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Fringe Benefits Tax (FBT) Reform – Living-Away-From-Home Benefits

We make the following comments on the proposed changes to the living away concessions:

Live in workers

Some staff are required as part of their work duties to "live in" at accommodation provided by the employer. This includes residential boarding schools and residential University colleges where the staff have roles in the monitoring and managing of the premises and pastoral care duties for students residing in those premises. Unlike fly in fly out type arrangements, these staff will usually remain and be required to remain at the accommodation for the period of the tenure of the employment. This may be per academic year for residential tutors but can extend to up to 5 years for board masters, masters and deans with overall responsibility for the premises.

Based on the Treasury consultation document, if these types of staff do not maintain a residence elsewhere, the school or university college will be subject to FBT on the accommodation provided. This would appear inequitable given some staff may have rented personal accommodation rather than owned personal accommodation.

Thus those that have rented will have given up that lease to take up the role with the school or university college. The school or University College would need to strongly consider offering such positions only to those who owned a personal residence due to the FBT imposts that may otherwise arise.

It is therefore suggested that where the role of the employee requires them to be involved with the management of the accommodation or ancillary activities (e.g. residential live in tutors) and to reside in that accommodation as an integral part of that role it should remain classified as living away. This also is on the basis that they must vacate the premises provided at the end of the employment.

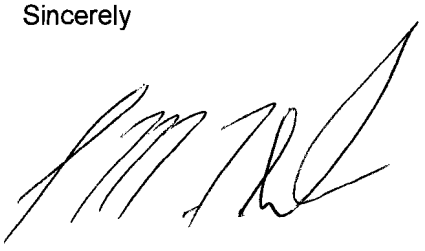
Superannuation Guarantee (SG) impact

Presently, the definition of ordinary time earnings (OTE) excludes fringe benefits. OTE is used to determine the contributions made by employers for employees. If a living away allowance is to become assessable or notionally assessable to the employee then this then raises the question of whether an employer will have a superannuation liability on such payments as they may then be viewed as OTE.

We suggest that such payments should be excluded from the definition of OTE irrespective of whether assessable or not. This can be best dealt with by amendment to the Commissioner of Taxation's ruling on what constitutes OTE.

Without prejudice to this suggestion, the alternative could be to exclude such allowances where the Commissioner has granted a blanket tax variation. The issue with this approach is that some employee's notably foreign workers who do not receive the application of the variation may then receive superannuation support whilst Australian permanent residents would not. Thus the first option is recommended for simplicity and on equitous grounds.

Sincerely



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