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## Explanatory Statement

# Fringe Benefits Tax Assessment (Adequate Alternative Records – Otherwise Deductible Benefits) Determination 2024

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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 specifies records the Commissioner of Taxation will accept as an alternative to an employee declaration in respect of expense payment fringe benefits, property fringe benefits or residual fringe benefits, where the employer seeks to reduce the taxable value of the fringe benefit by applying the otherwise deductible rule (under section 24, section 44 or section 52 of the FBTAA).
3. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

### Date of effect

4. This instrument commences on 1 April 2024.

### Effect of this instrument

5. This instrument may reduce compliance costs for employers by allowing them to rely on adequate alternative records (rather than employee declarations) to meet their FBT record keeping obligations.
6. Section 123AA of the FBTAA allows the Commissioner to make a legislative instrument that specifies alternative records that employers can rely on, in lieu of statutory evidentiary documents, for FBT record keeping purposes.
7. The instrument applies for the FBT year ending 31 March 2025, and all subsequent FBT years (paragraph 5(1)(a) of the instrument). It allows an employer to which the instrument applies to accept adequate alternative records instead of a declaration referred to in:
  - (a) paragraph 24(1)(e) of the FBTAA for an expense payment fringe benefit,
  - (b) paragraph 44(1)(c) of the FBTAA for a property fringe benefit, and
  - (c) paragraph 52(1)(c) of the FBTAA for a residual fringe benefit.
8. The instrument applies to the class of employers specified in subsection 5(2) – that is, employers reducing the taxable value of an expense payment fringe benefit described in section 24, a property fringe benefit described in section 44, or a residual fringe benefit described in section 52 of the FBTAA.
9. Section 6 of the instrument sets out what records are adequate alternative records that can be accepted instead of a relevant employee declaration. It stipulates that the alternative records must be written in English and contain, at a minimum, the following information:
  - (a) the name of the employee who received the benefit,
  - (b) the dates (inclusive) on which the benefit was provided during the FBT year,
  - (c) for an expense payment fringe benefit:

- (i) the nature of the expense, and
  - (ii) the determined percentage for which the employee would have been entitled to claim an income tax deduction had they incurred the expense,
- (d) for a property fringe benefit:
  - (i) the nature of the property, and
  - (ii) the determined percentage for which the employee would have been entitled to claim an income tax deduction had they incurred the cost of the property for its market value,
- (e) for a residual fringe benefit:
  - (i) the nature of the benefit, and
  - (ii) the determined percentage for which the employee would have been entitled to claim an income tax deduction had they incurred the cost of the residual benefit – such as a service or privilege – for its market value.

10. There is no limit on the number of records that may, in aggregate, meet the minimum information requirements. Further, there is no prescribed type or form of record in which the required information must be contained. If multiple different records collectively contain the minimum information when viewed together, the records will be accepted in aggregate as satisfying the requirements. For example, records can be stored electronically or in paper form, and the required information could be contained in various types of documents such as employment contracts, payroll records, job descriptions, employer and employee correspondence (for example, emails or text messages), employer policies, and calculations of private use.

11. 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. This is the date of lodgment of their FBT return for the relevant year, or such later date as the Commissioner allows. 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 kept from multiple sources**

Steve is an employee of Co Ltd. Co Ltd provides Steve with the use of a mobile phone. Under Co Ltd company policy, Steve can use the phone for both personal and work-related purposes. At the end of the FBT year, Steve emails his manager a description of the nature and purpose of his phone use, and the percentage of the phone usage that Steve has calculated was work-related.

Providing Steve with the use of a mobile phone constitutes a residual fringe benefit. Under section 52 of the FBTAA, Co Ltd is entitled to reduce the taxable value of the fringe benefit if the requirements of that section are met. Instead of obtaining the declaration required by paragraph 52(1)(c), Co Ltd seeks to rely on section 123AA of the FBTAA.

Co Ltd has obtained records containing, in aggregate, the minimum information to be relied upon as an alternative to the employee declaration, including the email between Co Ltd and Steve and copies of the mobile phone bills. These records contain sufficient information to determine the name of the employee, the nature of the benefit, the dates to which the benefit relates, and the percentage related to earning assessable income. The relevant records are as follows:

Table 1: Co Ltd records that contain the required minimum information

Required minimum information	Records held by Co Ltd
<ul style="list-style-type: none"> <li>Name of employee receiving the benefit</li> <li>Dates (inclusive) the benefit was provided during the year</li> <li>Dates (inclusive) the benefit was provided during the year</li> </ul>	Email between Co Ltd and Steve Copies of mobile phone bills
<ul style="list-style-type: none"> <li>Nature of the benefit</li> <li>The percentage that the employee would have been able to claim as an income tax deduction had they been able to claim the phone and bills as an income tax deduction</li> </ul>	Email between manager and Steve

Co Ltd can reduce the taxable value of the residual fringe benefit in accordance with section 52 of the FBTAA. Due to the operation of subsection 123AA(1) of the FBTAA, Co Ltd is taken to have kept and retained the relevant declaration and accordingly has satisfied the requirement in paragraph 52(1)(c).

**Example 2 – information kept in a different document – expense reimbursement form**

Nancy is an employee of Company Ltd and works from home 3 days a week, incurring internet usage expenses.

Nancy pays her internet bill and completes an employer-provided reimbursement form that allows employees to claim a reimbursement for work-related expenditure.

The information provided on the reimbursement form includes the name of the employee, the dates covered by the bill, a description of the nature and the purpose of the expenditure, and the calculated work-related percentage.

In addition, Nancy provides Company Ltd with a copy of the bill and receipt for the expenditure being claimed.

Company Ltd reimburses Nancy for the full amount of her internet bill.

This reimbursement constitutes an expense payment fringe benefit. Under section 24 of the FBTAA, Company Ltd is entitled to reduce the taxable value of the fringe benefit if the requirements of that section are met. Instead of obtaining the declaration required by paragraph 24(1)(e), Company Ltd seeks to rely on section 123AA of the FBTAA.

Company Ltd has obtained records containing, in aggregate, the minimum information to be relied upon as an alternative to the declaration, including the reimbursement form containing all the required information.

Table 2: Company Ltd records that contain the required minimum information

Required minimum information	Records held by Company Ltd
<ul style="list-style-type: none"> <li>Name of employee receiving the benefit</li> <li>Dates (inclusive) the benefit was provided during the year</li> </ul>	Reimbursement form Copy of bill and receipt
<ul style="list-style-type: none"> <li>Nature of the benefit</li> <li>The percentage that the employee would have been able to claim as an income tax deduction had they been able to claim the phone and bills as an income tax deduction</li> </ul>	Reimbursement form Copy of bill

Company Ltd can reduce the taxable value of the expense payment fringe benefit in accordance with section 24 of the FBTAA. Due to the operation of subsection 123AA(1) of

the FBTA, Company Ltd is taken to have kept and retained the relevant declaration and accordingly has satisfied the requirement in paragraph 24(1)(e).

Nancy correctly does not include the reimbursed work-related expenses as part of her deductions when she completes her income tax return.

### **Compliance cost assessment**

12. Minor – there will be no additional regulatory impacts as the instrument is minor and machinery in nature (The Office of Impact Assessment reference: OIA23-06207).

### **Background**

#### ***Expense payment fringe benefit and declaration***

13. Section 24 of the FBTA allows an employer to reduce the taxable value of certain expense payment fringe benefits by application of the otherwise deductible rule. The reduction is available to the employer where:

- (a) the employer reimburses (in whole or in part) expenditure incurred by the employee, or pays a third party (in whole or in part) in respect of an amount of expenditure incurred by the employee, and
- (b) the employee would have been entitled to a once-only income tax deduction, had the employee incurred the expense.

14. In accordance with paragraph 24(1)(e) of the FBTA, the employer ordinarily needs to obtain a signed employee declaration in the approved form by the declaration date to reduce the taxable value. This instrument prescribes alternative records the employer can use instead of the declaration to reduce the taxable value for the relevant FBT year.

#### ***Property fringe benefit and declaration***

15. Section 44 of the FBTA allows an employer to reduce the taxable value of certain property fringe benefits by application of the otherwise deductible rule. The reduction is available to the employer where:

- (a) the employer provided the employee free or discounted property, and
- (b) the employee would have been entitled to a once-only income tax deduction, had the employee purchased the property for its market value.

16. In accordance with paragraph 44(1)(c) of the FBTA, the employer ordinarily needs to obtain a signed employee declaration in the approved form by the declaration date to reduce the taxable value. This instrument prescribes alternative records the employer can use instead of the declaration to reduce the taxable value for the relevant FBT year.

#### ***Residual fringe benefit and declaration***

17. Section 52 of the FBTA allows an employer to reduce the taxable value of certain residual fringe benefits by application of the otherwise deductible rule. The reduction is available to the employer where:

- (a) the employer provided the employee with a residual benefit – such as a service or privilege, and
- (b) the employee would have been entitled to a once-only income tax deduction, had the employee purchased the residual benefit for its market value.

18. In accordance with paragraph 52(1)(c) of the FBTAA, the employer ordinarily needs to obtain a signed employee declaration in the approved form by the declaration date to reduce the taxable value. This instrument prescribes alternative records the employer can use instead of the declaration to reduce the taxable value for the relevant FBT year.

### **Consultation**

19. Subsection 17(1) of the *Legislation Act 2003* requires that the Commissioner undertake appropriate and reasonably practicable consultation before making a legislative instrument.

20. For this instrument, broad public consultation was undertaken from 12 October 2023 to 9 November 2023.

21. The draft instrument and draft explanatory statement were published to the ATO Legal database on the 'What's new' page. They were also advertised on the ato.gov.au website on the 'Open Consultation' page. Major tax and superannuation publishers and associations monitor these pages and include the details in the daily and weekly alerts and newsletters to their subscribers and members.

22. As a result of feedback received during consultation, the explanatory statement was amended to improve its clarity.

### **Legislative references**

*Acts Interpretation Act 1901*

*Fringe Benefits Tax Assessment Act 1986*

*Human Rights (Parliamentary Scrutiny) Act 2011*

*Income Tax Assessment Act 1997*

*Legislation Act 2003*

## **Statement of compatibility with human rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

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This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the legislative instrument**

The instrument specifies records that the Commissioner of Taxation will accept from an employer, in certain circumstances, as an alternative to an employee providing a declaration for an expense payment fringe benefit, property fringe benefit or residual fringe benefit in respect of particular benefits that would be otherwise deductible.

#### **Human rights implications**

This legislative instrument does not engage any of the applicable rights or freedoms because it merely provides employers with an option to use acceptable alternative records instead of an employee declaration. Importantly, it will help reduce employers' record keeping compliance costs in relation to the fringe benefits tax law and provide them with certainty regarding their record keeping obligations.

#### **Conclusion**

This legislative instrument is compatible with human rights as it does not raise any human rights issues.