

CR 2007/88 - Fringe benefits tax: employer clients of Shakespeare & Associates who are subject to the provisions of section 57A of the Fringe Benefits Tax Assessment Act 1986 whose employees make use of a Visa Salary Packaging Card (Meal Entertainment) facility

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 This document has changed over time. This is a consolidated version of the ruling which was published on 7 September 2016



Class Ruling

Fringe benefits tax: employer clients of Shakespeare & Associates who are subject to the provisions of section 57A of the *Fringe Benefits Tax Assessment Act 1986* whose employees make use of a Visa Salary Packaging Card (Meal Entertainment) facility

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	8
Scheme	12
Ruling	23A
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
Explanation	28
Appendix 2:	
Detailed contents list	36

❗ 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 (<https://www.ato.gov.au/law>) 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:

- section 5B of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA);
- paragraph 5E(3)(a) of the FBTAA;

- Division 9A of Part III of the FBTAA;
- section 37AC of the FBTAA;
- section 37AD of the FBTAA;
- section 38 of the FBTAA;
- section 39 of the FBTAA;
- section 57A of the FBTAA; and
- Part XIB 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 a Visa Salary Packaging Card (Meal Entertainment) facility with a financial institution under an arrangement with Shakespeare & Associates (the promoter). Employees of those employers may be provided with a Visa Salary Packaging 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 23 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 2007. 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 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 Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the 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 the description. The relevant documents or parts of documents incorporated into this description of the scheme are:

- a draft Salary Packaging Facility Agreement between the Financial Institution and the Salary Sacrifice Service Provider (Shakespeare & Associates) dated October 2006;
- the financial institution's Business Card (Salary Packaging) Facility-Cardholder Application Form;
- the financial institution's Business Card (Salary Packaging) Terms and Conditions effective 11 September 2006;

- the financial institution's Business Card (Salary Packaging) Facility Application Kit version 0906;
- Shakespeare & Associates Salary Packaging Card Product Profile;
- Shakespeare and Associates Meals Entertainment Business Card Conditions of use;
- further information received on 2 May 2007, including:
 - an example of the guidelines for claiming meal entertainment expenses for employees of an employer (effective December 2006);
 - copy of Shakespeare & Associates Meals Entertainment Card – Salary Packaging Guide; and
 - copy of the financial institution's submission regarding identification, cash advance restrictions and deposit restrictions.

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 provides salary packaging services to employers who are subject to the provisions of section 57A. These employers enable employees to apply for the card under an effective salary sacrifice agreement entered into with the employer.

14. The promoter will enter into an agreement with a financial institution to promote the financial institution's Visa Salary Packaging Card (Meal Entertainment) facility as part of the salary packaging services that it provides.

15. An employer who elects to offer the Visa Salary Packaging Card (Meal Entertainment) facility will request the financial institution to establish a card facility.

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

17. Employees apply for a card by completing the application form which is submitted to the employer who approves the issue of the card and verifies the employee's identity. In completing the application the employee acknowledges the use of the card is governed by the Conditions of Use provided with the card.

18. The Conditions of Use agreement signed by the employee as part of their application includes the following conditions:

- the use of the card is limited to the balance held in the card at the time of use;
- no cash advances are allowed from the card;

- the cardholder named on the card is the only authorised user of the card;
- deposits to the card account can only be made by the promoter;
- the card can only be used within Australia;
- the card can only be used for approved transactions identified by merchant code;
- any expenditure deemed not to be meal entertainment will be required to be reimbursed by the employee at the next pay period;
- breaches of the guidelines can result in the card being cancelled; and
- employees when requested are required to provide copies of receipts together with a reconciled copy of the card transactions.

19. The employer is primarily liable for any expenditure incurred using the card including any unauthorised expenditure incurred by the employee.

20. The promoter will establish a bank account for the employer to deposit all funds associated with the provision of the card. The promoter will deduct from the account any administrative fees for its services on a monthly basis and the promoter will be responsible for all costs associated with the use of the card, including any interest and bank charges.

21. The employer must provide to the promoter electronically, in an agreed format and on an agreed date and cycle, a listing of amounts to be allocated to each card, in respect of each employee for meal entertainment expenses. The employer must deposit funds into the account equal to the listing of contributions in respect of each employee on or before the agreed date for providing the listing of contributions.

22. The employer will recover deposits it makes to an employee's card that are not used. This amount will be returned to the employee as salary and wages.

23. On termination the employee is given two weeks to use the balance in the card. The card will then be closed and balance of funds returned to the employee as salary and wages.

Ruling

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

23A. Paragraphs 24 to 27 of this Ruling (and paragraphs 28 to 35 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

24. 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.

25. 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.

26. 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).

27. 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.

Salary packaged meal entertainment benefits provided from 1 April 2016

27A. Paragraphs 27B to 27J of this Ruling (and paragraphs 28 to 32 and 35A to 35D 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*.

27B. 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.

27C. The provision of meal entertainment by way of the card gives rise to an exempt benefit under section 57A.

27D. 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.

27E. 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.

27F. 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.

27G. The grossed-up taxable value of the salary packaged meal entertainment benefits (as well as the grossed up-taxable value of

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.

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

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).

27H. 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).

27I. 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

27J. 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

26 September 2007

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).

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.*

28. 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.

29. Under the scheme, the employer deposits funds into a card account. The employee uses the Visa Salary Packaging card to purchase meal entertainment. When the employee uses the card to pay for meal entertainment the financial institution uses some, or all of the funds deposited by the employer in respect of the employee to pay the merchant for the meal entertainment provided to the employee. As this payment is a payment of expenses incurred in providing meal entertainment it comes within paragraph 37AD(c).

30. 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.

31. 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.

32. 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.

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

33. However, any employer to which section 57A applies, will not be liable for fringe benefits tax on benefits provided that fall 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.

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.

34. 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.

35. 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 the employees.

Salary packaged meal entertainment benefits provided from 1 April 2016

35A. 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).

35B. 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,⁸

35C. The benefit is a 'tax exempt body entertainment benefit' under section 38 which applies when a not-for-profit employer incurs non-

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

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

35D. 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 Refer to paragraph 37AC(b).

Appendix 2 – Detailed contents list

36. 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	23A
Salary packaged meal entertainment benefits provided on or before 31 March 2016	23A
Salary packaged meal entertainment benefits provided from 1 April 2016	27A
Appendix 1 – Explanation	28
Salary packaged meal entertainment benefits provided on or before 31 March 2016	33
Salary packaged meal entertainment benefits provided from 1 April 2016	35A
Appendix 2 – Detailed contents list	36

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2001/2

Subject references:

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

- FBTA 1986 5E(3)
- FBTA 1986 5E(3)(a)
- FBTA 1986 Pt III Div 9A
- FBTA 1986 37AC
- FBTA 1986 37AC(b)
- FBTA 1986 37AD
- FBTA 1986 37AD(c)
- FBTA 1986 38
- FBTA 1986 39
- FBTA 1986 57A
- FBTA 1986 57(1)
- FBTA 1986 57(2)
- FBTA 1986 57(3)
- FBTA 1986 57(4)
- FBTA 1986 57(5)
- FBTA 1986 Pt XIB
- FBTA 1986 136(1)
- FBTA 1986 152B
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968
- Tax and Superannuation Laws Amendment (2015 Measures No. 5) Act 2015

Legislative references:

- FBTA 1986 5B(1E)
- FBTA 1986 5B(1L)
- FBTA 1986 5B(1M)
- FBTA 1986 5B(1M)(a)
- FBTA 1986 5E

ATO references

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