

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

## Taxation Determination

**Fringe benefits tax and income tax: what are the tax consequences for a distributor who, under a product promotion arrangement with a manufacturer whose products it distributes, is provided with a non-cash business benefit (not being trading stock of the distributor) which may be passed on to the distributor's employees?**

1. If it is a condition of the promotion arrangement between the manufacturer and the distributor that the benefit must be passed on to the distributor's employees, and the benefit is passed on:
  - (i) the benefit is treated for income tax purposes as if it is provided by the manufacturer directly to the employees. The distributor is no more than a conduit through which the benefit passes. Accordingly, there are no income tax consequences for the distributor; and
  - (ii) employers who directly or by arrangement with others provide their employees with taxable fringe benefits are liable to fringe benefits tax. In this case, benefits are provided to the distributor's employees by the manufacturer under an arrangement between the manufacturer and the distributor. Therefore, the *Fringe Benefits Tax Assessment Act* (the FBTAA) treats the benefit as if it was provided by the employer with the result that the distributor is liable to fringe benefits tax on the taxable value of the benefit passed on to the employees. The benefit is an external property fringe benefit and its taxable value is determined under paragraph 43 (c) and section 44 of the FBTAA.
2. If the benefit is provided to the distributor who can choose to keep the benefit or to pass the benefit on to its employees, and:
  - (a) the distributor chooses to keep the benefit - the value of the benefit, as determined by subsection 21A(2) of the *Income Tax Assessment Act 1936* (the ITAA), must be included in the distributor's assessable income. There are no other taxation consequences for the distributor; or
  - (b) the decision to pass the benefit on to its employees is made, and the benefit is passed on, at the time the benefit is provided to the distributor -

- (i) the value of the benefit, as determined by subsection 21A(2) of the ITAA, that would otherwise be included in the distributor's assessable income is reduced, under subsection 21A(3) of the ITAA, by the value of the benefit passed on to its employees. This reduction is only available if the distributor would have otherwise, at the time the benefit was provided, been allowed a once only deduction for the amount the distributor would have incurred and paid for the benefit if it had purchased the benefit. A deduction would generally be allowed to an employer for a benefit purchased for an employee, at the time of purchase, provided the employer had made a firm decision, at that time, to immediately pass the benefit onto the employee as a form of remuneration in respect of the employment relationship - in other words, there would be a sufficient connection between the purchase and the carrying on of the employer's business in these circumstances to allow the deduction (the deduction must also be a 'once-only deduction' as defined in subsection 21A(5)). Where the reduction is available, the distributor is not also entitled to a deduction under subsection 51(1) of the ITAA for the value of the benefit passed on to the employees because that value is not included in the distributor's assessable income nor does the distributor suffer any financial loss or outgoing in respect of the benefit passed on; and
  - (ii) the distributor is liable for fringe benefits tax on the taxable value of the benefit passed on to the employees. The benefit is an external property fringe benefit and its taxable value is determined under paragraph 43 (c) and section 44 of the FBTAA; or
- (c) the decision to keep the benefit or to pass it on is not made at the time the benefit is provided to the distributor -
- (i) the distributor must include the value of the benefit, as determined by subsection 21A(2) of the ITAA, in its assessable income at the time the benefit is provided. Subsection 21A(3) would not be available in this case to reduce the value determined by subsection 21A(2) because the employer had not made a firm decision at the time the benefit was provided to immediately pass the benefit onto its employees;
  - (ii) if the distributor later chooses to pass the benefit on to its employees, the distributor is entitled to a deduction, under subsection 51(1) of the ITAA, for the value of the benefit passed on at the time the benefit is passed on. The deduction is limited however to the value of the benefit previously included in assessable income; and
  - (iii) the distributor is liable to fringe benefits tax on the taxable value of the benefit passed on to the employees in the same manner as described in sub-subparagraph 2(b)(ii).

**Commissioner of Taxation**

21/01/93

FOI INDEX DETAIL: Reference No.

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Previously issued as Draft TD 92/D131

Related Determinations:

Related Rulings:

Subject Ref: assessable income;external property fringe benefit;fringe benefits tax;non cash business benefit;otherwise deductible expenditure.

Legislative Ref: FBTAA 43(c); 44; ITAA 21A(2); 21A(3); 21A(5); 25(1); 51(1).

Case Ref: Fletcher and ors v F.C. of T. 91 ATC 4950; (1991) 22 ATR 613

ATO Ref: UMG 0015