

CR 2011/99 - Fringe benefits tax: employer clients of Wakefield Technologies Pty Ltd who are subject to the provisions of section 57A or section 65J of the Fringe Benefits Tax Assessment Act 1986 that make use of a Wakefield - Citi Living Expenses Prepaid Charge Card facility

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Class Ruling

Fringe benefits tax: employer clients of Wakefield Technologies Pty Ltd who are subject to the provisions of section 57A or section 65J of the *Fringe Benefits Tax Assessment Act 1986* that make use of a Wakefield – Citi Living Expenses Prepaid Charge 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);
 - section 20 of the FBTAA;
 - section 37AD of the FBTAA;
 - section 38 of the FBTAA;

- section 57A of the FBTAA;
- subsection 65J(1) of the FBTAA;
- subsection 65J(2A) of the FBTAA;
- subsection 65J(2B) of the FBTAA;
- subsection 136(1) of the FBTAA; and
- section 149A of the FBTAA.

All references in this Ruling are to the FBTAA unless otherwise stated.

Class of entities

3. The class of entities to which this Ruling applies is those employers that are either subject to the provisions of section 57A or section 65J that make use of a Wakefield – Citi Living Expenses Prepaid Charge Card facility.

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 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 2011. 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:

- the application for class ruling dated 17 November 2010;
- additional information provided on 20 July 2011;
- a draft service agreement between the employer and Wakefield Technologies Pty Ltd (Wakefield);
- a marketing brochure titled Living Expenses Card;
- a document titled Citibank Prepaid Charge Card Terms of Use and Product Disclosure Statement dated 21 April 2011;
- a draft document titled Card Payer Master Agreement;
- a draft document titled Card application form Citibank Prepaid Charge Card;
- a document titled Citibank Prepaid Charge Card – Card Payer Agreement;
- a document titled Citibank Prepaid Charge Card Referrer Agreement between Citigroup Pty Ltd (Citi) and Wakefield;
- a draft document titled The Wakefield pre-paid card program salary packaging participation agreement; and
- a draft letter that will be sent to the Cardholder with a Living Expenses Card.

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. Under the scheme a series of agreements will be entered into between:

- Wakefield and Citi (Referrer Agreement);
- Wakefield and the employer;

- Citi and the employer (Card Payer Agreement);
- Citi and the employee; and
- the employer and employee.

Referrer Agreement

11. The Referrer Agreement sets out:

- the services that Wakefield will provide in relation to the nominated Citi products;
- the undertakings of the parties in respect of the services to be performed; and
- the financial arrangements between Wakefield and Citi.

12. Under the terms of the agreement, Wakefield will provide services in relation to certain Citi charge Cards; including the Citi Living Expenses Prepaid Charge Card (the Card). The services provided by Wakefield include:

- the identification of potential employers who may wish to participate in the scheme;
- the provision of details of the potential employers to Citi; and
- the provision of information about the scheme to potential employers.

13. Also under the agreement, Citi will engage with Wakefield and receive instructions in relation to:

- the processing of applications for the Card;
- the transfer of information to Citi to enable the Card to be provided to Cardholders;
- the non-issuance and cancellation of the Card;
- accessing electronic records regarding the status of prepaid cards held by Cardholders;
- the transfer of funds from Wakefield to Citi to discharge the Cardholder's liability to Citi for the provision of credit by Citi to the Cardholder in relation to the use of the Card; and
- where necessary, the return of funds from Citi to Wakefield for remittance to the employer to be paid to the Cardholder (employee) as salary subject to the pay as you go withholding provisions (PAYG). For example, where the Card is cancelled or the Agreement between Wakefield and Citi is terminated.

Agreement between Wakefield and the employer

14. Under the terms of this agreement, a participating employer will appoint Wakefield to provide salary packaging services. The services provided by Wakefield will include:

- the administration of the salary sacrifice arrangements entered into between the employer and employee; and
- the facilitation of a Card Payer Agreement between Citi and the employer.

Card Payer Agreement

15. Under the terms of the Card Payer Agreement the employer agrees to provide each applicant with relevant information including a copy of the 'Application Form', an up-to-date 'Terms of Use and Product Disclosure Statement and a Financial Services Guide'.

16. Also under the terms of this agreement; Citi undertakes that where a prepaid card is cancelled or expires and the Cardholder is not issued with a new prepaid card, Citi will transfer any funds remaining to the credit of the Card to Wakefield for remittance to the employer to be paid to the Cardholder (employee) as salary subject to PAYG.

Agreement between Citi and the Cardholder (employee)

17. The 'Terms of Use and Product Disclosure Statement' operates as a contract between the Cardholder and Citi. It describes the rights and obligations between the Cardholder and Citi.

18. As set out in the statement:

- Citi agrees to settle the Card transactions by providing credit to the Cardholder to obtain goods and services;
- the credit is provided when the Cardholder charges the account by paying for goods or services;
- the employee is solely liable for all amounts charged to the Card account including fees and charges;
- the employee is required to pay an amount equal to the sum of the charges to the account immediately after Citi settles the transaction with a merchant's financial institution or the fees and charges become due;
- the maximum amount that Citi will authorise and settle is the balance of the amounts paid to Citi by Wakefield on behalf of the employer that is available to satisfy the employee's obligations to Citi;
- a Cardholder will not be permitted to do any of the following:
 - make a cash withdrawal;

- operate a cheque book facility in association with the account;
- use internet banking facilities (other than to make an on-line purchase from a merchant who accepts credit Cards for on-line transactions);
- branch transaction; or
- use the Card to access an ATM;
- the employer and Wakefield have the right to request cancellation of the Card account and access to card services (for example, if the Card is used in a manner that is contrary to the terms of the various agreements); and
- the employee is liable for the conduct of any additional Cardholders;

Agreement between employer and employee

19. The agreement between the employer and employee will be an effective salary sacrifice arrangement.¹ Under the terms of the agreement the employer will agree to discharge the employee's obligation to Citi that arises from the use of the Card. To do this, Wakefield on behalf of the employer will regularly transfer an agreed amount to Citi.

20. The amounts transferred to Citi by the employer will be held by Citi until they are used to discharge the Cardholder's obligation to Citi that arises from the use of the Card, or are returned to the employer.

The use of the Card

21. A Cardholder will use the Card to pay a merchant who uses the relevant payment system. When the Card is used, Citi will authorise and settle the transaction with the merchant's bank.²

22. Each authorised payment will initiate a charge to the Cardholder's account. Under the terms and conditions of the agreement between the Cardholder and Citi, the Cardholder is liable to Citi for all amounts charged to the Cardholder's account including fees and charges.

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*.

² The amount that Citi will authorise and settle is limited to the balance of the funds held by Citi in relation to the Cardholder's account.

23. Citi will discharge the Cardholder's obligation by applying the funds that relate to the Cardholder's account against the debt on the Card account. This will usually happen approximately two days after the obligation arises.

24. Citi will send Wakefield a transaction file on a periodic basis. The transaction file will list the transactions that have occurred.

25. At the end of the fringe benefits tax (FBT) year Wakefield will send a report listing all reportable fringe benefits tax transactions made using the Card to the employer and the account balance will either be returned to the employer or carried forward to the following FBT year.

26. If the balance is returned to the employer, it will be paid to the employee as salary subject to PAYG. Alternatively, if the balance is carried forward to the following FBT year, it is the employer's responsibility to reduce the amount that can be sacrificed in that year so as to ensure that the relevant threshold specified in either subsection 5B(1E) or subsection 65J(2B) is not exceeded.

27. On termination of employment the Card will be cancelled, any debts that arose prior to the date of cancellation will be discharged and any remaining balance will be returned to the employer to be paid to the employee as salary subject to PAYG.

Ruling

28. The use of a Living Expenses Prepaid Charge Card will give rise to a 'benefit' as defined in subsection 136(1) at the time the Cardholder's obligation to Citi is discharged.

29. The benefit may be a 'tax-exempt body entertainment benefit' under section 38 if the employer in discharging the Cardholder's obligation to Citi incurs 'non-deductible exempt entertainment expenditure' as defined in subsection 136(1).

30. Where the employer in discharging the Cardholder's obligation to Citi does not incur 'non-deductible exempt entertainment expenditure', the benefit will be an 'expense payment benefit' under section 20.

31. Both an 'expense payment benefit' and a 'tax-exempt body entertainment benefit' will be an exempt benefit where the employer comes within section 57A.

32. However, a fringe benefits tax liability will arise if the value of the benefits provided to an individual employee exceed the relevant threshold specified in subsection 5B(1E). In determining whether the relevant threshold in subsection 5B(1E) is exceeded, an employer to which section 57A applies will disregard tax-exempt body entertainment benefits that:

- constitute the provision of 'meal entertainment' as defined in section 37AD; or

- whose taxable value is wholly or partly attributable to 'entertainment facility leasing expenses'.

33. An employer that is a rebatable employer under subsection 65J(1) will receive a rebate of 48% of the gross tax that would otherwise be payable on the expense payment benefits and tax-exempt body entertainment benefits that arise from the use of a Living Expenses Prepaid Charge Card provided the value of the benefits provided to the employee does not exceed the threshold specified in subsection 65J(2B).

34. In determining whether the relevant threshold in subsection 65J(2B) is exceeded, an employer that is a rebatable employer under subsection 65J(1) will disregard tax-exempt body entertainment benefits that:

- constitute the provision of meal entertainment as defined in section 37AD; or
- whose taxable value is wholly or partly attributable to entertainment facility leasing expenses.

35. The provision of benefits, using the Card facility, are not GST-creditable benefits in terms of section 149A and, therefore, are type 2 benefits for the purposes of calculating the employer's aggregate non-exempt amount under subsection 5B(1E) or amount of the rebate under subsections 65J(2A).

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 benefit

36. A Cardholder is able to use the Card to purchase goods or services from merchants who use the relevant payment system.

37. Under the terms and conditions of the agreement between the Cardholder and Citi, Citi will authorise and settle the Cardholder's Card transactions. In so doing, Citi will provide credit for the amount of the transaction.

38. Each authorised payment will initiate a charge to the Cardholder's account. Under the terms and conditions of the agreement between the employee and Citi, the employee is liable to Citi for all amounts charged to the Card account including fees and charges.

39. This liability will be discharged using some or all of the funds that Wakefield acting on behalf of the employer has deposited into a Citi bank account.

40. This discharge of the employee's obligation to Citi may be an expense payment benefit under paragraph 20(a). 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'.

41. Under the scheme the funds deposited on behalf of the employer by Wakefield will be used to discharge the employee's obligation to Citi. When this occurs, the elements of paragraph 20(a) will be satisfied as the employer (the provider) will make a payment to Citi (the third person) to discharge the employee's (the recipient) obligation to Citi.

42. However, as set out in paragraph 9 of Taxation Ruling TR 97/17³ the benefit will not be an 'expense payment benefit' if it comes within a specific provision such as 'tax-exempt body entertainment'. Paragraph 9 of TR 97/17 states:

Where a meal falls within a specific FBT provision (for example, as a board fringe benefit or a tax-exempt body entertainment fringe benefit) then, in the absence of an election made under Division 9A, the taxable value of the benefit is determined under that specific provision rather than the more general sections dealing with expense payment and property fringe benefits. If an employer elects

³ Taxation Ruling TR 97/17 *Income tax and fringe benefits tax: entertainment by way of food or drink.*

to use one of the methods in Division 9A, then the taxation outcome for an individual meal is no longer relevant.

43. This may include meal entertainment, recreational entertainment or entertainment facility leasing expenses.

44. A 'tax-exempt body entertainment benefit' will arise under section 38 where an entity that is wholly or partly exempt from income tax incurs 'non-deductible exempt entertainment expenditure'. In general terms, the 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.

45. The employer will be either a not-for-profit organisation or a government body. As both of these types of organisation are exempt from income tax, a 'tax-exempt body entertainment benefit' will arise if the employer in discharging the employee's obligation to Citi incurs 'non-deductible exempt entertainment expenditure'.

Employers subject to section 57A

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

47. 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.

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

49. 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.

50. 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.

51. 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.

52. However, any employer to which section 57A applies, will, irrespective of whether or not an employee's threshold amount has or has not been exceeded, not be liable for FBT on benefits:

- that constitute the provision of meal entertainment;
- that are car parking fringe benefits; or
- whose taxable values are wholly or partly attributable to entertainment facility leasing expenses.

53. This results from the operation of Step 1 of the method statement contained in subsection 5B(1L) which specifically disregards these benefits in calculating an employer's aggregate non-exempt amount.

Employers subject to section 65J

54. Section 65J provides that certain non-government and non-profit organisations (rebatable 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.

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

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

56. Rebatable 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-rebatable amount).

57. 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 had not been enacted.

58. 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 \$30,000 cap multiplied by the FBT rate.

59. 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.

60. However, any employer to which subsection 65J(1) applies, will, irrespective of whether or not an employee's threshold amount has or has not been exceeded, be able to claim the rebate on benefits:

- that constitute the provision of meal entertainment;
- that are car parking fringe benefits; or
- whose taxable values are wholly or partly attributable to entertainment facility leasing expenses.

61. This results from the operation of Step 1 of the method statement contained in subsection 65J(2H) which specifically disregards these benefits in calculating an employer's aggregate non-rebatable amount.

Will the benefit be a type 2 benefit?

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

63. Taxation Ruling TR 2001/2⁴ 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 because of either:

- 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.

64. The second point in paragraph 63 of this Ruling does not apply as subsection 149A(2) of the FBTAA 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 63 needs to be considered.

65. Paragraph 86 of Goods and Services Tax Ruling GSTR 2001/3⁵ 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.

⁴ *Taxation Ruling TR 2001/2 Fringe benefits tax: the operation of the new fringe benefits tax gross-up formula to apply from 1 April 2000.*

⁵ *Goods and Services Tax Ruling GSTR 2001/3 Goods and Services Tax: GST and how it applies to supplies of fringe benefits.*

66. Paragraph 89 of GSTR 2001/3 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.

67. The discharging of the Cardholder's debt obligation to Citi as described in the scheme involves no more than reimbursing the outstanding balance owing by the Cardholder at the particular time but without any reference to any specific purchase or purchases. 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.

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

69. As the relevant benefits in this case are not GST-creditable benefits they will always be treated as being 'type 2' benefits for:

- the determination of the aggregate non-exempt amount under sections 5B(1E) to 5B(1L);
- the determination of the aggregate non-rebatable amount under sections 65J(2B) to 65J(2H); and
- the determination of gross tax in the rebate calculation of subsection 65J(2A).

Appendix 2 – Detailed contents list

70. 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 97/17;
TR 2001/2; TR 2001/10;
TR 2006/10

Subject references:

- entertainment expenses
- exempt benefits
- expense payment benefits
- FBT salary packaging
- FBT tax-exempt body
- fringe benefit
- fringe benefits tax
- health promotion charity
- public benevolent institution
- rebatable employer

- ANTS(GST)A 1999 Div 111
- FBTA 1986 5B
- FBTA 1986 5B(1E)
- FBTA 1986 5B(1L)
- FBTA 1986 20
- FBTA 1986 20(a)
- FBTA 1986 37AD
- FBTA 1986 38
- FBTA 1986 57A
- FBTA 1986 65J(1)
- FBTA 1986 65J(2A)
- FBTA 1986 65J(2B)
- FBTA 1986 65J(2H)
- FBTA 1986 136(1)
- FBTA 1986 149A
- FBTA 1986 149A(2)
- ITAA 1997 32-5
- TAA 1953
- Copyright Act 1968

Legislative references:

ATO references

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Fringe Benefits Tax -- Tax-exempt body entertainment benefits
Fringe Benefits Tax -- Employees individual fringe benefits amount