

# ***TR 1999/5W - Fringe benefits tax: employee benefit trusts and non-complying superannuation funds - meaning of 'associate' - property fringe benefits***

⚠ This cover sheet is provided for information only. It does not form part of *TR 1999/5W - Fringe benefits tax: employee benefit trusts and non-complying superannuation funds - meaning of 'associate' - property fringe benefits*

⚠ This ruling is being reviewed as a result of a recent court/tribunal decision. Refer to Decision Impact Statement: Commissioner of Taxation v Indooroopilly Childrens Services Pty Ltd (Published 23 March 2007).

⚠ This document has changed over time. This is a consolidated version of the ruling which was published on *27 June 2007*



# Notice of Withdrawal

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## Taxation Ruling

### Fringe benefits tax: employee benefit trusts and non-complying superannuation funds – meaning of ‘associate’ – property fringe benefits

Taxation Ruling TR 1999/5 is withdrawn with effect from today.

1. Taxation Ruling TR 1999/5 explained the Commissioner’s view in relation to the application of fringe benefits tax to arrangements where an employee benefit trust or non-complying superannuation fund was established and a contribution was made by the employer to the trustee in respect of potential beneficiaries (being the employees of the business).
2. In TR 1999/5 the Commissioner expressed the view, amongst other things, that there was a ‘fringe benefit’ under the *Fringe Benefits Tax Assessment Act 1986* at the time of the payment of money to the trust, notwithstanding that the payment was not in respect of a specific employee.
3. The decision of the Full Federal Court in *Commissioner of Taxation v. Indooroopilly Children Services (Qld) Pty Ltd* [2007] FCAFC 16 found that, for the purposes of determining whether there was a ‘fringe benefit’, it was necessary to identify, at the time a benefit was provided, a particular employee in respect of whose employment the benefit was provided. Whether a particular employee can be so identified and whether that gives rise to a ‘fringe benefit’ are questions of fact to be determined on a case by case basis.
4. However, the Commissioner’s views on other matters discussed in TR 1999/5 were supported by the decision in *Caelli Constructions (Vic) Pty Ltd v. FC of T* (2005) 147 FCR 449, that is, that a trustee of a trust or a non-complying superannuation fund can be an ‘associate’ of an employee where the employee is capable of benefiting under the trust or fund, and that the payment of money by an employer to the trustee of a trust in respect of the employment of an employee is the provision of a property fringe benefit.
5. TR 1999/5 is withdrawn as the Commissioner accepts the finding of the Full Court in *Indooroopilly*, as set out in paragraph 3 of this Notice, and as the Court has accepted the Commissioner’s other views expressed in TR 1999/5, as set out in paragraph 4 of this Notice.

# TR 1999/5

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6. The Commissioner will consider whether a replacement Ruling or other product is required following the withdrawal of TR 1999/5, taking into account the clear views expressed by the Federal Court and the understanding of employee benefit arrangements at this time.

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## Commissioner of Taxation

27 June 2007

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### ATO references

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