

# ***CR 2021/23 - EML Payment Solutions Limited - use of a living expenses card facility to acquire a stored value prepaid card***



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## Class Ruling

# EML Payment Solutions Limited – use of a living expenses card facility to acquire a stored value prepaid card

### **❶ Relying on this Ruling**

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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### **What this Ruling is about**

1. This Ruling sets out the fringe benefits tax consequences for employers who take part in the scheme by EML Payment Solutions Limited (EML) whereby participating employees (Cardholders) use the Living Expenses Card facility (the Card) to acquire a Stored Value Prepaid Card (SVPC).

2. Full details of this scheme are set out in paragraphs 11 to 27 of this Ruling.

**Note:** By issuing this Ruling, the ATO is not endorsing this product. Potential users must form their own view about the product.

3. All legislative references in this Ruling are to the *Fringe Benefits Tax Assessment Act 1986* unless otherwise indicated.

### **Who this Ruling applies to**

4. The class of entities to which this Ruling applies are those employers who are subject to the provisions of sections 57A or 65J and whose employees are Cardholders that use the Card to acquire a SVPC.

5. The class of entities defined in this Ruling may rely on this Ruling provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 11 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
- may be withdrawn or modified.

## When this Ruling applies

7. This Ruling applies from 1 April 2019 to 31 March 2024, and continues to apply after 31 March 2024 to all entities within the specified class who entered into the scheme during the term of this Ruling.

## Ruling

8. The payment to extinguish the Cardholder's liability in relation to debts arising from the use of the Card to purchase a SVPC for living expenses constitutes an expense payment benefit.

9. Where section 57 applies to a participating employer, the benefits provided to Cardholders using the Card to purchase a SVPC will be exempt benefits where the value of those benefits provided in the fringe benefits tax (FBT) year do not exceed the capping threshold specified in subsection 5B(1E).

10. 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 value of the benefits provided to Cardholders using the Card to purchase an SVPC in the FBT year does not exceed the relevant capping threshold specified in subsection 65J(2B).

## Scheme

11. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon. The following documents, or relevant parts of them, form part of and are to be read with this Ruling:

- class ruling application dated 27 February 2020
- salary packaging card terms and conditions.

## The Card facility

12. EML will provide employers that are not-for-profit organisations, government entities, or other tax-exempt bodies who are subject to the provisions of either sections 57A or 65J with the Card for use by employees of those employers.

13. Salary packaging providers, acting on the employer's behalf, will enter into an arrangement with EML to provide the salary packaging card facility to participating employees of the employer (Cardholders).

14. Cardholders use their Card to pay for living expenses. Expenditure amounts from these transactions are limited to the funds available in the Card account.

**Funding**

15. Participating employers will enter into valid salary sacrifice arrangements with their participating employees under which the employer will agree to contribute funds to the Cardholder's Card account. Individual salary sacrifice arrangements will be unique to each participating employer. The use of the Card will form an integral part of those arrangements.

16. Funds in the Cardholder's account, while held for expenditure purposes, will remain the legal property of the employer.

**The Card**

17. When a Cardholder uses the Card to make an authorised purchase, the EML Card Management System verifies there are sufficient funds against the Cardholder's Card in the participating employer's disbursement account to fund the transaction.

18. The EML system approves and processes the transactions made by the Cardholder against the funds pre-loaded onto the Cardholder's Card.

19. The Cardholder has the primary liability for the expenses incurred on the Card.

**Using the Card to pay living expenses**

20. When the Cardholder uses the Card to pay for living expenses:

- the participating employee will incur a primary obligation to pay an amount to the merchant equal to the transaction amount
- EML's settlement bank will settle the transaction by paying the transaction amount to the merchant
- the participating employee will incur an obligation to pay EML's settlement bank an amount equal to the transaction amount, as a result of the settlement referred to, and
- EML's settlement bank will apply the funds from the Card account, which remains the property of the participating employer up to the time they are expended, to discharge the participating employee's obligation to EML's settlement bank.

21. The benefit provided to the Cardholder will be the complete extinguishment of the Cardholder's liability to EML's settlement bank using employer funds held in the Card account.

22. The aggregate grossed-up value of salary packaged benefits from the use of the Card will not exceed the relevant grossed-up exemption cap as per the method statement in subsection 5B(1E).

**The Stored Value Prepaid Card**

23. EML and participating employer clients will allow employees, where they are aware of unused funds from the Card close to and prior to the end of the FBT year, to purchase a SVPC.

24. In the same way as the Card, the SVPC may be used to pay for living expenses.

25. There will be an initial sales transaction cost incurred to purchase the SVPC. Thereafter, the employee can load a value up to a maximum of \$2,000 per card.

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26. The terms and conditions and salary packaging policies regarding the use of the SVPC are the same as those for the Card.

27. The SVPC will have an expiry date of 12 months from the date of acquisition of the card.

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**Commissioner of Taxation**

24 March 2021

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**Appendix – Explanation**

**❶** *This Explanation 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.*

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**Does the payment to extinguish the Cardholder's liability in relation to debts arising from use of the Card to purchase a Stored Value Prepaid Card for living expenses constitute an expense payment benefit under section 20?**

28. 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.

29. The Cardholder is primarily liable for all expenditure incurred where the benefits being provided to the Cardholder are the complete extinguishment of the Cardholder's liabilities to EML's settlement bank. The obligation that is discharged is therefore the Cardholder's obligation to EML's settlement bank for any debt incurred using the Card to purchase a SVPC.

30. The provider (participating employer) is making payments in the discharge, in whole or part, of the obligations of the recipient (the Cardholder) to pay amounts to third persons (EML's settlement bank) in respect of amounts of expenditure incurred by the recipient (the Cardholder).

31. Therefore, the benefit provided is an expense payment benefit.

***At what time does the benefit arise?***

32. An expense payment benefit under section 20 will arise at the time when unused funds from the Cardholder's account are used to pay EML's settlement bank in respect of the financial obligation incurred by a cardholder in relation to the use of the Card.

33. In relation to the SVPC, an expense payment benefit under section 20 will arise at the time the SVPC is purchased, as this is the time that the debt is both incurred and then immediately paid, via the transfer from the Card account.

**Does the use of the Card and the Stored Value Prepaid Card for the acquisition of living expenses give rise to an exempt benefit for an employer subject to section 57A?**

34. Section 57A provides that benefits provided to employees by certain employers are generally exempt from FBT. This section applies to employers that are registered as a charity and endorsed as a public benevolent institution or health promotion charity, certain hospitals, and 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.

35. 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.

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

37. Subsection 5B(1E) limits the exemption to a general 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 FBT year commencing on 1 April 2019, and subsequent FBT years, this threshold is \$17,000 for each employee for employers who are public or non-profit hospitals, or who provide a public ambulance service. This 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.

38. All other employers to which section 57A applies will have a capping threshold of \$30,000 for each employee for the FBT year commencing on 1 April 2019 and subsequent FBT years. These employers are liable for FBT on the grossed-up taxable value of benefits provided in excess of this threshold.

39. 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.

40. Regarding the use of the Card to purchase a SVPC used for living expenses, where the grossed-up taxable value of the expense payment fringe benefit does not exceed the relevant threshold of either \$17,000 or \$30,000 for the FBT year, the benefit will remain exempt for employees of participating employers subject to section 57A.

**Does the use of the Card and the Stored Value Prepaid Card for the acquisition of living expenses give rise to a rebatable benefit for an employer subject to section 65J?**

41. Section 65J provides that certain non-government and non-profit organisations (rebtable 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.

42. If an employer is a rebatable employer, the employer is entitled to a rebate of tax in the employer's assessment for the relevant FBT year equal to the amount worked out using the relevant formula in subsection 65J(2A). If the employer is a rebatable employer for the full FBT 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).

43. 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 the FBT years ending 31 March 2020 and 31 March 2021 the threshold is \$30,000.

44. 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.

45. 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.

46. 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.

47. 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).



**References***Previous draft:*

Not previously issued as a draft

- FBTAA 1986 5E(3)(a)

- FBTAA 1986 20

- FBTAA 1986 20(a)

*Legislative references:*

- FBTAA 1986 5B

- FBTAA 1985 5B(1E)

- FBTAA 1986 5C

- FBTAA 1986 57

- FBTAA 1986 57A

- FBTAA 1986 65J

- FBTAA 1986 65J(2A)

- FBTAA 1986 65J(2B)

## ATO references

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