IT 2675 - Income tax and fringe benefits tax: entertainment - morning and afternoon teas; light meals; and in-house dining facilities

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Taxation Ruling

Income tax and fringe benefits tax: entertainment - morning and afternoon teas; light meals; and in-house dining facilities

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What this Ruling is about

1. This Ruling discusses:

   (a) whether expenditure incurred by a taxpayer in providing morning and afternoon teas and light meals for the taxpayer, the taxpayer's employees and their associates, and visitors to the taxpayer's premises is:

      (i) 'in respect of the provision of entertainment' and therefore precluded by subsection 51AE(4) of the *Income Tax Assessment Act 1936* (ITAA) from being an allowable income tax deduction under subsection 51(1); or

      (ii) a fringe benefit under the *Fringe Benefits Tax Assessment Act 1986* (FBTAA).

   (b) whether a boardroom or meeting room with kitchen facilities is an 'in-house dining facility' for the purposes of subsection 51AE(1) of the ITAA.

Ruling

(a) Morning and afternoon teas and light lunches

- Income tax law

2. Providing morning or 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 cost of providing these refreshments is therefore not excluded as a deduction by

subsection 51AE(4) of the ITAA. In most cases, an income tax deduction is allowable under subsection 51(1) of the ITAA.

3. However, it is necessary that the requirements of subsection 51(1) be met in each particular case for the cost of providing the morning or afternoon tea to be deductible. Broadly stated, the requirements are that the expenditure be incurred in the course of gaining assessable income (or carrying on business for this purpose) and that it not be of a capital, private or domestic nature.

4. If an employer (including a partner in a partnership) provides morning and afternoon tea to employees on a working day, and consumes morning or afternoon tea from the same source available to employees, the additional costs for the morning or afternoon tea consumed by the employer is not denied deductibility under the ITAA.

5. The provision of morning and afternoon teas to visitors to the taxpayer's premises or worksite is not the provision of entertainment if it is provided on the same basis as to employees.

6. Morning and afternoon tea includes light refreshments such as tea, coffee, fruit drinks, cakes and biscuits, etc., but does not include alcohol.

7. Light meals are treated in the same way as morning and afternoon tea. It is not the provision of entertainment to provide sandwiches and other 'hand food', salads, orange juice, etc.,. that are intended to, and can, be consumed on the taxpayer's premises or worksite. As 'light' meals become more elaborate, they take on more of the characteristics of entertainment. There is no particular point at which this will become obvious. Normal business practice will be the yardstick.

8. If alcohol is provided at a morning or afternoon tea or at a light meal:

(a) this constitutes the provision of entertainment in terms of subsection 51AE(4) of the ITAA; and

(b) unless one of the exemptions set out in subsection 51AE(5) applies, expenses incurred on the food and drink (including the alcohol) are denied deductibility.

- Fringe benefits tax law

9. The provision of morning and afternoon tea and light meals to employees is an exempt benefit under section 41 (exempt property benefit) of the FBTAA.

10. If an employer is an income tax-exempt body, expenditure on morning and afternoon tea and light meals is not a fringe

benefit under section 38 (income tax-exempt body entertainment benefits) of the FBTAA.

(b) In-house dining facilities

11. A boardroom or meeting room with kitchen facilities is not an 'in-house dining facility' as defined in subsection 51AE(1) of the ITAA . Therefore, the costs incurred in providing substantial meals to employees in these rooms are not allowable deductions.

Date of effect

12. This Ruling sets out the current practice of the Australian Taxation Office and does not contain any change in interpretation. Consequently, it applies (subject to any limitations imposed by statute) for years of income and fringe benefits tax years commencing both before and after the date on which it is issued.

Explanations

(a) Morning and afternoon teas and light meals

- Income tax law

13. Subsection 51AE(4) of the ITAA denies a deduction under section 51 of that Act for expenses incurred in respect of the provision of entertainment.

14. The expression 'provision of entertainment' is explained in subsection 51AE(3) of the ITAA. Broadly stated, it means the provision of:

(a) entertainment by way of food, drink or recreation; or

(b) accommodation or travelling in connection with, or to facilitate, this entertainment.

15. Entertainment is not defined in the ITAA. It must therefore take its ordinary meaning:

(a) agreeable occupation for the mind, diversion or amusement;

(b) something affording diversion or amusement;

(c) hospitable provision for the wants of a guest.

(Macquarie Dictionary)

16. The provision of biscuits and drinks such as tea, coffee, soft drinks and fruit juices to employees or their associates on a working day for morning or afternoon tea cannot be said to provide amusement or even to be an agreeable occupation. It is merely the provision of refreshments to enable the employees or associates to complete the working day in comfort. The same may be said of light meals provided by a taxpayer to employees or their associates on a working day.

17. Expenditure incurred by a taxpayer on morning and afternoon tea and meals consumed by the taxpayer is generally private expenditure and not deductible under subsection 51(1) of the ITAA. However, a taxpayer who is an employer may provide morning or afternoon tea or light meals to employees on a working day and consume some of these refreshments from the same source available to employees. The additional costs for the morning or afternoon tea or light meals consumed by the employer is not denied deductibility. This is because the entire expenditure in these circumstances has the essential character of an income-producing expense.

18. Providing alcohol, whether or not it is provided with morning or afternoon tea or at a light meal, is the provision of entertainment because the consumption of alcohol has social connotations and therefore provides or affords diversion or amusement. Unless one of the exemptions set out in subsection 51AE(5) of the ITAA applies, subsection 51AE(4) operates to preclude any allowable deduction under subsection 51(1) for the costs of the food or drink (including the alcohol).

- Fringe benefits tax law

19. Because the provision of morning and afternoon tea to an employee is not the provision of entertainment, the fringe benefits tax law relating to the provision of non-deductible entertainment to employees does not apply (sections 38 and 64 of the FBTAA).

20. The provision of morning and afternoon tea to an employee gives rise to a property benefit under section 40 of the FBTAA. However, under section 41 of the FBTAA, a property benefit is exempt if it is provided to, and consumed by, the employee on a working day on business premises of the employer.

(b) In-house dining facilities

21. The provisions of sub-subparagraph 51AE(5)(f)(i) or 51AE(5)(f)(ii) deal with in-house dining facilities. They ensure that subsection 51AE(4) does not operate to preclude an income

tax deduction for expenditure in respect of the provision of entertainment to the extent that the expenditure is incurred by a taxpayer in providing employees with food and drink in an 'in-house dining facility' of the taxpayer.

22. A canteen, dining room or similar facility is an 'in-house dining facility' as defined in subsection 51AE(1) of the ITAA if it satisfies all of the following three criteria:

(a) it is located on premises of the taxpayer (or, if the taxpayer is a company, on premises of the taxpayer or a company related to the taxpayer); and

(b) it is operated wholly or principally for providing food and drink on working days to employees of the taxpayer (or, if the taxpayer is a company, to employees of the taxpayer or a company related to the taxpayer); and

(c) it is not open to the public at any time.

23. Provided the facility satisfies the criteria in paragraph 22, there is no restriction on where the food or drink is consumed. The food or drink provided in these facilities need not be consumed at the facility. The food may be consumed by staff, for example, in a nearby park. Also, staff may have food delivered to them at their workpoints or workstations.

24. A canteen, dining room or similar facility can be an in-house dining facility even though it does not provide food and drink for all employees of the taxpayer. For example, a dining room for the sole use of a taxpayer's executive employees qualifies as an in-house dining facility.

25. A boardroom or a meeting room with kitchen facilities does not satisfy the definition of 'in-house facility' because:

. it is not a canteen, a dining room or a facility similar to a canteen or a dining room; and

. it is not operated wholly or principally for providing food and drink on working days to employees.

26. In its context in the definition of 'in-house facility', the word 'principally', in relation to the operation of a facility, means operation mainly for providing food or drink. Whether a facility is operated principally for the required purpose will ordinarily be determined on a time basis i.e. operated more than 50% of the time it is used. However, time is not necessarily the sole criterion. The issue is one of fact, degree or impression.

27. A boardroom or a meeting room, whether or not it has associated kitchen facilities, is used or operates mainly as a

venue for meetings, conferences, etc.,. Even a large single boardroom or conference room with bar and food servery facilities, divided into two separate and smaller sections by a flexible folding wall, is used or operated, in our view, mainly as a venue for meetings, conferences,etc.,.

28. Kitchen facilities may, in themselves, be in-house dining facilities in appropriate circumstances. However, kitchen facilities associated with a boardroom, meeting or conference room are not sufficient to bring the boardroom, etc.,. within the definition of 'in-house dining facility' in subsection 51AE (1) of the ITAA. This is because the boardroom is still operated wholly or principally for holding meetings, conferences, etc.,. even though the kitchen facilities are used to provide food and drink to participants.

29. The costs of providing substantial meals in a boardroom or a meeting room with associated kitchen facilities are not deductible. This is so regardless of where the meals are consumed.

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- ITAA 51AE
- FBTAA 38; FBTAA 40; FBTAA 41