


CR 2017/41 - Fringe benefits tax: employer clients of Smartgroup Corporation Ltd who are subject to the provisions of section 57A or 65J of the Fringe Benefits Tax Assessment Act 1986 that make use of the Smartgroup Everyday Purchases Card facility

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Class Ruling

Fringe benefits tax: employer clients of Smartgroup Corporation Ltd who are subject to the provisions of section 57A or 65J of the *Fringe Benefits Tax Assessment Act 1986* that make use of the Smartgroup Everyday Purchases 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 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 within 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

- section 65J of the FBTA
- subsection 65J(2A) of the FBTA
- section 149A of the FBTA.

Class of entities

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

- enter into an Employee Benefits Card facility with Westpac Banking Corporation (Westpac), under an arrangement with Smartgroup Corporation 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 Westpac, under an arrangement with Smartgroup Corporation Ltd,

to provide an Everyday Purchases 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 9 to 26 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.

Date of effect

7. This Ruling applies from 1 April 2017. 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).

Previous Rulings

8. Class Ruling 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.*

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 a class ruling dated 21 December 2016
- Westpac Card Application Form
- Westpac Terms and Conditions
- End of year FBT report
- Westpac Daily Process
- Tax free cap benefits Information Sheet Everyday Purchases
- Standard Employer Agreement
- Westpac Cardholder Communication Letter
- Westpac Customer Communication Letter.

The Card Scheme

10. Smartgroup Corporation Ltd, through its wholly-owned subsidiaries Smartsalary, Selectus and Advantage (collectively referred to as 'Smartgroup' and or 'the promoter'), operates a business which provides salary packaging services to employers.

11. The promoter proposes to enter into an agreement with the Westpac Banking Corporation (Westpac) to issue a Smartgroup Everyday Purchases Card to employees of employers who are subject to section 57A or section 65J.

12. The salary sacrifice arrangements (SSAs) in respect of the Smartgroup Everyday Purchases Card will specify that the benefits provided to the cardholders (that is employees of Smartgroup employer clients) are for the complete extinguishment of the cardholders' then liabilities to Westpac without reference to any specific purchases listed on the credit or debit card statements.

Participating employers

13. 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.
14. Participating employers will enter into arrangements with Smartgroup for the issue of cards to their employees (cardholders). Secondary cards will also be issued to spouses of employees where this is requested.
15. Smartgroup will issue the cards and coordinate the card's operation in accordance with a separate arrangement with Westpac.

Funding

16. Participating employers will enter into valid sacrifice arrangements (SSA) with their employees.¹ The use of the Smartgroup's Everyday Purchases Card facility will form an integral part of those arrangements.
17. The participating employers will deduct pre-tax salary sacrificed amounts from cardholders and make deposits equal to the amounts salary sacrificed into participating employer owned disbursement accounts.
18. A funds distribution file detailing the individual amounts salary sacrificed by each cardholder will be sent by the participating employers to Westpac who acts on behalf of the participating employers in such arrangements.
19. Smartgroup will reconcile the total value of the funds distribution against the funds received from the participating employers, and process the file to allocate the portion of funds then available to pay the transactions/costs of each of the individual cardholders.
20. Each cardholder will be allowed to transact on their card up to the amount that they have individually salary sacrificed year to date. The funds available to any given cardholder will therefore vary according to their particular salary sacrificed amounts and the costs incurred year to date (presented as 'available funds').
21. Any unused funds in the participating employers' disbursement accounts for particular cardholders remain in the ownership of the participating employers until such time as they are required to be used to pay merchants or service providers for goods or services provided to cardholders or to pay credit providers in respect of the financial obligations incurred by cardholders in relation to use of the cards. Any unused funds at the end of the Fringe Benefits Tax (FBT) year may be carried forward to the next FBT year

¹ Guidance on what constitutes a valid salary sacrifice arrangement is given in Taxation Ruling TR 2001/10 *Income tax: fringe benefits tax and superannuation guarantee: salary sacrificed amounts*.

for use by a cardholder where the parties agree to do so or will otherwise be returned to the cardholder as salary or wages (and subject to PAYG withholding).

Cards

22. The card will be made available as a debit card (with a Debit BIN) with no credit facility and expenditures made using the card can only be made to the extent of the pre-tax salary previously validly salary sacrificed by the cardholder. The cards will be issued in the name of the individual employee who holds the card. In the VISA mandate under which the card programs will operate, the cards will be provided with a security chip to mitigate fraud. The use of 'PayWave' capability will be optional and subject to agreement between Smartgroup and the participating employers.

23. The participating employer credits the funds salary sacrificed by each cardholder to a disbursement account held by the participating employer at Westpac. Westpac then allocates (pre-loads) the relevant salary sacrificed amount(s) against the particular cardholder's card. Each cardholder will be allowed to transact on their card up to the amount that they have individually salary sacrificed in the FBT year to date which will be verified by the Westpac's Card Management System (CMS). Westpac has a function included in its system software that manages the balances to ensure that an individual cardholder's transactions will only be funded up to the value of the total funds held at that particular time for the cardholder.

24. The card is not subject to merchant blocking and can be used for any 'personal expenses' of the cardholder other than those types of expenditures restricted under the arrangements.

Restrictions

25. The restrictions on the use of the cards is driven by employer policy. In addition, restrictions on the use of the card includes:

- cardholders cannot use funds pre-loaded onto the cards to withdraw cash
- funds pre-loaded onto the cards cannot be used to make direct debit payments
- funds pre-loaded onto the cards cannot be used to pay mortgages or transferred to other bank accounts, and
- funds pre-loaded onto the cards cannot be transferred from card to card.

Salary packaging arrangements

26. The SSAs in respect of the Debit BIN card will specify that the benefits provided to the cardholders are for the complete

extinguishment of the cardholders' then liabilities to Westpac without reference to any specific purchases listed on the credit or debit card statements.

27. The SSA will specify that the cardholders have the prime responsibility to pay the card providers for all expenditures incurred with the Smartgroup Everyday Purchases Card.

Ruling

28. Benefits provided to cardholders using the Smartgroup Everyday Purchases Card constitute an expense payment benefit under section 20.

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

30. Where section 57A applies to a participating employer, the benefits provided to cardholders using the Smartgroup Everyday Purchases 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).

31. Where section 65J 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).

Appendix 1 – Explanation

ⓘ *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.*

Does the extinguishment of the cardholders' liabilities to the Everyday Purchases Card provider constitute an expense payment fringe benefit?

32. The SSA between the employer and employee specifies that the benefit being provided to the cardholders (that is the employees) is the complete extinguishment of the cardholders' then liabilities incurred using the Everyday Purchases Card to the card provider (that is Westpac). The cardholders have the prime responsibility to pay the card providers.

33. An expense payment benefit arises under section 20 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 cardholders are primarily liable for all expenditure incurred where the benefits being provided to the cardholders are the complete extinguishment of the cardholders' then liabilities to the card providers. The obligation that is discharged is therefore the cardholder's obligation to the card provider for any debt incurred using the card.

35. When unused funds from the participating employers' disbursement accounts are used to pay the card providers in respect of the financial obligations incurred by the cardholders in relation to use of the cards an expense payment benefit under section 20 will arise at that time.

36. The providers (the participating employers) are making payments in the discharge, in whole or part, of the obligations of other persons (the employee) to pay amounts to third persons (Westpac) in respect of amounts of expenditure incurred by the recipients (cardholders).

37. Thus, in our view the benefit provided under this arrangement is an expense payment fringe benefit.

Does the benefit relating to the extinguishment of the cardholders' liabilities to the Everyday Purchases Card constitute a type 1 or type 2 benefit?

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

39. 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* provides that, for the purposes of section 149A, a GST-creditable benefit arises where the provider of a fringe benefit is entitled to an input tax credit either:

- for the provision of that fringe benefit by the operation of Division 111 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), or
- where the fringe benefit is a 'thing' acquired or imported by the provider, and the provider is entitled to an input tax credit because of that acquisition or importation of the thing.

40. The SSAs specify that where the benefits being provided to the cardholders are the complete extinguishment of the cardholders' then liabilities to the card providers, the cardholders have the prime responsibility to pay the card providers.

41. The second point in paragraph 39 of this Ruling does not apply, as there is no 'thing' acquired or imported under the scheme. In this case, there is a reimbursement for the purposes of the GST Act. Consequently, only the first point of paragraph 39 needs to be considered.

42. 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 payment benefit that constitutes an expense payment benefit.

43. 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 card.

44. The terms and conditions of the SSAs specify that the benefits provided by the participating employers to the cardholders are the complete extinguishment of the cardholders' then liabilities to the card providers without reference to any specific purchases listed on the credit or debit card statements.

45. 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.

46. Therefore, the provision of benefits under the scheme are not GST-creditable benefits for the purposes of section 149A. The

expense payment benefits under the scheme are type 2 benefits for the purposes of section 5C.

Will the benefits provided in relation to Smartgroup's Everyday Purchases Card by a section 57A employer to one of its employees be exempt from FBT where the grossed-up taxable value does not exceed the capping threshold?

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

48. 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.

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

50. Subsection 5B(1E) limits the exemption to a general 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 FBT year commencing 1 April 2017, this threshold is \$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.

51. All other employers to which section 57A applies will have a capping threshold of \$30,000 for each employee for the FBT year commencing 1 April 2017. These employers are liable for FBT on the grossed-up taxable 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. In relation to the provision of the Smartgroup Everyday Purchases Card, the type 2 rate will apply.

53. Where the grossed-up taxable value of the expense payment fringe benefit does not exceed the relevant threshold, either \$17,000 or \$30,000 for the FBT year commencing 1 April 2017, and subsequent FBT years, the benefit will remain exempt for employees of participating employers subject to section 57A.

Will the benefits provided in relation to Smartgroup's Everyday Purchases Card by a section 65J employer to one of its employees be eligible for the rebate on FBT where the grossed-up taxable value does not exceed the capping threshold?

54. Section 65J provides that certain non-government and non-profit organisations (rebatable employers) are entitled to have their FBT liability reduced by a rebate.

55. If an employer is a rebatable 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). The relevant formula depends upon the year in which the benefit is provided. For the FBT year commencing 1 April 2017, if the employer is a rebatable employer for the full year, the rebate (provided the capping threshold is not exceeded) will be 47% of the amount of the gross tax that would otherwise be paid by the employer. In subsequent years, the amount of the rebate will be determined by multiplying the FBT rate for the relevant FBT year by the amount of tax that would otherwise be paid by the employer (provided the capping threshold is not exceeded).

56. If the total grossed-up taxable value of benefits provided to an individual 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 year commencing 1 April 2017 and subsequent FBT years, the threshold is \$30,000 grossed-up taxable value per employee.

57. 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.

58. 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 capping threshold as set out in step 2 of the Method Statement in subsection 65J(2B) multiplied by the FBT rate.

59. 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. In relation to the provision of the Smartgroup Everyday Purchases Card, the type 2 rate will apply.

60. Where a benefit relating to the extinguishment of the liability of the debt owing by cardholders, who are employees of participating employers subject to the provisions of section 65J during the FBT year does not exceed the relevant threshold in Step 2 of the Method Statement in subsection 65J(2B), \$30,000, 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).

Appendix 2 – Detailed contents list

61. The following is a detailed contents list for this Ruling.

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References

Previous draft:

Not previously issued as a draft

- FBTA 1986 5B(1L)
- FBTA 1986 5B(1M)
- FBTA 1986 5C

*Related Rulings/Determinations:*GSTR 2001/3, TR 2001/2,
TR 2001/10, TR 2006/10

- FBTA 1986 5E(3)(a)
- FBTA 1986 5E(3)(c)
- FBTA 1986 Pt III Div 9A
- FBTA 1986 20
- FBTA 1986 40

Legislative references:

- ANTS(GST)A 1999
- ANTS(GST)A 1999 Div 69
- ANTS(GST)A 1999 69-5(3)
- ANTS(GST)A 1999 69-5(3)(f)
- ANTS(GST)A 1999 69-5(4)
- ANTS(GST)A 1999 Div 111
- FBTA 1986
- FBTA 1986 5B(1E)

- FBTA 1986 45
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 - FBTA 1986 65J(2A)
 - FBTA 1986 65J(2B)
 - FBTA 1986 136(1)
 - TAA 1953
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ATO references

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