


CR 2020/12 - Apex Salary Packaging Pty Ltd - use of an electric bicycle (e-bike) by an employee

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Class Ruling

Apex Salary Packaging Pty Ltd – use of an electric bicycle (e-bike) by an employee

❶ Relying on this Ruling

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

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

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What this Ruling is about

1. This Ruling sets out the fringe benefits tax consequences of employers providing their employees with the use of an electric bicycle (e-bike) under a salary packaging arrangement.

2. Full details of the e-bike scheme are set out in paragraphs 10 to 17 of this Ruling.

Note: By issuing this Ruling, the ATO is not endorsing this product. Potential purchasers / users must form their own view about the product.

Who this Ruling applies to

3. This Ruling applies to you if you are an employer who provides an e-bike to an employee by way of a salary packaging arrangement with Apex Salary Packaging Pty Ltd (Apex).

When this Ruling applies

4. This Ruling applies from 1 April 2019 to 31 March 2024.

Ruling

5. A car benefit as described in section 7 of the *Fringe Benefits Tax Assessment Act 1986*¹ (FBTAA) will not arise from an employee's use of an e-bike as the e-bike is not a car.
6. A property benefit as described in section 40 will not arise from an employee's use of an e-bike as Apex retains the ownership of the e-bike during the term of the lease.
7. A residual benefit as described in section 45 will arise from the employee's use of an e-bike.
8. 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 e-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.
9. 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 relates to private use, or
 - a cents per kilometre basis if there is extensive business use.

Scheme

10. The following description of the scheme is based on information provided by the applicant and on the FBT Employee declaration. If the scheme is not carried out as described, this Ruling cannot be relied upon.
11. Apex will purchase the e-bikes from manufacturers or Australian importers.
12. The e-bike consists of a bicycle-like frame fitted with an electric motor. The engine provides support when the rider is actively pedalling.
13. The motor is powered by a light lithium-based battery through an electronic speed controller.
14. No registration or driver's licence is required to ride an e-bike.
15. 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.
16. Under the scheme the employer will enter into a lease with Apex and provide the use of the e-bike to an employee as part of a salary packaging arrangement.

¹ All legislative references in this Ruling are to the *Fringe Benefits Tax Assessment Act 1986* unless otherwise indicated.

17. A Novated lease agreement will be entered into for each employee and includes the following terms and conditions:

- Apex leases the e-bike to the employer for the term of the agreement
- the employer agrees to pay Apex 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 employee
- Apex may terminate the agreement at any time should any changes in any legislation impose financial or other obligations that are unacceptable to Apex
- 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 employee shall obtain full comprehensive insurance cover against loss or damage to the e-bike, or alternatively, Apex will obtain full comprehensive insurance cover
- service and maintenance costs for the e-bike are included in the leasing payments
- breakdown repairs are handled by the roadside assistance service in states and territories where the roadside assistance service forms part of the lease terms. In those states and territories, Apex will pay for any breakdown repairs costs charged by the roadside assistance service directly
- in states and territories where the roadside assistance service is not available or in cases where the roadside assistance service is unable to repair the e-bike, Apex will pay for repairs at one of Apex's authorised service providers, which is a third party contracted by Apex to perform services, including emergency repairs
- Apex has agreements with third parties for the provision of insurance, roadside assistance, service and maintenance, and bicycle skills training as part of the lease, and
- at the end of the term of the lease the employee will deliver possession of the e-bike to Apex, or alternatively, the employee will purchase the e-bike outright by paying the residual value as specified in the agreement.

Appendix – Explanation

❶ *This Explanation 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.*

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

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

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)

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

20. 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) which is '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'.

21. The term 'motor cycle' is not defined in the FBTA or the ITAA 1997. It therefore takes on its ordinary meaning 'a motor vehicle resembling a bicycle, for one or two riders, sometimes with a sidecar attached'.²

22. '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)'.

23. The e-bike consists of a bicycle-like frame 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.

24. 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.

² As defined in Macmillan Publishers Australia, *The Macquarie Dictionary* online, www.macquariedictionary.com.au, viewed 4 December 2019.

25. 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?

26. 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.

27. Under the scheme, during the term of the lease, Apex 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?

28. 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)'.

29. 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.

30. 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.

31. Support for this conclusion is provided by Miscellaneous 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)?

32. 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). 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.

33. 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 e-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.³

34. Employees will complete an 'Employee FBT Declaration' declaring that any private use of the e-bike will be limited to the travel listed in paragraph 33 of this Ruling.

35. 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

36. 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.

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

- (a) an employee of the employer;
- (b) an employee of an associate of the employer;
- (c) an employee of a person other (in this definition referred to as the provider) other than the employer or an associate of the employer who provides benefits to, or to associates of, employees of the employer or an associate of the employer under an arrangement between:
 - (i) the employer or an associate of the employer; and
 - (ii) the provider or another person; or.
- (d) an associate of an employee to whom any of the preceding paragraphs apply.

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

39. 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 an e-bike for a period of more than one day, the benefit is an external period residual fringe benefit.

40. 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

³ Subparagraph 47(6)(b)(ii).

- 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.

41. The overall benefit provided to the employee by the employer is the use of a fully maintained e-bike. As this is 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).

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

in relation to the provision of property or another benefit to a person, ... the amount 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.

43. 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

44. 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 travelled in the year.

45. For an e-bike the operating costs includes the leasing charges that covers service and maintenance costs. The operating costs to the employer do not include the following:

- insurance (paid by either the employee or Apex), or
- repairs (responsibility of Apex).

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

Cents per kilometre method

47. 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.

48. The relevant rate is provided in an annual Taxation Determination. For the year commencing on 1 April 2019 the rate as provided in Taxation Determination TD 2019/3 *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 2019?* is 16 cents.

References*Previous draft:*

Not previously issued as a draft

- FBTAA 1986 47(6)
- FBTAA 1986 51
- FBTAA 1986 52
- FBTAA 1986 136(1)
- FBTAA 1986 149(1)
- ITAA 1997 995-1

Related Rulings/Determinations:

TD 2019/3; MT 2034

Legislative references:

- FBTAA 1986 7
- FBTAA 1986 7(1)(a)
- FBTAA 1986 40
- FBTAA 1986 45

Other references:

The Macquarie Dictionary, Macquarie
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viewed 4 December 2019

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NO: 1-JMWYRIO

ISSN: 2205-5517

BSL: SEO

ATOlaw topic: Fringe benefits tax ~~ Residual benefits ~~ Other

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