



Class Ruling

Fringe benefits tax: employer clients of SmartSalary Pty Limited who are subject to the provisions of section 57A of the *Fringe Benefits Tax Assessment Act 1986* that make use of a Meal Entertainment Purchasing Card facility

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❶ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are sections 5B, 5E, 37AD, 57A and 149A of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA).

Class of entities

3. The class of entities to which this Ruling applies are employers subject to the provisions of section 57A of the FBTAA who enter into a salary packaging arrangement with SmartSalary Pty Limited (the promoter). Employees of those employers may be provided with a Meal Entertainment Purchasing Card (Meal Card) under an arrangement made with the promoter.

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 12 to 22 of this Ruling.

6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling applies from 1 April 2006. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

9. If this Class Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

10. If this Class Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Class Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

11. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

12. The scheme that is the subject of the Ruling is described below and is based on the documents listed below. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the scheme are:

- Meal Entertainment Purchasing Card overview document.
- SmartSalary Staff Benefits Card Facility Terms & Conditions.
- Letter of Offer — Staff Benefits Card Facility, dated 13 June 2005 from the financial institution to SmartSalary Pty Limited.
- SmartSalary Staff Benefits Cards Product Disclosure Statement, dated April 2006 (the PDS).
- SmartSalary Functional Specification: Meal & Entertainment Debit Card File Imports: Version 1, dated 2 September 2005.
- Salary Packaging Services for Employer Agreement form between SmartSalary Pty Limited and an employer legal entity, dated 24 May 2005 (SmartSalary salary packaging agreement).
- SmartSalary Meal Entertainment Form.
- Further information received in a letter dated 4 April 2006.

Note: certain information received from the applicant has been provided on a commercial-in-confidence basis and will not be disclosed or released by the Tax Office under the freedom of information legislation.

13. The promoter operates a business which provides salary packaging services to employers. The promoter proposes to enter into an agreement with a financial institution to issue a Meal Card to employees of employers who are subject to section 57A of the FBTA.
14. The employer operates an account with the financial institution and deposits funds into the account on an agreed regular cycle. The promoter has withdrawal access to this account.
15. The promoter transfers funds from this account to the employee's Meal Card account in accordance with an effective salary sacrifice arrangement. This increases the balance of funds available on the Meal Card account.
16. Payments (up to an employee's agreed salary sacrifice value) can only be made to the card account by the promoter on behalf of the employer by means of the 'account holder's contribution'. This is defined in the PDS to mean the amount agreed between the account holder and the promoter to be paid by the promoter to the card account on behalf of the employer.
17. The Meal Card is a credit card with a \$1 credit limit.
18. The Meal Card is effectively a debit card, as each purchase reduces the available value on the Meal Card. Other than the \$1 credit limit, an employee or their associate cannot spend more than the value on the Meal Card as represented by the money transfers put onto the Meal Card by the promoter.
19. An employee is only permitted to use the Meal Card to purchase meal entertainment, as defined in section 37AD of the FBTA, from participating merchants. Payment to a merchant is made from the Meal Card account on verification of the employee's signature.
20. An employee is prohibited from using the Meal Card to obtain cash advances.
21. The rules under which the Meal Card is issued will permit an employee and their associate to both have a Meal Card simultaneously if desired.
22. On termination of employment, the employee is given one month to use any credit balance on the Meal Card account prior to the promoter notifying the financial institution to close the Meal Card account. Any credit balance remaining on closure of the Meal Card account will be forwarded by the financial institution to the employer for payment to the employee as salary or wages subject to the pay as you go (PAYG) provisions.

Ruling

23. The use of the Meal Card for the acquisition of entertainment by way of food or drink constitutes the provision of meal entertainment as defined in section 37AD of the FBTA.

24. The provision of meal entertainment by way of the Meal Card gives rise to an exempt benefit under section 57A of the FBTAA. Such benefits are not included in the employer's fringe benefits taxable amount.

25. Benefits that constitute the provision of meal entertainment are disregarded for the purposes of the capping thresholds in determining an employer's aggregate non-exempt amount under subsection 5B(1E) of the FBTAA.

26. The provision of meal entertainment is an excluded fringe benefit for the purposes of paragraph 5E(3)(a) of the FBTAA. As such, the value of the benefit is excluded from the reportable fringe benefits provisions in Part XIB of the FBTAA.

27. The provision of meal entertainment that is an exempt benefit under section 57A of the FBTAA is not a GST-creditable benefit in terms of section 149A of the FBTAA.

Appendix 1 – Explanation

① *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

28. Section 37AD of the FBTAA defines the meaning of the phrase 'provision of meal entertainment'. This section refers amongst other things, to the provision of entertainment by way of food or drink, or the payment or reimbursement of such expenses.

29. The first limb of the expense payment benefit provisions of Division 5 of Part III of the FBTAA provides that where a person (the provider) makes a payment in discharge, in whole or in part, of an obligation of another person (the recipient) to pay an amount to a third person in respect of expenditure incurred by the recipient, the making of that payment gives rise to an expense payment benefit.

30. The payment of the amount charged to the Meal Card in a particular transaction is a payment for the provision of meal entertainment and falls within the meaning of the provision of meal entertainment as provided in paragraph 37AD(c) of the FBTAA.

31. Under the scheme, the obligation that is discharged is the employee's obligation to the merchant. The employee incurs an expense to a merchant when the employee makes a charge on the Meal Card by authorising a transaction, that is, by signing for a purchase of food or drink that comes within the definition of the provision of meal entertainment. The financial institution then uses the credit available on a Meal Card account to pay the merchant. When the credit on the account is applied to the expense, the elements of paragraph 20(a) of the FBTAA are satisfied and an expense payment benefit arises.

32. Section 57A of the FBTAA provides that certain employers are generally exempt from fringe benefits tax. This section applies to employers that are public benevolent institutions, certain hospitals, public ambulance services (or a supporting service) and charitable institutions that promote the prevention or the control of diseases in humans.

33. Public and non-profit hospitals and ambulance services (or a supporting service) have a capping threshold placed on the value of benefits exempt from fringe benefits tax that may be provided to employees. This threshold is \$17,000 grossed-up taxable value per employee. Such employers are liable for fringe benefits tax on the value of benefits provided in excess of this threshold.

34. All other employers to which section 57A of the FBTAA applies will have a capping threshold of \$30,000 grossed-up taxable value per employee. Such employers are liable for fringe benefits tax on the value of benefits provided in excess of this threshold.

35. However, any employer to which section 57A of the FBTA applies, will not be liable for fringe benefits tax on benefits provided that fall within the meaning of the provision of meal entertainment. This results from the operation of Step 1 of the method statement contained in subsection 5B(1L) of the FBTA which specifically disregards the provision of meal entertainment in calculating an employer's fringe benefits taxable amount.

36. For employers subject to the provisions of section 57A of the FBTA, meal entertainment is always an exempt benefit because of the interaction between section 57A and subsection 5B(1L) of the FBTA. Step 1 of the method statement in subsection 5B(1L) of the FBTA specifically disregards the taxable value of the provision of meal entertainment for the purposes of determining exposure to the capping thresholds.

37. Part XIB of the FBTA requires the taxable values of certain benefits to be included in the reportable fringe benefits amount of the relevant employee. As the use of the Meal Card results in the provision of meal entertainment, paragraph 5E(3)(a) of the FBTA will apply to make the benefit an excluded benefit. This conclusion holds regardless of whether or not the employer has elected that Division 9A of Part III applies. Thus the value of the benefit is not included in the reportable fringe benefits amount of any employee.

38. Taxation Ruling TR 2001/2 points out that for the purposes of section 149A of the FBTA, to be a GST-creditable benefit, the provider of the benefit must be entitled to an input tax credit for that benefit and that a GST-creditable benefit arises where the provider is entitled to an input tax credit because of:

- the operation of Division 111 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act); or
- because the fringe benefit is a 'thing' that was acquired or imported by the provider.

39. The second point in the paragraph above does not apply as subsection 149A(2) of the FBTA only applies if the benefit was acquired or imported by the provider. In this case, we have a reimbursement for the purposes of the GST Act. Consequently, we need only consider the first point of the paragraph above.

40. Paragraph 86 of Goods and Services Tax Ruling GSTR 2001/3 states that Division 111 of the GST Act provides that an employer makes an acquisition that can be a creditable acquisition, subject to certain conditions, where:

- an employee is reimbursed for an expense that constitutes an expense payment benefit; or
- a payment is made on behalf of an employee for an expense payment benefit that constitutes an expense payment benefit.

41. Paragraph 87 of GSTR 2001/3 points out, amongst other things, that the expense payment benefit in these circumstances is not a creditable acquisition unless the supply of the thing acquired by the employee is a taxable supply.

42. Paragraph 89 of GSTR 2001/3 (note Addendum to Ruling issued 18 December 2002) points out that for Division 111 of the GST Act to apply, the arrangement between the employer and the employee needs to be for the reimbursement of a particular purchase or purchases incurred on the credit card.

43. Paragraph 88 of GSTR 2001/3 points out that one of the conditions which could prevent the acquisition from being a creditable acquisition is the application of the special rules set out in Division 69 of the GST Act.

44. An acquisition is not a creditable acquisition to the extent, if any, that the acquisition would not, because of Division 69 of the GST Act, be a creditable acquisition if the employer made it. Paragraph 96 of GSTR 2001/3 points out that Division 69 of the GST Act limits input tax credits for certain acquisitions and importations, including entertainment, to the extent that they would not be deductible expenditure under certain provisions of the *Income Tax Assessment Act 1997* (ITAA 1997).

45. Division 69 of the GST Act does not apply to disallow input tax credits for entertainment expenses made in providing fringe benefits. Where an employer as mentioned and described in section 57A of the FBTAA incurs expenditure in providing meal entertainment benefits to employees, such benefits are exempt benefits and not fringe benefits. Consequently, Division 69 of the GST Act can apply to deny any input tax credits in respect of such expenditure. GSTR 2001/3 explains this in more detail as follows:

97. Whilst section 32-5 of the ITAA 1997 denies a deduction for entertainment under section 8-1 of that Act, section 32-20 of the ITAA 1997 allows an exception where entertainment is provided by way of a fringe benefit. Consequently, Division 69 does not apply to disallow input tax credits for entertainment expenses made in providing fringe benefits (as defined in the FBTAA)...

98. Although acquisitions and importations made to provide fringe benefits are an exception to the Division 69 denial of deductions for entertainment expenses, exempt benefits are not fringe benefits for these purposes.

99. Paragraph 69-5(3)(f) disallows any entitlement to input tax credits for acquisitions and importations for providing entertainment to clients rather than employees. However, to the extent that the acquisitions and importations are made in providing entertainment to employees and are otherwise creditable, Division 69 will not deny those entitlements.

100. Where an entity such as a public benevolent institution provides any benefit to employees which is in respect of employment, section 57A of the FBTA provides that these are exempt benefits. As the fringe benefit exception rule in section 32-20 of the ITAA 1997 does not apply where entertainment benefits are exempt from FBT, paragraph 69-5(3)(f) (of the GST Act) can apply to deny any input credits for entertainment acquisitions and importations for public benevolent institutions. As subsection 69-5(4) applies the rules in subsection 69-5(3) to entities that are exempt from income tax as if they were subject to that tax, the fact that the benefit is exempt from FBT means that subsection 69-5(3) can apply to these entities in addition to entities that are subject to income tax.

46. Thus, the provision of benefits by way of food or drink as described in the scheme are not GST-creditable benefits for the purposes of section 149A of the FBTA.

47. This Ruling only applies to meal entertainment benefits provided to employees (and associates) as described in the scheme. Where employers who are not subject to the provisions of section 57A of the FBTA provide meal entertainment benefits under similar schemes, a ruling on such schemes is contained in Class Ruling CR 2006/47.

Appendix 2 – Detailed contents list

48. Below is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

CR 2006/47; GSTR 2001/3;
GSTR 2001/3A; TR 2001/2

Subject References

- class rulings
- entertainment expenses
- excluded fringe benefits
- exempt benefits
- expense payment fringe benefits
- FBT expense payment
- FBT meal entertainment
- FBT salary packaging
- FBT salary sacrifice
- fringe benefit
- fringe benefits tax
- reportable fringe benefits

- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- ANTS(GST)A 1999 Div 69
- ANTS(GST)A 1999 69-5(3)
- ANTS(GST)A 1999 69-5(3)(f)
- ANTS(GST)A 1999 69-5(4)
- ANTS(GST)A 1999 Div 111
- FBTAA 1986 5B
- FBTAA 1986 5B(1E)
- FBTAA 1986 5B(1L)
- FBTAA 1986 5E
- FBTAA 1986 5E(3)(a)
- FBTAA 1986 Pt III Div 5
- FBTAA 1986 20(a)
- FBTAA 1986 37AD
- FBTAA 1986 37AD(c)
- FBTAA 1986 57A
- FBTAA 1986 Pt XIB
- FBTAA 1986 149A
- FBTAA 1986 149A(2)
- ITAA 1997 8-1
- ITAA 1997 32-5
- ITAA 1997 32-20

Legislative references:

- Copyright Act 1968

ATO references

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