


CR 2021/12 - Salary Packaging Australia Pty Limited - benefits provided to fly-in fly-out employees

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Class Ruling

Salary Packaging Australia Pty Limited – benefits provided to fly-in fly-out employees

❶ Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out the fringe benefits tax consequences of providing airline travel benefits to fly-in fly-out (FIFO) employees of employers administered by Salary Packaging Australia Pty Limited (SPA Pty Ltd).
2. Full details of this scheme are set out in paragraphs 8 to 17 of this Ruling.
3. All legislative references in this Ruling are to provisions of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) unless otherwise indicated.

Note: By issuing this Ruling, the ATO is not endorsing this product. Potential purchasers/users must form their own view about the product.

Who this Ruling applies to

4. This Ruling applies to you if you are an employer with FIFO employees provided with airline travel benefits administered by SPA Pty Ltd.

When this Ruling applies

5. This Ruling applies from 1 April 2020 to 31 March 2025.

Ruling

6. The provision of airline travel to the employee is a residual benefit pursuant to section 45.

7. The residual benefit that arises from the provision of airline travel to the employee is an exempt benefit pursuant to subsection 47(7).

Scheme

8. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

9. SPA Pty Ltd administers FIFO travel benefits for its employer clients who provide FIFO travel to their employees under a salary sacrificing arrangement.

10. The employer clients of SPA Pty Ltd require certain employees to travel, either domestically or internationally, between their usual places of residence (in Australia or overseas) and their usual places of employment in remote parts of Australia, on a FIFO basis.

11. Each employee:

- has their usual place of employment in a remote location in Australia, which is not in or adjacent to, an eligible area for the purposes of the FBTA
- is provided with residential accommodation at or near the usual place of employment by the employer
- works for a number of days and then has a number of days off. On completion of the working days, the employee travels from that usual place of employment to their usual place of residence, which may be in Australia or overseas, and then on completion of the days off, returns from their usual place of residence to that usual place of employment
- is provided with transport by their employer between their usual place of residence and usual place of employment on a regular basis. This is wholly or partly administered by SPA Pty Ltd, and
- does not travel on a daily basis on workdays between their usual place of employment and their usual place of residence because it would be unreasonable to expect them to do so having regard to the location of these places.

12. Some of the employers pay for part of the travel between an employee's usual place of residence and usual place of employment outside of any salary packaging arrangement. For instance, they may pay for travel between a capital city airport and the place of employment. The arrangement with SPA Pty Ltd then allows the employee to salary package the travel costs (for flights) between their home and the capital city airport.

13. SPA Pty Ltd may manage salary packaging arrangements for either the entire travel between an employee's home and place of work, or just part of that travel.

14. An employer client will enter into an agreement with SPA Pty Ltd to provide the relevant FIFO travel benefit to its qualifying employees. Under that agreement, SPA Pty Ltd will act on the employer's behalf to facilitate the booking and payment of relevant employees' flights. This is carried out in accordance with the employer's agreement with a travel supplier.

15. SPA Pty Ltd, on behalf of the employer, will enter into a valid salary packaging arrangement with the FIFO employee. Under the agreement the employee agrees to a salary sacrifice amount in respect of FIFO travel and their pre-tax salary is reduced accordingly.

16. Payment of an amount equivalent to the salary sacrificed amount, is made by the employer, by regular transfer, to a bank account held by SPA Pty Ltd on the employer's behalf. The funds are held by SPA Pty Ltd until the travel supplier sends an invoice for payment. The invoice specifies air travel details for the employee and is addressed to, and payable by, the employer. The invoice is then paid by SPA (to the extent sufficient funds have been sacrificed by the employee) acting on behalf of the employer, out of the salary sacrificed funds held for this purpose.

17. If an employee's employment is terminated while funds they have sacrificed remain unspent, those funds are paid back to the employer, who pays them out to the employee as salary or wages with the appropriate pay as you go withheld.

Commissioner of Taxation

10 February 2021

Appendix – Explanation

❶ *This Explanation 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.*

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Is there a benefit?

18. The provision of the travel, under a salary sacrifice arrangement, will give rise to a benefit as defined in subsection 136(1).

19. The benefit will be a fringe benefit where it meets the definition of 'fringe benefit' as defined in subsection 136(1).

20. The definition of fringe benefit in subsection 136(1) excludes a benefit that is an exempt benefit in relation to the year of tax.

21. For the purposes of this Ruling, the relevant exemption is the exemption provided under subsection 47(7) for a residual benefit that consists of the provision of FIFO transport.

Is the benefit a residual benefit?

22. As section 47 provides the exempt residual benefits, it is necessary to consider whether the benefit is a residual benefit.

23. Section 45 provides that a benefit will be a residual benefit if it is not a benefit by virtue of a provision of Subdivision A of Divisions 2 to 11 (inclusive). Divisions 2 to 4 and 6 to 10 are not relevant to this scheme. Division 5 and Division 11 may be relevant to this scheme.

Expense payment benefits

24. With respect to Division 5, section 20 states that an expense payment benefit will arise where the provider either:

- (a) makes a payment in discharge, in whole or in part, of an obligation of another person (in this section referred to as the **recipient**) to pay an amount to a third person in respect of expenditure incurred by the recipient; or
- (b) reimburses another person (in this section also referred to as the **recipient**), in whole or in part, in respect of an amount of expenditure incurred by the recipient

25. Under this arrangement, the travel supplier issues an invoice to the employer for payment, rather than the employee incurring the expense directly.

26. SPA Pty Ltd then acts on behalf of the employer, in drawing funds held on behalf of the employer and arranging payment of the invoice.

27. The cost of the flight is paid for by the employer through use of the salary sacrificed funds and the employer is discharging their own obligation. The employer is, therefore, not discharging an obligation of another person to pay a third person, nor providing a reimbursement to another person in respect of expenditure incurred by that person.

28. The benefit is therefore not an expense payment benefit under section 20.

Property benefits

29. Division 11 applies to property fringe benefits where section 40 states:

Where, at a particular time, a person (in this section referred to as the **provider**) provides property to another person (in this section referred to as the **recipient**), the provision of the property shall be taken to constitute a benefit provided by the provider to the recipient at that time.

30. Subsection 136(1) provides the following definitions relevant to property benefits:

'property' means:

- (a) intangible property; and
- (b) tangible property.

'tangible property' means goods and includes:

- (a) animals, including fish; and
- (b) gas and electricity.

'intangible property' means:

- (a) real property;
- (b) a chose in action; and
- (c) any other kind of property other than tangible property;

but does not include:

- (d) a right arising under a contract of insurance; or
- (e) a lease or licence in respect of real property or tangible property.

'property benefit' means a benefit referred to in section 40, but does not include a benefit that is a benefit by virtue of a provision of Subdivision A of Divisions 2 to 10 (inclusive) of Part III.

31. The term 'goods' is not defined in the FBTA and therefore takes its ordinary meaning. *The Macquarie Dictionary*¹ defines the term 'goods' relevantly at paragraphs 1 and 2 as:

1. (plural) possessions, especially movable effects or personal belongings.
2. (plural) articles of trade; wares; merchandise, especially that which is transported by land.

32. The airline ticket therefore does not meet the definition of 'goods' and is therefore not tangible property.

33. Subsection 136(1) relevantly excludes from the definition of 'intangible property' leases or licences in respect of real property or tangible property.

34. 'Licence' is not defined in the FBTA, the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*. It therefore takes on its ordinary meaning.

35. *The Macquarie Dictionary* defines the term 'licence' (as relevant here) as:

1. formal permission or leave to do or not to do something.
2. formal permission from a constituted authority to do something, as to carry on some business or profession, to be released from jail for part of one's sentence under specific restrictions, etc.
3. a certificate of such permission; an official permit.

36. The ticket provides the employee with the formal permission to receive transport on the aeroplane and is therefore not intangible property.

37. As the airline ticket is neither tangible nor intangible property, the provision of the ticket is not a property benefit.

38. Therefore, the benefit provided by the employer, does not fall within any of the provisions of Subdivision A of Divisions 2 to 11 and as such is a residual benefit per section 45.

Is the benefit exempt under subsection 47(7)?

39. As the benefit is a residual benefit, consideration needs to be given as to whether the benefit is an exempt residual benefit under subsection 47(7).

40. Subsection 47(7) states:

Where, during a period of employment with an employer

- (a) an employee's usual place of employment is:
 - (i) on an oil rig, or other installation, at sea; or
 - (ii) at a location in a State or internal Territory but not in, or adjacent to, an eligible urban area; or
 - (iii) at a remote location that is not in a State or internal Territory; and
 - ...
- (b) the employee is provided with residential accommodation, at or near that usual place of employment, by:
 - (i) the employer; or

¹ Macmillan Publishers Australia, *The Macquarie Dictionary* online, www.macquariedictionary.com.au, accessed 9 December 2020.

- (ii) an associate of the employer; or
 - (iii) a person (in this subparagraph referred to as the “**arranger**”) other than the employer or an associate of the employer under an arrangement between:
 - (A) the employer or an associate of the employer; and
 - (B) the arranger or another person; and
- (c) the employee, on a regular basis:
 - (i) works for a number of days and has a number of days off; and
 - (ii) on completion of the working days, travels from that usual place of employment to his or her usual place of residence and, on completion of the days off, returns from his or her usual place of residence to that usual place of employment; and
- (d) the employee is provided with transport on a regular basis in connection with the travel referred to in subparagraph (c)(ii) and that transport is provided by:
 - (i) the employer; or
 - (ii) an associate of the employer; or
 - (iii) a person (in this subparagraph referred to as the “**arranger**”) other than the employer or an associate of the employer under an arrangement between:
 - (A) the employer or an associate of the employer; and
 - (B) the arranger or another person; and
- (e) it would be unreasonable to expect the employee to travel on a daily basis on workdays between:
 - (i) that usual place of employment; and
 - (ii) the location of the employee’s usual place of residence;
 having regard to the location of those places;

the residual benefit constituted by the provision of transport referred to in paragraph (d) is an exempt benefit.

Is the employee’s usual place of employment at a remote location in Australia or overseas, or on oil rigs or other installations at sea?

41. This Ruling only applies to employees working in remote locations. A remote location is one that is not located in or adjacent to an ‘eligible urban area’ as defined in section 140. According to paragraph 140(1)(a) an ‘eligible urban area’ is an urban centre that is either:

- situated in Zone A or Zone B for income tax purposes (as described in Parts I and II respectively in Schedule 2 to the *Income Tax Assessment Act 1936*) and had a 1981 census population of at least 28,000, or
- not situated in Zone A or Zone B for income tax purposes and is an urban centre with a 1981 census population of at least 14,000.

42. According to paragraph 140(1)(b), an area is ‘adjacent to an eligible urban area’ if it is either:

- less than 40 kilometres by the shortest practicable surface route from the centre of an eligible urban area with a 1981 census population of less than 130,000, or

- less than 100 kilometres by the shortest practicable surface route from the centre of an eligible urban area with a 1981 census population of 130,000 or more.

Are the employees provided with accommodation at or near the worksite on working days by the employer, an associate of the employer or an arranger?

43. The employees are provided with residential accommodation during their working days at or near their usual place of employment by the employer.

Do the employees, on a regular basis, work for a number of days followed by a number of days off, and return to their usual place of residence on their days off?

44. The employees work for a number of days and have a number of days off. On completion of their working days, they travel from that usual place of employment to their usual place of residence and, on completion of the days off, return from their place of residence back to that usual place of employment. These rosters are normal cyclical FIFO arrangements.

Is the employee regularly provided with transport between their usual place of residence and place of employment?

45. The employer provides their employee with transport on a regular basis between their usual place of residence and place of employment on a regular basis. A whole or part of this is administered by SPA Pty Ltd.

Having regard to the location of the two places, is it unreasonable to expect the employee to travel to and from work on a daily basis?

46. It would be unreasonable to expect the employee to travel on a daily basis on workdays between the employee's usual place of employment and their usual place of residence, having regard to the location of these places.

47. The requirements of subsection 47(7) are met and the provision of the FIFO travel is therefore exempt from fringe benefits tax.

References*Previous draft:*

Not previously issued as a draft

Legislative references:

- FBTAA 1986 Div 2 Subdiv A
- FBTAA 1986 Div 3 Subdiv A
- FBTAA 1986 Div 4 Subdiv A
- FBTAA 1986 Div 5 Subdiv A
- FBTAA 1986 Div 6 Subdiv A
- FBTAA 1986 Div 7 Subdiv A
- FBTAA 1986 Div 8 Subdiv A
- FBTAA 1986 Div 9 Subdiv A
- FBTAA 1986 Div 10 Subdiv A
- FBTAA 1986 Div 11 Subdiv A
- FBTAA 1986 20
- FBTAA 1986 40
- FBTAA 1986 45

- FBTAA 1986 47
- FBTAA 1986 47(7)
- FBTAA 1986 136(1)
- FBTAA 1986 136(1)(e)
- FBTAA 1986 140
- FBTAA 1986 140(1)(a)
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- ITAA 1936 Sch 2 Pt I
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- TAA 1953

Other references:

Macmillan Publishers Australia, The
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