

Federal Budget 2009 – Employment Taxes

EMPLOYMENT TAXES

Employee Share Schemes

The Treasurer announced a change to the taxation of employee share schemes by removing the deferral election which is currently available for qualifying share schemes. The deferral election allows employees to defer the point at which they pay tax on any discount received on the share or options (to a point later than the year in which the shares or options were received).

The amendments, which will apply to shares and options acquired under an employee share scheme on or after 12 May 2009, will remove the deferral option. This will mean employees will be subject to tax on the discount in the year in which the shares are acquired.

In addition, access to the current \$1,000 exemption will be tightened. Currently, for employees who acquire shares or options under a qualifying scheme who elect to be taxed upfront (i.e. do not take the deferral option), the first \$1,000 discount received is exempt from income tax. These rules will be tightened from 12 May 2009 to limit access to the \$1,000 exemption to taxpayers who have an adjusted taxable income of less than \$60,000.

Amendments to Section 23AG

The Treasurer announced an amendment to Section 23AG, the provision which exempts most foreign sourced employment income from Australian income tax. Under the provision as it currently operates, an Australian resident employee is not subject to Australian income tax on employment income they derive from foreign sources where that income is not exempt from tax in the foreign country and the foreign service period exceeds 91 days.

Under the amendment, to take effect from 1 July 2009, the application of Section 23AG will be restricted to income earned by foreign aid workers, foreign charity workers and selected Government employees.

For all other Australian resident employees who no longer qualify for the exemption under Section 23AG, their foreign sourced income will be subject to Australian income tax. Where the employee has paid income tax in the foreign country, they will be entitled to claim a foreign tax offset.

FBT Exemption for Salary Sacrifice Donations

The Fringe Benefits Tax (FBT) law will be amended, effective from 1 April 2008, to ensure donations made to deductible gift recipients (DGRs) under salary sacrificing arrangements do not result in employers incurring an FBT liability.

Current FBT Rules

Under current FBT rules, employees entering into such salary sacrifice arrangements with their employers to provide donations to a DGR will benefit by paying less

income tax on the reduced salary and wages, but the employees will not be entitled to claim a tax deduction for the donation.

The employer paying the donation to DGRs may claim the tax deduction. However, the employer may also be liable for FBT. This is because the DGR is deemed to be an associate of the employee and the "otherwise deductible" rule does not apply to reduce the taxable value of the fringe benefit as the recipient of the benefit (the DGR) is not an employee of the employer.

Salary sacrifice donation arrangements that are not covered by the proposed law change may be subject to FBT (e.g. donations made prior to 1 April 2008).

The changes will align the tax treatment of donations to DGRs made under salary sacrifice arrangements with donations made personally by employees or under Workplace Giving arrangements.