

# ***LI 2024/10 - Explanatory statement -***



---

## Explanatory Statement

# Fringe Benefits Tax Assessment (Adequate Alternative Records – Remote Area Holiday 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 remote area holiday transport (section 60A or section 61 of the FBTAA),
  - (b) the benefit consists in whole or part of a reimbursement of a 'Division 28 car expense' incurred by the employee 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 60A or section 61 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 family member 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 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 of lodgment of their FBT return for the relevant 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

James performs his duties in his position with DEF Company Pty Ltd (DEF Co) in a remote area of Western Australia, and lives on work premises. This area is not at a location in, or adjacent to, an eligible urban area. DEF Co agrees to reimburse James for remote area holiday transport expenses that relate to the use of his car for a week-long holiday to Fremantle.

James sends his employer an email outlining the dates in which he travelled and his destination address in Fremantle, as well as odometer readings for the start and end of the trip to Fremantle, and the start and end of the return trip. He also confirmed he travelled alone.

DEF Co organises for James to be reimbursed by reference to the distance travelled in the car in accordance with the 'cents per kilometre' method outlined in Division 28 of the *Income Tax Assessment Act 1997*.

This reimbursement constitutes an expense payment fringe benefit. DEF Co determines that under section 61 of the FBTA, DEF Co is entitled to reduce the taxable value of the fringe benefit. Instead of obtaining the declaration from James as required by paragraph 61(1)(c), DEF Co seeks to rely on section 123AA of the FBTA.

DEF Co has obtained records containing, in aggregate, the minimum information that can be relied upon as an alternative to the declaration. All of the required information was obtained and recorded before the due date for lodgment of DEF Co's FBT return. The relevant records are as follows:

Table 1: DEF Co records that contain the minimum information

Required minimum information	Record held by DEF Co
<ul style="list-style-type: none"> <li>• The name of the employee or family member receiving the benefit</li> </ul>	Payroll records recording the reimbursement
<ul style="list-style-type: none"> <li>• The number of family members travelling in the car</li> <li>• The address of the arrival location</li> </ul>	Email sent by James

<ul style="list-style-type: none"> <li>• The dates of travel</li> <li>• The total number of kilometres travelled in the car between the departure and arrival locations</li> </ul>	
<ul style="list-style-type: none"> <li>• The address of the departure location</li> </ul>	Company HR records

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

### 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. Sections 60A and 61 of the FBTA allow an employer to reduce the taxable value of fringe benefits that are provided in respect of remote area 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 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. 'Remote area holiday transport' is defined in section 143 of the FBTA. This is transport that enables an employee who performs employment duties in a remote area, defined in section 140 of the FBTA, to travel from and back to that remote area for the purpose of having a holiday of three working days or more. 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 locality.

15. The reduction in taxable value permitted under section 60A or 61 of the FBTA is limited to 50 per cent of 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 subparagraph 60A(2)(b)(i) and paragraph 61(1)(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 an 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 legislative 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*

*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*

### **Fringe Benefits Tax Assessment (Adequate Alternative Records – Remote Area 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**

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 remote area 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 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.