TD 92/164 - Income tax: insurance: are amounts paid by an employer on behalf of an employee as premiums on a life insurance policy exempt income of the employee where it is expected that the employee will obtain the amounts paid as premiums shortly after they are paid?

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This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part . Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, the Determination applies to transactions entered into both before and after its date of issue.

Taxation Determination

Income tax: insurance: are amounts paid by an employer on behalf of an employee as premiums on a life insurance policy exempt income of the employee where it is expected that the employee will obtain the amounts paid as premiums shortly after they are paid?

1. No. Under the arrangements in question here there is not expected to be any significant amount accumulated in the life insurance policy to provide for a payment on death. The policy is used as a conduit for the passage of cash, either through the withdrawal of amounts recently paid in or through the borrowing against such amounts. These types of arrangement are effectively no different from the employer depositing cash into the employee's bank account to be accessed to meet expenses that were previously paid out of the employee's salary. Arrangements that have come to this Office's attention generally involve bodies which are exempt from fringe benefits tax.

2. Where a life insurance contract is entered into with the sole or dominant purpose of being used as a means whereby an employee can obtain otherwise taxable benefits, the payments are not accepted as constituting insurance premiums for taxation purposes.

3. Amounts paid by an employer as premiums will be assessed to the employee under section 19 of the *Income Tax Assessment Act 1936* (*the Act*) as being derived by the employee at the time of payment. The general anti-avoidance provisions of the income tax law contained in Part IVA of *the Act* can be expected to be applied to these arrangements.

Example

4. The following is an example of the operation of a basic arrangement discussed above. This Determination also extends to developments of the basic arrangement, such as the introduction of loans against the policy in lieu of actual withdrawals.

5. One fringe benefits tax exempt employer 'A Co', pays its Executive Officer 'X', a salary of $50,000 per annum.

6. 'X's' tax liability (including Medicare levy) for the year ended 30 June 1992 on a salary of $50,000 is $15,939

7. Another fringe benefits tax exempt employer 'B Co', who expected to pay its Executive Officer 'Y' a salary or $50,000, enters into an arrangement with 'Y' to pay a salary of $35,000 plus $15,000 as premiums on a life insurance policy owned by 'Y'. 'Y' will need to draw from the $15,000 to meet expenses that were previously paid from the salary of $50,000. In fact 'Y' withdraws only $14,000 from the policy. The same result could have been achieved by the employer depositing cash into the employee's bank account. The introduction of the arrangement involving a life insurance policy is to provide a tax benefit to the employee.

8. It has been argued that the $15,000 is exempt from income tax. On this basis 'Y's' tax liability (including Medicare levy) for the year ended 30 June 1992 on a salary of $35,000 would be $8,931.50

9. The result of 'Y' entering into the arrangement is that he/she would be $7,007.50 better off because of the reduced income tax payments, yet both 'X' and 'Y' effectively received the same gross income of $50,000 for the year ended 30 June 1992. The cost to both employers 'A Co' and 'B Co' is the same as they are both exempt from fringe benefits tax.

10. Under this Determination both 'X' and 'Y' will be assessed on a taxable income of $50,000 and will be liable to the same amount of tax.

Commissioner of Taxation
01/10/92

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