TR 96/9 - Income tax and fringe benefits tax: entertainment by way of food and drink

Taxation Ruling
Income tax and fringe benefits tax: entertainment by way of food and drink

other Rulings on this topic

IT 2675; TD 93/76; TD 93/195; TD 93/197; TD 94/24; TD 94/25; TD 94/55

*This Ruling, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Ruling is a public ruling and how it is binding on the Commissioner.*

What this Ruling is about

Class of person/arrangement

1. This ruling looks at the concept of what is entertainment as it relates to the provision of food and drink for the purposes of applying the relevant provisions of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) and the *Income Tax Assessment Act 1936* (ITAA).

2. **Part A** of the **Explanations** section contains a table that summarises the application of the FBTAA and the ITAA to food and drink provided to employees and their associates, and to clients. The table is cross referenced to the Question and Answer section in Part B.

3. **Part B** of the **Explanations** section addresses some of the practical aspects of how the provisions of the FBTAA and the ITAA apply to entertainment provided by way of food and drink.

4. Part B, at paragraphs 29 to 32 and 37, also addresses changes to the law made by the *Taxation Laws Amendment (FBT Cost of Compliance) Act 1995* which are applicable from 1 April 1995. Answers to commonly asked questions are also provided in this part.

Ruling

5. Section 51AE of the ITAA provides for a general prohibition on the deduction of entertainment expenses. The effect of section 51AE is that, except for some specific exceptions, entertainment expenses incurred after 19 September 1985 are not deductible for income tax purposes. However, when the entertainment is subject to fringe benefits tax (FBT), section 51AE will have no effect.

6. The definition of 'provision of entertainment' contained in subsection 51AE(3) of the ITAA, and adopted by the FBTAA by virtue of section 152, does not prescribe that entertainment occurs every time food and drink is provided.

7. In order to determine when the provision of food and drink to a recipient results in the entertainment of that person, an objective analysis of all the circumstances surrounding the provision of the food and drink is required. In making this determination an employer should consider:

- **why** the food and drink is being provided;
- **what** type of food and drink is being provided;
- **when** that food and drink is being provided; and
- **where** the food and drink is being provided.

Food and/or drink which is determined by these criteria to constitute entertainment is taken to be 'meal entertainment'.

8. The term 'provision of meal entertainment' is defined in Division 9A of Part III of the FBTAA. That Division allows an employer who provides meal entertainment to employees or associates to elect to value the benefit using either of two methods. The definition of 'provision of meal entertainment' is similar to the definition of 'provision of entertainment' contained in subsection 51AE(3) of the ITAA, except that it does not include reference to the provision of recreation. For the purposes of understanding the concept of what is entertainment as it relates to food and drink only, the terms 'provision of entertainment' and 'provision of meal entertainment' are interchangeable.

9. Where a meal falls within a specific FBT provision (e.g., as a board fringe benefit or a tax-exempt body entertainment fringe benefit) then, in the absence of an election made under Division 9A, the taxable value of the benefit is determined under that specific provision rather than the more general sections dealing with expense payment and property fringe benefits. If an employer elects to use one of the methods in Division 9A, then the taxation outcome for an individual meal is no longer relevant.

What is entertainment?

10. Meal entertainment arises when the food and drink provided has the character of entertainment. The meal may be substantial, may be consumed as part of a social gathering, or may be consumed with other forms of entertainment. In order to classify food and drink as meal entertainment, it is necessary to determine when the provision of the food and drink constitutes the provision of entertainment under

subsection 51AE(3) of the ITAA or section 37AD of the FBTAA. For ease of explanation, reference in this discussion will be made only to subsection 51AE(3).

11. Subsection 51AE(3) of the ITAA states in part:

> 'A reference in this section to the provision of entertainment is a reference to the provision (whether to the taxpayer or to another person and whether gratuitously, pursuant to an agreement or otherwise) of -
>
> (a) entertainment by way of food, drink or recreation; or
>
> (b) accommodation or travel in connection with, or for the purpose of facilitating, entertainment to which paragraph (a) applies (whether or not the accommodation or travel is also in connection with something else or for another purpose)...'

12. Two alternative views have been suggested in interpreting what is the provision of entertainment by way of food and drink. They are:

(1) that the provision of all food and drink in any circumstance will constitute the provision of entertainment; or

(2) that only the provision of food and drink that has an element of entertainment satisfies the definition, i.e., the provision of food and drink must confer entertainment on the recipient.

13. The relevant question for the purpose of this Ruling is, therefore, the meaning of the words 'entertainment by way of food, drink' found in paragraph 51AE(3)(a) of the ITAA. As these words are not defined in the ITAA, they will bear their natural meaning, taken in the context that they appear in section 51AE of the ITAA.

14. The word 'entertainment', which is key to the operation of the relevant words, is defined in the *Macquarie Dictionary* to mean:

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

(b) something affording diversion or amusement; or

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

15. The suggested interpretation that the provision of food and drink in any circumstance constitutes the provision of entertainment for purposes of section 51AE is based on the premise that the diversion or amusement required occurs merely by the provision of food and drink. In other words 'entertainment by way of food [or] drink' as used in paragraph 51AE(3)(a) of the ITAA must be construed to refer to bodily not mental gratification.

16. Support for this interpretation is found in the approach taken by the English courts in the construction of similar kinds of words used in regulating refreshment houses (see *Taylor v. Oram* (1862) 1 H & C 370). In that case, Pollock CB at 376 took the view that in the context of the relevant English legislation the word 'entertainment' is only another expression for 'refreshment'. In addition, it can be argued that as it was necessary to extend the meaning of the word 'recreation' found in paragraph 51AE(3)(a) of the ITAA to include 'amusement', no independent element of either amusement or diversion is required where what occurs is the mere provision of food and drink.

17. The other view that an element of entertainment is required before the provision of food and drink becomes meal entertainment is based on the ordinary meaning of the word 'entertainment' by itself. As was suggested by the Lord Justice-Clerk (Lord Thomson) in *Bow v. Heatly* 1960 SLT 311 at 313:

> 'entertainment is the gathering together of a number of people to carry out some activity or to be present at some activity presumably with a view of enjoying themselves.'

In the same case, Lord Patrick at 313 made the following relevant observation:

> 'Parliament ... left the term "entertainment" to receive its meaning in ordinary language, and that meaning in this connection is "amusement".'

18. We take the view that the above latter interpretation represents the better view of the law. We would, however, add that in most cases the mere provision of food and drink would satisfy the 'entertainment' test. It is only in a narrow category of cases where the mere provision of food and drink would not amount to 'entertainment' for purposes of section 51AE of the ITAA.

19. We have expressed this view previously, for example, in Taxation Ruling IT 2675. That Ruling considers that the provision of morning and 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 provision of light meals (finger food, etc.), for example in the context of providing a working lunch, is not considered to be the provision of entertainment. The provision of food and drink in these circumstances does not confer entertainment on the recipient.

20. The provision of light meals can be contrasted with the examples of non-deductible entertainment given in the Explanatory Memorandum to *Taxation Laws Amendment Act (No 4) 1985*, i.e., business lunches and drinks, dinners, cocktail parties and staff social functions. In these examples the provision of the food and drink confers entertainment on the recipient. The wording of subsection

51AE(3) of the ITAA shows a clear intention to treat food and drink consumed in these situations as entertainment, whether or not business discussions or business transactions occur at the same time.

21. Where an employee is travelling in the course of performing their employment duties, the food and drink provided is consumed as a result of that work-related travel. In the absence of supplementary entertainment, the food and drink is not provided by the employer in order to confer entertainment on that employee. Therefore, the meal does not have the character of entertainment.

22. Taxation Determination TD 94/55 states that in determining whether providing an item of property constitutes the provision of entertainment, regard should be had to all the circumstances of the case. In particular, regard should be given to the character of the entertainment to be derived from the item of property provided. The provision of food and drink is the provision of property. However, an objective consideration of the circumstances in which that food and drink is provided is necessary to determine whether it constitutes the provision of entertainment.

23. It can be seen that the determination of whether or not the provision of food and drink constitutes the provision of entertainment requires an objective analysis of all the circumstances surrounding that provision. We are of the view that the following are relevant factors that should be considered in undertaking any objective analysis:

(a) **Why** is the food and drink being provided. This test is a 'purpose test'. For example, food and drink provided for the purposes of refreshment does not generally have the character of entertainment, whereas food and drink provided in a social situation where the purpose of the function is for employees to enjoy themselves will have the character of entertainment.

(b) **What** food and drink is being provided. As noted above, morning and afternoon teas and light meals are generally not considered to constitute entertainment. However, as light meals become more elaborate, they take on more of the characteristics of entertainment. The reason for this is that the more elaborate a meal, the greater the likelihood that entertainment arises from the consumption of the meal.

For example, when an employer provides morning or afternoon teas or light meals, that food and drink does not usually confer entertainment on the employee. By contrast, a three course meal provided to an employee during a working lunch would have the characteristics of

entertainment. The nature of the food itself confers entertainment on the employee.

(c) **When** is the food and drink being provided. Food and drink provided during work time, during overtime or while an employee is travelling is less likely to have the character of entertainment. This is because in the majority of these cases food provided will be for a work-related purpose rather than an entertainment purpose. This, however, will depend upon whether the entertainment of the recipient is the expected outcome of the provision of the food and drink. For example, a staff social function held during work time will still have the character of entertainment.

(d) **Where** is the food and drink being provided. Food and drink provided on the employer's business premises or at the usual place of work of the employee is less likely to have the character of entertainment; refer to the reasons in (b) and (c) above. However, food and drink provided in a function room, hotel, restaurant, cafe, coffee shop or consumed with other forms of entertainment is more likely to have the character of entertainment. This is because the provision of the food and drink is less likely to have a work-related purpose.

24. No one of the above factors will be determinative; however, paragraphs (a) and (b) are considered the more important. The application of the above factors will result in the determination of whether the food and drink amounts to meal entertainment. Once this determination is made, the employer must then decide whether each item of actual expenditure on meal entertainment is to be treated individually under the ITAA and FBTAA or whether to elect that one of the methods contained in Division 9A of the FBTAA should apply. If the election is made then the taxation outcome for the individual meal is no longer relevant. The fringe benefits tax and income tax consequences are discussed at paragraphs 29 to 32 and 37 of this Ruling.

Explanations

Part A: Entertainment table

25. The following table will assist employers to determine whether the food or drink provided in a given circumstance constitutes meal entertainment. **The taxation result prescribed in the table is relevant if the employer wishes to treat each item of actual**

expenditure on food and drink separately under the FBTAA and the ITAA where applicable. If the employer elects to use one of the methods provided in Division 9A of the FBTAA, then the taxation outcome for an individual meal is no longer relevant. However, its characterisation as meal entertainment or not is still relevant. The following key is to be used for the table. Please refer to the Note at the end of the table (page 12) for an explanation of the table.

Key

ME = meal entertainment

Y = Yes

N = No

Y/N = depending upon what is provided, food or drink may or may not amount to the provision of meal entertainment

\# = an income taxable employer has the option to claim a deduction for the cost of the meal and include $30 in their assessable income - section 26AAAC of the ITAA

		Taxable Employer		Tax-exempt Body	Ruling Paragraph Reference
	ME Y/N	**FBT Y/N**	**Deduction Y/N**	**FBT Y/N**	**(for taxable employers)**
Circumstances In Which Food and Drink Provided					
(a) Food and drink consumed on the employer's premises ...					43-56
(a)(i) ... by employees					
1) at a social function	Y	N	N	Y	27, 49, 50
2) in an in-house dining facility - not at a social function	Y/N	N	Y	N	27, 53, 54
3) in an in-house dining facility - at a social function	Y	N	N	Y	27, 49, 50
4) morning & afternoon teas & light lunches	N	N	Y	N	38, 39, 48, 55, 56
(a)(ii) ... by associates					
1) at a social function	Y	Y	Y	Y	49, 51
2) in an in-house dining facility - not at a social function	Y/N	Y	Y	Y	26
3) in an in-house dining facility - at a social function	Y	Y	Y	Y	49, 51
4) morning & afternoon teas & light lunches	N	Y	Y	Y	38, 39
(a)(iii) ... by clients					
1) at a social function	Y	N	N	N	49, 52
2) in an in-house dining facility - not at a social function	if Y if N	N N	N(#) Y	N N	52 52
3) in an in-house dining facility - at a social function	Y	N	N	N	52
4) morning & afternoon teas & light lunches	N	N	Y	N	48

		Taxable Employer		Tax-exempt Body	Ruling Paragraph Reference
	ME Y/N	FBT Y/N	Deduction Y/N	FBT Y/N	(for taxable employers)
Circumstances In Which Food and Drink Provided					
(b) Food and drink consumed off the employer's premises ...					57-62
1) ... at a social function or business lunch					
• by employees	Y	Y	Y	Y	57-62
• by associates	Y	Y	Y	Y	57, 58
• by clients	Y	N	N	N	
(c) Alcohol					63-69
1) employee travelling - wine accompanies evening meal	N	N	Y	N	66, 67
2) alcohol provided at the conclusion of a CPD seminar with finger foods	N	N	Y	N	68, 69
(d) Food and drink consumed by employees while travelling					70-96
1) employee travels and dines alone	N	N	Y	N	70-73
2) two or more travelling employees dine together	N	N	Y	N	70, 71, 74-80
3) travelling with client and dine together	N	N	Y	N	81-83
4) as in 3) except employer pays for all meals					
• employee's meal	N	N	Y	N	81-84
• client's meal	N	N	Y	N	81-84
5) dines with client who is travelling separately	N	N	Y	N	85-88

		Taxable Employer		Tax-exempt Body	Ruling Paragraph Reference
	ME Y/N	FBT Y/N	Deduction Y/N	FBT Y/N	(for taxable employers)
Circumstances In Which Food and Drink Provided					
6) dines with employee not travelling					
• only employee's meal provided	N	N	Y	N	89-91
• both employees' meals provided					
- travelling employee's meal	N	N	Y	N	89-93
- non-travelling employee's meal	Y	Y	Y	Y	89-93
7) dines with client who is not travelling					
• only employee's meal provided	N	N	Y	N	94-95
• employee's and client's meal provided					
- employee's meal	N	N	Y	N	94-96
- client's meal	Y	N	N	N	94-96
(e) Employees dining with other employees of the same employer or with employees of associates of the employer					97-103
1) employee entertains another employee and is reimbursed by the employer	Y	Y	Y	Y	97-101
2) employee entertains an employee of an associated company of the employer and is subsequently reimbursed					
• employer's employee (expense pmt)	Y	Y	Y	Y	97-103
• associate's employee (property)	Y	Y (assoc)	Y (employer)	Y	97-103
(f) Meal consumed by employees while attending a seminar					104-120
1) provided incidental to an 'eligible seminar' not held on the employer's premises	Y/N	N	Y	N	104-112, 117-120
2) light breakfast provided at a CPD seminar that is not an 'eligible seminar'	N	N	Y	N	113-114
3) light refreshments incl. moderate amount of alcohol provided immediately after a CPD seminar that is not an 'eligible seminar'	N	N	Y	N	115-116

		Taxable Employer		Tax-exempt Body	Ruling Paragraph Reference
	ME Y/N	FBT Y/N	Deduction Y/N	FBT Y/N	(for taxable employers)
Circumstances In Which Food and Drink Provided					
(g) Food and drink consumed by employees at promotions					121-124
1) function not held on employer's premises and is open to the general public	Y	Y	Y	Y	121-124
(h) Meals provided under an arrangement					125-127
1) employer is not aware or does not consent to employees being taken out to dinner by clients					
• employees	Y	Y	Y	Y	125-127
• client's employee	Y	N	N	N	125-127
(i) Use of corporate credit card					128-130
1) employees dine together at a restaurant and the meal is paid for with the credit card	Y	Y	Y	Y	128-130
(j) Restaurant discount cards					131-135
1) employee who holds a restaurant discount card entertains a client					
• employee - 1/2 total discounted price	Y	Y	Y	Y	131-135
• client - 1/2 total discounted price	Y	N	N	N	131-135
(k) Meals for accompanying spouses					136-138
1) with employee travelling on business and employer pays for all meals					
• employee	N	N	Y	N	136-138
• spouse	N	Y	Y	Y	136-138

	Taxable Employer			Tax-exempt Body	Ruling Paragraph Reference
	ME Y/N	FBT Y/N	Deduction Y/N	FBT Y/N	
Circumstances In Which Food & Drink Provided					
(l) Food and drink provided by tax-exempt bodies					139-143
1) 'non-deductible' meal entertainment provided to employees, whether or not on employer's premises	Y			Y	139, 140
2) meals provided to employees in an in-house dining facility	Y/N			N	139, 141
3) non meal entertainment provided to employees on employer's premises	N			N	142, 143

Please Note: The above table summarises the examples and answers given to the questions on the taxation treatment of the provision of food and drink discussed in **Part B** of the **Explanations** section. It provides a quick reference to the FBT and income tax treatment of a particular circumstance. The last column of the table provides a cross reference to those paragraphs of the Ruling that are relevant to the scenario. It should be noted that the benefit may constitute a 'minor benefit' in terms of section 58P of the FBTAA. The tax treatment of minor benefits is discussed at paragraph 27 below.

Part B: practical aspects and questions and answers

Result of providing meal entertainment

FBT result for employers (who are not income tax exempt bodies)

26. From 1 April 1994, where an employer provides meal entertainment to an employee or an associate of the employee, the benefit, whether it is provided as an expense payment fringe benefit or a property fringe benefit, will be subject to FBT. The cost of the fringe benefit to the employer will generally be deductible as a result of subsection 51AE(5AA) of the ITAA.

27. One exception is where the meal is provided to and is consumed by the employee at the employer's business premises at any time on a working day. Under these circumstances, and provided that the meal is a property benefit and not an expense payment fringe

benefit, the benefit will be exempt from FBT under section 41 of the FBTAA. A second exception is where the meal provided to the employee is small in value and provided infrequently and irregularly. Such a meal may be considered a 'minor benefit' for the purposes of section 58P of the FBTAA. Taxation Determinations TD 93/197 and TD 93/76 provide guidance on what is a minor benefit.

28. Where meal entertainment is subject to FBT, the taxable value of the fringe benefit may, in certain circumstances, be reduced under the 'otherwise deductible' rule. This rule provides that the taxable value of relevant fringe benefits may be reduced to the extent that an income tax deduction would have been available to the employee if that employee had incurred and paid the expense. In most cases the use of the 'otherwise deductible' rule must be supported by certain documents such as receipts and employee declarations.

29. Certain changes were made to the FBTAA and the ITAA by the *Taxation Laws Amendment (FBT Cost of Compliance) Act 1995*, with effect from 1 April 1995. The newly inserted Division 9A of the FBTAA provides that an employer may elect to determine the taxable value of meal entertainment provided to employees and their associates by one of two methods. These methods are the **50/50 split** method or the **12 week register** method. If the employer does not make an election, the taxable value will be determined according to actual expenditure. An election will apply for the whole FBT year.

30. Employers should carefully consider the full implications of both the 50/50 split method and the 12 week register method of calculating the taxable value of meal entertainment fringe benefits. It may be that the employer is better off determining the taxable value according to actual expenditure. If the employer does elect to adopt one of the above measures, it will be necessary to split the outgoings on food and drink into two categories. These are outgoings on food and drink that amount to meal entertainment and those that do not. It should be noted that the total value of meal entertainment is reduced by the amount of any contributions made by employees, to the extent that those contributions are not subject to reimbursement by the employer. Furthermore, the provision of food and drink that does not amount to meal entertainment is not covered by these new provisions. Such outgoings are to be treated on an actual expenditure basis.

31. Where an employer adopts the 50/50 split method, the taxable value of meal entertainment benefits will be half of the total meal entertainment expenditure incurred by the employer in the FBT year. The split is based on the total expenditure incurred by the employer on the provision of meal entertainment to employees (and associates) and non-employees regardless of whether the expenditure would be deductible for income tax purposes. It does not include the value of meal entertainment provided to employees by an associate of the

employer, the taxable value of which will be determined under the other provisions of the FBTAA.

32. Under the 12 week register method, the taxable value of meal entertainment fringe benefits for the FBT year will be the total meal entertainment expenditure incurred by the employer on all persons in the FBT year multiplied by the percentage of expenditure applicable to employees (and associates) as established by the register during the 12 week period.

FBT result for income tax exempt bodies

33. Certain entertainment provided to employees of a tax-exempt employer gives rise to a separate category of fringe benefit known as a 'tax-exempt body entertainment fringe benefit'. It is only entertainment that is non-deductible for income tax purposes (e.g., a meal at a party) that gives rise to a tax-exempt body entertainment fringe benefit. Subsection 51AE(5AA) of the ITAA is ignored for the purposes of determining whether the entertainment expenditure would be deductible.

34. The taxation consequences of entertainment provided by tax-exempt bodies have not changed as a result of the amendments to the ITAA and the FBTAA effective from 1 April 1994. The taxable value of such fringe benefits is determined under Division 10 of the FBTAA which has not been amended. It should be noted that the exemption from FBT for meals consumed by employees on the employer's business premises does not apply to a tax-exempt body entertainment benefit, as section 41 of the FBTAA only applies to property benefits. Furthermore, a tax-exempt body entertainment benefit that is considered 'minor' will only be exempt if the requirements of paragraph 58P(1)(d) of the FBTAA are met. A staff Christmas party provided by a tax-exempt body will not satisfy these requirements.

35. An income tax exempt employer can adopt the methods now provided in Division 9A of the FBTAA in determining the taxable value of meal entertainment benefits.

Income tax result for employers (who are not tax-exempt bodies)

36. Subsection 51AE(5AA) of the ITAA prevents the non-deductibility effect of subsection 51AE(4) from operating where the expenditure was incurred in providing a fringe benefit. The definition of a 'fringe benefit' in subsection 136(1) of the FBTAA excludes an exempt benefit. Therefore, expenditure on entertainment which is an exempt benefit under either section 41 or section 58P of the FBTAA cannot be income tax deductible unless the expenditure falls within one of the exclusions provided for in subsection 51AE(5) of the ITAA

(e.g., meals in an eligible dining facility). Expenditure on the provision of food and drink which does not constitute the provision of meal entertainment may also be income tax deductible if the conditions of subsection 51(1) of the ITAA are satisfied.

37. Where the employer has adopted one of the methods discussed at paragraphs 29 to 32 above, they will be entitled to an income tax deduction equal to the resulting taxable value. No other deduction will be allowed for the same expenditure. Section 51AEA of the ITAA is applicable to the 50/50 split method and section 51AEB is applicable to the 12 week register method.

Result of providing food or drink other than meal entertainment

FBT result for employers (who are not tax-exempt employers)

38. Since 1986, this type of food and drink has been subject to FBT. However, as is the case with meal entertainment, there are some exemptions. Where the food and drink is a property benefit provided to, and consumed by, the employee on a working day and on business premises of the employer, the benefit will be exempt from FBT under section 41 of the FBTAA. Similarly, where the food and drink constitutes a minor benefit, as discussed in paragraph 27 above, it will also be exempt from FBT.

39. Where the benefit is not an exempt benefit, the taxable value will be reduced by the 'otherwise deductible' rule to the extent that the employee could claim a deduction under the income tax provisions, e.g., meals of an employee while travelling in the course of employment are generally deductible where that travel includes an overnight stay.

FBT result for income tax exempt bodies

40. Food and drink that does not amount to meal entertainment does not give rise to tax-exempt body entertainment fringe benefits as described in paragraph 33 above. The FBT result will be the same as for taxable employers as explained in paragraphs 38 and 39.

Income tax result

41. The provision of food and drink to an employee that does not amount to meal entertainment is deductible to the employer under subsection 51(1) of the ITAA, whether or not it is subject to FBT.

Answers to commonly asked questions

42. A number of questions have been raised concerning some of the practical aspects of how FBT will be applied to entertainment provided by way of food and drink. The questions raised generally fall into the following categories:

(a) food and drink consumed on the employer's business premises;

(b) food and drink consumed off the employer's business premises;

(c) alcohol;

(d) food and drink consumed by employees while travelling on business;

(e) employees dining with other employees of the same employer or employees of associates of the employer;

(f) food and drink consumed by employees while attending a seminar;

(g) food and drink consumed by employees at promotions;

(h) meals provided under an 'arrangement';

(i) use of a corporate credit card;

(j) restaurant discount cards;

(k) accompanying spouses; and

(l) tax-exempt bodies.

The answers given below assume that the employer has not elected to determine the taxable value of meal entertainment benefits under Division 9A of the FBTAA. The effect of an employer making such an election is discussed at paragraphs 29 to 32 and 37 of this Ruling. Except as otherwise indicated, the questions and answers relate to income taxable employers. The position for tax-exempt employers is discussed at paragraphs 139 to 143 below.

(a) Food and drink consumed on the employer's business premises

Question 1

43. What are the taxation consequences where food and drink is provided by an employer and consumed by employees on the employer's business premises?

Answer

44. Section 41 of the FBTAA provides that property (including food and drink) that is provided to and consumed by an employee on the employer's business premises on a working day is an exempt benefit. This exemption applies whether or not the food and drink amounts to meal entertainment; however, it will not apply where the employer has elected to value all meal entertainment benefits under the two methods provided in Division 9A. The section 41 exemption can apply even if the food is not prepared on the employer's business premises. A working day is any 24 hour period during which work is usually performed by the employee.

45. However, the exemption from FBT available under section 41 applies only to the food or drink consumed by employees. Food and drink consumed by associates of employees is subject to FBT when it is provided and consumed on the employer's business premises.

46. Subsection 51AE(5AA) of the ITAA does not apply to allow a deduction under subsection 51(1) where the benefit is an exempt benefit. However, the expenditure may still be deductible under subsection 51(1) if one of the exclusions contained in subsection 51AE(5) applies.

47. For example, the cost of providing food and drink in an in-house dining facility (not at a party, reception or social function) is an allowable income tax deduction under subsection 51(1) because of the operation of subsection 51AE(5) of the ITAA. The term 'in-house dining facility' is defined in subsection 51AE(1) (also refer to Taxation Determination TD 94/24 and Taxation Ruling IT 2675). Subsection 51AE(5) applies even though the food and drink provided in the 'in-house dining facility' is also an exempt benefit under the provisions of section 41 of the FBTAA.

48. Food and drink which does not amount to meal entertainment and is provided on the employer's business premises is considered in Taxation Ruling IT 2675. The cost of providing the food or drink to employees is income tax deductible under the general provisions of subsection 51(1) of the ITAA.

Example 1.1

49. An employer provides food and drink at a social function for employees (and associates) and clients to celebrate the end of the financial year. The function is held on the employer's business premises at 5.30 pm on 30 June.

50. The food and drink provided at a social function constitutes the provision of entertainment and is therefore meal entertainment. The meal entertainment provided to employees in these circumstances is a

property benefit which is exempt from FBT under section 41 of the FBTAA. As a result, subsection 51AE(5AA) of the ITAA is not applicable because an exempt benefit is not a fringe benefit. Therefore, subsection 51AE(4) prevents the employer from claiming an income tax deduction for the cost of providing the meal entertainment. The result would be the same even if the social function was held in an in-house dining facility as it is a social function.

51. The meal entertainment provided to the associates of the employees gives rise to property fringe benefits. Section 41 of the FBTAA is not applicable to associates. The taxable value of the fringe benefit is the cost of the meal entertainment provided to the associates. Subsection 51AE(5AA) of the ITAA applies to prevent subsection 51AE(4) from denying an income tax deduction. The result would be the same for food and drink that does not amount to meal entertainment provided to the associate.

52. Meal entertainment provided to clients on the business premises of the employer is not deductible for income tax purposes. An exception is where the meal is provided in an in-house dining facility (not at a party, reception or social function) and the employer elects to include $30 in their assessable income in respect of the meal under section 26AAAC of the ITAA.

Example 1.2

53. An employer provides full hot lunches to employees in an 'in-house dining facility'.

54. The lunch provided does amount to meal entertainment. However, the meal is exempt from FBT under section 41 of the FBTAA. An income tax deduction for the meals will be allowable to the employer under paragraph 51AE(5)(f) of the ITAA as the meals were provided in an 'in-house dining facility'. Paragraph 51AE(5)(f) overrides the denying effect of subsection 51AE(4).

Example 1.3

55. An employer provides, on the employer's business premises, cut sandwiches and orange juice to the employees.

56. The food and drink does not amount to meal entertainment. It is food and drink of the type described in Taxation Ruling IT 2675, and is a property benefit which is exempt from FBT under section 41 of the FBTAA. The employer will be able to claim a deduction for the cost of providing the meal under the general provisions of subsection 51(1) of the ITAA.

(b) Food and drink consumed off the employer's business premises

Question 2

57. When is the cost of food and drink provided to employees and/or their associates, on premises that are not the employer's business premises (e.g., in a restaurant), subject to FBT?

Answer

58. The food and drink provided to employees and their associates in these cases will generally amount to meal entertainment and be subject to FBT. A reduction in the taxable value may be available under the 'otherwise deductible' rule, but only in respect of the benefit provided to an employee.

59. The employee would have only been entitled to claim such a deduction if it was concluded that the food and drink was not meal entertainment, e.g., if the employee was travelling. The situations where these types of meals are considered not to be meal entertainment are discussed below. If the food and drink does amount to meal entertainment, the employee would not have been entitled to an income tax deduction under subsection 51(1) because of the operation of subsection 51AE(4) of the ITAA.

60. However, there are a number of exceptions to subsection 51AE(4) which are set out in subsection 51AE(5). These include food and drink which is reasonably incidental to a person's attendance at an 'eligible seminar' (subparagraph 51AE(5)(f)(iv)).

Example 2.1

61. An employer provides food and drink at a social function for the employees to celebrate a particularly successful quarter of trading. The function is held at a restaurant near the office.

62. Applying the tests in paragraph 23 above leads to the conclusion that the food and drink amounts to meal entertainment. This would be the case regardless of the type of food and drink provided as the function is a social gathering. As a result, the provision of these meals gives rise to a property benefit which is subject to FBT. There is no reduction available under the 'otherwise deductible' rule in this case as the employee would not have been entitled to a deduction if they had paid for the meal. Subsection 51AE(5AA) of the ITAA applies to prevent subsection 51AE(4) from denying an income tax deduction.

(c) Alcohol

Question 3

63. Does the provision of alcohol automatically result in the provision of meal entertainment?

Answer

64. No. We do not believe that the provision of alcohol in every situation will result in the provision of meal entertainment. Generally, the consumption of alcohol does have social connotations and would provide or afford diversion or amusement. In those cases the provision of the alcohol would have the characteristics of entertainment. However, there is a narrow category of situations that arises where the provision of alcohol is incidental to a larger event or work-related activity of an employee.

65. As a result, in order to determine whether the provision of alcohol constitutes meal entertainment, the tests discussed at paragraph 23 above must be applied. The following examples explain the reasoning behind our approach to the provision of alcohol. The application of the law to the two scenarios is discussed under its own subject heading below.

Example 3.1

66. An employee who is travelling on a business trip takes an evening meal at a restaurant. The meal is accompanied by the consumption of some wine.

67. In this situation the employee is travelling in the course of his or her employment and the meal purchased is of a type that would normally be consumed at home. It is impractical to suggest that drinking wine in these circumstances changes the nature of the meal. The food and drink does not amount to meal entertainment. It is consumed by the employee while undertaking work-related travel.

Example 3.2

68. An employee of an engineering firm attends a Continuing Professional Development (CPD) session conducted at a local function centre. The employer reimburses the employee for the cost of the registration fee. At the end of the session, the CPD provider supplies the participants with finger foods and a choice of refreshments including tea, coffee, beer, wine and soft drink. The employee consumes some wine while partaking of the finger foods.

69. When applying the tests in paragraph 23 above to this example, it is reasonable to conclude that the consumption of the wine or beer forms only an incidental part of the meal. It does not result in the food and drink amounting to the provision of meal entertainment.

(d) Food and drink consumed by employees while travelling on business

Question 4

70. Will an employer be liable to FBT on the reimbursement to an employee of the cost of food and drink consumed while travelling on the employer's business?

Answer

71. No. Generally, the food and drink will not amount to meal entertainment. The employer is providing the employee with food and drink while undertaking work-related travel. As a result, the food and drink would not have the character of entertainment. However, this would not be the case where there was entertainment (e.g., a floor show) provided with the meal. The cost of the food and drink would have been 'otherwise deductible' to the employee under subsection 51(1) of the ITAA. Therefore, the taxable value of the expense payment fringe benefit is reduced to nil.

Example 4.1

72. An employee dines alone while travelling on business and is subsequently reimbursed by the employer.

73. The reimbursement of the meal expenses constitutes an expense payment fringe benefit. The food and drink does not amount to meal entertainment and the taxable value of that meal is reduced to nil because the meal would have been 'otherwise deductible' to the employee. The employer will get a deduction for the cost of the reimbursement.

Question 5

74. Is the situation different where two or more employees who are travelling together on business dine together and for convenience one employee pays for the meals of all the employees on behalf of the employer? This employee is subsequently reimbursed by the employer for the cost of all meals.

Answer

75. Reimbursement of the cost of an employee's own meals while travelling away from home does not normally constitute the provision of entertainment.

76. Where two or more employees of the same employer dine together while undertaking work-related travel, the food and drink consumed by all employees would not amount to meal entertainment. Therefore, under the 'otherwise deductible' rule, the taxable value of any expense payment fringe benefit would be reduced to nil.

77. However, if there is entertainment other than food and drink provided (e.g., a floor show) then the expenditure will be in respect of the provision of entertainment and, therefore, amount to meal entertainment. Accordingly, subsection 51AE(4) of the ITAA would apply to deny a deduction for the expenditure had the employee incurred it. As a result, the 'otherwise deductible' rule will not apply to reduce the taxable value of the expense payment fringe benefit.

Example 5.1

78. Two employees of the same employer travel together from Sydney to Melbourne on business. They eat a meal together in a motel restaurant with a bottle of wine. The senior member of the two pays for herself and on behalf of the other employee. Upon returning to Sydney, the senior member who paid for the meal submits an expense payment claim form, and is reimbursed by the employer.

79. The reimbursement to the senior member is an expense payment fringe benefit for both employees. The 'otherwise deductible' rule applies to reduce the taxable value of the benefits to nil because the expense would have been deductible to the employees.

80. The employer can claim a deduction under subsection 51(1) of the ITAA for the cost of providing meals to employees.

Question 6

81. Would the answer to Question 5 be different if an employee who is travelling dines with a client who is also travelling?

Answer

82. No. Neither meal will amount to meal entertainment, provided that the meals consumed by the employee and the client are not accompanied by entertainment other than food and drink. The fact that they dine together does not change the character of the meal consumed by each.

Example 6.1

83. An employee of a real estate agent travels with a client from Hobart to the Gold Coast in order to inspect a number of properties. The employee and the client dine together and pay for their own individual meals. The employee's meal cost is subsequently reimbursed by her employer. The 'otherwise deductible' rule will apply to reduce the taxable value of the fringe benefit provided to the employee. The employer would be able to claim an income tax deduction for the cost of the employee's meal.

Example 6.2

84. Assume the same facts as in Example 6.1. However, the employer pays for the meals of both the employee and the client. It is considered that neither meal will amount to meal entertainment. The fact that the employer pays for both meals does not change the character of the meal. The employer will be able to claim an income tax deduction for the cost of both meals under subsection 51(1) of the ITAA. The exclusion provision subsection 51AE(4) does not apply because the food and drink does not amount to the provision of entertainment. No FBT is payable as the 'otherwise deductible' rule reduces the taxable value of the fringe benefit to nil.

Question 7

85. Would the answer to Question 6 be different if the employee and the client were travelling on separate business trips but dined together at the same restaurant?

Answer

86. No. The food and drink will still not amount to meal entertainment. The important point is that both parties are travelling. The fact that the employee and the client dine together does not change the character of the meals consumed by each. This will be the case even where the employer reimburses the employee for the cost of both meals. However, if there is entertainment other than food and drink provided (e.g., a floor show) then the expenditure will be in respect of the provision of entertainment and amount to meal entertainment.

Example 7.1

87. An employee of an advertising agency located in Perth has travelled to Melbourne to finalise a campaign. While staying overnight in Melbourne, the employee dines with a Sydney client who is also in Melbourne for business purposes.

88. As both the employee and the Sydney client are travelling the meals will not amount to meal entertainment. This is the case irrespective of who pays for the meals. The employer will be entitled to a deduction under subsection 51(1) of the ITAA for the cost of the meal or meals as subsection 51AE(4) is not applicable. No FBT is payable as the 'otherwise deductible' rule applies to reduce the taxable value of the employee's meal to nil. No fringe benefit is provided to a client where the employer pays for that client's meal.

Question 8

89. What is the situation if an employee is travelling but dines with an employee who is not travelling? Only the cost of the meal for the travelling employee is reimbursed by the employer.

Answer

90. In this case the travelling employee's meal will not amount to meal entertainment. The presence of the non-travelling employee does not change the nature of the meal consumed by the travelling employee. However, if there is entertainment other than food and drink provided (e.g., a floor show) then the expenditure will be in respect of the provision of entertainment and, therefore, amount to meal entertainment.

Example 8.1

91. An employee who is travelling to Melbourne from Darwin joins two employees from the Melbourne office for an evening meal. The employer reimburses the travelling employee's meal cost. The taxable value of the expense payment fringe benefit provided will be reduced to nil by the 'otherwise deductible' rule. This is because a deduction would have been available to the employee by the operation of subsection 51(1) of the ITAA if that person had not been reimbursed by the employer. The employer will be entitled to claim an income tax deduction under subsection 51(1).

Question 9

92. Would the outcome in Example 8.1 differ if the employer paid for all of the employees' meals?

Answer

93. Yes. The travelling employee's meal is still considered not to amount to meal entertainment and the tax treatment remains the same. However, FBT will be payable on the cost of the meals provided to the non-travelling employees. Their meals are considered to amount to meal entertainment on the same basis as a business lunch and would be subject to FBT. The employer will be able to claim a tax deduction for these meals under subsection 51(1) because of the operation of subsection 51AE(5AA) of the ITAA.

Question 10

94. Would the answer to Question 8 be different if the travelling employee dined with a client who was not travelling?

Answer

95. No. The employee's meal would still not amount to meal entertainment.

96. If the employer paid for all meals, no fringe benefit arises for the provision of the meal to the client; however, no deduction is allowable to the employer for the cost of that meal. Section 63A of the FBTAA operates to reduce the taxable value of the expense payment fringe benefit by the amount applicable to the client's meal. Subsection 51(1) of the ITAA allows the employer to claim an income tax deduction for the cost of the employee's meal because of the operation of subsection 51AE(5AA).

(e) Employees dining with other employees of the same employer or with employees of associates of the employer

Question 11

97. What are the taxation consequences when an employee provides meal entertainment to another employee of the same employer and is subsequently reimbursed by the employer for the cost of providing the meal entertainment?

Answer

98. An expense payment fringe benefit is provided to the employee who was reimbursed the total cost of the meal entertainment. The taxable value of that benefit is reduced, under section 63A of the FBTAA, in as much as it relates to the meal entertainment provided to the other employee. At the same time the other employee who has received meal entertainment has received a property fringe benefit. The taxable value of the property benefit, under section 43 of the FBTAA, will be equivalent to the amount of the reduction applied to the expense payment benefit under section 63A. In other words, the combined taxable value of the expense payment and property benefits is equivalent to the total cost of the entertainment.

99. The employer can claim an income tax deduction under subsection 51(1) of the ITAA for the total reimbursement.

Example 11.1

100. An employee pays for a business lunch for himself and another employee of the same company. The employee is reimbursed by the employer for the total cost of the lunch which is $200 (or $100 per head). An expense payment fringe benefit with a taxable value of $200 has been provided to the employee who was reimbursed. The taxable value can be reduced under section 63A of the FBTAA to $100. A property fringe benefit is provided to the other employee with a taxable value of $100.

101. The employer can claim an income tax deduction of $200 under subsection 51(1) of the ITAA for the cost of the benefits provided.

Question 12

102. What are the taxation consequences when an employee entertains a person who is an employee of an associated company of his or her employer and is subsequently reimbursed by the employer?

103. The outcome is the same as for Question 11 except that the liability for FBT on the property benefit arises to the associated company of the employer. Under subsection 132(2) of the FBTAA the employer who is providing the fringe benefit is required to keep records of the meal entertainment provided to the associate's employee and to give a copy of these records to the associated company no later than 21 days after the end of the year of tax.

(f) Food and drink consumed by employees while attending a seminar

Question 13

104. Food and drink is provided to employees as part of a seminar which is not held on the employer's premises. Is the food and drink subject to FBT?

Answer

105. Food and drink provided to employees as part of their attendance at a seminar constitute either an expense payment or property fringe benefit. However, the 'otherwise deductible' rule may apply to reduce the taxable value of the fringe benefit.

106. Taxation Determination TD 93/195 provides guidance as to when the cost of food and drink which is part of the cost of attending a Continuing Professional Development (CPD) seminar is deductible under subsection 51(1) of the ITAA. Guidelines provided in that determination are useful in determining whether the 'otherwise deductible' rule can be applied to reduce the taxable value of the benefit provided. As indicated in TD 93/195 the relevant questions are:

- whether the cost of attending the seminar is deductible under subsection 51(1) of the ITAA;
- whether the seminar is an 'eligible seminar' as defined in subsection 51AE(1) of the ITAA, and if it is, whether the food and drink provided is 'reasonably incidental' to a participant's attendance at that seminar; and
- whether the food and drink provided amounts to the provision of entertainment.

107. With regard to the third dot point, the factors discussed at paragraph 23 above of this Ruling should be applied when determining whether the food and drink amounts to meal entertainment.

108. Subparagraph 51AE(5)(f)(iv) of the ITAA provides that if the seminar is an 'eligible seminar', then any food and drink consumed by the employee that is 'reasonably incidental' to the attendance at that seminar is not precluded by subsection 51AE(4) from being deductible under subsection 51(1) of the ITAA. This is regardless of whether or not the food and drink constitutes the provision of entertainment, i.e., whether or not the food and drink amounts to meal entertainment.

109. If the seminar is not an 'eligible seminar' and the costs of attending that seminar are deductible under subsection 51(1) of the ITAA, then food and drink which are included as part of the cost will also be deductible provided that the food and drink does not amount to the provision of entertainment, i.e., is not meal entertainment. For this purpose, light refreshments (which may include alcohol) provided immediately prior to or following the seminar do not constitute the provision of entertainment.

Example 13.1

110. An employer provides food and drink incidental to an 'eligible seminar' held at a nearby convention centre. For the purposes of this example, the food and drink provided amounts to meal entertainment.

111. The meal entertainment is a property benefit which is subject to FBT. However, the taxable value of that meal is reduced to nil. This is because the cost of the meal would have been 'otherwise deductible' to the employee because of subparagraph 51AE(5)(f)(iv) of the ITAA. For the same reason, a deduction for the meals will also be allowable to the employer under subsection 51(1) of the ITAA.

112. If the food and drink provided does not amount to meal entertainment then the 'otherwise deductible' rule would still apply as the cost of attendance at the seminar would generally be deductible under subsection 51(1).

Example 13.2

113. An employer pays for an employee to attend a seminar (not being an 'eligible seminar') that is held from 7.00 am to 9.00 am and is part of a Continuing Professional Development (CPD) program. The seminar is held in a hotel and a light breakfast is provided.

114. The food and drink provided in these circumstances does not amount to the provision of entertainment and is, therefore, not meal entertainment. However, it does constitute a property fringe benefit. The full cost of attending the CPD session would have been deductible to the employee under subsection 51(1) of the ITAA. Therefore, the taxable value of the property fringe benefit can be reduced to nil under the 'otherwise deductible' rule.

Example 13.3

115. An employer reimburses an employee for the cost of a CPD session (not being an 'eligible seminar') that is held between 6.00 pm and 8.00 pm. The cost includes a small but identifiable amount to

cover light refreshments (including a moderate amount of alcohol) provided immediately after the session.

116. The food and drink provided in these circumstances does not amount to meal entertainment. The cost of the seminar would have been 'otherwise deductible' to the employee had it not been reimbursed. Therefore, the employer's FBT liability is reduced to nil under the 'otherwise deductible' rule.

Example 13.4

117. An employer pays for an employee and spouse to attend an international accounting conference which is being held in another State capital city. The program is as follows:

• Day 1	7.00pm	Welcome dinner and opening speeches
• Day 2	Morning	Breakfast with accompanying person
		Technical sessions
	Lunch	Separate lunch provided for accompanying person
	Afternoon	Technical sessions
	Evening	Dinner
• Day 3	Morning	Breakfast with accompanying person
		Technical sessions
	Afternoon	Sightseeing trip
	Evening	Gala dinner dance.

118. The question to be asked is whether the meals amount to meal entertainment. Because the employee is travelling in the course of his employment to attend the seminar, meals such as breakfast, lunch and dinner will not, generally, be regarded as meal entertainment and, because of the 'otherwise deductible' rule, will not give rise to an FBT liability.

119. Food and drink provided at the gala dinner dance will constitute meal entertainment. This is because entertainment is provided with the meal. However, as the seminar is an 'eligible seminar' and the meal is incidental to the participant's attendance at the seminar, the cost of the meal will not give rise to an FBT liability. This is due to the operation of the 'otherwise deductible' rule. (For employees who are not travelling, see Example 13.1 above.)

120. Because of the provisions of section 51AG of the ITAA, all costs which relate to attendance at the seminar by the employee's spouse will not be 'otherwise deductible' and will be subject to FBT. The employer may claim an income tax deduction for these costs under subsection 51(1) because of the provisions of subsections 51AE(5AA) and 51AG(1A) of the ITAA.

(g) Food and drink consumed by employees at promotions

Question 14

121. Is an employer liable to FBT on food or drink provided to employees at a promotional function not held on the premises of the employer? The promotional function is open to the general public.

Answer

122. Yes. A property fringe benefit is provided to employees in these circumstances. Where the food and drink amounts to meal entertainment, the 'otherwise deductible' rule does not apply to reduce the taxable value of the benefit provided.

123. The employer can claim a deduction under subsection 51(1) of the ITAA for the costs of staging the function because paragraph 51AE(5)(d) prevents subsection 51AE(4) of the ITAA from denying an income tax deduction.

Example 14.1

124. An employer who owns a department store holds a fashion parade in a nearby convention centre. Employees attend the function, and food and drink is served. The employer has a liability to FBT in respect of the food and drink provided to the employees. A 'per head' apportionment basis as per Taxation Determination TD 94/25 can be used to determine the value of the food and drink provided to each employee.

(h) Meals provided under an 'arrangement'

Question 15

125. Where an employer provides a meal to an employee of a client, is the meal considered to be a fringe benefit provided to the employee of the client under an 'arrangement' between the employer and the client?

Answer

126. Where the client has no knowledge of the meal or does not consent to the meal being provided to the employee of the client, there is no fringe benefit provided under an 'arrangement' between the employer and the client.

Example 15.1

127. Company A and Company B have a business relationship. An employee of Company A takes an employee of Company B out to lunch. The employee of Company A uses his company expense account to pay for the lunch. Company B is not aware that its employee has been taken out to lunch. The provision of food and drink to the employee of Company A is the provision of entertainment and thus subject to FBT. The provision of food and drink to the employee of Company B is not a fringe benefit as no arrangement exists. The employer may claim a deduction for the cost of providing the fringe benefit to the employee under the provisions of subsection 51AE(5AA) of the ITAA. No income tax deduction is allowed in respect of the cost of providing the entertainment to the employee of the client as subsection 51AE(5AA) is not applicable, therefore the denying provision subsection 51AE(4) of the ITAA applies.

(i) Use of a corporate credit card

Question 16

128. What are the taxation consequences when an employee pays for meal entertainment with the employer's corporate credit card?

Answer

129. Where an employee is provided with meal entertainment and uses the employer's corporate credit card to pay for the meal entertainment, a property fringe benefit arises. The employer is liable to pay FBT on the taxable value of the property fringe benefit to the employee and associates (subject to the 'otherwise deductible' rule) and may claim an income tax deduction for the cost of the meal entertainment to the employee and associates, under subsection 51(1) because of the operation of subsection 51AE(5AA) of the ITAA.

Example 16.1

130. Employees of the same company dine together at a restaurant. The cost of the meals is paid for with a corporate credit card. The meals amount to meal entertainment. The meals will be property

fringe benefits and the employer is entitled to claim an income tax deduction for the cost of providing the fringe benefits.

(j) Restaurant discount cards

Question 17

131. What are the taxation consequences when an employee uses a restaurant discount card when obtaining food and drink?

Answer

132. Some hotels and restaurants provide, for a fee, a discount card which, it is said, entitles the holder to a free meal if he or she entertains others in the restaurant. The usual arrangement is that if other persons are entertained and the bill is paid by use of the discount card, the card holder is entitled to a discount calculated as a percentage of the total cost of the meal. Where an employee entertains clients and a discount is given on the total cost of the meal, FBT still applies to the employee's share of the meal.

133. It should be noted that the cost incurred by an employee to purchase a hotel discount card is not an allowable income tax deduction, unless the card is to be used primarily for income tax deductible purposes (e.g., for the purchase of meals while travelling on business). If an employer paid for a card on behalf of the employee, the cost would be income tax deductible to the employer and subject to FBT.

Example 17.1

134. An employee who holds a restaurant discount card entertains a client of her employer. Under the terms of the card, the holder is entitled to a reduction in the total food bill in proportion to the number of persons entertained. The total food bill of $100 is reduced to $50. The proportion of the reduced cost of the meal that relates to the employee is $25. This is the amount that is subject to FBT. (Taxation Determination TD 94/25 allows the cost of the employee's meal to be determined on a 'per head' basis.)

Example 17.2

135. An employee who holds a restaurant discount card entertains three clients of his employer. The restaurant discount card provides for a discount of 25% off the cost of the meal. The total cost of the meal is $160. The discounted cost is $120. The value of the

employee's meal, for FBT purposes, is $30 using the 'per head' apportionment basis.

(k) Accompanying spouses

Question 18

136. Where an employee is travelling on business and is accompanied by a spouse, is the employer subject to fringe benefits tax on reimbursement of the costs of the meals?

Answer

137. The reimbursement to the employee gives rise to an expense payment fringe benefit. It is important to note that in this case the spouse is an 'associate' of the employee. Therefore, the provision of both meals is a fringe benefit. As both parties are travelling, the meals consumed by the employee and the spouse do not amount to meal entertainment providing the meals are not accompanied by other forms of entertainment. The taxable value of the expense payment fringe benefit that relates to the meals provided to the employee can be reduced to nil by the 'otherwise deductible' rule. This is because the employee would not have been denied a deduction by subsection 51AE(4) of the ITAA.

138. The taxable value of the expense payment fringe benefit that relates to meals provided to the spouse cannot be reduced under the 'otherwise deductible' rule. This is because the spouse would not have been entitled to a tax deduction under subsection 51(1), because of the operation of section 51AG of the ITAA, had the spouse purchased the meals.

(l) Tax-exempt bodies

Question 19

139. If an employer, who is a tax-exempt body, provides meal entertainment to employees on the employer's business premises, does section 41 of the FBTAA apply to exempt the benefit from FBT?

Answer

140. No. The benefit provided is a 'tax-exempt body entertainment fringe benefit'. A benefit that falls into this category is not a property fringe benefit and therefore section 41 of the FBTAA cannot apply.

141. The provision of food and drink that is normally income tax deductible under subsection 51(1) because of the operation of

subsection 51AE(5) of the ITAA, such as meals provided in an 'in-house dining facility' or morning and afternoon teas, may give rise to a property fringe benefit when provided by an employer who is tax-exempt. Taxation Determination TD 94/24 sets out the circumstances when entertainment provided in an in-house dining facility is an exempt benefit under the provisions of section 41 of the FBTAA.

Question 20

142. Where a tax-exempt body provides food and drink to an employee which does not amount to meal entertainment, does an FBT liability arise?

Answer

143. Not usually. Section 38 of the FBTAA only creates a fringe benefit in relation to non-deductible entertainment expenditure, e.g., a meal at a party. In this case the fringe benefit provided is treated the same as for taxable employers, i.e., the fringe benefit is either an expense payment benefit or a property benefit and the 'otherwise deductible' rule or the section 41 exemption may be applicable.

Date of effect

144. This Ruling applies from and including the fringe benefits tax year commencing 1 April 1994. This Ruling 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 Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Commissioner of Taxation

17 April 1996

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