


CR 2016/32 - 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 Entertainment Benefits 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 Entertainment Benefits 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 within this Ruling are:

- subsection 5B(1E) of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA)
- paragraph 5E(3)(a) of the FBTAA

- paragraph 5E(3)(c) of the FBTAA
- Division 9A of Part III
- section 38 of the FBTAA
- section 57A of the FBTAA
- section 65J of the FBTAA
- subsection 65J(2A) of the FBTAA
- subsection 136(1) of the FBTAA, and
- Part XIB of the FBTAA.

Class of entities

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

- enter into a Card Facility Arrangement (CFA) with Australia and New Zealand Banking Group Limited (ANZ) to provide the ANZ Entertainment Benefits Card (Entertainment Benefits Card) facility to their employees under a salary packaging arrangement, or
- enter into an arrangement with a salary packaging provider to administer salary packaging on its behalf, with the salary packing provider (acting on the employer's behalf) entering into a CFA with ANZ to provide the Entertainment Benefits 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 21 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 2016 to 31 March 2020. The Ruling continues to apply after 31 March 2020 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).

Previous Rulings

8. Class Ruling CR 2009/52.

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 22 December 2015
- ANZ Commercial Card Terms and Conditions
- ANZ Salary Packaging Cardholder Application Form
- ANZ Meal Entertainment Card Letter of Offer & Facility Acceptance, and
- ANZ Salary Packaging Card & ANZ Meal Entertainment Card – Cardholder Specific Terms & Conditions.

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

10. 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 of the FBTAA.

11. Participating employers or a salary packaging provider acting on the employers behalf, will enter into an arrangement with the ANZ, as card provider, for the issue of cards (ANZ Entertainment Benefits Card) to their employees (cardholders). Participating employers and salary packaging providers are collectively referred to as Principals.

12. ANZ will issue the card in the employee's name and the employee is primarily liable for payment of any expense charged on the card. A separate card account is established for each employee. However, the employer will be liable for any expenditure incurred using the card under the terms of the salary sacrifice arrangement.

Funding

13. Employers will enter into valid salary sacrifice arrangements¹ (SSA) with employees to purchase entertainment benefits up to an amount agreed and over an agreed period. The use of the Entertainment Benefits Card facility will form an integral part of those arrangements.

14. The Principal will establish an ANZ bank account in which it will deposit funds associated with the provision of the card. The Principal will deposit funds into the account equal to the agreed salary sacrifice amounts for each agreed period. Where the salary packaging arrangements associated with entertainment benefits is being administered by a salary packaging provider, they will be authorised to draw upon this account for the purposes of administration of the salary packaging arrangements.

15. The Principal sends funds to ANZ in accordance with the salary sacrifice cycle, regardless of any amount on the card or the statement cycle date. The payment of funds to the card every pay cycle enable the cardholder to pay for expenses incurred on the card within the required repayment period.

16. Any unused funds remain the employer's. If the employee terminates employment, the unused funds are returned to the employer and paid out as salary and wages to the employee.

Cards

17. The card will be a credit card with a \$1 limit. Any credit extended is due and payable in full within 14 days from the date of the Statement of Account. The Cardholder will be liable to ANZ for any credit extended arising out of the use of the card.

18. The card will be issued in the name of the individual employee who holds the card. Employees apply for the card by completing the application form which is submitted to the Principal who approves the issue of the card. In completing the application, the employee acknowledges that the use of the card is governed by the Terms and Conditions provided with the card.

¹ 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 cardholder will be liable for any expenditure incurred using the card under the terms of the salary sacrifice arrangement. The employee (cardholder) does not have any obligation to the merchant (retailer) at the point of sale, other than what is required on the part of the cardholder for the purchase transaction to be completed successfully.

Usage

20. The use of the card will be subject to the ANZ Entertainment Benefits Card – Cardholder Specific Terms and Conditions, and the Terms and Conditions contained in the Letter of Offer. The sole purpose of the card is to facilitate the provision of the relevant benefits by the Principal to the cardholder under the terms of the salary sacrifice arrangements between them as employer and employee respectively.

Restrictions

21. Each Principal will impose a policy that the card will only be used for the payment of expenditure in respect of entertainment benefits. Restrictions on the use of the card include:

- no cash advances
- no withdrawing cash from an automatic teller machine (ATM) or bank branch, and
- limiting the use of the card to specific classes of merchants.

Should an employee incur unauthorised expenditure using the card, the Principal will be liable to ANZ and the Principal may subsequently seek compensation from the employee by their own arrangement.

Ruling

22. The use of the ANZ Entertainment Benefits Card ('the 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 provided under a salary packaging arrangement.

23. The use of the card for the hire or lease of an entertainment facility will be a 'tax-exempt body entertainment benefit' under section 38 of the FBTAA.

24. Deposits by participating employers into the participating employers' disbursement accounts, held by ANZ, do not constitute the provision of a 'fringe benefit' as defined in subsection 136(1) of the FBTA.

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

26. 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 FBTA.

27. Benefits provided under the 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 for the purpose of the capping thresholds in determining the employer's aggregate non-exempt amount under subsection 5B(1E) of the FBTA for an employer subject to the provisions of section 57A of the FBTA.

28. 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 of the FBTA. The provision of such benefits will form part of the employer's aggregate non-rebatable amount in the subsection 65J(2A) of the FBTA 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 FBTA for an employer subject to the provisions of section 65J of the FBTA.

29. The provision of meal entertainment or an entertainment facility 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) of the FBTA rebate calculation, per subsections 5C(3) or 5C(4) of the FBTA as applicable.

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

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.*

Does the use of the card for the acquisition of food and drink by way of entertainment by employees constitute the provision of Meal Entertainment as defined in section 37AD of the FBTAA?

31. 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.

32. The Principal deposits funds into an ANZ bank account which it established which will discharge a liability to pay a third person when the card is activated. Paragraph 20(a) of the FBTAA 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.

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

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

35. The expenditure on food or drink by the Cardholder will come within the meaning of the phrase 'provision of meal entertainment' under section 37AD(a) of the FBTAA. That phrase, at paragraph 37AD(a), includes 'entertainment by way of food or drink'. The transfer of funds from the Principal's account to discharge a debt incurred by the Cardholder in relation to entertainment by way of food and drink will come within the meaning of paragraph 37AD(c) of the FBTAA.

A reference to the **provision of meal entertainment** is a reference to the provision of:

- (a) entertainment by way of food or drink;
- (b) accommodation or travel in connection with, or for the purpose of facilitating, entertainment to which paragraph (a) applies; or
- (c) the payment or reimbursement of expenses incurred in providing something covered by paragraph (a) or (b);

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'.

Where, at a particular time, a person (in this section referred to as the **provider**) incurs non-deductible exempt entertainment expenditure that is wholly or partly in respect of the provision, in respect of the employment of an employee, of an employee, of entertainment to a person (in this section referred to as the **recipient**) being the employee or an associate of the employee, the incurring of the expenditure shall be taken to constitute a benefit provided by the provider to the recipient at that time in respect of that employment.

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.

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...

39. 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'.

40. By virtue of paragraph 37AD(c) of the FBTAA, section 32-5 of the ITAA 1997 would apply to the participating employer in relation to the use of the card by the employee to purchase food or drink that constitutes 'meal entertainment'. The provision of such benefits will be 'non-deductible exempt entertainment expenditure'.

41. Therefore, the use of the card to purchase meal entertainment will be a 'tax-exempt body entertainment benefit' under section 38 of the FBTAA. Although an employer can make an election under Division 9A of Part III that 'entertainment by way of food or drink' be treated as 'meal entertainment benefits', rather as any other kind of benefit for the purposes of the FBTAA, 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 cannot be used to calculate the taxable value of the benefit as it is not a meal entertainment fringe benefit. The taxable value of the benefit provided is therefore determined under section 39 of the FBTAA as a 'tax-exempt body entertainment benefit'.

Does the use of the card to incur entertainment facility leasing expenses constitute a 'tax-exempt body entertainment benefit' under section 38 of the FBTAA?

42. 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.

43. Further, Taxation Determination TD 94/55² 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.

44. 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.

45. 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.

46. 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.

Where the employer is subject to the provisions of section 57A of the FBTAA is the provision of entertainment benefits through use of the card valued in accordance with the Method Statement as set out in subsection 5B(1E) of the FBTAA?

47. 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.

² 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?*

48. 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.

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

50. 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 ending 31 March 2017, this threshold is \$17,667 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 \$17,000 for the year ending 31 March 2018 and subsequent years.

51. All other employers to which section 57A applies will have a capping threshold of \$31,177 for each employee for the FBT year ending 31 March 2017. These employers are liable for FBT on the grossed-up taxable value of benefits provided in excess of this threshold. This threshold will be \$30,000 for the year ending 31 March 2018 and subsequent FBT years.

52. 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.

53. 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.

54. 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.

Where the employer is subject to the provisions of section 65J of the FBTAA is the provision of entertainment benefits through use of the card valued in accordance with the Method Statement as set out in subsection 65J(2B) of the FBTAA?

55. 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.

56. 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 ending 31 March 2017, if the employer is a rebatable employer for the full year, the rebate (provided the capping threshold is not exceeded) will be 49% 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).

57. 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 ending 31 March 2017 the threshold is \$31,177 grossed-up taxable value per employee. This will be \$30,000 for the year ending 31 March 2018 and subsequent years.

58. 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 FBTAA had not been enacted.

59. 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) of the FBTA. If that amount is positive it is further reduced under step 2A 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 (i.e. the amount of the meal entertainment or entertainment facility leasing expenses provided through the use of the card). If the amount is greater than nil it is multiplied by the FBT rate.

60. 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.

61. 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 \$31,177 capping threshold. The provision of 'meal entertainment' and 'entertainment facility leasing expenses' may therefore reduce the amount of rebate available to a rebatable employer.

Reportable fringe benefits amount

62. 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 FBTA 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 FBTA.

63. 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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TD 94/55; TR 2006/10;
TR 2001/10; CR 2009/52

Legislative references:

- FBTAA 1986
- FBTAA 1986 5B
- FBTAA 1986 5B(1E)
- FBTAA 1986 5B(1L)
- FBTAA 1986 5B(1M)
- FBTAA 1986 5C(3)
- FBTAA 1986 5C(4)
- FBTAA 1986 5E(3)(a)
- FBTAA 1986 5E(3)(c)
- FBTAA 1986 20(a)
- FBTAA 1986 37AD
- FBTAA 1986 37AD(a)

- FBTAA 1986 37AD(c)
- FBTAA 1986 38
- FBTAA 1986 57A
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- TAA 1953

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edition

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