


***CR 2018/53 - Fringe benefits tax: employer clients of Police Financial Services Limited, trading as BankVic, who are subject to the provisions of section 57A or 65J of the Fringe Benefits Tax Assessment Act 1986 that make use of the BankVic Everyday Expenses Card***

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## Class Ruling

Fringe benefits tax: employer clients of Police Financial Services Limited, trading as BankVic, who are subject to the provisions of section 57A or 65J of the *Fringe Benefits Tax Assessment Act 1986* that make use of the BankVic Everyday Expenses Card

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### **📌 This publication provides you with the following level of protection:**

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.

## 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 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 FBTAA
- section 65J(2A) of the FBTAA
- section 65J(2B) of the FBTAA
- subsection 136(1) of the FBTAA
- section 149A of the FBTAA.

All subsequent references are to the FBTAA unless otherwise indicated.

## **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, who enter into an arrangement, either directly or via a third party intermediary salary packaging administrator, with Police Financial Services Limited trading as BankVic (BankVic), to provide the BankVic Everyday Expenses card to the employer's employees and/or the employees' 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 8 to 24 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
- this Ruling may be withdrawn or modified.

## **Date of effect**

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7. This Ruling applies from 1 April 2018 to 31 March 2024. The Ruling continues to apply after 31 March 2024 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 *Public Rulings*).

## **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:

- class ruling application dated 19 July 2018
- Salary Packaging Cards Services Agreement between BankVic and an employer
- Salary Packaging Cards Services Agreement between BankVic and a Salary Packaging Administrator
- application for Salary Packaging Card
- Salary Packaging Card Product Disclosure Statement
- Sample Salary Packaging Application Form and Terms and Conditions.

### **The Cards Scheme**

9. Participating employers wish to offer their employees, as a component of their salary packages, salary packaging purchase cards to purchase products.

10. BankVic, has developed salary packaging cards for use by employees of Australian employer customers who will either self-administer the salary packaging or use a third party intermediary salary packaging administrator.

11. The Everyday Expense Cards are a debit card facility where the amount available is restricted to the value of the funds held at the relevant time for the cardholder in the card account.

12. 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.

13. Participating employers or salary packaging administrators, acting on the employer's behalf, will enter into an arrangement with BankVic to provide the salary packaging card facility to participating employees of the employer.

14. Employees of participating employers who wish to take part may apply to BankVic to be provided with an Everyday Expenses Card issued in the employee or a nominated associate's name (the Cardholder).

15. Cardholders use their salary packaging cards to pay for private purchases. Expenditure amounts from these transactions are limited to the funds available in the card account.

## **Funding**

16. Participating employers will enter into effective salary sacrifice arrangements (SSAs) with their participating employees under which the employer will agree to contribute funds to their card account. Individual SSAs will be unique to each participating employer. The use of the Everyday Expenses Card will form an integral part of those arrangements.

17. BankVic will open accounts to hold funds deposited by a participating employer notionally allocated for the discharge of liabilities incurred by participating employees who purchase authorised products.

18. Contributions of funds to the Cardholder accounts will be as follows:

- a funds distribution file detailing the individual amounts salary sacrificed by each Cardholder will periodically be sent by the participating employers to BankVic
- BankVic will allocate the funds received across the relevant Cardholder accounts
- the funds will be added to the debit balance of the relevant card.

19. Funds in the Cardholder's account, while held for expenditure purposes, will remain the legal property of the employer.

## **Using the Everyday Expenses Card**

20. When the Cardholder uses the Everyday Expenses Card to purchase goods or services:

- the participating employee will incur a primary obligation to pay an amount to the merchant equal to the transaction amount
- BankVic will settle the transaction by paying the transaction amount to the merchant
- as a result of the settlement referred to, the participating employee will incur an obligation to pay BankVic an amount equal to the transaction amount
- BankVic will apply funds from the account, which remains the property of the participating employer up to the time they are expended, to discharge the participating employee's obligation to BankVic without reference to any specific purchases listed on the debit card statements.

21. The benefit provided to the Cardholder will be the complete extinguishment of the Cardholders' liabilities to BankVic using employer funds held in the card account.

22. The aggregate grossed-up value of salary packaged benefits from the use of the Everyday Expenses Cards will not exceed the relevant grossed-up exemption cap as per the method statement in subsection 5B(1E). Where living expenses are salary packaged by the relevant employee through mechanisms other than the card product, the packaging limit on the relevant card will be adjusted down to ensure card expenditure is restricted to the available threshold.

23. Cardholders will be allowed to make direct debit payments using card funds as long as they comply with the appropriate merchant rules.

### **Restrictions**

24. The cards may be subject to merchant blocking depending on individual arrangement with employers; however, regardless of whether this is the case, the Cardholder will agree to the following restrictions on card use at the time of application:

- Payments up to an employee's agreed salary sacrifice value can only be made to the card account by the employer.
- Cardholders will only be permitted to transact on their card up to the balance of employer funds that are available.
- Cardholders will be subject to an absolute prohibition on withdrawing any funds from salary packaging cards, cash advances, or transferring the balance of funds on the cards, deposits to card account (other than from their employer) under any circumstances.
- Cardholders will not be allowed to use funds on the cards to pay mortgages.
- Cardholders will only be permitted to transact on their card to a grossed up benefits amount that does not exceed the caps contained in section 5B.

### **Ruling**

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25. Benefits provided to cardholders using the Everyday Expenses Card constitute an expense payment benefit under section 20.

26. The provision of expense payment fringe benefits under the Everyday Expenses Card, arising from the payment of a cardholder's liability to BankVic by a participating employer 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.

27. Where the taxable value of the fringe benefit provided to Cardholders in the FBT year does not exceed the capping threshold specified in subsection 5B(1E), the benefit will be an exempt benefit, and an employer subject to the provisions of section 57A will not have a FBT liability.

28. Where the taxable value of the fringe benefit provided to Cardholders in the FBT year does not exceed the relevant capping threshold specified in the Method Statement in subsection 65J(2B), the benefits provided by the Everyday Expenses Card will give rise to a rebate of tax where the employer is a rebatable employer as defined in section 65J.

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**Commissioner of Taxation**

5 December 2018

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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.*

### **Types of benefits arising from the use of the Salary Packaging Card facility**

29. An expense payment fringe 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.

30. The SSA between the employer and employee specifies that the benefit being provided to the Cardholders is the complete extinguishment of the Cardholders' liabilities incurred using the Everyday Expenses Card.

31. When the Everyday Expenses Card is used, it is the Cardholder who has the prime responsibility to pay BankVic. The obligation that is discharged is therefore the Cardholder's obligation to BankVic for any debt incurred using the card.

32. The participating employer makes payments in the discharge, in whole or part, of the employee's obligation to pay amounts to BankVic in respect of expenditure incurred by the Cardholders.

33. An expense payment benefit under section 20 will arise at the time when the unused funds in the card account are used to pay BankVic in respect of the financial obligation incurred by a Cardholder in relation to the use of the card.

### **Will the benefit be a Type 1 or Type 2 benefit arising from the use of the Everyday Expenses Card?**

34. The distinction between Type 1 or Type 2 benefits is set out in section 5C:

- a Type 1 benefit is a fringe benefit that is a 'GST-creditable benefit' as defined in section 149A
- a Type 2 benefit is a fringe benefit that is not a Type 1 benefit.

35. 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)

- 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.

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

37. The second point in paragraph 35 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 35 needs to be considered.

38. 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.

39. Paragraph 89 of GSTR 2001/3 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. This includes the employer requiring the employee's invoices to demonstrate that relevant purchases have been made.

40. 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' liabilities to the card providers. The discharging of the Cardholder's debt obligation to BankVic as described in the scheme involves no more than reimbursing the outstanding balance owing by the Cardholder at the particular time without reference to any specific purchase or purchases.

41. 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.

42. 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.

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

43. 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.

44. 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.

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

46. 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 2018, 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.

47. 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 2018. These employers are liable for FBT on the grossed-up taxable value of benefits provided in excess of this threshold.

48. 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 2018, and subsequent FBT years, the benefit will remain exempt for employees of participating employers subject to section 57A.

**Employers subject to section 65J who participate in the arrangement**

49. Section 65J provides that certain non-government and non-profit organisations (rebatable 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.

50. 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 year commencing 1 April 2018, 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 (providing the capping threshold is not exceeded).

51. 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 2018 and subsequent FBT years, the threshold is \$30,000 grossed-up taxable value per employee.

52. 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.

53. 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.

54. 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.

55. 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).

56. As the Everyday Expenses Cards will be administered such that the per employee grossed-up taxable value of benefits arising from card use does not exceed the annual threshold, all fringe benefits arising to a participating employer as a result of the salary packaging card process will entitle the employer to a rebate of the gross tax as set out in subsection 65J(2A).

57. 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**

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

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## References

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- Previous draft:*
- FBTAA 1986 5B(1E)
- Not previously issued as a draft
- FBTAA 1986 5C
  - FBTAA 1986 20
- Related Rulings/Determinations:*
- FBTAA 1986 57A
  - FBTAA 1986 65J
- GSTR 2001/3; TR 2001/2;  
TR 2006/10
- FBTAA 1986 65J(2A)
  - FBTAA 1986 65J(2B)
- Legislative references:*
- ANTS(GST)A 1999
  - ANTS(GST)A 1999 Div 111
  - FBTAA 1986
  - FBTAA 1986 5B
  - FBTAA 1986 136(1)
  - FBTAA 1986 149A
  - TAA 1953
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### ATO references

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