



THE TAX INSTITUTE

THE MARK OF EXPERTISE

26 August 2015

Mr Tom Reid
General Manager
Law Design Practice
The Treasury
Langton Crescent
PARKES ACT 2600

By email: taxlawdesign@treasury.gov.au

Dear Mr Reid,

Limiting Fringe Benefits Tax concessions on salary packaged entertainment benefits

The Tax Institute welcomes the opportunity to make a submission to the Treasury in relation to the *Tax and Superannuation Laws Amendment (2015 Measures No. 4) Bill 2015: Limiting FBT concessions on salary packaged entertainment benefits Exposure Draft Exposure Draft (Exposure Draft)*.

Summary

In our submission below, we raise a proposal for Treasury's consideration, which is an increase in the proposed cap on salary packaged entertainment benefits from \$5,000 to \$15,000. As an alternative, another proposal is suggested to limit the application of the changes to employees above an agreed income cap. Otherwise, we consider that the Exposure Draft achieves the intended policy goal.

Discussion

In The Tax Institute's view, the proposed amendment to the *Fringe Benefits Tax Assessment Act 1986* (Cth) (**FBTAA**) is a relatively straightforward amendment and note that the changes will achieve the intended policy goal set out in the 2015-16 Federal Budget measure *Introducing a cap for salary sacrificed meal entertainment and entertainment facility leasing expense*.

1. Proposal

a) Increase the proposed cap from \$5,000 to \$15,000

The Tax Institute wishes to propose an alternate measure for Treasury's consideration that should achieve the same policy goal of improving fairness in the tax system by introducing a limit on the use of salary sacrificed meal entertainment and entertainment facility leasing expense benefits of employees, particularly those employed by non-profit entities.

We suggest the cap be raised from \$5,000 to \$15,000 which will greatly assist lower income earners to continue to access these salary-packaged benefits to which they may be accustomed as part of their remuneration base.

We consider that the current proposed cap of \$5,000 will unduly impact lower income earners who are provided these types of salary-packaged benefits in lieu of more competitive salaries their non-profit employers may not otherwise be able to offer. The proposed measure does not compensate non-profit employers for the impact the cap will have on their ability to attract employees and offer competitive salary packages comparable to private sector salaries. In our view, a higher cap of \$15,000 strikes a better balance between preserving the position under the current law for many lower income employees while at the same time preventing excessive salary packaging of these benefits by higher income earners and therefore still achieving 'fairness' as intended by the Government upon introducing this measure.

This is The Tax Institute's preferred outcome.

b) Alternate proposal – No cap on benefits below a certain income threshold

The Tax Institute poses an alternate solution which involves applying an income cap below which salary packaged entertainment benefits can be provided on the same (uncapped) footing as are able to be provided under the current law. Above the income threshold, salary packaged entertainment benefits would be provided subject to the proposed \$5,000 in the Exposure Draft.

A possible appropriate income threshold may be a gross remuneration¹ amount in line with the income level at which the top marginal rate begins to apply (ie \$180,000).

¹ Including salary or wage income, allowances, superannuation plus grossed up fringe benefits etc.

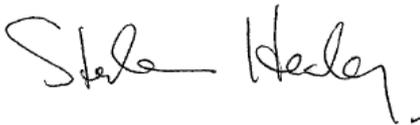
2. Minor Comments in relation to Explanatory Memorandum

On the basis the current Exposure Draft and associated explanatory memorandum proceed as they are, we make the following minor comments:

- a) Paragraph 1.35 – this paragraph should be reviewed as it currently does not make sense.
- b) Paragraph 1.73 – the remainder of the definition of ‘salary packaged arrangements’ (defined in section 136(1) of the FBTA under the term ‘salary packaging arrangement’) should be included to pick up the element that the ‘benefit is provided in circumstances where it is reasonable to conclude that the employee’s salary or wages would be greater if the benefit was not provided’. The paragraph should reflect the definition accurately.
- c) Example 1.1 at paragraph 1.83
 - i) The “restaurant meals with a taxable value of \$1,800” (see the fourth bullet point) should be treated as Type 2 not Type 1 benefits as such benefits are not GST creditable² and therefore should be subject to the lower gross-up factor.
 - ii) There appears to be a typo in Footnote 8 on p21 of the EM and at Step F in the example - \$17,677 should be \$17,667.

If you would like to discuss any of the above, please contact either me or Tax Counsel, Stephanie Caredes, on 02 8223 0059.

Yours sincerely



Stephen Healey
President

² Refer to Division 69 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)