CR 2007/16 - Fringe benefits tax: employer clients of PBI Benefit Solutions Pty Ltd who are subject to the provisions of section 57A of the Fringe Benefits Tax Assessment Act 1986 whose employees make use of an Employee Benefits Card (Meal Entertainment) facility

This document has changed over time. This is a consolidated version of the ruling which was published on *5 December 2007*

Class Ruling

Fringe benefits tax: employer clients of PBI Benefit Solutions Pty Ltd who are subject to the provisions of section 57A of the *Fringe Benefits Tax Assessment Act 1986* whose employees make use of an Employee Benefits Card (Meal Entertainment) facility

Contents Para

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 Tax Office 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);
- paragraph 5E(3)(a) of the FBTAA;

- section 37AD of the FBTAA;
- section 57A of the FBTAA; and
- section 149A of the FBTAA.

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

Class of entities

3. The class of entities to which this Ruling applies are employers who are subject to the provisions of section 57A and who enter into an Employee Benefits Card facility with a financial institution under an arrangement with PBI Benefit Solutions Pty Ltd. Employees of those employers and/or their associates may be provided with a Meal Entertainment Card (the card).

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 26 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.

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 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:

- Employee Benefits Card – Facility Terms and Conditions of the financial institution effective August 2005, as amended;
- the financial institution's salary sacrifice agreement form used in connection with the scheme;
- the financial institution's brochure current as at April 2006 titled The Meal Entertainment Card – Help yourself to more of your income; and
- the financial institution's brochure current as at April 2006 titled The Meal Entertainment Card – Unlocking tax-free benefits for you, including a Cardholder Request form attached.

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 employer establishes an Employee Benefits Card facility with the financial institution which enables its employees to apply for the card under an effective salary sacrifice agreement entered into with the employer.

14. Employees apply to the financial institution for the card. The card is issued by the financial institution in the employee's name and the employee is primarily liable for payment of any expenses charged on the card. It is a MasterCard or Visa card operating as a credit card within the banking system.

15. A separate card account is established for each employee.

16. An agreed salary sacrifice amount in accordance with the salary sacrifice agreement is transferred each pay cycle by the employer through the electronic banking system to the employee's card account.

17. Employees use the card to pay for meal entertainment expenses. Expenditure amounts are limited to the available funds established by the salary sacrifice transfers. Funds in the card account are only accessible through incurring expenses on the card.

18. Under the salary sacrifice agreement employees agree and declare that they will only use the card to pay for meal entertainment expenses. This is reinforced by the MEC Conditions of Use which also prohibit the use of the card to pay for expenses other than the provision of meal entertainment as defined in section 37AD.

19. Each month employees receive a statement of amounts spent. Employees are primarily liable to pay the total of the amounts spent at each statement date. This total of the account is discharged with the salary sacrifice funds available at each statement date. Any remaining funds available each month are carried forward and added to subsequent salary sacrifice transfers.

20. At the end of the fringe benefits tax (FBT) year the employer reconciles the total amounts charged to each card account from information available from the financial institution.

21. In order to ensure that adequate checks are in place so that the card is only used for meal entertainment expenses, employers will undertake random checks of employee card statements during the FBT year and impose a sanction that an employee's card will be cancelled if the card is not used in accordance with the employee's declaration.

22. Any unspent amounts on the card account are carried forward into the next FBT year.

23. On termination of a card account, including termination of employment, the card is cancelled, amounts spent up to the date of cancellation discharged with available balances and any remaining balance returned to the employer to be reconciled along with other reconciliations on termination of the employee.

24. The card account can be cancelled at any stage by the employer and any unspent money is refunded to the employer. The only rights employees have is to charge meal entertainment expenses on the card up to available balances.

25. Employees cannot transfer amounts or draw cash advances from the card account.

26. While the electronic authorisation required to approve expenses is designed to limit amounts charged on the card to funds available, if there is any overspending arising from small charges being made which do not require authorisation, such overspent amounts will be recovered from the employee's post-tax income or be subject to FBT if the relevant threshold specified in subsection 5B(1E) is exceeded.

Ruling

27. 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.

28. The provision of meal entertainment by way of the card gives rise to an exempt benefit under section 57A. Such benefits are not included in the employer's fringe benefits taxable amount.

29. Benefits that constitute the provision of meal entertainment are disregarded for the purposes of the capping thresholds in determining an employer's aggregate non-exempt amount under subsection 5B(1E).

30. The provision of meal entertainment 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.

31. The provision of meal entertainment that is an exempt benefit under section 57A is not a GST-creditable benefit in terms of section 149A.

Commissioner of Taxation
7 March 2007

Appendix 1 – Explanation

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.

32. Section 37AD 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.

33. The first limb of the expense payment benefit provisions of Division 5 of Part III 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.

34. Each month employees receive a statement of amounts spent. Employees are primarily liable to pay the total of the amounts spent at each statement date. This total of the account is discharged with the salary sacrifice funds available at each statement date.

35. When the credit on the account is applied to the total of the amounts spent at each statement date the elements of paragraph 20(a) are satisfied and an expense payment benefit arises at that time. Such benefits fall within the meaning of the provision of meal entertainment as provided in paragraph 37AD(c).

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 $17,000 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 will have a capping threshold of $30,000 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.

39. However, any employer to which section 57A applies, will not be liable for fringe benefits tax on benefits provided that falls within the meaning of the provision of meal entertainment. This results from the operation of Step 1 of the method statement contained in subsection 5B(1L) which specifically disregards the provision of meal entertainment in calculating an employer's fringe benefits taxable amount.

40. 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.

41. Part XIB requires the taxable values of certain benefits to be included in the reportable fringe benefits amount of the relevant employee. As the use of the card results in the provision of meal entertainment, 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 benefit is not included in the reportable fringe benefits amount of any employee.

42. Taxation Ruling TR 2001/2 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.

43. The second point in paragraph 42 of this Ruling does not apply as subsection 149A(2) 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 in paragraph 42.

44. 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 payment benefit that constitutes an expense payment benefit.

45. 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.

46. 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.

47. The discharging of an employee's debt obligation to the financial institution as described in the scheme involves no more than reimbursing the balance owing on the employee's card account statement. Consistent with paragraph 89 of GSTR 2001/3, this is an input taxed financial supply that does not meet the requirements of Division 111.

48. Further, 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.

49. 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).

50. Division 69 of the GST Act does not apply to disallow input tax credits for entertainment expenses made in providing fringe benefits. Where an employer as mentioned and described in section 57A incurs expenditure in providing meal entertainment benefits to employees, such benefits are exempt benefits and not fringe benefits. Consequently, Division 69 of the GST Act can apply to deny any input tax credits in respect of such expenditure. GSTR 2001/3 explains this in more detail as follows:

> 97. 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).
>
> 98. Although acquisitions and importations made to provide fringe benefits are an exception to the Division 69 denial of deductions for entertainment expenses, exempt benefits are not fringe benefits for these purposes.
>
> 99. Paragraph 69-5(3)(f) disallows any entitlement to input tax credits fro acquisitions and importations for providing entertainment to clients rather than employees. However, to the extent that the acquisitions and importations are made in providing entertainment to employees and are otherwise creditable, Division 69 will not deny those entitlements.

100. Where an entity such as a public benevolent institution provides any benefit to employees which is in respect of employment, section 57A of the FBTAA provides that these are exempt benefits. As the fringe benefit exception rule in section 32-20 of the ITAA 1997 does not apply where entertainment benefits are exempt from FBT, paragraph 69-5(3)(f) (of the GST Act) can apply to deny any input credits for entertainment acquisitions and importations for public benevolent institutions. As subsection 69-5(4) applies the rules in subsection 69-5(3) to entities that are exempt from income tax as if they were subject to that tax, the fact that the benefit is exempt from FBT means that subsection 69-5(3) can apply to these entities in addition to entities that are subject to income tax.

51. Thus, the provision of benefits by way of food or drink as described in the scheme are not GST-creditable benefits for the purposes of section 149A.

Appendix 2 – Detailed contents list

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

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

GSTR 2001/3; GSTR 2001/3A; TR 2001/2

Subject References

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

Legislative references:

- ANTS(GST)A 1999 Div 69
- ANTS(GST)A 1999 69-5(3)
- ANTS(GST)A 1999 69-5(3)(f)
- ANTS(GST)A 1999 69-5(4)
- ANTS(GST)A 1999 Div 111
- FBTAA 1986 5B(1E)
- FBTAA 1986 5B(1L)
- FBTAA 1986 5E(3)(a)
- FBTAA 1986 Pt III Div 5
- FBTAA 1986 20(a)
- FBTAA 1986 Pt III Div 9A
- FBTAA 1986 37AD
- FBTAA 1986 37AD(c)
- FBTAA 1986 57A
- FBTAA 1986 Pt XIB
- FBTAA 1986 149A
- FBTAA 1986 149A(2)
- ITAA 1997 8-1
- ITAA 1997 32-5
- ITAA 1997 32-20
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

ATO references

NO:	2007/3021
ISSN:	1445-2014
ATOlaw topic:	Fringe Benefits Tax ~~ Expense payment fringe benefits