MT 2050 - Fringe benefits tax: payment of recipients contribution by journal entry

Taxation Ruling
Fringe benefits tax: payment of recipients contribution by journal entry

Miscellaneous Tax Rulings do not have the force of law. Each decision made by the Australian Taxation Office is made on the merits of each individual case having regard to any relevant Ruling.

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What this Ruling is about

1. This Ruling considers whether journal entries in an employer's accounts can be a payment of a 'recipients contribution', 'recipient's payment' or 'recipients rent' under the *Fringe Benefits Tax Assessment Act 1986*.

Ruling

2. Journal entries in an employer's accounts are a payment of a 'recipients contribution', 'recipient's payment' or 'recipients rent' only if all of the following conditions are met:

(a) the employee has an obligation to make a contribution to the employer towards a fringe benefit;

(b) the employer has an obligation to make a payment to the employee;

(c) the employer and employee agree to set-off the employee's obligation to the employer against the employer's obligation to the employee.

3. If payment of an employee's contribution is to be by journal entries, those entries may be made at the time the books of account are written up for income tax purposes.

Date of effect

4. As this Ruling deals with a change in a previous interpretation given by this Office, it will only apply from the fringe benefits tax year commencing 1 April 1992. For earlier fringe benefits tax years, journal entries in an employee's loan account will continue to be

accepted as a payment of a 'recipients contribution', 'recipient's payment' or 'recipients rent' if both parties have agreed to the making of the payment in that way. For those earlier years it is not necessary to show that there were cross-liabilities between the employer and employee and an agreement between them to set-off the cross-liabilities.

Explanations

5. The taxable value of a fringe benefit is usually reduced by the amount of any payment by the recipient or employee. For example, if an employee is provided with the use of a house by the employer, the taxable value of that benefit is reduced by the amount of any rent paid by the employee.

6. Journal entries, however, only amount to a payment of an employee's contribution towards a fringe benefit if the employer and employee have agreed to set-off the employee's obligation to make the contribution (where such an obligation exists) against any obligation of the employer (such as an agreed obligation of the employer to lend money to the employee) to the employee (*Manzi v. Smith* (1975) 132 CLR 671; (1975) 49 ALJR 376; *Temples Wholesale Flower Supplies Pty Ltd v. FC of T* 91 ATC 4387, 21 ATR 1606). In setting-off the liabilities it is not necessary to go through the formality of handing the money backwards and forwards (*Re Harmony and Montague Tin and Copper Mining Company* (*Spargo's Case*) (1873) LR 8 Ch App 407).

7. The rule in *Spargo's Case* cannot be applied, however, if no cross-liabilities exist between parties (*FC of T* v. *Steeves Agnew & Co. (Victoria) Pty Ltd* (1951) 82 CLR 408 per Dixon J at 421; 9 ATD 259 at 266). An agreement to make a voluntary payment by one party to another does not create a liability between the parties (*Lend Lease Corporation Ltd v. FC of T* 90 ATC 4401; (1990) 21 ATR 402 per Hill J at ATC 4406; ATR 408). Consequently, journal entries can only be used for the payment of an employee's contribution towards a fringe benefit if the employee is obliged to make that contribution. It is the employer (being the taxpayer) who needs to prove that such an obligation on the employee exists.

8. It is also necessary that the employer have an obligation to pay money to the employee. That obligation may be an existing debt such as salary due but unpaid, or the parties may agree that the employer is to lend an amount to the employee (*Brookton Co-Operative Society*

Ltd v. FC of T 81 ATC 4346; (1981) 11 ATR 880 per Mason J at ATC 4354; ATR 889). For example, the employer and employee may agree that the amount of the employee's contribution is to become a loan to the employee which is to be repaid at a future date. (*Re Associated Electronic Services Pty Ltd* [1965] Qd R 36). We take the view that the existence and use by an employee of an employee's loan account is prima facie evidence that the employer has agreed to lend money to the employee.

9. If the liabilities to be set-off are not equal, payment of the balance must be effected by other means (the *Steeves Agnew Case*).

10. Whether the employee's account has a debit or credit balance does not affect the taxable value of the fringe benefit in relation to which the contribution was made. However, if the account is in debit, both parties would need to have specifically agreed in advance that the employer would, in the circumstances, grant a further amount by way of loan through the employee's account. That loan may constitute a loan fringe benefit if the loan itself gives rise to a benefit and if the benefit is provided to the employee in respect of employment.

11. The treatment of journal entries as a 'recipients contribution', 'recipient's payment' or 'recipients rent' means that the amount so paid to the employer is assessable income of the employer for income tax purposes. The receipt of the amount by the employer, being:

(a) part of the proceeds of the employer's business; or

(b) a product of the business; or

(c) incidental to the conduct of the business,

has the character of income according to ordinary concepts (*H.R. Sinclair Pty Ltd v. FC of T* (1966) 14 ATD 194; *Automatic Totalisators Ltd v. FC of T* (1968) 15 ATD 170; *FC of T v. Reynolds* 81 ATC 4131; (1981) 11 ATR 629).

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- FBTAA 9, 10(3C), 23; FBTAA 33, 36, 43; FBTAA 48, 49, 50,
- FBTAA 51, 58P, 136(1)

case references
- Re Associated Electronic Services Pty Ltd [1965] Qd R 36
- Automatic Totalisators Ltd v. FC of T (1968) 15 ATD 170
- Brookton Co-operative Society Ltd v. FC of T 81 ATC 4346; (1981) 11 ATR 880
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- FC of T v. Steeves Agnew & Co. (Victoria) Pty Ltd (1951) 82 CLR 408; 9 ATD 259
- Temples Wholesale Flower Supplies Pty Ltd v. FC of T 91 ATC 4387; 21 ATR 1606