

# ***CR 2003/36 - Fringe benefits 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 June 2016*

## Class Ruling

Fringe benefits 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.*

*[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.]*

## 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 relevant provisions tax laws dealt with in this Ruling are:

- section 5B of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA)
- subsection 5B(1E) of the FBTAA
- subsection 5B(1L) of the FBTAA
- paragraph 5B(1M)(a) of the FBTAA
- section 5E of the FBTAA
- paragraph 5E(3)(a) of the FBTAA
- Division 9A of Part III of the FBTAA
- section 37AC of the FBTAA

- paragraph 37AC(b) of the FBTAA
- section 37AD of the FBTAA
- section 38 of the FBTAA
- section 39 of the FBTAA
- section 57A of the FBTAA
- Part XIB of the FBTAA
- subsection 136(1) of the FBTAA, and
- section 150 of the 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**

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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**

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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.

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## Ruling

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### **Salary packaged meal entertainment benefits provided on or before 31 March 2016**

15A. Paragraphs 16 to 18 of this Ruling (and paragraphs 19 to 28 of the Explanation section) apply to benefits provided on or before 31 March 2016 and refer to provisions in the FBTAA before the application of the *Tax and Superannuation Laws Amendment (2015 Measures No. 5) Act 2015*.<sup>1</sup>

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.

18A. Paragraphs 18B to 18J of this Ruling (and paragraphs 19 to 20 and 28A to 28D of the Explanation section) apply to benefits provided from 1 April 2016 and refer to provisions in the FBTAA following the application of the *Tax and Superannuation Laws Amendment (2015 Measures No. 5) Act 2015*.

18B. The use of the card for the acquisition of entertainment by way of food or drink constitutes the 'provision of meal entertainment' as defined in section 37AD.

18C. The provision of meal entertainment by way of the card gives rise to an exempt benefit under section 57A.

18D. The benefit is a 'tax-exempt body entertainment benefit' under section 38 and the taxable value of the fringe benefit is determined under section 39.

18E. The meal entertainment is provided under a salary packaging arrangement<sup>2</sup> as described in paragraph 37AC(b). As a result Division 9A of Part III (election for meal entertainment expenses) cannot apply.

18F. Paragraph 5B(1M)(a) applies as the benefit is provided under a salary packaging arrangement and is constituted by the provision of meal entertainment as defined in section 37AD.

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<sup>1</sup> The *Tax and Superannuation Laws Amendment (2015 Measures No. 5) Act 2015* makes changes to the FBTAA and applies to salary packaged meal entertainment benefits provided on or after 1 April 2016.

<sup>2</sup> 'Salary packaging arrangement' is defined in subsection 136(1).

18G. The grossed-up taxable value of the salary packaged meal entertainment benefits (as well as the grossed up-taxable value of any other fringe benefits provided to the employee in that year) are included in the '*individual grossed-up non-exempt amount*' under step 1 of the method statement in subsection 5B(1E).

18H. Under subsection 5B(1E) the employee's *individual grossed-up non-exempt amount* is reduced by:

- the general capping threshold<sup>3</sup>, and
- if any amount remains, by '*salary packaged entertainment cap*'.<sup>4</sup> This cap is the lesser of \$5,000 and an employee's total grossed-up taxable value of the salary packaged meal entertainment benefits and salary packaged entertainment facility leasing expenses covered by subsection 5B(1M).

18I. This reduced amount for all employee's forms the employer's '*aggregate non-exempt amount*' for the year of tax under subsection 5B(1E).<sup>5</sup>

18J. The provision of salary packaged meal entertainment is not an excluded fringe benefit for the purposes of paragraph 5E(3)(a). The grossed-up value of such benefits is included in the reportable fringe benefits provisions in Part XIB.

## 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

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<sup>3</sup> The general capping threshold under subsections 57A(2), (3), and (4) for public hospitals and public ambulance services is \$17,667 for the FBT year commencing on 1 April 2016. The general capping threshold under subsections 57A(1) and (5) for public benevolent institutions and health promotion charities is \$31,177 for the FBT year commencing on 1 April 2016.

<sup>4</sup> Refer to step 4 of the method statement in subsection 5B(1E).

<sup>5</sup> Refer to step 5 of the method statement in subsection 5B(1E).

meaning of the provision of meal entertainment as provided in paragraph 37AD(c) of the FBTAA.

**Salary packaged meal entertainment benefits provided on or before 31 March 2016**

21. Meal entertainment can be taxed under various provisions of the FBTAA, 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 FBTAA.

22. Part XIB of the FBTAA 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 FBTAA 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 FBTAA 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<sup>6</sup> 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 FBTAA applies, will have a capping threshold of \$30,000<sup>7</sup> 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 FBTAA 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 FBTAA which specifically disregards the provision of meal entertainment in calculating an employer's fringe benefits taxable amount.

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<sup>6</sup> This threshold is increased to \$17,667 for the FBT years ending 31 March 2016 and 31 March 2017.

<sup>7</sup> This threshold is increased to \$31,177 for the FBT years ending 31 March 2016 and 31 March 2017.

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.

### **Salary packaged meal entertainment benefits provided from 1 April 2016**

28A. From 1 April 2016, the *Tax and Superannuation Laws Amendment (2015 Measures No 5) Act 2015* makes changes to the FBTAA to limit the concessional treatment of salary packaged entertainment benefits (for both meal entertainment and entertainment facility leasing expenses) by:

- removing the subsection 5E(3) reporting exclusion in respect of salary packaged entertainment benefits so that these benefits now form part of the employee's individual fringe benefits amount under section 5E
- removing access to the Division 9A and section 152B elections, and
- introducing a \$5,000 cap on the grossed-up value of salary packaged entertainment benefits under subsections 5B(1E) and 5B(1M).

28B. For employers subject to the provisions of section 57A, the provision of salary packaged entertainment benefits are capped at \$5,000 of the grossed-up taxable value of fringe benefits for each employee. Any salary packaged entertainment benefits that exceed this cap will be included in the general cap of either \$17,667 or \$31,177 for the FBT year commencing 1 April 2016. This is because of the interaction between section 57A and subsection 5B(1L). For benefits provided from 1 April 2016, step 1 of the method statement in subsection 5B(1L) no longer disregards the provision of salary

packaged entertainment in calculating an employer's fringe benefits taxable amount.<sup>8</sup>

28C. The benefit is a 'tax exempt body entertainment benefit' under section 38 which applies when a not-for-profit employer incurs non-deductible expenditure on entertainment of an employee or associate of an employee. Elections under Division 9A of Part III no longer apply where there is a salary packaging arrangement.<sup>9</sup>

28D. In relation to salary packaged entertainment benefits provided from 1 April 2016, under part XIB, the employer will be required to include the grossed-up taxable value of salary packaged entertainment benefits on an employee's payment summary where the value of these benefits, and that of other benefits provided to the employee in the particular FBT year, exceeds \$2,000.

## Detailed contents list

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

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<sup>8</sup> Subsection 5B(1L) continues to apply to non- salary packaged entertainment expenses and car parking benefits.

<sup>9</sup> Refer to paragraph 37AC(b).

## Detailed contents list

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### Commissioner of Taxation

14 May 2003

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

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

*Legislative references*

- FBTAA 1986 Div 1 of Pt IIA
  - FBTAA 1986 5B
  - FBTAA 1986 5B(1E)
  - FBTAA 1986 5B(1L)
  - FBTAA 1986 5B(1M)
  - FBTAA 1986 5B(1M)(a)
  - FBTAA 1986 5E
  - FBTAA 1986 5E(3)(a)
  - FBTAA 1986 Div 9 of Pt III
  - FBTAA 1986 Div 9A of Pt III
- FBTAA 1986 37AC
  - FBTAA 1986 37AC(b)
  - FBTAA 1986 37AD
  - FBTAA 1986 37AD(c)
  - FBTAA 1986 38
  - FBTAA 1986 39
  - FBTAA 1986 57A
  - FBTAA 1986 136
  - FBTAA 1986 136(1)
  - FBTAA 1986 150
  - FBTAA 1986 Pt XIB
  - TAA 1953 Part IVAAA
  - Copyright Act 1968
  - Tax and Superannuation Laws  
Amendment (2015 Measures No. 5)  
Act 2015

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ATO references

NO 2003/04988

BSL: PGH

ISSN: 1445-2014