

TD 95/D7 - Fringe benefits tax: can a government body be an 'association' for the purposes of section 65J of the Fringe Benefits Tax Assessment Act 1986 (FBTAA)?

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This document has been finalised by TD 95/56.

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Draft Taxation Determination

Fringe benefits tax: can a government body be an 'association' for the purposes of section 65J of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA)?

1. No. A government body cannot be an 'association' where it is formed by government, is controlled by government and performs functions on behalf of government.
2. Subsection 65J(1) of the FBTAA lists the categories of organisations which are rebatable employers. In paragraphs 65J(1)(f) to 65J(1)(l), 'association' is one of the terms used to describe the types of rebatable organisations. The *Shorter Oxford English Dictionary* defines the term 'association' to be 'a body of persons associated for a common purpose; the organisation formed to effect their purpose'. The *Macquarie Dictionary* defines 'association' as being 'an organisation of people with a common purpose and having a formal structure'. Olsson J, in *Quinton v. South Australian Psychological Board* (1985) 38 SASR 523, also stated that the term 'association' has come to be regarded as attaching to a body of persons associated for a common purpose.
3. It is mentioned in the *Metropolitan Fire Brigades Board v. FC of T* 93 ATC 4052 case that a government body is a body constituted and controlled by government and that it performs functions on behalf of government. Accordingly, it cannot be said that a government body is a body of persons coming together to effect their common purpose. It follows that, where a government body is formed by government, is controlled by government and performs functions on behalf of government, it will not fall within the meaning of 'association'.
4. Section 136(1) of the FBTAA defines 'government body' to mean 'the Commonwealth, a State, a Territory or an authority of the Commonwealth or of a State or Territory'. Local councils are constituted under a state act and fall within this definition. Other examples of government bodies would include statutory authorities set up to market, regulate or promote agricultural or other products.

Example

The Agriculture Authority was created under the State Agriculture Act and is authorised by statute to buy and export Australian agricultural produce for sale overseas. The Agriculture Authority is controlled, on a day to day basis, by 6 non-government persons who were appointed by the relevant State Minister. While the Minister is not generally involved with the day to day running of the Authority, the State Agriculture Act gives him the ultimate authority over the Board. The Authority is a government body and, as such, is not an association for the purposes of section 65J of the FBTAA.

Commissioner of Taxation

06/07/95

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Related Determinations:

Related Rulings:

Subject Ref:

Legislative Ref: FBTAA 65J; 65J(1)(f); 65(1)(l); 136(1)

Case Ref: Metropolitan Fire Brigades Board v. FC of T 93 ATC 4052; Quinton v. South Australian Psychological Board (1985) 38 SASR 523

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