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Commissioners Jonathan Coppel and Paul Lindwall
Remote Area Tax Concessions and Payments Study
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

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For online submission

Dear Commissioners Coppel and Lindwall

We are pleased to provide our comments in response to the consultation by the Productivity Commission on the draft report on Remote Area Tax Concessions and Payments released in August 2019.

In our view the remote area tax concessions, particularly those relating to Fringe Benefits Tax (FBT), provide necessary and valuable support to employers and employees faced with a variety of hardships. The policy support for promoting residential arrangements in remote and regional areas remains strong. Community support, both in remote areas and in urban areas, is also strong.

We do not agree with the Commission's proposals to reduce the existing FBT remote area concessions. Our comments on the Commission's findings and responses to requests for information are enclosed.

If you have any queries, please do not hesitate to contact me

Yours sincerely

Tanya Ross Jones
Partner – People Advisory Services

Comments on recommendations and findings

We have commented on the specific findings and recommendations which we would ask the Commission to consider more closely.

Draft finding 4.1

The remoteness areas published by the Australian Bureau of Statistics would be a more suitable basis for defining zone tax offset boundaries. They are widely used, including by State governments and the Commonwealth Grants Commission, and are updated after each census using a transparent and well-understood methodology.

We support this proposal. In our view the remoteness areas are suitable for defining zone tax offset boundaries.

Draft finding 4.2

The zone tax offset (ZTO) is flawed and outdated.

- ▶ Eligibility has not kept up with change in remote Australia, and nearly half of ZTO claimants live in large coastal regional centres.
- ▶ Inflation and growth in wages have substantially eroded the value of the ZTO. The economic and employment impacts of the concession are likely to be small, and there is no evidence to suggest that the ZTO currently affects where people choose to live and work.

We agree that at current levels, the ZTO provides little value to employees. If the boundaries were changed and the values of ZTO increased, the ZTO would have greater impact. We support the position that individuals residing and working in remote areas should be directly entitled to support which is not reliant on their employers.

Draft finding 5.1

There is no compelling justification for a zone tax offset in contemporary Australia. Higher living costs or other aspects of life in remote areas do not warrant compensation from other taxpayers. Australians face a range of advantages and disadvantages in where they live, and will typically locate in the area they value most highly. Communities likewise grow or shrink based on their advantages and disadvantages. Attempts by governments to artificially create an advantage for a remote community, or attract people to live in high cost areas through tax concessions, typically result in net losses to the broader Australian community.

Draft recommendation 5.1 Abolish zone and overseas forces tax offsets

The Australian Government should abolish the zone tax offset and the overseas forces tax offset.

For the reasons outlined above, we do not support this recommendation. We consider the ZTO should be revised rather than abolished.

Draft finding 5.2

There is no case for the Government to provide company tax offsets specifically to businesses in remote areas. Governments should focus on creating successful business environments regardless of their location.

We agree with this finding. Company tax offsets would add complexity. It is preferred that support to companies and other employers is provided via a simpler and more effective regime for FBT concessions.

The remote area allowance

Draft recommendation 6.1 Adjust RAA boundaries

The Australian Government should revise section 14 of the *Social Security Act 1991* (Cth) to align the remote area allowance geographical boundaries with the Australian Bureau of Statistics remoteness classification for very remote and remote areas.

We support this recommendation.

Draft recommendation 6.2 Review RAA payment rates periodically

The Australian Government should revise payment rates for the remote area allowance (RAA) following the completion of this study.

Thereafter, the Department of Social Services should review the RAA periodically. These reviews should:

- ▶ Revise RAA payment rates, taking into account changes in living-cost differentials between remote and non remote areas
- ▶ Report on RAA annual outlays and recipient numbers
- ▶ Consider any issues associated with administering the RAA.

The reviews should be made public.

We support this recommendation.

Fringe Benefits Tax remote area concessions

Draft finding 7.1

The use and economic effects of fringe benefits tax (FBT) remote area concessions vary.

- ▶ The exemption for employer provided housing (used as a usual place of residence) can provide significant value at the employee level, particularly for higher income employees, and could cost as much as \$430 million per year in forgone FBT revenue nationally. Usage is concentrated in certain areas — such as the Pilbara in Western Australia, and the Central Highlands and Bowen Basin in Queensland — and in industries such as mining, agriculture, and public services (including hospitals, police, and local government).
- ▶ The partial concessions on employee sourced housing are narrowly used. The 50 per cent concession is much less generous than the full exemption on employer provided housing, and the compliance burdens are higher.
- ▶ Use of other FBT remote area concessions (on residential fuel, meals for primary production employees and holiday transport) is minimal, in part because they provide limited tax savings and are overly complex with high compliance costs.
- ▶ FBT concessions for fly in fly out workers, while widely used, are likely to have only a minor influence on decisions to maintain a fly in fly out workforce.

We agree the FBT housing exemptions can provide significant value to employees. In our experience this is not limited to employer-provided housing, with the concessions for remote area purchase assistance, mortgage interest, rent and loans also used by a variety of employers and their employees. Remote area utilities and holiday transport are also well-used concessions for remote area residential employees, reflecting the additional costs incurred when residing in a remote area.

Draft finding 7.2

Fringe benefits tax remote area concessions help to address inequities inherent in the FBT regime, but they are not fit for purpose. The current concessions are overly generous and complex, thereby creating other inequities.

We disagree. While the current concessions may be criticised for being inconsistent (for example the different application of the 50% reductions for rent as opposed to the other forms of housing assistance), thereby adding complexity and cost to administering them, this would not justify abolishing them. It is not clear how it has been concluded that they are overly generous. If the concern is that higher income taxpayers have an opportunity to benefit to a larger extent, this will always be the case for a tax concession including any form of tax deduction. Concerns with the magnitude of benefit would be better addressed by capping the value that can be obtained, as opposed to removing access altogether. Abolishing concessions would in fact disproportionately disadvantage lower-paid employees whose take-home pay is directly supplemented via salary packaging arrangements.

Draft recommendation 8.1 Tighten tax treatment of employer provided housing

The Australian Government should amend the *Fringe Benefits Tax Assessment Act 1986* (Cth) 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)).

We strongly disagree with this recommendation. The exemption should be retained in its current form. Limiting it to 50% and removing the “customary” test would add significant complexity by requiring the alternative, more onerous tests to be satisfied. It would very much reduce the opportunities for its use. This is inconsistent with the policy rationale of supporting remote area residential arrangements.

Being customary in the industry is consistent with the intent of there being an underlying business need. Not all industries can meet this requirement. This has been explained by the Australian Taxation Office in Taxation Determination TD 94/97. It should not be construed that this requirement is met too readily.

Draft recommendation 8.2 Remove 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).

We disagree. Employee-sourced housing, including homes purchased with mortgages and leased properties, remains very much related to the needs of employment and business for those working in remote areas. Allowing concessions for employee-sourced housing provides flexibility for different forms of remuneration arrangements and can significantly reduce employer costs and administration.

This flexibility is seen across other types of fringe benefits. For example, the novated lease industry has developed through the desire to provide employee flexibility while meeting the FBT requirements that an employer must “hold” a car for it to be treated as a fringe benefit.

If anything, we support extending the 50% remote housing concessions to result in a full exemption and thereby avoid the complexity and confusion that arises when comparing employer-provided housing with employee owned or rented accommodation. Removing the concessions would disadvantage employees and make residential workforces far less viable.

Draft recommendation 8.3 Tighten 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).

We disagree with this recommendation. Remote area utilities and holiday transport are also well-used concessions for remote area residential employees, reflecting the additional costs incurred when residing in a remote area. These additional costs flow on from the necessity of working in a remote area and accordingly there are good grounds to consider these to be work-related to a sufficient extent that employer assistance should not be a taxable benefit. This is enshrined in numerous industrial agreements.

To disturb the position will create additional costs, a good proportion of which will directly affect individuals. In the circumstances, noting the proportion of socio-economically disadvantaged and Indigenous individuals who receive such assistance, we would consider this unfair and not to be supported.

Information requested

We provide the following input in relation to information requested.

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?

Our experience in working with employers across a range of industries including mining, oil and gas, agriculture and government is that while the number of employees residing in remote areas forms a relatively small proportion of the population, where there is an opportunity to obtain better outcomes for employees by using the concessions, they are well used. Salary sacrifice arrangements are prevalent for the various forms of housing assistance and for remote area holiday transport. Employer assistance with remote area fuel is also common.

In relation to the estimates of cost at Table C.7, we would question the proportion of year spent on job site. The factor of 0.44, based on two weeks on and two weeks off with a further six weeks' annual leave and sick leave does not align with our experience. The more prevalent rosters are two or three weeks on and one week off, with some longer rotations of six weeks on and two weeks off. Annual leave may be paid out under many industrial agreements as "off" rotations provide sufficient leave, therefore it is not reasonable to factor in a further six weeks of absence from site.

We recommend revisiting these assumptions and revising the proportion of accommodation used by FIFO employees, which in turn reduces the estimated value of employer residential housing.

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?

The remote area concessional benefits should remain excluded (non-reportable). They arise from work-related conditions and are not of a remuneration nature. We support maintaining the non-reportable status of remote area benefits.

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.

As noted above, we do not support these proposals. Should the exemption for employer-provided housing be limited to a partial concession, this will introduce the need for valuations. This adds cost and complexity to compliance. In markets where the stock of employer housing directly affects market values, obtaining suitable valuations could be difficult.

We recommend, if the proposals proceed, there should be scope for safe harbour valuations. This was a feature of the remote area housing FBT provisions when originally introduced. Needing to engage professional valuers should be avoided as far as possible, although there should be an option to do this if the employer chooses.

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?

For employers, investing in housing is a long-term decision. It demonstrates a commitment to a local community and the desire to improve amenities. Such decisions improve local infrastructure and help to alleviate burdens on the public pocket. For all of these reasons, employer investment should be promoted. This can only occur if there is not a risk that concessional treatment may be withdrawn due to the change in a boundary or population level. Particularly for mining communities, boom and bust cycles make populations volatile. There would be many examples of populations temporarily exceeding limits that would result in a reclassification, only to revert below the relevant threshold within a matter of years.

We therefore recommend updates should not occur within timeframes of less than 20 to 30 years. This permits long term planning, clarity of decision making and strategic investment. Where a change occurs, there should be grandfathering of existing employees so as not to disadvantage them in unintended ways.

We do not see any reason the ZTO and FBT remote boundaries need to be aligned. The transparency and contemporaneity of the remoteness boundaries are suitable for testing the eligibility of individuals to offsets which would presumably remain of smaller overall value than the housing concessions. From an employer perspective, longer term certainty is required if the concessions are to be effective.

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?

Remote area employees engaged in key public services, including health, education and police, benefit from remote area FBT concessions as much as employees of any other industry. Therefore they would be equally disadvantaged by their removal. This in turn would be expected to make it much more difficult to attract and retain suitably qualified staff. This either results in increased costs to government or a reduction in levels of service. We do not support either outcome.