

CR 2023/54 - EML Payment Solutions Limited - employer clients' use of living expenses card facility



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Status: **legally binding**

Class Ruling

EML Payment Solutions Limited – employer clients’ use of living expenses card facility

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 (FBT) consequences for employer clients of EML Payment Solutions Limited (EML) who are subject to the provisions of either section 57A or section 65J of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) and make use of EML’s Living Expenses Card Facility.
2. Details of this scheme are set out in paragraphs 17 to 33 of this Ruling.
3. All legislative references in this Ruling are to the FBTAA, unless otherwise indicated.

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

Who this Ruling applies to

4. This Ruling applies to you if you are an employer who is subject to the provisions of either section 57A or section 65J of the FBTAA and make use of EML’s Living Expenses Card facility.

When this Ruling applies

5. This Ruling applies from 1 April 2022 to 31 March 2027.

Status: **legally binding**

Ruling

Extinguishment of liabilities benefits

6. Benefits provided by participating employers to their employees (cardholders), where the benefit being provided to the cardholders is the complete extinguishment of the cardholders' then liabilities to EML (the card provider) and the cardholders have the prime responsibility to pay the card provider, constitute an expense payment under section 20.

Goods or services benefits

7. Benefits provided by participating employers to cardholders, where the benefits being provided to cardholders are the particular goods or services supplied to the cardholders and the participating employers have the prime responsibility to pay the merchants or service providers, constitute property benefits under section 40 or residual benefits under section 45.

8. One exception exists when the goods or services provided include the acquisition of food or drink that constitutes 'the provision of meal entertainment' in accordance with section 37AD, or 'entertainment facility leasing expenses' as defined in subsection 136(1). Such part of the benefits will constitute 'tax-exempt body entertainment benefits' which fall under section 38.

Employers who are subject to the provisions of section 57A

9. Where section 57A applies to a participating employer, the benefits provided to cardholders using the card can be exempt benefits, subject to capping provisions contained in section 5B.

10. To determine if the 'capping thresholds' are exceeded, the 'aggregate non-exempt amount' can be calculated in accordance with the 'Method statement' in subsection 5B(1E).

11. If any 'tax-exempt body entertainment benefits' exist, and are salary packaged meal entertainment and entertainment facility leasing benefits, there is a 'separate' capping under Step 4 of the 'Method statement' in subsection 5B(1E).

Employers who are subject to the provisions of section 65J

12. 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), subject to capping provisions.

13. To determine if the 'capping thresholds' are exceeded, the 'aggregate non-rebatable amount' can be calculated based on the 'Method statement' in subsection 65J(2B).

14. If any 'tax-exempt body entertainment benefits' exist, and are salary packaged meal entertainment and entertainment facility leasing benefits, there is a 'separate' capping under Step 2A of the 'Method statement' in subsection 65J(2B).

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Type 1 or Type 2 benefits

15. Benefits provided by participating employers to cardholders, where the benefits being provided to the cardholders is the complete extinguishment of the cardholders' then liabilities to the card provider and the cardholders have the prime responsibility to pay the card provider, are not GST-creditable benefits for the purpose of section 149A. They are type 2 benefits for the purpose of section 5C.

16. Benefits provided by participating employers to cardholders, where the benefits being provided to the cardholders are the particular goods or services supplied to the cardholders and the participating employers have the prime responsibility to pay the merchants or service providers will be GST-creditable benefits if the requirements of section 149A are satisfied in respect of the underlying goods or services supplied. Such benefits will be type 1 benefits for the purpose of section 5C. The benefits will be type 2 benefits where the requirements of section 149A are not satisfied.

Scheme

17. 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.

18. The following document, or relevant parts of it, form part of and are to be read with this Ruling:

- Mastercard Product Disclosure Statement (Mastercard PDS).

Participating employers

19. Participating employers will be employers that are not-for-profit organisations, government entities, or other tax-exempt bodies who are subject to the provisions of either section 57A or section 65J.

20. Participating employers will enter into an arrangement with the card provider for the issue of cards to their employees.

21. EML will issue the cards and coordinate the card's settlement obligations in respect of the card transactions with the authorised deposit-taking institution.

Funding

22. Participating employers will enter into valid salary-sacrifice arrangements (SSA)¹ with their employees. The use of EML's Living Expenses Card facility will form an integral part of those arrangements.

23. The participating employers will deduct pre-tax salary-sacrificed amounts from cardholders and make deposits equal to the amounts salary-sacrificed into a segregated monies account maintained by an authorised deposit-taking institution. The amounts are held by EML on trust for the participating employers.

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*.

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24. A funds distribution file detailing the individual amounts salary-sacrificed by each cardholder will be sent by the participating employers to salary packaging providers that the participating employers enter agreements with. The salary packaging providers will subsequently send the funds distribution file to EML.

25. EML will reconcile the total value of the funds distribution file against the funds received from the participating employers and process the file to allocate the portion of funds available to pay the transactions or costs of each of the individual cardholders.

26. Each cardholder will be allowed to transact on their card up to the amount of the salary that they have individually salary-sacrificed year to date. The funds available to any given cardholder will therefore vary according to their particular salary-sacrificed amounts and the costs incurred year to date (presented as 'available funds').

27. As the funding originates from sacrificed salary, the funds will remain in ownership of the participating employers until such time as they are spent to pay costs incurred by the cardholders. Any unused funds at the end of the FBT year will be returned to the employer to subsequently pay to the employees as taxable salary, unless there was a specific agreement entered into prior to the funds being salary-sacrificed to enable application of these funds towards another category of benefit.

Cards

28. The card will be issued in the name of the individual employee who holds the card.

29. The EML Living Expenses Card will be issued as a prepaid reloadable Mastercard.

Usage

30. The cards can only be used for transactions with eligible merchants through the enforcement of rules on Merchant Category Codes (MCCS). The EML Card Management System (CMS) will apply whitelisting or blacklisting rules on MCCS when verifying a transaction and approve or decline, as required. The restrictions on the use of a card are set out in the proposed Mastercard PDS.

31. Cardholders will have the ability to upload receipts relating to their use of the card such that purchases using the card can be identified as being GST-creditable or not.

Restrictions

32. The restrictions on the use of the cards include:

- the cards may be used for any personal expenses
- cardholders cannot use funds loaded onto the cards to withdraw cash
- funds loaded onto the cards cannot be used to make direct debit payments
- funds loaded onto the cards cannot be used to pay mortgages or transferred to other bank accounts, and
- funds loaded onto the cards cannot be transferred from card to card.

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Salary packaging arrangements

33. The salary packaging provider, as an authorised representative of EML, will be required to include specific terms and conditions within the SSAs with participating employees and employers, to detail the nature of the benefits provided when the cards are used. Where this Living Expenses Card is utilised, the relevant expenditure to be met through the SSA will be specified to be either for the extinguishment of financial obligations incurred by the employee when the card is used, or for the goods or services acquired.

Commissioner of Taxation

4 October 2023

Status: **not legally binding**

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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Extinguishment of liabilities benefits

34. Where the SSA provides that the benefits being provided to the cardholders are the complete extinguishment of the cardholders' then liabilities to the card provider, the cardholders have the prime responsibility to pay the card provider.

35. An expense payment benefit arises, under section 20, where either an employer pays a third-party in satisfaction of expenditures incurred by an employee or where an employer reimburses an employee for expenditures incurred by the employee.

36. The cardholders are primarily liable for all expenditure incurred where the benefits being provided to the cardholders are the complete extinguishment of the cardholders' then liabilities to the card provider. The obligation that is discharged is therefore the cardholder's obligation to the card provider for any debt incurred using the card.

37. When unused funds from the disbursement accounts are used to pay the card provider in respect of the financial obligations incurred by the cardholders in relation to use of the cards an expense payment benefit under section 20 will arise at that time.

38. The providers (the participating employers) are making payments in the discharge, in whole or part, of the obligations of other persons (the cardholder) to pay amounts to third persons (the card provider) in respect of amounts of expenditure incurred by the recipients (cardholders).

Goods or services benefits

39. Where the SSA provides that goods or services will be supplied to the cardholders, the debts to the merchants or to the other suppliers of goods or services are met from the funds then held in the disbursement account by EML on trust for the employers and made available (loaded) on to the card.

40. The employers are the ones primarily liable for all transactions arising from the use of the cards where the SSA provides that goods or services will be supplied to the

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cardholders. Therefore, when the cardholders use the cards, it is, nonetheless, the employers who are incurring the relevant debts to the merchants or to the other suppliers of goods or services.

41. As the employers are discharging their own obligations to the merchants or other suppliers of goods or services, the employers are therefore not discharging obligations of other persons to pay third persons nor are they providing reimbursements to other persons in respect of expenditure incurred by those persons.

42. Consequently, when a card is used to pay debts to merchants or the other suppliers of goods or services, these will not give rise to expense payment benefits, under section 20, as some of the required conditions of that section are not met.

43. As the relevant goods or services are considered firstly acquired by the employers, the subsequent grant to the cardholders of either the possession of the goods or the use of the services will result in a 'benefit', as defined in subsection 136(1), being provided by the employers to each of the employees.

44. The benefits so provided by the participating employers to the cardholders may include property benefits under section 40 or residual benefits under section 45.

45. One exception exists when the goods or services provided include the acquisition of food or drink that constitutes 'the provision of meal entertainment' in accordance with section 37AD, or the 'entertainment facility leasing expenses' as defined in subsection 136(1). Such part of the benefits will constitute 'tax-exempt body entertainment benefits' which fall under section 38. Please refer to the related Class Ruling CR 2023/55 *EML Payment Solutions Limited – employer clients' use of meals and entertainment card facility* for more details of the 'tax-exempt body entertainment benefits'.

Deposits and pre-loading of funds are not 'benefits'

46. Deposits by participating employers into the disbursement accounts do not constitute the provision of a 'benefit', as defined in subsection 136(1), as the participating employers are merely transferring funds to 'their own accounts' on trust by EML, with the authorised deposit-taking institution. It is considered that this view is not altered by the fact that such deposits into the disbursement accounts are steps in the furtherance of the terms of SSAs.

47. Similarly, the pre-loading of funds onto the cards is merely the transfer of participating employer funds and no 'benefit' is provided to the cardholders at the time of that transfer.

Employers subject to section 57A who participate in the arrangements

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

49. 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.

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

51. 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 a particular FBT year. For the relevant FBT years of this Ruling, this threshold is \$17,000 for each employee of 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 grossed-up taxable value of benefits provided in excess of this threshold.

52. All other employers to which section 57A applies will have a capping threshold of \$30,000 for each employee for the relevant FBT years of this Ruling. Such employers are liable for FBT on the grossed-up taxable value of benefits provided in excess of this threshold.

53. When provision of salary packaged meal entertainment or entertainment facility leasing exist within the goods or services provided, it may involve a 'separate threshold'. Please refer to the related CR 2023/55 for more details of this separate threshold.

54. The benefits of the underlying goods and services provided to cardholders who are employees of participating employers subject to the provisions of section 57A, will be exempt under section 57A where the grossed-up taxable value of the benefits provided in the FBT year do not exceed the threshold specified in subsection 5B(1E).

55. For similar reasons, the expense payment benefits provided to cardholders, who are employees of participating employers subject to the provisions of section 57A, will also 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 arrangements

56. 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 the employers covered by section 57A that are discussed earlier in this Ruling.

57. 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). If the employer is a rebatable employer for the full year, the rebate (provided the capping threshold is not exceeded) will be 47% of the amount of the gross tax that would otherwise be paid by the employer for the relevant FBT years of this Ruling.

58. If the total grossed-up taxable value of benefits provided to an individual 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. For the relevant FBT years of this Ruling, the threshold is \$30,000 grossed-up taxable value per employee.

59. When provision of salary packaged meal entertainment or entertainment facility leasing exist within the goods or services provided, it may involve a 'separate threshold'. Please refer to the related CR 2023/55 for more details of this separate threshold.

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60. 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.

61. The rebatable employer's 'aggregate non-rebatable amount', is calculated by following the 'Method statement' in subsection 65J(2B).

Are the benefits of extinguishment of the obligation provided from the use of the card type 1 or type 2 benefits?

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

63. 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* 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.

64. Where the SSA provides that the benefits being provided to the cardholders are the complete extinguishment of the cardholders' then liabilities to the card provider, the cardholders have the prime responsibility to pay the card provider.

65. Paragraph 86 of Goods and Services Tax Ruling GSTR 2001/3 *Goods and Services Tax: GST and how it applies to supplies of fringe benefits* 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.

66. However, paragraph 89 of GSTR 2001/3 points out, among 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.

67. Where the SSA provides that the benefits provided by the participating employers to the cardholders are the complete extinguishment of the cardholders' then liabilities to the card provider, it does not provide reference to any specific purchases listed on the card statements.

68. Consistent with paragraph 89 of GSTR 2001/3, the payments by the participating employers of the cardholder's then liabilities to the card provider, is an input taxed financial supply that does not meet the requirements of Division 111 of the GST Act.

69. Therefore, the payments by the participating employers of the cardholder's then liabilities to the card provider are not GST-creditable benefits for the purposes of section 149A and are type 2 benefits for the purposes of section 5C.

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Are the benefits of the underlying goods and services provided from the use of the card type 1 or type 2 benefits?

70. As stated earlier in this 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 either because of:

- the operation of Division 111 of the GST Act, or
- the fringe benefit is a 'thing' acquired or imported by the provider.

71. In this instance, as the relevant goods or services are firstly acquired by the participating employers, it has to be determined whether the particular goods or services (the 'things') being acquired entitle the participating employers to input tax credits in relation to the (fringe) benefits subsequently provided to the cardholders.

72. Where the 'thing' acquired by the participating employer:

- is a taxable supply, it is a creditable acquisition, and
- is not a taxable supply, it is not a creditable acquisition.

73. Therefore, benefits of the underlying goods or services provided to cardholders arising from the use of cards will be GST-creditable benefits if the requirements of section 149A are satisfied. Such benefits will be type 1 benefits for the purposes of section 5C.

74. Where the requirements of section 149A are not satisfied the benefits of the underlying goods and services provided to cardholders arising from the use of cards will not be GST-creditable benefits and thus will be type 2 benefits for the purposes of section 5C.

Status: **not legally binding**

References

Previous Rulings/Determinations:

CR 2014/75

- FBTAA 38

- FBTAA 40

- FBTAA 45

Related Rulings/Determinations:

TR 2001/2; TR 2001/10; GSTR 2001/3

- FBTAA 57A

- FBTAA 65J

- FBTAA 65J(2A)

- FBTAA 65J(2B)

Legislative references:

- FBTAA 5B

- FBTAA 5B(1E)

- FBTAA 5C

- FBTAA 20

- FBTAA 37AD

- FBTAA 136(1)

- FBTAA 149A

- ANTS(GST)A Div 111

ATO references

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