

LI 2024/11 - Explanatory statement -



Explanatory Statement

Fringe Benefits Tax Assessment (Adequate Alternative Records – Travel Diaries) 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 outlines the adequate alternative records the Commissioner of Taxation will accept as an alternative to a 'travel diary' (as defined in subsection 136(1) of the FBTAA) required under the following provisions:
 - (a) paragraph 24(1)(d) of the FBTAA for an expense payment fringe benefit that is an extended travel expense payment benefit (other than an international aircrew expense payment benefit),
 - (b) paragraph 44(1)(d) of the FBTAA for a property fringe benefit that is an extended travel property benefit (other than an international aircrew property benefit), and
 - (c) paragraph 52(1)(d) of the FBTAA for a fringe benefit that is an extended travel residual benefit (other than an international aircrew residual benefit).
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 travel diaries) 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)). It allows an employer to which the instrument applies to accept adequate alternative records instead of a travel diary referred to in paragraphs 24(1)(d), 44(1)(d) and 52(1)(d) of the FBTAA.
8. Section 6 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 duration of the travel, and
 - (c) for each activity undertaken by the employee in the course of producing their assessable income while undertaking the travel, the:

- (i) place where the activity was undertaken
- (ii) date and approximate time the activity commenced
- (iii) duration of the activity, and
- (iv) nature of the activity.

9. The detail of each activity the employee undertakes in the course of producing their assessable income must be recorded before, at the time of, or as soon as reasonably practicable after the relevant activity took place. A record will not meet the prescribed requirements of this legislative instrument if it attempts to reconstruct an account of the employee's activities at a significantly later date (such as, at the time the employer is lodging its FBT return for the year).

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 that 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), logbooks, employer policies, hotel receipts, employee itineraries, conference programs 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 FBTAA deems the employee to have the travel diary at the time that they hold the records, and the underlying travel diary is required to be obtained by the declaration date.

Example 1

Company Ltd sends their employee, Samara, overseas to conduct business with a foreign client. Samara's travel lasts a total of 14 days, and she is undertaking work for the duration of the travel.

Company Ltd reimburses Samara for the costs of her flights and accommodation. As these reimbursements constitute expense payment fringe benefits, the 'otherwise deductible rule' in section 24 of the FBTAA may apply to reduce the taxable value of the benefit.

Samara maintains a work calendar on Company Ltd's systems to schedule and record her appointments and activities. She uses this calendar to record all business activities undertaken while she is overseas. Activities in the calendar are generally recorded in advance, and if Samara has unplanned changes to her schedule she updates the calendar at the time of the change or shortly afterward.

In applying to receive the reimbursement, Samara gives Company Ltd's payroll administration team access to her work calendar for the period of the travel.

As the benefits are extended travel expense payment benefits, Company Ltd needs to obtain a travel diary from Samara to apply the 'otherwise deductible rule', pursuant to paragraph 24(1)(d) of the FBTAA.

Instead of obtaining a travel diary, Company Ltd can rely on section 123AA of the FBTAA. In accordance with the legislative instrument, Samara's work calendar contains the required minimum information to be relied upon as an alternative to the travel diary.

Example 2

ACo Pty Ltd sends their employee, Ted, to a week long (Monday to Friday) conference at the Sunshine Coast in Queensland. Ted flies to Queensland on Sunday afternoon and checks into the conference venue.

ACo's travel policy allows extra days to be added onto business travel, where the extra days are less than 50% of the business travel, the employee pays for additional costs, and manager approval is provided. Ted obtains his manager's approval to stay 2 extra nights in Queensland (i.e., Friday and Saturday nights). He flies home on the following Sunday.

ACo pays for Ted's conference attendance fee, flights, accommodation for the week (excluding the 2 extra nights). ACo reimburses Ted for any travel to and from the airport, and for meals not provided during the conference.

Ted provides ACo with a copy of his flight itinerary, conference and accommodation tax invoice, and conference itinerary. When Ted returns to work on the Monday, he also provides receipts for travel to and from the airport and receipts for meals not provided during the conference.

As the benefits are extended travel expense payment benefits, ACo needs to obtain a travel diary from Ted to apply the 'otherwise deductible rule', pursuant to paragraph 24(1)(d) of the FBTA.

Instead of obtaining a travel diary, ACo can rely on section 123AA of the FBTA. In accordance with the legislative instrument, Ted's flight itinerary, conference itinerary, accommodation invoice, receipts and email records contain the required minimum information to be relied upon as an alternative to the travel diary.

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: OBPR23-04436).

Background

13. Where an employer provides certain fringe benefits, they are able to reduce the taxable value of the fringe benefit by the amount that their employee would have been able to claim as a once-only deduction if they had incurred the expenditure to obtain the benefit. This is known as the 'otherwise deductible rule' and is contained in:
 - (a) section 24 of the FBTA for an expense payment fringe benefit,
 - (b) section 44 of the FBTA for a property fringe benefit, and
 - (c) section 52 of the FBTA for a residual fringe benefit.
14. For an employer to apply the 'otherwise deductible rule' they must have certain documentation to substantiate the extent to which the travel-related fringe benefit would have been deductible to the employee. Specific documentation, namely a 'travel diary', is required for benefits that concern 'extended travel', pursuant to:
 - (a) Paragraph 24(1)(d) of FBTA for an expense payment fringe benefit that is an extended travel expense payment benefit (other than an international aircrew expense payment benefit),
 - (b) paragraph 44(1)(d) of the FBTA for a property fringe benefit that is an extended travel property benefit (other than an international aircrew property benefit), and
 - (c) paragraph 52(1)(d) of the FBTA for a fringe benefit that is an extended travel residual benefit (other than an international aircrew residual benefit).

15. A fringe benefit concerns 'extended travel' where it is in respect of travel by the recipient:
 - (a) outside Australia for more than five consecutive nights, or
 - (b) within Australia for more than five consecutive nights, where the travel is not exclusively for performing employment-related duties (see the definitions in subsection 136(1) of the FBTAA for 'extended travel expense payment benefit'; 'extended travel property benefit' and 'extended travel residual benefit').
16. The fact that the business travel requires the employee to stay away over a weekend will not, itself, mean the trip is not undertaken exclusively in the course of their employment.
17. In determining whether a travel diary (or corresponding alternative records) needs to be kept, an employer must assess the number of nights the employee is away from home. The number of nights away from home includes transit time.
18. This instrument prescribes alternative records that an employer can use instead of a 'travel diary' to reduce the taxable value of these benefits under the 'otherwise deductible rule' for the relevant FBT year.

Consultation

19. Subsection 17(1) of the *Legislation Act 2003* requires that the Commissioner undertake appropriate and reasonably practicable consultation before making a legislative instrument.
20. For this instrument, broad public consultation was undertaken from 9 to 30 September 2022. Targeted consultation was also undertaken from 28 September 2022 to 14 October 2022.
21. The draft instrument and draft explanatory statement were published on the Treasury Consultation web page available at treasury.gov.au as part of a joint Treasury-ATO consultation process.
22. The legislative instrument and explanatory statement were amended to reflect feedback received through consultation. The main issues raised included the use of internal policies and documents, itineraries and receipts as alternative records, 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

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

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 travel diary for certain fringe benefits in respect of travel.

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 travel diary. 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.