


TD 93/D130 - Fringe Benefits Tax: is an employer liable to fringe benefits tax (FBT) on periodic payments paid to a former employee which are a reimbursement of expenditure incurred by the former employee?

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Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Fringe Benefits Tax : is an employer liable to fringe benefits tax (FBT) on periodic payments paid to a former employee which are a reimbursement of expenditure incurred by the former employee?

1. Whether an employer is liable to FBT on periodic payments paid to a former employee which constitute a reimbursement of expenses incurred by the former employee depend on whether the employer is under an obligation to make the payments or not.

2. Where an employer is under an obligation to make such periodic payments to a former employee, the payments will usually fall within the description of a 'pension'. As a fringe benefit defined in subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) does not include salary or wages for the purpose of the *Income Tax Assessment Act 1936* (ITAA) and as pensions form part of the definition of 'salary and wages' in section 221A of the ITAA, no part of the periodic payments would be subject to fringe benefits tax. (See *Tubemakers of Australia Limited v Commissioner of Taxation* 93 ATC 4207; (93) 25 ATR 183).

3. Where an employer is not under any obligation to make such periodic payments to a former employee (e.g. ex gratia payments) the payments are no longer considered to be in the nature of a 'pension'. As such, the payments constitute an expense payment fringe benefit under paragraph 20(b) of the FBTAA.

Example 1. An employer makes several payments to a former employee who is in financial distress. The payments are reimbursements of a number of expenses incurred by the former employee. The employer is under no obligation to make the payments. The employer is liable to FBT on the amounts paid.

Example 2. An employer is under an obligation to make periodic payments to a former employee. The payments reimburse the employee's liability to a medical fund. The payments are a pension and not subject to FBT.

Commissioner of Taxation
27/5/93

FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings:

Subject Ref: former employees, pension, fringe benefits tax

Legislative Ref s. 20, ss. 136(1) FBTAA, s. 221A ITAA

Case Ref: *Tubemakers of Australia Ltd v FCT* 93 ATC 4207; (93) 25 ATR 183, *FC of T v Harris* (1980) 80 ATC 4238

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