


***TD 94/D31 - Fringe benefits tax and income tax: for the purposes of the Fringe Benefits Tax Assessment Act 1986 (FBTAA), what facts or circumstances will indicate that a benefit is provided in respect of a person's employment, where that person is both a shareholder and employee of a private company?***

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## Draft Taxation Determination

**Fringe benefits tax and income tax: for the purposes of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA), what facts or circumstances will indicate that a benefit is provided in respect of a person's employment, where that person is both a shareholder and employee of a private company?**

1. Paragraph 19 of Taxation Ruling MT 2019 provides the following general rule for loans to shareholder/employees:

'Where there are no facts or circumstances which positively indicate that a loan to a shareholder/employee is associated with that person's employment and the loan is consistent with his or her status as a shareholder, it would ordinarily be inferred that the loan was made by virtue of the shareholding.'

2. The presence of any of the following will positively indicate that a benefit has been provided to a person in respect of that person's employment:

- a reference in an employment contract, to the provision of the benefit, or
- the provision of a similar benefit to an 'arm's length' employee, or
- the benefit is of a kind more readily seen as employment related, e.g., private use of a business vehicle, or
- a reference in a director's minute, to the provision of the benefit being in an employment context, or
- a level of remuneration provided to the employee, which is not commensurate with the work performed, such that it will be concluded that the benefit was provided instead of adequate remuneration.

3. Where a benefit is of a kind provided to employees in the same industry or in a similar business, e.g., accommodation provided to a motel manager, this is a factor in determining whether a benefit has been provided in respect of employment.

4. The claiming of an income tax deduction for the cost of providing a benefit is another factor, but by itself is not regarded as conclusive evidence of a benefit being employment related. This is commonly the case where the cost being claimed is for interest on borrowings that have partly or fully funded a shareholder/employee loan account. However, if the claiming of an income tax deduction is combined with any other employment related factor, it will be concluded that the benefit was provided in respect of employment.

5. On the other hand, if it is concluded that a benefit is not employment related, but for example relates to shareholding, any costs of providing the benefit are not tax deductible.

6. Where it is established that a benefit is provided to a person for more than one reason including that of employment, paragraph 148(1)(a) of the FBTAA will apply. In these circumstances, regardless of whether a benefit is also provided directly or indirectly in relation to any other matter (e.g., shareholding), the benefit is deemed to be totally in respect of employment.

7. The above applies equally to benefits provided to a person who is both an employee and beneficiary of a trust.

#### *Example 1*

*Fred Rubble is a shareholder and employee of Granite Pty Ltd. Fred, a professional plumber, works on average about 60 hours a week in the business but only draws a nominal salary of \$100 per week. The majority of the family's private living expenses are paid out of the company's bank account and are then debited to a loan account (in Fred's name), which normally has a debit balance.*

*As the (loan) benefit has been provided instead of adequate remuneration it is subject to fringe benefits tax.*

#### *Example 2*

*Mary is a full time employee of XYZ Pty. Ltd. and as the sales manager is paid an annual salary of \$50,000. Mary and her husband Mike are also shareholders in the company and she has a loan account which has an average debit balance of approximately \$40,000. Mary's dividend entitlements are usually credited to the loan account. The company's only external borrowings relate to the purchase of assets. It also has accumulated profits of \$85,000.*

*As there are no factors that indicate that the loan has been provided in respect of employment, fringe benefits tax is not applicable.*

#### **Commissioner of Taxation**

31/3/94

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FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings: MT 2019

Subject Ref: fringe benefits tax; shareholder loan account

Legislative Ref: FBTAA 148(1)(a)

Case Ref:

ATO Ref: FBT Cell 30/01

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ISSN 1038 - 8982