CR 2026/46 - Department of Primary Industries and Regional Development - New South Wales Forestry Industry Worker Support Program

Class Ruling

Department of Primary Industries and Regional Development – New South Wales Forestry Industry Worker Support Program

Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out the income tax and fringe benefits tax (FBT) consequences of support payments provided by the New South Wales (NSW) Government and administered by the Department of Primary Industries and Regional Development (DPIRD) to support NSW Forestry Industry employees impacted by the transition away from native timber harvesting under the Forestry Industry Worker Support Program (Program).

2. Details of this scheme are set out in paragraphs 21 to 48 of this Ruling.

3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997), unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you are an employee who receives support payments, consisting of Government top-up payments, education and training cost reimbursement payments, and relocation cost reimbursement payments, under the Scheme, following the termination of your employment.

When this Ruling applies

5. This Ruling applies from 11 November 2025 to 7 September 2028.

Ruling

Government top-up payments

6. If an employee receives a top-up redundancy payment (Government top-up, or GTU payment) under the Program and satisfies the criteria of section 83-175 with reference to an objective assessment of their circumstances, that payment will be a genuine redundancy payment and will be non-assessable non-exempt income (tax free) up to the limit worked out under section 83-170.

7. If an employee receives a GTU payment under the Program, to the extent that payment either does not satisfy the criteria of section 83-175, or exceeds the limit worked out under section 83-170, that payment will be an employment termination payment (ETP), where the criteria of section 82-130 is satisfied with reference to an objective assessment of their circumstances. The tax treatment of that ETP will depend on the employee's individual circumstances.

8. If an employee receives a GTU payment, it will not be included in their assessable income under section 6-5 if, when undertaking an objective assessment of their circumstances, it:

- satisfies the criteria of section 83-175, or
- does not satisfy that criteria but does satisfy the criteria of section 82-130 and does not exceed the limit worked out under section 83-170.

9. A capital gain which an employee makes when receiving a GTU payment is reduced under section 118-20 by the extent to which that payment satisfies the requirements of either Division 82 (Employment termination payments) or Division 83 (Other payments on termination of employment).

Education and training cost reimbursement payments

10. If an employee receives an education and training cost reimbursement payment under the Program, that payment will not satisfy the requirements of section 83-175 or 82-130. This means it is not an ETP or genuine redundancy payment under Divisions 82 or 83.

11. The education and training cost reimbursement payment provided to employees under the Program is not considered ordinary income, and therefore it is not assessable under section 6-5.

12. A reimbursement of education and training costs gives rise to CGT event C2 under section 104-25, when the employee's entitlement to receive the reimbursement is satisfied. However, any capital gain arising from this event is disregarded under paragraph 118-37(2)(a).

13. An education and training cost reimbursement payment made to an employee under the Program will not result in the employee having a reportable fringe benefits amount (RFBA) for the purposes of Part XIB of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA).

Relocation cost reimbursement payments

14. The following payments, forming part of the relocation cost reimbursement payments that are paid to employees, are not an ETP or genuine redundancy payment under Divisions 82 or 83:

- Category 1 – removalist expense reimbursement
- Category 2 – property purchase and end-of-tenancy expense reimbursement
- Category 3 – incidental relocation cost reimbursement, and
- Category 4 – short-term accommodation cost reimbursement.

15. These payments, that are paid to employees, are not included in their assessable income under section 6-5.

16. For the purposes of a Category 1 – removalist expense reimbursement, CGT event C2 (under section 104-25) occurs when an employee's entitlement to receive a removalist and relocation expense reimbursement payment is satisfied. However, any capital gain is disregarded pursuant to paragraph 118-37(2)(a).

17. For the purposes of a Category 2 – property purchase and end-of-tenancy expense reimbursement, the property purchase and end-of-tenancy expense reimbursement payment is not included in assessable income. Therefore, the expenditure incurred is excluded from the cost base, or reduced cost base, of the property. Depending on the circumstances of the employee, the main residence exemption provisions in Subdivision 118-B may apply to disregard a capital gain or capital loss made on disposal of the property.

18. For the purposes of a Category 3 – incidental relocation cost reimbursement, CGT event C2 (under section 104-25) occurs when an employee's entitlement to receive an incidental relocation cost reimbursement payment is satisfied. However, any capital gain is disregarded pursuant to paragraph 118-37(2)(a).

19. For the purposes of a Category 4 – short-term accommodation cost reimbursement, CGT event C2 (under section 104-25) occurs when an employee's entitlement to receive the short-term accommodation costs reimbursement payment is satisfied. However, any capital gain is disregarded pursuant to paragraph 118-37(2)(a).

20. The relocation cost reimbursement payments also will not give rise to an RFBA pursuant to Part XIB of the FBTAA.

Scheme

21. This description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

Forestry Industry Worker Support Program

22. On 7 September 2025, the NSW Government announced the creation of the Great Koala National Park (GKNP) on the Mid-North Coast of NSW. The GKNP reserves 176,000 hectares of state forest and connects with existing national parks to create a 476,000 hectare nature reserve.

23. As part of the creation of the GKNP, the NSW Government imposed an immediate temporary moratorium (Moratorium) on timber harvesting within the GKNP, effective 8 September 2025 to 8 September 2026, through a Ministerial Direction in accordance with section 20N of the *State Owned Corporations Act 1989* (NSW). This halts all logging across the 476,000 hectares of state forest included in the GKNP.

24. The Moratorium restricts harvesting and haulage operations and the supply of high-quality and low-quality products by the following 6 timber mills, which were previously party to Wood Supply Agreements with the Forestry Corporation of NSW (FCNSW) and the State of NSW:

- Allen Taylor & Company Ltd (ACN 000 003 056)
- Duncan's Holdings Ltd (ACN 000 080 704)
- Adam's Sawmill Pty Ltd (ABN 98 002 757 477)
- Aquafern Pty Ltd (ABN 40 065 134 027)
- M G Dyer Pty Ltd (formerly M&B Dyer Pty Ltd) (ACN 095 489 553), and
- Thora Sawmilling Pty Ltd (ABN 30 000 409 290).

25. It is expected that the Moratorium will result in the redundancy of approximately 300 employees of impacted mills and harvesting or haulage operators contracted by FCNSW.

26. The NSW Government has introduced the Program to provide financial support for employees of impacted mills and harvest or haulage operators (collectively, impacted businesses) who have been made or are expected to be made redundant following the commencement of the Moratorium. The Program is administered by the DPIRD.

27. The Program includes the following support payments to eligible employees:

- top-up redundancy payments
- education and training cost reimbursement payments, and
- relocation cost reimbursement payments.

28. Details on the Program (including its objectives, eligibility criteria, available support, and registration requirements) are provided in the *Program Guidelines – Forestry Industry Worker Support Program*[1] and on the NSW Government Forestry website.

29. Applications for the Program commenced on 11 November 2025 and will conclude on 7 March 2028. Claims close 18 months after the date on which redundancy is confirmed or by 7 September 2028, whichever occurs first.

Financial support

Government top-up payment

30. The GTU payment is a one-off payment to supplement an employee's statutory redundancy entitlements under sections 119 and 389 of the *Fair Work Act 2009* or relevant enterprise agreement, up to a specified cap. This will be made in recognition that the employee's job is no longer available.

[1] NSW Primary Industries and Regional Development (2026) *Program Guidelines Forestry Industry Worker Support Program*, https://www.dpird.nsw.gov.au/forestry/establishing-the-great-koala-national-park/forestry-industry-worker-support-program.

31. Employees less than 45 years old will receive 4 weeks of base pay (inclusive of employer redundancy payment, if any) per year of service with an impacted timber mill or harvesting or haulage operator, capped at $150,000.

32. Employees 45 years old or over will receive a further 3 weeks of pay for every year of service after the age of 45 (up to a cap of $50,000), to be calculated separately from the payment to employees under the age of 45.

33. The caps include both the GTU payment and any redundancy payment already paid by an employer in accordance with the employee’s employment contract or enterprise agreement. The GTU payment will not be paid if an employee receives a redundancy payment from their employer that exceeds the cap.

34. The GTU payment will be paid to employees by their employers. Part-time and casual employees will be eligible for the GTU payment on a pro rata basis. The pro rata value of the GTU payment will be determined based on the greater of the employee’s past 5 years of employment or the past 12 months of employment.

Education and training cost reimbursement payments

35. Education and training cost reimbursement payments of up to $9,000 (goods and services tax inclusive) may be paid for training and upskilling costs incurred within 12 months of being made redundant. These payments arise because employees have ceased employment in the forestry industry and are determined by their post-employment circumstances under the Program. Employers have no role in facilitating registration or the making of payments. The benefits are provided to assist employees to transition out of the forestry industry.

Relocation cost reimbursement payments

36. Relocation cost reimbursement payments of up to $45,000 (goods and services tax inclusive) may be paid to employees for relocating to more than 50 kilometres commuting distance from their current residential address, in order to obtain new employment, if such expense was incurred within 12 months of being made redundant. These payments arise because employees have ceased employment in the forestry industry and, under the Program, are determined by the employee’s post-employment circumstances. Employers have no role in facilitating registration or the making of payments. The benefits are provided to assist employees to transition out of the forestry industry.

37. The reimbursements for incurred relocation cost expenses can be grouped into 4 categories:

- Category 1 – removalist expenses, which includes
  - removalist and removalist insurance
  - truck hire
  - storage
  - trailer hire
  - gardening fees
  - cleaning fees
  - pet boarding fees (up to one month), and

  - travel costs
- Category 2 – property purchase and end-of-tenancy expenses, which includes
  - reasonable lease-breaking costs incurred at the current residence, as charged by estate agents
  - rental bond of the new place of residence
  - relocation-associated legal costs (such as conveyancing and related legal fees), and
  - reimbursement of stamp duty and agent fees upon demonstrating that the eligible employee has sold a residence at their previous location
- Category 3 – incidental relocation costs, which includes
  - utility connection and exit costs charged by third-party utility providers
  - first groceries purchased from a grocer's shop or supermarket to stock the fridge and pantry at the new residence, capped at $1,500
  - associated medical costs, such as gap payments for amounts payable to medical practitioners and allied health professionals (up to 2 months)
  - one-off school enrolment fees
  - vehicle registration transfer fees (if moving interstate)
  - licence transfer fees, and
  - school uniforms
- Category 4 – short-term accommodation costs, which includes
  - temporary accommodation, that is, short stays in a hotel, motel, caravan parks or Airbnb, and
  - rent at new location (up to 2 months).

38. The benefits will be incurred by the employees in their own names. The reimbursements will be administered and provided by the DPIRD.

Eligibility for the Program

39. Eligibility for the Program is determined by the DPIRD.

40. To be eligible for the GTU payment, education and training cost reimbursements, and relocation cost reimbursements, applicants must meet the following requirements:

- they were a full-time, part-time or casual employee of a Wood Supply Agreement holder with demonstrated direct impacts from the Moratorium, or of a harvesting or haulage operator contracted by FCNSW at the time of the Moratorium announcement, and
- one of the following applies

- they were a full-time, part-time or casual employee of a Wood Supply Agreement holder with demonstrated impacts from the Moratorium, who has been made redundant within 18 months of the time of the Moratorium announcement (by 7 March 2027) and can provide an Employment Separation Certificate or equivalent letter of confirmation from their employer of their redundancy, or
- they were a full-time, part-time or casual employee of a harvesting or haulage operator contracted by FCNSW who has been made redundant, within 18 months of the time of the moratorium announcement (by 7 March 2027) and can provide an Employment Separation Certificate or equivalent letter of confirmation from their employer of their redundancy.

41. The Program will also be made available to 9 employees of Allen Taylor & Company Ltd, a subsidiary of Pentarch Forestry, who were made redundant as a result of the Coastal Integrated Forestry Operations Approval Protocol amendments, that prevented harvesting in their regions, made on 19 September 2023.

42. The following requirements apply for education and training cost reimbursement payments, and for relocation cost reimbursement payments. The employee must be employed by an impacted business (being one of the impacted timber mills, or a harvesting or haulage operator contracted by FCNSW) and live in one of the following North Coast local government areas at the time of the Moratorium announcement (7 September 2025):

- Ballina
- Bellingen
- Byron
- Clarence Valley
- Coffs Harbour
- Kempsey
- Kyogle
- Lismore
- Nambucca
- Port Macquarie-Hastings
- Richmond Valley
- Tweed.

43. Claims for eligible expenditure may be paid upon submission of a valid tax invoice and supporting evidence.

44. For education and training costs, the expenditure must have been incurred within 12 months of employment ceasing with the impacted business.

45. An employee is ineligible to receive education and training support under the Program if they are not employed by an impacted business, do not reside within the specified local government areas, or have already received equivalent education and training support under another government assistance scheme.

46. For relocation costs, an eligible employee must have moved to a new residential address that is 50 kilometres or more commuting distance from their previous residential address, within 12 months of their employment ceasing with an impacted business.

47. Claims are subject to assessment by the DPIRD, and payment may require the submission of additional information or further verification in accordance with the Program guidelines.

48. This Ruling does not address the potential tax implications (if any) of the support services. It focuses only on the support payments. Further, it does not apply to workers who are considered eligible employees for the purposes of the Program, but who are not employees under a taxation law.

Commissioner of Taxation
5 August 2026

Appendix – Explanation

This Explanation is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.

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Background

49. In arriving at the decisions outlined in this Ruling, we have considered whether the payments made to employees under the Program are:

- genuine redundancy payments
- ETPs
- assessable as ordinary income
- subject to the capital gains tax (CGT) provisions, and
- subject to FBT.

Government top-up payment

Genuine redundancy payments

50. A GTU payment made to an employee is a genuine redundancy payment if that payment satisfies all the requirements in section 83-175, with reference to an objective consideration of the circumstances of that payment and of the employee.

51. Subsections 83-175(1) and (2) provide that:

> A ***genuine redundancy payment*** is so much of a payment received by an employee who is dismissed from employment because the employee's position is genuinely redundant as exceeds the amount that could reasonably be expected to be received by the employee in consequence of the voluntary termination of his or her employment at the time of the dismissal.
>
> A ***genuine redundancy payment*** must satisfy the following conditions:
>
> (a) the employee is dismissed before the earlier of the following:
>
> (i) the day the employee reaches pension age;
>
> (ii) if the employee's employment would have terminated when he or she reached a particular age or completed a particular period of service – the day he or she would reach the age or complete the period of service (as the case may be);
>
> (b) if the dismissal was not at arm's length – the payment does not exceed the amount that could reasonably be expected to be made if the dismissal were at arm's length;
>
> (c) at the time of the dismissal, there was no arrangement between the employee and the employer, or between the employer and another person, to employ the employee after the dismissal.

52. Paragraph 11 of Taxation Ruling TR 2009/2 *Income tax: genuine redundancy payments* provides the 4 components of a payment which, in our view, must necessarily be satisfied for a payment to be a payment received by an employee who is dismissed from employment because the employee's position is genuinely redundant. Satisfying this requirement establishes the essential character of the payment.

53. The 4 necessary components within this requirement are:

- the payment being tested must be received *in consequence* of an employee's termination
- that termination must involve the employee being dismissed from employment
- that dismissal must be caused by the redundancy of the employee's position
- the redundancy payment must be made genuinely because of a redundancy.

54. There are further conditions that must also be satisfied before a payment can be treated as a genuine redundancy payment. Paragraph 33 of TR 2009/2 outlines the further conditions for genuine redundancy payment treatment as required by subsections 83-175(2) and (3), as follows:

- the dismissed employee is not older than the specified age limits
- the termination is not at the end of a fixed period of employment
- the actual amount paid is not greater than the amount that could reasonably be expected had the parties been dealing at arm's length, in the event that the employer and employee are in fact not dealing at arm's length in relation to the dismissal
- there is no arrangement entered into between the employer and the employee or the employer and another entity to employ the dismissed employee after the termination
- the payment is not in lieu of superannuation benefits.

Payment received in consequence of an employee's termination

55. We consider that any payment must be made 'in consequence of' the employee's termination for it to be a genuine redundancy payment.

56. The phrase 'in consequence of' is not defined in the legislation. However, the words have been interpreted by the courts in several cases. We have also issued Taxation Ruling TR 2003/13 *Income tax: employment termination payments (ETP): payments made in consequence of the termination of any employment: meaning of the phrase 'in consequence of'*, which discusses the meaning of the phrase.

57. The Full High Court of Australia considered the expression 'in consequence of the termination of any employment' in *Reseck v Commissioner of Taxation* [1975] HCA 38 (*Reseck*). The relevant issue in that case was whether amounts paid to a taxpayer by his employer at the end of 2 periods of employment, to which the taxpayer was entitled under an agreement between the employer and the taxpayer's union, were an allowance paid in a lump sum 'in consequence of retirement from, or the termination of, any office or

employment …'. Gibbs J concluded that the amounts were made in consequence of the termination of the taxpayer's employment. His Honour said that:

> Within the ordinary meaning of the words a sum is paid in consequence of the termination of employment when the payment follows as an effect or result of the termination … It is not in my opinion necessary that the termination of the services should be the dominant cause of the payment … In the present case the allowance was paid in consequence of a number of circumstances, including the fact that the taxpayer's service had been satisfactory and that the industrial agreements provided for the payment, but it was none the less paid in consequence of the termination of the taxpayer's employment.

58. Jacobs J also concluded that the amounts constituted an allowance that was paid in consequence of the termination of the taxpayer's employment. His Honour said:

> It was submitted that the words "in consequence of" import a concept that the termination of the employment was the dominant cause of the payment. This cannot be so. A consequence in this context is not the same as a result. It does not import causation but rather a "following on".

59. The interpretations of 'in consequence of' adopted by Gibbs J and Jacobs J were considered by the Full Federal Court in *McIntosh, Charles v The Commissioner of Taxation* [1979] FCA 65 (*McIntosh*). The matter before the Court concerned a taxpayer who, one week after retirement, commuted part of the pension to which he became entitled upon his retirement, into a lump sum. The commuted payment was made out of a provident fund established by a bank for the payment of benefits to bank officers on their retirement. The issue being considered by the Court was whether the commuted lump sum payment came within former paragraph 26(d) of the *Income Tax Assessment Act 1936*.

60. In *McIntosh*, Brennan J considered the judgments of Gibbs J and Jacobs J in *Reseck* and concluded that their Honours were both saying that a causal nexus between the termination and payment was required, though it was not necessary for the termination to be the dominant cause of the payment. Brennan J said that:

> Though Jacobs J. speaks in different terms, his meaning may not be significantly different from the meaning of Gibbs J … His Honour denies the necessity to show that retirement is the dominant cause, but he does not allow a temporal sequence alone to suffice as the nexus. Though the language of causation often contains the seeds of confusion, I apprehend his Honour to hold the required nexus to be (at least) that the payment would not have been made but for the retirement.

61. In the same case, Lockhart J stated:

> In my opinion, although the phrase is sufficiently wide to include a payment caused by the retirement of the taxpayer, it is not confined to such a payment. The phrase requires that there be a connection between the payment and the retirement of the taxpayer, the act of retirement being either a cause or an antecedent of the payment. The phrase used in s 26(d) is not "caused by" but "in consequence of". It has a wider connotation than causation and assumes a connection between the circumstance of retirement and the act of payment such that the payment can be said to be a "following on" of the retirement.

62. TR 2003/13 considers the divergent views as to the correct interpretation of the phrase 'in consequence of' as interpreted by the courts. Paragraph 5 of TR 2003/13 states:

> … the Commissioner considers that a payment is received by a taxpayer in consequence of the termination of the taxpayer's employment if the payment 'follows as an effect or result of' the termination. In other words, but for the termination of employment, the payment would not have been received by the taxpayer.

63. As further stated in paragraphs 6 and 7 of TR 2003/13:

> The phrase requires a causal connection between the termination and the payment, although the termination need not be the dominant cause of the payment …

> The greater the length of time between the termination of employment and the payment, the more likely that the causal connection between the termination and the payment will be too remote for a conclusion that a payment was received in consequence of the termination of employment. However, length of time will not be determinative when there is a presently existing right to payment of the amount at the time of termination …

64. The question of whether a GTU payment is made in consequence of the termination of an employee's employment will be determined by the relevant facts and circumstances of each case.

65. In this case, the NSW Government has introduced the Program to provide financial support for employees of impacted businesses who have been made, or are expected to be made, redundant following the commencement of the Moratorium.

66. To be eligible for a GTU payment under the Program, an eligible employee (within the meaning of the Program) who is a common law employee, must satisfy the conditions outlined in paragraphs 40 or 41 of this Ruling.

67. GTU payments can only be made once employment has ended.

68. In this case, we consider that termination of an employee's employment because of a business' closure or restructure will, in most cases, be the dominant cause of the GTU payment being made to the employee. It follows that, where the conditions of the Program are met, there will generally be a sufficient causal nexus between the termination of the employee's employment and the subsequent receipt of the payment, and that the payment will have been received in consequence of the termination of the relevant employee's employment.

Termination involves the employee being dismissed from employment

69. For a payment to qualify as a genuine redundancy, the employee must be dismissed from employment. Paragraph 241 of TR 2009/2 provides that, in our view, it is not sufficient that the person loses a particular position with an employer but continues on in some other capacity. A redundancy payment can only arise when there is no suitable job available for the employee with the employer, meaning that they must be dismissed.

70. The exception to this general principle is the case of a person holding an office with the employer at the same time as having a common law employment relationship with the same employer, referred to as 'dual capacity' employees. Dual capacity employees are discussed in further detail in paragraphs 75 to 79 of this Ruling.

71. Dismissal is a particular mode of employment termination. It requires a decision to terminate employment at the employer's initiative without the consent of the employee. This stands in contrast to employment that is terminated at the initiative of the employee, for example, in the case of resignation.

72. Consent in this context refers to the employee freely choosing to agree to, or approve, the act or decision to terminate employment, in circumstances where the employee has the capacity to make such a choice. Determining whether an employee has consented to their termination requires an assessment of the facts and circumstances of each case. Consent may be either expressly stated by the employee or implied by their behaviour or conduct.

73. A dismissal can still occur even where an employee has indicated that they would be interested in having their employment terminated, provided that the final decision to terminate employment remains solely with the employer. Such a case may arise where expressions of interest in receiving a redundancy package are sought from employees as

part of a structured process undertaken by the employer as a means of promoting industrial harmony.

74. Determining whether an employee has been dismissed from their employment, and whether they consented to their termination, requires an assessment of the facts and circumstances of each case. This will be most apparent where the employer has chosen to close or restructure their business without input from the employee. This is likely to be evidenced by statements to the effect that the employee's employment has been terminated (for example, a certificate of termination), as is generally required by the eligibility criteria.

Dual capacity employees

75. A dual capacity employee is both an employee and a directing mind or office holder of the employer (for example, a director who is also an employee). Under section 80-5, termination in either capacity constitutes a termination of employment for Part 2-40 purposes.

76. Dual capacity employees are assessed under the same genuine redundancy principles in section 83-175 as other employees. However, because they may influence or determine termination decisions, consent must be closely examined.

77. A dismissal requires termination without the employee's consent. A person cannot consent in one capacity and withhold consent in another. Consent is assessed by determining:

- whether the employee agreed to or approved the decision to terminate their own employment, and
- if so, whether that agreement was freely given or compelled by legal or economic circumstances leaving no real choice.

78. Termination may still be a dismissal where consent was absent, not unanimous, or not freely given, including due to external legal or economic compulsion. This includes the industry-wide consequences of the cessation of native timber harvesting in the GKNP from 8 September 2025, consistent with constructive dismissal principles in TR 2009/2.

79. Only dual capacity employees who are genuinely redundant are eligible for support. Contrived arrangements do not qualify.

Dismissal caused by the redundancy of the employee's position

80. Dismissal is a particular mode of employment termination. Section 83-175 further requires that the dismissal be caused by redundancy of the employee's position, and not for some other reason.

81. An employee's position is redundant when an employer determines that it is superfluous to the employer's needs and the employer does not want the position to be occupied by anyone. Accordingly, it is fundamentally the employer's decision that a position is redundant. On occasion, the decision may be unavoidable due to the circumstances surrounding the employer's operations.

82. As is the case in determining if there is a dismissal, the reason for a dismissal is to be established in light of the facts and circumstances of each case. The redundancy of the relevant position must be the prevailing or most influential reason for the dismissal if there is more than one contributing cause.

83. With reference to the outline of the scheme at paragraphs 21 to 48 of this Ruling, we consider that, where supported by an objective consideration of the relevant facts and circumstances of the case, it is likely that an employee receiving a payment under the Program will have been dismissed due to the redundancy of their position. While the Moratorium may be a contributing or background factor that influences an employer's operational decisions, it does not, by itself, bring employment to an end. Instead, where an employer responds to the Moratorium by closing, downsizing or restructuring its operations, and, as a result, decides that an employee's position is no longer required, the dismissal will be regarded as being caused by redundancy where that redundancy decision is the main reason for the termination.

Payment made genuinely because of the redundancy

84. For a payment to meet the conditions of a genuine redundancy, the payment must be made because the employee's position is genuinely redundant. As such, and as stated in paragraph 31 of TR 2009/2, contrived cases of redundancy will not meet the conditions in section 83-175. Whether a redundancy is 'genuine' is determined on an objective basis.

85. Examples of situations which would be considered a contrived redundancy are provided in paragraph 279 of TR 2009/2, and include:

- where an employing entity is wound-up and some or all of the employees are immediately re-engaged by a new employing entity, or
- where an employer terminates an employee on outsourcing particular duties and functions and immediately engages that employee to perform the outsourced duties and functions.

86. In this case, the Program has been established to assist employees in the timber industry who have been impacted by the transition away from native timber harvesting in NSW state forests. This transition has occurred due to changes in the legal and regulatory environment, and cessation of native timber harvesting in state forests. This will impact sawmills and harvest and haulage operators in the industry.

87. Consequently, we consider that, generally, an employee receiving a payment under the Program because their position is redundant, where supported by an objective determination and where the redundancy is not contrived, is likely to have received that payment because their position was 'genuinely' redundant.

Other factors

88. In order for a payment to be a genuine redundancy, it must also satisfy the conditions in subsection 83-175(2), as referred to in paragraph 51 of this Ruling.

Age-based limits

89. Paragraph 83-175(2)(a) provides that an employee receiving a genuine redundancy payment must, at the time of dismissal, not have reached the pension age or a younger age of compulsory retirement for the particular position in question.

90. Whether an employee who receives a payment under the Program satisfies this condition will be a question of fact, determined with reference to the circumstances of the individual employee.

91. A termination payment made to a person who has reached pension age or another younger age of compulsory retirement for the position, at the time of dismissal, may however be an ETP if the conditions in section 82-130 are satisfied.

Arm's length amount

92. Paragraph 83-175(2)(b) provides that where the dismissal was not at arm's length, the payment does not exceed the amount that could reasonably be expected to be made if the dismissal were at arm's length.

93. The GTU payment is outlined in paragraphs 31 and 32 of this Ruling. Consequently, we consider that, to the extent that the employer and the employee may not be dealing at arm's length, the determination of the payment amount under the Program will be at arm's length. The amount of the payment would not be greater than any other employee's payment in an arm's length relationship between employer and employee.

94. This reasoning would extend to dual capacity employees, as again, the amount of the payment would not be greater than would be available to any other employee under the Program, irrespective of the extent to which that employee was involved in considerations around their own termination.

Amount of the payment that was received in lieu of superannuation benefits

95. Pursuant to subsection 83-175(3), a genuine redundancy payment does not include any part of a payment that was received by the employee in lieu of superannuation benefits to which the employee may have been entitled at the time the payment was received or at a later time.

96. We consider that no part of the payment received by an employee under the Program is received in lieu of superannuation benefits to which the employee may have been entitled.

Excluded payments

97. A payment is not a genuine redundancy payment to the extent that it is subject to a more specific tax treatment. Pursuant to subsection 83-175(3), these payments are payments of the type mentioned in section 82-135 (apart from paragraph 82-135(e)).

98. We consider that, on the facts provided, GTU payments under the Program are not likely to be captured by section 82-135.

Tax-free treatment of genuine redundancy payments

99. In accordance with section 83-170, a genuine redundancy payment that falls within the specified limits is referred to as the 'tax-free' amount and will not be assessable income and will not be exempt income.

100. For each payment, the tax-free amount is limited to the amount determined under the formula at subsection 83-170(3), being:

$$\text{Base amount} + (\text{service amount} \times \text{years of service})$$

where:

base amount means:

> (a) for the income year 2006-2007 – $6,783; and
>
> (b) for a later income year – the amount mentioned in paragraph (a) indexed annually.
>
> …
>
> ***service amount*** means:
>
> (a) for the income year 2006-2007 – $3,392; and
>
> (b) for a later income year – the amount mentioned in paragraph (a) indexed annually.

101. As this Ruling applies for the period specified in paragraph 5 of this Ruling, inclusive, both the base amount and the service amount in relation to the calculation of the tax-free amount will need to be determined with reference to the relevant initial amount for that provision, indexed annually. Subdivision 960-M provides how to index these amounts.

102. The extent to which the payment is tax free will depend on the amount of the payment and the total number of whole years of employment to which the payment relates. There is no requirement for the years of service to be continuous when applying the threshold in section 83-170.

103. In this case, we consider that in certain circumstances, the full aggregate period of an employee's non-consecutive employment within the NSW forestry industry may fall within the definition of 'years of service'.

104. Whether multiple non-consecutive employment relationships may collectively count as 'employment to which the payment relates' for the purpose of establishing 'years of service' is to be determined as a question of fact and with regard to each employee's specific circumstances.

105. This conclusion is most apparent where an employee has performed multiple, non-consecutive 'seasonal' periods with the same employer, or a series of related employers. If earlier years of service with a previous employer are carried over and acknowledged on commencement with a new employer that later makes a redundancy payment to an employee, those years of service can be included in working out the tax-free amount of the genuine redundancy payment.

106. The conclusion will be less likely where there was a significant break in the connection between employment relationships (for example, because the employee left the industry and took up other employment for several years before returning to the industry).

107. It should be noted, however, that 6 months, 8 months or even 11 months do not count as a whole year for the purposes of this calculation. As such, where an employee has been employed on a series of rolling employment contracts, only the sum of consecutive or non-consecutive periods attributable to time spent working will be counted.

108. If a particular employment relationship has already been recognised by the payment of a previous genuine redundancy payment, it would not be able to be counted again towards the employment to which the current payment relates.

Employment status considerations

109. Section 83-175 defines a genuine redundancy payment as so much of a payment received by an 'employee who is dismissed from employment' because the employee's position is genuinely redundant.

110. Paragraph 6 of TR 2009/2 further explains that Part 2-40 (which includes section 83-175) is intended to operate cohesively in relation to payments made in consequence of the termination of a person's employment as a common law employee. The treatment of genuine redundancy payments must therefore be determined in this context.

111. Only payments that relate to periods during which a person was an employee are capable of being treated as genuine redundancy payments. Payments that do not relate to a period of employment will not qualify for this treatment.

112. This Ruling proceeds on the basis that the individual was a common law employee for the entirety of the relevant service period to which the payment relates.

113. Whether a worker was an employee during a relevant period remains a question of fact. Where the worker was an employee, a payment made to them may be treated as a genuine redundancy payment, provided all other conditions of the relevant provisions are satisfied.

114. In assessing eligibility, the characterisation of the employment relationship must reflect the objective facts and accurately describe the nature of the employment during the relevant period.

115. In addition, both the employer and employee must ensure that all related tax obligations arising from the employment relationship are correct and up to date. In particular:

- Employers should consider whether all required obligations, including minimum superannuation guarantee contributions, have been met for each relevant period to avoid exposure to the superannuation guarantee charge.
- Employees should ensure their tax affairs accurately reflect their employment status and any associated entitlements.

Employment termination payment

116. Subsection 82-130(1) provides that:

> A payment is an employment termination payment if:
>
> (a) it is received by you:
>
> (i) in consequence of the termination of your employment; or
>
> (ii) after another person's death, in consequence of the termination of the other person's employment; and
>
> (b) it is received no later than 12 months after the termination (but see subsection (4)); and
>
> (c) it is *not* a payment mentioned in section 82-135.

Is the Government top-up payment received in consequence of an employee's termination?

117. A payment is considered to be made *in consequence of* an employee's termination when the termination is the direct cause of the payment. If this condition is met for assessing a genuine redundancy payment, the same conclusion applies when determining whether the payment is an employee termination payment, subject to the specific facts and circumstances of the case.

Government top-up payment received no later than 12 months after the termination

118. Paragraph 82-130(1)(b) requires that the payment must be received no later than 12 months after the termination of the employment.

119. Subsection 82-130(4) provides that:

> Paragraph (1)(b) does not apply to you if:
>
> (a) you are covered by a determination under subsection (5) or (7); or
>
> (b) the payment is a genuine redundancy payment or an early retirement scheme payment.

120. In this case, there is no indication that subsections 82-130(5) or (7) apply. Further, if the GTU payment is a genuine redundancy payment based on the facts and circumstances of the employee, then this paragraph will not apply, and the payment will not be an ETP.

Government top-up payment *no*t a payment mentioned in section 82-135

121. Section 82-135 lists payments that are not ETPs. These include (among others):

- a superannuation benefit
- an unused annual leave payment, and
- the part of a genuine redundancy payment or an early retirement scheme payment worked out under section 83-170.

122. The payment under the Program reflects each employee's individual circumstances and the nature of their engagement.

123. Based on the information provided, payments made under the Program are unlikely to fall within the exclusions listed in section 82-135.

Ordinary income

124. For employees that satisfy the genuine redundancy eligibility requirements, the GTU payment will not be ordinary income, by virtue of subsection 83-170(2).

125. To the extent that the GTU payment exceeds the genuine redundancy cap and satisfies the ETP requirements, the taxable component of the payment is assessable income pursuant to subsection 82-10(2).

126. Should employees not satisfy either the genuine redundancy or ETP eligibility requirements, and the payment not be on capital account, the GTU payment may be income according to ordinary concepts. In this instance, the income or capital distinction will be dependent on the facts and circumstances surrounding the payment.

Capital gains tax

127. An eligible employee's entitlement to receive a GTU payment is a CGT asset under subsection 108-5(1).

128. The time of the CGT event under subsection 104-25(2) will be when the payment is made by the employer. Specifically, the payment by the employer to eligible employees gives rise to CGT event C2, pursuant to section 104-25, which is payment in satisfaction of an eligible employee's entitlement to receive the GTU payment. However, to the extent

that the eligible employee satisfies either the genuine redundancy or ETP requirements, any capital gain will be reduced to nil by virtue of paragraph 118-20(4)(a), reducing the capital gain by an amount that is included in assessable or exempt income.

129. To the extent that the employee does not satisfy either the genuine redundancy or ETP eligibility requirements, the capital gain may be taxable.

Education and training cost reimbursement payments

130. In accordance with the Program, eligible employees may receive reimbursements of up to $9,000 for accredited training and upskilling costs incurred within 12 months of termination of employment. The payments will only be made if the employee provides a valid tax invoice of the expense, proof of payment, and proof of enrolment from a registered training organisation listed on the Australian Government's National Training Register. For completeness, the $9,000 includes an upfront payment of $2,000 without the need to provide invoices at the point of application, but eligible employees are required to substantiate this upfront payment with valid tax invoices before accessing further payments.

131. The reimbursements will be administered and provided by the DPIRD.

Payment received in consequence of an employee's termination

132. As noted, TR 2003/13 sets out the our view on when a payment is made 'in consequence of' termination of employment. Ultimately, the question of whether a payment is received in consequence of the termination of employment will be determined by the relevant facts and circumstances of each case.

133. As reflected in paragraph 6 of TR 2003/13, while the termination does not need to be the dominant cause of the payment, the phrase requires a causal connection between the termination and the payment. A mere temporal sequence alone would not be sufficient to demonstrate this nexus.

134. In simple words, we consider that a payment will be received in consequence of an employee's termination where, but for the termination of employment, the payment would not have been received by the taxpayer.

135. In this case, we generally consider that education and training cost reimbursements paid under the Program would not be made in consequence of an employee's termination. Irrespective of when the employee was terminated, that employee would not actually be eligible for the payment until they have incurred the specified expense associated with that education and training, and provided a valid tax invoice in relation to that expense.

136. The causal connection between the employee's termination and the payment of the education and training reimbursement payment would generally be too remote to satisfy this condition. Consequently, education and training cost reimbursement payments are not genuine redundancy payments.

137. For this same reason, education and training cost reimbursements would also not be ETPs, as they are not payments which are paid in consequence of the termination of employment.

Ordinary income

138. Subsection 6-5(1) provides that an amount is included in assessable income if it is income according to ordinary concepts (ordinary income). The legislation does not provide specific guidance on the meaning of ordinary income. However, a substantial body of case law exists which identifies likely characteristics.

139. Whether or not a particular receipt is ordinary income, depends on its character in the hands of the recipient, refer *Scott v Federal Commissioner of Taxation* [1966] HCA 48; *Hayes v Commissioner of Taxation* [1956] HCA 21; *Federal Coke Company Pty Limited v The Commissioner of Taxation of the Commonwealth of Australia* [1977] FCA 29.

140. In *GP International Pipecoaters Pty Ltd v Commissioner of Taxation* [1990] HCA 25, the Full High Court stated:

> To determine whether a receipt is of an income or of a capital nature, various factors may be relevant. Sometimes the character of receipts will be revealed most clearly by their periodicity, regularity or recurrence; sometimes, by the character of a right or thing disposed of in exchange for the receipt; sometimes, by the scope of the transaction, venture or business in or by reason of which money is received and by the recipient's purpose in engaging in the transaction, venture or business.

141. In the circumstance where an employee receives the education and training cost reimbursement payment directly, it is accepted that while in each instance the recipients are former employees of a particular entity, the payments received under the Program are not a product of employment, services or business.

142. Therefore, it is also appropriate to consider the following points made in various High Court cases in relation to the types of payment that can generally be characterised as voluntary payments.

143. In *Federal Commissioner of Taxation v Dixon* [1952] HCA 65, the Court considered the form of the receipt, that is, whether it is received as a lump sum or periodically, to be a relevant factor for consideration. The Court found that the fact that the patriotic top-up payments were regular and periodic was important, though not decisive, in concluding that those payments were assessable income. An important factor in determining that the receipts were ordinary income was that the taxpayer relied to some extent on the amount he received from his previous employer and that he had confidence that the payments would continue on a periodic basis to supplement his income as a soldier. The Court also held that the payments were made in substitution for the salary and wages the taxpayer would have earned had he not enlisted. The payment accordingly acquired the characteristics of the payment for which it was substituted.

144. In *Scott v Federal Commissioner of* Taxation [1966] HCA 48, the Court said that while the motives of the donor do not determine the answer, they are a relevant circumstance for consideration. The Court held that the payment was given to the taxpayer by the donor as a gift and was not assessable income of the taxpayer.

145. In *Hayes v Commissioner of Taxation* [1956] HCA 21, the Court held that shares given to an accountant by a former employer were not assessable as income because it was 'impossible to point to any employment or "personal exertion", of which the receipt of the shares was in any real sense an incident, or which can fairly be said to have produced that receipt'.

146. Where a payment for the education and training reimbursement is received by an employee under the Program, the concepts of ordinary income developed by the courts over time can be applied:

- the payment is not paid as any form of substitution for what would be income of the employee
- payments are made to reimburse the eligible employee for approved education and training expenses they incur and are not paid on a periodic or recurring basis, and
- payments are made to the eligible employee by the DPIRD and are not connected with any employment relationship or the provision of services by the eligible employee.

147. Accordingly, we consider that the education and training cost reimbursement does not have the characteristics of ordinary income. As a result, the payment is not assessable income in the hands of the employee under section 6-5.

Capital gains tax

148. An eligible employee's entitlement to the education and training reimbursement is a CGT asset under subsection 108-5(1), which is acquired when the eligible employee's invoices have been deemed eligible. CGT event C2 occurs under section 104-25 when an eligible employee's entitlement to receive the payment of the reimbursement of an education and training cost is satisfied.

149. If a payment is made to a third-party supplier on behalf of the eligible employee, the CGT provisions apply as if the eligible employee has received the amount (subsection 103-10(1)).

150. However, when the DPIRD makes a payment to the eligible employee in satisfaction of the entitlement, any capital gain is disregarded pursuant to paragraph 118-37(2)(a). The Program is a scheme established by a state government agency, and the amount paid involves a reimbursement or payment of expenses.

Fringe benefits tax

151. The definition of 'benefit' in subsection 136(1) of the FBTAA includes any right, privilege, service or facility. Therefore, payments of any kind made to an employee under the Program (either to them directly, or to a third party on their behalf) come within the definition of a benefit for the purposes of the FBTAA.

152. The definition of a fringe benefit contained in subsection 136(1) of the FBTAA requires, among other things, that in order for a benefit to be a fringe benefit, the benefit is provided in respect of the employment of the employee (the employment connection test).

153. The term 'in respect of employment' has been considered by the courts on numerous occasions. In *J & G Knowles v Commissioner of Taxation* [2000] FCA 196, the Full Federal Court examined the definition of fringe benefit and noted that:

> Whatever question is to be asked, it must be remembered that what must be established is whether there is a sufficient or material, rather than a, causal connection or relationship between the benefit and the employment.

154. The following are considered to be material reasons why benefits provided to employees under the Program do not have a 'sufficient or material' connection with the employment of the employee:

- The benefits do not have a connection with any previous employment. Rather, they arise because employees have ceased employment in the forestry industry and are determined by reference to their post-employment circumstances under the Program.
- The benefits are provided to assist employees transition out of the forestry industry, including through retraining and job search support, and are therefore directed to future employment rather than to past or current employment.
- Entitlement to the benefits depends on employees independently registering for the Program administered by the DPIRD. Employers have no role in facilitating registration or the making of payments.

155. The benefits, being the education and training cost reimbursement payments, are administered by the DPIRD, on behalf of the NSW Government, to assist employees to obtain other employment.

156. Accordingly, the benefits provided to an employee under the Program do not have a sufficient or material connection with any employment of the employee and, therefore, do not fall within the definition of a fringe benefit for the purposes of the FBTAA.

157. Consequently, an employee will not have an RFBA in relation to benefits provided under the Program for the purposes of Part XIB of the FBTAA.

Relocation cost reimbursement payments

158. Relocation reimbursements are a class of support payment available to 'employees' under the Program. They are described as assistance which is 'intended to reimburse employees for costs incurred in relocating 50 kilometres or more commuting distance from their current residence due to securing new employment'.

159. Relocation reimbursements may be available in relation to different types of expenditure associated with relocation, with the type of assistance available dependent on the employee's circumstances. Broadly, reimbursement is grouped into the 4 categories as outlined in paragraph 37 of this Ruling.

160. None of the payments paid as relocation reimbursement will be periodic or recurring, nor will they be intended to supplement income.

Payment received in consequence of an employee's termination

161. As noted, TR 2003/13 sets out the our view on when a payment is made 'in consequence of' termination of employment. Ultimately, the question of whether a payment is received in consequence of the termination of employment will be determined by the relevant facts and circumstances of each case.

162. As reflected in paragraph 6 of TR 2003/13, while the termination does not need to be the dominant cause of the payment, the phrase requires a causal connection between the termination and the payment. A mere temporal sequence alone would not be sufficient to demonstrate this nexus.

163. In simple words, we consider that a payment will be received in consequence of an employee's termination where, but for the termination of employment, the payment would not have been received by the taxpayer.

164. In this case, we generally consider that relocation reimbursements paid under the Program would not be made in consequence of an employee's termination. Irrespective of when the employee was terminated, that employee would not actually be eligible for the payment until they have:

- secured new employment 50 kilometres or more commuting distance from their current residence and will need to move to take up the new job, and
- incurred an expense associated with that relocation and provided a valid tax invoice in relation to that expense.

165. The causal connection between the employee's termination and the payment of the relocation reimbursement payment would generally be too remote to satisfy this condition. Consequently, relocation reimbursement payments are not genuine redundancy payments.

166. For this same reason, relocation reimbursements would also not be ETPs as they are not payments which are paid in consequence of the termination of employment.

Category 1 – removalist expense reimbursement

Ordinary income

167. When applying the principles of ordinary income as discussed at paragraphs 138 to 147 of this Ruling, the removalist expense reimbursement payment:

- does not substitute for, or replace, income of an eligible employee
- is not made on a periodic, recurring or regular basis, and
- is not connected with the employment of, or the provision of services by, the eligible employee.

168. Therefore, we consider that the reimbursement of removalist costs received by an eligible employee does not possess the characteristics of ordinary income and is not assessable to the eligible employee under section 6-5.

Capital gains tax

169. An eligible employee's entitlement to the payment of the reimbursement of a relocation cost is a CGT asset under subsection 108-5(1), which is acquired when the eligible employee's invoices have been deemed eligible. CGT event C2 occurs under section 104-25 when an eligible employee's entitlement to receive a payment for the reimbursement of a relocation cost is satisfied.

170. If a payment is made to a third-party supplier on behalf of the eligible employee, the CGT provisions apply as if the eligible employee has received the amount (subsection 103-10(1)).

171. However, when the DPIRD makes a payment to the eligible employee in satisfaction of the entitlement, any capital gain is disregarded, pursuant to paragraph 118-37(2)(a). The Program is a scheme established by a state government agency and the amount paid involves a reimbursement or payment of expenses.

Fringe benefits tax

172. We consider that the benefits provided to an employee under the Program do not have a sufficient or material connection with any employment of the employee to fall within the definition of a fringe benefit for the purposes of the FBTAA.

173. Consequently, an eligible employee will not have an RFBA in relation to such benefits provided under the Program for the purposes of Part XIB of the FBTAA.

Category 2 – property purchase and end of tenancy expense reimbursement

Ordinary income

174. When applying the principles of ordinary income as discussed at paragraphs 138 to 147 of this Ruling, the property purchase and end-of-tenancy reimbursement payment:

- does not substitute for, or replace, income of an eligible employee
- is not made on a periodic, recurring or regular basis, and
- is not connected with the employment of, or the provision of services by, the eligible employee.

175. Accordingly, we consider that the property purchase and end-of-tenancy reimbursement payment does not have the characteristics of ordinary income. As a result, the payment is not assessable income in the hands of the employee under section 6-5.

Capital gains tax

176. Some aspects of the property purchase and end-of-tenancy assistance may be included in the second element of the cost base of the property's incidental costs under subsection 110-25(3). The types of incidental costs that may be included are specified in section 110-35.

177. However, for an eligible employee that receives a property purchase and end-of-tenancy reimbursement payment, the amount will be classified as a recoupment of expenditure incurred. Recouped expenditure is excluded from the cost base, under either subsections 110-40(3) or 110-45(3), or the reduced cost base under subsection 110-55(6), except if the recoupment is included in assessable income.

178. In the present case, the property purchase and end-of-tenancy reimbursement payment is not included in assessable income. Therefore, the expenditure incurred is excluded from the cost base, or reduced cost base, of the property. Depending on the circumstances of the eligible employee, the main residence exemption provisions in Subdivision 118-B may apply to disregard a capital gain or capital loss made on disposal of the property. This will need to be considered by eligible employees on a case-by-case basis.

Fringe benefits tax

179. We consider that the benefits provided to an employee under the Program do not have a sufficient or material connection with any employment of the employee to fall within the definition of a fringe benefit for the purposes of the FBTAA.

180. Consequently, an employee will not have an RFBA in relation to such benefits provided under the Program for the purposes of Part XIB of the FBTAA.

Category 3 – incidental relocation cost reimbursement

Ordinary income

181. When applying the principles of ordinary income as discussed at paragraphs 138 to 147 of this Ruling, the incidental relocation cost reimbursement:

- does not substitute for, or replace, income of an eligible employee
- is not made on a periodic, recurring, or regular basis, and
- is not connected with the employment of, or the provision of services by, the eligible employee.

182. Accordingly, we consider that the incidental relocation cost reimbursement does not have the characteristics of ordinary income. Therefore, the payment is not assessable income in the hands of the eligible employee under section 6-5.

Capital gains tax

183. An eligible employee's entitlement to the incidental relocation cost reimbursement is a CGT asset under subsection 108-5(1), which is acquired when the eligible employee's application is approved. CGT event C2 happens, under section 104-25, when an eligible employee's entitlement to receive the payment is satisfied.

184. Where a payment is made to a third-party supplier on behalf of the eligible employee, the CGT provisions apply as if the eligible employee has received the amount (subsection 103-10(1)).

185. However, any capital gain under CGT event C2 is disregarded by virtue of paragraph 118-37(2)(a). The Program is a scheme established by a state government agency, and the amount paid involves a reimbursement or payment of expenses.

Fringe benefits tax

186. We consider that the benefits provided to an employee under the Program do not have a sufficient or material connection with any employment of the employee to fall within the definition of a fringe benefit for the purposes of the FBTAA.

187. Consequently, an employee will not have an RFBA in relation to such benefits provided under the Program for the purposes of Part XIB of the FBTAA.

Category 4 – short-term accommodation cost reimbursement

Ordinary income

188. When applying the principles of ordinary income as discussed at paragraphs 138 to 147 of this Ruling, the short-term accommodation cost reimbursement:

- does not substitute for, or replace, income of an eligible employee
- is not made on a periodic, recurring, or regular basis, and

- is not connected with the employment of, or the provision of services by, the eligible employee.

189. Accordingly, it is considered that a payment made to an eligible employee to reimburse them for short-term accommodation costs is not income according to ordinary concepts and is not assessable income under section 6-5.

Capital gains tax

190. An eligible employee's entitlement to the short-term accommodation cost reimbursement is a CGT asset under subsection 108-5(1) which is acquired when the eligible employee's invoices are deemed eligible. CGT event C2 happens, under section 104-25, when an eligible employee's entitlement to receive the payment is satisfied.

191. If the short-term accommodation cost reimbursement relates to expenses included in the cost base or reduced cost base of the property, it is a recoupment of that expenditure. Recouped expenditure is generally excluded from the cost base or reduced cost base (see paragraph 178 of this Ruling).

192. However, any capital gain under CGT event C2 is disregarded by virtue of paragraph 118-37(2)(a). The Program is a scheme established by a state government agency, and the amount paid involves a reimbursement or payment of expenses.

Fringe benefits tax

193. We consider that the benefits provided to an eligible employee under the Program do not have a sufficient or material connection with any employment of the employee to fall within the definition of a fringe benefit for the purposes of the FBTAA.

194. Consequently, an eligible employee will not have an RFBA in relation to such benefits provided under the Program for the purposes of Part XIB of the FBTAA.

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