


CR 2010/50 - 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 (Leisure Accommodation and Venue Hire) facility

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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 (Leisure Accommodation and Venue Hire) 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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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:

- subsection 5B(1E) of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA);
- paragraph 5E(3)(c) of the FBTAA;
- section 57A of the FBTAA;
- section 149A of the FBTAA; and

- Part XIB of the FBTAA.

All subsequent legislative references in the Ruling are to the FBTAA unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies are those employers subject to the provisions of section 57A who enter into an Employee Benefits Card facility with the specified financial institution (the financial institution) under an arrangement with PBI Benefit Solutions Pty Ltd to enable an Employee Benefits Card (Leisure Accommodation and Venue Hire) (the card) to be provided to their employees.

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 9 to 21 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 2010. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

9. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them, form part of and are to be read with the description:

- 'Employee Benefits Card – Facility Terms and conditions' effective April 2007;
- the 'Leisure Accommodation and Venue Hire Card Salary Sacrifice Agreement';
- a brochure titled 'Rest easy' which includes the Leisure Accommodation and Venue Hire Card Cardholder request; and
- a brochure titled 'Rest easy. The Leisure Accommodation and Venue Hire card'.

Note: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

10. An employer who decides to participate in the scheme will establish an Employee Benefits Card facility with the financial institution to enable its employees to apply for the card under an effective salary sacrifice agreement entered into with the employer.

11. An employee who decides to apply for the card will complete the salary sacrifice agreement and the Leisure Accommodation and Venue Hire Card Application Form. Both of these forms are returned to the employer.

12. The card will be either a Visa or MasterCard with a one dollar credit limit. It is issued in the employee's name.

13. Although the employee is primarily liable for payment of any expenses charged on the card, the employee does not have any control over the card which can be cancelled at any stage by the employer. The only right the employee has is a right to charge eligible expenses on the card up to the available balance.

14. In entering into the Leisure Accommodation and Venue Hire Card Salary Sacrifice Agreement the employee:

- acknowledges that cash advances are not available from the card;
- declares that he or she will only use the card to pay for leisure accommodation and venue hire expenses;
- acknowledges that the specified amount will be transferred by regular transfers to the card account to reimburse expenses incurred on the card;

- agrees that he or she has no entitlement to amounts transferred to the card account other than as a reimbursement of leisure accommodation and venue hire expenses incurred on the card;
- acknowledges that any credit balances remaining on the card account on termination or cancellation of the card shall be refunded to the employer;
- authorises and directs the employer to make any deductions from his or her remuneration or termination entitlements as are required to discharge the employee's obligations to the employer under the agreement; and
- agrees that the employer may alter or discontinue the arrangement at any time.

15. The leisure accommodation and venue hire expenses for which the card can be used are outlined in the brochure titled 'Rest easy. The Leisure Accommodation and Venue Hire card' which states:

Leisure accommodation expenses within Australia or overseas ... can include the use of a hotel/motel room in a hotel/motel facility or the use of a cabin or on-site van in a caravan park or the use of a room in a bed and breakfast whilst you are on holidays or undertaking similar leisure time pursuits. The accommodation costs can be anything from an overnight stay or a weekend away or an extended overseas holiday.

Venue hire expenses can include the hire of a private function room at a club or similar facility for a family celebration or similar leisure time pursuit.

16. The brochure also provides examples of expenses that can not be paid using the card. The examples include:

- the cost of food, drink, travel or any other costs associated with the accommodation (for example, laundry, room service, mini-bar, in-house movies, etc);
- the cost of food, drink or waiter service associated with venue hire;
- leisure accommodation expenses incurred while travelling for work related purposes;
- periodical payments or direct debits; and
- cash withdrawals.

17. 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 card account.

18. Purchases made with the card and other fees and charges debited to the card account will reduce the amount available to spend on the card.

19. Each month the employee will receive a statement of the amount spent during the statement period. This total of the account is discharged with the funds available in the account at the statement date. Any remaining funds each month are carried forward and added to any subsequent salary sacrifice transfers.

20. If the card account goes into debit balance, the overspent balance will be recovered from the employee after tax.

21. On termination of a card, (for example, termination of employment), the account is cancelled and the balance (after payment of any final amount) is returned to the employer to be reconciled along with other reconciliations on termination.

Ruling

22. The use of the card for the payment of a leisure accommodation expense or a venue hire expense will give rise to an exempt benefit under section 57A.

23. The exempt benefits that arise from the use of the card to pay an accommodation expense or a venue hire expense are disregarded for the purposes of the capping thresholds in determining an employer's aggregate non-exempt amount under subsection 5B(1E).

24. The use of the card for the payment of a leisure accommodation expense or a venue hire expense will be an excluded fringe benefit under paragraph 5E(3)(c). As such, the value of the benefit is excluded from the reportable fringe benefits provisions in Part XIB.

25. The use of the card for the payment of a leisure accommodation expense or a venue hire expense that is an exempt benefit under section 57A is not a GST-creditable benefit in terms of section 149A.

Commissioner of Taxation**6 October 2010**

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. Under the scheme, an employee will use the card to pay leisure accommodation expenses and venue hire expenses. Each month the employee will receive a statement of the amounts spent in the statement period. The employee is primarily liable to pay this amount. This liability is discharged with the salary sacrifice funds that are in the card account at the statement date.

27. Section 57A provides that certain employers are generally exempt from fringe benefits tax (FBT). This section applies to employers that are an endorsed public benevolent institution, certain hospitals, an employer who provides public ambulance services (or services that support those services) where the employee is predominantly involved in connection with the provision of those services, or an endorsed health promotion charity.

28. The exemption in section 57A also applies to benefits provided to an employee of a government body where the duties of employment are exclusively performed in, or in connection with certain hospitals.

29. However, these exemptions are subject to the capping provisions contained in section 5B.

30. Subsection 5B(1E) limits the exemption to \$17,000 grossed-up taxable value per employee for employers who are a public or non profit hospital, or who provide a public ambulance service. The \$17,000 threshold also applies in respect of employees of a government body whose duties are exclusively performed in, or in connection with a public or non profit hospital. Such employers are liable for full FBT on the value of benefits provided in excess of this threshold.

31. All other employers to which section 57A applies have a capping threshold of \$30,000 grossed up taxable value per employee. Such employers are liable for full FBT on the value of benefits provided in excess of this threshold.

32. However, an employer to which section 57A applies, will not be liable for FBT on certain benefits including benefits whose taxable values are wholly or partly attributable to entertainment facility leasing expenses.

33. This results from the operation of Step 1 of the method statement contained in subsection 5B(1L) which specifically disregards these benefits in calculating an employer's fringe benefits taxable amount.

Will the taxable values of the benefits that arise from the discharge of the employee's liability be wholly or partly attributable to entertainment facility leasing expenses?

34. The definition of 'entertainment facility leasing expenses' in subsection 136(1) states:

entertainment facility leasing expenses, for a person, means expenses incurred by the person in hiring or leasing:

- (a) a corporate box; or
- (b) boats, or planes, for the purpose of the provision of entertainment; or
- (c) other premises, or facilities, for the purpose of the provision of entertainment;

but does not include so much of any of such expenses that:

- (d) is attributable to the provision of food or drink; or
- (e) is attributable to advertising and is an allowable deduction for the person under the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*.

Expenses Incurred by a person

35. Under the scheme the employee or spouse is a person who incurs an expense on leisure accommodation or venue hire.

In Hiring or Leasing

36. This condition will be met when the employee enters into an agreement for the hire or lease of a premise or facility listed in the brochure 'Rest easy. The Leisure Accommodation and Venue Hire card'.

A corporate box; boat; plane; other premises or facilities

37. An employee may rent a hotel/motel room, cabin, on-site van, a room in a bed and breakfast or hire a function room. The words 'other premises or facility' as they are used in the definition of 'entertainment facility leasing expenses' have a wide meaning which includes buildings, part of buildings or other structures including temporary structures. Therefore, the employee's expenditure in these situations will be for leasing or hiring 'other premises or facilities' as set out in paragraph (c) of 'entertainment facility leasing expenses' as defined in subsection 136(1).

38. Accordingly, when an employee incurs expenditure on leisure accommodation or venue hire the employee's expenditure is on leasing or hiring other premises or facilities.

For the purpose of the provision of entertainment

39. Subsection 136(1) defines 'entertainment':

entertainment has the meaning given by section 32-10 of the *Income Tax Assessment Act 1997*.

40. Taxation Determination TD 94/55 Income tax: when does providing an item of property constitute the provision of entertainment within the meaning of subsection 51AE(3) of the *Income Tax Assessment Act 1936*?, states that in determining whether providing an item of property constitutes entertainment, regard should be had to all the circumstances of the case. In particular, regard should be given to the character of the entertainment to be derived from the item of property provided. Specifically, in Example 2 in TD 94/55, costs incurred in providing holiday accommodation are incurred in providing property that would constitute the provision of entertainment.

41. When an employee incurs expenditure on leisure accommodation and venue hire the expenditure is on leasing or hiring other premises or facilities for the purpose of the provision of entertainment.

But does not include expenses attributable to the provision of food, drink or advertising

42. When an employee incurs expenditure on leisure accommodation or venue hire the expenditure will not include any amounts attributable to the provision of food, drink or advertising.

Summary

43. Therefore, as each of the conditions contained within the definition of 'entertainment facility leasing expenses' are met the employee's expenses on leisure accommodation or venue hire are 'entertainment facility leasing expenses' as defined in subsection 136(1).

The calculation of the employer's fringe benefits taxable amount

44. Under the scheme the funds deposited by the employer into the card account are used to discharge the liability that arises from the use of the card. The payment made to discharge the liability is non-deductible exempt entertainment expenditure which is taken to constitute a tax-exempt body entertainment benefit as defined in section 38.

45. However, as the employer comes within section 57A the tax-exempt body entertainment benefit provided to the employee will not be included in the calculation of the employer's fringe benefits taxable amount as the benefit is wholly attributable to 'entertainment facility leasing expenses'.

The calculation of the employee's reportable fringe benefits amount

46. Part XIB requires the taxable values of certain benefits to be included in the reportable fringe benefits amount of the relevant employee. However, the reportable amount does not include an 'excluded fringe benefit'.

47. Subsection 5E(3) sets out the benefits that are an 'excluded fringe benefit'. Under paragraph 5E(3)(c) a benefit whose taxable value is wholly or partly attributable to entertainment facility leasing expenses is an 'excluded fringe benefit'.

48. As the use of the card results in a benefit whose taxable value is wholly or partly attributable to 'entertainment facility leasing expenses', the benefit will be an 'excluded fringe benefit' under paragraph 5E(3)(c). As such, the value of the benefit is excluded from the reportable fringe benefits provisions in Part XIB.

Is the benefit a GST-creditable benefit?

49. 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.

50. The second point in paragraph 49 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 49.

51. 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.

52. Paragraph 87 of GSTR 2001/3 points out 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.

53. Paragraph 89 of GSTR 2001/3 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.

54. 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 of the GST Act.

55. 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.

56. 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).

57. 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 for 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.

58. Thus, the discharge of the employee's obligation as described in the scheme are not GST-creditable benefits for the purposes of section 149A.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2001/2; TR 2006/10;
TD 94/55; GSTR 2001/3

Subject references:

- entertainment expenses
- excluded fringe benefits
- exempt benefits
- FBT salary packaging
- FBT salary sacrifice
- FBT tax-exempt body
- fringe benefits tax
- reportable fringe benefits
- tax-exempt body entertainment fringe benefits

Legislative references:

- FBTAA 1986
- FBTAA 1986 5B
- FBTAA 1986 5B(1E)

- FBTAA 1986 5B(1L)
 - FBTAA 1986 5E(3)
 - FBTAA 1986 5E(3)(c)
 - FBTAA 1986 38
 - FBTAA 1986 57A
 - FBTAA 1986 Pt XIB
 - FBTAA 1986 136(1)
 - FBTAA 1986 149A
 - FBTAA 1986 149A(2)
 - 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
 - ITAA 1936 51AE(3)
 - ITAA 1997
 - ITAA 1997 8-1
 - ITAA 1997 32-5
 - ITAA 1997 32-10
 - ITAA 1997 32-20
 - TAA 1953
 - Copyright Act 1968
-

ATO references

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