


# ***TD 94/D94 - Fringe benefits tax: what does the phrase 'customary for employers in the industry' mean in relation to the provision of fringe benefits to employees?***

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This document has been finalised by TD 94/97.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

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## Draft Taxation Determination

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### **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:

- sections 29 and 142 dealing with remote area housing fringe 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 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.

*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**

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Related Determinations:

Related Rulings:

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