

Director
Personal Deductions and Fringe Benefits Tax Unit
Personal and Indirect Tax, Charities & Housing Division
Treasury

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3 October 2022

Dear Sir or Madam,

Fringe benefits tax - record keeping exposure draft legislation

CPA Australia and the Institute of Public Accountants (IPA) make this submission in response to the Government's [proposal](#) to legislate the changes to fringe benefits tax (FBT) record keeping practices announced in the 2020-21 Budget. The measure is welcome, as it provides new options to reduce FBT compliance costs which are an ongoing burden for taxpayers and their advisers. FBT has the highest compliance costs relative to the revenue it generates and therefore any opportunity to reduce the compliance burden on employers is welcome.

We also support the ability for the Commissioner of Taxation to specify alternative forms of records as the rapid evolution of technology and data systems gives rise to new types of documentation and employee information.

The [Exposure Draft Treasury Laws Amendment \(Measures for Consultation\) Bill 2022: FBT record keeping \(ED\)](#) is a positive step towards enhancing FBT administration and compliance. However, FBT more generally, remains a complex and costly exercise for many employers. We recommend that the Government release the Board of Taxation's work undertaken in 2018 on its [Fringe Benefits Tax Compliance Cost Review](#) to identify further opportunities to streamline compliance.

Current statutory approach for larger enterprises

Larger enterprises, including corporate leasing companies and salary packagers, have invested considerable amounts to develop systems and protocols based on the existing evidentiary requirements under the FBT regime.

In addition, they have also committed considerable time to educating their employees and/or employer clients concerning the stringent requirements that must be satisfied for FBT purposes. This includes the compilation of required supporting evidentiary documentation and employee declarations.

Many larger enterprises, including government or statutory authority entities (e.g., universities), often lack significant in-house tax expertise. This is especially so as FBT matters are often dealt with by human resources personnel who do not have a significant tax background.

Hence, the adoption of alternative methods is subject to whether they are demonstrably simpler than existing practices. This is particularly so given the contingent risk to the employer and the packaging provider if appropriate documentation requirements are not met.

In their current form, the legislative instruments (LIs) are not sufficiently distinguishable from the existing statutory methods to generate noticeable compliance cost benefits. For many, this does not justify changing from existing processes.

Small and medium enterprises (SMEs)

The FBT tax gap for 2018-19 is estimated at 22.6 per cent¹ and our members advise us that non-compliance with FBT is more pronounced in small and medium enterprises (SMEs) due to limited access to the requisite systems and expertise to best comply with the FBT legislation.

Our view is that part of this non-compliance by SME taxpayers is due to the complexity of the FBT legislation which many smaller businesses do not fully understand and cannot afford to comply with. Access to advice can be limited and is usually an add-on service provided by their tax or BAS agent, if at all.

¹ Australian Taxation Office, [Fringe benefits tax gap](#), 2021, viewed 27 September 2022

Hence, the LIs should be simplified to the greatest extent possible so that they can be easily adopted by SME taxpayers and tailored to their operating environment. For the SME sector in particular, record keeping that forms part of their natural business systems is preferred. This may require consideration of multiple scenarios covering different markets, such as the large corporate, government and SME sectors.

Additional comments

We raise the following matters for your consideration.

- The alternative methods require the collation of multiple forms of documentation to satisfy the record-keeping contained in the [Legislative Instrument Fringe Benefits Tax Assessment – Adequate Alternative Records \(Travel Diaries\) Determination 2022](#) (travel diaries LI) or [Legislative Instrument Fringe Benefits Tax Assessment – Adequate Alternative Records \(Relocation Transport\) Determination 2022](#) (relocation transport LI). For many it will remain easier and simpler to use the existing declarations instead, as all the required details are contained within the existing declaration forms. This means that the LIs in their current form may be of limited, or no, benefit to taxpayers.
- The ED is largely limited to declarations and other documentation, such as travel diaries related to valuation and concessions. The draft legislation does not extend, for example, to records of elections an employer makes for the purpose of the FBT legislation, such as the 50/50 split method for meal entertainment, which is in need of a simpler alternative record-keeping option.
- The Commissioner of Taxation should also develop additional LIs covering all relevant records, such as logbooks and odometer records for car benefits and living away from home allowance declarations. We recommend that the ATO develop a program of work in collaboration with its [FBT Stakeholder Group](#) to deliver additional alternative methods for a broader range of FBT records.
- Due to the significant embedded cost in managing FBT compliance and educating clients, we understand that larger employers will adopt the alternative methods only when they have sufficient certainty that the alternative methods in the LIs will be in place for a sustained period. Therefore, an indefinite, or longer time period, for the LIs is suggested.

If you have any queries about this submission, contact Elinor Kasapidis, Senior Manager Tax Policy on +61 466 675 194 or elinor.kasapidis@cpaaustralia.com.au.

Yours sincerely,

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