



# PITCHER PARTNERS

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Ref: AS:ph:jd

21 August 2015

General Manager  
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The Treasury  
Langton Crescent  
PARKES ACT 2600

Dear Sir / Madam

### **FRINGE BENEFITS TAX REFORM: LIMITING FBT CONCESSIONS ON MEAL ENTERTAINMENT AND ENTERTAINMENT FACILITY LEASING BENEFITS**

We thank you for the opportunity to make comment on the proposal to introduce a \$5,000 single grossed-up cap on meal entertainment and entertainment facility leasing benefits ("Salary Packaged Entertainment") for employees of FBT exempt and rebatable employers (e.g. Public Benevolent Institutions, Public Hospitals or Schools) in addition to other reforms. We are pleased to provide the following response.

Pitcher Partners comprises five independent firms operating in Adelaide, Brisbane, Melbourne, Perth and Sydney. Collectively we would be regarded as one of the largest accounting associations outside the Big Four. Our specialisation is servicing and advising smaller public companies, large family businesses and small to medium enterprises (which we refer to as the "middle market"). As such, we believe we are in an excellent position to make informed comments on the real implications of the proposed reforms on the middle market.

#### **Proposed Amendments**

Our understanding of the proposed amendments contained in the *Tax and Superannuation Laws Amendment (2015 Measures No. 4) Bill 2015: Limiting FBT concessions on salary packaged entertainment benefits* is that the government, in accordance with its aim to improve fairness in the tax system, wishes to introduce a limit on the amount of Salary Packaged Entertainment benefits that can be salary packaged by employees (amongst other ancillary changes).

We describe our understanding of the proposed legislation, with specific comments or recommendations on each change below.

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## 1. Changes to the capping measures

The government proposes to include the taxable value of salary packaged Entertainment within the existing caps. There will be an additional cap of \$5,000 (grossed-up) available for Salary Packaged Entertainment. If the existing caps are exceeded, an additional cap of \$5,000 will be available for Salary Packaged Entertainment Benefits provided to employees of eligible FBT-exempt or rebatable employers. .

Comments:

- *We agree that the proposed measures should increase the fairness across the tax system.*
- *However, many organisations in the NFP sector that have come to rely upon the FBT concessions to allow them to compete with the commercial sector in attracting quality staff will be faced with a sudden drop in labour market competitiveness.*

**We recommend delaying the proposed changes to allow time for the government to implement strategies and communicate measures that will provide more direct support to the NFP sector and prevent a drain on talented labour resources from these organisations that provide social benefits.**

- *The existing rebatable and FBT exemption caps of \$17,667 and \$31,177 are not indexed, and have not been reviewed against broader inflationary or relative wealth changes since their introduction<sup>1</sup>.*

**We recommend that the government consider whether the quantum of these caps are still consistent with the original intention of the legislation, particularly with the introduction of a limit on concessional taxed Salary Packaged Entertainment which can also serve to potentially reduce the existing benefits provided to employees. In light of this, the government should consider whether the additional cap of \$5,000 (grossed-up) for Salary Packaged Entertainment is set at too low a level.**

## 2. Change to payment summary reporting measures

The government proposes to make all Salary Packaged Entertainment fringe benefits reportable on employee's payment summaries. We note that this measure is not limited to employers in the non-profit or charitable sector.

Comments:

- *While there may be an increase in the administrative burden, this should be limited by the fact that many organisations that offer Salary Packaged Entertainment fringe benefits should already have processes in place to track and report other salary packaged benefits on employee payment summaries.*

*We agree that this measure should increase the fairness across the tax system as it means that employees who reduce their taxable income for individual income tax purposes by Salary Packaged Entertainment fringe benefits are eligible for or subject to a similar level of means tested government benefits and obligations as other employees who do not salary package these benefits.*

<sup>1</sup> We note that they were increased from 1 April 2015 to account solely for the increase in the individual top marginal tax rate and FBT rate.

### 3. Changes due to the interaction with generally available concessions

The government proposes to prevent the current elective meal entertainment and entertainment facility leasing concessions (e.g. the 50 / 50 method for meal entertainment and entertainment facility leasing expenses and 12 week register method for meal entertainment) being available for Salary Packaged Entertainment. This is irrespective of whether the organisation receives FBT concessions due to its charitable or non-profit status.

*Comments:*

- *It is stated that the objective of these measures is to increase the fairness of the tax system with respect to concessions received by non-profit or charitable employers and other employees generally.*

*However, these general elective concessions have been available to all employers (subject only to the choices made by the employer across all fringe benefits of the same category each year). The general elective concessions do not create an unfair advantage as any concession (independent of the capping concessions) is potentially available to all employers. As such, this measure is not likely to increase the fairness of the tax system.*

- *Further, we note that this measure may increase the compliance burden and complexity of FBT returns across a wide range of employers.*
- ***If the purpose of these measures is solely to increase the fairness of the tax system, particularly around the “unfair” advantage received by the non-profit or charitable sector, the measure should not proceed.***

### 4. Transitional Arrangements

No transitional measures have been proposed.

*Comment:*

- *A common structure for the provision of Salary Packaged Entertainment is to have the employee salary sacrifice a certain pre-loaded value onto a card which can be used only to purchase meals and in some cases also entertainment facility leasing expenses. Employees may have entered into arrangements prior to the 2015 Federal Budget measure being announced. If there is unutilised value on the card at the end of the FBT year ended 31 March 2016, the value may be refunded to the employee and form part of their taxable income for individual income tax purposes for the tax year ended 30 June 2016.*

*This may have the effect of shifting taxable income salary packaged prior to 30 June 2015 from the 2015 individual tax year to the 2016 individual tax year. Certain employees may be disadvantaged if the increased taxable income in the 2016 tax year is subject to tax at a higher tax rate than would have applied in the 2015 year (e.g. if the increased taxable income moves up a marginal tax bracket).*

***We recommend the government consider introducing transitional measures to prevent employees who had existing arrangements in place from being unfairly disadvantaged by the changes.***

**Contacts for Further Information**

Should you have any queries in relation to the points raised in our submission, please feel free to contact Paul Hum on 03 8612 9272 or myself on 03 8610 5520.

Yours faithfully

PITCHER PARTNERS ADVISORS PROPRIETARY LIMITED



A SULEYMAN  
Executive Director