


***CR 2012/86 - Fringe benefits tax: employer clients of Baptist Financial Services Australia who are subject to the provisions of section 57, section 57A or section 65J of the Fringe Benefits Tax Assessment Act 1986 and who make use of the BFS Visa Prepaid PayCard facility***

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## Class Ruling

Fringe benefits tax: employer clients of Baptist Financial Services Australia who are subject to the provisions of section 57, section 57A or section 65J of the *Fringe Benefits Tax Assessment Act 1986* and who make use of the BFS Visa Prepaid PayCard 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 5C of the FBTAA;
  - section 20 of the FBTAA;
  - section 38 of the FBTAA;

- section 40 of the FBTA
- section 45 of the FBTA;
- section 57 of the FBTA
- section 57A of the FBTA;
- subsection 65J of the FBTA;
- subsection 65J(2B) of the FBTA;
- subsection 136(1) 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 is those employers who are subject to the provisions of section 57, section 57A or of section 65J and who make use of the BFS Visa Prepaid PayCard (PayCard) 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 33 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

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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

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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 24 August 2011;
- additional information provided on 09 December 2011;
- additional information provided on 03 July 2012;
- BFS Visa Prepaid PayCard Financial Services Guide dated 1 January 2012;
- BFS Visa Prepaid PayCard Product Disclosure Statement (PDS) dated 01 January 2012;
- BFS Visa Prepaid PayCard Application sample form;
- BFS Visa Prepaid PayCard sample salary packaging agreement;
- BFS Visa Prepaid PayCard sample cardholder details; and the
- Draft Master Agreement between Indue Ltd (Indue) and Baptist Investments & Finance Ltd (now known as Baptist Financial Services Australia).

**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. A participating employer will enter into an agreement with Baptist Financial Services (BFS) for the PayCard to be made available to the employer's participating employee.
11. The PayCard is issued and operated by Indue who is an authorised deposit-taking Institution.
12. The employer will enter into a valid salary sacrificing arrangement (SSA)<sup>1</sup> with the employee whereby the employee can use the PayCard up to the extent of the total funds salary sacrificed by the employee for that specific purpose.
13. The employee will be the holder (Cardholder) of the PayCard.
14. The Cardholder will only use the PayCard to pay for goods and/or services in accordance with the terms of the relevant SSA.
15. The PayCard is held in the name of the employer.
16. The PayCard is not a credit card.
17. The employer is liable (in the first instance) for all transactions arising from the use of the PayCard.
18. The employer will arrange for an agreed salary sacrificed amount in respect of each employee to be deposited regularly each pay cycle to a card ledger account held with Indue in the employer's name (employer's account).
19. The Cardholder can only access up to the total amount (Value) of cleared funds added (loaded) to the PayCard at any particular time in respect of the Cardholder.
20. All funds held in the employer's account and loaded on to the Paycard remain the property of the employer.
21. Funds in the employer's account are used to pay for the goods or services obtained by the Cardholder from an authorised use of the PayCard.
22. Indue is responsible for effecting settlement of all transactions that result from the use of the PayCard.
23. Indue will debit (deduct) against the Value any transaction authorised by the Employer or Cardholder using the PayCard.

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<sup>1</sup> What comprises a valid salary sacrifice arrangement is discussed in Taxation Ruling TR 2001/10 Income tax: fringe benefits tax and superannuation guarantee: salary sacrifice arrangements.

24. Indue will, in the first instance, consider a transaction as having been authorised when:
- the Cardholder (or the employer) purchases goods and/or services using, or arising from the use, of the PayCard; or
  - the PayCard is used to conduct the purchase of goods and/or services using, or arising from use, of the PayCard; or
  - the PayCard is presented to a merchant (or someone else on behalf of a merchant) in a way acceptable to Indue.
25. The PayCard can be used for online purchases.
26. The PayCard cannot be used to withdraw cash at Automatic Teller Machines (ATMs) or Electronic Banking Terminals (EFTPOS devices).
27. The Cardholder is not permitted to load funds on to the PayCard at any time or to arrange for any other third party (other than the employer) to load funds on to the PayCard.
28. The total value that may be loaded onto the Paycard at any one time cannot exceed the then current card limit.
29. The employer or Cardholder will not earn any interest on any Value stored on the PayCard.
30. On expiry or cancellation of the PayCard any remaining Value on the PayCard will be transferred solely to the employer and not to the Cardholder.
31. The PayCard may be cancelled by the employer at any time.
32. Should circumstances arise where the PayCard balance is overdrawn the employer is the party responsible for this overdrawn amount and Indue and BFS can recover this overdrawn amount from the employer.
33. Transactions on the PayCard are monitored for fraudulent or unauthorised transactions.

## **Ruling**

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34. When the PayCard is used by the Cardholder to pay merchants or the other suppliers of goods and services this will not give rise to expense payment benefits for the purposes of section 20.
35. However, the use of the PayCard by the Cardholder will give rise to various other types of benefits that may include tax-exempt body entertainment benefits under section 38, property benefits under section 40 and residual benefits under section 45, as applicable, unless otherwise exempt.

36. Neither a deposit of funds by the employer to the employer's account nor the loading of available funds on to the PayCard will constitute a 'benefit' as that term is defined in subsection 136(1).

37. Benefits provided by a religious institution to its employees who are religious practitioners, and also benefits provided to the religious practitioner's spouse and children as applicable, will be exempt under section 57 where all of the requirements of that section are met.

38. Where the value of the benefits provided to an employee, of an employer subject to the provisions of section 57A, during the fringe benefits tax (FBT) year does not exceed the relevant threshold specified in subsection 5B(1E) such benefits will constitute exempt benefits under section 57A.

39. Where the value of the benefits provided to an employee, of an employer subject to the provisions of section 65J, during the FBT year does not exceed the relevant threshold specified in subsection 65J(2B) such benefits will receive a rebate of 48% of the gross tax that would otherwise be payable.

40. 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 section 149A are not satisfied the benefit will not be a GST-creditable benefit and thus will be a type 2 benefit for the purposes of section 5C.

## **Appendix 1 – Explanation**

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**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.*

### **Kinds of benefits arising from the use of the PayCard facility**

41. Section 20 states that an expense payment benefit will arise where the provider either:

- makes a payment in discharge, in whole or part, of an obligation of another person 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 part, in respect of an amount of expenditure incurred by the recipient.

42. When the PayCard is used in respect of goods or services the debt to the merchant or to the other suppliers of goods or services is met from the funds then held in the employer's account and made available (loaded) on to the Paycard.

43. The employer is liable (in the first instance) for all transactions arising from the use of the PayCard. Therefore, when the employee (as the Cardholder) uses the PayCard in respect of goods or services it is, nonetheless, the employer, in the first instance, who is incurring such expenditure.

44. As the employer is discharging the employer's own obligation the employer is, therefore, not discharging an obligation of another person to pay a third person nor providing a reimbursement to another person in respect of expenditure incurred by that person.

45. Consequently, when the PayCard is used to pay merchants or the other suppliers of goods and services this will not give rise to expense payment benefits, under section 20, as none of the required conditions of that section are met.

46. The fact that Indue is responsible for carrying out the settlement of all transactions does not alter the position that the employer is discharging the employer's own obligation as Indue is simply effecting payment to the merchant or the other suppliers of goods and services on the behalf of the employer.

47. As the relevant goods or services are firstly acquired by the employer the subsequent grant by the employer to the employee (Cardholder) of either the possession of the goods or the use of the services will result in a 'benefit', as that term is defined in subsection 136(1), being provided by the employer to the employee.

48. The benefits so provided by the employer to the employee may include tax-exempt body entertainment benefits under section 38, property benefits under section 40 and residual benefits under section 45, as applicable, unless otherwise exempt. However, as stated above (at paragraph 45) any such benefits will not include expense payment benefits.

49. A deposit by the employer to the employer's account does not constitute a 'benefit', as defined, as the employer is merely transferring funds to its own account. It is considered that this view is not altered by the fact that such deposits to the employer's account are but steps in the furtherance of the terms of a SSA.

50. Similarly, the loading of funds on to the PayCard is, again, merely the transfer of employer funds and no 'benefit', as defined, is provided to the employee at the time of the transfer.

*Summary on kinds of benefits arising from the use of the PayCard facility*

51. The use of the PayCard by the Cardholder to pay merchants or the other suppliers of goods and services does not give rise to expense payment benefits under section 20.

52. However, the use of the PayCard by the Cardholder to obtain goods or services will give rise to various other types of benefits which may include tax-exempt body entertainment benefits under section 38, property benefits under section 40 and residual benefits under section 45, as applicable, unless otherwise exempt.

53. The deposits by the employer into the employer's account and also the subsequent loading of funds on to the PayCard do not give rise to any kind of 'benefit' as that term is defined in sub-section 136(1).

54. It may be noted that where no exemption or other exclusion under the FBTAA applies, the relevant benefits provided to the Cardholder will subsequently also constitute 'fringe benefits', as that term is defined in subsection 136(1), as the benefits are being provided in respect of the employee's employment as evidenced by the relevant SSAs.

**Employers subject to section 57 who participate in the PayCard arrangements**

55. Benefits provided by religious institutions to religious practitioners are exempt under section 57 if the benefits are provided principally because of the religious practitioner's pastoral duties or any other duties relating to the practice, study, teaching or propagation of religious beliefs (Taxation Ruling TR 92/17<sup>2</sup> provides guidance on the requirements for exemption under section 57).

**Employers subject to section 57A who participate in the PayCard arrangements**

56. Section 57A provides that certain employers are generally exempt from fringe benefits tax. This section applies to employers who are an endorsed public benevolent institution, certain hospitals, 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, or an endorsed health promotion charity.

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

58. 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 fringe benefits tax (FBT) on the value of benefits provided in excess of this threshold.

59. All other employers to which section 57A applies will have a capping threshold of \$30,000 grossed-up taxable value per employee under the capping limitations imposed by subsection 5B(1E). Such employers are liable for FBT on the value of benefits provided in excess of this threshold.

60. 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.

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

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<sup>2</sup> Taxation Ruling TR 92/17 Income tax and fringe benefits tax: exemptions for 'religious institutions'

62. For employers subject to the provisions of section 57A, benefits that constitute the provision of meal entertainment, car parking fringe benefits and benefits whose taxable value is wholly or partly attributable to entertainment facility leasing expenses 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 those particular kinds of benefits for the purposes of determining exposure to the capping thresholds.

63. Therefore, where the value of the benefits provided to an employee, of an employer subject to the provisions of section 57A, during the FBT year does not exceed the relevant threshold specified in subsection 5B(1E) such benefits will constitute exempt benefits under section 57A.

### **Employers subject to section 65J who participate in the PayCard arrangements**

64. Section 65J provides that certain non-government and non-profit organisations (rebataable 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.

65. If an employer is a rebataable employer for the year of tax beginning on 1 April 2000, or a later year of tax, 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 formula in subsection 65J(2A) of the FBTAA as follows:

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

where:

**gross tax** means the amount of tax payable on the fringe benefits taxable amount of the employer of the year of tax (assuming that this section had not been enacted).

**rebataable days in year** means the number of whole days in the year of tax when the employer engaged in activities as an employer covered by any of paragraphs 65J(1)(a) to (l) (inclusive) of the FBTAA.

**total days in year** means the number of days in the year of tax excluding the days on which the employer did not engage in activities as an employer.

**aggregate non-rebataable amount** is determined according to subsection 65J(2B) of the FBTAA.

66. Rebatable employers have a capping threshold of \$30,000 grossed-up taxable value per employee per paragraph (b) of Step 2 subsection 65J(2B). 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).

67. 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.

68. 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.

69. 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.

70. 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.

71. 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.

72. Therefore, where the value of the benefits provided to an employee, of an employer subject to the provisions of section 65J, during the FBT year does not exceed the relevant threshold specified in paragraph (b) of Step 2 of subsection 65J(2B) such benefits will receive a rebate of 48% of the gross tax that would otherwise be payable.

**Will the benefit be a type 1 benefit or a type 2 benefit arising from the use of the PayCard by the Cardholder?**

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

74. Taxation Ruling TR 2001/2<sup>3</sup> 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.

75. Paragraph 86 of Goods and Services Tax Ruling GSTR 2001/3<sup>4</sup> 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.

76. As determined above (at paragraph 47), the use of the PayCard by the Cardholder will not give rise to expense payment benefits and, therefore, Division 111 of the GST Act will not apply.

77. However, as also determined above (at paragraph 50), the use of the PayCard by the Cardholder will give rise to benefits including tax-exempt body entertainment benefits under section 38, property benefits under section 40 and residual benefits under section 45, as applicable.

78. Whether those various other kinds of benefits will be type 1 benefits or type 2 benefits will depend on whether the 'thing' acquired by the provider (in this case, the employer) is, or is not, a GST-creditable benefit as defined in section 149A.

79. Therefore, a benefit provided to the Cardholder from use of the PayCard 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 section 149A are not satisfied the benefit provided by the Cardholder will not be a GST-creditable benefit and thus will be a type 2 benefit for the purposes of section 5C.

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<sup>3</sup> 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.

<sup>4</sup> Goods and Services Tax Ruling GSTR 2001/3 goods and Services Tax: GST and how it applies to supplies of fringe benefits

## **Appendix 2 – Detailed contents list**

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

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 92/17; TR 2001/10;  
TR 2001/2; TR 2006/10;  
GSTR 2001/3.

*Subject references:*

- entertainment benefits
- expense payment benefits
- exempt benefits
- FBT salary packaging
- FBT tax-exempt body
- fringe benefits tax
- rebatable employer
- public benevolent institution
- health promotion charity
- hospitals
- public ambulance services
- tax-exempt body entertainment benefits
- property benefits
- residual benefits
- religious institution
- religious practitioner

*Legislative references:*

- ANTS(GST)A 1999 Div 111
- FBTA 1986 5B(1E)
- FBTA 1986 5B(1L)
- FBTA 1986 5C
- FBTA 1986 20
- FBTA 1986 38
- FBTA 1986 40
- FBTA 1986 45
- FBTA 1986 57
- FBTA 1986 57A
- FBTA 1986 65J
- FBTA 1986 65J(2A)
- FBTA 1986 65J(2B)
- FBTA 1986 65J(2H)
- FBTA 1986 136(1)
- FBTA 1986 149A
- TAA 1953
- Copyright Act 1968

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*ATO references*

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Fringe Benefits Tax ~~ Tax-exempt body entertainment benefits