



Class Ruling

Fringe benefits tax: employer clients of McMillan Shakespeare Australia Pty Ltd that make use of a Salary Packaging Payment Card facility

Contents	Para
What this Class Ruling is about	1
Date of effect	8
Arrangement	9
Ruling	13
Explanation	15
Detailed contents list	28

Preamble

*The number, subject heading, and the **What this Class Ruling** is about (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains Class Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a 'public ruling' and how it is binding on the Commissioner.*

What this Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. The tax law(s) dealt with in this Ruling are:
- Sections 5B, 5C, 20, 147 and 149A of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA).

Class of persons

3. The class of persons to whom this Ruling applies are those employers who enter into a salary packaging services agreement with McMillan Shakespeare Australia Pty Ltd (the promoter). Employees of these employers will be provided with a salary packaging payment card (the card), under a salary packaging arrangement with the promoter.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

5. The class of persons defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the arrangement described in paragraphs 9 to 12.

6. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement 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- this Ruling may be withdrawn or modified.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 2001. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 to 22 of Taxation Ruling TR 92/20). Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the Gazette;
- it is not taken to be withdrawn by an inconsistent later public ruling; or
- the relevant tax laws are not amended.

Arrangement

9. The arrangement that is the subject of the Ruling is described below, and is based on the documents listed below. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- Salary Packaging Payment Card Business Rules dated September 2001;
- Purchasing Card Facility Agreement, dated 4 October 2001;
- Draft Salary Packaging Services Agreement between promoter and employer;
- Employee Information on Salary Packaging Payment Card, dated September 2001;
- Conditions of Use of the Purchasing Card; and
- McMillan Shakespeare Salary Packaging Payment Card Cardholder Request Form.

Note: certain information received from McMillan Shakespeare has been provided on a commercial-in-confidence basis and will not be disclosed or released by the Tax Office under the Freedom of Information Legislation.

10. The promoter operates a business, which amongst other areas of activity, provides salary packaging services to employers. The promoter has entered into an agreement with a financial institution to issue a purchasing card to employees of those employers, as part of a salary packaging arrangement. An employee can use the card to pay for a range of expenses such as private utilities, groceries, motor vehicle operating expenses, insurance payments and private travel. Cash advances using the card are not permitted.

11. Each employee, by agreement with their employer, is allowed to use the card up to an agreed value, over an agreed period of time. The employee is liable for any debt incurred by using the card.

12. The employer operates an account with the financial institution and deposits funds into the account on an agreed regular cycle. The promoter has withdrawal access to that account, so that the promoter can draw against the employer's funds to pay debts incurred on an employee card. The financial institution will advise the promoter of the amount that has been expended by the employee in the previous period of time. The promoter will then pay that amount to the card account of the employee, subject to the amount not exceeding the predetermined agreed value.

Ruling

13. The payment of an amount to an employee's card account constitutes an expense payment fringe benefit for the purposes of Division 5 of the FBTAA where, under the arrangement the employee has incurred expenses using the card.

14. The provision of such an expense payment fringe benefit is not a GST-creditable benefit in terms of section 149A of the FBTAA and is therefore regarded as a type 2 benefit for the purposes of section 5C of the FBTAA. The taxable value of that benefit is grossed up according to the formula in subsection 5B(1C) of the FBTAA.

Explanation

15. The first limb of the expense payment fringe benefit provisions in Division 5 of Part 111 of the FBTAA, provides that 'Where a personmakes a payment in discharge, in whole or in part, of an obligation of another person (...the '**recipient**')...', the making of that payment gives rise to an expense payment benefit.

16. By way of clarification of the term obligation, section 147 provides that 'a person shall be deemed to be under an obligation to pay ... an amount notwithstanding that the amount is not due for payment. ...'

17. Where, under the arrangement, the promoter pays an amount to the employee's card account (up to an agreed value) out of funds provided by the employer, a payment in discharge of an obligation of another person (the employee) is made. By virtue of section 147 of the FBTAA and for the purposes of subsection 20(a), a payment by the promoter does not need to relate to an amount that is currently due for payment by the employee. It is sufficient that the amount is merely paid to the employee's card account.

18. The first limb of the expense payment provisions also requires that a payment in discharge of an obligation relates to an obligation by the recipient 'to pay an amount to a third person in respect of expenditure incurred by the recipient'.

19. Under the arrangement, the obligation that is discharged in whole or in part, by the promoter's payment, is the employee's obligation to the financial institution (the third person) for any debts incurred in using the card.

20. Thus, for the purposes of subsection 20(a) of the FBTAA, an expense payment fringe benefit arises at the time that the promoter pays an amount to the employee's card account.

21. To determine whether such an expense payment fringe benefit is a type 1 or type 2 benefit for the purpose of the operation of the fringe benefits tax (FBT) gross-up formula, it is necessary to ascertain whether the benefit is a GST-creditable benefit as defined in section 149A of the FBTAA.

22. Taxation Ruling TR 2001/2 points out that for the purposes of section 149A of the FBTAA, to be a GST-creditable benefit, the provider of the benefit must be entitled to an input tax credit for that benefit and that a GST-creditable benefit arises where the provider is entitled to an input tax credit because of:

- the operation of Division 111 of the GST Act, or
- because the fringe benefit is a 'thing' that was acquired or imported by the provider.

23. For the purpose of subsection 149A(1) of the FBTAA, paragraphs 89 and 90 of the Goods and Services Tax Ruling GSTR 2001/3, indicate that an expense payment fringe benefit as described in the arrangement does not involve a creditable acquisition for the purposes of Division 111 of the GST Act and therefore there is no entitlement to an input tax credit.

24. For the purpose of subsection 149A(2) of the FBTAA, paragraph 43 of TR 2001/2 indicates that that subsection is designed to cover benefits that arise from the employee's use of a 'thing' such as a car. Paragraph 52 of the ruling makes it clear that the 'thing' used to provide the benefit must have been acquired or imported. Therefore, subsection 149A(2) has no application to an expense payment fringe benefit as described in the arrangement.

25. Thus, an expense payment fringe benefit as described in the arrangement is not a GST-creditable benefit for the purposes of section 149A of the FBTAA.

26. Where a fringe benefit is not a GST-creditable benefit, it is included in the employer's type 2 aggregate fringe benefits amount under subsection 5C(4) of the FBTAA. The taxable value of that benefit is grossed-up at the rate of 1.9417 where the FBT rate is 48.5%, calculated in accordance with the formula in subsection 5B(1C) of the FBTAA.

27. This ruling only applies to expense payment fringe benefits provided to employees as described in the arrangement. Where public benevolent institution employers provide meal entertainment fringe benefits under similar arrangements, a ruling on such arrangements is contained in Class Ruling CR 2003/36.

Detailed contents list

28. Below is a detailed contents list for this Class Ruling:

	Paragraph
What this Class Ruling is about	1
Tax law(s)	2
Class of persons	3
Qualifications	4
Date of effect	8
Arrangement	9
Ruling	13
Explanation	15
Detailed contents list	28

Commissioner of Taxation

17 December 2003

Previous draft: - FBT Taxable value

Not previously issued as a draft

Related Rulings/Determinations:

CR 2001/1; CR 2003/36; TR 92/1;
TR 92/20; TR 97/16; TR 2001/2;
GSTR 2001/3

Subject references:

- creditable acquisition
- expense payment fringe benefits
- fringe benefits tax
- fringe benefit
- goods and services tax
- input taxed
- input tax credit
- salary packaging
- GST-creditable benefit
- Aggregate fringe benefits amount

Legislative references:

- Copyright Act 1968
- TAA 1953 Pt IVAAA
- ANTS(GST)A Div 111
- FBTAA 1986 Div 5
- FBTAA 1986 Div 5 Part III
- FBTAA 1986 5B
- FBTAA 1986 5B(1C)
- FBTAA 1986 5C
- FBTAA 1986 5C(4)
- FBTAA 1986 20
- FBTAA 1986 20(a)
- FBTAA 1986 147
- FBTAA 1986 149A
- FBTAA 1986 149A(1)
- FBTAA 1986 149A(2)

ATO references

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