Chapter 5

Schedule 4—fringe benefit tax, jointly held assets

5.1 Schedule 4 to this bill amends the *Fringe Benefits Tax Assessment Act 1986* (FBTAA 1986) to ensure that where a fringe benefit is provided jointly to an employee and their associate, the employer's fringe benefits tax (FBT) liability on the taxable value of the fringe benefit will only be reduced to the extent the employee's share of the fringe benefit is used for income producing purposes.

Background

5.2 The proposed change to the legislation results from a Federal Court ruling over the 'otherwise deductible' rule as considered in *National Australia Bank Ltd v FC of T93 ATC4914*. In this case, the employer provided low interest loans jointly to the employee husband and his wife which were invested in a jointly held investment property (a loan fringe benefit). The Federal Court held that as a result of subsection 138(3), the employee was the sole recipient of the loan fringe benefit. It further held that as sole recipient of the loan and sole investor of the proceeds, if the employee husband had incurred and paid unreimbursed interest on the loan, he would have been entitled to a deduction for the expense. Thus, under the otherwise deductible rule in section 19 of the FBTAA 1986, the taxable value of the loan fringe benefit is reduced to nil so that the employer had no FBT liability arising from the loan fringe benefit provided to both the employee and his spouse.[1]

5.3 As a result of the National Australia Bank case, an employer can reduce the taxable value of a fringe benefit provided jointly to an employee and their associate in relation to an income earning asset owned by both the employee and their associate.

5.4 This outcome was inconsistent with the operation of the otherwise deductible rule as it would apply where a benefit is provided solely to an associate.

5.5 This outcome was also in conflict with the income tax position as determined by the courts that income and deductions arising from jointly owned rental property should be allocated between joint owners in accordance with their interest in the property (e.g. joint tenants in a rental property would include 50 per cent of the rental income in their assessable income and claim 50 per cent of the rental property expenses).

Proposed amendments

5.6 Under the proposed legislation an employer must adjust the taxable value of a fringe benefit provided jointly in relation to an income earning asset jointly owned by

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1 Explanatory memorandum, paragraphs 4.4–4.5.

an employee and their associate, so that the taxable value of the fringe benefit is reduced only by the employee's percentage of interest in the asset.

5.7 Schedule 4 inserts a new provision into the otherwise deductible rule for loan fringe benefits, expense payment fringe benefits, property fringe benefits and residual fringe benefits in subsections 19(1), 24(1), 44(1) and 52(1) of the *FBTAA 1986* which will provide a different calculation for the application of the otherwise deductible rule where because of subsection 138(3) of the *FBTAA 1986* a fringe benefit is provided jointly to an employee and their associate and is deemed to be provided solely to the employee. [Schedule 4, items 7, 17, 30 and 39].

5.8 The explanatory memorandum provides the following example to illustrate the proposed changes:

> Neena and her husband Marek are jointly provided with a $100,000 low interest loan by Neena's employer which they use to acquire shares. The loan fringe benefit has a taxable value of $10,000. Neena and Marek use the loan to purchase $100,000 of shares which they will hold jointly with a 50 per cent interest each. Neena and Marek return 50 per cent of the dividends derived from the shares as assessable income in each of their income tax returns. Under the current law (and as a result of the NAB case) the otherwise deductible rule would apply to reduce the taxable value of the loan fringe benefit ($10,000) (i.e., in respect of both Neena and Marek's share of the benefit) to nil and consequently the employer would have no FBT liability. As a result of new paragraph 19(1)(i) and new subsection 19(5) the notional deduction of $10,000 is reduced by Neena's percentage of interest in the shares (i.e., 50 per cent so that the taxable value of the loan fringe benefit of $10,000 is reduced by $5,000). The employer has an FBT liability on $5,000 which reflects the share of the loan fringe benefit that was provided to Marek.[2]

5.9 Part 2 of Schedule 4 to this bill also makes some minor technical corrections to the FBT law. The amendments will correct certain cross references and in line with current drafting practice, improve the readability of these provisions [Schedule 4, Part 2, items 42 to 75].

5.10 The committee did not receive any submissions on the proposed changes contained in Schedule 4.

2 Explanatory memorandum, p. 54.