

House of Representatives Standing Committee on Employment Education and
Workplace Relations

Inquiry into Employee Share Ownership in Australian Enterprises

The following question was asked by the Committee on 1 June 2000:

The question relates to a quote from an article in the Business Review Weekly, Vol. 21, No 43, 5 November 1999. 'Five share-plan strategies' by Michael Laurence).

The quote is as follows:

Sidestep the dreaded tax surcharge on superannuation contributions by middle and higher-income earners. The value of salary-sacrificed contributions to tax-deferred share plans are not recorded on an employee's group certificate and not taken into account when calculating liability for the tax surcharge on packaged superannuation contributions for middle and higher income earners. This means an employee earning, for example, \$95,000 a year could completely bypass liability for the maximum 15% surcharge by putting \$17,000 a year into a tax-deferred employee share plan. This strategy may particularly suit double-income couples that can afford to put a large portion of one partner's income to savings through share plans and surcharge-free superannuation. The surcharge is based on 'taxable income' that, in turn, is calculated by adding together an employee's cash income, pretax superannuation contributions and most packaged benefits but not contributions to a tax-deferred employee share scheme. For 1999-2000, the indexed surcharge begins at 1% for indexed taxable incomes of \$78,208 and then progressively rises to the 15% maximum for incomes of \$94,966.

The questions as asked by the Committee:

- 1. Is it the case that the value of salary-sacrificed contributions to tax-deferred share plans are not recorded on an employee's group certificate?*
- 2. Is it the case that they are not taken into account when calculating liability for the tax surcharge on packaged superannuation contributions for middle and higher income earners?*
- 3. Is this strategy one that would deliver the benefits claimed, assuming other things are equal?*

Our understanding is that salary-sacrifice is recorded on an employee's group certificate but that salary-sacrifice is not taken into account when calculating liability for the tax surcharge and that this strategy would work as the article claims.

The ATO response is as follows:

We are unsure of the context in which the term 'tax-deferred share plans' is used in the article referred to by the Committee. We think that in the context of the article it is intended to refer to employee share schemes that are within the meaning of Division 13A of the *Income Tax Assessment Act 1936*. Division 13A applies to shares or rights acquired at a discount (after 6pm EST 28 March 1995).

If the benefit, that arises from the employer granting shares to the employee, falls within Division 13A, no benefit will arise under the *Fringe Benefits Tax Assessment Act 1986*.

So the answer to question 1 is – yes. This is because only certain fringe benefits are recorded on an employee's group certificate, and as no fringe benefit arises as a result of Division 13A, the benefit is not included on the group certificate.

The effect of 'tax-deferred share plans' is to defer the assessable income to a later year of income, not to 'wipe out' the liability to income tax. So in relation to question 2, the discount benefit arising from the shares issued under an employee share scheme will be taken into account for superannuation contributions surcharge in the year that the discount benefit is included in the employee's assessable income.

In response to question 3, the strategy is effective in delaying the payment of superannuation contributions surcharge.

In relation to the comments about what is recorded in an employee's group certificate, where a person's employer provides more than \$1,000 worth of reportable fringe benefits to the person in a FBT year, the value of those benefits will be recorded on the person's group certificate. This first applies to group certificates prepared for the year ended 30 June 2000 based on fringe benefits provided for the period 1 April 1999 to 31 March 2000.

The value of the "reportable fringe benefits amount" (ie the grossed-up individual's fringe benefits amount) is used to determine a taxpayer's entitlement to certain income-tested tax concessions and liability to income-tested surcharges for the 1999/2000 and later income years. These include the superannuation contributions surcharge.