TD 93/230 - Income tax and fringe benefits tax : is a camping allowance assessable under section 30 of the Fringe Benefits Tax Assessment Act 1986 (FBTAA) or under Division 6 of the Income Tax Assessment Act 1936 (ITAA)?

This cover sheet is provided for information only. It does not form part of *TD 93/230 - Income tax and fringe benefits tax : is a camping allowance assessable under section 30 of the Fringe Benefits Tax Assessment Act 1986 (FBTAA) or under Division 6 of the Income Tax Assessment Act 1936 (ITAA)?*

This document has changed over time. This is a consolidated version of the ruling which was published on *4 October 2006*

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).

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]

Taxation Determination

Income tax and fringe benefits tax : is a camping allowance assessable under section 30 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) or under Division 6 of the *Income Tax Assessment Act 1997* (ITAA97)?

1. A camping allowance which is paid as compensation for the additional expenses (and other disadvantages) incurred by an employee while living away from his or her usual place of residence will generally be assessable as a living-away-from-home allowance under section 30 of the FBTAA.

2. However, that part of a camping allowance which is paid to cover additional expenses which are 'deductible expenses' under the ITAA is not a living-away-from-home allowance under section 30 of the FBTAA. In such a case, that part of the allowance falls within the extended definition of ‘salary or wages’ in subsection 136(1). That is, it is not a payment for the purposes of section 12-1 of the Taxation Administration Act (1953) and therefore will be classified as a payment to an employee for the purposes of section 12-35 and assessable in accordance with section 6-1 of the ITAA97.

3. Subsection 136(1) of the FBTAA defines 'deductible expenses' to mean expenses deductible under section 51 of the ITAA36 or section 8-1 of the ITAA97, and includes expenses that would have been deductible under section 51 if section 51AE, or Subdivisions F and G of Division 3 of Part III of the ITAA, had not made them non-deductible under section 51. Or Divisions 28, 32 and 900 of ITAA97 had not made them non-deductible under section 8-1 of the ITAA97.

4. In determining the taxation treatment of a camping allowance it is important to determine whether the expenses it is intended to cover are deductible under section 51 of the ITAA36 or section 8-1 of the ITAA97. These sections will only allow such expenses to be deductible where the nexus between the expense and the employment is strong enough to overcome the negative limb of that section (ie. that the expense is not of a private, domestic or capital nature).

5. Hill J. in *Roads and Traffic Authority of NSW v FC of T* 93 ATC 4508 recently considered a camping allowance where the allowance was found not to be a living-away-from-home allowance as the expenses would have been deductible under section 51 of the ITAA had they been incurred

by the employee. The factors taken into account by Hill J. in determining whether section 51 would have applied to the expenses in that case included:

(a) the employee was required by the employer, as an incident of their employment, to live close by their work;

(b) the employee was only living away from home for relatively short periods of time;

(c) the employee did not choose to live at the places where the camp sites were located; and

(d) the employee had a permanent home elsewhere.

6. The question of what is a relatively short period of time was addressed in Taxation Ruling MT 2030 (which deals with the difference between a living-away-from-home-allowance and a travelling allowance). Paragraph 41 sets out a practical general rule to be applied in circumstances where the employee is away from his or her home base for a brief period and it is difficult to conclude whether the employee is living away from home or travelling. In these circumstances, where the allowance is for a period of up to 21 days, the allowance will be treated as a travelling allowance (the expenses against which are generally deductible under section 51) and not a living-away-from-home allowance. For periods in excess of 21 days, it would be necessary to consider the guidelines in MT 2030 in full.

7. The general rule mentioned in paragraph 6 can be applied equally in determining what is a relatively short period of time for the tests in paragraph 5. In the *Roads and Traffic Authority of NSW case* where the camping allowances were only paid for periods of 5 days at a time (the employees went home to their families on the weekends), Hill J. found that the expenses incurred would have been deductible under section 51 of the ITAA. Such a decision is consistent with MT 2030.

Example:

Joe works for a Railway Authority. As part of the conditions of his employment he is required to live at camp sites away from his family home. Under an award, Joe is entitled to a camping allowance to cover both the disadvantages of not living at home and the additional costs of food and drink. Although the particular task being undertaken by Joe at the camp site may take months to complete, Joe does not stay at the camp site over the weekend as the sites are generally located within 100 km of his home. Accordingly, the Railway Authority pays Joe a camping allowance to cover the five days of each week that he is in camp. The camping allowance is considered to be assessable under Division 6 of ITAA97 and not a living-away-from-home-allowance for the purposes of section 30 of the FBTAA. Joe, of course, can claim deductions to the extent allowed under the ITAA for any expenses incurred against this allowance.

Commissioner of Taxation
25/11/93

FOI INDEX DETAIL: Reference No. I 1216673 Previously issued as Draft TD 93/D242
Related Determinations:
Related Rulings: MT 2030
Subject Ref: living away from home allowance, camp allowance, travelling allowance
Legislative Ref: FBTAA 1986 136(1); FBTAA 1986 30(1); ITAA 1936 25(1); ITAA 1936 51(1); ITAA 1936 221A(1); ITAA 1997 Div 6; ITAA 1997 6-1; ITAA 1997 8-1; ITAA 1997 Div 28; ITAA 1997 Div 32; ITAA 1997 Div 900; TAA 1953 Sch 1 12-1; TAA 1953 Sch 1 12-35
Case Ref: Roads and Traffic Authority of NSW v FC of T 93 ATC 4508
ATO Ref: FBT Cell 30/39
ISSN 1038 - 8982