



CR 2007/15 - Fringe benefits tax: employer clients of Community Sector Banking Pty Ltd who are subject to the provisions of section 57A of the Fringe Benefits Tax Assessment Act 1986 that make use of a CSB Salary Benefit Card Account facility

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 This document has changed over time. This is a consolidated version of the ruling which was published on *8 June 2016*



Class Ruling

Fringe benefits tax: employer clients of Community Sector Banking Pty Ltd who are subject to the provisions of section 57A of the *Fringe Benefits Tax Assessment Act 1986* that make use of a CSB Salary Benefit Card Account 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 (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided 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.

[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 with in this Ruling are:
- subsection 5B(1E) of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA)
 - subsection 5B(1M) of the FBTAA
 - paragraph 5B(1M)(a) of the FBTAA

- section 5C of the FBTA
- subsection 5E(3) of the FBTA
- section 5E(3)(a) of the FBTA
- section 20 of the FBTA
- Division 9A of Part III of the FBTA
- section 37AC of the FBTA
- paragraph 37AC(c) of the FBTA
- section 37AD of the FBTA
- section 38 of the FBTA
- section 39 of the FBTA
- section 40 of the FBTA
- section 45 of the FBTA
- section 57A of the FBTA
- Part XIB of the FBTA
- subsection 149A(2) of the FBTA, and
- section 152B of the FBTA.

All references in this Ruling are to the FBTA unless otherwise stated.

Class of entities

3. The class of entities to which this Ruling applies are employers subject to the provisions of section 57A who enter into an agreement with Community Sector Banking Pty Ltd (the financial institution) to make use of a Salary Benefit Card Account facility.

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 19 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. 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 this 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:

- further information received on 23 November 2006, including:
 - email template which is forwarded to interested employers;
 - Community Sector Banking Salary Benefits Card information document; and
 - Community Sector Banking Salary Benefits Card Common Questions and Answers; and
- further information received on 7 December 2006, including:
 - Community Sector Banking Salary Benefit Card Application form dated April 2006;
 - Community Sector Banking Business Accounts and Facilities Terms and Conditions dated 1 November 2006;
 - Salary Packaging Participation Agreement form;
 - Community Sector Banking CSB Client information booklet; and
 - Community Sector Banking CSB Salary Benefit Card brochure.

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. An employer applies to the financial institution for a Salary Benefit Card Account (the account). The account will be opened under the employer's customer record.

14. Employees of the employer may apply to the financial institution for a Payments Card (the card). Each employee will be an additional cardholder to the account. Spouse and partner cards can be issued where required.

15. An employer enters into an effective salary sacrifice arrangement with each participating employee and sets aside a salary sacrificed amount for each employee. Employees use the card to draw down on funds to pay for goods or services. These products and services are settled from the account.

16. The card is based on a Visa Debit Card and has a zero credit limit.

17. The following will not be permitted under the card:

- cash withdrawals;
- ATM withdrawals;
- chequebook facilities;

- transfer of funds into other personal accounts;
- in Branch transactions; and
- Internet banking.

18. An employer is liable for any obligation incurred by its employee's use of the card. Ultimate ownership of the card remains with the employer at all times and it is their responsibility.

19. If there is any remaining credit in the account on termination of employment, it is the employer's decision to pay the remainder out to the employee either as salary subject to tax withholding rules or other form of benefit.

Ruling

Salary packaged benefits provided on or before 31 March 2016

19A. Paragraphs 20 to 24A of this Ruling (and paragraphs 25 to 43A of the Explanation section) apply to benefits provided on or before 31 March 2016 and refer to provisions in the FBTAA before the application of the *Tax and Superannuation Laws Amendment (2015 Measures No. 5) Act 2015*.¹

20. A payment by the employer into the account in respect of an employee does not constitute an expense payment benefit for the purposes of section 20.

21. The use of the card by an employee or associate of the employee to purchase goods or services gives rise to benefits including tax-exempt body entertainment benefits under section 38, property benefits under section 40 or residual benefits under section 45.

22. Where the value of the benefits provided to an employee during the fringe benefits tax year does not exceed the relevant threshold specified in subsection 5B(1E) they will constitute exempt benefits under section 57A.

23. The employer is liable for fringe benefits tax on the value of benefits provided in excess of the relevant threshold specified in subsection 5B(1E).

24. A benefit will be a GST-creditable benefit if the requirements of subsection 149A(2) are satisfied. Such a benefit will be a type 1 benefit for the purposes of section 5C. Where the requirements of this subsection are not satisfied, the benefit will not be a GST-creditable benefit and thus a type 2 benefit.

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

24A. The provision of meal entertainment on or before 31 March 2016 is an excluded fringe benefit for the purposes of paragraph 5E(3)(a). As such, the value of the benefit is excluded from the reportable fringe benefits provisions in Part XIB.

Salary packaged benefits provided from 1 April 2016

24B. Paragraphs 24C to 24K of this Ruling (and paragraphs 25 to 38 and 43B to 43E of the Explanation section) apply to benefits provided from 1 April 2016 and refer to provisions in the FBTAA following the application of the *Tax and Superannuation Laws Amendment (2015 Measures No. 5) Act 2015*.

24C. 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.

24D. The provision of meal entertainment by way of the card gives rise to an exempt benefit under section 57A.

24E. 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.

24F. The meal entertainment is provided under a salary packaging arrangement² as described in paragraph 37AC(c). As a result Division 9A of Part III (election for meal entertainment expenses) cannot apply.

24G. 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.

24H. 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).

24I. 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

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).

salary packaged entertainment facility leasing expenses covered by subsection 5B(1M).

24J. 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

24K. 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.

Commissioner of Taxation

7 March 2007

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

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.*

25. According to section 20 an expense payment benefit may arise where a person, in this case an employer:

- 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 an amount of expenditure incurred by the recipient; or
- reimburses the recipient, in whole or in part, in respect of an amount of expenditure incurred by the recipient.

26. Thus, an expense payment benefit can only exist where the recipient of the benefit, in this case the employee (or associate), has incurred expenditure. The payment or reimbursement must be referable to that expense incurred by the employee.

27. The payment by the employer into the account under the scheme is not referable to:

- an employee obligation to the financial institution in respect of expenditure incurred by the employee; or
- an employee obligation to any other person in respect of expenditure incurred by the employee.

28. Under the scheme:

- the account is owned by the employer;
- the employee is an additional cardholder; and
- the card that is issued to the employee has a zero credit limit.

29. When the employer makes a payment into the account, the employer is merely meeting its obligations to make such payments under agreements with the financial institution and the employee. No expense payment benefit arises at that time.

30. The fact that some or all of the funds in this account may subsequently be used to pay for purchases made by the employee does not change the employer’s payment into the account to that of an ‘expense payment benefit’.

31. The employer is not making the payment into the account to discharge an obligation of the employee to another person for an expense he or she may later incur. This is evidenced by the fact that an employee may potentially not even use any of the money during the year.

32. Under the scheme the account is opened under the employer's customer record and is controlled and maintained by the employer. Ultimate ownership of the card remains with the employer at all times and it is their responsibility. Using the card in his or her capacity as an additional cardholder, the employee does not incur any expenditure to have an obligation to another person. It is the employer who incurs the expenditure and any obligation will be that of the employer.

33. Under the scheme, the obligation that is discharged by payment of the amount charged to the account in a particular transaction is the employer's obligation to the merchant. The employer incurs an expense to a merchant when the employee purchases a good or a service. The financial institution then uses the credit available on the employer's account to pay the merchant.

34. As it is the employer and not the employee who incurs the expense, the elements of paragraph 20(a) are not satisfied and an expense payment benefit does not arise.

35. The use of the card by an employee or associate of the employee to purchase goods or services gives rise to benefits including tax-exempt body entertainment benefits under section 38, property benefits under section 40 or residual benefits under section 45. Where no exemption under the FBTAA applies, such benefits will constitute fringe benefits as defined in subsection 136(1).

36. Section 57A provides that certain employers are generally exempt from fringe benefits tax. This section applies to employers that are public benevolent institutions, certain hospitals, public ambulance services (or a supporting service) and charitable institutions that promote the prevention or the control of diseases in humans.

37. Public and non-profit hospitals and ambulance services (or a supporting service) have a capping threshold placed on the value of benefits exempt from fringe benefits tax that may be provided to employees. This threshold is \$17,000⁶ grossed-up taxable value per employee. Such employers are liable for fringe benefits tax on the value of benefits provided in excess of this threshold.

38. All other employers to which section 57A applies have a capping threshold of \$30,000⁷ grossed-up taxable value per employee. Such employers are liable for fringe benefits tax on the value of benefits provided in excess of this threshold.

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 years ended 31 March 2016 and 31 March 2017.

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

39. Tax-exempt body entertainment benefits includes meal entertainment and non-meal entertainment. For employers subject to the provisions of section 57A, meal entertainment is always an exempt benefit because of the interaction between section 57A and subsection 5B(1L). Step 1 of the method statement in subsection 5B(1L) specifically disregards the taxable value of the provision of meal entertainment for the purposes of determining exposure to the capping thresholds.

40. To determine whether a benefit provided under this scheme is a type 1 or type 2 benefit for the purposes of section 5C, it is necessary to ascertain whether the benefit is a GST-creditable benefit as defined in section 149A.

41. Taxation Ruling TR 2001/2⁸ points out that for the purposes of section 149A, 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 *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.

42. The first point in paragraph 41 of this Ruling does not apply to this scheme as subsection 149A(1) only applies where there is a reimbursement to an employee and the provider is entitled to an input tax credit under Division 111 of the GST Act. In this case there is no reimbursement for the purposes of the GST Act. Consequently, employers need only consider the second point of paragraph 41 of this Ruling.

43. A benefit will be a GST-creditable benefit if the requirements of subsection 149A(2) are satisfied. Such a benefit will be a type 1 benefit for the purposes of section 5C. Where the requirements are not satisfied, the benefit will not be a GST-creditable benefit and thus a type 2 benefit for the purposes of section 5C.

43A. Part XIB requires the taxable values of certain benefits to be included in the reportable fringe benefits amount of the relevant employee. To the extent that the benefit is the provision of meal entertainment on or before 31 March 2016, paragraph 5E(3)(a) will apply to make the benefit an excluded benefit. This conclusion holds regardless of whether or not the employer has elected that Division 9A of Part III applies. Thus the value of the meal entertainment benefits is not included in the reportable fringe benefits amount of the employees.

⁸ 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.*

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

43B. 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).

43C. 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.

43D. 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*.

Salary packaged meal entertainment benefits provided from 1 April 2016

43E. 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).

43F. 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 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,⁹

43G. 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.¹⁰

43H. 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 Subsection 5B(1L) continues to apply to non- salary packaged entertainment and car parking benefits.

¹⁰ Refer to paragraph 37AC(c).

Appendix 2 – Detailed contents list

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

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References

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| <i>Previous draft:</i> | - FBTAA 1986 20(a) |
| Not previously issued as a draft | - FBTAA 1986 Pt III Div 9A |
| | - FBTAA 1986 37AC |
| <i>Related Rulings/Determinations:</i> | - FBTAA 1986 37AC(c) |
| TR 2001/2 | - FBTAA 1986 37AD |
| | - FBTAA 1986 38 |
| <i>Subject references:</i> | - FBTAA 1986 39 |
| - class rulings | - FBTAA 1986 40 |
| - expense payment benefits | - FBTAA 1986 45 |
| - FBT salary packaging | - FBTAA 1986 57A |
| - FBT salary sacrifice | - FBTAA 1986 Pt XIB |
| - fringe benefit | - FBTAA 1986 136(1) |
| - fringe benefits tax | - FBTAA 1986 149A |
| - property benefits | - FBTAA 1986 149A(1) |
| - residual benefits | - FBTAA 1986 149A(2) |
| | - FBTAA 1986 152B |
| <i>Legislative references:</i> | - TAA 1953 |
| - FBTAA 1986 5B(1E) | - TAA 1953 Sch 1 357-75(1) |
| - FBTAA 1986 5B(1L) | - TAA 1953 Sch 1 382-5 |
| - FBTAA 1986 5B(1M) | - ANTS(GST)A 1999 Div 111 |
| - FBTAA 1986 5B(1M)(a) | - ANTS (GST)A 1999 29-80 |
| - FBTAA 1986 5C | - ANTS (GST)R 1999 29-80.01 |
| - FBTAA 1986 5E(3) | - Copyright Act 1968 |
| - FBTAA 1986 5E(3)(a) | - Tax and Superannuation Laws Amendment (2015 Measures No 5) |
| - FBTAA 1986 20 | Act 2015 |

ATO references

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