

***CR 2003/36A1 - Addendum - Fringe benefits tax:
Employer clients of McMillan Shakespeare Australia
Pty Ltd that make use of a Meal Entertainment
Payment Card facility***

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Addendum

Class Ruling

Fringe benefits tax: Employer clients of McMillan Shakespeare Australia Pty Ltd that make use of a Meal Entertainment Payment Card facility

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Class Ruling CR 2003/36 to take account of the application of the *Tax and Superannuation Laws Amendment (2015 Measures No. 5) Act 2015* to the concessional treatment of meal entertainment and entertainment facility leasing expense benefits provided under a salary packaging arrangement from 1 April 2016.

CR 2003/36 is amended as follows:

1. **Paragraph 2**

Omit the paragraph; substitute:

2. The relevant provisions tax laws dealt with in this Ruling are:

- section 5B of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA)
- subsection 5B(1E) of the FBTAA
- subsection 5B(1L) of the FBTAA
- paragraph 5B(1M)(a) of the FBTAA
- section 5E of the FBTAA
- paragraph 5E(3)(a) of the FBTAA
- Division 9A of Part III of the FBTAA
- section 37AC of the FBTAA
- paragraph 37AC(b) of the FBTAA
- section 37AD of the FBTAA
- section 38 of the FBTAA
- section 39 of the FBTAA
- section 57A of the FBTAA
- Part XIB of the FBTAA

- subsection 136(1) of the FBTA, and
- section 150 of the FBTA.

2. All occurrences

- (a) Omit all occurrences of 'Section' and replace with 'section'.
- (b) Omit all occurrences of 'Subsection' and replace with 'subsection'.
- (c) Omit all occurrences of 'Paragraph' and replace with 'paragraph'.

3. Paragraph 16

Before the paragraph; insert:

Salary packaged meal entertainment benefits provided on or before 31 March 2016

15A. Paragraphs 16 to 18 of this Ruling (and paragraphs 19 to 28 of the Explanation section) apply to benefits provided on or before 31 March 2016 and refer to provisions in the FBTA before the application of the *Tax and Superannuation Laws Amendment (2015 Measures No. 5) Act 2015*.¹

4. Paragraph 18

After the paragraph; insert:

Salary packaged meal entertainment benefits provided from 1 April 2016

18A. Paragraphs 18B to 18J of this Ruling (and paragraphs 19 to 20 and 28A to 28D of the Explanation section) apply to benefits provided from 1 April 2016 and refer to provisions in the FBTA following the application of the *Tax and Superannuation Laws Amendment (2015 Measures No. 5) Act 2015*.

18B. The use of the card for the acquisition of entertainment by way of food or drink constitutes the 'provision of meal entertainment' as defined in section 37AD.

18C. The provision of meal entertainment by way of the card gives rise to an exempt benefit under section 57A.

¹ The *Tax and Superannuation Laws Amendment (2015 Measures No. 5) Act 2015* makes changes to the FBTA and applies to salary packaged meal entertainment benefits provided on or after 1 April 2016.

18D. The benefit is a 'tax-exempt body entertainment benefit' under section 38 and the taxable value of the fringe benefit is determined under section 39.

18E. The meal entertainment is provided under a salary packaging arrangement² as described in paragraph 37AC(b). As a result Division 9A of Part III (election for meal entertainment expenses) cannot apply.

18F. Paragraph 5B(1M)(a) applies as the benefit is provided under a salary packaging arrangement and is constituted by the provision of meal entertainment as defined in section 37AD.

18G. The grossed-up taxable value of the salary packaged meal entertainment benefits (as well as the grossed up-taxable value of any other fringe benefits provided to the employee in that year) are included in the '*individual grossed-up non-exempt amount*' under step 1 of the method statement in subsection 5B(1E).

18H. Under subsection 5B(1E) the employee's '*individual grossed-up non-exempt amount*' is reduced by:

- the general capping threshold³, and
- if any amount remains, by 'salary packaged entertainment cap'.⁴ This cap is the lesser of \$5,000 and an employee's total grossed-up taxable value of the salary packaged meal entertainment benefits and salary packaged entertainment facility leasing expenses covered by subsection 5B(1M).

18I. This reduced amount for all employee's forms the employer's '*aggregate non-exempt amount*' for the year of tax under subsection 5B(1E).⁵

18J. The provision of salary packaged meal entertainment is not an excluded fringe benefit for the purposes of paragraph 5E(3)(a). The grossed-up value of such benefits is included in the reportable fringe benefits provisions in Part XIB.

² 'Salary packaging arrangement' is defined in subsection 136(1).

³ The general capping threshold under subsections 57A(2), (3), and (4) for public hospitals and public ambulance services is \$17,667 for the FBT year commencing on 1 April 2016. The general capping threshold under subsections 57A(1) and (5) for public benevolent institutions and health promotion charities is \$31,177 for the FBT year commencing on 1 April 2016.

⁴ Refer to step 4 of the method statement in subsection 5B(1E).

⁵ Refer to step 5 of the method statement in subsection 5B(1E).

5. Paragraph 20

After the paragraph; insert new heading:

Salary packaged meal entertainment benefits provided on or before 31 March 2016

6. Paragraph 24

Omit '\$17,000' in the second sentence; substitute: '\$17,000⁶'

7. Paragraph 25

Omit '\$30,000' in the second sentence; substitute: '\$30,000⁷'

8. Paragraph 28

After the paragraph; insert:

Salary packaged meal entertainment benefits provided from 1 April 2016

28A. From 1 April 2016, the *Tax and Superannuation Laws Amendment (2015 Measures No 5) Act 2015* makes changes to the FBTAA to limit the concessional treatment of salary packaged entertainment benefits (for both meal entertainment and entertainment facility leasing expenses) by:

- removing the subsection 5E(3) reporting exclusion in respect of salary packaged entertainment benefits so that these benefits now form part of the employee's individual fringe benefits amount under section 5E
- removing access to the Division 9A and section 152B elections, and
- introducing a \$5,000 cap on the grossed-up value of salary packaged entertainment benefits under subsections 5B(1E) and 5B(1M).

28B. For employers subject to the provisions of section 57A, the provision of salary packaged entertainment benefits are capped at \$5,000 of the grossed-up taxable value of fringe benefits for each employee. Any salary packaged entertainment benefits that exceed this cap will be included in the general cap of either \$17,667 or \$31,177 for the FBT year commencing 1 April 2016. This is because of the interaction between section 57A and subsection 5B(1L). For benefits

⁶ This threshold is increased to \$17,667 for the FBT years ending 31 March 2016 and 31 March 2017.

⁷ This threshold is increased to \$31,177 for the FBT years ending 31 March 2016 and 31 March 2017.

provided from 1 April 2016, step 1 of the method statement in subsection 5B(1L) no longer disregards the provision of salary packaged entertainment in calculating an employer's fringe benefits taxable amount.⁸

28C. The benefit is a 'tax exempt body entertainment benefit' under section 38 which applies when a not-for-profit employer incurs non-deductible expenditure on entertainment of an employee or associate of an employee. Elections under Division 9A of Part III no longer apply where there is a salary packaging arrangement.⁹

28D. In relation to salary packaged entertainment benefits provided from 1 April 2016, under part XIB, the employer will be required to include the grossed-up taxable value of salary packaged entertainment 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.

9. Paragraph 29 (Detailed Contents List)

Omit:

Ruling **16**

Insert:

Ruling **15A**

Salary packaged meal entertainment benefits provided on or before 31 March 2016 **15A**

Salary packaged meal entertainment benefits provided from 1 April 2016 **18A**

Salary packaged meal entertainment benefits provided on or before 31 March 2016 **21**

Salary packaged meal entertainment benefits provided from 1 April 2016 **28A**

10. Subject references

Omit the references.

11. Legislative references

Insert

- FBTAA 1986 5B(1E)
- FBTAA 1986 5B(1M)

⁸ Subsection 5B(1L) continues to apply to non- salary packaged entertainment expenses and car parking benefits.

⁹ Refer to paragraph 37AC(b).

- FBTA 1986 5B(1M)(a)
- FBTA 1986 37AC
- FBTA 1986 37AC(b)
- FBTA 1986 38
- FBTA 1986 39
- Tax and Superannuation Laws Amendment (2015 Measures No. 5) Act 2015

This Addendum applies on and from 1 April 2016.

Commissioner of Taxation

1 June 2016

ATO references

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Other
Fringe benefits tax ~~ Not for profit ~~ Exemptions and
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promotion charities
Fringe benefits tax ~~ Not for profit ~~ Exemptions and
concessions ~~ Public hospitals and ambulance
Fringe benefits tax ~~ Tax-exempt body entertainment
benefits ~~ Taxable value

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