TR 97/17 - Income tax and fringe benefits tax: entertainment by way of food or drink

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

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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.*

The Tax Law Improvement Project is restructuring, renumbering and re-writing the income tax law in plain language. The Parliament is amending the income tax law progressively to reflect these aims. As new laws come into effect, Taxation Rulings about old laws are being brought into line with them.

*[**Note**: This is a consolidated version of this document. Refer to the Tax Office Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]*

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 or drink for the purposes of applying the relevant provisions of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) and the *Income Tax Assessment Act 1997* (ITAA).

2. **Part A** of the **Explanations** section contains a table that summarises the application of the FBTAA and the ITAA to food or 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 or 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. Division 32 of the ITAA provides for a general prohibition on the deduction of entertainment expenses. The effect of Division 32 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), Division 32 has no effect.

6. The definition of 'entertainment' contained in section 32-10 of the ITAA, and adopted by the FBTAA in the definition of 'entertainment' in subsection 136(1), does not prescribe that entertainment occurs every time food or drink is provided.

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

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

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

8. Division 9A of Part III of the FBTAA allows an employer who provides meal entertainment to employees or associates to elect to value the benefit using either of two methods. The term 'provision of meal entertainment' is defined in that Division in section 37AD. The definition is similar to the definition of 'entertainment' in section 32-10 of the ITAA, except that section 37AD:

(a) contains paragraphs (e), (f) and (g), which were omitted from the section 32-10 definition. The explanatory memorandum to the Tax Law Improvement Bill 1996 outlined the effect of the omitted paragraphs, stating at page 97 that:

"... The omissions have no substantive effect on the definition, they were clearly within the definition's ordinary scope. ... "; and

(b) does not include reference to recreation.

For the purposes of understanding the concept of what is entertainment as it relates to food or drink only, the terms '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 or 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 or drink as meal entertainment, it is necessary to determine when the provision of the food or drink constitutes entertainment under section 32-10 of the ITAA or section 37AD of the FBTAA. For ease of explanation, reference in this discussion will be made only to section 32-10.

11. Section 32-10 of the ITAA states in part:

> '(1) **Entertainment** means:
>
> (a) entertainment by way of food, drink or recreation; or
>
> (b) accommodation or travel to do with providing entertainment by way of food, drink or recreation ...'

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

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

(2) that only the provision of food or drink that has an element of entertainment satisfies the definition, i.e., the provision of food or 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 32-10(1)(a) of the ITAA. As these words are not defined in the ITAA, they have their natural meaning, taken in the context that they appear in Division 32 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 or drink in any circumstance constitutes entertainment for purposes of Division 32 is based on the premise that the diversion or amusement required occurs merely by the provision of food or drink. In other words 'entertainment by way of food [or] drink' as used in paragraph 32-10(1)(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 and Another* (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 32-10(1)(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 or drink.

17. The other view that an element of entertainment is required before the provision of food or 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 and Others 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. However, we add that in most cases the mere provision of food or drink satisfies the 'entertainment' test. It is only in a narrow category of cases where the mere provision of food

or drink does not amount to 'entertainment' for purposes of Division 32 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 entertainment. The provision of light meals (finger food, etc.), for example in the context of providing a working lunch, is not considered to be entertainment. The provision of food or 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 Bill (No 4) 1985, i.e., business lunches and drinks, dinners, cocktail parties and staff social functions. In these examples the provision of the food or drink confers entertainment on the recipient. The wording of section 32-10 of the ITAA shows a clear intention to treat food or 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 or drink provided is consumed as a result of that work-related travel. In the absence of supplementary entertainment, the food or 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 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 or drink is the provision of property. However, an objective consideration of the circumstances in which that food or drink is provided is necessary to determine whether it constitutes entertainment.

23. It can be seen that the determination of whether or not the provision of food or drink constitutes 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 or drink being provided. This test is a 'purpose test'. For example, food or drink provided for the purposes of refreshment does not generally have the character of entertainment, whereas food or drink

provided in a social situation where the purpose of the function is for employees to enjoy themselves has the character of entertainment.

(b) **What** food or 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 or drink does not usually confer entertainment on the employee. By contrast, a three course meal provided to an employee during a working lunch has the characteristics of entertainment. The nature of the food itself confers entertainment on the employee.

(c) **When** is the food or drink being provided. Food or 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 is for a work-related purpose rather than an entertainment purpose. This, however, depends upon whether the entertainment of the recipient is the expected outcome of the provision of the food or drink. For example, a staff social function held during work time still has the character of entertainment.

(d) **Where** is the food or drink being provided. Food or 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 or 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 or 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 results in the determination of whether the food or 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 is to 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 or 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 for an explanation of the table.

Key	**M**	**E**=meal entertainment
R	=	reportable fringe benefit
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 32-70 of the ITAA.

Note: In relation to reportable fringe benefits the table includes a column indicating whether the benefit is 'reportable'. Reportable fringe benefits received by associates of the employee are reportable to the employee.

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

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

			Taxable Employer		Tax-exempt Body	Ruling Paragraph Reference
	ME Y/N	R Y/N	FBT Y/N	Deduction Y/N	FBT Y/N	(for taxable employers)
Circumstances In Which Food or Drink Provided						
6) dines with employee not travelling						
• only employee's meal provided	N	N	N	Y	N	89-91
• both employees' meals provided	N	N	N	Y	N	89-93
- travelling employee's meal	Y	N	Y	Y	Y	89-93
- non-travelling employee's meal						
7) dines with client who is not travelling						
• only employee's meal provided	N	N	N	Y	N	94-95
• employee's and client's meal provided	N	N	N	Y	N	94-96
- employee's meal	Y	N	N	N	N	94-96
- client's meal						
(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	N	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 payment)	Y	N	Y	Y	Y	97-103
• associate's employee (property)	Y	N	Y *	Y **	Y	97-103
* = associate						
** = employer						

			Taxable Employer		Tax-exempt Body	Ruling Paragraph Reference
	ME Y/N	R Y/N	FBT Y/N	Deduction Y/N	FBT Y/N	(for taxable employers)
Circumstances In Which Food or Drink Provided						
(f) Meal consumed by employees while attending a seminar						104-120
1) provided incidental to a seminar that satisfies section 32-35 and is not held on the employer's premises	Y/N	N	N	Y	N	104-112, 117-120
2) light breakfast provided at a CPD seminar that does not satisfy section 32-35	N	N	N	Y	N	113-114
3) light refreshments incl. moderate amount of alcohol provided immediately after a CPD seminar that does not satisfy section 32-35	N	N	N	Y	N	115-116
(g) Food or drink consumed by employees at promotions						121-124
1) function not held on employer's premises and is open to the general public	Y	N	Y	Y	Y	121-124
(h) Meals provided under an arrangement						125-127
1) client does not facilitate or promote an arrangement where its employee is taken out to lunch by another employer						
• client's employee	N	N	N	N	N	125-127
• employee of other employer	Y	N	Y	Y	Y	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	N	Y	Y	Y	128-130

			Taxable Employer		Tax-exempt Body	Ruling Paragraph Reference
	ME Y/N	R Y/N	FBT Y/N	Deduction Y/N	FBT Y/N	(for taxable employers)
Circumstances In Which Food or Drink Provided						
(j) Restaurant discount cards						131-135
1) employee who holds a restaurant discount card entertains a client						
• employee - 1/2 total discounted price	Y	N	Y	Y	Y	131-135
• client - 1/2 total discounted price	Y	N	N	N	N	131-135
(k) Meals for accompanying spouses						136-138.1
1) with employee travelling on business and employer pays for all meals						
• employee	N	N	N	Y	N	136-138
• spouse	Y	N	Y	Y	Y	136-138.1
(l) Food or drink provided by tax-exempt bodies						139-143
1) 'non-deductible' meal entertainment provided to employees, whether or not on employer's premises	Y	N			Y	139, 140
2) meals provided to employees in an in-house dining facility	Y/N	N			N	139, 141
3) non meal entertainment provided to employees on employer's premises	N	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 or 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 is to 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, is subject to FBT. The cost of the fringe benefit to the employer is generally deductible as a result of section 32-20 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 is exempt from FBT under section 41 of the FBTAA.
A second exception is where the meal provided to the employee has a notional taxable value of less than $100 and is 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 *Income Tax Assessment Act 1936* (ITAA 1936) 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 is determined according to actual expenditure.
An election applies 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 is necessary to split the outgoings on food or drink into two categories. These are outgoings on food or drink that amount to meal entertainment and those that do not. It is to 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 or 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 is 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 is 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. Section 32-20 of the ITAA is ignored for the purposes of determining whether the entertainment expenditure is deductible.

34. The taxation consequences of entertainment provided by tax-exempt bodies have not changed as a result of the amendments to the ITAA 1936 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. Section 32-20 of the ITAA prevents the non-deductibility effect of section 32-5 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 Subdivision 32-B of the ITAA (e.g., meals in a dining facility). Expenditure on the provision of food or drink which does not constitute the provision of meal entertainment may also be income tax deductible if the conditions of section 8-1 of the ITAA are satisfied.

37. Where the employer has adopted one of the methods discussed at paragraphs 29 to 32 above, they are entitled to an income tax deduction equal to the resulting taxable value. No other deduction is allowed for the same expenditure. Section 51AEA of the ITAA 1936 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 or drink has been subject to FBT. However, as is the case with meal entertainment, there are some exemptions. Where the food or 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 is exempt from FBT under section 41 of the FBTAA. Similarly, where the food or drink constitutes a minor benefit, as discussed in paragraph 27 above, it is also exempt from FBT.

39. Where the benefit is not an exempt benefit, the taxable value is 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 or 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 is the same as for taxable employers as explained in paragraphs 38 and 39.

Income tax result

41. The provision of food or drink to an employee that does not amount to meal entertainment is deductible to the employer under section 8-1 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 is applied to entertainment provided by way of food or drink. The questions raised generally fall into the following categories:

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

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

(c) alcohol;

(d) food or 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 or drink consumed by employees while attending a seminar;

(g) food or 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 or drink consumed on the employer's business premises

Question 1

43. What are the taxation consequences where food or 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 or 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 or drink amounts to meal entertainment; however, it does 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 applies 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 or drink consumed by associates of employees is subject to FBT when it is provided and consumed on the employer's business premises.

46. Section 32-20 of the ITAA does not apply to allow a deduction under section 8-1 where the benefit is an exempt benefit. However, the expenditure may still be deductible under section 8-1 if one of the exclusions contained in Subdivision 32-B applies.

47. For example, the cost of providing food or drink to your employees in an in-house dining facility (not at a party, reception or social function) is an allowable income tax deduction under section 8-1 because of the operation of item 1.1 of the table in section 32-30 of the ITAA. The term 'in-house dining facility' is defined in section 32-55 (also refer to Taxation Determination TD 94/24 and Taxation Ruling IT 2675). Item 1.1 of the table in section 32-30 applies even though the food or drink provided in the 'in-house dining facility' is

also an exempt benefit under the provisions of section 41 of the FBTAA.

48. Food or 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 deduction provisions of section 8-1 of the ITAA.

Example 1.1

49. An employer provides food or 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 or drink provided at a social function constitutes 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, section 32-20 of the ITAA is not applicable because an exempt benefit is not a fringe benefit. Therefore, section 32-5 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. Section 32-20 of the ITAA applies to prevent section 32-5 from denying an income tax deduction. The result would be the same for food or 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. Item 1.2 of the table in section 32-30 of the ITAA provides an exception where the meal is provided in an in-house dining facility (not at a party, reception or social function) and the employer chooses to include $30 in assessable income in respect of the meal under section 32-70.

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 item 1.1 of the table in section 32-30 of the ITAA as the meals were provided in an 'in-house dining facility'. Item 1.1 overrides the denying effect of section 32-5.

Example 1.3

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

56. The food or drink does not amount to meal entertainment. It is food or 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 deduction provisions of section 8-1 of the ITAA.

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

Question 2

57. When is the cost of food or 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 or drink provided to employees and their associates in these cases generally amounts to meal entertainment and is 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 or 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 or drink does amount to meal entertainment, the employee would not have been entitled to an income tax deduction under section 8-1 because of the operation of section 32-5 of the ITAA.

60. However, there are a number of exceptions to section 32-5 which are set out in Subdivision 32-B. These include food or drink which is reasonably incidental to a person's attendance at a seminar which satisfies section 32-35.

Example 2.1

61. An employer provides food or 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 or drink amounts to meal entertainment. This is the case regardless of the type of food or 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. Section 32-20 of the ITAA applies to prevent section 32-5 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 results in the provision of meal entertainment. Generally, the consumption of alcohol does have social connotations and provides or affords diversion or amusement. In those cases the provision of the alcohol has 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 is normally consumed at home. It is impractical to suggest that drinking wine in these circumstances changes the nature of the meal. The food or 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 or drink amounting to the provision of meal entertainment.

(d) Food or 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 or drink consumed while travelling on the employer's business?

Answer

71. No. Generally, the food or drink does not amount to meal entertainment. The employer is providing the employee with food or drink while undertaking work-related travel. As a result, the food or drink does not have the character of entertainment. However, this is not the case where there was entertainment (e.g., a floor show) provided with the meal. The cost of the food or drink would have been 'otherwise deductible' to the employee under section 8-1 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 or 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 is allowed 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 entertainment.

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

77. However, if there is entertainment other than food or drink provided (e.g., a floor show) then the expenditure is in respect of entertainment and, therefore, amounts to meal entertainment. Accordingly, section 32-5 of the ITAA would apply to deny a deduction for the expenditure if the employee incurred it and the 'otherwise deductible' rule does 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 and they stay overnight. 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 section 8-1 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 amounts to meal entertainment, provided that the meals consumed by the employee and the client are not accompanied by entertainment other than food or 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 for two days 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 applies to reduce the taxable value of the fringe benefit provided to the employee. The employer is 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 is able to claim an income tax deduction for the cost of both meals under section 8-1 of the ITAA. The exclusion provision section 32-5 does not apply because the food or drink does not amount to 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 or drink still does 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 is the case even where the employer reimburses the employee for the cost of both meals. However, if there is entertainment other than food or drink provided (e.g., a floor show) then the expenditure is in respect of entertainment and, therefore, amounts 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 do not amount to meal entertainment. This is the case irrespective of who pays for the meals. The employer is entitled to a deduction under section 8-1 of the ITAA for the cost of the meal or meals as section 32-5 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 does 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 or drink provided (e.g., a floor show) then the expenditure is in respect of entertainment and, therefore, amounts 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 is reduced to nil by the 'otherwise deductible' rule. This is because a deduction would have been available to the employee by the operation of section 8-1 of the ITAA if that person had not been reimbursed by the employer. The employer is entitled to claim an income tax deduction under section 8-1.

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 is 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 are subject to FBT. The employer is able to claim a tax deduction for these meals under section 8-1 because of the operation of section 32-20 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 still does 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. Section 8-1 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 section 32-20.

(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, is 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 section 8-1 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 is 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 section 8-1 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 or drink consumed by employees while attending a seminar

Question 13

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

Answer

105. Food or 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 or drink which is part of the cost of attending a Continuing Professional Development (CPD) seminar is deductible under section 8-1 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 section 8-1 of the ITAA;
- whether the seminar satisfies the requirements of section 32-35 of the ITAA; and
- whether the food or drink provided amounts to entertainment.

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

108. Item 2.1 of the table in section 32-35 of the ITAA provides that if the seminar goes for at least 4 hours and does not satisfy one of the specified exceptions, then any food or drink consumed by the employee that is 'reasonably incidental' to the attendance at that seminar is not precluded by section 32-5 from being deductible under section 8-1 of the ITAA. This is regardless of whether or not the food or drink constitutes entertainment, i.e., whether or not the food or drink amounts to meal entertainment.

109. If the seminar does not satisfy the requirements of section 32-35 and the costs of attending that seminar are deductible under section 8-1 of the ITAA, then food or drink which is included as part of the cost is also deductible provided that the food or drink does not amount to entertainment, i.e., is not meal entertainment. For this purpose, light refreshments (which may include alcohol) provided immediately prior to or following the seminar does not constitute entertainment.

Example 13.1

110. An employer provides food or drink incidental to a seminar that satisfies section 32-35 held at a nearby convention centre. For the purposes of this example, the food or 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 section 32-35 of the ITAA. For the same reason, a deduction for the meals is also allowable to the employer under section 8-1 of the ITAA.

112. If the food or drink provided does not amount to meal entertainment then the 'otherwise deductible' rule still applies as the cost of attendance at the seminar is generally deductible under section 8-1.

Example 13.2

113. An employer pays for an employee to attend a seminar (that does not satisfy 32-35) 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 or drink provided in these circumstances does not amount to 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 section 8-1 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 (that does not satisfy section 32-35) 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 or 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	7.00 pm	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 are not, generally, regarded as meal entertainment and, because of the 'otherwise deductible' rule, do not give rise to an FBT liability.

119. Food or drink provided at the gala dinner dance constitutes meal entertainment. This is because entertainment is provided with the meal. However, as the seminar satisfies the requirements of section 32-35 (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 26-30 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 section 8-1 because of the provisions of section 32-20 and subsection 26-30(3) of the ITAA.

(g) Food or 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 or 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 section 8-1 of the ITAA for the costs of staging the function because item 4.3 of the table in section 32-45 prevents section 32-5 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 or drink is served. The employer has a liability to FBT in respect of the food or 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 or 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. There is no fringe benefit unless the client participates in, facilitates or promotes the provision of or receipt of the benefit. There will be a fringe benefit only if the client knew or ought to have known, that he or she was participating, facilitating or promoting the provision or receipt of the benefit.

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 and uses his company credit card to pay for the lunch. Company B did not facilitate or promote the provision or receipt of the lunch provided to its employee. The provision of food and drink to the employee of Company A is entertainment and subject to FBT. The provision of food and drink to the employee of Company B is not a fringe benefit as Company B did not agree and was not involved in relation to the provision or receipt of the benefit. Company A may claim a deduction for the costs of providing the fringe benefit to the employee under the provisions of section 32-20 of the ITAA. No income tax deduction is allowed in respect of the costs of providing the entertainment to the employee of the client as section 32-20 is not applicable, therefore the denying provisions of section 32-5 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 section 8-1 because of the operation of section 32-20 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 are 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 or 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.

138. The taxation treatment of the employee's meal is the same as that discussed in paragraph 70 and 71 because the employee is undertaking work related travel. The otherwise deductible rule would apply to reduce the taxable value to nil.

138.1 The spouse is not on work related travel. In this circumstance the meals provided to the spouse amounts to meal entertainment and is subject to fringe benefits tax. The otherwise deductible rule would not apply to reduce the taxable value.

(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 or drink that is normally income tax deductible under section 8-1 because of the operation of Subdivision 32-B 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 or 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.

Cross references of provisions

144. Provisions of the ITAA, to which this Ruling refers, express the same ideas as provisions of the ITAA 1936. The following table cross references the provisions of the ITAA to the corresponding provisions of the ITAA 1936.

ITAA 1997	ITAA 1936
Section 8-1	Subsection 51(1)
Section 26-30	Section 51AG
Subsection 26-30(3)	Subsection 51AG(1A)
Division 32	Section 51AE
Section 32-5	Subsection 51AE(4)
Section 32-10	Subsection 51AE(3)
Paragraph 32-10(1)(a)	Paragraph 51AE(3)(a)

Subdivision 32-B	Subsection 51AE(5)
Section 32-20	Subsection 51AE(5AA)
Section 32-30 item 1.1	Subparagraph 51AE(5)(f)(i),(ii)
Section 32-30 item 1.2	Subparagraph 51AE(5)(f)(i)
Section 32-30 item 1.3	Subparagraph 51AE(5)(f)(iii)
Section 32-35 item 2.1	Subparagraph 51AE(5)(f)(iv)
Section 32-45 item 4.3	Paragraph 51AE(5)(d)
Section 32-55	Subsection 51AE(1) in-house dining facility definition
Section 32-70	Section 26AAAC

Date of effect

145. Given that the new laws described in this Ruling express the same ideas as the old laws they replace, 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).

Previous Rulings

146. Taxation Ruling TR 96/9 is now withdrawn.

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