



CR 2007/17 - Fringe benefits tax: employer clients of PBI Benefit Solutions Pty Ltd who are subject to the provisions of section 57A of the Fringe Benefits Tax Assessment Act 1986 whose employees make use of an Employee Benefits Card (Everyday Purchases) facility

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 This document has changed over time. This is a consolidated version of the ruling which was published on *7 October 2009*



Class Ruling

Fringe benefits tax: employer clients of PBI Benefit Solutions Pty Ltd who are subject to the provisions of section 57A of the *Fringe Benefits Tax Assessment Act 1986* whose employees make use of an Employee Benefits Card (Everyday Purchases) 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, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are 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 Tax Office Legal Database (<http://law.ato.gov.au>) 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 FBTAA;

- section 57A 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 are those employers subject to the provisions of section 57A who:

- enter into an Employee Benefits Card facility with a financial institution, under an arrangement with PBI Benefit Solutions Pty Ltd; or
- 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 Employee Benefits Card facility with a financial institution, under an arrangement with PBI Benefit Solutions Pty Ltd;

to provide an Everyday Purchases Card (the card) to their employees and/or their associates.

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 12 to 24 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 2006. The Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

9. If this Class Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

10. If this Class Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Class Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

11. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

12. The scheme that is the subject of the Ruling is described below and is based on the documents listed below. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the scheme are:

- Employee Benefits Card – Facility Terms and Conditions of the financial institution effective August 2005, as amended;
- the financial institution's salary sacrifice agreement form used in connection with the scheme;
- the financial institution's brochure current as at 1 October 2004 titled *The Employee Benefits Card – Changing the way you think about salary packaging*;
- the financial institution's brochure current as at 2005 titled *The Employee Benefits Card – Help yourself to more of your income*; and

- the financial institution's brochure current as at 28 September 2005 titled Employee Benefits Card – Unlocking tax-free benefits for you, including a Cardholder Request Form attached.

Note: certain information received from the applicant has been provided on a commercial-in-confidence basis and will not be disclosed or released by the Tax Office under the freedom of information legislation.

13. The employer or salary packaging provider on behalf of the employer establishes an Employee Benefits Card facility with the financial institution which enables employees to apply for the card under an effective salary sacrifice agreement entered into with the employer.

14. Employees apply to the financial institution for the card. The card is issued by the financial institution in the employee's name and the employee is primarily liable for payment of any expenses charged on the card. It is a MasterCard or Visa card operating as a credit card within the banking system.

15. A separate card account is established for each employee.

16. An agreed salary sacrifice amount in accordance with the salary sacrifice agreement is transferred each pay cycle by the employer through the electronic banking system to the employee's card account.

16A. Where a salary packaging provider is administering the salary sacrifice agreement on behalf of the employer, the employer will transfer its funds to an account for the purposes of the arrangement and the salary packaging provider will have access to draw upon these funds to transfer the relevant amounts to the employee's card account.

17. Employees use the card to pay for expenses. Expenditure amounts are limited to the available funds established by the salary sacrifice transfers. Funds in the card account are only accessible through incurring expenses on the card.

18. Each month employees receive a statement of amounts spent. Employees are primarily liable to pay the total of the amounts spent at each statement date. This total of the account is discharged with the salary sacrifice funds available at each statement date. Any remaining funds available each month are carried forward and added to subsequent salary sacrifice transfers.

19. At the end of the fringe benefits tax (FBT) year the employer or salary packaging provider on behalf of the employer reconciles the total amounts charged to each card account from information available from the financial institution.

20. Any unspent amounts on the card account are carried forward into the next FBT year. This amount reduces the amount that can be sacrificed in that year to ensure that the relevant threshold specified in subsection 5B(1E) is not exceeded.

21. On termination of a card account, including termination of employment, the card is cancelled, amounts spent up to the date of cancellation discharged with available balances and any remaining balance returned to the employer or salary packaging provider on behalf of the employer to be reconciled along with other reconciliations on termination of the employee.

22. The card account can be cancelled at any stage by the employer or salary packaging provider on behalf of the employer and any unspent money is refunded to the employer. The only rights employees have is to charge expenses on the card up to available balances.

23. Employees cannot transfer amounts or draw cash advances from the card account.

24. While the electronic authorisation required to approve expenses is designed to limit amounts charged on the card to funds available, if there is any overspending arising from small charges being made which do not require authorisation, such overspent amounts will be recovered from the employee's post-tax income or be subject to FBT if the relevant threshold specified in subsection 5B(1E) is exceeded.

Ruling

25. The use of the card gives rise to an expense payment benefit as defined in section 20 at the time the employee's obligation to the financial institution is discharged.

26. As the employers are subject to the provisions of section 57A, the benefits provided will be exempt benefits pursuant to this section. This effectively means that employers are only liable for fringe benefits tax on the value, if any, of benefits provided in excess of the relevant threshold specified in subsection 5B(1E).

27. The benefits provided are not GST-creditable benefits in terms of section 149A and thus type 2 benefits for the purposes of section 5C.

Commissioner of Taxation

7 March 2007

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.*

28. The first limb of the expense payment benefit provisions of Division 5 of Part III 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. Each month employees receive a statement of amounts spent. Employees are primarily liable to pay the total of the amounts spent at each statement date. This total of the account is discharged with the salary sacrifice funds available at each statement date.

30. Under the scheme, the obligation that is discharged is the employee's obligation to the financial institution for any debts incurred in using the card.

31. When the credit on the account is applied to the total of the amounts spent at each statement date the elements of paragraph 20(a) are satisfied and an expense payment benefit arises at that time.

32. Section 57A provides that certain employers are generally exempt from fringe benefits tax. This section applies to employers that are public benevolent institutions, certain hospitals, public ambulance services (or a supporting service) and charitable institutions that promote the prevention or the control of diseases in humans.

33. Public and non-profit hospitals and ambulance services (or a supporting service) have a capping threshold placed on the value of benefits exempt from fringe benefits tax that may be provided to employees. This threshold is \$17,000 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.

34. 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.

35. To determine whether an expense payment benefit provided under this scheme is a type 1 or type 2 benefit for the purposes of section 5C, it is necessary to ascertain whether the benefit is a GST-creditable benefit as defined in section 149A.

36. Taxation 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 for that benefit and that a GST-creditable benefit arises where the provider is entitled to an input tax credit because of:

- 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.

37. The second point in paragraph 36 of this Ruling does not apply as subsection 149A(2) 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 36 needs to be considered.

38. Paragraph 86 of Goods and Services Tax Ruling GSTR 2001/3 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.

39. Paragraph 89 of GSTR 2001/3 (note Addendum to Ruling issued 18 December 2002) 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.

40. The discharging of an employee's debt obligation to the financial institution as described in the scheme involves no more than reimbursing the balance owing on the employee's card account statement. 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.

41. Thus, the provision of benefits under the scheme are not GST-creditable benefits for the purposes of section 149A.

Appendix 2 – Detailed contents list

42. 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; GSTR 2001/3A;
TR 2001/2

Subject References:

- class rulings
- entertainment expenses
- exempt benefits
- expense payment fringe benefits
- FBT expense payment
- FBT salary packaging
- FBT salary sacrifice
- fringe benefit
- fringe benefits tax

Legislative references:

- ANTS(GST)A 1999 Div 111
- FBTA 1986 5B(1E)
- FBTA 1986 5C
- FBTA 1986 Pt III Div 5
- FBTA 1986 20
- FBTA 1986 20(a)
- FBTA 1986 57A
- FBTA 1986 149A
- FBTA 1986 149A(2)
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

ATO references

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