


# ***TDP 2017/2 - Fringe Benefits Tax - Definition of Tax***

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Australian Government  
Australian Taxation Office

## Discussion Paper

### Fringe Benefits Tax – Definition of Taxi

This paper considers the definition of ‘taxi’ contained in the *Fringe Benefits Tax Assessment Act 1986* (FBT Act) and the exemption from fringe benefits tax for taxi travel undertaken to or from work or due to illness.

#### Purpose and status of this discussion paper

The purpose of this paper is to facilitate consultation between the Australian Taxation Office (ATO) and the community as part of the process of developing advice on the application of the Fringe Benefits Tax law.

This paper is prepared solely for the purpose of obtaining comments from interested parties. All views in this paper are therefore preliminary in nature and should not be taken as representing either an ATO view or that the ATO will take a particular view.

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<b>Date of issue</b>	27 September 2017
<b>Contact officer</b> <i>(for comments or further information)</i>	<p><i>Please note that your submission (including name and address details if included) will be published on the ATO website unless you indicate that you do not wish this to occur. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain unpublished should provide this information <b>marked</b> as such in a separate attachment.</i></p> <p>Name of officer: Anna Longley            Email address: <a href="mailto:anna.longley@ato.gov.au">anna.longley@ato.gov.au</a>            Phone number: (03) 8632 4575            Please submit responses electronically to: <a href="mailto:anna.longley@ato.gov.au">anna.longley@ato.gov.au</a></p>
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## Introduction

1. Employers must pay fringe benefits tax on certain benefits they provide to their employees in respect of employment. This is generally a benefit provided to somebody either because they are an employee or associated with an employee. Benefits can be provided by the employer or another provider and include rights, privileges or services.
2. The FBT Act provides an exemption from fringe benefits tax for certain types of benefits provided to employees.
3. The provision of travel to an employee would generally be a benefit upon which fringe benefits tax would be payable, either as an expense payment fringe benefit or a residual benefit (depending on how payment for the travel was made). However, under section 58Z of the FBT Act, employers are specifically exempted from having to pay fringe benefits tax in respect of travel undertaken by their employees in a taxi to or from work or due to illness of the employee.

## The taxi travel exemption

4. The taxi travel exemption<sup>1</sup> was introduced in 1995 to exempt some types of taxi travel from fringe benefits tax.<sup>2</sup> Limiting exempt travel to taxis sought to ensure that the travel was provided by an arm's length supplier at commercial rates.
5. Under section 58Z of the FBT Act:

Any benefit arising from taxi travel by an employee is an exempt benefit if the travel is a single trip beginning or ending at the employee's place of work.

Any benefit arising from taxi travel by an employee is also an exempt benefit if the travel is both:

  - a result of sickness of, or injury to, the employee
  - the whole or a part of the journey directly between any of the following:
    - the employee's place of work
    - the employee's place of residence
    - any other place that it is necessary, or appropriate, for the employee to go as a result of the sickness or injury.
6. A taxi is defined in subsection 136(1) of the FBT Act to mean a:

Motor vehicle that is licensed to operate as a taxi
7. Our document, *Fringe benefits tax – a guide for employers* states, at 20.2:

The exemption is limited to travel in a vehicle licensed by the relevant State or Territory to operate as a taxi. It does not extend to ride-sourcing services provided in a vehicle that is not licensed to operate as a taxi.

## Purpose

8. In light of a recent Federal Court decision in the matter of *Uber B.V. v. Commissioner of Taxation* [2017] FCA 110 (*Uber*), and certain proposed changes to licensing regulations in a

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<sup>1</sup> Section 58Z of the *Fringe Benefits Tax Assessment Act 1986* (FBT Act).

<sup>2</sup> Section 58Z has since been amended so there is no restriction on the hours within which the taxi travel must take place.

number of states and territories, we consider it is appropriate to review our interpretation of the definition of 'taxi' contained in the FBT Act.

9. We wish to engage in consultation with employers, tax professionals, industry representatives and government on the basis of an interpretation of 'taxi' that includes ride-sourcing vehicles and other vehicles for hire.

10. This discussion paper provides a basis for consultation and invites feedback and comments on the interpretation of 'taxi' and the taxi travel exemption. Other ideas and opinions are welcome.

### Identified issues - Application and scope of the taxi travel exemption

11. The published ATO view on this matter is that the fringe benefits tax exemption for taxi travel, contained in section 58Z of the FBT Act, does not extend to other vehicles for hire, including ride-sourcing services provided in a vehicle that is not licensed by a state or territory as a taxi. Generally, states and territories differentiate as to whether a license is a taxi license on the basis of whether a vehicle is licensed to, amongst other things, ply or stand for hire. We have interpreted the definition of taxi on the basis that the requirement that the vehicle be 'licensed to operate as a taxi' referred to the taxi licensing regime that operated, variously, through each state and territory of Australia.

12. Consequently, employers who provide travel to their employees between work and home or due to illness using ride-sourcing vehicles and other vehicles for hire have been required to pay fringe benefits tax on the provision of the benefit. Employers who provide such travel in vehicles licensed to provide rank and hail taxi services have not.

13. Travel undertaken using ride-sourcing vehicles and other vehicles for hire could only be exempt from FBT if it fell within the minor benefits exemption contained in section 58P of the FBT Act. Section 58P requires that the value of the benefit is minor and the benefit is provided infrequently.

14. Further, whilst employers can, in some circumstances, reduce the value of a benefit if the cost of that benefit would be otherwise deductible for income tax purposes, this is not available for travel beginning or ending at work, including as a result of illness, because travel to and from work is considered to be inherently private in nature and therefore not deductible.<sup>3</sup>

### Recent developments

15. The ordinary meaning of taxi has recently been defined by the Federal Court in the *Uber* decision. The Federal Court considered the definition of 'taxi' for goods and services tax (GST) purposes and held that uberX drivers were required to be registered for GST on the basis that they were supplying taxi travel. The Court found '...that the ordinary meaning of the word "taxi" is a vehicle available for hire by the public and which transports a passenger at his or her direction for the payment of a fare that will often, but not always, be calculated by reference to a taximeter.'

16. We are aware that licensing regimes are being reviewed in a number of states and territories. The changes will have a direct impact on the way taxis are licenced and how ride-sourcing and hire cars are regulated in each state and territory. There is a possibility that the FBT consequences for travel undertaken by employees may differ depending on the state or territory within which the ride is taken.

17. The Court considered the ordinary meaning of 'taxi' due to it not being a defined term in GST legislation. We consider that it is appropriate to interpret the definition of 'taxi' in the FBT Act in a manner that encompasses the Federal Court's finding.

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<sup>3</sup> Pursuant to sections 24 and 52 of the FBT Act, the taxable value of an expense payment fringe benefit (where the benefit is the reimbursement an employer makes to an employee for an amount of expenditure) or a residual fringe benefit (a benefit that is not otherwise described in Divisions 2 to 11 of Part III of the FBT Act) can be reduced if the expense would have been deductible for income tax purposes.

18. As a result of the *Uber* decision and the proposed changes to taxi licensing, we consider it is appropriate to review our interpretation of the definition of ‘taxi’ in the FBT Act and to adopt an interpretation that accepts that a taxi may include a ride-sourcing vehicle or other vehicle for hire.

19. We propose therefore that a ‘taxi’, as defined in the FBT Act, means a vehicle that is available for hire by the public and is licensed to transport a passenger at his or her direction for the payment of a fare that will often, but not always, be calculated by reference to a taximeter.

### Interaction with other provisions

20. ‘Taxi’ is also referred to in other parts of the FBT Act. Specifically:

- section 7, which refers to car benefits
- section 8, which refers to exempt car benefits, and
- section 47, which refers to exempt residual benefits.

21. We do not consider that an interpretation of the definition of ‘taxi’ that includes ride-sourcing vehicles and other vehicles for hire would affect the operation of these sections.

### Consultation Questions

22. Consultation Question (1)

- Should a ‘motor vehicle that is licensed to operate as a taxi’ be interpreted to mean a motor vehicle that is statutorily permitted to transport a passenger at his or her direction for the payment of a fare that will often, but not always, be calculated by reference to a taximeter?

23. Consultation Question (2)

- Should the definition of ‘taxi’ in subsection 136(1) of the FBT Act be interpreted to include not just vehicles licensed to provide taxi services, including rank and hail services, but ride-sourcing vehicles and other vehicles for hire?

24. Consultation Question (3)

- If the proposed definition is adopted, the result will be an expansion of the exemption. Are there consequences of taking this approach that we should be aware of?

25. Consultation Question (4)

- Have you identified any issues with the proposed interpretation of ‘taxi’ in its application to other provisions within the FBT Act?

## References

ATOlaw topic(s)	Fringe benefits tax ~~ Exempt benefits ~~ Other exempt benefits ~~ Other Fringe benefits tax ~~ Interpretation ~~ Other
Legislative references:	FBTAA 1986 FBTAA 1986 Pt III Div 2 FBTAA 1986 7 FBTAA 1986 8 FBTAA 1986 Pt III Div 3 FBTAA 1986 Pt III Div 4 FBTAA 1986 Pt III Div 5 FBTAA 1986 24 FBTAA 1986 Pt III Div 6 FBTAA 1986 Pt III Div 7 FBTAA 1986 Pt III Div 8 FBTAA 1986 Pt III Div 9 FBTAA 1986 Pt III Div 10 FBTAA 1986 Pt III Div 11 FBTAA 1986 47 FBTAA 1986 52 FBTAA 1986 58P FBTAA 1986 58Z FBTAA 1986 136(1)
Case references:	<i>Uber BV v. Federal Commissioner of Taxation</i> [2017] FCA 110; 2017 ATC 20-608; (2017) 247 FCR 462
Other references:	Fringe benefits tax – a guide for employers
ATO references:	