

LI 2024/7 - Explanatory statement -



Explanatory Statement

Fringe Benefits Tax Assessment (Adequate Alternative Records – Private Use of Vehicles Other Than Cars) 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 residual fringe benefits where:
 - (a) the benefit consists of the private use of a motor vehicle other than a car,
 - (b) the employer seeks to reduce the taxable value of the benefit under the ‘otherwise deductible rule’ in section 52 of the FBTAA, and
 - (c) the employer chooses to ascertain the amount of this reduction by reference to the number of business use and/or private use kilometres travelled in the vehicle.
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 52(1)(c) of the FBTAA for a residual fringe benefit.
8. The instrument applies to the class of employers specified in subsection 5(2) – that is, employers reducing the taxable value of a residual fringe benefit described in section 52 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 details of the vehicle,
 - (c) the date or dates (inclusive) on which the vehicle was provided during the FBT year,

- (d) the total number of whole kilometres travelled in the vehicle during that period,
- (e) the total number of whole business use kilometres travelled in the vehicle during that period, and
- (f) the percentage of operating costs of the vehicle for which the employee would have been entitled to claim an income tax deduction, had they incurred those costs.

10. As indicated in Miscellaneous Taxation Ruling MT 2034 *Fringe benefits tax: private use of vehicles other than cars*, the details of the vehicle must be sufficient to identify which category the vehicle falls within from the following categories:

- (a) engine capacity between 0 and 2,500 cc,
- (b) engine capacity over 2,500 cc, or
- (c) motorcycle.

11. 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), employer policies, and calculations of business travel.

12. 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 FBT year, or such later date as 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 1: mobile phone application used to record business use via GPS

Dominic works for XYZ Co Ltd as a delivery driver. As part of his employment arrangement, he is provided the use of a two-tonne capacity van for the full FBT year. He performs deliveries using the van, but is also able to use it privately outside of his work duties.

Dominic utilises a mobile phone app that is connected to XYZ Co Ltd's systems, which records when he is undertaking deliveries for them. The app records the make and model of the van, and records travel distances for each delivery using the phone's GPS. The app also has a 'notes' section, and Dominic records the odometer readings for the van for the start and end of the FBT year in this section.

XYZ Co Ltd is providing a residual fringe benefit, and will be able to partially reduce the benefit's taxable value using the 'otherwise deductible rule'. XYZ Co Ltd needs to obtain a declaration from Dominic to apply the 'otherwise deductible rule', pursuant to paragraph 52(1)(c) of the FBTAA.

Instead of obtaining the declaration, XYZ Co Ltd can rely on section 123AA of the FBTAA. In accordance with this legislative instrument, XYZ Co Ltd has obtained adequate alternative records containing the required minimum information:

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

Required minimum information	Records held by XYZ Co
<ul style="list-style-type: none"> • Name of employee receiving the benefit • Make and model of van 	Mobile phone app

<ul style="list-style-type: none"> Total kilometres travelled for the FBT year 	Odometer readings
<ul style="list-style-type: none"> Total number of whole business use kilometres travelled during that period (or private use kilometres if business kilometres are subtracted from total kilometres) 	GPS recordings Dates of deliveries

XYZ Co Ltd chooses to calculate the net taxable value (after the application of the ‘otherwise deductible rule’) in line with the methodology described by the Commissioner in Miscellaneous Tax Ruling MT 2034 *Fringe benefits tax: private use of motor vehicles other than cars*. Using the total number of private use kilometres and the van’s engine capacity determined via its make and model, it applies the appropriate ‘cents per kilometre’ rate to find the net taxable value.

Example 2: information recorded in fleet register when providing vehicles

Motor Co provides its employee Kim a motorcycle for a period of one month. Kim is required to use the motorcycle for business purposes on 2 occasions, but otherwise is free to use it for private purposes. Motor Co maintains a register of their fleet of motorcycles, noting the engine capacity of each motorcycle, and when a motorcycle has been provided to an employee.

In their register, Motor Co records the odometer reading when it initially ‘checks-out’ the motorcycle to Kim, and again upon ‘check-in’ when they receive it back from her. Kim provides, by email, the start and end odometer readings for one of the business-related trips she undertakes.

Kim forgets to record the start and end odometer reading for the second trip. She looks at her work schedule and provides, by email, the departure and arrival addresses for the second business-related trip to Motor Co. Motor Co uses an electronic map to determine the number of kilometres for this second business-related trip and keeps a record of this calculation.

Instead of requesting a declaration from Kim to support their application of the ‘otherwise deductible rule’, Motor Co can rely on section 123AA of the FBTA as they have obtained adequate alternative records that, in aggregate, contain the required minimum information:

Table 2: Motor Co records that contain the required minimum information

Required minimum information	Records held by Motor Co
<ul style="list-style-type: none"> Name of employee receiving the benefit Engine capacity of vehicle Period during which the vehicle was provided 	Fleet register
<ul style="list-style-type: none"> Total number of whole kilometres travelled in the vehicle during that period 	‘Check-out’ and ‘check-in’ odometer readings
<ul style="list-style-type: none"> Total number of whole business use kilometres travelled during that period 	Email with start and end odometer readings for business-related trip Email with departure and arrival addresses of business-related trip Electronic map calculation of kilometres

Compliance cost assessment

13. Minor – there will be no additional regulatory impacts as the instrument is minor and machinery in nature (The Office of Impact Assessment reference: OIA23-06211).

Background

14. Where an employer provides a fringe benefit by making a vehicle other than a car available for their employee's private use, the benefit will not be a car benefit under section 7 of the FBTAA or an exempt car benefit under section 8 of the FBTAA. It will be a residual fringe benefit under section 45 of the FBTAA (assuming it is not exempt under subsection 47(6)).

15. Paragraph 51(c) of the FBTAA provides that the taxable value of this fringe benefit will be the amount that the employee could reasonably be expected to have been required to pay to obtain the use of the vehicle under an arm's length transaction for the period in question.

16. Section 52 of the FBTAA allows an employer to reduce the taxable value of a residual fringe benefit based on the amount that the employee would have been able to claim as a once only deduction if they had incurred their own expenditure to obtain the benefit. This is known as the 'otherwise deductible rule'.

17. Where a vehicle has had both business use (that is, use for which an employee would have been able to claim an income tax deduction) and private use, the employer may seek to establish the amount that can be reduced under the 'otherwise deductible rule' by referring to the proportions of business use and/or private use of the vehicle in kilometres.

18. The Commissioner of Taxation has accepted the validity of this approach to determining the application of the 'otherwise deductible rule'. In Miscellaneous Tax Ruling MT 2034, the Commissioner outlines acceptable methodologies to establish:

- (a) the gross taxable value under paragraph 51(c) of the FBTAA, and
- (b) the net taxable value after applying a reduction pursuant to section 52 of the FBTAA.

19. For example, one methodology accepted by the Commissioner in MT 2034 is the usage of a cents per kilometre rate which, when applied to the total private kilometres travelled in the FBT year, produces the net taxable value. Recording a total number of private kilometres is accepted for the purposes of section 52 of the FBTAA in lieu of recording an amount that would have been deductible.

20. Another methodology as outlined in MT 2034 is to use the operating cost to the employer of the particular vehicle. Operating costs for these purposes would be as per component C of the car operating cost formula for car fringe benefits under section 10 of the FBTAA – that is, the operating costs are calculated on the same basis as for car fringe benefits. As required by paragraph 10(3)(a) of the FBTAA, operating costs would include the cost of fuel, repairs and maintenance, registration and insurance and leasing charges (or depreciation and imputed interest, as appropriate). The operating costs would be reduced under section 52 of the FBTAA, broadly, according to the proportion of business kilometres to total kilometres travelled in the year.

21. In accordance with paragraph 52(1)(c) of the FBTAA, 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 the employer can use instead of the employee declaration to reduce the taxable value for the relevant FBT year.

Consultation

22. Subsection 17(1) of the *Legislation Act 2003* requires that the Commissioner undertake appropriate and reasonably practicable consultation before making a legislative instrument.

23. For this instrument, broad public consultation was undertaken from 12 October 2023 to 9 November 2023.

24. 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.

25. As a result of feedback received during consultation, the explanatory statement was amended to improve its clarity.

Legislative references

Acts Interpretation Act 1901

Fringe Benefits Tax Assessment Act 1986

Human Rights (Parliamentary Scrutiny) Act 2011

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 declaration for a residual fringe benefit in respect of private use of a vehicle other than a car that would be otherwise deductible.

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.