

Commissioner's Statement CS 18/01

Determining "Market Rental Value" of Employer-Provided Accommodation – Boarding Schools

The purpose of a Commissioner's Statement is to inform taxpayers of the Commissioner's position and the operational approach being adopted on a particular tax matter. The Statement is not a consultative document.

All legislative references are to the Income Tax Act 2007 (the Act).

Introduction

In Commissioner's Statement CS 16/02, the Commissioner provided guidance to assist taxpayers in estimating the likely market rental value of employer-provided accommodation.

This Commissioner's Statement is supplementary to Commissioner's Statement CS 16/02, and sets out concessionary treatment that will apply in respect of on-site accommodation provided to employees of boarding schools only.

Accommodation provided to employees of boarding schools is taxable income of that employee. As it is treated as a PAYE income payment, the value of such accommodation is subject to the deduction of PAYE.

The Commissioner's Statement CS 16/02 applies to accommodation provided to employees of boarding schools. However, it is recognised that on-site boarding school accommodation is likely to be subject to reduced market value, compared to comparable off-site accommodation, that is not readily quantifiable, due to unique restrictions and expectations that would apply to any tenant. This Commissioner's Statement therefore sets out what the Commissioner will accept as an appropriate reduction off the market rental value that would otherwise apply. The effect of such a reduction is to reduce the amount to be treated as taxable income of the employee.

Market rental value and appropriate reductions

Boarding schools generally provide accommodation to employees. Such accommodation is either provided off-site or on-site. On-site accommodation is, for the purposes of this Statement, either "separate", "embedded", or "adjoined".

The starting point for all employer provided accommodation is that the taxable value of such accommodation is the market rental value of the accommodation. Commissioner's Statement CS 16/02 sets out the guidance provided to assist in estimating such a market rental value, and should be referred to.

When school-owned accommodation is provided off school grounds, it is not considered that the market rental value of such accommodation will differ to any relevant degree.

However, it is considered that, broadly speaking, accommodation that is located within the grounds of a school could be subject to restrictions that would generally not occur in a residential tenancy. For example, bearing in mind the presence of students and the location of the dwelling within the grounds of a school, the tenancy arrangement may be subject to restrictions on smoking or drinking, whether inside or outside the dwelling, the ability to receive guests or visitors (including overnight guests), or greater expectations of tidiness or general behaviour. In addition, it is accepted that schools owe a fiduciary type duty to their students, and that duty could also be imposed on any tenants of accommodation located within the school grounds, regardless of whether or not the tenant was an employee of the school.

Such restrictions could, of course, be taken into account in a professionally prepared market rental valuation, as it is appropriate to have regard to the specific terms of the tenancy. However, it is also acknowledged that restrictions that are appropriate in respect of boarding school on-site accommodation may not be as common, or generally applicable to other tenancy arrangements.

Commissioner's Statement CS 16/02 allows an estimate of market rental value to be based on a review of comparable properties on internet sites that advertise rental properties, such as Trade Me. Such sites are unlikely to include sufficient detail of the terms of applicable tenancy agreements, and it is unlikely that there would be sufficient comparable properties to allow an accurate estimate to be made.

Therefore, the Commissioner has concluded that as a reasonable proxy, it will be acceptable for a standard reduction of the market rental third party information to be applied. That reduction takes into account, in the Commissioner's view, specific reductions in the market rental value of accommodation applicable to boarding schools. The extent of the restrictions, and therefore the amount of the applicable reduction, will depend on the nature of the accommodation provided.

For the accommodation provided to employees of boarding schools, it is necessary to establish the applicable arm's length market rental value. That market rental value can then be reduced by the amount specified in the following table.

Accommodation type	Reduction
Off-site accommodation – not on or adjacent to school grounds, and sufficiently separate from the school grounds as to not be readily associated with the school.	No reduction
On-site accommodation – separate (within school grounds but with direct off-site access, or immediately adjacent to school grounds).	20% of the market rental value
On-site accommodation – separate (within school grounds but without direct off-site access and not physically attached to student accommodation).	35% of the market rental value
On-site accommodation – adjoined to student accommodation (separate access - not through student accommodation).	40% of the market rental value
On-site accommodation – embedded within the student accommodation (no separate access – only access via student accommodation).	50% of the market rental value

Explanation of applicable reductions and categories

Off-site accommodation

Off-site accommodation is accommodation that is not provided within the grounds of the boarding school. This includes accommodation that is owned by the school, and might therefore be regarded as school property.

It is considered that the market rental value of such accommodation will not differ, to any relevant degree.

Example 1

Edward is a teacher at Prince Albert College, a boarding school in a New Zealand city. As part of his employment terms, Edward is provided with a house, free of charge. The house is owned by the College, but is located off school grounds.

No reduction is applied to the market rental value of that accommodation.

On-site accommodation – separate (with direct off-site access, or without direct off-site access)

This category refers to accommodation that is provided within the grounds of the boarding school or immediately adjacent to it, and which is separate from any student accommodation. This category is further separated into two further sub-categories to distinguish between accommodation that has direct off-site access and that which does not.

Example 2

Victoria is the Principal of Prince Albert College. She is provided with a three bedroom house, located within the grounds of the school. The house is not attached to the student accommodation and does not have direct off-site access.

On the basis of a review of similar rental properties available in the same part of town as the school, the market rental value has been estimated at \$500 per week. This amount can be reduced by 35%, giving rise to taxable income of \$325 per week.

Example 3

Victoria's colleague, Helena, also has an on-site house, which is separate from the student accommodation. However, Helena's house is on the boundary of the school grounds and has direct off-site access. The market rental value has also been estimated at \$500 per week, but as this can only be reduced by 20%, giving rise to taxable income of \$400 per week.

Accommodation that is not within the school grounds, but is immediately adjacent to the school grounds, and to all casual observers would be regarded as part of the school grounds, may also be included in this category (rather than as off-site accommodation).

On-site accommodation – embedded or adjoined

This category refers to accommodation provided to an employee where that accommodation is more directly associated with student accommodation. There are two categories of such accommodation: embedded accommodation which has its only access

through the student accommodation, and adjoined accommodation which is attached to, or immediately adjacent to, student accommodation, but which has access separate from the student accommodation.

It is considered that in such cases the privacy of the employee will be reduced, levels of student related noise may be higher, or further behavioural restrictions may apply.

Example 4

Alice is also employed by Prince Albert College. Her role is as a matron, responsible for the pastoral care of the students who have accommodation in the Prince Harry Student Dormitory.

Consistent with that role, she is provided with a 1 bedroom flat located within the dormitory. Her only means of access is shared with the students, via the dormitory.

On the basis of a review of available rental properties, a comparable property is considered to be a 1 bedroom apartment in a nearby block of flats. The market rental value has been estimated at \$300 per week. This amount can be reduced by 50%, giving rise to taxable income of \$150 per week.

Example 5

Carl is also a teacher at Prince Albert College. He also has a 1 bedroom flat similar to Alice's. While Carl's flat can also be accessed from within the student dormitory, it has alternative access direct to school grounds. The market rental value for Carl's flat is also estimated at \$300, and after a reduction of 40% his taxable income is \$180 per week.

Application

This statement sets out the reduction in respect of the specified classes of accommodation that the Commissioner considers appropriate and which she will accept. It does not apply to any other taxpayers or classes of employee.

The use of the reductions set out in this statement is not mandatory. All taxpayers may take a tax position that differs from the reductions that have been set out. Sufficient records and evidence should be kept so that taxpayers can demonstrate the basis of any such greater reduction.

The reductions set out in this statement may be used in respect of PAYE periods commencing on or after 1 April 2015, or for the 2016 and later tax years. This aligns with the application date of Commissioner's Statement CS 16/02.

Any employee of a boarding school, who has accommodation that falls within the scope of this statement, may apply the reductions in this statement to reduce their taxable income. If necessary, employees may request the Commissioner amend their assessment. However, the use of the reductions requires that taxable income has been returned based on a calculation of market rental value consistent with CS 16/02, or alternatively the reduced amount must be calculated consistently with the combined effect of this statement and CS 16/02.

Boarding schools and employees of boarding schools otherwise need only apply CS 16/02, to calculate the market rental value of accommodation supplied by the school from 1 April 2019, or to PAYE periods falling on or after 1 April 2019, if they have been,

and are, calculating an amount of taxable income in respect of such accommodation. That calculation need not have been consistent with CS 16/02.

However, any school that has not been calculating the market rental value of such accommodation at all, and has not been accounting for any PAYE on that value, must start immediately.

If you are unsure about how this statement applies to you, specific guidance should be sought from appropriately qualified tax professionals or valuation experts.

If you have any concerns about compliance with the tax obligations discussed in this Commissioner's Statement, you should discuss the matter with a tax professional or Inland Revenue.

Rob Wells
Manager, Technical Standards

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