

29 September 2022

Director
Personal Deductions and Fringe Benefits Tax Unit
Personal and Indirect Tax, Charities & Housing Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: FBTRecordKeeping@treasury.gov.au

Dear Director

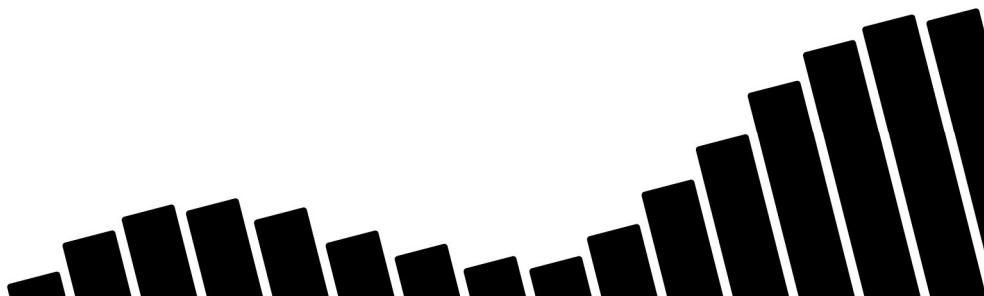
Fringe benefits tax – record keeping exposure draft legislation

The Tax Institute welcomes the opportunity to make a submission to the Treasury in relation to the Treasury Laws Amendment (Measures for consultation) Bill 2022: FBT record keeping exposure draft legislation and accompanying explanatory material in relation to modifying existing FBT record keeping obligations. This submission contains comments in relation to the travel diary and relocation transport legislative instruments, and the travel diary and relocation transport explanatory statements (the **explanatory statements**).

In the development of this submission, we have closely consulted with our National Fringe Benefits Tax & Employment Taxes Technical Committee to prepare a considered response which represents the views of the broader membership of The Tax Institute.

The Tax Institute broadly supports the policy intent to reduce and simplify fringe benefit tax (**FBT**) record keeping requirements, by allowing employers to rely on adequate alternative records. The delegation to the Commissioner of the power to determine appropriate record keeping, rather than codifying requirements through the legislative process, will mean that record keeping requirements can be addressed in a more timely and appropriate manner, particularly in an evolving environment. The success of the measures will ultimately depend on the Commissioner taking a reasonable, timely and practical approach to his delegated authority.

The Tax Institute has two specific observations in respect of the explanatory statements. First, in our view the relief proposed for travel diaries and relocation transport employee declarations, appear to provide minimal practical benefits and accordingly do not entirely achieve the policy intent of the measure. We consider that for employers to appreciably



benefit from this measure, more information and examples should be published in the explanatory statements to enable taxpayers and practitioners to fully understand the scope.

Secondly, existing FBT record keeping obligations require businesses to navigate a jungle of 'red tape'. The proposed relief is a welcome but small step towards reducing and simplifying compliance costs for employers in this regard. For greater impact, we consider that the approach could be expanded to encompass other FBT declarations. For example, living away from home allowance (**LAFHA**) declarations, declarations relating to the otherwise deductible rule, 'no private use declarations' and car log books. Allowing employers to rely on alternative records for commonly used declarations would provide widespread relief for many businesses and improve the effectiveness of the policy.

Our comments below include certain recommendations that we consider will enhance the translation of the policy intent within the legislative instruments and explanatory statements, and support businesses to benefit from the relief this measure is intended to provide.

We would be pleased to work with the Treasury to develop the information and examples in the explanatory statements and address the issues outlined in our submission so that the measure can apply effectively to simplify and reduce the record keeping requirements for employers.

The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all. Please refer to **Appendix B** for more about The Tax Institute.

If you would like to discuss any of the above, please contact our Tax Counsel, Julie Abdalla, on (02) 8223 0058.

Yours faithfully,



Jerome Tse

President

APPENDIX A

We have set out below our detailed comments and observations for your consideration to ensure that the draft legislation and explanatory material are effective in meeting the policy intent and provide the most effective and practical advice for taxpayers and their advisers. Our comments firstly address the travel diary explanatory statement followed by the relocation transport explanatory statement.

Travel Diary Explanatory Statement

Section 136(1) of the *Fringe Benefits Tax Assessment Act 1986* (**FBTAA**) prescribes the requirements for a travel diary or similar document where a recipient receives either an expense payment fringe benefit, a property fringe benefit, or a residual fringe benefit. The recipient must record the following details of each business activity in a diary or similar document:

- the date the entry was made;
- the place where the activity was undertaken;
- the date and approximate time when the activity commenced;
- the duration of the activity; and
- the nature of the activity.

The Travel Diary Legislative Instrument requires that the same information is retained by the employer, as prescribed in section 136(1) of the FBTAA. However, this information can be documented in many different forms rather than as prescribed in the FBTAA.

Our members have indicated that the revised travel diary record keeping requirements may have minimal practical impact for employers. Only one example has been provided in the explanatory statement for an alternative document that may be used in lieu of the travel diary. This example provides limited assurance for the types of documents employers could rely on and that would be accepted by Commissioner under the proposed changes. We recommend that the explanatory statement provides additional examples that illustrate other types of records that would be acceptable to the Commissioner, including for example other common records, such as conference programs, hotel receipts and itineraries.

Employee declarations

We consider that the explanatory material would benefit from the inclusion of examples where an employer uses accounting records in lieu of employee declarations. We acknowledge that many businesses are required to regularly maintain and record costs using accounting systems, and these systems may be used to retain invoices and other supporting documents. We would expect that the FBT compliance burden for employers could be considerably reduced, and easily applied where employers can leverage off their accounting systems and processes. This may occur where an employer makes a payment to an employee to cover business relevant costs e.g. self-education, or business related costs e.g. mobile telephone expenses, internet costs and actual car expenses (not cents per kilometre). We recommend the inclusion of examples in the explanatory material detailing when employers can rely on their accounting records and what supplementary information should be retained to adequately rely on these records. We consider that these type examples could have widespread application to a number of employers and effectively enhance the policy's operation.

We acknowledge that there may be practical difficulties for employers to obtain alternative documentation for employee declarations. The FBT regime requires information from an employee, for example how the relevant benefit was used (i.e. to satisfy otherwise deductible conditions) or whether the employee had a usual place of residence available to them (i.e. to satisfy LAFHA conditions). Generally, employers will not have corporate records that can be utilised in lieu of employee declarations in these and other cases. We recommend that additional examples are provided in the explanatory statement, detailing the types and combination of documents that could be used in lieu of an employee declaration. This will be paramount to ensure the measure is well understood and applied appropriately by employers.

We would be pleased to work with Treasury to assist in providing practical examples in the explanatory statements for both the travel diary and transport relocation. We consider that the inclusion of additional practical examples will be important in resolving the uncertainty of the types and combinations that employers can rely on, and accordingly enable employers to avail themselves of the relief appropriately.

APPENDIX B

About The Tax Institute

The Tax Institute is the leading forum for the tax community in Australia. We are committed to representing our members, shaping the future of the tax profession and continuous improvement of the tax system for the benefit of all, through the advancement of knowledge, member support and advocacy.

Our membership of more than 11,000 includes tax professionals from commerce and industry, academia, government and public practice throughout Australia. Our tax community reach extends to over 40,000 Australian business leaders, tax professionals, government employees and students through the provision of specialist, practical and accurate knowledge and learning.

We are committed to propelling members onto the global stage, with over 7,000 of our members holding the Chartered Tax Adviser designation which represents the internationally recognised mark of expertise.

The Tax Institute was established in 1943 with the aim of improving the position of tax agents, tax law and administration. More than seven decades later, our values, friendships and members' unselfish desire to learn from each other are central to our success.

Australia's tax system has evolved, and The Tax Institute has become increasingly respected, dynamic and responsive, having contributed to shaping the changes that benefit our members and taxpayers today. We are known for our committed volunteers and the altruistic sharing of knowledge. Members are actively involved, ensuring that the technical products and services on offer meet the varied needs of Australia's tax professionals.