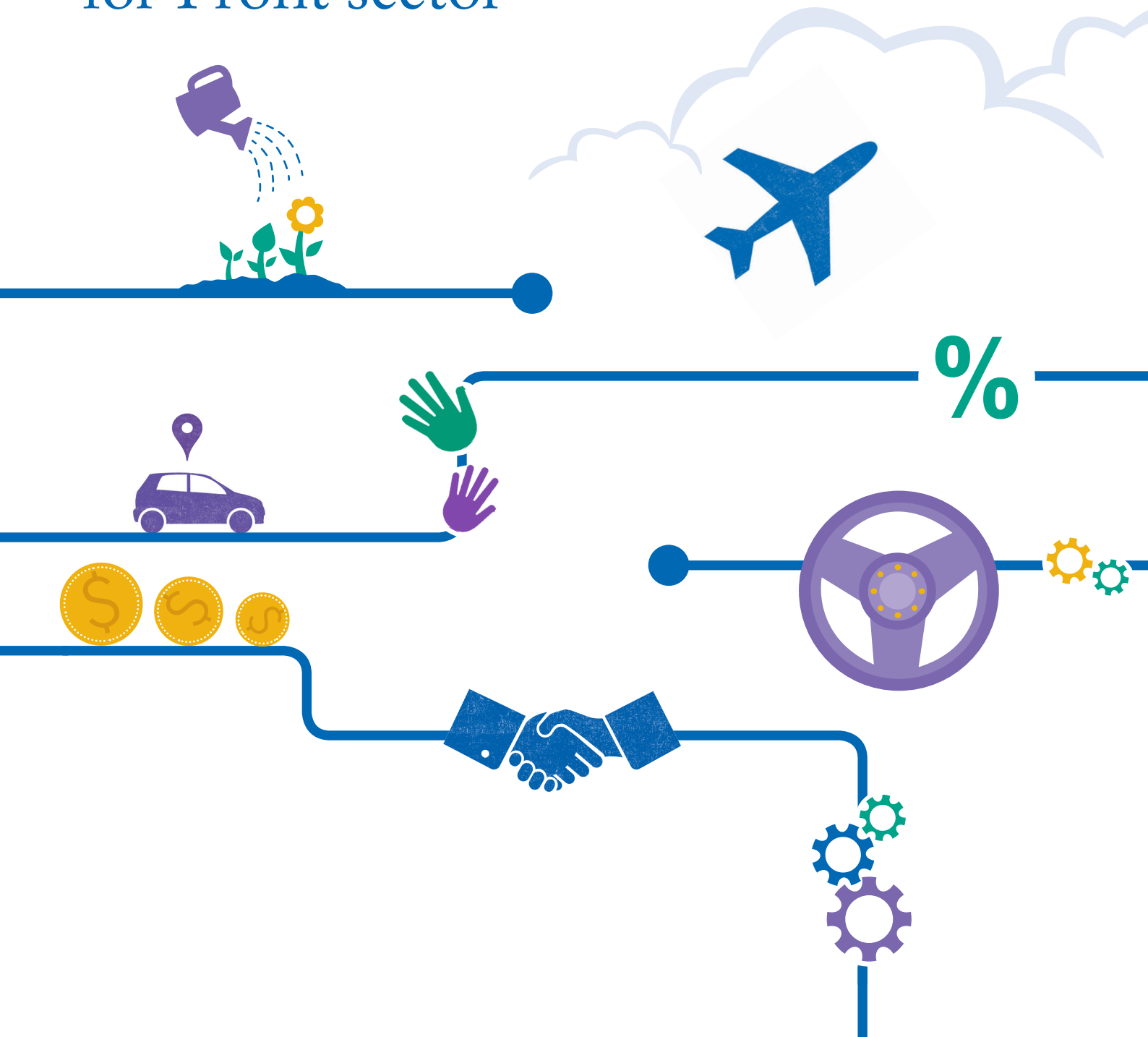


Fringe benefits tax in the Not for Profit sector





Paying fringe benefits tax (FBT) on cars can cause a lot of confusion for taxpayers. The desire to pay the minimum FBT may lead to misconceptions about how to apply certain FBT exemptions, or cause oversights when an entity's circumstances change.

There are a few recurring issues regarding FBT in the not for profit sector – here, we've focused on these; particularly motor vehicles, carparks and airpoints.

Motor vehicles - what is the benefit?

Put simply, a fringe benefit arises where a motor vehicle is made available for the private use of an employee by an employer. So it is important to remember that a vehicle may not actually be used by employees, but if it remains available for private use, it will be subject to FBT on that particular day.

For quarterly filing, FBT on vehicles is calculated on 5% of the vehicle's cost – regardless of whether it is leased or owned by the employer. Sometimes, there is no 'cost' to the employer as the vehicle may be paid for - for example, by a sponsor. In this case, FBT may still arise where the benefit is provided under an 'arrangement' with the employer. If an arrangement does exist, the FBT will be based on the market value of the vehicle at the start of the arrangement, or when a fringe benefit is initially provided to the employee. For example, where the vehicle is funded by a sponsor, and was not initially available for private use, but becomes available for private use, then fringe benefit tax is still based on the market value at the time of purchase or entering into the arrangement.

From there, a multitude of exemptions may apply, including:

- the type of vehicle provided (ie, a work-related vehicle)
- the type of entity (ie, charities)
- the ever topical carparks.

Work related vehicles

These are vehicles 'not designed exclusively or mainly to carry people'. Generally, this includes utes and vans.

A station wagon cannot be a work-related vehicle as it is designed mostly for carriage of passengers, rather than goods, unless the back seats are bolted down or taken out etc. This is an extreme, but necessary requirement for the FBT exemption to apply to a station wagon.

Another requirement of the work-related vehicle exemption is that it must be sign written with the employer's name and that signage must be 'permanently and prominently' displayed on the outside of the vehicle. This requirement is usually well understood.



What is commonly overlooked?

- The vehicle will not be a work-related vehicle on any day on which the vehicle is available for the employee's private use – other than incidental private use.
Generally home to work travel is allowed, but it is vital to have some form of formal prohibition of private use of the vehicle in place, such as a letter to the employee. Even then, the letter may not be sufficient where private use is in fact more than incidental. So it is even more vital to document the private use from time to time, just in case Inland Revenue asks for proof
- The nature of the job must require a vehicle of this type. So, if your job involves visiting farms and/or carrying goods, then it makes sense to have a ute as a work vehicle. If you're a CEO or office worker, then not so much; so the risk in that case is that a ute, even if sign written, would not qualify for the exemption
- FBT will apply equally if the employer owns or leases the vehicles or if provided for free through a sponsorship deal

Charities

Charities are broadly exempt from FBT – other than for benefits provided mainly in connection with business activities that are outside an entity's benevolent, charitable, cultural or philanthropic purposes.





To apply this exemption, the entity must be registered as a charitable organisation under the Charities Act 2005.

But what happens when an entity is removed from the charities register?

Assuming that the entity has complied with its constitution over time, FBT will apply from the last day of the quarter or income year which includes the day of Charities Services' final decision to deregister the charity. So, prior to deregistration, it makes sense to check the extent of any fringe benefits being provided to employees and then consider registering for FBT. It is worth keeping in mind that there is a risk that FBT will apply retrospectively for those entities which have not complied with their constitution.



Carparks

Carparks are often provided to staff to use – either for the company vehicle or a private vehicle. Historically, Inland Revenue have accepted that 'leased' carparks are exempt from FBT, but 'licenced' carparks were not. Essentially, with a lease, the lessor has exclusive rights of possession, meaning that they can tow away wayward parkers. Licence holders do not have that legal right. The importance of this difference may have been overlooked, meaning that FBT should have been paid.

If this is news to you, and you have that sinking feeling that you should have paid FBT on that carpark (perhaps for many years), the great news is that Inland Revenue have recently changed their position on the FBT treatment of some licenced carparks.

In a recently issued ruling, Inland Revenue have stated that a licenced car park will be exempt (ie, treated as being on the employer's premises) if the employer can show that their right to use the carpark is, in effect, 'substantially exclusive'; reserved car spaces work well in this instance.

There's also more great news. If you have paid FBT on licenced carparks in the past, then Inland Revenue may be open to reassessing past FBT returns.

Airpoints

If an employee is a member of an airpoints programme, FBT generally doesn't apply to any airpoints they accrue after their employer reimburses them for travel costs. The exception is if the employer has entered into an 'arrangement' for FBT purposes with the airpoints programme provider, in which case, FBT may arise.



Not sure if you've accounted for FBT correctly?

Inland Revenue can come down severely on organisations that are not properly accounting for FBT. With a recent increase in Inland Revenue reviews in this sector, you could be sitting on a ticking FBT time bomb.

If you have concerns you have been accounting for FBT incorrectly or not at all, then contact your advisor to clarify whether a liability does arise and if it is material. They can then advise you whether to lodge a voluntary disclosure with Inland Revenue.



Key contacts

Auckland

L4, Grant Thornton House
152 Fanshawe Street
Auckland 1140
T +64 (0)9 308 2570
F +64 (0)9 309 4892
E info.auckland@nz.gt.com

Stacey Davies

Partner, Privately Held Business
D +64 (0)9 308 2591
M +64 (0)21 858 050
E stacey.davies@nz.gt.com

Wellington

L15, Grant Thornton House
215 Lambton Quay
Wellington 6143
T +64 (0)4 474 8500
F +64 (0)4 474 8509
E info.wellington@nz.gt.com

Barry Baker

Partner and Not for Profit
Specialist
D +64 (0)4 495 3787
M +64 (0)21 797 221
E barry.baker@nz.gt.com

Christchurch

L3, 2 Hazeldean Road
Addington
Christchurch 8024
T +64 (0)3 379 9580
F +64 (0)3 366 3720
E info.christchurch@nz.gt.com

Michael Stewart

Partner, Audit
T +64 (0)3 379 9580
M +64 (0)21 670 076
E michael.stewart@nz.gt.com



© 2016 Grant Thornton New Zealand Ltd. All rights reserved.

Grant Thornton New Zealand Ltd is a member firm of Grant Thornton International Ltd (GTIL). GTIL and the member firms are not a worldwide partnership. Services are delivered by the member firms. GTIL and its member firms are not agents of, and do not obligate, one another and are not liable for one another's acts or omissions. Please see www.grantthornton.co.nz for further details. This report is general in nature and its brevity could lead to misrepresentation. No responsibility can be accepted for those who act on its content without first consulting us and obtaining specific advice.

www.grantthornton.co.nz