



***CR 2014/74 - 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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 This document has changed over time. This is a consolidated version of the ruling which was published on *14 September 2016*



## 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

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### **❶ 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.

**[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:
- 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.

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

## **Class of entities**

3. The class of entities to which this Ruling applies is those employers who are subject to the provisions of either section 57A or section 65J and who make use of the Emerchants' Meals and Entertainment Card facility.

## **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 8 to 33 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.

## Date of effect

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7. This Ruling applies from 1 April 2014. However, this Ruling will not apply to taxpayers to the extent 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

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

- the application for a class ruling dated 17 April 2014
- draft Emerchants Employee Benefits Card' Product Disclosure Statement (Version 3), and
- additional information provided on 12 May 2014, 13 May 2014, 30 May 2014, and 23 July 2014.

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

### Participating employers

9. Participating employers will be employers that are not-for-profit organisations, government entities, or other tax-exempt bodies who are subject to the provisions of either section 57A or section 65J.

10. Participating employers will enter into an arrangement with the card provider (Emerchants) for the issue of cards to their employees (cardholders).

11. Emerchants will issue the cards and coordinate the card's operation in accordance with a separate arrangement with their authorised deposit-taking institution.

## Funding

12. Participating employers will enter into valid salary sacrifice arrangements (SSA)<sup>1</sup> with their employees. The use of the Emerchants' Meals and Entertainment Card facility will form an integral part of those arrangements.

13. The participating employers will deduct pre-tax salary sacrificed amounts from cardholders and make deposits equal to the amounts salary sacrificed into participating employer owned disbursement accounts held by the Emerchants' authorised deposit-taking institution.

14. A funds distribution file detailing the individual amounts salary sacrificed by each cardholder will be sent by the participating employers either directly to Emerchants or, alternatively, to salary packaging providers acting on behalf of the participating employers in such arrangements (and who, in turn, will subsequently send the funds distribution file to Emerchants).

15. Emerchants will reconcile the total value of the funds distribution file against the funds received from the participating employers, and process the file to allocate the portion of funds then available to pay the transactions/costs of each of the individual cardholders.

16. Each cardholder will be allowed to transact on their card up to the amount of the salary that they have individually salary sacrificed year to date. The funds available to any given cardholder will therefore vary according to their particular salary sacrificed amounts and the costs incurred year to date (presented as 'available funds').

17. Any unused funds in the participating employers' disbursement accounts for particular cardholders remain in the ownership of the participating employers until such time as they are required to be used to pay merchants or service providers for goods or services provided to cardholders or to pay credit providers in respect of the financial obligations incurred by cardholders in relation to use of the cards. Any unused funds at the end of the FBT year may be carried forward to the next FBT year for use by a cardholder where the parties agree to do so or will otherwise be returned to the cardholder as salary or wages (and subject to PAYG withholding).

## Cards

18. The cards will be issued in the name of the individual employee who holds the card. According to the VISA mandate, under which the card programs will operate, the cards will be provided with a security chip to mitigate fraud. The use of 'PayWave' capability will be optional and subject to agreement between Emerchants and the participating employers.

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<sup>1</sup> Guidance on what constitutes a valid salary sacrifice arrangement is given in Taxation Ruling TR 2001/10 *Income tax: fringe benefits tax and superannuation guarantee: salary sacrifice arrangements*.

19. The Emerchants' Meals and Entertainment Card will be made available as either a debit card (with a Debit BIN) or a credit card (with a Credit BIN).

***Card with a Debit BIN***

20. This is a debit card (with no credit facility) and expenditures made using the card can only be made to the extent of the pre-tax salary previously validly salary sacrificed by the cardholder.

21. The participating employer credits the funds salary sacrificed by each cardholder to a disbursement account held by the participating employer at the Emerchants' authorised deposit-taking institution.

22. Emerchants then allocates (pre-loads) the relevant amount(s) of salary sacrificed funds against the particular cardholder's card.

23. When a cardholder uses the card to make an authorised purchase the Emerchants' Card Management System (CMS) verifies that there are sufficient funds held against the cardholder's card in the participating employer's disbursement account.

24. The Emerchants' system approves and processes the transactions made by the cardholder against the funds pre-loaded onto the cardholder's card.

25. Emerchants has a function included in its system software that manages the balances in the participating employer's disbursement account to ensure that an individual cardholder's transactions will only be funded up to the value of the total funds held at that particular time for the cardholder in the participating employer's disbursement account.

26. The card can only be used for the purchase of meal entertainment and the hiring or leasing of entertainment facilities. The card has a blocking mechanism which only allows it to be used on approved merchant categories. A list of merchants where the card can be used will be available on the Emerchants website. These merchants will be those who provide meal entertainment or the hire of entertainment facilities only.

***Card with a Credit BIN***

27. This is a credit card but the amount of credit available is restricted to the extent of the value of the total funds held at that particular time for the cardholder in the participating employer's disbursement account.

28. Otherwise, the functions and operations in respect of a card with a Credit BIN are exactly the same as the functions and operations in respect of a card with a Debit BIN as described in paragraphs 20 to 26 of this Ruling.

## ***Usage***

29. The cards can only be used for card-present transactions at point of sale eligible merchants through the enforcement of rules on Merchant Category Codes (MCCS). CMS will apply whitelisting/blacklisting rules on MCCS when verifying a transaction and approve or decline, as required.

30. Cardholders will have the ability, as and when required, to upload receipts or other transaction documents such that purchases using the card can be identified as being GST-creditable or not.

## ***Restrictions***

31. The restrictions on the use of the cards (whether with a Debit BIN or a Credit BIN) include:

- the cards can only be used for either the acquisition of food or drink that constitutes 'the provision of meal entertainment', in accordance with section 37AD, or for 'entertainment facility leasing expenses', as that latter term is defined in subsection 136(1)
- cardholders cannot use funds pre-loaded onto the cards to withdraw cash
- funds pre-loaded onto the cards cannot be used to make direct debit payments
- funds pre-loaded onto the cards cannot be used to pay mortgages or transferred to other bank accounts, and
- funds pre-loaded onto the cards cannot be transferred from card to card.

## **Salary packaging arrangements**

32. Salary packaging providers acting on the employer's behalf may also be included as part of the relevant SSA.

33. The SSAs will state that where either the Debit or Credit BIN cards are validly used, it is the participating employers who have the prime responsibility to pay the merchants or the service providers. As such the SSAs will further state that the benefits being provided to the cardholders are the particular goods and/or services supplied to the cardholders.

## Ruling

### **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 FBTA before the application of the *Tax and Superannuation Laws Amendment (2015 Measures No 5) Act 2015*.<sup>1A</sup>

34. The use of the cards (whether a card with a Debit BIN or card with a Credit BIN) for the acquisition of entertainment by way of food or drink, constituting 'meal entertainment', will be a 'tax-exempt body entertainment benefit' under section 38 unless the employer has made an election to use Division 9A of Part III to calculate the taxable value of the meal entertainment fringe benefit.

35. The use of the cards (whether a card with a Debit BIN or card with a Credit BIN) for the hire or lease of an entertainment facility will be a 'tax-exempt body entertainment benefit' under section 38.

36. Deposits by participating employers into the participating employers' disbursement accounts, held by the Emerchants' authorised deposit-taking institution, do not constitute the provision of a 'benefit' as defined in subsection 136(1).

37. The pre-loading of funds onto the cards (whether a card with a Debit BIN or card with a Credit BIN) does not constitute the provision of a 'benefit' as defined in subsection 136(1).

38. The provision of meal entertainment or the hire or lease of an entertainment facility by way of the cards gives rise to an exempt benefit for a participating employer subject to the provisions of section 57A.

39. Benefits that constitute the provision of meal entertainment or an entertainment facility leasing expense are disregarded for the purposes of the capping thresholds in determining the employer's aggregate non-exempt amount under subsection 5B(1E) for an employer subject to the provisions of section 57A.

40. The provision of meal entertainment or an entertainment facility leasing expense by way of the cards does not reduce the amount of rebate available to a rebatable employer under section 65J as the provision of meal entertainment or an entertainment facility leasing expense does not form part of the employer's aggregate non-rebatable amount in the subsection 65J(2A) rebate calculation.

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



41. The provision of meal entertainment or an entertainment facility leasing expense by way of the cards provides a rebate to the rebatable employer of the gross tax that would otherwise be payable as the provision of the benefits are included in the calculation of the amount of gross tax, for the purposes of the subsection 65J(2A) rebate calculation, per subsections 5C(3) or 5C(4) as applicable.

42. A benefit will be a GST-creditable benefit if the requirements of section 149A are satisfied. Such a benefit will be a type 1 benefit for the purposes of section 5C. Where the requirements of section 149A are not satisfied the benefit will not be a GST-creditable benefit and thus will be a type 2 benefit for the purposes of section 5C.

43. The provision of meal entertainment or an entertainment facility leasing expense are excluded fringe benefits for the purposes of paragraphs 5E(3)(a) or 5E(3)(c). As such, the value of the benefits are excluded from the reportable fringe benefits provisions in Part XIB.

#### **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).

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<sup>1B</sup> 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.

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<sup>1B</sup> 'Salary packaging arrangement' is defined in subsection 136(1).

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<sup>1C</sup>; and
- if any amount remains, by 'salary packaged entertainment cap'.<sup>1D</sup> 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).<sup>1E</sup>

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<sup>1F</sup>; and

<sup>1C</sup> 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.

<sup>1D</sup> Refer to step 4 of the method statement in subsection 5B(1E).

<sup>1E</sup> Refer to step 5 of the method statement in subsection 5B(1E).

<sup>1F</sup> The general capping threshold under section 65J for rebatable employers is \$31,177 for the FBT year commencing on 1 April 2016.

- if any amount remains, by 'salary packaged entertainment cap'.<sup>1G</sup> 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.

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**Commissioner of Taxation**

1 October 2014

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<sup>1G</sup> Refer to step 2A of the method statement in subsection 65J(2B).

## 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.*

### **Types of benefits using cards with a Debit BIN**

44. An expense payment benefit arises under section 20 where either an employer pays a third party in satisfaction of expenditure incurred by an employee or where an employer reimburses an employee for expenditure incurred by the employee.

45. When the card with a Debit BIN is used, the debts to the merchants or to the other providers of food or drink or entertainment facilities are met from the funds then held in the employer's disbursement account and made available (loaded) on to the card.

46. The employers are the ones primarily liable for all transactions arising from the use of the cards with a Debit BIN. Therefore, when the cardholders use the cards it is, nonetheless, the employers who are incurring the relevant debts to the merchants or to the other providers of food or drink or entertainment facilities.

47. As the employers are discharging only their own obligations, to the merchants or other providers of food or drink or entertainment facilities, the employers are, therefore, not discharging obligations of other persons to pay third persons nor are they providing reimbursements to other persons in respect of expenditure incurred by those persons.

48. Consequently, when a card with a Debit BIN is used to pay debts to merchants or the other providers of food or drink or entertainment facilities these will not give rise to expense payment benefits under section 20 as the conditions of that section have not been met.

49. As the relevant goods or services are firstly acquired by the employers, the subsequent grant to the cardholders of either the possession of the goods or the use of the services will result in a 'benefit', as that term is defined in subsection 136(1), being provided by the employers to each of the employees.

50. An employee is able to use the card for either the acquisition of food or drink or to pay for the hire or lease of an entertainment facility.

51. The expenditure on food or drink by an employee will come within the meaning of the phrase 'provision of meal entertainment' under section 37AD. That phrase, at paragraph 37AD(a), includes 'entertainment by way of food or drink'.

52. A 'tax-exempt body entertainment benefit' will arise under section 38 where an entity that is wholly or partly exempt from income tax incurs 'non-deductible exempt entertainment expenditure'.

53. The participating employers in the arrangements will be not-for-profit organisations, government entities or other tax-exempt bodies. These types of organisations are exempt from income tax.

54. In general terms, expenditure will be 'non-deductible exempt entertainment expenditure' if section 32-5 of the *Income Tax Assessment Act 1997* (ITAA 1997) would prevent an income tax deduction from being claimed for the expenditure if the entity incurring the expense was subject to income tax.

55. Section 32-5 of the ITAA1997 states (as is relevant here):

To the extent that you incur a loss or outgoing in respect of providing entertainment, you cannot deduct it under section 8-1...

56. Under paragraph 32-10(1)(a) of the ITAA 1997 the meaning of 'entertainment', for the purposes of the FBTAA, includes 'entertainment by way of food, drink or recreation'.

57. Section 32-5 of the ITAA 1997 would apply in relation to the use of the card to purchase food or drink that constitutes 'meal entertainment'. The provision of such benefits will be 'non-deductible exempt entertainment expenditure'.

58. Therefore, the use of the card with a Debit BIN to purchase meal entertainment will be a 'tax-exempt body entertainment benefit' under section 38 unless the employer has made an election to use Division 9A of Part III to calculate the taxable value of its meal entertainment fringe benefits.

59. An election can be made by an employer, under Division 9A of Part III, that the provision of 'entertainment by way of food or drink' be treated as 'meal entertainment benefits' rather than as any other kind of benefit for the purposes of the FBTAA.

60. However, if no election under Division 9A of Part III is made, where the provision of entertainment by way of food or drink falls within a specific provision (that is, tax-exempt body entertainment fringe benefit), the taxable value of the benefit is determined under that specific provision rather than the more general sections dealing with property benefits under section 40 or residual benefits under section 45.

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.<sup>1H</sup>

61. The term 'entertainment facility leasing expenses' is defined in subsection 136(1) as:

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

(a) a corporate box; or

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<sup>1H</sup> Refer to paragraph 37AC(b).

- (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*.

62. The expenditure on hire or lease of an entertainment facility in this instance will come within the meaning of 'entertainment facility leasing expenses' under subsection 136(1).

63. A 'tax-exempt body entertainment benefit' will arise under section 38 of the FBTA where the participating employer is wholly or partly exempt from income tax and section 32-5 of the ITAA 1997 would prevent the employer from claiming an income tax deduction for the expenditure if it were subject to income tax.

64. The meaning of 'entertainment' includes entertainment by way of recreation in paragraph 32-10(1)(a) of the ITAA 1997. Subsection 995-1 of the ITAA 1997 defines the term 'recreation' to include 'amusement, sport or similar leisure-time pursuits'. While the term 'recreation' is defined the words 'entertainment by way of recreation' are not defined. As these words are not defined, they have their natural meaning, taken in the context in which they appear in the legislation.

65. The term 'entertainment', which is the key to the operation of the relevant words, is defined in the *Macquarie Dictionary*, on-line edition, to mean:

1. the act of entertaining; agreeable occupation for the mind; diversion, or amusement.
2. something affording diversion or amusement, especially an exhibition or performance of some kind.
3. hospitable provision for the wants of guests.

66. Further, Taxation Determination TD 94/55<sup>2</sup> 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.

67. 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.

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<sup>2</sup> Taxation Determination TD 94/55 Income tax: when does providing an item of property constitute the provision of entertainment within the meaning of subsection 32-10(1) of the *Income Tax Assessment Act 1997*?

68. It is considered, therefore, that where an entertainment facility is hired or leased, the hire or lease costs are incurred for the purposes of the provision of 'entertainment' as that latter term is defined in subsection 32-10(1) of the ITAA 1997.

69. Consequently, the use of the card with a Debit BIN to pay for the hire or lease of an entertainment facility will be a 'tax-exempt body entertainment benefit' under section 38.

70. Deposits by participating employers into the disbursement accounts do not constitute the provision of a 'benefit' as that term is defined in subsection 136(1), as the participating employers are merely transferring funds to their own accounts with the Emerchants' authorised deposit-taking institution. It is considered that this view is not altered by the fact that such deposits into the employers' accounts are steps in the furtherance of the terms of SSAs.

71. Similarly, the pre-loading of funds onto the cards is merely the transfer of participating employer funds and no 'benefit' is provided to the cardholders at the time of that transfer.

## **Types of benefits using cards with a Credit BIN**

72. For similar reasons, as explained in paragraphs 44 to 57 of this Ruling, it is considered that the use of a card with a Credit BIN for the provision of food or drink that constitutes 'meal entertainment' will also be a 'tax-exempt body entertainment benefit' under section 38, unless an election is made under Division 9A of Part III.

73. For similar reasons, as explained in paragraphs 59 to 68 of this Ruling, it is considered that the use of a card with a Credit BIN to pay for the hire or lease of an entertainment facility will also be a 'tax-exempt body entertainment benefit' under section 38.

## **Employers subject to section 57A who participate in arrangements where a card with a Debit BIN is used**

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.

75. 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.

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

77. Subsection 5B(1E) limits the exemption to a general capping threshold on each employee's individual grossed-up non-exempt amount (that is, the total grossed-up taxable value of benefits not otherwise exempt) for the particular FBT year. For the FBT year ending 31 March 2015, this threshold is \$17,000 for each employee for employers who are public or non-profit hospitals, or who provide a public ambulance service. This 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 grossed-up taxable value of benefits provided in excess of this threshold. This threshold will be \$17,667 for the years ending 31 March 2016 and 31 March 2017.<sup>3</sup>

78. All other employers to which section 57A applies will have a capping threshold of \$30,000 for each employee for the FBT year ended 31 March 2015. Such employers are liable for FBT on the grossed-up taxable value of benefits provided in excess of this threshold. This capping threshold will be \$31,177 for the years ending 31 March 2016 and 31 March 2017.

#### **Salary packaged entertainment benefits provided on or before 31 March 2016**

79. However, any participating employer to which section 57A applies, will not be liable for FBT on benefits provided they constitute the provision of 'meal entertainment' as defined in section 37AD (whether or not the employer made an election under Division 9A of Part III) or are wholly or partially attributable to 'entertainment facility leasing expenses'.

80. This results from the operation of step 1 of the Method Statement contained in subsection 5B(1L) which specifically disregards these particular types of benefits in calculating an employer's aggregate non-exempt amount.

#### **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

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<sup>3</sup> [Omitted.]



- 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.<sup>3A</sup>

**Employers subject to section 57A who participate in arrangements where a card with a Credit BIN is used**

81. For similar reasons, as explained in paragraphs 74 to 80 of this Ruling, it is considered that any participating employer to which section 57A applies, where a card with a Credit BIN is used, will also not be liable for FBT on benefits provided they constitute the provision of 'meal entertainment' as that term is defined in section 37AD or are wholly or partially attributable to 'entertainment facility leasing expenses'.

82. This results, again, 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 aggregate non-exempt amount.

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.

**Employers subject to section 65J who participate in arrangements where a card with a Debit BIN is used**

83. Section 65J provides that certain non-government and non-profit organisations (rebatable employers) are entitled to have their FBT liability reduced by a rebate. The section does not apply to registered public benevolent institutions or registered health promotion charities.

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<sup>3A</sup> Subsection 5B(1L) continues to apply to non- salary packaged entertainment and car parking benefits.

84. If an employer is a rebatable employer, the employer is entitled to a rebate of tax in the employer's assessment for the year of tax concerned equal to the amount worked out using the relevant formula in subsection 65J(2A). The relevant formula depends upon the year in which the benefit is provided. For the FBT year ended 31 March 2015, if the employer is a rebatable employer for the full year, the rebate (provided the capping threshold is not exceeded) will be 48% of the amount of the gross tax that would otherwise be paid by the employer. In subsequent years, the amount of the rebate will be determined by multiplying the FBT rate for the relevant year by the amount of tax that would otherwise be paid by the employer (provided the capping threshold is not exceeded).

85. If the total grossed-up taxable value of benefits provided to an individual employee exceeds the relevant threshold, the rebate will not apply to the tax that arises on the excess amount. That is, the rebate will only apply to the tax that would otherwise be paid up to the amount of the threshold. The amount of this threshold depends upon the FBT year in which the benefit is provided. For example, in the FBT year ended 31 March 2015 the threshold is \$30,000 grossed-up taxable value per employee. This will be \$31,177 for the years ending 31 March 2016 and 31 March 2017.

86. The amount of gross tax is the amount of tax that would be payable on the fringe benefits taxable amount of the rebatable employer assuming that section 65J had not been enacted.

#### **Salary packaged entertainment benefits provided on or before 31 March 2016**

87. The rebatable employer's aggregate non-rebatable amount is calculated by aggregating the product of each employee's individual grossed-up non-rebatable amount less the relevant capping threshold as set out in step 2 of the Method Statement set out in subsection 65J(2B) multiplied by the FBT rate.

88. Each employee's individual grossed-up non-rebatable amount is determined by multiplying the employee's type 1 and type 2 individual base non-rebatable amounts by the applicable gross-up rate. However, step 1 of the Method Statement contained in subsection 65J(2H) specifically disregards the taxable value of benefits constituting 'meal entertainment,' as that term is defined in section 37AD (whether or not the employer made an election under Division 9A of Part III), and also those which are wholly or partially attributable to 'entertainment facility leasing expenses' in determining an employee's individual base non-rebatable amount.

89. Consequently, the provision of 'meal entertainment' and 'entertainment facility leasing expenses' do not form any part of the rebatable employer's aggregate non-rebatable amount in the rebate calculation. Therefore, the provision of 'meal entertainment' and 'entertainment facility leasing expenses' do not reduce in any way the amount of rebate available to a rebatable employer.

90. However, the values of the provision of 'meal entertainment' and 'entertainment facility leasing expenses' will still be included in the calculation of the amount of the gross tax in the rebate calculation per subsections 5C(3) or 5C(4) as applicable. Therefore, the provision of 'meal entertainment' and 'entertainment facility leasing expenses' have an effective 48% rebate of the benefit's taxed grossed-up taxable value in the year ended 31 March 2015. In the FBT years ending 31 March 2016 and 31 March 2017, the rebate will be equivalent to the revised calculation based upon the FBT rate in subsection 65(2A) as amended applicable from 1 April 2015.

### **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 FBTA 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.<sup>3B</sup>

### **Employers subject to section 65J who participate in arrangements where a card with a Credit BIN is used**

91. For similar reasons, as explained in paragraphs 83 to 89 of this Ruling, it is considered that the provision of 'meal entertainment' and 'entertainment facility leasing expenses', where a card with a Credit BIN is used, will also not reduce in any way the amount of rebate available to a rebatable employer.

<sup>3B</sup> Subsection 65J(2H) continues to apply to non- salary packaged entertainment and car parking benefits.

92. For similar reasons, as explained in paragraph 90 of this Ruling, where a card with a Credit BIN is used for the provision of 'meal entertainment' and 'entertainment facility leasing expenses' it will have an effective 48% rebate of the benefit's grossed-up taxable value in the year ended 31 March 2015. In subsequent FBT years the rebate will be equivalent to the revised calculation based upon the FBT rate in subsection 65(2A) as amended applicable from 1 April 2015.

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.

**Are the benefits provided using a card with a Debit BIN type 1 or type 2 benefits for a rebatable employer?**

93. To determine whether a benefit provided under a card with a Debit BIN arrangement is a type 1 or type 2 benefit, it is necessary to ascertain whether the relevant benefit is a GST-creditable benefit as defined in section 149A.

94. Taxation Ruling TR 2001/2<sup>4</sup> 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 because of either:

- 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.

95. Paragraph 86 of Goods and Services Tax Ruling GSTR 2001/3<sup>5</sup> 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.

96. As stated in paragraph 48 of this Ruling, the use of a card with a Debit BIN by the cardholder will not give rise to expense payment benefits and, therefore, Division 111 of the GST Act will not apply.

<sup>4</sup> Taxation Ruling TR 2001/2 Fringe benefits tax: the operation of the new fringe benefits tax gross-up formula to apply from 1 April 2000.

<sup>5</sup> Goods and Services Tax Ruling GSTR 2001/3 goods and Services Tax: GST and how it applies to supplies of fringe benefits.

97. However, as stated in paragraphs 51 and 58 of this Ruling, the use of a card with a Debit BIN by the cardholder will give rise to tax-exempt body entertainment benefits under section 38.

98. Whether this kind of benefit will be type 1 benefits or type 2 benefits will depend on whether the 'thing' acquired by the provider (in this case, the participating employer) is, or is not, a GST-creditable benefit as defined in section 149A – that is, if the participating employer is entitled to input tax credit for the goods or services acquired.

99. Paragraph 88 of GSTR 2001/3 points out that one of the conditions which could prevent an entitlement to an input tax credit for an acquisition by an employer is the application of the special rules set out in Division 69 of the GST Act.

100. An entitlement to an input tax credit would not arise for an 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 ITAA 1997.

101. Division 69 of the GST Act does not apply to disallow input tax credits for entertainment expenses made in providing fringe benefits to employees as explained in GSTR 2001/3 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). This rule also applies to fringe benefit acquisitions and importations for recreational club expenses and expenses for a leisure facility or boat.

...

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.

102. Therefore the provision of 'meal entertainment' and 'entertainment facility leasing expenditure' to the cardholder from the use of a card with a Debit BIN can be a GST-creditable benefit. Such a benefit will be a type 1 benefit for the purposes of section 5C. Where the benefits are not GST-creditable benefits they will be a type 2 benefit for the purposes of section 5C.

**Are the benefits provided using a card with a Credit BIN type 1 or type 2 benefits for a rebatable employer?**

103. As cards with a Credit BIN or Debit BIN have the same functions and operations, for similar reasons, as explained in paragraph 102 of this Ruling, it is considered that benefits provided to cardholders arising from the use of cards with a Credit BIN will be GST-creditable benefits where the requirements of section 149A are satisfied. Such benefits will be type 1 benefits for the purposes of section 5C. If the requirements of section 149A are not satisfied, such benefits will be type 2 benefits for the purposes of section 5C.

**Reportable fringe benefits amount**

104. 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 cards result in the provision of meal entertainment or an entertainment facility leasing expense, paragraphs 5E(3)(a) or 5E(3)(c) will apply to make the benefit an excluded benefit.

105. This conclusion holds regardless of whether or not the employer has elected that Division 9A of Part III applies or whether the employer is either subject to the provisions of section 57A or a rebatable employer under section 65J. Thus the value of the benefit is not included in the reportable fringe benefits amount of any employee of such employers.

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.

## Appendix 2 – Detailed contents list

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Not previously issued as a draft

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