

1993-94

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

TAXATION LAWS AMENDMENT BILL (NO. 4) 1994

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and Requests for Amendment to be
Moved on Behalf of the Government

(Circulated by authority of the
Treasurer, the Hon Ralph Willis, MP)



General Outline and Financial Impact

Imputation - Early payments of company tax for 1993-94

Amends the provisions of the Bill relating to the transitional arrangement resulting from the reduction in the company tax rate to ensure that, if a company pays a franked dividend during its 1993-94 franking year, and if the imputation credit attached to that dividend arises from an early payment of company tax for that year, then the imputation credit cannot exceed the amount of that tax.

Financial impact: The amendment will preserve the integrity of the original provisions which were expected to prevent a potential loss to revenue of approximately \$1 million.

Employee share acquisition schemes

Amends the Bill to alter the value of the section 39FG concession (the deferral concession) and the conditions attached to that concession to provide easier access to the concession for companies that offer employer company shares or rights. Amends the Bill to remove the concessional deduction which was to be allowed under the proposed subsection 76(1) of the *Income Tax Assessment Act 1936* in respect of the section 39FG concession (the deferral concession). Other minor changes relating to the valuation of shares or rights quoted on a stock market will also be made to the Bill.

Financial impact: The nature of the amendments are such that a reliable estimate cannot be made.

Imputation - Early payments of company tax for 1993-94

Explanation of the amendments

The following requests for amendment relate to *Schedule 1* of the Bill.

Request for amendment 1

Subitem 86(1) of Schedule 1 to the Bill overcomes the anomaly that could otherwise arise when a company, during its 1993-94 income year, pays its tax for the year and also a franked dividend. In such a case the imputation credits attached to the dividends could exceed the company tax paid.

To prevent this anomaly, subitem 86(1) requires the franking credit arising from the tax payment to be reduced to match the imputation credits attached to the dividend. However, where the application of subitem 86(1) would result in a franking deficit at the end of a company's 1993-94 franking year, the alternative measure in subitem 86(2) will apply. That subitem provides for a class A franking debit, in lieu of the franking deficit, to arise at the date of commencement of the Bill so that there would be no potential retrospective application of the penalty provisions.

This alternative measure could in some situations result in the class A franking debit being less than intended. This would arise where, but for the Bill, a company would have a franking surplus at the end of its 1993-94 franking year and after applying the transitional provision in subitem 86(1) would have a franking deficit. In this case the alternative transitional measure in subitem 86(2) could have the effect that the franking surplus is carried forward to the 1994-95 franking year. The franking debit that arises under subitem 86(2) would therefore be offset by the amount of the carried forward franking surplus.

This amendment to subitem 86(2) prevents a company from carrying forward a franking surplus to its 1994-95 franking year in a situation where, if subitem 86(1) had applied to the company, it would have converted the surplus into a franking deficit. The amount that would have been the deficit if subitem 86(1) had been applied is posted as a Class A

franking debit in the company's franking account on the date the Bill receives royal assent. *[Subitem 86(2)]*

Request for amendment 2

This amendment adds a definition of '1994-95 franking year'.
[Subitem 86(3)]



Employee share acquisition schemes

The following amendments and requests for amendment relate to *Schedule 6* of the Bill.

Request for amendment 3

This amendment ensures that the valuation provisions of the proposed paragraph 136B(1)(a) of the FBTAA, which values shares or rights quoted on a stock market, apply where there is only one transaction on the stock market on the day. **[Item 6]**

Request for amendment 4

This amendment provides for two further methods of valuing shares or rights which are quoted on a stock market but which cannot be valued under the methods currently set out in the proposed paragraph 136B(1)(a) of the FBTAA. **[Item 6]**

Requests for amendment 5 and 6

These amendments remove the concessional deduction which was to be allowed under the proposed subsection 76(1) of the *Income Tax Assessment Act 1936* (ITAA) in respect of the section 39FG concession (the deferral concession). **[Item 14]**

Amendment 1

This amendment increases the section 39FG concession amount (the deferral concession amount) from \$1500 to \$5000. **[Item 2]**

Amendment 2

This amendment ensures that the limiting conditions of non-discrimination, vesting, and minimum disposal period (previously contained in the proposed paragraph 39FI(f) of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) but removed by **amendments 5, 6, and 7**)

continue to apply to the section 39FF concession (the exemption concession). *[Item 2]*

Amendment 3

This amendment adds a limiting condition to the section 39FG concession (the deferral concession) so that the concession will only apply to ordinary employee share fringe benefits where each employee is, or was at some earlier time, entitled to acquire shares or rights in the current employer or holding company of the current employer. It is not necessary, in these cases, that the earlier acquisition scheme be operated only by the current employer or that the employee was employed by the current employer at the time. *[Item 2]*

Amendment 4

This is a technical amendment which arises as a result of **amendments 5, 6 and 7**. *[Item 2]*

Amendment 5

This amendment removes the limiting condition of the proposed subparagraph 39FI(f)(i) of the FBTAA which required that, before either the 39FF concession (the exemption concession) or the 39FG concession (the deferral concession) could be claimed, both the acquisition scheme and any financial assistance scheme be non-discriminatory. However, **amendment 2** ensures that this limiting condition continues to apply to the section 39FF concession (the exemption concession). *[Item 2]*

Amendment 6

This amendment removes the limiting condition of the proposed subparagraph 39FI(f)(iv) of the FBTAA which required that, before either the 39FF concession (the exemption concession) or the 39FG concession (the deferral concession) could be claimed, the acquisition scheme did not have any conditions that could result in the shares or rights being forfeited. However, **amendment 2** ensures that this limiting condition continues to apply to the section 39FF concession (the exemption concession). *[Item 2]*

Amendment 7

This amendment removes the limiting condition of the proposed subparagraph 39FI(f)(v) of the FBTAA which required that, for either the 39FF concession (the exemption concession) or the 39FG concession (the deferral concession) to be claimed, the disposal of any shares or rights could not generally occur within 5 years of acquisition. However,

amendment 2 ensures that this limiting condition continues to apply to the section 39FF concession (the exemption concession). *[Item 2]*

Amendment 8

This amendment changes the definition of 'permanent employee' in the proposed subsection 39FL(1) of the FBTAA so that a full-time or permanent part-time employee needs at least 24 months service to qualify as a permanent employee. *[Item 2]*

Amendment 9

This amendment changes the previously proposed definition of 'approved stock exchange' in subsection 136(1) of the FBTAA to extend its meaning to include the Australian Stock Exchange Ltd and certain overseas stock exchanges. *[Item 5]*

