



TD 94/98 - Fringe benefits tax: in what circumstances will an employer be liable to fringe benefits tax (FBT) for benefits provided to volunteer workers?

 This cover sheet is provided for information only. It does not form part of *TD 94/98 - Fringe benefits tax: in what circumstances will an employer be liable to fringe benefits tax (FBT) for benefits provided to volunteer workers?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *22 December 1994*

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

Fringe benefits tax: in what circumstances will an employer be liable to fringe benefits tax (FBT) for benefits provided to volunteer workers?

1. An employer will only be liable to FBT on benefits provided to volunteer workers where the benefits are provided in respect of, or by virtue of, the employment of an employee. In most cases, no FBT will arise in the case of genuine volunteer workers as the benefits will not have been provided in respect of employment.
2. Before a benefit will be subject to FBT, the benefit must be a 'fringe benefit' as defined in subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA). One of the requirements under this definition is that the benefit must be provided 'to the employee'.
3. In the FBTAA the term 'employee' is defined by reference to section 221A of the *Income Tax Assessment Act 1936* (ITAA). Under this section an 'employee' is a person who receives, or is entitled to receive, salary or wages. This encompasses, by reason of the definition of 'salary or wages' (in subsection 221A(1) of the ITAA), not only persons who are employees within the ordinary or common law meaning of the term 'employee', but also persons working under contracts that are wholly or principally for labour.
4. Whether volunteer workers will be considered to receive (or entitled to receive) salary or wages and thus be employees, will depend, amongst other things, on the level of remuneration they receive. Miscellaneous Taxation Ruling MT 2032 considers when sporting clubs may be liable for FBT. Paragraph 8 of that Ruling states where the level of payments to players does little more than offset the training and travelling expenses of the players, the players are not likely to be employees for FBT purposes. In line with that paragraph, where the level of payments to volunteer workers does little more than to offset travel expenses and the like, it would be unlikely that the volunteer workers would be considered to be employees.
5. For the purpose of determining who is an employee within the FBTAA, section 137 of the FBTAA deems that section 221A of the ITAA will apply as if the benefit were salary or wages and provided in respect of employment. However, where volunteer workers receive a benefit that, if paid in cash would not be salary or wages, then they will not be deemed to have received salary or wages and no FBT will arise.

6. It should be noted that many volunteer workers provide their services to public benevolent institutions. Benefits provided by these institutions to their employees are already exempt from FBT.

Example 1

Mary carries out work for a private hospital. She receives no cash payment for her services. The hospital agrees, however, to provide her with a motor vehicle for both business and private use. As the private use of the motor vehicle by Mary is more than incidental she is considered to be an employee for FBT purposes. Even though no salary or wages are paid by her employer, section 137 of the FBTAA applies to deem salary or wages to have been received.

Example 2

George provides his services to the local volunteer bushfire brigade. He is reimbursed for travel and other minor expenses he incurs in carrying out his duties. George is not considered to be an employee as the reimbursement he receives does not amount to salary or wages. No FBT will arise on these reimbursements.

Last Determination

This is the last Taxation Determination for the 1994 calendar year. The next Determination will be Taxation Determination TD 95/1.

Commissioner of Taxation

22/12/94

FOI INDEX DETAIL: Reference No. I 1218339

Previously issued as Draft TD 94/D95

Related Determinations:

Related Rulings: MT 2032

Subject Ref: employee; volunteer

Legislative Ref: FBTAA 136(1); FBTAA 137; ITAA 221A; ITAA 221A(1)

Case Ref:

ATO Ref: FBT Cell 30/114; 94/6076-4

ISSN 1038 - 8982