


TD 94/D116 - Fringe benefits tax: if an employee (or an associate of an employee) receives an incentive award from a 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 been finalised by TD 95/35.

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: if an employee (or an associate of an employee) receives an incentive award from a 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 where an employer actively or passively participates in or has knowledge of product promotions or where it is an industry norm that benefits are provided 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. It is considered that where an employee is offered and accepts an award, and the 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 employees are precluded from participating in product promotions arranged by third parties. Evidence that an employer does not allow an employee to participate in such promotions would include:
 - manuals detailing company policy
 - personnel information provided to all staff
 - instructions issued to staff prohibiting acceptance of awards and advising of disciplinary action if policy is not adhered to
 - 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, 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 will be assessable income to the employee under 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 Accessories Manufacturing Company with a proposal that she be given a set of car seat covers, as an award under an incentive program, for achieving sales targets in respect of sales of their products. Dianne's employer is aware that such programs are customary in the industry and 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 car seat covers 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 formal 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 approaches John directly congratulating him on exceeding sales targets of their product and offering him, as an incentive award, a colour television set. 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 will, however, be subject to income tax on the value of the television.

Commissioner of Taxation8/12/94

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Related Determinations:

Related Rulings:

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