



CR 2005/89 - Fringe benefits tax: employer clients of Remunerator (Aust) Pty Ltd that make use of a Salary Packaging Dining 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 2005*



Class Ruling

Fringe benefits tax: employer clients of Remunerator (Aust) Pty Ltd that make use of a Salary Packaging Dining 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 law(s)' 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 37AD, 38 and 41 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA 1986).

Class of persons

3. The class of persons to which this Ruling applies are those employers who enter into a salary packaging services agreement with Remunerator (Aust) Pty Ltd as trustee for The Remunerator (Aust) Unit Trust (the promoter). Employees of these employers may be provided with a dining card which will facilitate the provision of food or drink.

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- this Ruling may be withdrawn or modified.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 based on the documents, or relevant parts of them, as the case may be, for part of and are to be read with this description. The relevant documents or parts of the documents incorporated into this description of the arrangement are:

- draft salary packaging services agreement between Remunerator (Aust) Pty Ltd and its employer clients;
- draft catering services agreement between employer clients of Remunerator (Aust) Pty Ltd and third party operator of the in-house dining facility;

- Remunerator (Aust) Pty Ltd document titled 'Terms and Conditions for use of Cafeteria Card';
- Remunerator (Aust) Pty Ltd document titled 'How to use your Cafeteria Card'; and
- Remunerator (Aust) Pty Ltd dining card promotional brochure and application form.

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 administers a range of salary sacrifice programs to both large and small employer organisations throughout Australia.

11. The promoter will facilitate the use of a dining card system to assist its employer clients with the administration of the provision of food or drink to the employer's employees under salary sacrifice arrangements.

12. The food or drink will be provided to, and consumed by, current employees on the employer's business premises on a working day in either a canteen or a similar dining facility. The dining facility may be operated by a third party operator under a non-exclusive licence agreement with the employer. No residential accommodation is provided in conjunction with the food or drink.

13. The employer will deposit the pre-arranged salary sacrificed amount into an account held by the employer and for which the promoter will have drawing rights.

14. The dining card will be linked to a system facilitated and administered by the promoter and the system will track the amount of food and drink provided to, and consumed by, each employee. The system will ensure that the value of the food or drink provided does not exceed the total amount salary sacrificed by the employee.

15. The food to be provided to the employees will be either 'hand-food' or 'non-elaborate single course meals' and the drinks will be non-alcoholic.

16. There is no credit facility associated with the dining card so the employee can only obtain the food or drink up to the unused amount salary sacrificed at that time.

17. The dining card is issued by, and remains the property of, the employer and is not transferable.

18. If the relevant employees either cease salary packaging or leave the employer's employment, the dining card account is closed and any 'unused credits' will be taken into account when the employee's salary package is reconciled.

19. All employees participating in the dining card arrangement must have a current salary package with the promoter.

Ruling

20. The provision of such food or drink as described in the arrangement at paragraphs 9 to 19 will not constitute 'entertainment', nor the 'provision of meal entertainment' for the purposes of Division 9A of Part III of the FBTA 1986 where an employer has made an election for that Division to apply. The provision of such food or drink also does not constitute tax-exempt body entertainment benefits under section 38 of the FBTA 1986.

21. The provision of either 'hand-food', 'non-elaborate single course meals' or non-alcoholic drinks to employees during a working day on an employer's business premises, where the facilitation of same is by a dining card system, will constitute exempt benefits pursuant to section 41 of the FBTA 1986.

Explanation

Meal entertainment

22. For the purposes of Division 9A of Part III of the FBTA 1986, section 37AD of the FBTA 1986 defines the expression 'provision of meal entertainment' by reference to three circumstances:

- the provision of entertainment by way of food or drink;
- the provision of accommodation or travel in connection with or facilitating the provision of entertainment by way of food or drink; or
- the payment or reimbursement of expenses incurred in providing entertainment by way of food or drink or related accommodation or travel.

23. Subsection 136(1) of the FBTA 1986 provides that the term 'entertainment' has the meaning given by section 32-10 of the ITAA 1997. Section 32-10 of the ITAA 1997 states:

- (1) **Entertainment** means:
- (a) entertainment by way of food, drink or recreation; or
 - (b) accommodation or travel to do with providing entertainment by way of food, drink or recreation.
- (2) You are taken to provide **entertainment** even if business discussions or transactions occur.

24. The meaning of entertainment is discussed in Taxation Ruling TR 97/17 Income tax and fringe benefits tax: entertainment by way of food or drink. Paragraph 7 of the Ruling sets out the criteria for determining whether the provision of food or drink results in the provision of entertainment. In making the decision the following should be considered:

- why the food or drink is being provided;

- what type of food or drink is being provided;
- when that food or drink is being provided; and
- where the food or drink is being provided

25. Paragraph 19 of TR 97/17 states:

We have expressed this view previously, for example, in Taxation Ruling IT 2675. That Ruling considers that the provision of morning and afternoon tea to employees (and associates of employees) on a working day, either on the employer's premises or at a worksite of the employer, is not entertainment. The provision of light meals (finger food, etc.), for example in the context of providing a working lunch, is not considered to be entertainment. The provision of food or drink in these circumstances does not confer entertainment on the recipient.

26. Taxation Ruling IT 2675, Income tax and fringe benefits tax: entertainment – morning and afternoon teas; light meals; and in-house dining facilities, also states at paragraph 6 that:

Morning and afternoon tea includes light refreshments such as, coffee, fruit drinks, cakes and biscuits, etc., but does not include alcohol.

27. The provision of food or drink in these circumstances does not confer entertainment on the recipient. The relevant employees in this case will receive food that is either 'hand-food' or 'non-elaborate single course meals' and the drinks they receive will be non-alcoholic. Both the food or drink will only be provided at a canteen or similar dining facility on the employer's business premises and only during working hours. It is considered, therefore, that in such circumstances the provision of the food or drink to the relevant employees does not constitute 'entertainment by way of food or drink'.

28. The food or drink provided under the arrangement as described in paragraphs 9 to 19 will be excluded from the 'provision of meal entertainment' as defined in section 37AD of the FBTA 1986.

29. Where an election is made by an employer to value meal entertainment under the two methods provided in Division 9A of Part III of the FBTA 1986, expenditure on food and drink in respect of this arrangement will not be taken into account.

Exempt benefit

30. Section 41 of the FBTA 1986 provides an exemption for property benefits under certain conditions. These conditions are that:

- the benefit provided is a property benefit;
- the property benefit is provided to a current employee of an employer;
- the property benefit is provided in respect of the employee's employment;

- the relevant property is provided to the employee on a working day;
- the relevant property is consumed by the employee on a working day; and
- the property is provided to the employee on the business premises of the employer (and if the employer is a company this would include a company related to the employer).

31. Section 40 of the FBTA 1986 states that a property benefit arises where a person provides property to another person. Property is defined in subsection 136(1) of the FBTA 1986 to include both tangible and intangible property. Tangible property is also defined in subsection 136(1) of the FBTA 1986 as meaning goods.

32. The extent and type of food and drink being provided together with the timing, place and the other conditions of their provision determines that such food or drink is neither board benefits under section 35 of the FBTA 1986, meal entertainment benefits under Division 9A of Part III of the FBTA 1986 nor tax-exempt body entertainment benefits under section 38 of the FBTA 1986. Therefore, the provision of the food or drink to the employees would normally be considered to be property benefits under section 40 of the FBTA 1986 unless otherwise exempted.

33. The provision of the food or drink will be exempt under section 41 of the FBTA 1986 as all the necessary conditions as outlined in paragraph 30 have been satisfied.

34. This exemption will apply whether or not the dining facility is operated by the employer, or a third party operator under a non-exclusive licence agreement with the employer.

Assessable income of the employee

35. Taxation Ruling TR 2001/10 at paragraph 9, in part states:

'Salary or wages' is defined in subsection 136(1) of the FBTA and means a payment, to the extent that it is assessable income, from which an amount must be withheld under either section 12-35, 12-40, 12-45, 12-115 or 12-120 of Schedule 1 to the TAA.

36. Paragraph 10 of TR 2001/10 states that:

If a 'fringe benefit', as defined by subsection 136(1) of the FBTA, or an exempt benefit under the FBTA, is ordinary income or statutory income derived under the ITAA 1997, section 23L of the ITAA 1936 provides that the income is exempt income. Therefore, even though the fringe benefit or exempt benefit may be income in nature, it is exempt income and subsection 6-15(2) of the ITAA 1997 ensures that it does not form part of the assessable income of the employee under section 6-5 or 6-10 of the ITAA 1997.

37. The benefit as identified in paragraph 33 is an exempt property benefit. As stated in paragraph 36, the exempt benefit is considered exempt income which does not form part of the assessable income of the employee. Therefore, the exempt benefit provided under this arrangement is not assessable income to the employee as it is considered exempt income under section 6-5 or 6-10 of the ITAA 1997.

Detailed contents list

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Previous draft:

Not previously issued as a draft

- FBTAA 1986 Pt III Div 9A

- FBTAA 1986 37AD

- FBTAA 1986 38

Related Rulings/Determinations:

CR 2001/1; IT 2675; TR 92/1;

TR 92/20; TR 97/17; TR 2000/4;

TR 2001/10; TD 94/24; TD 94/55

- FBTAA 1986 40

- FBTAA 1986 41

- FBTAA 1986 136(1)

- ITAA 1936 23L

- ITAA 1997 6-5

- ITAA 1997 6-10

Subject references:

- exempt benefits

- exempt property benefits

- FBT meal entertainment

- fringe benefits tax

- property fringe benefits

- ITAA 1997 6-15(2)

- ITAA 1997 32-10

- TAA 1953 Pt IVAAA

- TAA 1953 Sch 1 12-35

- TAA 1953 Sch 1 12-40

- TAA 1953 Sch 1 12-45

- TAA 1953 Sch 1 12-115

Legislative references:

- Copyright Act 1968

- FBTAA 1986 35

- TAA 1953 Sch 1 12-120

ATO references

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