

CR 2007/35 - Fringe benefits tax: employer clients of SmartSalary Pty Limited who are subject to the provisions of section 57A of the Fringe Benefits Tax Assessment Act 1986 that make use of a salary packaging General Living Expenses Purchasing Card facility

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Class Ruling

Fringe benefits tax: employer clients of SmartSalary Pty Limited who are subject to the provisions of section 57A of the *Fringe Benefits Tax Assessment Act 1986* that make use of a salary packaging General Living Expenses Purchasing Card 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.

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

- subsection 149A(1) of the FBTAA.

All legislative 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 employers subject to the provisions of section 57A who enter into a salary packaging arrangement with SmartSalary Pty Limited (the promoter). Employees (and or their associates) of those employers may be provided with a General Living Expenses Purchasing Card (the card) under an arrangement made with the employer and the promoter.

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 13 to 23 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 2007.

9. 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.

10. If this 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)).

11. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the 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.

12. 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

13. 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:

- General Living Expenses Purchasing Card overview document;
- SmartSalary Staff Benefits Card Facility Terms & Conditions (terms and conditions);
- SmartSalary Staff Benefits Cards Product Disclosure Statement, dated September 2005;
- Salary Packaging Services for Employer Agreement form between SmartSalary Pty Limited and an employer legal entity, dated 24 May 2005 (SmartSalary salary packaging agreement);

- SmartSalary General Living Expenses Form; and
- SmartSalary General Living Expenses Purchasing Card Application Form.

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.

14. The promoter operates a business which provides salary packaging services to employers. The promoter proposes to enter into an agreement with a financial institution to issue the card to employees of employers who are subject to section 57A of the FBTAA.

15. The employer operates an account with a financial institution and deposits funds into the account on an agreed regular cycle. The promoter has withdrawal access to this account.

16. The promoter transfers funds from this account to the employee's card account (that is, the BSB and account number linked to the employee's card) in accordance with an effective salary sacrifice arrangement. This increases the balance of funds available on the employee's card account.

17. Payments (up to an employee's agreed salary sacrifice value) can only be made to the card account by the promoter on behalf of the employer by means of the 'account holder's contribution'. This is defined in the terms and conditions to mean the amount agreed between the account holder and the promoter to be paid by the promoter to the card account.

18. The card is a credit card with a \$1 credit limit.

19. The card is effectively a debit card, as each purchase reduces the available value on the card. Other than the \$1 credit limit, an employee or their associate cannot spend more than the value on the card as represented by the money transfers put onto the card by the promoter.

20. An employee is permitted to use the card to purchase goods or services (including the provision of meal entertainment as defined in section 37AD) from participating merchants. Payment to a merchant is made from the card account of the employee on verification of the employee's signature.

21. An employee is prohibited from using the card to obtain cash advances.

22. The rules under which the card is issued will permit an employee and their associate to both have a card simultaneously if desired.

23. On termination of employment, the employee is given one month to use any credit balance on the card account prior to the promoter notifying the financial institution to close the card account. Any credit balance remaining on closure of the card account will be forwarded by the financial institution to the employer for payment to the employee as salary or wages subject to the pay as you go (PAYG) provisions.

Ruling

24. The use of the card by an employee or associate of the employee to purchase goods or services will give rise to expense payment benefits for the purposes of section 20.

25. Where the value of benefits provided does not exceed the relevant threshold specified in subsection 5B(1E) the benefits will be exempt benefits under section 57A.

26. Employers are liable for fringe benefits tax on the value of benefits provided in excess of the relevant threshold specified in subsection 5B(1E).

27. A benefit will be a GST-creditable benefit if the requirements of subsection 149A(1) are satisfied. Such a benefit will be a type 1 benefit for the purposes of section 5C. Where the requirements of this subsection are not satisfied, the benefit will not be a GST-creditable benefit and thus a type 2 benefit.

Commissioner of Taxation

9 May 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. The payment of the amount charged to the card in a particular transaction is an expense payment benefit for the purposes of Division 5 of Part III.

30. Under the scheme, the obligation that is discharged is the employee's obligation to the merchant. The employee incurs an expense to a merchant when the employee makes a charge on the card by authorising a transaction, that is, by signing for the purchase of a good or service. The financial institution then uses the credit available on the card account of the employee to pay the merchant. When the credit on the account is applied to the expense, the elements of paragraph 20(a) are satisfied and an expense payment benefit arises.

31. 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.

32. 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.

33. 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.

34. However, any employer to which section 57A applies, will not be liable for fringe benefits tax on benefits provided that fall within the meaning of the provision of meal entertainment. This results from the operation of Step 1 of the method statement contained in subsection 5B(1L) which specifically disregards the provision of meal entertainment in calculating an employer's fringe benefits taxable amount.

35. For employers subject to the provisions of section 57A, meal entertainment 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 meal entertainment for the purposes of determining exposure to the capping thresholds.

36. To determine whether a 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.

37. 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.

38. The second point in paragraph 37 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 of paragraph 37 needs to be considered.

39. A benefit will be a GST-creditable benefit if the requirements of subsection 149A(1) are satisfied. Such a benefit will be a type 1 benefit for the purposes of section 5C. Where the requirements of this subsection are not satisfied, the benefit will not be a GST-creditable benefit and thus a type 2 benefit for the purposes of section 5C.

40. The provision of meal entertainment by the use of the card is not a GST-creditable benefit in terms of subsection 149A(1) and thus a type 2 benefit for the purposes of section 5C.

Appendix 2 – Detailed contents list

41. 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:

TR 2001/2

Subject References

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

Legislative references:

- FBTA 1986 5B(1E)
- FBTA 1986 5B(1L)
- FBTA 1986 5C
- FBTA 1986 Pt III Div 5
- FBTA 1986 20
- FBTA 1986 20(a)
- FBTA 1986 37AD
- FBTA 1986 57A
- FBTA 1986 149A
- FBTA 1986 149A(1)
- FBTA 1986 149A(2)
- Copyright Act 1968
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- ANTS(GST)A 1999 Div 111

ATO references

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