



CR 2008/24 - Fringe benefits tax: employer clients of Australia and New Zealand Banking Group Limited who are subject to the provisions of section 57A of the Fringe Benefits Tax Assessment Act 1986 whose employees make use of the ANZ Salary Packaging Card facility

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 This document has changed over time. This is a consolidated version of the ruling which was published on *18 March 2009*



Class Ruling

Fringe benefits tax: employer clients of Australia and New Zealand Banking Group Limited who are subject to the provisions of section 57A of the *Fringe Benefits Tax Assessment Act 1986* whose employees make use of the ANZ Salary Packaging Card facility

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This publication (excluding appendices) 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 taxation 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.

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

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 57A of the FBTA; and
- section 149A of the FBTA.

All references in this Ruling are to the FBTA 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 who:

- enter into an arrangement with Australia and New Zealand Banking Group Limited (ANZ) to provide the ANZ Salary Packaging Card facility to their employees; or
- are clients of salary packaging providers who enter into an arrangement with ANZ to provide the ANZ Salary Packaging Card facility to employees of their employer clients.

Employees of those employers may be provided with an ANZ Salary Packaging Card (the card).

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 27 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:

- ANZ Booklet titled ANZ Commercial Card Terms and Conditions dated November 2008;
- ANZ Salary Packaging Card Cardholder Specific Terms and Conditions;
- ANZ Salary Packaging Card Letter of Offer (Letter of Offer) including the ANZ Salary Packaging Card Facility Acceptance form;
- ANZ Salary Packaging Cardholder Application Form; and
- further information received on 19 February 2008.

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. Each employer or salary packaging provider enters into an arrangement with ANZ to provide the ANZ Salary Packaging Card facility to employees.
15. Employees of those employers may then apply to ANZ to be issued with the card. The card is a credit card.
16. A separate card account is established with ANZ for each employee.
17. Each employer enters into effective salary sacrifice agreements with their participating employees and sets aside a salary sacrificed amount for each employee.
18. Salary sacrificed funds are transferred to the employee's card account on a periodic basis.
19. The amount transferred will be equal to the amount determined by the employee and the employer in the salary sacrifice agreement.
20. Where the employer is administering the salary sacrifice agreement, the employer will transfer funds directly to each employee's card account.
21. Where a salary packaging provider is administering the salary sacrifice agreement on behalf of the employer, the employer will transfer its funds to an account established by the employer and the salary packaging provider will have access to draw upon these funds to transfer the relevant amounts to individual employee card accounts.
22. Employees use the card to pay for expenses. Expenditure amounts are limited to the available salary sacrificed funds transferred onto the card account. The only rights employees have is to charge expenses on the card up to available balances.
23. The card will be restricted to ensure that cash advances, cash withdrawals and account transfers are not available. In this regard, payments towards mortgages and rental payments will not be allowed.
24. ANZ send the employer or the salary packaging provider as the case may be, a transaction file. The transaction file lists the transactions that the employees are liable to pay within 14 days from the date of the file. Within this time the transaction amounts are discharged with the salary sacrificed funds available on the employee's card account.

25. The employer or the salary packaging provider then provides the transaction information to the employee via either a website, a paper based statement, or directs the employee to view such information via ANZ's internet banking site. The file is sent either daily or monthly, depending on the requirements of the employer or the salary packaging provider.

26. At the end of the fringe benefits tax year any remaining funds in the employee's card account can be rolled over for use in the following year or refunded to the employer depending on the employer's preference. It is the employer's responsibility to reduce any salary sacrifice amounts in the year following a rollover, to ensure that the relevant exempt fringe benefits tax threshold is not exceeded.

27. At such time as the relevant employment ceases, both the employer and the employee will be obliged to inform ANZ immediately, following which the card and the relevant card account will be cancelled. Any credit balance remaining on the employee's card account 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

28. The use of the card gives rise to an expense payment benefit as defined in section 20 at the time the employee's obligation to ANZ is discharged.

29. As the employers are subject to the provisions of section 57A, the benefits provided will be exempt benefits pursuant to this section. This effectively means that employers are only liable for fringe benefits tax on the value, if any, of benefits provided in excess of the relevant threshold specified in subsection 5B(1E).

30. The benefits provided are not GST-creditable benefits in terms of section 149A and therefore type 2 benefits for the purposes of section 5C.

Commissioner of Taxation

12 March 2008

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.*

31. The first limb of the expense payment benefit provisions of Division 5 of Part III 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.

32. Under the scheme, the obligation that is discharged is the employee's obligation to ANZ for any debts incurred in using the card.

33. At the due date, available funds on an employee's card account are applied against the employee's expenditure to reduce the total debt. When the credit on the card account is applied to the total of the amounts spent the elements of paragraph 20(a) are satisfied and an expense payment benefit arises at that time.

34. Section 57A provides that certain employers are generally exempt from fringe benefits tax. 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.

35. Public and non-profit hospitals and ambulance services (or a supporting service) have a capping threshold placed on the value of benefits exempt from fringe benefits tax that may be provided to employees. This threshold is \$17,000 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.

36. 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.

37. To determine whether an expense payment 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.

38. 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* (GST Act); or
- because the fringe benefit is a 'thing' that was acquired or imported by the provider.

39. The second point in paragraph 38 of this Ruling does not apply as subsection 149A(2) only applies if the benefit was acquired or imported by the provider. In this case, there is a reimbursement for the purposes of the GST Act. Consequently, only the first point in paragraph 38 needs to be considered.

40. Paragraph 86 of Goods and Services Tax Ruling GSTR 2001/3 states that Division 111 of the GST Act provides that an employer makes an acquisition that can be a creditable acquisition, subject to certain conditions, where:

- an employee is reimbursed for an expense that constitutes an expense payment benefit; or
- a payment is made on behalf of an employee for an expense payment benefit that constitutes an expense payment benefit.

41. Paragraph 89 of GSTR 2001/3 (note Addendum to the Ruling issued 18 December 2002) points out, amongst other things, that for Division 111 of the GST Act to apply, the arrangement between the employer and the employee needs to be for the reimbursement of a particular purchase or purchases incurred on the credit card.

42. The discharging of an employee's debt obligation to ANZ as described in the scheme involves no more than reimbursing the balance owing on the employee's statement of account. Consistent with paragraph 89 of GSTR 2001/3, this is an input taxed financial supply that does not meet the requirements of Division 111 of the GST Act.

43. Therefore, the provision of benefits under the scheme are not GST-creditable benefits for the purposes of section 149A.

Appendix 2 – Detailed contents list

44. 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:

GSTR 2001/3; TR 2001/2

Subject references:

- expense payment benefits
- FBT salary packaging
- FBT salary sacrifice
- fringe benefits
- fringe benefits tax

Legislative references:

- ANTS(GST)A 1999 Div 111
- FBTA 1986 5B(1E)
- FBTA 1986 5C
- FBTA 1986 Pt III Div 5
- FBTA 1986 20
- FBTA 1986 20(a)
- FBTA 1986 57A
- FBTA 1986 149A
- FBTA 1986 149A(2)
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

ATO references

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