SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and requests for amendments to be moved on behalf of the Government

(Circulated by authority of the Treasurer, the Hon Peter Costello, MP)
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General outline and financial impact

Fringe Benefits Tax Reform

The amendments made to Schedule 1 to this Bill will:

- increase the level of benefits eligible for concessional FBT treatment from $25,000 to $30,000, where the benefits are provided to an employee of a public benevolent institution (PBI) or a rebatable employer that is not a hospital;

- ensure that a greater number of hospitals and charitable organisations will qualify for the remote area housing exemption available in the law by widening the definition of remote areas; and

- clarify the operation of the new FBT grossing-up arrangements by restructuring the provisions that determine whether an input tax credit was available in respect of the provision of a benefit.

Date of effect: The new cap on benefits provided to an employee of a PBI or rebatable employer that is not a hospital, is effectively delayed until 1 April 2001. The new remote area tests for certain hospitals and charitable organisations will apply from the FBT year commencing 1 April 2000.

The amendments to the new FBT grossing-up provisions apply from the FBT year commencing 1 April 2000.

Proposal announced: The original measures were announced on 13 August 1998 in the Government’s tax reform package, Tax Reform: not a new tax, a new tax system. These amendments have not been previously announced.

Financial impact: The total revenue to be raised from the revised FBT capping measure is expected to be $115 million in 2000-2001, $125 million in 2001-2002, $130 million in 2002-2003 and $135 million in 2003-2004. The revenue impact of the new remote area tests are unquantifiable.

The amendments to the new FBT grossing-up arrangements do not affect the original estimates contained in the explanatory memorandum to this Bill.

Compliance cost impact: The amendments to the FBT capping measure and the new FBT grossing-up provisions will not alter the compliance costs that are outlined in the explanatory memorandum to this Bill. The
new remote area tests for certain hospitals and charitable organisations will reduce employer compliance costs as a greater number of these employers will be eligible for the FBT concessions that are available when remote area housing benefits are provided to their employees.
Overview

1.1 Schedule 1 to this Bill amends the Fringe Benefits Tax Assessment Act 1986 (FBTAA 1986) to implement the reforms to fringe benefits tax (FBT) as foreshadowed in the Government’s Tax Reform Document: Tax Reform: not a new tax, a new tax system.

1.2 This Bill will stop the overuse of the FBT exemption for public benevolent institutions and limit the concessional FBT treatment for certain non-profit, non-government organisations, exempt remote area housing benefits from FBT, exempt from FBT meals provided on a work day to remote area employees employed in a business of primary production and introduce a new FBT gross-up formula.

Summary of the amendments

Purpose of the amendments

1.3 The purpose of the amendments is to:

- increase the level of benefits eligible for the exemption under section 57A, or the rebate available under section 65J, where the benefits are provided to employees of a public benevolent institution (PBI) or rebatable employer that is not a hospital;

- ensure that a greater number of hospitals and charitable organisations will qualify for the remote area housing exemption available in the law by widening the definition of remote areas; and

- clarify the operation of the provisions implementing the new FBT gross-up formula.

Background to the legislation

Capping FBT exempt benefits and rebates

1.4 This Bill limits the FBT exemption currently allowed under section 57A to certain excluded fringe benefits and $25,000 of each
employee’s ‘individual grossed-up non-exempt amount’. The $25,000 cap reduces to $17,000 where broadly, the section 57A employer is a public hospital, or the employer is a government body and the employee works in a public hospital.

1.5 Similar rules apply to the rebate of tax allowed under section 65J to certain non-profit, non-government organisations. The rebate available to hospitals under new subsection 65J(2A) is limited to the FBT that has been paid on an employee’s ‘individual grossed-up non-rebatable amount’ of, or less than, $17,000 as well as the FBT paid on any meal entertainment benefits, car parking fringe benefits, and entertainment facility leasing expenses. The threshold for all other rebatable employers is $25,000.

Remote areas

1.6 The FBT law currently provides a number of concessions where certain fringe benefits are provided to employees in ‘remote areas’. Further, this Bill seeks to extend the current remote area housing exemption for primary producers, to all employers who provide housing benefits to their remote area employees.

1.7 Generally, a particular location will be treated as a remote area if it is not at a location ‘in or adjacent to an eligible urban area’. Section 140 of the FBT interpretation provisions explains what is an eligible urban area and an adjacent location. In accordance with this provision, an area will be treated as remote where it is at least 40 kilometres from a town of 14,000 or more people and at least 100 kilometres from a town of 130,000 or more people. However, if the location is in either Zones A or B for income tax purposes, it must be at least 40 kilometres from a town of 28,000 or more people, and at least 100 kilometres from a town on 130,000 or more people. The population figures are based on the results of the Census of Population and Housing undertaken by the Australian Statistician on 30 June 1981.

1.8 Section 157 of the FBTAA 1986 states that, for the purposes of the FBT law, Christmas Island and the Cocos (Keeling) Islands are to be treated as remote areas.

New FBT gross-up provisions

1.9 Broadly, the new FBT gross-up formula recoups input tax credits claimed in respect of goods and services tax (GST) paid on fringe benefits. The intent of the measure is to maintain tax neutrality between fringe benefits and cash salary following the introduction of the GST.

1.10 As part of the changes necessary to implement the new FBT gross-up formula, new subsections 5C(3) and (4) of this Bill require an employer to classify fringe benefits into one of 2 types of aggregate fringe
benefits amounts. The benefits are grouped according to whether or not input tax credits were available.

1.11 The ‘type 1 aggregate fringe benefits amount’ represents broadly the total value of fringe benefits provided to employees or their associates, in respect of which the provider of the benefit was entitled to input tax credits, at the time the benefit was acquired. The ‘type 2 aggregate fringe benefits amount’ is intended to apply to all other fringe benefits which are not included in the calculation of the ‘type 1 aggregate fringe benefit amount’.

1.12 The new FBT gross-up provisions also impact on the calculation of benefits eligible for exemption under section 57A of the FBTAA 1986, and the amount of rebate available to certain non-profit, non-government employers under section 65J.

**GST legislation**

1.13 Division 48 of the *A New Tax System (Goods and Services Tax) Act 1999* (GSTA 1999) allows companies that satisfy common ownership rules to be organised as a single group for GST purposes. Non-profit bodies that are members of the same non-profit association may also qualify as a GST group. The grouping arrangements essentially provide for one member of the group to deal with all the GST liabilities and entitlements of the group. Also, any transactions carried out between members within the same GST group will fall outside of the GST system.

**Explanation of the amendments**

**FBT capping changes**

*Amendments 1 and 2*

1.14 Any benefits that are provided to employees of a PBI employer that is not a public hospital, will effectively retain their exempt status under section 57A for the FBT year of tax commencing 1 April 2000. Similarly, a rebatable employer that is not a hospital will be entitled to the full rebate calculated under new subsection 65J(2A) in respect of benefits provided in the FBT year of tax commencing 1 April 2000.

1.15 In the case of an FBT year of tax commencing on or after 1 April 2001, the total grossed-up value of benefits that can be provided to each employee of a PBI or rebatable employer, without losing the existing concessions, is increased to $30,000. Note however, that where the PBI or rebatable employer is a hospital, or the employer is a government body where one or more of its employees works in a public hospital, the limit on the amount of benefits which can be provided to their employees remains unchanged at $17,000.
1.16 Therefore, where a PBI or rebatable employer is not a hospital, these amendments increase the level of benefits that are eligible for concessional FBT treatment under section 57A or section 65J, and effectively delay the application of the FBT capping measure until 1 April 2001.

**Remote areas**

*Amendment 3*

1.17 The simplified remote area tests only apply in respect of benefits provided in respect of an employee’s employment with one of the following employers:

- a public hospital that is a PBI;
- a government body where the duties of employment of one or more of its employees are exclusively performed in, or in connection with, a public hospital that is a PBI;
- a public hospital which is a rebatable employer for FBT;
- a hospital carried on by a non-profit society or a non-profit association which is a rebatable employer for FBT;
- a charitable institution. [New subsections 140(1B) and (1C)]

For all other employers to whom new subsection 140(1B) and (1C) do not apply, the existing remote area tests contained in subsection 140(1) must be used.

1.18 In accordance with new subsection 140(1A), an area will be treated as remote where it is situated at least 100 kilometres by the shortest practicable surface route, from a town with at least 130,000 people (population figures based on the 1981 Census).

1.19 This amendment therefore ensures that a greater number of hospitals and charitable organisations will qualify for the remote area housing exemption, when housing benefits are provided to their remote area employees.

**GST-creditable benefits**

*Requests for amendment 1, 2, 3, 4, 7 and 8*

1.20 Various provisions in this Bill require an employer to identify benefits that involved the provision of goods or services, where on their acquisition, the person providing the benefit was entitled to input tax credits. These provisions are extended to incorporate the common ownership rules for GST purposes. Further, the provisions are restructured so that the test to be used by an employer in classifying
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benefits is amalgamated into a single test to determine whether the benefit is a ‘GST-creditable benefit’. This term is subsequently defined in new subsection 149A to encompass the tests which are being replaced.

1.21 These amendments restructure and extend the FBT gross-up provisions to enhance the readability of the legislation and ensure consistency of treatment between the GST law and the FBT law.

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1.22 New subsection 149A defines what is a ‘GST-creditable benefit’. The first type of benefit to qualify as a ‘GST-creditable benefit’ is one where the person who provided the benefit was entitled to an input tax credit for that benefit by the operation of Division 111 of the GSTA 1999.

1.23 New paragraph 149A(1)(b) applies to GST group arrangements and ensures that a benefit may also be a ‘GST-creditable benefit’ where another member of the GST group, rather than the person who is providing the benefit, is entitled to input tax credits in respect of the benefit being provided by the operation of Division 111 of the GSTA 1999.

1.24 The second category of benefit which will be treated as a ‘GST-creditable benefit’ is one that relates to the acquisition or importation of a ‘thing’. The term ‘thing’ replaces the references to ‘goods or services’ used in this Bill. For the purposes of new subsection 149A, thing takes its meaning from the GSTA 1999 where it is defined as anything that can be supplied or imported.

1.25 New paragraph 149A(2)(a) clarifies that the application of the FBT gross-up provisions is not limited only to those situations where the benefit is the ‘thing’ which has been acquired or imported. Rather, the provisions apply to all types of benefits that may arise, depending on the way in which the ‘thing’ that has been acquired or imported, is made available to an employee or an employee’s associate. For example, the provisions would cover benefits that arise from the employee’s use of a ‘thing’, such as a car.

1.26 The ‘thing’ referred to in new subparagraphs 149A(2)(a)(i) to (vi) must have been acquired or imported. To satisfy the tests of a ‘GST-creditable benefit’, entitlement to input tax credits arising from the acquisition or importation of the ‘thing’ must also have been available to the person providing the benefit; or, where the person providing the benefit is a member of a GST group, either that person, or to a person who is or was a member of the same GST group. [New paragraph 149A(2)(b)]

1.27 These provisions ensure that members of a GST group are not able to structure the way in which a ‘thing’ is acquired or transferred between members of the same GST group, in order to avoid using the new FBT gross-up rate. Note, for the purposes of new subparagraph 149A(2)(b), it is not necessary for the person providing the benefit to be a
member of the GST group at the time the ‘thing’ was acquired or imported. Similarly, the person who acquired or imported the ‘thing’ or the person who was entitled to input tax credits for the acquisition or importation, does not need to be a member of the group at the time the benefit was provided, in order for the provisions to apply.

**Type 2 aggregate fringe benefits amount**

*Requests for amendment 5 and 6*

1.28 The method statement contained in *new subsection 5C(4)* explains how to calculate an employer’s ‘type 2 aggregate fringe benefits amount’. Steps 1 and 3 of the method statement are rephrased so that the provisions clearly apply to all fringe benefits which are not included in the calculation of an employer’s ‘type 1 aggregate fringe benefits amount’.

1.29 The amendments provide a simpler method for calculating the ‘type 2 aggregate fringe benefits amount’ and make it easier for employers to understand how the provisions operate.

**Definitions**

*Amendment 1 consequential to the requests for amendment*

1.30 Subsection 136(1) of the FBTAA 1986 is amended to include the meaning of ‘GST-creditable benefit’. It is defined to have the meaning given by *new subsection 149A* (see paragraphs 1.22 to 1.27).