FRINGE BENEFITS TAX ASSESSMENT BILL 1986

Date introduced: 2 May 1986
House: House of Representatives
Presented by: Hon. Paul Keating, M.P., Treasurer

DIGEST OF BILL

Purpose

To introduce a tax, payable by employers, on non-cash benefits received by employees.

Background

There were many discussions relating to tax reform in 1985. A Tax Summit was held in July following which the Government announced that a full statement on tax reform would be made in September. On 19 September the Treasurer made his Statement on Reform of the Australian Taxation System to Parliament (the September Statement). This Bill implements some of the reforms announced in the September Statement.

Outline

The Bill contains a wide, general definition of benefit as well as listing 11 specific benefits and how the taxable value of those benefits is to be calculated. The tax is to be payable by employers. In addition, the Bill contains the administrative provisions necessary to impose the tax. The tax year for the fringe benefits tax will end on 31 March. Contrary to standard drafting practice, the interpretation provisions appear at the end of this Bill. The Bill also contains a number of transitional provisions to deal with the first, part-year of the taxes' operation.

Main Provisions

The Bill will operate from the day it receives the Royal Assent.
Clauses 3, 4 and 5 deal with the general administration of the Bill. Clause 4 will require an annual report on the operation of this Bill to be tabled in Parliament while clause 5 will make it an offence for an officer to disclose information.

Part III of the Bill (clauses 6 to 65) is divided into 13 Divisions and deals with fringe benefits. Clause 6 states that this Part is not to limit the definition of benefits while the remainder deals with the 11 specific benefits, residual benefits and their taxable value. The specific benefits are:

**Car Fringe Benefits**

Clauses 7 and 8 define when car use will be considered a taxable benefit. Basically, this will be when an employee has actually used the car for private use or where it is available for private use. Where there is a rule against the private use of cars but this is not consistently enforced, the employee will be deemed to be entitled to use the car. The provisions will not apply to hired cars unless there is a substantial continuity of the hiring. Taxis, utilities, panel vans and other vehicles of less than 1 tonne not designed to carry passengers will be exempt if not used for private use or all private use was work related. Car is defined in clause 136 to include all vehicles designed to carry a load of less than 1 tonne or fewer than nine passengers but not to include a motor cycle.

Clauses 9 to 13 deal with the taxable value of car benefits. There will be two methods of calculating the taxable value, a statutory formula and a cost basis. The statutory formula, which will operate unless the alternative method is nominated, is based on the cost of the car, the number of days of private use and a statutory fraction that will depend on the total distance travelled in a year. Under the cost basis method the operating costs of the car, including depreciation and interest, the number of private kilometres and total kilometres will be used. Clause 11 deals with the calculation of depreciation and interest, while clause 13 deals with transactions that are not 'at arm's length'.

**Debt Waiver Fringe Benefits**

Such benefits occur where a person waives another's obligation to repay a debt (clause 14). The taxable value of such benefits will be equal to the amount waived (clause 15).
Loan Fringe Benefits

Low or no interest loans, other than certain loans by employers to employees that consist of an advance repayable within six months, will be a taxable benefit (clauses 16 and 17). The taxable value of such benefits will be the difference between the rate of interest charged and the statutory interest rate. The latter will be calculated by reference to the Commonwealth Bank housing loan rate (clause 136).

Expense Payment Benefits

Tax will generally be payable on obligations met by another or for reimbursement of expenditure. Accommodation expenses incurred solely due to an employee having to be away from their usual residence and certain payments in the form of compensation to an employee for the use of his personal car for their employment will be exempt from tax (clauses 20-22). The taxable value will generally be the value of the debt paid or the amount reimbursed (clause 23).

Housing Benefits

The provision of subsidised or free accommodation to another will be taxable (clause 25). There will be different methods for calculating the taxable value of such accommodation in non-remote and remote areas. For accommodation in non-remote areas (other than non-remote external Territories) the taxable value will generally depend on the period of tenancy, the 'statutory annual value' of the housing and any employee contributions. The statutory annual value will depend on the length of tenancy and the market value of the housing (clause 26). For later valuations, the value will be indexed (see clause 28 for the method of calculating the indexation factor).

Accommodation will be taken as being within a remote area if it is not located in or adjacent to an eligible urban area, it was customary for employers in that industry to provide accommodation and it was necessary for the employer to provide accommodation (sub-clause 29(4)). There will be two methods of calculating the taxable value of subsidised remote area accommodation. First, the statutory annual value can be used. This will be calculated in the same way as for non-remote areas but reduced by 40% (paragraph 29(1)(c)). Secondly, the employer may elect to use a statutory formula (sub-clause 29(1)).
Living-away-from-home Allowance Benefits

Tax will be payable on an allowance given to an employee to compensate for additional expenses or disadvantages suffered by the employee due to their having to live away from their usual place of residence (clause 30). The taxable value of such an allowance will be its value less the exempt accommodation and exempt food components (clause 31). The latter terms are defined in clause 136.

Airline Transport Benefits

Free or subsidised airline travel provided by an airline or travel agent to an employee or an associate of an employee under stand-by conditions will be taxable (clause 32). The taxable value will generally be the stand-by value less any contribution (clause 33). Stand-by value is defined in clause 136 and will generally be 37.5% of the economy fare charged by T.A.A. for domestic routes and 37.5% of the lowest published fare for international routes.

Board Benefits

Tax will be payable on board meals provided to another (clause 35). The taxable value will generally be $2 for meals provided to people over 12 and $1 for meals provided to people under 12, less any contribution (clause 36).

Tax-exempt Body Entertainment Benefits

Where a tax-exempt body incurs non-deductible expenditure in providing entertainment for an employee, that expenditure will be taken as a fringe benefit and will be taxable (clause 39).

Property Benefits

Tax will be payable on all property provided to another person except for benefits provided to an employee that are provided and consumed on a working day at the employers business premises (clauses 40 and 41). There will be a number of methods for calculating the taxable value of property benefits. If the provider sells the goods provided wholesale, the taxable value will be the normal wholesale price less any contribution. If the provider sells retail, it will be 75% of the lowest public price less any
contribution. These rules will apply to 'in-house' benefits, i.e., those provided by an employer who also supplies such goods to the public. For external benefits, if the property was provided to an employee, the taxable value will be the cost of that property less any contribution (clause 43).

Residual Benefits

These are defined as any benefit not specifically listed (clause 45). Clause 47 lists certain exempt residual benefits, including the provision by an employer of recreational facilities or child care and the provision of accommodation; travel provided to an employee who works on an oil rig or in a remote area and who regularly returns to their normal residence and the use of a vehicle not covered by clauses 7 and 8 (e.g., vehicles designed to carry over 1 tonne) provided there is no private use or all private use was work related. The taxable value of such benefits provided 'in house' will generally be 75% of the public price (clauses 48 and 49). For external benefits, the value will generally be the cost of the benefit provided (clauses 50 and 51).

Division 13 of the Bill (clauses 53 to 65) contains certain concessions and exemptions from the tax. These include: food and drink provided to an employee who also received a board benefit on that day so long as the food or drink is consumed on the business premises other than at a party or other social function (clause 54); diplomatic and consular immunity will remain (clause 56); benefits given by a religious institution to a full-time member of a religious order so long as the benefit relates to their religious duties (clause 57); accommodation provided by a government body, religious organisation or non-profit company to a live-in care worker (clause 58) and concessions will apply for remote area residential fuel (clause 59), housing (clause 60) and holiday transport (clause 61). Clause 62 will exempt the first $200 of in house benefits or airline transport benefits from the tax ($150 in the transitional year).

Part IV of the Bill (clauses 66 and 67) deals with the liability to pay tax. Clause 66 states that the employer will be liable to pay the tax while clause 67 contains anti-avoidance provisions.
Part V of the Bill (clauses 68 to 78) deals with returns and assessment. The major provisions relate to self assessment. The employer will be required to return a form to the Commissioner (clause 68) and this will be taken as the assessment (clause 72). The Commissioner will have power to amend an assessment (clause 74).

Objections, reviews and appeals are dealt with in Part VI (clauses 79 to 89). A taxpayer will be able to have an assessment reviewed by a Board of Review or a Supreme Court (clause 81). The remainder of this Part deals with the powers and procedures of the Board and the Court.

Part VII (clauses 90 to 113) deals with the collection and recovery of the tax. The major points are:

- the tax will be payable 28 days after the end of the tax year (clause 90). The tax year will end on 31 March.

- a penalty at the rate of 20% p.a. may be imposed on tax unpaid by the due date (clause 93);

- in a full year, the tax will be payable in three instalments, due on 28 July, 28 October and 28 January. In the transitional year, two instalments will be due (clause 103);

- the formula for calculating the instalments is contained in clause 111.

Part VIII (clauses 114 to 117) deals with penalties. Where an employer, other than a government body makes a false or misleading statement of tax payable, the employer will be liable to additional penalty tax equal to double the difference between the tax paid and the tax payable (clause 115). The same penalty will apply where the taxpayer arranged to avoid the tax (clause 116).

Part IX (clauses 118 to 122) deals with tax agents. Unregistered agents will not be able to charge fees (clause 119), while tax agents will be liable to the employer for any penalty resulting from their negligence (clause 120).

The miscellaneous provisions are contained in Part XI (clauses 124 to 135). The more important provisions are:
officers will be able to enter premises and examine documents (clause 127);

- the Commissioner will be able to require people (including government bodies) to produce information (clause 128);

- records are to be retained for seven years (clause 132);

- the Commissioner will have power to release an employer or trustee of a deceased estate from tax liability where the Commissioner, the Secretary of the Department of Finance and the Comptroller-General of Customs (or their substitutes) are satisfied that the employer or the dependants of a deceased owing tax is in such circumstances that the paying of full tax liability will entail serious hardship. Requests to waive liability of $10 000 or more must be referred to a Board of Review (clause 133);

- the Governor-General will have power to make regulations (clause 135).

The interpretation provisions are Part XII (clauses 136 to 167).

Remarks

In the Second Reading Speech for this Bill the Treasurer estimated that the fringebenefits tax would raise $330 million in 1986-87, $540 million in 1987-88 and $625 million in 1988-89.[1]

For further information, if required, contact the Economics and Commerce Group.
Reference