TD 93/D244 - Income tax and fringe benefits tax: can a reimbursement within the meaning of the Fringe Benefits Tax Assessment Act 1986 (FBTAA) fall within the definition of 'salary or wages' in subsection 221A(1) of the Income Tax Assessment Act 1936 (ITAA)?

This cover sheet is provided for information only. It does not form part of *TD 93/D244 - Income tax and fringe benefits tax: can a reimbursement within the meaning of the Fringe Benefits Tax Assessment Act 1986 (FBTAA) fall within the definition of 'salary or wages' in subsection 221A(1) of the Income Tax Assessment Act 1936 (ITAA)?*

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Australian Taxation Office

Taxation Determination TD 93/D244

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax and fringe benefits tax: can a reimbursement within the meaning of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) fall within the definition of 'salary or wages' in subsection 221A(1) of the *Income Tax Assessment Act 1936* (ITAA)?

1. No. It is considered that the definition of 'salary or wages' in section 221A of the ITAA includes payments made by employers to employees for services rendered by way of cash or its equivalent but does not include payments made by an employer for the purpose of paying the employee's liabilities or reimbursing the employee for expenses incurred.

2. In *Roads and Traffic Authority of NSW v FC of T* 93 ATC 4508, Hill J. suggested that reimbursements may fall within the definition of 'salary or wages' in section 221A of the ITAA. However, it was not necessary for his Honour to consider this question further as the payments in question in the case were found to have been paid to the employees regardless of whether there were any actual expenses incurred. As such, Hill J. found the payments to be salary or wages. The decision in this case is consistent with Taxation Ruling TR 92/15.

3. To include reimbursements in the definition of 'salary or wages' in section 221A of the ITAA would negate a large part of Division 5 of Part III of the FBTAA (Expense Payment Fringe Benefits) as salary or wages are exempted from being fringe benefits. The enactment of Division 5 demonstrates a clear intention of Parliament to specifically deal with reimbursements under the FBTAA. An interpretation which includes reimbursements within the definition of 'salary or wages' in section 221A of the ITAA would create a result inconsistent with Parliament's intention in enacting Division 5. Accordingly, with the provisions of section 15AA and section 15AB of the *Acts Interpretation Act 1901* in mind, reimbursements will continue to be dealt with under the FBTAA, and not the ITAA.

Examples:

Joe is paid a travelling allowance under an award for travel to and from work. The amount paid is based on the cost of public transport. On payment of the allowance the employer does not check whether the employee did in fact use public transport or whether any expenditure was incurred in travelling to work. It is considered that the amounts paid to Joe is an allowance which is assessable to Joe under the ITAA.

Irma catches the bus to and from work every day. Her employer is required under an award to pay her costs in travelling to and from work. Irma keeps her bus tickets and gives them to her employer at the end of every fortnight. Her employer reimburses her for the amount she has incurred on the bus tickets. The amount paid by her employer is a reimbursement as the amount paid is the actual cost of the bus tickets. The payment is an expense payment fringe benefit which is assessable to Irma's employer under the FBTAA.

Commissioner of Taxation
23/9/93

FOI INDEX DETAIL: Reference No.
Related Determinations:
Related Rulings:
Subject Ref: salary or wages, travelling allowance, expense payment fringe benefit
Legislative Ref: FBTAA 20, 136(1); ITAA 221A
Case Ref: Roads and Traffic Authority of NSW v FC of T 93 ATC 4508
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