


***TD 2016/15 - Income tax: is an employer entitled to a deduction under section 8-1 of the Income Tax Assessment Act 1997 for the annual fee incurred on an airport lounge membership for use by its employees?***

 This cover sheet is provided for information only. It does not form part of *TD 2016/15 - Income tax: is an employer entitled to a deduction under section 8-1 of the Income Tax Assessment Act 1997 for the annual fee incurred on an airport lounge membership for use by its employees?*



## Taxation Determination

Income tax: is an employer entitled to a deduction under section 8-1 of the *Income Tax Assessment Act 1997* for the annual fee incurred on an airport lounge membership for use by its employees?

**1 This publication provides you with the following level of protection:**

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

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

### Ruling

1. Yes, the taxpayer, an employer, is entitled to a deduction under section 8-1 of the *Income Tax Assessment Act 1997* ('ITAA 1997') for the annual fees incurred on an airport lounge membership for use by its employees where that membership is provided because of the employment relationship.
2. However, the annual fees incurred will not be deductible under section 8-1 of the ITAA 1997 to the extent the annual fees are incurred in relation to gaining or producing exempt income or non-assessable non-exempt income.

*Note 1: The annual fees will be deductible in full even if there is substantial private use of the lounge membership by employees, for example, the membership is used whilst on holiday.*

*Note 2: Section 58Y of the Fringe Benefits Tax Assessment Act 1986 provides that an expense payment benefit or a property benefit provided by an employer that relates to an airport lounge membership is exempt from fringe benefits tax.*

# TD 2016/15

## **Date of effect**

3. This Determination applies to income years commencing both before and after its date of issue. However, this Determination will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

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**Commissioner of Taxation**

27 July 2016

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## Appendix 1 – Explanation

**❶** *This Appendix 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.*

4. Section 8-1 of the ITAA 1997 allows a deduction for losses and outgoings to the extent that they are necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income.
5. Where an airport lounge membership is provided to employees of a taxpayer because of the employment relationship, the fees incurred by the taxpayer are 'incidental and relevant' to the conduct of the taxpayer's business.<sup>1</sup>
6. Notwithstanding the position under section 8-1, a deduction for the membership fees is not allowable if section 26-45 of the ITAA 1997(recreational club expenses) or section 32-5 of the ITAA 1997(entertainment expenses) apply.
7. Airport lounge clubs provide business facilities (such as meeting rooms, individual workstations and Wi-Fi access) and services relating to the travel of their members (such as a streamlined checking in process). Although the clubs also provide some food, drink and recreation, the provision of a lounge membership is not properly characterised as a provision of 'entertainment'.<sup>2</sup> Similarly, airport lounge clubs could not properly be said to be clubs that are carried on 'mainly to provide facilities ... for drinking, dining, recreation or entertainment'.<sup>3</sup> For these reasons:
  - the airport lounge membership fee is not an entertainment expense, and Division 32 of the ITAA 1997 does not apply to deny the deduction, and
  - the airport lounge club is not a recreational club, and section 26-45 of the ITAA 1997 does not apply to deny the deduction.
8. Accordingly, the annual airport lounge annual membership fees are deductible under section 8-1, except to the extent they are incurred in relation to gaining or producing exempt income or non-assessable non-exempt income.

<sup>1</sup> *W Nevill & Co Ltd v. Federal Commissioner of Taxation* [1937] HCA 9; (1937) 56 CLR 290; *Ronpibon Tin NL & Tongkah Compound NL v. Federal Commissioner of Taxation* [1949] HCA 15; (1949) 78 CLR 47.

<sup>2</sup> Subsection 32-10(1) of the ITAA 1997.

<sup>3</sup> Subsection 26-45(2) of the ITAA 1997 (definition of 'recreational club').

## References

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*Previous draft:*

Not previously issued as a draft

- FBTA 1986
- FBTA 1986 58Y
- TA 1953

*Related Rulings/Determinations:*

TR 2006/10

*Cases relied on:*

*Legislative references:*

- ITAA 1997
- ITAA 1997 8-1
- ITAA 1997 26-45
- ITAA 1997 26-45(2)
- ITAA 1997 32-5
- ITAA 1997 32-10(1)

- W Nevill & Co Ltd v. Federal Commissioner of Taxation [1937] HCA 9; (1937) 56 CLR 290
- Ronpibon Tin NL & Tongkah Compound NL v. Federal Commissioner of Taxation [1949] HCA 15; (1949) 78 CLR 47

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ATO references

NO: 1-64DMMU0.

ISSN: 2205-6211

BSL: IND

ATOlaw topic: Income tax ~~ Deductions ~~ Business and professional expenses ~~ Other

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