



Tax Laws Amendment (Budget Measures) Act 2008

No. 59, 2008

An Act to amend the law relating to taxation, and for related purposes

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No. 59, 2008

An Act to amend the law relating to taxation, and for related purposes

[Assented to 30 June 2008]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (Budget Measures) Act 2008*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Fringe benefits tax and employee share schemes

Part 1—Fringe benefits tax and related measures

Fringe Benefits Tax Assessment Act 1986

1 Section 41

Before “Where”, insert “(1)”.

2 At the end of section 41

Add:

- (2) This section does not apply to food or drink provided to, and consumed by, an employee if the food or drink is provided:
 - (a) because of the employee agreeing to receive the food or drink in return for a reduction in the employee’s salary or wages that would not have happened apart from the agreement; or
 - (b) as part of the employee’s remuneration package, in circumstances where it is reasonable to conclude that the employee’s salary or wages would be greater if the food or drink were not made part of that package.

3 Application

- (1) The amendment made by item 2 applies to food and drink provided after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008.
- (2) However, that amendment does not apply to an agreement made by an employee before 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008 to the extent that:
 - (a) a reduction in salary or wages has already occurred by that time; and
 - (b) the food or drink is provided before 1 April 2009.

4 Subsections 58X(2), (3) and (4)

Repeal the subsections, substitute:

- (2) Subject to subsection (3), each of the following is an **eligible work related item** if it is primarily for use in the employee's employment:
- (a) a portable electronic device;
 - (b) an item of computer software;
 - (c) an item of protective clothing;
 - (d) a briefcase;
 - (e) a tool of trade.
- (3) An item (the **later item**) listed in subsection (2) is not an **eligible work related item** if, earlier in the FBT year, an expense payment benefit or a property benefit of the employee has arisen in relation to another item that has substantially identical functions to the later item.
- (4) However, the rule in subsection (3) does not apply if the later item is a replacement for the other item.
- Example: The later item would be a replacement for the other item if the other item were lost or destroyed, or needed replacing because of developments in technology.

5 Application

- (1) The amendments made by item 4 apply to items acquired after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008, other than items acquired under a contract entered into at or before that time.
- (2) To avoid doubt, subsections 58X(3) and (4) of the *Fringe Benefits Tax Assessment Act 1986* as amended by this Act apply where both the later item and the other item referred to in those subsections are acquired after that time.

Income Tax Assessment Act 1936

6 At the end of section 51AH

Add:

- (3) This section does not apply to deductions under Division 40 of the *Income Tax Assessment Act 1997* (about capital allowances).

7 Application

The amendment made by item 6 applies to depreciating assets acquired on or after 1 July 2008.

Income Tax Assessment Act 1997

8 Before subsection 40-45(2)

Insert:

Eligible work related items

- (1) This Division does not apply to an asset that is an eligible work related item for the purposes of section 58X of the *Fringe Benefits Tax Assessment Act 1986* where the relevant benefit provided by the employer is an expense payment benefit or a property benefit (within the meaning of that Act).

9 Application

The amendment made by item 8 applies:

- (a) to assets acquired after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008, other than assets acquired under a contract entered into at or before that time; and
- (b) to assets acquired at or before that time, but only for assessments for the 2008-09 income year and later years.

Part 2—Employee share schemes

Income Tax Assessment Act 1936

10 Subsection 139E(1)

After “that year”, insert “(the *acquisition year*)”.

11 Subsection 139E(2)

Repeal the subsection, substitute:

- (2) An election under subsection (1) in relation to each such share or right must be made in the taxpayer’s return of income for the acquisition year.
- (2A) The Commissioner may, after receiving a request made by the taxpayer in the approved form, allow the election to be made at a later time.
- (2B) This Act applies to a taxpayer as if the taxpayer had made an election under subsection (1) for a year of income if:
 - (a) the total discount for the taxpayer for the year of income is \$1,000 or less; and
 - (b) the exemption conditions (see section 139CE) are satisfied in relation to the relevant shares or rights.

12 Subsection 139E(4)

Repeal the subsection, substitute:

- (4) An election under subsection (3) must be made in the taxpayer’s return of income for the employment year.
- (5) The Commissioner may, after receiving a request made by the taxpayer in the approved form, allow the election to be made at a later time.

13 Application

The amendments made by items 10 to 12 apply in relation to the 2008-09 year of income and later years.

Income Tax Assessment Act 1997

14 Subsection 130-90(3)

Repeal the subsection, substitute:

- (3) One of the following paragraphs must apply:
- (a) the individual, *associate or affiliate company must have acquired the *share or right:
 - (i) under an *employee share scheme; or
 - (ii) alternatively in the case of a share—as a result of exercising a right acquired under an employee share scheme;
 - (b) the share or right must, because of section 139DQ of the *Income Tax Assessment Act 1936*, be a share or right that is treated, for the purposes of Division 13A of Part III of that Act, as if it were a continuation of a share or right acquired under an employee share scheme;
 - (c) if the share was acquired as a result of exercising a right, the right must, because of section 139DQ of the *Income Tax Assessment Act 1936*, be a right that is treated, for the purposes of Division 13A of Part III of that Act, as if it were a continuation of a right acquired under an employee share scheme.

15 Application

The amendment made by item 14 applies in relation to CGT events happening after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008.

Schedule 2—In-house software

Income Tax Assessment Act 1997

1 Subsection 40-95(7) (table item 8)

Omit “2¹/₂ years”, substitute “4 years”.

2 Application

The amendment made by item 1 applies to in-house software that:

- (a) you start to hold under a contract entered into after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008; or
- (b) you developed, where the development started after that time; or
- (c) you start to hold in some other way after that time.

*[Minister’s second reading speech made in—
House of Representatives on 27 May 2008
Senate on 16 June 2008]*

(97/08)
