

# ***LI 2024/13 - Explanatory statement -***



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## Explanatory Statement

# Fringe Benefits Tax Assessment (Adequate Alternative Records – Overseas Employment Holiday Transport) Determination 2024

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### 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 overseas employment holiday transport (section 61A 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 family member 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 61A(2)(a) 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 61A 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 who received the benefit,

- (b) the number of family members 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 whole kilometres travelled between the address of the departure location and the address of the arrival location (inclusive of the return trip).

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 in. 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 of lodgment of their FBT return for the relevant year, or such later date that the Commissioner allows. This is because section 123AA of the FBTAA 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

Felicity works for Global Co and is placed on an assignment in New Zealand for 18 months. During this time, Felicity has a week of leave and returns to Australia to visit family. Felicity has her own car in New Zealand, and she drives this car to the airport to catch her flight back to Australia. When she returns to New Zealand she again uses her car to return to her accommodation.

Global Co has a policy of reimbursing car expenses in these circumstances on a cents per kilometre basis. Felicity submits a claim via the Global Co’s payroll system. The payroll claim form includes her dates of travel, who was travelling in the car, the departure and arrival addresses, and number of kilometres travelled.

This reimbursement constitutes an expense payment fringe benefit. Global Co is entitled to reduce the taxable value of the fringe benefit. Instead of obtaining the declaration from Felicity as required by subparagraph 61A(2)(a), Global Co relies on section 123AA of the FBTAA.

The payroll claim form can be relied upon as an alternative to the declaration, as it contains all of the required information.

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

Required minimum information	Record held by Global Co
<ul style="list-style-type: none"> <li>• The name of the employee receiving the benefit</li> <li>• The date or dates of travel</li> <li>• The number of family members who travelled in the car, including the employee who received the benefit</li> <li>• The address of arrival location</li> <li>• The address of the departure location</li> <li>• The total number of kilometres travelled between the address of departure and arrival locations</li> </ul>	Global Co’s payroll records

## 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: OIA23-04482).

## Background

13. Section 61A of the FBTAA allows an employer to reduce the taxable value of certain expense payment fringe benefits that are provided in respect of overseas employment holiday transport. The reduction is available to the employer where:

- (a) they reimburse the recipient for a Division 28 car expense (as defined in subsection 136(1) of the FBTAA),
- (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. 'Overseas employment holiday transport' is defined in section 143C of the FBTAA. It is transport provided to enable an overseas employee, as defined in section 143B of the FBTAA, to travel from, and back to, their place of employment for the purpose of having a holiday of three or more working days. It does not include travel whilst at the holiday location. It may also include transport to enable family member(s) of the employee to accompany the employee, including transport to meet the employee if they do not live at the employee's work location.

15. The reduction of taxable value that is permitted under section 61A of the FBTAA is limited to 50 per cent of the amount the employer would have reimbursed based on the rate applied on a cents per kilometre basis for that amount of travel. Where the travel is not to the employee's home country, the reduction is also limited to 50 per cent of the 'benchmark travel amount'. The benchmark travel amount is generally the cost of a return economy airfare, determined at the start of the employee's holiday.

16. In accordance with paragraph 61A(2)(a) of the FBTAA, the employer 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 20 February 2023 to 22 March 2023.

19. The draft instrument and draft explanatory statement were published to the ATO Legal database on the 'What's new' page. They were also advertised on the ato.gov.au website on the 'Open Consultation' page. Major tax and superannuation publishers and associations monitor these pages and include the details in the daily and weekly alerts and newsletters to their subscribers and members.

20. The legislative instrument and the explanatory statement were amended to reflect feedback received through consultation and the enactment of related amendments to the primary law. A key change to the instrument was the removal of the requirement for information about the particulars of the car.

**Legislative references**

*Acts Interpretation Act 1901*

*Fringe Benefits Tax Assessment Act 1986*

*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*

### **Fringe Benefits Tax Assessment (Adequate Alternative Records – Overseas Employment Holiday Transport) Determination 2024**

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**

The 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 relation to overseas employment holiday 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 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.