


CR 2007/86 - Fringe benefits tax: employer clients of Salary Options Pty Ltd who are subject to the provisions of section 57A of the Fringe Benefits Tax Assessment Act 1986 that make use of a Visa Debit Card facility established with a financial institution by Salary Options Pty Ltd

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Class Ruling

Fringe benefits tax: employer clients of Salary Options Pty Ltd who are subject to the provisions of section 57A of the *Fringe Benefits Tax Assessment Act 1986* that make use of a Visa Debit Card facility established with a financial institution by Salary Options Pty Ltd

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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, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are 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);
- section 5C of the FBTAA;
- section 20 of the FBTAA;
- section 38 of the FBTAA;

- section 40 of the FBTA;A;
- section 45 of the FBTA;A;
- section 57A of the FBTA;A; and
- subsection 149A(2) of the FBTA;A.

All references in this Ruling are to the FBTA;A unless otherwise stated.

Class of entities

3. The class of entities to which this Ruling applies are employers subject to the provisions of section 57A who enter into a salary packaging agreement with Salary Options Pty Ltd (the promoter). Employees of those employers may be provided with a Visa Debit Card linked to an account established with a financial institution by 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 13 to 31 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 2007.

9. 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. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

10. If this Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

11. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

12. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

13. The scheme 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 scheme are:

- salary packaging agreement form between Salary Options Pty Ltd and participating employers dated October 2006;
- the financial institution's Customer Application form;
- the financial institution's Personal Accounts and Facilities Terms and Conditions dated 1 November 2006;
- agreement form between Salary Options Pty Ltd and employees who wish to use this facility;

- a copy of the letter dated 1 June 2007 that will be issued by Salary Options Pty Ltd to the employee with the Visa Debit Card regarding general card use including the cardholder's agreement to the conditions outlined in the letter;
- Salary Options Pty Ltd's information sheet about this facility dated 1 January 2006; and
- further information received on 14 August 2007.

Note: certain information received from the applicant 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.

14. The promoter enters into an agreement with each employer to provide salary packaging services to the employer's employees.

15. Each employee enters into an agreement with the promoter by completing and signing the agreement form.

16. Employees of an employer may apply to the financial institution for a Visa Debit Card (card). Spouse and partner cards can be issued where required.

17. Each employee completes the financial institution's Customer Application form and forwards this to the promoter. The promoter completes the Corporate Details section of the form. The form is processed by the financial institution and an account is established in the name of the promoter in respect of each employee.

18. The promoter is the owner of each and every account and is liable to the financial institution for debit balances.

19. The rights and obligations in respect of the account are documented in the financial institution's Personal Accounts and Facilities Terms and Conditions.

20. Each employee is set up as an additional cardholder to the promoter's account. For administrative ease each account has the name of the promoter and the employee's name.

21. A card is issued to the employee by the promoter together with a covering letter regarding general card use. As requested by the promoter, the employee signs and sends the letter to the promoter as notification of the employee's agreement to the conditions outlined in the letter.

22. The employer enters into an effective salary sacrifice agreement with each employee who wishes to make use of the facility.

23. The employer transfers funds in accordance with the salary sacrifice agreement to the promoter's funds processing account on a regular cycle. These funds will be transferred by the promoter to the relevant employee's card account.

24. Employees use the card to purchase goods and services from third party providers or in Bpay transactions to pay for expenses incurred by the employees or associates of the employees.

25. Each employee is allowed to use the card to the extent of the agreed funds. Purchases can only be made when the credit balance is equal to or greater than the purchase price of the intended item.

26. The value of benefits provided is limited to an amount for which the employer's relevant capping threshold is calculated using the type 1 gross-up rate. This is regardless of whether the benefits provided are type 1 or type 2 benefits for the purposes of section 5C.

27. The grossed-up value of the benefits provided to an employee during a particular fringe benefits tax (FBT) year will not exceed the employer's relevant capping threshold.

28. All accounts will be nil as at 31 March each year as the promoter will withdraw the funds from each account and return the money to the employer.

29. As outlined in the promoter's information sheet and in the letter, the following will not be permitted under the card:

- cash withdrawals;
- chequebook facilities;
- internet banking facilities;
- transfer of funds into other personal bank accounts;
- in branch transactions;
- direct debits off card numbers; and
- access to ATM's (no PIN is issued).

30. A report listing all reportable fringe benefits transactions and deposits is completed and sent by the promoter to the employers after the end of the FBT year.

31. On termination of employment any funds in the account must remain for two weeks to allow purchases to be debited to the account. After this two week period the account is closed and any money remaining is transferred to the employer for payment to the employee subject to the pay as you go (PAYG) provisions.

Ruling

32. A payment by the promoter into the account in respect of an employee does not constitute an expense payment benefit for the purposes of section 20.

33. The use of the card by an employee or associate of the employee to purchase goods or services gives rise to benefits including tax-exempt body entertainment benefits under section 38, property benefits under section 40 or residual benefits under section 45.

34. The use of the card by an employee or associate of the employee in Bpay transactions to pay for expenses that have been incurred by the employee or associate of the employee gives rise to expense payment benefits under paragraph 20(a).

35. As the value of the benefits provided to an employee during the FBT year will not exceed the relevant threshold specified in subsection 5B(1E) they will constitute exempt benefits under section 57A.

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

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.*

37. According to section 20 an expense payment benefit may arise where a person, in this case the promoter:

- 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 an amount of expenditure incurred by the recipient; or
- reimburses the recipient, in whole or in part, in respect of an amount of expenditure incurred by the recipient.

38. Thus, an expense payment benefit can only exist where the recipient of the benefit, in this case the employee (or associate), has incurred expenditure. The payment or reimbursement must be referable to that expense incurred by the employee.

39. The payment made by the promoter into the account under the scheme is not referable to:

- an employee obligation to the financial institution in respect of expenditure incurred by the employee; or
- an employee obligation to any other person in respect of expenditure incurred by the employee.

40. The employee does not have an obligation to pay an amount to the financial institution. When the promoter makes a payment into the account, the promoter is merely meeting its obligations to make such payments under agreements made with the employer and the employee. No expense payment benefit arises at that time.

41. The fact that some or all of the funds in this account may subsequently be used to pay for purchases made by the employee does not change the promoter's payment into the account to that of an 'expense payment benefit'.

42. The promoter is not making the payment into the account to discharge an obligation of the employee to another person for an expense he or she may later incur. This is evidenced by the fact that an employee may potentially not even use any of the money during the year.

43. The account is opened under the promoter's customer record and is controlled and maintained by the promoter. Ultimate ownership of the account remains with the promoter at all times and it is their responsibility.

44. When the employee purchases goods or services from a merchant the obligation that is discharged by payment of the amount charged to the card is the promoter's obligation to the merchant. The promoter incurs an expense to the merchant as agent for the employer. The financial institution then uses the credit available on the promoter's account to pay the merchant.

45. By purchasing goods or services from a merchant, in his or her capacity as an additional cardholder the employee does not incur any expenditure. The elements of paragraph 20(a) or 20(b) are not satisfied and an expense payment benefit does not arise.

46. The use of the card by an employee or associate of the employee to purchase goods or services gives rise to benefits including tax-exempt body entertainment benefits under section 38, property benefits under section 40 or residual benefits under section 45. Where no exemption under the FBTAA applies, such benefits will constitute fringe benefits as defined in subsection 136(1).

47. The use of the card by an employee or associate of the employee in Bpay transactions to pay for expenses that have been incurred by the employee or associate of the employee gives rise to expense payment benefits as all of the elements of paragraph 20(a) are satisfied.

48. Section 57A provides that certain employers are generally exempt from FBT. This section applies to employers that are public benevolent institutions, certain hospitals, public ambulance services (or a supporting service) and charitable institutions that promote the prevention or the control of diseases in humans.

49. Public and non-profit hospitals and ambulance services (or a supporting service) have a capping threshold placed on the value of benefits exempt from FBT that may be provided to employees. This threshold is \$17,000 grossed-up taxable value per employee. Such employers are liable for FBT on the value of benefits provided in excess of this threshold.

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

51. However, any employer to which section 57A applies, will not be liable for FBT on benefits provided that fall within the meaning of the provision of meal entertainment. 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 fringe benefits taxable amount.

52. For employers subject to the provisions of section 57A, meal entertainment is always an exempt benefit because of the interaction between section 57A and subsection 5B(1L). Step 1 of the method statement in subsection 5B(1L) specifically disregards the taxable value of the provision of meal entertainment for the purposes of determining exposure to the capping thresholds.

53. To determine whether a benefit provided under this scheme is a type 1 or type 2 benefit for the purposes of section 5C, it is necessary to ascertain whether the benefit is a GST-creditable benefit as defined in section 149A.

54. Taxation Ruling TR 2001/2 points out that for the purposes of section 149A, to be a GST-creditable benefit, the provider of the benefit must be entitled to an input tax credit 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 *A New Tax System (Goods and Services Tax) Act 1999*; or
- because the fringe benefit is a 'thing' that was acquired or imported by the provider.

55. The first point in paragraph 54 of this Ruling will only apply to an expense payment benefit that arises when the card is used by an employee in a Bpay transaction to pay for an expense that has been incurred by the employee or an associate of the employee. In this situation, a benefit will be a GST-creditable benefit if the requirements of subsection 149A(1) are satisfied. Such a benefit will be a type 1 benefit for the purposes of section 5C. Where the requirements of this subsection are not satisfied, the benefit will not be a GST-creditable benefit and thus a type 2 benefit for the purposes of section 5C.

56. The second point in paragraph 54 of this Ruling will apply to all benefits other than expense payment benefits. A benefit will be a GST-creditable benefit if the requirements of subsection 149A(2) are satisfied. Such a benefit will be a type 1 benefit for the purposes of section 5C. Where the requirements of this subsection are not satisfied, the benefit will not be a GST-creditable benefit and thus a type 2 benefit for the purposes of section 5C.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2001/2

Subject references:

- class rulings
- entertainment expenses
- exempt benefits
- expense payment benefits
- FBT expense payment
- FBT meal entertainment
- FBT salary packaging
- FBT salary sacrifice
- fringe benefit
- fringe benefits tax
- property benefits
- residual benefits

Legislative references:

- ANTS(GST)A 1999 Div 111
- FBTAA 1986 5B(1E)
- FBTAA 1986 5B(1L)
- FBTAA 1986 5C
- FBTAA 1986 20
- FBTAA 1986 20(a)
- FBTAA 1986 20(b)
- FBTAA 1986 38
- FBTAA 1986 40
- FBTAA 1986 45
- FBTAA 1986 57A
- FBTAA 1986 149A
- FBTAA 1986 149A(1)
- FBTAA 1986 149A(2)
- FBTAA 1986 136(1)
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

ATO references

NO: 2007/15921

ISSN: 1445-2014

ATOlaw topic: Fringe Benefits Tax ~~ Expense payment fringe benefits
 Fringe Benefits Tax ~~ Property fringe benefits
 Fringe Benefits Tax ~~ Residual fringe benefits