TD 95/35 - Fringe benefits tax: if an employee (or an associate of an employee) receives an incentive award from an industry product promotion, will the award always be a fringe benefit provided under an 'arrangement' between the employer and the provider?

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This document has changed over time. This is a consolidated version of the ruling which was published on *19 July 1995*

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Australian Taxation Office

Taxation Determination TD 95/35

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, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Fringe benefits tax: if an employee (or an associate of an employee) receives an incentive award from an industry product promotion, will the award always be a fringe benefit provided under an 'arrangement' between the employer and the provider?

1. No. The award will only be a fringe benefit provided under an arrangement where an employer actively or passively participates in a product promotion conducted by a third party.

2. Subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986* defines 'arrangement' to give it an extended meaning, in common with provisions of other taxation laws, so as to include any agreement, arrangement or understanding, either expressed or implied, and whether or not intended to be enforceable under law. Where an employee is offered and accepts an award, and the participating employer takes no action to prohibit acceptance, there is an arrangement in place.

3. An employer would not be liable for fringe benefits tax where an employee is precluded from participating in a product promotion conducted by a third party. Evidence that an employer has a policy which does not allow an employee to participate in such promotions would include one or more of the following:

- manuals detailing company policy
- personnel information provided to all staff
- instructions issued to staff prohibiting acceptance of awards
- correspondence to customary providers of incentives advising of the employer's policy and requesting that its employees be excluded from product promotions
- signed undertakings by staff not to accept awards.

4. Where that evidence does not exist, or where the policy is not consistently applied, it is considered that the employer is acquiescing in the provision of the benefit, and therefore the benefit is provided under an arrangement.

5. Where an effective policy is in place, and despite that policy, an employee accepts an award from a third party provider, the award may be assessable income to the employee under section 21A, subsection 25(1) and/or paragraph 26(e) of the *Income Tax Assessment Act 1936*.

Example 1:

Al is employed in selling shoes for ABC Department Store Limited. XYZ Shoe Manufacturing Company Pty Ltd approaches Al through his employer and offers him a compact disc player for being judged the state shoe salesperson of the month. Al accepts the award. An arrangement exists and ABC Department Store Limited is liable for fringe benefits tax on the value of the award.

Example 2:

Dianne sells cars for X Car Sales Pty Ltd and is directly approached by Y Car Manufacturing Company advising her that she is entitled to a trip to Fiji, as an award under an incentive program widely publicised in the industry, for achieving sales targets in respect of sales of their motor vehicles. Dianne's employer has taken no action to prevent employees from accepting awards. X Car Sales Pty Ltd is liable for fringe benefits tax on the value of the trip accepted by Dianne as it is considered the award is provided under an arrangement.

Example 3:

John works in a sports store and sells, amongst other products, basketball equipment and accessories. John's employer has a policy in place which precludes employees from accepting incentive awards from third parties and has written to all promoters of incentive programs advising that the company does not participate in such programs. Every employee is made aware of the policy as part of their employment contract. A basketball accessory manufacturer obtains sales figures from John and approaches him directly, congratulating him on exceeding sales targets of their product and offers him, as an incentive award, a colour television. John accepts the television despite the employer's policy. It is considered that the employer has an effective policy in place and would not be liable for fringe benefits tax. John may, however, be subject to income tax on the value of the television.

Commissioner of Taxation
19/7/95

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