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Sent via email: FBTRecordkeeping@treasury.gov.au

30 September 2022

Dear Director

FBT Record Keeping Exposure Draft Legislation

1. PricewaterhouseCoopers (**PwC**) 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)* and associated Legislative Instruments and draft Explanatory Materials.
2. The proposed measures are a welcome development and, if administered in a manner to give effect to the intent of the reform, should assist employers in alleviating the compliance burden that is often associated with the Fringe Benefits Tax (**FBT**) regime.
3. Our submission outlines our suggested policy considerations based on our significant experience engaging with clients of all sizes across all industries in relation to FBT (governance, compliance, systems, automation and documentation) which, if implemented, should further reduce and simplify the FBT record keeping requirements.

A. Extending law to include FBT elections

4. In addition to the 20+ employee declarations that currently need to be considered by an employer when preparing a FBT return, employers also make an election to utilise certain calculation methodology (such as the 50-50 split method for meal entertainment, operating cost method for cars, etc.). This generally requires employers to complete and sign an election form which, similar to declarations, is not lodged with the Australian Taxation Office (**ATO**) and is only a record keeping requirement.
5. At this stage, the Exposure Draft is largely limited to employee declarations and other documentation (e.g. travel diaries) related to valuation and concessions and does not extend to election forms (such as for the 50/50 split method for meal entertainment, etc.).

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6. When preparing FBT workpapers, it is generally self-evident whether an election has been made to utilise a particular valuation method. For instance, if the statutory formula method is used for car parking, an employer will clearly use the associated formula in determining the taxable value. The requirement to sign an election form prior to lodgement is an unnecessary administrative burden for employers.
7. As such, we recommend extending the Exposure Draft to allow the Commissioner to develop instruments to cover elections in addition to declarations. We consider that this will continue to alleviate the record keeping compliance burden for employers, without compromising the ATO's ability to ensure an employer's compliance with the FBT laws.

B. Clarification on timing of implementation

8. The Exposure Draft "Commencement" is listed as "the first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent." However, under section "2 Application" of the Exposure Draft, it is noted that the "the amendment made by this Schedule applies to FBT years starting on or after the commencement of this item".
9. This appears to constitute an inconsistency.
10. We seek clarity on the effective date of these proposed changes. On current reading, we have interpreted this to mean if Royal Assent is achieved, say, in October 2022, the measures will apply to the FBT year commencing 1 April 2023. This means that the new rules cannot apply to the current FBT year.
11. If our interpretation is correct, we recommend amending the Application date to be effective for the current FBT year (that is, from 1 April 2022), with Legislative Instruments commencing accordingly. The benefits of the administration relief will still have a tangible impact notwithstanding that a significant portion of the FBT year has been completed - this is on the basis that, for the majority of employers, employee declaration and similar documentation collection is ordinarily sought towards the end of the year to ensure capture of all benefits.

C. Expansion of draft legislative instruments to other benefits

12. As part of the current consultation, two draft legislative instruments have been released that provide the Commissioner of Taxation's 'alternative' records with respect to travel diaries and the relocation transport declaration.
13. Once enacted, to ensure maximum utility and application, we requested that, as soon as practicable, a suite of further instruments be released to cover, in particular, the most common benefit categories that currently require declarations. For a number of relevant benefit categories, the subject matter of the declarations are self-evident and sufficient corporate records are generally in place to augment these.



14. We have outlined some further documents that should be the target of Legislative Instruments for Treasury's consideration below:
 - Fly-In-Fly Out Declarations: The nature of employee rosters, associated flight schedules and accommodation logs will generally demonstrate where employees reside during 'on' periods and that employees are returning to the normal residence during 'off' periods.
 - Living Away From Home (**LAFH**) Declaration: The requirements for qualifying for LAFH concessions (including the need to maintain a home) is often obtained through correspondence between the employer and employee.
 - Expense Payment Declaration: With otherwise-deductible-rule declarations, expense management software, correspondence between the employer and employee and receipts of purchase provided by the employee will sufficiently demonstrate the amount an employee would have been entitled to claim as a once only income tax deduction if they had provided or paid for an item, such as a desk, chair or COVID-19 test for work-related purposes.
 - Fuel Declaration: Where employees incur their own costs towards fuel, generally the details required for the declaration such as the total kilometres travelled, the car's fuel consumption and the average fuel costs are known from other sources (e.g. car manufacturer specifications, leasing records showing odometer readings, service and maintenance records, etc.)

D. Alternative records to be further focused on employer governance documentation

15. As a further comment, often the purpose of the FBT documentation that is required within the FBT legislation – and typically regarded as unnecessary administrative burden - is to establish “why” a benefit has been provided, rather than “what” benefit has been provided. The current Legislative Instruments appear largely focused on the “what”.
16. A more targeted approach to provide assurance on the work-related (or exempt / otherwise deductible) purpose (the “why”) of a benefit would be to specify required records of the employer (such as benefit policies and other documented rules) that would demonstrate the required work-related intent and control environment in providing the benefit. Reliance / trust could be placed on the strength of the tax governance framework of the employer, much like Justified Trust and Combined Assurance Reviews in the GST and/or Income Tax context, supported by adequate testing plans and processes, rather than targeting every transaction of the employer/employee (which is where the burden actually lies).
17. For example, with respect to the draft Legislative Instrument on travel diaries, the policy intent of reducing and simplifying record keeping requirements and lowering compliance costs would be better met by alleviating travel diary requirements where the employer has a clear, documented policy that only permits work-related (100% deductible) travel costs being paid by the employer and is able to validate the operational effectiveness of that policy through intermittent testing. Compare this to Example 1 in the Explanatory Memorandum to the Travel Diary Legislative Instrument, which still requires the employer to ensure that the employee is recording detailed, similar information in the work calendar - for what is clearly a work-related trip.



We would be pleased to participate in any opportunity to discuss our submission with you in further detail, particularly Item D.

In the interim, if you have any questions, please contact either Shane Pinto (0423 679 958) or me (0412 957 101).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'G Kent', is written over a light blue rectangular background.

Greg Kent
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Employment Taxes