

Q9.7 Would a list excluding non-remunerative unclassified benefits help to reduce compliance costs?

Q9.8 Are there any other benefits that should be included on the list?

Q9.9 Which option would be more effective at reducing compliance costs and strengthening the link to remuneration; option one or option two?

Q9.10 Do submitters who operate such schemes see any issues with the proposed treatment?

Q9.11 Is the on-premises exemption still necessary under these two options?

## **Chapter 10 – FBT on entertainment expenses**

Q10.1 What are submitters thoughts on moving the entertainment deduction limitation within the FBT regime?

Q10.2 Are there any concerns submitters see with this approach?

Q10.3 Are taxpayers comfortable with the trade-off between potentially paying more tax in respect of the adjustment and the reduction in compliance costs?

Q10.4 Do submitters see any issues with removing the current exemptions?

Q10.5 Which option do submitters prefer? Why?

Q10.6 Any other issues that submitters think should be considered?

## **Chapter 11 – Miscellaneous issues**

Q11.1 Do submitters agree with the proposed change in calculating the value of a subsidised transport benefit?

Q11.2 What are submitters views on the proposed valuation rules for rebates passed on to employees?

Q11.3 Are there any issues with the proposed treatment for open loop cards in deeming these to be subject to FBT rather than PAYE?

Q11.4 Is the proposed treatment of global insurance plans workable for employers or is there a better way to apportion these?

Q11.5 Do submitters see any issues with the proposed deeming of certain reimbursements to be subject to FBT rather than PAYE?

Q11.6 If the entertainment proposals in chapter 10 do not proceed how could a better boundary rule be enacted to make it clear which benefits are subject to the entertainment deduction limitation or FBT?

## **Chapter 12 – Data, filing and integrity**

Q12.1 Do submitters see any issues in providing more detailed FBT information when they file their returns?

Q12.2 Would the ability to electronically file returns via software increase the use of software to assist in FBT compliance?

Q12.3 Do submitters see any value in being able to file their first three quarters based on 25% of the prior year's FBT liability?

Q12.4 Do submitters see any issues with doing this?

Q12.5 Do submitters have other practical ideas which would make FBT return preparation easier?

Q12.6 Do submitters see any issue with the proposed declaration in the income tax return of the taxpayer?