

***TD 94/D59 - Fringe benefits tax: can the making of a loan to an employee be an exempt benefit under subsections 17(1) or 17(2) of the Fringe Benefits Tax Assessment Act 1986 where the employee is entitled to, or subsequently does, receive a reduced interest rate not available to members of the public?***

 This cover sheet is provided for information only. It does not form part of *TD 94/D59 - Fringe benefits tax: can the making of a loan to an employee be an exempt benefit under subsections 17(1) or 17(2) of the Fringe Benefits Tax Assessment Act 1986 where the employee is entitled to, or subsequently does, receive a reduced interest rate not available to members of the public?*

This document has been finalised by TD 95/18.

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: can the making of a loan to an employee be an exempt benefit under subsections 17(1) or 17(2) of the *Fringe Benefits Tax Assessment Act 1986* where the employee is entitled to, or subsequently does, receive a reduced interest rate not available to members of the public?**

1. No. Those subsections only operate to exempt loans which are made on the same terms as arm's length loans made at or about the same time to members of the public in the ordinary course of the employer's business.
2. Subsection 17(1) requires that the interest rate payable in respect of the loan is fixed. If the terms of the loan provide for the interest rate to be varied, then the exemption will not apply, and the value of the benefit should be determined under section 18.
3. The exemption provided under subsection 17(2) is conditional upon the interest rate from time to time payable under the loan being at least equal to the interest rate applicable to a similar arm's length loan made at or about the time of the employee loan. Where the interest rate on the employee loan falls below that of the comparable loan then the making of the loan is not an exempt benefit in that year. As the exemption does not apply, the taxable value of the benefit should be determined under section 18 by reference to the whole of the period in the year of tax during which the loan existed, not simply from the date that the interest rate was varied.

### *Examples*

1. *Martin is an employee of the Upstate Building Society, and takes out a personal loan with his employer at a fixed interest rate equal to the interest rate available to members of the public on similar loans. Under the loan agreement, Martin can reduce the interest rate by 5 percent after he has been employed with Upstate for 5 years. The loan will not be an exempt loan under subsection 17(1) because the interest rate can be varied.*
2. *Kelly is also an employee of Upstate, and on 1 June 1991 takes out a home loan with her employer at a variable interest rate equal to the variable interest rate available to members of the public on similar loans. Under the loan agreement, Kelly can reduce the interest rate by 2 percent after she has been employed with Upstate for 5 years, and she does so on 1 September 1992. The loan will be an exempt benefit under subsection 17(2) for the year of tax ending on 31 March 1992.*

*It will not be an exempt loan for the year of tax ending on 31 March 1993 because the interest rate does not vary in line with comparable loans to members of the public. The taxable value of the loan benefit should be calculated from 1 April 1992.*

**Commissioner of Taxation**

26/5/94

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