

CR 2023/55 - EML Payment Solutions Limited - employer clients' use of meals and entertainment card facility



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Status: **legally binding**

Class Ruling

EML Payment Solutions Limited – employer clients’ use of meals and entertainment card facility

❗ Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Table of Contents	Paragraph
What this Ruling is about	1
Who this Ruling applies to	4
When this Ruling applies	5
Ruling	6
Scheme	18
Appendix – Explanation	35

What this Ruling is about

1. This Ruling sets out the fringe benefits tax (FBT) consequences for employer clients of EML Payment Solutions Limited (EML) who are subject to the provisions of either section 57A or section 65J of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) and make use of EML’s Meals and Entertainment Card facility.

2. Details of this scheme are set out in paragraphs 18 to 34 of this Ruling.

3. All legislative references in this Ruling are to the FBTAA, unless otherwise indicated.

Note: By issuing this Ruling, the Australian Taxation Office is not endorsing this product. Potential users must form their own view about the product.

Who this Ruling applies to

4. This Ruling applies to you if you are an employer who is subject to the provisions of either section 57A or section 65J of the FBTAA and make use of EML’s Meals and Entertainment Card facility.

When this Ruling applies

5. This Ruling applies from 1 April 2022 to 31 March 2027.

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Ruling

The meal entertainment benefits

6. The use of EML's Meals and Entertainment card for the acquisition of meal entertainment by way of food or drink constitutes the 'provision of meal entertainment' as defined in section 37AD.
7. The benefit is a 'tax-exempt body entertainment benefit' under section 38. The taxable value of the benefit is determined under section 39.
8. The meal entertainment is provided under a salary packaging arrangement, thus not satisfying paragraph 37AC(b). As a result, Division 9A of Part III (election as meal entertainment benefits) cannot apply.

The entertainment facility leasing expenses

9. The use of EML's Meals and Entertainment card for the hire or lease of an entertainment facility constitutes 'entertainment facility leasing expenses' as defined in subsection 136(1).
10. The benefit is a 'tax-exempt body entertainment benefit' under section 38. The taxable value of the benefit is determined under section 39.
11. The entertainment facility leasing expense is provided under a salary packaging arrangement, as described in subsection 152B(2). As a result, subsection 152B(1) (election as entertainment facility leasing costs) cannot apply.

Employers who are subject to the provisions of section 57A

12. Where section 57A applies to a participating employer, the benefits provided to cardholders using EML's Meals and Entertainment card can be exempt benefits, subject to capping provisions contained in section 5B.
13. To determine if the 'capping thresholds' are exceeded, the 'aggregate non-exempt amount' can be calculated in accordance with the 'Method statement' in subsection 5B(1E).
14. In relation to Step 4 of the 'Method statement' in subsection 5B(1E), there is a 'separate' capping for salary packaged meal entertainment and entertainment facility leasing benefits.

Employers who are subject to the provisions of section 65J

15. Where section 65J applies to a participating employer, the employer will receive a rebate of the gross tax that would otherwise be payable, in accordance with subsection 65J(2A), subject to capping provisions.
16. To determine if the 'capping thresholds' are exceeded, the 'aggregate non-rebatable amount' can be calculated based on the 'Method statement' in subsection 65J(2B).

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17. In relation to Step 2A of the 'Method statement' in subsection 65J(2B), there is a 'separate' capping for salary packaged meal entertainment and entertainment facility leasing benefits.

Scheme

18. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

19. The following document, or relevant parts of it, form part of and are to be read with the description:

- Mastercard Product Disclosure Statement (Mastercard PDS).

Participating employers

20. 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.

21. Participating employers will enter into an arrangement with the card provider (EML) for the issue of Meals and Entertainment cards (cards) to their employees (cardholders).

22. EML will issue the cards and coordinate the card's settlement obligations in respect of the card transactions with the authorised deposit-taking institution.

Funding

23. Participating employers will enter into valid salary-sacrifice arrangements (SSA)¹ with their employees. The use of EML's Meals and Entertainment Card facility will form an integral part of those arrangements.

24. The participating employers will deduct pre-tax salary-sacrificed amounts from cardholders and make deposits equal to the amounts salary-sacrificed into a segregated monies account maintained by an authorised deposit-taking institution. The amounts are held by EML on trust for the participating employers.

25. A funds distribution file detailing the individual amounts salary-sacrificed by each cardholder will be sent by the participating employers to salary packaging providers that the participating employers enter agreements with. The salary packaging providers will subsequently send the funds distribution file to EML.

26. EML will reconcile the total value of the funds distribution file against the funds received from the participating employers and process the file to allocate the portion of funds available to pay the transactions or costs of each of the individual cardholders.

27. Each cardholder will be allowed to transact on their card up to the amount of the salary that they have individually salary-sacrificed year to date. The funds available to any given cardholder will therefore vary according to their particular salary-sacrificed amounts and the costs incurred year to date (presented as 'available funds').

28. As the funding originates from sacrificed salary, the funds will remain in ownership of the participating employers until such time as they are spent to pay costs incurred by the

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*.

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cardholders. Any unused funds at the end of the FBT year will be returned to the employer to subsequently pay to the employees as taxable salary, unless there was a specific agreement entered into prior to the funds being salary-sacrificed to enable application of these funds towards another category of benefit.

Cards

29. The card will be issued in the name of the individual employee who holds the card.
30. The card will be issued as a prepaid reloadable Mastercard.

Usage

31. The cards can only be used for transactions with eligible merchants through the enforcement of rules on Merchant Category Codes (MCCS). The EML Card Management System (CMS) will apply whitelisting or blacklisting rules on MCCS when verifying a transaction and approve or decline, as required. The restrictions on the use of a card are set out in the proposed Mastercard PDS.
32. Cardholders will have the ability to upload receipts relating to their use of the card such that purchases using the card can be identified as being GST-creditable or not.

Restrictions

33. The restrictions on the use of the cards include:
- the cards can only be used for either the acquisition of food or drink that constitutes 'the provision of meal entertainment', in accordance with section 37AD, or for 'entertainment facility leasing expenses', as defined in subsection 136(1)
 - cardholders cannot use funds loaded onto the cards to withdraw cash
 - funds loaded onto the cards cannot be used to make direct debit payments
 - funds loaded onto the cards cannot be used to pay mortgages or transferred to other bank accounts, and
 - funds loaded onto the cards cannot be transferred from card to card.

Salary packaging arrangements

34. The salary packaging provider, as an authorised representative of EML, will be required to include specific terms and conditions within the SSAs with participating employees and employers, to detail the nature of the benefits provided when the cards are used. This will specify that the expenditure being met through a SSA that utilises a Meals and Entertainment Card will be for the goods and services acquired by the employee.

Commissioner of Taxation

4 October 2023

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Appendix – Explanation

❶ *This Explanation 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.*

Table of Contents	Paragraph
Meal entertainment expenditure	35
Entertainment facility leasing expenses	52
Deposits and pre-loading of funds are not 'benefits'	63
Employers subject to section 57A who participate in the arrangements	65
Employers subject to section 65J who participate in the arrangements	72

Meal entertainment expenditure

35. An expense payment benefit arises under section 20 where either an employer pays a third party in satisfaction of expenditure incurred by an employee, or where an employer reimburses an employee for expenditure incurred by the employee.

36. When the card is used, the debts to the merchants or to the other providers of food or drink or entertainment facilities are met from the funds then held in account on trust for the employers and made available (loaded) on to the card.

37. The employers are the ones primarily liable for all transactions arising from the use of the cards. Therefore, when the cardholders use the cards, it is, nonetheless, the employers who are incurring the relevant debts to the merchants or to the other providers of food or drink or entertainment facilities.

38. As the employers are discharging only their own obligations, to the merchants or other providers of food or drink or entertainment facilities, the employers are, therefore, not discharging obligations of other persons to pay third persons, nor are they providing reimbursements to other persons in respect of expenditure incurred by those persons.

39. Consequently, when a card is used to pay debts to merchants or the other providers of food or drink or entertainment facilities, these will not give rise to expense payment benefits under section 20 as the conditions of that section have not been met.

40. As the relevant goods or services are firstly acquired by the employers, the subsequent grant to the cardholders of either the possession of the goods or the use of the services will result in a 'benefit', as that term is defined in subsection 136(1), being provided by the employers to each of the employees.

41. 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.

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

43. 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'.

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44. The participating employers in the arrangements will be not-for-profit organisations, government entities or other tax-exempt bodies. These types of organisations are exempt from income tax.
45. 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.
46. 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...
47. Under paragraph 32-10(1)(a) of the ITAA 1997, the meaning of 'entertainment', for the purposes of the FBTA, includes 'entertainment by way of food, drink or recreation'.
48. 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'.
49. Therefore, the use of the card to purchase meal entertainment will be a 'tax-exempt body entertainment benefit' under section 38.
50. The taxable value of a tax-exempt body entertainment fringe benefit is determined under section 39.
51. As the meal entertainment is provided under a salary packaging arrangement, not as described in paragraph 37AC(b), Division 9A of Part III ('election' as meal entertainment benefits) can no longer apply. The 'tax-exempt body entertainment benefit' under section 38 will therefore stand.

Entertainment facility leasing expenses

52. The term 'entertainment facility leasing expenses' is defined in subsection 136(1) 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*.

53. 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).
54. A 'tax-exempt body entertainment benefit' will arise under section 38 where the participating employer is wholly or partly exempt from income tax and section 32-5 of the

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ITAA 1997 would prevent the employer from claiming an income tax deduction for the expenditure if it were subject to income tax.

55. The meaning of 'entertainment' includes entertainment by way of recreation in paragraph 32-10(1)(a) of the ITAA 1997. Subsection 995-1(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.

56. The term 'entertainment', which is the key to the operation of the relevant words, is defined in The Macquarie Dictionary online²:

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.

57. Further, 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?* 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.

58. Specifically, in Example 2 of TD 94/55, costs incurred in providing holiday accommodation are incurred in providing property that would constitute the provision of entertainment.

59. 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.

60. 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.

61. The taxable value of a tax-exempt body entertainment fringe benefit is determined under section 39.

62. As the entertainment facility leasing expense is provided under a salary packaging arrangement, which is caught by subsection 152B(2), subsection 152B(1) ('election' as entertainment facility leasing costs) can no longer apply. The 'tax-exempt body entertainment benefit' under section 38 will therefore stand.

Deposits and pre-loading of funds are not 'benefits'

63. Deposits by participating employers into the account on trust for the employers do not constitute the provision of a 'benefit' as that term is defined in subsection 136(1), as the participating employers are merely transferring funds to 'their own accounts' held on trust by EML, maintained by an authorised deposit-taking institution. It is considered that this view is not altered by the fact that such deposits into the accounts are steps in the furtherance of the terms of SSAs.

² Macmillan Publishers Australia, The Macquarie Dictionary online, www.macquariedictionary.com.au, accessed 27 September 2023.

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64. Similarly, the loading of funds onto the cards is merely the transfer of participating employer funds and no 'benefit' is provided to the cardholders at the time of that transfer.

Employers subject to section 57A who participate in the arrangements

65. Section 57A provides that certain employers are generally exempt from FBT. This section applies to employers that are registered and endorsed public benevolent institutions, 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 a registered and endorsed health promotion charity.

66. 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.

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

68. Subsection 5B(1E) limits the exemption to a 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 a particular FBT year. For the relevant FBT years of this Ruling, this threshold is \$17,000 for each employee of employers who are public or not-for-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 not-for-profit hospital.

69. All other employers to which section 57A applies will have a capping threshold of \$30,000 for each employee for the relevant FBT years of this Ruling.

70. On top of the 'general' capping thresholds of either \$17,000 or \$30,000 for a FBT year, the provision of salary packaged meal entertainment and entertainment facility leasing benefits, is subject to a 'separate threshold', capped at \$5,000 of the grossed-up taxable value of fringe benefits for each employee. Any salary packaged meal entertainment and entertainment facility leasing benefits that exceed this separate cap of \$5,000 will be included in the 'general' capping thresholds.

71. The benefits provided to cardholders who are employees of participating employers subject to the provisions of section 57A, will be exempt under section 57A where the grossed-up taxable value of the benefits provided in the FBT year do not exceed the thresholds specified in subsection 5B(1E).

Employers subject to section 65J who participate in the arrangements

72. Section 65J provides that certain non-government and not-for-profit organisations (rebatable employers) are entitled to have their FBT liability reduced by a rebate. The section does not apply to the employers covered by section 57A that are discussed earlier in this Ruling.

73. 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). If the employer is a rebatable employer for the full year, the rebate (provided the capping threshold is not exceeded) will be 47% of the amount of the gross tax that would otherwise be paid by the employer for the relevant FBT years of this Ruling.

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74. 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. For the relevant FBT years of this Ruling, the threshold is \$30,000 grossed-up taxable value per employee.

75. On top of 'general' capping threshold of \$30,000 for a FBT year, the provision of salary packaged meal entertainment and entertainment facility leasing benefits, are subject to a 'separate threshold', capped at \$5,000 of the grossed-up taxable value of fringe benefits for each employee. Any salary packaged meal entertainment and entertainment facility leasing benefits that exceed this separate cap of \$5,000 will be included in the 'general' capping threshold.

76. 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.

77. The rebatable employer's 'aggregate non-rebatable amount', is calculated by following the Method Statement in subsection 65J(2B).

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References

Previous Rulings/Determinations:
CR 2014/75

- FBTAA 38
- FBTAA 39
- FBTAA 57A

Related Rulings/Determinations:
TR 2001/10; TD 94/55

- FBTAA 65J
- FBTAA 65J(2A)
- FBTAA 65J(2B)

Legislative references:

- FBTAA 5B
- FBTAA 5B(1E)
- FBTAA 20
- FBTAA Pt III Div 9A
- FBTAA 37AC(b)
- FBTAA 37AD
- FBTAA 37AD(a)

- FBTAA 136(1)
 - FBTAA 152B(1)
 - FBTAA 152B(2)
 - ITAA 1997 32-5
 - ITAA 1997 32-10(1)
 - ITAA 1997 32-10(1)(a)
 - ITAA 1997 995-1(1)
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ATO references

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