


CR 2009/52 - Fringe benefits tax: employer clients of Australia and New Zealand Banking Group Limited (ANZ) who are subject to the provisions of section 57A of the Fringe Benefits Tax Assessment Act 1986 or who are rebatable employers under section 65J of that Act and whose employees make use of the ANZ Meal Entertainment Card facility

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Class Ruling

Fringe benefits tax: employer clients of Australia and New Zealand Banking Group Limited (ANZ) who are subject to the provisions of section 57A of the *Fringe Benefits Tax Assessment Act 1986* or who are rebatable employers under section 65J of that Act and whose employees make use of the ANZ Meal 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.

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 5C(3) of the FBTAA;

- subsection 5C(4) of the FBTA;A;
- paragraph 5E(3)(a) of the FBTA;A;
- section 37AD of the FBTA;A;
- section 57A of the FBTA;A;
- section 65J of the FBTA;A;
- subsection 65J(2A) of the FBTA;A; and
- Part XIB of the FBTA;A.

All subsequent legislative references are to the FBTA;A unless otherwise stated.

Class of entities

3. The class of entities to which this Ruling applies are those employers subject to the provisions of section 57A or rebatable employers under section 65J who:

- enter into an arrangement with ANZ to provide the ANZ Meal Entertainment Card (Meal Entertainment Card) facility to their employees; or
- enter into an arrangement with a salary packaging provider to administer salary packaging on its behalf, with the salary packaging provider (acting on the employer's behalf) entering into an arrangement with ANZ to provide the Meal Entertainment Card facility to the employer's employees.

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 2009 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. 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 following documents, or relevant parts of them form part of and are to be read with the description:

- Class Ruling Application dated 4 February 2009;
- ANZ Booklet titled ANZ Commercial Card Terms and Conditions dated November 2008;
- ANZ Salary Packaging Card & ANZ Meal Entertainment Card Cardholder Specific Terms & Conditions;
- ANZ Meal Entertainment Card Letter of Offer including the ANZ Meal Entertainment Card Facility Acceptance form;
- ANZ Salary Packaging Cardholder Application Form;
- Applicant's e-mail of 17 June 2009; and
- Applicant's e-mail of 26 June 2009.

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

10. Each employer or salary packaging provider, acting on the employer's behalf, enters into an arrangement with ANZ to provide the Meal Entertainment Card facility to employees of the employer.

11. Employees of participating employers may then apply to ANZ to be provided with a Meal Entertainment Card issued in the employee's (Cardholder's) name. The Meal Entertainment Card is a credit card.

12. Each employer enters into effective salary sacrifice arrangements¹ with that employer's participating employees to set aside salary sacrificed amounts in respect of meal entertainment.

13. A separate account (Principal's account) is established with ANZ for each employer or, where a salary packaging provider is administering the salary sacrifice agreement on behalf of the employer, the salary packaging provider will have an account, which holds the funds on behalf of its principal clients (also referred to as 'Principal's account').

14. Funds are made available to the Cardholder's Account from the Principal's account on a periodic basis as determined under the relevant salary sacrifice arrangements. Access to the available funds is authorised by either the employer or salary packaging provider depending on who is administering the salary sacrifice arrangements.

15. Cardholders use their Meal Entertainment Card to pay for meal entertainment expenditure. Expenditure amounts within any given period are limited to the funds made available from the Principal's account to the Cardholder. The only rights Cardholder's have is to charge expenses on the Meal Entertainment Card up to the available balance.

16. ANZ draws upon the available balance on a progressive basis when the merchant presents the relevant transaction for payment. ANZ reports on a daily basis to the employer or the salary packaging provider, as applicable, the transactions made by the Cardholder and the remaining balance available to the Cardholder. The Cardholder also has access to this daily information through an ANZ web-portal.

17. Cardholders are restricted to using Meal Entertainment Cards only for meal entertainment by the process of ANZ merchant ID blocking and also by the employer or salary packaging provider, as applicable, carrying out reviews of the specific expenditure to ensure that there is accurate identification, usage and subsequent correction where required.

¹ The meaning of what is an effective salary sacrifice arrangement is discussed in Taxation Ruling TR 2001/10 Income tax: fringe benefits tax and superannuation guarantee: salary sacrifice arrangements.

18. Cardholder's are primarily liable to ANZ for all expenditure incurred using the Meal Entertainment Card. However, employers have a secondary liability in the event of a Cardholder's default. All unexpended balances remain the property of the employer.

19. ANZ regularly sends the employer or salary packaging provider, as the case may be, a transaction file. The transaction file includes a list of transactions that the Cardholder is liable to pay within 14 days from the date of the file. Within this time any outstanding transaction amounts are discharged from the funds available to the Cardholder.

20. The Meal Entertainment Card is restricted to ensure that cash advances, cash withdrawals and account transfers are not available. In this regard, for example, payments towards mortgages and rental payments are not allowed.

21. At the end of the fringe benefits tax year, any remaining funds available to the Cardholder can be rolled over for use in the following year or refunded to the employer depending on the employer's preference.

22. At such time as the relevant employment ceases, both the employer and the employee will be obliged to inform ANZ immediately, following which the Meal Entertainment Card will be cancelled. Any credit balance remaining will be returned to the employer to be paid to the employee as salary subject to the pay as you go tax withholding rules.

Ruling

23. The use of the Meal Entertainment Card for the acquisition of entertainment by way of food or drink constitutes the provision of meal entertainment as defined in section 37AD.

24. The provision of meal entertainment by way of the Meal Entertainment Card gives rise to an exempt benefit for an employer subject to the provisions of section 57A.

25. Benefits that constitute the provision of meal entertainment 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.

26. The provision of meal entertainment by way of the Meal Entertainment Card does not reduce the amount of rebate available to a rebatable employer under section 65J as the provision of meal entertainment does not form part of the employer's aggregate non-rebatable amount in the subsection 65J(2A) rebate calculation.

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27. The provision of meal entertainment by way of the Meal Entertainment Card has an effective rebate of 48% of the benefit's taxed grossed-up value as the provision of meal entertainment is 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.

28. The provision of meal entertainment is an excluded fringe benefit for the purposes of paragraph 5E(3)(a). As such, the value of the benefit is excluded from the reportable fringe benefits provisions in Part XIB.

Commissioner of Taxation

16 September 2009

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.*

Type of benefits

29. Section 37AD defines the meaning of the phrase 'provision of meal entertainment'. The section refers to, amongst other things, the provision of entertainment by way of food or drink or the payment or reimbursement of such entertainment.

30. Paragraph 20(a) provides that where a person (the provider) makes a payment in discharge, in whole or in part, of an obligation of another person (the recipient) to pay an amount to a third person in respect of expenditure incurred by the recipient, the making of that payment gives rise to an expense payment benefit.

31. Cardholders are primarily liable for all expenditure incurred using the Meal Entertainment Card. Under the scheme, the obligation that is discharged is the Cardholder's obligation to ANZ for any debt incurred using the Meal Entertainment Card.

32. Therefore, when available funds from the Principal's account are used to discharge a debt incurred by the Cardholder in using the Meal Entertainment Card the elements of paragraph 20(a) are satisfied and an expense payment benefit arises at that time.

33. As the Cardholder may only use the Meal Entertainment Card for meal entertainment any resultant expense payment benefits fall within the meaning of the provision of meal entertainment for the purposes of section 37AD.

Employers subject to section 57A

34. Section 57A provides that certain employers are generally exempt from fringe benefits tax (FBT). This section applies to employers that are an endorsed public benevolent institution, certain hospitals, an employer who provides public ambulance services (or services that support those service) where the employee is predominantly involved in connection with the provision of those services, or an endorsed health promotion charity.

35. 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.

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

37. Subsection 5B(1E) limits the exemption to \$17,000 grossed-up taxable value per employee for employers who are public or non-profit hospitals, 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 full FBT on the value of benefits provided in excess of this threshold.

38. All other employers to which section 57A applies will have a capping threshold of \$30,000 grossed-up taxable value per employee. Such employers are liable for fringe benefits tax on the value of benefits provided in excess of this threshold.

39. However, any employer to which section 57A applies, will not be liable for fringe benefits tax on benefits provided that constitute the provision of meal entertainment as defined in section 37AD. This results from the operation of step 1 of the method statement contained in subsection 5B(1L) which specifically disregards the provision of meal entertainment in calculating an employer's aggregate non-exempt amount.

Rebatable employers under section 65J

40. Section 65J provides that certain non-government and non-profit organisations (rebtable employers) are entitled to have their FBT liability reduced by a rebate. The section does not apply to public benevolent institutions nor to health promotion charities.

41. The rebate determined under subsection 65J(2A) is calculated as follows:

$$0.48 \times \left(\text{Gross tax} - \frac{\text{Aggregate non-rebtable amount}}{\text{Total days in year}} \right) \times \frac{\text{Rebtable days in year}}{\text{Total days in year}}$$

42. Rebtable employers have a capping threshold of \$30,000 grossed-up taxable value per employee. If the total grossed-up taxable value of benefits is more than \$30,000 a rebate cannot be claimed for the FBT liability on the excess amount (or on the aggregate non-rebtable amount).

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

44. The rebtable employer's aggregate non-rebtable amount is calculated by aggregating the product of each employee's individual grossed-up non-rebtable amount less the \$30,000 cap multiplied by the then FBT rate.

45. 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 the provision of meal entertainment in determining an employee's individual base non-rebatable amount.

46. Consequently, the provision of meal entertainment does not form any part of the rebatable employer's aggregate non-rebatable amount in the rebate calculation. Therefore, the provision of meal entertainment does not reduce in any way the amount of rebate available to a rebatable employer.

47. However, the provision of meal entertainment 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 has an effective 48% rebate of the benefit's taxed grossed-up value.

Reportable fringe benefits amount

48. 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 Meal Entertainment Card results in the provision of meal entertainment, paragraph 5E(3)(a) will apply to make the benefit an excluded benefit.

49. 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.

Appendix 2 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

CR 2008/24; CR 2008/24A;
TR 2001/10; TR 2006/10

Subject references:

- expense payment benefits
- FBT salary packaging
- FBT salary sacrifice
- fringe benefits
- fringe benefits tax
- exempt employer
- rebatable employer
- public benevolent institution
- hospital
- public ambulance service
- charitable institution

Legislative references:

- FBTA 1986 5B
- FBTA 1986 5B(1E)
- FBTA 1986 5B(1L)
- FBTA 1986 5C(3)
- FBTA 1986 5C(4)
- FBTA 1986 5E(3)(a)
- FBTA 1986 20(a)
- FBTA 1986 37AD
- FBTA 1986 57A
- FBTA 1986 65J
- FBTA 1986 65J(2A)
- FBTA 1986 65J(2H)
- FBTA 1986 Part XIB
- FBTA 1986 Div 9A Pt III
- TAA 1953
- Copyright Act 1968

ATO references

NO: 2009/8991

ISSN: 1445-2014

ATOlaw topic: Fringe Benefits Tax -- Expense payment fringe benefits