



Explanatory Statement

Fringe Benefits Tax Assessment (Adequate Alternative Records – Relocation Transport) Determination 2024

General outline of instrument

1. This instrument is made under section 123AA of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA).
2. The instrument specifies records the Commissioner of Taxation will accept as an alternative to an employee declaration in respect of expense payment fringe benefits where:
 - (a) the employer seeks to reduce the taxable value of a benefit in respect of relocation transport (section 61B of the FBTAA),
 - (b) the benefit consists in whole or part of a reimbursement of a 'Division 28 car expense' incurred by the employee or their associate in relation to a car they own or lease, and
 - (c) the reimbursement is calculated on a cents per kilometre basis.
3. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Date of effect

4. This instrument commences on 1 April 2024.

Effect of this instrument

5. This instrument may reduce compliance costs for employers by allowing them to rely on adequate alternative records (rather than employee declarations) to meet their FBT record keeping obligations.
6. Section 123AA of the FBTAA allows the Commissioner to make a legislative instrument that specifies alternative records that employers can rely on, in lieu of statutory evidentiary documents, for FBT record keeping purposes.
7. The instrument applies for the FBT year ending 31 March 2025, and all subsequent FBT years (paragraph 5(1)(a) of the instrument). It allows an employer to which the instrument applies to accept adequate alternative records instead of a declaration referred to in paragraph 61B(c) of the FBTAA (paragraph 5(1)(b) of the instrument).
8. The instrument applies to the class of employers specified in subsection 5(2) – that is, employers reducing the taxable value of an expense payment fringe benefit described in section 61B of the FBTAA, in certain circumstances.
9. Section 6 of the instrument sets out what records are adequate alternative records that can be accepted instead of a relevant employee declaration. It stipulates that the alternative records must be written in English and contain, at a minimum, the following information:
 - (a) the name of the employee, or associate of the employee, who received the benefit,
 - (b) the number of family members, or an associate receiving the benefit, who travelled in the car, including the employee who received the benefit,

- (c) the address of the departure location,
- (d) the address of the arrival location,
- (e) the dates of travel, and
- (f) the total number of kilometres travelled between the address of the departure location and the address of the arrival location (inclusive of any return trip, and excluding any kilometres travelled whilst at the destination).

10. There is no limit on the number of records that may, in aggregate, meet the minimum information requirements. Further, there is no prescribed type or form of record in which the required information must be contained. If multiple different records collectively contain the minimum information when viewed together, the records will be accepted in aggregate as satisfying the requirements. For example, records can be stored electronically or in paper form, and the required information could be contained in various types of documents such as employment contracts, payroll records, job descriptions, employer and employee correspondence (for example, emails or text messages), log books, employer policies, and calculations of private travel.

11. Records can only be accepted as an alternative to the declaration if they are obtained and held by the employer by the employer's declaration date. This is the date for lodgment of their FBT return for the relevant FBT year, or such later date as the Commissioner allows. This is because section 123AA of the FBTA deems the employee to have the declaration at the time that they hold the records, and the underlying declaration is required to be obtained by the declaration date.

Example 1: information received from multiple sources during the ordinary process of providing the benefit

Maddy's position with ABC Company Pty Ltd (ABC Co) in Brisbane is being relocated to Townsville. ABC Co agrees to reimburse Maddy for her relocation expenses, including her travel expenses. Maddy uses her own car to drive to Townsville, along with her spouse.

Maddy sends her employer an email outlining the dates in which she travelled from Brisbane to Townsville as well as odometer readings for the start and end of the travel.

Subsequently, the ABC Co accounts manager realises that Maddy forgot to include in her email the number of family members who travelled, and the departure and arrival addresses. At the time, Maddy is on holiday and does not have access to her work email account.

The accounts manager already has the address information, as they have a copy of the engagement letter from removalists who assisted with the relocation. The accounts manager asks Maddy by text message to supply the details of who was in the car with her. The accounts manager takes a screenshot of this message and stores it alongside Maddy's email in the company's system.

ABC Co organises for Maddy to be reimbursed by reference to the distance travelled with the car in accordance with the 'cents per kilometre' method outlined in Division 28 of the ITAA 1997.

This reimbursement constitutes an expense payment fringe benefit. Under section 61B of the FBTA, ABC Co is entitled to reduce the taxable value of the fringe benefit if the requirements of that section are met. Instead of obtaining the declaration from Maddy required by paragraph 61B(c), ABC Co seeks to rely on section 123AA of the FBTA.

In accordance with this legislative instrument, ABC Co has obtained records containing, in aggregate, the minimum information to be relied upon as an alternative to the declaration. All of the required information was obtained and/or recorded before the due date for lodgment of ABC Co's FBT return. The relevant records are as follows:

Table 1: ABC Co records that contain the required minimum information

| Required minimum information | Record held by ABC Co |
|---|---------------------------------------|
| <ul style="list-style-type: none"> The name of the employee or associate of the employee receiving the benefit The date or dates of travel The total amount of kilometres travelled between place of departure and destination | Email sent by Maddy |
| <ul style="list-style-type: none"> The number of family members travelling in the car, including the employee if they travelled in the car | Text message sent by Maddy |
| <ul style="list-style-type: none"> The address of the departure location The address of the arrival location | Engagement documents with removalists |

ABC Co can reduce the taxable value of the expense payment fringe benefit in accordance with section 61B of the FBTA. Due to the operation of subsection 123AA(1) of the FBTA, ABC Co is taken to have kept and retained the relevant declaration and accordingly has satisfied the requirements in paragraph 61B(c).

Example 2: employee uses mobile phone app to record information

Edwin, his partner, and their two children live in Tennant Creek. He has been advised by his employer, Action Ltd that he is being relocated to the Darwin office. In accordance with Action Ltd's relocation policy, Edwin will be reimbursed relocations expenses, including travel expenses by Action Ltd.

Edwin and Action Ltd agree that Edwin will drive his own car from Tennant Creek to Darwin, and Action Ltd will reimburse him on a 'cents per kilometre' basis in line with the method outlined in Division 28 of the ITAA 1997. Edwin and his manager agree via email that Edwin's partner and their two children will drive in their second car from Tennant Creek to Darwin a week later.

Edwin has an auto-mileage tracker app on his phone. It automatically records each trip he takes, and it can also classify business trips. Edwin uses this app when he drives from Tennant Creek to Darwin.

After arriving at his new accommodation in Darwin, Edwin sends the relevant information contained on the app to Action Ltd.

Edwin's partner and their two children drive from Tennant Creek to Darwin a week later. Action Ltd's relocation policy states that only direct travel will be reimbursed – any extra travel is at the employee's expense. Action Ltd has Edwin and his partner's home address in Tennant Creek and their new address in Darwin. An electronic map on the internet is used to determine the distance between these two places.

Table 2: Action Ltd records that contain the required minimum information

| Required minimum information | Record held by Action Ltd |
|---|---|
| <ul style="list-style-type: none"> The name of the employee or associate of the employee receiving the benefit The date or dates of travel The number of family members travelling in the car, including the employee if they are travelled in the car | Emails between Edwin and Action Ltd |
| <ul style="list-style-type: none"> The total amount of kilometres travelled between place of departure and destination | Relocation policy Electronic map calculation |
| <ul style="list-style-type: none"> The address of the departure location The address of the arrival location | HR information held by Action Pty Ltd |

This information can be relied upon by Action Ltd as an alternative to the declaration mentioned in paragraph 61B(c) of the FBTA.

Compliance cost assessment

12. Minor – there will be no additional regulatory impacts as the instrument is minor and machinery in nature (The Office of Impact Assessment reference: OBPR23-04438).

Background

13. Section 61B of the FBTA allows an employer to reduce the taxable value of certain expense payment fringe benefits that are provided in respect of relocation transport. The reduction is available where:

- (a) they reimburse the recipient for a Division 28 car expense (as defined in subsection 136(1) of the FBTA),
- (b) the reimbursement is calculated on a cents per kilometre basis, and
- (c) the recipient used their own car (that is, a car that they own or lease).

14. 'Relocation transport' is defined in section 143A of the FBTA. This is transport that enables an employee to relocate to a new residence in circumstances where they are required to live away from home in order to perform employment-related duties, or are similarly required to relocate their usual place of residence.

15. The reduction in taxable value permitted under section 61B is limited to the amount the employer would have reimbursed based on the applicable rate applied on a cents per kilometre basis for that amount of travel. The applicable rate is the sum of the basic car rate (determined under subsection 28-25(4) of the *Income Tax Assessment Act 1997*), and the supplementary car rate if two or more family members travelled in the car (the rate prescribed by section 15 of the *Fringe Benefits Tax Assessment Regulations 2018*).

16. In accordance with paragraph 61B(c) of the FBTA, the employer ordinarily needs to obtain a signed employee declaration in the approved form by the declaration date to reduce the taxable value. This instrument prescribes alternative records the employer can use instead of the declaration to reduce the taxable value for the relevant FBT year.

Consultation

17. Subsection 17(1) of the *Legislation Act 2003* requires that the Commissioner undertake appropriate and reasonably practicable consultation before making a legislative instrument.

18. For this instrument, broad public consultation was undertaken from 9 to 30 September 2022. Targeted consultation was also undertaken from 28 September to 14 October 2022.

19. The draft instrument and draft explanatory statement were published to the Treasury Consultation page available at treasury.gov.au as part of a joint Treasury-ATO consultation process.

20. The legislative instrument and explanatory statement were amended to reflect feedback received through consultation and the enactment of related amendments to the primary law. The main issues raised included the use of internal policies and documents as alternative records, a suggestion to remove the requirement for information about the particulars of the car, and a suggestion for different examples in the explanatory statement to account for employers' differing circumstances.

Legislative references

Acts Interpretation Act 1901

Fringe Benefits Tax Assessment Act 1986

Fringe Benefits Tax Assessment Regulations 2018

Human Rights (Parliamentary Scrutiny) Act 2011

Income Tax Assessment Act 1997

Legislation Act 2003

Statement of compatibility with human rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

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This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

This instrument specifies records that the Commissioner of Taxation will accept from an employer, in certain circumstances, as an alternative to an employee providing a declaration for an expense payment fringe benefit in respect of relocation transport.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms because it merely provides employers with an option to use acceptable alternative records instead of an employee declaration. Importantly, it will help reduce employers' record keeping compliance costs in relation to the fringe benefits tax law and provide them with certainty regarding their record keeping obligations.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.