MT 2038 - Fringe Benefits Tax: travel diaries

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[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]

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TAXATION RULING NO. MT 2038

FRINGE BENEFITS TAX : TRAVEL DIARIES

F.O.I. EMBARGO: May be released

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I 1010429	FRINGE BENEFITS TAX	FRINGE BENEFITS TAX ASSESSMENT ACT: S.24, 34, 44, 52 and 136 INCOME TAX ASSESSMENT ACT S.82KZ

RELATED RULINGS : MT 2026

PREAMBLE This Ruling addresses the operation and application of the FBT travel diary requirements. An employee must keep and give his employer a travel diary in situations where the employer pays or reimburses the employee's expenses of travel outside Australia, in order that the employer can claim a reduction in the taxable value of the benefit. Similarly, a travel diary must be kept for travel by an employee inside Australia where the trip involves the employee being away for more than 5 consecutive nights and the purpose of the travel is not exclusively in the course of the employee's employment.

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2. The FBT travel requirements complement the operation of equivalent requirements in the income tax substantiation provisions. Their self-evident intention is to provide a record of events on which to determine the extent to which a trip was undertaken for deductible purposes. Accordingly, this Ruling is equally relevant for income tax purposes. It should be noted, however, that the exemption from having to keep a travel diary where travel is within Australia and exclusively for business, does not apply for income tax purposes.

3. At the outset, it is important to recognise that it is the intention of the legislation to make deductions from assessable income or reductions in the taxable value of benefits, as the case may be, dependent on the maintenance of certain records. The requirement is designed to counter the problem of past years where many of the deductions sought were significantly inflated and the then existing law was not sufficient to attack the problem in an administrably practicable manner.

4. The nature of the requirements mean that there will be cases where either deductions or reductions will be denied because of failure to maintain necessary records, notwithstanding that the taxpayer may have expended the amount.

RULING 5. It is necessary to understand the requirements of the FBT

provisions detailed in the definition of travel diary in subsection 136(1). The elements of that definition, which are identical to the substantiation provisions under the income tax law, require that the employee records in a diary or similar document in respect of each business activity:-

- the place where the activity was undertaken;
- the date and approximate time when the activity commenced;
- the duration of the activity; and
- the nature of the activity.

6. First it should be understood that the word "diary" is not a term of art. This is reinforced by the law which recognises the use of a "similar document". In effect all that is required is a record of events disclosing the details specified. The precise form of that record may vary. Secondly, the law requires that the employee makes the entry. In the normal course of events this will result in a record maintained in the employee's own handwriting. Equally, however, a record typed for the employee by someone else but which the employee endorses as an accurate record would satisfy that requirement.

7. Returning to the definition, the relevant record is required to be made before, at the time of, or as soon as reasonably practicable after the relevant activity took place.

8. Two points should be noted here. First, the law recognises that the record can be prepared in advance of the relevant activity. Secondly, if the record is made after the event, it must be made as soon as is reasonably practicable thereafter. The underlying intention of the law is that an accurate record of relevant events be maintained and the time frame for making entries would need to be consistent with that. A similar requirement is evident in the log book rules and the general policy reflected in MT 2026 is that the entry be made on the day of the journey. Given the detail required there (e.g., opening and closing kilometres) a daily update is necessary to satisfy that policy. In the area of travel diaries, however, the same rule may not necessarily be relevant.

9. Clearly, entries made on the day of the activity will satisfy the requirements. However, consistent with the intention of the law and the level of detail required, entries made within a few days of the activity would be satisfactory. In circumstances where entries are based on, for example, a pre-prepared itinerary or conference notes, a longer period may be appropriate if it can be established that there were valid reasons (e.g. illness) for the delay and the entries are consistent with other records relating to the travel.

10. Examples of the operation of the relevant provisions in relation to specific purpose trips of limited duration are:-

- a detailed pre-prepared travel itinerary which includes the specified details (paragraph 5) prepared in advance of the trip would be an acceptable travel diary, provided that the employee endorses that it was followed or records any variations that occurred;
- a pre-prepared travel itinerary on which any

omissions/variations of detail are added by the employee would similarly satisfy the requirements;

- similarly, a detailed conference schedule which includes all of the required detail would be satisfactory where attendance/variation is endorsed by the employee;

- the endorsement, etc., envisaged in the above points could take the form of a separate confirmation document attached to the schedule or annotations on the original document, both of which should be signed by the employee;

- while endorsement of an itinerary/conference schedule could be done on a daily basis, it would be acceptable for this to occur on returning to the home base. (This is consistent with common employer practices requiring confirmation details at the end of a trip for the purpose of acquitting expenses);

- similarly, where an employer requires a written report on a trip from employees on returning home, that report would satisfy the requirements of the law provided all of the necessary detail is incorporated in the report.

11. For longer, less disciplined trips, e.g., sabbaticals, it would be necessary for the entries to be made on a regular basis throughout the trip. While some flexibility is necessary depending on the nature of the activity, it would generally be expected that entries be made on at least a weekly basis. In this case the diary might consist of a combination of, for example, confirmed conference agenda and other entries.

12. In determining whether there is sufficient detail relating to the travel as outlined in paragraph 5, it is again appropriate to look to the intention of the requirements. As previously noted their overall objective is to provide a record of events giving a sufficient basis on which to determine the extent to which the trip was undertaken for deductible purposes. The detail contained in the entry recording the "nature" of the activity should, in particular, be measured against this. Provided this detail, when considered with the nature of the employment is sufficient to give a reasonable guide towards determination of this test, it should be accepted.

13. The level of the detail sufficient to satisfy the remaining entry requirements should also be measured against the intention of the provisions. Thus, where a particular item is not specifically recorded but can be readily derived from other entries that determine the essential question, its absence should not prevent acceptance of the diary. For example, an entry recording the approximate start and finish times but not, specifically, the duration, would be acceptable.

COMMISSIONER OF TAXATION
17 March 1988