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→ As per Section 768-1 (Division 768) of the ITAA 1997, if:

(a) an Australian corporate tax entity receives a foreign equity distribution (i.e. non-share dividends) from a foreign Company, either directly or indirectly through one or more interposed trusts or partnerships; and

(b) the Australian corporate tax entity holds a participation interest of at least 10% in the foreign Company;

Such equity distribution (i.e. non-share dividend) is non-assessable non-exempt income for the Australian Corporate tax entity.

→ The above mentioned treatment of equity distributions (i.e. non-share dividends) can be refered to as a "participation exemption".

→ Thus the key factors which determine the tax treatment are:

(i) Participation test → i.e. minimum 10% participation

(ii) Foreign equity distributions on participation interests.

The above two factors are explained in detail as follows:-

(i) Participation test - minimum 10% participation:-

An entity satisfies the participation test in relation to another entity at a time if, at that time, the sum of the following is atleast 10%:

ⓐ the direct participation interest the entity would have in the other entity if rights on winding-up were disregarded;

ⓑ the indirect participation interest the entity would have in the other entity if:

① rights on winding-up were disregarded; and

② Section 960-185 (i.e. indirect participation interest) only applied to intermediate entities that are not corporate tax entities.

(ii) Foreign equity distributions on participation interests.

I. In case foreign equity distribution is received directly:

Such distribution is non-assessable non-exempt only if the recepient entity is Australian resident and corporate tax entity, and at the time the distribution is made, such entity satisfies the participation test discussed earlier in (i) in relation to the company that made the distribution. Further, it is to be noted here that such entity should not receive the distribution in capacity of a trustee. ~~or~~ However, it can do so in capacity of a trustee of a public trading trading trust.

II. In case foreign equity distribution is received through interposed trusts and partnerships:-

Such distribution is non-assessable non-exempt only if the recepient entity is a beneficiary of a trust or partner in the partnership, as

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Australian resident and a corporate tax entity. Further such distribution so made should be from the amount of all or part of the net income of the trust or partnership, subject to certain prescribed conditions.

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→ The Fringe Benefit Tax ('FBT') was introduced ~~uno~~ as a federal law in year 1986. Such legislation was brought to complement the Australian Income tax legislation.

→ FBT is imposed on employers on the value of certain fringe benefits provided ~~to~~ by them to their employees or associates of their employees by the Fringe Benefits Tax Assessment Act, 1986 and Fringe Benefits Tax Act 1986.

→ 1) What benefits are covered by FBT?
Fringe benefits are widely defined to include any right (including a right in relation to, or an interest in, real or personal property), privelege, service or facility provided to a present, past or prospective employee or his relatives or other associates in connection with the employment of the employee

Fringe benefits are divided into 12 categories. The legislation provides rules for calculating

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the taxable value of the benefits falling into each category and also for certain exemptions specific to each category.

The 12 Categories are as follows:-

(i) motor cars (Car fringe benefits)
(ii) debt waivers fringe benefits
(iii) Loan fringe benefits
(iv) Housing fringe benefits
(v) expense payment fringe benefits
(vi) living-away-from-home allowance fringe benefits
(vii) board fringe benefits
(viii) Airline transport fringe benefits
(ix) Entertainment fringe benefits
(x) Car parking fringe benefits
(xi) property fringe benefits
(xii) residual fringe benefits (i.e. fringe benefits which do not fall within (i) to (xi) above)

2) Who is liable to pay FBT?

As discussed earlier, an employee is liable to pay FBT on the value of certain fringe

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benefits provided by them to their employees or associates of their employees.

3) When is FBT payable, and at what rate?

→ The rate of FBT is 49% from 1st April 2015 to 31st march 2017. In this rate of 49%, temporary Budget Repair Levy and Medicare levy have been accomodated.

→ Where the employer's FBT liability is AUD 3,000 or more in the previous ~~tax~~ Year, FBT is payable in advance by quarterly installments due on 21 July, 21 October, 21 January and 21 April, otherwise an annual payment is required. The FBT installments are required to be notified in an employer's quarterly business activity statement with any final payment due upon logement of final employer's annual FBT return.

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4.) Is FBT deductible for income tax purposes?

- Yes. fringe benefit amount ~~FBT~~ is deductible for income tax purposes after grossing-up. The tax element per-se may not be deductible, except subject to conditions.

5.) How can FBT be avoided or minimised, and are there ways to stop such practices?

→ FBT, to an extent, becomes unavoidable, but it may certainly be minimised. In saying this, it needs to be understood that FBT is a tax on fringe benefits. Such benefits are given to one's employees for various works performed by him, whether directly relatable or indirectly attributable, ~~to~~ for his employee. These are various benefits which motivate an employee and increase his loyalty as well as productivity towards his employer. While an employee is

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entrusted with the responsibility to pay tax on such fringe benefit provided, the legislature is Clear in legislating that such benefit may be a prevalent practice and acceptable and may be provided to one's Employees ~~for~~ for their sweat and dedication towards the employers. Thus, it may be concluded that FBT cannotbe avoided Completely but can be minimised, and such a practice may not be completely stopped. However, such benefits are a complete discretion of the employer who may choose to not provide such benefits at all to the employees.

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1.) Points of difference between FRS' withholding tax rules and Australian witholding tax rules.

→ In case of FRS, witholding tax is payable in respect of all prescribed payments (i.e. interest, dividend, royalty and rent) to a person or entity resident outside the FRS. Further, the witholding tax rate is 20% in all cases unless payment is an amount for which deduction is not and cannot be claimed in the FRS, in which case the rate of witholding tax is 15%.

In ~~connection~~ contradiction with the above, ~~the rat~~ as per Australian witholding tax rules, withholding tax is payable only in respect of interest, dividends and royalties paid to the foreign resident entity or individual. No specific witholding provisions apply to rental or leasing income (except where income is deemed to be royalty) Further, also the witholding tax rates differ. The rates of witholding tax on interest, dividend

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and royalty are 10%, 30% and 30% respectively. Further, on those dividends which are franked, no withholding taxes are applicable. Thus, in effect, witholding taxes are only applicable to unfranked dividends.

Further, as per FRS' witholding tax rules, witholding tax is final ~~tax~~, however as per Australian witholding tax rules, such liability is not final. It is only a prescribed witholding tax rate that is applicable on certain nature of payments. Such incomes received by the foreign resident persons shall be includible in their assesable income and tax shall be calculated based on income tax rates prescribed under the Australian Income tax ~~law~~ or relevant Double Taxation Avoidance Agreement (tax treaty) (if signed with Australia), whichever is beneficial. Thus, withholding tax rates being from domestic tax law, DTAA's need to be refered to derive the final tax.

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Further, in case of FRS, base on which witholding taxes are applied is the gross value of payments made with no reductions. In case of Australia, only that part of foreign resident person's income which is chargeable to tax in Australia as per the Australian tax legislation is charged to withholding taxes ~~at~~ domestic tax rates or DTAA rates, whichever is beneficial. Further, the fact that payment is not deductible or no deduction is claimed for such an amount shall not affect the Australian withholding tax liability.

2.) As discussed above, the various deficiencies in FRS rules that are dealt with in Australian rules is that it is not a final tax (except for dividend) and such sums are ~~only~~ to be added to the foreign resident's assessable income and final tax liability will be determined upon ~~his~~ its furnishing of tax returns. Withholding tax liability is a first hand deduction of taxes with further tax liability to be crystallised

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only upon assessment of total incomes during the tax year. Such assessment may also be a refund situation for the foreign tax payer.

Further, as in the FRS tax rules, withholding tax rates are dependent upon whether the payment is deductible /deducted in hands of payer. Lower withholding tax rate of 15% is applicable to such a case vis-a-vis a 20% rate in case of no deductibility issues. In case of Australia, dividends (unfranked) and royalties are taxed at a higher rate of 30% whereas interest is taxed at 10%. Such rates are further not final as beneficial rates under the DTAA (wherever applicable) shall be referred to and applied.

Further, withholding tax in FRS is applied to the gross payment made from FRS with no reductions. In case of Australia, such deficiency is met by taxing certain incomes such as dividends only on the unfranked portion i.e. only on portion of such dividends which are declared out of incomes on which no corporate taxes have been paid by the payer company. Further, even such dividends which are unfranked may be considered as non assessable non exempt which are declared from conduit foreign income. Further, Australia exempts certain dividends from witholding tax such as dividends paid by pooled development funds (PDFs), etc.

3.) The only deficiency that can be noticed in Australian witholding tax rules which is dealt with by FRS rules is that rate of witholding is same for all cases, thus reducing the burden of characterisations of several incomes as to constituting either a dividend, interest or a royalty. Such flat rate of rate is an administrative convenience for a country thereby reducing probable litigations. Further FRS is also taxing rental incomes which Australia usually does not as Australia

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generally characterises rental income as a deemed royalty and taxes it at 30%. This deficiency is dealt with by FRS by taxing such rental incomes like any other income at 20%. ~~So~~ Further, 30% tax rate is quite on a high side considering that the corporate tax rate is 30% and small taxpayers will need to file returns and claim offsets, ~~and~~ thus leading to a time-consuming and expensive exercise. 20% rate is an averaged tax rate which may be not so burdensome for the individual tax payers especially.

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→ It can be found that BGE Pty Ltd. ('BGE') is an ~~Australi~~ Australian resident company. It has paid fully franked dividend of $70,000 to each of its five equal shareholders.

→ As per the Australian witholding tax rules, BGE is not obligated to withold any taxes on the franked dividend paid to its foreign shareholders.

→ Taxability of the five Shareholders:

a) Ms Rebecca Johnson is a resident of Australia. As mentioned earlier, Australia works on an imputation System whereby dividends are included in Shareholder's assesable income and the tax payable by a company on profits out of which dividend are ~~£~~ paid is fully creditable against the income tax liability of resident Shareholders. As per facts, Ms. Rebecca's only incomes ~~is~~ are the dividend from BGE and Age ~~old~~ Pension. ~~Thus~~,

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Age Pension is non-assessable non exempt income. Further, only franked dividend shall be includible in the taxable income of M/s Rebecca. Further, franking dividend gross up shall be includible too which shall subsequently be claimed as ~~Cre~~ imputation credits from total tax liability.

b) M/s Tammy Fernandez is also an Australian resident. No witholding tax shall be charged on the franked dividend received by ~~M/s~~ Ms Tammy. Further, such dividend shall be includible in the assessable income of Ms. Tammy together with its other income in excess of $2 million in the tax year. Further, franking dividend gross-up shall also be added to the assessable income which shall subsequently be claimed as an imputation credit from total tax payable.

c) Growth Co Pty Ltd. is an Australian Resident Company. No witholding tax shall be levied on the franked dividend paid to Growth ~~M/s Tamm~~ Co Pty Ltd. However, such dividend shall be includible in the assesable income of Growth Co Pty Ltd. together with its other income in the tax year. Further, Growth Co Pty Ltd. shall be liable to add a franking dividend gross up to its assessable income which shall subsequently be reduced as imputation credit from the tax liability. The net assessable income shall be taxed at rate of 30% in hands of Growth Co Pty Ltd.

d.) Jack Law is a resident of USA. Thus, he is a non-resident for Australian tax purposes. A non-resident is liable to tax on all dividends paid out of profits derived from sources in Australia. However, no withholding tax shall be levied on franked dividend paid to Jack Law. Further, since the dividends are franked, ~~it~~ the dividend would not suffer any ordinary tax and shall

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be exempt in hands of Jack Law.

e) XYZ Superannuation fund is a complying Australian Superannuation fund. Thus, ~~as~~ it is a resident in Australia for tax purposes. No withholding tax shall be levied on ~~XYZ die~~ franked dividends derived by resident XYZ. Further, as per Section 11-5 of ITAA 1997, a super-annuation fund resident in Australia shall be exempt from all taxes - whether on ordinary or statutory income. Thus, such dividends shall not be assessable in hands of XYZ.

→ Further, after close of 2015 year of income, BGE realises that it had over-franked the dividend paid to the extent of 20%. The ramifications of this error can be that there shall be a debit entry to be passed in the imputation credit account maintained

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by ~~the~~ BGE. No ramifications, however, can be traced to the Shareholders of BGE for the error.

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1.) As per the deductibility rules in the Australian tax legislation, interest paid by Harold is a permissible deduction. It is assumed that the Surrey Hills property is a property which is to be used for an income producing activity. Thus, any borrowing costs to the extent such borrowings are used for purpose of generating asseseable income is deductible. (section 25-25). In terms of the concerns of Harold because the security provided is in ~~2.)~~ form of his residence and fact that interest will exceed the rent for atleast few years cannot be a reason to not grant deduction for interest expense. However, such property shall be used only for an income producing activity. In fact, as per Sec 25-30, even expenses of discharge of mortgage is deductible.

2.) In case roof repairs are carried out, ~~it~~ on the property, it may be argued that such repairs may increase the economic life of the asset or atleast make the asset usable. Thus, it may be argued that such expenses are capital in nature. Thus, it may be added to cost of asset and not deductible from assessable income of Harold.

3.) A gas heater is a capital good. Conversely, such a heater is not directly relatable to income producing asset which in this case is Surrey Hills propeety. Thus, such expense, which can be of a non-business or leisure nature, may be argued to be not deductible.

4.) For tax purposes, the purchase date for Surrey Hills propeety is when contract was entered into for purchase of this propeety i.e. 1 may 2014. Settlement of purchase Contract is irrelevant.

Further, Harold was to sell the propeety by exchange of contract in early 2016 but delayed settlement in late 2016. In this case, the date on which sale contract was executed and entered into shall be the sale date for tax purposes. The rationale behind determination of date of purchase and sale is transfer of title and consequent risks associated with the property. In both cases, the title is deemed to pass on execution of agreements and not actual settlement thereof.

5) Harold will be liable to pay GST at 10% on sale of property. He will be entitled to claim input credit for all taxable & inputs he purchased | costs incurred for such property. However, sale of residential property is not subject to GST, which in current case is not assumed to be the case.