TD 94/D95 - Fringe benefits tax: in what circumstances will an employer be liable to fringe benefits tax (FBT) for benefits provided to volunteer workers?

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Australian Taxation Office

Taxation Determination TD 94/D95

Draft Taxation Determination

Fringe benefits tax: in what circumstances will an employer be liable to fringe benefits tax (FBT) for benefits provided to volunteer workers?

1. An employer will only be liable to FBT on benefits provided to volunteer workers where the benefits are provided in respect of, or by virtue of, the employment of an employee. In most cases, no FBT will arise in the case of genuine volunteer workers as the benefits will not have been provided in respect of employment.

2. Before a benefit will be subject to FBT, the benefit must be a 'fringe benefit' as defined in subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA). One of the requirements under this definition is that the benefit must be provided 'to the employee'.

3. In the FBTAA the term 'employee' is defined by reference to section 221A of the *Income Tax Assessment Act 1936*. Under this section the term 'employee' means a person who receives, or is entitled to receive, salary or wages. This encompasses, by reason of the definition of 'salary or wages' (in subsection 221A(1)), not only persons who are employees within the ordinary or common law meaning of the term 'employee', but also persons working under contracts that are wholly or principally for labour.

4. Whether a volunteer worker will be considered to receive salary or wages will depend, amongst other things, on the level of remuneration they receive. Miscellaneous Taxation Ruling MT 2032 considers when sports persons are considered to be 'employees'. Paragraph 8 of that ruling states where the level of payments to players does little more than offset the training and travelling expenses of the players, the players are not likely to be employees for FBT purposes. In line with that paragraph, where the level of payments to volunteers does little more than to offset travel expenses and the like, it would be unlikely that the volunteer worker would be considered to be an employee.

5. For the purpose of determining who is an employee within the FBTAA, section 137 of the FBTAA deems that section 221A will apply as if the benefit were salary or wages and provided in respect of employment. However, where a volunteer receives a benefit that, if paid in cash would not be salary or wages then the volunteer will not be deemed to have received salary or wages and no FBT will arise.

6. It should be noted that many volunteers provide their services to public benevolent institutions. Benefits provided by these institutions to their employees are already exempt from FBT.

Example 1

Mary carries out work for a private hospital. She receives no cash payment for her services. The hospital agrees, however, to provide her with a motor vehicle for both business and private use. As the private use of the motor vehicle by Mary is more than incidental she is considered to be an employee for FBT purposes. Even though no salary or wages are paid by her employer, section 137 of the FBTAA applies to deem salary or wages to have been received.

Example 2

George provides his services to the local volunteer bushfire brigade. He is reimbursed for travel and other minor expenses he incurs in carrying out his duties. George is not considered to be an employee as the reimbursement he receives does not amount to salary or wages. No FBT will arise on these reimbursements.

Commissioner of Taxation
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