CR 2016/29 - Fringe benefits tax: employer clients of Bendigo and Adelaide Bank Limited who are subject to the provisions of either sections 57A or 65J of the Fringe Benefits Tax Assessment Act 1986 that make use of a B-Entertained MasterCard debit card facility

This Ruling contains references to provisions of the *A New Tax System (Goods and Services Tax) Regulations 1999,* which have been replaced by the *A New Tax System (Goods and Services Tax) Regulations 2019.* This Ruling continues to have effect in relation to the remade Regulations.

Paragraph 32 of TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed and rewritten.

A comparison table which provides the replacement provisions in the *A New Tax System (Goods and Services Tax) Regulations 2019* for regulations which are referenced in this Ruling is available.

This document has changed over time. This is a consolidated version of the ruling which was published on *6 October 2021*

Class Ruling

Fringe benefits tax: employer clients of Bendigo and Adelaide Bank Limited who are subject to the provisions of either sections 57A or 65J of the *Fringe Benefits Tax Assessment Act 1986* that make use of a B-Entertained MasterCard debit 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.

***[Note:** This is a consolidated version of this document. Refer to the Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]*

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 within this Ruling are:

- subsection 5B(1E) of the Fringe Benefits Tax Assessment Act 1986 (FBTAA)
- section 5C of the FBTAA
- paragraph 5E(3)(a) of the FBTAA
- paragraph 5E(3)(c) of the FBTAA
- Division 9A of Part III of the FBTAA
- section 37AD of the FBTAA
- section 38 of the FBTAA
- section 57A of the FBTAA
- section 65J of the FBTAA
- section 65J(2A) of the FBTAA
- section 65J(2H) of the FBTAA
- Part XIB of the FBTAA
- subsection 136(1) of the FBTAA, and
- section 149A of the FBTAA.

Class of entities

3. The class of entities to which this Ruling applies is those employers who are subject to the provisions of either section 57A or section 65J of the FBTAA and who:

- enter into an arrangement with Bendigo and Adelaide Bank Limited (BEN) to provide the B-Entertained MasterCard debit card facility to their employees or associates of their employees, or
- enter into an arrangement with a salary packaging provider to administer salary packaging on its behalf, with the salary packaging provider (acting on the employer's behalf) entering into an arrangement with BEN to provide the B-Entertained MasterCard debit card facility to the employer's employees or their associates.

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 8 to 20 of the 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.

Date of effect

7. This Ruling applies from 1 April 2016 to 31 March 2024. The Ruling continues to apply after 31 March 2024 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. 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

Community Sector Banking Pty Ltd

7A. Community Sector Banking Pty Ltd ABN 88 098 858 765 (AFSL authorised representative No. 265317 and Australian Credit authorised representative No. 379667) (CSB) is a franchisee of BEN, and is a wholly-owned subsidiary of Community Sector Enterprises Pty Ltd ABN 95 098 858 354 (CSE). CSE is a 50/50 joint venture between BEN and Community 21 Limited ABN 79 097 612 416 (C21).

7B. The banking product that forms the basis for the scheme that is the subject of this class ruling is and always has been a banking product of BEN.

7C. CSB distributed a suite of BEN banking products to customers in the not-for-profit sector under the terms of a franchise agreement. In early 2020, BEN acquired all of the shares held by C21 in CSE via a share sale and purchase agreement. Despite the change in form and structure of the arrangement, the substance of the product suite remains unchanged.

Information provided

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

- information received in 2015, including
  - the application for a class ruling dated 31 October 2015
  - Bendigo Business Accounts and Facilities Terms & Conditions dated 26 November 2015
  - B-Packaged and B-Entertained organisation application form
  - B-Packaged and B-Entertained employee application form, and
  - B-Entertained card mail out letter.
- information received on 18 August 2021, including
  - B-Entertained fact sheet
  - B-Packaged and B-Entertained organisation application form
  - B-Packaged and B-Entertained employee application form
  - Bendigo and Adelaide Bank Limited fees and charges document dated 5 February 2021, and
  - Bendigo and Adelaide Bank Limited accounts and facilities terms and conditions dated 2 December 2020.

Participating employers

9. Participating employers will be employers that are not-for-profit organisations, government entities, or other tax-exempt bodies who are subject to the provisions of either section 57A or section 65J.

10. Participating employers or a salary packaging provider, acting on the employer's behalf, will enter into an arrangement with the card provider BEN for the issue of cards (B-Entertained MasterCard debit cards with no credit facility) to their employees (cardholders).

11. BEN will issue the card in the employee's name and the employer is primarily liable for payment of any expenses charged on the card. A separate card account is established for each employee.

Funding

12. Participating employers will enter into valid salary sacrifice arrangements (SSA)[1] with their employees. The use of the B-Entertained MasterCard debit card facility will form an integral part of those arrangements.

13. The participating employers will deduct pre-tax salary sacrificed amounts from cardholders each pay cycle and transfer the amounts through the electronic banking system to the employee's card account. Where a salary packaging provider is administering the salary sacrifice agreement on behalf of the employer, the employer will transfer its funds to an account for the purposes of the arrangement and the salary packaging provider will have access to draw upon these funds to transfer the relevant amounts to the employee's card account.

14. Each month employees receive a statement of amounts spent. Any remaining funds available each month are carried forward and added to subsequent salary sacrifice transfers. At the end of the fringe benefits tax (FBT) year the employer or salary packaging provider on behalf of the employer reconciles the total amounts charged to each card account from information available from the financial institution.

15. Participating employers will receive reports from BEN with information about the usage of each card at the end of the FBT year to assist with distinguishing between the types of supplies.

16. Any unspent amounts on the card account are carried forward into the next FBT year. Where a future limit on the amounts that are eligible for meal entertainment is in place, any carried forward amounts will reduce the amount eligible to be sacrificed in the following year.

17. On termination of a card account, including termination of employment, the card is cancelled and any remaining balance returned to the employer or salary packaging provider on behalf of the employer to be reconciled along with other reconciliations on termination of the employee. The card account can be cancelled at any stage by the employer or salary packaging provider on behalf of the employer and any unspent money is refunded to the employer. The only right an employee has is to charge meal entertainment expenses on the card up to available balances.

Cards

18. Separate cards will be issued in the name of the individual employee who holds the card.

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[1] Guidance on what constitutes a valid salary sacrifice arrangement is given in Taxation Ruling TR 2001/10 *Income tax: fringe benefits tax and superannuation guarantee: salary sacrifice arrangements*.

Usage

19. The card has a blocking mechanism which only allows it to be used on approved merchant categories. These merchants will be those who provide meal entertainment or the hire of entertainment facilities only.

Restrictions

20. Restrictions on the use of the cards includes that funds cannot be:

- drawn as cash advances from the card account
- used to make direct debit payments
- be used to pay mortgage or transferred to other accounts, and
- transferred from card to card.

Ruling

21. The use of the B-Entertained MasterCard debit card for the acquisition of entertainment by way of food or drink, constituting 'meal entertainment', will be a 'tax-exempt body entertainment benefit' under section 38 of the FBTAA. A participating employer cannot make an election to use Division 9A of Part III of the FBTAA to calculate the taxable value of the meal entertainment provided under a salary packaging arrangement.

22. The use of the B-Entertained MasterCard debit card for the hire or lease of an entertainment facility will be a 'tax-exempt body entertainment benefit' under section 38 of the FBTAA.

23. Deposits by participating employers into the participating employers' disbursement accounts, held by BEN, do not constitute the provision of a 'benefit' as defined in subsection 136(1) of the FBTAA.

24. The pre-loading of funds onto the cards does not constitute the provision of a 'benefit' as defined in subsection 136(1) of the FBTAA.

25. The provision of meal entertainment or the hire or lease of an entertainment facility by way of the card gives rise to an exempt benefit for a participating employer subject to the provisions of section 57A.

26. Benefits provided under a salary packaging arrangement that constitute the provision of meal entertainment or an entertainment facility leasing expense are an exempt benefit where the grossed-up taxable value does not exceed $5,000. Any excess amount is included in the capping thresholds for the purposes of determining the

employer's aggregate non-exempt amount under subsection 5B(1E) of the FBTAA for an employer subject to the provisions of section 57A of the FBTAA.

27. The provision of meal entertainment or an entertainment facility leasing expense by way of the card may reduce the amount of rebate available to a rebatable employer under section 65J of the FBTAA. The provision of such benefits will form part of the employer's aggregate non-rebatable amount in the subsection 65J(2A) of the FBTAA rebate calculation where the grossed-up taxable value of such benefits exceeds $5,000. Any excess amount is included in the capping thresholds for the purposes of determining the employer's aggregate non-rebatable amount under subsection 65J(2A) of the FBTAA for an employer subject to the provisions of section 65J of the FBTAA.

28. The provision of meal entertainment or an entertainment facility leasing expense by way of the cards provides a rebate to the rebatable employer of the gross tax that would otherwise be payable as the provision of the benefits are included in the calculation of the amount of gross tax, for the purposes of the subsection 65J(2A) rebate calculation, per subsections 5C(3) or 5C(4) as applicable.

29. A benefit will be a GST-creditable benefit if the requirements of section 149A of the FBTAA are satisfied. Such a benefit will be a type 1 benefit for the purposes of section 5C of the FBTAA. Where the GST-creditable benefit acquired has a GST exclusive value of $75 or less, the employer can attribute an input tax credit to a tax period without holding a tax invoice.

30. Where the requirements of section 149A are not satisfied the benefit will not be a GST-creditable benefit. Such a benefit will be a type 2 benefit for the purposes of section 5C of the FBTAA.

31. The provision of meal entertainment or an entertainment facility leasing expense under a salary packaging arrangement are not excluded fringe benefits for the purposes of paragraphs 5E(3)(a) or 5E(3)(c) of the FBTAA. As such, the value of such benefits are included in the reportable fringe benefits provisions in Part XIB of the FBTAA.

Commissioner of Taxation
18 May 2016

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.

Types of benefits provided by the B-Entertained MasterCard debit card

32. A fringe benefit is defined in subsection 136(1) of the FBTAA as being a benefit that is provided by an employer or associate of the employer, to an employee or an associate of the employee, in respect of the employment of the employee.

33. When an employee uses a B-Entertained MasterCard debit card at an approved merchant, an employee is able to use the card for either the acquisition of food or drink or to pay for the hire or lease of an entertainment facility. This does not give rise to an expense payment benefit under section 20 of the FBTAA as a participating employer does not discharge an obligation of an employee to a pay third party nor do they reimburse an employee in respect of expenditure they incur.

34. When the card is used, the amounts owed to the merchants are met from the funds held in a participating employer's disbursement account and made available (loaded) on to the card. A participating employer is therefore the entity primarily liable for all transactions, and incurring the relevant debts to the approved merchants, arising from the use of the cards.

35. The expenditure on food or drink by an employee will come within the meaning of the phrase 'provision of meal entertainment' under section 37AD of the FBTAA. That phrase, at paragraph 37AD(a) of the FBTAA, includes 'entertainment by way of food or drink'.

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

37. The participating employers in the arrangement will be not-for-profit organisations, government entities or other tax-exempt bodies such as public benevolent institutions, health promotion charities, public hospitals and public ambulance services. These types of organisations are exempt from income tax.

38. 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.

39. Section 32-5 of the ITAA 1997 states (as is relevant here):

> To the extent that you incur a loss or outgoing in respect of providing *entertainment, you cannot deduct it under section 8-1 …

40. Under paragraph 32-10(1)(a) of the ITAA 1997 the meaning of 'entertainment', for the purposes of the FBTAA, includes 'entertainment by way of food, drink or recreation'.

41. Section 32-5 of the ITAA 1997 would apply in relation to the use of the card to purchase food or drink that constitutes 'meal entertainment'. The provision of such benefits 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 of the FBTAA. An employer cannot make an election under Division 9A of Part III that 'entertainment by way of food or drink' be treated as 'meal entertainment benefits' rather than as any other kind of benefit for the purposes of the FBTAA. This is because meal entertainment provided under a salary packaging arrangement is specifically excluded from being a meal entertainment benefit under section 37AC of the FBTAA. The elective valuation rules therefore cannot be used to calculate the taxable value of the benefit as it is not a meal entertainment fringe benefit. Consequently, the taxable value of the benefit provided is determined under section 39 of the FBTAA as a 'tax-exempt body entertainment benefit'.

43. The term 'entertainment facility leasing expenses' is defined in subsection 136(1) of the FBTAA as:

> ***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.*

44. The expenditure on hire or lease of an entertainment facility in this instance will come within the meaning of 'entertainment facility leasing expenses' under subsection 136(1) of the FBTAA.

45. A 'tax-exempt body entertainment benefit' will arise under section 38 of the FBTAA where the participating employer is wholly or partly exempt from income tax and section 32-5 of the ITAA 1997 would prevent the employer from claiming an income tax deduction for the expenditure if it were subject to income tax.

46. The meaning of 'entertainment' includes entertainment by way of recreation in paragraph 32-10(1)(a) of the ITAA 1997. Subsection 995-1 of the ITAA 1997 defines the term 'recreation' to include 'amusement, sport or similar leisure-time pursuits'. While the term 'recreation' is defined, the words 'entertainment by way of recreation' are not defined. As these words are not defined, they have their natural meaning, taken in the context in which they appear in the legislation.

47. The term 'entertainment', which is the key to the operation of the relevant words, is defined in the Macquarie Dictionary, on-line edition, to mean:

1. the act of entertaining; agreeable occupation for the mind; diversion, or amusement.
2. something affording diversion or amusement, especially an exhibition or performance of some kind.
3. hospitable provision for the wants of guests.

48. Further, Taxation Determination TD 94/55[2] 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.

49. 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.

50. It is considered, therefore, that where an entertainment facility is hired or leased, the hire or lease costs are incurred for the purposes of the provision of 'entertainment' as that latter term is defined in subsection 32-10(1) of the ITAA 1997.

51. Consequently, 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 of the FBTAA.

52. Deposits by participating employers into the disbursement accounts do not constitute the provision of a 'benefit' as that term is defined in subsection 136(1) of the FBTAA, as the participating employers are merely transferring funds to their own accounts with BEN. It is considered that this view is not altered by the fact that such deposits into the employers' accounts are steps in the furtherance of the terms of SSAs.

53. Similarly, the pre-loading of funds onto the cards is merely the transfer of participating employer funds and no 'benefit' is provided to the employees at the time of that transfer.

[2] Taxation Determination TD 94/55 *Income tax: when does providing an item of property constitute the provision of entertainment within the meaning of subsection 32-10(1) of the Income Tax Assessment Act 1997?*

Application to employers subject to section 57A of the FBTAA who provide their employees with tax-exempt body meal entertainment benefits

54. Section 57A of the FBTAA provides that benefits provided to employees by certain employers are generally exempt from FBT. This section applies to employers that are registered as a charity and endorsed as a public benevolent institution or health promotion charity, certain hospitals and 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.

55. The exemption in section 57A of the FBTAA 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 in section 5B of the FBTAA.

57. Subsection 5B(1E) of the FBTAA limits the exemption to a general capping threshold on each employee's individual grossed-up non-exempt amount (that is, the total grossed-up taxable value of benefits not otherwise exempt) for the particular FBT year. For the FBT year ending 31 March 2017, this threshold is $17,667 for each employee for employers who are public or non-profit hospitals, or who provide a public ambulance service. This 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 grossed-up taxable value of benefits provided in excess of this threshold. This threshold will be $17,000 for the year ending 31 March 2018 and subsequent years.

58. All other employers to which section 57A applies will have a capping threshold of $31,177 for each employee for the FBT year ending 31 March 2017. These employers are liable for FBT on the grossed-up taxable value of benefits provided in excess of this threshold. This threshold will be $30,000 for the year ending 31 March 2018 and subsequent FBT years.

59. If the employee's individual grossed-up non-exempt amount is greater than the capping threshold, an employer may further reduce the amount under step 4 of the Method Statement in subsection 5B(1E) by the lesser of $5,000 and so much of the employee's individual grossed-up non-exempt amount that relates to salary packaged meal entertainment and entertainment facility leasing expenses under subsection 5B(1M) of the FBTAA. The latter amount, for the purposes of subsection 5B(1M) includes the provision of meal entertainment or entertainment facility leasing expenses made through the use of the card.

60. Each employee's individual grossed-up non-exempt amount is determined by multiplying the employee's type 1 and type 2 individual base non-exempt amounts by the applicable gross-up rate. Step 1 of the Method Statement contained in subsection 5B(1L) of the FBTAA does not specifically disregard the taxable value of benefits provided under a salary packaging arrangement that constitutes 'meal entertainment,' as that term is defined in section 37AD of the FBTAA, or those which are wholly or partially attributable to 'entertainment facility leasing expenses' in determining an employee's individual base non-exempt amount. This is because such benefits are not excluded fringe benefits for the purposes of paragraphs 5E(3)(a) or 5E(3)(c) of the FBTAA.

61. Consequently, the use of the card to purchase meal entertainment or to pay for the hire or lease of an entertainment facility may form part of any participating employer's aggregate non-exempt amount in the exemption calculation where the grossed-up taxable value of such benefits exceeds $5,000, and the excess amount when added to the grossed-up taxable value of other benefits provided to an employee exceeds the relevant general capping threshold.

Application to employers subject to section 65J of the FBTAA who provide their employees with tax-exempt body meal entertainment benefits

62. Section 65J of the FBTAA provides that certain non-government and non-profit organisations (rebatable employers) are entitled to have their FBT liability reduced by a rebate.

63. If an employer is a rebatable employer, the employer is entitled to a rebate of tax in the employer's assessment for the year of tax concerned equal to the amount worked out using the relevant formula in subsection 65J(2A) of the FBTAA. The relevant formula depends upon the year in which the benefit is provided. For the FBT year ending 31 March 2017, if the employer is a rebatable employer for the full year, the rebate (provided the capping threshold is not exceeded) will be 49% of the amount of the gross tax that would otherwise be paid by the employer. In subsequent years, the amount of the rebate will be determined by multiplying the FBT rate for the relevant FBT year by the amount of tax that would otherwise be paid by the employer (provided the capping threshold is not exceeded).

64. If the total grossed-up taxable value of benefits provided to an individual employee exceeds the relevant threshold, the rebate will not apply to the tax that arises on the excess amount. That is, the rebate will only apply to the tax that would otherwise be paid up to the amount of the threshold. The amount of this threshold depends upon the FBT year in which the benefit is provided. For example, in the FBT year ending 31 March 2017 the threshold is $31,177 grossed-up taxable value per employee. This will be $30,000 for the year ending 31 March 2018 and subsequent years.

65. 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 of the FBTAA had not been enacted.

66. 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 capping threshold as set out in step 2 of the Method Statement in subsection 65J(2B) of the FBTAA. If that amount is positive it is further reduced under step 2A of the Method Statement in subsection 65J(2B) by the lesser of $5,000 and so much of the employee's individual grossed-up non-rebatable amount that relates to salary packaged meal entertainment and entertainment facility leasing expenses under subsection 65J(2J) of the FBTAA (that is, the amount of the meal entertainment or entertainment facility leasing expenses provided through the use of the card). If the amount is greater than nil it is multiplied by the FBT rate.

67. 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. Step 1 of the Method Statement contained in subsection 65J(2H) of the FBTAA does not disregard the taxable value of benefits provided under a salary packaging arrangement that constitutes 'meal entertainment,' as that term is defined in section 37AD of the FBTAA, or those which are wholly or partially attributable to 'entertainment facility leasing expenses' in determining an employee's individual base non-rebatable amount. This is because such benefits are not excluded fringe benefits for the purposes of paragraphs 5E(3)(a) or 5E(3)(c) of the FBTAA.

68. Consequently, the use of the card to purchase meal entertainment or to pay for the hire or lease of an entertainment facility will form part of a participating employer's aggregate non-rebatable amount in the rebate calculation where the grossed-up taxable value of such benefits exceeds $5,000, and the excess amount when added to the grossed-up taxable value of other benefits provided to an employee exceeds the $31,177 capping threshold. The provision of 'meal entertainment' and 'entertainment facility leasing expenses' may therefore reduce the amount of rebate available to a rebatable employer.

69. Further, the values of the provision of 'meal entertainment' and 'entertainment facility leasing expenses' will be included in the calculation of the amount of the gross tax in the rebate calculation per subsections 5C(3) or 5C(4) of the FBTAA as applicable.

Are the benefits provided using the B-Entertained MasterCard debit card type 1 or type 2 benefits?

70. A participating employer, or salary packaging provider on behalf of the participating employer, receives information on the usage of each card from BEN at the end of the FBT year. This information would enable a participating employer, or salary packaging provider on behalf of the participating employer, to distinguish between taxable, GST-free and input taxed supplies.

71. To determine whether a benefit provided under the B-Entertained MasterCard debit card is a type 1 or type 2 benefit, it is necessary to ascertain whether the relevant benefit is a GST-creditable benefit as defined in section 149A of the FBTAA.

72. Taxation Ruling TR 2001/2[3] advises that for the purposes of section 149A of the FBTAA, 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.

73. Paragraph 86 of Goods and Services Tax Ruling GSTR 2001/3[4] 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 that constitutes an expense payment benefit.

74. As stated in paragraphs 42 and 51 of this Ruling, the use of a B-Entertained MasterCard debit card by a cardholder will give rise to tax-exempt body entertainment benefits under section 38 of the FBTAA. The benefit provided is not an expense payment benefit, and therefore, Division 111 of the GST Act will not apply.

75. Whether a tax-exempt body entertainment benefit will be type 1 or type 2 benefit will depend on whether the 'thing' acquired by the participating employer, as the provider, is entitled to input tax credits for the goods or services acquired.

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

76. Paragraph 88 of GSTR 2001/3 points out that one of the conditions which could prevent an entitlement to an input tax credit for an acquisition by an employer is the application of the special rules set out in Division 69 of the GST Act.

77. An entitlement to an input tax credit would not arise for an acquisition to the extent, if any, that the acquisition would not, because of Division 69 of the GST Act, be a creditable acquisition if the employer made it. Paragraph 96 of GSTR 2001/3 points out that Division 69 of the GST Act limits input tax credits for certain acquisitions and importations, including entertainment, to the extent that they would not be deductible expenditure under certain provisions of the ITAA 1997.

78. Division 69 of the GST Act does not apply to disallow input tax credits for entertainment expenses made in providing fringe benefits to employees as explained in GSTR 2001/3 as follows.

> 97. Whilst section 32-5 of the ITAA 1997 denies a deduction for entertainment under section 8-1 of that Act, section 32-20 of the ITAA 1997 allows an exception where entertainment is provided by way of a fringe benefit. Consequently, Division 69 does not apply to disallow input tax credits for entertainment expenses made in providing fringe benefits (as defined in the FBTAA). This rule also applies to fringe benefit acquisitions and importations for recreational club expenses and expenses for a leisure facility or boat.
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> …
>
> 99. Paragraph 69-5(3)(f) disallows any entitlement to input tax credits for acquisitions and importations for providing entertainment to clients rather than employees. However, to the extent that the acquisitions and importations are made in providing entertainment to employees and are otherwise creditable, Division 69 will not deny those entitlements.
>
> 100. Where an entity, such as a public benevolent institution, provides any benefits to employees which are in respect of employment, section 57A of the FBTAA provides that these are exempt benefits. As the fringe benefit exception rule in section 32-20 of the ITAA 1997 does not apply where entertainment benefits are exempt from FBT, paragraph 69-5(3)(f) can apply to deny any input credits for entertainment acquisitions and importations for public benevolent institutions. As subsection 69-5(4) applies the rules in subsection 69-5(3) to entities that are exempt from income tax as if they were subject to that tax, the fact that the benefit is exempt from FBT means that subsection 69-5(3) can apply to these entities in addition to entities that are subject to income tax.

79. Therefore the provision of 'meal entertainment' and 'entertainment facility leasing expenditure' to the employee from the use of a card can be a GST-creditable benefit. Such a benefit will be a type 1 benefit for the purposes of section 5C. Where the benefits are not GST-creditable benefits they will be a type 2 benefit for the purposes of section 5C.

Taxable supply with a GST exclusive value of $75 or less

80. Section 29-80 of the GST Act and regulation 29-80.01 of the *A New Tax System (Goods and Services Tax) Regulations 1999* (GST Regulations) provide that the recipient of a taxable supply can claim an input tax credit without holding a tax invoice if the GST-exclusive value of the thing acquired is $75 or less (or such higher amount as the regulations specify).[5]

81. Where multiple taxable supplies are made in a single transaction, this low value threshold should be applied to the aggregate value of those taxable supplies.

82. Consequently, an employer does not need to hold a tax invoice to claim an input tax credit in relation to the provision of 'meal entertainment' and 'entertainment facility leasing expenditure' to the employee from the use of a card provided such benefits are a GST-creditable benefit with a GST-exclusive value of $75 or less. However, the employer must have records to explain its entitlement to an input tax credit for a creditable acquisition for the purposes of section 382-5 of Schedule 1 to the *Taxation Administration Act 1953*.

Reportable fringe benefits amount

83. Part XIB requires the taxable values of certain benefits to be included in the reportable fringe benefits amount of the relevant employee. As the use of the card results in the provision of meal entertainment or an entertainment facility leasing expense under a salary packaging arrangement, paragraphs 5E(3)(a) and 5E(3)(c) of the FBTAA apply such that the benefits are not an excluded fringe benefit. The value of the benefits is included in the reportable fringe benefits amount of an employee of employers subject to either the provisions of section 57A or section 65J of the FBTAA.

84. Any participating employer therefore will be required to include the grossed-up taxable value of the salary packaged meal entertainment and entertainment facility leasing expenses benefits on an employee's payment summary where the value of these benefits, and that of other benefits provided to the employee in the particular FBT year, exceeds $2,000.

[5] Paragraph 58 of Goods and Services Tax Ruling GSTR 2013/1 *Goods and services tax: tax invoices*.

Appendix 2 – Detailed contents list

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Previous draft:

Not previously issued as a draft

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CR 2014/74; GSTR 2001/3;
GSTR 2013/1; TD 94/55;
TR 2001/2; TR 2006/10

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