



## **Australian Government**

### **The Treasury**

15 June 2009

#### **Senate Economics Legislation Committee**

#### **ANSWERS TO QUESTIONS ON NOTICE**

Hearing Wednesday 10 June 2009

RE: Tax Laws Amendment (2009 Budget Measures No. 1) Bill

#### **Question from Senator Hurley**

If a worker is required to go to a foreign country and his family is in Australia but it might be provided with a house and perhaps a driver who doubles as a security officer and that kind of thing, would that be regarded as a taxable fringe benefit.

#### **Response**

The FBT system plays an important role in maintaining the fairness and integrity of Australia's taxation system. It places employees with access to fringe benefits on a more even footing with employees whose remuneration consists entirely of salary or wages. The introduction of FBT was designed to remove a serious gap in the income tax law and ensure that all forms of remuneration paid to employees bear a fair measure of tax.

For this reason, the fringe benefits tax law imposes tax on a wide range of benefits provided by employers to their employees. Broadly, fringe benefits tax is imposed on the value of non-cash benefits but is reduced when the benefit is provided in relation to a work related activity.

The provision of housing accommodation for use by an employee would generally constitute a taxable fringe benefit and would be subject to fringe benefits tax.

If an employer provides an employee with the services of a driver, then, to the extent that any travel undertaken by the employee was not for business purposes, a taxable fringe benefit would arise in respect of the services of the driver and be subject to fringe benefits tax.

The provision of personal security measures which could include a security officer will generally be a fringe benefit subject to fringe benefits tax. However, security related benefits are excluded from the reportable fringe benefits amount that is included on an employee's PAYG payment summary.

**Question from Senator Bushby**

Many of the people who are likely to be affected by this change may not have a consistent income whereby they take home the same amount every week. Backpackers are a good example. Working in a bar you might have different hours in different weeks. It may be hard to assess what will be their likely income and their likely tax liability when they talk to you—whether it is from Peru, England or wherever—to try to arrange it. What happens if they make arrangements with the ATO and they get it wrong if they are outside 15 per cent or something like that? There is a penalty, is there not?

...

Would it be a similar situation? Prior to coming to the Senate I used to have to pay tax instalments in a small business of which I was part owner. There was an opportunity to vary the amount that you paid, depending on the circumstances that you were facing. From memory, if you were more than 15 per cent out in what you anticipated you would be when you varied it, you had to pay a penalty because you had varied it and you got it wrong. If you do not know, would you mind taking that question on notice to find out whether that would apply to overseas taxpayers who seek to vary their withholding rate to avoid having to pay

## Response

Under the PAYG Withholding system, the Commissioner has a discretion, to vary the amount of withholding required to be withheld from a withholding payment in order to meet the particular circumstances of a case or class of cases. The Commissioner can exercise this discretion on his volition or following a request to do so from a taxpayer or employer.

The amount of any credit refundable or monies payable by a taxpayer is determined as a consequence of the assessment process performed after lodgement of a taxpayer's annual return. A taxpayer is not penalised if the total withholding is insufficient to meet the tax assessed because the Commissioner reduced the amount of withholding.

## Question from Senator Hurley

It seems to me, once again, that the fringe benefits tax might be a significant problem. If it is straight salary it is not so much of a problem, but where there have been factors such as housing, drivers and so on that had not been considered before and that will now be considered it might be much more of an issue.

...

As you have provided an estimate of the additional moneys to revenue that will flow from this, what percentage of fringe benefits tax would apply now?

## Response

- FBT effects were not incorporated into the costing.
- As any fringe benefits utilised overseas during the relevant period for which foreign employment income is exempt from tax do not have to be reported, no data is available on the magnitude of fringe benefits being provided to employees during these periods of working overseas.
- The extent to which remuneration while working overseas is received in the form of fringe benefits is highly uncertain and dependant on a number of factors. Two significant factors that form part of this decision-making process for employers and employees are outlined below:
  - The relative levels of taxation applied to cash salary and non-cash remuneration (such as fringe benefits) in the relevant country.
    - : This relationship may be complicated further in overseas jurisdictions where the tax rate applied to cash salary is quite progressive but the tax rate applied to non-cash remuneration is not. In those instances, the relationship between the two tax rates will also be driven by the total remuneration package for the relevant employee(s).
  - The capacity of the employer to provide non-cash remuneration which is more competitively priced than could be attained by the employee in the market place.
    - : This consideration is particularly relevant in Australia, and is one of numerous reasons why many individuals who do not face the top marginal tax rate will still participate in salary packaging, despite the FBT rate exceeding their own personal income tax rate.

- In addition to the significant uncertainty surrounding current remuneration packaging by employees working overseas under the existing policy, there is also significant uncertainty surrounding the level of behaviour change regarding the structure of remuneration packages as a result of this policy change.
- While no data is available on the current utilisation of overseas fringe benefits arrangements for those eligible for a tax exemption for their foreign employment income, comparisons between reportable fringe benefits and salary and wage levels domestically suggest that any overseas fringe benefit utilisation will not have a material impact on the costing.
  - 2006-07 Taxation Statistics data indicates an aggregate level of salary and wage income of around \$380 billion, compared to an aggregate level of reportable fringe benefits of around \$10 billion.
  - : Therefore, for the entire population of those who lodge tax returns, reportable fringe benefits equate to less than 3 per cent of the size of salary and wage income.

### Question from Senator Cameron

Let me take you through the example that they gave. You might want to take this Question on notice.

....

They [Pricewaterhousecoopers] aid that a company would be less competitive; it would have to provide similar incentives to entice Australian employees to work in remote locations; and employees would continue to focus on their net income and not on their gross income. They go on to state: the costs will increase to employers and that this includes the income tax of employees met by employers, the fringe benefit tax on Australian income tax payments; benefits in kind; foreign tax payments; flights; and loans to employees to meet duplicate tax costs. They then go on to refer to PAYG duplication in two jurisdictions and whether the payroll teams in both countries are able to understand the laws. They then go on to refer to external providers such as payroll bureaus where there is no corporate presence in the former location and administrative costs for getting the details to enable compliance such as benefits and income tax paid within the tax year of both Australia and the foreign country, which are rarely the same, given Australia's year end. They then say that this example means that for an employee on \$150,000 per annum that will increase costs for the employer by \$200,000. You need to address that issue.

### Response

The example provided by PricewaterhouseCoopers shows an employee receiving \$150,000 salary plus allowances and other non cash consideration which together gives a total salary package of \$332,563. Because of the exemption provided by section 26AG this amount is in effect a post tax amount.

An Australian resident taxpayer whose income was not exempt from income tax would require a pre tax salary of around \$565,000 to receive an equivalent post tax amount. The difference of approximately \$232,000 is consistent with the extra costs identified in the PricewaterhouseCoopers example of what would be required to be paid to put the employee in the same after tax position following the proposed amendments to 23AG.

However, it is noted that extra information supplied by PricewaterhouseCoopers, it appears that the salary package structure could be adjusted so as to maintain the value of the package to the employee and minimise the extra cost to the employer to as little as \$36,197. How the package is structured is obviously a matter for the employer and the employee to negotiate.

William Potts  
Manager  
International Tax Unit  
International Tax and Treaties Division  
Phone: 62634467  
Mobile: 0419887676  
Email: [william.potts@treasury.gov.au](mailto:william.potts@treasury.gov.au)