


CR 2013/36 - Fringe benefits tax: employer clients of the Commonwealth Bank of Australia (CBA) who are subject to the provisions of section 57A of the Fringe Benefits Tax Assessment Act 1986 and who make use of the Bank's prepaid Employee Benefits Card facility

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Class Ruling

Fringe benefits tax: employer clients of the Commonwealth Bank of Australia (CBA) who are subject to the provisions of section 57A of the Fringe Benefits Tax Assessment Act 1986 and who make use of the Bank's prepaid Employee Benefits Card facility

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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(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 38 of the FBTAA;

- section 40 of the FBTAA
- section 45 of the FBTAA;
- section 57A of the FBTAA;
- subsection 136(1) 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 is those employers who are subject to the provisions of section 57A who:

- enter into an arrangement with the CBA to provide the Bank's prepaid Visa or Mastercard Employee Benefits Card (EBC) facility to their employees or associates of their employees; 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 arrangement with the CBA to provide the EBC facility to the employer's employees 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 9 to 33 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 2013. 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 5 November 2012;
- additional information provided on 28 February 2013;
- additional information provided on 11 April, 18 April and 23 April 2013;
- Commercial Prepaid Card Agreement between the employer and the CBA;
- CBA's Employee Benefits Card Application sample form; and
- Employee Benefits Card Salary Sacrifice Agreement sample form;

Note: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

10. A participating employer or salary packaging provider, acting on the employer's behalf, will enter into a Commercial Prepaid Card Agreement with the CBA to facilitate the issue of the EBC to employees of the employer or an associate of an employee of the employer.

11. The EBC is issued and operated by the CBA which is an authorised deposit-taking Institution.
12. The employer will enter into a valid salary sacrificing arrangement (SSA)¹ with the employee. As part of that agreement the employee agrees that the salary sacrificed amount as authorised under the agreement will be transferred by regular transfers to a nominated account held with the CBA in the employer's name (employer's account). Value will be loaded by the CBA onto a prepaid EBC a Mastercard or Visa (as applicable).
13. The total value that may be loaded onto the EBC during any one month period and during any 12 month period is in accordance with the Salary Sacrifice Agreement between the employer and the employee.
14. The CBA will only accept payments from the employer and not directly from the employee.
15. The employee will apply for and/or have an associate of theirs apply for an EBC. The employee or their associate who applies will be the holder (Cardholder) of the EBC. No name is printed on the card.
16. The Cardholder may use the EBC for a range of unspecified personal expenses wherever MasterCard or Visa (as appropriate) prepaid cards are accepted.
17. The EBC can not be used for, purchases from merchants using an imprinter (click-clack machine), direct debit, recurring or instalment payments, any illegal activities, and cash withdrawals including at ATMs or cash out with purchases.
18. The EBC is not a credit card.
19. The employer is liable (in the first instance) for all transactions arising from the use of the EBC. Should circumstances arise where the EBC balance is overdrawn (due to for example delays in the processing of merchant transactions) the employer is the party responsible for this overdrawn amount, and employer must pay CBA the outstanding amount.
20. The Cardholder can only access up to the total amount (Value) of cleared funds added (loaded) to the EBC at any particular time.
21. All funds held in the employer's account and loaded on to the EBC remain the property of the employer.

¹ What comprises a valid salary sacrifice arrangement is discussed in Taxation Ruling TR 2001/10 Income tax: fringe benefits tax and superannuation guarantee: salary sacrifice arrangements.

22. The card balance will be maintained by the CBA and will be equal to the original amount loaded on to the EBC together with any reload amounts less transaction amounts and fees debited to the EBC plus or minus any adjustments (for example refunds or corrections).
23. Any unused balance after the funds expiry date (if applicable) cannot be used by or redeemed by the cardholder. All such funds will be redeemed to the employer in accordance with the agreement between the CBA and the employer.
24. On expiry or cancellation of the EBC any remaining value on the EBC will be transferred by the CBA solely to the employer and not directly to the Cardholder.
25. Funds in the employer's account are used to pay for the goods or services obtained by the Cardholder from an authorised use of the EBC.
26. CBA is responsible for effecting settlement of all approved transactions that result from the use of the EBC.
27. CBA will debit (deduct) against the Value loaded onto the card any transaction authorised by the Cardholder using the EBC.
28. The Cardholder is not permitted to load funds on to the EBC at any time or to arrange for any other third party (other than the employer) to load value on to the EBC.
29. The Cardholder will not earn any interest on any value stored on the EBC.
30. Interest may be paid on the employer's account depending on what type of account is used. The interest is payable to the account holder being the employer and not the employee.
31. The EBC may be cancelled by the employer at any time.

Ruling

32. The use of the EBC by the Cardholder will give rise to various types of benefits that may include tax-exempt body entertainment benefits under section 38, property benefits under section 40 and residual benefits under section 45, as applicable, unless otherwise exempt.
33. When the EBC is used by the Cardholder to pay merchants or the other suppliers of goods and services this will not give rise to expense payment benefits for the purposes of section 20.
34. Neither a deposit of funds by the employer to the employer's account nor the loading of available value on to the EBC will constitute a 'benefit' as that term is defined in subsection 136(1).

35. Where the value of the benefits provided to an employee (or an associate of the employee), of an employer subject to the provisions of section 57A, during the fringe benefits tax (FBT) year, does not exceed the relevant threshold specified in subsection 5B(1E) such benefits will constitute exempt benefits under section 57A.

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

Commissioner of Taxation

5 June 2013

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.*

Kinds of benefits arising from the use of the EBC facility

37. Section 20 states that an expense payment benefit will arise where the provider either:

- (a) makes a payment in discharge, in whole or part, of an obligation of another person to pay an amount to a third person in respect of an amount of expenditure incurred by the recipient; or
- (b) reimburses the recipient, in whole or part, in respect of an amount of expenditure incurred by the recipient.

38. When the EBC is used in respect of goods or services the debt to the merchant or to the other suppliers of goods or services is met from the funds then held in the employer's account and made available (loaded) on to the EBC.

39. The employer is liable (in the first instance) for all transactions arising from the use of the EBC. Therefore, when the employee or associate of the employee (as the Cardholder) uses the EBC in respect of goods or services it is, nonetheless, the employer, in the first instance, who is incurring such expenditure.

40. As the employer is discharging the employer's own obligation the employer is, therefore, not discharging an obligation of another person to pay a third person nor providing a reimbursement to another person in respect of expenditure incurred by that person.

41. Consequently, when the EBC is used to pay merchants or the other suppliers of goods and services this will not give rise to expense payment benefits, under section 20, as none of the required conditions of that section are met.

42. The fact that CBA is responsible for carrying out the settlement of all transactions does not alter the position that the employer is discharging the employer's own obligation as CBA is simply effecting payment to the merchant or the other suppliers of goods and services on the behalf of the employer.

43. As the relevant goods or services are firstly acquired by the employer the subsequent grant by the employer to the employee or their associate (Cardholder) of either the possession of the goods or the use of the services will result in a 'benefit', as that term is defined in subsection 136(1), being provided by the employer to the employee or their associate.

44. The benefits so provided by the employer to the employee or their associate may include tax-exempt body entertainment benefits under section 38, property benefits under section 40 and residual benefits under section 45, as applicable, unless otherwise exempt. However, as stated above (at paragraph 42) any such benefits will not include expense payment benefits.

45. It may be noted that where no exemption or other exclusion under the FBTAA applies, the relevant benefits provided to the Cardholder will subsequently also constitute 'fringe benefits', as that term is defined in subsection 136(1), as the benefits are being provided in respect of the employee's employment as evidenced by the relevant SSAs.

46. A deposit by the employer to the employer's account does not constitute a 'benefit', as defined, as the employer is merely transferring funds to its own account. It is considered that this view is not altered by the fact that such deposits to the employer's account are but steps in the furtherance of the terms of a SSA.

47. Similarly, the loading of value on to the EBC no 'benefit', as defined, is provided to the employee at the time of the transfer.

Employers subject to section 57A who participate in the EBC arrangements

48. Section 57A provides that certain employers are generally exempt from fringe benefits tax. This section applies to employers who are an endorsed public benevolent institution, certain hospitals, an employer who provides public ambulance services (or services that support those service) where the employee is predominantly involved in connection with the provision of those services, or an 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. However, these exemptions are subject to the capping provisions contained in section 5B.

50. Subsection 5B(1E) limits the exemption to \$17,000 grossed-up taxable value per employee for 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 fringe benefits tax (FBT) on the value of benefits provided in excess of this threshold.

51. All other employers to which section 57A applies will have a capping threshold of \$30,000 grossed-up taxable value per employee under the capping limitations imposed by subsection 5B(1E). Such employers are liable for FBT on the value of benefits provided in excess of this threshold.

52. Each employee's individual grossed-up non-exempt amount is determined by multiplying the employee's type 1 and type 2 individual base non-exempt amounts by the applicable gross-up rate.

53. Provided the value of the benefits provided to the employee during the FBT year does not exceed the relevant threshold in subsection 5B(1E) they will constitute exempt benefits under section 57A.

54. For employers subject to the provisions of section 57A, benefits that constitute the provision of meal entertainment, car parking fringe benefits and benefits whose taxable value is wholly or partly attributable to entertainment facility leasing expenses 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 those particular kinds of benefits for the purposes of determining exposure to the capping thresholds.

55. Therefore, where the value of the benefits provided to an employee, of an employer subject to the provisions of section 57A, during the FBT year does not exceed the relevant threshold specified in subsection 5B(1E) such benefits will constitute exempt benefits under section 57A.

Will the benefit be a type 1 benefit or a type 2 benefit arising from the use of the EBC by the Cardholder?

56. To determine whether a benefit provided under the EBC arrangements is a type 1 or type 2 benefit, it is necessary to ascertain whether the relevant benefit is a GST-creditable benefit as defined in section 149A.

57. Taxation Ruling TR 2001/2² 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 because of either:

- 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.

58. Paragraph 86 of Goods and Services Tax Ruling GSTR 2001/3³ 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

² 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.

³ Goods and Services Tax Ruling GSTR 2001/3 goods and Services Tax: GST and how it applies to supplies of fringe benefits

- a payment is made on behalf of an employee for an expense payment benefit that constitutes an expense payment benefit.

59. As determined above (at paragraph 41), the use of the EBC by the Cardholder will not give rise to expense payment benefits and, therefore, Division 111 of the GST Act will not apply.

60. However, as also determined above (at paragraph 44), the use of the EBC by the Cardholder will give rise to benefits including tax-exempt body entertainment benefits under section 38, property benefits under section 40 and residual benefits under section 45, as applicable.

61. Whether those various other kinds of benefits will be type 1 benefits or type 2 benefits will depend on whether the 'thing' acquired by the provider (in this case, the employer) is, or is not, a GST-creditable benefit as defined in section 149A.

62. Therefore, a benefit provided to the Cardholder from use of the EBC will be a GST-creditable benefit if the requirements of section 149A are satisfied. Such a benefit will be a type 1 benefit for the purposes of section 5C. Where the requirements of section 149A are not satisfied the benefit provided by the Cardholder will not be a GST-creditable benefit and thus will be a type 2 benefit for the purposes of section 5C.

Appendix 2 – Detailed contents list

63. 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 92/17; TR 2001/10;
TR 2001/2; TR 2006/10;
GSTR 2001/3.

Subject references:

- entertainment benefits
- expense payment benefit
- exempt benefits
- FBT salary packaging
- FBT tax-exempt body
- fringe benefits tax
- public benevolent institutions
- health promotion charities
- hospitals
- public ambulance services
- tax-exempt body entertainment fringe benefits
- exempt property benefits
- residual benefits

Legislative references:

- ANTS(GST)A 1999 Div 111
- FBTA 1986 5B(1E)
- FBTA 1986 5B(1L)
- FBTA 1986 5C
- FBTA 1986 20
- FBTA 1986 38
- FBTA 1986 40
- FBTA 1986 45
- FBTA 1986 57A
- FBTA 1986 136(1)
- FBTA 1986 149A
- TAA 1953
- Copyright Act 1968

ATO references

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