IT 67 - Subsidised housing benefits

TAXATION RULING NO. IT 67

SUBSIDISED HOUSING BENEFITS

F.O.I. EMBARGO: May be released

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	- REMOTE AREAS	26AAAB
	EMPLOYER SUBSIDISED HOUSING	26(e)
	EMPLOYEE BENEFITS	
	HOUSING BENEFITS	

PREAMBLE 1. This ruling is intended to provide guidance on the operation of section 26AAAB of the Income Tax Assessment Act 1936. The section was inserted by Income Tax Assessment Amendment Act (No. 2) 1981 which received Royal Assent on 2 December 1981.

2. Where certain conditions are satisfied, section 26AAAB limits the benefit assessable, in terms of section 26(e), in respect of residential accommodation provided free or at subsidised rents by an employer to an employee. Broadly stated, the concession applies not only to those employees who are provided with subsidised accommodation and who live and work in remote areas but also to employees not living and working in remote areas who satisfy certain additional criteria. This wider scope will mean that taxpayers who are employed at, or in connection with, sugar mills and who are provided with free or subsidised accommodation by their employers will generally obtain the benefit of the concession. Nevertheless, the terms of the legislation are such that, where the additional tests are met, the concession will also be available for employees outside that industry.

3. The scope of section 26AAAB is limited to benefits granted in the form of a lease or licence in respect of a unit of residential accommodation. Other benefits associated with free or subsidised housing, such as free electricity or telephone, are considered to be outside the scope of the section and, therefore, remain assessable to the full extent of the value to the taxpayer under section 26(e).

4. Under section 26(e), the value to a taxpayer of all allowances, gratuities, compensations, benefits, bonuses and premiums given in respect of or in relation directly or indirectly to any employment or services rendered is to be included in the person's assessable income. Where an employee is provided with residential accommodation in respect of his or

her employment at either no cost or at a cost less than the value of the accommodation, the value to the employee of the benefit so derived forms part of his or her assessable income in terms of section 26(e).

5. Section 26AAAB requires that where specified conditions are satisfied, the amount to be included in the employee's assessable income in respect of employer-provided housing is to be limited to 10 per cent of the market rental value of the accommodation, less any rent paid by the employee.

6. In determining the value to an employee of housing accommodation benefits the Commissioner is required by section 26AAAA to take all relevant factors into account. These factors specifically include the availability or otherwise of suitable alternative accommodation; the remoteness of the location at which the accommodation is situated; whether it is customary for employers in the particular industry to provide employees with free or subsidised accommodation; whether the accommodation provided is of a higher standard or larger size than required by the employee; and whether there are any onerous conditions attaching to the occupation of the accommodation.

RULING

7. For a taxpayer to qualify under the remoteness tests contained in paragraph (a) of sub-section (1) of section 26AAAB, he or she must live and work at a location that is not in, or adjacent to, an eligible urban area. By sub-sections (10) and (12) an eligible urban area is defined as an urban centre or bounded locality that had a population of 12,000 or more as at the date of the 1976 census. A taxpayer's residence or place of employment is to be treated as being adjacent to an urban centre where it is within 40 kilometres by the shortest practicable surface route of a centre having a 1976 census population of 12,000 or more or within 100 kilometres by the shortest practicable surface route of a centre having a 1976 census population of 130,000 or more. The distances involved are those as at the commencement of the section, i.e., 2 December 1981. This, of course, means that subsequent roadworks will have no effect on the distances measured for the purpose of the concession.

8. For most purposes, now current road maps should suffice to indicate approximate distances to the centre point of an eligible urban area. Signposted distances could also be used as prima facie evidence of distances involved. In rare cases, it might become necessary to obtain an accurate measurement of the distance involved for the purpose of settling a dispute. To reduce scope for disputes, particularly where several alternative routes are available as, for example,
in the case of a location to be measured from a capital city, it is thought that a degree of tolerance should be adopted in dealing with borderline distance situations.

9. The shortest practicable surface route is not intended to include rough tracks or other little used roads where there is another route that is normally used. However, it would

include a route that is wholly or partly across water where that is the generally adopted method of surface transport.

10. In cases where it becomes necessary to measure the distance involved, the measurement is to be made from the location in the urban area from which distances are usually measured. In capital cities, this will usually be the G.P.O. or other designated location in the central business district of the city. In other places, the measurement would usually be taken from the post office or other historical centre of the town. Again, some tolerance in favour of the taxpayer should be permitted in the event of doubt as to the place from which distances are usually measured.

11. The concept of an urban centre or bounded locality which is used by the Australian Statistician for the purposes of the population census will, in some cases, include more than one city or town. For example, the population figures for capital cities embrace the total metropolitan areas of the cities; Albury/Wodonga is taken as one urban centre and Queanbeyan is described as part of the Canberra urban centre. In such cases, there will be more than one location within the urban centre or bounded locality from which it is usual to measure distances and paragraph (b) of sub-section (11) requires that the distance be measured from the usual measuring point in the principal part (e.g. Canberra in the Canberra/Queanbeyan situation) of the eligible urban area.

12. For a taxpayer to be eligible for the concession on a "remoteness" basis, the other conditions specified in paragraph (a) of sub-section (1) must also be satisfied. By sub-paragraph (iii), it must be customary for employers in the taxpayer's industry of employment to provide free or subsidised accommodation to their employees. Examples of classes of employees whose employers are considered to meet this requirement are -

- miners
- sugar mill employees
- bank employees
- police
- prison employees
- school teachers
- hospital employees
- farm workers
- hotel and motel staff
- civil engineering workers, e.g., on bridge or dam works.

13. Members of the clergy represent a special case in that their housing benefits are assessable under section 26(e) while, in many cases, there is not strictly speaking an employer/employee relationship. Members of the clergy who satisfy all other requirements for the concession should be granted the concession in respect of any amount assessable under section 26(e) for subsidised accommodation benefits.

14. Sub-paragraph (1)(a)(iv) requires the Commissioner to be of the opinion that it was necessary for the employer of the taxpayer to provide accommodation for employees for any of 3 reasons:

- employees are frequently required to move from one place to another in the course of their employment. In this category would be bank staff, police, prison employees and school teachers;

- there was insufficient suitable accommodation at or near the place of employment, such as may occur in the case of a new mining development or civil engineering works; or

- it is customary for employers in the particular industry to provide free or subsidised accommodation for employees.

15. The final condition, paragraph (1)(a)(v), operates as a safeguard to deny the benefit of the concession in any case where it can be seen that the free or subsidised accommodation was given to an employee, under a non-arm's length arrangement or otherwise, for the purpose of obtaining the concession.

16. For "non-remote" employees, the eligibility criteria are contained in paragraph (b) of sub-section (1). Sub-paragraph (1)(b)(i) requires it to be customary for employers in the particular industry to provide free or subsidised accommodation at or in close proximity to the workplace, e.g., as is the case in the sugar industry.

17. Sub-paragraph (1)(b)(ii) requires the Commissioner to be of the opinion that the taxpayer had no reasonable alternative to occupying the employer-provided accommodation by reason that:

(A) other suitable accommodation was not available on reasonable terms and conditions or was not available in close proximity to the workplace; or

(B) the taxpayer was required by his employer to reside in close proximity to the workplace and to be on call for duty.

18. Whether a unit of accommodation is in "close proximity" to the workplace is a matter for decision on the facts of the case and it is not practical to lay down precise rules. In the

context of the sugar milling industry, accommodation will qualify if it is adjacent to, or within a kilometre or so of the mill. In other cases, accommodation could be accepted as being in close proximity to the mill if it is located in an area set aside for mill houses. Regarding clause (B), it will not be necessary for the taxpayer to be on call for duty at all times or at any particular time, but it would be sufficient for him to be liable to be called for duty at any time outside normal working hours, whether or not he is formally rostered to be on call.

19. By sub-paragraph (b)(iii), accommodation provided to a non-remote employee will not be eligible for the concession unless the Commissioner is of the opinion that the conditions under which the accommodation is occupied are onerous by reason of its close proximity to the workplace. Onerous conditions could exist for sugar mill employees, for example, during the harvesting and subsequent processing of sugar cane due to such factors as air pollution, odours or noise emanating from the workplace and movement of insects and vermin from the canefields. In addition, accommodation at the mill may not be within ready access, relative to other accommodation in the town, of shopping, entertainment, medical or educational facilities. For other industries at "non-remote" locations, e.g., at mining or civil engineering sites, factors such as the presence of dust or noise from the workplace or the absence of facilities or good roads could similarly be considered as giving rise to onerous conditions.

20. The condition prescribed by paragraph (b)(iv) requires accommodation to be provided for at least 5 other employees apart from the taxpayer. (It is understood that the minimum number of houses provided for employees at any sugar mill is at present six). It will be noted that the requirement in the law is not for six units of accommodation, but accommodation for six employees. In keeping with the intention of the legislation it is thought that this test should not be rigidly applied if, for a time, the number of accommodated employees falls below six, e.g., because of a temporary employment vacancy.

21. It is required that the five other employees referred to in paragraph (b)(iv) be employed at, or in association with, the taxpayer's place of employment. The words underlined would meet the situation of sugar plantation workers such as farm managers who are provided with accommodation on a plantation which may be some distance from the sugar mill itself and from accommodation of employees of the mill proper.

22. The formula in sub-section (1) determines the amount to be included in a taxpayer's assessable income for a year of income. It will be noted that any rent paid by the taxpayer is to be subtracted after the calculation of the discounted benefit and not from the rental value before discounting. This means that if the taxpayer were to pay rent of 10% or more of the rental value, no amount will be assessable notwithstanding that, in fact, the taxpayer has been granted a benefit of up to 90% of the rental value of the accommodation.

23. The "annual rental value", determined under sub-section (3), forms the basis of the sub-section (1) calculation. In determining the annual rental value of a unit of accommodation for a year of income it is first necessary to ascertain whether the year of income is to be treated as a "base" year of income in accordance with sub-section (4). If the year of income is a base year, the annual rental value is, broadly, the market rental value of the accommodation. If the year is not a base year, the annual rental value is calculated as the annual rental value for the previous year multiplied by an indexation factor.

24. In a base year, in a case where the taxpayer occupied the accommodation for part only of the year of income, the annual rental value for the year is determined by extrapolating the market rental value for the period of occupation to the equivalent full year amount. For example, if a taxpayer occupied employer-provided accommodation on a free or subsidised basis for the final 10 weeks (70 days) of a year of income that is a base year and the rental value of the accommodation during that period was $40 per week, the annual rental value would be:

$$40 \times 10 \times \frac{365}{70} = \$2085$$

In subsequent years (other than years required to be treated as base years) the annual rental value of the accommodation in respect of the same taxpayer would be the amount of $2085 multiplied by the appropriate index factor(s) determined in accordance with sub-section (5). Details of the indexation factors for each capital city are attached to this ruling. Table 1 lists the index numbers for the rent sub-group of the C.P.I. for each capital city and in Table 2 are the factors calculated in accordance with section 26AAAB(5) on the basis of the relevant index numbers.

25. Sub-section (4) determines whether a year of income is to be treated as a base year. Paragraph (4)(b) requires a year of income to be treated as a base year if, in the previous year, the taxpayer was not assessed in accordance with section 26AAAB in respect of the particular unit of accommodation. The result that follows from this provision is that the indexation of the annual rental value of particular accommodation is to take place only while the unit is occupied by the same taxpayer. A change of occupant requires a determination of actual market rental value and a base year calculation.

26. Paragraph (4)(c) applies where the market rental value of the unit of accommodation is considered to have been substantially altered by reason of any alterations, improvements, addition or removal of facilities or damage to the unit and requires that the year of income in which such events took place and the following year of income be treated as base years, for which a determination of the actual market rental value of the accommodation will be necessary.

27. Sub-paragraph (4)(c)(iii) requires some mention. It

would include the addition or removal of facilities such as furniture. It would also include the provision of major facilities, such as a swimming pool or tennis court for use by employees occupying accommodation provided by an employer. Market influences on rental values such as the erection of industrial premises nearby which may tend to lower the market value or, on the other hand, the erection of improved community facilities in the vicinity would not authorise re-assessment of the annual rental value. Such factors could, of course, be taken into account in any re-assessment of annual rental value that becomes necessary for other reasons.

28. It is anticipated that the Commissioner's right to re-assess the annual rental value in accordance with paragraph (4)(c) would seldom be used. It is necessary that the variation of market value be substantial before the paragraph can be invoked. In revenue terms, a variation of $20 per week would only mean an increase of $2 per week in the assessable amount.

29. Sub-section (2) is designed to reduce anomalies that could arise under the remoteness tests applied as between near neighbours. It should be used, for example, to eliminate injustices such as could arise if two employees of the same employer, who were provided with free housing near to each other but on either side of the dividing line, would otherwise be treated differently.

30. It will also be apparent from the wording of sub-section 26AAAB(1) that, in any case where employer-provided housing is of no pecuniary benefit to a taxpayer, the section has no field of operation. In any case where there is a benefit, but the value to the taxpayer of the benefit otherwise determined is shown to be less than the amount determined under section 26AAAB, the smaller amount should be included in assessable income. Such situations could arise, for example, where the taxpayer maintains a home for his family but is required by his employer to live for part of the time in accommodation provided at the workplace.

31. The reference in section 26AAAB to a "unit of residential accommodation" is not intended to convey the meaning that the accommodation must be self-contained or a functionally complete unit. The term "unit" is used in the legislation simply to refer, in the context of indexation of value and location of the accommodation, to the particular accommodation. This means that a taxpayer who is provided with board and quarters by his or her employer could be entitled to the benefit of section 26AAAB in respect of the quarters component of the benefit granted. The value of meals provided would, of course, remain assessable under ordinary principles.

32. The market rental value of a unit of accommodation should be determined normally on a conservative, but realistic, basis. It should be the value that could reasonably be expected to be paid by an arm's length tenant in the particular community and should not be discounted, before applying the 90% discount under section 26AAAB, by factors relevant to the determination

of value under section 26AAAA.

33. If a taxpayer fails to satisfy the requirements of section 26AAAB, the value to him of employer-provided accommodation should be determined having regard to the criteria set out in section 26AAAA. For taxpayers in non-remote areas (as defined in section 26AAAB) a discount of up to 25% of the realistic rental valuation, to take account of any other relevant factors, would generally be acceptable, although the circumstances of individual cases could warrant a greater or lesser discount. It would be uncommon that a taxpayer, who lives and works in a remote area and who occupies employer-provided accommodation, would be unable to satisfy the other criteria set out in section 26AAAB. If such a case should occur, appropriate discounting under section 26AAAA should be applied and, for this purpose, the generous discounting available under section 26AAAB to other remote taxpayers would be a relevant consideration.

34. Although section 26AAAA applies in 1977-78 and later assessments, the Commissioner has decided that, as a matter of administration, where a taxpayer has an undetermined objection in respect of the 1976-77 assessment against the assessed value of employer-provided accommodation, the objection should be determined on the basis that section 26AAAA applied for that year. The 90% discount provided by section 26AAAB is not to be granted in 1976-77 assessments, notwithstanding that in subsequent years the taxpayer is entitled to the 90% discount in respect of the same accommodation.

COMMISSIONER OF TAXATION

TABLE F.O.I. EMBARGO: May be released

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TABLE 1

INDEX OF NUMBERS FOR THE STATE OF:

QTR ENDED	SYDNEY	MELBOURNE	BRISBANE	ADELAIDE	PERTH
June 76	252.2	201.1	192.5	192.6	203.1
Sept. 76	263.2	208.5	208.3	198.8	206.8
Dec. 76	271.9	213.3	211.6	208.3	215.4
March 77	278.4	219.4	214.7	211.5	219.9
June 77	286.1	223.7	217.8	214.0	212.5
Sept. 77	294.6	226.5	221.0	218.2	216.7
Dec. 77	301.5	230.1	226.9	229.9	223.4
March 78	306.5	232.0	239.5	232.6	242.0
June 78	313.9	234.6	243.1	235.0	244.5
Sept. 78	322.8	240.9	245.2	238.1	246.0
Dec. 78	331.0	243.4	251.7	242.8	251.0
March 79	339.7	245.6	259.4	251.7	252.3
June 79	349.6	248.1	261.1	254.2	

253.3	Sept. 79	359.8	251.7	264.2	256.6
254.2	Dec. 79	367.0	254.2	267.2	259.3
255.7	March 80	372.9	256.3	270.5	262.5
257.1					
June 80	381.3	259.8	272.6	274.2	
259.3	Sept. 80	392.7	263.7	274.2	277.3
266.7	Dec. 80	399.6	266.5	277.6	280.2
269.0	March 81	407.7	270.8	286.9	282.7
271.4					

TABLE 2

FACTOR TO BE APPLIED IN TERMS OF SUB-SECTION 26AAAD(5 YEAR ENDED

	SYDNEY	MELBOURNE	BRISBANE	ADELAIDE	PERTH
30/6/79	1.115	1.083	1.094	1.103	
1.101	30/6/80	1.100	1.057	1.104	1.081
1.068	30/6/81	1.109	1.047	1.064	1.067
1.027	30/6/82	1.091	1.050	1.045	1.079
1.045					