

TD 95/18 - 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 receives 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 95/18 - 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 receives a reduced interest rate not available to members of the public?*

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: 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 receives a reduced interest rate not available to members of the public?

1. No. Those subsections only operate to exempt loans that 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 be fixed. If the terms of the loan provide for the interest rate to be varied, then the exemption in subsection 17(1) will not apply.
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. If 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 is to 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 is varied.
4. Subsection 17(2) requires a comparison of the interest rate charged on the employee loan with the rate charged on a similar arm's length loan. Whilst there is no requirement that the loans be identical, we consider that the loans should be similar in terms of both their documentation and conditions. However, we consider that the inclusion of conditions such as those requiring the employee to repay or renegotiate the loan upon termination of employment or providing for a future reduction in the interest rate, will not make the loans dissimilar.

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 3 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. It will be an exempt benefit under subsection 17(2) for each year up until the year of tax during which the interest rate varies below the interest rate on comparable loans made to members of the public on or around the date of Martin's loan.

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 3 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 only be an exempt benefit for the year of tax ending on 31 March 1993 if the interest rate does not vary below the interest rate on comparable loans made to members of the public on or around 1 June 1991. If not exempt, the taxable value of the loan benefit should be calculated from 1 April 1992.

3. Another employee of Upstate, Julie, takes out a home loan on 1 June 1991 which is 'capped' for 12 months at a rate also available to members of the public. Twelve months later Julie's loan reverts to a variable loan at an interest rate which is 3 percent below that which is available to members of the public who took out similar loans on or around 1 June 1991.

The loan is an exempt loan for the year of tax ending 31 March 1992 but not for the year of tax ending 31 March 1993. The taxable value of the loan benefit should be calculated from 1 April 1992.

Commissioner of Taxation

4/5/95

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