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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TREASURY LAWS AMENDMENT BILL 2022: FBT RECORD KEEPING

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

<i>Abbreviation</i>	<i>Definition</i>
ATO	Australian Taxation Office
Commissioner	Commissioner of Taxation
FBT	fringe benefits tax
FBTAA 1986	<i>Fringe Benefits Tax Assessment Act 1986</i>

Chapter 1: Fringe benefits tax record keeping

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Outline of chapter

- 1.1 Schedule 1 amends the FBTAA 1986 to reduce compliance costs for employers finalising their FBT returns by empowering the Commissioner to allow them, where it is appropriate to do so, to rely on adequate alternative records instead of obtaining statutory evidentiary documents, such as prescribed employee declarations.
- 1.2 The Schedule reduces and simplifies FBT record keeping requirements for employers while producing similar compliance outcomes with lower compliance costs, consistent with the Government’s commitment to remove ‘red tape’ for business.

Context of amendments

- 1.3 FBT is a tax paid by employers on certain benefits they provide to their employees or associates of their employees (for example, their employees’ family). Employers are required to pay tax on these fringe benefits. FBT is separate to income tax and is calculated on the taxable value of the fringe benefit. The rules for FBT are set out in the FBTAA 1986, which is administered by the Commissioner.
- 1.4 Employers are required to self-assess their FBT liability and lodge an FBT return following the end of the FBT year, where there is a fringe benefits

taxable amount for the year. As part of this process, employers must keep and preserve all records for the fringe benefits they provide for five years from the date they are prepared, obtained or the transactions completed. During this period the ATO may request an employer's records for compliance purposes.

- 1.5 Part III of the FBTA 1986 contains numerous provisions requiring employees to provide information to employers about fringe benefits received, and employers to prepare declarations 'in a form approved by the Commissioner.' The ATO website contains 20 different approved employee declarations tailored to various fringe benefits, two FBT employer declarations and a travel diary requirement, to be used as statutory evidentiary documents for this purpose.
- 1.6 The requirement for certain records to be in an approved form to comply with FBT record keeping obligations forces employers, and in some cases employees, to create records which duplicate existing records captured through other record keeping processes, including in the employer's own corporate records.
- 1.7 Providing employers with an option to rely on existing or other alternative records, as determined by the Commissioner, without the need to prepare employer declarations or obtain declarations from employees in the approved form, reduces and simplifies the employer's record keeping compliance burden without compromising the ATO's ability to ensure an employer's compliance with the FBT laws. It also encourages businesses which initially may be unable to rely on adequate alternative records to establish and maintain robust corporate records for this purpose.
- 1.8 The kind of alternative documents or records which reasonably satisfy the employer's record keeping obligations for various types of fringe benefits will be determined by the Commissioner by way of legislative instrument.

Summary of new law

- 1.9 Schedule 1 amends Part 10 of the FBTA 1986 by:
 - giving the Commissioner power to make legislative instruments determining the kinds of adequate alternative records which may be kept and retained by employers in lieu of a statutory evidentiary documents for specified fringe benefits, for FBT record keeping purposes; and
 - providing that employers are taken to have kept and retained a statutory evidentiary document for a specified fringe benefit for FBT record keeping purposes if they keep and retain those adequate alternative records determined by the Commissioner, for the specified fringe benefit.

Comparison of key features of new law and current law

Table 1.1 Comparison of new law and current law

New law	Current law
<p>Employers have the option, for each fringe benefit, to:</p> <ul style="list-style-type: none"> rely on adequate alternative records (as determined by the Commissioner) which contain the information required for FBT record keeping purposes; or keep and retain the designated statutory evidentiary documents in the approved form for FBT record keeping purposes. 	<p>Employers must keep and retain the designated statutory evidentiary documents in the approved form for each fringe benefit, for FBT record keeping purposes.</p>

Detailed explanation of new law

- 1.10 Schedule 1 provides the Commissioner with the power to make determinations, by legislative instrument, specifying the kind of alternative documents or records which reasonably satisfy the employer's record keeping obligations for the various types of fringe benefits.
[Schedule 1, item 1, section 123AA of the FBTA 1986]
- 1.11 Alternative documents or records will be other documents or records made or held by an employer that both meet the information requirements stipulated in the FBTA 1986 and provide the Commissioner with the ability to enforce compliance with the FBTA 1986.
- 1.12 It is appropriate to delegate power to the Commissioner to make legislative instruments for this purpose due to the technical nature of the instruments, which are tailored to cover a range of fringe benefits of varying complexity and different statutory evidentiary documents applicable for each fringe benefit. Enabling the Commissioner to determine, by way of legislative instrument, the kind of alternative documents or records which can be utilised for this purpose provides an efficient and flexible mechanism to enable employers to identify the kind of records that will meet their record keeping obligations. This gives employers certainty, supports the purpose of the amendment to reduce FBT record keeping obligations for employers and supports the operation of the FBT regime generally.
- 1.13 Instruments made under section 123AA of the FBTA 1986 are disallowable under section 42 of the *Legislation Act 2003*.

- 1.14 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. To achieve this, the Commissioner will determine the years of tax, the classes of persons and the classes of statutory evidentiary documents applying to the relevant fringe benefit, and the kind of alternative documents or records an employer may use to satisfy their record keeping obligations. Specifying different classes of persons and statutory documents in determinations enables the Commissioner to tailor determinations to various types of fringe benefits and employers based on the different circumstances and compliance risks associated with employers in different parts of the economy.
[Schedule 1, item 1, paragraph 123AA(2)(a) to (d) of the FBTA 1986]
- 1.15 While the option to use alternative records will generally reduce the record keeping burden for employers, it is not envisaged that the Commissioner will specify alternative record keeping options for all available fringe benefits or all situations where fringe benefits may be provided. It is anticipated that for records that are exhaustively defined within the legislation, such as log books and odometer records, employers will continue to meet their record keeping obligations under the current requirements.
- 1.16 Due to the wide range and varying complexity of available fringe benefits and the circumstances to which they apply, employers may choose to continue to use the approved form or use adequate alternative records or use a combination of these options for each benefit provided to an employee, to meet record keeping requirements.
- 1.17 A person who is an employer is taken to keep and retain a statutory evidentiary document if, at a certain time, the person keeps and retains alternative documents or records of a kind specified in a determination made by the Commissioner. This allows employers to rely on their own record keeping processes and systems rather than duplicating existing records to fulfil their FBT record keeping obligations, as long as their existing records meet the requirements determined by the Commissioner and provide the same information otherwise obtained in statutory evidence document. Determinations made by the Commissioner are intended to apply to a variety of circumstances in which adequate alternative records are kept and retained by the employer for record keeping purposes. These circumstances include where the employer or associate holds existing adequate alternative records of a kind that can be taken to be a statutory evidentiary document, and where the recipient of the fringe benefit gives the employer a document of a kind that can be taken to be a statutory evidentiary document.
[Schedule 1, item 1, subsection 123AA(1) of the FBTA 1986]
- 1.18 The Commissioner's determination applies to alternative records when the determination is in force and specifies the years of tax, the classes of statutory evidentiary documents, the classes of employer to which the determination applies, and the kind of alternative documents specified in the determination.
[Schedule 1, item 1, paragraphs 123AA(1)(a) to (e) of the FBTA 1986]

- 1.19 It is anticipated that there may be a wide variety of arrangements under which a certain fringe benefit is provided and for which statutory evidentiary documents must be kept and retained by the employer. Consequently, the Commissioner may make determinations applying to certain fringe benefits specifying that in relation to certain classes of persons and certain statutory evidentiary documents, different sets of alternative records may be taken to be statutory evidentiary documents. The Commissioner may also make further determinations specifying additional records which can be taken to be statutory evidentiary documents in relation to that fringe benefit.
[Schedule 1, item 1, paragraphs 123AA(1)(c) and 123AA(1)(d) of the FBTA 1986]
- 1.20 Where alternative records are kept and held by a third party in relation to a fringe benefit, and the person or associate has access to those records, the Commissioner may determine whether the person or associate is taken to keep and retain those alternative records.
[Schedule 1, item 1, paragraph 123AA(1)(e) of the FBTA 1986]
- 1.21 A determination made by the Commissioner may only specify kinds of documents or records if the Commissioner is reasonably satisfied that such documents or records are an adequate alternative to the statutory evidentiary documents for the applicable fringe benefit. If the Commissioner is not reasonably satisfied that adequate alternative records are available for certain fringe benefits, employers are expected to continue utilising the approved form to ensure they retain statutory evidentiary documents that meet their record keeping obligations.
[Schedule 1, item 1, subsection 123A(3) of the FBTA 1986]