TD 93/D165 - Fringe benefits tax: employment agreement: does the payment or the reimbursement of costs, incurred by an employee in association with an employment agreement, give rise to a liability under the Fringe Benefits Tax Assessment Act 1986 to the employer?

This cover sheet is provided for information only. It does not form part of *TD 93/D165 - Fringe benefits tax: employment agreement: does the payment or the reimbursement of costs, incurred by an employee in association with an employment agreement, give rise to a liability under the Fringe Benefits Tax Assessment Act 1986 to the employer?*

This document has been finalised by TD 93/165.

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: employment agreement: does the payment or the reimbursement of costs, incurred by an employee in association with an employment agreement, give rise to a liability under the *Fringe Benefits Tax Assessment Act 1986* to the employer?

1. Yes. Where the employer pays expenses incurred by the employee or reimburses expenses incurred by the employee then the employer provides a fringe benefit under the Fringe Benefits Tax legislation. The value of the fringe benefit may be reduced by the 'otherwise deductible' rule.

2. Under the Employee Relations Act (Vic) 1992 relationships between employers and employees are governed by employment agreements. Existing award conditions are to be phased out.

3. An employment agreement is a written, legal and binding confirmation of the employer/employee relationship. The agreement covers rates of pay, working conditions, leave entitlements and many other special provisions. Agreements are for a fixed term, not exceeding five years.

4. Costs may be incurred by both the employer and the employee and include:

- representation (which could be a union, an accountant, a lawyer or any other representative) during negotiation;
- costs associated with the drawing up of the agreement;
- lodgement fees; and
- costs associated with settlement of disputes.

Example 1:
Kathy has been employed by Damien since 1984. In March 1993 they arrange for an employment agreement to be drawn up to comply with the new legislation. Kathy takes her contract to her lawyer, who checks it. Her lawyer sends her an account for $350 for services rendered. Damien pays the account.

Damien is liable for Fringe Benefits Tax. However, the value of the fringe benefit is reduced by the amount which would otherwise have been deductible to Kathy. As Kathy would have been entitled to a deduction for this amount, the value of the benefit is reduced to nil.

Example 2:
Charles leaves Goldmine Pty Ltd, to join ABC Bank Pty Ltd. The new job is an advancement for him, as he will be paid a much higher salary and has much better long term prospects. They arrange for an employment agreement to be drawn up to comply with the new legislation. Charles takes the agreement to his lawyer who checks it . He sends him an account for $150 for services rendered. ABC Bank Pty Ltd reimburses Charles for the $150 he paid to his lawyer.

The taxable value of the fringe benefit is $150. As the payment would not have been an allowable deduction to Charles, the fringe benefit is the full amount of the payment made by ABC Bank Pty Ltd.

Commissioner of Taxation
24/6/93

FOI INDEX DETAIL: Reference No.
Related Determinations: TD 93/D161, TD 93/D162, TD 93/D163, TD 93/D164
Related Rulings:
Subject Ref: employment agreement
Legislative Ref: FBTAA 20; FBTAA 24
Case Ref:
ATO Ref: MOR

ISSN 1038 - 8982