



18 October 2022

Director
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By email: FBTRecordkeeping@TREASURY.GOV.AU

**Re: Fringe Benefits Tax Assessment
– Adequate Alternative Records Standard 2022**

Dear Philip,

The NTAA and its members thank you for the opportunity to comment on the following Explanatory Statements:

- Fringe Benefits Tax Assessment – Adequate Alternative Records (Travel Diaries) Standard 2022; and
- Fringe Benefits Tax Assessment – Adequate Alternative Records (Relocation Transport) Standard 2022.

We understand and support the Government's intention with respect to the proposed legislative amendments that will be made to the *Fringe Benefits Tax Assessment Act 1986* in the form of amendments contained in *Treasury Laws Amendment (Measures for Consultation) Bill 2022*.

We have divided our feedback with respect to travel diaries and relocation transport separately, although our focus relates to travel diaries (being a significant issue for most employers).

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

1. More practical guidance on acceptable alternative records

Our first suggestion involves the document providing more examples of records or documents that can be relied upon by employers as an effective alternative for a travel diary.

At paragraphs 14 and 15 of the Explanatory Statement, the document refers to the minimum information requirements that must be satisfied in order for a record or document to be accepted as a valid alternative to a travel diary.

Paragraph 18 discusses and provides broad examples of the types of documents/information that can be maintained by an employer that may constitute an alternative record for these purposes.

Our concern is that the legislative instrument does not provide sufficient practical guidance on the types of documents that will be permissible in these circumstances. Reference is made to employment contracts, payroll records, job descriptions and employer policies.

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The NTAA recommends that the instrument provides more specific guidance on the types of records that would substitute for a valid travel diary. For example, it is suggested that the legislative instrument refer to travel itineraries devised by an employer (or travel agent where appropriate), travel schedules devised by an employer, and other internal documentation that provides sufficient information to meet the requirements of a travel diary.

In addition to the above, it would be valuable if further examples were provided within the Explanatory Statement. For example, paragraph 18 confirms that multiple different records may, collectively, when viewed together, meet the minimum information requirement. It would be useful to provide a practical illustration of this scenario.

2. Clarifying the extent to which employers can rely on their own documentation

It is noted that paragraph 1.14 of the Explanatory Materials states that “[the] content of determinations made by the Commissioner gives employers the ability to identify the kind of alternative documents or records they could use, including their own records if available, which would reasonably satisfy their FBT record keeping obligations.”

As currently drafted, the extent to which an employer is able to rely on its own records to satisfy its minimum information requirements under the Explanatory Statement is not entirely clear. For instance, must the documents prepared by an employer always be validated by an employee (i.e., to validate the accuracy of the information that is contained within the alternative document such as a travel itinerary (assuming a travel itinerary is acceptable, as noted above))?

At present, the (only) example provided in the Explanatory Statement involves the employee in question (Samara) preparing and maintaining a work calendar, which was accepted as an alternative to a ‘travel diary’ for FBT purposes. It would be useful to also include an example where one or more documents are prepared and maintained by the employer which together are accepted as an alternative to a ‘travel diary’. It would also be necessary to indicate the degree to which (if any) these documents must be validated by the employee involved.

3. Recording the information ‘before, at the time of, or as soon as practicable after the relevant activity’ has been undertaken

One key legislative requirement that creates frustration for employers is the need for a travel diary entry to arise ‘before, at the time of, or as soon as practical after the relevant activity’.

It is noted that this requirement is replicated in the Explanatory Statement at paragraph 16, which states the following: “[t]he 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.”

To that end, to further enhance the practical use of the Explanatory Statement, would the ATO consider relaxing this strict requirement (i.e., where an alternative document is being relied upon instead of a travel diary)?

For example, if an employer is using an alternative document, such as a calendar (and/or other document) under this Explanatory Statement, the fact the employee does not validate the accuracy of the information in the calendar until sometime after they return from their business trip, should not invalidate the document for FBT purposes (which may be well after the particular activity has been undertaken by the employee but prior to the employer lodging its FBT return).

We would suggest that strictly enforcing the timing requirements of an alternative document may render the value of the concession redundant in many cases.

The NTAA suggests that a statement be contained within the legislative instrument that confirms an alternative document will remain valid (subject to the information requirements being satisfied), even where the accuracy of the document is not confirmed until the employee returns from the business trip (assuming such validation is required). That is, the alternative document remains valid even where it is not validated by the employee ‘before, at the time of, or as soon as practical after the relevant activity’.

Explanatory Statement: Fringe Benefits Tax Assessment – Adequate Alternative Records (Relocation Transport) Standard 2022

One of the most common frustrations associated with employers providing relocation transport benefits relates to the very prescriptive nature of the employee declaration requirements.

As stated in paragraph 14 of this Explanatory Statement, the minimum information required to rely on alternative records, rather than obtain a declaration, is as follows:

- (a) The name of the employee or associate of the employee receiving the benefit;
- (b) The number of family members travelling in the car (this includes the employer, or associate of employee, receiving the benefit if they travelled in the car);
- (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; and
- (g) The total number of whole kilometres travelled between the address of departure and the address of arrival.

The ATO's approach in the Explanatory Statement, which accepts records such as emails, apps, text messages etc., as potentially meeting the minimum information requirement offers a practical and sensible alternative to obtaining a declaration from the employee.

However, the NTAA view is that the practicality of the Explanatory Statement can be further enhanced by further streamlining the information requirements associated with employers who provide employees with the provision of relocation benefits and the necessary documentation requirements (e.g., removing the requirement to obtain the specific make and model of the car).

We believe that there are elements associated with relocation benefits that provide little value for confirming FBT concessions.

Furthermore, as noted above, could the ATO confirm within this legislative instrument the extent to which an employee is required to validate any or all of the information requirements?

It is noted at paragraph 17 of this Explanatory Statement that "*calculations of private travel (for example via a diary or calendar)*" may be required. It is not clear why there is a need for an employer to obtain details of private travel in the context of relying on alternative records for the purposes of S.61B of the FBT Act. The requirement to record private travel is confusing given that 'relocation transport' only arises where an employee is required to live away from their usual place of residence to perform the duties of that employment. Refer to S.143A of the FBT Act.

Thank you again for the opportunity to comment on the ATO's proposed changes to the above noted Explanatory Statements.

Should you wish to discuss any of the issues raised above, please contact Andrew Gardiner on 03 9209 9999 (or via email at andrew.gardiner@corsem.com.au).

Yours faithfully,



Geoff Boxer
Chief Executive Officer, NTAA