

# Additional Comments from the Coalition

## Overview

The Tax Laws Amendment (Budget Measures) Bill 2008 amends taxation legislation to give effect to some of the policy initiatives announced as part of the 2008-09 Budget. Specifically it amends the *Fringe Benefits Tax Assessment Act 1986*, *Income Tax Assessment Act 1936* and *Income Tax Assessment Act 1997*.

The proposed amendments affect the tax treatment of:

- Employee share schemes;
- Some fringe benefits provided to employees that are now concessionaly taxed; and
- The depreciation period for computer software.

## Discussion

The Bill deals with the following revenue raising measures.

### **Fringe Benefits Tax – Meal Cards, raising an estimated \$610 million over the forward estimates**

The stated intent of the measure is to tighten the law applying to arrangements for work related items and for property consumer on an employer's premises. These meal card arrangements rely on the exemption given in the FBT legislation for property consumed on business premises on a working day. There is no suggestion that the meal card arrangement has been an exercise in avoidance – far from it. The Australian Taxation Office (ATO) has issued a number of class rulings that sanction meal card-like arrangements.

This measure takes effect to food and drink provided after 7:30 pm AEST on 13 May 2008, but allows undrawn balances on food cards to be accessed without FBT until 31 March 2009 (the end of the current FBT year).

In testimony Accor Services stated that meal cards are used by a wide range of low to middle income earners who would be significantly disadvantaged by the changes. Accor also considered that the revenue estimated was overstated.

Accor Services stated that it had 7000 clients, with more than 60 per cent on a 30 per cent marginal tax rate and 60 per cent of whom are female.

Fringe Benefits Tax – Eligible work related items, raising an estimated \$530 million over the forward estimates

The stated intent is to tighten the FBT exemption given for certain things provided by an employer to enable an employee to do their job.

Currently there are some items exempt from FBT, despite the legislation not expressly requiring the employee to use the item in the course of his or her duties – for example, laptops and PDAs. As well, the legislation did not provide a limit on the number of items that the employee could take through salary packaging arrangements.

The measure will restrict the FBT exemption to items that are used primarily for work-related purposes and limit the employee to one item a year, unless the item is a replacement.

The measure applies to items acquired after 7:30 pm AEST on 13 May 2008.

In addition, employees will no longer be able to depreciate these FBT exempt work-related items.

### **Employee share schemes – election to be taxed on shares or options in the year of grant, raising an estimated \$77 million over the forward estimates**

This is described as an integrity measure. Under the measure, when an employee who is granted shares or options at a discount to market value elects to be taxed on that discount in the year of grant (instead of deferring tax say to the year of sale), the employee will not be able to take advantage of changes in value and try to ‘backdate’ the election. That is, the ATO is unlikely in the future to let employees amend earlier year returns to include the discount belatedly.

### **Employee share schemes – removal of double taxation**

This corrects a technical exposure to capital gains tax for trustees and members of employee share schemes on the member becoming absolutely entitled to share in the ESS.

### **Depreciation of computer software, raising an estimated \$1.3 billion over the forward estimates**

This measure increases the depreciation period on computer software from 2.5 years to 4 years, which aligns it with computer hardware. Effectively the measure defers deductions.

Software which is purchased on a rental agreement (eg 1 year license fee) would remain immediately deductible. In addition, provided software is replaced, the undeducted balance becomes immediately deductible.

## **Recommendations**

Coalition Senators are concerned about the impact of the meal cards measure which has the potential to significantly affect low to middle income earners. Coalition Senators recommend that the Government give consideration to amending the Bill with a limit on the taxable income (including salary sacrificed income) and/or a limit on the value of the meals and drinks to be consumed.

Coalition Senators recommend the Coalition give consideration to policies to alleviate the harm caused by the Government's measure during its policy-review process.

Coalition Senators note that the employee share scheme – election to be taxed on shares or options in the year of grant does not close a loophole, it merely targets an abuse of the present law. Coalition Senators are surprised at the estimated revenue from this measure.

Coalition Senators are also surprised at the revenue estimate for the depreciation of computer software measure. Given that many businesses will presumably write off software before the four year period, it may be that the Government has over-estimated the revenue likely to flow from this measure.

Subject to the above comments, Coalition Senators recommend that the Opposition not oppose the Bill.

