


***CR 2011/98 - 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 Leisure Venue & Accommodation 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 Leisure Venue & Accommodation Prepaid Charge Card facility

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**📌 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, 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)(c) of the FBTAA;

- 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 Leisure Venue & Accommodation 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 31 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 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

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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 Leisure Venue & Accommodation 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 draft document titled Citibank Prepaid Charge Card – Card Payer Agreement;
- a draft document titled Citibank Prepaid Charge Card – 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 Leisure Venue & Accommodation 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 Leisure Venue & Accommodation 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 go withholding provisions (PAYG). For example, where the 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.<sup>1</sup> 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. In explaining how the Leisure Venue & Accommodation Prepaid Charge Card operates the brochure titled 'Leisure Venue & Accommodation Card' advises the Card can be used for payments relating to venue hire, including expenses necessary for the operation of the venue (tables, chairs etc) and accommodation costs that are used for leisure such as a weekend away or an extended holiday. The amount of expenditure will be limited to the amount of funds held in the Card account.

22. The brochure provides the following examples of venues for which the Leisure Venue & Accommodation Prepaid Charge Card can be used:

- a room at a reception centre for an events such as a wedding;
- a room at a club for a family celebration such as a 21st birthday;

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<sup>1</sup> 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.*

- a marquee;
- a corporate box for a social event; or
- a boat or plane for the purpose of entertainment.

23. The brochure provides the following examples of accommodation for which the Leisure Venue & Accommodation Prepaid Charge Card can be used:

- a holiday house;
- a room at a hotel/motel;
- a room at a resort;
- a room at a bed & breakfast; and
- a self contained apartment.

24. The brochure also advises the Card can only be used for the hire cost and the total amount must be paid for on the Card. The Card cannot be used to pay for expenses such as dry cleaning, phone bills, mini bar and room service.

#### **The use of the Card**

25. 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.<sup>2</sup>

26. 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.

27. 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.

28. 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 hire or lease of a leisure venue or accommodation.

29. If the review of the transaction file identifies a Card that has been used for a transaction that does not involve the hire or lease of a leisure venue or of accommodation, 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 an entertainment facility leasing expense for the purposes of calculating the employer's fringe benefits tax liability and the employee's reportable fringe benefit amount.

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<sup>2</sup> 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.

30. 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.

31. 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.

## Ruling

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32. The use of a Leisure Venue & Accommodation Prepaid Charge Card to pay for an entertainment facility leasing expense will be a 'tax-exempt body entertainment benefit' under section 38.

33. Where the Leisure Venue & Accommodation Prepaid Charge Card is used to pay for an entertainment facility leasing expense the benefit will be an exempt benefit where the employer comes within section 57A.

34. Benefits that constitute an entertainment facility leasing expense 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.

35. The use of the Card for the payment of an entertainment facility leasing expense will not reduce the amount of rebate available to a rebatable employer under section 65J as a benefit whose taxable value is wholly or partially attributable to an entertainment facility leasing expense will not form part of the employer's 'aggregate non-rebatable amount' in the subsection 65J(2A) rebate calculation.

36. 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).

37. The provision of a benefit whose taxable value is wholly or partly attributable to entertainment facility leasing expenses will be an excluded fringe benefit for the purposes of paragraph 5E(3)(c). As such, the value of the benefit 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.***

### **Will the taxable values of the benefits that arise from the discharge of the employee's liability be wholly or partly attributable to entertainment facility leasing expenses?**

38. An employee is able to use the Card to pay for the cost of hiring a room at a reception centre, a room at a club, a marquee, a corporate box for a social event, a boat or plane for the purpose of entertainment, a holiday house, a room at a hotel/motel, a room at a resort, a room in a bed & breakfast or a self-contained apartment for a holiday.

39. The definition of 'entertainment facility leasing expenses' in subsection 136(1) states:

***entertainment facility leasing expenses***, for a person, means expenses incurred by the person in hiring or leasing:

- (a) a corporate box; or
- (b) boats, or planes, for the purpose of the provision of entertainment; or
- (c) other premises, or facilities, for the purpose of the provision of entertainment;

but does not include so much of any of such expenses that:

- (d) is attributable to the provision of food or drink; or
- (e) is attributable to advertising and is an allowable deduction for the person under the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*.

### ***Expenses incurred by a person***

40. This condition is met when the Cardholder uses the Card to pay for the hire or lease of a leisure venue or accommodation.

### ***In Hiring or Leasing***

41. This condition is met when the Cardholder enters into an agreement for the hire or lease of a leisure venue or accommodation.

***A corporate box; boat; plane; other premises or facilities***

42. An employee may use the Card to pay for the cost of hiring or leasing a corporate box. When this occurs, the employee's expenditure will be for hiring or leasing a corporate box as set out in paragraph (a) of the definition of 'entertainment facility leasing expenses' in subsection 136(1).

43. Alternatively, the employee may use the Card to pay for the cost of hiring or leasing a boat or a plane for the purpose of entertainment. When this occurs, the employee's expenditure will be for hiring or leasing a boat or plane for the purpose of entertainment as set out in paragraph (b) of the definition of 'entertainment facility leasing expenses' in subsection 136(1).

44. Alternatively, the employee may use the Card to pay for the cost of hiring or leasing a room at a reception centre, a room at a club, a marquee, a holiday house, a room at a hotel/motel, a room at a resort, a room in a bed & breakfast or a self contained apartment for a holiday.

45. The words 'other premises or facility' as they are used in the definition of 'entertainment facility leasing expenses' have a wide meaning which includes buildings, part of buildings or other structures including temporary structures. Therefore, the employee's expenditure in the situations referred to in paragraph 44 will be for leasing or hiring 'other premises or facilities' as set out in paragraph (c) of the definition of 'entertainment facility leasing expenses' in subsection 136(1).

***For the purpose of the provision of entertainment***

46. Subsection 136(1) defines 'entertainment':

***entertainment*** has the meaning given by section 32-10 of the *Income Tax Assessment Act 1997*.

47. *Taxation Determination TD 94/55 Income tax: when does providing an item of property constitute the provision of entertainment within the meaning of subsection 51AE(3) of the Income Tax Assessment Act 1936?*, states that in determining whether providing an item of property constitutes entertainment, regard should be had to all the circumstances of the case. In particular, regard should be given to the character of the entertainment to be derived from the item of property provided. Specifically, in Example 2 in TD 94/55, costs incurred in providing holiday accommodation are incurred in providing property that would constitute the provision of entertainment.

48. Therefore, this condition will be met where the boat, plane, premise or facility is hired or leased for a social event or a holiday.

***But does not include expenses attributable to the provision of food, drink or advertising***

49. This condition will be met where the expenses incurred are not attributable to the provision of food, drink or advertising.

**Type of benefit**

50. 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'.

51. 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.

52. 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 pay for an entertainment facility leasing expense, the payment will be 'non-deductible exempt entertainment expenditure'.

53. Therefore, the use of the Card to pay for the hire or lease of an entertainment facility will be a 'tax-exempt body entertainment benefit' under section 38.

**Employers subject to section 57A**

54. 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 services) where the employee is predominantly involved in connection with the provision of those services, or an endorsed health promotion charity.

55. 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.

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

57. 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.

58. 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.

59. However, any employer to which section 57A applies, will not be liable for fringe benefits tax on benefits whose taxable values are wholly or partly attributable to entertainment facility leasing expenses.

60. This results from the operation of step 1 of the method statement contained in subsection 5B(1L) which specifically disregards the benefits whose taxable values are wholly or partly attributable to entertainment facility leasing expenses in calculating an employer's aggregate non-exempt amount.

### **Rebatable employers under section 65J**

61. Section 65J provides that certain non-government and non-profit organisations (rebtable 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.

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

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

63. Rebtable 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-rebtable amount).

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

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

66. 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 benefits whose taxable values are wholly or partly attributable to entertainment facility leasing expenses in determining an employee's individual base non-rebatable amount.

67. Consequently, the use of the Card to pay for an entertainment facility leasing expense does not form any part of the rebatable employer's aggregate non-rebatable amount in the rebate calculation. Therefore, the use of the Card to pay for an entertainment facility leasing expense will not reduce the amount of rebate available to a rebatable employer.

68. However, benefits whose taxable values are wholly or partly attributable to entertainment facility leasing expenses will still be included in the calculation of the amount of the gross tax in the rebate calculation. Therefore, the discharge of an obligation that relates to an entertainment facility leasing expense 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?**

69. 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.

70. Taxation Ruling TR 2001/2<sup>3</sup> 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.

71. The second point in paragraph 70 of this Ruling does not apply as subsection 149A(2) of the FBTAA 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 70 needs to be considered.

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<sup>3</sup> *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*

72. Paragraph 86 of Goods and Services Tax Ruling GSTR 2001/3<sup>4</sup> 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.

73. 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.

74. 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.

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

76. 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).

## **Reportable fringe benefits amount**

77. Part XIB requires the taxable values of certain benefits to be included in the reportable fringe benefits amount of the relevant employee. Where the Card is used to pay for an entertainment facility leasing expense, paragraph 5E(3)(c) will apply to make the benefit an excluded benefit.

78. This conclusion holds regardless of whether the employer is subject to the provisions of section 57A or is a rebatable employer under section 65J.

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

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

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

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

GSTR 2001/3; TD 94/55;  
TR 2001/2; TR 2001/10;  
TR 2006/10

*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

*Legislative references:*

- ANTS(GST)A 1999 Div 111
- FBTA 1986
- FBTA 1986 5B
- FBTA 1986 5B(1A)
- FBTA 1986 5B(1E)
- FBTA 1986 5B(1L)
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- FBTA 1986 65J(2H)
- FBTA 1986 Part XIB
- FBTA 1986 136(1)
- FBTA 1986 149A
- FBTA 1986 149A(2)
- ITAA 1997 32-5
- TAA 1953
- Copyright Act 1968

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ATO references

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