

22 March 2023

Kerry Lake  
Superannuation & Employer Obligations  
Australian Taxation Office

By email: [super&employmentconsultation@ato.gov.au](mailto:super&employmentconsultation@ato.gov.au)

Dear Ms Lake

### **Draft Legislative Instruments**

The Tax Institute welcomes the opportunity to make a submission to the Australian Taxation Office (**ATO**) in relation to the following Draft Legislative Instruments:

- [LI 2023/D3](#) *Fringe Benefits Tax Assessment (Adequate Alternative Records - Overseas Employment Holiday Transport) Determination 2023 (LI 2023/D3)*;
- [LI 2023/D4](#) *Fringe Benefits Tax Assessment (Adequate Alternative Records - Car Travel to Employment Interview or Selection Test) Determination 2023 (LI 2023/D4)*;
- [LI 2023/D5](#) *Fringe Benefits Tax Assessment (Adequate Alternative Records - Remote Area Holiday Transport) Determination 2023 (LI 2023/D5)*; and
- [LI 2023/D6](#) *Fringe Benefits Tax Assessment (Adequate Alternative Records - Car Travel to Certain Work-Related Activities) Determination 2023 (LI 2023/D6)*.

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

The Tax Institute is of the view that the fringe benefits tax (**FBT**) record keeping requirements should be simplified and reduced. Feedback from our members indicates that there are a number of declarations that are more commonly used for FBT purposes than the four declarations covered by the Draft Legislative Instruments. These include living-away-from-home declarations, and declarations regarding the otherwise deductible nature of various benefits. We consider that simplifying and reducing the record keeping requirements for the more common declarations will benefit a broader range of employers by reducing the FBT compliance costs.

The Draft Legislative Instruments LI 2023/D3, LI 2023/D4 and LI 2023/D6 require that the records retained by the employer in lieu of an employee declaration must include the make and model of the car. This information is unnecessary as it does not impact the tax treatment of the payments made in the circumstances where these declarations are required. We note that Schedule 4 of [Treasury Laws Amendment \(Modernising Business Communications and Other Measures\) Bill 2023](#) (the **Bill**) will, when enacted, amend section 61A, 61E and 61F of the *Fringe Benefits Tax Assessment Act 1986* (**FBTAA**), to remove the requirement for declarations made under those sections to include the particulars of the car. This will result in less information being required to be disclosed in the relevant declarations in accordance with the FBTAA than under the requirements of the Draft Legislative Instruments LI 2023/D3, LI 2023/D4 and LI 2023/D6. The Tax Institute is of the view that requiring taxpayers to provide additional information above what is required at law does not demonstrate good policy or administrative practice. We recommend that the Draft Legislative Instruments remove the requirement for employers to retain the make and model of a car, so that the guidance is consistent with the FBTAA when the Bill is enacted.

We would be pleased to meet with the ATO to discuss the points raised in our submission.

The Tax Institute is 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.

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

Yours faithfully,



**Scott Treatt**

General Manager,  
Tax Policy and Advocacy



**Todd Want**

Council Member