



TD 94/97 - Fringe benefits tax: what does the phrase 'customary for employers in the industry' mean in relation to the provision of fringe benefits to employees?

 This cover sheet is provided for information only. It does not form part of *TD 94/97 - Fringe benefits tax: what does the phrase 'customary for employers in the industry' mean in relation to the provision of fringe benefits to employees?*

 This document has changed over time. This is a consolidated version of the ruling which was published on 4 October 2006

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 Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

Taxation Determination

Fringe benefits tax: what does the phrase 'customary for employers in the industry' mean in relation to the provision of fringe benefits to employees?

1. Certain sections in the *Fringe Benefits Tax Assessment Act 1986* provide that a benefit will be exempt or the taxable value of a benefit will be reduced where, amongst other things, it is customary for employers in the industry in which the employee is employed to provide the same or similar benefits. The phrase occurs in the following sections:

- section 58ZC which exempts benefits for remote area housing
- section 142 which deals with the concessional treatment associated with remote area benefits
- section 58S which exempts benefits for certain trainees
- section 65A which exempts benefits for children of overseas employees
- section 143 dealing with remote area holiday transport
- section 143C dealing with overseas employment holiday transport.

2. A benefit will be accepted as being customary where it is normal or common for employees of that class or job description in that industry to be provided with the same or similar benefits. It is not necessary that all or even the majority of employees in the industry receive the benefit. Where the provision of the benefit is unique, rare or unusual within an industry it would not be accepted as being customary.

3. In defining the employer's industry, this Office will accept categorisation based on any recognised industry classification system. Examples of these are the industry codes for business income used by this Office (listed in the company income tax return instructions), and Australian and New Zealand Standard Industrial Classification (ANZSIC) codes.

4. The ANZSIC has a structure comprising categories at four levels, namely Divisions (the broadest level), Subdivisions, Groups and Classes (the finest level). For example, the operations of a wine maker fall within the following categories:

- Division: Manufacturing
- Subdivision: Food, Beverage and Tobacco Manufacturing
- Group: Beverage and Malt Manufacturing

- Class: Wine Manufacturing.

It will be open for an employer to argue that their operations fall within any of the four levels of classification.

5. Employers may seek a private ruling from this Office on whether it is customary within their industry for a particular benefit to be provided. An industry group, with the written consent of employers, may also seek such a ruling.

Example

Oil Driller Pty Ltd regularly employs expatriate technicians on secondment from the parent company in the United Kingdom. These employees are provided with return travel to their UK home for themselves and their families twice a year during their secondment. It is accepted that it is customary for employees of that type to be provided with such benefits, notwithstanding that industry employees generally do not receive similar benefits.

Commissioner of Taxation

22/12/94

FOI INDEX DETAIL: Reference No. I 1218063

Previously issued as Draft TD 94/D94

Related Determinations:

Related Rulings:

Subject Ref: fringe benefits tax; customary; industry; classification

Legislative Ref: FBTAA 29; FBTAA 29(4); FBTAA 58S; FBTAA 65A; FBTAA 142; FBTAA 142(2E); FBTAA 143; FBTAA 143C

Case Ref:

ATO Ref: FBT Cell 30/25; NAT 94/9040-0

ISSN 1038 - 8982