

CR 2015/80 - Fringe benefits tax: use of an E-stralian electric bicycle (e-bike) by an employee



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Class Ruling

Fringe benefits tax: use of an E-stralian electric bicycle (e-bike) by an employee

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ⓘ 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 provision(s) 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 within this Ruling are:

- section 7 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA)
- section 40 of the FBTAA
- section 45 of the FBTAA, and
- subsection 47(6) of the FBTAA.

All subsequent references are to the FBTAA unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies is employers who provide the use of an E-stralian electric bicycle (e-bike) to an employee.

Qualifications

4. The Commissioner makes this Ruling based 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 15 of the 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 1 April 2015 to 31 March 2020. The Ruling continues to apply after 31 March 2020 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. 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 received on 12 May 2015 and the example document titled 'Novated Lease Agreement' provided on 17 June 2015.
9. Thijs Van Der Heijden trading as E-stralian will purchase the e-bikes from manufacturers or Australian importers.
10. The e-bike consists of a bicycle-like frame fitted with an electric motor. The engine provides support when the rider is actively pedalling.
11. The motor is powered by a light lithium-based battery through an electronic speed controller.
12. No registration or drivers licence is required to ride an e-bike.
13. Although there is no legal obligation to carry an odometer on an e-bike, every e-bike is equipped with a speedometer and odometer as a by-product of the technology used to control the engine.
14. Under the scheme the employer will enter into a lease with E-stralian and provide the use of the bike to an employee as part of a salary sacrifice arrangement.

15. The example document titled 'Novated Lease Agreement' includes the following terms and conditions:

- E-stralian leases the e-bike to the employer for the term of the agreement
- the employer agrees to pay E-stralian the amount specified in the agreement
- the costs incidental to the instructions for and the preparation, execution and stamping of the lease and all stamp duties payable in respect of the lease are borne and paid by the employer
- E-stralian may terminate the agreement at any time should any changes in any legislation impose financial or other obligations that are unacceptable to E-stralian
- all risk of loss of the e-bike or damage to it, other than damage recklessly caused by the employee shall be borne by the employer
- the employer shall obtain full comprehensive insurance cover against loss or damage to the e-bike
- the employer is responsible for all maintenance costs including breakdown repairs, regular servicing and other consumables, and
- at the end of the term of the lease the employer will deliver possession of the e-bike to E-stralian.

Ruling

16. A car benefit as described in section 7 will not arise from an employee's use of an e-bike as the e-bike is not a car.

17. A property benefit as described in section 40 will not arise from an employee's use of an e-bike as E-stralian retains the ownership of the e-bike.

18. A residual benefit as described in section 45 will arise from the employee's use of an e-bike.

19. The residual benefit that arises from an employee's use of an e-bike may be an exempt benefit under subsection 47(6) if the private use of the bike is restricted to:

- travel to and from work
- use that is incidental to travel in the course of performing employment-related duties, and
- non-work-related use that is minor, infrequent and irregular.

20. Where a residual fringe benefit arises from an employee's use of an e-bike, the taxable value of the fringe benefit can be calculated using either:

- the proportion of total operating costs that relate to private use, or
- a cents per kilometre basis if there is extensive business use.

Commissioner of Taxation

14 October 2015

Appendix 1 – Explanation

❶ *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.*

Will a car benefit arise from an employee's use of an e-bike?

21. Section 7 describes the circumstances in which a car benefit will arise. Paragraph 7(1)(a) states:

Where:

- (a) at any time on a day, in respect of the employment of an employee, **a car held by a person** (in this subsection referred to as the *provider*):
 - (i) ... [emphasis added]

22. For this section to apply the vehicle must be a car.

23. The definition of 'car' in subsection 136(1) provides that the term has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997* (ITAA 1997).

24. Subsection 995-1(1) of the ITAA 1997 defines 'car' to mean:

a motor vehicle (except a motor cycle or similar vehicle) designed to carry a load of less than 1 tonne and fewer than 9 passengers

25. The term 'motor cycle' is not defined in the FBTAA or the ITAA 1997. It therefore takes on its ordinary meaning.

26. *The Macquarie Dictionary*¹ defines 'motorcycle' to mean:

a motor vehicle resembling a bicycle, for one or two riders, sometimes with a sidecar attached

27. 'Motor vehicle' is defined in subsection 995-1(1) of the ITAA 1997 to mean:

any motor-powered road vehicle (including a 4 wheel drive vehicle).

28. The e-bike consists of a bicycle-like frame fitted with an electric motor. It is therefore a 'motor vehicle' as it is powered by an electric motor. Although it is powered by an electric motor, rather than a motor powered by petrol, the type of motor does not affect the classification of the vehicle. It is a bicycle powered by a motor. Therefore, it is considered to be a motor cycle.

29. As the e-bike is a motor cycle it is excluded from being a car by the definition in subsection 995-1(1) of the ITAA 1997.

¹ *The Macquarie Dictionary*, [Online], viewed 7 October 2015, www.macquariedictionary.com.au

30. Therefore, as the e-bike is not a car, a car benefit will not arise from the employee's use of the e-bike.

Will a property benefit arise from an employee's use of an e-bike?

31. Section 40 provides that a property benefit will arise:

Where, at a particular time, a person (in this section referred to as the **provider**) provides property to another person (in this section referred to as the **recipient**), the provision of the property shall be taken to constitute a benefit provided by the provider to the recipient at that time.

32. Under the scheme E-stralian retains the ownership of the e-bike. Therefore, a property benefit will not arise from an employee's use of an e-bike.

Will a residual benefit arise from an employee's use of an e-bike?

33. Section 45 provides that a benefit will be a residual benefit:

... if the benefit is not a benefit by virtue of a provision of Subdivision A of Divisions 2 to 11 (inclusive).

34. Subsection 136(1) defines benefit to include:

any right (including a right in relation to, and an interest in, real or personal property), privilege, service or facility and, without limiting the generality of the foregoing, includes a right, benefit, privilege, service or facility that is, or is to be, provided under:

- (a) an arrangement for or in relation to:
 - (i) the performance of work (including work of a professional nature), whether with or without the provision of property;
 - (ii) the provision of, or of the use of facilities for, entertainment, recreation or instruction; or
 - (iii) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction;
- (b) a contract of insurance; or
- (c) an arrangement for or in relation to the lending of money.

35. The right to use an e-bike comes within this definition. As it is not a benefit covered by a provision of Subdivision A of Divisions 2 to 11 it will be a residual benefit.

36. Support for this conclusion is provided by Taxation Ruling MT 2034 *Fringe benefits tax: private use of motor vehicles other than cars*. In detailing the circumstances in which the use of a vehicle other than a car will give rise to an FBT liability and providing guidelines for the determination of the value of that benefit MT 2034 provides rates that can be applied to the use of a motor cycle.

Will the residual benefit that arises from an employee's use of an e-bike be an exempt benefit under subsection 47(6)?

37. In discussing the circumstances in which a fringe benefit will arise from the use of a motor vehicle that is not a car, paragraph 8 of MT 2034 refers to the exemption provided by subsection 47(6).

38. Paragraph 8 of MT 2034 states:

A significant exemption from FBT is, however, provided under sub-section 47(6) of the Act. Under this sub-section, no liability for FBT will arise in respect of the provision of a vehicle to an employee where there is no private use of the vehicle by the employee or where private use of the vehicle by the employee during a year of tax is limited to certain work-related travel. Work related travel is defined in sub-section 136(1) of the Act to be travel between the employee's residence and place of employment or other place at which employment duties are performed and any travel that is incidental to travel in the course of performing duties of employment. It should be noted that in the event that private use is not so limited, FBT liability extends to all private use, including private home to work travel.

39. In accordance with this paragraph the residual benefit that arises from an employee's use of an e-bike will be an exempt benefit under subsection 47(6) if the private use of the bike is restricted to:

- travel to and from work
- use that is incidental to travel in the course of performing employment-related duties, and
- non-work-related use that is minor, infrequent and irregular.

40. Where the private use is not restricted to these types of travel, the private use will be a residual fringe benefit.

Calculating the taxable value of the residual fringe benefit that arises from an employee's use of an e-bike

41. In general terms, the method used to determine the taxable value of a residual fringe benefit depends upon whether the employer or an associate of the employer carries on a business that consists of, or includes the provision of identical or similar benefits principally to outsiders and whether the benefit is provided over a period.

42. Subsection 136(1) defines 'outsider' to mean a person who is not:

- an employee of the employer
- an employee of an associate of the employer
- an employee of a person other than the employer or an associate who provides benefits to employees (or associates) of the employer (or an associate of the employer) under an arrangement, or
- an associate of an employee.

43. Under the scheme, the employer will only provide the use of an e-bike to an employee under a salary sacrifice arrangement. Therefore, the benefit is not provided principally to outsiders.

44. Under subsection 149(1) a benefit is taken to be provided during a period if the benefit is provided during a period of more than one day. As an employee is provided with the use of a bike for a period of more than one day, the benefit is an external period residual fringe benefit.

45. Section 51 provides three methods for calculating the taxable value of an external period residual fringe benefit. The relevant method depends upon whether:

- the provider was the employer or an associate of the employer who purchased the overall benefit under an arm's length transaction; or
- where the provider was not the employer or an associate of the employer, whether the employer or an associate incurred expenditure to the provider under an arm's length transaction.

46. The overall benefit provided to the employee by the employer is the use of a fully maintained e-bike. As this was not purchased by the employer, the taxable value under paragraph 51(c) is the notional value of the recipients' current benefit reduced by the amount of the recipients' contribution (if any).

47. Notional value is defined in subsection 136(1) as follows:

in relation to the provision of property or another benefit to a person, means the amount that the person could reasonably be expected to have been required to pay to obtain the property or other benefit from the provider under an arm's length transaction.

48. MT 2034 provides guidance on the valuation of motor vehicles other than cars. Two methods of valuation are allowed, namely,

- operating cost method, or
- a cents per kilometre basis where there is extensive business use of the vehicle.

Operating Cost method

49. The operating cost method used to calculate the residual fringe benefit that arises from the private use of a motor vehicle that is not a car is described in paragraphs 12 and 13 of MT 2034. These paragraphs state:

12. An alternative measure would be to look, broadly, to what would be the cost to the employee of providing his or her own vehicle of the same kind as that provided by the employer. However, rather than attempting a notional calculation of the cost to the employee of providing a similar vehicle, which becomes largely impracticable if different employees use the same vehicle over time, a more practical measure would be to look to the operating cost of the particular vehicle to the employer. Operating costs for these purposes would be as per component A of the car operating cost formula. As required by paragraph 10(3)(a), operating costs would thus include the cost of fuel, repairs and maintenance, registration and insurance and leasing charges (or depreciation and imputed interest, as appropriate). Any sales tax exemptions would, as for cars, be disregarded for these purposes.

13. The gross taxable value determined on this basis would be reduced under section 52 of the Act, broadly, according to the proportion of business kilometres to total kilometres travelled in the year – see paragraphs 23 to 27. ...

50. For an e-bike the operating costs would include:

- leasing charges
- insurance
- electricity for the battery
- maintenance costs, and
- repairs.

51. If the e-bike is used for work related purposes, the total of the operating costs can be reduced under section 52 according to the proportion of business kilometres to total kilometres travelled in the year.

Cents per kilometre method

52. Alternatively, if the e-bike is used extensively for business purposes with the result that the standing costs would be spread over a substantial number of annual kilometres, the taxable value can be determined by multiplying the number of private kilometres travelled during the year by a cents per kilometre rate.

53. The relevant rate is provided in an annual Taxation Determination. For the year commencing on 1 April 2015 the rate as provided in Taxation Determination TD 2015/6 *Fringe benefits tax: what are the rates to be applied on a cents per kilometre basis for calculating the taxable value of a fringe benefit arising from the private use of a motor vehicle other than a car for the fringe benefits tax year commencing on 1 April 2015?* is 15 cents.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

MT 2034; TD 2015/6

Subject references:

- car fringe benefit
- exempt benefits
- external residual period fringe benefit
- FBT operating cost
- FBT salary sacrifice
- property fringe benefit
- recipients contributions
- residual fringe benefit

Legislative references:

- FBTAA 1986 7
- FBTAA 1986 7(1)(a)
- FBTAA 1986 40
- FBTAA 1986 45
- FBTAA 1986 47(6)
- FBTAA 1986 51
- FBTAA 1986 52
- FBTAA 1986 136(1)
- FBTAA 1986 149(1)
- ITAA 1997 995-1(1)

Other references:

- *The Macquarie Dictionary*,
[Online], viewed 7 October 2015,
www.macquariedictionary.com.au

ATO references

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