


CR 2005/82 - Fringe benefits tax: employer clients of Remunerator (Aust) Pty Ltd that make use of a credit card facility

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Class Ruling

Fringe benefits tax: employer clients of Remunerator (Aust) Pty Ltd that make use of a credit card facility

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Preamble

The number, subject heading, **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 law(s)

2. The tax laws dealt with in this Ruling are sections 5B, 5E, 20, 37AD, 57A, 147 and 149A of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA 1986).

Class of persons

3. The class of persons to whom this Ruling applies are employers subject to the provisions of section 57A of the FBTAA 1986 who enter into a salary packaging service agreement with Remunerator (Aust) Pty Ltd as trustee for The Remunerator (Aust) Unit Trust (the promoter). Employees of those employers may be provided with personal credit cards issued by a financial institution under an agreement made with the promoter.

Qualifications

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

5. The class of persons defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the arrangement described in paragraphs 9 to 19.

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

- 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
- this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling applies from 1 April 2005. 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:

- agreement between Remunerator (Aust) Pty Ltd and a financial institution for sourcing and promoting a co-branded credit card;
- draft of the financial institution's business requirements for the credit card published on 4 October 2004;

- standard salary packaging service agreement between Remunerator (Aust) Pty Ltd and its employer clients;
- salary packaging policy agreement to be made between Remunerator (Aust) Pty Ltd on behalf of its employer clients and their employees;
- Remunerator (Aust) Pty Ltd salary packaging information brochure; and
- salary packaging policy to be adopted by employer clients of Remunerator (Aust) Pty Ltd.

Note: certain information received from Remunerator (Aust) Pty Ltd 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.

10. The promoter provides salary packaging services to employers who are subject to the provisions of section 57A of the FBTA 1986. These employers provide salary sacrifice arrangements (SSA) to their employees which are administered by the promoter.

11. The promoter has entered into an agreement with a financial institution to issue personal credit cards to employees of clients who are subject to the provisions of section 57A of the FBTA 1986 who participate in the SSA. Each employee is solely liable for the debts incurred by using the card.

12. Under the SSA an employee will forego part of their salary in return for expense payment benefits being the payment of their credit card liability incurred in respect of meal entertainment and of the balance (or part thereof) of the remaining credit card liability.

13. The employer operates a bank account and deposits funds into the account. Such an account may be held with the financial institution which issues the credit cards or another financial institution.

14. When an employee uses the credit card, expenditure types will be identified by their international merchant codes. Each month the financial institution will record the expenditure on each card and produce a data file listing of all expenditure incurred in the prescribed period by the employee and electronically send that file to the employer and the promoter.

15. Under the arrangement certain items of expenditure incurred in using the credit card will not be eligible for payment by the employer. From the data file the promoter will specifically identify transactions which are outside the scope of the employer's salary packaging policy. The liability for any transactions made in respect of ineligible expenditure will be the responsibility of the employee.

16. The promoter will then identify the total meal entertainment expenses incurred in the period and will make a payment from the employer's account to the financial institution for those expenses.

17. The balance of the credit card (that is excluding the ineligible transactions and the amount paid for meal entertainment expenses) will constitute the outstanding liability under the arrangement owed by the employee in respect of the credit card. The promoter will make a second payment from the employer's account to the financial institution for any outstanding liability.

18. The promoter will ensure that the total amounts paid do not exceed the salary sacrifice amount agreed between the employer and employee under the SSA.

19. The financial institution will issue a credit card statement to the employee and to the promoter. In addition to being liable for any ineligible transactions, the employee will be liable for the amount, if any, which is in excess of the agreed salary sacrifice amount.

Ruling

20. The payment of expenditure incurred by the use of the credit card for the acquisition of entertainment by way of food and drink constitutes the provision of meal entertainment as defined in section 37AD of the FBTAA 1986.

21. The provision of such meal entertainment is an excluded fringe benefit for the purposes of paragraph 5E(3)(a) of the FBTAA 1986. As such, the value of the benefit is excluded from the reportable fringe benefits provisions in Part XIB of the FBTAA 1986.

22. As the employer is subject to the provisions of section 57A of the FBTAA 1986, the provision of meal entertainment by way of the card is an exempt benefit and is not included in the employer's fringe benefits taxable amount.

23. The payments of all or part of the remaining balance of expenditure incurred by the use of the credit card under the arrangement are expense payment benefits under section 20 of the FBTAA 1986.

24. The provision of such an expense payment benefit is not a GST-creditable benefit in terms of section 149A of the FBTAA 1986 and is therefore regarded as a type 2 benefit for the purposes of section 5B of the FBTAA 1986.

Explanation

25. Section 37AD of the FBTAA 1986 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.

26. The use of the credit card to pay for meal entertainment expenses of an employee of a client of the promoter is considered to satisfy the definition of the provision of meal entertainment. The employer will deposit funds into a bank account which may be held with the financial institution that issues the credit cards or another financial institution. The promoter will have withdrawal access to that account, so that the promoter can draw against the employer's funds to pay debts incurred on the employee's credit card. 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 FBTAA 1986.

27. Meal entertainment can be taxed under various provisions of the FBTAA 1986, 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 1986.

28. Part XIB of the FBTAA 1986 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 1986 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.

29. Section 57A of the FBTAA 1986 provides that certain employers are generally exempt from FBT. Section 57A of the FBTAA 1986 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.

30. Public and non-profit hospitals and ambulance services (or a supporting service) have a capping threshold placed on the amount of fringe benefits tax exempt benefits 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.

31. All other employers to which section 57A of the FBTAA 1986 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.

32. However, any employer to which section 57A of the FBTAA 1986 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 FBTAA 1986 which specifically disregards the provision of meal entertainment in calculating an employer's fringe benefits taxable amount.

33. For employers subject to the provisions of section 57A of the FBTA 1986, meal entertainment is always an exempt benefit because of the interaction between section 57A and subsection 5B(1L) of the FBTA 1986. Step 1 of the method statement in subsection 5B(1L) of the FBTA 1986 specifically disregards the taxable value of the provision of meal entertainment for the purposes of determining exposure to the capping thresholds.

34. The test in Division 1 of Part IIA of the FBTA 1986, 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.

35. The first limb of the expense payment benefit provisions in Division 5 of Part III of the FBTA 1986, provides that 'Where a person ...makes a payment in discharge, in whole or in part, of an obligation of another person (...the **'recipient'**) ...', the making of that payment gives rise to an expense payment benefit.

36. By way of clarification of the term obligation, section 147 provides that 'a person shall be deemed to be under an obligation to pay ... an amount notwithstanding that the amount is not due for payment...'.

37. When the promoter makes the second payment under the arrangement on behalf of the employer in relation to the employee's outstanding credit card debt (up to the agreed value), that payment discharges an employee's obligation. By virtue of section 147 of the FBTA 1986 and for the purposes of paragraph 20(a) of the FBTA 1986, a payment by the promoter does not need to relate to an amount that is currently due for payment by the employee. It is sufficient that the amount is merely paid to the employee's card account. The first limb of the expense payment provisions also requires that a payment in discharge of an obligation relates to an obligation by the recipient 'to pay an amount to a third person in respect of expenditure incurred by the recipient'.

38. Under the arrangement, the obligation that is discharged in whole or in part, by the promoter's payment, is the employee's obligation to the financial institution (the third person) for any debts incurred in using the card.

39. Thus, for the purposes of paragraph 20(a) of the FBTA 1986, an expense payment benefit arises at the time that the promoter pays an amount to the employee's card account.

40. To determine whether such an expense payment benefit is a type 1 or type 2 benefit for the purpose of the operation of the fringe benefits tax gross-up formula, it is necessary to ascertain whether the benefit is a GST-creditable benefit as defined in section 149A of the FBTA 1986.

41. Taxation Ruling TR 2001/2 points out that for the purposes of section 149A of the FBTA 1986, 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.

42. For the purpose of subsection 149A(1) of the FBTA 1986, paragraphs 89 and 90 of the Goods and Services Tax Ruling GSTR 2001/3, indicate that an expense payment benefit as described in the arrangement does not involve a creditable acquisition for the purposes of Division 111 of the GST Act and therefore there is no entitlement to an input tax credit.

43. For the purpose of subsection 149A(2) of the FBTA 1986, paragraph 43 of TR 2001/2 indicates that that subsection is designed to cover benefits that arise from the employee's use of a 'thing' such as a car. Paragraph 52 of the ruling makes it clear that the 'thing' used to provide the benefit must have been acquired or imported. Therefore, subsection 149A(2) has no application to an expense payment benefit as described in the arrangement.

44. Thus, an expense payment benefit as described in the arrangement is not a GST-creditable benefit for the purposes of section 149A of the FBTA 1986.

45. As the benefit is not a GST-creditable benefit, it is a type 2 benefit for the gross-up formula in section 5B of the FBTA 1986.

46. This ruling only applies to expense payment benefits provided to employees as described in the arrangement.

Detailed contents list

47. Below is a detailed contents list for this Class Ruling:

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Commissioner of Taxation

12 October 2005

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 92/20;
TR 97/16; TR 2001/2;
GSTR 2001/3

Subject References

- credit cards
- creditable acquisition
- entertainment expenses
- excluded fringe benefits
- exempt benefits
- expense payment fringe benefits
- FBT expense payment
- FBT meal entertainment
- FBT salary packaging
- FBT salary sacrifice
- fringe benefits tax
- fringe benefit
- reportable fringe benefits

Legislative references:

- Copyright Act 1968
- TAA 1953 Pt IVAAA
- ANTS(GST)A 1999 Div 111
- FBTAA 1986 Pt IIA Div 1
- FBTAA 1986 5B
- FBTAA 1986 5B(1L)
- FBTAA 1986 5E
- FBTAA 1986 5E(3)(a)
- FBTAA 1986 Pt III Div 5
- FBTAA 1986 20
- FBTAA 1986 20(a)
- FBTAA 1986 Pt III Div 9
- FBTAA 1986 Pt III Div 9A
- FBTAA 1986 37AD
- FBTAA 1986 37AD(c)
- FBTAA 1986 57A
- FBTAA 1986 Pt XIB
- FBTAA 1986 147
- FBTAA 1986 149A
- FBTAA 1986 149A(1)
- FBTAA 1986 149A(2)

ATO references

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