TD 94/D78 - Fringe benefits tax: can practice companies to which Taxation Ruling IT 2503 applies, provide fringe benefits to employees?

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This document has been finalised by TD 95/34.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Fringe benefits tax: can practice companies to which Taxation Ruling IT 2503 applies, provide fringe benefits to employees?

1. Yes. Where a practice company's income is predominantly from personal service income, IT 2503 states that the ATO will accept the incorporation of the practice where the only advantage for income tax purposes is access to greater superannuation benefits. The ATO will accept such practice companies providing fringe benefits as part of an employee's remuneration package, provided that no overall taxation advantage is gained, other than access to greater superannuation benefits.

2. It is accepted that there will not be an overall taxation advantage as a result of:

- a difference in fringe benefits tax payable and the amount of tax that would have been payable if the benefit was provided in the form of salary or wages;
- a different amount of tax payable arising from the different methods of calculating car benefits under the *Fringe Benefits Tax Assessment Act 1986*, as compared with the comparable tax effect under the *Income Tax Assessment Act 1936*.

3. These practice companies should not, however, provide exempt benefits other than unavoidable exempt benefits such as benefits arising from the provision of workers' compensation.

Example:

Dr Bloggs is employed as a medical practitioner by a practice company. The company provides him with a motor vehicle for private use. The practice company has not breached IT 2503 by providing the vehicle. Fringe benefits tax is payable by the company on the car fringe benefit.

Commissioner of Taxation
07/07/94

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