


# ***CR 2007/71 - Income tax: deductibility of the Special Category Membership offered by the Hunter Business Chamber***

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## Class Ruling

### Income tax: deductibility of the Special Category Membership offered by the Hunter Business Chamber

Contents	Para
<b>LEGALLY BINDING SECTION:</b>	
<b>What this Ruling is about</b>	<b>1</b>
<b>Date of effect</b>	<b>8</b>
<b>Scheme</b>	<b>13</b>
<b>Ruling</b>	<b>22</b>
<b>NOT LEGALLY BINDING SECTION:</b>	
<b>Appendix 1:</b>	
<b><i>Explanation</i></b>	<b>26</b>
<b>Appendix 2:</b>	
<b><i>Detailed contents list</i></b>	<b>41</b>

#### **① 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 (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided 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:

- section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 32-5 of the ITAA 1997;
- section 32-20 of the ITAA 1997;
- section 32-35 of the ITAA 1997;
- section 32-65 of the ITAA 1997; and
- Division 9A of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA).

All legislative references are to the ITAA 1997 unless otherwise indicated.

## Class of entities

3. There are two classes of entity to which this Ruling applies.
  - The first class of entity is an entity that carries on a business and takes out a Special Category Membership of the Hunter Business Chamber (HBC) and no employees (or associates of employees) attend functions associated with the Special Category Membership in respect of their employment with the entity.
  - The second class of entity is an entity that carries on a business and takes out a Special Category Membership of the HBC and has employees (or associates of employees) who attend functions associated with the Special Category Membership in respect of their employment with the entity.

## 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 13 to 21 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

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8. This Ruling applies from the year commencing 1 July 2007.
9. The Ruling only applies to the extent that:
- it is not later withdrawn by notice in the *Gazette*; or
  - the relevant tax laws are not amended.
10. If this 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)).
11. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the 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.
12. 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).

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## Scheme

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13. The following description of the scheme is based on information provided by the applicant.
14. The purpose of the HBC is to act as an independent representative organisation for the regional business community in the Hunter region. The HBC acts as an advisor, a forum, a source of information and a point of access for its members, providing a comprehensive range of services including lobbying, advocacy, networking and advice regarding workplace relations, business advice and training.
15. The HBC is offering a new Special Category Membership which will be a business membership. The concept is to utilise a premium corporate function room facility that is available in a new stadium at a local football club and the positive image and profile of the football team to provide a unique networking and marketing opportunity for new members in the local business community. The HBC states that the primary purpose of obtaining the membership is to meet business contacts in a controlled environment at a time which allows the cross selling of services. The membership will entitle the entity to attend functions at the stadium which are held to coincide with the home games of the local football club. The attendee at the function will be at the discretion of the entity.

16. The football club's home games will be used as a platform to conduct the functions which will operate for a minimum of 4 hours and up to 6 hours, including the game time of 1.5 hours.

17. It is anticipated that the split up of time between promotional and entertainment activities will be as follows:

- 1.5 hours, attributable to watching the football game and participating in match related activities; and
- 2 to 4 hours allocated to business presentations and speeches. This time includes pre and post meeting networking opportunities and the consumption of a meal and drinks.

18. The HBC estimates that there will be an average of 3 hours per function spent on promotional activities.

19. The entity will receive as part of their attendance at the function an undercover seat to view the game. They will be provided with food and drinks. The function will also include presentations of entity businesses and a guest speaker relevant to the focus of the HBC. The entity will also receive a copy of the HBCs magazine and an HBC badge. The entity will also have the opportunity to advertise their business by way of signage.

20. The Special Category Membership also provides the entity with full access to all services provided by the general membership of HBC, as detailed in paragraph 14 of this Ruling, including voting rights. If an existing member takes up a Special Category Membership they would not need to renew their general membership.

21. The cost of the membership comprises the following items, and for the year ended 30 June 2006 amounts to \$2411:

	\$
Membership of HBC	900
Membership signage	150
Club ground signage	150
HBC magazine	66
HBC membership badge	5
MC & guest speakers	120
Light meal with tea and coffee	132
Premium undercover seating	360
Allowance for other food & drinks	528

## Ruling

22. For the first class of entities described in this Ruling that part of the subscription for the Special Category Membership of the HBC that comprises the following items is deductible under section 8-1:

- membership of HBC;

- membership signage;
- club ground signage;
- HBC magazine;
- HBC membership badge;
- MC and guest speakers; and
- light meal with tea and coffee.

23. The remaining part of the subscription for the Special Category Membership, consisting of premium undercover seating and allowance for other food and drinks is not considered to be incurred in the gaining or producing of assessable income or in carrying on a business for the purpose of gaining or producing assessable income and is not deductible under section 8-1. In any event, this expenditure is of a private nature and as it is an entertainment expense is specifically denied as a deduction by section 32-5.

24. For the second class of entities described in this Ruling that part of the subscription for the Special Category Membership of the HBC that comprises the following items is deductible under section 8-1:

- membership of HBC;
- membership signage;
- club ground signage;
- HBC magazine;
- HBC membership badge;
- MC and guest speakers; and
- light meal with tea and coffee.

25. The remaining part of the subscription for the Special Category Membership that comprises the premium undercover seating and allowance for other food and drinks is deductible under section 8-1 to the extent that the expenditure is incurred in providing a fringe benefit to an employee (or an associate of the employee) of the entity in respect of the employment of the employee.

## Appendix 1 – Explanation

**❶** *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.*

26. Paragraph 8-1(1)(b) states that an entity can deduct any loss or outgoing to the extent that it is necessarily incurred in carrying on a business for the purpose of gaining or producing the entity's assessable income. However, an entity cannot deduct a loss or outgoing if it is capital or private or domestic in nature (subsection 8-1(2)).

27. Several significant court decisions have established that, for an expense to be an allowable deduction, there must be a sufficient connection between the outgoing and the assessable income such that the expenditure is incidental and relevant to the taxpayer's income-producing activities (*Ronpibon Tin NL and Tongkah Compound NL v. Federal Commissioner of Taxation* (1949) 78 CLR 47; (1949) 4 AITR 236; (1949) 8 ATD 431) and it must have the essential character of an outgoing incurred in gaining assessable income (*Lunney & Haley v. Federal Commissioner of Taxation* (1958) 100 CLR 478; (1958) 7 AITR 166; (1958) 11 ATD 404).

28. Periodic subscriptions paid by a person or business for a membership of a trade, business or professional association are deductible under section 8-1 where the principal activities of the trade, business or professional association are relevant to the gaining or producing of assessable income by the member, or the carrying on of a business by the member for the purpose of gaining or producing assessable income.

29. Membership of HBC gives entities access to the services and benefits as described in paragraph 14 of this Ruling and they are accepted as being sufficiently connected to the carrying on of the entities business to meet the requirements for deductibility under section 8-1.

30. In the circumstances here however, the subscription is also incurred to allow entities to attend functions at all home games of the football team.

31. The subscription for HBC membership includes the provision of meals and drinks and premium undercover seating for the home games. This part of the subscription is considered to be entertainment expenses which, for the first class of entities described in this Ruling, are not incurred in the gaining or producing of assessable income or in carrying on a business for the purpose of gaining or producing assessable income and, in any event, are of a private nature. This part of the subscription is also specifically excluded from deductibility by section 32-5.

**Seminars**

32. In the event that this part of the subscription had been deductible under section 8-1 it would be necessary to consider whether any of the exceptions to the exclusion under section 32-5 would apply.

33. Section 32-35 provides that section 32-5 does not stop an entity deducting a loss or outgoing for providing food, drink, accommodation or travel to an individual (including the entity) that is reasonably incidental to the individual attending a seminar that goes for at least 4 hours. But this exception does not apply if:

- (a) the seminar is a business meeting;
- (b) the seminar's main purpose is to promote or advertise a business (or prospective business) or its goods or service; or
- (c) the seminar's main purpose is to provide entertainment at, or in connection with, the seminar.

34. Subsection 32-65(1) defines seminar as 'includes a conference, convention, lecture, meeting (including a meeting for the presentation of awards), speech, 'question and answer session', training session or educational course'.

35. A seminar must go for at least 4 hours (breaks for recreation and meals do not form part of the 4 hours (subsection 32-65(2)). HBC has been able to provide estimates of the time to be allocated to the various activities which form part of the football functions. The time spent watching the football game, other match related activities and consuming a meal are not counted towards the 4 hours. When the time reasonably attributed to these activities is deducted from even the maximum function time of 6 hours the time remaining is less than the required 4 hours.

36. In the event however that the function did go for at least 4 hours it is considered that the exclusions contained in paragraphs 32-35(b) and 32-35(c) would apply.

- Paragraph 32-35(b) provides that where the seminar's main purpose is to promote or advertise a business (or prospective business) or its goods or service then the seminar exception will not apply. As an average of 3 hours will be spent on promotional activities it is considered that this exclusion will apply and the seminar exception will not apply.



- Further, and in the alternative, paragraph 32-35(c) provides that where the seminar's main purpose is to provide entertainment at or in connection with the seminar the seminar exception will not apply. The viewing of the football club's home games and the meals and drinks supplied are the catalyst for attracting new members to the HBC. This is the main purpose in holding the HBC functions at this venue and in offering the Special Category Membership. It is considered that this exclusion would apply and the seminar exception will not apply.

## **Fringe benefits**

37. As stated at paragraph 31 the cost of premium undercover seating and food and drinks are considered to be entertainment expenses falling for consideration under section 32-5. Section 32-20 provides that section 32-5 does not apply to deny a deduction for entertainment expenses to the extent that the expenditure is incurred in respect of providing entertainment by way of providing a fringe benefit. Where the second class of entity chooses to send an employee to the HBC function and it can be concluded that the benefit is being provided in respect of the employment of the employee then the cost is one that is incurred in relation to the carrying on of the entities business. In these circumstances the provision of a fringe benefit changes the character of the expenditure into one that is an allowable deduction under section 8-1.

38. Where a member of HBC allows an employee (or an associate of an employee) to attend the football related functions in respect of the employee's employment the member will be taken to have provided entertainment by way of providing fringe benefits to the employee (or associate of the employee).

39. In these circumstances the employer may deduct the cost of providing the fringe benefit which for the year ended 30 June 2006 would be a cost of \$888, being \$360 for premium undercover seating and \$528 allowance for other food and drinks under section 8-1.

40. Alternatively, the employer may make an election under Division 9A of the FBTA which permits the employer to use a 50/50 split method or a 12 week register method to determine the fringe benefits taxable value of meal entertainment provided to employees or associates of employees. The taxable value of the fringe benefit, and accordingly the amount which is an allowable deduction under section 8-1 will vary according to the circumstances of the employer.

## **Appendix 2 – Detailed contents list**

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41. The following is a detailed contents list for this Ruling:

	<b>Paragraph</b>
<b>What this Ruling is about</b>	<b>1</b>
Relevant provision(s)	2
Class of entities	3
Qualifications	4
<b>Date of effect</b>	<b>8</b>
<b>Scheme</b>	<b>13</b>
<b>Ruling</b>	<b>22</b>
<b>Appendix 1 – Explanation</b>	<b>26</b>
Seminars	32
Fringe benefits	37
<b>Appendix 2 – Detailed contents list</b>	<b>41</b>

## References

### *Previous draft:*

Not previously issued as a draft

### *Subject references:*

- conference & seminar expenses
- deductions & expenses
- entertainment expense
- FBT deductible entertainment expenditure
- FBT entertainment
- FBT meal entertainment
- FBT non deductible entertainment expenditure
- seminar food & drink expenses

### *Legislative references:*

- ITAA 1997 8-1
- ITAA 1997 8-1(1)(b)
- ITAA 1997 8-1(2)
- ITAA 1997 32-5
- ITAA 1997 32-20

- ITAA 1997 32-35
- ITAA 1997 32-35(b)
- ITAA 1997 32-35(c)
- ITAA 1997 32-65
- ITAA 1997 32-65(1)
- ITAA 1997 32-65(2)
- FBTA 1986 Div 9A
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

### *Case references:*

- Lunney & Haley v. Federal Commissioner of Taxation (1958) 100CLR 478; (1958) 7 AITR 166; (1958) 11 ATD 404
- Ronpibon Tin NL and Tongkah Compound NL v. Federal Commissioner of Taxation (1949) 78 CLR 47; (1949) 4AITR 236; (1949) 8 ATD 431

### ATO references

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