

CR 2015/106 - Income tax and fringe benefits tax: use of the Mobilyser app report to calculate an income tax deduction or fringe benefits tax liability



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Class Ruling

Income tax and fringe benefits tax: use of the Mobilyser app report to calculate an income tax deduction or fringe benefits tax liability

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❶ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provisions identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:

- section 20A of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA)
- section 24 of the FBTAA
- section 47A of the FBTAA
- section 52 of the FBTAA
- section 58P of the FBTAA
- section 58X of the FBTAA
- section 152A of the FBTAA, and
- section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997).

Class of entities

3. The classes of entities to which this Ruling applies are:
- individual taxpayers who use the Mobilyser app report to calculate an income tax deduction for expenses incurred in the work related use of their mobile phone, and
 - employers who use the Mobilyser app report to:
 - calculate the amount of a reimbursement paid to an employee for expenses that relate to the employee's mobile phone, or
 - calculate the taxable value of an expense payment fringe benefit that arises from the payment or reimbursement of an employee's mobile phone expenses, or
 - calculate the taxable value of a residual fringe benefit that arises from an employee's private use of the employer's mobile phone.

Qualifications

4. The Commissioner makes this Ruling on the precise scheme identified in this Ruling.
5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 8 to 16 of this Ruling.
6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:
- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled, and
 - this Ruling may be withdrawn or modified.

Date of effect

7. This Ruling applies from 10 November 2014 to 10 November 2019. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

8. The following description of the scheme is based on information provided by the applicant in the application for Class Ruling dated 14 May 2015, information provided on the Mobilyser Web Portal at www.mobilyser.net/ and information provided on 13 August 2015.

9. Mobilyser is a phone app that is downloaded to a mobile phone by the user.

10. Mobilyser is used to calculate the percentage of a user's mobile phone calls that are work related. This percentage can then be applied to the portion of the phone bill that is related to receiving and making phone calls on the mobile phone.

11. Once the app is downloaded the user will open the app to:

- register their name and their telecommunications carrier details
- set the 'default tag' as either 'work' or 'personal'
- sync the list of contacts and reset the tag for the contacts to which the 'default tag' does not apply. For example, if the 'default tag' is set as 'personal', the tag will need to be changed for each of the work contacts.

12. When a call is made or received from a listed contact, Mobilyser will use the recorded tag to classify the call as 'work' or 'personal'.

13. If a call is made or received from a number that is not a listed contact, Mobilyser will send a pop-up notification asking the user to set the tag for that number as 'work' or 'personal'. If a tag is not set, Mobilyser will apply the 'default tag' to the number.

14. At the end of the month (or the selected period) the user can generate a Mobilyser app report by entering the total amount owing for the period and selecting the method to be used to calculate the business percentage.

15. Mobilyser provides three alternate methods for calculating the business percentage. They are:

- 'Count of calls method' which determines the business percentage by dividing the number of work calls by the total number of the calls made
- 'Duration method' which determines the business percentage by dividing the total duration of work related calls by the total duration of all calls within a set time period, and
- 'Actual cost method' (only available if the phone bill is uploaded) which uses the actual call costs for the identified business calls to determine a business use percentage by dividing the business call costs by the total cost of all calls.

16. The Mobilyser app report includes the following information:
- the selected method
 - the relevant period of the report
 - a summary of work calls and personal calls and the percentages of both of these types.

Ruling

17. Where the 'default tag' on the app for calls is set as 'personal', the percentage of the total mobile phone usage that relates to work purposes shown in the Mobilyser app report can be used to calculate the amount of the income tax deduction that can be claimed for the mobile phone costs incurred by an individual taxpayer under section 8-1 of the ITAA 1997.

18. Where the 'default tag' on the app for calls is set as 'personal', an employer can use the percentage of the total mobile phone usage that relates to work purposes shown in the Mobilyser app report to calculate the amount of the expense relating to an employee's mobile phone that is an exempt benefit under section 20A of the FBTAA if the employer completes a *No private use declaration-expense payment benefits* declaration.

19. Where the 'default tag' on the app for calls is set as 'personal', an employer can use the percentage of the total mobile phone usage that relates to work purposes shown in the Mobilyser app report to calculate the proportion of the use of an employer's mobile phone by an employee that is an exempt benefit under section 47A of the FBTAA if the employer completes a *No private use declaration-residual benefits* declaration.

20. Where the 'default tag' on the app for calls is set as 'personal', an employer can use the percentage of the total mobile phone usage that relates to private purposes shown in the Mobilyser app report to calculate the notional taxable value of the expense payment or residual benefit for the purposes of determining whether the benefit is an exempt minor benefit under section 58P of the FBTAA.

21. The Mobilyser app report is not relevant for determining whether an expense payment or residual benefit is an exempt benefit under section 58X of the FBTAA.

22. Where the 'default tag' on the app for calls is set as 'personal' the percentage of the total mobile phone usage that relates to work purposes shown in the Mobilyser app report can be used by an employee when completing an *expense payment benefit declaration* or a *recurring expense payment fringe benefit declaration* for the purpose of enabling the employer to reduce the taxable value of an expense payment that relates to the employee's mobile phone using the 'otherwise deductible' rule in section 24 of the FBTAA.

23. Where the 'default tag' on the app for calls is set as 'personal' the percentage of the total mobile phone usage that relates to work purposes shown in the Mobilyser app report can be used by an employee when completing a *residual benefit declaration* or a *recurring residual fringe benefit declaration* for the purpose of enabling the employer to reduce the taxable value of a residual fringe benefit that arises from the use of an employer's mobile phone by an employee using the 'otherwise deductible' rule in section 52 of the FBTA.

24. Where the 'default tag' on the app for calls is set as 'personal' the percentage of the total mobile phone usage that relates to work purposes shown in the Mobilyser app report that relates to a year that is covered by a recurring fringe benefit declaration is not more than 10% less than the deductible percentage shown in the declaration.

Commissioner of Taxation16 December 2015

Appendix 1 – Explanation

① *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

Can the percentage of the total mobile phone usage that relates to work purposes shown in the Mobilyser app report be used to calculate the amount of the income tax deduction claimed under section 8-1 of the ITAA 1997 for the mobile phone costs incurred?

25. In general terms, section 8-1 of the ITAA 1997 enables an income tax deduction to be claimed for a loss or outgoing incurred in gaining or producing assessable income, unless the loss or outgoing is of a private or domestic nature. However, to claim a deduction, it is necessary for records to be kept that substantiate the amount of the expense and the proportion of the expense that is work related.

26. Generally, an individual taxpayer who uses their mobile phone for work purposes is able to claim an income tax deduction for the work related use under section 8-1 of the ITAA 1997 if he or she has records that substantiate the amount of the expense and the proportion of the expense that is work related.

27. Guidance for considering whether the Mobilyser app report provides the information required for an income tax deduction to be claimed under section 8-1 of the ITAA 1997 is provided in Practice Statement Law Administration PS LA 2001/6 *Home office and electronic device expenses* and in *Claiming mobile phone, internet and home phone expenses* which is available on the ATO website at www.ato.gov.au/Individuals/Income-and-deductions/Deductions-you-can-claim/.

28. These guidelines provide that records must be kept for a four week representative period in each income year to claim an income tax deduction of greater than \$50. These records may include diary entries, including electronic records and bills. In addition, evidence that the employer expects the employee to work at home or make work related calls using a mobile telephone will assist with claiming a deduction.

29. The guidelines require the percentage of the total use of a mobile phone that relates to work purposes to be worked out using a reasonable basis. In discussing what is a reasonable basis for determining a work related percentage for mobile phone expenses section 10 of PS LA 2001/6 states:

10. Mobile phone expenses

In determining a work related percentage for mobile phone expenses the following factors are elements that can be considered:

- number of business calls compared to private calls
- time used for business calls compared to private calls

- time used in different functions for work related compared to private purposes – for example, some taxpayers may use the camera and gaming applications exclusively for private use whereas other taxpayers may require the camera and many applications for work purposes
- the time spent using the mobile telephone for work related and private purposes each day
- any employer requirements or restrictions, for business use of the mobile phone for work purposes, and
- business and private use proportions of data usage.

The relevance of type of use can be significant. Thus, if a taxpayer predominantly uses a mobile phone for phone calls then analysis of phone call use will provide the most relevant measure of use. In such cases the guidelines for home telephone use set out in section 8 of this practice statement are relevant.

30. The guidelines for home telephone use in section 8 of PS LA 2001/6 states:

Examples of a reasonable basis for landline telephones include:

- where a taxpayer has identified the actual proportion of work calls from itemised telephone accounts, or
- using diary records covering a representative four week period to show the work percentage and using that percentage to calculate the claim for the entire year.

For deductions for telephone expenses, an acceptable basis of apportionment calculation is:

$$\frac{\text{Business calls (incoming and outgoing)}}{\text{total calls (incoming and outgoing)}}$$

31. Mobilyser provides three alternate methods for calculating the percentage of the total use of the mobile phone that relates to work purposes. They are:

- 'Count of calls method' which determines the business percentage by dividing the number of work calls by the total number of the calls made
- 'Duration method' which determines the business percentage by dividing the total duration of work related calls by the total duration of all calls within a set time period, and
- 'Actual cost method' (only available if the phone bill is uploaded) which uses the actual call costs for the identified business calls to determine a business use percentage by dividing the business call costs by the total cost of all calls.

32. In applying the guidelines in PS LA 2001/6, it is accepted that each of these methods provides a reasonable basis for determining the work related percentage to be applied to the portion of the phone bill that is related to receiving and making phone calls.

33. Therefore, provided the 'default tag' on the app for calls is set as 'personal' (so as to ensure a private call will not be recorded as 'work'), where the Mobilyser is used for a representative four week period, the percentage of the total use of a mobile phone that relates to work purposes shown in the Mobilyser app report can be used to calculate a work related percentage of mobile phone expenses for which an income tax deduction can be claimed under section 8-1 of the ITAA 1997.

Can the percentage of the total mobile phone usage that relates to work purposes shown in the Mobilyser app report be used to determine whether a benefit is an exempt benefit, or to calculate the taxable value of a fringe benefit arising from mobile phone usage by an employee?

34. In general terms, an employer is liable to pay fringe benefits when a benefit is provided to an employee. An employee will receive a benefit when:

- the employer pays for or reimburses an employee for the costs of the employee's mobile phone (expense payment benefit), or
- provides the use of a mobile phone to an employee (residual benefit).

35. However, a fringe benefits tax liability will not arise if:

- the benefit is an exempt benefit, or
- the employee would have been able to claim an income tax deduction for the benefit if it had not been provided by the employer.

Exempt benefits

36. A benefit received by an employee that relates to a mobile phone may be an exempt benefit under:

- section 20A of the FBTAA if the benefit is an expense payment benefit
- section 47A of the FBTAA if the benefit is a residual benefit
- section 58P of the FBTAA, or
- section 58X of the FBTAA.

Exemption under section 20A or 47A of the FBTA

37. An expense payment benefit will be an exempt benefit under section 20A of the FBTA where the employer completes a *No private use declaration-expense payment benefits* declaration. An employer may use this declaration for an expense payment benefit that relates to the employee's mobile phone where the employer only pays or reimburses the mobile phone expenses that the employee could have claimed as an income tax deduction if the payment or reimbursement had not been made by the employer.

38. Similarly, a residual benefit will be an exempt benefit under section 47A of the FBTA where the employer completes a *No private use declaration-residual benefits* declaration. An employer may use this declaration for a residual benefit that relates to the employee's use of the employer's mobile phone where there is a consistently enforced prohibition on the private use of the phone.

39. The two declarations are available at <https://www.ato.gov.au/Forms/Declarations/>.

40. Where the 'default tag' on the app for calls is set as 'personal' (so as to ensure a private call will not be recorded as 'work'), an employer can use the Mobilyser app report to:

- calculate the amount of the expenses relating to the employee's mobile phone which the employee could have claimed as an income tax deduction, so as to be able to complete a *No private use declaration-expense payment benefits* declaration, or
- verify that an employee has only used the employer's mobile phone for work related purposes, so as to be able to complete a *No private use declaration-residual benefits* declaration.

Exemption under section 58P of the FBTA

41. In general terms, a benefit will be an exempt benefit under section 58P of the FBTA where:

- the notional taxable value of the benefit is less than \$300, and
- it would be concluded that it would be unreasonable, having regard to the specified criteria in paragraph 58P(1)(f), to treat the benefit as a fringe benefit.

42. The notional value is the value that will be the taxable value if the benefit is a fringe benefit. In the context of the benefits provided in relation to a mobile phone this will be:

- the amount of the payment or reimbursement that relates to private calls made by the employee using his or her mobile phone, or

- the value of the private phone calls made using the employer's mobile phone.

43. In accordance with the conclusions reached in paragraph 33 of this Ruling it is accepted that where the 'default tag' on the app for calls is set as 'personal', an employer can use the Mobilyser app report to:

- calculate the amount of the payment or reimbursement that relates to private calls made by the employee using his or her mobile phone, or
- the value of the private phone calls made using the employer's mobile phone.

44. Where this value is less than \$300, the benefit may be an exempt benefit under section 58P of the FBTA if it would be unreasonable having regard to the specified criteria in paragraph 58P(1)(f) to treat the benefit as a fringe benefit.

45. Guidance for considering the criteria in paragraph 58P(1)(f) of the FBTA is provided in paragraphs 193 to 245 of Taxation Ruling TR 2007/12 *Fringe benefits tax: minor benefits*.

Exemption under section 58X of the FBTA

46. In general terms, section 58X of the FBTA provides that:

- an expense payment benefit where the employee's expenditure is in respect of an eligible work related item, and
- a residual benefit that consists of the making available of an eligible work related item,

will be an exempt benefit.

47. Subsection 58X(2) of the FBTA provides that a portable electronic device is an eligible work related item if it is primarily for use in the employee's employment. A mobile phone is an example of a portable electronic device.

48. An item is primarily for use in an employee's employment if it is provided principally to enable the employee to do their job.

49. The decision about whether an item is primarily for use in the employee's employment is based on the employee's intended use at the time the benefit is provided to them. The employee's actual usage of the item is not determinative of whether it is used primarily in the employee's employment.

50. Therefore, the Mobilyser app report will not be relevant when determining whether an expense payment or residual benefit is an exempt benefit under section 58X of the FBTA.

The application of the 'otherwise deductible' rule

51. Section 24 of the FBTA provides that where the recipient of an expense payment fringe benefit is an employee, the taxable value of an expense payment fringe benefit may be able to be reduced in accordance with the 'otherwise deductible' rule. A similar reduction is provided for residual fringe benefits provided to an employee in section 52 of the FBTA.

52. Broadly, the 'otherwise deductible' rule enables the taxable value of a fringe benefit to be reduced by the amount the employee would have been entitled to claim as an income tax deduction if the employer had not paid or reimbursed the expense, or provided the use of a mobile phone to the employee. For example, if 80% of the calls made using a mobile phone are work related the 'otherwise deductible' rule enables the taxable value of the fringe benefit to be reduced by 80% if the substantiation requirements are met.

Employee declarations

53. Generally, the use of the 'otherwise deductible' rule in relation to an expense payment fringe benefit or a residual fringe benefit that relates to a mobile phone requires an employer to obtain an employee declaration from the employee. In completing an employee declaration an employee is required to provide details of the purposes for which a benefit has been provided and the percentage of the cost that the employee would have been able to claim as an income tax deduction. The *expense payment benefit declaration* and the *residual benefit declaration* are available at <https://www.ato.gov.au/Forms/Declarations/>.

54. As discussed at paragraphs 25 to 33 of this Ruling, an employee who does not have his or her mobile phone costs paid or reimbursed by the employer is able to use the Mobilyser app report to calculate the amount of the income tax deduction. Similarly, the Mobilyser app report can also be used by the employee when completing an *expense payment benefit declaration* or a *residual benefit declaration*.

Recurring fringe benefit declaration

55. An employee who receives identical expense payment or residual benefits over a five year period is able to make a recurring fringe benefit declaration that will apply to all of the benefits under section 152A of the FBTA if the deductible proportion of the later benefits is not more than 10% less than the percentage stated in the declaration.

56. The following example regarding the use of a recurring residual fringe benefit declaration is provided in part 18.8 of *Fringe benefits tax – a guide for employers*:

An employee lives in a house provided by the employer. The telephone service to the house is in the name of the employer and

the employer pays each telephone bill. Use of the telephone is a residual fringe benefit.

The employee gives the employer a recurring fringe benefit declaration which specifies that the deductible proportion of the use of the telephone is 80%. The declaration covers all further use of the telephone over the next five years, providing that the employment-related use of the telephone is not less than 70%. If the employment-related use of the telephone drops to less than 70%, another declaration is required.

57. In accordance with the discussion at paragraph 54 of this Ruling in relation to the use of the Mobilyser app report to complete an *expense payment benefit declaration* or a *residual benefit declaration*, the Mobilyser app report can be used to determine the deductible proportion for the purposes of completing a *Recurring expense payment fringe benefit declaration* or a *Recurring residual fringe benefit declaration*. Both of these declarations are available at <https://www.ato.gov.au/Forms/Declarations/>.

58. Although not specifically required, a Mobilyser app report that relates to a subsequent year that is covered by a recurring fringe benefit declaration can be used to confirm that the deductible percentage was not more than 10% less than the deductible percentage shown in the recurring fringe benefit declaration.

Appendix 2 – Detailed contents list

59. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

- ITAA 1997
- ITAA 1997 8-1

Related Rulings/Determinations:

TR 2006/10; TR 2007/12

Other references:

- Australian Taxation Office 2015, [Claiming mobile phone, internet and home phone expenses](#), viewed 20 August 2015
- [Fringe benefits tax – a guide for employers](#)
- Explanatory Memorandum to Tax Laws Amendment (Small Business Measures No. 3) Bill 2015
- PS LA 2001/6 Home office and electronic device expenses

Legislative references:

- FBTAA 1986
 - FBTAA 1986 20
 - FBTAA 1986 20A
 - FBTAA 1986 24
 - FBTAA 1986 45
 - FBTAA 1986 47A
 - FBTAA 1986 52
 - FBTAA 1986 58P
 - FBTAA 1986 58X
 - FBTAA 1986 136(1)
-

ATO references

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Fringe benefits tax ~~ Types of benefits ~~ Expense payment benefits
Fringe benefits tax ~~ Types of benefits ~~ Residual benefits

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