



Fringe Benefits Tax (Miscellaneous Provisions) Act 1986

No. 41 of 1986

An Act to make certain amendments consequent upon the enactment of the *Fringe Benefits Tax Assessment Act 1986*, and for related purposes

[Assented to 24 June 1986]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title

1. This Act may be cited as the *Fringe Benefits Tax (Miscellaneous Provisions) Act 1986*.

Commencement

2. (1) Subject to sub-section (2), this Act shall come into operation on the day on which the *Fringe Benefits Tax Assessment Act 1986* comes into operation.

(2) If the day on which the *Taxation Laws Amendment Act 1986* receives the Royal Assent is a later day than the day referred to in sub-section (1), the amendment made by this Act inserting section 82KZK in the *Income Tax Assessment Act 1936* shall come into operation on that later day.

Amendments

3. The Acts specified in the Schedule are amended as set out in the Schedule.

Application of amendments

4. (1) Subject to this section, the amendments of the *Income Tax Assessment Act 1936* made by this Act apply to assessments in respect of income of the year of income commencing on 1 July 1986 and of all subsequent years of income.

(2) The amendment made by this Act inserting sub-sections 51AE (5A) and (5B) in the *Income Tax Assessment Act 1936* applies to assessments in respect of income of the year of income in which 20 September 1985 occurred and of all subsequent years of income.

(3) The amendments of sections 221A and 221C of the *Income Tax Assessment Act 1936* made by this Act apply to payments of salary or wages made on or after 1 July 1986.

SCHEDULE

Section 3

AMENDMENTS OF ACTS

Administrative Decisions (Judicial Review) Act 1977

Paragraph (e) of Schedule 1—

Insert "*Fringe Benefits Tax Assessment Act 1986*" before "*Gift Duty Assessment Act 1941*".

Crimes (Taxation Offences) Act 1980

Sub-section 3 (1) (before the definition of "income tax")—

Insert the following definitions:

"'fringe benefits tax' means—

- (a) fringe benefits tax imposed by the *Fringe Benefits Tax Act 1986*, as assessed under the *Fringe Benefits Tax Assessment Act*;
- (b) additional tax payable under section 93, sub-section 112 (4) or Part VIII of the *Fringe Benefits Tax Assessment Act*; and
- (c) an instalment of fringe benefits tax payable under Division 2 of Part VII of the *Fringe Benefits Tax Assessment Act*;

'Fringe Benefits Tax Assessment Act' means the *Fringe Benefits Tax Assessment Act 1986*;"

Before sub-section 4 (1)—

Insert the following sub-section:

"(1A) Section 5 of the *Fringe Benefits Tax Assessment Act 1986* has effect as if this Act were part of that Act."

After Part III—

Insert the following Part:

SCHEDULE—continued

“PART IV—OFFENCES RELATING TO FRINGE BENEFITS TAX

Application of Part I and Part II in relation to fringe benefits tax

“14. (1) Without prejudice to their effect apart from this section, sub-section 3 (3), paragraph 3 (4) (e) and the provisions of Part II (other than section 8 and sub-section 10 (3)) also have the effect they would have if—

- (a) a reference in any of those provisions to sales tax were a reference to fringe benefits tax;
- (b) a reference in any of those provisions to future sales tax were a reference to future fringe benefits tax;
- (c) a reference in any of those provisions to some one or other of the Sales Tax Assessment Acts were a reference to the Fringe Benefits Tax Assessment Act; and
- (d) a reference in any of those provisions, in relation to a company or trustee, to sales tax moneys were a reference to fringe benefits tax moneys.

“(2) For the purposes of the application of the provisions of Part II (other than section 8 and sub-section 10 (3)) in accordance with sub-section (1) of this section—

- (a) a reference in any of those provisions to the fringe benefits tax payable by a company or trustee, in relation to the purpose, or a purpose, of a person entering into, or the knowledge or belief of a person concerning, an arrangement or transaction shall be read as a reference to some or all of the fringe benefits tax due and payable by the company or the trustee at the time when the arrangement or transaction was entered into;
- (b) a reference in any of those provisions to future fringe benefits tax payable by a company or trustee, in relation to the purpose, or a purpose, of a person entering into, or the knowledge or belief of a person concerning, an arrangement or transaction shall be read as a reference to some or all of the fringe benefits tax that may reasonably be expected by that person to become payable by the company or trustee after the arrangement or transaction is entered into;
- (c) a reference in any of those provisions, other than sub-sections 10 (1) and (2), in relation to a company or trustee, to fringe benefits tax moneys shall be read as a reference to—
 - (i) fringe benefits tax payable by the company or trustee; and
 - (ii) costs ordered by a court against a company or trustee in a proceeding for the recovery of fringe benefits tax; and
- (d) a reference in sub-sections 10 (1) and (2) to fringe benefits tax moneys shall be read as a reference to fringe benefits tax that has been assessed under the Fringe Benefits Tax Assessment Act.

“(3) For the purposes of the application of sub-section 10 (2), section 11 and section 12 in accordance with the preceding provisions of this section, the liability of a company or trustee in respect of fringe benefits tax moneys that have been assessed shall not be taken not to be finally determined by reason only of the possibility of the Commissioner amending the assessment (otherwise than as a result of an objection being allowed or at the direction of a Board of Review or court).”

Income Tax Assessment Act 1936

After sub-section 6 (1A)—

Insert the following sub-section:

“(1B) A reference in this Act to a benefit, or a fringe benefit, within the meaning of the *Fringe Benefits Tax Assessment Act 1986*, includes a reference to a matter or

SCHEDULE—continued

thing that would be a benefit, or a fringe benefit, as the case may be, within the meaning of that Act, if paragraphs (d) and (e) of the definition of ‘employer’ in sub-section 136 (1) of that Act were omitted.”.

After section 23K—

Insert the following section:

Exemption of certain benefits in the nature of income

“23L. Where the taxpayer derives income by way of the provision of—

- (a) a fringe benefit within the meaning of the *Fringe Benefits Tax Assessment Act 1986*; or
- (b) a benefit (other than a benefit to which paragraph 26 (eaa) of this Act applies) that, but for paragraph (g) of the definition of ‘fringe benefit’ in sub-section 136 (1) of the *Fringe Benefits Tax Assessment Act 1986*, would be a fringe benefit within the meaning of that Act,

the income is exempt income.”.

Sub-paragraph 26 (e) (ii)—

Omit “or” (last occurring).

After sub-paragraph 26 (e) (iii)—

Insert the following sub-paragraphs:

- “(iv) a fringe benefit within the meaning of the *Fringe Benefits Tax Assessment Act 1986*; or
- (v) a benefit that, but for paragraph (g) of the definition of ‘fringe benefit’ in sub-section 136 (1) of the *Fringe Benefits Tax Assessment Act 1986*, would be a fringe benefit within the meaning of that Act;”.

After paragraph 26 (e)—

Insert the following paragraph:

- “(eaa) in a case where the taxpayer is provided with a benefit that, but for section 22 of the *Fringe Benefits Tax Assessment Act 1986*, would be an expense payment fringe benefit within the meaning of that Act—the amount of the reimbursement referred to in that section;”.

Paragraph 26 (ea)—

Omit “otherwise:”, substitute the following words and sub-paragraphs:

“otherwise, not being—

- (i) a fringe benefit within the meaning of the *Fringe Benefits Tax Assessment Act 1986*; or
- (ii) a benefit that, but for paragraph (g) of the definition of ‘fringe benefit’ in sub-section 136 (1) of the *Fringe Benefits Tax Assessment Act 1986*, would be a fringe benefit within the meaning of that Act;”.

Sections 26AAAA and 26AAAB—

Repeal the sections.

After sub-section 51 (4)—

Insert the following sub-section:

“(4A) A deduction is not allowable under sub-section (1) in respect of tax imposed by the *Fringe Benefits Tax Act 1986*.”.

SCHEDULE—continued

After sub-section 51AE (5)—

Insert the following sub-sections:

“(5A) Sub-section (4) does not apply to a loss or outgoing incurred by the taxpayer to the extent to which it is incurred in respect of—

- (a) the provision of a meal where the provision of the meal constitutes a board fringe benefit within the meaning of the *Fringe Benefits Tax Assessment Act 1986*;
- (b) the provision of food or drink where the provision of the food or drink would, but for section 54 of the *Fringe Benefits Tax Assessment Act 1986*, constitute a fringe benefit within the meaning of that Act; or
- (c) the provision of a living-away-from-home food fringe benefit within the meaning of the *Fringe Benefits Tax Assessment Act 1986*.

“(5B) A reference in sub-section (5A) to a fringe benefit within the meaning of the *Fringe Benefits Tax Assessment Act 1986* includes a reference to a benefit that would be a fringe benefit within the meaning of that Act if the period after 19 September 1985 and before 1 July 1986 were a period in a year of tax within the meaning of that Act.”.

After section 51AG—

Insert the following section:

Deductions not allowable where expenses incurred by employee are reimbursed

“51AH. (1) Where—

- (a) either of the following sub-paragraphs applies:
 - (i) a person makes a payment in discharge, in whole or in part, of an obligation of the taxpayer to pay an amount to a third person in respect of an amount of a loss or outgoing incurred by the taxpayer;
 - (ii) a person reimburses the taxpayer, in whole or in part, in respect of an amount of a loss or outgoing incurred by the taxpayer;
- (b) the payment or reimbursement, as the case may be, constitutes—
 - (i) a fringe benefit; or
 - (ii) a benefit that, but for paragraph (g) of the definition of ‘fringe benefit’ in sub-section 136 (1) of the *Fringe Benefits Tax Assessment Act 1986*, would be a fringe benefit; and

(c) in the case of a reimbursement—the amount of the reimbursement is not included in the taxpayer’s assessable income under paragraph 26 (eaa), the amount of the deduction that, but for this section, has been allowed or would be allowable in respect of the loss or outgoing shall be reduced by the amount of the payment or reimbursement.

“(2) Expressions used in this section and in the *Fringe Benefits Tax Assessment Act 1986* have the same respective meanings in this section as they have in that Act.”.

Section 51A—

Repeal the section.

Sub-section 82KA (1) (definition of “net income”)—

Omit “51A,”.

After section 82KZJ—

Insert the following section in Subdivision G of Division 3 of Part III:

SCHEDULE—continued

Rental property income to include taxable values of certain fringe benefits

“82KZK. (1) For the purposes of this Subdivision, where—

- (a) in respect of the employment of an employee of the taxpayer, the taxpayer provided a fringe benefit in relation to a year of tax ending in a year of income, being—
 - (i) a housing fringe benefit constituted by the subsistence of a lease in respect of land; or
 - (ii) a residual fringe benefit constituted by the subsistence of a lease in respect of land;
- (b) the land was not exempt residential land in relation to the taxpayer; and
- (c) either of the following sub-paragraphs applies:
 - (i) the taxpayer acquired an interest in the land after the commencement date;
 - (ii) the taxpayer or another person made a post commencement date improvement to the land,

the taxpayer shall, in the year of income, in addition to any other amount of rental property income derived by the taxpayer, be deemed to have derived rental property income equal to the taxable value of the fringe benefit in relation to the year of tax.

“(2) Expressions used in this section and in the *Fringe Benefits Tax Assessment Act 1986* have the same respective meanings in this section as they have in that Act.”.

Sub-section 170 (10)—

Insert “, 51AH” after “51AD”.

Before paragraph 215 (3D) (a)—

Insert the following paragraph:

“(aa) tax within the meaning of sub-section 96 (2) of the *Fringe Benefits Tax Assessment Act 1986*.”.

Sub-section 221A (1) (definition of “salary or wages”)—

Omit all the words after “but does not”, substitute the following word and paragraphs:

“include—

- (p) payments of exempt income;
- (q) prescribed payments within the meaning of Division 3A; or
- (r) living-away-from-home allowance benefits within the meaning of the *Fringe Benefits Tax Assessment Act 1986*.”.

Sub-sections 221C (4), (5) and (6)—

Omit the sub-sections.

Pay-roll Tax (Territories) Assessment Act 1971

Before paragraph 30 (3C) (a)—

Insert the following paragraph:

“(aa) tax within the meaning of sub-section 96 (2) of the *Fringe Benefits Tax Assessment Act 1986*.”.

Sales Tax Assessment Act (No. 1) 1930

Before paragraph 32 (2D) (a)—

Insert the following paragraph:

“(aa) tax within the meaning of sub-section 96 (2) of the *Fringe Benefits Tax Assessment Act 1986*.”.

SCHEDULE—continued

Taxation Administration Act 1953

After paragraph 8J (2) (h)—

Insert the following paragraph:

“(ha) paragraph 128 (1) (c) of the *Fringe Benefits Tax Assessment Act 1986*.”

After paragraph 8ZE (3) (c)—

Insert the following paragraph:

“(ca) section 114 or 115 of the *Fringe Benefits Tax Assessment Act 1986*.”

Taxation (Interest on Overpayments) Act 1983

Sub-section 3 (1) (before paragraph (d) of the definition of “decision to which this Act applies”)—

Insert the following paragraph:

“(cb) in a case where the expression is used in relation to fringe benefits tax imposed by the *Fringe Benefits Tax Act 1986*—a decision of the Commissioner to amend an assessment made in relation to an employer reducing the liability of the employer to tax, other than—

- (i) a decision to give effect to an application or request by or on behalf of the employer for an amendment of the assessment; or
- (ii) a decision made in consequence of another decision of the Commissioner to amend another assessment (whether of or by the employer or of another person), being another decision that was made to give effect to an application or request by or on behalf of the employer or the other person, as the case may be, for the amendment of the other assessment.”

Sub-section 3 (1) (after paragraph (e) of the definition of “objection”)—

Insert the following paragraph:

“(ea) sub-section 67 (6), 80 (1) or 98 (3) or (7) of the *Fringe Benefits Tax Assessment Act 1986*.”

Sub-section 3 (1) (after paragraph (h) of the definition of “relevant tax”)—

Insert the following paragraph—

“(ha) tax within the meaning of sub-section 93 (1) of the *Fringe Benefits Tax Assessment Act 1986*.”

Tobacco Charges Assessment Act 1955

Before paragraph 27 (3C) (a)—

Insert the following paragraph:

“(aa) tax within the meaning of sub-section 96 (2) of the *Fringe Benefits Tax Assessment Act 1986*.”

Wool Tax (Administration) Act 1964

Before paragraph 47 (3C) (a)—

Insert the following paragraph:

“(aa) tax within the meaning of sub-section 96 (2) of the *Fringe Benefits Tax Assessment Act 1986*.”

Fringe Benefits Tax (Miscellaneous Provisions) No. 41, 1986

[*Minister's second reading speech made in—
House of Representatives on 2 May 1986
Senate on 27 May 1986*]