TD 94/D34 - Income tax: when does providing an item of property constitute the provision of entertainment within the meaning of subsection 51AE(3) of the Income Tax Assessment Act 1936?

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This document has been finalised by TD 94/55.

Australian Taxation Office

Taxation Determination TD 94/D34

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.

Draft Taxation Determination

Income tax: when does providing an item of property constitute the provision of entertainment within the meaning of subsection 51AE(3) of the *Income Tax Assessment Act 1936?*

1. The expression 'provision of entertainment' is broadly defined in subsection 51AE(3). It means the provision of:

a) entertainment by way of food, drink or recreation; or
b) accommodation or travel in connection with, or for the purpose of facilitating, entertainment to which paragraph (a) applies.

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 the giving of items of property such as 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
31/3/94

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