

The background of the slide is a top-down photograph of a workspace. It features a silver laptop with a black keyboard and a trackpad. To the left of the laptop is a white computer mouse. In the center, a pair of white earbuds lies on the surface. In the bottom right corner, a white cup of coffee with a dark, frothy top is visible. A blue rectangular overlay is positioned on the left side of the image, containing the event title and speakers information.

VIRTUAL COFFEE TALK: Final Meals and Entertainment (M&E) Expense Regulations

Kevin M. Jacobs, Kathleen King and James Deets, Alvarez & Marsal Taxand
Kevin Deyoung, Wolters Kluwer

November 10, 2020 | 2:00 to 3:00 p.m. ET



Wolters Kluwer



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What Changed?

M&E Expenses – Setting the Table

- Impacts businesses of every size and entity type.
- Results in permanent tax difference.
- Highly factual determination where amount of supporting documentation can be significant.
- Applies detailed substantiation requirements.



M&E History

Tax Reform Act of 1986

- M&E 100% deductible until 1986
- M&E limited to 80% for subsequent years

Omnibus Budget Reconciliation Act of 1993

- In general:
- Meals & entertainment limited to a 50% deduction

Tax Cuts and Jobs Act

- For post-2017, in general:
- Meals limited to a 50% deduction
 - Entertainment is 0% deductible

M&E General Requirements



Pre- and Post-TCJA:

- Expense cannot be “lavish” or “extravagant”.
- Substantiation is required for all deductions.
- Certain exceptions are available that allow 100% deductibility.
- Limitations exist for certain employees.



POLLING QUESTION

How would you rate your current systems for tracking meals and entertainment expenses?

- ☐ The current system meets our needs
- ☐ The current system needs to be updated for tax reporting purposes
- ☐ The system is fine, but we need clearer reporting guidance
- ☐ What system?

M&E Exceptions

Pre- and Post-TCJA

- Reimbursed Expenses
- Expenses Treated as Compensation
- Recreational or Social Exception
- Items Available to Public
- Goods or Services Sold to Customers



Reimbursed Expenses

- Expenses paid or incurred by the taxpayer in connection with the performance of services for another person under a reimbursement or other expense allowance arrangement.
- Sufficient documentation must be provided with bill for M&E expenses.
- Example: M&E included as part of travel costs billed from outside service provider.

Expenses Treated as Compensation



Deductible amount limited to the amount included in employees' income

Recreational or Social Exception

- Attendees generally cannot include clients, contractors, etc.
- Examples:
 - Team building events for employees
 - Employee holiday parties
 - Employee recognition events, end of busy season parties, etc.
- This is the **ONLY** form of “entertainment” that remains deductible after TCJA.



Items Available to the Public

- Expenses for goods, services and facilities made available by the taxpayer to the general public.
 - Examples:
 - Coffee and cookies in building lobby
 - Foot massages at a marathon
- Must be utilized >50% by the general public



Goods or Services Sold to Customers

- Expenses paid or incurred for food or beverages, to the extent the food or beverages are sold to customers in a bona fide transaction for an adequate and full consideration.
- Applies to employees who pay in bona fide transaction.



POLLING QUESTION

Given the COVID-19 environment, how do you expect 2020 meals and entertainment expenses to compare to prior years?

- ☐ Meals and Entertainment will be higher than prior years
- ☐ Meals and Entertainment will be lower than prior years
- ☐ I have not tried to figure it out
- ☐ No impact – we still need to eat

TCJA Changes to M&E

The significant changes in TCJA ...

**Entertainment expenses
were generally disallowed**

**De minimis fringe benefit
exception eliminated.**

drove the need for additional guidance:

- Rev. Rul. 2018-76
- Proposed regulations published in February 2020
- Final regulations T.D. 9925

Final Regulations

- Limited changes from February 2020 proposed regulations
- Confirmed that “entertainment” does not include food or beverages if the meal expenses are separately stated from the entertainment costs
- Added or modified various examples to provide clarity on specific scenarios
- Clarified that food or beverage expenses includes the cost of food or beverages, as well as any delivery fees, tips, and sales tax
 - Indirect expenses, including the cost of transportation to a meal, are not included in the definition.

Entertainment Expenses

- Deductibility: Generally, 0%
- What is entertainment?
- Context may cause “entertainment” to be deductible.



Entertainment Expenses – New Guidance

Food and Beverage Provided in Conjunction with Entertainment

- Not deductible unless cost is broken out
 - Cost must represent the usual amount charged for the food and beverage when purchased separately from the entertainment, or approximate the reasonable value of the food and beverage
 - Deductibility still subject to other requirements

Elimination of *de minimis* fringe exception

- Deductibility: 50% after TCJA
- No longer allowed as an exception.
- “Frequency” and “amount” tests are somewhat subjective.
- Examples of *de minimis* benefits under IRS Reg. 1.132-6(d)(2):
 - Meals provided on an occasional basis or for overtime work
 - Snacks, coffee, donuts, etc.

Employee Cafeteria

- After TCJA, food and beverage provided in employer-operated eating facilities is limited to the 50% deduction.
 - The 50% limitation applies to expenses for food and beverage paid or incurred through 12/31/2025.
 - Limitation does not apply to overhead and labor costs (i.e., cafeteria worker salaries)
- Beginning on 1/1/2026, ALL subsidy amounts paid or incurred to operate a facility (beyond just food and beverage) are fully disallowed under the new Section 274(o).

Convenience of the Employer

- Meals provided for the convenience of the employer are now subject to the 50% limitation.
- The 50% limitation applies to expenses for food and beverage paid or incurred through 12/31/2025.
- Beginning on 1/1/2026, ALL amounts paid or incurred to operate a facility (beyond just food and beverage) are fully disallowed under the new Section 274(o).

Substantiation Requirements

- The following documentation must be provided:
 - Amount of each separate expenditure for entertainment.
 - Date and description of type of entertainment (i.e., dinner, theater, etc.).
 - Place of activity.
 - Business purpose of activity, including a description of any business benefit derived or expected, and nature of any business discussion with person entertained.
 - Business relationship to persons entertained, including name and affiliation.



POLLING QUESTION

What further IRS guidance would help you calculate your meals and entertainment deductions?

- ☐ Further examples on Entertainment activities
- ☐ More detailed guidance on the necessary documentation
- ☐ The system fine, but we need clearer reporting guidance
- ☐ The final regulations provide sufficient clarity for me to calculate M&E deduction.

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Thank you for attending

Virtual Coffee Talk: Final Meal and Expense Regulations

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Kevin M. Jacobs

Kevin M. Jacobs is a Managing Director with Alvarez & Marsal Taxand in Washington D.C. and the National Tax Office Practice Leader. He brings more than 15 years of experience in tax matters in both the public and the private sector.

Prior to joining A&M, Mr. Jacobs was a Senior Technician Reviewer (TCJA) with the IRS Office of Associate Chief Counsel (Corporate) for more than six years, where he advised on tax issues such as corporate re-organizations and corporation-shareholder issues, earning and profits, recovery and allocation of stock basis, liquidations, redemptions, bankruptcies, spin-offs and consolidated returns.

Mr. Jacobs was the principal Associate Chief Counsel (Corporate) attorney on several regulatory projects including the proposed section 382(h) regulations on built-in gains and losses, the global intangible low-taxed income regulations, and debt-equity regulations. He provided substantial contributions to numerous other guidance projects, such as the limitation on interest deductions regulations, and assisted in overseeing the Corporate Division's response to TCJA, including the coordination with Treasury's Offices of Tax Legislative Counsel and International Tax Counsel. Previously, Mr. Jacobs spent more than nine years at law and certified public accounting firms (Ropes & Gray LLP, Latham & Watkins LLP, Dewey Ballantine LLP and Arthur Andersen LLP).

Mr. Jacobs earned a bachelor's degree in accounting, a master's degree in accounting (with a concentration in taxation), a J.D. (magna cum laude) from the University of Florida and an LL.M. in taxation from New York University. He is admitted to practice before multiple courts, including the Supreme Court of the United States, the U.S. Tax Court and the U.S. Court of Federal Claims. He is admitted to the District of Columbia and Florida Bars and is a licensed Certified Public Accountant (CPA) in Florida and Colorado. Mr. Jacobs is a member of several organizations including the American Bar Association and the New York State Bar Association. He is also a frequent speaker on numerous corporate transaction tax matters.



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Prior to joining A&M, Mr. Deets was Counsel in the Dallas office of Hunton & Williams LLP, where he focused his practice on employee benefits and executive compensation.

Mr. Deets earned a law degree with honors from the Baylor University Law School, where he served as Assistant Managing Editor of the Baylor Law Review. He earned a bachelor's degree in mathematical sciences from Baylor University.

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