



Explanatory Statement

Fringe Benefits Tax Assessment – Adequate Alternative Records (Travel Diaries) Standard 2022

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 a ‘travel diary’¹ required under the following provisions:
 - (a) Paragraph 24(1)(d) of 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).
 - (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*.
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 travel diaries, to assess their liability to FBT for the FBT year.

Compliance cost assessment

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

¹ ‘Travel diary’ is defined in subsection 136(1) of the FBTAA.

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 reducing the taxable value of certain fringe benefits under the 'otherwise deductible rule', where a travel diary requirement exists.

9. 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 relevantly provided for in:

- (a) section 24 of the FBTAA for an expense payment fringe benefit
- (b) section 44 of the FBTAA for a property fringe benefit, and
- (c) section 52 of the FBTAA for a residual fringe benefit.

10. 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 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).
- (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).

11. 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.²

12. In determining whether a travel diary (or the corresponding alternative records) needs to be kept, an employer needs to assess the number of nights the employee is away from home. The number of nights away from home includes transit time.

13. 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 year.

Information that must be contained in adequate alternative records

14. 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.

15. The record, or records written in English when considered in aggregate, need to contain the following minimum information:

- (a) The name of the employee receiving the benefit
- (b) The duration of the travel

² 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'. The fact that the business travel requires the employee to stay away over a weekend will not, in itself, mean the trip is not undertaken exclusively in the course of their employment.

- (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.

16. 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).

Types of records

17. The records envisaged by this instrument are not limited to one type or form of record. Any form of record may satisfy the requirements of this instrument if it contains the minimum information. If multiple different records collectively contain the minimum information when viewed together, the records will be accepted in aggregate as satisfying the requirements.

18. 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, calculations of private travel.

19. 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 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

20. *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 performing business activity for the entire duration of the travel.*

21. *Company Ltd reimburses Samara for the costs of her flights and accommodation. These reimbursements constitute expense payment fringe benefits, and they may be able to reduce their taxable value under the 'otherwise deductible rule' in section 24 of the FBTAA.*

22. *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 of the business activities she undertakes while on the overseas travel. 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.*

23. *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.*

24. *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.*

25. *Instead of obtaining a travel diary, Company Ltd can rely on section 123AA of the FBTA. 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.*

Consultation

26. 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.

27. 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

Income Tax Assessment Act 1997

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