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Limiting FBT concessions on salary packaged entertainment benefits

The IPA welcomes the opportunity to provide a submission on the exposure draft Tax and Superannuation Laws Amendment (2015 Measures No. 4) Bill 2015: Limiting FBT concessions on salary packaged entertainment benefits (**ED**) and the accompanying explanatory material (**EM**).

The IPA is a professional organisation for accountants who are recognised for their practical, hands-on skills and a broad understanding of the total business environment. Representing more than 35,000 members and students in Australia and in more than 81 countries, the IPA represents members and students working in industry, commerce, government, academia and private practice. More than 75 per cent of our members work in or with small business and SMEs and are recognised as the trusted advisers to these sectors.

We support the Governments proposed changes to the Fringe Benefits Tax (FBT) to limit the concessional treatment of salary packaged entertainment. For many years, the IPA have been advocating that the Government should introduce a cap on the total amount of salary packaged entertainment that employees can include as part of their remuneration package. There has been ample evidence over many years that this

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concessional treatment has been exploited beyond its original intended purpose. This has been highlighted in a number of recent independent inquiries which have been mentioned in the EM.

Salary packaging providers have been actively promoting the use of meal entertainment cards for dining for many years now. The concession has been further exploited by extending its reach to include entertainment facility leasing which includes both domestic and overseas holiday accommodation. These uncapped concessions particularly for employers able to access a general FBT exemption cap or rebate has created inequitable outcomes that go well beyond the policy intent. The independent reviews have highlighted what most have suspected was happening. That is, the benefit of this concession was not evenly spread among not-for-profit (NFP) employees, but more highly utilized by eligible employees on higher salaries. The policy intent was that this concession was to help enabled registered charities and public hospitals attract and reduce their costs of employment.

We fully support these benefits being treated more consistently with other fringe benefits. The NFP and public health sector workers already enjoy FBT exemptions or rebates. In addition, these employees have been able to salary package a range of benefits not available to other taxpayers such as meal entertainment benefits which include holidays, cruises, weddings, and meals and alcohol in restaurants. The benefits are not capped and not reportable for FBT or for other government tax and transfer payment income tests.

The proposal to include these benefits subject to a new reportable grossed-up exemption cap, will improve fairness in the taxation system.

We are disappointed however, that some of the other well-known loopholes were also not specifically targeted as part of the 2015-16 Budget changes relating to FBT concessions that are available to employees of public benevolent institutions and health promotion charities.

Employees of such institutions have either a \$30,000 or \$17,000 FBT exemption cap. These caps apply on a per employer basis so employees working for multiple eligible

employers can avail themselves of multiple caps. In addition there is no pro-rata entitlement to the cap based on days of service, so new employees can use the annual cap amount even if they have only worked for the eligible employer for a short period during the year.

Specific comments on tax impediments, as follows:

- 1.1 Until you read the ED and EM, many tax practitioners could easily assume that the impacts of these changes was limited to employees of public benevolent institutions and health promotion charities who are eligible for either a FBT exemption or rebate cap. The legislative changes proposed extend well beyond the not for profit sector. The 2015-16 Budget announcements also apply to all employers who allow employees to salary sacrifice meal entertainment. This has not been made abundantly clear in all the announcements to date associated with the Budget changes. It would be recommended that the wider impacts of these changes to all other employers be made upfront with examples as it may be overlooked by many employers and advisers. The examples must clearly highlight the impacts on both non-profit and for-profit employers. A more expansive EM is entirely warranted given the intricacies of the FBT and income tax interactions in respect to entertainment expenses.
- 1.2 Under the proposed changes, the 50/50 split method employers can elect to calculate the taxable value of meal entertainment will not be available for meal entertainment which forms part of an employee's salary package arrangements. The 50/50 split method was introduced as a compliance cost saving, allowing employers to avoid apportioning different types of benefits to different types of recipients. We acknowledge that the method can produce a concessional result (i.e. the value of a packaged benefit is halved) and moreover salary packaged entertainment is considered as being easily valued and easily attributed for particular employees. Again, as this change applies to all employers, the impact of this may go unnoticed as it was not

clear from the original announcements. Such FBT elections also have ramifications for income tax purposes (i.e. 50% of such total expenses become non-deductible).

- 1.3 Whilst we support the introduction of a cap for salary sacrificed meal entertainment and entertainment facility leasing expenses, the proposed threshold of a grossed up amount of \$5,000 may be deemed too low for cash strapped NFP trying to attract and retain employees. The introduction of a cap will remove the exploitation of the concession and ensure that it is not unevenly used by employees on higher salaries. However if the cap is struck at a level which is too low, it can place undue pressure on small NFP employers trying to compete with commercial remuneration packages. Some research should be conducted on the impacts of the proposed threshold will have particularly for small NFP organisations.

The IPA welcomes the opportunity to discuss further any of the matters we have put forward in our submission. Please address all further enquires to myself (tony.greco@publicaccountants.org.au or 0419 369 038).

Yours sincerely,

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