TD 95/34 - Fringe benefits tax: can practice companies to which Taxation Ruling IT 2503 applies, provide fringe benefits to employees?

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Australian Taxation Office

Taxation Determination TD 95/34

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: 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, Taxation Ruling IT 2503 states that we will accept the incorporation of the practice where the only advantage for income tax purposes is access to greater superannuation benefits. We will accept such practice companies providing fringe benefits as part of an employee's remuneration package, provided that no material taxation advantage is gained, other than access to greater superannuation benefits.

2. It is accepted that there will not be material 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;
- the different amount of tax payable arising from the different methods of calculating certain benefits (e.g., motor vehicle benefits, remote area housing benefits, or living-away-from-home allowance benefits) under the *Fringe Benefits Tax Assessment Act 1986*, as compared with the tax effect if those benefits had been dealt with under the *Income Tax Assessment Act 1936*.

3. These practice companies should not, however, provide exempt benefits (e.g., provision of free or subsidised child care facilities) other than unavoidable exempt benefits such as benefits arising from a statutory requirement on the company (e.g., the provision of worker's compensation).

4. A description of what is a practice company for the purpose of this Determination is set out in paragraph 8 of Taxation Ruling IT 2277. That Ruling states that a practice company arises where a business formerly conducted by a sole trader or partnership is taken over by a company created for the purpose. The sole trader or partners are then employed by the company.

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, and fringe benefits tax is payable by the company on the car fringe benefit.

Commissioner of Taxation
12/7/95

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