


TD 95/5 - Income tax and fringe benefits tax: will a non-cash business benefit and a taxable fringe benefit both arise if a low or interest free loan is made by an insurance company to an insurance agency and then on lent to an agency employee or an associate of an employee who uses the loan monies for private purposes?

 This cover sheet is provided for information only. It does not form part of *TD 95/5 - Income tax and fringe benefits tax: will a non-cash business benefit and a taxable fringe benefit both arise if a low or interest free loan is made by an insurance company to an insurance agency and then on lent to an agency employee or an associate of an employee who uses the loan monies for private purposes?*

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

Income tax and fringe benefits tax: will a non-cash business benefit and a taxable fringe benefit both arise if a low or interest free loan is made by an insurance company to an insurance agency and then on lent to an agency employee or an associate of an employee who uses the loan monies for private purposes?

1. Yes. Both a non-cash business benefit under section 21A of the *Income Tax Assessment Act 1936* (ITAA) and a loan fringe benefit under section 16 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) will arise. However, only the loan fringe benefit gives rise to a tax liability.
2. A low or interest free loan from an insurance company to an insurance agency may constitute a non-cash business benefit as defined in subsection 21A(5) of the ITAA. However, the value of the benefit will be reduced to nil under the otherwise deductible rule in subsection 21A(3) of the ITAA, because the on-lending by the insurance agency to an employee or an associate of an employee, as a fringe benefit, represents business usage of the funds.
3. The on-lending to the employee by the insurance agency constitutes a loan fringe benefit under section 16 of the FBTAA. The liability for any fringe benefits tax payable will be with the insurance agency.

Example

An interest free agency development loan is made to an insurance agency by an insurance company. The loan monies are then on-lent, by the insurance agency, interest free, to an employee of the agency and are used to purchase a yacht for personal use.

The agency development loan received by the insurance agency is a non-cash business benefit but because it was on-lent to its employee the assessable value of the benefit is reduced to nil.

The insurance agency as an employer is liable for fringe benefits tax in relation to the loan made to the employee.

Commissioner of Taxation

16/03/95

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Related Determinations:

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