



CR 2006/81 - Fringe benefits tax and income tax: employer clients of Sodexho Australia Pty Ltd or Universal Sodexho Pty Ltd that make use of the Sodexho 'SmartPay' card facility

 This cover sheet is provided for information only. It does not form part of *CR 2006/81 - Fringe benefits tax and income tax: employer clients of Sodexho Australia Pty Ltd or Universal Sodexho Pty Ltd that make use of the Sodexho 'SmartPay' card facility*

 This document has changed over time. This is a consolidated version of the ruling which was published on *1 April 2006*



Class Ruling

Fringe benefits tax and income tax: employer clients of Sodexho Australia Pty Ltd or Universal Sodexho Pty Ltd that make use of the Sodexho 'SmartPay' card facility

Contents	Para
BINDING SECTION:	
What this Ruling is about	1
Date of effect	8
Scheme	12
Ruling	23
NON BINDING SECTION:	
Appendix 1:	
<i>Explanation</i>	26
Appendix 2:	
<i>Detailed contents list</i>	43

ⓘ 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:

- section 37AD of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA);
- section 41 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA); and
- section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997).

Class of entities

3. The class of entities to which this Ruling applies to are those employers who enter into a service agreement with Sodexho Australia Pty Ltd or Universal Sodexho Pty Ltd (the Sodexho companies). Employees of these employers may be provided with a Sodexho SmartPay card which will facilitate the provision of food or drink.

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.

7. This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to:

Commonwealth Copyright Administration
Attorney General's Department
Robert Garran Offices
National Circuit
Barton ACT 2600

or posted at: <http://www.ag.gov.au/cca>

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 the documents incorporated into this description of the scheme are:

- Draft services agreement between Sodexho Australia Pty Ltd or Universal Sodexho Pty Limited and their employer clients titled 'Schedule D – additional clauses';
- Sodexho SmartPay document titled 'Sodexho SmartPay Terms and Conditions';
- Sodexho SmartPay document titled 'Client In-House Dining Benefit Election'; and
- Sodexho SmartPay document titled: 'Sodexho SmartPay FAQ's'.

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 Sodexho companies are part of the Sodexho Alliance, a food and management services group, providing services including in-house catering to clients in Australia.

14. The Sodexho companies offer certain clients at sites, where the Sodexho companies provide an in-house catering service, with a point of sale system linked to a system known as 'Sodexho Smartpay'.

15. The use of a SmartPay card system assists the Sodexho companies' employer clients with the administration of the provision of food and/or drink to the employer's employees under a salary sacrifice arrangement. The system will ensure that the value of the food or drink provided does not exceed the total amount salary sacrificed by the employee.

16. The food and/or drink will be provided to, and consumed by, the employer's current employees on a working day at an in-house dining facility located on the employer's business premises. The employer's business premises constitute 'business premises' as described in Taxation Ruling TR 2000/4 Fringe benefits tax: meaning of 'business premises' and the employer's in-house dining facility fulfils the requirements of an 'in-house dining facility' as defined in section 32-55 of the *Income Tax Assessment Act 1997*.

17. The employer will deposit the pre-arranged salary sacrificed amounts into an account (Sodexho SmartPay Bank account) held by the Sodexho companies for which the Sodexho companies have drawing rights.

18. The food to be provided to the employees will be either 'hand-food' or 'non-elaborate single course meals'. Drinks may also be provided, however these will not include alcohol.

19. There is no credit facility associated with the SmartPay card so the employee can only obtain the food or drink up to the unused amount salary sacrificed at that time.

20. The SmartPay card is issued by, and remains the property of, the employer and is not transferable.

21. If the relevant employees either cease salary packaging or leave the employer's employment, the SmartPay card account is closed and any 'unused credits' will be forwarded to the employer for payment to the employee as salary or wages subject to the pay as you go (PAYG) provisions.

22. All employees participating in the SmartPay card scheme must have a completed client in-house dining benefit election, with the relevant information provided to the Sodexho companies.

Ruling

23. The provision of food or drink to employees, facilitated by the SmartPay card system under the scheme described at paragraphs 12 to 22 of this Ruling, will not constitute 'entertainment', nor the 'provision of meal entertainment' for the purposes of Division 9A of Part III of the FBTA.

24. The provision of food or drink to employees, facilitated by the SmartPay card system under the scheme described at paragraphs 12 to 22 of this Ruling, will constitute exempt property benefits under section 41 of the FBTAA.

25. The cost of providing food or drink to employees, facilitated by the SmartPay card system under the scheme described at paragraphs 12 to 22 of this Ruling, is deductible to the relevant employers under section 8-1 of the ITAA 1997.

Commissioner of Taxation

30 August 2006

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.*

Meal entertainment

26. For the purposes of Division 9A of Part III of the FBTAA, section 37AD of the FBTAA defines the expression 'provision of meal entertainment' by reference to three circumstances:

- the provision of entertainment by way of food or drink;
- the provision of accommodation or travel in connection with or facilitating the provision of entertainment by way of food or drink; or
- the payment or reimbursement of expenses incurred in providing entertainment by way of food or drink or related accommodation or travel.

27. Subsection 136(1) of the FBTAA provides that the term 'entertainment' has the meaning given by section 32-10 of the ITAA 1997. Section 32-10 of the ITAA 1997 states:

- (1) Entertainment means:
 - (a) entertainment by way of food, drink or recreation; or
 - (b) accommodation or travel to do with providing entertainment by way of food, drink or recreation.
- (2) You are taken to provide **entertainment** even if business discussions or transactions occur.

28. The meaning of entertainment is discussed in TR 97/17 Income tax and fringe benefits tax: entertainment by way of food or drink. Paragraph 7 of the Ruling sets out the criteria for determining whether the provision of food or drink results in the provision of entertainment. In making the decision the following should be considered:

- why the food or drink is being provided;
- what type of food or drink is being provided;
- when that food or drink is being provided; and
- where the food or drink is being provided.

29. Paragraph 19 of TR 97/17 states:

We have expressed this view previously, for example, in Taxation Ruling IT 2675. That Ruling considers that the provision of morning and afternoon tea to employees (and associates of employees) on a working day, either on the employer's premises or at a worksite of the employer, is not entertainment. The provision of light meals (finger food, etc.), for example in the context of providing a working lunch, is not considered to be entertainment. The provision of food or drink in these circumstances does not confer entertainment on the recipient.

30. IT 2675 Income tax and fringe benefits tax: entertainment – morning and afternoon teas; light meals; and in-house dining facilities, also states at paragraph 6 that:

Morning and afternoon tea includes light refreshments such as, coffee, fruit drinks, cakes and biscuits, etc., but does not include alcohol.

31. The provision of food or drink in these circumstances does not confer entertainment on the recipient. The relevant employees in this case will receive food that is either 'hand-food' or 'non-elaborate single course meals' and the drinks they receive will be non-alcoholic. Both the food and/or drink will only be provided at an in-house dining facility on the employer's business premises and only during working hours. It is considered, therefore, that in such circumstances the provision of the food or drink to the relevant employees does not constitute 'entertainment by way of food or drink'.

32. The food or drink provided under the scheme as described in paragraphs 12 to 22 of this Ruling will be excluded from the 'provision of meal entertainment' as defined in section 37AD of the FBTA.

Exempt benefit

33. Section 41 of the FBTA provides an exemption for property benefits under certain conditions. These conditions are that:

- the benefit provided is a property benefit;
- the property benefit is provided to a current employee of an employer;
- the property benefit is provided in respect of the employee's employment;
- the relevant property is provided to the employee on a working day;
- the relevant property is consumed by the employee on a working day; and
- the property is provided to the employee on the business premises of the employer (and if the employer is a company this would include a company related to the employer).

34. Section 40 of the FBTAA states that a property benefit arises where a person provides property to another person. 'Property' is defined in subsection 136(1) of the FBTAA to include both tangible and intangible property. 'Tangible property' is also defined in subsection 136(1) of the FBTAA as meaning 'goods'.

35. The extent and type of food and drink being provided together with the timing, place and the other conditions of their provision determines that such food or drink is considered to be property benefits under section 40 of the FBTAA unless otherwise exempted.

36. The provision of the food or drink will be exempt under section 41 of the FBTAA as all the necessary conditions as outlined in paragraph 33 of this Ruling have been satisfied.

Income tax deduction for the employer

37. TR 97/17 states the following:

41. The provision of food or drink to an employee that does not amount to meal entertainment is deductible to the employer under section 8-1 of the ITAA, whether or not it is subject to FBT.

38. The food or drink provided to an employee under the scheme as described in paragraphs 12 to 22 of this Ruling does not amount to meal entertainment and as such is deductible to an employer under section 8-1 of the ITAA 1997.

39. TR 97/17, also states the following:

46. Section 32-20 of the ITAA does not apply to allow a deduction under section 8-1 where the benefit is an exempt benefit. However the expenditure may still be deductible under section 8-1 if one of the exclusions contained in Subdivision 32-B applies.

47. For example, the cost of providing food or drink to your employees in an in-house dining facility (not at a party, reception or social function) is an allowable income tax deduction under section 8-1 because of the operation of item 1.1 of the table in section 32-30 of the ITAA...Item 1.1 of the table in section 32-30 applies even though the food or drink provided in the 'in-house dining facility' is also an exempt benefit under the provisions of section 41 of the FBTAA.

40. Section 32-55 of the ITAA 1997 defines an 'in-house dining facility' as:

An *in-house dining facility* is a canteen, dining room or similar facility that:

- (a) is on property you occupy; and
- (b) is operated mainly for providing food and drink to your employees; and
- (c) is not open to the public.

41. The food or drink in this case will be provided at premises that are within the definition of an 'in-house dining facility' in section 32-55 of the ITAA 1997. The food or drink is either 'hand-food' or 'non-elaborate single course meals' and the drinks will not include alcohol and as such it is not provided at either a party, reception or other social function.

42. Accordingly, the provision of such food or drink will be a deduction to the employer under section 8-1 of the ITAA 1997.

Appendix 2 – Detailed contents list

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

	Paragraph
What this Ruling is about	1
Relevant provision(s)	2
Class of entities	3
Qualifications	4
Date of effect	8
Scheme	12
Ruling	23
Appendix 1 – Explanation	26
Meal entertainment	26
Exempt benefit	33
Income tax deduction for the employer	37
Appendix 2 – Detailed contents list	43

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

IT 2675; TR 97/17; TR 2000/4

Subject references:

- business premises
- exempt benefits
- exempt property benefits
- FBT salary sacrifice
- FBT meal entertainment
- fringe benefits tax
- fringe benefits
- in-house dining facility
- property benefits

Legislative references:

- Copyright Act 1968
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- FBTA 1986 Pt III Div 9A
- FBTA 1986 37AD
- FBTA 1986 40
- FBTA 1986 41
- FBTA 1986 136(1)
- ITAA 1997 8-1
- ITAA 1997 32-10
- ITAA 1997 Subdiv 32B
- ITAA 1997 32-20
- ITAA 1997 32-30
- ITAA 1997 32-55

ATO references

NO: 2006/15322

ISSN: 1445-2014

ATOLaw topic: Fringe Benefits Tax -- Exempt property benefits
Income Tax -- Deductions -- expenses incurred by
employer for employees