


TD 94/D65 - Income tax and fringe benefits tax: will a non-cash business benefit and a taxable fringe benefit both arise if a low or interest free loan is made by a life assurance company to an insurance agency and then on-lent to an agency employee (or an associate of an employee) who uses the loan monies for private purposes?

 This cover sheet is provided for information only. It does not form part of *TD 94/D65 - Income tax and fringe benefits tax: will a non-cash business benefit and a taxable fringe benefit both arise if a low or interest free loan is made by a life assurance company to an insurance agency and then on-lent to an agency employee (or an associate of an employee) who uses the loan monies for private purposes?*

This document has been finalised by TD 95/5.

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Draft Taxation Determination

Income tax and fringe benefits tax: will a non-cash business benefit and a taxable fringe benefit both arise if a low or interest free loan is made by a life assurance company to an insurance agency and then on-lent to an agency employee (or an associate of an employee) who uses the loan monies for private purposes?

1. Yes. Both a non-cash business benefit under section 21A of the *Income Tax Assessment Act 1936* (ITAA) and a loan fringe benefit under Division 4 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) will arise. However, only the loan fringe benefit gives rise to a tax liability.
2. The loan from the life assurance company to the agency will constitute a non-cash business benefit as defined in subsection 21A(5) of the ITAA. However, the value of the benefit will be reduced to nil by the 'otherwise deductible' rule in subsection 21A(3) of the ITAA, because the on-lending to the employee or associate represents business usage of the funds.
3. The making of the loan to the employee or associate by the agency constitutes a loan fringe benefit under section 16 of the FBTAA. Liability for any fringe benefits tax payable will rest with the agency employer.

Example

An interest free agency development loan is made to an insurance agency. The loan monies are then on-lent, interest free, to an employee insurance agent and are used to purchase a yacht for personal use.

The value of the non-cash business benefit in relation to the loan made to the agency will be reduced to nil because the monies were on-lent to the employee.

The agency is liable for fringe benefits tax in relation to the loan made to the employee.

Commissioner of Taxation

9/6/94

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