



Our Ref: 100-G0-0407
Your Ref:

Remote Area Tax Concessions and Payments
Study
Productivity Commission
GPO Box 1428
CANBERRA CITY ACT 2601

11 October 2019

Dear Sir or Madam

Submission to the Productivity Commission's Draft Report on Remote Area Tax Concessions and Payments

This submission has been prepared by Fortescue Metals Group (Fortescue) in response to the abovementioned report released by the Productivity Commission in August 2019. Fortescue welcomes the opportunity to provide input into the consultation process.

As an employer of a large number of employees working and residing in remote areas, Fortescue does not support the removal of tax concessions for residential remote area arrangements. It is our view that the recommendations made in the Commission's draft report would have a number of negative social and economic impacts, particularly on our most vulnerable employees.

Fortescue urges the Commission to consider, in its final report, supporting the extension of the existing concessions to aid in simplicity and effectiveness. More detailed comments are enclosed.

If there are any aspects of this submission on which further information is required, please contact Greg Cutri of this office

Yours sincerely

FORTESCUE METALS GROUP

TIM LANGMEAD

Director, Community, Environment and Government

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1. Executive Summary

This submission provides Fortescue's response to the Commission's draft recommendations regarding fringe benefits tax (**FBT**) remote area residential concessions, contained in the Draft Report of August 2019.

The FBT concessions currently provide an avenue for employers to provide suitable housing to employees and to build sustainable communities in remote regions. The recommendations made by the Commission in the Draft Report would result in significantly increased costs and compliance burden for such companies and their employees. This runs counter to promoting investment in the productivity and sustainability of communities in remote regions. It is contrary to supporting regional development and promoting corporate investment.

The increased costs and removal of tax concessions would further increase the difficulties in servicing regional areas. There are clear productivity, social and economic reasons to use tax concessions to increase and promote the growth of residential workforces in regional areas. The recommendations, if accepted, would reduce the productivity of an industry that is a significant contributor to the economy. If implemented, the recommendations could have an enormous adverse effect on the social and economic development of regional areas as well as directly affecting disadvantaged and vulnerable individuals.

For the reasons set out below, Fortescue strongly disagrees with the Commission's recommendations 8.1 to 8.3 that proposes for the tightening and/or removal of FBT concessions in remote areas. We submit that the changes:

- Would cause negative social and economic impact on Aboriginal employees living in remote areas that participate in employer provided housing programs;
- Would cause negative impacts on the property market if employers move away from company provided housing;
- Reduces employer focus on maintaining permanent and local jobs, creating a shift to transient 'fly-in—fly-out' (**FIFO**) roles;
- Discourages investment in social and infrastructure development in remote regions;
- Disregards the role of corporates in investing in remote area regions. Reforms will shift the responsibility and burden from federal to state;
- Disregards the objectives & spirit behind the introduction of the tax concession policy;
- Would result in the loss of essential community health and professional services; and
- Would lead to reduction in the remote area community's population which in turn will impact the local commerce and economy.

While the FBT exemptions and concessions comprise of only a small subset of measures that support individuals, businesses and communities in the development of remote Australia, the impact of the benefits has a magnifier effect. It encourages the development of infrastructure in the form of housing, which then encourages other amenities invaluable to the long-term development of remote area towns. This submission provides the background and discusses the relevance to Fortescue and the social and economic impact of the recommendations.

Although less significant, we support the retention of the zone tax offset, and revisiting the levels to better align with income i.e., provide greater assistance to those on lower incomes.

2. Overview of remote area housing practices and relevance to Fortescue

2.1 Remote area tax concessions and the Draft Report

The Commission's Draft Report investigates the remote area tax concessions and payments, stating that remote area tax concessions and payments are outdated, inequitable and poorly designed. The Commission's initial conclusion is that they should be rationalised and reconfigured to reflect a contemporary Australia.

Whilst the Draft Report examines the appropriateness of the zone tax offset, FBT remote area concessions and the Remote Area Allowance, this submission focuses specifically on the FBT remote area concessions.

2.2 The history of remote area housing concessions

To provide context to the impact of the Commission's recommendations, it is important to recognise the history and intent behind existing FBT concessions and exemptions for remote area arrangements.

When FBT was introduced in 1986, the purpose of the legislation clearly reflected the spirit and intention to support employment in regional and remote areas. This was seen in a series of exemptions and reductions in taxable value for items that would otherwise be taxable for FBT purposes. The position was taken as these items were either so necessary to the working arrangements in question that they could not be considered of a genuine remuneration nature, or that they should be supported from a policy perspective to assist employers who would otherwise have difficulty in attracting the necessary skills and attributes to places of work which involve relatively higher degrees of isolation and lifestyle disadvantages.

Initially in 1986, remote area housing was not exempt from FBT but was treated as a special category of housing assistance. A housing benefit arises where the accommodation in question is the employee's usual place of residence. In relation to remote area housing, under the rules in place from 1986 to 2000, a choice could be made to either adopt statutory values based on whether or not the accommodation was shared, or to use a value based on a 40% reduction from market value. This reduction was subsequently increased to 50%. The taxable value of residential fuel (gas or electricity) was reduced to nil if the statutory method was adopted for remote area housing.

In 1997, an exemption from FBT was introduced for remote area housing provided by a primary producer. In 2000 following a period of consultation, this was extended to an exemption for all remote area housing where the provision of accommodation was necessary and customary in the industry in question. It was stated at the time that this was expected to affect approximately 600 employers, whereas the primary production exemption affected 1,000 employers.

In an unrelated measure, the same Bill also introduced caps to limit the FBT exemptions for Public Benevolent Institutions, hospitals and rebateable employers. These changes were estimated to affect 26,100 employers. At a time where it was considered appropriate to discourage the overuse of FBT concessions by employers such as charities and hospitals, it was still considered appropriate to encourage the provision of residential housing to employees in remote areas. This is a strong statement of support for remote residential arrangements. It was seen as particularly desirable that the costs of compliance and record keeping be reduced for these employers.

2.3 Relevance to Fortescue

Fortescue is one of the world's largest iron ore producers. It owns and operates integrated infrastructure and a supply chain spanning two main iron ore mining hubs in the Pilbara, Western Australia. Namely, the Solomon Hub and the Chichester Hub with a third Western Hub currently under development. Rail, port and shipping infrastructure owned and operated by Fortescue include the five-berth Herb Elliott Port and Judith Street Harbour towage facility in Port Hedland and the fastest heavy haul railway in the world. There are also several projects currently under development in the same region.

Fortescue strives to ensure that communities benefit from its growth and development and has a strong focus on corporate social responsibility. Fortescue supports regional and Aboriginal communities in Western Australia via our commitment to residential workforces at Port Hedland, Tom Price, Roebourne and Karratha. A residential workforce enables employees to fully integrate into the local community and creates critical mass for development; sustaining and improving the quality of public services such as health and education and local businesses in remote areas. The development of such services impacts directly on the communities in this region.

As part of Fortescue's licence to operate in the Pilbara, it is party to the Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004 (the **Pilbara Infrastructure State Agreement**) which requires Fortescue to invest in the local community, including developing a regionally based work force. Section 9 of the Pilbara Infrastructure State Agreement states:

Community development plan

9. (1) *In this clause, the term "community and social benefits" includes:*
- a) *training and guaranteed employment for indigenous and non-indigenous persons living in the Pilbara region of the said State;*
 - b) *regional development and local procurement of goods and services;*
 - c) *contribution to community services and facilities; and*
 - d) *a regionally based workforce.*
- (2) *The Company acknowledges the need for community and social benefits flowing from this Agreement.*
- (3) *The Company agrees that, prior to the time at which it submits any proposals pursuant to clause 10, and, if required by the Minister, prior to the time at which it submits any additional proposals pursuant to clause 12, 12A or 13, it shall:*
- a) *consult with the relevant local government or local governments with respect to the need for community and social benefits in relation to the developments proposed;*
 - b) *following such consultation, prepare a plan which describes the Company's proposed strategies for achieving community and social benefits in connection with the developments proposed, and such plan shall include a process for regular consultation by the Company with the relevant local government or local governments in respect of the strategies; and*
 - c) *submit to the Minister the plan prepared pursuant to subclause (3)(b) and confer with the Minister in respect of the plan...*

Historically, the presence of a large number of employees of Fortescue and other mining and services companies in the Pilbara area, combined with a shortage of residential housing in the area, contributed to Fortescue's commitment to add to the stock of residential accommodation in Port Hedland. To date, Fortescue has made a significant investment in the area, spending almost \$100 million through the construction of new houses.

A key objective of investing in remote area residential housing is to provide suitable accommodation for employees working in the area and to ensure the lack of accommodation does not act as a disincentive for employees considering a position in the area. Another important objective, as discussed above, is to contribute to the development of the community by encouraging a residential workforce with strong ties to the area. This is aligned with Fortescue's values and to the objectives of the Pilbara Infrastructure State Agreement as stated above.

Although Fortescue's preference is to support a 'residential' workforce in the Pilbara, it is acknowledged there are often compelling reasons to justify the use of FIFO arrangements rather than developing a residential workforce. These include:

- FIFO arrangements suit employees that do not wish to relocate themselves (and the rest of their family) to regional towns that have traditionally been seen as having less developed infrastructure, less robust health services and fewer schooling options (particularly at the secondary school level).
- There is no cost benefit in operating a 'residential' model.
- The development timelines for the resources sector outstrip the government's ability to respond. It is more efficient (from a time and cost perspective) for Fortescue to develop regional 'FIFO hubs'. For example, it is estimated Fortescue can deliver a 250-person camp from "approvals-to-beds" in less than six months. By comparison delivery of housing stock, even where suitably serviced land is available, is time consuming, expensive and generally takes many years to come to fruition.

Fortescue utilises a mixture of residential and FIFO arrangements. However residential arrangements remain prevalent.

3. Commission's Recommendations

The Commission made 6 recommendations in its Draft Report. Three of the recommendations (recommendations 8.1, 8.2 and 8.3) focus on the treatment of remote area concessions in respect of FBT. Fortescue disagrees with these three recommendations. This submission focuses on the detailed arguments against adoption of these recommendations (outlined at section 4 of this Submission).

3.1 FBT remote area concessions

The Commission's recommendations in respect of the FBT remote area concessions are listed below.

Recommendation 8.1 focusses on tightening the tax treatment of employer provided housing:

"The Australian Government should amend the Fringe Benefits Tax Assessment Act 1986 (Commonwealth) to change the tax treatment of employer-provided housing. Specifically, it should:

- *revert the exemption for employer-provided housing (section 58ZC) to a 50 per cent concession (as it was prior to 2000)*
- *remove the provision that enables employers to claim the concession because it is 'customary' to provide housing (section 58ZC(2)(d)(iii))*
- *remove the provision that extends the concession to additional areas for 'certain regional employers' (section 140(1A))."*

Recommendation 8.2 focusses on removal of the concession for employee-sourced housing:

"The Australian Government should amend the Fringe Benefits Tax Assessment Act 1986 (Cth) to remove the 50 per cent concession on employee-sourced housing (section 60)."

Recommendation 8.3 focusses on tightening the tax treatment of other goods and services:

"The Australian Government should amend the Fringe Benefits Tax Assessment Act 1986 (Cth) to change the tax treatment of residential fuel, meals for primary production employees, and holiday transport provided by employers in remote areas. Specifically, it should:

- *limit access to the residential fuel concession for use in conjunction with employer-provided housing (section 59(1)) to instances where there is an operational requirement for the employer to provide residential fuel*
- *remove the residential fuel concession for use in conjunction with employee-sourced housing (section 59(2) and (3))*
- *limit access to the exemption that currently applies to meals for primary production employees (section 58ZD) to instances where there is an operational requirement for the employer to provide these meals*
- *remove the definition limiting the exemption to meals 'ready for consumption', as it leads to ambiguity and difficulty in implementation*
- *remove the holiday transport concession (section 60A and section 61)."*

4. Detailed Discussion

The key arguments in support of maintaining the remote area residential FBT concessions are set out below:

4.1 Negative social and economic impact on Aboriginal employees living in remote areas that participate in housing programs

The Draft Report acknowledges that a large proportion of Indigenous Australians live outside major cities causing Australian Federal, State and Territory government policies and programs to include a regional and remote dimension. Overcrowding, poor housing conditions and housing shortages in remote Indigenous communities are prevalent and Australia, State and Territory governments have implemented policies to try and address these issues¹. These policies are largely limited to government investment in public housing and policies (such as the Australian Government's Indigenous Procurement Policy) to help simulate Indigenous economic development and to grow the Indigenous business sector.

The positive impact corporates have on increasing access to housing and employment for Aboriginal people in remote areas should not be overlooked. Fortescue is a major employer of Aboriginal people employing 779 Aboriginal people which represents 12.1% of Fortescue's Australian-based workforce². The total number of Aboriginal people working on Fortescue sites at 30 June 2019 is 1,070 which includes direct employees, labour hire and contractors³. By leveraging the remote area FBT housing exemptions and concessions, Fortescue can run programs designed to create a workplace which supports and promotes Aboriginal employment in remote areas. Housing support is a key initiative put in place for Aboriginal employees to help overcome some of the barriers in securing and maintaining work.

In FY19, all Pilbara-based employees were eligible to receive housing support and entitlements. Currently, 199 Aboriginal employees are accessing Fortescue owned and leased properties. The Company spent approximately AU\$7.5 million in FY19 on housing support for Aboriginal employees who reside in the Pilbara and its surrounds⁴.

Removing housing concessions may lead to the shutdown of local housing programs and sale of Company owned housing. As a result, Aboriginal employees may no longer receive local housing via employment. Affordable housing access will be limited as Aboriginal employees may become ineligible to Home West housing due to their Fortescue salary, and yet, may be unable to obtain suitable rental or housing on the open market on their own merits due to a lack of rental or credit history.

The removal of the FBT concessions would stymie Fortescue's efforts and have a direct impact on these Aboriginal communities. The existing arrangements allow Aboriginal employees to access remote affordable housing, live and raise their families in these communities and easily work on the remote mine sites. Without the remote area housing concessions, local housing programs in the Pilbara region may be shut down. In some cases, it would not be economic to remain in the remote area, forcing Aboriginal employees to leave their communities and relocate to cities. This change would have a negative social impact on these Aboriginal families.

¹ Pg. 119, Productivity Commission Draft Report August 2019.

² Pg. 89, Fortescue's FY19 Corporate Social Responsibility Report issued in August 2019

³ Ibid.

⁴ Pg. 90, Fortescue's FY19 Corporate Social Responsibility Report issued in August 2019.

According to Draft Finding 2.2, Indigenous Australians constitute 28 per cent of the population in remote areas. Given their relatively low income and employment rates, the change to the concessions, though not substantial relative to other programs, would have a significant impact on these communities.

4.2 Negative impacts on property market if move away from company provided housing

Denying the FBT exemption for remote housing benefits would remove the incentive for employers in remote areas to provide housing benefits to employees. Employers would be likely to opt for the cheaper option of providing dormitory style accommodation with a shift towards a more transient FIFO workforce (this is explored in further detail below at section 4.3). The impact of the shift to a FIFO workforce would reduce demand for residential housing in these remote locations and adversely impact on an already flagging market.

Fortescue owns a significant number of homes in Port Hedland and South Hedland. Over the course of the last 10 plus years, Fortescue has increased the housing stock in these regional areas by constructing 138 houses. The houses were constructed to attract employees to regional areas, areas in which it is often difficult to attract the right employees due to their relatively higher degrees of isolation and lifestyle disadvantages. Additionally, Fortescue has been running a housing ownership program to assist employees in purchasing property to establish their permanent homes in the Port Hedland area. This program is enabled as there currently is no incremental FBT cost for Fortescue to provide such a benefit to employees.

The impact of suggested reforms on employers and employees

The suggested reforms in respect of remote area housing would impact both employers and employees, and ultimately result in the sale of homes in these remote areas.

For Fortescue, the suggested reforms would result in an immediate increase in the tax costs for the Company. This would lead to a re-assessment by Fortescue and other employers, of the viability of providing employer-owned homes to employees. There is a population of Fortescue employees residing in Port Hedland and neighbouring towns who receive the benefit of the FBT remote area concessions via salary sacrifice arrangements. Removing the FBT exemption or the 50% FBT concession will have an immediate financial impact on these employees by reducing their net disposable income.

Due to the financial impact on employees, the occupancy rate for these homes may be reduced. Similarly, employers such as Fortescue may decide that employer-owned homes are no longer viable from a commercial perspective. In both instances, there would be increased sales of these homes, resulting in an over-supply of housing in the Pilbara region. We note the Draft Report states about 5% of all homes (some 52,100 dwellings) located in the FBT remote area are employer-provided⁵. Oversupply will further decrease property values in an already depressed property market, which will be felt more heavily in remote areas with a higher concentration of employer-provided housing. This will have a direct impact on the wealth of these local communities, creating economic instability and financial hardship for residents.

⁵ Pg. 289, Productivity Commission Draft Report August 2019
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4.3 Changes will reduce employer focus on maintaining permanent and local jobs, creating a shift to transient FIFO roles

The current FBT concessions encourage employers to invest in a residential workforce with strong ties to the area. This has been the case for Fortescue, as we have actively sought to build a strong residential population in several remote area towns in the Pilbara region, such as Port Hedland. This is evidenced by the large demographic of Fortescue employees that are provided with housing assistance as 'residential' employees in the Pilbara. Fortescue provides employees with the choice to permanently relocate to these areas as well as to employ local residents. Employees who choose to relocate are provided with appropriate housing support in line with the FBT concessions.

The recommendations proposed in the Draft Report in respect of remote area residential FBT concessions would dramatically increase the tax cost to employers that provide housing related benefits to residential employees. This would immediately act as a disincentive for companies to provide any assistance to residential employees in remote regions and may in turn reduce the number of individuals who are willing to relocate to the remote locations to live. There would be a further risk that companies shift their workforce in these regions from a 'residential' model to a FIFO model.

The proposed changes could create catastrophic and unforeseen social and economic consequences for residential towns. We note the Draft Report states about 5% of all homes (some 52,100 dwellings) located in the FBT remote area are employer-provided⁶. This figure is misleading and does not demonstrate even distribution in all remote-area towns. In fact, the Draft Report goes on to further state nearly two-thirds of all employer-provided dwellings in the FBT remote area are in the top 20 locations⁷. Social and economic consequences for these towns will be concentrated and pronounced.

Consequences on individual employees may be dramatic where companies shift their workforce in these regions to a FIFO model. It is commonly understood in the resources sector that long-term FIFO arrangements can negatively impact the mental health of employees. FIFO working rosters often consist of extended working hours which are concentrated into a short period of time. The transient nature of a FIFO roster hinders the ability for employees to undertake the regular activities necessary for building positive and resilient mental health. For example, FIFO employees are away from their families for extended periods of time and are not able to form lasting connections to their community via regular participation in socially active groups such as sports teams. These factors often lead to elevated stress levels, can lead to depression, and may have negative impacts on employees' relationships with immediate family members.

Having the choice between residential and FIFO models is the optimal approach to balance both the requirements of business and the preferences of individuals. It remains appropriate to ensure both approaches are supported by FBT concessions.

4.4 Discourages investment in social and infrastructure development in remote regions

Fortescue is committed to supporting regional communities in Western Australia due to the existence of its business operations and its residential workforce. This provides local employment opportunities and strengthens local business capability at various locations across the Pilbara. Community development is key to Fortescue's corporate ethos and values.

⁶ Ibid.

⁷ Ibid.

Fortescue also has a focus on ensuring the Pilbara region can sustain long term employment by investing and developing the communities in the region. This is a flow-on effect of having a residential workforce. To date, Fortescue has made a substantial contribution towards community initiatives in the Pilbara region (investing approximately \$6 million in community initiatives since 2011). The community initiatives include grant programs for local projects / groups, support at local food markets and music festivals, sponsorship towards youth art prizes, mental health rallies and road-side clean-ups⁸. Additionally, Fortescue has constructed and developed its Vocational Training and Education Centre (**VTEC**), which has provided training, support and employment to over 1,500 Australian Indigenous persons since 2006.

The FBT remote area housing concessions encourage employers to invest in a residential workforce, which consequently (due to an increased population) encourages the development of local communities from both a social and infrastructure perspective. In support of this, there has been concerted efforts by the State, local Governments and industry bodies alike to move away from 'FIFO mining camps' located on the fringes of these communities, to 'residential' communities – communities where employees are fully integrated residents. The liveability of regional towns will be severely impacted by the reforms due to creating a shift to FIFO roles. Employees that are integrated into these local communities engage with community services, support local businesses through spending, are involved in local sport and community organisations, and their children attend local schools and childcare facilities. Removal of the FBT housing concessions will impact the economic and social fabric of these communities. Population numbers will be eroded, followed by less investment in amenities, infrastructure and education.

It is good policy to leverage the willingness of large employers to invest in communities. The relatively small tax cost estimated by the Commission at \$210 to \$430 million has a magnifier effect by encouraging the development of infrastructure in the form of housing, which encourages other amenities invaluable to the long-term development of remote area towns. It is not overly generous and achieves the desirable policy and productivity outcomes by increasing population and investment in regional communities for a relatively small tax cost.

4.5 Disregards role of corporates in investing in remote area regions. Reforms will shift the responsibility and burden from federal to state

The reforms focus on federal revenue growth, shifting the social and economic impact on local communities to the state governments and local councils. The Draft Report notes "State and Territory governments carry primary responsibility for regional development, and each jurisdiction will have its own challenges and priorities"⁹. It is not reasonable to say this is primarily a State and Territory concern. Federal Government has supported the remote area concept prior to inception of FBT and for the ensuing 33 years. While there have been changes in which areas should be considered 'remote', the basic policy objective is still valid and should be supported by the Federal Government.

The Draft Report states the exemption for employer-provided housing could cost as much as \$430 million per year in forgone FBT revenue nationally¹⁰. The focus on increased federal revenue disregards the role that large employers play by investing in regional towns. One of the major problems with attracting residential workers to regional locations is the lack of available housing, infrastructure, facilities, education and recreational services. As discussed above, Fortescue and

⁸ For more information, please refer to Fortescue's FY19 Corporate Social Responsibility Report issued in August 2019.

⁹ Pg. 228, Productivity Commission Draft Report August 2019.

¹⁰ Pg. 294, Productivity Commission Draft Report August 2019.

other employers invest significantly in housing and community development projects in the Pilbara region to combat these problems.

Should employers decrease investment in regions due to the reforms, local and State governments will need to take on increased responsibility for developing local communities. Local government funding in many regional areas is seen as inadequate to allow councils to deliver the services and amenities that are required in small towns.

Federal action to remove the FBT concessions without first improving local government funding and the capacity to build regional health, education, business and recreation services could be catastrophic for regional development. Maintaining the current FBT exemptions and concessions will support ongoing corporate investment in remote locations.

4.6 Proposed reform disregards the objectives & spirit behind the introduction of the tax concession policy

The initial introduction of exemptions and reductions in taxable value clearly reflected the intention to support employment in regional and remote areas and to assist employers who would otherwise have difficulty in attracting the necessary skills and attributes, to places of work which involve relatively higher degrees of isolation and lifestyle disadvantages. Although the cost of living varies across Australia, the Commission acknowledges the data suggests some living cost pressures are inherent with remoteness, and that these costs are more pronounced in very remote areas¹¹.

To remove the concessions is not consistent with the intention to promote labour market mobility and to increase national productivity. The Commission's recommendations do not sufficiently acknowledge that regional growth plays an important role in economic productivity as an enabler to most Australian export industries, and on ability to improve infrastructure. This has been seen in areas such as Port Hedland.

The Commission's Draft Report states the rate of the concession should depend on the likelihood that there is an operational reason for an employer to provide a good or service, and on whether it also privately benefits the employee.¹² According to the Draft Report, the existence of a full exemption is not justified where the provision benefits the employee (e.g., in the case of housing). This argument is flawed considering the current FBT regime. For example, there are other examples of FBT exemptions apart from matters that are strictly work-related, such as FBT exempt relocation benefits. It is not valid to claim that FBT concessions should only exist in cases of immediate and direct work-related necessity.

In any event, the provision of a remote area housing benefit has a clear connection to business operations. This is particularly evident where there is a requirement for businesses operating in the region to enter into a community development plan (to invest in the local community and to develop a regional workforce as a condition of the license agreement with the state). This is evidenced in Fortescue's case in the Pilbara. If developing the regions is a shared responsibility between Federal, State and private organisations, then any costs relating to supporting this policy would naturally be required for operational reasons even where there is an element of private benefit.

¹¹ Pg. 10, Productivity Commission Draft Report August 2019.

¹² Pg. 235, Productivity Commission Draft Report August 2019.

4.7 Significantly increased costs, administration and compliance for companies operating a residential model

The proposed reforms would lead to greater tax costs to companies that choose to operate a residential model.

The Draft Report, however, has failed to highlight the fact that moving the benefits from being exempt to taxable (whether partly or fully) will dramatically increase the cost of compliance. The administrative burden will increase for employers in the form of additional record keeping requirements for FBT purposes, tracking, valuing and reporting the benefits to employees. Valuing properties in a volatile market where there are very few points of comparison would entail significant practical difficulty.

Further, limiting the access to the residential fuel concession only to instances where there is an operational requirement for the employer to provide the fuel will also add complexity. “Operational requirement” would need to be clearly defined otherwise it would provide ambiguity and room for interpretation thus increasing the complexity in applying the test.

5. Information Requested

Fortescue has the following comments in response to the information requested by the Commission.

INFORMATION REQUEST 2

“The Commission invites feedback on its estimates of the utilisation of the FBT concessions. Are the Commission’s assumptions plausible? If not, what alternative assumptions should apply? Are there other data that could assist in gauging the use of FBT concessions?”

Response:

- The Commission states at page 294 of the Draft Report that estimated FBT foregone is between 210 million and 430 million. This is a large range and may not be an accurate representation of actual FBT revenue foregone. Additionally, the Draft Report notes that reducing the remote area housing exemption to a 50% concession halves these estimates. This is not correct as employer behaviour would change in terms of providing housing benefits, which in turn, could completely erode any additional revenue that arises.
- The Commission uses a methodology at page 295 of the Draft Report to exclude FIFO (i.e., temporary accommodation) from total employer-provided dwellings. This methodology should be considered by the Commission in more detail as it may not accurately reflect the proportion of a time FIFO/DIDO workers spend on a job site. The Commission’s assumption adopted a 2 weeks on/2 weeks off roster (plus 6 week’s annual and sick leave) results in adjusting the number of FIFO workers by a factor of 0.44 (to reflect the proportion of time spent on site during a year). An additional adjustment is made for shared accommodation.
- We submit a factor of 0.6-0.7 is more realistic as an indicator of the proportion of time spent on site during the year. The 0.44 factor used overestimates ‘off’ periods for FIFO employees. This is evident when we consider that the majority of Fortescue’s FIFO workforce fall within the following two FIFO rosters: 2 weeks on/1 week off, and 8 days on/6 days off. Rotations of 6 weeks on/2 weeks off, 3 weeks on/1 week off, and 28 days on/10 days off are also prevalent in the resources industry.
- Should the Commission apply a higher factor per above, this would result in a higher allocation of employer-provided dwellings to FIFO/DIDO workers. A lower number to residential employees would be recognised. This in turn would reduce the Commission’s estimated cost of FBT foregone.
- It is recommended the Commission undertake further analysis by seeking data directly from employers operating in remote areas (e.g., seeking actual data drawn during the preparation of FBT returns to ascertain categories of housing assistance such as residential vs. temporary vs. FIFO). This may be used as a basis for producing more reliable FBT estimates. We note that any assumptions applied will need to be appropriately validated if using such a model.

INFORMATION REQUEST 3

“Should the revised remote area concessions be considered ‘reportable’ or ‘excluded’ benefits? Are there additional compliance burdens from allocating these benefits to individual employees that justify excluding them?”

Are there any other factors that should be considered in implementing these changes?”

Response:

- Remote area benefits should remain excluded (non-reportable) benefits as their dominant purpose is to counteract difficulties for employees working in remote locations.
- Treating these benefits as reportable may result in financial hardship for employees (including Aboriginal employees in Fortescue’s case), as it may result in individuals having to bear additional costs through the loss of private health care rebates and additional obligations such as the Medicare Levy Surcharge, FEE-HELP or Child Support.
- This is unwarranted as the basis for housing assistance programs is to address additional costs and disadvantages.

INFORMATION REQUEST 4

“The Commission invites further information on the compliance burdens that could arise from this change in the FBT treatment of employer-provided housing, and on what could be done to reduce these burdens while addressing equity concerns.”

Response:

- There are practical concerns for employers when changing from an exemption to a taxable basis (whether a concession or whether treated as fully taxable).
- Concerns include an increased administrative burden for employers having to report benefits in tax returns (previously unreported), tracking benefits provided and undertaking valuations which have not historically been required.
- Determining whether the requirement to provide accommodation is “necessary” or due to “operational requirement” adds complexity and cost. In practice, it would be difficult to apply these criteria and the circumstances for qualification will need to be clarified.
- For the reasons above, the change would increase compliance burden resulting in increased costs for employers, particularly small operators.
- In some arrangements, employees, rather than employers, directly benefit from the existing concessions via salary sacrifice. As such, if the recommendations proceed, there should be grandfathering of existing arrangements to protect them.

INFORMATION REQUEST 5

“How often should the FBT remote area boundaries be updated?”

Should the FBT remote area boundaries be decoupled from the ZTO boundaries? If so, how?

Can the other eligibility rules for remote area concessions be improved sufficiently to make geographical boundaries redundant?”

Response:

- It is imperative that boundaries remain stable for an extended period (e.g., at least 20 years).
- Stability will reduce the compliance burden for the federal government having to regularly update remote area boundaries and will aid in long term decision making for companies (e.g., deciding on the viability of new projects). This will also allow companies to take appropriate steps towards effective budgeting measures.
- Changing eligibility rules will need to be clear and should allow an appropriate transitional period for employers to appropriately budget and/or to aid future decision making.

INFORMATION REQUEST 6

“What impacts would the proposed changes to FBT remote area concessions (particularly for housing) have on the provision of key public services, such as health services, in remote areas?”

Response:

- Refer to arguments at 4.4 and 4.5 above. The relatively small tax cost estimated by the Commission at \$210 to \$430 million has a magnifier effect by encouraging the development of infrastructure in the form of housing, which encourages other amenities invaluable to the long-term development of remote area towns.
- There will be a greater burden on local governments and councils to fund infrastructure and community development projects in the absence of the current levels of employer participation.