

**EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY | HUKIHUKI HURANGA
- MŌ TE TĀKUPU ME TE MATAPAKI ANAKE**

Deadline for comment | Aukatinga mō te tākupu: **6 November 2024**

Please quote reference | Whakahuatia te tohutoro: **PUB00453**

Send feedback to | Tukuna mai ngā whakahokinga kōrero ki
public.consultation@ird.govt.nz

FACT SHEET | PUKA MEKA

FBT – travel by motor vehicle between home and work

Issued | Tukuna: Issue Date

IS 24/## FS

This fact sheet accompanies **IS 24/XX**, which considers when employer-provided transport between home and work by motor vehicle is a fringe benefit subject to fringe benefit tax.

All legislative references are to the Income Tax Act 2007.

Related documents | Tuhinga whai pānga

For more information on tax issues related to travel by motor vehicle between home and work, see:

- **IS 24/XX**: Income tax – deducting costs of travel by motor vehicle between home and work; and
- **IS 24/XX FS**: Income tax – deducting costs of travel by motor vehicle between home and work.

Fringe benefits – travel by motor vehicle

1. Under the FBT rules, an employer who supplies a **fringe benefit** to an employee is liable to pay FBT. In the context of travel between home and work, a fringe benefit is broadly a benefit that:
 - an employer supplies to an employee in connection with their employment;
 - arises when a motor vehicle is made available to an employee for their **private use** (see from [2]); and
 - is not excluded from being a fringe benefit by a statutory exclusion.
2. **Private use** includes:
 - the employee's use of the vehicle for travel between home and work; and
 - any other travel that confers a **private benefit** on the employee (see from [4]).
3. The courts have read the reference to "other travel" to mean that travel between home and work will only amount to private use if it confers a private benefit on the employee.

Private benefit

4. The meaning of **private benefit** in the context of travel between home and work is key to establishing whether an employer is supplying a fringe benefit to an employee when it supplies a motor vehicle to the employee for travel between home and work. Case law specifically considers when travel between home and work is private travel (and so confers a private benefit). This case law is discussed from [5] to [9].

The general rule for home to work travel

5. The **general rule** (from case law) is that expenditure on travel between home and work is private expenditure. If an employer instead makes a motor vehicle available to an employee for travel between home and work, this will confer a private benefit on the employee, and the travel will be private use that is subject to FBT.

The four exceptions

6. **Four exceptions** (from case law) apply to the general rule that travel between home and work confers a private benefit. If any one of these exceptions applies, the

employer has no FBT liability when it supplies a motor vehicle to an employee for travel between home and work.

7. The following are the four exceptions to the general rule:
 - A vehicle is necessary for the employee to **transport equipment or instruments (goods)** that are essential to their work between their home and workplace for use at both their home and their workplace. The vehicle must be necessary because the bulk, value, sensitivity or other special characteristics of the goods make it impractical to transport them without the use of a vehicle.
 - The **employee's work is itinerant**. The term "itinerant" has a specific meaning in this context. It requires, broadly, that the employee works at different locations during a workday; or that the sequence of workplaces and the periods spent by the employee at each workplace vary and are unpredictable, so it is impractical for the employee to carry out their work without the use of a vehicle.
 - The employee responds to **emergency calls** from home and their responsibility for the outcome of the calls begins before they leave home. The nature of the work must require that the employee works at home part of the time.
 - The employee's **home is a workplace** or base of operations for the purposes of travel between home and work. For this exception to apply, it requires more than that the employee does some work at home. It is a variation on the second case law exception (the employee's work is itinerant).
8. Essentially, these exceptions mean that travel between home and work in a motor vehicle that an employer supplies to an employee will not be a fringe benefit if:
 - The need for the work to be performed partly at home (and therefore the need for the travel) arises from **the nature of the work**; and
 - The travel is undertaken in performing employment duties (**on work**).
9. Where any one of the exceptions applies, the employee is regarded as travelling on work as soon as they leave home and until they arrive home, rather than travelling to or from work. The travel between home and work does not confer a private benefit, is not private use and is not subject to FBT.

Incidental private use

10. If the private benefit conferred on the employee is only incidental, the use is not private use for FBT purposes. **Incidental private use** arises where an employee travels on work and, as a consequence or an effect of the travel, a private benefit is conferred

on the employee. To be incidental, the private benefit must not add to the overall distance travelled.

11. For example, an employee who is travelling on work passes a café to reach their destination. The employee stops at the café to buy a sandwich for lunch. The private benefit received in this situation is incidental to the on-work use of the motor vehicle. There is no private use of the motor vehicle for FBT purposes.

FBT rules – other provisions

12. Under the FBT rules, an employer is liable for FBT if it **makes a motor vehicle available** to an employee for their private use.
13. In some situations, however, close companies can choose to use subpart DE (the specific deduction for motor vehicle expenditure, under which the method of apportionment denies a deduction for private use) for their **shareholder-employees**, instead of paying FBT.
14. Three **statutory exclusions** are also relevant to travel between home and work by motor vehicle.

Availability for private use

15. A fringe benefit arises when an employer **makes a motor vehicle available** to an employee for their private use. If travel between home and work is not private use for an employee, the employer must be able to show that it has not made the vehicle available to the employee for other use that is private use.
16. If an employer has physically made a vehicle available for use by an employee, the vehicle is considered to have been made available for private use unless the employer can show that:
 - the employee is prohibited from using the vehicle for private purposes;
 - the prohibition on private use of the vehicle is genuine; and
 - the employer takes steps to ensure the employee observes the prohibition.
17. Special record-keeping requirements apply for shareholder-employees when a motor vehicle has been made available for their private use.

Shareholder-employees

18. In some situations, close-companies can choose to claim deductions under subpart DE for motor vehicle expenditure that their **shareholder-employees** incur, instead of paying FBT.
19. Subpart DE provides methods for calculating the proportion of **business use** of a motor vehicle (the **business proportion**). The business proportion is then used to calculate the amount of motor vehicle expenditure that can be deducted.
20. A close company can elect to use subpart DE if it:
 - supplies a maximum of two motor vehicle fringe benefits under s CX 6 to shareholder-employees in an income year; and
 - does not supply any other fringe benefits to employees in the income year.
21. Once a close company elects to use subpart DE, it must continue to do so until it stops using the motor vehicle for business use or until it disposes of the motor vehicle.
22. For information on claiming deductions for motor vehicle expenditure under subpart DE, see [IS 24/XX FS](#).

Statutory exclusions from FBT

23. As well as the case law exceptions discussed from [6], there are three statutory exclusions from FBT for motor vehicle benefits, including travel between home and work. The statutory exclusions apply to:
 - work-related vehicles;
 - emergency calls affecting health, life, or the operation of essential machinery or services; and
 - business trips of more than 24 hours.
24. When any one of these exclusions applies, it excludes the whole day from the calculation of FBT. For more details, see [IS 24/XX](#) or [IS 17/07: FBT – motor vehicles](#).

Minor or insignificant private use and the Commissioner's view

25. Minor or insignificant private use arises where a person makes a minor or insignificant detour for a private purpose during a journey that adds to the overall distance

travelled. (This situation differs from incidental private use, which does not add to the overall distance travelled – see [10].)

26. Minor or insignificant private use can be disregarded in deciding whether a vehicle has been made available to an employee for their private use.
27. The Commissioner considers that, to be minor or insignificant, private travel cannot exceed **either** of the following:
 - approximately 5% of the journey; and
 - approximately 2 km.

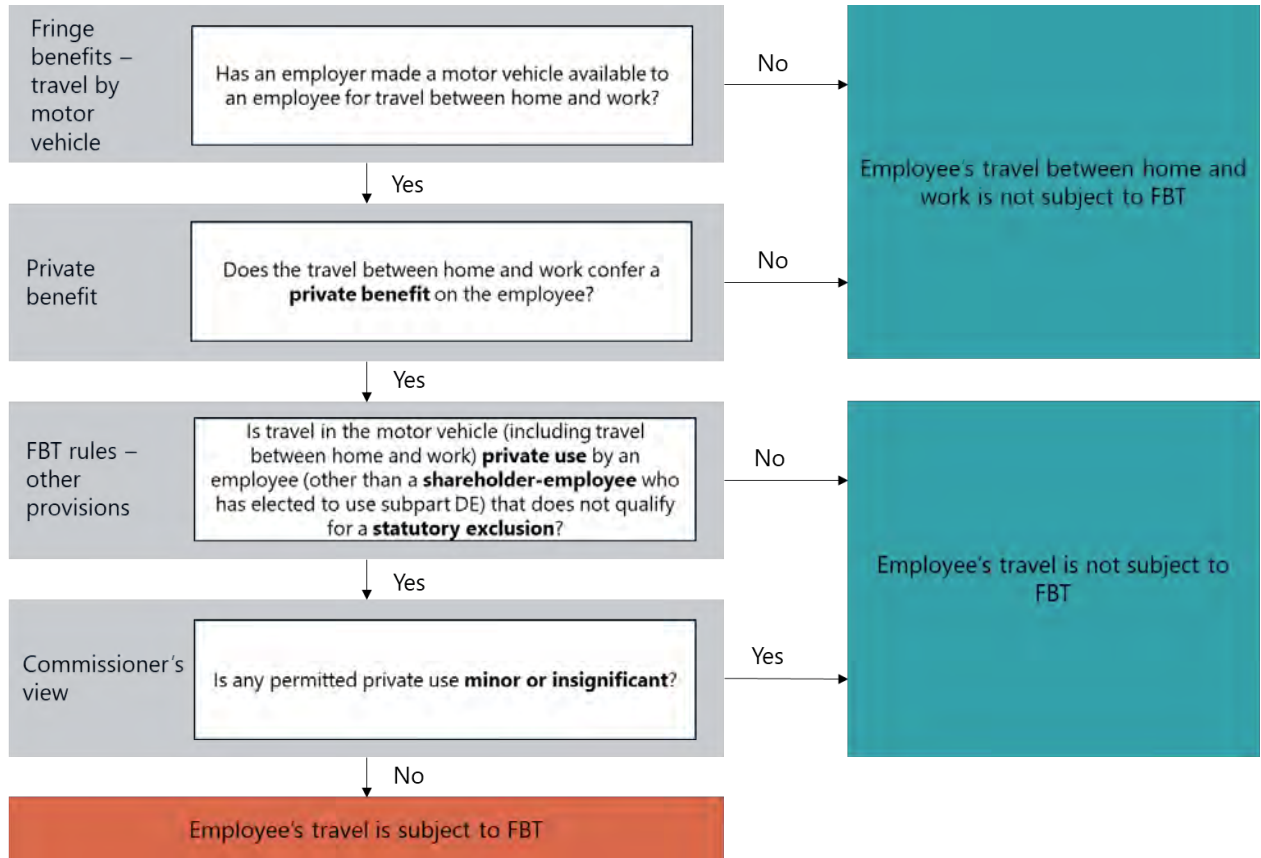
Vehicles taken home for security reasons or for charging

28. Taking a vehicle home for security reasons or (in the case of an electric vehicle) to charge the battery is not **of itself** sufficient to stop an employee's journey between home and work from being private use (subject to FBT).
29. However, travel between home and work will not be private use if other relevant factors mean that an exception applies. For example, a relevant factor may be that:
 - a vehicle is **necessary to transport equipment or instruments (goods)** that are essential to the employee's work between their home and workplace for use at both their home and their workplace; or
 - the employee's **home is a workplace** or base of operations for the purposes of travel between home and work.
30. However, if the motor vehicle has been made available for other use that is private use on that day, FBT will still apply (unless a statutory exclusion covers that use).

Flowchart

31. Figure | Hoahoa 1 provides an overview of the information in this fact sheet.

Figure | Hoahoa 1: Travel by motor vehicle – whether subject to FBT



About this document | Mō tēnei tuhinga

Some of the Tax Counsel Office’s longer or more complex items are accompanied by a fact sheet that summarises and explains an item’s main points. While it summarises the Commissioner’s considered views, a fact sheet should be read alongside the full item to completely understand the guidance. Fact sheets are not binding on the Commissioner. See further [Status of Commissioner’s advice](#) (Commissioner’s statement, Inland Revenue, December 2012).