MT 2022 - Fringe benefits tax : purchased goods sold by retailers to employees at cost or above : liability for tax and record keeping requirements

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TAXATION RULING NO. MT 2022

FRINGE BENEFITS TAX : PURCHASED GOODS SOLD BY RETAILERS TO EMPLOYEES AT COST OR ABOVE : LIABILITY FOR TAX AND RECORD KEEPING REQUIREMENTS

F.O.I. EMBARGO: May be released

REF H.O. REF: L85/10-3 DATE OF EFFECT: Immediate

B.O. REF: DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1210101	FRINGE BENEFITS TAX	FRINGE BENEFITS TAX ASSESSMENT ACT: S.42, 132 and 136

PREAMBLE This Office has been asked to confirm that no liability for fringe benefits tax arises where a retailer sells goods to employees at full arm's length prices under an arm's length transaction or at a discounted price at least equal to the arm's length purchase price of those goods to the retailer. In the event that that is the case, we have been further requested to advise whether the retailer would be required to maintain records of such sales to individual employees.

2. The questions asked relate solely to sales to employees of purchased goods of a kind sold in the ordinary course of the retailer's business and the following comments are similarly restricted to these cases.

3. Division II of Part III of the Fringe Benefits Tax Assessment Act (the "Act") specifies both the circumstances in which the provision of property will give rise to a taxable fringe benefit and the taxable value of the benefit.

4. As is the general rule, it is only where the benefit - in this case the provision of goods to an employee - is provided in respect of, or by virtue of, the employment of the employee that a taxable fringe benefit arises. This is because to be subject to fringe benefits tax, a benefit must be a "fringe benefit" as defined in sub-section 136(1) of the Act. That definition requires, amongst other things, that the benefit must be provided to an employee (or associate) in respect of the employment of the employee.

5. It follows from this that sales by retailers to employees on a full arm's length basis at full arm's length prices would have no fringe benefits tax implications.

6. Where the benefit is conferred in respect of the employee's employment - generally, where the employee is entitled to a staff discount - paragraph 42(1)(b) operates to

value the benefit at the difference between the price paid by the employee and the lesser of the arm's length purchase price of those goods to the retailer and their arm's length selling price at the time of the sale.

7. As a consequence, the general rule for discounted sales by retailers to their employees is that it is only where the price charged to employees is less than the arm's length cost of those goods to the retailer that a taxable fringe benefit arises. In the event that the arm's length selling price of the particular goods falls below their cost to the retailer (e.g. damaged goods), a taxable fringe benefit will arise only where the price paid by employees is less than the arm's length selling price.

8. By virtue of section 132 of the Act an employer is obliged to keep records that explain all transactions and other acts engaged in by the employer that are relevant for the purpose of ascertaining the employer's liability to fringe benefits tax.

RULING

9. Sales of goods by retailers to their employees either at full arm's length prices or at a discounted price at least equal to the arm's length purchase price of those goods to the retailer do not give rise to a taxable fringe benefit and, in these circumstances, the retailer would not be required to keep records of sales of this type to individual employees.

COMMISSIONER OF TAXATION
28 August 1986