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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TAXATION LAWS AMENDMENT (FRINGE BENEFITS TAX
MEASURES) BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer,
the Hon. John Dawkins, M.P.)

General Outline and Financial Impact

This Bill will amend the following taxation Acts to give effect to the following measures :

Changes to the Fringe Benefits Tax Structure

- The *Fringe Benefits Tax Assessment Act 1986* to calculate Fringe Benefits Tax payable by using a tax-inclusive value of the fringe benefit (known as the "grossing up method").
- The *Income Tax Assessment Act 1936* to allow Fringe Benefits Tax to be deductible for income tax purposes and to implement associated measures.

Date of effect: 1 April 1994

Proposal announced: Not previously announced.

<i>Financial impact:</i>	94/95	95/96	96/97
	\$m1,525	\$m840	\$m840

Clauses involved in the proposed amendments

Clause 2: sets out the date from which the Act commences.

Clause 3: amends the *Income Tax Assessment Act 1936* and the *Fringe Benefits Tax Assessment Act 1986* as set out in the Schedule.

Clause 4: sets out the date the amendments in the Schedule to the Bill will apply from.

Changes to the Fringe Benefits Tax structure

Summary of proposed amendments

Purpose of amendment: to improve the equitable operation of the Fringe Benefits Tax structure by calculating the fringe benefits tax payable on the tax-inclusive value of the fringe benefit and by allowing income tax deductions for the amount of fringe benefits tax paid.

Date of Effect: 1 April 1994

Background to the legislation

The fringe benefits tax legislation, when first introduced, sought to levy tax on fringe benefits provided to employees to a similar extent to income tax that would have been payable had the benefit been paid to the employee in a monetary form. This result was achieved due to the close alignment of the fringe benefits tax rate, the top marginal income tax rate and the company income tax rate.

This position was disturbed by the reduction of the company income tax rate on 1 July 1988.

The following table illustrates this distortion:

	Current System	Equivalent Salary
	\$	\$
Fringe Benefit Value	1000	1932
FBT at 48.25%	482	0
Tax deduction for benefit paid	-390	-753
Tax deduction for FBT paid	0	0
Total cost to employer	1092	1179
Employee's income tax at 48.25%	0	932
Net tax paid	92	179

The above example shows that a corporate employer would save \$87 by giving an employee, who was on the top marginal rate of income tax, a fringe benefit of \$1000 instead of giving that employee a net (after income tax) monetary payment of \$1000.

To restore the similarity in the treatment of employee remuneration, Part 3 of the Bill will introduce a new system of taxing fringe benefits. While the new system will increase an employer's fringe benefits tax liability, it will also permit income tax deductions for fringe benefits tax paid, where applicable.

Explanation of proposed amendments

Fringe Benefits Tax Assessment Act 1986

The Bill will amend the definition of "fringe benefits taxable amount" (currently defined in subsection 136(1)) to ensure that this amount is increased to a tax-inclusive amount. That is, the amount that would have been the "fringe benefits taxable amount" under the current definition is increased by the fringe benefits tax liability on that amount [*new section 136AA*]

The Bill will also make two other consequential amendments.

First, to ensure that the effect of the anti-avoidance provisions of section 67 is not reduced, the Bill will amend subsections 67(1), 67(2) and 67(3) to replace the term "fringe benefits taxable amount" with "aggregate fringe benefits amount". The term "aggregate fringe benefits amount" has a meaning similar to the current definition of "fringe benefits taxable amount" (*see definition in subsection 136(1)*).

Second, to ensure that instalments of fringe benefits tax for the 1994-95 tax year will be comparable to the expected fringe benefits tax liability for that year, the Bill will require the tax assessed in the previous year to be increased by 93 per cent. This increased amount is the notional tax amount which forms the basis for the determination of the instalments for the 1994-95 tax year [*new paragraph 110(1)(c)*].

Income Tax Assessment Act 1936

So that amounts of fringe benefits tax paid may qualify for a deduction under subsection 51(1), the Bill will omit subsection 51(4A).

As a consequence of the omission of subsection 51(4A), the Bill will also repeal section 23M.

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