

[382] Repayment of a loan - a fringe benefit?

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In its 23 February 2007 decision in *FCT v Slade Bloodstock Pty Ltd* [2007] FCA 188 (see 2007 WTB 9 [364]), the Federal Court held that a repayment of a loan was a fringe benefit for the purposes of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA).

This is an extraordinary proposition and, if correct, will have significant implications.

Facts

Mr Slade was an accountant with a life long wish to breed race horses. In 1999, he and his wife set up a company to begin a breeding program. Mr Slade was the sole director and he and his wife were the only shareholders. The company had no other employees. As is usual in such situations, the company paid no wages to them.

Mr and Mrs Slade provided the working capital to the company in the form of a loan and a formal loan agreement was entered into on commercial terms. The loan was repayable as and when required by Mr and Mrs Slade. The loan agreement contemplated that the loan could be repaid by the company making payments on behalf of Mr and Mrs Slade and this is what happened eg the company periodically paid off their credit cards.

The Commissioner claimed that the payments were a fringe benefit for the purpose of the FBTAA.

Decision

The Federal Court held that the payments, although a repayment of the loan, also constituted a fringe benefit by the company to Mr and Mrs Slade. The Court's reasoning was to the following effect:

- The payments conferred a "benefit" on Mr and Mrs Slade: s 136(1) FBTAA.
- The benefit was a fringe benefit in relation to an employee because it fell within the words of s 136(1) as a benefit "in respect of the employment of the employee".
- The Court noted that by virtue of s 148(1), the provision of a benefit to a person in respect of his employment as an employee is a reference to the provision of such a benefit.
 - "(a) whether or not the benefit is also provided in respect of, by reason of, by virtue of, or for or in relation directly or indirectly to, any other matter or thing; ...
 - (g) whether or not the provision of the benefit is, or is in the nature of, income."
- It was irrelevant, according to the Court, that the repayments arose because Mr and Mrs Slade had lent the money to the company: s 148(1)(a). In this case, the company repaid the loans by paying their personal debts, eg payment of credit cards and in the words of the Court: "Here the repayments were also by reason of, by virtue of, or for, in or in relation, directly or indirectly to the employment. Mr and Mrs Slade received no other remuneration. There were no other employees. The Company's business could not have operated without their work as employees."

Contrary view

It is suggested that the above reasoning is unsound.

The Full Federal Court has accurately stated the legal position of what is a fringe benefit in *J & G Knowles & Associates Pty Limited v FCT* (2000) 44 ATR 22:

"Whatever question is to be asked, it must be remembered that what must be established is whether there is a **sufficient** or **material**, rather than **a**, causal connection or relationship between the benefit and the employment. There is, in any event, a danger in placing too much emphasis on causation." [Emphasis added]

"Here the question whether there is a sufficient or material connection or relationship between a benefit and employment is assisted by having regard to the purpose or object of imposing FBT on employers. That purpose was stated by the then Treasurer, Mr Keating, in the Second Reading Speech (2 May 1986, Hansard, House of Representatives) p 3020 to be to "ensure that all forms of remuneration paid to employees bear a fair measure of tax..."

"To put the matter another way, although the process of characterising the benefit provided in a particular case can involve questions of fact and degree, it is not sufficient for the purposes of the Act [FBTAA] merely to enquire whether there is some causal connection between the benefit and the employment: see *FCT v Rowe* (1995) 60 FCR 99 at 114 and 123; 31 ATR 392 at 404 and 412. Although Brennan, Deane and Gaudron JJ observed in *Technical Products* at 47, that the requisite connection will not exist unless there is "some discernible and rational link" between the two subject matters which the statute requires to be linked, as was pointed out by Dawson J (at 51), the connection must be "material"."

The determining question of fact, in the present circumstances, was whether the payments made on behalf of Mr and Mrs Slade were repayments of the loan.

Once it was decided that, as a matter of fact, there were repayments of the loan, it was irrelevant whether Mr and Mrs Slade received any remuneration for being employees. If they had been remunerated, the company would still have been under an obligation to repay the loan when called upon by them. The issue of remuneration had no relevance to the existence of the loan or its repayment. It was likewise irrelevant whether Mr and Mrs Slade directed payment not to them, but to those who they owed money, as it in no way altered the character of the payment.

In the present case, there was, in my view, no sufficient or material connection or relationship between the benefit and employment.