

CR 2014/74A1 - Addendum - Fringe benefits tax: employer clients of Emerchants Payment Solutions Limited (Emerchants) who are subject to the provisions of either section 57A or section 65J of the Fringe Benefits Tax Assessment Act 1986 and make use of the Emerchants' Meals and Entertainment Card facility

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Addendum

Class Ruling

Fringe benefits tax: employer clients of Emerchants Payment Solutions Limited (Emerchants) who are subject to the provisions of either section 57A or section 65J of the *Fringe Benefits Tax Assessment Act 1986* and make use of the Emerchants' Meals and Entertainment Card facility

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Class Ruling CR 2014/74 to take account of the application of the *Tax and Superannuation Laws Amendment (2015 Measures No 5) Act 2015* to the concessional treatment of meal entertainment and entertainment facility leasing expense benefits provided under a salary packaging arrangement from 1 April 2016.

CR 2014/74 is amended as follows:

1. Paragraph 2

Omit the dot points; substitute:

- subsection 5B(1E) of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA)
- subsection 5B(1M) of the FBTAA
- section 5C of the FBTAA
- paragraph 5E(3)(a) of the FBTAA
- paragraph 5E(3)(c) of the FBTAA
- Division 9A of Part III of the FBTAA
- section 37AC of the FBTAA
- paragraph 37AC(b) of the FBTAA
- section 37AD of the FBTAA
- section 38 of the FBTAA
- section 39 of the FBTAA

- section 57A of the FBTAA
- section 65J of the FBTAA
- subsection 65J(2B) of the FBTAA
- subsection 65J(2J) of the FBTAA
- Part XIB of the FBTAA
- subsection 136(1) of the FBTAA
- section 149A of the FBTAA
- subsection 152B(1) of the FBTAA, and
- subsection 152B(2) of the FBTAA.

2. Paragraph 34

Before paragraph 34; insert:

Salary packaged entertainment benefits provided on or before 31 March 2016

33A. Paragraphs 34 to 43 of this Ruling (and paragraphs 44 to 80, 81 to 82, 83 to 90 and 91 to 92 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*.^{1A}

3. Paragraph 43

After paragraph 43; insert:

Salary packaged entertainment benefits provided from 1 April 2016

43A. Paragraphs 43B to 43Q of this Ruling (and paragraphs 44 to 78, 80A to 80B, 82A, 83 to 86, 90A to 90B and 92A 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*.

43B. The use of the card for the acquisition of meal entertainment by way of food or drink constitutes the 'provision of meal entertainment' as defined in section 37AD.

43C. The use of the card for the hire or lease of an entertainment facility constitutes 'entertainment facility leasing expenses' as defined in subsection 136(1).

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

43D. The provision of meal entertainment or entertainment facility leasing expense by way of the card gives rise to an exempt benefit under section 57A.

43E. 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.

43F. The meal entertainment is provided under a salary packaging arrangement^{1B} as described in paragraph 37AC(b). As a result Division 9A of Part III (election for meal entertainment expenses) cannot apply.

43G. The entertainment facility leasing expense is provided under a salary packaging arrangement as described in subsection 152B(2). As a result subsection 152B(1) (election for entertainment facility leasing costs) cannot apply.

43H. Subsection 5B(1M) applies as the benefits are provided under a salary packaging arrangement and is constituted by the provision of meal entertainment as defined in section 37AD or is wholly or partly attributable to entertainment facility leasing expenses.

43I. The grossed-up taxable value of the salary packaged 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).

43J. Under subsection 5B(1E) the employee's *individual grossed-up non-exempt amount* is reduced by:

- the general capping threshold^{1C}; and
- if any amount remains, by 'salary packaged entertainment cap'.^{1D} 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).

43K. This reduced amount for all employee's forms the employer's '*aggregate non-exempt amount*' for the year of tax under subsection 5B(1E).^{1E}

^{1B} 'Salary packaging arrangement' is defined in subsection 136(1).

^{1C} 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.

^{1D} Refer to step 4 of the method statement in subsection 5B(1E).

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

43L. The provision of meal entertainment or an entertainment facility leasing expense by way of the card may reduce the amount of rebate available to a rebatable employer under section 65J.

43M. Subsection 65J(2J) applies as the benefits are provided under a salary packaging arrangement and is constituted by the provision of meal entertainment as defined in section 37AD or is wholly or partly attributable to entertainment facility leasing expenses.

43N. The grossed-up taxable value of the salary packaged 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-rebatable amount*' under step 1 of the method statement in subsection 65J(2B).

43O. Under subsection 65J(2B) the employee's *individual grossed-up non-rebatable amount* is reduced by:

- the general capping threshold^{1F}; and
- if any amount remains, by 'salary packaged entertainment cap'.^{1G} 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 65J(2J).

43P. This reduced amount for all employee's forms the employer's '*aggregate non-rebatable amount*' for the year of tax under subsection 65J(2B).

43Q. The provision of salary packaged 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.

4. Paragraph 59

After 'that'; insert 'the provision of'.

^{1F} The general capping threshold under section 65J for rebatable employers is \$31,177 for the FBT year commencing on 1 April 2016.

^{1G} Refer to step 2A of the method statement in subsection 65J(2B).

5. Paragraph 60

After the paragraph; insert:

60A. For benefits provided from 1 April 2016, the benefit is a 'tax exempt body entertainment benefit' under section 38. Elections under Division 9A of Part III no longer apply where there is a salary packaging arrangement.^{1H}

6. Paragraph 74

Omit the paragraph; substitute:

74. Section 57A provides that certain employers are generally exempt from FBT. This section applies to employers that are registered as a charity and endorsed as a public benevolent institution or health promotion charity, certain hospitals, or 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.

7. Paragraph 77

- (a) After 'exemption to a'; insert 'general'.
- (b) Omit 'The \$17,000'; substitute 'This'.
- (c) Omit footnote 3.

8. Paragraph 78

Omit from the third sentence 'ended'; substitute 'ending'.

9. Paragraph 79

Before the paragraph; insert:

Salary packaged entertainment benefits provided on or before 31 March 2016

^{1H} Refer to paragraph 37AC(b).

10. Paragraph 80

After the paragraph; insert:

Salary packaged entertainment benefits provided from 1 April 2016

80A. 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 election; and
- introducing a \$5,000 cap on the grossed-up value of salary packaged entertainment benefits under subsections 5B(1E) and 5B(1M).

80B. 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.^{3A}

11. Paragraph 82

After the paragraph; insert:

82A. However, for purchases made from 1 April 2016, any participating employer can be liable for FBT on the provision of meal entertainment or entertainment facility leasing expenses under a salary packaging arrangement for similar reasons as explained in paragraphs 80A and 80B of this Ruling.

12. Paragraph 84

Omit 'year ending'; substitute 'FBT year ended'.

^{3A} Subsection 5B(1L) continues to apply to non- salary packaged entertainment and car parking benefits.

13. Paragraph 85

Omit the first occurrence of 'ending'; substitute 'ended'.

14. Paragraph 87

Before the paragraph; insert:

Salary packaged entertainment benefits provided on or before 31 March 2016

15. Paragraph 90

After the paragraph insert:

Salary packaged entertainment benefits provided from 1 April 2016

90A. 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 section 152B election; and
- introducing a \$5,000 cap on the grossed-up value of salary packaged entertainment benefits under subsections 65J(2B) and 65J(2J).

90B. For employers subject to the provisions of section 65J, 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 \$31,177 for the FBT year commencing 1 April 2016. This is because of the interaction between section 65J and subsection 65J(2H). For benefits provided from 1 April 2016, step 1 of the method statement in subsection 65J(2H) no longer disregards the provision of salary packaged entertainment in calculating an employer's fringe benefits taxable amount.^{3B}

^{3B} Subsection 65J(2H) continues to apply to non- salary packaged entertainment and car parking benefits.

16. Paragraph 92

After the paragraph; insert:

92A. However, for purchases made from 1 April 2016, the provision of meal entertainment or entertainment facility leasing expenses under a salary packaging arrangement may be included in the rebate calculation for similar reasons as explained in paragraphs 90A and 90B of this Ruling.

17. Paragraph 101

Omit 'fringe benefits to employees GSTR 2001/3 explains this in more detail'; substitute 'fringe benefits to employees as explained in GSTR 2001/3'.

18. Paragraph 105

After the paragraph; insert:

105A. 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.

19. Appendix 2 – Detailed contents list

Omit:

Ruling	33
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Insert:

Ruling	33A
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Salary packaged entertainment benefits provided on or before 31 March 2016	33A
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Salary packaged entertainment benefits provided from 1 April 2016	43A
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Salary packaged entertainment benefits provided on or before 31 March 2016	79
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Salary packaged entertainment benefits provided from 1 April 2016	80A
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Salary packaged entertainment benefits provided on or before 31 March 2016	87
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Salary packaged entertainment benefits provided from 1 April 2016	90A
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20. Legislative references

Omit:

- FBTA 1986 37AC(c)
- FBTA 1986 37A(a)
- TLA(TBRL)A 2014
- Copyright Act 1968

Insert:

- FBTA 1986 5B(1M)
- FBTA 1986 37AC
- FBTA 1986 37AC(b)
- FBTA 1986 37AD(a)
- FBTA 1986 39
- FBTA 1986 57A(1)
- FBTA 1986 57A(2)
- FBTA 1986 57A(3)
- FBTA 1986 57A(4)
- FBTA 1986 57A(5)
- FBTA 1986 65J(2B)
- FBTA 1986 65J(2J)
- FBTA 1986 152B
- FBTA 1986 152B(1)
- FBTA 1986 152B(2)
- ITAA 1997 32-20
- Tax and Superannuation Laws Amendment (2015 Measures No. 5) Act 2015

21. Subject references

Omit the references.

This Addendum applies on and from 1 April 2016.

Commissioner of Taxation14 September 2016

ATO references

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