

TA 2002/9 - Remote Area Housing Benefit Arrangements



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Taxpayer Alert

TA 2002/09

The Taxation Office view on this arrangement is set out in ATO IDs 2001/761 & 2002/412 and TD 2003/D8 & TD 2004/26.

FOI status: may be released

Taxpayer Alerts are intended to be an "early warning" of significant new and emerging tax planning issues or arrangements that the ATO has under risk assessment.

Taxpayer Alerts will provide information that is in the interests of an open tax administration to taxpayers. Taxpayer Alerts are written principally for taxpayers and their advisers and they also serve to inform ATO officers of new and emerging tax planning issues. Not all potential tax planning issues that the ATO has under risk assessment will be the subject of a Taxpayer Alert, and some arrangements that are the subject of a Taxpayer Alert may on further examination be found not to be of concern to the ATO.

Taxpayer Alerts will give the title of the issue (which may be a scheme, arrangement or particular transaction), briefly describe the issue and will highlight the features which the ATO considers give rise to taxation issues. These issues will generally require more detailed analysis to provide an ATO view to taxpayers.

The developers and marketers of an arrangement which is the subject of a Taxpayer Alert should provide the full facts of the arrangement to the ATO to enable the ATO to finalise its view.

Taxpayers who have entered into or are contemplating entering into an arrangement similar to that described in this Taxpayer Alert can seek a formal determination of the ATO's position through a Private Ruling. Such taxpayers might obtain their own advice and/or contact the ATO officer named in the Alert.

This Taxpayer Alert is issued under the authority of the Commissioner.

TITLE: Remote Area Housing Benefit Arrangements

This Taxpayer Alert describes an arrangement where an employer and its employee enter into a lease agreement on a residential property either owned or leased by the employee in a remote area. The employer makes rental payments to the employee and allows the employee to live in the property rent free. The arrangement seeks to allow the employee to obtain tax deductions in relation to the employee's private residence and to exempt the employer from fringe benefits tax by relying on the remote area housing exemption.

DESCRIPTION

The Alert applies to arrangements having the following features:

1. An employee is employed in a remote area.
2. The employee either buys or leases a residential property in that area.

3. The employee leases the property to his or her employer and receives rent from the employer. The property is then provided to the employee rent-free by the employer until such time as the employee ceases to be in employment or moves to another location.
4. In a variation on this arrangement, the employee enters into a salary sacrifice arrangement with the employer. The employee foregoes part of their expected total remuneration in return for the rent-free housing. The amount foregone is equal to the rental payments made by the employer to the employee.
5. The employee declares the rent received as assessable income and claims property expenses such as interest on loans, rates, maintenance and depreciation as deductions from that income. This is said to result in an overall loss to the employee which can be offset against other income.
6. The employer claims to satisfy the conditions set out in paragraph 58ZC(2)(a) to paragraph 58ZC(2)(e) of the *Fringe Benefits Tax Assessment Act 1986* ('the FBTA') and to be entitled to the remote area housing benefit exemption.

FEATURES WHICH THE ATO CONSIDERS GIVE RISE TO TAXATION ISSUES

The ATO considers that the arrangement outlined above gives rise to taxation issues which include:

- (a) Whether the conditions set out in paragraph 58ZC(2)(a) to subparagraph 58ZC(2)(d)(iii) of the FBTA are satisfied.
- (b) Whether paragraph 58ZC(2)(e) of the FBTA, which denies the exemption, applies.
- (c) The deductibility of the property expenses to the employee.
- (d) Whether the general anti-avoidance provision contained in Part IVA of the *Income Tax Assessment Act 1936* will apply given that the arrangement seems artificial and contrived in its design and execution.

The Australian Taxation Office is examining these arrangements.

subject references: Remote Area Housing Benefit

related taxation rulings:

legislative references: ITAA 1997 section 8-1
FBTA section 58ZC
FBTA paragraph 58ZC(2)(e)
ITAA 1936 Part IVA

related taxpayer alerts:

related practice statements: PS 2001/15 Taxpayer Alerts

related media releases: MR 2002/100

file references:

Date issued:	24 October 2002
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