TD 93/90 - Income tax: does the 'otherwise deductible rule' apply to reduce the taxable value of fringe benefits provided to associates of employees?

This cover sheet is provided for information only. It does not form part of *TD 93/90 - Income tax: does the 'otherwise deductible rule' apply to reduce the taxable value of fringe benefits provided to associates of employees?*

This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2006*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of PartáIVAAA 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

Income tax: does the 'otherwise deductible rule' apply to reduce the taxable value of fringe benefits provided to associates of employees?

1. No. The 'otherwise deductible rule' does not apply to benefits provided to associates to employees. The operation of the 'otherwise deductible rule' is limited to benefits provided directly to employees.

2. The term 'associate' is defined in subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA). It carries the same meaning as subsection 26AAB(14) of the *Income Tax Assessment Act 1936*. The definition is very broad and includes relatives, partners, trustees, beneficiaries and related companies.

3. This determination does not deal with fringe benefits provided jointly to employees and their associates.

Example:

An employer provides two low interest loans which give rise to loan fringe benefits, one to an employee and one to the employee's spouse. Both the employee and the spouse invest their loan monies in shares.

***Treatment of the employee's loan** : A declaration is provided by the employee to his employer stating that the loan was used wholly for income producing purposes (as required by paragraph (c) of subsection 19(1) of the FBTAA). The 'otherwise deductible rule' enables the taxable value of this loan fringe benefit to be reduced to nil.*

***Treatment of the spouse's loan** : Even though the spouse's loan is also used for income producing purposes, there is no reduction in the taxable value of this loan fringe benefit. The 'otherwise deductible rule' does not apply because the spouse is not an employee, but is an associate of the employee.*

Commissioner of Taxation
20/5/93

FOI INDEX DETAIL: Reference No. I 1214955 Previously issued as Draft TD 92/D207
Related Determinations: TD 92/D173
Related Rulings:
Subject Ref: fringe benefits tax; 'otherwise deductible rule'; reduction in taxable value
Legislative Ref: FBTAA : 19(1), 24(1)(a), 34(1)(a), 37(a), 44(1)(a), 52(1)(a), 136(1),
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