


CR 2010/36 - Fringe benefits tax: employers who implement the SmartSalary Holiday Accommodation and Venue Hire Benefit arrangement and who satisfy the provisions of section 57A of the Fringe Benefits Tax Assessment Act 1986

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Class Ruling

Fringe benefits tax: employers who implement the SmartSalary Holiday Accommodation and Venue Hire Benefit arrangement and who satisfy the provisions of section 57A of the *Fringe Benefits Tax Assessment Act 1986*

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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:

- section 5B of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA);
- section 38 of the FBTAA; and
- section 57A 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 who implement the SmartSalary Holiday Accommodation and Venue Hire Benefit arrangement (the SmartSalary HAVH Benefit) and who are:

- employers that are public benevolent institutions endorsed under subsection 123C(1) or (5) where benefits provided in respect of the employment of the employee are exempt benefits under subsection 57A(1);
- employers that are government bodies where the duties of the employee are exclusively performed in a particular way (such as in a public hospital) where benefits provided in respect of the employment of the employee are exempt benefits under subsection 57A(2);
- employers that are public hospitals where benefits provided in respect of the employment of the employee are exempt benefits under subsection 57A(3);
- employers that provide public ambulance services or supporting services where the employee is predominantly involved in connection with the provision of those services where benefits provided in respect of the employment of the employee are exempt benefits under subsection 57A(3);
- employers that are hospitals that are carried on by a non-profit society or carried on by a non-profit association where benefits provided in respect of the employment of the employee are exempt benefits under subsection 57A(4); and
- employers that are health promotion charities endorsed under subsection 123D(1) where benefits provided in respect of the employment of the employee are exempt benefits under subsection 57A(5).

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 22 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 Class Ruling application dated 3 November 2009 forms part of and is to be incorporated into the description of the scheme.

10. SmartSalary Pty Limited (SmartSalary) has designed a salary packaging benefit, called the SmartSalary HAVH Benefit. This benefit is the subject of an effective salary sacrifice arrangement as described in Taxation Ruling TR 2001/10: Income tax: fringe benefits tax and superannuation guarantee: salary sacrifice arrangements.

11. An employer in the Class of Entities will implement the SmartSalary HAVH Benefit arrangement and the employee will participate in this arrangement. An employee who chooses to receive a SmartSalary HAVH Benefit will have incurred an expense referred to in this Scheme as a 'Holiday Accommodation' expense or a 'Venue Hire' expense. Alternatively, the Holiday Accommodation expense or Venue Hire expense will have been incurred by the spouse of the employee.

12. The employee or spouse will pay the expense and the employee will submit a claim for reimbursement of the expense to SmartSalary. SmartSalary acts as agent for the employer who is an employer in the Class of Entities. In submitting the claim for reimbursement, employees must provide original tax invoices/receipts and proof of payment.

13. The employer makes payment to SmartSalary for the amount to be reimbursed to the employee or spouse. Subsequently, SmartSalary as agent for the employer will reimburse the employee or spouse for the amount of the expense incurred. The reimbursement is provided in respect of the employment of the employee and is the SmartSalary HAVH Benefit.

'Holiday Accommodation'

14. A Holiday Accommodation expense is an expense incurred by the employee or spouse in renting one of the following:

- a holiday home;
- a hotel/motel room;
- a room or cabin at a holiday resort;
- a room/suite at a bed and breakfast;
- an on-site caravan and/or cabin;
- a serviced or self-contained apartment; or
- a houseboat in its entirety.

15. The unit of accommodation will be used primarily to accommodate the employee's immediate family. Non-family members are able to reside in the rental facility as guests.

16. The expense incurred by the employee or spouse will be for the entire unit of accommodation. If an employee or spouse shares the Holiday Accommodation expense with another person, the employee will not be permitted to package any portion of the expense.

17. Everyone staying in the unit of accommodation will be on holidays.

18. The expenses will be for the rent of the unit of accommodation only. Costs such as dry cleaning, phone bills, mini bar and meals will not be reimbursed.

19. Package deals that entitle the employee to additional recreational and/or education activities will not be reimbursed. For example, the following package deals will not be reimbursed:

- golfing 'stay and play' accommodation packages;
- skiing packages that include lift-hire and ski-rental in the accommodation cost; and
- arrangements where the accommodation costs include foreign language, cooking or other courses.

'Venue Hire'

20. A Venue Hire expense is an expense incurred by the employee or spouse in hiring one of the following:

- a room in a reception centre or entire function room for an entertainment event such as a wedding reception;
- a marquee for an entertainment event;
- a boat or plane for the purpose of a social event; or
- a corporate box.

21. The expense incurred by the employee or spouse will relate to the entire room etc. If an employee or spouse shares the Venue Hire expense with another person, the employee will not be permitted to package any portion of the expense.

22. The expense will be for the hire of the venue only. However, it may include items that come as part of the hire cost and are necessary for the operation of the room etcetera. For example, tables and chairs provided as part of the hire of a function room used for a wedding reception.

Ruling

23. When an employer in the Class of Entities makes payment to SmartSalary for the amount SmartSalary subsequently reimburses to the employee or spouse (for their Holiday Accommodation or Venue Hire expenses), the employer incurs non-deductible exempt entertainment expenditure. This expenditure is taken to constitute a tax-exempt body entertainment benefit provided to the employee or spouse under section 38.

24. This benefit would have a taxable value, but for the exemption provided in section 57A.

25. The taxable value of the tax-exempt body entertainment benefit (apart from section 57A) is wholly attributable to the employee or spouse's Holiday Accommodation or Venue Hire expenses. As these expenses are entertainment facility leasing expenses the benefit is disregarded for the purposes of determining an employee's subsection (1L) amount under subsection 5B(1L).

26. The provision of the benefit to the employee or to the spouse has no effect on the employer's fringe benefits taxable amount under section 5B.

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.*

27. Under the SmartSalary HAVH Benefit arrangement an employer in the Class of Entities makes payment to SmartSalary for the amount SmartSalary subsequently reimburses to the employee or spouse for their expenses incurred on Holiday Accommodation or Venue Hire.

28. As a result the employer incurs non-deductible exempt entertainment expenditure which is taken to constitute a tax-exempt body entertainment benefit provided to the employee or spouse under section 38. This benefit is an exempt benefit under section 57A. However, the exemption provided by section 57A is subject to the threshold provisions contained in section 5B.

29. Subsection 5B(1E) limits the exemption to a \$17,000 threshold 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 fringe benefits tax on the value of benefits provided in excess of this threshold.

30. Under subsection 5B(1E) all other employers to which section 57A applies have a threshold of \$30,000, grossed-up taxable value per employee. Such employers are liable for fringe benefit tax on the value of benefits provided in excess of this threshold.

31. However, any employer to which section 57A applies, will, irrespective of whether or not an employee's threshold amount has or has not been exceeded, not be liable for FBT on benefits:

- that constitute the provision of meal entertainment;
- that are car parking fringe benefits; or
- whose taxable values are wholly or partly attributable to entertainment facility leasing expenses.

32. 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.

Entertainment Facility Leasing Expenses

33. Subsection 136(1) defines 'entertainment facility leasing expenses':

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

34. Under the scheme the employee or spouse is a person who incurs an expense on Holiday Accommodation or Venue Hire.

In Hiring or Leasing

35. When the employee or spouse enters into an agreement for Holiday Accommodation or Venue Hire the employee or spouse incurs hire or lease expenses.

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

36. An employee or spouse may hire a corporate box. This is expenditure in hiring a corporate box as set out in paragraph (a) of 'entertainment facility leasing expenses' as defined in subsection 136(1).

37. Alternatively, an employee or spouse may rent a houseboat or hire a boat or plane. This is expenditure in hiring a boat or plane as set out in paragraph (b) of 'entertainment facility leasing expenses' as defined in subsection 136(1).

38. Alternatively, an employee or spouse may rent a holiday home, hotel/motel room, cabin, caravan or apartment or hire a reception centre, function room or marquee. 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 or spouse'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).

39. Accordingly, when an employee or spouse incurs expenditure on Holiday Accommodation or Venue Hire, the employee's or spouse's expenditure is on leasing or hiring a corporate box, boat, plane or other premises or facilities.

For the purpose of the provision of entertainment

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

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

41. 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.

42. When an employee or spouse incurs expenditure on Holiday Accommodation or Venue Hire the expenditure is on leasing or hiring a corporate box, boat, plane or 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

43. When an employee or spouse incurs expenditure on Holiday Accommodation or Venue Hire the expenditure will not include any amounts attributable to the provision of food, drink or advertising.

44. Therefore, the employee's or spouse's expenses on Holiday Accommodation or Venue Hire are 'entertainment facility leasing expenses' as defined in subsection 136(1).

Fringe Benefits Taxable Amount

45. Under the SmartSalary HAVH Benefit arrangement the employer will make a payment to SmartSalary for the amount SmartSalary subsequently reimburses the employee or spouse for their Holiday Accommodation or Venue Hire expenses. This employer payment is taken to constitute a benefit under section 38. The taxable value of this benefit (but for section 57A) is wholly attributable to the Holiday Accommodation or Venue Hire expenses incurred by the employee or spouse. Those Holiday Accommodation or Venue Hire expenses are entertainment facility leasing expenses.

46. The tax-exempt body entertainment benefit provided to the employee or to the spouse is therefore disregarded for the purposes of determining an employee's subsection (1L) amount under subsection 5B(1L) as it is wholly or partly attributable to entertainment facility leasing expenses.

47. The provision of the benefit to the employee or to the spouse has no effect on the employer's fringe benefits taxable amount under section 5B.

Appendix 2 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2001/10; TR 2006/10;
TD 94/55

Subject references:

- class rulings
- entertainment expenses
- excluded fringe benefits
- exempt benefits
- FBT salary packaging
- FBT salary sacrifice
- FBT tax-exempt body
- fringe benefit
- 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 38
- FBTAA 1986 57A
- FBTAA 1986 57A(1)
- FBTAA 1986 57A(2)
- FBTAA 1986 57A(3)
- FBTAA 1986 57A(4)
- FBTAA 1986 57A(5)
- FBTAA 1986 123C(1)
- FBTAA 1986 123C(5)
- FBTAA 1986 123D(1)
- FBTAA 1986 136(1)
- ITAA 1936 51AE(3)
- TAA 1953
- Copyright Act 1968

ATO references

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