TD 94/55 - Income tax: when does providing an item of property constitute the provision of entertainment within the meaning of subsection 32-10(1) of the Income Tax Assessment Act 1997?

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This document has changed over time. This is a consolidated version of the ruling which was published on *31 August 2011*

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

Taxation Determination

Income tax: when does providing an item of property constitute the provision of entertainment within the meaning of subsection 32-10(1) of the *Income Tax Assessment Act 1997*?

1. Entertainment is defined in subsection 32-10(1) of the *Income Tax Assessment Act 1997* (ITAA 1997) to mean:

a) entertainment by way of food, drink or *recreation; or
b) accommodation or travel to do with providing entertainment by way of food or drink or recreation.

(*recreation is defined in section 995-1 of ITAA 1997 as including amusement, sport or similar leisure-time pursuits.)

2. 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. This character is distinct from the property itself and relates to the immediate and active use of the property.

3. In practice, the provision of entertainment can be determined by reference to the following characteristics:

- **Timeliness**
  - entertainment occurs soon after provision of the item of property;
  - the usefulness of the item of property expires after consumption; or
  - the item of property is returned at the completion of use.

- **Direct Connection**
  There should be a direct connection between the item of property and the entertainment:
  - the entertainment should arise from the use of the item of property;
  - the entertainment is the expected outcome of the provision of the property.

Example 1

Costs incurred in the giving of items of property, such as bottled spirits, groceries, games, TV sets, VCRs, computers, crockery, swimming pools, gardening equipment, etc; have an enduring character, and only an indirect nexus to any immediate entertainment. Consumption is usually delayed. The items of property usually require further steps before they can be consumed, and consumption can occur over a long period.

Hence, these items of property do not generally constitute provision of entertainment.

Example 2

Costs incurred in providing glasses of champagne, hot meals, theatre tickets, holiday accommodation, hired entertainers, and hired sporting equipment, have a dynamic and immediate character. Consumption can usually occur immediately. These items of property do not last beyond initial consumption (or are to be returned at the end of the hire period).

Hence, these items of property would generally constitute provision of entertainment.

Commissioner of Taxation
16/6/94

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