

TR 97/17A - Addendum - Income tax and fringe benefits tax: entertainment by way of food or drink

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Addendum

Income tax and fringe benefits tax: entertainment by way of food or drink

1. This addendum amends Taxation Ruling TR 97/17 because of changes made to the Fringe Benefits Tax Assessment Act 1986 (FBTAA) as a result the *A New Tax System (Fringe Benefits Reporting) Act 1999* [ANTS(FBR)A] and by *Taxation Laws Amendment Act (No.1) 1999* (TLAA 1999). Some other minor amendments have been made to the Ruling.

2. ANTS(FBR)A amended the *Fringe Benefits Tax assessment Act 1986* (FBTAA) and the *Income Tax Assessment Act 1997* (ITAA) to implement the first phase of the Government's tax reform package for fringe benefits tax (FBT). From the 1999-2000 year of income employers will be required to identify on group certificates the grossed up taxable value of certain employee fringe benefits.

3. TLAA 1999 amended paragraph (e) of the definition of a 'fringe benefit' in subsection 136(1) of the FBTAA by including new paragraph (ea) to confine the scope of the provision to arrangements covered by paragraph (a) of the definition of arrangement. In general terms a third party benefit will be a fringe benefit only if the employer knew, or ought to have known, that they were participating, facilitating or promoting the provision or receipt of the benefit. This amendment was effective from 1 April 1998.

What this ruling is about

4. Part A: Entertainment table is withdrawn and is replaced with the following new '**Part A: Entertainment table**'. A column has been added to indicate whether each of the benefits shown is a reportable fringe benefit or not reportable. The responses in the table also reflect the minor changes contained in the paragraphs that have been replaced.

Part A: Entertainment table

25. The following table will assist employers to determine whether the food or drink provided in a given circumstance constitutes meal entertainment. **The taxation result prescribed in the table is relevant if the employer wishes to treat each item of actual**

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expenditure on food or drink separately under the FBTAA and the ITAA where applicable. If the employer elects to use one of the methods provided in Division 9A of the FBTAA, then the taxation outcome for an individual meal is no longer relevant. However, its characterisation as meal entertainment or not is still relevant. The following key is to be used for the table. Please refer to the Note at the end of the table for an explanation of the table.

Key	M	E=meal entertainment
R	=	reportable fringe benefit
Y	=	Yes
N	=	No
Y/N	=	depending upon what is provided, food or drink may or may not amount to the provision of meal entertainment.
#	=	an income taxable employer has the option to claim a deduction for the cost of the meal and include \$30 in their assessable income - section 32-70 of the ITAA.

Note: In relation to reportable fringe benefits the table includes a column indicating whether the benefit is 'reportable'. Reportable fringe benefits received by associates of the employee are reportable to the employee.

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			Taxable Employer		Tax-exempt Body	Ruling Paragraph Reference (for taxable employers)
	ME Y/N	R Y/N	FBT Y/N	Deduction Y/N	FBT Y/N	
Circumstances In Which Food or Drink Provided						
(a) Food or drink consumed on the employer's premises ...						43-56
(a)(i) ... by employees						
1) at a social function	Y	N	N	N	Y	27, 49, 50
2) in an in-house dining facility - not at a social function	Y/N	N	N	Y	N	27, 53, 54
3) in an in-house dining facility - at a social function	Y	N	N	N	Y	27, 49, 50
4) morning & afternoon teas & light lunches	N	N	N	Y	N	38, 39, 48, 55, 56
(a)(ii) ... by associates						
1) at a social function	Y	N	Y	Y	Y	49, 51
2) in an in-house dining facility - not at a social function	if Y if N	N Y	Y	Y	Y	26, 51
3) in an in-house dining facility - at a social function	Y	N	Y	Y	Y	49, 51
4) morning & afternoon teas & light lunches	N	Y	Y	Y	Y	38, 39
(a)(iii) ... by clients						
1) at a social function	Y	N	N	N	N	49, 52
2) in an in-house dining facility - not at a social function	if Y if N	N N	N N	N(#) Y	N N	52 52
3) in an in-house dining facility - at a social function	Y	N	N	N	N	52
4) morning & afternoon teas & light lunches	N	N	N	Y	N	48

			Taxable Employer		Tax-exempt Body	Ruling Paragraph Reference
	ME Y/N	R Y/N	FBT Y/N	Deduction Y/N	FBT Y/N	(for taxable employers)
Circumstances In Which Food or Drink Provided						
(b) Food or drink consumed off the employer's premises ...						57-62
1) ... at a social function or business lunch						
• by employees	Y	N	Y	Y	Y	57-62
• by associates	Y	N	Y	Y	Y	57, 58
• by clients	Y	N	N	N	N	
(c) Alcohol						63-69
1) employee travelling - wine accompanies evening meal	N	N	N	Y	N	66, 67
2) alcohol provided at the conclusion of a CPD seminar with finger foods	N	N	N	Y	N	68, 69
(d) Food or drink consumed by employees while travelling						70-96
1) employee travels and dines alone	N	N	N	Y	N	70-73
2) two or more travelling employees dine together	N	N	N	Y	N	70, 71, 74-80
3) travelling with client and dine together	N	N	N	Y	N	81-83
4) as in 3) except employer pays for all meals						
• employee's meal	N	N	N	Y	N	81-84
• client's meal	N	N	N	Y	N	81-84
5) dines with client who is travelling separately	N	N	N	Y	N	85-88

			Taxable Employer		Tax-exempt Body	Ruling Paragraph Reference (for taxable employers)
	ME Y/N	R Y/N	FBT Y/N	Deduction Y/N	FBT Y/N	
Circumstances In Which Food or Drink Provided						
6) dines with employee not travelling						
• only employee's meal provided	N	N	N	Y	N	89-91
• both employees' meals provided	N	N	N	Y	N	89-93
- travelling employee's meal	Y	N	Y	Y	Y	89-93
- non-travelling employee's meal						
7) dines with client who is not travelling						
• only employee's meal provided	N	N	N	Y	N	94-95
• employee's and client's meal provided	N	N	N	Y	N	94-96
- employee's meal	Y	N	N	N	N	94-96
- client's meal						
(e) Employees dining with other employees of the same employer or with employees of associates of the employer						97-103
1) employee entertains another employee and is reimbursed by the employer	Y	N	Y	Y	Y	97-101
2) employee entertains an employee of an associated company of the employer and is subsequently reimbursed						
• employer's employee (expense payment)	Y	N	Y	Y	Y	97-103
• associate's employee (property)	Y	N	Y	Y	Y	97-103
* = associate			*	**		
** = employer						
(f) Meal consumed by employees while attending a seminar						104-120
1) provided incidental to a seminar that satisfies section 32-35 and is not held on the employer's premises	Y/N	N	N	Y	N	104-112, 117-120
2) light breakfast provided at a CPD seminar that does not satisfy section 32-35	N	N	N	Y	N	113-114

			Taxable Employer		Tax-exempt Body	Ruling Paragraph Reference
	ME Y/N	R Y/N	FBT Y/N	Deduction Y/N	FBT Y/N	(for taxable employers)
Circumstances In Which Food or Drink Provided						
3) light refreshments incl. moderate amount of alcohol provided immediately after a CPD seminar that does not satisfy section 32-35	N	N	N	Y	N	115-116
(g) Food or drink consumed by employees at promotions						121-124
1) function not held on employer's premises and is open to the general public	Y	N	Y	Y	Y	121-124
(h) Meals provided under an arrangement						125-127
1) client does not facilitate or promote an arrangement where its employee is taken out to lunch by another employer						
• client's employee	N	N	N	N	N	125-127
• employee of other employer	Y	N	Y	Y	Y	125-127
(i) Use of corporate credit card						128-130
1) employees dine together at a restaurant and the meal is paid for with the credit card	Y	N	Y	Y	Y	128-130
(j) Restaurant discount cards						131-135
1) employee who holds a restaurant discount card entertains a client						
• employee - 1/2 total discounted price	Y	N	Y	Y	Y	131-135
• client - 1/2 total discounted price	Y	N	N	N	N	131-135

Circumstances In Which Food or Drink Provided			Taxable Employer		Tax-exempt Body	Ruling Paragraph Reference
	ME Y/N	R Y/N	FBT Y/N	Deduction Y/N	FBT Y/N	(for taxable employers)
(k) Meals for accompanying spouses						136-138.1
1) with employee travelling on business and employer pays for all meals						
• employee	N	N	N	Y	N	136-138
• spouse	Y	N	Y	Y	Y	136-138.1
(l) Food or drink provided by tax-exempt bodies						139-143
1) 'non-deductible' meal entertainment provided to employees, whether or not on employer's premises	Y	N			Y	139, 140
2) meals provided to employees in an in-house dining facility	Y/N	N			N	139, 141
3) non meal entertainment provided to employees on employer's premises	N	N			N	142, 143

Please Note: The above table summarises the examples and answers given to the questions on the taxation treatment of the provision of food or drink discussed in **Part B** of the **Explanations** section. It provides a quick reference to the FBT and income tax treatment of a particular circumstance. The last column of the table provides a cross reference to those paragraphs of the Ruling that are relevant to the scenario. It is to be noted that the benefit may constitute a 'minor benefit' in terms of section 58P of the FBTA. The tax treatment of minor benefits is discussed at paragraph 27 below.

5. Section (h) which includes paragraphs 125 to 127 is withdrawn and is replaced with the following section:

(h) Meals provided under an 'arrangement'

Question 15

125. Where an employer provides a meal to an employee of a client, is the meal considered to be a fringe benefit provided to the employee of the client under an 'arrangement' between the employer and the client?

Answer

126. There is no fringe benefit unless the client participates in, facilitates or promotes the provision of or receipt of the benefit. There will be a fringe benefit only if the client knew or ought to have known, that he or she was participating, facilitating or promoting the provision or receipt of the benefit.

Example 15.1

127. Company A and Company B have a business relationship. An employee of Company A takes an employee of Company B out to lunch and uses his company credit card to pay for the lunch. Company B did not facilitate or promote the provision or receipt of the lunch provided to its employee. The provision of food and drink to the employee of Company A is entertainment and subject to FBT. The provision of food and drink to the employee of Company B is not a fringe benefit as Company B did not agree and was not involved in relation to the provision or receipt of the benefit. Company A may claim a deduction for the costs of providing the fringe benefit to the employee under the provisions of section 32-20 of the ITAA. No income tax deduction is allowed in respect of the costs of providing the entertainment to the employee of the client as section 32-20 is not applicable, therefore the denying provisions of section 32-5 applies.

6. Section (k) which includes paragraphs 136 to 138 is withdrawn and is replaced with the following section:

(k) Accompanying spouses

Question 18

136. Where an employee is travelling on business and is accompanied by a spouse, is the employer subject to fringe benefits tax on reimbursement of the costs of the meals?

Answer

137. The reimbursement to the employee gives rise to an expense payment fringe benefit. It is important to note that in this case the

spouse is an 'associate' of the employee. Therefore, the provision of both meals is a fringe benefit.

138. The taxation treatment of the employee's meal is the same as that discussed in paragraph 70 and 71 because the employee is undertaking work related travel. The otherwise deductible rule would apply to reduce the taxable value to nil.

138.1 The spouse is not on work related travel. In this circumstance the meals provided to the spouse amounts to meal entertainment and is subject to fringe benefits tax. The otherwise deductible rule would not apply to reduce the taxable value.

Commissioner of Taxation

17 May 2000

ATO references:

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