


CR 2023/28 - National Rugby League Limited - the provision of meals and accommodation to employees and their associates during the COVID-19 pandemic

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Status: **legally binding**

Class Ruling

National Rugby League Limited – the provision of meals and accommodation to employees and their associates during the COVID-19 pandemic

📌 Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out the fringe benefits tax (FBT) consequences for the National Rugby League Limited (NRL) and the 12 NRL clubs listed in paragraph 4 of this Ruling who provided fringe benefits in the form of meals and accommodation and other relevant benefits to employees (Club employees and NRL employees) and their immediate families (associates) during the temporary relocation of the 2021 NRL competition to Queensland as a result of the COVID-19 pandemic (the temporary relocation period).
2. Details of this scheme are set out in paragraphs 15 to 30 of this Ruling.
3. All legislative references in this Ruling are to the *Fringe Benefits Tax Assessment Act 1986* (FBTAA), unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you are the NRL or one of the 12 NRL clubs (an NRL Club) listed in this paragraph who provided fringe benefits in the form of meals and accommodation and other relevant benefits to Club employees, NRL employees and their associates during the temporary relocation period:

- Parramatta National Rugby League Club Pty Ltd
- Bulldogs Rugby League Club Ltd
- Cronulla Sutherland District Rugby League Football Club Limited

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- Knights Rugby League Pty Limited
- Manly Warringah Sea Eagles Limited
- Penrith District Rugby League Football Club Ltd
- Eastern Suburbs District Rugby League Football Club Limited
- The Canberra Raiders Pty Limited
- St George Illawarra Rugby League Football Club Pty Limited
- West Tigers Rugby League Football Pty Ltd
- South Sydney Rabbitohs District Rugby League Football Club Limited
- Melbourne Storm Rugby League Club Limited.

When this Ruling applies

5. This Ruling applies to the fringe benefits tax year ending 31 March 2022 (the 2022 FBT year).

Ruling

Benefits provided to Club employees, NRL employees and their associates during quarantine period

6. Temporary accommodation provided to Club employees, NRL employees and their associates in Queensland-based quarantine hotels, prior to moving to Queensland-based NRL hubs, is an exempt benefit under section 58N.

Benefits provided to Club employees, NRL employees and their associates during the temporary relocation period

Meals

7. The meals provided to the Club employees, NRL employees and their associates by the NRL and NRL Clubs are property benefits under section 40.

8. The reimbursement of Club employees, NRL employees and their associates for meals and other relevant benefits by the NRL and NRL Clubs are expense payment benefits under section 20.

9. The meals provided to the Club employees, NRL employees and their associates, either as property benefits or expense payment benefits, will be living-away-from-home (LAFH) food fringe benefits as defined in subsection 136(1). As the conditions in section 63 have been met, there will be a reduction in the taxable value of the LAFH food fringe benefits.

10. The allowance provided to the Club employees, NRL employees and their associates by the NRL and NRL Clubs for meals is a living-away-from-home allowance (LAFHA) benefit under subsection 30(1).

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11. The taxable value of the LAFHA benefit will be reduced by the exempt food component where expenditure incurred on meals for Club employees, NRL employees and their associates did not exceed the amount of reasonable food and drink expenses for the 2022 FBT year as determined by the Commissioner in Taxation Determination TD 2021/3 *Fringe benefits tax: reasonable amounts under section 31G of the Fringe Benefits Tax Assessment Act 1986 for food and drink expenses incurred by employees receiving a living-away-from-home allowance fringe benefit for the fringe benefits tax year commencing on 1 April 2021.*

Accommodation

12. The accommodation provided to the Club employees, NRL employees and their associates by the NRL and NRL Clubs is a residual benefit under section 45.

13. As the conditions in subsection 47(5) have been met, the accommodation provided to Club employees, NRL employees and their associates will be an exempt residual benefit.

Other relevant benefits – education support and child care costs

14. The education support and child care costs provided for the children of Club employees, NRL employees and their associates is a residual benefit under section 45.

Scheme

15. The following description of the scheme is based on information provided by you, including:

- NRL Club accommodation details – specific detail on the time periods in Queensland and nature of accommodation for each NRL Club, and
- NRL Apollo 21 Manual – covering Queensland NRL hub arrangements.

16. If the scheme is not carried out as described, this Ruling cannot be relied upon by you.

17. As a result of the significant COVID-19 pandemic in New South Wales (NSW), Victoria (VIC) and the Australian Capital Territory (ACT) in 2021, the Australian Rugby League Commission decided to temporarily relocate the 12 NRL Clubs (listed in paragraph 4 of this Ruling) into south-east Queensland (QLD) to continue to compete in the 2021 NRL competition at QLD sporting venues.

18. The temporary relocation was undertaken with the purpose of ensuring the continuance of the 2021 NRL competition, in addition to work health and safety considerations such as preventing the transmission of COVID-19 among players, NRL Club staff, officials and their immediate families and preventing the unemployment of the large workforce associated with the competition. The NRL sought to avoid the suspension of the 2021 NRL competition, as had occurred in 2020.

19. Players under their contracts had to temporarily relocate, or otherwise face breaching their contracts. Likewise, NRL Club staff and officials were required to temporarily relocate at the request of their Club, under their respective Club's licence with the NRL.

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20. It was also decided that it was essential that immediate family members (described outside this section of the Ruling as 'associates') should temporarily relocate for the mental and physical health considerations of players, Club staff, officials and families.

21. The NRL provided for players, NRL Club staff and officials (Club employees), NRL officials including referees and other game day controllers (NRL employees) and their respective immediate families to be temporarily relocated to the QLD-based NRL hubs on the Gold Coast, Sunshine Coast and Brisbane. This included the provision of accommodation and meals and other relevant benefits (either directly or by way of reimbursement).

22. Generally, Club employees and NRL employees arrived at QLD-based quarantine hotels on 14 July 2021 and subsequently moved to other hotels and accommodation after exiting quarantine on 29 July 2021.

23. Immediate family members arrived at QLD-based quarantine hotels (where required) after the Club employees and NRL employees in 2 separate groups on 21 July 2021 and 30 August 2021, respectively.

24. Generally, accommodation during the quarantine period was provided in the form of single occupancy hotel rooms, units and serviced apartments. The benefits provided by the NRL during this period were the payment of Queensland Department of Health quarantine hotel expenses.

25. In order for the NRL to continue to schedule NRL games and ensure a controlled environment, for COVID-19 health and safety reasons, the Club employees and the NRL employees were required to stay in short-term accommodation away from the general public.

26. After the quarantine period identified in paragraphs 22 and 23 of this Ruling, Club employees, NRL employees and their respective immediate families were provided with the following benefits:

- food expenses in the form of hotel catering for breakfast, lunch, dinner and snacks
- compensation for food costs in the form of meal, food and incidental allowance payments
- accommodation in the form of hotel rooms, self-catering apartments, units and apartments, and
- education support and child care costs for children of Club employees and NRL employees, as set out in the NRL Children Education Support Document.

27. Benefits provided to Club employees and their respective immediate families by the NRL were so provided under a mutual arrangement between the NRL and the relevant NRL Club.

28. Club employees, NRL employees and their respective immediate families were repatriated to their home locations in NSW, VIC and ACT as soon as feasible upon their NRL Club completing their season commitments. This generally occurred in September 2021 and October 2021 when the Club exited the competition.

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29. The Club employees and NRL employees have provided a declaration prior to the declaration date¹ about LAFH.

30. This Ruling does not seek to address the FBT consequences of transport expenses, such as travel to and from the QLD-based NRL hubs to games played elsewhere in QLD.

Commissioner of Taxation

24 May 2023

¹ 'Declaration date' is defined in subsection 136(1) as 'in relation to an employer in relation to a year of tax, means the date of lodgment of the return of the fringe benefits taxable amount of the employer of the year of tax, or such later date as the Commissioner allows'.

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Appendix – Explanation

❶ *This Explanation is provided as information to help you understand how the Commissioner’s view has been reached. It does not form part of the binding public ruling.*

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Have fringe benefits been provided to Club employees, NRL employees and their associates?

31. A 'fringe benefit' is defined in subsection 136(1).
32. Broadly, a 'fringe benefit' arises when the following conditions are satisfied:
- a benefit is provided at any time during the year of tax
 - the benefit is provided to an employee or an associate of the employee
 - the benefit is provided by
 - their employer
 - an associate of the employer
 - a third party other than the employer or an associate under an arrangement between the employer or associate of the employer and the third party, or
 - a third party other than the employer or an associate of the employer, if the employer or an associate of the employer
 - participates in or facilitates the provision or receipt of the benefit, or
 - participates in, facilitates or promotes a scheme or plan involving the provision of the benefit; and the employer or associate knows, or ought reasonably to know, that the employer or associate is doing so
 - the benefit is provided in respect of the employment of the employee
 - the benefit is not one that is specifically excluded as per paragraphs (f) to (s) of the definition of 'fringe benefit' in subsection 136(1).

Is a benefit provided?

33. Subsection 136(1) provides the definition of a 'benefit' as including:
- any right (including a right in relation to, and an interest in, real or personal property), privilege, service or facility and, without limiting the generality of the foregoing, includes a right, benefit, privilege, service or facility that is, or is to be, provided under:
- (a) an arrangement for or in relation to:

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- (i) the performance of work (including work of a professional nature), whether with or without the provision of property.

34. The NRL and the NRL Clubs provided benefits to Club employees, NRL employees and their associates including accommodation and meals and other relevant benefits (being education support and child care costs). Each is a 'benefit' as defined in subsection 136(1).

35. Therefore, this condition in the definition of 'fringe benefit' in subsection 136(1) is satisfied.

Is the benefit provided to an employee or an associate of an employee?

36. An 'employee' is defined in subsection 136(1) to include a current, future and former employee. Subsection 136(1) defines a 'current employee' to mean 'a person who receives, or is entitled to receive, salary or wages'.

37. 'Salary or wages', as defined in subsection 136(1), means payments from which an amount must be withheld under section 12-35 of Schedule 1 to the *Taxation Administration Act 1953*.

38. The NRL Clubs pay Club employees payments which are 'salary or wages'. Therefore, the Club employees are current employees of the NRL Clubs.

39. The NRL pays NRL employees payments which are 'salary or wages'. Therefore, the NRL employees are current employees of the NRL.

40. An employee's immediate family, being their spouse and children, are their 'associates' as defined in subsection 136(1) by reference to the definition in section 318 of the *Income Tax Assessment Act 1936* (ITAA 1936).

41. Therefore, this condition in the definition of 'fringe benefit' in subsection 136(1) is satisfied.

Is the benefit provided by the employer, an associate of the employer or a third party (the arranger)?

42. NRL employees and their associates were provided benefits by the NRL, their employer.

43. For Club employees and their associates, they were provided benefits by the respective NRL Club, their employer.

44. Some benefits were also provided to Club employees under a mutual arrangement between the NRL and the NRL Club. In these circumstances, paragraph (e) of the definition of 'fringe benefit' in subsection 136(1) has been satisfied as the NRL (as the arranger) has provided the benefits to the Club employees or their associates under an arrangement with the respective NRL Clubs.

45. Therefore, this condition in the definition of a 'fringe benefit' in subsection 136(1) is satisfied.

Is the benefit provided in respect of the employee's employment?

46. In considering whether a benefit is provided to an employee in respect of their employment, subsection 136(1) defines 'in respect of', in relation to the employment of an

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employee, to include ‘by reason of, by virtue of, or for or in relation directly or indirectly to, that employment’.

47. In *J & G Knowles v Commissioner of Taxation* [2000] FCA 196, the Full Federal Court, in examining the meaning of ‘in respect of’ an employee’s employment held that the phrase required a “nexus, some discernible and rational link, between the benefit and employment”, though noted 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’.

48. Based on the facts, it is considered that the provision of benefits to Club employees, NRL employees and their associates was sufficiently and materially connected to the employment of the respective employees, and as such, any benefit would be considered to have been provided ‘in respect of’ their employment’.

49. Therefore, this condition in the definition of a ‘fringe benefit’ in subsection 136(1) is satisfied.

Is the benefit excluded from the definition of a fringe benefit?

50. A benefit which comes within paragraphs (f) to (s) of the definition of a ‘fringe benefit’ in subsection 136(1) is excluded from being a fringe benefit.

51. Paragraph (g) of the definition of ‘fringe benefit’ excludes ‘a benefit that is an exempt benefit’.

52. A benefit that is either a residual benefit, or property benefit, may be an exempt benefit, or be eligible for a reduction in its taxable value where it is provided to an employee who is required to live away from their normal place of residence² to perform their duties of employment.

Benefits provided to Club employees, NRL employees and their associates during quarantine period

53. Temporary accommodation was provided to Club employees, NRL employees and their associates in QLD-based quarantine hotels, prior to them temporarily relocating to the QLD-based NRL hubs.

54. Section 58N provides:

Where:

- (a) benefit is provided in respect of the employment of an employee of an employer;
- (b) the benefit is provided solely by way of the grant of emergency assistance to the recipient; and
- (c) ...

the benefit is an exempt benefit.

55. Subsection 136(1) contains the following relevant definitions:

emergency, means an emergency involving any of the following matters:

- (a) a natural disaster;

² A normal residence can also be described as a usual residence or an employee’s home. These terms are used interchangeably for the purposes of this Ruling.

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- (b) a conflict involving an armed force;
- (c) a civil disturbance;
- (d) an accident;
- (e) a serious illness;
- (f) any similar matter.

emergency assistance, in relation to a person, means assistance granted to the person where:

- (a) the person is, or is at immediate risk of becoming, the victim of an emergency;
- (b) the assistance is granted to the person solely in order to provide immediate relief;
- (c) the assistance is in respect of all or any of the following matters:
 - (i) first aid or other emergency health care;
 - (ii) emergency meals or food supplies;
 - (iii) emergency clothing;
 - (iv) emergency transport;
 - (v) emergency accommodation;
 - (vi) emergency use of household goods;
 - (vii) temporary repairs;
 - (viii) any similar matter.

56. The COVID-19 pandemic is an 'emergency' within the definition of that term in subsection 136(1).

57. The temporary accommodation provided to Club employees, NRL employees and their associates is within the definition of 'emergency assistance' as defined in subsection 136(1) because it was:

- assistance in respect of emergency accommodation, and
- granted to employees and their associates to prevent the spread of a serious illness or become the victim of COVID-19.

58. The relevant conditions in section 58N are satisfied because the benefit:

- was provided to the employees and their associates in respect of the employee's employment – it enabled each employee to continue their duties of employment, and
- of the provision of temporary accommodation to employees and their associates was provided solely by way of grant of emergency assistance.

59. Therefore, the benefit of temporary accommodation is an exempt benefit under section 58N. As a result, the temporary accommodation provided to Club employees, NRL employees and their associates is an exempt benefit and excluded from the definition of 'fringe benefit' in subsection 136(1).

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Types of benefits provided to Club employees, NRL employees and their associates during the temporary relocation period

60. The NRL provided for Club employees, NRL employees and their associates to be temporarily relocated to the QLD-based 'NRL hubs' on the Gold Coast, Sunshine Coast and Brisbane, including the provision of meals and hotel accommodation.

61. Depending on the type of benefits provided and whether they were provided directly, or by way of reimbursement or by an allowance, the provision of meals and hotel accommodation may be a property fringe benefit, an expense payment fringe benefit, a residual fringe benefit or a LAFHA benefit.

Property fringe benefits

62. Division 11 applies to property fringe benefits. Section 40 provides:

Where, at a particular time, a person (in this section referred to as the 'provider') provides property to another person (in this section referred to as the 'recipient'), the provision of the property shall be taken to constitute a benefit provided by the provider to the recipient at that time.

63. Subsection 136(1) provides the following definitions relevant to property benefits:

'property' means:

- (a) intangible property; and
- (b) tangible property.

'tangible property' means goods and includes:

- (a) animals, including fish; and
- (b) gas and electricity.'

'intangible property' means:

- (a) real property;
- (b) a chose in action; and
- (c) any other kind of property other than tangible property;

but does not include:

- (d) a right arising under a contract of insurance; or
- (e) a lease or licence in respect of real property or tangible property.

64. The meals provided to Club employees and NRL employees and their associates would meet the definition of tangible property and are therefore considered property benefits.

Expense payment fringe benefits

65. Under section 20, an expense payment benefit arises where a provider:

- (a) makes a payment in discharge, in whole or in part, of an obligation of another person (in this section referred to as the recipient) to pay an amount to a third person in respect of expenditure incurred by the recipient; or
- (b) reimburses another person (in this section referred to as the recipient) in whole or in part, in respect of an amount of expenditure incurred by the recipient;...

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66. An expense payment benefit was provided when the NRL or the NRL Club reimbursed Club employees, NRL employees and their associates for meals and other relevant benefits.

Residual benefit

67. Section 45 provides that a benefit is a residual benefit for the purposes of the FBTAA if the benefit is not a benefit by virtue of a provision of Subdivision A of Divisions 2 to 11 (inclusive) of Part III.

68. The provision of accommodation does not fall under any other Division, so in these circumstances, a residual benefit was provided to Club employees, NRL employees and their associates.

Living-away-from-home allowance fringe benefit

69. Subsection 30(1) sets out the circumstances in which an allowance paid by an employer to an employee will qualify as a LAFHA benefit, and states:

Where:

- (a) at a particular time, in respect of the employment of an employee of an employer, the employer pays an allowance to the employee; and
- (b) it would be concluded that the whole or a part of the allowance is in the nature of compensation to the employee for:
 - (i) additional expenses (not being deductible expenses) incurred by the employee during a period; or
 - (ii) additional expenses (not being deductible expenses) incurred by the employee, and other additional disadvantages to which the employee is subject, during a period;

by reason that the duties of that employment require the employee to live away from his or her normal residence;

the payment of the whole, or of the part, as the case may be, of the allowance constitutes a benefit provided by the employer to the employee at that time.

70. There are 3 conditions that must be met for a payment to an employee to be considered a LAFHA benefit:

1. It is an allowance an employer pays an employee in respect of the employment of that employee.
2. The duties of their employment require the employee to live away from their normal residence.
3. The whole or part of the allowance is in the nature of compensation to the employee for:
 - non-deductible additional expenses an employee might be expected to incur, or
 - non-deductible additional expenses an employee might be expected to incur and other disadvantages suffered, because the duties of an employee's job require them to live away from their normal residence.

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An allowance for meals to the employees in respect of their employment

71. In some instances, an allowance for meals was paid to Club employees and NRL employees in respect of their employment.

The duties of Club employees and NRL employees require them to live away from their normal residence

72. 'Normal residence' is defined in subsection 136(1) as the employee's usual place of residence, when the employee's usual place of residence is in Australia.

73. The FBTAA does not provide a definition of the term 'usual place of residence'.

74. However, subsection 136(1) defines 'place of residence' to mean:

- (a) a place at which the person resides; or
- (b) a place at which the person has sleeping accommodation;

whether on a permanent or temporary basis and whether or not a shared basis.

75. In the absence of a legislative definition, it is relevant to refer to the ordinary meaning of the word 'usual'. *The Macquarie Dictionary Online*³ defines 'usual' to mean

1. 'habitual or customary...'

76. It is accepted that, in the current circumstances, an employee's usual place of residence was their home location in NSW, VIC or ACT where their NRL Club was based, their home ground located and where they trained. Club employees and NRL employees were required to temporarily relocate to QLD either because of the terms of their employment contract, or because of the terms of the Club's licence.

The whole or part of the allowance is in the nature of compensation for non-deductible expenses

77. In order to determine whether the allowances paid to Club employees and NRL employees was in the nature of compensation for non-deductible expenses, it is necessary to determine if the employees were living at a location away from their usual residence. If the employees are considered to be living at a location, then any expenses incurred for meals would be living expenses and therefore not deductible.

Are the Club employees and NRL employees living at a location away from their usual residence?

78. Paragraph 42 of Taxation Ruling TR 2021/4 *Income tax and fringe benefits tax: employees: accommodation and food and drink expenses, travel allowances, and living away from home allowances* provides the following factors for determining whether an employee is living at a location away from their usual residence:

- there is a change in the employee's regular place of work
- the length of the overall period the employee will be away from their usual residence is a relatively long one

³ Macmillan Publishers Australia, *The Macquarie Dictionary* online, www.macquariedictionary.com.au, accessed 4 April 2023.

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- the nature of the accommodation is such that it becomes their usual residence
- whether the employee is, or can be, accompanied by family or visited by family and friends.

Change in the employee's regular place of work

79. Where there is a change in the employee's regular place of work and the employee incurs accommodation and meal expenses to be closer to their new regular place of work, the employee will be living at that new location away from their usual residence.

80. In this case, the employee's usual place of residence was their home location in NSW, VIC or ACT where their NRL club was based, their home ground located and where they trained.

81. Due to the COVID-19 pandemic in NSW, VIC and ACT, the decision was made by the Australian Rugby League Commission to temporarily relocate 12 NRL Clubs to QLD. The NRL provided for Club employees, NRL employees and their associates to be temporarily relocated to the QLD-based 'NRL hubs' on the Gold Coast, Sunshine Coast and Brisbane. The employees did not choose to temporarily relocate, rather they were required to do so to ensure the 2021 NRL competition could continue uninterrupted by the COVID-19 pandemic.

82. Based on the decision to temporarily relocate to QLD for the remainder of the 2021 NRL competition, the Commissioner accepts that there was a change in the employees' regular place of work. This factor supports a conclusion that the Club employees and NRL employees are living at a location away from their usual residence.

The length of the period away

83. The 'length of period away' means the overall period of time the employee spends living at a particular location for work. Where an employee is living at one location for work for an extended period, that period is not broken by short trips they take from that location, for example travelling back to their usual residence on weekends or when travelling on work from that location. Generally, the longer an employee spends away from their usual residence for work, the more likely the employee is living at the location.

84. During the temporary relocation of the 2021 NRL competition, Club employees and NRL employees spent a minimum of 54 days and a maximum of 115 days in the NRL hubs. The period away was not broken by short trips. They returned to their homes following the end of the temporary relocation period or the elimination of their respective team from the 2021 NRL competition.

85. Given the length of time that the employee spends away from their usual residence for work and this length of time is in one location for an unbroken period, it is the Commissioner's view that the Club employees and NRL employees could be considered to be living at a location away from their usual residence. However, this factor, on its own, is not determinative and must be considered alongside all factors listed in paragraph 78 of this Ruling.

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The nature of the accommodation

86. The nature of an employee's accommodation is relevant but does not determine whether the employee is living at a location away from their usual residence. Generally, where an employee works away from home for a considerable period and, for that period, stays in accommodation generally used for longer-term accommodation (such as a house, unit, apartment or caravan), this would support a view that they are living at a location away from their usual residence.

87. The use of short-term accommodation such as hotels and motels located close to the temporary work location is generally an indication that the employee is travelling on work.

88. In this case, to allow for the 2021 NRL competition to continue and ensure a controlled environment where the general public were kept away from Club employees and NRL employees for COVID-19 health and safety reasons, the employees were required to stay in short-term type accommodation away from the general public.

89. The accommodation included single occupancy hotel rooms, units and serviced apartments.

90. Therefore, a variety of different accommodation types was used to accommodate the large number of Club employees and NRL employees in the QLD-based NRL hubs, and the nature of this accommodation is not determinative as to whether the employees were living at a location away from their usual residence.

Whether the employee is, or can be, accompanied by family or visited by family and friends

91. An employee who is living at a location away from their usual residence can generally be accompanied or visited by their family and friends.

92. It is more likely that an employee will be living away from their usual residence where they are, or can be accompanied by family (but they are not) or visited by family and friends.

93. As part of the arrangement with Club employees and NRL employees to facilitate the temporary relocation and ensure the 2021 NRL competition could continue to run, it was decided that their immediate families would be able to join the employees in any NRL hub.

94. It was determined to be essential that immediate families should also relocate for the mental and physical health considerations of families and employees.

95. This factor tends to support a conclusion that the Club employees and NRL employees are living at a location away from their usual residence.

Conclusion – living at a location away from their usual residence

96. Based on consideration of the above factors, the Commissioner considers that the Club employees and NRL employees are living at a location away from their usual residence. Therefore, the meal expenses incurred are living expenses and not deductible. Further, these expenses were incurred because the duties of employment of the Club employees and the NRL employees required them to live away from their usual residence.

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An allowance provided for meals is a living-away-from-home allowance benefit

97. The allowances provided for meals are considered to be LAFHA benefits in accordance with subsection 30(1).

98. Section 31H provides that the exempt food component in relation to a LAFHA fringe benefit is equal to the total expenses that are incurred by the employee and substantiated under section 31G, reduced by the applicable statutory food totals.

99. The taxable value of the LAFHA benefit will be reduced by the exempt food component where expenditure incurred on meals for Club employees, NRL employees and their associates did not exceed the amount of reasonable food and drink expenses for the 2022 FBT year as determined by the Commissioner in TD 2021/3.

Are meals provided to Club employees, NRL employees and their associates a living-away-from-home food fringe benefit for the purposes of section 63?

100. As defined in subsection 136(1), a benefit will be a LAFH food fringe benefit where the following criteria are met:

- (a) an expense payment fringe benefit provided in respect of the employment of an employee where:
 - (i) the recipients expenditure was incurred in respect of food or drink; and
 - (ii) the food or drink was not for consumption while the employee was undertaking travel in the course of performing the duties of that employment; and
 - (iii) the food or drink was for consumption by eligible family members at a time when the duties of that employment required the employee to live away from his or her normal place of residence or
- (b) a property fringe benefit provided in respect of the employment of an employee where:
 - (i) the recipients property is food or drink; and
 - (ii) the food or drink was not for consumption while the employee was undertaking travel in the course of performing the duties of that employment; and
 - (iii) the food or drink was for consumption by eligible family members at a time when the duties of that employment required the employee to live away from his or her normal residence.

101. As concluded at paragraph 64 of this Ruling, meals provided to Club employees, NRL employees and their associates are property fringe benefits. Expense payment fringe benefits were also provided to Club employees, NRL employees and their associates in relation to meals.

102. The meals (food and drink) was for consumption by employees and their associates (who are 'eligible family members' in accordance with the definition in subsection 136(1)) while the employees were living away from their usual place of residence while performing their employment duties.

103. Therefore the meals provided to Club employees, NRL employees and their associates, either as property fringe benefits or expense payment fringe benefits, will be LAFH food fringe benefits.

Status: **not legally binding**

Reduction of taxable value of living-away-from-home allowance food fringe benefits

104. Section 63 reduces what would otherwise be the taxable value of the property fringe benefit or the expense payment fringe benefit to the equivalent of \$42 a week for each adult and \$21 a week for each child.

105. Section 63 provides that the taxable value of a LAFH food fringe benefit may be reduced where:

- (a) a living-away-from-home food fringe benefit, or 2 or more living-away-from-home food fringe benefits, in relation to an employer in relation to a year of tax relates or relate to a particular employee; and
- (b) the fringe benefit or fringe benefits are equivalent to the food component of a living-away-from-home allowance fringe benefit in respect of a particular period in the year of tax; and
- (c) that food component exceeds the sum of the statutory food amounts in respect of eligible family members in respect of that period; and
- (d) the employee satisfies:
 - (i) sections 31C (about maintaining an Australian home) and 31D (about the first 12 months); or
 - (ii); and
- (da) the employee gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out:
 - (i) if the employee satisfies sections 31C and 31D--the matters in subparagraphs 31F(1)(a)(i) to (iii); or
 - (ii); and
 the following provisions apply:
- (e) if there is only one living-away-from-home food fringe benefit--the amount that, but for this section and section 62, and the recipients contribution, would be the taxable value of that fringe benefit, shall be reduced by the amount of the excess referred to in paragraph (c);
- (f) if there are 2 or more living-away-from-home food fringe benefits--the amounts that, but for this section and section 62, and the recipients contribution, would be the taxable values of those fringe benefits shall be reduced by amounts proportionate to those taxable values and equal in total to the amount of the excess referred to in paragraph (c).

Maintaining a home in Australia

106. The employee satisfies section 31C if:

- (a) the place in Australia where the employee usually resides when in Australia:
 - (i) is a unit of accommodation in which the employee or the employee's spouse has an ownership interest (within the meaning of the *Income Tax Assessment Act 1997*); and
 - (ii) continues to be available for the employee's immediate use and enjoyment during the period that the duties of that employment require the employee to live away from it; and
- (b) it is reasonable to expect that the employee will resume living at that place when that period ends.

Status: **not legally binding**

First 12 months the employee is required to live away from home

107. The employee satisfies section 31D if the fringe benefit relates only to all or part of the first 12 months that the duties of that employment require the employee to live away from the place in Australia where he or she usually resides when in Australia.

Has the relevant declaration been provided?

108. To access the concessional FBT treatment for LAFH food fringe benefits, the Club Employees and the NRL employees must give to their employer a declaration before the declaration date.

Conclusion – application of section 63

109. In this case, the LAFH food fringe benefits were provided within the first 12 months that the Club employees and NRL employees were required to temporarily relocate to QLD. The Club employees and NRL employees maintain a home in Australia that continues to be available for their immediate use and enjoyment during the period that their employment requires them to live away from home. The Club employees and NRL employees have provided a declaration prior to the declaration date about living-away-from-home.

110. As the conditions in sections 31C and 31D have been met, the taxable value of the LAFH food fringe benefits may be reduced under section 63.

Are the accommodation benefits provided to Club employees, NRL employees and their associates exempt benefits?

111. Subsection 47(5) states that where:

- (a) a residual benefit consisting of the subsistence, during a year of tax, of a lease or licence in respect of a unit of accommodation is provided to an employee of an employer in respect of his or her employment; and
- (b) the unit of accommodation is for the accommodation of eligible family members and is provided solely because the duties of that employment require the employee to live away from his or her normal residence; and
- (ba) the employee satisfies:
 - (i) sections 31C (about maintaining an Australian home) and 31D (about the first 12 months); or
 - (ii); and
- (c) the accommodation is not provided while the employee is undertaking travel in the course of performing the duties of that employment; and
- (d) any of the following conditions is satisfied:
 - (i);
 - (ii) if the employee satisfies sections 31C and 31D--the employee gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out the matters in subparagraphs 31F(1)(a)(i) to (iii);
 - (iii);

the benefit is an exempt benefit in relation to the year of tax.

Status: **not legally binding**

112. In this case:

- the Club employees and NRL employees were provided with a unit of accommodation in respect of their employment
- the unit of accommodation was provided for Club employees, NRL employees and their associates and is provided because the duties of employment of the Club employees and the NRL employees required them to live away from their normal residence
- the Club employees and NRL employees maintained a home in Australia
- the fringe benefits were provided within the first 12 months that they were required to live away from home and temporarily relocate to QLD, and
- the relevant declarations have been provided.

113. As the criteria in subsection 47(5) has been satisfied, the benefits provided, being the accommodation for Club employees, NRL employees and their associates are exempt residual fringe benefits.

Education support and child care costs for the children of Club employees, NRL employees and their associates

114. As part of the process of temporarily relocating 12 NRL Clubs to QLD-based NRL hubs, including the children of Club employees, NRL employees and their associates, there were various educational support and child care-type benefits which were provided for the children.

115. Section 45 provides that a benefit is a residual benefit if it is not a benefit by virtue of a provision of Subdivision A of Divisions 2 to 11 (inclusive) of Part III.

116. As the provision of education support and child care costs for the children are not benefits under any other Division, they will be residual benefits provided to Club employees, NRL employees and their associates.

117. Subsection 47(2) states that:

Where:

- (a) a residual benefit provided to a current employee in respect of his or her employment consists of:
 - (i) the provision, or use, of a recreational facility; or
 - (ii) the care of children of the employee in a child care facility; and
- (b) the recreational facility or child care facility, as the case may be, is located on business premises of:
 - (i) the employer; or
 - (ii) if the employer is a company, of the employer or of a company that is related to the employer;

the benefit is an exempt benefit.

As the education support and child care costs for the children were simply support provided within the QLD-based NRL hubs and not on business premises of the employer, the residual benefits will not be exempt benefits under subsection 47(2).

Status: **not legally binding**

References

Related Rulings/Determinations:
TR 2021/4; TD 2021/3

Legislative references:

- FBTA 31H
- FBTA 40
- FBTA 45
- FBTA 47(2)
- FBTA 47(5)
- FBTA 62
- FBTA 63
- FBTA 58N
- FBTA 136(1)
- ITAA 1936 318
- TAA 1953 12-35 Sch 1
- FBTA Pt III Div 2 Subdiv A
- FBTA Pt III Div 3 Subdiv A
- FBTA Pt III Div 4 Subdiv A
- FBTA Pt III Div 5 Subdiv A
- FBTA Pt III Div 6 Subdiv A
- FBTA Pt III Div 7 Subdiv A
- FBTA Pt III Div 8 Subdiv A
- FBTA Pt III Div 9 Subdiv A
- FBTA Pt III Div 10 Subdiv A
- FBTA Pt III Div 11 Subdiv A
- FBTA 20
- FBTA 30(1)
- FBTA 31C
- FBTA 31D
- FBTA 31F(a)(i)
- FBTA 31F(a)(ii)
- FBTA 31F(a)(iii)
- FBTA 31G

- FBTA 31H
- FBTA 40
- FBTA 45
- FBTA 47(2)
- FBTA 47(5)
- FBTA 62
- FBTA 63
- FBTA 58N
- FBTA 136(1)
- ITAA 1936 318
- TAA 1953 12-35 Sch 1

Cases relied on:

- J & G Knowles v Commissioner of Taxation [2000] FCA 196; 96 FCR 402; 2000 ATC 4151; 44 ATR 22

Other references:

- Macmillan Publishers Australia, *The Macquarie Dictionary* online, www.macquariedictionary.com.au

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