

Comments from the CTA on the FBT Recordkeeping Exposure Draft and draft Legislative Instruments on Travel Diaries and Relocation Transport

- The power provided to the Commissioner in the Exposure Draft is fairly broad. However, the exercise of that power as evidenced in a Legislative Instrument (LI) issued pursuant to this power must be closely examined. All LIs issued under this power must be subject to an appropriate level of consultation before being finalised.
- The two draft LIs on travel diaries and relocation transport as currently drafted reflect circumstances generally more relevant to smaller employers and so have limited practical application for large businesses (or potentially other types of employers such as not-for-profit organisations).
- Unless they are intended to have a very limited application or be limited to reducing the compliance burden for one type of employer only, LIs issued under the power in draft section 123AA of the FBTAA should reflect the circumstances of different types of employers. The Commissioner is empowered to do this under draft section 123AA(2)(c). This can be achieved through the inclusion of an appropriate range of practical examples in the Explanatory Statements to the LIs.
- For example, there are larger employers (ie SGEs) that have robust internal policies, governance procedures and tight cost controls in place to ensure, for example, that expenditure related to travel is only for business purposes. There may be exceptions to the policy where special approval is given for some limited expenditure paid for by the employer company that may attract FBT. An example of such a policy for travel is where a company disallows the number of days of annual leave (private purpose travel) added to travel for business purposes to be greater than the number of days of business travel.
- As the Commissioner is being given the power for the LIs to apply to one or more classes of persons (draft section 123AA(2)(c)), from a large business perspective, an additional example should be included in the Explanatory Statement for each draft LI that better reflects the large business context.
 - For the LI on travel diaries, that example could be about what 'adequate alternative records' are required (if any) where there is a business travel policy in place that either prevents or restricts the amount of private travel that can be added on. The example could compare the circumstances where there is an employee that engages in business travel only and an employee that engages in business travel plus private travel. [There is precedent for the ATO to rely on a taxpayer's internal policies in advice and guidance – see [TD 2022/4](#).]
 - For the LI on relocation transport, an example of a policy is one that clearly sets out the parameters of the use of an employee's own vehicle for relocation, that the vehicle is not used for business purposes and reasonable travel costs (including mileage allowance for use of own vehicle) will be reimbursed. Another example is where the company policy mirrors the FBT-exempt items only.

- Otherwise, the LIs and their accompanying Explanatory Statements as currently drafted have limited practical application and will be restricted to applying only to employers that have similar circumstances to those set out in the examples in the Explanatory Statements, preventing many employers from being able to benefit from the reduced recordkeeping compliance burden the LIs aim to provide.

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