



CR 2008/23 - Fringe benefits tax: employer clients of Super Group International (Australia) Pty Limited or SMB Fleet Management Pty Limited who make use of the SMB Cafe Card facility

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 This document has changed over time. This is a consolidated version of the ruling which was published on *12 March 2008*



Class Ruling

Fringe benefits tax: employer clients of Super Group International (Australia) Pty Limited or SMB Fleet Management Pty Limited who make use of the SMB Café Card facility

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❶ This publication provides you with the following level of protection:

This publication (excluding appendices) 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 37AD of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA);
- section 38 of the FBTAA; and
- section 41 of the FBTAA.

Class of entities

3. The class of entities to which this Ruling applies are those employers who enter into a SMB Café Card Service Agreement with Super Group International (Australia) Pty Limited or SMB Fleet Management Pty Limited (the Super Group International companies). Employees of these employers may be provided with a SMB Café Card which will facilitate the provision of food or drink.

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 27 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

8. This Ruling applies from 1 April 2007.

9. 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. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions 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).

Scheme

13. The following description of the scheme is based on information provided by the applicant.

14. The relevant documents or parts of the documents incorporated into this description of the scheme are:

- Draft 'SMB Café Card Service Agreement' between SMB Fleet Management Pty Ltd and the employer clients of the Super Group International companies;
- SMB Café Card Terms and Conditions for employees;
- SMB Café Card Business Process Diagram;
- SMB Café Card Promotional Brochure and application form; and
- Example Catering Services Agreement between employer clients of the Super Group International companies and the third party operator of in-house dining facilities.

Note: certain information received from the applicant 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.

15. The Super Group International companies administer a range of salary sacrifice programs to both large and small employer organisations throughout Australia.

16. The Super Group International companies will facilitate the use of a point of sale arrangement linked to a system known as the 'SMB Café Card Management System' (Café Card system) to assist their employer clients with the administration of the provision of food and/or drink to the employer's employees under the terms of an effective salary sacrifice arrangements as described in Taxation Ruling TR 2001/10 Income tax: fringe benefits tax and superannuation guarantee: salary sacrifice arrangements.

17. The employee will use a 'SMB Café Card' (Café Card) to obtain the food and/or drink and the Café Card system will ensure that the value of the food or drink provided does not exceed the total amount salary sacrificed for that purpose by the employee.

18. The food and/or drink will be provided to, and consumed by, the employer's current employees on a working day at an in-house dining facility located on the employer's business premises. No residential accommodation is provided in conjunction with the food or drink.

19. The employer's in-house dining facility fulfils the requirements of an 'in-house dining facility' as defined in section 32-55 of the *Income Tax Assessment Act 1997* (ITAA 1997). The dining facility may be operated by a third-party operator under a non-exclusive licence agreement with the employer.

20. The employer's business premises constitute 'business premises' as described in Taxation Ruling TR 2000/4 Fringe benefits tax: meaning of 'business premises'.

21. The employer will deposit each fortnight a pre-arranged salary sacrificed amount (Nominated Fortnightly Amount) into an account (Agency Accounts) held by the employer and for which the Super Group International companies have drawing rights.

22. The fees (Administration Fee) for the services provided in respect of each employee by the Super Group International companies will be drawn each fortnight directly from an employee's individual fund within the Agency Account.

23. The food to be provided to the employees will be either 'hand-food' or 'non-elaborate single course meals'. Drinks may also be provided, however, these will not include alcohol.

24. There is no credit facility associated with the Café Card so the employee can only obtain the food and/or drink up to the unused amount salary sacrificed at that time.

25. The Café Card is issued by, and remains the property of, the Super Group International companies.

26. If the relevant employees either cease salary packaging with the Super Group International companies or leave the employer's employment, the employee's Café Card account is closed and any 'unused credits' will be forwarded to the employer for payment to the employee as salary or wages subject to the pay as you go (PAYG) provisions.

27. All employees participating in the Café Card scheme must have a completed Café Card application form forwarded to, and accepted by, the Super Group International companies.

Ruling

28. The provision of food or drink to employees, under the scheme described at paragraphs 13 to 27 of this Ruling, will not constitute 'entertainment' nor the 'provision of meal entertainment' for the purposes of Division 9A of Part III of the FBTAA.

29. The provision of food or drink to employees, under the scheme described at paragraphs 13 to 27 of this Ruling, will not constitute tax-exempt body entertainment benefits under section 38 of the FBTAA.

30. The provision of food or drink to employees, under the scheme described at paragraphs 13 to 27 of this Ruling, will constitute exempt property benefits under section 41 of the FBTAA.

Commissioner of Taxation

12 March 2008

Appendix 1 – Explanation

❗ *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.*

Meal entertainment benefit

31. For the purposes of Division 9A of Part III of the FBTA, section 37AD of the FBTA 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.

32. Subsection 136(1) of the FBTA 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.

33. 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 TR 97/17 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.

34. 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.

35. 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 tea, coffee, fruit drinks, cakes and biscuits, etc., but does not include alcohol.

36. 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 and/or drink will be provided and consumed at an in-house 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'.

37. The food or drink provided under the scheme as described in paragraphs 13 to 27 of this Ruling will be excluded from the 'provision of meal entertainment' as defined in section 37AD of the FBTA.

Tax-exempt body entertainment benefit

38. Tax-exempt body entertainment benefits arise under section 38 of the FBTA where expenses are incurred wholly or partly in respect of the provision of entertainment to an employee (or associate) of an employer who is wholly or partially exempt from income tax, or who does not derive assessable income from the activities to which the entertainment relates.

39. As it has been determined above that the provision of the food or drink in this case does not constitute the provision of entertainment then tax-exempt body entertainment benefits under section 38 of the FBTA does not arise.

Exempt property benefit

40. Section 41 of the FBTA grants an exemption for property benefits provided under all the following conditions:

- 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;
- 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); and
- the property is consumed by 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).

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

42. 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 are property benefits under section 40 of the FBTAA unless otherwise exempted.

43. The provision of the food or drink will be exempt under section 41 of the FBTAA as all the necessary conditions as outlined in paragraph 40 of this Ruling have been satisfied in this case.

44. 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.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

- tax-exempt body entertainment benefit

Related Rulings/Determinations:

IT 2675; TR 97/17; TR 2000/4;
TR 2001/10

Legislative References:

- FBTA 1986 Pt III Div 9A
- FBTA 1986 37AD
- FBTA 1986 38
- FBTA 1986 40
- FBTA 1986 41
- FBTA 1986 136(1)
- ITAA 1997 32-10
- ITAA 1997 32-55
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

Subject References:

- business premises
 - exempt benefits
 - exempt property benefits
 - FBT salary sacrifice
 - FBT meal entertainment
 - fringe benefits tax
 - fringe benefits
 - meal entertainment benefit
-

ATO references

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