

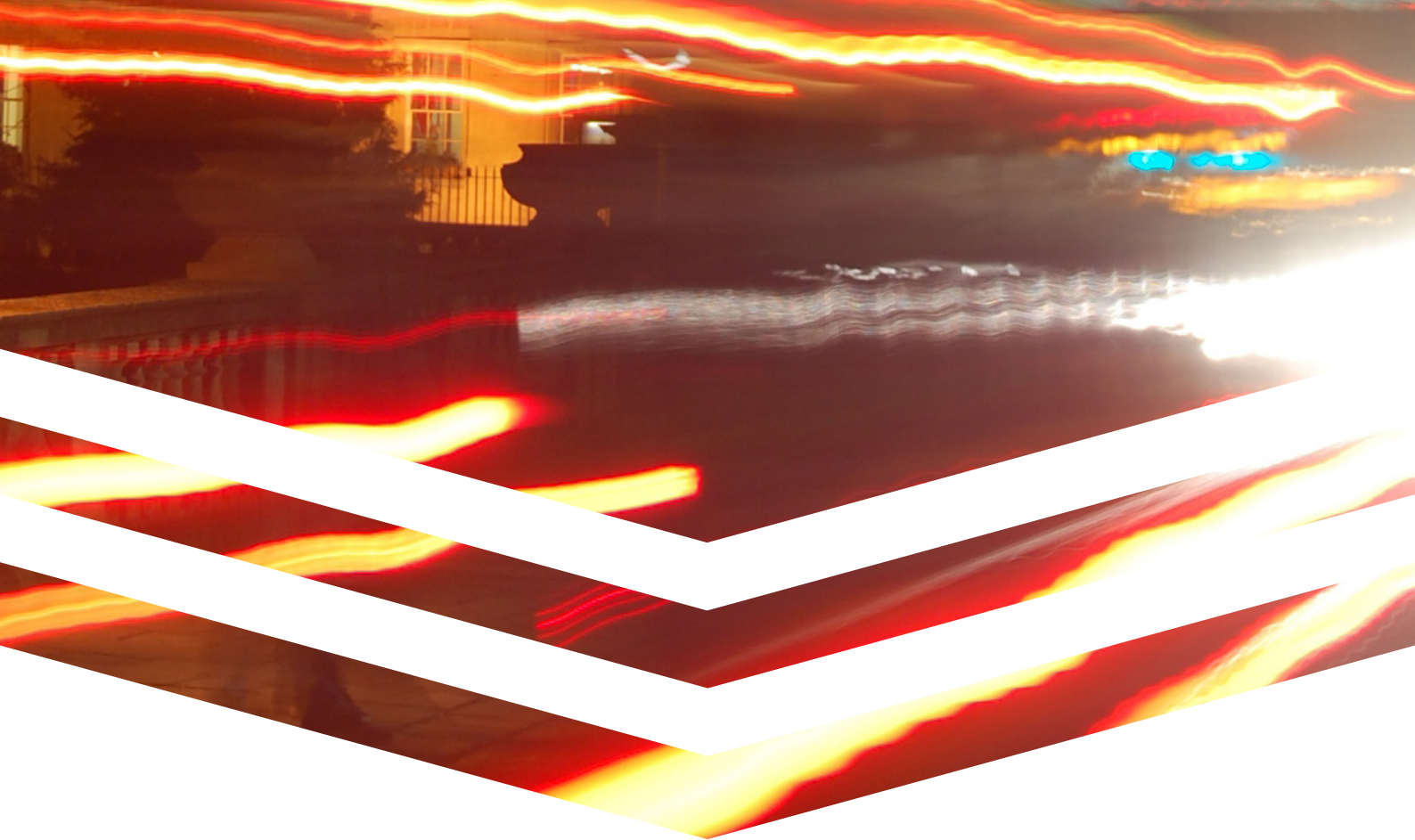
# BACK TO THE YEAR 2022

APPLYING 1986  
PRINCIPLES IN YOUR

 2022 FBT RETURN 



THOMSON REUTERS®



The world around us continues to change at a rapid pace from COVID-19 impacts, remote and flexible work arrangements, new technology and benefit offerings. FBT practitioners and the ATO are having to interpret legislation to arrangements and benefits which were not contemplated in the 80s when the FBT legislation was first enacted. This has led to several emerging issues and ATO guidance releases which are summarised in the update article below.

**Hayley Lock**

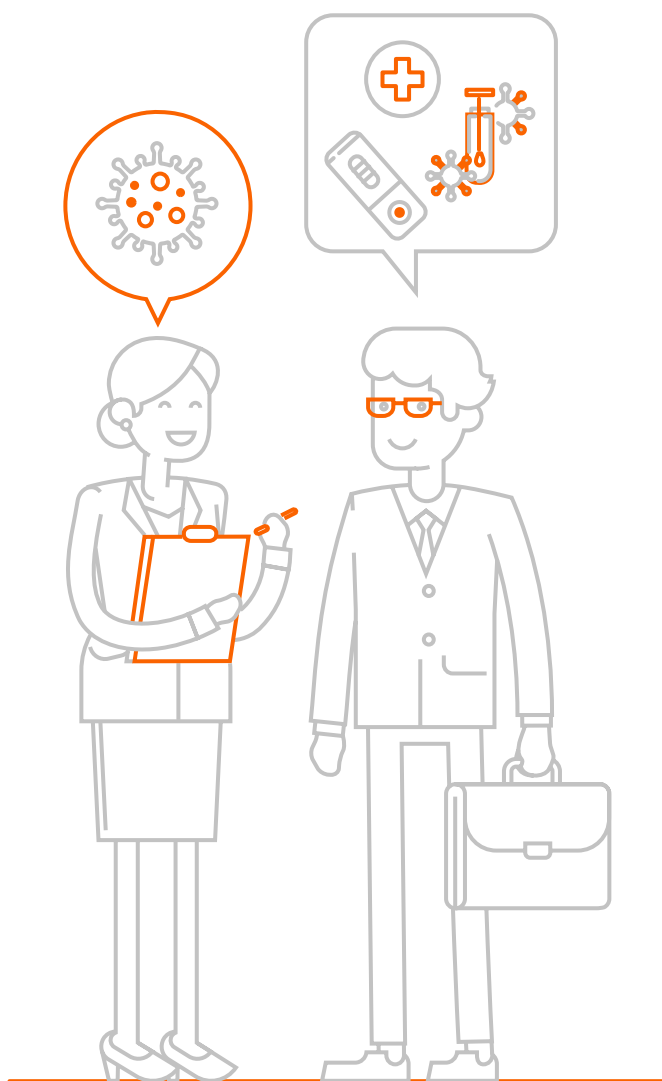
Partner, KPMG Employment Tax Advisory

**Stacey Biggar**

Senior Manager, KPMG Employment Tax Advisory

## 1. Emerging Issue - Covid Testing

**With the rapidly increasing daily case number, some employers have provided COVID testing support to employees either due to border restrictions or company safety mandates**



The ATO has provided guidance confirming COVID tests would not attract FBT if:

- Testing is carried out by a legally qualified medical practitioner and available to all employees
- Provided infrequently and irregularly and the cumulative value of the tests provided to an employee is less than \$300; or
- The test is required for an employee travelling on work due to border restrictions.

The now common situation which is not covered by this guidance, is employees requiring regular Rapid Antigen Tests (RATs) to attend work in accordance with an employer mandate. There are several legislative interpretations that could have application depending on the specific facts and circumstances, however, there remains a risk that FBT may apply in some circumstances. We understand a number of professional bodies have raised concerns and we will keep you updated as the issue is hopefully resolved.

Source: [COVID-19 and fringe benefits tax | Australian Taxation Office \(ato.gov.au\)](https://www.ato.gov.au/ATO/Content.aspx?Content=COVID-19+and+fringe+benefits+tax)

## 2. Emerging Issue - Electric Vehicles

**To achieve emission reduction targets some employers are considering including electric vehicles in their fleet.**



The FBT legislation was enacted before electric vehicles were invented. It is therefore no surprise that there are several practical challenges currently being considered by the ATO on how to value the vehicle benefits (including substantiation).

Labor has a target of 50% of new car sales to be electric vehicles by 2030 and has proposing a FBT exemption for the electric vehicles in a bid to increase uptake. This means that purchasing or leasing an electric car for employees would have the same treatment as if they were to be provided with a dual cab ute.

Source: [Labor pledges tax breaks under revamped electric car policy \(afr.com\)](#)

## 3. Vaccination Incentives

**Many employers have been encouraging employees to get COVID-19 vaccinations with incentives and rewards.**

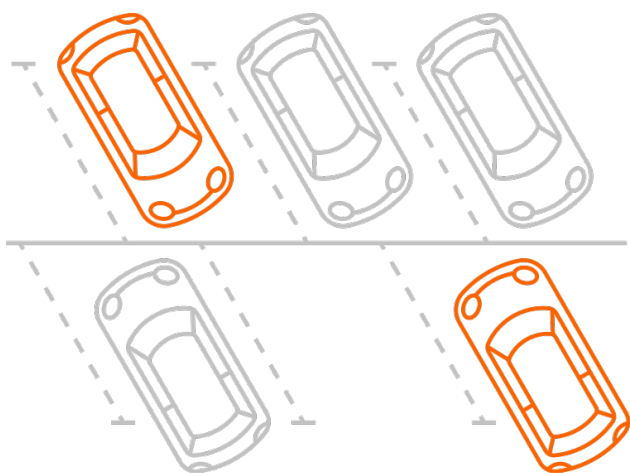
The ATO published a fact sheet regarding COVID-19 vaccination incentives and rewards. Employers providing non-cash benefits such as gift-cards, vouchers or raffle prizes to employees, will likely be subject to FBT, unless the minor benefit exemption or in-house reduction applies.

Source: [COVID-19 vaccination incentives and rewards - your tax and super obligations | Legal database \(ato.gov.au\)](#)



## 4. Car Parking

**The long awaited final car parking ruling (TR 2021/2) was released with significant changes from the 2019 draft.**



The main difference between the draft and the final is the “commercial car parking facility” definition. It now has less of a focus on a taxpayer making an assessment about whether a car parking facility is run on a “commercial” basis and a focus on objective factors on a holistic basis.

If a car park is operated by a car parking operator it is a commercial car parking facility, regardless of whether it is run on behalf of or within another building or business (e.g. Secure parking operating a hospital or shopping centre car park).

If a car park is not operated by a car parking operator it is a commercial parking facility if 2 of the 3 hallmark characteristics below are present:

- 1 has clear signage visible from the street advertising that paid parking is available
- 2 has mechanisms to control who can enter and/or exit the parking facility (for example boom gates or ticketing machines)
- 3 charges more than a nominal fee for paid parking

As we outlined last year, employers currently excluding car parking from their FBT returns should reassess their FBT positions. The current interpretation of the FBT legislation by the ATO widens the scope of the act and therefore could result in an increase in the FBT liability of employers.

An appeal has been allowed in a recent Virgin case discussing ‘primary place of employment’. The ATO has indicated that the new ruling will be amended in due course to reflect the outcome of this case.

Source: [TR 2021/2 | Legal database \(ato.gov.au\)](#)

## 5. Travel

**In August, the ATO concluded a four-year journey to update travel vs living away from home guidance for modern day workforce arrangements.**



The following three finalised ATO rulings and guidance are relevant when determining FBT treatment of travel expenses:

- TR 2021/1 – Income Tax: when are deductions allowed for employees’ transport expenses?
- TR 2021/4 - Income tax and fringe benefits tax: employees: accommodation and food and drink expenses travel allowances, and living-away-from-home allowances
- PCG 2021/3 - Determining if allowances or benefits provided to an employee relate to travelling on work or living at a location - ATO compliance approach

There have been significant changes between the earlier draft and final versions, the most notable been the removal of the special demands travel concept. This could particularly impact those in mining, construction & transport industries.

Now that guidance is finalized, employers with mobile workforces should review their travel policies and the various arrangements in place and if not applying the PCG consider formally documenting the positions. Additionally, employers with travelling senior executives should consider the application of the ruling to these scenarios which often have a high profile. Appreciating that travel is still impacted by the pandemic, now could be an opportune time to implement protocols around how transport, meal and accommodation benefits are provided to mobile employees.

The PCG sets a “safe harbour” of an aggregate period of fewer than 90 days in an FBT year for presence at a particular temporary work location to be treated as travelling on work. Provided that this requirement is met, the Guideline allows an employee to have numerous short stints of travel of up to, and including, 21 continuous days. Notably Fly-in Fly-out or Drive-in Drive-out are excluded from the PCG so the safe harbour cannot apply in these scenarios.

Source:

[tr2021-001.pdf \(ato.gov.au\)](#)

[TR 2021/4 | Legal database \(ato.gov.au\)](#)

[PCG 2021/3 | Legal database \(ato.gov.au\)](#)

**Contact us today - Australia/New Zealand**

1800 074 333 (Australia)

0800 785 483 (New Zealand)

[info.anz@thomsonreuters.com](mailto:info.anz@thomsonreuters.com)

[tax.thomsonreuters.com.au/onesource/fringe-benefits-tax](http://tax.thomsonreuters.com.au/onesource/fringe-benefits-tax)

