



CR 2003/36 - Income tax: Employer clients of McMillan Shakespeare Australia Pty Ltd that make use of a Meal Entertainment Payment Card facility

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 This document has changed over time. This is a consolidated version of the ruling which was published on *1 April 2001*



Class Ruling

Income tax: Employer clients of McMillan Shakespeare Australia Pty Ltd that make use of a Meal Entertainment Payment Card facility

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Preamble

*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains **Class Rulings** and **Taxation Rulings** TR 92/1 and TR 97/16 together explain when a **Ruling** is a public ruling and how it is binding on the Commissioner.*

What this Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax laws' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax laws

2. The tax laws dealt with in this Ruling are:- Sections 5B, 5E, 37AD, 57A, 136 and 150 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA).

Class of persons

3. The class of persons to whom this Ruling applies are those employers subject to the provisions of Section 57A of the FBTAA who enter into a salary packaging services agreement with McMillan Shakespeare Australia Pty Ltd (the promoter). Employees of these employers will be provided with a meal entertainment payment card (the card), under a salary packaging arrangement with the promoter. These employers that are subject to the provisions of Section 57A of the FBTAA, are also referred to as public benevolent institution employers (PBI employers).

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.
5. The classes of persons defined in this Ruling may rely on its contents provided that the arrangement is carried out in accordance with the details of the arrangement provided in paragraphs 9 to 15 of this Ruling.
6. If the arrangement described in this Ruling is materially different from the arrangement that is actually carried out:
- (a) this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled, and
 - (b) this Ruling may be withdrawn or modified.
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Date of effect

8. This Ruling applies from 1 April 2001. 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 (see paragraphs 21 to 22 of Taxation Ruling TR 92/20). Furthermore, the Ruling only applies to the extent that:
- it is not later withdrawn by notice in the Gazette;
 - it is not taken to be withdrawn by an inconsistent later public ruling; or
 - the relevant tax laws are not amended.

Arrangement

9. The arrangement 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 arrangement are:

- meal entertainment payment card - business rules dated September 2001;
- purchasing card facility agreement dated 4 October 2001;
- conditions of use - purchasing card (meal entertainment);
- draft salary packaging services agreement - employer and promoter;
- employee information - meal entertainment payment card dated October 2001; and
- McMillan Shakespeare Meal Entertainment Payment Card Cardholder Request Form.

Note: certain information received from the promoter has been provided on a commercial-in-confidence basis and will not be disclosed or released by the ATO under the Freedom of Information Legislation.

10. The promoter operates a business that amongst other areas of activity, provides salary packaging services to employers. The promoter has entered into an agreement with a financial institution to issue a corporate credit card facility in the name of the promoter, acting as agent for its employer clients, as part of a salary packaging arrangement. The conditions of use of the card will prohibit an employee from obtaining cash advances with the card, and may also limit the use of the card to specific classes of merchants.

11. The policy of each client of the promoter is that the card will only be used for the payment of expenditure in respect of meal entertainment.

12. The employer is primarily liable for any expenditure incurred using the card, and is also responsible for any debts arising from the use of the card, notwithstanding that the card is issued in the name of the employee. If an employee incurs unauthorised expenditure, and there is a dispute over liability to the financial institution, the financial institution will seek restitution from the employer through the promoter as agent for its employer clients.

13. Each employee, by agreement with their employer, is allowed to purchase meal entertainment to an agreed value over an agreed period of time. The promoter will establish a bank account for the employer to deposit all funds associated with the provision of the card. The promoter will deduct from the account any administrative fees for its services on a monthly basis and the promoter will be responsible for all costs associated with the use of the card, including any interest and bank charges.

14. The employer is responsible for approving the use of the card by nominated employees, and informing the promoter of any restrictions applying to any merchant types. The employer must provide to the promoter electronically, in an agreed format and on an agreed date and cycle, a listing of amounts to be allocated to each card, in respect of each employee for meal entertainment expenses. The employer must deposit funds into the account equal to the listing of contributions in respect of each employee on or before the agreed date for providing the listing of contributions.

15. The card is intended to be primarily marketed to PBI employers that may become clients of the promoter.

Ruling

16. The use of the card for the acquisition of food and drink by way of entertainment by employees, constitutes the provision of meal entertainment as defined in Section 37AD of the FBTAA.

17. The provision of such 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.

18. Where the employer is a PBI employer, the provision of meal entertainment by way of the card, is an exempt benefit in accordance with Section 57A of the FBTAA and is not included in the employer's fringe benefits taxable amount.

Explanations

19. For the purposes of the application of the FBTAA, 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.

20. The use of the meal entertainment payment card to pay for a benefit provided to an employee of a client of the promoter is considered to satisfy the definition of the provision of meal entertainment. The employer pays the promoter the amount charged to the card, up to a predetermined limit. The promoter then ensures that the debt charged to the card for that item of expenditure is extinguished. The payment of the amount charged to the card is a benefit provided to the employee. This benefit falls within the meaning of the provision of meal entertainment as provided in Paragraph 37AD(c) of the FBTA.

21. Meal entertainment can be taxed under various provisions of the FBTA, for example Division 9 of Part III Board Fringe Benefits. Regardless of which provision the meal entertainment is taxed under, it will still constitute the provision of meal entertainment for the purposes of Division 9A of Part III of the FBTA.

22. 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 card results in the provision of meal entertainment, Paragraph 5E(3)(a) of the FBTA will apply to make the benefit an excluded benefit. Thus the value of the benefit is not included in the reportable fringe benefits amount of any employee.

23. Section 57A of the FBTA applies to employers with a PBI status, certain hospitals, or charitable institutions that promote the prevention or the control of diseases in humans. Section 57A provides that these employers are generally exempt from FBT, but are subject to the capping provisions contained in Section 5B.

24. PBI employers that are public hospitals, or private not-for-profit hospitals have a capping threshold placed on the amount of FBT exempt benefits that may be provided to employees. This threshold is \$17,000 grossed up taxable value per employee and applies from 1 April 2000. Such employers are liable for full FBT on the value of benefits provided in excess of this threshold.

25. All other employers to which Section 57A of the FBTA applies, will have a capping threshold of \$30,000 grossed up taxable value per employee which applies from 1 April 2001. Such employers are liable for full FBT on the value of benefits provided in excess of this threshold.

26. However, any employer to which Section 57A of the FBTA applies, will not be liable for FBT 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.

27. For PBI employers, meal entertainment is always an exempt benefit because of the interaction between Section 57A and Subsection 5B(1L) of the FBTAA. Step 1 of the method statement in Subsection 5B(1L) of the FBTAA specifically disregards the taxable value of the provision of meal entertainment for the purposes of determining exposure to the capping thresholds. Consequently, meal entertainment, as an exempt benefit, is excluded from the definition of a fringe benefit under Subsection 136(1) of the FBTAA.

28. The operation of Section 150 of the FBTAA can in certain circumstances preclude the taxing of a benefit under Division 9A of Part III. However, the test in Division 1 of Part IIA of the FBTAA, which determines whether a benefit is a disregarded benefit, only applies to meal entertainment as defined in section 37AD, whether or not the employer has elected that Division 9A of Part III applies.

Detailed contents list

29. Below is a detailed contents list for this Class Ruling

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Commissioner of Taxation

14 May 2003

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 92/1; TR 92/20; TR 97/16;
CR 2001/1.

Subject references:

- expense payment benefits
- fringe benefits tax
- fringe benefit
- reimbursement
- salary packaging
- meal entertainment
- meal entertainment benefit

- entertainment
- public benevolent institution
- credit cards

Legislative references

- FBTAA 1986 Div 1 of Pt IIA
- FBTAA 1986 5B
- FBTAA 1986 5B(1L)
- FBTAA 1986 5E
- FBTAA 1986 5E(3)(a)
- FBTAA 1986 Div 9 of Pt III

- FBTAA 1986 Div 9A of Pt III
- FBTAA 1986 37AD
- FBTAA 1986 37AD(c)
- FBTAA 1986 57A
- FBTAA 1986 136
- FBTAA 1986 136(1)
- FBTAA 1986 150
- FBTAA 1986 Pt XIB
- TAA 1953 Part IVAAA
- Copyright Act 1968

ATO references

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