# *MT 2016 - Fringe benefits tax : benefits not taxable unless provided in respect of employment*

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TAXATION RULING NO. MT 2016

FRINGE BENEFITS TAX : BENEFITS NOT TAXABLE UNLESS PROVIDED IN RESPECT OF EMPLOYMENT

F.O.I. EMBARGO: May be released

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| I 1206283 | FRINGE BENEFITS TAX | FRINGE BENEFITS TAX ASSESSMENT ACT; S.136 & ss.148(1) |

PREAMBLE Section 136 of the Fringe Benefits Tax Assessment Act 1986 contains definitions of a number of expressions used in the operative sections of the Act. One such definition is of the term "fringe benefit". The meaning of this term is central in determining a liability to fringe benefits tax. It is a benefit provided in respect of an employee in a year of tax that, subject to the application of the rules in Part III of the Act relating to the various categories and taxable values of taxable fringe benefits, gives rise to a fringe benefits tax liability.

2. An essential element of the definition of "fringe benefit" is that the benefit must be one provided in respect of the employment of the employee. Unless a benefit is provided in the context of an employer-employee relationship the tax has no application.

3. Section 148 qualifies the meaning that is to be given to references in the Act to benefits provided "in respect of" the employment of an employee.

4. Sub-section 148(1) seeks to anticipate arguments that might otherwise be put so as to narrow the defined meaning of "fringe benefit". The sub-section is based in part on experiences of difficulties with the practical application of paragraph 26(e) of the Income Tax Assessment Act 1936.

5. Sub-section 148(1) does not remove in any circumstances the fundamental requirement that, before there can be a tax liability, the benefit under consideration has to be provided in respect of the employment of the employee. Where that requirement is satisfied, sub-section 148(1) ensures that the benefit will not be regarded as other than a fringe benefit subject to tax by reason that:

- the benefit may also be provided in respect of some other matter or thing;

- the benefit is in respect of previous employment or prospective employment;

- the benefit is more than adequate to the needs or wants of the recipient;

- the benefit is also provided to another person;

- the benefit is to an extent offset by some inconvenience or disadvantage;

- the benefit has a use in connection with the employment;

- the benefit is or is not in the nature of income;

- the benefit is or is not a reward for services.

Under the various valuation rules contained in the Act, however, some of the above factors may be taken into account in determining the taxable value of a benefit.

6. In particular, the fact that the benefit is used in the course of an employee's employment will reduce or eliminate any fringe benefits tax liability by virtue of the "otherwise deductible to employee" rules built into the valuation rules, e.g., section 24. Put broadly, these have the effect of reducing the otherwise taxable amount by such deduction as would have been allowable to the employee for income tax purposes had he or she borne the relevant expenditure. In addition, certain remote area concessions built into the valuation rules recognise the inconviences that may be associated with working in those areas.

FACTS

7. It has been suggested that sub-section 148(1), particularly when read in the context of the definition of "employee" in section 136 which takes in current, future and former employees, extends the meaning of "in respect of the employment of an employee" and, consequently, gives excessive width to the coverage of the Fringe Benefits Tax Assessment Act. Some examples of benefits said to be thus brought within the scope of the tax include:

(a) the value of accommodation and meals provided in the family home where children of a primary producer work on the family farm;

(b) similarly, the value of board provided free in the family home to a son who is apprenticed to his father as a motor mechanic;

(c) birthday presents given to children who work in small businesses run by their parents;

(d) a wedding gift given by parents to an adult child who had some years earlier worked after school in the family business;

(e) an interest-free or concessional loan given to such a child for the purpose of buying a matrimonial home;

(f) the rental value of a farm homestead occupied by a family whose private company conducts the farming business in which they work and holds the title to the homestead.

RULING

8. To be subject to fringe benefits tax two essential requirements must be satisfied. First, the benefit must be provided to an employee (or associate) and, second, the benefit must be provided in respect of the employment of the employee.

9. The reference in the law to future or former employees does not curtail the requirement that the benefit also be provided in respect of the employment of the employee. In the context of "future" or "former" employees the reference to employment is, by virtue of the definitions of those terms and the definition of "current employee", a reference to the employment activities ultimately undertaken in the case of a future employee or formerly undertaken in the case of a former employee.

10. Seen in context, therefore, the reference to future and former employees ensures only that a benefit provided in respect of employment activities does not escape fringe benefits tax merely by virtue of the fact that it is given in advance of the employment commencing or after the employment ceases. For example, the inclusion of former employees ensures that a benefit (e.g., a low interest loan) that continues to be provided to a former employee by virtue of his or her former employment remains subject to fringe benefits tax.

11. Nor does sub-section 148(1) curtail the basic requirement for the application of fringe benefits tax that the benefit must be provided in respect of the employment of the employee.

12. In each of the examples in paragraphs 7(a) to (e) above, the facts as presented lead strongly to the conclusion that the benefits and gifts were given in an ordinary family setting and would have been a normal incidence of family relationships. It would not be concluded that they were to any extent provided in respect of either past or current employment of the recipient members.

13. That is not to be taken as implying that all benefits provided to children or other family members who are employed in a family business will be outside the scope of the tax. For example, the private use of a motor vehicle provided to a relative employed as a travelling salesman in a business conducted by a family company could ordinarily be expected to be treated as a fringe benefit provided in an employment context rather than a family one.

14. The fact situation at paragraph 7(f) above needs to be

considered in some detail. If the arrangement under which title to the homestead lies in the private company has been treated by the parties as a family arrangement rather than as a business one for income tax purposes this will be an indication that the occupancy did not arise in respect of employment of the family members by the company. The arrangement may, for example, owe its existence to previous death duty considerations. In that case it would be expected that expenditures in relation to the homestead, e.g., repairs, fuel, would be met by the occupants and, being private expenses, not claimed as deductions.

15. If, on the other hand, the homestead was being treated by the company as a business asset and income tax deductions were being claimed for expenses incurred by the company in respect of the homestead it would generally be concluded that the occupancy of the homestead was a fringe benefit arising in respect of employment by the company. That may not be the case, however, if the only expenses claimed related to a room set aside solely for use as a business office.

COMMISSIONER OF TAXATION
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