


TD 92/164A1 - Addendum - Income tax: insurance: are amounts paid by an employer on behalf of an employee as premiums on a life insurance policy exempt income of the employee where it is expected that the employee will obtain the amounts paid as premiums shortly after they are paid?

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Addendum

Taxation Determination

Income tax: insurance: are amounts paid by an employer on behalf of an employee as premiums on a life insurance policy exempt income of the employee where it is expected that the employee will obtain the amounts paid as premiums shortly after they are paid?

This Addendum amends Taxation Determination TD 92/164 to reflect changes to the law resulting from the operation of the *Tax Law Improvement Act 1997* and the repeal of inoperative provisions by the *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006*.

TD 92/164 is amended as follows:

1. Paragraph 3

- (a) Omit 'section 19 of the *Income Tax Assessment Act 1936 (the Act)*'; substitute 'subsection 6-5(4) or subsection 6-10(3) of the *Income Tax Assessment Act 1997*'.
- (b) Omit '*the Act*'; substitute 'the *Income Tax Assessment Act 1936*'.

2. Paragraph 5

Omit '\$50,000'; substitute '\$150,000'.

3. Paragraphs 6 to 10

Omit the paragraphs; substitute:

- 6. 'X's' tax liability (including Medicare levy) for the year ended 30 June 2009 on a salary of \$150,000 is \$48,250.

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7. Another fringe benefits tax exempt employer 'B Co', who expected to pay its Executive Officer 'Y' a salary of \$150,000, enters into an arrangement with 'Y' to pay a salary of \$125,000 plus \$25,000 as premiums on a life insurance policy owned by 'Y'. 'Y' will need to draw from the \$25,000 to meet expenses that were previously paid from the salary of \$150,000. In fact 'Y' withdraws only \$20,000 from the policy. The same result could have been achieved by the employer depositing cash into the employee's bank account. The introduction of the arrangement involving a life insurance policy is to provide a tax benefit to the employee.

8. It has been argued that the \$25,000 is exempt from income tax. On this basis 'Y's' tax liability (including Medicare levy) for the year ended 30 June 2009 on a salary of \$125,000 would be \$37,875.

9. The result of 'Y' entering into the arrangement is that he/she would be \$10,375 better off because of the reduced income tax payments, yet both 'X' and 'Y' effectively received the same gross income of \$150,000 for the year ended 30 June 2009. The cost to both employers 'A Co' and 'B Co' is the same as they are both exempt from fringe benefits tax.

10. Under this Determination both 'X' and 'Y' will be assessed on a taxable income of \$150,000 and will be liable to the same amount of tax.

4. Legislative references

Omit 'ITAA 19; ITAA Part IVA'; substitute 'ITAA 1936 Part IVA; ITAA 1997 6-5(4); ITAA 1997 6-10(3)'.

This Addendum applies on and from 14 September 2006.

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9 February 2011

ATO references

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