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STANDING COMMITTEE ON FAMILY AND HUMAN SERVICES

INQUIRY INTO BALANCING WORK AND FAMILY

McMillan Shakespeare Limited



Delivering Enhanced Business Solutions

1 Background

- 1.1 McMillan Shakespeare Limited is the largest provider of salary packaging administration services for employers throughout Australia. McMillan Shakespeare provide salary packaging services to over 1,000 employers and more than 160,000 employees in both the public and private sector. McMillan Shakespeare clients include state and commonwealth departments and agencies, public hospitals, schools and major private sector organisations.

2 Fringe Benefits Tax – Employer Provided Childcare

- 2.1 The *Fringe Benefits Tax Assessment Act 1986 (FBTAA)* provides for an exemption from Fringe Benefits Tax (FBT) in subsection 47(2) for employer provided childcare.
- 2.2 The FBTAA requires that the childcare facilities be provided on the employer's business premises for the benefit of employees. Where such facilities are provided on business premises of a related company in a wholly owned company group, the child care expenses are similarly exempt from FBT. The *related party* test enables a government department to share a childcare facility with other government departments, agencies and statutory authorities.
- 2.3 Currently salary sacrificing of childcare fees exempt from fringe benefits tax is restricted to employers who are able provide a childcare facility on their business premises.
- 2.4 In practice, the exemption from fringe benefits tax is only available to a limited number of private sector organisations such as the banks and large public sector departments and agencies with thousands of employees. This is due to the cost incurred by employers in establishing their own childcare facilities and meeting the requirements of the Australian Taxation Office.
- 2.5 In the ruling (TR 2000/4), the Australian Taxation Office (ATO) clarified the meaning of *business premises* to enable employers to lease premises for the provision of child care, to contract out the management of the childcare facility and to provide access to the child care facility to members of the public.
- 2.6 TR 2000/ 4 states in paragraph 57 that the following minimum requirements should be met:
- *the management agreement with the childcare operator operate on an ordinary and arm's length basis;*
 - *the management agreement be able to be terminated on normal commercial grounds;*
 - *where the management agreement is terminated, there be no impediment to another childcare operator being engaged to manage and operate the facility on the particular premises;*
 - *the document granting the employer or employers tenure or occupancy rights operate on normal commercial grounds;*
 - *the termination of the management agreement not require termination of the employer's or employers' tenure or occupancy rights, nor should the rights under the tenure or occupancy rights agreement (for example, amount of rental, conditions of occupancy) be affected in any way;*
 - *the management agreement and tenure or occupancy rights agreement operate independently of each other;*
 - *the calculation of rentals under the tenure or occupancy rights agreement, management fees and childcare fees be commercially based and independent of each other;*

- *the risks held by the various parties be consistent with the relevant premises being those of the employer or employers (for example, risks in respect of flow of funds, insurance, etc);*
- *the tenure and occupancy rights as they affect the childcare facility come from the employer or employers, rather than the operator;*
- *the composite rights of control over the service provider, e.g., the right of termination, be on a normal commercial basis. For example, clauses in management agreements that have the effect that an operator may only be removed in the most extraordinary or extreme circumstances give rise to the inference that the activity is not 'business operations' of the employer or employers.*

3 Statistics

- 3.1 We are in a unique position that we can offer some statistics about the salary packaging of childcare expenses by employees.
- 3.2 The childcare benefits that are salary packaged by our clients are
- employer provided childcare; and
 - external childcare (ie not provided by the employer).
- 3.3 In the last financial year we provided services as follows:
- 20% of our employer clients offered in-house childcare as a salary sacrifice benefit;
 - 64% of our employer clients offered external childcare as a salary sacrifice benefit;
 - 0.2% of our employee clients salary sacrifice in-house childcare and the average payment in the last financial year was about \$6,400; and
 - 0.4% of our employee clients salary sacrifice external childcare and the average payment in the last financial year was \$2,700.

4 Issues

- 4.1 The provision of child care services by an employer:
- demonstrates the commitment of the employer to family friendly work practices;
 - increases the number of employees who return to work following parental leave;
 - reduces absenteeism and turnover of employees;
 - promotes a sense of partnership and loyalty between employees and the employer; and
 - enables employees to achieve tax savings through salary packaging child care expenses.
- 4.2 Employer provided child care is not widely available in the workplace for the following reasons:
- The costs associated with the infrastructure eg leasing or constructing a facility, staffing and managing the facility;
 - Changing demographics of the employees makes it difficult to predict and manage demand for child care; and
 - Selecting an appropriate location eg at the workplace or in the suburbs.

- 4.3 Where employers do provide a childcare facility to their employees it is usually only available near the city centre. There is generally not equal access for all employees such as those who work outside of the capital cities.”
- 4.4 Employers are not in the business of running childcare centres. Many employers with the best of intentions establish childcare facilities to enable their employees to take advantage of reduced costs as a result of being able to salary sacrifice their childcare payments. Unfortunately these childcare centres can fail for a number of reasons including cost, changing demographics, demand for places and centre location.”

5 Our Model

- 5.1 Remuneration Services (Qld) Pty Limited (**RemServ**) is a subsidiary of McMillan Shakespeare Limited and is located in the CBD of Brisbane.
- 5.2 In recognition of the importance of work-life balance and in order to increase productivity and staff retention rates, RemServ wishes to make a childcare program available to its staff.
- 5.3 The provision of more affordable childcare for working parents through salary packaging would provide a boost to the childcare industry, there would be an increase in childcare places because there would be an increase in affordability of childcare.
- 5.4 RemServ has evaluated a variety of options to establish an in-house childcare facility. There is no space available at the existing premises. In addition it has been determined that the cost of establishing and operating a childcare centre for RemServ employees is not viable. Therefore it has been decided to outsource the management of the service to an existing experienced childcare provider and to locate additional premises to enable RemServ to operate a childcare facility.
- 5.5 Our model is a low cost method for employers to establish quality childcare facilities for their employees with minimum risk and is provides a unique flexible model which is not available any where else in Australia. There are no capital investments required as the model uses existing childcare facilities.
- 5.6 Our objectives are as follows:
- Establish access to quality child care;
 - Provide tax effective, quality corporate childcare services to employees; and
 - minimise risk to the employer.
- 5.7 In contrast to the current system, employees would see the cost benefit of salary packaging their payments each payday rather than waiting until the financial year after they have made their childcare payments.
- 5.8 The Manager will invoice and collect all fees for the users of the childcare facility. The Manager will invoice RemServ for payment for RemServ employees who have salary sacrifice arrangements, which include RemServ childcare.
- 5.9 The fees charged to RemServ will be the on the same basis as for non-RemServ employees.

6 Recommendations

Recommendation 1

That the ATO provide greater assistance to employers (without undue delays) seeking to set up childcare facilities including meeting with applicants to discuss issues prior to making a determination.

Recommendation 2

That the business premises / business operations requirements are simplified for employers who seek to set up in-house childcare facilities.

Recommendation 3

That employees who salary package their childcare fees have access to the 30% tax rebate and that the administrative arrangements for accessing the rebate are simplified.

Recommendation 4

That all employees be able to salary package childcare expenses exempt from FBT irrespective if the employer has an in-house facility.

Recommendation 5

That all employers who are registered for FBT are required to provide their employees the opportunity to salary package childcare (approved providers) in relation to their employment. If the employer is not registered for FBT then the employee will still have access to the CCB and the tax rebate.