

***CR 2017/38 - Fringe benefits tax: employer clients of Community Sector Banking Pty Limited who are subject to the provisions of either section 57A or 65J of the Fringe Benefits Tax Assessment Act 1986 that make use of a B-Maximised MasterCard credit card facility***

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! This document has changed over time. This is a consolidated version of the ruling which was published on *28 June 2017*



## Class Ruling

Fringe benefits tax: employer clients of Community Sector Banking Pty Limited who are subject to the provisions of either section 57A or 65J of the *Fringe Benefits Tax Assessment Act 1986* that make use of a B-Maximised MasterCard credit 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, 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.

## Summary – what this ruling is about

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

### Relevant provisions

2. The relevant provisions dealt with in this Ruling are:

- section 5B of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA)
- subsection 5B(1E) of the FBTAA
- section 5C of the FBTAA
- section 20 of the FBTAA

- section 57A of the FBTAA
- section 65J of the FBTAA
- subsection 65J(2A) of the FBTAA
- subsection 65J(2B) of the FBTAA
- section 149A of the FBTAA
- Division 111 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

### **Class of entities**

3. The class of entities to which this Ruling applies is those employers who are subject to the provisions of either section 57A or section 65J of the FBTAA and who:

- enter into an arrangement with Community Sector Banking Pty Ltd (CSB) to provide the b-maximised MasterCard credit card 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 CSB to provide the b-maximised MasterCard credit card facility to the employer's employees or their associates.

### **Qualifications**

4. The Commissioner makes this Ruling 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 8 to 27 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

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7. This Ruling applies from 1 April 2017 to 31 March 2020. The Ruling continues to apply after 31 March 2020 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. 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).

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## Scheme

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8. 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 27 April 2017
- CSB b-maximised credit card terms and conditions dated January 2016
- CSB b-maximised credit card Employer Program Agreement terms and conditions
- CSB b-maximise credit card Employer Guideline
- Salary packaging solutions organisation application form
- b-maximised employee application form
- letter of agency – b-maximised salary packaging provider
- letter of offer – b-maximised employer
- b-maximised credit card schedule
- promotional material, and
- b-maximised MasterCard frequently asked questions.

### Participating employers

9. 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.

10. Each employer or salary packaging provider, acting on the employer's behalf, enters into an arrangement with CSB to provide the CSB b-maximised MasterCard credit card facility to its employees.

11. Employees of those employers may then apply to CSB to be issued with the b-maximised MasterCard.
12. The account is established in the employer's name with the employee being an additional cardholder. The MasterCard itself will bear both the employer's and the employee's name.
13. A separate account is established with CSB for each employee.

## **Funding**

14. Each employer enters into an effective salary sacrifice agreement with their participating employees and sets aside a salary sacrificed amount for each employee.
15. Salary sacrificed funds are transferred to the employee's b-maximised card account from the employer's account on a periodic basis as determined by the relevant salary sacrifice agreement.
16. The amount transferred will be equal to the amount determined by the employee and the employer in the salary sacrifice agreement.
17. Where the employer administers the salary sacrifice agreement, the employer will transfer funds directly to each employee's card account.
18. Where a salary packaging provider administers the salary sacrifice agreement on behalf of the employer, the employer will transfer its funds to an account established by the employer and the salary packaging provider will have access to draw upon these funds to transfer the relevant amounts to individual employee card accounts.

## **Usage**

19. Employees use their b-maximised card to pay for private expenses. Expenditure amounts are limited to the funds made available from the employer's account to the employee's b-maximised card account. The only rights employees have is to charge expenses on the card up to the monthly spend limit.
20. The card will be restricted so that the following are not available:
  - cash withdrawals
  - cash deposits
  - cheque book facilities
  - phone or internet banking facilities
  - transfers to personal bank accounts
  - in-branch transactions

- direct debits or periodical payments
  - payments to other credit cards
  - BPAY, and
  - payments towards mortgages and rental payments.
21. The card cannot be used for meal entertainment expenses.
22. Employees are primarily liable to CSB for all expenditure incurred using the b-maximised Card. However, employers have a secondary liability in the event of an employee's default. All unexpended balances in the employees' b-maximised card accounts remain the property of the employer.
23. CSB reports to the employer or the salary packaging provider, as applicable, the transactions made by the cardholder and the remaining balance available to the employee. The employee also has access to this daily information through the electronic banking access provided.
24. CSB will send the employer or the salary packaging provider, acting on the employer's behalf, a transaction file. The transaction file lists the transactions that the employees are liable to pay within 14 days from the date of the file. Within this time the transaction amounts are discharged with the salary sacrificed amounts available on the employee's b-maximised card account.
25. The employer or the salary packaging provider then provides the transaction information to the employee via a website, or a statement (either paper based or electronic). The transaction information is sent on a monthly basis.
26. At the end of the fringe benefits tax year (31 March) any remaining funds in the employee's card account can be rolled over for use in the following year or refunded to the employer depending on the employer's preference. It is the employer's responsibility to reduce any salary sacrifice amounts in the year following a rollover, to ensure that the relevant exempt fringe benefits tax threshold is not exceeded.
27. At such time as the relevant employment ceases, both the employer and the employee will be obliged to inform CSB immediately, following which, the card and the relevant card account will be cancelled. Any credit balance remaining on the employee's card account will be returned to the employer to be paid to the employee as salary subject to the pay as you go tax withholding rules.

## Ruling

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### **What type of fringe benefit arises from the use of the card?**

28. Benefits provided to cardholders using the b-maximised MasterCard constitute an expense payment benefit under section 20 of the FBTA.

29. Where section 57A of the FBTA applies to a participating employer, the benefits provided to cardholders using the card will be exempt benefits where the value of those benefits provided in the FBT year do not exceed the capping threshold specified in subsection 5B(1E) of the FBTA.

30. Where section 65J of the FBTA 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) where the values of the benefits provided to cardholders in the FBT year do not exceed the relevant capping threshold specified in the Method Statement in subsection 65J(2B).

### ***At what time does the fringe benefit arise?***

31. The expense payment benefit arises at the time a participating employer pays on behalf of an employee the financial obligation owing to CSB in relation to the use of the card by the employee.

### ***Will the benefit be a type 2 benefit?***

32. Expense payment benefits arising from the payment of a cardholder's liability to CSB by a participating employer are not GST-creditable benefits for the purposes of section 149A of the FBTA and are type 2 benefits for the purposes of section 5C of the FBTA.

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**Commissioner of Taxation**

28 June 2017

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## **Appendix 1 – Explanation**

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**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.*

### **What type of benefit arises from the use of the CSB b-maximised MasterCard credit card facility?**

33. An expense payment benefits arises, under section 20 of the FBTAA, where either an employer pays a third party in satisfaction of expenditure incurred by an employee or where an employer reimburses an employee for expenditure incurred by the employee.

34. The participating employers make payments in discharge, in whole or part, of the obligations of the cardholders to pay amounts to CSB in respect of amounts of expenditure incurred by the cardholders.

35. When the card is used, it is the cardholder who has the primary responsibility to pay CSB. The obligation that is discharged is therefore the cardholder's obligation to CSB for any debt incurred using the card.

### **At what time does the benefit arise?**

36. An expense payment benefit under section 20 of the FBTAA will arise at the time when unused funds from the cardholder's account are used to pay CSB in respect of the financial obligation incurred by a cardholder in relation to the use of the card.

### **Will the benefit be a type 2 benefit?**

37. To determine whether the provision of the expense payment benefit resulting from the use of the card is a type 1 or type 2 benefit for the purposes of section 5C of the FBTAA, it is necessary to ascertain whether that benefit is a GST-creditable benefit as defined in section 149A of the FBTAA.

38. 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 of the FBTAA, 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.

39. As it is the cardholders who have the primary responsibility to pay CSB, only the first point in paragraph 38 of this Ruling, regarding the operation of Division 111 of the GST Act, needs to be considered.

40. 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.

41. Paragraph 89 of GSTR 2001/3 points out, for Division 111 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.

42. The discharge of the cardholder's debt to CSB as described in the scheme involves no more than reimbursement of the outstanding balance owing by the cardholder at the particular time but without any reference to any specific purchase or purchases. 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.

43. Therefore, the provision of benefits under the scheme does not constitute a GST-creditable benefit for the purposes of section 149A of the FBTAA and the benefits are therefore type 2 benefits for the purposes of section 5C of the FBTAA.

### **Employers subject to section 57A of the FBTAA who participate in the arrangement**

44. Section 57A provides that certain employers are generally exempt from FBT. This section applies to employers who are a registered and endorsed public benevolent institutions, 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.

45. 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.

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

47. 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 the particular FBT year. For the year ending 31 March 2018 this threshold will be \$17,000 for each 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 FBT on the grossed-up taxable value of benefits provided in excess of this threshold.

48. All other employers to which section 57A applies will have a capping threshold of \$30,000 for each employee for the FBT years ending 31 March 2018. Such employers are liable for FBT on the grossed-up taxable value of benefits provided in excess of this threshold.

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

50. The expense payment benefits provided to cardholders using the CSB b-maximised MasterCard credit card, and who are employees of participating employers subject to the provisions of section 57A, will 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 of the FBTA who participate in the arrangement**

51. Section 65J provides that certain non-government and non-profit organisations (rebtable employers) are entitled to have their FBT liability reduced by a rebate. This section does not apply to public benevolent institutions or to registered health promotion charities.

52. If an employer is a rebtable 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 rebtable employer for the full year, the rebate (provided the capping threshold is not exceeded) will be determined by multiplying the FBT rate for the relevant year by the amount of gross tax that would otherwise be paid by the employer (provided the threshold is not exceeded).

53. If the total grossed-up taxable value of benefits provided to an 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. The amount of this threshold depends upon the FBT year in which the benefit is provided. For the FBT year ending 31 March 2018 the threshold is \$30,000.

54. 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.

55. The rebatable employer's aggregate non-rebatable amount is calculated by aggregating the product of each employee's individual grossed-up non-rebatable amount less the relevant capping threshold as set out in the Method Statement in subsection 65J(2B) multiplied by the FBT rate.

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

57. As the relevant benefits in this case are not GST-creditable benefits they will always be treated as being type 2 benefits for both the determination of the aggregate non-rebatable amount and also the determination of gross tax in the rebate calculation in subsection 65J(2A).

58. Where the grossed-up taxable value of benefits provided to cardholders, who are employees of employers subject to the provisions of section 65J during the FBT year, does not exceed the relevant threshold specified in the Method Statement in subsection 65J(2B), such benefits will receive a rebate of the gross tax that would otherwise be payable at the rate applicable to that FBT year as set out in subsection 65J(2A) of the FBTA.

## **Appendix 2 – Detailed contents list**

59. The following is a detailed contents list for this Ruling:

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## References

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- |  |                      |
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| <i>Previous draft:</i>                 | - FBTAA 1986 5B      |
| Not previously issued as a draft       | - FBTAA 1986 5B(1E)  |
|  | - FBTAA 1986 5C      |
| <i>Related Rulings/Determinations:</i> | - FBTAA 1986 20      |
| GSTR 2001/3; TR 2001/2;                | - FBTAA 1986 57A     |
| TR 2006/10                             | - FBTAA 1986 65J     |
|  | - FBTAA 1986 65J(2A) |
| <i>Legislative references:</i>         | - FBTAA 1986 65J(2B) |
| - ANTS(GST)A 1999                      | - FBTAA 1986 149A    |
| - ANTS(GST)A 1999 Div 111              | - TAA 1953           |
| - FBTAA 1986                           |                      |
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### ATO references

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