
TAX AND SUPERANNUATION LAWS AMENDMENT (2015 MEASURES No. #)
BILL 2015: LIMITING FRINGE BENEFITS TAX CONCESSIONS ON SALARY
PACKAGED ENTERTAINMENT BENEFITS

EXPLANATORY MATERIALS

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EXPOSURE DRAFT

Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
FBT	fringe benefits tax
FBTAA	<i>Fringe Benefits Tax Assessment Act 1986</i>
GST	goods and services tax

EXPOSURE DRAFT

Chapter 1

Limiting fringe benefits tax concessions on salary packaged entertainment benefits

Outline of chapter

1.1 Schedule # to this Bill amends the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) to limit the concessional treatment of salary packaged entertainment benefits by:

- removing the reporting exclusion in respect of salary packaged entertainment benefits;
- removing access to elective valuation rules when valuing salary packaged entertainment benefits to prevent unintended and excessively concessional values being applied to those benefits; and
- introducing a cap on the total amount of salary packaged entertainment benefits that certain employees can be provided that are exempt from or subject to fringe benefits tax at concessional rates.

1.2 All references are to the FBTAA unless otherwise stated.

Context of amendments

Budget announcement

1.1 The Government announced in the 2015-16 Budget that it would improve fairness in the tax system by introducing a limit on the use of salary sacrificed meal entertainment and entertainment facility leasing expense benefits.

1.2 The announced changes involve all use of salary packaged meal entertainment and entertainment facility leasing expense benefits becoming reportable and included on an employee's payment summary.

1.3 The announced changes also involve introducing a separate single grossed-up cap of \$5,000 for salary packaged meal entertainment and entertainment facility leasing expense benefits for employees of

employers able to access a general fringe benefits tax (FBT) exemption or rebate. Affected benefits exceeding the separate grossed-up cap of \$5,000 can also be counted in calculating whether an employee exceeds their existing FBT exemption or rebate cap.

Previous reviews and inquiries

1.4 The FBT treatment of meal entertainment and entertainment facility leasing expense benefits has been reviewed by a number of different inquiries.

1.5 Most recently, the Final Report of the Not-for-profit Sector Tax Concession Working Group¹ included the following recommendation:

Recommendation 13: Include uncapped meal entertainment and entertainment facility leasing benefits in existing caps

As soon as practicable and independently of the implementation of Recommendation 12 [about broader reform of FBT], the uncapped concessions in relation to salary sacrificed meal entertainment and entertainment facility leasing fringe benefits should be removed. These benefits should be treated consistently with other fringe benefits, that is, included within existing caps.

1.6 The Not-for-profit Sector Tax Concession Working Group summarised that:

[U]ncapped access to meal entertainment and entertainment facility leasing benefits has raised concerns about the legitimacy of such concessions, especially since the rest of the community are not able to access such concessions or claim a deduction for such expenses. The benefit of this concession is also not evenly spread among [not-for-profit (NFP)] employees, tending to be more highly utilised by eligible employees on higher salaries.

1.7 The Productivity Commission in a Report in 2010 noted that the “meal entertainment benefit is particularly inequitable, with greater benefits flowing to employees with higher salaries, and those who have greater financial freedom to spend their salaries on eligible items.

¹ Not-for-profit Tax Concession Working Group, *Fairer, Simpler and More Effective Tax Concessions for The Not-for-profit Sector: Final Report*, May 2013, <http://www.treasury.gov.au/~media/Treasury/Access%20to%20Information/Disclosure%20Log/2014/1447/Downloads/PDF/NFP%20Sector%20WG%20Final%20Report.ashx>

Similarly, those employees with large one-off entertainment expenses benefit relatively more in that year.”²

1.8 The Productivity Commission also observed that:

The meal entertainment exemption for public and NFP hospitals was originally introduced because of the difficulty of accounting for the provision of meals to hospital employees when most hospitals had a subsidised staff canteen. However, in recent years it appears that the use of these concessions has grown much wider than the original intent. The salary packaging providers are actively promoting the use of meal entertainment cards for dining and holidays – domestic and overseas ...

There appears to be a strong case to limit or eliminate the meal entertainment benefit.

1.9 Similar concerns have been raised in other reports including in Australia’s Future Tax System Review, released in 2010.

Operation of existing law

1.10 FBT is a tax that employers pay on certain benefits they provide to their employees, including their employees’ family or other associates. The benefit may be in addition to, or part of, their salary or wages package. Benefits provided to some other individuals that are not employees may also be subject to FBT, such as directors of a company or statutory officeholders. FBT is imposed by the *Fringe Benefits Tax Act 1986* (FBTAA) and assessed under the FBTAA.

1.11 FBT is separate to income tax and is calculated on the grossed-up taxable value of the fringe benefits provided. The FBT year runs from 1 April to 31 March.

1.12 The FBTAA satisfies a number of policy objectives. It reports the grossed-up taxable value of benefits on an employee’s payment summary (which affects various entitlements and surcharges); it grosses-up taxable values using a higher goods and services tax (GST) inclusive formula where there are entitlements to GST credits but no GST collection point; and it applies FBT on the resultant sum of the grossed-up taxable values.

² Productivity Commission, *Contribution of the Not-for-profit Sector*, January 2010, <http://www.pc.gov.au/inquiries/completed/not-for-profit>

1.13 It also satisfies policy objectives by way of concessions and exemptions for entities such as registered charities and public hospitals which enable these entities to attract staff and reduce their costs of employment.

1.14 In order to achieve these policy objectives, the following method applies to calculate FBT under the FBTAA. The employer:

- determines the taxable value of a benefit (Divisions 1 to 13 of Part III);
 - this taxable value forms the employee's individual fringe benefits amount (subsection 5E(2)) or excluded fringe benefit (subsection 5E(3));
- reports an employee's individual fringe benefits amount (grossed-up to the reportable fringe benefits amount) on the employee's payment summary (section 135P - if in excess of the \$2,000 *de minimus* threshold);
- adds up all employee's individual fringe benefits amounts (ignoring the *de minimus* threshold) and excluded fringe benefit amounts for those benefits with a GST credit entitlement (subsection 5C(3)) the result being the type 1 aggregate fringe benefits amount;
- adds up all employee's individual fringe benefits amounts (ignoring the *de minimus* threshold) and excluded fringe benefit amounts for those benefits with no GST credit entitlement (subsection 5C(4)) the result being the type 2 aggregate fringe benefits amount;
- grosses-up the type 1 aggregate fringe benefits amount using the higher type 1 gross-up rate (subsection 5B(1F));
- grosses-up the type 2 aggregate fringe benefits amount using the lower type 2 gross-up rate (subsection 5B(1G));
- adds up grossed-up types 1 and 2 aggregate fringe benefits amounts which forms the fringe benefits taxable amount upon which tax is imposed (subsection 5B(1A) and section 66).

1.15 The method in **paragraph #.14** (including reporting) applies to employers who are subject to FBT in the normal fashion, including rebatable employers such as registered charities. Section 65J provides a

capped rebate of tax of up to \$30,000 per employee to rebatable employers but otherwise the method stays the same.³

1.16 The FBTAA provides certain employers with a ‘blanket’ exemption on all benefits provided to their employees so that they are not required to apply all of the items listed in **paragraph #.14**. However, this ‘blanket exemption’ is limited or capped. Section 57A exempts benefits provided by public hospitals and ambulance services (subject to a standard \$17,000 cap per employee) and registered public benevolent institutions and registered health promotion charities (subject to a standard \$30,000 cap per employee) have their exemptions capped using a quasi-reportable system (subsection 135Q(3)) and quasi-taxing system (subsections 5B(1D) to 5B(1L)).

1.17 Currently benefits arising from meal entertainment, car parking and entertainment facility leasing expenses are excluded from reporting for all taxpayers (paragraphs 5E(3)(a), (b) and (c)). These types of benefits are also excluded from the caps allowing for an unlimited tax exemption for employers by section 57A (subsection 5B(1L)) or unlimited rebates for tax-exempt employers (subsection 65J(2H)).

1.18 There are other ‘blanket exemptions’, such as for religious practitioners conducting pastoral duties that are unaffected by the budget measure as benefits received by these employees are not currently capped. In addition, section 135Q (about reporting) only applies to employers described in section 57A or 58, so that employees of these employers will not have amounts reported on their payment summaries.

Certain employers provided with concessions

1.19 Some organisations are exempt from FBT where the total grossed-up value of certain benefits (which are benefits that are not otherwise excluded) provided to each employee during the FBT year is equal to, or less than, the capping threshold. If the total grossed-up value of fringe benefits provided to an employee is more than that capping threshold, an organisation will need to pay FBT on the excess.

1.20 Table 1.1 outlines the types of organisations that are eligible for an FBT exemption, the capping thresholds that apply and whether the organisation needs to be endorsed by the Commissioner to access the FBT exemption.

³ Section 135Y increases the capping threshold for certain years to compensate for the temporary budget repair levy. During the temporary budget repair levy years the \$30,000 capping threshold is increased to \$31,177 and the \$17,000 capping threshold is increased to \$17,667.

Table 1.1

<i>Types of organisation eligible for FBT exemption</i>	<i>Standard capping threshold⁴</i>	<i>Does the employer need to be endorsed to access FBT exemption?</i>	<i>Exemption provision [Capping provision]</i>
Registered public benevolent institution (other than hospitals)	\$30,000 per employee	Yes	Section 57A [step 3 of the method statement in subsection 5B(1E)]
Registered health promotion charity	\$30,000 per employee	Yes	Section 57A [step 3 of the method statement in subsection 5B(1E)]
Public and not-for-profit hospitals	\$17,000 per employee	No	Section 57A [step 2 of the method statement in subsection 5B(1E)]
Public ambulance service	\$17,000 per employee	No	Section 57A [step 2 of the method statement in subsection 5B(1E)]

1.21 Some employers qualify for an FBT rebate and are referred to as ‘rebatable employers’.

1.22 The FBT rebate is an entitlement to a rebate equal to 47 per cent of the gross FBT payable, subject to a capping threshold.⁵

1.23 Rebatable employers are entitled to have their liability reduced by a rebate equal to 47 per cent of the gross FBT payable (subject to a \$30,000 standard capping threshold). If the total grossed-up taxable value of fringe benefits provided to an employee is more than \$30,000 a rebate cannot be claimed for the FBT liability on the excess amount. The \$30,000 capping threshold applies even if the rebatable employer did not employ the employee for the full FBT year.

⁴ See note 3.

⁵ Section 6A of the *Fringe Benefits Tax Act 1986* increases this rebate rate to 49 per cent for certain years to compensate for the temporary budget repair levy.

Reportable fringe benefits

1.24 The FBTAA determines whether the taxable value of a fringe benefit forms part of an employee's individual fringe benefits amount or is an excluded benefit. It does this so as to calculate an employee's reportable fringe benefit total for publication on an employee's payment summary in the following income tax year (sections 135M to 135Q). An amount is reported only if it exceeds a \$2,000 *de-minimus* threshold.

1.25 The reportable fringe benefits total of an employee is used to assess the employee's eligibility for transfer payments and other tax concessions as well as an employee's liability to certain levies and surcharges.

1.26 An employer currently does not have to allocate the following excluded benefits to employees or report them on payment summaries (subsections 5E(2) and (3)):

- entertainment by way of food and drink, and benefits associated with that entertainment, such as travel and accommodation, regardless of which category is used to value the benefit;
- car parking fringe benefits, not including car parking expense payment benefits;
- hiring or leasing entertainment facilities such as corporate boxes;
- remote area residential fuel where the value of the benefit is reduced under the FBTAA;
- remote area housing assistance where the value of the benefit is reduced under the FBTAA;
- remote area home ownership schemes where the value of the benefit is reduced under the FBTAA;
- remote area home repurchase schemes where the value of the benefit is reduced under the FBTAA;
- costs of occasional travel, being that which occurs from time to time and not at regular intervals, to a major Australian population centre by employees and their families living in a remote area;

- freight costs for food provided to employees living in a remote area; and
- fringe benefits provided to address certain security concerns relating to the personal safety of an employee, or an associate of the employee, arising from the employee's employment.

1.27 The following are further excluded by the *Fringe Benefits Tax Regulations 1992* (made for the purposes of paragraph 5E(3)(i) of the FBTA):

- emergency or other essential health care provided to an employee or associate who is an Australian citizen or permanent resident, while the employee is working outside Australia and no Medicare benefit is payable;
- certain Australian Government overseas living allowance payments, for example cost of living adjustments, post adjustments, child supplements, and child reunion supplements;
- certain benefits provided to Defence Force members, for example particular forms of housing assistance, reunion travel, assistance provided for removing and storing household effects, allowances paid to families with special needs, education assistance for children in critical years of schooling, elements of overseas living allowances, and removal expenses of a spouse due to marriage breakdown;
- certain benefits provided to police officers, for example particular forms of housing assistance, assistance provided for removing and storing household effects, certain relocation assistance and certain car benefits arising from travel between home and work by police officers using unmarked police vehicles that are fitted with a police radio and concealed or portable warning lights and sirens;
- certain car benefits arising from travel between home and work by police officers, ambulance officers and fire fighters using marked emergency vehicles; and
- car benefits arising from an employee's private use of pooled or shared cars (subject to certain conditions).

1.28 The nature of most excluded benefits are that they are either difficult or costly to attribute to particular employees or are difficult or

costly to allocate part of the taxable value of the benefit to a particular employee.⁶

1.29 However, some of the excluded benefits have now become part of some employee's salary packaging arrangements (as defined in section 136) undermining the rationale for the exclusion and undermining the integrity of the FBT system.

Alternate valuation rules for meal entertainment benefits (compliance cost savings methods)

1.30 Generally, when an employer provides entertainment to both employees and non-employees (for example, clients), only the part of the entertainment that relates to employees and their associates is subject to FBT.

1.31 However, those employers mentioned in **Table #.1** do not pay FBT on any of the meal entertainment benefits they provide to their employees.

1.32 The taxable value of the food or drink, and the associated accommodation or travel, is calculated using the respective valuation rule according to whether the benefit is an expense payment, property, residual or tax-exempt body entertainment fringe benefit.

1.33 If an employer cannot easily determine the actual expenditure, they can use a 'per head' basis of apportionment.

1.34 Alternatively, an employer may instead elect to value the food, drink and associated accommodation or travel as a 'meal entertainment fringe benefit'. If they make this election, they cannot use the per head basis of apportionment and the taxable value is calculated under the meal entertainment rules.

1.35 Where an employee elects to treat a expense payment fringe benefits, property fringe benefits, residual fringe benefits or tax-exempt body entertainment fringe benefits arise from the provision of meal entertainment, these fringe benefits will now be treated as meal entertainment fringe benefits. If they choose to classify a fringe benefit as a meal entertainment fringe benefit, they have to classify all fringe benefits arising from the provision of meal entertainment during the FBT year as meal entertainment fringe benefits.

⁶ Paragraph 1.28 of the Explanatory Memorandum to A New Tax System (Fringe Benefits Reporting) Bill 1998.

1.36 Specifically, the provision of meal entertainment under Division 9 of Part III means:

- providing entertainment by way of food or drink;
- providing accommodation or travel in connection with, or to facilitate the provision of, such entertainment; and
- paying or reimbursing expenses incurred by the employee for the above.

1.37 The provision of meal entertainment does not include the provision of entertainment by way of recreation.

1.38 If an employer elects to classify the provision of meal entertainment as a meal entertainment fringe benefit, the meal entertainment provided does not give rise to an expense payment fringe benefit, property fringe benefit, residual fringe benefit or tax-exempt body entertainment fringe benefit.

1.39 An employer cannot include meal entertainment provided by someone other than the employer (that is, someone who is not the employer) in the election.

1.40 This means that if a fringe benefit arises from meal entertainment provided by someone other than the employer, the employer must value the fringe benefit according to the rules for that type of fringe benefit. It could, for example, be an expense payment fringe benefit, a property fringe benefit, a residual fringe benefit or a tax-exempt body entertainment fringe benefit.

1.41 There are two methods an employer can use to calculate the taxable value of meal entertainment fringe benefits:

- 50-50 split method; and
- 12-week register method.

1.42 These options are also available to income tax-exempt employers, who may be exempt from income tax but may have a liability for FBT.

1.43 Both methods are based on an employer's total meal entertainment expenditure. This includes expenditure that might otherwise be exempt from FBT or not normally subject to FBT.

1.44 Under the 50-50 split method, the taxable value is 50 per cent of an employer's total meal entertainment expenditure.

1.45 The 12-week register method is based on the total meal entertainment expenditure and an appropriate percentage, as evident from the 12-week register.

1.46 Under the 50-50 split method, the total taxable value of meal entertainment fringe benefits is 50 per cent of the expenses an employer incurs in providing meal entertainment to all people (whether employees, clients or otherwise) during the FBT year. An employer's total meal entertainment expenditure includes expenditure that might otherwise be exempt from FBT or not normally subject to FBT.

1.47 The 50-50 split method was introduced to assist in reducing compliance costs in employers not having to apportion different types of meal entertainment to different benefits and different recipients. However, the method can produce the wrong result (a concessional result) in respect of salary packaged entertainment which is easily valued and attributable to a particular individual. If the method is adopted, the value of a salary packaged benefit provided to an employee is effectively halved.

Entertainment facility leasing expense benefits – alternate valuation rules (compliance cost saving method)

1.48 Similar rules also apply in respect of entertainment facility leasing expense benefits. The taxable value of recreational entertainment is calculated using the respective valuation rule according to whether the benefit is an expense payment fringe benefit, property fringe benefit or residual fringe benefit.

1.49 Where an employer provides recreational entertainment by hiring or leasing entertainment facilities, they may elect to use the 50-50 split method.

1.50 Entertainment facility leasing expenses are the expenses incurred in hiring or leasing:

- a corporate box;
- boats or planes for providing entertainment; and
- other premises or facilities for providing entertainment.

1.51 Expenses, or parts of expenses, that are not entertainment facility leasing expenses for these purposes are:

- expenses attributable to providing food or beverages; and
- expenses attributable to advertising that would be an allowable income tax deduction.

1.52 Generally, the transport to and from an entertainment facility will be a separate benefit that will not be part of the entertainment facility leasing expense.

1.53 However, the transport may be part of the entertainment facility leasing expense where the transport is provided as part of an all-inclusive package.

1.54 Expenses incurred in hiring or leasing a boat or plane in their entirety for the purposes of providing entertainment will be 'entertainment facility leasing expenses'. For example, the hiring or leasing of a houseboat or a charter flight where the whole plane is hired for entertainment purposes would meet the definition of entertainment facility leasing expenses.

1.55 When an employer gives an employee a plane ticket for travel to a holiday destination, the expense may relate to entertainment but will not be an entertainment facility leasing expense because the purchase of an airfare is not the hiring or leasing of a plane.

1.56 However, if the plane ticket is part of an all-inclusive package that includes holiday accommodation, the taxable value of the benefit may be partly attributable to an entertainment facility leasing expense being the cost of hiring the holiday accommodation. For example, providing an all-inclusive holiday package to an employee organised through a travel agent that includes both flights and the hire or lease of holiday accommodation will be a single benefit whose taxable value is partly attributable to entertainment facility leasing expenses. As the benefit is partly attributable to entertainment facility leasing expenses, the whole of the package will be treated as an entertainment facility leasing expense.

1.57 The phrase 'other premises or facilities' has a wide meaning. In the same way that a corporate box is a part of larger premises or a facility (being the sporting stadium), items that satisfy this category of entertainment facility leasing expense must be either:

- an entire premises or facility; or
- a distinct area or separate room of a larger premises or a facility.

1.58 The following are examples of ‘other premises or facilities’ for providing entertainment:

- a function room in a club or hotel that has been hired to the exclusion of others;
- a hotel/motel room;
- a room in a bed and breakfast facility;
- a cabin on a cruise ship;
- a cabin or on-site van at a caravan park;
- a marquee;
- a golf course that is hired or leased for a set time or full day to the exclusion of others, for example for a corporate golf day; and
- a tennis court that is hired to the exclusion of others, for example for a corporate tennis day.

1.59 The following would not be ‘other premises or facilities’ for providing entertainment:

- a seat on a plane;
- a seat at a sporting event;
- a table in the dining room of a club or hotel;
- golf green fees or memberships; and
- caravan site fees.

1.60 An employer may elect to use the 50-50 split method so that the total taxable value of fringe benefits arising from the use of entertainment facilities an employer hires or leases is 50 per cent of all entertainment facility leasing expenses.

1.61 The minor benefits exemption does not apply if an employer elects to use the 50-50 split method for valuing entertainment facility leasing expenses.

1.62 The 50-50 split method for entertainment facility leasing expenses only applies to expenses an employer incurs. It does not include,

for example, those expenses incurred by an employee that an employer reimburses.

Summary of new law

1.63 Schedule # to this Bill amends the FBTAA to limit the concessional treatment of salary packaged entertainment benefits.

1.64 Entertainment benefits are those benefits that are meal entertainment benefits (those relating to the provision of meal entertainment) or entertainment facility leasing expense benefits.

1.65 Salary packaging is generally an arrangement by which an employee reduces his or her salary and wages in return for receiving a non-cash benefit.

1.66 Schedule # to this Bill limits the concessional treatment of salary packaged entertainment benefits by making three core changes.

1.67 Firstly, Schedule # ensures salary packaged meal entertainment and entertainment facility leasing expense benefits will always appear as part of an employee's reportable fringe benefits total which is included on their payment summaries. This is achieved through the removal of an existing reporting exclusion.

1.68 Secondly, Schedule # removes access to elective valuation rules when valuing salary packaged entertainment benefits to prevent unintended and excessively concessional values being applied to those benefits.

1.69 Lastly, Schedule # introduces a cap on the total amount of salary packaged entertainment benefits that employees can be provided by exempt employers (covered by section 57A) and rebatable employers (covered by section 65J) that are subject to a reduced amount of FBT.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Meal entertainment benefits and entertainment facility leasing expense benefits are only excluded from forming part of an employee's individual fringe benefits amount and	Meal entertainment benefits and entertainment facility leasing expense benefits are excluded from forming part of an employee's individual fringe benefits amount and reportable

Limiting fringe benefits tax concessions on salary packaged entertainment benefits

<i>New law</i>	<i>Current law</i>
reportable fringe benefits total where they are <i>not</i> provided under a salary packaging arrangement.	fringe benefits total.
An employer can elect to calculate the taxable value of all meal entertainment benefits under the 12 week register method or the 50/50 split method. However, the methods do not apply to calculate the taxable value of meal entertainment benefits <i>not</i> provided by an employer or where the benefit is provided under a salary packaging arrangement.	An employer can elect to calculate the taxable value of all meal entertainment benefits under the 12 week register method or the 50/50 split method. However, the methods do not apply to calculate the taxable value of meal entertainment benefits <i>not</i> provided by an employer.
An employer can elect to calculate the taxable value of all entertainment facility leasing expense benefits under the 50/50 split method. However, the method does not apply to calculate the taxable value of entertainment facility leasing expense benefits provided under a salary packaging arrangement.	An employer can elect to calculate the taxable value of all entertainment facility leasing expense benefits under the 50/50 split method.
<p>Employers covered under section 57A (public benevolent institutions, health promotion charities, public and not-for-profit hospitals, and public ambulance services) are exempt from FBT where the total grossed-up value of benefits provided to each employee during the FBT year is equal to, or less than, the capping threshold (the standard threshold is either \$30,000 or \$17,000 depending on the employee and employer). If the total grossed-up value of fringe benefits provided to an employee is more than that capping threshold, the employer will need to pay FBT on the excess.</p> <p>The standard capping threshold does <i>not</i> include excluded fringe benefits.</p> <p>Salary packaged entertainment benefits previously excluded are included in the standard capping threshold. However, if the standard capping threshold is exceeded in a particular year, it is raised by the</p>	<p>Employers covered under section 57A (public benevolent institutions, health promotion charities, public and not-for-profit hospitals, and public ambulance services) are exempt from FBT where the total grossed-up value of benefits provided to each employee during the FBT year is equal to, or less than, the capping threshold (the standard threshold is either \$30,000 or \$17,000 depending on the employee and employer). If the total grossed-up value of fringe benefits provided to an employee is more than that capping threshold, the employer will need to pay FBT on the excess.</p> <p>The standard capping threshold does <i>not</i> include excluded fringe benefits (including salary packaged entertainment benefits).</p>

<i>New law</i>	<i>Current law</i>
<p><i>lesser of:</i></p> <ul style="list-style-type: none"> • \$5,000; and • the total grossed-up taxable value of salary packaged entertainment benefits. 	
<p>Rebatable employers are entitled to have their FBT liability reduced by a rebate equal to 47 per cent of the gross FBT payable (subject to a \$30,000 standard capping threshold). If the total grossed-up taxable value of fringe benefits provided to an employee is more than \$30,000 a rebate cannot be claimed for the FBT liability on the excess amount.</p> <p>The standard capping threshold does <i>not</i> include excluded fringe benefits.</p> <p>Salary packaged entertainment benefits previously excluded are included in the standard capping threshold. However, if the standard capping threshold is exceeded in a particular year, it is to be raised by the <i>lesser of:</i></p> <ul style="list-style-type: none"> • \$5,000; and • the total grossed-up taxable value of salary packaged entertainment benefits. 	<p>Rebatable employers are entitled to have their FBT liability reduced by a rebate equal to 47 per cent of the gross FBT payable (subject to a \$30,000 standard capping threshold). If the total grossed-up taxable value of fringe benefits provided to an employee is more than \$30,000 a rebate cannot be claimed for the FBT liability on the excess amount.</p> <p>The standard capping threshold does <i>not</i> include excluded fringe benefits (including salary packaged entertainment benefits).</p>

Detailed explanation of new law

1.70 Schedule # to this Bill amends the FBTAA to make a number of small changes to limit the concessional treatment of salary packaged entertainment benefits.

Including entertainment benefits in an employee's reportable fringe benefits total

1.71 Schedule # amends the definition of *excluded fringe benefit* to remove the provision of meal entertainment (as currently defined in section 37AD) provided under a salary packaging arrangement and a benefit wholly or partly attributable to entertainment facility leasing

expenses (currently defined in subsection 136(1)) provided under a salary packaging arrangement. *[Schedule #, items 4 and 5, paragraphs 5E(3)(a) and (c)]*

1.72 By removing salary packaged entertainment benefits from the definition of ‘excluded fringe benefit’, entertainment fringe benefits will form part of an employee’s ***individual fringe benefits amount*** and ***reportable fringe benefits total***.

1.73 Salary packaged arrangements (currently defined in subsection 136(1)) are arrangements between an employer and an employee, whereby the employee agrees to forgo salary or wages in return for the employer or associate providing the employee or their associate with benefits of a similar value.

1.74 These changes deliver on the Government’s announcement that all salary packaged entertainment benefits will be reportable.

Removing access to elective valuation rules when valuing salary packaged entertainment benefits

1.75 Schedule # prevents Division 9A of Part III (about elective valuation rules for meal entertainment benefits) and section 152B (about elective valuation rules for entertainment facility leasing expense benefits) applying to value salary packaged entertainment benefits. *[Schedule #, items 6, 10 and 11, section 37AC and subsection 152B(2)]*

1.76 The elective valuation rules can provide an unintended and excessively concessional value being applied to salary packaged entertainment benefits, particularly in relation to employers who are generally exempt from FBT.

1.77 To ensure that entertainment fringe benefits are allocated an appropriate taxable value (as determined under the core FBT rules), the elective valuation regimes cannot be applied to determine the taxable value of salary packaged entertainment benefit. However, the elective valuation rules will remain available to calculate the value of other benefits that fall within their current scope.

1.78 The elective valuation regimes are provided so as to reduce compliance costs in relation to apportionment and valuation of individual entertainment benefits, which in some cases can be considerable. However, the compliance costs in relation to valuing a salary packaged entertainment benefit are not subject to the same issues due to the existence of the agreement between the employer and employee to reduce salary and wages in return for providing/receiving the entertainment benefit.

1.79 Retaining access to the current elective valuation rules for salary packaged entertainment benefits would undermine these changes by reducing the reporting of these benefits and effectively raising the proposed new cap on the maximum amount of these benefits that can be accessed at concessional FBT rates.

Introducing a cap on the total amount of salary packaged entertainment benefits that certain employees can be provided that are exempt from or subject to fringe benefits tax at concessional rates

FBT exempt employers (section 57A employers)

1.80 Currently, certain specified employers are exempt from FBT where the total grossed-up value of certain benefits (which are benefits that are not otherwise excluded – excluded benefits) provided to each employee during the FBT year is equal to, or less than, the capping threshold. If the total grossed-up value of fringe benefits provided to an employee is more than that capping threshold, an employer will need to pay FBT on the excess.

1.81 As Schedule # removes from being an excluded benefit, salary packaged entertainment benefits, without further changes, the grossed-up taxable value of those benefits will be taken into account in determining whether, and by how much, the capping threshold has been exceeded.

1.82 Rather than remove in full the concessional treatment of salary packaged entertainment benefits for these employers, Schedule # limits the existing concession by increasing the existing capping threshold by the *lesser* of:

- \$5,000; and
- an employee's total grossed-up taxable value of salary packaged entertainment benefits (i.e., those benefits relating to the provision of meal entertainment or entertainment facility leasing expenses).

[Schedule #, items 2 and 3, subsection 5B(1E) (step 4 in the method statement) and subsection 5B(1M)]

1.83 This effectively provides each employee of those employers a separate single grossed-up cap of \$5,000 each FBT year for salary packaged entertainment benefits which remain eligible for the current FBT exemption. Where this cap is exceeded, any benefits may firstly be taken into account under the existing caps before determining whether there is any excess to be taxed.

Example 1.1: New Step G

A public hospital⁷ provides an employee, Lee, with the following benefits during the 2016-2017 FBT year⁸:

Salary packaging arrangement

- a television with taxable value of \$1,000 (GST creditable);⁹
- domestic air travel with taxable value of \$2,000 (GST creditable);
- reimbursed child care fees with a taxable value \$3,000 (not GST creditable);
- reimbursement of restaurant meals with taxable value of \$1,800 (GST creditable);¹⁰
- reimbursement of cost of Canadian holiday accommodation with taxable value of \$1,200 (not GST creditable);¹¹ and

Not through a salary packaging arrangement

- food and drink provided by a third party while attending a corporate event with taxable value of \$400 (GST creditable).¹²

The employer does *not* elect under section 37AA (about meal entertainment) or section 152B (entertainment facility leasing expenses) to value entertainment benefits under any of the elective valuation rules.

The employer's **aggregate non-exempt amount** for the 2016-2017 FBT year is calculated in the following way:

⁷ The employer (a public hospital) provides benefits exempt under subsection 57A(3) and the benefits would have a taxable value if subsection 57A(3) was disregarded.

⁸ Note during the 2016-2017 FBT year the FBT rate of tax is 49%; The FBT 'cap' for hospitals is \$17,677 general cap plus a \$5,000 entertainment cap.

⁹ 'GST creditable' indicates entitlement to GST input tax credits (type 1 gross-up applies) and 'not GST creditable' indicates no entitlement to GST input tax credits (type 2 gross-up applies).

¹⁰ Salary packaged restaurant meals for \$ 1,800 constitute the provision of meal entertainment as defined in subsection 37AD(1) and forms part of the employee's individual fringe benefits amount under subsection 5E(2).

¹¹ Salary packaged holiday accommodation for \$ 1,200 has a taxable value which is wholly or partly attributable to entertainment facility leasing expenses and forms part of the employee's individual fringe benefits amount under subsection 5E(2).

¹² Non-salary packaged food and drink for \$400 constitute the provision of meal entertainment as defined in subsection 37AD(1) and are excluded fringe benefits under subsection 5E(3) and are also excluded from the employers taxation liability under subsection 5B(1L).

Step A

The employer works out what would be the individual fringe benefits amount for each employee, if section 57A did not apply. This is determined by adding the taxable values of the benefits provided in respect of the employee's employment, except for any excluded fringe benefits. The notional 'individual fringe benefits amount' for Lee is calculated as:

$$\begin{aligned} &= \$1,000 \text{ (tv)} + \$2,000 \text{ (travel)} + \$3,000 \text{ (child care)} \\ &\quad + \$1,800 \text{ (restaurant meals)} \\ &\quad + \$1,200 \text{ (holiday)} \end{aligned}$$

$$= \$9,000$$

The notional individual fringe benefits amount is now broken down into 2 components. Those where GST input tax credits were available to the employer and those where no GST input tax credits are available.

Where a GST input tax credit is available – the taxable values of the benefits identified are added together to give what is referred to as the **step 3 of subsection (1K) amount** and it is calculated in Lee's case as:

$$= \$1,000 \text{ (tv)} + \$2,000 \text{ (travel)} + \$1,800 \text{ (restaurant meals)}$$

$$= \$4,800$$

The difference between the notional 'individual fringe benefits amount' and the 'step 3 of subsection (1K) amount' calculated for each employee is referred to as the **step 4 of subsection (1K) amount**, and in Lee's case is:

$$= \$9,000 - \$4,800$$

$$= \$4,200$$

Step B

The employer (because they are covered by section 57A) is also required to allocate each employee's share of the taxable value of certain benefits which would qualify as excluded fringe benefits other than meal entertainment benefits, entertainment facility leasing expense benefits or car parking fringe benefits. The employee's share of such excluded fringe benefits must also be divided into two parts based on whether GST input tax credits were available, and are

referred to as the **step 3 and step 4 of subsection (1L) amounts**, respectively (see subsection 5B(1L)).

As Lee does not have a share of any excluded benefits other than non-packaged meal entertainment, the value of the step 3 and step 4 of subsection (1L) amounts for Lee is nil.

Step C

Each employee's step 3 of subsection (1K) and (1L) amounts (i.e. benefits in respect of which GST input tax credits were available) are added together to determine the **type 1 individual base non-exempt amount**. For Lee this is calculated as:

$$\begin{aligned} &= \$4,800 + \$0 \\ &= \$4,800 \end{aligned}$$

Similarly, the **type 2 individual base non-exempt amount** is calculated as the total of an employee's step 4 of subsection (1K) and (1L) amounts, and for Lee this is:

$$\begin{aligned} &= \$4,200 + \$0 \\ &= \$4,200 \end{aligned}$$

Step D

Each employee's type 1 and type 2 individual base non-exempt amount is grossed-up (see subsections 5B(1F) and 5B(1G)).

The **individual grossed-up type 1 non-exempt amount** for Lee is:

$$\begin{aligned} &= \$4,800 \times \frac{0.49 + 0.1}{(1 - 0.49) \times (1 + 0.1) \times 0.49} \\ &= \$10,302 \end{aligned}$$

The **individual grossed-up type 2 non-exempt amount** for Lee is:

$$\begin{aligned} &= \$4,200 \times \frac{1}{(1 - 0.49)} \\ &= \$8,235 \end{aligned}$$

Step E

For each employee, the employer adds the individual grossed-up type 1 non-exempt amount and the individual grossed-up type 2 non-exempt

amount to determine the *individual grossed-up non-exempt amount* and for Lee this is:

$$\begin{aligned} &= \$10,302 + \$8,235 \\ &= \$18,537 \end{aligned}$$

Step F

The employer must now apply the threshold test for Lee by subtracting \$17,677 from each employee's individual grossed-up non-exempt amount. This is the *step 2 of subsection 5B(1E) amount*. For Lee this is:¹³

$$\begin{aligned} &= \$18,537 - \$17,677 \\ &= \$860 \end{aligned}$$

Step G

If the Step F result is positive, the employer must now calculate how much of the step 3 of subsection 5B(1E) amount relates to benefits covered by subsection 5B(1M) (about salary packaged entertainment benefits) for each employee.¹⁴ For Lee the step 2 of subsection 5B(1E) amount is:

$$\begin{aligned} &\text{Grossed-up GST creditable salary packaged entertainment benefits} \\ &= \$1,800 (\text{restaurant meals}^{15}) \times \frac{0.49 + 0.1}{(1 - 0.49) \times (1 + 0.1) \times 0.49} \\ &= \$3,863 \end{aligned}$$

Grossed-up not GST creditable salary packaged entertainment benefits

¹³ As this is a temporary budget repair levy year the standard \$17,000 cap has been increased to \$17,677.

¹⁴ One way to do this is to:

- determine the benefits provided under a salary packaging arrangement by way of meal entertainment benefits or entertainment facility leasing expense benefits in the step 3 and step 4 subsection 5B(1K) amounts;
- gross-up the resultant step 3 of subsection 5B(1K) amount using the type 1 gross-up rate;
- gross-up the resultant step 4 of subsection 5B(1K) amount using the type 2 gross-up rate; and
- add the two grossed-up amounts together.

¹⁵ The relevant benefit is the salary packaged restaurant meals from the step 3 of subsection (1K) amount.

$$\begin{aligned} &= \$1,200 (\text{holiday}^{16}) \times \frac{1}{(1 - 0.49)} \\ &= \$2,353 \end{aligned}$$

Grossed-up value of subsection (1M) benefits included in step 3 of subsection 5B(1E) amount

$$\begin{aligned} &= \$3,863 + \$2,353 \\ &= \$6,216 \end{aligned}$$

Step H

Each employee's amount calculated under Step F, if it is a positive amount, is reduced by the *lesser* of \$5,000 and the result of Step G (but not below zero) in order to determine the employee's **aggregate non-exempt amount** for the 2016-2017 FBT year.

The aggregate non-exempt amount for Lee is:

$$\begin{aligned} &= \$860 - \$5,000 (\text{lesser of } \$6,216 \text{ and } \$5,000) \\ &= \$0 (\text{as the result is less than } \$0) \end{aligned}$$

The amount of \$0 will be included in the employer's fringe benefits taxable amount when calculating the FBT liability in relation to Lee for the 2016-2017 FBT year.

Step I

Lee's reportable fringe benefits amount to be reported on his payment summary is his individual fringe benefits amount grossed-up by the type 2 formula (see Step D).

$$\begin{aligned} &= \$9,000 (\text{see Step A}) \times \frac{1}{(1 - 0.49)} \\ &= \$17,647 \end{aligned}$$

¹⁶ The relevant benefit is the salary packaged Canadian holiday from the step 4 of subsection (1K) amount.

FBT rebatable employers (section 65J)

1.84 Rebatable employers (certain specified tax-exempt entities) are entitled to have their liability reduced by a rebate of the gross FBT payable (subject to a capping threshold). If the total grossed-up taxable value of certain fringe benefits provided to an employee (which are benefits that are not otherwise excluded – excluded benefits) is more than the capping threshold a rebate cannot be claimed for the FBT liability on the excess amount.

1.85 As Schedule # removes from being an excluded benefit, salary packaged entertainment benefits, without further changes, the grossed-up taxable value of those benefits would be taken into account in determining whether, and by how much, the capping threshold has been exceeded.

1.86 Rather than remove in full the concessional treatment of salary packaged entertainment benefits for these employers, Schedule # limits the existing concession by increasing the existing capping threshold by the *lesser* of:

- \$5,000; and
- an employee's total grossed-up taxable value of salary packaged entertainment benefits (i.e., those benefits relating to the provision of meal entertainment or entertainment facility leasing expenses).

[Schedule #, items 7 and 8, subsection 65J(2B) (step 2A in the method statement) and subsection 65J(2J)]

1.87 This effectively provides each employee of those employers a separate single grossed-up cap of \$5,000 each FBT year for salary packaged entertainment benefits which remain eligible for the current FBT rebate. Where this cap is exceeded, any benefits may first be taken into account under the existing caps before determining whether there is any excess which will be ineligible for rebate.

Consequential amendments

Definitions

1.88 The definition of 'salary packaging arrangement' has been amended to ensure it captures both benefits provided to employees and benefits provided to associates of an employee where the employee has

reduced their salary and wages in return for the benefit. *[Schedule #, item 11, definition of 'salary packaging arrangement' in subsection 136(1)]*

1.89 This removes possible ambiguity as to whether the definition was limited to benefits provided only to employees or also covers benefits provided to associates of employees. The intended operation of the definition was to cover benefits provided to both employees and their associates.

Repealing inoperative provisions

1.90 A number of inoperative provisions have been repealed from the FBTAA in order to reduce the overall volume of the Commonwealth statute book. These changes have no substantive effect on the operation of the law. *[Schedule #, items 1, 2 and 7, subsection 5B(1), step 3 (paragraph (a)) of the method statement in subsection 5B(1)(e) and step 2 (paragraph (a)) of the method statement in subsection 65J(2B)]*

Application and transitional provisions

1.91 Schedule # to this Bill applies to the 2016-17 FBT year and later FBT years. *[Schedule #, item 12]*

EXPOSURE DRAFT