

TD 93/201 - Fringe benefits tax: where a housing fringe benefit is provided in a "remote area" to an employee who is also a shareholder and/or director of the employer company, may an employer always elect to use the "statutory amount" available under subsection 29(1) of the Fringe Benefits Tax Assessment Act 1986?

 This cover sheet is provided for information only. It does not form part of *TD 93/201 - Fringe benefits tax: where a housing fringe benefit is provided in a "remote area" to an employee who is also a shareholder and/or director of the employer company, may an employer always elect to use the "statutory amount" available under subsection 29(1) of the Fringe Benefits Tax Assessment Act 1986?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *21 October 1993*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Fringe benefits tax: where a housing fringe benefit is provided in a "remote area" to an employee who is also a shareholder and/or director of the employer company, may an employer always elect to use the "statutory amount" available under subsection 29(1) of the *Fringe Benefits Tax Assessment Act 1986*?

1. No. An employer may only make an election under subsection 29(2) to value a housing benefit using the "statutory amount" where the provision of the housing qualifies as a remote area housing fringe benefit.
2. Apart from the question of location, to qualify as a remote area housing fringe benefit, certain conditions set out in subsection 29(4) must be satisfied. In brief, those conditions include that it be "customary" and "necessary" in an industry for an employer to provide free or cheap housing to an employee. Even if these conditions are satisfied, if the housing benefit is provided pursuant to a non-arm's length arrangement, the benefit of the remote area valuation concession is not available.
3. This determination assumes that any benefits provided are in respect of the employment relationship. The question of whether a benefit is provided in respect of employment or not, is covered in MT2016 and MT2019.

Example :

A farmer is employed by the family company to run the family business. The farmer and spouse are the sole shareholders of the family company. Remuneration for work done is partly provided in the form of free occupancy of a 4 bedroom house located on the family property. As the housing is provided as a part of remuneration, it is clear that the benefit is provided in respect of the employment arrangement.

Similar benefits are not provided to other employees and, because the owners (shareholders) and the employees receiving the benefits are the same people, it is apparent that the benefit was provided as a result of a non-arm's length arrangement. Consequently, the taxable value of the housing fringe benefit should not be calculated using the statutory amount.

Commissioner of Taxation

21/10/93

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Related Determinations:

Related Rulings: MT 2016; MT 2019, TD 93/200

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