TD 93/D242 - Income tax and fringe benefits tax: is a camping allowance assessable under section 30 of the Fringe Benefits Tax Assessment Act 1986 (FBTAA) or under subsection 25(1) of the Income Tax Assessment Act 1936 (ITAA)?

This cover sheet is provided for information only. It does not form part of *TD 93/D242 - Income tax and fringe benefits tax: is a camping allowance assessable under section 30 of the Fringe Benefits Tax Assessment Act 1986 (FBTAA) or under subsection 25(1) of the Income Tax Assessment Act 1936 (ITAA)?*

This document has been finalised by TD 93/230.

Australian Taxation Office

Taxation Determination **TD 93/D242**

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax and fringe benefits tax: is a camping allowance assessable under section 30 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) or under subsection 25(1) of the *Income Tax Assessment Act 1936* (ITAA)?

1. A camping allowance will usually be assessable as a living-away-from-home allowance under section 30 of the FBTAA. This is because the allowance is generally paid as compensation for the additional expenses (and other disadvantages) incurred by an employee while living away from his or her usual place of residence.

2. However, a camping allowance cannot be a living-away-from-home allowance under section 30 of the FBTAA where those additional expenses are "deductible expenses" under the ITAA. In such a case, the allowance falls within the extended definition of "salary or wages" in subsection 221A(1) of the ITAA and, as such, will be assessable to the recipient under subsection 25(1) of the ITAA.

3. Subsection 136(1) of the FBTAA defines "deductible expenses" to mean expenses deductible under subsection 51(1) of the ITAA, and includes expenses that would have been deductible under subsection 51(1) if section 51AE, or Subdivisions F and G of Division 3 of Part III of the ITAA, had not made them non-deductible under subsection 51(1).

4. In determining the taxation treatment of a camping allowance it is important to determine whether the expenses it is intended to cover are deductible under subsection 51(1) of the ITAA. Subsection 51(1) will only allow such expenses to be deductible where the nexus between the expense and the employment is strong enough to overcome the negative limb of that section (i.e. that the expense is not of a private, domestic or capital nature).

5. Hill J. in *Roads and Traffic Authority of NSW v FC of T* 93 ATC 4508 recently considered a camping allowance where the allowance was found not to be a living-away-from-home allowance as the expenses would have been deductible under subsection 51(1) of the ITAA had they been incurred by the employee. The factors taken into account by Hill J. in determining whether subsection 51(1) would have applied to the expenses in that case included:

(a) the employee was required by the employer, as an incident of his employment, to live close by his work;
(b) the employee was only living away from home for relatively short periods of time;
(c) the employee did not choose to live at the places where the camp sites were located; and
(d) the employee had a permanent home elsewhere.

6. The question of what is a relatively short period of time was addressed in paragraph 41 of Taxation Ruling MT 2030 (dealing with the difference between a living-away-from-home-

allowances and a travelling allowance). Paragraph 41 sets out a practical general rule that, where the allowance is for a period of up to 21 days, the allowance will be treated as a travelling allowance (the expenses against which are generally deductible under subsection 51(1) and not a living-away-from-home allowance. For periods in excess of 21 days, it would be necessary to consider the guidelines in MT 2030 in full.

7. The general rule mentioned in paragraph 6 can be applied equally in determining what is a relatively short period of time for the tests in paragraph 5. In the *Roads and Traffic Authority of NSW Case* where the camping allowances were only paid for periods of 5 days at a time (the employees went home to their families on the weekends), Hill J. found that the expenses incurred would have been deductible under subsection 51(1) of the ITAA. Such a decision is consistent with MT 2030.

Example:

Joe works for a Railway Authority. As part of the conditions of his employment he is required to live at camp sites away from his family home. Under an award, Joe is entitled to a camping allowance to cover both the disadvantages of not living at home and the additional costs of food and drink. Although the particular task being undertaken by Joe at the camp site may take months to complete, Joe does not stay at the camp site over the weekend as the sites are generally located within 100 km of his home. Accordingly, the Railway Authority pays Joe a camping allowance to cover the five days of each week that he is in camp. The camping allowance is considered to be assessable under subsection 25(1) of the ITAA and not a living-away-from-home-allowance for the purposes of section 30 of the FBTAA. Joe, of course, can claim deductions under subsection 51(1) of the ITAA for any expenses incurred against this allowance.

Commissioner of Taxation
23/9/93

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