

# The \$88k FBT motor vehicle trap...

*You know you're having a bad day when you get an \$88,000 FBT bill from the Tax Office for a car that you thought was exempt.*

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A sole director of a company bought a Lexus in June 2004 for \$119,000. The Director purchased the car through his company for use in the business (100% business use by the Director). The company operated from the same block of land as the Director's principal place of residence but the two buildings were divided by a wall and had separate driveways and letterboxes. As the car was for business use and garaged at the business, it was assumed that FBT did not apply and as a result, no FBT returns were lodged. No log books were kept evidencing the business use of the car until the Tax Office announced their intention to audit the business.

Following an FBT audit in 2009, the Tax Office gave the Director an assessment for just under \$88,000 in outstanding tax. The Director challenged the Tax Office's assessment as "excessive" but lost. The reason for the assessment is that the FBT Act states that a vehicle will be available for private use (and subject to FBT) if the car is garaged or kept "at or near a place of residence of the employee or an associate of the employee." In this case, the Administrative Appeals Tribunal found the Lexus was kept 'near' the Director's place of residence and as a result, gave rise to a car fringe benefit for each day it was garaged there.

Another complicating factor for the Director and the company was that the operating cost method, commonly called the log book method, could not be used to evidence the business use of the car. To use the operating cost method you need to make an 'election' to the ATO that you will be using this method and keep a log book and other appropriate records. The Director only had a partial log book compiled after the audit was announced. The Tax Office will accept the non-lodgement of an FBT return as an election if there are no taxable fringe benefits. However, and this is the important part, you still need to keep a log book and other documents to show how you arrived at a nil FBT position.

If there are no records to show how you arrived at a nil FBT position, the statutory method will apply instead. The statutory method uses a prescribed formula to calculate the FBT liability that hinges on the number of days the car fringe benefit is provided (in this case, 365 days a year!). In this case, as no election to use the operating cost method had been made, the Tax Office used the statutory method to calculate the company's FBT liability.

While this particular case is unusual because the Director's principal place of residence was on the same block of land the company operated from, there are a couple of key points that all employers (including the self employed) should take away:

- Always keep records to justify your tax decisions; and
- Be aware of what method you need to use for FBT and motor vehicles.



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*Continued...*

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As always with tax, the devil is in the detail.

For motor vehicles, it's important to have a record of what cars are subject to FBT, when things change, periods of use, and the method being used to calculate FBT. If you use the statutory method, make sure you do an odometer reading at the end of the FBT year on 31 March, and if you have elected to use the operating cost method, make sure that your log books are current.

Don't forget that informal arrangements between employers and employees can unintentionally give rise to an FBT liability - such as allowing employees to use company cars for private use over a weekend.



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