
THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

A NEW TAX SYSTEM (FRINGE BENEFITS) BILL 2000
A NEW TAX SYSTEM (MEDICARE LEVY SURCHARGE – FRINGE BENEFITS)
AMENDMENT BILL 2000

EXPLANATORY MEMORANDUM

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

Changes to fringe benefits tax

The A New Tax System (Fringe Benefits) Bill 2000 amends the Fringe Benefits Tax Assessment Act 1986 (FBTAA 1986) and the A New Tax System (Goods and Services Tax) Act 1999 to implement the second phase of the Government’s tax reform package for fringe benefits tax (FBT). These changes will enhance the fairness of the taxation system by:

- stopping the overuse of concessional FBT treatment for public benevolent institutions (PBIs) and certain non-profit organisations. This will be done by limiting certain benefits eligible for the concessions to $17,000 of grossed-up taxable value for each employee of a hospital, and $25,000 for employees of all other PBIs and rebatable employers;
- extending the application of the current FBT exemption for remote area housing benefits for primary producers to all employers;
- allowing a FBT exemption to primary producers in remote areas for non-entertainment meals provided to remote area employees on a work day; and
- introducing a new FBT gross-up formula to neutralise the tax treatment between fringe benefits and cash salary following the introduction of the goods and services tax (GST) system, and ensuring that the GST law interacts properly with the FBT law.

Date of effect: The reform measures in the FBTAA 1986 will apply from the FBT year commencing 1 April 2000. The amendments to the GST law will apply from 1 July 2000.

Proposal announced: The measures relating to the capping of FBT concessions and the new gross-up rate were originally announced on 13 August 1998 in the Government’s Tax Reform Document: Tax Reform: not a new tax, a new tax system: The Howard Government’s Plan for a new tax system. However, the variation to the capping measure has not been made public.

The FBT exemption for remote area housing has not been previously announced. However, this measure is an extension of the Government’s original proposal to exempt remote area housing provided by employers engaged in the mining industry.

The exemption of meals for primary producers in remote areas was announced by the then Deputy Prime Minister on 18 September 1998 at the National Party Campaign Launch.
Financial impact: The total revenue expected to be raised from each of the measures is:

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Compliance cost impact: The compliance cost impact statement for the measures is incorporated in the regulation impact statement which appears at the end of Chapter 1.

Summary of Regulation Impact Statement

Impact: Low to medium.

Main points:

- PBIs will be liable for FBT where the total grossed-up taxable value of certain employee benefits exceeds $17,000 in the case of hospitals, or $25,000 for all other PBI employers. Hospitals, that are rebatable employers, will lose their rebate entitlements for certain fringe benefits that exceed the $17,000 limit per employee. For all other rebatable employers the limit is $25,000 per employee.

- Removing remote area housing benefits from FBT will reduce the cost of compliance and record keeping costs borne by employers in remote areas. These employers will not need to determine the value of their housing stock or keep associated FBT records.

- The FBT exemption of non-entertainment remote area meals will result in compliance savings to primary producers as they will not need to value the meals being provided to employees or keep the associated FBT records.
Policy objective: The measures will implement the Government’s announced changes to the FBT provisions aimed at making the system fairer for all taxpayers.


The A New Tax System (Medicare Levy Surcharge – Fringe Benefits) Amendment Bill 2000 makes minor technical corrections to the A New Tax System (Medicare Levy Surcharge – Fringe Benefits) Act 1999 to ensure that the Medicare levy surcharge on reportable fringe benefits is consistent with the additional 1% Medicare levy on taxable income of taxpayers who do not have adequate private patient hospital insurance. Schedule 3 to the A New Tax System (Fringe Benefits) Bill 2000 corrects an anomaly in the Medicare levy surcharge provisions contained in the Medicare Levy Act 1986. These measures are discussed in Chapter 3.

Date of effect: The amendments will apply to the Medicare levy surcharge payable on taxable income and reportable fringe benefits for the 1999-2000 year of income and later years.

Proposal announced: The decision to take fringe benefits into account when determining liability for various tax surcharges and obligations was announced on 13 August 1998 in the Government’s Tax Reform Document: Tax Reform: not a new tax, a new tax system: The Howard Government’s Plan for a new tax system.

Financial impact: The amendments will not have an effect on the revenue.

Compliance cost impact: There will be no compliance costs resulting from the amendments.
Chapter 1
Fringe Benefits Tax Reform

Overview

1.1 Schedule 1 of A New Tax System (Fringe Benefits) Bill 2000 will amend 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 (ANTS).

Fringe Benefits Tax Reform

1.2 In ANTS released on 13 August 1998, the Government proposed a number of changes to the FBT provisions as part of its broader initiative to implement a new taxation system.

1.3 This Bill deals with the implementation of the FBT reform measures which will stop the overuse of the FBT exemption for public benevolent institutions (PBIs) and limit the concessional FBT treatment for certain non-profit, non-government organisations; exempt from FBT remote area housing benefits; 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.

1.4 The measures are explained in the following sections:

Section 1: Amendments to the Fringe Benefits Tax Assessment Act 1986; and

Section 2: Regulation Impact Statement.

Summary of the amendments

Purpose of the amendments

1.5 The purpose of the amendments is to reform the FBT legislation in order to assist in the implementation of a taxation system that is fairer and more equitable for all taxpayers.

1.6 Specifically, this Bill amends the FBTAA 1986 to:

- stop the overuse of the FBT exemption for PBIs and the concessional FBT treatment for certain non-profit, non-government organisations, by limiting benefits eligible for the exemption or concession to $17,000 of grossed-up taxable value per employee of a hospital, and $25,000 for employees of all other PBI and rebatable employers;
• extend the application of the current FBT exemption for remote area housing benefits provided by primary producers to all employers who provide remote area housing benefits;

• provide a FBT exemption for meals provided on a work day to remote area employees employed in a business of primary production, unless the benefit constitutes meal entertainment; and

• maintain tax neutrality between fringe benefits and cash salary following the introduction of the goods and services tax (GST), by adjusting the FBT gross-up formula to substantially recoup input tax credits claimed in respect of GST paid on fringe benefits.

Date of effect
1.7 The application date for each reform measure is as follows:

• The exemption from FBT for PBIs and the concessional FBT treatment for rebatable employers will be capped from the FBT year commencing 1 April 2000.

• The FBT exemption for remote area housing benefits will apply to benefits provided to employees on or after 1 April 2000.

• The FBT exemption for remote area work meals will apply to benefits provided to employees on or after 1 April 2000.

• The new FBT gross-up provisions will apply from 1 April 2000 onwards.

Background to the legislation

Current law

*FBT exempt benefits and rebatable employers*

1.8 The current law provides FBT exemptions or concessional FBT treatment based on either the type of benefits being provided or the status of the employer.

1.9 The exemption available under section 57A of the FBTAA 1986 treats a benefit provided in respect of an employee’s employment with a PBI as an exempt benefit. The exemption also applies where the employer is a government body and the employee’s duties are solely performed in, or in connection with, a public hospital that is a PBI. The effect of the section 57A exemption is that these employers do not incur a FBT liability when their employees are provided with benefits. Further, employers are not restricted in the amount of benefits that can be provided to employees in respect of their employment. In theory these employees could obtain their remuneration free of any tax.
1.10 A rebate of 48% on FBT paid is available under section 65J of the FBTAA 1986 to certain non-profit, non-government employers. The effect of this rebate is that the employees of a rebatable employer can receive fringe benefits at a rate significantly less than the top marginal income tax rate. As with the exemption under section 57A, there is no limitation on the amount of benefits that can be provided to individual employees of a rebatable employer.

**Remote area housing fringe benefits**

1.11 The current FBT exemption for remote area housing benefits under section 58ZA of the FBTAA 1986 is limited to employers carrying on a business of primary production.

1.12 Remote area housing benefits provided by all other employers are subject to concessional valuation rules. The concessions generally take the form of a 50% reduction in the taxable value of the benefit. These rules apply to not only remote area housing fringe benefits as defined in the FBT law, but also to benefits provided in the form of remote area housing loans, remote area residential fuel, remote area residential property, and remote area residential property repurchase or ownership schemes.

**Meals**

1.13 The provision of a meal to an employee may give rise to a number of different types of fringe benefit, depending on the circumstances in which the benefit is provided, e.g. a board fringe benefit, a meal entertainment fringe benefit, a property fringe benefit, or an expense payment fringe benefit.

**Grossing-up rules**

1.14 The FBT grossing-up process is designed to provide a substantially neutral tax treatment between the provision of fringe benefits and the payment of gross salary or wages to an employee, where the employee is subject to income tax at the top marginal rate.

1.15 Under the current FBT provisions, an employer is liable to tax on the aggregate taxable value of fringe benefits provided in respect of his or her employees during a year of tax. Broadly, the taxable values of all fringe benefits are totalled to give the ‘aggregate fringe benefits amount’. The aggregate fringe benefits amount is then grossed-up to a tax inclusive amount, referred to as the fringe benefits taxable amount. The FBT payable is the tax imposed on the fringe benefits taxable amount.
SECTION 1: AMENDMENTS TO THE FRINGE BENEFITS TAX ASSESSMENT ACT 1986

Explanation of the amendments

Employer’s fringe benefits taxable amount

1.16 Items 1 and 2 of Schedule 1 amend the existing provisions for working out an employer’s ‘fringe benefits taxable amount’. The new subsections incorporate the changes necessary to implement the new FBT gross-up formula and to cap the amount of exempt benefits provided to employees of employers described in section 57A. Diagram 1.1 sets out the process for calculating the fringe benefits taxable amount.

Note: For the purposes of Diagrams 1.1 and 1.2 and this explanatory memorandum, a reference to the ‘new gross-up formula’ is a reference to:

\[
\frac{\text{FBT rate} + \text{GST rate}}{(1 - \text{FBT rate}) (1 + \text{GST rate}) \times \text{FBT rate}}
\]

Similarly, any references to the ‘existing gross-up formula’ is a reference to:

\[
\frac{1}{1 - \text{FBT rate}}
\]
Diagram 1.1: Determining an employer’s fringe benefits taxable amount

Calculate each employee’s *individual fringe benefits amount* and add all of the employees’ amounts together

Add the taxable value of all *excluded fringe benefits*

For each fringe benefit included in the previous calculations, was the provider entitled to input tax credits when the benefit was acquired by the provider?

- **Yes**
  - Calculate the *type 1 aggregate fringe benefits amount*
    - i.e. add the taxable values of all fringe benefits identified as having input tax credits available to the provider of the benefit
  - Calculate the *subsection (1B) amount*
    - type 1 aggregate fringe benefits amount \( \times \) new gross-up amount
  
  **New FBT gross-up formula**

- **No**
  - Calculate the *type 2 aggregate fringe benefits amount*
    - i.e. add the taxable values of all fringe benefits provided where either input tax credits were not allowed or GST was not paid by the provider of the benefit
  - Calculate the *subsection (1C) amount*
    - type 2 aggregate fringe benefits amount \( \times \) existing gross-up amount

Have benefits exempted under section 57A been provided in respect of an employee’s employment?

- **Yes**
  - Calculate the *aggregate non-exempt amount*

- **No**
  - Calculate the employer’s *fringe benefits taxable amount*
    - subsection (1B) amount + subsection (1C) amount + aggregate non-exempt amount

\[
\begin{align*}
\text{Employer's type 1 aggregate fringe benefits amount} & \times \text{new gross-up formula} \\
\text{Employer's type 2 aggregate fringe benefits amount} & \times \text{existing gross-up formula}
\end{align*}
\]
calculations is to distinguish between the different treatment of certain benefits and persons under the GST.

1.19 The ‘type 1 aggregate fringe benefits amount’ represents 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 amount is then grossed-up to a tax inclusive value by applying the new FBT gross-up formula. [New subsection 5B(1B)]

1.20 The new FBT gross-up formula is expressed as:

\[
\frac{\text{FBT rate} + \text{GST rate}}{(1 - \text{FBT rate})(1 + \text{GST rate})\times \text{FBT rate}}
\]

1.21 This gross-up formula effectively recoups any input tax credits arising from the provision of fringe benefits:

• by an employer;
• by an associate of the employer;
• under an arrangement between the employer and a third party; or
• under an arrangement between an associate of the employer and a third party.

1.22 The formula therefore ensures that the net cost to an employer of remunerating an employee with fringe benefits or cash salary will remain tax neutral after the GST is introduced.

1.23 The second type of aggregate fringe benefits amount provides for situations where:

• fringe benefits are provided, and their taxable value is determined, before the introduction of the GST – that is, between 1 April 2000 and 30 June 2000;
• fringe benefits are GST free;
• the goods or services are not acquired by the employer, for example, the goods or services are manufactured;
• small business employers have opted not to register for the GST; or
• the activities of certain registered employers are input taxed.

1.24 Applying the new FBT gross-up formula to these cases would distort the tax treatment between fringe benefits and cash salary – either, because the person who provided the benefit was not entitled to an input tax credit or because the GST did not apply. In order to ensure that the new FBT provisions produce an equitable outcome for all employers, the existing FBT gross-up formula is to be applied to ‘type 2 aggregate fringe benefits amounts’. [New subsection 5B(1C)]

1.25 The calculation of an employer’s type 1 and type 2 aggregate fringe benefits amounts is explained in the following paragraphs.
**Fringe Benefits Tax Reform**

1.26 **New subsection 5C(3)** establishes how to work out an employer’s ‘type 1 aggregate fringe benefits amount’ for a year of tax.

1.27 In order to determine the ‘type 1 aggregate fringe benefits amount’, an employer is required to identify for each employee those fringe benefits in respect of which the provider was allowed input tax credits. An employee’s individual fringe benefits amount is then calculated in respect of those benefits.

1.28 Under the current FBT law, an employer must determine the individual fringe benefits amount for each employee in order to work out the aggregate fringe benefits amount. The individual fringe benefits amount is calculated in accordance with section 5E and is essentially the employee’s share of the taxable value of all fringe benefits, other than ‘excluded fringe benefits’, provided to an employee or to an associate of the employee.

1.29 An employer must also calculate the taxable value of every ‘excluded fringe benefit’ provided to employees, or associates of the employees, where the provider of the benefit was entitled to input tax credits.

1.30 The proportion of the ‘individual fringe benefits amount’ worked out in paragraphs 1.27 and 1.28 for each of the employees, and the proportion of the ‘excluded fringe benefits’ worked out in paragraph 1.29, are then added together to give the employer’s **type 1 aggregate fringe benefits amount**.

1.31 In the case where, for the entire operating period, the persons providing the benefits are not registered for GST or the business activities are input taxed, the employer’s ‘type 1 aggregate fringe benefits amount’ will be nil.

**Employer’s type 2 aggregate fringe benefits amount**

1.32 In accordance with **new subsection 5C(4)**, an employer’s ‘type 2 aggregate fringe benefits amount’ for a FBT year is calculated as the sum of:

- the individual fringe benefits amount for each of the employer’s employees that relates to fringe benefits on which the provider of the benefit did not incur GST, or was not entitled to input tax credits on the acquisition of the benefit; and

- the total taxable value of excluded fringe benefits on which the provider of the benefit did not incur GST, or was not entitled to input tax credits on the acquisition of the benefit.

1.33 Essentially, the individual fringe benefits amount calculated for the ‘type 2 aggregate fringe benefits amount’ is the residual of an employee’s total individual fringe benefits amount calculated under section 5E, less the individual fringe benefits amount used in determining
the employer’s ‘type 1 aggregate fringe benefits amount’. The value of
excluded fringe benefits can be calculated in a similar way.

1.34 Where the people providing the benefits are not registered for
GST or are input taxed, for the whole of the operating period, there is
effectively no change in the calculation of the employer’s fringe benefits
taxable amount. That is, the ‘type 2 aggregate fringe benefits amount’ is
calculated in the same way that the aggregate fringe benefits amount is
worked out under the existing law.

Example 1.1

During the 2000-2001 FBT year, an employer provides its employees
with the following fringe benefits:

Employee A receives a stereo with a taxable value of $2,000 and is
provided with an overseas holiday with a taxable value of $7,000.

Employee B is reimbursed for his children’s school fees of $3,000.

Assuming that the employer is registered for GST and that input tax
credits were available on the acquisition of the stereo, the employer’s
fringe benefits taxable amount for the year of tax is calculated in the
following way:

Firstly, calculate the ‘type 1 aggregate fringe benefits amount’
The employer adds together each employee’s individual fringe benefits
amount calculated in respect of those fringe benefits where the provider
was entitled to input tax credits for GST paid. Any excluded fringe
benefits with input tax credits available to the provider are added to this
total amount.

Employee A = $2,000 (stereo)
Employee B = $0 (school tuition fees are GST-free)

As no excluded fringe benefits have been provided, the employer’s
‘type 1 aggregate fringe benefits amount’ is $2,000.

Secondly, calculate the ‘type 2 aggregate fringe benefits amount’
The employer must work out each employee’s individual fringe
benefits amount for those benefits in respect of which the provider did
not pay GST or input tax credits were not allowed when the benefit(s)
were acquired.

Employee A = $7,000 (no GST was paid on the holiday)
Employee B = $3,000 (school tuition fees are GST-free)

The individual fringe benefits amount calculated for each of the
employees are added together, i.e. $7,000 + $3,000 = $10,000. As
there are no excluded fringe benefits, the employer’s ‘type 2 aggregate
fringe benefits amount’ is $10,000.

Thirdly, calculate the ‘subsection (1B) amount’

To calculate this amount, the employer needs to multiply the ‘type 1
aggregate fringe benefits amount’ by the new FBT gross-up formula.

$$2,000 \times \frac{0.485 + 0.1}{(1 - 0.485) \times (1.1) \times (0.485)} = 4,258$$
Fourthly, calculate the ‘subsection (1C) amount’

The ‘subsection (1C) amount’ is worked out by grossing-up the ‘type 2 aggregate fringe benefits amount’ with the existing gross-up formula:

\[
10,000 \times \frac{1}{1 - 0.485} = 19,417
\]

Lastly, calculate the ‘fringe benefits taxable amount’

The employer’s ‘fringe benefits taxable amount’ is calculated by adding together the subsection (1B) and (1C) amounts worked out in the third and fourth calculations.

The employer’s FBT liability will be calculated on the ‘fringe benefits taxable amount’ of $23,675.

Note, the term aggregate fringe benefits amount, which is used within a number of provisions contained in the FBTAA 1986, has not effectively been changed, in that it remains the sum of the:

- ‘type 1 aggregate fringe benefits amount’ for a year of tax; and
- ‘type 2 aggregate fringe benefits amount’ for a year of tax.

[New subsection 5C(2)]

Reportable Fringe Benefits Amount

The new FBT gross-up formula will not affect the calculation of an employee’s ‘reportable fringe benefits amount’ for a year of income. An employer will continue to gross-up the employee’s individual fringe benefits amount by the existing gross-up formula, when determining the amount to be shown on the employee’s group certificate. The new FBT gross-up formula only applies to the calculation of an employer’s FBT liability.

Capping section 57A exempt benefits

An employer’s fringe benefits taxable amount may be increased when benefits provided in respect of an employee’s employment with the employer are exempt under section 57A [new subsection 5B(1D)]. The increased amount is referred to as the employer’s ‘aggregate non-exempt amount’. This amount ensures that the FBT exemption allowed under section 57A is limited to certain excluded fringe benefits and $25,000 of each employee’s individual grossed-up non-exempt amount. However, the $25,000 cap reduces to $17,000 in cases where the employee of the section 57A employer works in a public hospital.

The provisions for working out an employer’s ‘aggregate non-exempt amount’ are contained in new subsections 5B(1E) to 5B(1L). Diagram 1.2 provides an overview of how an employer’s aggregate non-exempt amount is determined.
Diagram 1.2: Determining an employer’s aggregate non-exempt amount

Are the benefits provided in respect of an employee’s employment exempt under section 57A?

No

No calculations are required for that employee.

Yes

For each employee, calculate the amount that would be an employee’s:
- individual fringe benefits amount; and
- share of certain excluded fringe benefits, assuming the section 57A exemption did not apply.

For each benefit included in the previous calculations, was the provider entitled to input tax credits at the time the benefit was acquired?

No

Benefits provided to the employee remain exempt from FBT.

Yes

Calculate the type 1 individual base non-exempt amount for each employee

i.e. add the notional taxable values of all benefits identified as having input tax credits available to the provider.

Calculate the type 2 individual base non-exempt amount for each employee

i.e. add the notional taxable values of all benefits identified where the provider was not entitled to input tax credits (either because no GST was incurred or because of the provider’s status).

Calculate the individual grossed-up type 1 non-exempt amount for each employee:

type 1 individual base non-exempt amount \times \text{new gross-up formula}

Calculate the individual grossed-up type 2 non-exempt amount for each employee:

type 2 individual base non-exempt amount \times \text{existing gross-up formula}

Is the individual grossed-up non-exempt amount greater than $17,000 in the case of public hospitals, or $25,000 for all other s57A employers?

No

1.4 Yes

Calculate the aggregate non-exempt amount

= Total of all amounts greater than the relevant threshold for all employees.
• is provided in respect of the employee’s employment; and
• would not be an excluded fringe benefit.

1.41 A section 57A employer must also calculate each employee’s share of the notional taxable value of certain benefits which would qualify as excluded fringe benefits under subsection 5E(3), if the section 57A exemption did not apply. The following notional excluded fringe benefits are to be allocated to individual employees when calculating the ‘aggregate non-exempt amount’:

• benefits that are provided in connection with remote area housing assistance and are valued concessionally under section 59 (e.g. remote area residential fuel) and section 60 (e.g. remote area housing loans);
• amortised fringe benefits;
• reducible fringe benefits;
• benefits that relate to occasional travel to a major population centre in Australia provided to employees and family members residing in remote areas;
• benefits that relate to freight costs for foodstuffs provided to remote area employees; and
• benefits that are prescribed as excluded fringe benefits by regulation.

1.42 Benefits which constitute the provision of meal entertainment, that would be a car parking fringe benefit, or are attributable to entertainment facility leasing expenses, will retain their exemption from FBT for PBIs. These types of benefits are not included in the calculation of the ‘aggregate non-exempt amount’ because the additional compliance costs outweigh the equity considerations in allocating the taxable value of these benefits to individual employees.

1.43 Although remote area housing fringe benefits are included in the current definition of excluded fringe benefits, these types of benefits do not need to be allocated to employees. This is because remote area housing benefits will be exempt from FBT from 1 April 2000 (see paragraph 1.62).

1.44 An employer must separate the benefits that comprise an employee’s ‘individual fringe benefits amount’ and share of ‘excluded fringe benefits’ (listed in paragraph 1.41) into 2 groups. The type 1 individual base non-exempt amount represents the sum of the taxable values of those benefits included in the calculation of an employee’s individual fringe benefits amount and share of excluded fringe benefits, where the person providing the benefit was entitled to input tax credits. [New subsection 5B(1H)] Benefits where input tax credits were not available to the provider when the benefit was acquired (the residual) are aggregated to give the employee’s type 2 individual base non-exempt amount. [New subsection 5B(1J)]
1.45 The ‘type 1 individual base non-exempt amount’ is grossed-up in accordance with the new FBT gross-up formula to determine the *individual grossed-up type 1 non-exempt amount* for the employee. [*New subsection 5B(1F)*] The new FBT gross-up formula is applied so that the input tax credits, which were available to the person(s) providing the benefits, are recouped. The *individual grossed-up type 2 non-exempt amount* is obtained by multiplying the ‘type 2 individual base non-exempt amount’ by the existing FBT gross-up formula. [*New subsection 5B(1G)*]

1.46 The 2 grossed-up non-exempt amounts are added together to calculate an employee’s *individual grossed-up non-exempt amount*. Where an employee’s ‘individual grossed-up non-exempt amount’ is greater than the relevant threshold ($17,000 for employees of s57A employers who work in public hospitals and $25,000 for employees of all other PBIs), the amount that exceeds this threshold is added to similar amounts calculated for all of the employer’s other employees. This total amount is the employer’s *aggregate non-exempt amount* for the FBT year. [*New subsection 5B(1E)*]

1.47 The limit for the section 57A exemption applies in respect of each employee, for each employer. This threshold also applies in cases where an employee has not been employed by the employer for the whole of the FBT year – that is, there is no pro-rata of the cap for part year employment.

1.48 The total value of benefits that can be provided to an employee without exceeding the threshold will vary, depending on whether the benefits provided are exempt under another provision of the FBT law or are concessionally valued. The average use of an Australian 6 cylinder car and a small amount of additional benefits would generally fall within the cap.

1.49 ‘Aggregate non-exempt amount’ is to be defined in subsection 136(1) of the FBTAA 1986 by reference to the meaning given by *new subsection 5B(1E)*. [*Item 18*]

**Example 1.2**

A public hospital provides its employees A and B with the following benefits during the 2000-2001 FBT year:

- Employee A receives a television with a notional taxable value of $4,000 and domestic air travel of $3,000; and
- Employee B is reimbursed for his children’s child care fees of $3,000 and receives overseas travel with a taxable value of $8,000.

(Note: the example is worked out on the assumption that the public hospital was registered for GST and entitled to input tax credits for GST paid. It is also assumed that the television and domestic travel provided to employee A are subject to GST, and that the child care services and overseas travel provided to employee B did not attract GST).

The employer’s aggregate non-exempt amount for the 2000-2001 FBT year is calculated in the following way:
(A): The employer works out what would be the individual fringe benefits amount for each employee, if section 57A was not enacted. This is determined by adding the taxable values of the benefits provided in respect of the employee’s employment, except for any excluded fringe benefits. The notional ‘individual fringe benefits amount’ for employee A and employee B is calculated as:

Employee A = $4,000 + $3,000 = $7,000  
Employee B = $3,000 + $8,000 = $11,000

The notional individual fringe benefits amount is now broken down into 2 components. Where input tax credits were available to the person providing the benefits, the taxable values of the benefits identified are added together to give the step 3 subsection (1K) amount.

Employee A = $7,000  
Employee B = $0

The difference between the notional individual fringe benefits amount and the ‘step 3 subsection (1K) amount’ calculated for each employee is referred to as the step 4 subsection (1K) amount:

Employee A = $7,000 − $7,000 = $0  
Employee B = $11,000 − $0 = $11,000

(B): The employer is also required to allocate each employee’s share of the taxable value of certain benefits which would qualify as excluded fringe benefits, except for the operation of section 57A. The employee’s share of such excluded fringe benefits must also be divided into 2 parts based on whether input tax credits were available to the provider at the time the benefits were acquired. [New subsection 5B(1L)]

As employees A and B do not have a share of any excluded benefits, the value of the step 3 and step 4 subsection (1L) amount for each employee is nil.

(C): Each employee’s step 3 subsection (1K) and (1L) amounts (i.e. benefits in respect of which input tax credits were available) are added together to determine the type 1 individual base non-exempt amount:

Employee A = $7,000 + $0 = $7,000  
Employee B = $0 + $0 = $0

Similarly, the type 2 individual base non-exempt amount is calculated as the total of an employee’s step 4 subsection (1K) and (1L) amounts:

Employee A = $0 + $0 = $0  
Employee B = $11,000 + $0 = $11,000

(D): Each employee’s type 1 and type 2 individual base non-exempt amount is grossed-up in accordance with the formula set out in new subsection 5B(1F) and new subsection 5B(1G) respectively.
The individual grossed-up type 1 non-exempt amount for employees A and B is:

Employee A:

$7,000 \times \frac{0.485 + 0.1}{(1 - 0.485) \times (1.1) \times (0.485)} = \$14,904$

Employee B:

$0 \times \frac{0.485 + 0.1}{(1 - 0.485) \times (1.1) \times (0.485)} = \$0$

The individual grossed-up type 2 non-exempt amount for employees A and B is:

Employee A:

$0 \times \frac{1}{(1 - 0.485)} = \$0$

Employee B:

$11,000 \times \frac{1}{(1 - 0.485)} = \$21,359$

(E): For each employee, the employer adds the individual grossed-up type 1 non-exempt amount and the individual grossed-up type 2 non-exempt amount to determine the individual grossed-up non-exempt amount:

Employee A = $14,904 + 0 = \$14,904$

Employee B = $0 + 21,359 = \$21,359$

(F): The employer must now apply the threshold test for employee A and employee B by subtracting $17,000 from each employee’s individual grossed-up non-exempt amount. That is:

Employee A: $14,904 - 17,000 = \text{nil}$

Employee B: $21,359 - 17,000 = \$4,359$

(G): Each employee’s amount calculated under (F) is added in order to determine the employer’s aggregate non-exempt amount for the 2000-2001 FBT year.

Aggregate non-exempt amount = $4,359 + 0$

= $4,359$

The amount of $4,359 will be included in the employer’s fringe benefits taxable amount when calculating the FBT liability for the 2000-2001 FBT year.
Capping section 65J rebates

1.50 Item 16 amends the formula used to calculate the amount of rebate allowed to certain non-profit, non-government organisations. The new formula is expressed as:

\[
0.48 \times \left( \frac{\text{Gross tax} - \text{Aggregate non-rebatable amount}}{\text{Total days in year}} \right) \times \frac{\text{Rebatable days in year}}{\text{Total days in year}}
\]

1.51 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.

Definitions

1.52 New subsection 65J(2A) defines each term contained in the formula:

- **Gross tax** means the amount of FBT payable by the employer for the FBT year, assuming that no rebate is allowed.

- **Rebatable days in year** refers to the number of days in the FBT year that the employer qualified as a rebatable employer during the period. Subsection 65J(1) lists certain non-profit organisations who are considered to be rebatable employers for FBT. Item 14 excludes PBIs from the rebate provisions to ensure that these employers do not qualify for an FBT exemption for benefits provided up to the applicable cap, and then also receive a further rebate of tax.

- **Total days in year** is also re-defined so that the rebate is calculated with reference to the total number of days from which an employer has engaged in activities for a FBT year, rather than the actual number of days in the year. The new definition ensures that the rebate available is not reduced in cases where a rebatable employer starts or ends operations during the FBT year.

Employer’s aggregate non-rebatable amount

1.53 New subsections 65J(2B) to (2H) contain the provisions for working out an employer’s ‘aggregate non-rebatable amount’ for the FBT year commencing on 1 April 2000 and for later FBT years. The calculation relies on similar rules used to determine the ‘aggregate non-exempt amount’ for a section 57A employer.

1.54 The ‘aggregate non-rebatable amount’ is the amount that represents the proportion of the taxable value of fringe benefits for which the employer is being denied a rebate. For each employee of a rebatable hospital whose ‘individual grossed-up non-rebatable amount’ is greater
than $17,000, those amounts in excess of $17,000 are added together for all of the employer’s employees. For each employee of all other rebatable employers whose ‘individual grossed-up non-rebatable amount’ is greater than $25,000, those amounts in excess of $25,000 are added together for all of the employer’s employees. The FBT rate for the year of tax is applied to this total amount to give the employer’s aggregate non-rebatable amount for the FBT year. [New subsection 65J(2B)]

1.55 The first step identified in the method statement requires the employer to calculate an employee’s ‘individual grossed-up non-rebatable amount’ for the FBT year. An employee’s individual grossed-up non-rebatable amount is obtained by adding together the:

- ‘individual grossed-up type 1 non-rebatable amount’; and
- ‘individual grossed-up type 2 non-rebatable amount’.

1.56 The individual grossed-up type 1 non-rebatable amount is calculated by grossing-up the ‘type 1 individual base non-rebatable amount’ in accordance with the new FBT gross-up formula [new subsection 65J(2C)]. This amount reflects those benefits where the provider was entitled to input tax credits for GST paid on the acquisition of the goods and services.

1.57 An employee’s ‘individual grossed-up type 2 non-rebatable amount’ is worked out in accordance with new subsection 65J(2D). To calculate this amount, the employer grosses-up the ‘type 2 individual base non-rebatable amount’ in accordance with the existing FBT gross-up formula. This amount represents the benefits provided to employees or their associates, where the person providing the benefits did not incur GST or was not entitled to input tax credits at the time the goods and services were acquired.

1.58 In order to determine the ‘type 1 individual base non-rebatable amounts’ and ‘type 2 individual base non-rebatable amounts’, the employer must calculate an employee’s individual fringe benefits amount for the FBT year. This is the same process used in determining an employer’s ‘aggregate fringe benefits amount’ and an employee’s ‘reportable fringe benefits amount’ under the current FBT law.

1.59 Each employer must also determine an employee’s share of the taxable value of the ‘excluded fringe benefits’ listed in paragraph 1.41. This amount and the employee’s individual fringe benefits amount are divided into 2 subsets for the purpose of applying the 2 different FBT gross-up formulas.

1.60 The type 1 individual base non-rebatable amount is made up of the benefits which form the ‘individual fringe benefits amount’ and ‘excluded fringe benefits’ (listed in paragraph 1.41), in respect of which the provider was allowed to receive input tax credits [new subsection 65J(2E)]. The remaining benefits that comprise the ‘individual fringe benefits amount’ and ‘excluded fringe benefits’ are added together to give the type 2 individual base non-rebatable amount. [New subsection 65J(2F)]
1.61 ‘Aggregate non-rebatable amount’ is defined in subsection 136(1) of the FBTAA 1986 to have the meaning given by new subsection 65J(2B). [Item 19]

Remote area housing exemption

1.62 New section 58ZC exempts remote area housing benefits from FBT. Broadly, section 25 defines a housing benefit as a benefit that arises where an employee is granted a right to occupy, as a usual place of residence, a unit of accommodation provided by an employer. New subsection 58ZC(2) requires certain conditions to be satisfied before a housing benefit provided in respect of an employee’s employment in a remote area can qualify as an exempt benefit. These conditions are identical to those in subsection 29(4) which is being repealed.

Accommodation must be located in a remote area

1.63 The unit of accommodation for the whole of the tenancy period must not have been at a location in or adjacent to an eligible urban area. A unit of accommodation will be treated as being in a remote area if it is not at a location in, or adjacent to an eligible urban area. Section 140 of the FBTAA 1986 states that an eligible urban area is a town or a city with a 1981 census population of 14,000 or more (or 28,000 or more if the town or city is located in Zone A or Zone B for income tax purposes). A location will be treated as being adjacent to an eligible urban area (i.e. not remote) if it is less than 40 kilometres by the shortest practicable surface route from the centre point of an eligible urban area with a 1981 census population of less than 130,000 or is less than 100 kilometres from an eligible urban area with a census population of 130,000 or more. [New paragraph 58ZC(2)(a)]

Employee must be employed in a remote area for whole tenancy period

1.64 The recipient of the benefit must have been a current employee of the employer for the whole tenancy period and the employee’s usual place of employment must not have been at a location in or adjacent to an eligible urban area during that period. [New paragraph 58ZC(2)(b)]

Provision of accommodation is customary

1.65 It is customary for employers in the industry in which the employee is employed during the tenancy period to provide free or subsidised residential accommodation. [New paragraph 58ZC(2)(c)]

Provision of accommodation is necessary

1.66 It is necessary for the employer to provide free or subsidised accommodation to employees for any of the following reasons:

- the nature of the employer’s business is such that employees are likely to move frequently from one residential location to another;
- there is not sufficient suitable residential accommodation otherwise available in the area in which the employee is employed; or
• it is customary in the employer’s industry to provide free or subsidised housing to employees.

[New paragraph 58ZC(2)(d)]

The arrangement must be bona fide

1.67 The arrangement under which the accommodation is provided must be an arms length arrangement and it must not be provided under an arrangement for the purposes of obtaining the concessions provided by this provision. [New paragraph 58ZC(2)(e)]

Commissioner’s discretion

1.68 New subsection 58ZC(3) provides the Commissioner of Taxation (the Commissioner) a discretion, where circumstances warrant it, to treat a person who resides in an area adjacent to an eligible urban area, as residing outside that area if persons who live near to that person, are outside that area. [New paragraph 58ZC(3)(a)]

1.69 Similarly, the Commissioner may treat a person who works in an area adjacent to an eligible urban area, as working outside that area if persons who work near to that person, are outside that area. [New paragraph 58ZC(3)(b)]

1.70 This discretion may be exercised by the Commissioner in situations where near neighbours would otherwise be treated differently as to whether they qualify for the concession under the remoteness tests because they live or work just on opposite sides of the dividing mark.

Concessional treatment

1.71 New subsection 59(1) replaces the existing subsection to reflect the new remote area housing exemption provisions. Where an employer provides a remote area housing benefit and supplies, pays for, or reimburses the cost of electricity, gas or other residential fuel for an employee in a remote area, the taxable value of the benefit is reduced by 50%.

Consequential amendments

1.72 An ‘excluded fringe benefit’ is currently defined to include remote area housing fringe benefits. This is no longer necessary as the benefits are to be exempt from FBT [item 8]. Similarly, item 9 removes the reference to ‘a remote area housing fringe benefit’ from subsection 26(1).

1.73 Sections 29 and 29A that dealt with the calculation of the taxable value of a remote area housing fringe benefit are being repealed as the calculation will no longer be required [item 10]. Further, section 58ZA is being repealed as the remote area housing exemption is being extended to all employers [item 11].

1.74 Item 20 repeals the definition of ‘remote area housing fringe benefit’ from subsection 136(1) of the FBTAA 1986.
Meals exemption

1.75 New section 58ZD will exempt from FBT certain meal benefits provided by primary producers. The following conditions must be met before a meal benefit can be an exempt benefit:

- the employer must be engaged in a primary production business for the purposes of the Income Tax Assessment Act 1997 [new paragraph 58ZD(a)];
- the business of primary production must be carried on in a remote area [new paragraph 58ZD(b)]. The definition of remote area is discussed at paragraph 1.63;
- the benefit provided to an employee consists of a meal on a day that the employee works for the employer [new paragraph 58ZD(c)]. This would cover situations where an employee is provided with a meal ready for consumption by way of an expense payment benefit. Meals and working day are not defined within the new provisions as these terms would be interpreted on the basis of their ordinary meaning. Note, an employee can be provided with more than one meal on a work day;
- the benefit that is provided to the employee cannot amount to the provision of meal entertainment as defined in section 37AD [new paragraph 58ZD(d)];
- the benefit must be provided to the employee except where the benefit is a board benefit, and then it may also be provided to an associate of the employee [new subparagraph 58ZD(f)(ii)];
- the employee is employed in the business of primary production and the employee’s primary place of employment is in a remote area [new subparagraph 58ZD(f)(i)]; and
- the benefit is provided to the employee in respect of that employment [new paragraph 58ZD(g)].

1.76 There is no requirement that the meal be provided on the business premises of the employer.

SECTION 2: REGULATION IMPACT STATEMENT

Policy objectives

1.77 These measures were originally announced by the Government on 13 August 1998 in ANTS. The first phase of the proposals relating to reportable fringe benefits was implemented on 1 April 1999.

1.78 The policy objective of the measures is to enhance the fairness of the taxation system by:
A. Stopping overuse of the concessional FBT treatment of PBIs and certain non-profit organisations. Broadly, this will be done by limiting for each employee of a PBI or rebatable employer, fringe benefits eligible for concessional treatment to $25,000 of the grossed-up taxable value. However, the cap will be $17,000 in the case of an employee of a PBI or a rebatable employer that is a hospital;

B. Extending the fringe benefits tax exemption for remote area housing;

C. Allowing an FBT exemption for all non-entertainment meals provided on a work day to employees employed in a business of primary production in a remote area; and

D. Ensuring there is equal tax treatment between fringe benefits and cash salary following the introduction of the GST system by including in the gross-up formula an adjustment to recoup input tax credits allowed on fringe benefits provided to employees or their associates, and other GST changes.

Reason for the policy

1.79 The FBT capping measure will stop the overuse of the FBT exemption for PBIs and the concessional FBT treatment for certain non-profit, non-government organisations, which are currently open-ended, by capping the exempt or concessional treatment to $25,000 of the tax-inclusive value of an employee’s fringe benefits. However, the threshold is $17,000 where the employee of the s57A employer or rebatable employer works in a hospital. This measure goes some way towards the ideal position where employees earning the same remuneration are taxed the same, while ensuring that PBIs and certain non-profit organisations retain a cost advantage over other employers.

1.80 ANTS announced that the FBT gross-up rate would be changed from July 2000 to ensure neutrality of treatment between cash salary and fringe benefits following the introduction of the GST. GST input tax credits would not normally be allowed for goods and services which are ultimately for the private use of employees. The new gross-up formula will effectively claw back through the FBT system the input tax credit that was obtained by the provider on acquisition of the benefit.

1.81 Without this adjustment to the gross-up factor, employees would have an incentive to convert cash salary to fringe benefits (because of the availability to the provider of a GST input credit) in order to effectively avoid the GST on taxable goods or services. The alternative approach of denying input tax credits for GST paid in providing fringe benefits would have unduly complicated the GST system and added to employer compliance costs.
Implementation options

1.82 There are no feasible alternatives for implementing the Government’s proposals. The measures will be implemented by amending the FBTAA 1986 and the A New Tax System (Goods and Services Tax) Act 1999. The FBT measures are to apply from the FBT year commencing 1 April 2000. The changes to the GST law will apply from 1 July 2000.

Assessment of impacts (costs and benefits)

Impact group identification

Measure A

1.83 The measure will affect around 3,100 FBT rebatable employers and a further 23,000 PBIs.

Measure B

1.84 The measure will deliver compliance cost savings to employers providing housing benefits in remote areas. It is estimated that 600 employers will benefit from this exemption.

Measure C

1.85 It is estimated that approximately 1,000 primary producers operating in remote areas will benefit from the meals exemption.

Measure D

1.86 It is estimated that up to 90,500 employers will be affected by this measure.

1.87 The Australian Taxation Office (ATO) will also be affected by the above measures. Changes will need to be made to forms and computer systems to capture the relevant data. Training will also have to be provided to staff in the relevant areas to ensure the measure is implemented correctly and to educate the public.

Analysis of the costs and benefits

Compliance costs

Measure A

1.88 Changes resulting from the A New Tax System (Fringe Benefits Reporting) Act 1999 mean that these changes will not significantly affect the compliance costs of PBIs, as they already have to report on an employee’s group certificate the grossed-up taxable value of fringe benefits over $1,000. PBIs that have employees whose grossed-up taxable value of fringe benefits exceeds the relevant threshold, will be liable to pay FBT.

1.89 PBIs and rebatable employers’ initial costs will include training payroll staff and those involved in salary sacrificing. The initial costs are
expected to be in the order of $1 million. On an ongoing basis, both the employer and employee will need to monitor the level of benefits provided during the FBT year if they wish to ensure that they do not exceed the limit. It is therefore estimated that recurrent compliance costs of around $1 million a year will be imposed on PBIs and rebatable employers.

**Measure B**

1.90 Extending FBT exemption for remote area housing will reduce the cost of compliance and record keeping costs borne by employers in remote areas.

**Measure C**

1.91 The FBT exemption of non-entertainment meals will result in compliance savings to employers who are carrying on a business of primary production and provide meals on a work day to remote area employees in the form of board fringe benefits, expense payment fringe benefits, property fringe benefits or residual fringe benefits. These employers will not need to value the meals being provided to employees or keep the associated FBT records.

**Measure D**

1.92 All FBT providers will potentially incur additional compliance costs as employers will need to identify which benefits have input tax credits attached and keep appropriate records. These benefits will have to be separated from the remaining fringe benefits on which no GST was payable, or where input tax credits were not claimable.

1.93 Employers will be required to calculate 2 separate amounts, one for liability and one for FBT reporting on group certificates. Therefore, the total estimated compliance costs associated with the new FBT gross-up formula is in the order of $4 million for the 2000-2001 FBT year and $2 million for each subsequent year.

**Administrative costs**

1.94 Overall, the administrative costs to the ATO in implementing all of the reform measures is estimated to be $2 million: $1.3 million for the year ending 30 June 2000 and $0.7 million for year ending 30 June 2001. These costs can be attributed to the preparation of educational material for employers, training staff so that they are able to answer queries, preparing new forms and modifying information systems to accommodate the changes.

**Impact on government revenue**

**Measure A**

1.95 The estimated gain to revenue associated with placing a $17,000 limit on hospitals and a $25,000 limit on all other PBIs and rebatable employers is $170 million in 2000-2001, $175 million in 2001-2002, $185 million in 2002-2003 and $190 million in 2003-2004.
Measure B


Measure C

1.97 The cost to revenue of exempting board meals provided by primary producers to employees in remote areas is estimated to be $1 million in the years 2000-2001, 2001-2002, 2002-2003 and 2003-2004. Non-entertainment meals provided on a work day in the form of expense, property or residual benefits will result in an unquantifiable loss to revenue that is expected to be insignificant.

Measure D


Consultation

1.99 Consultation has been undertaken with representatives of the accounting and taxation professions, and the business community. Concerns were expressed regarding the equity of allowing an FBT exemption for remote area housing benefits only for primary producers and mining employers. These concerns have been addressed by extending the application of the exemption to all remote area employers.

Conclusion

1.100 The above measures will implement the Government’s announced tax reform changes aimed at reforming the fringe benefits tax provisions and making the system fairer for all taxpayers.

1.101 The Treasury and the ATO will monitor these measures, as part of the on-going taxation system as a whole. In addition, the ATO has consultative arrangements in place to obtain feedback from professional and business associations and through other taxpayer forums.
Chapter 2
Amendment of the goods and services tax law

Overview

2.1 This Chapter explains the amendments to the goods and services tax (GST) law as a consequence of the adjustment to the fringe benefits taxable amount proposed by the A New Tax System (Fringe Benefits) Bill 2000.

2.2 The amendments are contained in Schedule 2 to the A New Tax System (Fringe Benefits) Bill 2000.

Summary of amendments

Purpose of amendments

2.3 In the outline of the indirect tax reforms in the policy document Tax Reform: not a new tax, a new tax system the Government indicated that input tax credits will be allowed where goods and services are provided to employees as fringe benefits, but fringe benefit tax (FBT) will be adjusted so that there will be no advantage for the employer in providing benefits rather than providing salary.

2.4 A corollary of this is that there should also be no GST advantage to the employee in acquiring goods or services by way of employer-provided benefits. To the extent an employee provides consideration (other than services as an employee) for goods or services provided by an employer, that amount is to be treated as the price of a taxable supply.

2.5 The amendments to the A New Tax System (Goods and Services Tax) Act 1999 (GSTA 1999) will ensure that the supply of goods and services by an employer to an employee is not subject to GST if the supply is also a benefit that is subject to the FBT rules.

2.6 Consideration given by the recipient, other than the services provided by the employee as an employee, is to be treated as the price of a supply which has not been subject to FBT. GST will therefore be payable on taxable supplies that are fringe benefits and exempt benefits but only if the recipient does give consideration of that kind. The amount of GST will be calculated by reference to the consideration given by the recipient.
Date of effect

2.7 The amendments will apply from 1 July 2000, the commencement of the GST.

Background to the legislation

Current law

2.8 GST is payable on taxable supplies, that is, supplies made:
   • for consideration;
   • in the course or furtherance of an enterprise carried on;
   • that are connected with Australia; and
   • by an entity registered for GST purposes.

2.9 Ordinarily goods and services provided by an employer to an employee or associate of an employee would be taxable supplies, unless the supplies are input taxed or GST-free. Services provided by an employee would constitute ‘consideration’ within the broad definition of that term in section 9-15 of the GSTA 1999.

2.10 Goods and services may be provided by an employer wholly in consideration for services provided as part of an employee’s remuneration package. On the other hand, goods and services may be provided partly for consideration other than services of the employee, for example, a cash contribution by the recipient.

2.11 Goods and services provided by an employer are also subject to the provisions of the Fringe Benefits Tax Assessment Act 1986 (FBTAA 1986) which contain particular exemptions and rules for the calculation of the taxable value of the various types of fringe benefit. The adjustment to the fringe benefits taxable amount proposed by this Bill maintains the policy preferences that inhere in those rules. The adjustment approach thereby provides an efficient mechanism to consistently apply those rules in the GST context. The GST law consequently needs to be amended to ensure that taxable supplies that are subject to the FBT rules are not also subject to GST.

Explanation of the amendments

When a taxable supply that is a fringe benefit is subject to GST

2.12 The provisions of the FBTAA 1986 apply to determine the FBT liability for goods and services provided by an employer to an employee, or associate of an employee. In calculating the taxable value of the benefit certain amounts have the effect of diminishing the liability to FBT. These include the giving of consideration other than services provided as an employee. Such amounts are to be treated as the price of a taxable supply that is subject to GST.
2.13 A *recipient's payment* (in the case of a car fringe benefit), and *recipients contribution* (in the case of a benefit other than a car fringe benefit), are both amounts taken into account in calculating the taxable value of a fringe benefit. ‘Recipient’s payment’ is to be defined in the Dictionary to the GSTA 1999 by reference to the meaning of that term in paragraphs 9(2)(e) and 10(3)(c), FBTAA 1986 [item 4]. Similarly, ‘recipients contribution’ is to be defined in the Dictionary to the GSTA 1999 in a way that includes exempt benefits, as well as the meaning of that term in subsection 136(1), FBTAA 1986 [item 3].

2.14 The price of a taxable supply that is a fringe benefit is to be defined as the amount that corresponds to the recipient’s payment or recipients contribution, as appropriate, that is made in a tax period. It does not matter if the payment or contribution is in the form of money or takes some other form. [*Item 1, new subsection 9-75(3)*]

2.15 The amount of GST on such a taxable supply is to be calculated as 1/11 of that price.

2.16 This means that amounts that are taken into account as recipient’s payment for FBT purposes, but do not constitute consideration for the supply will not be subject to GST. For example, expenditure incurred by an employee for fuel will be subject to GST at the time of purchase. This expenditure will not be included in the calculation of the employer’s GST liability for a taxable supply in accordance with the new rule.

2.17 The new rule will also apply to a taxable supply that is an exempt benefit. The term ‘fringe benefit’ will be defined in the Dictionary to the GSTA 1999 in a way that includes exempt benefits [item 2]. A taxable supply, to the extent it is an exempt benefit, will not be subject to GST.

**The tax period in which GST is payable on a fringe benefit**

2.18 Division 29 of the GSTA 1999 contains the basic rules for attributing GST payable on taxable supplies and input tax credit entitlements to particular tax periods. These rules will apply to a taxable supply that is a fringe benefit so that GST payable will be attributable to the tax period in which an amount that is included in the recipient’s payment or recipients contribution is received as consideration for that supply.
Chapter 3

Overview


Summary of the amendments

Purpose of the amendments

3.2 The purpose of the amendments is to correct anomalies in the application of the Medicare levy surcharge to a person’s taxable income and reportable fringe benefits.

3.3 The amendments to the ANTS (MLS-FB) 1999 and MLA 1986 will ensure that:

- a person will be liable for the Medicare levy surcharge when the sum of his or her taxable income and reportable fringe benefits total exceeds the income threshold that applies to the person for the year of income;

- the income tests used to determine whether the surcharge is payable by a person who is married for the whole year are consistent; and

- where a person has not been married for the whole year of income, no surcharge is payable unless his or her total taxable income and reportable fringe benefits total exceeds the family surcharge threshold.

Date of effect

3.4 The amendments apply to the Medicare levy surcharge payable on a person’s taxable income and reportable fringe benefits for the 1999-2000 year of income and later years of income.
Background to the legislation

Current law

3.5 The ANTS (MLS-FB) 1999 imposes a 1% Medicare levy surcharge on a person’s reportable fringe benefits total for a year of income, where the person is a resident of Australia at any time during the year. The income tests used to determine whether a person is liable for the surcharge are based on the sum of the person’s and their spouse’s taxable income and reportable fringe benefits for the year. Persons can avoid liability for the surcharge by taking out private patient hospital insurance.

3.6 The MLA 1986 imposes an additional 1% Medicare levy on a person’s taxable income, where a person’s taxable income and reportable fringe benefits for a year of income exceed the thresholds set out in the law.

Explanation of the amendments

General rules for calculating the amount of surcharge payable

3.7 Section 11 of the ANTS (MLS-FB) 1999 contains the general rules for calculating the amount of surcharge payable on reportable fringe benefits. Currently, subsections 11(2) and (3) provide that no surcharge is payable by a person if his or her taxable income is less than the Medicare levy low income threshold of $13,389. Similarly, the surcharge amount is reduced where the person’s taxable income is between the amounts of $13,389 and $14,474. This threshold is not affected by the reportable fringe benefits total.

3.8 Subsections 11(2) and (3) are repealed to correct the inconsistency between the ANTS (MLS-FB) 1999 and the MLA 1986. A person will be liable for the surcharge where the sum of the person’s taxable income and reportable fringe benefits total exceeds the relevant income tests. The income tests used will depend on whichever of the Divisions of ANTS (MLS-FB) 1999 applies to the person for a period in the year of income. The amendment ensures that a person can not avoid liability for the surcharge, or reduce the amount of surcharge payable, through salary packaging.

Calculation of full year surcharge for married person

3.9 Division 4 of the ANTS (MLS-FB) 1999 is used to calculate the amount of surcharge payable by a person who:

- is married for the year of income;
- is not a prescribed person; and
- either the person or any one of his or her dependants are not covered by private patient hospital insurance.
3.10 The income tests used in determining liability for the surcharge differ, depending on whether these conditions apply for the whole year of income or for only part of the year.

3.11 When the conditions apply for the whole year of income, the taxable income and reportable fringe benefits total of the person’s spouse are included in the income test calculations. New subsection 15(2) provides a special rule for calculating the spouse’s taxable income when the spouse is a beneficiary of a trust estate. In this case, the spouse’s taxable income must also include the spouse’s share in the net income of that trust estate to which they are presently entitled, and on which the trustee is assessed under section 98 of the Income Tax Assessment Act 1936.

3.12 New subsection 15(2) is equivalent to the special rule which already exists under subsection 16(5). Where Division 4 only applies for part of the year of income to a person who is married for the whole year (e.g. the person and dependants have private patient hospital insurance for part of the year), subsection 16(5) requires the spouse’s share of net trust income which is assessable to the trustee, to be taken into account when calculating his or her taxable income under subsection 16(2). The amendment therefore ensures that the calculation of a spouse’s taxable income is consistent when Division 4 applies for the whole year of income or for only part of the year of income.

3.13 Item 4 amends subsection 16(5) to enhance the readability of the provision and to reflect the wording used in new subsection 15(2).

**Calculation of part year surcharge for married person**

3.14 Item 3 of the ANTS (MLS-FB) 1999 and Schedule 3 of the A New Tax System (Fringe Benefits) Bill 2000 correct the income tests used in determining whether a person is liable for the surcharge when he or she is married for part of the year of income. The amendment to paragraph 16(3)(b) of the ANTS (MLS-FB) 1999 will ensure that no surcharge is payable on a person’s reportable fringe benefits if the sum of the person’s taxable income and reportable fringe benefits total for the year of income is less than, or equal to, the family surcharge threshold. Similarly, paragraph 8D(4)(b) of the MLA 1986 is amended so that the family surcharge threshold is the income test used in determining whether a person is liable for the additional medical levy payable on taxable income.