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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

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TAXATION LAWS AMENDMENT BILL (NO.4) 1988

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and new clauses to be
moved on behalf of the Government

(Circulated by authority of the Minister for
Finance, Senator the Hon. Peter Walsh)

INTRODUCTORY NOTE

This supplementary explanatory memorandum explains the amendments proposed to the Taxation Laws Amendment Bill (No.4) 1988 (referred to in this memorandum as the "Bill") as introduced into the Senate. The amendments will ensure that non-cash business benefits are not taxable in three situations.

GENERAL OUTLINE

The amendments will amend the Bill to -

exclude from assessability a non-cash business benefit to the extent that it is used by the recipient in circumstances, where, if the recipient had incurred its cost as an expenditure in carrying on his or her business, the cost would have been otherwise deductible to the recipient;

exclude from assessability a non-cash business benefit, the cost of which to the provider is a non-deductible entertainment expenditure; and

exempt from taxation non-cash business benefits received by a taxpayer in an income year that do not exceed \$300 in total value.

FINANCIAL IMPACT

The nature of the proposed amendments to exclude certain non-cash business benefits is such that a reliable estimate of the potential revenue effect cannot be made.

NOTES ON AMENDMENTS

Amendment (1)

By this amendment, the taxable amount of a non-cash business benefit for purposes of the new section 21A proposed by clause 13 of the Bill will be the arm's length value of the benefit less the amount that would otherwise have been deductible to the taxpayer if he or she had incurred expenditure in providing for such a benefit.

This amendment will apply to both direct and indirect non-cash business benefits. An example of the latter type of benefit would be the provision of an interest-free loan to a taxpayer in circumstances giving rise to an assessable benefit. In such a case, the notional market rate of interest would for purposes of the proposed new section 21A constitute the taxable amount. However, if the taxpayer/recipient of this benefit uses the interest-free loan in carrying on a business in lieu of a borrowing on which deductible interest would have been

incurred, the value of the benefit to the extent it is so used will not be assessable. The amendment will also ensure that tangible non-cash business benefits received by a taxpayer (for example, materials that can be used in the taxpayer's business), being items which the taxpayer would have otherwise purchased for the business, thereby incurring deductible expenditure, are not taxable.

Amendment (2B)

By this amendment, a non-cash business benefit derived by a taxpayer, to the extent that it constitutes a non-deductible entertainment expenditure in terms of subsection 51AE of the Income Tax Assessment Act 1936 (the "Act") to the provider, will not be assessable to the recipient. In such cases, the taxable amount of the non-cash business benefit for purposes of the new section 21A proposed by clause 13 of the Bill will be the arm's length value of the benefit less the amount of the non-deductible entertainment expenditure.

Amendment (2)

Amendment (2) ascribes meanings to the following two expressions:

"non-deductible entertainment expenditure" is defined to mean expenditure made non-deductible by the operation of section 51AE of the Act, being expenditure that would otherwise be deductible under section 51 of the Act.

"once-only deduction" in relation to expenditure is defined to mean a deduction that is allowable only in a particular year.

Amendment (3)

Amendment (3) will introduce a de minimus rule to exempt from taxation in the hands of the recipient non-cash business benefits the total value of which in a particular year of income does not exceed \$300.

Amendments (4) and (5)

Amendments (4) and (5) are consequential technical amendments to give full effect to amendments (1), (2A), (2) and (3).

