

***TD 96/7 - Fringe benefits tax: is fringe benefits tax (FBT) payable on meals and accommodation provided to employees who work at remote construction sites, where the accommodation is not the usual place of residence of the employee?***

⚠ This cover sheet is provided for information only. It does not form part of *TD 96/7 - Fringe benefits tax: is fringe benefits tax (FBT) payable on meals and accommodation provided to employees who work at remote construction sites, where the accommodation is not the usual place of residence of the employee?*

⚠ This document has changed over time. This is a consolidated version of the ruling which was published on *31 January 1996*

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

### **Fringe benefits tax: is fringe benefits tax (FBT) payable on meals and accommodation provided to employees who work at remote construction sites, where the accommodation is not the usual place of residence of the employee?**

1. There will be no liability under the *Fringe Benefits Tax Assessment Act 1986* ('the Act') in respect of the accommodation. However, there may be FBT payable on the meals where the 'otherwise deductible' rule does not apply.
2. The provision of accommodation will not give rise to an FBT liability because either:
  - (i) the employee is travelling in the course of their employment, in which case the taxable value of the benefit is reduced to nil under the 'otherwise deductible' rule in section 52 of the Act; or
  - (ii) the employee is not travelling in the course of their employment, in which case the benefit is specifically exempted by subsection 47(5).
3. Where meals are provided, and it is concluded that the employee is travelling in the course of their employment, the taxable value of the benefit will be reduced to nil under the 'otherwise deductible' rule. The criteria for determining whether an employee is travelling in the course of performing their job are set out in paragraphs 35-43 of Taxation Ruling MT 2030. These criteria include:
  - the nature of the duties performed;
  - whether the employee is accompanied by dependants; and
  - the length of time spent away from home.

As a practical general rule, where the question of whether or not the employee is travelling cannot easily be determined and the period away does not exceed 21 days, the employee may be accepted as travelling.

4. Guidance as to whether the 'otherwise deductible' rule will apply to reduce to nil the taxable value of meals provided to employees who are not travelling for work purposes is found in paragraph 5 of Taxation Ruling TD 93/230. Relevant factors to take into account include whether the employee:

- is required to live close by work;
- has a permanent residence away from the work site;
- lives away from home for a relatively short period of time; and
- has any choice as to the location of the accommodation provided.

Again, the 21 day period mentioned in paragraph 3 above will be accepted as a relatively short period of time for the purpose of these tests.

5. An employee declaration will not be required in respect of exempt accommodation where the employee is employed under a 'fly-in fly-out' arrangement and the transport itself is an exempt benefit under subsection 47(7). In cases where the taxable value of meals and accommodation are reduced to nil by the 'otherwise deductible' rule, no employee declaration is required as the benefits are exclusive employee benefits.

### *Examples*

1. *Allan works for a builder who has subcontracted work at a remote construction site in the Gulf Country. Allan stays at the site for 1 year but is flown home for two weeks every three months. Allan maintains a home in Townsville where his wife and family continue to live while he is away. All meals and accommodation at the site are provided by Allan's employer.*

*The taxable value of the accommodation is an exempt benefit under subsection 47(5). As the 'otherwise deductible' rule does not apply, the taxable value of each meal is \$2.00.*

2. *Bill works for a builder who subcontracts only on remote construction sites throughout North Queensland. Bill and his family live in Cairns. While working on a three week contract at a construction site on Cape York Peninsula, Bill's employer, in accordance with his usual practice, flies Bill home on the two intervening weekends. All meals and accommodation at the site are provided by Bill's employer.*

*The taxable values of the meals and accommodation are reduced to nil under the applicable 'otherwise deductible' rules, as Bill would be accepted as travelling in the course of his employment.*

### **Commissioner of Taxation**

31 January 1996

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