


CR 2006/47 - Fringe benefits tax: employer clients of SmartSalary Pty Limited that make use of a Meal Entertainment Purchasing Card facility

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Class Ruling

Fringe benefits tax: employer clients of SmartSalary Pty Limited that make use of a Meal Entertainment Purchasing 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, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are 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 sections 5C, 37AD, 37B and 149A of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA).

Class of entities

3. The class of entities to which this Ruling applies are employers not subject to the provisions of section 57A of the FBTAA who enter into a salary packaging arrangement with SmartSalary Pty Limited (the promoter). Employees of those employers may be provided with a Meal Entertainment Purchasing Card (Meal Card) under an arrangement made with the promoter.

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 12 to 22 of this Ruling.
6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:
 - this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
 - this Ruling may be withdrawn or modified.
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Date of effect

8. This Ruling applies from 1 April 2006. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:
 - it is not later withdrawn by notice in the *Gazette*; or
 - the relevant provisions are not amended.
9. If this Class Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).
10. If this Class Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Class Ruling is made, the following two conditions are met:
 - the income year or other period to which the rulings relate has not begun; and
 - the scheme to which the rulings relate has not begun to be carried out.

11. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

12. The scheme that is the subject of the Ruling is described below and is based on the documents listed below. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the scheme are:

- Meal Entertainment Purchasing Card overview document.
- SmartSalary Staff Benefits Card Facility Terms & Conditions.
- Letter of Offer — Staff Benefits Card Facility, dated 13 June 2005 from the financial institution to SmartSalary Pty Limited.
- SmartSalary Staff Benefits Cards Product Disclosure Statement, dated April 2006 (the PDS).
- SmartSalary Functional Specification: Meal & Entertainment Debit Card File Imports: Version 1, dated 2 September 2005.
- Salary Packaging Services for Employer Agreement form between SmartSalary Pty Limited and an employer legal entity, dated 24 May 2005 (SmartSalary salary packaging agreement).
- SmartSalary Meal Entertainment Form.
- Further information received in a letter dated 4 April 2006.

Note: certain information received from the applicant has been provided on a commercial-in-confidence basis and will not be disclosed or released by the Tax Office under the freedom of information legislation.

13. The promoter operates a business which provides salary packaging services to employers. The promoter proposes to enter into an agreement with a financial institution to issue a Meal Card to employees of employers not subject to section 57A of the FBTA.

14. The employer operates an account with the financial institution and deposits funds into the account on an agreed regular cycle. The promoter has withdrawal access to this account.

15. The promoter transfers funds from this account to the employee's Meal Card account in accordance with an effective salary sacrifice arrangement. This increases the balance of funds available on the Meal Card account.

16. Payments (up to an employee's agreed salary sacrifice value) can only be made to the card account by the promoter on behalf of the employer by means of the 'account holder's contribution'. This is defined in the PDS to mean the amount agreed between the account holder and the promoter to be paid by the promoter to the card account on behalf of the employer.

17. The Meal Card is a credit card with a \$1 credit limit.

18. The Meal Card is effectively a debit card, as each purchase reduces the available value on the Meal Card. Other than the \$1 credit limit, an employee or their associate cannot spend more than the value on the Meal Card as represented by the money transfers put onto the Meal Card by the promoter.

19. An employee is only permitted to use the Meal Card to purchase meal entertainment, as defined in section 37AD of the FBTA, from participating merchants. Payment to a merchant is made from the Meal Card account on verification of the employee's signature.

20. An employee is prohibited from using the Meal Card to obtain cash advances.

21. The rules under which the Meal Card is issued will permit an employee and their associate to both have a Meal Card simultaneously if desired.

22. On termination of employment, the employee is given one month to use any credit balance on the Meal Card account prior to the promoter notifying the financial institution to close the Meal Card account. Any credit balance remaining on closure of the Meal Card account will be forwarded by the financial institution to the employer for payment to the employee as salary or wages subject to the pay as you go (PAYG) provisions.

Ruling

23. The use of the Meal Card for the acquisition of entertainment by way of food or drink constitutes the provision of meal entertainment as defined in section 37AD of the FBTA.

24. Where the requirements of Division 111 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) are met, the fringe benefits provided will be GST-creditable benefits pursuant to section 149A of the FBTA. As such, they will be type 1 fringe benefits for the purposes of section 5C of the FBTA.

25. Where an employer makes an election under section 37B of the FBTA, 50% of the employer's total meal entertainment expenditure in the relevant year of tax is GST-creditable pursuant to section 149A of the FBTA.

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.***

26. Section 37AD of the FBTAA defines the meaning of the phrase 'provision of meal entertainment'. This section refers amongst other things, to the provision of entertainment by way of food or drink, or the payment or reimbursement of such expenses.

27. The first limb of the expense payment benefit provisions of Division 5 of Part III of the FBTAA provides that where a person (the provider) makes a payment in discharge, in whole or in part, of an obligation of another person (the recipient) to pay an amount to a third person in respect of expenditure incurred by the recipient, the making of that payment gives rise to an expense payment benefit.

28. The payment of the amount charged to the Meal Card in a particular transaction is a payment for the provision of meal entertainment and falls within the meaning of the provision of meal entertainment as provided in paragraph 37AD(c) of the FBTAA.

29. Under the scheme, the obligation that is discharged is the employee's obligation to the merchant. The employee incurs an expense to a merchant when the employee makes a charge on the Meal Card by authorising a transaction, that is, by signing for a purchase of food or drink that comes within the definition of the provision of meal entertainment. The financial institution then uses the credit available on a Meal Card account to pay the merchant. When the credit on the account is applied to the expense, the elements of paragraph 20(a) of the FBTAA are satisfied and an expense payment benefit arises.

30. Meal entertainment can be taxed under various provisions of the FBTAA, for example Division 9 of Part III Board fringe benefits. Regardless of which provision the meal entertainment is taxed under, it will still constitute the provision of meal entertainment for the purposes of Division 9A of Part III of the FBTAA.

31. Taxation Ruling TR 2001/2 points out 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 for that benefit and that a GST-creditable benefit arises where the provider is entitled to an input tax credit because of:

- the operation of Division 111 of the GST Act; or
- because the fringe benefit is a 'thing' that was acquired or imported by the provider.

32. The second point in the paragraph above 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, we have a reimbursement for the purposes of the GST Act. Consequently, we need only consider the first point of the paragraph above.

33. Paragraph 86 of Goods and Services Tax Ruling GSTR 2001/3 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 that constitutes an expense payment benefit.

34. Paragraph 87 of GSTR 2001/3 points out, amongst other things, that the expense payment benefit in these circumstances is not a creditable acquisition unless the supply of the thing acquired by the employee is a taxable supply.

35. Paragraph 89 of GSTR 2001/3 (note Addendum to Ruling issued 18 December 2002) points out 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.

36. Paragraph 88 of GSTR 2001/3 points out that one of the conditions which could prevent the acquisition from being a creditable acquisition is the application of the special rules set out in Division 69 of the GST Act.

37. An acquisition is not a creditable 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 *Income Tax Assessment Act 1997* (ITAA 1997).

38. Paragraph 97 of GSTR 2001/3 explains that:

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)...

39. Thus, where the requirements of Division 111 of the GST Act are met, the provision of meal entertainment as described in the scheme will be GST-creditable benefits for the purposes of section 149A of the FBTAA, such that they are regarded as type 1 fringe benefits for the purposes of section 5C of the FBTAA.

40. Where an employer incurs meal entertainment expenses, the employer may elect to apply Division 9A of Part III of the FBTAA for determining the taxable value of their meal entertainment fringe benefits for the fringe benefits tax year. If an employer makes the FBT election, only 50% of the meal entertainment expenditure is deductible under section 51AEA of the *Income Tax Assessment Act 1936* (ITAA 1936). Consequently, only 50% of the employer's meal entertainment expenditure is GST-creditable pursuant to section 149A of the FBTAA. GSTR 2001/3 explains this in more detail as follows:

102. Where you have incurred meal entertainment expenses or entertainment facility leasing expenses, you may elect to apply Division 9A of Part III or section 152B of the FBTAA in working out your fringe benefits tax liability for the FBT year. Where you make this election, the taxable value of a meal entertainment benefit can be calculated by using either a 50/50 split method or by a 12 week register method. You can also elect to use the 50/50 split method to calculate the taxable value of your entertainment facility leasing expenses.

103. Where the FBT election is made, the employer will be entitled to a part deduction for the expenses under section 51AEA, 51AEB or 51AEC of the ITAA 1936.

104. For GST purposes, an acquisition or importation of goods that constitutes meal entertainment or entertainment facility leasing will only be available for an input tax credit to the extent that it is deductible under sections 51AEA, 51AEB, and 51AEC of the ITAA 1936.

41. This Ruling only applies to meal entertainment benefits provided to employees (and associates) as described in the scheme. Where employers who are subject to the provisions of section 57A of the FBTAA provide meal entertainment benefits under similar schemes, a ruling on such schemes is contained in Class Ruling CR 2006/48.

Appendix 2 – Detailed contents list

42. Below is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

CR 2006/48; GSTR 2001/3;
GSTR 2001/3A; TR 2001/2

Subject References

- class rulings
- entertainment expenses
- expense payment fringe benefits
- FBT expense payment
- FBT meal entertainment
- FBT salary packaging
- FBT salary sacrifice
- fringe benefit
- fringe benefits tax

Legislative references:

- Copyright Act 1968
- TAA 1953

- TAA 1953 Sch 1 357-75(1)
- ANTS(GST)A 1999 Div 69
- ANTS(GST)A 1999 Div 111
- FBTA 1986 5C
- FBTA 1986 Pt III Div 5
- FBTA 1986 20(a)
- FBTA 1986 Pt III Div 9A
- FBTA 1986 37AD
- FBTA 1986 37AD(c)
- FBTA 1986 37B
- FBTA 1986 57A
- FBTA 1986 149A
- FBTA 1986 149A(2)
- FBTA 1986 152B
- ITAA 1997 8-1
- ITAA 1997 32-5
- ITAA 1997 32-20
- ITAA 1936 51AEA
- ITAA 1936 51AEB
- ITAA 1936 51AEC

ATO references

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