


CR 2010/13 - Fringe benefits tax: employer clients of PBI Benefit Solutions Pty Ltd who enter into arrangements to reimburse the mortgage payments of participating employees

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Class Ruling

Fringe benefits tax: employer clients of PBI Benefit Solutions Pty Ltd who enter into arrangements to reimburse the mortgage payments of participating employees

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This publication (excluding appendices) 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.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision identified below applies to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provision dealt with in this Ruling is paragraph 20(b) of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA).

Class of entities

3. The class of entities to which this Ruling applies is all employers who are clients of PBI Benefit Solutions Pty Ltd and who enter into an effective salary sacrifice arrangement with employees in respect of mortgage payments.

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 9 to 16 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 2009. 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

9. 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:
 - the application for Class Ruling dated 20 November 2009; and
 - additional information provided in a letter dated 11 December 2009.

10. In respect of a loan, an employee incurs expenses for mortgage payments consisting of interest and capital over a preceding period (typically the preceding 12 months).

11. The employee's employer enters into an arrangement with the employee on the basis that it is an effective salary sacrifice arrangement whereby an amount not greater than the expenditure incurred by the employee in respect of those payments will be reimbursed to the employee by the employer.

12. At the beginning of each FBT year the employee lodges an expenses claim with the employer for payment in instalments of an amount not exceeding the mortgage payment expenditure incurred by the employee over the preceding period.

13. Each payment is an equal amount calculated by dividing the expenses claimed by the number of pay periods remaining in the relevant FBT year for the employee.

14. This claim is verified by a statement from the employee's mortgage provider showing those expenses incurred by the employee over the relevant period in respect of the mortgage.

15. Each payment paid by the employer to the employee's nominated bank account, is provided on the basis that the employee remains in employment and continues to participate in the arrangement.

16. If the employee's employment is terminated, or if the employee otherwise discontinues participation in the arrangement, the obligation of the employer to make any further reimbursement ceases.

Ruling

17. Each employer payment is a reimbursement, either in whole or in part, of the mortgage payments incurred by the recipient and therefore an expense payment benefit in terms of paragraph 20(b) of the FBTAA.

Commissioner of Taxation

5 May 2010

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.*

Expense payment benefit

18. Section 20 of the FBTAA states:

Where a person (in this section referred to as the '**provider**')

- (a) makes a payment in discharge, in whole or in part, of an obligation of another person (in this section referred to as the '**recipient**') to pay an amount to a third person in respect of expenditure incurred by the recipient; or
- (b) reimburses another person (in this section also referred to as the '**recipient**') in whole or in part, in respect of an amount of expenditure incurred by the recipient;

the making of the payment referred to in paragraph (a), or in the reimbursement referred to in paragraph (b), shall be taken to constitute the provision of a benefit by the provider to the recipient.

19. In terms of the Scheme identified, payments are made to employees which may be reimbursements. Accordingly, the particular paragraph to which the scheme relates will be paragraph 20(b) of the FBTAA.

Reimbursement of expenditure incurred

20. Taxation Ruling TR 92/15,¹ provides guidance as to what constitutes reimbursement of expenditure incurred. In that regard paragraphs 3, 9 and 10 state:

3. A payment is a reimbursement when the recipient is compensated exactly (meaning precisely, as opposed to approximately), whether wholly or partly, for an expense already incurred although not necessarily disbursed. ...

9. The word 'reimburse' is defined under subsection 136(1) of the FBTAA to include any act having the effect or result, direct or indirect, of a reimbursement. Since neither the FBTAA nor the ITAA provides a more descriptive definition beyond that, the ordinary meaning of the word applies. The Macquarie dictionary defines the word 'reimburse' as a repayment for expense or loss incurred, or a refund.

¹ TR 92/15 Income tax and fringe benefit tax: the difference between an allowance and a reimbursement.

10. The ordinary meaning of the word 'reimburse' implies that the recipient is to be compensated exactly for an expense already incurred although not necessarily disbursed. The definition of 'reimburse' under subsection 136(1) of the FBTA is wide enough to include payments made before expenses are incurred. However, whether the payment is made before or after expenses are incurred by the recipient, it qualifies as a reimbursement when the provider considers the expense to be its own and the recipient incurs the expense on behalf of the provider.

21. By agreeing to the loan, the employee is committed to the terms of the loan agreement. As such with respect to the FBTA, whilst the employee may have an 'obligation' under the terms of the loan agreement to repay a third party in respect of all the expenditure incurred, in terms of paragraph 20(b), the employer is reimbursing in whole or in part an amount of expenditure incurred. In this case this is the amount the employee has incurred on mortgage payments which were made in the previous year.

Salary sacrifice

22. The Commissioner's view on the taxation and superannuation implications of salary sacrifice arrangements (SSAs) is discussed in Taxation Ruling TR 2001/10.²

23. TR 2001/10 at paragraph 19 defines a SSA to mean;

an arrangement under which an employee agrees to forego part of his or her total remuneration, that he or she would otherwise expect to receive as salary or wages, in return for the employer or someone associated with the employer providing benefits of a similar value. The main assumption made by the parties is that the employee is then taxed under the income tax laws only on the reduced salary or wages and that the employer is liable to pay FBT, if any, on the benefits provided.

24. As provided for at paragraph 20 of TR 2001/10, the type of benefits which can be part of an effective SSA include payments 'of school fees, childcare costs or loan repayments'.

25. In terms of paragraph 21 of TR 2001/10 where the employee agrees 'to receive part of his or her total remuneration as benefits before the employee has earned the entitlement to receive that amount as salary or wages', it will be an effective SSA.

26. As stated at paragraph 32, of TR 2001/10, benefits paid under effective SSAs are not 'salary or wages' within the meaning of that term in subsection 136(1) of the FBTA.

27. By entering into the arrangement described, employees would be entering into an effective SSA meaning that the benefits as provided would not be 'salary or wages'.

² TR 2001/10 Income tax: fringe benefits tax and superannuation guarantee: salary sacrifice arrangements.

Appendix 2 – Detailed contents list

28. 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 92/15; TR 2001/10;
TR 2006/10

Subject references:

- expense payment benefit
- fringe benefits
- fringe benefits salary sacrifice
- fringe benefits tax

Legislative references:

- FBTAA 1986
- FBTAA 1986 20
- FBTAA 1986 20(b)
- FBTAA 1986 136(1)
- TAA 1953
- Copyright Act 1968

ATO references

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