Taxation Laws Amendment Bill (No. 3) 1988

Date Introduced: 25 May 1988
House: House of Representatives
Presented by: Hon. Peter Morris, M.P., Minister Assisting the Treasurer

Digest of Bill

Purpose

To make technical changes to the law relating to fringe benefits, substantiation and capital gains rollover relief.

Background

The provisions of the Bill are designed to cover very specific matters, rather than make broad changes to the law. In most instances the changes would have been made in response to representations by interested parties affected by anomalies in the existing law, have been generated by the taxation office to clarify particular points of law or to make compliance with the law more practical.

The changes to the capital gains tax rollover relief provisions implement the amendments announced in press release No. 9 issued by the Treasurer on 28 January 1988.

Main Provisions

The following is an overview of the effect of the major proposed changes. If a detailed explanation of the amendments to sections is required reference should be made to page 18 onwards of the Explanatory Memorandum to the Bill.

Amendments to the Fringe Benefits Tax Assessment Act 1986 (FBTAA)

The majority of the amendments will have retrospective effect from 1 July 1986.
COMPASSIONATE TRAVEL (clause 6): the clause proposes a new exemption from the fringe benefits tax. The exemption relates to 'compassionate travel' and will allow employers to pay for the travel expenses of their employees to visit seriously ill close relatives (or vice versa) or attend a funeral, without the employer having to pay fringe benefits tax. The exemption would also apply to the travel costs of a close relative of the employee. Eligibility for the benefit is subject to two main conditions. First, it is available only in respect of employees who are required to travel or to live away from home as part of their job. Secondly, it will apply only in the case of serious illness, or the funeral, of the employee or a close relative.

REMOTE AREA HOLIDAY TRANSPORT: under the existing law fringe benefits tax is imposed on half only of the reimbursed cost of employee holiday travel from remote areas. Clauses 7, 8 and 17 propose to extend the concession to cover cash allowances paid to the spouse and children of employees.

OVERSEAS TRAVEL FRINGE BENEFITS: in instances where an employer reimburses the reasonable costs of overseas travel to an employee only those costs which are for personal expenditure are subject to fringe benefits tax. However under existing law, before the business and personal elements can be separated the employee must provide all receipts and a travel diary to the employer. If the documentation is not supplied, the employer must pay fringe benefits tax on the whole of the amount reimbursed to the employee. The change proposed in clause 5 dispenses with the need to obtain receipts for expenditure on meals and other incidental items for which obtaining receipts is often difficult. Larger value items, such as accommodation, still require documentary evidence and the requirement to maintain a travel diary remains.

INTERNATIONAL AIRLINE FLIGHT CREWS: clause 5 will also dispense with the need for international airline flight crews to maintain a travel diary.

LOAN FRINGE BENEFITS: clauses 4 and 5 will amend the FBTAA to remove an anomaly that exists regarding the treatment of deductions relating to loans used to gain foreign sourced income. Under the foreign tax credits system, such deductions can be set off only against certain overseas income. As a result, if the income is less than the deductions only an amount equal to the income may be deducted in that year with the remainder being carried over to future years.

Under the fringe benefits tax, if an employee can claim a deduction in relation to a benefit the value of the benefit for the purpose of the tax is reduced by the amount of the deduction. As the law currently stands, the taxable value of a low interest loan benefit will be reduced by the maximum amount that could be deducted by the employee, rather than the amount that is actually deducted. Thus, even if a full deduction is not allowed under the foreign tax credits scheme, the taxable value of the loan for FBT purposes will be decreased by the full amount. Under the proposed amendments, the amount that may be deducted for FBT purposes will be the amount that can actually be claimed as a deduction. This amendment will have effect from 28 May 1988.
Other modifications to the fringe benefits tax law include simplification of the record keeping procedures for car fringe benefits, clarification of the treatment of reimbursements of fringe benefits tax by the employee to the employer and other minor changes.

Amendments to the Income Tax Assessment Act (ITAA)

Substantiation

OVERSEAS TRAVEL EXPENSES: clause 29 proposes to reduce the documentation required to satisfy the substantiation rules in the same way as clauses 5 and 15 (see above) reduce the documentation requirements for fringe benefits tax purposes.

Other minor changes to the substantiation rules are proposed in this Bill. For example, fuel and oil expense substantiation for other vehicles such as motor cycles and small trucks is simplified in line with the rules for motor cars; and the classification of car hire expenses will be altered to employment-related expenses instead of the present classification as car expenses.

Capital gains rollover relief

There are many instances when, although assets are transferred from one entity to another, the ultimate beneficial ownership of the asset does not change. The special provisions in the law which exclude or limit the application of the capital gains tax provisions to such transactions are referred to as the 'rollover relief' provisions. The rollover relief provisions are not general in nature but apply only to transactions described in the law. The purpose of the amendments proposed by this Bill is to extend the rollover provisions to a wider range of transactions. In most instances the relief will be effective from 20 September 1985.

CROWN LEASES (clause 37): this clause inserts a new Division which provides for rollover relief when a crown lease is converted to freehold or to a lease in perpetuity, or is renewed, extended, reduced or expanded in size, subdivided or consolidated with another crown lease held by the taxpayer.

UNIT TRUSTS (clauses 38, 39, 41 and 49): in line with other measures in the ITAA, the changes proposed by these clauses will bring the treatment of unit trusts into line with that of companies. For example, rights or options to acquire units in a unit trust will be treated the same, for capital gains tax purposes, as rights to acquire shares in a company.

PROSPECTING AND MINING RIGHTS: extension of relief from capital gains tax is proposed in the event of a renewal, extension, consolidation or, in certain instances, of re-organisation of prospecting and mining rights (clause 43).
IN VOLUNTARY DISPOSAL (clauses 44 and 45): two amendments are proposed by these clauses. First, the rollover relief currently available where an asset is compulsorily acquired by a government or government authority will be extended to cases where a declaration to acquire has been issued but the asset is subsequently voluntarily disposed of to the government or authority. The second change relates to the replacement of pre-20 September 1985 assets that have been involuntarily lost or destroyed. Replacement assets are deemed to have been acquired before 20 September 1985 if their market value does not exceed 120% of the market value of the original asset. The amendment will make it clear that the market value of the original asset is to be calculated immediately before it was lost or destroyed.

MARRIAGE BREAKDOWN: the existing rollover relief on transfers of assets between spouses will be extended to include transfers of assets from a company or a trust to a spouse as a result of a court order or a maintenance agreement. This amendment will apply to assets transferred after 28 January 1988 (clauses 46 and 51).

Other transactions for which rollover relief is proposed or is modified by this Bill are:

- Interposition of a company into an existing business structure
- Renewal or extension of a statutory licence, authority or permit
- Transfer of assets by a partnership to a wholly-owned company
- Certain reorganisations of public trading unit trusts made between 28 January 1988 and 1 July 1988
- Transfer of assets to non-resident companies after 25 May 1988

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

6 September 1988

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This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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