


TR 95/D13 - Income tax and fringe benefits tax: entertainment by way of food and drink

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Draft Taxation Ruling

Income tax and fringe benefits tax: entertainment by way of food and drink

other Rulings on this topic

IT 2675; TD 92/151;
TD 93/195; TD 94/24;
TD 94/25; TD 94/55

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What this Ruling is about

Class of person/arrangement

1. This ruling looks at the concept of what is entertainment as it relates to the provision of food and drink. Understanding this concept is necessary when applying the provisions of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) and the *Income Tax Assessment Act 1936* (ITAA).
2. **Part A** of the **Explanations** section contains a table that summarises the application of the FBTAA and the ITAA to food and drink provided to employees and their associates. The table is cross referenced to the question and answer section in Part B.
3. **Part B** of the **Explanations** section addresses some of the practical aspects of how the provisions of the FBTAA and the ITAA apply to entertainment provided by way of food and drink. Answers to commonly asked questions are also provided in this part.
4. This ruling applies to the law as it stands at 31 March 1995. It does not take into account the proposed cost of compliance changes to entertainment announced by the Treasurer on 24 February 1995 which have not yet become law.

Ruling

5. Section 51AE of the ITAA provides for a general prohibition on the deduction of entertainment expenses. The effect of section 51AE is that, except for some specific exceptions, entertainment expenses incurred after 19 September 1985 are not deductible for income tax

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purposes. However, when entertainment is subject to fringe benefits tax (FBT), section 51AE will have no effect.

6. The definition of 'provision of entertainment' contained in paragraph 51AE(3)(a) of the ITAA does not prescribe that entertainment occurs every time food and drink is provided. Entertainment is considered to have been provided only when the food and drink confers entertainment on the recipient.

7. In order to determine whether entertainment has been conferred on a recipient, an objective analysis of all the circumstances surrounding the provision of the food and drink is required. In making this determination an employer should consider:

- **what** type of food and drink is being provided;
- **when** that food and drink is being provided;
- **where** the food and drink is being provided; and
- **why** the food and drink is being provided.

8. When the provision of food and/or drink does confer entertainment on the recipient, that person has been provided with an 'entertainment meal'. Conversely a 'non-entertainment meal' is the provision of food and drink that does not confer entertainment upon the recipient.

9. To the extent that a meal falls to be dealt with under a specific provision of the FBTA (specific fringe benefit meals), it must be dealt with under that provision only.

10. The terms 'entertainment meal', 'non-entertainment meal' and 'specific fringe benefit meal' are not statutory terms but are used in this ruling for explanatory purposes only.

What is entertainment?

11. An entertainment meal arises when the food and drink provided has the character of entertainment. The meal may be substantial, may be consumed as part of a social gathering, or may be consumed with other forms of entertainment.

12. In order to classify a meal as either an entertainment meal or a non-entertainment meal, it is necessary to determine when the provision of food and drink constitutes the provision of entertainment under paragraph 51AE(3)(a).

13. Sub-section 51AE(3) of the ITAA states in part:

'A reference in this section to the provision of entertainment is a reference to the provision (whether to the taxpayer or to another

person and whether gratuitously, pursuant to an agreement or otherwise) of -

- (a) entertainment by way of food, drink or recreation; or
- (b) accommodation or travel in connection with, or for the purpose of facilitating, entertainment to which paragraph (a) applies (whether or not the accommodation or travel is also in connection with something else or for another purpose)...

14. Two alternative views have been suggested in interpreting what is the provision of entertainment by way of food and drink. They are:

- (1) that the provision of all food and drink in any circumstance will constitute the provision of entertainment; or
- (2) that only the provision of food and drink that has an element of entertainment satisfies the definition, ie the provision of food and drink must confer entertainment on the recipient.

15. The relevant question for the purpose of this Ruling is, therefore, the meaning of the words 'entertainment by way of food, drink' found in paragraph 51AE(3)(a) of the ITAA. As these words are not defined in the ITAA, they will bear their natural meaning, taken in the context that they appear in section 51AE of the ITAA.

16. The word 'entertainment', which is key to the operation of the relevant words, is defined in the *Macquarie Dictionary* to mean:

- (a) agreeable occupation for the mind, diversion or amusement; or
- (b) something affording diversion or amusement; or
- (c) hospitable provision for the wants of a guest.

17. The suggested interpretation that the provision of food and drink in any circumstance constitutes the provision of entertainment for purposes of section 51AE is based on the premise that the diversion or amusement required occurs merely by the provision of food and drink. In other words 'entertainment by way of food [and] drink' as used in paragraph 51AE(3)(a) of the ITAA must be construed to refer to bodily not mental gratification.

18. Support for this interpretation is found in the approach taken by the English courts in the construction of similar kinds of words used in regulating refreshment houses (see *Taylor v Oram* (1862) 1 H & C 370). In that case, Pollock CB at 376 took the view that in the context of the relevant English legislation the word 'entertainment' is only another expression for 'refreshment'. In addition, it can be argued that as it was necessary to extend the meaning of the word 'recreation'

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found in paragraph 51AE(3)(a) of the ITAA to include 'amusement', no independent element of either amusement or diversion is required where what occurs is the mere provision of food and drink.

19. The other view that an element of entertainment is required before the provision of food and drink becomes an 'entertainment meal' is based on the ordinary meaning of the word 'entertainment' by itself. As was suggested by Lord Justice-Clerk (Thomson) in *Bow v Heatly* 1960 SLT 311 at 313:

'entertainment is the gathering together of a number of people to carry out some activity or to be present at some activity presumably with a view of enjoying themselves.'

In the same case Lord Patrick at 313 made the following relevant observation:

'Parliament...left the term "entertainment" to receive its meaning in ordinary language, and that meaning in this connection is "amusement".'

20. We take the view that the above latter interpretation represents the better view of the law. We would, however, add that in most cases the mere provision of food and drink would satisfy the 'entertainment' test. It is only in a narrow category of cases where the mere provision of food and drink would not amount to 'entertainment' for purposes of section 51AE of the ITAA. We have expressed this view previously, for example, in Taxation Ruling IT 2675. That Ruling considers that the provision of morning and afternoon tea to employees (and associates of employees) on a working day, either on the employer's premises or at a worksite of the employer, is not the provision of entertainment. The provision of light meals (finger food, etc.), for example in the context of providing a working lunch, is not considered to be the provision of entertainment. The provision of food and drink in these circumstances does not confer entertainment on the recipient.

21. The provision of light meals can be contrasted with the examples of non-deductible entertainment given in the explanatory memorandum to *Taxation Laws Amendment Act (No 4) 1985*, i.e., business lunches and drinks, dinners, cocktail parties and staff social functions. In these examples the provision of the food and drink confers entertainment on the recipient.

22. Similarly, Taxation Determination TD 94/55 states that 'in determining whether providing an item of property constitutes the provision of entertainment, regard should be had to all the circumstances of the case. In particular, regard should be given to the character of the entertainment to be derived from the item of property provided'. The provision of food and drink is the provision of property. However, an objective consideration of the circumstances in

which that food and drink is provided is necessary to determine whether it constitutes the provision of entertainment.

23. The provision of a basic meal in order for an employee to complete a working day does not, ordinarily, have the character of entertainment. However, a staff social function or elaborate meal would do so, as the purpose of providing the food or drink is no longer solely to enable an employee to complete a working day in comfort.

24. Similarly, where an employee is travelling and dines alone (or with other employees) the food and drink provided is consumed as a result of the work-related travel. However, as explained in Taxation Determination TD 92/151, the character of the meal changes when the employee dines with clients and the employer pays for the employee's meal and the client's meal. The reason the meal is provided for the employee is no longer simply for sustenance but to provide entertainment.

25. This approach is consistent with the types of meals made non-deductible under section 51AE of the ITAA (e.g., business lunches). The intent of section 51AE is evident from the wording of subsection 51AE(3) which considers entertainment to have been provided whether or not business discussions or business transactions occur.

26. It can be seen that the determination of whether or not the provision of food and drink constitutes the provision of entertainment requires an objective analysis of all the circumstances surrounding that provision. We are of the view that the following are relevant factors that should be considered in undertaking any objective analysis:

- (a) **What** food and drink is being provided. As noted above, morning and afternoon teas and light meals are generally not considered to constitute entertainment. However, as light meals become more elaborate, they take on more of the characteristics of entertainment. The reason for this is that the more elaborate a meal, the greater the likelihood that entertainment arises from the consumption of the meal.

For example, when an employer provides morning or afternoon teas or light meals, that food and drink does not usually confer entertainment on the employee. However, a three course meal provided to an employee during a working lunch would have the characteristics of entertainment. The nature of the food itself confers entertainment on the employee.

- (b) **When** is the food and drink being provided. Food and drink provided during work time, during overtime or whilst an employee is travelling is less likely to have the

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character of entertainment. This is because in the majority of these cases food provided will be for a work-related purpose rather than an entertainment purpose. This, however, will depend upon whether the entertainment of the recipient is the expected outcome of the provision of the food and drink. For example, a staff social function held during work time will still have the character of entertainment.

- (c) **Where** is the food and drink being provided. Food and drink provided on the employers business premises or at the usual place of work of the employee is less likely to have the character of entertainment; refer to the reasons in (b) above. However, food and drink provided in a function room, hotel, restaurant, cafe, coffee shop or consumed with other forms of entertainment is more likely to have the character of entertainment. This is because the provision of the food and drink is less likely to have a work-related purpose.
- (d) **Why** is the food and drink provided. This test is a 'purpose test'. For example, food and drink provided for the purposes of refreshment and sustenance do not generally have the character of entertainment, whereas food and drink provided in a social situation where the purpose of the function is for employees to enjoy themselves will have the character of entertainment.

27. No one of the above factors will be determinative; however, paragraphs (a) and (d) are considered the more important. The application of the above factors will result in the classification of the food and drink as either an entertainment meal or a non-entertainment meal.

28. Where the meal falls within a specific FBT provision (e.g., as a board fringe benefit, living-away-from-home food fringe benefit or a tax-exempt body entertainment fringe benefit) then the taxable value of the benefit is determined under that specific provision rather than the more general sections dealing with expense payment and property fringe benefits.

Explanations

Part A: Entertainment table

29. The following key is to be used for the table below. Please refer to the note at the bottom of page 10 for an explanation of the table.

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Key

A = fringe benefits tax and an income tax deduction

B = fringe benefits tax and no income tax deduction

C = no fringe benefits tax and an income tax deduction

D = no fringe benefits tax and no income tax deduction

EM = entertainment meal

NEM = non-entertainment meal

			Tax Outcome		Ruling Paragraph Reference
	EM	NEM	Tax Exempt Body	Income Taxable Employer	
Circumstances In Which Food & Drink Provided					
(a)(i) Consumed by employees on employer's business premises					41 - 53
1) at a social function	✓		B	D	47 - 49
2) in an in-house dining facility - not party, etc.	✓	✓	D	C	45, 50 & 51
3) in an in-house dining facility - at a party, etc.	✓		B	D	45
4) morning & afternoon teas & light lunches		✓	D	C	52 & 53
(a)(ii) Consumed by associates on the employer's business premises					
1) at a social function	✓		B	A	35, 43 & 49
2) in an in-house dining facility - not party, etc.	✓		B	A	35
3) in an in-house dining facility - at a party, etc.	✓		B	B	35
4) morning & afternoon teas & light lunches		✓	B	A	35
(a)(iii) Consumed by clients on the employers business premises					
1) at a social function	✓		D	D	
2) in an in-house dining facility - not party, etc.	✓		D	D	
3) in an in-house dining facility - at a party, etc.	✓		D	D	
4) morning & afternoon teas & light lunches		✓	D	C	

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			Tax	Outcome	Ruling Paragraph Reference
	EM	NEM	Tax Exempt Body	Income Taxable Employer	
Circumstances In Which Food & Drink Provided					
(b) Food and drink consumed off the employer's premises					54 - 59
1) at a social function or business lunch					
• by employees	✓		B	A	58 & 59
• by clients	✓		D	D	
• by associates	✓		B	A	
(c) Alcohol					60 - 66
1) employee travelling - wine accompanies evening meal		✓	D	C	63 & 64
2) alcohol provided at the conclusion of a CPD seminar with finger foods		✓	D	C	65 & 66
(d) Consumed by employees while travelling					67 - 94
1) employee travels and dines alone		✓	D	C	67 - 70
2) two or more travelling employees dine together		✓	D	C	71 - 77
3) travelling with client & dine together		✓	D	C	78 - 80
4) as in 3) except employer pays for all meals					
• employees meal		✓	D	C	81
• clients meal		✓	D	C	81
5) dines with client who is travelling separately		✓	D	C	82 - 85
6) dines with employee not travelling					
• travelling employees meal provided only		✓	D	C	86 - 88
• all meals provided by employer	✓		B	A	89 & 90
7) dines with client who is not travelling					
• only employees meal provided	✓		D	C	91 & 92
• employees and clients meal provided					
- employees meal	✓		B	A	93 & 94
- clients meal	✓		D	D	93 & 94

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			Tax Outcome		Ruling Paragraph Reference
	EM	NEM	Tax Exempt Body	Income Taxable Employer	
Circumstances In Which Food & Drink Provided					
(e) Employees dining with other employees of the same employer or with employees of associates of the employer					95 - 101
1) employee entertains another employee and is subsequently reimbursed by the employer	✓		B	A	95 - 99
2) employee entertains an employee of an associated company of the employer and is subsequently reimbursed					
• employee's employer - (expense payment)	✓		B	A	100 -101
• employers associate - (property benefit)	✓		B	A	100 - 101
(f) Meal consumed by employees while attending a seminar					102 - 113
1) provided incidental to an eligible seminar not held on the employers premises	✓	✓	D	C	107 - 109
2) light breakfast provided at a CPD seminar that is not an eligible seminar		✓	D	C	110 & 111
3) light refreshments incl. moderate amount of alcohol provided immediately after a CPD seminar that is not an eligible seminar		✓	D	C	112 & 113
(g) Consumed by employees at promotions					114 - 117
1) function not held on employers premises and is open to the general public	✓		B	A	114 - 117
(h) Meals provided under an arrangement					118 - 120
1) employer is aware and consents to employees being taken out to dinner by clients					
• employees	✓		B	A	120
• clients	✓		D	D	120

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	EM	NEM	Tax Outcome		Ruling Paragraph Reference
			Tax Exempt Body	Income Taxable Employer	
Circumstances In Which Food & Drink Provided					
(i) Use of corporate credit card					121 & 123
1) employees dine together at a restaurant and the meal is paid for with the credit card	✓		B	A	123
(j) Hotel discount cards					124 - 128
1) employee who holds a restaurant discount card entertains a client					
• employee - 1/2 total discounted price	✓		B	A	127
• client - 1/2 total discounted price	✓		D	D	127
2) employee uses card to entertain 4 clients & holders meal cost reduced by 25% for each additional person					
• employee - cost reduced to nil	✓		D	D	128
• client	✓		D	D	128
(k) Accompanying spouses					129 - 131
1) with employee travelling on business and employer pays for all meals					
• employee		✓	D	C	129 - 131
• spouse		✓	B	A	129 - 131
(l) Tax exempt bodies					132 - 136
1) EM provided to employees on employers premises	✓		B		132 & 133
2) meals provided to employees in an in-house dining facility	✓	✓	D		134
3) provision of NEM to employees		✓	D		135 - 136

Please Note: The above table summarises the examples and answers given to the questions on the taxation treatment of the provision of food and drink discussed in **Part B** of the **Explanations** section. The key provides quick reference as to the FBT and income tax treatment of a particular circumstance. The last column of the table provides a cross reference to those paragraphs of the ruling that are relevant to the circumstance.

Part B: Practical aspects and questions and answers**Result of providing an entertainment meal*****FBT result for employers (who are not income tax-exempt bodies)***

30. From 1 April 1994, where an employer provides an entertainment meal to an employee, the benefit, whether it is provided as an expense payment fringe benefit or a property fringe benefit, will be subject to FBT.

31. An exception is where the meal is provided to and is consumed by the employee at the employer's business premises anytime on a working day. Under these circumstances, and provided that the meal is a property benefit and not an expense payment fringe benefit, the benefit will be exempt from FBT under section 41 of the FBTAA.

32. Where an entertainment meal is subject to FBT, the taxable value of the fringe benefit may, in certain circumstances, be reduced under the 'otherwise deductible' rule. This rule provides that the taxable value of relevant fringe benefits may be reduced to the extent that an income tax deduction would have been available to the employee if that employee had incurred and paid the expense. In most cases the use of the 'otherwise deductible' rule must be supported by certain documents such as receipts and employee declarations.

FBT result for income tax-exempt bodies

33. Certain entertainment provided to employees of a tax-exempt employer gives rise to a separate category of fringe benefit known as a 'tax-exempt body entertainment fringe benefit'. It is only entertainment that is non-deductible for income tax purposes (e.g., a meal at a party), that gives rise to a tax-exempt body entertainment fringe benefit. For this purpose subsection 51AE(5AA) of the ITAA does not apply.

34. The taxation consequences of entertainment provided by tax-exempt bodies has not changed as a result of the amendments to the ITAA and the FBTAA effective 1 April 1994. The taxable value of such fringe benefits is determined under Division 10 of the FBTAA which has not been amended. It should be noted that the exemption from FBT discussed in paragraph 31 above does not apply to a tax-exempt body entertainment fringe benefit.

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Income tax result for employers (who are not tax-exempt bodies)

35. Subsection 51AE(5AA) of the ITAA prevents the non-deductibility effect of subsection 51AE(4) of the ITAA from operating where the expenditure was incurred in providing a fringe benefit. The definition of a 'fringe benefit' in subsection 136(1) of the FBTAA excludes an exempt benefit. Therefore, expenditure on entertainment which is an exempt benefit under either section 41 or section 58P of the FBTAA cannot be income tax deductible unless the expenditure falls within one of the exclusions provided for in subsection 51AE(5) of the ITAA (e.g., meals in an eligible dining facility). Expenditure on the provision of food and drink which does not constitute the provision of entertainment may also be income tax deductible if the conditions of section 51(1) of the ITAA are satisfied.

Result of providing a non-entertainment meal***FBT result for employers (who are not tax-exempt employers)***

36. Since 1986, these meals have been subject to FBT. However, as is the case with entertainment meals, there are some exemptions. Where the meal is a property benefit provided to, and consumed by, the employee on a working day and on business premises of the employer, the benefit will be exempt from FBT under section 41 of the FBTAA. Where a non-entertainment meal is small in value, provided infrequently and irregularly it may be an exempt benefit under section 58P of the FBTAA.

37. Where the benefit is not an exempt benefit, its taxable value will be reduced by the 'otherwise deductible' rule to the extent that the employee could claim a deduction under the Income Tax provisions, e.g., meals of an employee while travelling in the course of employment are generally deductible.

FBT result for income tax-exempt bodies

38. Non-entertainment meals do not give rise to tax-exempt body entertainment fringe benefits as described in paragraph 33 above. The FBT result will be the same as in paragraphs 36 and 37.

Income Tax Result

39. Non-entertainment meals provided to an employee, whether they are subject to FBT or not, are deductible to the employer under subsection 51(1) of the ITAA.

Answers to commonly asked questions

40. A number of questions have been raised concerning some of the practical aspects of how FBT will be applied to entertainment provided by way of food and drink. The questions raised generally fall into the following categories:

- (a) food and drink consumed on the employer's premises;
- (b) food and drink consumed off the employer's premises;
- (c) alcohol;
- (d) food and drink consumed by employees while travelling on business;
- (e) employees dining with employees of the same employer or employees of associates of the employer;
- (f) food and drink consumed as part of a seminar;
- (g) food and drink consumed by employees at promotions;
- (h) use of a corporate credit card;
- (i) meals provided under an 'arrangement';
- (j) restaurant discount cards;
- (k) accompanying spouse at conferences or seminars; and
- (l) tax-exempt bodies.

(a) Food and drink consumed on the employer's business premises***Question 1***

41. What are the taxation consequences where food and drink is provided by an employer and consumed by employees on the employer's business premises?

Answer

42. Section 41 of the FBTAA provides that property (including food and drink) that is provided to and consumed by an employee on the employer's business premises on a working day is an exempt benefit. This exemption applies whether or not the food and drink is an entertainment or a non-entertainment meal. Furthermore, it will apply even if the food is not prepared on the employer's business premises. A working day is any 24 hour period during which work is usually performed by the employee.

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43. However, the exemption from FBT allowed under section 41 applies only to the food or drink consumed by employees. Food and drink consumed by associates of employees is subject to FBT when it is provided and consumed on the employer's business premises.

44. Subsection 51AE(5AA) of the ITAA does not apply to allow a deduction under subsection 51(1) of the ITAA where the benefit is an exempt benefit. However, the expenditure may still be deductible under subsection 51(1) if one of the exclusions contained in subsection 51AE(5) of the ITAA applies.

45. For example, the cost of providing food and drink in an in-house dining facility (not at a party, reception or social function) is an allowable income tax deduction under the provisions of subsection 51AE(5) of the ITAA. The term 'in-house dining facility' is defined in subsection 51AE(1) of the ITAA (also refer to Taxation Determination TD 94/24). This subsection applies even though the food and drink provided in the 'in-house dining facility' is also an exempt benefit under the provisions of section 41 of the FBTAA.

46. Food and drink, which is a non-entertainment meal provided on the employer's business premises, is considered in Taxation Ruling IT 2675. The cost of providing a non-entertainment meal to employees is income tax deductible under the general provisions of subsection 51(1) of the ITAA.

Example 1.1

47. An employer provides food and drink at a social function for the employees and associates to celebrate the end of the financial year. The function is held in the company boardroom at 5.30 pm on 30 June.

48. The food and drink provided at a social function constitutes the provision of entertainment and is therefore an entertainment meal. The entertainment meal provided to employees in these circumstances is a property benefit which is exempt from FBT under section 41 of the FBTAA. As a result, subsection 51AE(5AA) of the ITAA is not applicable because an exempt benefit is not a fringe benefit. Therefore, section 51AE(4) prevents the employer from claiming an income tax deduction for the cost of providing the entertainment.

49. The entertainment meal provided to the associates of the employees gives rise to property fringe benefits and section 41 of the FBTAA is not applicable to associates. The taxable value of the fringe benefit is the cost of the entertainment meals provided to the associates. Subsection 51AE(5AA) of the ITAA applies to prevent subsection 51AE(4) from denying an income tax deduction.

Example 1.2

50. As part of an award agreement, an employer provides full hot lunches to employees in an 'in-house dining facility'.

51. The lunch provided is an entertainment meal. However, the meal is exempt from FBT under section 41 of the FBTAA. An income tax deduction for the meals will be allowable to the employer under paragraph 51AE(5)(f) of the ITAA as it was provided in an 'in-house dining facility'. Paragraph 51AE(5)(f) overrides the denying effect of section 51AE(4) of the ITAA.

Example 1.3

52. As part of an award agreement, an employer provides, on the employers business premises, cut sandwiches and orange juice to the employees.

53. The lunch is a non-entertainment meal of the type described in Taxation Ruling IT 2675. It is a property benefit which is exempt from FBT under section 41 of the FBTAA. The employer will be able to claim a deduction for the cost of providing the non-entertainment meal under the general provisions of subsection 51(1) of the ITAA.

(b) Food and drink consumed off the employer's premises*Question 2*

54. When is the cost of food and drink provided to employees and/or their associates, on premises that are not the employer's business premises (e.g., in a restaurant) subject to FBT?

Answer

55. The food and drink provided to employees and their associates in these cases will generally be entertainment meals and subject to FBT. A reduction in the taxable value may be available under the 'otherwise deductible' rule.

56. The employee would have only been entitled to claim such a deduction if it was concluded that the food and drink was a non-entertainment meal, e.g., if the employee was travelling. The situations where these types of meals are considered non-entertainment meals are discussed below. If the meal is an entertainment meal, the employee would not have been entitled to a deduction under subsection 51(1) because of the operation of subsection 51AE(4) of the ITAA.

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57. However, there are a number of exceptions to subsection 51AE(4) which are set out in subsection 51AE(5) of the ITAA. These include:

- food and drink which is reasonably incidental to a person's attendance at an 'eligible seminar' (subparagraph 51AE(5)(f)(iv));
- food and drink consumed by an employee while travelling in the course of employment (paragraph 51AE(5)(g)).

Example 2.1

58. An employer provides food and drink at a social function for the employees to celebrate a particularly successful quarter of trading. The function is held at a restaurant near the office.

59. Applying the tests in paragraph 26 leads to the conclusion that the food and drink amounts to an entertainment meal. This would be the case regardless of the type of food and drink provided as the function is a social gathering. As a result, the provision of these meals gives rise to property benefits which are subject to FBT. There is no reduction available under the 'otherwise deductible' rule in this case as the employee would not have been entitled to a deduction if they had paid for the meal. Subsection 51AE(5AA) of the ITAA applies to prevent subsection 51AE(4) from denying an income tax deduction.

(c) Alcohol

Question 3

60. Does the provision of alcohol automatically deem a meal to be an entertainment meal?

Answer

61. No. We do not believe that the provision of alcohol in every situation will result in the provision of entertainment. Generally, the consumption of alcohol does have social connotations and would provide or afford diversion or amusement. In those cases the provision of the alcohol would have the characteristics of entertainment. However, there are a narrow category of situations that do arise where the provision of alcohol is incidental to a larger event or work-related activity of an employee.

62. As a result, in order to determine whether the provision of alcohol constitutes an entertainment meal, the tests discussed at paragraph 26 must be applied. The following examples explain the

reasoning behind our approach to the provision of alcohol. The application of the law to the two scenarios are discussed under their own subject heading below.

Example 3.1

63. An employee who is travelling on a business trip takes an evening meal at a restaurant. The meal is accompanied by the consumption of some wine.

64. In this situation the employee is travelling in the course of his or her employment and the meal purchased is of a type that would normally be consumed at home. It is impractical to suggest that drinking wine in these circumstances changes the nature of the meal. The meal is a non-entertainment meal consumed by the employee whilst undertaking work-related travel.

Example 3.2

65. An employee of an engineering firm attends a Continuing Professional Development (CPD) session conducted at a local function centre. The employer reimburses the employee for the cost of the registration fee. At the end of the session the CPD provider supplies the participants with finger foods and a choice of refreshments including tea, coffee, beer, wine and soft drink. The employee consumes some wine while partaking in the finger foods.

66. When applying the tests in paragraph 26 it is reasonable to conclude that where the consumption of the wine or beer forms only an incidental part of the meal, it does not result in the food and drink amounting to the provision of entertainment.

(d) Food and drink consumed by employees while travelling on business

Question 4

67. Will an employer be liable to FBT on the reimbursement to an employee of the cost of food and drink consumed while travelling on the employer's business?

Answer

68. No. Generally, the meal will be a non-entertainment meal. The employer is providing the employee with sustenance whilst undertaking work-related travel. However, this would not be the case where there was other entertainment provided with the meal. The cost

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of the non-entertainment meal would have been 'otherwise deductible' to the employee under subsection 51(1) of the ITAA. Therefore, the taxable value of the expense payment fringe benefit is reduced to nil.

Example 4.1

69. An employee dines alone while travelling on business and is subsequently reimbursed by the employer.

70. The provision of the meal constitutes an expense payment fringe benefit. The meal is a non-entertainment meal and the taxable value of that meal is reduced to nil because the meal would have been 'otherwise deductible' to the employee. The employer will get a deduction for the cost of the reimbursement.

Question 5

71. Is the situation different where two or more employees who are travelling together on business dine together and for convenience one employee pays for the meals of all the employees? This employee is subsequently reimbursed by the employer for the cost of all meals.

Answer

72. Taxation Determination TD 92/151 states that this Office accepts that the cost of an employee's own meals while travelling away from home does not normally constitute the provision of entertainment.

73. We also accept that where more than one employee of the same employer dine together while undertaking work-related travel, the meals consumed by all employees would be non-entertainment meals. If the meal costs of all employees are paid for by one employee, acting on the instructions of the employer, deductions continue to be allowable for such costs. Therefore under the 'otherwise deductible' rule the taxable value of any expense payment fringe benefit would be reduced to nil.

74. However, if there is entertainment other than food and drink provided (e.g., a floor show) then the expenditure will be in respect of the provision of entertainment and therefore, an entertainment meal. Accordingly, subsection 51AE(4) of the ITAA would apply to deny a deduction for the expenditure had the employee incurred it. As a result, the 'otherwise deductible' rule will not apply to reduce the taxable value of the expense payment fringe benefit.

Example 5.1

75. Two employees of the same employer travel together from Sydney to Melbourne on business. They eat a meal together in a motel restaurant with a bottle of wine. The senior member of the two pays for himself and on behalf of the other employee. Upon returning to Sydney, the senior member who paid for the meal submits an expense payment claim form, and is reimbursed by the employer.

76. The reimbursement to the senior member is an expense payment fringe benefit for both employees. The 'otherwise deductible' rule applies to reduce the taxable value of the benefits to nil because the expense would have been deductible to the employees.

77. The employer can claim a deduction under subsection 51(1) of the ITAA for the cost of providing meals to employees.

Question 6

78. Would the answer to question 5 be different if an employee who is travelling dines with a client who is also travelling?

Answer

79. No. Providing the employee and the client are merely consuming sustenance, both meals will be non-entertainment meals. The fact that they dine together does not change the character of the meal consumed by each.

Example 6.1

80. An employee of a real estate agent travels with a client to inspect a number of properties on the Gold Coast. The employee and the client dine together and pay for their own individual meals. The 'otherwise deductible' rule will apply to reduce the taxable value of the fringe benefit provided to the employee. The employer would be able to claim an income tax deduction for the cost of the employee's meal.

Example 6.2

81. As in Example 6.1, however, the employer pays for both the employee and the clients meals. It is considered that both meals remain non-entertainment meals. The fact that the employer pays for both meals does not change the character of the meal as being one that is providing sustenance. The employer will be able to claim an income tax deduction for the cost of both meals under sub-section 51(1) of the ITAA. The exclusion provision subsection 51AE(4) does

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not apply because the food and drink does not amount to the provision of entertainment. No FBT is payable as the 'otherwise deductible' rule reduces the taxable value of the fringe benefit to nil.

Question 7

82. Would the answer to question 6 be different if the employee and the client were travelling on separate business trips but dined together at the same restaurant?

Answer

83. No. The food and drink remain non-entertainment meals. The important point is that both parties are travelling and must consume sustenance while undertaking that travel. The fact that the employee and the client dine together does not change the character of the meals consumed by each. This will be the case even where the employer reimburses the employee for the cost of both meals. However, if the meals are lavish or are consumed with large amounts of alcohol they will be considered to be entertainment meals.

Example 7.1

84. An employee of an advertising agency located in Perth has travelled to Melbourne to finalise a campaign. While staying overnight in Melbourne the employee dines with a Sydney client who is also in Melbourne for business purposes.

85. As both the employee and the Sydney client are travelling the meals consumed are non-entertainment meals. This is the case irrespective of who pays for the meals. The employer will be entitled to a deduction under subsection 51(1) of the ITAA for the cost of the meal or meals as subsection 51AE(4) is not applicable. No FBT is payable as the 'otherwise deductible' rule applies to reduce the taxable value of the employee's meal to nil. No fringe benefit is provided to a client where the employer pays for that client's meal.

Question 8

86. What is the situation if an employee is travelling but dines with an employee who is not travelling? Only the cost of the travelling employee's meal is reimbursed by the employer.

Answer

87. In this case both meals are entertainment meals. This is because the presence of the non-travelling employee attaches more of the characteristics of entertainment to the meal, ie social interaction leading to diversion or amusement.

Example 8.1

88. An employee who is travelling to Melbourne from Darwin joins two employees from the Melbourne office for an evening meal. Reimbursement of an employee's meal expense is an expense payment fringe benefit. The taxable value of the fringe benefit provided will be reduced to nil by the 'otherwise deductible' rule. This is because a deduction would have been available to the employee by the operation of paragraph 51AE(5)(g) of the ITAA. Broadly, paragraph 51AE(5)(g) allows a deduction for expenditure on entertainment that does not involve the entertainment of another person, and would otherwise be deductible to the person benefiting from it. The employer will still be entitled to claim a tax deduction under subsection 51(1) by the operation of subsection 51AE(5AA) of the ITAA.

Question 9

89. Would the outcome in example 8.1 differ if the employer paid for all of the employees' meals?

Answer

90. Yes. All the meals are still considered entertainment meals, however, FBT will be payable on the cost of the meals provided to all the employees. The travelling employees meal cannot be reduced to nil because paragraph 51AE(5)(g) of the ITAA does not apply where the expense is incurred in entertaining someone other than the travelling employee. Also refer to Taxation Determination TD 92/151.

Question 10

91. Would the answer to question 8 be different if the travelling employee dined with a client who was not travelling?

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Answer

92. Yes. The meals would still be entertainment meals for the same reasons set out in the answer to Question 8. The employee's meal would be a fringe benefit, however, the taxable value of the fringe benefit will be reduced to nil by the 'otherwise deductible' rule. This is because paragraph 51AE(5)(g) of the ITAA would have applied to allow the employee a deduction if they had paid for the meal. If the employer only paid for the employee's meal they would be entitled to a deduction for the cost of that meal under subsection 51(1) by the operation of subsection 51AE(5AA) of the ITAA.

93. However, the taxation treatment is different if the employer pays for the travelling employee's meal and the non-travelling client's meal. Taxation Determination TD 92/151 states that expenses incurred by a taxpayer in entertaining a client, including the cost of the taxpayer's own meal, are regarded as 'entertainment expenses' and are not deductible because of subsection 51AE(4) of the ITAA. Furthermore, paragraph 51AE(5)(g) of the ITAA does not override subsection 51AE(4) as the expenses were incurred in entertaining a person other than the employee. Accordingly, the 'otherwise deductible' rule does not apply to reduce the expense payment fringe benefit.

94. No fringe benefit arises for the provision of the meal to the client. Section 63A of the FBTAA operates to reduce the taxable value of the expense payment fringe benefit by that amount applicable to the client's meal. Subsection 51AE(5AA) of the ITAA allows the employer to claim an income tax deduction for the cost of the employee's meal.

(e) Employees dining with other employees of the same employer or with employees of associates of the employer

Question 11

95. What are the taxation consequences when an employee provides entertainment to another employee of the same employer and is subsequently reimbursed by the employer for the cost of providing the entertainment?

Answer

96. An expense payment fringe benefit is provided to the employee who was reimbursed the total cost of the entertainment. The taxable value of that benefit is reduced, under section 63A of the FBTAA, in as much as it relates to the entertainment provided to the other employee. At the same time the other employee who has received entertainment by way of food and drink has received a property fringe

benefit. The taxable value of the property benefit, under section 43 of the FBTAA, will be equivalent to the amount of the reduction applied to the expense payment benefit under section 63A. In other words, the combined taxable value of the expense payment and property benefits is equivalent to the total cost of the entertainment.

97. The employer can claim a deduction under the ITAA for the total reimbursement.

Example 11.1

98. An employee pays for a business lunch for himself and another employee of the same company. The employee is reimbursed by the employer for the total cost of the lunch which is \$200 (or \$100 per head). An expense payment fringe benefit with a taxable value of \$200 has been provided to the employee who was reimbursed. The taxable value can be reduced under section 63A of the FBTAA to \$100. A property fringe benefit is provided to the other employee with a taxable value of \$100.

99. The employer can claim an income tax deduction of \$200 for the cost of the benefits provided.

Question 12

100. What are the taxation consequences when an employee entertains a person who is an employee of an associated company of his or her employer and is subsequently reimbursed by the employer?

101. The same as for Question 9 except that the liability for FBT on the property benefit arises to the associated company of the employer. Under subsection 132(2) of the FBTAA the employer who is providing the fringe benefit is required to keep records of the entertainment provided to the associate's employee and to give a copy of these records to the associated company no later than 21 days after the end of the year of tax.

(f) Meals consumed by employees while attending a seminar

Question 13

102. Food and drink is provided to employees as part of a seminar which is not held on the employer's premises. Is the food and drink subject to FBT?

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Answer

103. Food and drink provided to employees as part of their attendance at a seminar constitute either an expense payment or property fringe benefit. However, the 'otherwise deductible' rule may apply to reduce the taxable value of the fringe benefit.

104. Taxation Determination TD 93/195 provides guidance as to when the cost of food and drink which is part of the cost of attending a Continuing Professional Development (CPD) seminar is deductible under subsection 51(1) of the ITAA. Guidelines provided in that determination are useful in determining whether the 'otherwise deductible' rule can be applied to reduce the taxable value of the benefit provided. As indicated in Taxation Determination TD 93/195 the relevant questions are:

- whether the costs of attending the seminar is deductible under subsection 51(1) of the ITAA;
- whether the seminar is an 'eligible seminar' as defined in 51AE(3) of the ITAA and if it is whether the food and drink provided is 'reasonably incidental' to a participant's attendance at that seminar; and
- if the seminar is not an 'eligible seminar' whether the food and drink provided amounts to the provision of entertainment.

105. Taxation Determination TD 93/195 prescribes that if the seminar is an 'eligible seminar', then any food and drink consumed by the employee that is 'reasonably incidental' to the attendance at that seminar, is not precluded by subsection 51AE(4) from being deductible under subsection 51(1) of the ITAA. This is regardless of whether or not the food and drink constitutes the provision of entertainment, ie whether or not the food and drink is an entertainment meal or a non-entertainment meal'.

106. If the seminar is not an 'eligible seminar' and the costs of attending that seminar are deductible under subsection 51(1) of the ITAA then food and drink which are included as part of the cost will also be deductible provided that the food and drink does not amount to the provision of entertainment, ie a non-entertainment meal. For this purpose light refreshments immediately prior to or following the seminar which may include alcohol do not constitute the provision of entertainment.

Example 13.1

107. An employer provides food and drink incidental to an 'eligible seminar' held at a nearby convention centre. The food and drink provided amounts to the provision of entertainment.

108. The food and drink provided is an entertainment meal and is a property benefit which is subject to FBT. However, the taxable value of that meal is reduced to nil. This is because the cost of the meal would have been 'otherwise deductible' to the employee as subparagraph 51AE(5)(f)(iv) of the ITAA allows a deduction otherwise denied by section 51AE(4) of the ITAA. For the same reason, a deduction for the meals will also be allowable to the employer.

109. If the food and drink provided was a non-entertainment meal then the 'otherwise deductible' rule would still apply as there would be no provision of entertainment. As a result, a deduction for the meals would also be allowable to the employer.

Example 13.2

110. An employer pays for an employee to attend a seminar (not being an 'eligible seminar') that is held from 7.00 am to 9.00 am and is part of a Continuing Professional Development (CPD) program. The seminar is held in a hotel and a light breakfast is provided.

111. The food and drink provided in these circumstances does not amount to the provision of entertainment and is therefore a non-entertainment meal. However, it does constitute a property fringe benefit. The full cost of attending the CPD session would have been deductible to the employee under subsection 51(1) of the ITAA. Therefore, the taxable value of the property fringe benefit can be reduced to nil under the 'otherwise deductible' rule. As this is an exclusive employee expense payment fringe benefit no declaration is required to reduce the taxable value of the fringe benefit.

Example 13.3

112. An employer reimburses an employee for the cost of a CPD session (not being an 'eligible seminar') that is held between 6.00 pm to 8.00 pm. The cost includes a small but identifiable amount to cover light refreshments (including a moderate amount of alcohol) provided immediately after the session.

113. The food and drink provided in these circumstances does not amount to an entertainment meal. The cost of the seminar would have been 'otherwise deductible' to the employee had it not been

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reimbursed. Therefore, the employer's FBT liability is reduced to nil under the 'otherwise deductible' rule. As this is an exclusive employee expense payment fringe benefit (subparagraph 24(1)(e)(i) of the FBTA) no declaration is required to reduce the taxable value of the fringe benefit.

(g) Food and drink consumed by employees at promotions

Question 14

114. Is an employer liable to FBT on food or drink provided to employees at a promotional function not held on the premises of the employer? The promotional function is open to the general public.

Answer

115. Yes. A property fringe benefit is provided to employees in these circumstances. The 'otherwise deductible' rule does not apply to reduce the taxable value of the benefit provided.

116. The employer can claim a deduction under subsection 51(1) of the ITAA for the costs of staging the function because paragraph 51AE(5)(d) prevents subsection 51AE(4) of the ITAA from denying an income tax deduction.

Example 14.1

117. An employer who owns a department store holds a fashion parade in a nearby convention centre. Employees attend the function where food and drink is served. The employer has a liability to FBT in respect of the food and drink provided to the employees. A 'per head' apportionment basis as per Taxation Determination TD 94/25 can be used to determine the value of the food and drink provided to each employee.

(h) Meals provided under an 'arrangement'

Question 15

118. Where an employer provides a meal to an employee of a client, is the meal considered to be a fringe benefit provided to the employee of the client under an 'arrangement' between the employer and the client?

Answer

119. Where the client has no knowledge of the meal or does not consent to the meal being provided to the employee of the client, there is no fringe benefit provided under an 'arrangement' between the employer and the client.

Example 15.1

120. Company A and Company B have a business relationship. An employee of Company A takes an employee of Company B out to lunch. The employee of Company A uses his company expense account to pay for the lunch. Company B is not aware that its employee has been taken out to lunch. The provision of food and drink to the employee of Company A is the provision of entertainment and thus subject to FBT. The provision of food and drink to the employee of Company B is not a fringe benefit as no arrangement exists. The employer may claim a deduction for the cost of providing the fringe benefit to the employee under the provisions of subsection 51AE(5AA) of the ITAA. No tax deduction is allowed in respect of the cost of providing the entertainment to the employee of the client as 51AE(5AA) is not applicable, therefore the denying provision 51AE(4) of the ITAA applies.

*(i) Use of a corporate credit card**Question 16*

121. What are the taxation consequences when an employee pays for entertainment expenses with the employer's corporate credit card?

Answer

122. Where an employee is provided with entertainment by way of food or drink and uses the employer's corporate credit card to pay for the entertainment, a property fringe benefit arises. The employer is liable to pay FBT on the taxable value of the property fringe benefit to the employee and associates (subject to the 'otherwise deductible' rule) and may claim an income tax deduction for the cost of the entertainment to the employee and associates, under subsection 51AE(5AA) of the ITAA.

Example 16.1

123. Employees of the same company dine together at a restaurant. The cost of the meals is paid for with a corporate credit card. The

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meals constitute property fringe benefits and the employer is entitled to claim an income tax deduction for the cost of providing the fringe benefits.

(j) Hotel discount cards

Question 17

124. Will the use of a restaurant discount card enable employers to avoid paying FBT on employee meals?

Answer

125. Some hotels and restaurants provide, for a fee, a discount card which, it is said, entitles the holder to a free meal if he or she entertains others in the restaurant. The usual arrangement is that if other persons are entertained and the bill is paid by use of the discount card, the card holder is entitled to a discount calculated as a percentage of the total cost of the meal. Where an employee entertains clients and a discount is given on the entire meal, FBT still applies to the employee's share of the meal.

126. It should be noted that the cost incurred by an employee to purchase a hotel discount card, is not an allowable income tax deduction. If an employer paid for a card on behalf of the employee, the cost would be income tax deductible to the employer and subject to FBT.

Example 17.1

127. An employee who holds a restaurant discount card, entertains a client of her employer. Under the terms of the card, the holder is entitled to a reduction in the total food bill in proportion to the number of persons entertained. The total food bill of \$100 is reduced to \$50. The proportion of the reduced cost of the meal that relates to the employee is \$25. This is the amount that is subject to FBT. (Taxation Determination TD 94/25 allows the cost of the employee's meal to be determined on a 'per head' basis.)

Example 17.2

128. An employee who holds a restaurant discount card, entertained three clients of his employer. The restaurant discount card provides for a discount of 25% off the cost of the meal. The total cost of the meal was \$160. The discounted cost was \$120. The value of the

employee's meal, for FBT purposes, was \$30 using the 'per head' apportionment basis.

(k) Accompanying spouses

Question 18

129. Where an employee is travelling on business and is accompanied by a spouse, is the employer subject to fringe benefits tax on reimbursement of the costs of the meals?

Answer

130. The reimbursement to the employee gives rise to an expense payment fringe benefit. It is important to note that in this case the spouse is an 'associate' of the employee. Therefore, the provision of both meals are fringe benefits. As both parties are travelling, the meals consumed by the employee and the spouse are non-entertainment meals providing the meals constitute sustenance. The taxable value of the expense payment fringe benefit that relates to the meals provided to the employee can be reduced to nil by the 'otherwise deductible' rule. This is because the employee would not have been denied a deduction by subsection 51AE(4) of the ITAA.

131. The taxable value of the expense payment fringe benefit that relates to meals provided to the spouse cannot be reduced under the 'otherwise deductible' rule. This is because the spouse would not have been entitled to a tax deduction under subsection 51(1) of the ITAA by the operation of section 51AG.

(l) Tax-exempt bodies

Question 19

132. If an employer, who is a tax-exempt body, provides an entertainment meal to employees on the employer's business premises, does section 41 of the FBTAA apply to exempt the benefit from FBT?

Answer

133. No. The benefit provided is a 'tax-exempt body entertainment fringe benefit'. A benefit that falls into this category cannot be a property fringe benefit and therefore section 41 of the FBTAA cannot apply.

134. The provision of entertainment that is normally income tax deductible under subsection 51AE(5) of the ITAA, such as meals

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provided in an 'in-house dining facility' or non-entertainment meals, may give rise to a property fringe benefit when provided by an employer who is tax-exempt. Taxation Determination TD 94/24 sets out the circumstances when entertainment provided in an in-house dining facility is an exempt benefit under the provisions of section 41 of the FBTAA.

Question 20

135. Where a tax-exempt body provides food and drink which is a non-entertainment meal, to an employee, does an FBT liability arise?

136. No. Section 38 of the FBTAA only creates a fringe benefit in relation to non-deductible entertainment expenditure, e.g., a meal at a party. In this case the fringe benefit provided is treated the same as for taxable employers, i.e., the fringe benefit is either an expense payment benefit or a property benefit and the 'otherwise deductible' rule may be applicable.

Date of effect

137. This Ruling applies from and including the fringe benefits tax year commencing 1 April 1994.

Your comments

138. If you wish to comment on this Draft Ruling, please send your comments by: 11 August 1995

to:

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Commissioner of Taxation

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- ITAA 51(1)
- ITAA 51AE
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- FBTAA 38
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- FBTAA 58P
- FBTAA 63A
- FBTAA 132(2)
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case references

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- Bow v. Heatly 1960 SLT 311