Retirement Living COUNCIL

6 March 2015

Mr Michael Pini
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Dear Mr Pini

Valuation of housing fringe benefits provided to live-in village managers

When representatives of the Retirement Living Council Tax Committee and ATO met in August 2014, we briefly raised the issue of the valuation of housing fringe benefits provided to live-in retirement village managers. This submission now provides further information on our position.

We submit that the Commissioner update Miscellaneous Taxation Ruling MT 2025 (Fringe Benefits Tax: Guidelines for Valuation of Housing Fringe Benefits) to cover the situation of a live-in manager in a retirement village, taking into account the unique characteristics of the accommodation provided. In this regard, we suggest a valuation discount of 25% would be appropriate, taking into account the physical characteristics of the accommodation and the location within a retirement village.

Background

In the retirement village industry, it is not unusual for operators to provide live-in accommodation for the manager of a village. Live-in managers provide retirement village residents with many benefits, including the comfort of having someone they know available to assist with any issues, questions or concerns, as well as the safety and security of constant monitoring of emergency call systems. Live-in village managers also contribute greatly to the sense of community in a village by getting to know all the residents and organizing and participating in activities to bring residents together, and to introduce new residents. Live-in village managers may also maintain a separate home where they are not employed seven days or for their family members.

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Accommodation for live-in managers will often be in close proximity to access roads and common facilities (such as the village community hall or swimming pool). Live-in accommodation in a retirement village is also often smaller than available rental accommodation in the market, both in terms of floor space and land area. In addition there are often restrictions that apply within a retirement village, including in relation to pets, visitors or car parking that would not be a feature of typical residential housing.

Current FBT position

Housing fringe benefits

Section 25 of the *Fringe Benefits Tax Assessment Act 1986* ("the Act") provides:

> *"The subsistence during the whole or part of a year of tax of a housing right granted by a person (in this section referred to as the provider) to another person (in this section referred to as the recipient) shall be taken to constitute a benefit provided by the provider to the recipient in respect of the year of tax."*

A housing right is defined in section 136 of the Act to mean the granting of a lease or licence to occupy or use a unit of accommodation as the person's usual place of residence.

A unit of accommodation is defined in section 136 of the Act to include a house, flat or home unit, accommodation in a hotel, hostel, motel or guesthouse, accommodation in a bunkhouse or other living quarters, accommodation in a ship, vessel or floating structure, and a caravan or mobile home.

The provision of accommodation to managers of retirement villages by an employer would often be a housing fringe benefit and therefore subject to FBT.

Valuation rules

Section 26 refers to the taxable value of a housing right in non-remote areas. Specifically, section 26(1)(b) of the Act provides that the taxable value of non-remote accommodation provided in a hotel, motel, hostel, guesthouse, caravan or mobile home in Australia is the *market value* less any rent paid.

Concessional valuation rules apply to certain providers of accommodation. If the unit of accommodation provided is a caravan, mobile home, motel, hotel, hostel or guesthouse and the provider's business normally consists of providing the same or similar accommodation, the taxable value is 75% of the market value of the accommodation provided. Independent living units in retirement villages would generally not satisfy any of these categories of accommodation.

For the purposes of the valuation rules, the market value first determined can be used as a base value in the initial year the accommodation is provided and is then indexed over the subsequent nine years.

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The Act does not prescribe how to determine the market value, however, Taxation Ruling MT 2025 provides guidance on how to value various types of accommodation. MT 2025 addresses a number of industry sectors but does not address the retirement living sector.

MT 2025 generally provides that the right to occupy the unit of accommodation is to be valued according to what it would command for rent in an open market situation, without taking into account any special employment conditions. In this regard MT 2025 refers to valuation discounts of between 10% - 40% relating to the physical characteristics of live-in accommodation in certain industries (e.g. caretaker accommodation within a school, university or apartment building or accommodation of funeral director employees).

Given the lack of specific guidance, most operators currently adopt full market rental in valuing live-in manager housing benefits despite the fact that live-in manager accommodation in a retirement village has a number of unique features which would reduce the value of the benefit, such as proximity to access roads and common facilities (such as the village community hall or swimming pool). Live-in accommodation in a retirement village is also often smaller than available rental accommodation in the market, both in terms of floor space and land area, which makes finding an open market comparable difficult and suggests a discount to valuation would be appropriate. In addition there are often restrictions that apply within a retirement village, including in relation to pets, visitors or car parking that would not be a feature of typical residential housing and should be seen to reduce the value of the accommodation.

Proposed solution

Valuation of live-in manager accommodation

We submit that the Commissioner update MT 2025 to cover the situation of a live-in manager in a retirement village, taking into account the unique characteristics of the accommodation provided. In this regard, a valuation discount of 25% would be appropriate, taking into account the physical characteristics of the accommodation and the location within a retirement village.

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If you have any queries about this letter, please contact Ms Leida Pirts, Senior Policy Manager, on (07) 3225 3007. We look forward to discussing this submission with you in more detail.

Yours sincerely

Mary Wood

Mary Wood
Executive Director
Retirement Living Council

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