


TD 94/D89 - Fringe benefits tax: if employees work at remote construction sites in circumstances where the 'fly-in fly-out' transport is an exempt benefit under subsection 47(7) of the Fringe Benefits Tax Assessment Act 1986, are the meals and accommodation provided at the sites subject to fringe benefits tax?

 This cover sheet is provided for information only. It does not form part of *TD 94/D89 - Fringe benefits tax: if employees work at remote construction sites in circumstances where the 'fly-in fly-out' transport is an exempt benefit under subsection 47(7) of the Fringe Benefits Tax Assessment Act 1986, are the meals and accommodation provided at the sites subject to fringe benefits tax?*

This document has been finalised by TD 96/7.

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

Fringe benefits tax: if employees work at remote construction sites in circumstances where the 'fly-in fly-out' transport is an exempt benefit under subsection 47(7) of the *Fringe Benefits Tax Assessment Act 1986*, are the meals and accommodation provided at the sites subject to fringe benefits tax?

1. Yes, in certain circumstances. The provision of meals would constitute a board fringe benefit in terms of section 35, and the provision of accommodation would be a residual fringe benefit under section 45.
2. Residual fringe benefits in respect of accommodation provided for employees who are working at remote construction sites in circumstances where their 'fly-in fly-out' arrangements are exempt benefits, are also exempt benefits under subsection 47(5) where all the requirements of the subsection are met.
3. Alternatively, if subsection 47(5) does not apply, for example because subparagraph 47(5)(d)(ii) is not satisfied, some relief from tax may still be available.
4. Where either or both, accommodation and meals are provided for employees while they are travelling in the course of their employment, the 'otherwise deductible' rules contained in sections 52 and 37 respectively apply to reduce the taxable value of the fringe benefits to nil. Taxation Ruling MT 2030 provides that as a general practical rule a person will be considered to be travelling in the course of their employment where they are away from their home base for a period not exceeding 21 days.
5. Where accommodation and meals are provided to employees who are away from their home base for periods in excess of 21 days, the employees would, as a general practical rule, not be considered to be travelling in the course of their employment. The 'otherwise deductible' rules contained in sections 52 and 37 would not therefore apply.
6. For further guidance on the question of whether a person is travelling in the course of their employment, refer to Taxation Ruling MT 2030 which discusses in paragraphs 35 to 43 the circumstances where a person will be considered to be travelling for the purposes of distinguishing between travelling allowances and living away from home allowances.

Example

Bill works for a builder who subcontracts on construction sites throughout Cape York Peninsula and the Gulf Country. He and his family live in Cairns. While working at the remote construction sites Bill stays at camp at the sites for periods of two to ten months, with a three weeks on, one

week off, 'fly-in fly-out' arrangement. All meals and accommodation at the camp are provided by Bill's employer.

We accept in these circumstances that Bill is travelling in the course of his employment. Accordingly, in respect of the meals and accommodation provided, the taxable values of the board and residual fringe benefits are reduced to nil under the 'otherwise deductible' rules pertaining to each fringe benefit. Alternatively, the accommodation provided would be an exempt benefit.

Commissioner of Taxation

18/8/94

FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings: MT 2030

Subject Ref: accommodation; meals; fly-in fly-out transport; board fringe benefit; residual fringe benefit; exempt fringe benefit; otherwise deductible

Legislative Ref: FBTAA 35, 37, 45, 47(5), 47(5)(d)(ii), 47(7), 52

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