



CR 2016/18 - Fringe benefits tax: employer clients of Community CPS Australia Limited trading as Beyond Bank Australia who are subject to the provisions of either section 57A or section 65J of the Fringe Benefits Tax Assessment Act 1986 and make use of the 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 *9 August 2017*



Class Ruling

Fringe benefits tax: employer clients of Community CPS Australia Limited trading as Beyond Bank Australia who are subject to the provisions of either section 57A or section 65J of the *Fringe Benefits Tax Assessment Act 1986* and make use of the Salary Packaging Card facility

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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.

[Note: This is a consolidated version of this document. Refer to the Legal Database (<https://www.ato.gov.au/law>) 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 FBTA
- section 57A of the FBTA
- section 65J of the FBTA, and
- section 149A of the FBTA.

All subsequent legislative references are to the FBTA unless otherwise indicated

Class of entities

3. The class of entities to which this Ruling applies is those employers, who are subject to the provisions of either section 57A or section 65J, who enter into an arrangement with a salary packaging provider to administer salary packaging on its behalf, with the salary packaging provider (acting on the employer's behalf) entering into an arrangement with Community CPS Australia Limited trading as Beyond Bank Australia (Beyond Bank Australia) to provide the Salary Packaging Card facility (also known as a Living Expenses Card) to the employer's employees.

Qualifications

4. The Commissioner makes this Ruling 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 8 to 20 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.

Date of effect

7. This Ruling applies from 1 June 2015. 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

8. 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:

- Class Ruling Application dated 20 October 2015
- Beyond Bank Australia Salary Packaging Cards Terms and Conditions
- Salary Packaging Card Merchant Category Code Whitelist
- Salary Packaging Card Carrier
- Online Application Form
- Additional Cardholder Application Form
- Additional information provided on 9 December 2015, 10 December 2015 and 18 December 2015.

Note: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

9. The salary packaging provider is prescribed by Beyond Bank. The salary packaging provider, acting on the employer's behalf, enters into an arrangement with Beyond Bank Australia to provide the Salary Packaging Card facility to employees of the employer.

10. Employees of participating employers may then apply to Beyond Bank Australia to be provided with a Salary Packaging Card issued in the employee's (cardholder's) name.

11. The Salary Packaging Card is issued on a Prepaid Card Bank Identification Number (BIN) where the amount of credit available is restricted to the value of funds held at a particular time for the cardholder in the participating employer's disbursement account.

12. Each employer enters into effective salary sacrifice arrangements¹ with that employer's participating employees to set aside salary sacrificed amounts in respect of the employee's private expenditure.

¹ Guidance on what constitutes a valid salary sacrifice arrangement is given in Taxation Ruling TR 2001/10 *Income Tax: fringe benefits tax and superannuation guarantee: salary sacrifice arrangements*.

13. The salary packaging provider, who is administering the salary sacrifice agreement on behalf of the employer, will have an account with Beyond Bank Australia which holds the funds on behalf of its principal clients (Principal's account). If the funds cannot be directly transferred to the Principal's account from the Employer, the funds may be initially transferred to another financial institution designated by the salary packaging provider before being transferred to the Principal's account. The sole purpose of the bank account with the other financial institution is to facilitate the transfer of funds between the Employer and Principal account. These funds will be used for no other purpose.

14. Funds are made available to the Cardholder's Account from the Principal's account on a periodic basis as determined under the relevant salary sacrifice arrangements. Access to the available funds is authorised by the salary packaging provider.

15. Cardholders use their Salary Packaging Card to pay for private expenditure. Expenditure amounts within any given period are limited to the funds made available from the Principal's account for the Cardholder. The only right Cardholders have is to charge expenses on the Salary Packaging Card up to the available balance.

16. Beyond Bank Australia draws upon the available balance on a progressive basis when the merchant presents the relevant transaction for payment. Beyond Bank Australia reports upon request to the salary packaging provider the transactions made by the Cardholder and the remaining balance available to the Cardholder. The Cardholder also has access to this daily information through a Beyond Bank Australia Internet Banking facility, or Mobile Banking Application.

17. Cardholders are primarily liable to Beyond Bank Australia for all expenditure incurred using the Salary Packaging Card. However, employers have a secondary liability in the event of a Cardholder's default. All unexpended balances remain the property of the employer.

18. The Salary Packaging Card is restricted to ensure that cash advances, cash withdrawals and account transfers are not available.

19. At the end of the fringe benefits tax (FBT) year, any remaining funds available to the Cardholder can be rolled over for use in the following year or remitted to the employer depending on the employer's preference. It is the employer's responsibility to reduce any salary sacrificed amounts in the year following a rollover, to ensure that the relevant FBT threshold is not exceeded.

20. At such time as the employment ceases, the employee is obliged to inform Beyond Bank Australia immediately, following which the Salary Packaging Card will be cancelled. Any credit balance remaining will be returned to the employer via the salary packaging provider and will be paid to the employee as salary or wages subject to the pay as you go tax withholding rules.

Ruling

21. Benefits provided to cardholders using the Living Expenses card constitute an expense payment benefit under section 20.

22. Expense payment benefits arising from the payment of a cardholder's liability to Beyond Bank Australia by a participating employer are not GST-creditable benefits for the purposes of section 149A and are type 2 benefits for the purposes of section 5C.

23. Where section 57A applies to a participating employer, the benefits provided to cardholders using the Living Expenses card will be exempt benefits where the value of those benefits provided in the FBT year do not exceed the capping threshold specified in subsection 5B(1E).

24. Where section 65J applies to a participating employer, the employer will receive a rebate of the gross tax that would otherwise be payable in accordance with subsection 65J(2A) where the values of the benefits provided to cardholders in the FBT year do not exceed the relevant capping threshold specified in the Method Statement in subsection 65J(2B).

Commissioner of Taxation

30 March 2016

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.*

Types of benefits arising from the use of the Salary Packaging Card facility

25. An expense payment benefits arises, under section 20, where either an employer pays a third party in satisfaction of expenditure incurred by an employee or where an employer reimburses an employee for expenditure incurred by the employee.

26. The participating employers are making payments in discharge, in whole or part, of the obligations of the cardholders to pay amounts to Beyond Bank Australia in respect of amounts of expenditure incurred by the cardholders.

27. When the card is used, it is the cardholder who has the prime responsibility to pay Beyond Bank Australia. The obligation that is discharged is therefore the cardholder's obligation to Beyond Bank Australia for any debt incurred using the card.

28. An expense payment benefit under section 20 will arise at the time when unused funds from the Principal's account are used to pay Beyond Bank in respect of the financial obligation incurred by a cardholder in relation to the use of the card.

Will the benefit be a type 1 or type 2 benefit arising from the use of the Salary Packaging Card?

29. To determine whether the provision of the expense payment benefit resulting from the use of the card is a type 1 or type 2 benefit for the purposes of section 5C, it is necessary to ascertain whether that benefit is a GST-creditable benefit as defined in section 149A.

30. TR 2001/2² 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 either because of:

- the operation of Division 111 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), or
- the fringe benefit is a 'thing' acquired or imported by the provider.

31. As it is the cardholders who have the prime responsibility to pay Beyond Bank Australia, only the first point in paragraph 30 of this Ruling, regarding the operation of Division 111 of the GST Act, needs to be considered.

² 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.*

32. Paragraph 86 of GSTR 2001/3³ 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 that constitutes an expense payment benefit.

33. 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 card.

34. The discharging of the cardholder's debt to Beyond Bank Australia 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.

35. Therefore, the provision of benefits under the scheme is not GST-creditable benefits for the purposes of section 149A and the benefits are therefore type 2 benefits for the purposes of section 5C.

Employers subject to section 57A who participate in the arrangement

36. Section 57A provides that certain employers are generally exempt from FBT. This section applies to employers who are a registered and endorsed public benevolent institutions, 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 a registered and endorsed health promotion charity.

37. 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.

38. However, the exemptions provided under section 57A are subject to the capping provisions contained in 5B.

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

39. Subsection 5B(1E) limits the exemption to a capping threshold on each employee's individual grossed-up non-exempt amount (that is, the total grossed-up taxable value of benefits not otherwise exempt) for the particular FBT year. For the year ending 31 March 2016 and 31 March 2017⁴ this threshold will be \$17,667 for each employee for employers who are public or non-profit hospitals, or who provide a public ambulance service. The \$17,667 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 grossed-up taxable value of benefits provided in excess of this threshold.

40. All other employers to which section 57A applies will have a capping threshold of \$31,177 for each employee for the FBT years ended 31 March 2016 and 31 March 2017. Such employers are liable for FBT on the grossed-up taxable value of benefits provided in excess of this threshold.

41. Each employee's individual grossed-up non-exempt amount is determined by multiplying the employee's type 2 individual base non-exempt amounts by the applicable gross-up rate.

42. The expense payment benefits provided to cardholders using the Living Expenses card, and who are employees of participating employers subject to the provisions of section 57A, will be exempt under section 57A where the grossed-up taxable values of the expense payment benefits provided in the FBT year do not exceed the threshold specified in subsection 5B(1E).

Employers subject to section 65J who participate in the arrangement

43. Section 65J provides that certain non-government and non-profit organisations (rebatable employers) are entitled to have their FBT liability reduced by a rebate. This section does not apply to public benevolent institutions or to registered health promotion charities.

44. If an employer is a rebatable employer, 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 relevant formula in subsection 65J(2A). The relevant formula depends upon the year in which the benefit is provided. For the year ended 31 March 2016 onwards, if the employer is a rebatable employer for the full year, the rebate (provided the capping threshold is not exceeded) will be determined by multiplying the FBT rate for the relevant year by the amount of gross tax that would otherwise be paid by the employer (provided the threshold is not exceeded).

⁴ See *Tax Laws Amendment (Temporary Budget Repair Levy) Act 2014*.

45. If the total grossed-up taxable value of benefits provided to an employee exceeds the relevant threshold, the rebate will not apply to the tax that arises on the excess amount. That is, the rebate will only apply to the tax that would otherwise be paid up to the amount of the threshold. The amount of this threshold depends upon the FBT year in which the benefit is provided. For example for the FBT years ended 2016 and 31 March 2017 the threshold is \$31,177

46. 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.

47. 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 relevant capping threshold as set out in the Method Statement in subsection 65J(2B) multiplied by the FBT rate.

48. 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.

49. As the relevant benefits in this case are not GST-creditable benefits they will always be treated as being type 2 benefits for both the determination of the aggregate non-rebatable amount and also the determination of gross tax in the rebate calculation in subsection 65J(2A).

50. Where the grossed-up taxable value of benefits provided to cardholders, who are employees of employers subject to the provisions of section 65J during the FBT year, does not exceed the relevant threshold specified in the Method Statement in subsection 65J(2B), such benefits will receive a rebate of the gross tax that would otherwise be payable at the rate applicable to that FBT year as set out in subsection 65J(2A) which from 1 April 2015 is the FBT rate.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

- FBTA 1986 20
- FBTA 1986 57A
- FBTA 1986 65J

*Related Rulings/Determinations:*TR 2001/2; TR 2001/10;
TR 2006/10; GSTR 2001/3

- FBTA 1986 65J(2A)
- FBTA 1986 65J(2B)
- FBTA 1986 149A
- ANTS(GST)A 1999 Div 111
- TAA 1953

Legislative references:

- FBTA 1986
- FBTA 1986 5B
- FBTA 1986 5B(1E)
- FBTA 1986 5C

- Tax Laws Amendment
(Temporary Budget Repair
Levy) Act 2014

ATO references

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