TD 95/57 - Fringe benefits tax: will benefits provided to employees of administration entities or combined administration/service entities who are also partners of an associated partnership give rise to a fringe benefits tax liability?

Australian Taxation Office

Taxation Determination TD 95/57

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: will benefits provided to employees of administration entities or combined administration/service entities who are also partners of an associated partnership give rise to a fringe benefits tax liability?

1. No. Where benefits are provided to an employee/partner through an administration entity or combined administration/service entity, no fringe benefits tax liability will arise as a result of the provision of benefits.

2. As explained in paragraph 10 of Taxation Ruling IT 2494, we do not accept the provision of fringe benefits to employees of an administration entity or combined administration/service entity where those employees are also partners of an associated partnership (referred to in this Determination as employee/partners). As stated in paragraph 9 of that Taxation Ruling, the sole justification for accepting administration entities is to enable employee/partners access to superannuation benefits. They were accepted on the clear understanding that the remuneration paid would consist solely of a reasonable amount of salary for administrative/managerial duties and that the salary would form the basis for the calculation of superannuation benefits. Salary for superannuation purposes is defined in Taxation Ruling IT 2067 and it clearly does not include fringe benefits.

3. Concern has been expressed that where:

- a partnership provides a benefit to a partner,
- the benefit is provided through an administration or administration/service entity; and
- the partner is also an employee of the administration or administration/service entity;

then a fringe benefit has been provided by the administration or administration/service entity. Given the limited purpose of the administration entity, the benefit is considered not to have been provided to the employee/partner in respect of employment with the administration entity but provided only by reason of the employee/partner's position as a partner with the partnership.

Examples:

The examples refer to Abacus Accountants, a partnership which uses a combined administration/service company, X Pty Ltd, to employ staff and provide office facilities to the

partnership. Partners of Abacus Accountants are also employees of X Pty Ltd for the purposes of obtaining superannuation cover under section 82AAC of the Income Tax Assessment Act 1936 (the Act).

Example 1:

In the 1994/95 FBT year, X Pty Ltd provides car parking to its employees and employee/partners. An FBT liability will arise on benefits provided to employees but not to employee/partners. The deductibility of costs associated with the provision of car parking provided to employee/partners (charged back to the partnership, Abacus Accountants) will need to be determined by the partnership according to section 51AGB of the Act.

Example 2:

A partner of Abacus Accountants takes a client and an employee of X Pty Ltd out to lunch at a restaurant. The total cost of the meal is paid for by:

- *the employee using his personal credit card. X Pty Ltd subsequently reimburses the employee the full amount; OR*
- *the partner using her personal credit card. X Pty Ltd subsequently reimburses the partner the full amount.*

Under either of the above circumstances, X Pty Ltd will have an FBT liability in respect of the employee's meal, but not that part of the meal attributable to the employee/partner or the client. The cost attributable to the employee/partner and client will be non-deductible for income tax purposes. As per Taxation Determination TD 94/25 a 'per head' apportionment basis can be used to calculate the cost of the respective meals.

Commissioner of Taxation
1 November 1995

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