TR 2001/10A - Addendum - Income tax: fringe benefits tax and superannuation guarantee: salary sacrifice arrangements

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Addendum

Income tax: fringe benefits tax and superannuation guarantee: salary sacrifice arrangements

Taxation Ruling TR 2001/10 is amended with effect from today.

This addendum clarifies how Taxation Ruling TR 2001/10 applies to an employee who enters into an effective 'salary sacrifice arrangement' (SSA) and subsequently takes leave that accrued prior to the commencement of the SSA.

Omit the last sentence in paragraph 27 and substitute with the following:

To deal with an entitlement to take leave that has already accrued will be an ineffective SSA. The exchange of an entitlement to take leave for another benefit will cause the entitlement to be paid as salary or wage and to be derived as ordinary income.

Add to the end of paragraph 28:

Similarly, the taking of leave that accrued prior to the commencement of the SSA in the ordinary course of employment will not cause the SSA to be ineffective.

Add the following Examples after paragraph 144:

Example 8 – effective SSA while taking leave

145. Michelle has had a successful career while employed by her current employer for many years. On promotion to the executive level, Michelle is invited to enter into a SSA. Michelle's SSA includes the provision of a motor vehicle. Seven months after her promotion, Michelle takes long service leave of six weeks. The long service leave had accrued prior to the commencement of the SSA. Michelle uses the motor vehicle to travel interstate whilst on long service leave.

146. Notwithstanding that the long service leave accrued prior to the commencement of her SSA, the SSA remains effective while Michelle is on leave.

Example 9 – dealing with leave that causes a SSA to be ineffective

147. Aaron has accrued an entitlement to take 12 weeks annual leave. Aaron's employer directs him to take a minimum of 8 weeks annual leave. Aaron does not wish to take the leave and receives permission from his employer to enter into a SSA to exchange the remuneration that he would receive if he took 8 weeks leave for a superannuation contribution of equal value. Aaron continues to attend work, however his accrued annual leave has been reduced by 8 weeks.

148. The SSA which has exchanged an entitlement to take leave for a superannuation contribution is ineffective. The whole amount contributed to the superannuation fund is Aaron's salary or wage and forms part of his ordinary income. His employer has a PAYG withholding obligation. Aaron or his employer should ensure that the superannuation fund is aware that the superannuation contribution is an undeducted contribution so that it can be properly accounted for by the superannuation fund (income tax and superannuation surcharge).

Renumber paragraph 145, the paragraph will now read as 149

Commissioner of Taxation
31 July 2002

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