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TravelSmart or travel tax breaks: is the fringe benefits tax a barrier to active commuting in Australia? [1]

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Abstract

The Fringe Benefits Tax (FBT) provides tax incentives to employers and employees who use private motor cars to travel to and from work. However there is no broad exemption available to employers that support employees choosing alternative modes of commuting.

In this paper we explore schemes that some employers are currently implementing to promote active commuting, and how FBT applies to those schemes. We find that employers are frequently implementing arrangements without adequate awareness of potential FBT liabilities.

We argue that the current patchwork of exemptions is inadequate and that broad exemptions are required to support commuters who choose active travel alternatives.

Keywords: *Fringe Benefits Tax, active commuting, public transport, environment*

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1. INTRODUCTION

Smart commuting policies are policies that encourage Australians to use public transport, walking and cycling for commuting rather than a personal passenger motor vehicle to address the unsustainable increase in motor vehicle usage, particularly passenger motor vehicles. There have been many calls for all levels of Australian governments to promote smart commuting through policies that provide appropriate infrastructure and incentives, including tax incentives, to individuals and employers that promote such practices.

Without any policy changes that promote smart commuting, the low level of usage is likely to get worse. Not only will road-transport activity more than double by 2050 (Energy, 2012; para 3.3.8), but the Australian population is projected to grow and change over the next 40 years (Treasury, 2015). Passenger motor vehicles are currently the main form of transport to get to work or full time study. In 2012, 71 per cent of Australian commuters used passenger motor vehicles to travel to work or full time study, 16 per cent used public transport, four per cent walked and two per cent cycled (ABS, 2013).

The increasing number of motor vehicles on the roads imposes negative externalities such as congestion, greenhouse gas emissions, safety and health issues, reduced energy security and lower economic prosperity. By not promoting smart commuting policies, the Australian Government is also not fulfilling its commitment to the Global Community to preserve energy and protect the environment.

A range of policies are required at the federal and state government levels to encourage alternative forms of commuting. Public transport and cycling infrastructure need to be improved to meet the needs of commuters, and commuters need to be encouraged to change their behaviour.

It is time for the Australian Government to promote travel smart policies, which must also include fiscal legislation that impedes the adoption of alternative modes of travel (Pearce, 2011; 2014). The focus of this paper is to explore the constraints imposed by the Fringe Benefits Tax (FBT), how it hinders smart commuting and how a subsidy for smart commuting can be provided through policy changes to the FBT.

The paper is divided into five parts. Part 2 of the paper provides an overview of the operation of the FBT in Australia. In Part 3 we then present the findings from our survey of a focus group of TravelSmart co-ordinators who are responsible for encouraging smart commuting in their workplace. Part 4 explores how FBT applies to the range of benefits provided under these schemes, using case studies drawn from the focus group. Finally, we conclude that although there are ways to work within the current parameters of the FBT in developing schemes to support smart commuting, there is an urgent need for legislative reform, and we make some proposals for reform.

2. FRINGE BENEFITS TAX

It is well known that there are significant FBT concessions available to employees through salary packaging of cars, but there is also demand, currently small but increasing, for employers to support other forms of travel. The motives for providing alternative travel benefits vary, but both employers and employees cite congestion,

parking and health as reasons to adopt alternative forms of transport to and from work. However FBT is often cited as a barrier.

Australia is unusual, being one of only two countries in the world to impose FBT on employee benefits on employers, with the other being New Zealand. The purpose of the tax, which was introduced in 1986, is to ensure that tax is paid on non-cash benefits provided to employees where that benefit is for a private purpose by calculating the value of a benefit using an objective formula, and applying the maximum personal rate of tax to the pre-tax value of the benefit.

The structure of the FBT (FBTAA 1986) is schedular. A benefit is classified as falling within a particular category, and the relevant exemptions and calculations for each category are set out in separate divisions of the FBTAA. If there is a benefit that cannot be classified under a specific category, for example, the use of a bicycle owned by the employer, it is classified as a residual benefit under Division 12 to ensure that it does not escape FBT. The rules applied to calculate the taxable value for each category of benefit are intended to reach a value that is approximately equivalent to the arm's length value of the benefit, that is, the amount that unrelated parties would pay to acquire the goods or services in an open market. The value of the benefit is not taxed to the employee, although it will be included as adjusted taxable income used for the purpose of access to many other government payments, levies and charges.

There are exemptions, exclusions and reductions for a range of items where there is either a policy reason; for example, avoiding double taxation on superannuation contributions taxed in a superannuation fund (FBTAA s 136 Definition of Fringe Benefit, (j)); where it is a work-related obligation, such as health and safety obligations (FBTAA ss 58K, 58M); or where the employee is using the goods for work related purposes, such as the provision of professional subscriptions (FBTAA s 58Y). If the employee contributes to the cost of the benefit the taxable value is reduced (eg FBTAA ss 10, 39C), and there are exemptions for employees of charities and public hospitals (FBTAA ss 5A, 57A).

Although the valuation rules generally try to adopt a taxable value that is close to the arms length value of providing the benefit, there are some notable exceptions. Of particular relevance to this article there are concessional methods available to calculate the taxable value of benefits provided in connection with motor cars. Section 9 of the FBTAA allows the use of a statutory formula to calculate the taxable value of a car based on the value of the vehicle without reference to the true cost of operating the vehicle. The employer and the employee receive an indirect tax benefit as the statutory formula does not differentiate between private and business travel.

The concessional method of calculation of the liability on motor cars was designed to protect the domestic motor vehicle industry when the tax was introduced. It has existed since the tax was introduced, although it was scaled back in 2011 to reduce the concessional rate to 20 per cent regardless of the distance travelled. Further reforms to remove the concessional calculation proposed in 2013 were opposed by the motor vehicle and finance industries, and did not ultimately proceed.

Parking also receives concessional treatment under Division 10A which allows a number of methods of calculating the taxable value of parking benefits that do not necessarily correlate to the cost of providing that parking. These alternative methods were introduced in order to simplify the calculation of FBT on parking.

Since the introduction of the FBT in 1986 the practice of salary packaging, or salary sacrificing, has become pervasive. Salary packages incorporate tax preferred benefits to minimise tax obligations, notably superannuation contributions that exceed the mandated superannuation guarantee rate and provision of a motor car that can be used for private purposes. The employee negotiates a lower cash salary with the inclusion of salary packaged items. Generally any FBT liability is passed from the employer to the employee in the arrangement.

However other forms of transport do not fall within tax preferred categories. This creates a tax subsidy for private motor vehicles as a form of transport.

3. THE FOCUS GROUP

3.1 TravelSmart

TravelSmart Workplace is a component of the WA Healthy Workers Initiative which is jointly funded by the Western Australian and Australian Governments. It is designed to promote active travel, facilitating a range of workplace initiatives to reduce the use of cars and increase the use of alternatives including public transport and cycling (WA Department of Transport, 2015a).

The benefits of the TravelSmart programme are based on efficiency gains through improved access and reduced parking costs, health and productivity benefits for employees, and reduction of the environmental footprint of the business.

TravelSmart programme co-ordinators in each participating workplace, drawn from both the government and the private sector, are invited to become part of a network co-ordinated by the Department of Transport. They receive a regular newsletter and are invited to participate in quarterly seminars to discuss issues relevant to the programme.

The authors were approached by the Travelsmart co-ordinator to run a seminar on the application of FBT to a range of travel incentives. This seminar, which was held in November 2014, formed an opportunity to hold a focus group to discuss the various incentives that the TravelSmart workplaces are offering employees and any barriers created by the tax system. As this focus group was a self-selected group of Travelsmart co-ordinators who were already committed to smart commuting policies the findings cannot be attributed to the general population. However, it does form a useful case study of the practices being implemented by committed employers, and the impediments to implementation of such practices.

Preliminary discussions indicated that the benefits most likely to be offered would be classified as expense payments, provision of property or residual fringe benefits that do not fall within a specified category. The seminar commenced with an overview of the FBT as it applies to car fringe benefits, parking fringe benefits and the other identified fringe benefit types. Participants were then invited to discuss the programmes available in their workplace, any incentives they have considered introducing and any barriers to the implementation of those programmes. Before leaving, participants were asked to complete a survey (Appendix 1). Subsequently the authors undertook indepth interviews with selected participants to obtain more detailed information about their incentives.

3.2 Data analysis

Twenty-two surveys were returned, therefore an Excel spreadsheet was considered to be the most appropriate tool for analysis. Of the 22 surveys returned, 12 were from government departments, five from not-for profit organisations and only three were from private sector employers. Most attendees described their role as one of: occupational health and safety, policy or sustainability officers (Question 3). This indicates that the TravelSmart programme is regarded as either a health or an environmental initiative in most participating organisations. There were three managers and two facilities managers, responsible for parking allocations, but there were no finance officers in attendance. One participant reported that they were developing a third party provider model for active travel.

Question 2 asked for information about the physical premise of the employing organisations. There were nearly twice as many suburban premises (15) as CBD premises (8), although some organisations had more than one office. Most premises had parking facilities: over half (13) had parking provided by the employer, although in one case this was only available to senior management, and another five had commercial parking within 1 km. Thirteen, or 56 per cent, of the premises were reported as being close to public transport.

Question 4 explored the reasons why employers were implementing TravelSmart incentives. Environmental concerns (14) were second to parking issues (16); followed by employee concerns (10) and productivity gains (8). Two surveys specified employee retention as a reason for implementing the programme, and two were motivated to set an example.

Question 5 asked which of a range of programmes were available in a particular workplace, then allowed the participants to nominate which they would like to make available. Each of the listed incentives had strong support, as shown in the following table.

Table 1: Various TravelSmart programmes available or desired by surveyed participants

OPTIONS	AVAILABLE	DESIRED	TOTAL
Travel allowance for alternative methods of transport	10%	59%	69%
Provision or subsidy of travel passes/SmartRiders	23%	55%	78%
SmartRiders for work related travel only	23%		
Reward schemes for staff not driving to work	14%	55%	69%
Challenge schemes/competitions with rewards	18%	45%	63%
Provision of bicycle—prize or hire arrangement	32%	45%	77%
Discount to bike shop	5%		
Workplace facilities for active travellers,, eg change rooms, bicycle storage facilities	95%	5%	100%
Active commuter time allowance in working day	nil	55%	55%

Almost all employers had end of trip facilities, although in some cases they needed to be upgraded or were inadequate for current demand. The only employer not providing facilities is planning to relocate office. The next most popular incentive, both available and desired, was subsidised SmartRiders, which is the electronic tag used on public transport in Perth. Half of the SmartRider subsidies were only provided to employees for work related travel (such as meetings in work time) and another 10 per cent offered travel allowances of $6 or $9 per day. This was also the most desired incentive. The suggestion of an active commuter time allowance to allow an employee to take public transport during the working day or to recognise the time required to change clothing was the least popular at 55 per cent and has not been implemented anywhere.

Respondents were given the opportunity to expand on these responses. The comments included the following further information in relation to specific schemes:

1. the number of cars kept available in a car pool for work related travel was reduced by providing taxi vouchers or corporate SmartRiders;

2. electric bikes were acquired through a grant and are available through a bike pool system;

3. provision of a 20 per cent subsidy on SmartRiders used to travel to and from work (refer to Case Study 3 in Part 4 below);

4. a union intends to include active travel incentives in the next bargaining round of the relevant industrial award;

5. two week's public transport fares provided to employees; and

6. the Frequent Alternative Traveller reward scheme (refer to Case Study 4 in Part 4 below).

The final section of the survey asked respondents to identify the take-up rate of SmartTravel incentives, barriers to implementation and how those barriers could be removed. About half of the surveys reported barriers related to tax or red tape—internal as well as governmental. Parking was the other significant barrier: as long as parking is provided by employers for employees, there is little incentive to employees to change their behaviour. The third most commonly cited barrier was cycling infrastructure and safety issues. Awareness of the incentives available within an organisation, overcoming inertia and needing a champion also came up regularly. There were several comments that management did not give real support to these programmes, particularly in the public sector that, at least in WA, is driven by economic imperatives and is not seen to be taking climate change seriously.

4. FBT IMPLICATIONS OF TRAVELSMART INITIATIVES

4.1 Car benefits

The benefits of salary packaging cars are well understood and heavily promoted. Cars are currently the second most popularly packaged benefit, behind superannuation contributions. With the enhancement of novated lease agreements, the combination of pre- and post-tax contributions by the employee, and inclusion of FBT costs in the packaged cost, generally car benefits can be packaged with no FBT liability to the employer. Accordingly the decision as to whether an employee will enter into a salary sacrifice arrangement in respect of a car is based on the financial benefit to the employee.

The environmental consequences of the concessional calculation of the car benefit have been detailed elsewhere (Henry, 2010; Mortimore, 2011; Lignier, 2011). Since the Henry Review was published in 2010, there have been two attempts to reform the car concession, justified at least partly on environmental grounds. With effect from 10 May 2011 the statutory formula available under s 9 FBTAA was modified to a flat rate of 20 per cent of the value of the car regardless of the distance travelled during the year. Under the stepped rates in place until that date that reduced the tax payable as the distance travelled increased, taxpayers on the cusp of the next, lower distance band would increase their use of the car to cross the threshold. Not only did this reduce the revenue collected, on environmental grounds it encouraged excessive use of the car.

In 2013 the Labor Government announced plans to remove the statutory formula method of calculation. This would significantly decrease the concession for employees who were not using the car for work related purposes as they would be required to keep a log book, and the tax would be calculated on the value of the private use of the car: similar to most other fringe benefits. It was estimated at the time that the measure would affect about 320,000 employees who had salary sacrificed motor vehicles but did not use them for work purposes (Bowen, 2013). This proposal was fiercely opposed by the (then) Coalition Opposition and by business interests. Interestingly, in addition to the motor vehicle manufacturing sector the industry sector that was most prominent in opposing the reform was the finance and

leasing sector, which indicates how the practice of salary sacrificing to acquire a motor car has become embedded in remuneration packages.

On environmental grounds, to the extent that decisions over transport are price sensitive, any increase in the FBT paid on a car package would contribute to a reduction in the use of the car. Notably this reform was proposed in conjunction with the introduction of changes to the transition from the Carbon Tax to a floating carbon price.

Unsurprisingly, the proposal was abandoned in November 2013 after the Coalition was elected.

Given that the FBT concession that subsidises the use of private cars for travel to and from work is not likely to be removed, a similar concession should be made available for active travel. This would address the tax bias that encourages the use of motor cars to travel to work and would promote alternative, more environmentally friendly, forms of commuting.

4.2 Parking

Provision of parking to employees is a fringe benefit. It is independent of car benefits, but it is likely that a business that allows employees to salary sacrifice a car would also have to account for parking benefits.

A car parking benefit is defined in s 39A FBTAA. It arises where an employer provides parking on its premises for employees during a working day, if there is a commercial parking station within 1 km of the premises that charges more than the parking threshold, which was $8.26 per day for the year ended 31 March 2015.

There are a number of ways that the taxable value to the employer of a car parking benefit can be reduced below the arm's length rate, or completely eliminated:

1. there is no car parking benefit if there is no commercial parking station within 1 km of the business premises that charges more than the parking threshold (ss 39A(1), 9B);

2. the employee must park there for more than four hours on a relevant day (s 39A(1)). Accordingly there is no liability in respect of workers who travel during the working day or part-time employees who work for less than four hours a day;

3. employers with a turnover less than $10m are exempt from FBT on parking as long as the parking is not at a commercial station (s 58GA);

4. there is a choice of simplified calculation methods, which tend to give a value lower than the actual cost of providing the parking (Div 10A); and

5. a parking benefit that is not within the definition in s 39A may be either a residual fringe benefit if the parking is provided, or an expense payment benefit if the employee is reimbursed. However both of these are exempt from FBT (s 58G(1)).

Clearly there are some business needs that are met by the exemptions, particularly where a business has employees that are on the road for part of the working day, or

where the premises are not readily accessible by other means of transport, employees can reasonably expect to be able to park at the business premises while attending the office.

Given that parking and congestion is listed as one of the main reasons for business to promote active travel, the concessional nature of FBT on parking does not align with this agenda. However, planning regulations are an additional tool that can be used in some circumstances to reduce parking demand.

Case study 1: University parking

The WA Planning Commission has determined that no additional parking areas will be allowed in 'priority zones', which affects large public institutions including universities. Parking on campus has traditionally been relatively cheap, with a non-reserved bay costing $500 pa or $3 per day in the 2014 calendar year; and with permits not required outside teaching periods.

Currently there is no FBT payable in relation to staff permits as there is no other commercial parking station within 1 km of campus.

The university has adopted a policy of increasing the cost of parking over three years to the equivalent of a two-zone fare (about 20 km) on public transport which is currently $4.40. For the 2015 calendar year the cost of permits was increased to $700 pa, and permits will be phased out over a three year period. It is hoped that this will encourage employees (and students) to choose public transport over campus parking where that is a viable alternative.

However the availability of salary sacrifice arrangements for parking permits is a limitation on the parity pricing arrangements. The pricing structure is such that staff attending campus for three or fewer full days in a week should find it cheaper to pay the daily rate than purchase a permit. Once salary sacrificing arrangements are factored in in relation to permits, there is no price signal to switch from permits to daily parking rates.

The local government council is currently planning to establish a commercial parking station in an adjacent business area, which would bring the university parking within the s 39A definition of a car parking benefit. However the benefit would still be exempt under subs 58G(2)(d) which exempts a car parking benefit provided by a public educational institution.

Clearly the availability of parking for commuters needs to be considered by both the employer and the local planning authorities. In some situations imposing planning restrictions or charging long term parking fees, will result in an FBT price signal that could drive a change in commuter behaviour.

4.3 Travel allowances/subsidies

Where congestion is caused by competition between the clients of a business and employees of that business, the employer may need to seek more creative solutions to parking congestion issues. The solutions raised by our focus group included travel allowances or travel subsidies.

Where a 'green travel' allowance is paid to employees, it is not subject to FBT but is instead taxed in the hands of the employee (s 6-5 ITAA97). To the extent that the travel allowance relates to travel to and from work there would be no offsetting income tax deduction available, accordingly the amount of the allowance would need to be sufficient to allow for the tax effect.

Case study 2: Travel reimbursement

A Sydney based business relocated from a number of locations across the city to a single office. The property was a 'green building' within 500 m of a train station, with limited parking attached to the building. The employer offered a relocation incentive to employees moving from other locations. Parking was allotted to employees who car-pooled, and employees who took public transport were eligible for a Travelpass, which at the time was a prepaid paper based ticket.

In the first year the employer purchased the Travelpass quarterly to employee specifications, thus incurring a FBT liability.

In the second year the employer changed to an allowance, paid with monthly pay. Following employee representations, the rate of the allowance was adjusted to reflect the tax effect: for example, in 2013 a quarterly two zone Travelpass cost $550 ($2,200 pa), with the allowance increased to $326 per month ($3,912 pa) for an employee paying 40 per cent income tax (+levies).

If an employer pays a travel provider directly or reimburses verified purchases, a travel subsidy is an expense payment fringe benefit as the employer reimburses a proportion of the cost of the employee travel (FBTAA s 20). Unless the employer is a public transport authority, in which case special rules apply (FBTAA s 47) and the taxable value of the benefit would be the amount that the employer pays to the employee or the third party in respect of the travel. Subsidised public transport is particularly useful where the employer is located in close proximity to public transport: for example, in the CBD or at large public facilities including hospitals or universities where employees and clients compete for parking space.

The survey indicates that 78 per cent of the respondents would prefer the provision of a subsidy or travel passes. However, employers can be reluctant to provide such a subsidy as it has FBT implications. An FBT subsidy in this area would enhance the use of public transport, bringing about substantial savings in negative transport externalities such as congestion, emissions and other health and environmental impacts.

Most Australian capital cities are now moving to electronic payment of fares, and phasing out prepaid travel, with discounts for frequent users or adding value through bank account debits when credit reaches a specified level. This raises practical and administrative issues that the employer needs to consider.

Case study 3: Public hospital—parking congestion

A public hospital has instituted a system of subsidised travel to and from work through the use of subsidised travel passes. The reason for making this subsidy available is to address issues of parking congestion on the hospital precinct.

The employee enters into an agreement with the employer to be issued with a travel card that can only be used for travel to and from work. The hospital co-ordinator arranges for the employee contribution to be deducted from their bank account fortnightly. Under a Memorandum of Understanding with the transit authority a further 20 per cent discount is applied to fares paid on this card in addition to the other discounts available giving a total 45 per cent discount on the cash fare.

Travel on the card is restricted to travel between home and work and the employee must relinquish any weekday parking permit, although shift workers can park on site on the weekends if public transport options are limited. To monitor compliance a number of steps are taken:

- all employees that apply to participate in the program are required to meet with the co-ordinator where the conditions of use are explained;
- the participant signs an agreement to comply with the conditions of use;
- the card is badged as an employer issued card; and
- usage is audited regularly: 10 per cent of cards are audited every three months.

When introduced the programme was overwhelmed by applications from staff, and currently there are more than 1,000 participants, which represents about one third of the workforce.

In this case study, the motivation was to address parking issues, and FBT was not a consideration in the design of the scheme. Therefore the employer pays the tax.

However, many of the employees working at the hospital would be eligible for FBT exempt benefits as benefits provided to employees of public hospitals in respect of their employment are exempt benefits up to an annual cap of $17,000 (FBTAA ss 57A, 5B). If implemented, salary packaging would reduce the cost of transport to eligible employees even further, depending on the marginal tax rate of the employee.

In this case, the administrative cost of managing the scheme is the main barrier to extending the scheme to other hospitals.

Other employers that are located in the CBD or are otherwise serviced by good public transport networks are making corporate public transport cards available for work related travel during the working day. This removes the incentive to bring a car to work if the employee has to attend a meeting off the premises during the day. There are, however, limitations to the practicality of using public transport, therefore the public transport cards may need to be supplemented by taxi fares where public transport is not a feasible alternative. There are no tax consequences in relation to travel paid by the employer for work related purposes, as these would either be an exempt benefit or the value would be cancelled by the application of the ‘otherwise

deductible rule' which provides that the taxable value of a benefit is reduced by the amount that the recipient would be entitled to claim as a tax deduction if they paid the amount themselves (FBTAA ss 24, 44, 52).

However proposals that rely on public transport depend on public transport being in proximity to both the home and the workplace of the commuter.

Some employers provide bicycles or power assisted bicycles for employee use for short distance travel, which constitutes a residual fringe benefit. Where that use relates directly to their duties in the workplace there are no FBT consequences as the benefit is exempt (FBTAA s 47(3)). However if the employee is allowed to use the bicycle to travel between home and work, a fringe benefit arises in relation to that travel.

4.4 Provision of workplace facilities

One of the barriers to employees choosing to use alternative transport to commute to work is access to appropriate facilities to freshen up before the start of their work day. Although many older commercial buildings do not have appropriate facilities, in the focus group sample all except one employer provided shower and change facilities, and that employer is planning to move to new premises that will have such facilities.

Many local government planning schemes require developers to make provision for 'end of trip' facilities in new commercial developments and a number of significant inner city residential developments are providing bicycle facilities in addition to parking. The Sydney City Access Strategy states that: 'We will also look at opportunities for public bicycle parking and encouraging end of trip facilities such as showers and lockers' (Transport NSW, 2013). In addition to the provision of public bicycle parking areas, bicycle parking spaces are exempt from the Parking Space Levy (Parking Space Levy Regulation 7(1)(a)), currently $2,260 pa, which generally applies to any non-residential off-street space used for parking within the Sydney CBD and North Sydney and at the lower rate $800 for other leviable areas in NSW.

Other end of trip facilities, specifically showers and lockers, are becoming increasingly important in new commercial developments, with new buildings incorporating high end changeroom facilities in order to attract tenants (Han, 2015).

Some local councils have incorporated minimum requirements for bicycle facilities in their town planning schemes. For example, the Victoria Planning Provisions provide a template for minimum requirements for bicycle facilities for a range of building uses, specifying requirements for bicycle parking, showers and changerooms. Under the plan new office developments are required to provide the following facilities (Transport Victoria, 2006, Clause 52.34):

1. long term bicycle parking: one space for each 300 m^2 of office space, if net floor area exceeds 1,000 m^2;

2. visitor bicycle parking: one space for each 1,000 m^2 of floor space, if net floor area exceeds 1,000 m^2;

3. showers: if five or more employee parking spaces are required, one shower + one for every 10 additional spaces; and

4. changeroom: access to a changeroom from each shower or the shower may be a combined shower/changing cubicle.

The provision of end of trip facilities to employees that use alternative modes of transport does not result in any FBT consequences as those facilities are exempt from FBT. Exemptions are available in respect of property consumed on the premises on a working day, on business premises (FBTAA s 41); and for residual benefits resulting from the use of employee amenities (FBTAA s 47(3) as defined in s 47(4)), on the employer's business premises.

There are also a number of special events promoted by external organisations, such as Ride2Work Day, to encourage changes in commuter behaviour. Employers are encouraged to support participants in these events through the provision of breakfast or other refreshments. Employers could go further and even establish a regular event for employees. The Australian Taxation Office has determined that morning and afternoon teas and light lunches provided to employees on the employer's premises would not constitute meal entertainment, and an income tax deduction is allowable (TR97/17). Arguably, where a light meal is provided at the start of the business day, it could be considered a light meal as discussed in paragraphs 113–114 of the ruling as the purpose of the provision is refreshment not recreational. Accordingly there would be no FBT payable.

It is important to note the distinction between a light meal and a social event. Where an event is considered to be a social function and the employer is a taxable employer the exemption under s 41 is not available and no tax deduction is allowable (TR 97/17, para 25). If the value is less than $100 and is provided irregularly and infrequently it would then fall under the exemption for minor benefits under s 59P.

4.5 Alternative commuter benefit plans

Another approach to encourage alternative commuting is to construct a scheme that provides incentives for employees choosing to use alternative methods of transport. FBT is an important consideration in constructing such a scheme. If the reward is based on the payment of an expense or provision of property to an employee, or is a residual fringe benefit such as the use of a bicycle owned by the employer, a fringe benefit may arise.

In constructing such a scheme, the exemptions that are available within the FBTAA can be used to reduce any FBT liability. The most significant of these is the minor benefits exemption, under s 58P FBTAA, which exempts a benefit with a value of less than $300. However there are constraints around qualification for the minor benefits exemption.

Firstly, the benefits must be infrequent, which takes its ordinary meaning; and secondly, if associated benefits are granted during the year, they need to be aggregated when determining the value of the minor benefit. Thirdly, an in-house benefit cannot be a minor benefit, and finally it must 'be concluded that it would be unreasonable to treat the minor benefit as a fringe benefit in relation to the employer in relation to the current year of tax' (FBTAA s 58P(f)). These requirements present a challenge in designing an incentive scheme that is intended to change the behaviour of employees.

An incentive scheme could be based on the employee accruing points for continuing use of alternative modes of transport; or structured with benefits provided on an ad

hoc basis. If the scheme allows the employee to accrue points towards a reward, any tax is payable at the time at which the reward is received (PSLA 2004/4 (GA)).

However, if points are accrued on an ongoing basis it could disqualify the benefit from being a minor benefit if the level of points required to redeem a reward is established at a level where employees could be expected to receive rewards regularly during the FBT year. The Australian Taxation Office has considered a number of reward style schemes in relation to employment (TR 2007/12), and has determined that a scheme based on sales targets was not exempt from FBT as a minor benefit as it was expected that staff would qualify for rewards (TR 2007/12, example 8), but an ad hoc bonus to an employee that is not part of a formal scheme would be considered to be a minor benefit (TR 2007/12, example 9).

Case study 4: Frequent Alternative Traveller (FAT) Rewards Scheme

A Perth based environmental consultancy business with fewer than 20 employees has established a points based scheme for active travellers. The motivation was primarily environmental. Given the nature of the business the employees are conscious of the impact of commuting on the environment, and the firm wants to display its environmental credentials.

The FAT Rewards scheme allows employees to accumulate points for alternative methods of commuting. The scheme allows an employee to accumulate points depending on the mode of travel:

Active transport: three points each way

Public transport: two points each way

Motorcycle/carpool/powered bicycle: one point each way

Each point is valued at 50c. Accumulated points can be used as follows:

- to purchase prepaid or add credit to Smartriders;
- to purchase health related equipment or services;
- a contribution to a nominated charity, which is matched by the employer; or
- to repay a loan (up to $1,000) to purchase a bicycle

Over 75 per cent of staff participates in the scheme, with several employees completely changing their usual mode of travel. One employee who lives in an outer suburban centre now exclusively uses public transport and has redeemed her points by purchasing prepaid Smartriders. The current Smartrider fare is $6.55 each way, which is effectively reduced by $1 each way: a 15 per cent discount.

This scheme was designed without any consideration of the FBT impact or any available exemptions.

The benefits that could arise include a fringe benefit on the notional interest payable on the advance to purchase a bicycle which would be valued at the prevailing benchmark interest rate, currently 5.95 per cent; and expense payment benefits in relation to the reimbursement of the authorised expenses. An expense payment benefit can be exempt if the employee lodges a declaration that there was no private

use of the goods or services that have been reimbursed, but this exemption is not available in relation to the types of items listed in the scheme.

An individual employee could accumulate up to $720 value of points over a year. Although it is unlikely that any single redemption of points would reach the $300 threshold for a 'minor benefit', it is likely that multiple payments of the same type, for example, multiple payments to a Smartrider, will be considered to be associated benefits and would therefore be accumulated and tested against the $300 threshold. There is also the possibility that all reimbursements to an employee under the FAT Scheme would be accumulated as they are accumulated under a single scheme with specified terms and conditions.

This scheme won the 2014 Travelsmart Innovate Award (WA Department of Transport, 2015b).

4.6 In-house benefits

An in-house benefit is a benefit provided by an employer where the employer would normally supply identical or similar property or benefits to outsiders; for example where a bicycle retailer provides a bicycle to employees (FBTAA s 136). It can be a property benefit, an expense payment benefit or a residual benefit. Such a benefit may be made available to employees as part of an employee remuneration agreement, or in conjunction with a rewards scheme.

In respect of in-house benefits, the aggregate notional taxable value of benefits that can be provided without the imposition of FBT increases to $1,000 pa (FBTAA s 62). Note, however, that with effect from 22 October 2012 this exemption does not apply to in-house benefits provided under a salary sacrificing arrangement (FBTAA s 62(2), TR 2007/12, paras 123–129).

Case study 5: In-house benefit: public transport

Employees in the Queensland Public Service are entitled to enter into salary packaging arrangements. Prior to 2013, this included access to public transport on government operated services up to a value of $1,333 per annum, based on the s 62 in-house reduction in value (Housing and Works Qld, 2013). However following the amendments to the legislation that removed the exemption in respect of salary packaged benefits, the benefit is now a fully taxed benefit when included in a salary packaging arrangement (Housing and Works Qld, 2014).

Public transport fares remain exempt from FBT in two circumstances: where an employee of a transport company or a police officer is provided with free transport to and from work (FBTAA s 47(6)). Note that this does not extend to non-work related travel, which excludes commuting between home and work (ATO ID 2009/140).

Two of the fundamental concepts of the FBT are that the benefit must be provided by an employer to an employee and be in respect of employment. However, in order to protect the integrity of the tax, the tax cannot be circumvented by using a third party provider. Under the FBTAA a fringe benefit includes a benefit provided by another party under an arrangement with the employer, or where the employer facilitates or promotes a scheme promoted by another party (FBTAA s 136). However it can limit the ability to promote Travelsmart schemes through the employer where there is a reward attached.

Case study 6: Third party rewards scheme

A software developer is working on a mobile application to track the mode of travel adopted by commuters. The app will be able to determine the mode of travel; that is, walking, cycling or public transport; and the distance travelled. Points will be awarded to the commuter based on the mode and distance of travel. The points will be able to be redeemed for rewards.

The program will be administered by the software developer, not by the employer. However the software developer will be involving a number of employers to promote the app among their employees and to provide rewards that can be redeemed by any participating commuter.

On the face of it, there is no FBT liability as the software developer does not employ the participants in the rewards scheme. However if the software developer enlists the support of the employer, any benefits would be fringe benefits and would impose a liability on the employer, not the software developer.

5. REFORMS TO PROMOTE SMART COMMUTING

It is time for the Australian Government to make changes to promote smart commuting, especially policies that encourage the use of public transport (Pearce, 2014; Pearce & Pinto, 2015). In this respect, the Australian Government should review its fiscal policies in order to promote smart commuting. The most important policy change would be to make changes to the FBT regime to allow exemptions for smart commuting that are on a par with incentives provided to car travel.

In order to promote smart commuting, the Australian Government could carry out reforms such as providing an exemption from FBT if the employer pays or subsidises an employee's public transport fares to travel to and from work.

Governments in many countries heavily subsidise public transport services, for example the US government subsidises up to 89 per cent of operating cost of some rail and bus services (Parry & Small, 2009). This subsidy to encourage the use of public transport can be provided directly, or through tax policy design such as the FBT.

There should be a specific exemption incorporated in the FBT legislation to allow employers to subsidise travel between work and home for an employee. There are two options to design the exemption: it could be restricted to travel between work and home, or it could be extended to all travel on a specific travel card. On balance, the cost involved in managing a system that limits the benefit to travel between home and work, and the relatively low cost of public transport compared to provision of a car, does not justify the more limited exemption. It would, however be appropriate to limit the concession to a single traveller, or electronic card, each year.

Cycling alternatives could also be eligible for tax concessions. The Australian Government should follow the example of other countries in the world that are promoting alternative travelling initiatives to promote health, such as the Cycle to Work Alliance in the UK that was introduced in the *Finance Act 1999* (UK) and provides a tax efficient work initiative encouraging employers to loan bicycles and

cycling equipment to travel to work (Cycle to Work Alliance, 2011). The cycle to work scheme is the second most popular salary sacrifice employee benefit in the UK. A behavioural impact analysis carried out on the Cycle to Work Alliance in the UK in February 2011 revealed that 87 per cent of the respondents noticed a health benefit from cycling to work and 84 per cent of users believed the scheme was an important and easy way to keep fit. Ireland has also introduced an exemption from income tax when an employer provides a benefit-in-kind arising from a bicycle or bicycle safety equipment to its employee to use it for qualifying work related journeys (Irish Tax and Customs).

Unlike the European policies, cycling plays only a minor role in Australia in reducing car use. The focus group exercise set out in this paper indicates that safety was a significant factor in the decision of how to travel to work. The Australian Government should not only provide tax breaks to encourage cycling to and from work, but also implement policies that make cycling safe and convenient with properly lit cycle paths and bicycle storing facilities near public transport hubs. Due to lack of Australian Government policies encouraging bicycle use to travel to and from work, the bicycle usage rate is very low when compared with international standards, despite the fact that bike ownership in Australia is among the highest in the world (Australian Conservation Foundation, p. 8).

6. CONCLUSION

Currently an employer that chooses to encourage alternative commuting strategies, whether cycling or the use of public transport has to negotiate the complexities of the FBT if they wish to limit any exposure to the tax (Hodgson, 2015). Our discussions with employers that have facilitated the change have, in general, developed schemes despite FBT, either accepting any liability or designing a scheme to fit available exemptions.

However an employer who is committed to environmental principles may not be aware of the potential FBT liability, exposing their business to the risk that they are not complying with the legislation. This is in stark contrast to the FBT subsidies available for the provision of motor cars and parking; and the well established support systems in place for these benefits.

It is time that the FBT was reformed to reduce the concessions given to motor cars and to facilitate the provision of alternative methods of travel. As noted in the Henry Review:

> Tax concessions introduced for non-environmental purposes but which promote behaviour with adverse environmental consequences should be reviewed. Such a review would consider whether the social benefit of the activity supported by the concession outweighs the social cost associated with the environmental damage. (Henry, 2010, p. 371).

7. REFERENCES

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8. APPENDIX

(University Letterhead)

PARTICIPANT SURVEY

By completing this form, you are consenting to participate in the questionnaire that will be used for the purpose outlined in the attached Information Sheet.

TRAVELSMART FORUM
26 November 2014
140 William St, Perth

1. In which sector is the organisation you represent active:
    a. Government
    b. Private
    c. Not for profit
    d. Other _____

2. The operational premises are located :
   (mark all those that apply)
    a. CBD
    b. Suburbs
    c. Outer metropolitan
    d. Close to a transport hub
    e. Within 1 km of parking
        i. Employer provided on the premises
        ii. Commercial parking stations

3. What is your role in the organisation
    a. Human resources
    b. Finance
    c. Management
    d. Other _____

4. What is the motivation for your organisation to offer travelsmart incentives to employees?
    a. Productivity gains
    b. Parking and traffic congestion at the workplace
    c. Environmental concerns
    d. Responding to employee concerns
    e. Possibility of a congestion tax
    f. Other _____

5. Which of the following categories of initiatives are available, or would you like to be available in your organisation?

Available	Program	Desired
	Travel allowances for alternative methods of transport	
	Provision or subsidy of travel passes/smart riders	
	Reward schemes for staff not driving to work	
	Challenge schemes/competitions with rewards	
	Provision of bicycle – prize or hire arrangement	
	Workplace facilities for active travellers eg change rooms, bicycle storage facilities	
	Active Commuter Time allowance in working day	
	Other:	

6. Please give further details of how these incentive schemes work (or could work) in your organisation

7. What is the take-up rate for the incentive(s) offered by your organisation?
    a. _____
    b. _____
    c. _____

8. What are the barriers to employees taking up these incentives?
    a. _____
    b. _____
    c. _____

9. What are the barriers to the organisation offering the additional incentives identified above?
    a. _____
    b. _____
    c. _____

10. What government incentives would help to remove these barriers?
    a. _____
    b. _____
    c. _____

11. Would you like to add any further comments?