



CR 2014/75 - Fringe benefits tax: employer clients of Emerchants Payment Solutions Limited (Emerchants) who are subject to the provisions of either section 57A or section 65J of the Fringe Benefits Tax Assessment Act 1986 and make use of the Emerchants' Living Expenses Card facility

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 This document has changed over time. This is a consolidated version of the ruling which was published on 1 October 2014



Class Ruling

Fringe benefits tax: employer clients of Emerchants Payment Solutions Limited (Emerchants) who are subject to the provisions of either section 57A or section 65J of the *Fringe Benefits Tax Assessment Act 1986* and make use of the Emerchants' Living Expenses 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:

- 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
- section 65J of the FBTAA
- subsection 136(1) of the FBTAA, and
- section 149A of the FBTAA.

All subsequent legislative 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 either section 57A or section 65J and who make use of the Emerchants' Living Expenses Card facility.

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 36 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 2014. However, this Ruling will not apply to taxpayers to the extent 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

8. The following description of the scheme is based upon 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 17 April 2014
- draft Emerchants Employee Benefits Card Product Disclosure Statement (Version 3), and
- additional information provided on 12 May 2014, 13 May 2014, 30 May 2014 and 23 July 2014.

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

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. Participating employers will enter into arrangements with the card provider (Emerchants) for the issue of cards to their employees (cardholders).

11. Emerchants will issue the cards and coordinate the card's operation in accordance with a separate arrangement with their authorised deposit-taking institution.

Funding

12. Participating employers will enter into valid salary sacrifice arrangements (SSA)¹ with their employees. The use of the Emerchants' Living Expenses Card facility will form an integral part of those arrangements.

13. 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 held by the Emerchants' authorised deposit-taking institution.

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 sacrifice arrangements*.

14. A funds distribution file detailing the individual amounts salary sacrificed by each cardholder will be sent by the participating employers either directly to Emerchants or, alternatively, to salary packaging providers acting on behalf of the participating employers in such arrangements (and who, in turn, will subsequently send the funds distribution file to Emerchants).

15. Emerchants will reconcile the total value of the funds distribution file 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.

16. Each cardholder will be allowed to transact on their card up to the amount of the salary 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').

17. 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 FBT year may be carried forward to the next FBT year 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

18. The cards will be issued in the name of the individual employee who holds the card. According to 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 Emerchants and the participating employers.

19. The Emerchants' Living Expenses Card will be made available as either a debit card (with a Debit BIN) or a credit card (with a Credit BIN).

Card with a Debit BIN

20. This is a debit card (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.

21. The participating employer credits the funds salary sacrificed by each cardholder to a disbursement account held by the participating employer at the Emerchants' authorised deposit-taking institution.

22. Emerchants then allocates (pre-loads) the relevant amount(s) of salary sacrificed funds against the particular cardholder's card.
23. When a cardholder uses the card to make an authorised purchase the Emerchants' Card Management System (CMS) verifies that there are sufficient funds held against the cardholder's card in the participating employer's disbursement account.
24. The Emerchants' system approves and processes the transactions made by the cardholder against the funds pre-loaded onto the cardholder's card.
25. Emerchants has a function included in its system software that manages the balances in the participating employer's disbursement account 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 in the participating employer's disbursement account.
26. The card is not subject to merchant blocking and can be used for any 'personal expenses' of the cardholder other than for those types of expenditures restricted under the arrangements.

Card with a Credit BIN

27. This is a credit card but the amount of credit available is restricted to the extent of the value of the total funds held at that particular time for the cardholder in the participating employer's disbursement account.
28. Otherwise, the functions and operations in respect of a card with a Credit BIN are exactly the same as the functions and operations in respect of a card with a Debit BIN as described in paragraphs 20 to 26 of this Ruling.

Usage

29. The cards can only be used for card-present transactions at point of sale eligible merchants through the enforcement of rules on Merchant Category Codes (MCCS). CMS will apply whitelisting/blacklisting rules on MCCS when verifying a transaction and approve or decline, as required.
30. Cardholders will have the ability, as and when required, to upload receipts or other transaction documents such that purchases using the card can be identified as being GST-creditable or not.

Restrictions

31. The restrictions on the use of the cards (whether with a Debit BIN or a Credit BIN) include:

- the card cannot be used for the acquisition of any food or drink that constitutes 'meal entertainment' for the purposes of the FBTAA;
- the card cannot be used for the hire or lease of an entertainment facility whose taxable value is wholly or partly attributable to 'entertainment facility leasing expenses' for the purposes of the FBTAA;
- the card cannot be used for any other purposes that may, otherwise, constitute 'tax-exempt body entertainment benefits' falling under section 38;
- 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

32. Salary packaging providers acting on the employer's behalf may be included as part of the relevant SSAs.

33. The SSAs will state that where Debit BIN cards are validly used, it is the participating employers who have the prime responsibility to pay the merchants or service providers. As such the SSAs will further state that the benefits being provided to the cardholders are the particular goods and/or services supplied to cardholders.

34. The SSAs will state that where Credit BIN cards are validly used, it is the cardholders who have the prime responsibility to pay the credit providers. As such the SSAs will further state that the benefits being provided to the cardholders is the complete extinguishment of the cardholders' then liabilities to the credit providers (the Emerchants' authorised deposit-taking institution) without reference to any specific purchases listed on the credit card statements.

Ruling

35. Benefits provided by participating employers to cardholders, using cards with a Debit BIN, may include property benefits under section 40 and/or residual benefits under section 45.
36. Benefits provided by participating employers to cardholders, using cards with a Debit BIN, will not include expense payment benefits under section 20. Benefits provided to cardholders using cards with a Credit BIN constitute an expense payment under section 20.
37. Benefits provided by participating employers to cardholders using cards with both a Debit and Credit BIN will not include 'tax-exempt body entertainment benefits' under section 38.
38. Deposits by participating employers into the participating employer's disbursement accounts do not constitute the provision of a 'benefit', as defined in subsection 136(1).
39. The pre-loading of funds onto the cards (whether a card with a Debit BIN or card with a Credit BIN) does not constitute the provision of a 'benefit' as defined in subsection 136(1).
40. Where section 57A applies to a participating employer, the benefits provided to cardholders using cards with either a Debit or Credit BIN 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).
41. 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 using cards with either a Debit or Credit BIN in the FBT year do not exceed the relevant capping threshold specified in paragraph (b) of Step 2 of the Method Statement in subsection 65J(2B).
42. Benefits provided to cardholders arising from the use of cards with a Debit BIN will be GST-creditable benefits if the requirements of section 149A are satisfied. Such benefits will be type 1 benefits for the purposes of section 5C. The benefits will be type 2 benefits where the requirements of section 149A are not satisfied.
43. Expense payment benefits arising from payments by the participating employers of the cardholder's then liabilities to the credit providers (the Emerchants' authorised deposit-taking institution), in respect of cards with a Credit BIN, are not GST-creditable benefits for the purposes of section 149A and are type 2 benefits for the purposes of section 5C.

Appendix 1 – Explanation

① *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 using cards with a Debit BIN

44. 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.

45. When the card with a Debit BIN is used, the debts to the merchants or to the other suppliers of goods or services are met from the funds then held in the employer's disbursement account and made available (loaded) on to the card.

46. The employers are the ones primarily liable for all transactions arising from the use of the cards with a Debit BIN. Therefore, when the cardholders use the cards it is, nonetheless, the employers who are incurring the relevant debts to the merchants or to the other suppliers of goods or services.

47. As the employers are discharging their own obligations to the merchants or other suppliers of goods or services, the employers are therefore not discharging obligations of other persons to pay third persons nor are they providing reimbursements to other persons in respect of expenditure incurred by those persons.

48. Consequently, when a card with a Debit BIN is used to pay debts to merchants or the other suppliers of goods and services, these will not give rise to expense payment benefits, under section 20, as none of the required conditions of that section are met.

49. As the relevant goods or services are firstly acquired by the employers, the subsequent grant to the cardholders 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 employers to each of the employees.

50. The benefits so provided by the participating employers to the cardholders may include property benefits under section 40 and/or residual benefits under section 45.

51. As the cards cannot be validly used for 'meal entertainment', 'entertainment facility leasing expenses' or any other purposes that may, otherwise, constitute 'tax-exempt body entertainment benefits', the benefits provided by the participating employers to the cardholders will not include 'tax-exempt body entertainment benefits' under section 38.

52. Deposits by participating employers into the disbursement accounts do not constitute the provision of a 'benefit', as that term is defined in subsection 136(1), as the participating employers are merely transferring funds to their own accounts with the Emerchants' authorised deposit-taking institution. It is considered that this view is not altered by the fact that such deposits into the employers' accounts are steps in the furtherance of the terms of SSAs.

53. Similarly, the pre-loading of funds onto the cards is merely the transfer of participating employer funds and no 'benefit' is provided to the cardholders at the time of that transfer.

Types of benefits using cards with a Credit BIN

54. The SSA will state that where Credit BIN cards are validly used, it is the cardholders who have the prime responsibility to pay the credit providers.

55. As stated in paragraph 44 of this Ruling an expense payment benefit arises, under section 20, where either an employer pays a third party in satisfaction of expenditures incurred by an employee or where an employer reimburses an employee for expenditures incurred by the employee.

56. For a card with a Credit BIN, the cardholders are primarily liable for all expenditure incurred. The obligation that is discharged is therefore the cardholder's obligation to the credit provider for any debt incurred using the card.

57. When unused funds from the participating employers' disbursement accounts are used to pay the credit 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.

58. The providers (the participating employers) are making payments in the discharge, in whole or part, of the obligations of other persons (the cardholder) to pay amounts to third persons (the credit providers) in respect of amounts of expenditure incurred (the credit card bills) by the recipients (cardholders).

Employers subject to section 57A who participate in arrangements where a card with a Debit BIN is used

59. 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.

60. 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.

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

62. Subsection 5B(1E) limits the exemption to a capping threshold on each employee's individual grossed-up non-exempt amount (ie the total grossed-up taxable value of benefits not otherwise exempt) for the particular FBT year. For the FBT year ending 31 March 2015, 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. This threshold will be \$17,667 for the years ending 31 March 2016 and 31 March 2017.²

63. All other employers to which section 57A applies will have a capping threshold of \$30,000 for each employee for the FBT year ended 31 March 2015. Such employers are liable for FBT on the grossed-up taxable value of benefits provided in excess of this threshold. This capping threshold will be \$31,177 for the years ended 31 March 2016 and 31 March 2017.

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

65. The benefits provided to cardholders using cards with a Debit BIN, 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 value of the benefits provided in the FBT year do not exceed the threshold specified in subsection 5B(1E).

Employers subject to section 57A who participate in arrangements where a card with a Credit BIN is used

66. For similar reasons, as explained in paragraphs 59 to 65 of this Ruling, the expense payment benefits provided to cardholders using cards with a Credit BIN, and who are employees of participating employers subject to the provisions of section 57A, will also 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).

² See *Tax Laws Amendment (Temporary Budget Repair Levy) Act 2014*.

Employers subject to section 65J who participate in arrangements where a card with a Debit BIN is used

67. 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 registered public benevolent institutions or to registered health promotion charities.

68. 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 FBT year in which the benefit is provided. For the year ending 31 March 2015, if the employer is a rebatable employer for the full year, the rebate (provided the capping threshold is not exceeded) will be 48% 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 year by the amount of gross tax that would otherwise be paid by the employer (provided the capping threshold is not exceeded).

69. 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 example, in the FBT year ending 31 March 2015 the threshold is \$30,000 for each employee. This will be \$31,177 for the years ending 31 March 2016 and 31 March 2017.

70. 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.

71. 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 step 2 of the Method Statement in subsection 65J(2B) multiplied by the FBT rate.

72. 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.

73. Therefore, where the grossed-up taxable value of the 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 paragraph (b) of Step 2 of 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). From the FBT year beginning 1 April 2015, this rate will be set as the FBT rate.

Employers subject to section 65J who participate in arrangements where a card with a Credit BIN is used

74. For similar reasons, as explained in paragraphs 67 to 73 of this Ruling, where the expense payment benefits provided to cardholders using cards with a Credit BIN, and who are employees of participating employers subject to the provisions of section 65J during the FBT year does not exceed the relevant threshold specified in paragraph (b) of Step 2 of 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). From the FBT year beginning 1 April 2015, this rate will be set as the FBT rate.

Are the benefits provided using a card with a Debit BIN type 1 or type 2 benefits?

75. To determine whether the provision of a benefit resulting from the use of a card with a Debit BIN is a type 1 or type 2 benefit it is necessary to ascertain whether that benefit is a GST-creditable benefit as defined in section 149A.

76. Taxation Ruling TR 2001/2³ 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 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.

77. In this instance, as the relevant goods or services are firstly acquired by the participating employers, it has to be determined whether the particular goods or services (the 'things') being acquired entitle the participating employers to input tax credits in relation to the (fringe) benefits subsequently provided to the cardholders.

78. Where the 'thing' acquired by the participating employer is a taxable supply it is a creditable acquisition and where the 'thing' acquired by the employer is not a taxable supply it is not a creditable acquisition.

79. Therefore, benefits provided to cardholders arising from the use of cards with a Debit BIN will be GST-creditable benefits if the requirements of section 149A are satisfied. Such benefits will be type 1 benefits for the purposes of section 5C.

80. Where the requirements of section 149A are not satisfied the benefits provided to cardholders arising from the use of cards with a Debit BIN will not be GST-creditable benefits and thus will be type 2 benefits for the purposes of section 5C.

³ 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*.

Are the benefits provided using a card with a Credit BIN type 1 or type 2 benefits?

81. As stated in paragraph 76 of this 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 either because of:

- the operation of Division 111 of the GST Act; or
- the fringe benefit is a 'thing' acquired or imported by the provider.

82. The SSAs will state that where Credit BIN cards are validly used, it is the cardholders who have the prime responsibility to pay the credit providers. Therefore, it is considered that only the first dot point in paragraph 81 of this Ruling, regarding the operation of Division 111 of the GST Act, needs to be considered.

83. Paragraph 86 of GSTR 2001/3⁴ 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.

84. However, 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.

85. The terms and conditions of the SSAs will specify that where cards with a Credit BIN are validly used the benefit provided by the participating employers to the cardholders is the complete extinguishment of the cardholders' then liabilities to the credit providers without reference to any specific purchases listed on the credit card statements.

86. Consistent with paragraph 89 of GSTR 2001/3, the payments by the participating employers of the cardholder's then liabilities to the credit provider, in respect of a card with a Credit BIN, is an input taxed financial supply that does not meet the requirements of Division 111 of the GST Act.

87. Therefore, the payments by the participating employers of the cardholder's then liabilities to the credit provider, in respect of a card with a Credit BIN, are not GST-creditable benefits for the purposes of section 149A and are type 2 benefits for the purposes of section 5C.

⁴ Goods and Services Taxation Ruling GSTR 2001/3 *Goods and Services Tax: GST and how it applies to supplies of fringe benefits*.

Appendix 2 – Detailed contents list

88. 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 2001/2; TR 2001/10;
TR 2006/10; GSTR 2001/3

Subject references:

- exempt benefits
- expense payment benefits
- FBT salary packaging
- FBT tax-exempt body
- fringe benefit
- fringe benefits tax
- health promotion charity
- hospitals
- public ambulance services
- public benevolent institution
- rebatable employer
- religious institution
- tax-exempt body entertainment benefits

Legislative references:

- FBTAA 1986
- FBTAA 1986 5B
- FBTAA 1986 5B(1E)
- FBTAA 1986 5C
- FBTAA 1986 20
- FBTAA 1986 38
- FBTAA 1986 40
- FBTAA 1986 45
- FBTAA 1986 57A
- FBTAA 1986 65J
- FBTAA 1986 65J(2A)
- FBTAA 1986 65J(2B)
- FBTAA 1986 136(1)
- FBTAA 1986 149A
- ANTS(GST)A 1999 Div 111
- TAA 1953
- TLA(TBRL)A 2014
- Copyright Act 1968

ATO references

NO: 1-5H82RQG
ISSN: 1445-2014
ATOlaw topic: Fringe Benefits Tax ~~ Types of benefits ~~ Expense payment benefits

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