


CR 2023/40 - Pemby Pty Ltd - use of an electric bicycle by an employee

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Status: **legally binding**

Class Ruling

Pemby Pty Ltd – use of an electric bicycle by an employee

❶ 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.

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What this Ruling is about

1. This Ruling sets out the fringe benefits tax (FBT) consequences of employers providing their employees with the use of an electric bicycle (e-bike) under a salary packaging arrangement with Pemby Pty Ltd (Pemby).
2. Details of this scheme are set out in paragraphs 13 to 20 of this Ruling.
3. All legislative references in this Ruling are to the *Fringe Benefits Tax Assessment Act 1986*, unless otherwise indicated.

Note: By issuing this Ruling, the ATO is not endorsing this product. Potential purchasers or users must form their own view about the product.

Who this Ruling applies to

4. 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 Pemby.

When this Ruling applies

5. This Ruling applies from 1 April 2022 to 31 March 2027.

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Ruling

6. A car benefit as described in section 7 will not arise from an employee's use of the e-bike as an e-bike is not a car.
7. 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.
8. A property benefit as described in section 40 will not arise from an employee's use of an e-bike as Pemby retains ownership of the e-bike during the term of the lease agreement.
9. A residual benefit as described in section 45 will arise from the employee's use of an e-bike.
10. 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.
11. 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 pursuant to section 51, using a methodology based on 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

12. 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.
13. Pemby operates a business that specialises in the supply and servicing of e-bikes, under the trading name 'Electric Bikes Brisbane'.
14. Each e-bike is a bicycle fitted with an electric motor. The e-bike's motor provides support when the rider is actively pedalling. It can also propel the e-bike without the rider's pedalling.
15. An e-bike can be used on roads in Australia and is not currently required to be registered in any Australian state or territory.
16. E-bike riders are not required to have a licence to ride an e-bike.
17. While most e-bikes have an odometer, there is no requirement for an odometer to be fitted.
18. Pemby will acquire e-bikes and proposes to supply the e-bikes to employers under a lease agreement (the Lease).

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19. The employer will then provide the e-bikes to its employees for work purposes and will also allow the employees to ride the e-bikes to and from work, by way of a salary packaging arrangement.

20. The Lease includes the following terms:

- Pemby will lease the e-bikes to the employers.
- The employers will have the right to quiet enjoyment and possession of the e-bikes.
- The employers will pay Pemby the lease fees in accordance with the Lease.
- The e-bikes will be stored at specified premises. There is scope for more than one premises to be nominated.
- The employers will be liable for costs associated with the maintenance, servicing or repair of the e-bikes.
- Risk or loss of, or damage to, or deterioration of, the e-bike is on the employer.
- The employers must have full comprehensive insurance to cover the e-bikes.

Commissioner of Taxation

26 July 2023

Status: **not legally binding**

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 under section 7 arise from an employee's use of an e-bike?

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

Where:

- (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**) ...

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

23. 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'.

24. The term 'motor cycle' is not defined in the FBTA or the ITAA 1997. It therefore takes on its ordinary meaning. *The Macquarie Dictionary online*¹ defines a 'motorcycle' as 'a motor vehicle resembling a bicycle, for one or two riders, sometimes with a sidecar attached'.

25. A '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)'.

26. An e-bike consists of a bicycle-like frame with an electric motor. It is therefore a 'motor vehicle' as it is a road vehicle that is powered by an electric motor. While an e-bike is powered by an electric motor rather than a motor powered by petrol, the type of motor

¹ Macmillan Publishers Australia, *The Macquarie Dictionary online*, www.macquariedictionary.com.au, accessed 19 July 2023.

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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'.

27. As an e-bike is a motor cycle, it is excluded from being a car pursuant to the definition of a 'car' in subsection 995-1(1) of the ITAA 1997.

28. Therefore, as an e-bike is not a car, a car benefit will not arise from the employee's use of an e-bike.

Will an expense payment benefit under section 20 arise from an employee's use of an e-bike?

29. 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 in 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.

30. Under the scheme, the lease payment is not an 'expense payment benefit' as the employer is under a legal obligation, pursuant to the Lease, to pay the lease payments to Pemby. The employer is not paying the lease payments on behalf of the employee.

Will a property benefit under section 40 arise from an employee's use of an e-bike?

31. 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.

32. Under the scheme, Pemby will retain ownership of the e-bike during the term of the Lease. Therefore, a property benefit will not arise from an employee's use of an e-bike.

Will a residual benefit under section 45 arise from an employee's use of an e-bike?

33. Section 45 provides that a benefit will be a 'residual benefit' in circumstances where 'the benefit is not a benefit by virtue of a provision of Subdivision A of Divisions 2 to 11 (inclusive)'.

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34. Subsection 136(1) defines a '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; ...

35. 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.

36. 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 a FBT liability, and in 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.

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. Therefore, a residual benefit would arise from the employee's use of an 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.

Status: **not legally binding**

How will the taxable value of a residual fringe benefit that arises from an employee's use of an e-bike be calculated?

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 the following 3 methods for calculating the taxable value of an 'external period residual fringe benefit':

- (a) where the provider was the employer or an associate of the employer and the recipients overall benefit was purchased by the provider under an arm's length transaction – the amount paid or payable by the provider in respect of the recipients current benefit;
- (b) where the provider was not the employer or an associate of the employer and the employer, or an associate of the employer, incurred expenditure to the provider under an arm's length transaction in respect of the provision of the recipients current benefit – the amount of that expenditure; or
- (c) in any other case – the notional value of the recipients current benefit; reduced by the amount of the recipients contribution insofar as it relates to the recipients current benefit.

45. The overall benefit provided to the employee by the employer is the use of a fully-maintained e-bike. As the e-bike is not purchased by the employer, the taxable value under paragraph 51(c) is the notional value of the recipient's (employee'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.

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47. MT 2034 provides guidance on the valuation of motor vehicles other than cars. There are 2 methods of valuation 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 to total kilometres travelled in the year ...

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

- full comprehensive insurance paid by the employer
- maintenance, servicing or repair (where the costs are paid by the employer), and
- risk or loss of the e-bike (where it is the responsibility of the employer).

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 2022, the rate is 17 cents per kilometre, as provided in Taxation Determination TD 2022/3 *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 2022?*

Status: **not legally binding**

References

Related Rulings/Determinations:

TD 2022/3; MT 2034

Legislative references:

- FBTAA 1986 Pt III Div 2 Subdiv A
- FBTAA 1986 Pt III Div 3 Subdiv A
- FBTAA 1986 Pt III Div 4 Subdiv A
- FBTAA 1986 Pt III Div 5 Subdiv A
- FBTAA 1986 Pt III Div 6 Subdiv A
- FBTAA 1986 Pt III Div 7 Subdiv A
- FBTAA 1986 Pt III Div 8 Subdiv A
- FBTAA 1986 Pt III Div 9 Subdiv A
- FBTAA 1986 Pt III Div 10 Subdiv A
- FBTAA 1986 Pt III Div 11 Subdiv A
- FBTAA 1986 7

- FBTAA 1986 7(1)(a)
- FBTAA 1986 20
- FBTAA 1986 40
- FBTAA 1986 45
- FBTAA 1986 47(6)
- FBTAA 1986 51
- FBTAA 1986 51(c)
- FBTAA 1986 52
- FBTAA 1986 136(1)
- FBTAA 1986 149(1)
- ITAA 1997 995-1(1)

Other references:

Macmillan Publishers Australia, The
Macquarie Dictionary online,
www.macquariedictionary.com.au

ATO references

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