

KPMG submission

Remote Area Tax Concessions and Payments

Productivity Commission Draft Report September 2019

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Executive Summary

KPMG welcomes the opportunity to make a submission in relation to the Productivity Commission's Draft Report on Remote Area Tax Concessions and Payments.

Our comments principally relate to the fringe benefits tax ("FBT") remote area concessions.

- 1) It would be reasonable for the FBT legislation to adopt the Australian Bureau of Statistics' ("ABS") published boundaries for defining an area as remote, regional or other. If the government chooses this approach, it should not combine it with the maintenance of legacy concepts from the tax legislation, such as the focus on local population size at a particular point in time.
- 2) Regardless of the general approach taken with area boundaries, the government should provide the agility to respond quickly to changes in circumstances by legislating the scope for the Assistant Treasurer to make regulations designating certain areas as eligible for particular time periods.
- 3) Any legislated change to the eligibility boundaries, or to the eligibility criteria and extent of the current FBT concessions should only take effect after a reasonable transition period. Employers and employees have entered into current arrangements in good faith and significant cost impacts or financial hardship could otherwise arise.
- 4) The government should retain the current exemption for qualifying employer-provided housing, and the 50% taxable value reduction for reimbursement of the cost of employee-sourced housing. These concessions are a valuable contributor to the government's strategic objective of promoting employment and economic growth in less populated areas of Australia.
- 5) Employer-provided housing can be eligible for exemption from FBT where it is "customary in the industry" for an employer to provide this benefit. The government should retain this feature of the legislation, as the other eligibility pathways do not adequately cover the range of operational needs that may cause employers to provide remote area accommodation for employees.

Detailed comments

1 Remote area boundaries

- 1.1 It is timely for the remote area boundaries to be reconsidered.
- 1.2 The Draft Report's suggestion to use the boundaries published by the Australian Bureau of Statistics ("ABS") is reasonable. There should be consideration of whether areas designated as "outer regional" by the ABS should come within the FBT concessions. We recommend that if an approach based on ABS classifications is adopted, it should be without modification for legacy tax concepts, such as the FBT legislation's current focus on population size at a particular point in time.
- 1.3 The fringe benefits tax ("FBT") consequences of a locality ceasing to qualify for the concessions could inflict considerable additional costs on employers, and substantially reduce the after-tax income of employees who had salary-packaged certain remote area benefits on an FBT-inclusive basis.
- 1.4 In order to reduce the risk that re-drawing the boundaries could be perceived as having retrospective impact, we recommend that there should be a transitional period, during which the location would continue to be considered eligible. The transitional period should apply to all employees whose usual place of employment was at the previously eligible location as of the date of Royal Assent to the amending legislation, and who were receiving affected benefits at that date.
- 1.5 The transitional period should have a duration of the lesser of 24 months, or until the date of the employee having a material change to their employment agreement (such as an extension of a previously fixed term).
- 1.6 Precedent exists for a transitional period of this type. This occurred in 2012 when eligibility for living away from home ("LAFH") concessions became significantly restricted, and impacted employers and employees in a manner similar to the predicted impact of a remote area boundary change.
- 1.7 Certain employers, including public hospitals, police and ambulance services can currently take advantage of a broader definition of a remote area in relation to accommodation benefits. This facilitates the provision of essential services in regional areas at reduced cost to the state and territory governments responsible for them. The legislation should retain this broader definition for these employers.
- 1.8 Removing the broader definition for essential services employers would simply represent a transfer of costs from one layer of government to another, and require significant administration and negotiation in terms of change to collective wage agreements.

2. Boundaries of eligible areas – allowance for ministerial discretion

- 2.1 Any new definition of an eligible area should allow for the Assistant Treasurer to designate a location as eligible for a specified future period, by way of legislative

instrument, in the case where the stock of accommodation in that location becomes so inadequate that it becomes an operational requirement for employers to construct, source or otherwise provide accommodation for their employees.

- 2.2 This could occur for example where a major infrastructure construction project commences in an area which is not statutorily designated as eligible, but is still a significant distance from the nearest major population centre. Recent examples where such a discretion could have been appropriate would include Gladstone, QLD and Geraldton, WA.
- 2.3 Under the current legislation, overseas remote locations are also relevant for the purpose of the “fly-in, fly-out” exemptions. The Commissioner of Taxation provides guidance on which locations will be accepted as remote, based on their current circumstances. Our recommendation at 2.1 would allow for the Assistant Treasurer to replicate this principle for locations within Australia.

3. Remote area housing benefits (employee’s usual place of residence)

- 3.1 The Draft Report recommends that the cost of employer-provided accommodation should cease to be exempt, and instead be eligible for a 50% reduction in taxable value. In addition the Draft Report recommends that the reimbursement of the cost of employee-sourced accommodation should be fully taxable, instead of 50%-exempt.
- 3.2 KPMG does not support these recommendations. The current concessions would become more necessary and targeted if fewer areas were designated remote following a revision of the remote area boundaries. In these areas that would continue to be classified as remote, the employer’s support with the sourcing and the cost of accommodation is much more of an operational need of the business.
- 3.3 As Australia’s population grows, there is a strategic benefit in supporting that population in spreading out beyond the capital cities and their suburbs. The remote area FBT concessions may not be sufficient on their own to drive this, but they can be a component of this support. If the FBT concessions contribute to achieving the goal of population dispersal, then the ABS will classify fewer locations as eligible in future, and as an appropriate consequence the use of the concessions will decline.
- 3.4 Any legislative change to these concessions should include a transitional period during which the concessions can continue apply for employees who were working at the location prior to the amending legislation receiving Royal Assent. Employers and employees have made employment and relocation decisions in good faith based on the FBT legislation as it currently stands. For these employees, any change should be deferred and then phased in over a period of time.

4. The “customary in the industry” requirement for remote area housing

- 4.1 The legislation should retain this feature.

- 4.2 The alternative criteria for eligibility for exemption for a housing benefit – being that either the employee is frequently required to move locations, or that the employee could not reasonably be expected to source their own accommodation, are insufficient to cover the range of circumstances where the provision of accommodation could effectively be an operational need.
- 4.3 The phrase “customary in the industry” could be seen as synonymous with a wide spectrum of “operational needs” in the context of employers providing accommodation to their staff. These could include a situation where employees in a particular industry have an expectation of such a benefit, with that benefit being locked into industrial agreements.