

TD 93/229 - Income tax and fringe benefits tax : can a reimbursement within the meaning of the Fringe Benefits Tax Assessment Act 1986 (FBTAA) fall within the definition of 'salary or wages' in subsection 221A(1) of the Income Tax Assessment Act 1936 (ITAA)?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *25 November 1993*

This Determination, 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 Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax and fringe benefits tax : can a reimbursement within the meaning of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) fall within the definition of 'salary or wages' in subsection 221A(1) of the *Income Tax Assessment Act 1936* (ITAA)?

1. No. It is considered that the definition of 'salary or wages' in section 221A of the ITAA includes payments made by employers to employees for services rendered by way of cash or its equivalent, but does not include payments made by an employer for the purpose of discharging the employee's liabilities or reimbursing the employee for expenses incurred.
2. In *Roads and Traffic Authority of NSW v FC of T* 93 ATC 4508, Hill J. suggested that reimbursements may fall within the definition of 'salary or wages' in section 221A of the ITAA. However, it was not necessary for his Honour to consider this question further as the payments in question in the case were found to have been paid to the employees regardless of whether there were any actual expenses incurred. As such, Hill J. found the payments to be salary or wages. The decision in this case is consistent with Taxation Ruling TR 92/15.
3. To include reimbursements in 'salary or wages' as defined in section 221A of the ITAA would effectively negate a large part of Division 5 of Part III of the FBTAA (Expense Payment Fringe Benefits) as salary or wages are exempted from being fringe benefits. The enactment of Division 5 demonstrates a clear intention of Parliament to specifically deal with reimbursements under the FBTAA. An interpretation which includes reimbursements within the definition of 'salary or wages' in section 221A of the ITAA would create a result inconsistent with Parliament's intention in enacting Division 5. Accordingly, with the provisions of section 15AA and section 15AB of the *Acts Interpretation Act 1901* in mind, reimbursements will continue to be dealt with under the FBTAA, and not the ITAA (other than where reimbursements have been actually included in the ITAA such as in section 26(eaa)).

Examples:

Joe is paid a travelling allowance under an award for travel to and from work. The amount paid is based on the cost of public transport. On payment of the allowance the employer does not check whether the employee did in fact use public transport or whether any expenditure was incurred in travelling to work. It is considered that the amounts paid to Joe is an allowance which is assessable to Joe under the ITAA.

Irma catches the bus to and from work every day. Her employer is required under an award to pay her costs in travelling to and from work. Irma keeps her bus tickets and gives them to her employer at the end of every fortnight. Her employer reimburses her for the amount she has incurred on the bus tickets. The amount paid by her employer is a reimbursement as the amount paid is the actual cost of the bus tickets. The payment is an expense payment fringe benefit which is assessable to Irma's employer under the FBTAA.

Commissioner of Taxation

25/11/93

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Related Determinations:

Related Rulings:

Subject Ref: salary or wages, travelling allowance, expense payment fringe benefit

Legislative Ref: FBTAA 20, 136(1); ITAA 221A

Case Ref: Roads and Traffic Authority of NSW v FC of T 93 ATC 4508

ATO Ref: FBT Cell 30/39

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