

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Fringe Benefits Tax: a housing fringe benefit is provided in a 'remote area' location, to an employee who is also a shareholder and/or director of the employer company. When the employer elects to apply the 'statutory amount' available under subsection 29(1) of the *Fringe Benefits Tax Assessment Act 1986*, does the 'statutory amount' automatically apply ?

1. No. The application of the 'statutory amount' to housing fringe benefits is only available where that housing qualifies as a remote area housing fringe benefit. Apart from the question of location, to qualify as a remote area housing fringe benefit, certain conditions set out in the Act, must apply.

2. 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. In addition, paragraph 29(4)(e) acts as a safeguard to ensure that where non-arm's length or other arrangements are involved, the benefit of the remote area valuation concession is not available.

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 house located on the family property.

Similar benefits are not provided to other employees.

The housing benefit is provided in respect of the employment arrangement.

As 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

8/7/93

FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings:

Subject Ref: Fringe Benefits Tax, housing, remote area

Legislative Ref: FBTAA 29(1) & 29(4)

Case Ref:

ATO Ref: FBT Cell 3/93
