


***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.

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## 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

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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

Case Ref:

ATO Ref: NAT 95/5052-6; FBT Cell 30/132

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