


CR 2011/97 - Fringe benefits tax: employer clients of Wakefield Technologies Pty Ltd who are subject to the provisions of section 57A or section 65J of the Fringe Benefits Tax Assessment Act 1986 that make use of a Wakefield - Citi Meal Entertainment Prepaid Charge Card facility

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Class Ruling

Fringe benefits tax: employer clients of Wakefield Technologies Pty Ltd who are subject to the provisions of section 57A or section 65J of the *Fringe Benefits Tax Assessment Act 1986* that make use of a Wakefield – Citi Meal Entertainment Prepaid Charge Card facility

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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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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:
- subsection 5B(1A) of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA);
 - subsection 5B(1E) of the FBTAA;
 - paragraph 5E(3)(a) of the FBTAA;
 - Division 9A of Part III of the FBTAA;

- section 37AD of the FBTA;A;
- section 38 of the FBTA;A;
- section 57A of the FBTA;A;
- section 65J of the FBTA;A;
- subsection 65J(2A) of the FBTA;A;
- Part XIB of the FBTA;A; and
- section 149A of the FBTA;A.

All references in this Ruling are to the FBTA;A unless otherwise stated.

Class of entities

3. The class of entities to which this Ruling applies is those employers that are either subject to the provisions of section 57A or section 65J that make use of a Wakefield – Citi Meal Entertainment Prepaid Charge Card facility.

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 9 to 30 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 2011. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

9. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of and are to be read with the description:

- the application for class ruling dated 17 November 2010;
- additional information provided on 20 July 2011;
- a draft service agreement between the employer and Wakefield Technologies Pty Ltd (Wakefield);
- a marketing brochure titled Meal Entertainment Card;
- a document titled Citibank Prepaid Charge Card Terms of Use and Product Disclosure Statement dated 21 April 2011;
- a draft document titled Card Payer Master Agreement;
- a draft document titled Card application form Citibank Prepaid Charge Card;
- a document titled Citibank Prepaid Charge Card – Card Payer Agreement;
- a document titled Citibank Prepaid Charge Card – Referrer Agreement between Citigroup Pty Ltd (Citi) and Wakefield;
- a draft document titled The Wakefield pre-paid card program salary packaging participation agreement; and
- a draft letter that will be sent to the Cardholder with a Meal Entertainment Card.

Note: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

10. Under the scheme a series of agreements will be entered into between:

- Wakefield and Citi (Referrer Agreement);
- Wakefield and the employer;

- Citi and the employer (Card Payer Agreement);
- Citi and the employee; and
- the employer and employee.

Referrer Agreement

11. The Referrer Agreement sets out:

- the services that Wakefield will provide in relation to the nominated Citi products;
- the undertakings of the parties in respect of the services to be performed; and
- the financial arrangements between Wakefield and Citi.

12. Under the terms of the agreement, Wakefield will provide services in relation to certain Citi charge cards; including the Citi Meal Entertainment Prepaid Charge Card (the Card). The services provided by Wakefield include:

- the identification of potential employers who may wish to participate in the scheme;
- the provision of details of the potential employers to Citi; and
- the provision of information about the scheme to potential employers.

13. Also under the agreement, Citi will engage with Wakefield and receive instructions in relation to:

- the processing of applications for the Card;
- the transfer of information to Citi to enable the Card to be provided to Cardholders;
- the non-issuance and cancellation of the Card;
- accessing electronic records regarding the status of prepaid cards held by Cardholders;
- the transfer of funds from Wakefield to Citi to discharge the Cardholder's liability to Citi for the provision of credit by Citi to the Cardholder in relation to the use of the Card; and
- where necessary, the return of funds from Citi to Wakefield for remittance to the employer to be paid to the Cardholder (employee) as salary subject to the pay as you go withholding provisions (PAYG). For example, where the charge Card is cancelled or the Agreement between Wakefield and Citi is terminated.

Agreement between Wakefield and the employer

14. Under the terms of this agreement, a participating employer will appoint Wakefield to provide salary packaging services. The services provided by Wakefield will include:

- the administration of the salary sacrifice arrangements entered into between the employer and employee; and
- the facilitation of a Card Payer Agreement between Citi and the employer.

Card Payer Agreement

15. Under the terms of the Card Payer Agreement the employer agrees to provide each applicant with relevant information including a copy of the 'Application Form', an up-to-date 'Terms of Use and Product Disclosure Statement and a Financial Services Guide'

16. Also under the terms of this agreement; Citi undertakes that where a prepaid Card is cancelled or expires and the Cardholder is not issued with a new prepaid Card, Citi will transfer any funds remaining to the credit of the Card to Wakefield for remittance to the employer to be paid to the Cardholder (employee) as salary subject to PAYG.

Agreement between Citi and the Cardholder (employee)

17. The 'Terms of Use and Product Disclosure Statement' operates as a contract between the Cardholder and Citi. It describes the rights and obligations between the Cardholder and Citi.

18. As set out in the statement:

- Citi agrees to settle the Card transactions by providing credit to the Cardholder to obtain goods and services;
- the credit is provided when the Cardholder charges the account by paying for goods or services;
- the employee is solely liable for all amounts charged to the Card account including fees and charges;
- the employee is required to pay an amount equal to the sum of the charges to the account immediately after Citi settles the transaction with a merchant's financial institution or the fees and charges become due;
- the maximum amount that Citi will authorise and settle is the balance of the amounts paid to Citi by Wakefield on behalf of the employer that is available to satisfy the employee's obligations to Citi;
- a Cardholder will not be permitted to do any of the following:

- make a cash withdrawal;
- operate a cheque book facility in association with the account;
- use internet banking facilities (other than to make an on-line purchase from a merchant who accepts credit cards for on-line transactions);
- branch transaction; or
- use the Card to access an ATM;
- the employer and Wakefield have the right to request cancellation of the Card account and access to card services (for example, if the Card is used in a manner that is contrary to the terms of the various agreements); and
- the employee is liable for the conduct of any additional Cardholders;

Agreement between employer and employee

19. The agreement between the employer and employee will be an effective salary sacrifice arrangement.¹ Under the terms of the agreement the employer will agree to discharge the employee's obligation to Citi that arises from the use of the Card. To do this, Wakefield on behalf of the employer will regularly transfer an agreed amount to Citi.

20. The amounts transferred to Citi by the employer will be held by Citi until they are used to discharge the Cardholder's obligation to Citi that arises from the use of the Card, or are returned to the employer.

21. Under the terms of the agreement the Card can only be used for the payment of direct expenses for meals provided by restaurants, cafes, hotels and caterers including drinks and taxi travel to and from the venue.

22. In explaining how the Meal Entertainment Prepaid Charge Card operates the brochure titled 'Meal Entertainment Card' provides the following examples of situations in which the Card can be used:

- dinner and drinks at a restaurant with your family;
- lunch and coffee with friends;
- drinks at a bar or nightclub; or
- food and drink while on holidays.

¹ The meaning of what is an effective salary sacrifice arrangement is discussed in *Taxation Ruling TR 2001/10 Income tax: fringe benefits tax and superannuation guarantee: salary sacrifice arrangements.*

23. The brochure provides the following examples of situations in which the Card cannot be used:

- take-away meals;
- light refreshments (coffee, juice, water etc) at work; and
- food and drink for your home.

The use of the Card

24. A Cardholder will use the Card to pay a merchant who uses the relevant payment system. When the Card is used, Citi will authorise and settle the transaction with the merchant's bank.²

25. Each authorised payment will initiate a charge to the Cardholder's account. Under the terms and conditions of the agreement between the Cardholder and Citi, the Cardholder is liable to Citi for all amounts charged to the Cardholder's account including fees and charges.

26. Citi will discharge the Cardholder's obligation by applying the funds that relate to the Cardholder's account against the debt on the Card account. This will usually happen approximately two days after the obligation arises.

27. Citi will send Wakefield a transaction file on a periodic basis. The transaction file will list the transactions that have occurred. This file will be reviewed by Wakefield to identify any transactions that do not involve the provision of meal entertainment.

28. If the review of the transaction file identifies a Card that has been used to make non-meal entertainment purchases, Wakefield will advise the employer who may take disciplinary action and Citi who may cancel the Card. Any such transactions will not be treated as meal entertainment for the purposes of calculating the employer's fringe benefits tax liability and the employee's reportable fringe benefit amount.

29. At the end of the fringe benefits tax (FBT) year the account balance will either be returned to the employer or carried forward to the following FBT year. If the balance is returned to the employer, it will be paid to the employee as salary subject to PAYG.

30. On termination of employment the Card will be cancelled, any debts that arose prior to the date of cancellation will be discharged and any remaining balance will be returned to the employer to be paid to the employee as salary subject to PAYG.

² The amount that Citi will authorise and settle is limited to the balance of the funds held by Citi in relation to the Cardholder's account.

Ruling

31. The use of a Meal Entertainment Prepaid Charge Card to acquire entertainment by way of food or drink will be a 'tax-exempt body entertainment benefit' under section 38 unless the employer has made an election to use Division 9A to calculate the taxable value of its meal entertainment fringe benefits.

32. The provision of meal entertainment by way of a Meal Entertainment Prepaid Charge Card will be an 'exempt benefit' for an employer subject to the provisions of section 57A.

33. Benefits that constitute the provision of meal entertainment are disregarded for the purpose of the capping thresholds in determining the employer's 'aggregate non-exempt amount' under subsection 5B(1E) for an employer subject to the provisions of section 57A.

34. The provision of meal entertainment by way of the Card will not reduce the amount of rebate available to a rebatable employer under section 65J as the provision of meal entertainment does not form part of the employer's 'aggregate non-rebatable amount' in the subsection 65J(2A) rebate calculation.

35. The provision of benefits, using the Card facility, are not GST-creditable benefits in terms of section 149A and, therefore, are type 2 benefits for the purposes of calculating the fringe benefits taxable amount of a rebatable employer under subsection 5B(1A) or the amount of the rebate under subsections 65J(2A).

36. The provision of meal entertainment is an excluded fringe benefit for the purposes of paragraph 5E(3)(a). As such, the value of meal entertainment provided using the Card will be excluded from the reportable fringe benefits provisions in Part XIB.

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.***

Type of benefit

37. Section 37AD defines the meaning of the phrase 'provision of meal entertainment'. The section refers to:

- (a) the provision of entertainment by way of food or drink;
- (b) accommodation or travel in connection with, or for the purpose of facilitating entertainment to which paragraph (a) applies; or
- (c) the payment or reimbursement of expenses incurred in providing something covered by paragraph (a) or (b).

38. An employee is able to use the Card to purchase meals and drinks at restaurants, cafes, hotels and from caterers for social events. The employee may also use the Card to pay for the cost of the travel to and from the venue. All of this expenditure will come within the meaning of 'provision of meal entertainment' for the purposes of section 37AD.

39. A 'tax-exempt body entertainment benefit' will arise under section 38 where an entity that is wholly or partly exempt from income tax incurs 'non-deductible exempt entertainment expenditure'.

40. The employer will be either a not-for-profit organisation or a government body. Both of these types of organisation are exempt from income tax.

41. In general terms, expenditure will be 'non-deductible exempt entertainment expenditure' if section 32-5 of the *Income Tax Assessment Act 1997* (ITAA 1997) would prevent an income tax deduction from being claimed for the expenditure if the entity incurring the expense was subject to income tax. As section 32-5 would apply in relation to the use of the Card to purchase meal entertainment, the payment will be 'non-deductible exempt entertainment expenditure'.

42. Therefore, the use of the Card to purchase meal entertainment will be a 'tax-exempt body entertainment benefit' under section 38 unless the employer has made an election to use Division 9A to calculate the taxable value of its meal entertainment fringe benefits.

Employers subject to section 57A

43. Section 57A provides that certain employers are generally exempt from fringe benefits tax. This section applies to employers that are an endorsed public benevolent institution, certain hospitals, an employer who provides public ambulance services (or services that support those service) where the employee is predominantly involved in connection with the provision of those services, or an endorsed health promotion charity.

44. The exemption in section 57A also applies to benefits provided to an employee of a government body where the duties of employment are exclusively performed in, or in connection with, certain hospitals.

45. However, these exemptions are subject to the capping provisions contained in section 5B.

46. Subsection 5B(1E) limits the exemption to \$17,000 grossed-up taxable value per employee for employers who are public or non-profit hospitals, or who provide a public ambulance service. The \$17,000 threshold also applies in respect of employees of a government body whose duties are exclusively performed in, or in connection with, a public or non-profit hospital. Such employers are liable for full FBT on the value of benefits provided in excess of this threshold.

47. All other employers to which section 57A 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.

48. However, any employer to which section 57A applies, will not be liable for fringe benefits tax on benefits provided that constitute the provision of meal entertainment as defined in section 37AD. This results from the operation of step 1 of the method statement contained in subsection 5B(1L) which specifically disregards the provision of meal entertainment in calculating an employer's aggregate non-exempt amount.

Rebatable employers under section 65J

49. Section 65J provides that certain non-government and non-profit organisations (rebatable employers) are entitled to have their FBT liability reduced by a rebate. The section does not apply to public benevolent institutions nor to health promotion charities.

50. The rebate determined under subsection 65J(2A) is calculated as follows:

$$0.48 \times \left(\text{Gross tax} - \frac{\text{Aggregate non-rebatable amount}}{\text{Total days in year}} \right) \times \frac{\text{Rebatable days in year}}{\text{Total days in year}}$$

51. Rebatable employers have a capping threshold of \$30,000 grossed-up taxable value per employee. If the total grossed-up taxable value of benefits is more than \$30,000 a rebate cannot be claimed for the FBT liability on the excess amount (or on the aggregate non-rebatable amount).

52. The amount of gross tax is the amount of tax that would be payable on the fringe benefits taxable amount of the rebatable employer assuming that section 65J had not been enacted.

53. The rebatable employer's aggregate non-rebatable amount is calculated by aggregating the product of each employee's individual grossed-up non-rebatable amount less the \$30,000 cap multiplied by the then FBT rate.

54. Each employee's individual grossed-up non-rebatable amount is determined by multiplying the employee's type 1 and type 2 individual base non-rebatable amounts by the applicable gross-up rate. However, step 1 of the method statement contained in subsection 65J(2H) specifically disregards the taxable value of the provision of meal entertainment in determining an employee's individual base non-rebatable amount.

55. Consequently, the provision of meal entertainment does not form any part of the rebatable employer's aggregate non-rebatable amount in the rebate calculation. Therefore, the provision of meal entertainment does not reduce in any way the amount of rebate available to a rebatable employer.

56. However, the provision of meal entertainment will still be included in the calculation of the amount of the gross tax in the rebate calculation. Therefore, the provision of meal entertainment has an effective 48% rebate of the benefit's taxed grossed-up value.

Will the benefit be a type 2 benefit for a rebatable employer?

57. To determine whether a benefit provided under this scheme is a type 1 or type 2 benefit, it is necessary to ascertain whether the benefit is a GST-creditable benefit as defined in section 149A.

58. Taxation Ruling TR 2001/2³ points out that for the purposes of section 149A, to be a GST-creditable benefit, the provider of the benefit must be entitled to an input tax credit because of either:

- 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.

³ Taxation Ruling TR 2001/2 *Fringe benefits tax: the operation of the new fringe benefits tax gross-up formula to apply from 1 April 2000*

59. The second point in paragraph 58 of this Ruling does not apply as subsection 149A(2) of the FBTA only applies if the benefit was acquired or imported by the provider. In this case, there is a reimbursement for the purposes of the GST Act. Consequently, only the first point in paragraph 58 needs to be considered.

60. Paragraph 86 of Goods and Services Tax Ruling GSTR 2001/3⁴ states that Division 111 of the GST Act provides that an employer makes an acquisition that can be a creditable acquisition, subject to certain conditions, where:

- an employee is reimbursed for an expense that constitutes an expense payment benefit; or
- a payment is made on behalf of an employee for an expense payment benefit that constitutes an expense payment benefit.

61. Paragraph 89 of GSTR 2001/3 points out, amongst other things, that for Division 111 of the GST Act to apply, the arrangement between the employer and the employee needs to be for the reimbursement of a particular purchase or purchases incurred on the credit card.

62. The discharging of the Cardholder's debt obligation to Citi as described in the scheme involves no more than reimbursing the outstanding balance owing by the Cardholder at the particular time without reference to any specific purchase or purchases. Consistent with paragraph 89 of GSTR 2001/3, this is an input taxed financial supply that does not meet the requirements of Division 111 of the GST Act.

63. Therefore, the benefits provided under the scheme are not GST-creditable benefits for the purposes of section 149A.

64. As the relevant benefits in this case are not GST-creditable benefits they will always be treated as being 'type 2' benefits for:

- the calculation of the fringe benefits taxable amount of a rebatable employer under subsection 5B(1A);
- the determination of the aggregate non-rebatable amount under sections 65J(2B) to 65J(2H); and
- the determination of gross tax in the rebate calculation of subsection 65J(2A).

⁴ *Goods and Services Tax Ruling GSTR 2001/3 goods and Services Tax: GST and how it applies to supplies of fringe benefits*

Reportable fringe benefits amount

65. Part XIB requires the taxable values of certain benefits to be included in the reportable fringe benefits amount of the relevant employee. Where the use of the Card results in the provision of meal entertainment, paragraph 5E(3)(a) will apply to make the benefit an excluded benefit.

66. This conclusion holds regardless of whether or not the employer has elected that Division 9A of Part III applies or whether the employer is either subject to the provisions of section 57A or a rebatable employer under section 65J.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2001/2; TR 2001/10;
TR 2006/10; GSTR 2001/3

Subject references:

- entertainment expenses
- excluded fringe benefits
- exempt benefits
- FBT salary packaging
- FBT salary sacrifice
- FBT tax-exempt body
- fringe benefit
- fringe benefits tax
- health promotion charity
- public benevolent institution
- rebatable employer
- reportable fringe benefits
- tax-exempt body -
entertainment fringe benefits

- ANTS(GST)A 1999 Div 111
- FBTAA 1986
- FBTAA 1986 5B
- FBTAA 1986 5B(1A)
- FBTAA 1986 5B(1E)
- FBTAA 1986 5B(1L)
- FBTAA 1986 5E(3)(a)
- FBTAA 1986 Div 9A of Part III
- FBTAA 1986 37AD
- FBTAA 1986 38
- FBTAA 1986 57A
- FBTAA 1986 65J
- FBTAA 1986 65J(1)
- FBTAA 1986 65J(2A)
- FBTAA 1986 65J(2H)
- FBTAA 1986 Part XIB
- FBTAA 1986 136(1)
- FBTAA 1986 149A
- FBTAA 1986 149A(2)
- ITAA 1997 32-5
- TAA 1953
- Copyright Act 1968

Legislative references:

ATO references

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