

TD 94/24 - 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 1986 (FBTAA)?



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).

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 1986* (FBTAA)?

1. No. Section 41 of the FBTAA applies to exempt an employer from FBT on meals provided to and consumed by employees on a working day on the employer's business premises whether or not the food is prepared on these 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. Nor does section 41 operate to exempt from FBT a board meal within the meaning of Div 9 of the FBTAA.

Example:

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

Commissioner of Taxation

31/3/94

FOI INDEX DETAIL: Reference No. I 1217166

Previously issued as Draft TD 94/D8

Related Determinations: ;

Related Rulings:

Subject Ref: in-house dining; provision of meals

Legislative Ref: FBTA 41, FBTA 64; ITAA 51AE

Case Ref:

ATO Ref: FBT Cell 30/78

ISSN 1038 - 8982