



TD 93/106 - Fringe benefits tax: who is a "suitably qualified valuer" for the purposes of paragraph 39D(3)(a) of the Fringe Benefits Tax Assessment Act 1986 (the FBTA)?

 This cover sheet is provided for information only. It does not form part of *TD 93/106 - Fringe benefits tax: who is a "suitably qualified valuer" for the purposes of paragraph 39D(3)(a) of the Fringe Benefits Tax Assessment Act 1986 (the FBTA)?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *17 June 1993*

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: who is a "suitably qualified valuer" for the purposes of paragraph 39D(3)(a) of the *Fringe Benefits Tax Assessment Act 1986* (the FBTAA)?

1. Paragraph 39D(3)(a) of the FBTAA (inserted by the *Taxation Laws Amendment (Car Parking) Act 1992*) requires that where an employer elects to use a market valuation of a car parking benefit the valuation must be provided by "a suitably qualified valuer". Paragraph 39D(3)(b) also requires that the valuer be at arms-length in relation to the valuation.

2. It is considered that a "suitably qualified valuer" is a person who has expertise in the valuation of parking facilities, and who would likely be accepted as an expert witness on the issue of the valuation of parking facilities before a court or tribunal.

3. Whilst it has been determined by the courts that the expertise of a person in a particular field is an issue of fact in each case, we consider that expertise in the valuation of parking may be acquired through relevant experience in the parking industry over a significant period of time, or from a course of study.

4. The attainment of relevant professional qualifications or recognition by an appropriate professional association or organisation would be indicative of expertise in this field.

5. The onus of proving that a person has expertise in a particular field will rest in each case with the taxpayer.

6. A valuer will not be considered to be at "arms-length" in relation to the valuation (as required by paragraph 39D(3)(b)) if he or she is either:

- . the employer obtaining the valuation or the provider of the car parking facilities to be valued;
- . an "associate" of the employer or of the provider of the car parking facilities to be valued;
- . an employee of either the employer or the provider of the car parking facilities to be valued; or
- . an employee of an "associate" of the employer or the provider of the car parking facilities to be valued.

"Associate" has the meaning given by section 26AAB of the *Income Tax Assessment Act 1936*.

Examples

Bill Bloggs is a registered valuer who specialises in the valuation of commercial properties and car parks associated with commercial properties for the purposes of determining lease premiums. He is considered to be a suitably qualified valuer.

Sue Smith has been employed for 5 years by 'Undercover Parking' as a sales manager. Her duties include the assessment of the value of car parks managed by Undercover and determination of the price to be charged to commercial clients. Although she has no formal qualifications in property valuation, she is considered to be a suitably qualified valuer for the purposes discussed above. (Note that paragraph 39D(3)(b) would preclude Sue from providing valuations to clients of "Undercover" for the purposes of determining their FBT liability for the provision of car parking benefits in these circumstances).

Joe Smith has worked as a personnel manager for "Undercover Parking" for 10 years and has not been involved in the valuation of car parking services in that time. Due to the nature of Joe's participation in the car parking industry, it is not considered that he is suitably qualified to assess the value of car parking facilities.

John Jones is a real estate agent whose experience and expertise is in the area of domestic housing. He is not considered to be a suitably qualified valuer of car parking facilities.

Commissioner of Taxation

17/6/93

FOI INDEX DETAIL: Reference No. I 1215201

Previously issued as Draft 93/D95

Related Determinations: 93/72; 93/71

Related Rulings:

Subject Ref: car parking; fringe benefits tax; suitably qualified valuer

Legislative Ref: FBTAA 39D(3)(a)

Case Ref:

ATO Ref: NO 93/2841-6

ISSN 1038 - 8982