


CR 2009/53 - Fringe benefits tax: employer clients of Australia and New Zealand Banking Group Limited (ANZ) who are rebatable employers under section 65J of the Fringe Benefits Tax Assessment Act 1986 and whose employees make use of the ANZ Salary Packaging Card facility

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Class Ruling

Fringe benefits tax: employer clients of Australia and New Zealand Banking Group Limited (ANZ) who are rebatable employers under section 65J of the *Fringe Benefits Tax Assessment Act 1986* and whose employees make use of the ANZ Salary Packaging 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.

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:

- section 20 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA);
- subsection 5C(4) of the FBTAA;
- subsection 65J(2A) of the FBTAA; and
- section 149A of the FBTAA.

All subsequent legislative references are to the FBTAA unless otherwise stated.

Class of entities

3. The class of entities to which this Ruling applies are those rebatable employers under section 65J who:

- enter into an arrangement with ANZ to provide the ANZ Salary Packaging Card (Salary Packaging Card) facility to 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 ANZ to provide the Salary Packaging Card facility to the employer's employees.

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 21 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 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).

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:

- Class Ruling Application dated 26 February 2009;
- ANZ Booklet titled ANZ Commercial Card Terms and Conditions dated November 2008;
- ANZ Salary Packaging Card & ANZ Meal Entertainment Card Cardholder Specific Terms & Conditions;
- ANZ Salary Packaging Card Letter of Offer including the ANZ Salary Packaging Card Facility Acceptance form;
- ANZ Salary Packaging Cardholder Application Form;
- Applicant's e-mail of 17 June 2009; and
- Applicant's e-mail of 26 June 2009.

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. Each employer or salary packaging provider, acting on the employer's behalf, enters into an arrangement with ANZ to provide the Salary Packaging Card facility to employees of the employer.

11. Employees of participating employers may then apply to ANZ to be provided with a Salary Packaging Card issued in the employee's (Cardholder's) name. The Salary Packaging Card is a credit card.

12. Each employer enters into effective salary sacrifice arrangements¹ with that employer's participating employees to set aside salary sacrificed amounts in respect of the employee's private expenditure.

13. A separate account (Principal's account) is established with ANZ for each employer or, where a salary packaging provider is administering the salary sacrifice agreement on behalf of the employer, the salary packaging provider will have an account, which holds the funds on behalf of its principal clients (also referred to as 'Principal's account').

14. Funds are made available to the Cardholder's Account from the Principal's account on a periodic basis as determined under the relevant salary sacrifice arrangements. Access to the available funds is authorised by either the employer or salary packaging provider depending on who is administering the salary sacrifice arrangements.

15. Cardholders use their Salary Packaging Card to pay for private expenditure. Expenditure amounts within any given period are limited to the funds made available from the Principal's account to the Cardholder. The only rights Cardholder's have is to charge expenses on the Salary Packaging Card up to the available balance.

16. ANZ draws upon the available balance on a progressive basis when the merchant presents the relevant transaction for payment. ANZ reports on a daily basis to the employer or the salary packaging provider, as applicable, the transactions made by the Cardholder and the remaining balance available to the Cardholder. The Cardholder also has access to this daily information through an ANZ web-portal.

17. Cardholder's are primarily liable to ANZ for all expenditure incurred using the Salary Packaging Card. However, employers have a secondary liability in the event of a Cardholder's default. All unexpended balances remain the property of the employer.

18. ANZ regularly sends the employer or salary packaging provider, as the case may be, a transaction file. The transaction file includes a list of transactions that the Cardholder is liable to pay within 14 days from the date of the file. Within this time any outstanding transaction amounts are discharged from the funds available to the Cardholder.

19. The Salary Packaging Card is restricted to ensure that cash advances, cash withdrawals and account transfers are not available. In this regard, for example, payments towards mortgages and rental payments are not allowed.

¹ The meaning of what is an effective salary sacrifice arrangement is discussed in Taxation Ruling TR 2001/10 Income tax: fringe benefits tax and superannuation guarantee: salary sacrifice arrangements.

20. At the end of the fringe benefits tax year, any remaining funds available to the Cardholder 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 sacrificed amounts in the year following a rollover, to ensure that the relevant fringe benefits tax threshold is not exceeded.

21. At such time as the relevant employment ceases, both the employer and the employee will be obliged to inform ANZ immediately, following which the Salary Packaging Card will be cancelled. Any credit balance remaining 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

22. The use of the Salary Packaging Card gives rise to an expense payment benefit as defined in section 20 at the time the employee's obligation to ANZ is discharged.

23. The provision of benefits, using the Salary Packaging Card facility, are not GST-creditable benefits in terms of section 149A and, therefore, are type 2 benefits for the purposes of subsection 5C(4) and also the rebate calculation of subsection 65J(2A).

24. The provision of benefits, using the Salary Packaging Card facility, has an effective 48% rebate of the amount of the benefit's taxed grossed-up value under subsection 65J(2A) where the relevant capping threshold is not breached and no aggregate non-rebatable amount arises.

Commissioner of Taxation

16 September 2009

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.*

25. Paragraph 20(a) provides that where a person (the provider) makes a payment in discharge, in whole or in part, of an obligation of another person (the recipient) to pay an amount to a third person in respect of expenditure incurred by the recipient, the making of that payment gives rise to an expense payment benefit.

26. Cardholders are primarily liable for all expenditure incurred using the Salary Packaging Card. Under the scheme, the obligation that is discharged is the Cardholder's obligation to ANZ for any debts incurred in using the Salary Packaging Card.

27. Therefore, when available funds from the Principal's account are used to discharge a debt incurred by the Cardholder in using the Salary Packaging Card the elements of paragraph 20(a) are satisfied and an expense payment benefit arises at that time.

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

29. Taxation Ruling TR 2001/2 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.

30. The second point in paragraph 29 of this Ruling does not apply as subsection 149A(2) of the FBTA only applies if the benefit was acquired or imported by the provider. In this case, there is a reimbursement for the purposes of the GST Act. Consequently, only the first point in paragraph 29 needs to be considered.

31. Paragraph 86 of Goods and Services Tax Ruling GSTR 2001/3 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.

32. Paragraph 89 of GSTR 2001/3² 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 credit card.

33. The discharging of the Cardholder's debt obligation to ANZ as described in the scheme involves no more than reimbursing 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.

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

35. Section 65J provides that certain non-government and non-profit organisations (rebatable employers) are entitled to have their FBT liability reduced by a rebate. The section does not apply to public benevolent institutions nor to health promotion charities.

36. The rebate determined under subsection 65J(2A) is calculated as follows:

$$0.48 \times \left(\text{Gross tax} - \frac{\text{Aggregate non-rebatable amount}}{\text{Total days in year}} \right) \times \frac{\text{Rebatable days in year}}{\text{Total days in year}}$$

37. Rebatable employers have a capping threshold of \$30,000 grossed-up taxable value per employee. If the total grossed-up taxable value of benefits is more than \$30,000 a rebate cannot be claimed for the FBT liability on the excess amount (or on the aggregate non-rebatable amount).

38. 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.

39. 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 \$30,000 cap multiplied by the FBT rate.

40. 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.

41. 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 of subsection 65J(2A).

² Note the Addendum to the Ruling issued 18 December 2002

42. Where the grossed-up taxable value of benefits provided per employee remains within the capping threshold of \$30,000 the rebate will not be reduced by any aggregate non-rebatable amount.

43. Therefore, the provision of benefits using the Salary Packaging Card will only be included in the determination of the amount of gross tax, per subsection 5C(4), for the purposes of the subsection 65J(2A) rebate calculation.

44. Consequently, the provision of benefits, using the Salary Packaging Card facility, has an effective 48% rebate of the amount of the benefit's taxed grossed-up value where the relevant capping threshold is not breached and no aggregate non-rebatable amount arises.

Appendix 2 – Detailed contents list

45. 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:

CR 2008/24; CR 2008/24A;
GSTR 2001/3; TR 2001/2;
TR 2001/10; TR 2006/10

Subject references:

- expense payment benefits
- FBT salary packaging
- FBT salary sacrifice
- fringe benefits
- fringe benefits tax
- rebatable employer
- public benevolent institution
- health promotion charity

Legislative references:

- FBTAA 1986 20
- FBTAA 1986 20(a)
- FBTAA 1986 5C
- FBTAA 1986 5C(4)
- FBTAA 1986 65J
- FBTAA 1986 65J(2A)
- FBTAA 1986 149A
- FBTAA 1986 149A(2)
- ANTS(GST)A 1999 Div 111
- TAA 1953
- Copyright Act 1968

ATO references

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