


TD 95/D8 - Fringe benefits tax: can administration entities or combined administration/service entities to which Taxation Ruling IT 2494 applies provide fringe benefits to employees who are also partners of an associated partnership?

 This cover sheet is provided for information only. It does not form part of *TD 95/D8 - Fringe benefits tax: can administration entities or combined administration/service entities to which Taxation Ruling IT 2494 applies provide fringe benefits to employees who are also partners of an associated partnership?*

This document has been finalised by TD 95/57.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO

Draft Taxation Determination

Fringe benefits tax: can administration entities or combined administration/service entities to which Taxation Ruling IT 2494 applies provide fringe benefits to employees who are also partners of an associated partnership?

1. No. As set out in paragraph 10 of Taxation Ruling IT 2494, we do not accept the provision of fringe benefits to employees of an administration entity or combined administration/service entity where those employees are also partners of an associated partnership (referred to in this Determination as employee/partners).

2. Concern has been expressed that where:

- a partnership provides a benefit to a partner,
- the benefit is provided through an administration or administration/service entity; and
- the partner is also an employee of the administration or administration/service entity;

a fringe benefit has been provided by the administration or administration/service entity. This then raises the question of whether the entity will be accepted for income tax purposes.

3. Where benefits are provided to an employee/partner through an administration entity or combined administration/service entity, no fringe benefits tax liability will arise as a result of the provision of benefits. Given the limited purpose of the administration entity, the benefits are considered not to have been provided to the employee/partner in respect of his or her employment with the administration entity but provided only by reason of the employee/partner's position as a partner with the partnership.

Examples:

The examples refer to Abacus Accountants, a partnership which uses a combined administration/service company, X Pty Ltd, to employ staff and provide office facilities to the partnership. Partners of Abacus Accountants are also employees of X Pty Ltd for the purposes of obtaining superannuation cover under section 82AAC of the Income Tax Assessment Act 1936 (the Act).

Example 1:

In the 1994/95 FBT year, X Pty Ltd provides car parking to its employees and employee/partners. An FBT liability will arise on benefits provided to employees but not to employee/partners. The deductibility of costs associated with the provision of car parking provided to employee/partners

(charged back to the partnership, Abacus Accountants) will need to be determined by the partnership according to section 51AGB of the Act.

Example 2:

A partner of Abacus Accountants takes a client and an employee of X Pty Ltd out to lunch at a restaurant. The total cost of the meal is \$120 paid for by:

- the employee using his personal credit card. X Pty Ltd subsequently reimburses the employee the full amount; OR*
- the partner using her personal credit card. X Pty Ltd subsequently reimburses the partner the full amount.*

X Pty Ltd will have an FBT liability in respect of the employee's meal, but not that part of the meal attributable to the employee/partner or the client. The cost attributable to the employee/partner and client will be non-deductible for income tax purposes. As per Taxation Determination TD 94/25 a 'per head' apportionment basis can be used to calculate the cost of the respective meals.

Commissioner of Taxation

12/7/95

FOI INDEX DETAIL: Reference No.

Related Determinations: TD 94/25

Related Rulings: IT 2494

Subject Ref: administration entities; car parking; entertainment; fringe benefits

Legislative Ref: ITAA 51AGB; ITAA 82AAC

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