TD 94/D8 - Fringe Benefits Tax: will the liability for employers to pay fringe benefits tax (FBT) on meals provided to employees in an 'in-house dining facility' change as a result of the repeal of section 64 of the Fringe Benefits Tax Assessment Act 1936 (FBTAA)?

• This cover sheet is provided for information only. It does not form part of *TD 94/D8* - *Fringe Benefits Tax: will the liability for employers to pay fringe benefits tax (FBT) on meals provided to employees in an 'in-house dining facility' change as a result of the repeal of section 64 of the Fringe Benefits Tax Assessment Act 1936 (FBTAA)?*

This document has been finalised by TD 94/24.



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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

Fringe Benefits Tax: will the liability for employers to pay fringe benefits tax (FBT) on meals provided to employees in an 'in-house dining facility' change as a result of the repeal of section 64 of the *Fringe Benefits Tax Assessment Act 1936* (FBTAA)?

1. No. Section 41 of the FBTAA applies to exempt an employer from FBT on meals provided to employees on a working day on the employer's business premises. Section 41 also exempts meals provided to employees in an in-house dining facility. This exemption is not affected by the repeal of section 64 from 1 April 1994.

2. An 'in-house dining facility' (as defined in subsection 51AE(1) of the *Income Tax Assessment Act 1936*) is a canteen, dining room or similar facility that is -

- (a) located on premises of the taxpayer or, if the taxpayer is a company, of the taxpayer or of a company that is related to the taxpayer;
- (b) operated wholly or principally for providing food and drink on working days -
 - (i) in any case to employees of the taxpayer; or
 - (ii) if the taxpayer is a company to employees of the taxpayer or of a company that is related to the taxpayer; and
- (c) not open to the public at any time.

3. Section 41 does not, however, operate to exempt from FBT a tax exempt body entertainment benefit within the meaning of Division 10 of the FBTAA.

Example:

Austco supplies meals to its employees at a staff canteen which falls within the definition of 'inhouse dining facility'. Austco is not liable to FBT on the provision of the meals as any benefit is exempt under section 41 of the FBTAA.

Commissioner of Taxation 27/1/94

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FOI INDEX DETAIL: Reference No. Related Determinations: Related Rulings: Subject Ref: in-house dining facility, provision of meals Legislative Ref: FBTAA 41, 64; ITAA 51AE Case Ref: ATO Ref: FBT Cell 30/78

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