


TD 93/20 - Fringe benefits tax: can the 'otherwise deductible' rule apply to reduce fringe benefits tax if an overseas trip, made by an employee, is not allowable to the employer as a deduction for income tax purposes because the trip is of a capital nature from the perspective of the employer?

 This cover sheet is provided for information only. It does not form part of *TD 93/20 - Fringe benefits tax: can the 'otherwise deductible' rule apply to reduce fringe benefits tax if an overseas trip, made by an employee, is not allowable to the employer as a deduction for income tax purposes because the trip is of a capital nature from the perspective of the employer?*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does 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 the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Fringe benefits tax: can the 'otherwise deductible' rule apply to reduce fringe benefits tax if an overseas trip, made by an employee, is not allowable to the employer as a deduction for income tax purposes because the trip is of a capital nature from the perspective of the employer?

1. Yes. The 'otherwise deductible' rule provides for a reduction in taxable value of a benefit if the employee who received the benefit would have been entitled to a 'once-only deduction' under the *Income Tax Assessment Act 1936* (ITAA) for the expenditure if that expenditure had not been paid or reimbursed by the employer but paid by the employee.
2. This rule refers to the 'notional' deductibility of an expense in the hands of the employee and not the employer.
3. Before a reduction in taxable value can be allowed under this rule the employer must obtain from the employee a 'travel diary' in the form prescribed by subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986* (see Taxation Ruling MT 2038) to substantiate the business purpose of the trip together with documentary evidence of the expenditure incurred.

Example.

An employee travels overseas to set up a new agency for his employer and is reimbursed by him. The cost of this would be a capital expense to the employer. If the employee had paid for the trip and was not reimbursed, then he would have been entitled to a deduction if the requirements of subsection 51(1) (ITAA) were met. Therefore, the 'otherwise deductible' rule applies.

Commissioner of Taxation

04/02/93

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Related Determinations:

Related Rulings: MT 2038

Subject Ref: fringe benefits tax; 'otherwise deductible' rule; overseas travel; reduction in taxable value

Legislative Ref: ITAA s51(1); FBTAA s.24; FBTAA s.34; FBTAA s.44; FBTAA s.52; FBTAA s136(1)

ATO Ref: BAN TD 10