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## Explanatory Statement

# Fringe Benefits Tax Assessment – Adequate Alternative Records (Relocation Transport) Standard 2022

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### 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 a substitute for an employee declaration in respect of expense payment fringe benefits where:
  - (a) the benefit is in respect of relocation transport, and
  - (b) the employer seeks to reduce the taxable value of the benefit under section 61B of the FBTAA.
3. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
4. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

### Date of effect

5. This instrument commences on 1 April 202X.

### What is the effect of this instrument

6. The effect of this instrument is to reduce the compliance burden of fringe benefits tax (FBT), by allowing employers with adequate alternative records to rely on these records, rather than employee declarations, to assess their liability to FBT for the FBT year.

### Compliance cost assessment

7. [\[Include the compliance cost assessment statement from the Revenue Analysis Branch minute here.\]](#)

### Background

8. This instrument has been developed to ensure that employers have a clear understanding regarding what alternative records can be relied on for the purposes of reducing the taxable value of certain expense payment fringe benefits provided to employees or associates of their employees.

9. Section 61B of the FBTAA allows an employer to reduce the taxable value of certain expense payment fringe benefits that are provided in respect of relocation transport. The reduction is available where:

- (a) they reimburse the recipient for a Division 28 car expense<sup>1</sup>
- (b) the reimbursement is calculated on a cents per kilometre basis, and
- (c) the recipient used their own car.<sup>2</sup>

10. In brief and for the purposes of this instrument, relocation transport is transport that enables an employee to relocate to a new residence in circumstances where they are required to live away from home in order to perform employment-related duties, or are similarly required to relocate their usual place of residence. This is provided under section 143A of the FBTAA.

11. The reduction is limited to the amount the employer would have reimbursed based on the applicable rate<sup>3</sup> applied on a cents per kilometre basis for that amount of travel.

12. Under paragraph 61B(c) of the FBTAA, the employer needs to obtain a signed declaration in the approved form. This instrument prescribes alternative records an employer can use instead of the declaration to reduce the taxable value for the year.

### **Information that must be contained in adequate alternative records**

13. The instrument sets out the minimum information that must be present in any type of record an employer may keep. There is no limit on the number of records that may, in aggregate, meet the information requirements.

14. The record, or records when considered in aggregate, need to contain the following minimum information.

- (a) The name of the employee or associate of the employee receiving the benefit
- (b) The number of family members travelling in the car<sup>4</sup>
- (c) The make and model of the car driven
- (d) The address of the departure location
- (e) The address of arrival location
- (f) The date or dates of travel
- (g) The total number of whole kilometres travelled between the address of departure and the address of arrival.

15. The particulars of the car are necessary to satisfy the requirement in subparagraph 61B(c)(i) of the FBTAA. However, as the applicable rate is static for the year and does not vary based on the particular type of car, additional information (such as engine capacity) does not need to be recorded.

### **Types of records**

16. The records envisaged by this instrument are not limited to one type or form of record. Any type or form of record may satisfy the requirements of this instrument if it contains the above-mentioned minimum information. If multiple different records collectively contain the minimum

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<sup>1</sup> A Division 28 car expense means a car expense as defined in section 28-13 of the *Income Tax Assessment Act 1997* (ITAA 1997), but does not include a car expense covered by section 28-165 of that Act.

<sup>2</sup> A car that is either owned by, or leased to, the recipient. 'Car' is defined in subsection 136(1) of the FBTAA.

<sup>3</sup> The applicable rate is the sum of the basic car rate (the rate referred to in subsection 28-25(4) of the ITAA 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*).

<sup>4</sup> This includes the employer, or associate of employee, receiving the benefit if they travelled in the car.

information when viewed together, the records will be accepted in aggregate as satisfying the requirements.

17. Records can be stored electronically or in paper form and could include, but are not limited to: employment contracts, payroll records, job descriptions, employer and employee correspondence (for example via email or text message), employer asset register, logbooks, employer policies, financial records/ledger accounts, notations to the accounts, and calculations of private travel (for example via a diary or calendar).

18. 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 – generally, this is the due date for lodgment of their FBT return for the relevant year. 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: information received from multiple sources during the ordinary process of providing the benefit**

19. Maddy's position with ABC Company Pty Ltd (ABC Co) in Brisbane is being relocated to Townsville. ABC Co agrees to reimburse Maddy for her relocation expenses, including her travel expenses. Maddy uses her own car to drive to Townsville, along with her spouse.

20. Maddy sends her employer an email outlining the dates in which she travelled from Brisbane to Townsville as well as odometer readings for the start and end of the travel.

21. Subsequently, the ABC Co accounts manager realises that Maddy forgot to include in her email the make and model of her car, the number of family members who travelled, and the departure and arrival addresses. At the time, Maddy is on holiday and does not have access to her work email account.

22. The accounts manager already has the address information, as they have a copy of the engagement letter from removalists who assisted with the relocation. The accounts manager asks Maddy by text message to supply the make and model of the car she was driving, along with details of who was in the car with her. The accounts manager takes a screenshot of this message and stores it alongside Maddy's email in the company's system.

23. ABC Co organises for Maddy to be reimbursed by reference to the distance travelled with the car in accordance with the 'cents per kilometre' method outlined in Division 28 of the ITAA 1997.

24. This reimbursement constitutes an expense payment fringe benefit. Under section 61B of the FBTAA, ABC Co is entitled to reduce the taxable value of the fringe benefit if the requirements of that section are met. Instead of obtaining the declaration from Maddy required by paragraph 61B(c), ABC Co seeks to rely on section 123AA of the FBTAA.

25. In accordance with this legislative instrument, ABC Co has obtained records containing, in aggregate, the minimum information to be relied upon as an alternative to the declaration. All of the required information was obtained and/or recorded before the due date for lodgment of ABC Co's FBT return. The relevant records are as follows:

<b>Required minimum information</b>	<b>Record held by ABC Co</b>
<ul style="list-style-type: none"> <li>• The name of the employee or associate of the employee receiving the benefit</li> <li>• The date or dates of travel</li> <li>• The total amount of kilometres travelled between place of departure and destination</li> </ul>	Email sent by Maddy
<ul style="list-style-type: none"> <li>• The number of family members travelling in the car</li> <li>• The make and model of the car</li> </ul>	Text message sent by Maddy

<b>Required minimum information</b>	<b>Record held by ABC Co</b>
<ul style="list-style-type: none"> <li>• The address of the departure location</li> <li>• The address of the arrival location</li> </ul>	Engagement documents with removalists.

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

### **Example 2: employee uses mobile phone app to record information**

27. Edwin is single and lives in Horsham, Victoria. He has been advised by his employer, Action Ltd that he is being relocated to the Darwin office and that his employer will reimburse him for the relocation expenses, including travel expenses, Edwin incurs.

28. Edwin and Action Ltd agree that Edwin will drive his own car from Horsham to Darwin, and Action Ltd will reimburse him on a 'cents per kilometre' basis in line with the method outlined in Division 28 of the ITAA 1997.

29. Edwin has an auto-mileage tracker app on his phone that contains details about the make and model of his car. It automatically records each trip he takes, and it can also classify business trips. Edwin uses this app when he drives from Horsham to Darwin.

30. After arriving at his new accommodation in Darwin, Edwin sends the relevant information contained on the app to Action Ltd. This information can be relied upon by Action Ltd as an alternative to the declaration mentioned in paragraph 61B(c) of the FBTA.

### **Consultation**

31. Subsection 17(1) of the *Legislation Act 2003* requires, before the making of a determination, that the Commissioner is satisfied that appropriate and reasonably practicable consultation has been undertaken.

32. As part of the consultation process, you are invited to comment on the draft determination and its accompanying draft explanatory statement.

### **Legislative references**

*Acts Interpretation Act 1901*

*Fringe Benefits Tax Assessment Act 1986*

*Fringe Benefits Tax Assessment Regulations 2018*

*Income Tax Assessment Act 1997*