


CR 2017/34 - Fringe benefits tax: employer clients of Smartgroup Corporation Ltd who are subject to the provisions of section 57A or 65J of the Fringe Benefits Tax Assessment Act 1986 that make use of the Smartgroup Meals and Entertainment Card facility

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Class Ruling

Fringe benefits tax: employer clients of Smartgroup Corporation Ltd who are subject to the provisions of section 57A or 65J of the *Fringe Benefits Tax Assessment Act 1986* that make use of the Smartgroup Meals and Entertainment Card facility

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❗ This publication provides you with the following level of protection:

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

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

Summary - 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 within this Ruling are:

- subsection 5B(1E) of the *Fringe Benefits Tax Assessment Act 1986* (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 37AD of the FBTAA
- section 38 of the FBTAA
- section 57A of the FBTAA
- section 65J of the FBTAA
- section 65J(2A) of the FBTAA
- Part XIB of the FBTAA
- subsection 136(1) of the FBTAA, and
- section 149A of the FBTAA.

Class of entities

3. The class of entities to which this Ruling applies are those employers, who are subject to the provisions of section 57A or section 65J of the FBTAA, who enter into a salary packaging arrangement with Smartgroup through its wholly-owned subsidiaries Smartsalary, Selectus and Advantage (collectively herein referred to as 'Smartgroup') (the promoter) to provide the promoter's Meal Entertainment and Venue Hire Purchasing Card (the Smartgroup Meals and Entertainment Card) to the employer's employees or their associates under an arrangement made with the promoter.

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 20 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

7. This Ruling applies from 1 April 2017. 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).

Previous Rulings

8. Class Ruling CR 2016/41 *Fringe benefits tax: employer clients of Smartgroup Corporation Ltd who are subject to the provisions of section 57A of the Fringe Benefits Tax Assessment Act 1986 that make use of the ANZ Entertainment Benefits Card facility.*

Scheme

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

- the application for a class ruling dated 21 December 2016
- Westpac Card Application Form
- Westpac Terms and Conditions
- End of year FBT report
- Westpac Daily Process
- Tax free cap benefits Information Sheet Meal Entertainment
- Entertainment Benefits Card Audit Process Document
- Entertainment Cap Utilisation Report
- Entertainment Card End of Year Journal Process Document
- Entertainment Card Merchant List
- Standard Employer Agreement
- Westpac Cardholder Communication Letter
- Westpac Customer Communication Letter.

10. Smartgroup Corporation Limited through its wholly-owned subsidiaries Smartsalary Pty Limited, Salary Packaging Solutions Pty Ltd t/a Advantage Salary Packaging, and Selectus Pty Ltd, collectively referred to as 'the promoter', operates a business which provides salary packaging services to employers.

11. The promoter proposes to enter into an agreement with the Westpac Banking Corporation (Westpac) to issue a Smartgroup Meal Entertainment and Venue Hire Purchasing Card (the card) to employees of employers who are subject to section 57A or section 65J of the FBTA. Secondary cards will also be issued to an employee's spouse where this is requested.

12. Participating employers will enter into valid sacrifice arrangements (SSA) with their employees. The use of the Smartgroup's Meal 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 account.

14. A funds distribution file detailing the individual amounts salary sacrificed by each cardholder will be sent by the participating employers to Westpac who acts on behalf of the participating employers in such arrangements. Westpac will reconcile the total value of the funds distribution 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.

15. The card will be made available as a debit card (with a Debit BIN) 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. The cards will be issued in the name of the individual employee who holds the card. In 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 Westpac and the participating employers.

16. The participating employer credits the funds salary sacrificed by each cardholder via the promoter to a disbursement account at Westpac. Westpac then allocates (pre-loads) the relevant salary sacrificed amount(s) against the particular cardholder's card. Each cardholder will be allowed to transact on their card up to the amount that they have individually salary sacrificed in the Fringe Benefits Tax (FBT) year to date which will be verified by the Westpac's Card Management System (CMS). Westpac has a function included in its system software that manages the balances 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.

17. 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. These merchants will be those who provide meal entertainment or hire of entertainment facilities.

18. The restrictions on the use of the cards is driven by Employer Policy. In addition, restrictions on the use of the card include:

- the cards can only be used for either the acquisition of food and drink that constitutes "the provisions of meal and entertainment", in accordance with section 37AD, or for 'entertainment facility leasing expenses', as 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 transferred from card to card or to make direct debit payments, and
- funds pre-loaded onto the cards cannot be used to pay mortgages or transferred to other bank accounts.

19. The salary sacrifice arrangements (SSAs) will state that where the 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 services supplied to the cardholders.

20. 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 fringe benefits tax (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 pay-as-you-go (PAYG) withholding.

Ruling

21. The use of the Smartgroup Meals and Entertainment Card 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 of the FBTAA. A participating employer cannot make an election to use Division 9A of Part III of the FBTAA to calculate the taxable value of the meal entertainment provide under a salary packaging arrangement.

22. The use of the Smartgroup Meals and Entertainment Card for the hire or lease of an entertainment facility will be a 'tax-exempt body entertainment benefit' under section 38 of the FBTAA.

23. The pre-loading of funds onto the cards does not constitute the provision of a 'benefit' as defined in subsection 136(1) of the FBTAA.

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

25. Benefits provided under a salary packaging arrangement that constitute the provision of meal entertainment or an entertainment facility leasing expense are an exempt benefit where the grossed-up taxable value does not exceed \$5,000. Any excess amount is included in the capping thresholds for the purposes of determining the employer's non-exempt amount under subsection 5B(1E) of the FBTAA for an employer subject to the provisions of section 57A of the FBTAA.

26. The provision of meal entertainment or the hire or lease of an entertainment facility by way of the card may reduce the amount of rebate available to a rebatable employer under section 65J of the FBTAA.

27. The provision of such benefits will form part of the employer's aggregate non-rebatable amount in the subsection 65J(2A) of the FBTAA rebate calculation where the grossed-up taxable value of such benefits exceeds \$5,000. Any excess amount is included in the capping thresholds for the purposes of determining the employer's aggregate non-rebatable amount under subsection 65J(2A) of the FBTAA for an employer subject to the provisions of section 65J of the FBTAA.

28. The provision of meal entertainment or an entertainment leasing expense by way of the card 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) of the FBTAA as applicable.

29. Benefits provided of a meal entertainment or an entertainment facility leasing expense by participating employers subject to either section 57A or 65J of the FBTAA to cardholders, using cards with a Debit BIN, where the accompanying SSA states that the benefits being provided to the cardholders are the particular goods and/or services supplied to the cardholders and that the participating employers have the prime responsibility to pay the merchants or service providers will be GST-creditable benefits if the requirements of section 149A of the FBTAA are satisfied in respect of the underlying goods and/or services supplied.

30. Such benefits will be type 1 benefits for the purpose of section 5C of the FBTAA. The benefit will be type 2 benefits where the requirements of section 149A of the FBTAA are not satisfied.

31. The provision of a meal entertainment or an entertainment facility leasing expense under a salary packaging arrangement is not an excluded fringe benefit for the purposes of paragraphs 5E(3)(a) or 5E(3)(c) of the FBTAA. As such, the value of such benefits is included in the reportable fringe benefits provisions in Part XIB of the FBTAA.

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.*

Will the use of the Smartgroup Meals and Entertainment Card for the acquisition of entertainment by way of food or drink constitute the provision of meal entertainment as defined in section 37AD of the FBTAA and for the payment of venue hire and holiday accommodation rental costs constitute an entertainment facility lease expense as per the definition in subsection 136(1) of the FBTAA?

32. A fringe benefit is defined in subsection 136(1) of the FBTAA as being a benefit that is provided by an employer or associate of the employer, to an employee or an associate of the employee, in respect of the employment of the employee.

33. When an employee uses a Smartgroup Meals and Entertainment Card (the card) at an approved merchant, 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. This does not give rise to an expense payment benefit under section 20 of the FBTAA as a participating employer does not discharge an obligation of an employee to pay a third party nor do they reimburse an employee in respect of expenditure they incur.

34. When the card is used, the amounts owed to the merchants are met from the funds held in a participating employer's disbursement account and made available (loaded) on to the card. A participating employer is therefore the entity primarily liable for all transactions, and incurring the relevant debts to the approved merchants, arising from the use of the cards.

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

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

37. The participating employers in the arrangement will be not-for-profit organisations, government entities or other tax-exempt bodies such as public benevolent institutions, health promotion charities, public hospitals and public ambulance services. These types of organisations are exempt from income tax.

38. 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.

39. Section 32-5 of the ITAA 1997 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...

40. 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'.

41. 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'.

42. Therefore, the use of the card to purchase meal entertainment will be a 'tax-exempt body entertainment benefit' under section 38 of the FBTAA. An employer cannot make an election under Division 9A of Part III that '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. This is because meal entertainment provided under a salary packaging arrangement is specifically excluded from being a meal entertainment benefit under section 37AC of the FBTAA. The elective valuation rules therefore cannot be used to calculate the taxable value of the benefit as it is not a meal entertainment fringe benefit. Consequently, the taxable value of the benefit provided is determined under section 39 of the FBTAA as a 'tax-exempt body entertainment benefit'.

43. The term 'entertainment facility leasing expenses' is defined in subsection 136(1) of the FBTAA as:

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

- (a) a corporate box
- (b) boats, or planes, for the purpose of the provision of entertainment
- (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
- (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*.

44. 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) of the FBTAA.

45. A 'tax-exempt body entertainment benefit' will arise under section 38 of the FBTAA 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.

46. 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.

47. 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.

48. Further, 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?* 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.

49. 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.

50. 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.

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

52. 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) of the FBTAA, as the participating employers are merely transferring funds to their own accounts with the financial 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 salary sacrifice arrangements.

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

Will the meal entertainment and entertainment facility lease expense benefits provided by a section 57A employer due to use of the Smartgroup Meals and Entertainment Card be included in the \$5,000 cap imposed on such benefit types in accordance with subsection 5B(1E) of the FBTAA?

54. Section 57A of the FBTAA provides that benefits provided to employees by 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 and 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.

55. The exemption in section 57A of the FBTAA 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.

56. However, these exemptions are subject to the capping provisions in section 5B of the FBTAA.

57. Subsection 5B(1E) of the FBTAA 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 commencing on 1 April 2017, and subsequent FBT years, 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.

58. All other employers to which section 57A of the FBTAA applies will have a capping threshold of \$30,000 for each employee for the FBT year commencing on 1 April 2017 and subsequent FBT years. These employers are liable for FBT on the grossed-up taxable value of benefits provided in excess of this threshold.

59. If the employee's individual grossed-up non-exempt amount is greater than the capping threshold, an employer may further reduce the amount under step 4 of the Method Statement in subsection 5B(1E) by the lesser of \$5,000 and so much of the employee's individual grossed-up non-exempt amount that relates to salary packaged meal entertainment and entertainment facility leasing expenses under subsection 5B(1M) of the FBTAA. The latter amount, for the purposes of subsection 5B(1M) includes the provision of meal

entertainment or entertainment facility leasing expenses made through the use of the card.

60. Each employee's individual grossed-up non-exempt amount is determined by multiplying the employee's type 1 and type 2 individual base non-exempt amounts by the applicable gross-up rate. Step 1 of the Method Statement contained in subsection 5B(1L) of the FBTAA does not specifically disregard the taxable value of benefits provided under a salary packaging arrangement that constitutes 'meal entertainment,' as that term is defined in section 37AD of the FBTAA, or those which are wholly or partially attributable to 'entertainment facility leasing expenses' in determining an employee's individual base non-exempt amount. This is because such benefits are not excluded fringe benefits for the purposes of paragraphs 5E(3)(a) or 5E(3)(c) of the FBTAA.

61. Consequently, the use of the card to purchase meal entertainment or to pay for the hire or lease of an entertainment facility may form part of any participating employer's aggregate non-exempt amount in the exemption calculation where the grossed-up taxable value of such benefits exceeds \$5,000, and the excess amount when added to the grossed-up taxable value of other benefits provided to an employee exceeds the relevant general capping threshold.

Will the meal entertainment and entertainment facility lease expense benefits provided by a section 65J employer due to use of the Smartgroup Meals and Entertainment Card be included in the \$5,000 cap imposed on such benefit types in accordance with subsection 5B(1E) of the FBTAA?

62. Section 65J of the FBTAA provides that certain non-government and non-profit organisations (rebatable employers) are entitled to have their FBT liability reduced by a rebate.

63. 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) of the FBTAA. The relevant formula depends upon the year in which the benefit is provided. For the FBT year commencing 1 April 2017, if the employer is a rebatable employer for the full year, the rebate (provided the capping threshold is not exceeded) will be 47% 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 FBT year by the amount of tax that would otherwise be paid by the employer (provided the capping threshold is not exceeded).

64. 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 the year commencing 1 April 2017 and subsequent FBT years, the threshold is \$30,000 grossed-up taxable value per employee.

65. 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 of the FBTA had not been enacted.

66. 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 capping threshold as set out in step 2 of the Method Statement in subsection 65J(2B) by the lesser of \$5,000 and so much of the employee's individual grossed-up non-rebatable amount that relates to salary packaged meal entertainment and entertainment facility leasing expenses under subsection 65J(2J) of the FBTA (that is, the amount of the meal entertainment or entertainment facility leasing expenses provided through use of the card). If the amount is greater than nil it is multiplied by the FBT rate.

67. 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. Step 1 of the Method Statement contained in subsection 65J(2H) of the FBTA does not disregard the taxable value of benefits provided under a salary packaging arrangement that constitutes 'meal entertainment', as that term is defined in section 37AD of the FBTA, or those which are wholly or partially attributable to 'entertainment facility leasing expenses' in determining an employee's individual base non-rebatable amount. This is because such benefits are not excluded fringe benefits for the purposes of paragraphs 5E(3)(a) or 5E(3)(c) of the FBTA.

68. Consequently, the use of the card to purchase meal entertainment or to pay for the hire or lease of an entertainment facility will form part of a participating employer's aggregate non-rebatable amount in the rebate calculation where the grossed-up taxable value of such benefits exceeds \$5,000, and the excess amount when added to the grossed-up taxable value of other benefits provided to an employee exceeds the \$30,000 capping threshold. The provision of 'meal entertainment' may therefore reduce the amount of rebate available to a rebatable employer.

69. Further, the values of the provision of 'meal entertainment' and 'entertainment facility leasing expenses' will be included in the calculation of the amount of the gross tax in the rebate calculation per subsections 5C(3) or 5C(4) of the FBTA as applicable.

Will the meal entertainment and entertainment facility lease expense benefits arising to a section 57A employer due to use of the Smartgroup Meals and Entertainment Card be GST-creditable benefits as defined in section 149A of the FBTA?

70. A participating employer, or the promoter on behalf of the participating employer, receives information on the usage of each card from the financial institution and the end of the FBT year. This information would enable a participating employer, or the promoter on behalf of the participating employer, to distinguish between taxable, GST-free and input taxed supplies.

71. To determine whether a benefit provided under the Smartgroup Meals and Entertainment Card 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 of the FBTA.

72. 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* advises that for the purposes of section 149A of the FBTA, 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.

73. In this instance, as the relevant goods or services are firstly acquired by the participating employers, it has to be determined whether the particular goods or services (the 'things') being acquired entitle the participating employers to input tax credits in relation to the fringe benefits subsequently provided to the cardholders.

74. Where the 'thing' acquired by the participating employer is a taxable supply it is a creditable acquisition and where the 'thing' acquired by the employer is not a taxable supply it is not a creditable acquisition.

75. Therefore, benefits of the underlying goods and services provided to cardholders arising from the use of cards will be GST-creditable benefits if the requirements of section 149A of the FBTA are satisfied. Such benefits will be type 1 benefits for the purposes of section 5C of the FBTA.

76. Where the requirements of section 149A of the FBTA are not satisfied the benefits of the underlying goods and services provided to cardholders arising from the use of cards will not be GST-creditable benefits and thus will be type 2 benefits for the purposes of section 5C of the FBTA.

Will the meal entertainment and entertainment facility lease expense benefits arising to a section 65J employer due to use of the Smartgroup Meals and Entertainment Card be GST-creditable benefits as defined in section 149A of the FBTAA?

77. See paragraphs 69 to 75 of this Ruling.

78. If the requirements of section 149A of the FBTAA are satisfied, the benefits will be type 1 benefits for the purposes of section 5C of the FBTAA.

79. If the requirements of section 149A of the FBTAA are not satisfied, the benefits will be type 2 benefits for the purposes of section 5C of the FBTAA.

Is the provision of meal entertainment and entertainment facility lease expense using the Smartgroup Meals and Entertainment Card included in determining an employee's Reportable Fringe Benefits Amount?

80. 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 card results in the provision of meal entertainment or an entertainment facility leasing expense under a salary packaging arrangement, paragraphs 5E(3)(a) and 5E(3)(c) of the FBTAA apply such that the benefits are not an excluded fringe benefit. The value of the benefits is included in the reportable fringe benefits amount of an employee of employers subject to either the provisions of section 57A or section 65J of the FBTAA.

81. Any participating employer therefore will be required to include the grossed-up taxable value of the salary packaged meal entertainment and entertainment facility leasing expenses 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

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

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References

Previous draft:

Not previously issued as a draft

Previous Rulings:

CR 2016/41

Related Rulings/Determinations:

TD 94/55; TR 2001/2;

TR 2006/10

Legislative references:

- ANTS(GST)A 1999
- ANTS(GST)A 1999 Div 69
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