TD 2004/D5 - Income tax: Where a fringe benefits tax liability is deductible to a taxpayer under section 8-1 of the Income Tax Assessment Act 1997, is a later refund or reduction of that liability, as a result of an amended fringe benefits assessment, an assessable recoupment for the purposes of subsection 20-20(3) that must be included in the taxpayer's assessable income under subsection 20-35(1)?

This cover sheet is provided for information only. It does not form part of *TD 2004/D5 - Income tax: Where a fringe benefits tax liability is deductible to a taxpayer under section 8-1 of the Income Tax Assessment Act 1997, is a later refund or reduction of that liability, as a result of an amended fringe benefits assessment, an assessable recoupment for the purposes of subsection 20-20(3) that must be included in the taxpayer's assessable income under subsection 20-35(1)?*

This document has been finalised by TD 2004/21.

Draft Taxation Determination

Income tax: Where a fringe benefits tax liability is deductible to a taxpayer under section 8-1 of the *Income Tax Assessment Act 1997*, is a later refund or reduction of that liability, as a result of an amended fringe benefits assessment, an assessable recoupment for the purposes of subsection 20-20(3) that must be included in the taxpayer's assessable income under subsection 20-35(1)?

Preamble

This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners as it is not a ruling for the purposes of Part IVAAA of the ***Taxation Administration Act 1953****. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.*

1. Yes. Where a fringe benefits tax liability is deductible to a taxpayer under section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997), a refund or reduction of that liability, as the result of an amended fringe benefits tax assessment, that is not ordinary income, is an assessable recoupment for the purposes of subsection 20-20(3) of the ITAA 1997, and must be included in the taxpayer's assessable income under subsection 20-35(1) of the ITAA 1997 for the year in which the refund or the notice of the amended assessment giving effect to the reduction is received.

2. Subdivision 20-A of the ITAA 1997 includes the receipt of an assessable recoupment in the assessable income of a taxpayer. Subsection 20-35(1) provides that a taxpayer's assessable income includes an assessable recoupment of a loss or outgoing if the taxpayer has deducted or can deduct the whole of the loss or outgoing in an earlier income year. Subsection 20-25(1) defines a 'recoupment' of a loss or outgoing to include any kind of recoupment or refund. Subsection 20-20(3) then establishes that an amount received by a taxpayer as 'recoupment' of a loss or outgoing is an 'assessable recoupment' if the taxpayer can deduct the loss or outgoing for an earlier income year under a provision listed in section 20-30. The table in subsection 20-30(1)(Item 1.2), lists rates or taxes deductible under section 8-1 as deductions for which recoupments are assessable. Where a fringe benefits tax liability is deductible to a taxpayer under section 8-1, a later receipt of a refund

of that liability by the taxpayer would be an 'assessable recoupment' for the purposes of subsections 20-20(3) and 20-35(1).

3. The effect of subsection 6-10(3) of the ITAA 1997 is that a reduction, on your behalf or as you direct, in the amount of a deductible fringe benefits tax liability, which does not result in the receipt of a refund, is also an assessable recoupment when the amount is received.

Date of Effect

4. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of 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).

Your comments

5. We invite you to comment on this draft Taxation Determination. Please forward your comments to the contact officer by the due date.

Due date: **7 April 2004**

Contact officer: **Faith Garnar**

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Commissioner of Taxation
3 March 2004

Previous draft:
Not previously issued in draft form

Related Rulings/Determinations:
TR 92/20; TR 95/24

Subject references:
- fringe benefits tax
- assessable recoupments
- amended fringe benefits tax assessments

Legislative references:
- TAA 1953 Part IVAAA
- ITAA 1997 6-10(3)
- ITAA 1997 8-1
- ITAA 1997 20-20(3)
- ITAA 1997 20-25(1)
- ITAA 1997 20-30(1)
- ITAA 1997 20-30
- ITAA 1997 20-35(1)
- ITAA 1997 Subdiv 20-A

ATO references
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