

TD 95/56 - Fringe benefits tax: can a body which is formed by government, is controlled by government and performs functions on behalf of government be an 'association' for the purposes of section 65J of the Fringe Benefits Tax Assessment Act 1986 (FBTAA)?

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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, 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: can a body which is formed by government, is controlled by government and performs functions on behalf of government be an 'association' for the purposes of section 65J of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA)?

1. No. A body cannot be an 'association' where it is formed by government, is controlled by government and performs functions on behalf of government.

2. Subsection 65J(1) of the FBTAA lists the categories of organisations which are rebatable employers. In paragraphs 65J(1)(f) to 65J(1)(l), 'association' is one of the terms used to describe the types of rebatable organisations. The *Shorter Oxford English Dictionary* defines the term 'association' to be 'a body of persons associated for a common purpose; the organisation formed to effect their purpose'. The *Macquarie Dictionary* defines 'association' as being 'an organisation of people with a common purpose and having a formal structure'. Olsson J, in *Quinton v. South Australian Psychological Board* (1985) 38 SASR 523, also stated that the term 'association' has come to be regarded as attaching to a body of persons associated for a common purpose.

3. A body which is formed by government, is controlled by government and performs functions on behalf of government is clearly not formed to effect the purposes of the members of that body but is formed to effect the purposes of government. Combined with the fact that the members do not create the body (or have the power to dissolve it) and that the members do not have ultimate control over the functions of the body, such a body cannot be said to be an association.

4. Bodies which are formed by government, are controlled by government and perform functions on behalf of government would include:

- most bodies formed by the Federal, State or Territory Governments;
- most statutory authorities (including those set up to market, regulate or promote agricultural or other products);
- local government councils.

Example 1

The Agriculture Authority was created under the State Agriculture Act and is authorised by statute to buy and export Australian agricultural produce for sale overseas. The Agriculture Authority is

controlled, on a day to day basis, by 6 non-government persons who were appointed by the relevant State Minister. While the Minister is not generally involved with the day to day running of the Authority, the State Agriculture Act gives him the ultimate authority over the Board. The Authority is formed by government, is controlled by government and performs functions on behalf of government and, as such, is not an association for the purposes of section 65J of the FBTAA.

Example 2

A group of farmers, concerned about their individual capacity to sell their produce for a reasonable price at market, form a co-operative. Notwithstanding that the State Government may regulate their activities as a co-operative and may, in some cases, give the co-operative funding, it is clear that the co-operative is not a body which is formed by government for government purposes and thus the co-operative is an association for the purposes of section 65J of the FBTAA.

Commissioner of Taxation

1 November 1995

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Related Determinations:

Related Rulings:

Subject Ref: associations; fringe benefits tax; government bodies; rebateable employers; statutory authorities

Legislative Ref: FBTAA 65J; FBTAA 65J(1)(f) to 65J(1)(l); FBTAA 136(1)

Case Ref: Quinton v. South Australian Psychological Board (1985) 38 SASR 523

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