


# ***CR 2020/68 - E-stralian Pty. Ltd. - use of an electric bicycle by an employee***

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## Class Ruling

# E-stralian Pty. Ltd. – use of an electric bicycle by an employee

### **📌 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 with E-stralian Pty. Ltd. (E-stralian).
2. Full details of the e-bike scheme are set out in paragraphs 11 to 18 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 E-stralian.

### **When this Ruling applies**

4. This Ruling applies from 1 April 2020 to 31 March 2025.

## Ruling

5. A car benefit as described in section 7 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA)<sup>1</sup> will not arise from an employee's use of an e-bike as the e-bike is not a car.
6. An expense payment benefit as described in section 20 will not arise from the employee's use of an e-bike under the arrangement as the employer is legally liable for the lease payments, not the employee.
7. 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 during the term of the lease.
8. A residual benefit as described in section 45 will arise from the employee's use of an e-bike.
9. 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.
10. 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

11. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.
12. The e-bikes are purchased from manufacturers or Australian importers by E-stralian.
13. The e-bike consists of a bicycle-frame fitted with an electric motor. The e-bike's motor provides support when the rider is actively pedalling.
14. The e-bike's motor is powered by a light lithium-based battery through an electronic speed controller.
15. No registration or driver's licence is required to ride an e-bike. Every e-bike is equipped with an odometer.
16. Under the scheme, the employee enters into a lease agreement with E-stralian (the Lease Agreement), who provide the e-bike to the employee.
17. A Deed of Novation is entered into between E-stralian, the employee and the employer, which transfers the liability for the lease payment from the employee to the employer, for the term of the employee's paid employment.

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<sup>1</sup> All legislative references in this Ruling are to the FBTAA unless otherwise indicated.

## 18. Under the Lease Agreement and Deed of Novation:

- E-stralian leases the e-bike to the employee for the term of the agreement.
- The costs incidental to the instructions for 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.
- The employer agrees to pay E-stralian the amount specified in the agreement for the lease payments.
- 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 shall be borne by the employee.
- The employee shall obtain full comprehensive insurance cover against loss or damage to the e-bike or alternatively, E-stralian will obtain full comprehensive insurance cover on the employee's behalf
- Service and maintenance costs for the e-bike are included in the lease payments.
- E-stralian may charge the employee for any costs associated with damages caused by careless, reckless or unlawful behaviour by the employee, or improper use of the e-bike. The employee remains responsible for these costs.
- E-stralian has agreements with third parties for the provision of insurance, roadside assistance, services and maintenance, and bicycle skills training as part of the lease.
- The lease is terminated if:
  - the employee's employment with the employer is terminated or ceased
  - the employee is suspended from employment
  - the employee commences leave without pay
  - the employee's salary (or portion of salary which they are entitled to salary package) is reduced (for whatever reason and regardless of whether the reduction is on a temporary or permanent basis) to an amount which (in the employer's view) is less than the payments the employer is obligated to make to E-stralian
  - the lease expires or is otherwise terminated
  - the employee's salary packaging arrangements no longer make allowance for an arrangement such that is established by the Deed of Novation
  - the employer, at its sole discretion, notifies the employee and E-stralian that this Deed of Novation is terminated, for any reason whatsoever, or
  - the employer and employee mutually agree to terminate the Deed of Novation, and

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- At the end of the term of the lease, the employee will deliver possession of the e-bike to E-stralian or alternatively, the employee will purchase the e-bike outright by paying the residual value as specified in the agreement.

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**Commissioner of Taxation**

25 November 2020

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**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?**

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

- (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*) ...

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

21. 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’.

22. The term ‘motor cycle’ is not defined in the FBTAA 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’.<sup>2</sup>

23. ‘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)’.

24. 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.

25. 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.

<sup>2</sup> Macmillan Publishers Australia, *The Macquarie Dictionary* online, [www.macquariedictionary.com.au](http://www.macquariedictionary.com.au), viewed 29 September 2020.

26. 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 an expense payment benefit arise from an employee's use of an e-bike?**

27. Section 20 provides that an 'expense payment benefit' will arise:

Where a person (in this section referred to as the **provider**):

- (a) makes a payment in discharge, in whole or part, of an obligation of another person (in this section referred to as the **recipient**) to pay an amount to a third person in respect of expenditure incurred by the recipient; or
- (b) reimburses another person (in this section also referred to as the **recipient**), in whole or in part, in respect of an amount of expenditure incurred by the recipient;

the making of the payment referred to in paragraph (a), or the reimbursement referred to in paragraph (b), shall be taken to constitute the provision of a[n expense payment] benefit by the provider to the recipient.

28. Under this scheme, the lease payment is not an expense payment benefit as the employer is under a legal obligation, pursuant to the Deed of Novation, to pay the lease payments to E-stralian. The employer is not paying the lease payments on behalf of the employee.

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

29. 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.

30. Under the scheme, during the term of the lease, 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?**

31. 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)'.

32. 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.

33. 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.

34. 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.

35. Further confirmation that a residual benefit will arise from an employee's use of an e-bike pursuant to section 45 comes from Taxation Ruling TR 1999/15 *Income tax and fringe benefits tax: taxation consequences of certain motor vehicle lease novation arrangements*. Paragraph 21 of TR 1999/15 provides that '[i]n partial novations a residual benefit may arise under the FBTAA where all that occurs is the transfer to the employer of the lease payment obligations of the employee'.

36. Paragraph 4 of TR 1999/15 defines a partial novation as:

... an industry expression that describes a novation (transfer) of a finance lease payment obligation. A partial novation may also occur where there exists both a finance lease and a sub-lease.

37. Under the arrangement considered in this Ruling, the employer is responsible for the lease payments which gives the employee the legal right to use the e-bike. A residual benefit therefore does arise from the employee's use of the e-bike pursuant to section 45.

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

38. 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.

39. In accordance with paragraph 8 of MT 2034, 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.<sup>3</sup>

<sup>3</sup> Subparagraph 47(6)(b)(ii).



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

40. 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.

41. 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 (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.

42. 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.

43. 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.

44. 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.

45. 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 recipient's current benefit reduced by the amount of the recipient's contribution (if any).

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

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

47. 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**

48. 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.

49. For an e-bike, the operating costs include the leasing charges. The operating costs to the employer exclude:

- full comprehensive insurance where it is paid for by the employee, or
- regular maintenance and servicing, including breakdown repairs (where those costs are incorporated into the leasing charges, forming part of the leasing charges), or
- risk of loss of the e-bike (where it is the responsibility of the employee).

50. 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 basis**

51. 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.

52. The relevant rate is updated each year in an annual taxation determination. For the FBT year commencing 1 April 2020, the rate is 17 cents per kilometre, as provided in Taxation Determination TD 2020/3 *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 2020?*

## References

*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TD 2020/3; TR 1999/15; MT 2034

*Legislative references:*

- FBTA Div 2 Subdiv A
- FBTA Div 3 Subdiv A
- FBTA Div 4 Subdiv A
- FBTA Div 5 Subdiv A
- FBTA Div 6 Subdiv A
- FBTA Div 7 Subdiv A
- FBTA 7
- FBTA 7(1)(a)
- FBTA Div 8 Subdiv A
- FBTA Div 9 Subdiv A
- FBTA Div 10 Subdiv A
- FBTA 10(3)(a)

- FBTA Div 11 Subdiv A
- FBTA 20
- FBTA 40
- FBTA 45
- FBTA 47(6)
- FBTA 47(6)(b)(ii)
- FBTA 51
- FBTA 52
- FBTA 136(1)
- FBTA 149(1)
- ITA 1997 995-1(1)
- TA 1953

*Other references:*

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