

Public Sector Industrial and Employee Relations

Level 4, 75 William Street Brisbane QLD 4000

Telephone 32252347

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Circular No. C3-09

Date September 2009

Arrangements for salary packaging from 1 July 2009

The Queensland Government approved the extension of salary packaging in the Queensland public sector on 28 October 1999, and implementation arrangements on 24 October 2000. On 17 December 2007 Government approved changes to the list of allowable items that may be packaged and the conditions about employees seeking independent financial advice. The full list of approved benefit items is found at Attachment One. In May 2009 changes were announced by the Federal Government to decrease the amount an employee may salary sacrifice to superannuation before it is considered to be an excess contribution and taxed at the top marginal rate plus Medicare levy. This change to concessionally taxed contributions is effective from 1 July 2009.

What is Salary Packaging?

Salary packaging is an arrangement whereby future cash salary and wages are remodelled with the approval of the employer into a combination of cash and non-cash benefits to suit the employee's individual needs. A legitimate salary sacrifice arrangement cannot be made retrospectively for salary or wages which have already been earned. Employees may obtain a benefit in net remuneration but it must be at no additional cost to the Government as the employer.

Provision to be in Certified Agreements

The Government's approval of the extension of salary packaging in the Queensland public sector was on the basis that it would be delivered through wage bargaining where business cases had been approved by the Government as part of the wage bargaining approval process.

The Department of Justice and Attorney-General shall be consulted when an agency wishes to have a suitable clause inserted into a certified agreement or an award.

Salary Packaging Principles

The following principles for salary packaging were endorsed by the Government in 1999 and remain unchanged **except for the financial advice requirements**.

- There is to be no cost to the Government either directly or indirectly. The fringe benefits tax (FBT) debts and recovery policy is found at Attachment Two.

- The costs for administering the package, including FBT, will be passed to employees as part of their salary package.
- There must be no additional increases in superannuation costs or to FBT payments made by the Government.
- Increases or variations in taxation that arise from salary sacrifice arrangements are passed to employees as part of their salary package.
- The Government **strongly recommends** that employees obtain independent financial advice before taking up a salary package. (This principle amends previous financial advice requirements prescribed in PSIER Circular C4-07)
- There will be no significant additional workload or other recurring costs to the Government.
- The salary packaging arrangements will be managed through contracted companies which would provide a bureau service. Bureau service providers are to be contracted through the appropriate State Purchasing Policy arrangements.
- The management and administrative costs charged by the bureau service are to be recovered from the participating employee.

Approval of Agency Schemes

Agencies are not required to seek further approval before implementing salary packaging arrangements provided that:

- Agencies have observed the principles approved by the Government; and
- The non-cash benefits to be included in salary packages are among the allowable items listed in this circular.

Requirements of the Australian Taxation Office (ATO)

Currently the Australian Taxation Office does not have a limit on the percentage of income that can be packaged, but 50% is considered an appropriate maximum proportion. However, the Government has approved that there be no limit on the amount of salary that an employee may salary sacrifice to superannuation. (See NOTE at page 4)

Examples are included on page 4.

Bureau Service Providers

The bureau service provider is to:

- Develop comprehensive salary packaging policy and procedures.

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- Develop, copy and distribute documentation to employees explaining salary packaging.
- Conduct information sessions for employees in Brisbane and regional centres.
- Provide ongoing administration.

Liability

There are four main contractual relationships that need to be considered:

- Agency and participating employee.
- Agency and bureau service provider.
- Employee and bureau service provider.
- Employee and his/her financial adviser.

The participation agreement provides for the following:

- Indemnity of the agency against any claims by the employee arising from the salary packaging arrangement; and
- The employee's written or electronic authorisation for the agency to make the necessary deductions from salary.

The participation agreement between the agency and the employee allows the employee mobility across the service with minimal disruption to their remuneration arrangements

A contract between the State of Queensland and the bureau service provider should provide for the following:

- An indemnity from the provider against all claims that the employee might make;
- The procedures and protocols to ensure a quality service; and
- A requirement that the provider would not act outside the scope of the agreed procedures and protocols.

Independent Financial Advice

The revised arrangements remove the mandatory requirement for independent financial advice. The Queensland Government now strongly recommends that employees obtain independent financial advice before entering into a packaging arrangement. According to ATO guidelines, financial advice sought by employees in regard to salary packaging arrangements will be subject to FBT when the cost is included as part of a salary packaging arrangement.

Standing Offer Arrangement (SOA)

Agencies with employees covered by the *State Government Departments Certified Agreement*

are required to use the bureau service provider contracted by the Queensland Government Chief Procurement Office under an SOA unless they obtain approval from Government to be exempted.

Participating employees will be required to recompense any administration fees as agreed in the SOA (or another contractual arrangement if the SOA is not used). These fees are exempt from FBT and may be included in the packaging arrangements.

The fees charged for administering the salary packaging payments made under the SOA will be deducted from the employee's salary packaged amount that has been distributed and/or transferred by the employer to the bureau service provider.

Credit Cards

The bureau service provider and the employee may agree to the use of a credit card (including a special-purpose card provided by arrangement between the service provider and a financial institution) for the payment of benefit items.

Superannuation

Both mandatory and voluntary superannuation contributions made by way of salary sacrifice can only be made to QSuper. They may not be invested in any other fund. Superannuation payments are to be sent directly from the agency to QSuper Ltd. They are not to be paid through a bureau service provider's account.

Government Boards, Committees and Statutory Authorities

Remuneration of part-time members of government boards, committees and statutory authorities may be packaged in accordance with these principles and arrangements. Such arrangements are to be approved and documented to meet Australian Taxation Office requirements.

Further Enquiries

Please ensure when distributing this information within your agency that a contact officer from your agency is nominated for further enquiries.

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Executive Director

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ATTACHMENT ONE

ALLOWABLE SALARY PACKAGING ITEMS

Note: The arrangements outlined in this attachment include amendments to take effect 1 July 2009

Subject to any future limitations by the Australian Taxation Office, an employee may package up to 50% of their salary into items other than superannuation. Superannuation may be packaged up to 100% of salary (excluding that portion of superannuation which is nominated as the 'employer contribution').

That is, an employee may choose to salary package in either of the following combinations:

- Any percentage of salary up to 100% sacrificed to superannuation only. (See NOTE at page 4)
- Up to 50% of salary packaged to other items, plus the remaining percentage, up to a total of 100% of salary, packaged to superannuation (eg, 20% to laptop and novated car lease, plus 60% to superannuation) (See NOTE at page 4)

When entering into a salary packaging arrangement for the first time, or adding a new item/items to an already agreed packaging arrangement, the employee is **strongly recommended** to seek independent financial advice.

"Not subject to FBT" or "Otherwise Deductible" Package Items

- Superannuation
- Portable electronic devices - from 7:30pm on 13 May 2008 portable electronic devices (i.e. laptop, notebook computer, electronic diary, personal digital assistant or mobile phone) primarily for use in the employee's employment. Only one item with substantially identical features is available per FBT year (excluding items purchased as a replacement for an existing device)
- Computer software primarily for use in the employee's employment and purchased with the portable electronic device
- Work Uniforms (ATO conditions apply)
- Professional association membership fees or subscriptions (work-related)
- Airport lounge membership
- Child care fees (at facilities that comply with ATO legislation regarding centres located on the employer's business premises, and as advised by the Treasury Department and Qld Purchasing)
- Electricity¹ (subject to maximum amounts for each 1 April to 31 March annual period and only applicable to those employees of specific agencies subject to a relevant ATO private ruling) which includes the Queensland Community Ambulance Charge levy
- Public transport costs^{1 2} (subject to threshold amounts for each 1 April to 31 March annual period and only applicable to those employees of specific agencies subject to a relevant ATO private ruling)
- Home office expenses
- Financial counselling fees³ (ATO conditions apply)
- Disability/Income protection insurance premiums
- Self education expenses⁴ (related to the employee's current employment activities)
- Work related travel expenses (not including travel to and from work)

"Part or Concessionally Taxed for FBT Purposes" Package Item

- Novated lease on a motor vehicle (private use)

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"Full FBT Applied" Package Items

- HELP fees (previously known as HECS Fees)
- Private health insurance
- Private health/fitness centre memberships
- Private rental payments
- Own home mortgage payments
- Car parking
- Desktop computer (non-work related)
- Computer software (non-work related)
- Portable electronic devices (i.e. laptop, notebook computer, electronic diary, personal digital assistant or mobile phone) (non-work related)
- Personal loan repayments
- Aged and disabled care payments
- Savings/investment scheme (non-superannuation) contributions
- Insurance premiums (other than income protection insurance)
- House/contents insurance (on employee's principal place of residence)
- Child care fees (non employer owned)
- Private school fees
- Private travel
- Public transport costs^{1 2}
- Financial counselling fees³ (ATO conditions apply)
- Club/association (non work-related) membership subscriptions
- Motor vehicle operating expenses
- Payments to utilities (private telephone, electricity¹, local government rates, etc)

¹ Access to the partial FBT exemption for electricity costs and public transport costs only applies to employees of those agencies subject to ATO Private Rulings Authorisation Numbers 90358 dated 27 February 2009, 76585 dated 21 September 2007, 77555 dated 31 October 2007 or any other ATO private ruling specific to the individual employer – [click here](#) to see full list of agencies covered by the above Private Rulings. Those employees not employed by agencies subject to an ATO Private Ruling can only salary package electricity costs and public transport costs with full FBT applied.

² The public transport concession only applies to transport provided by Queensland Rail and Brisbane City Council.

³ Financial counselling/advice about salary packaging will attract full FBT.

⁴ Self education expenses must be wholly deductible for income tax purposes in the year in which they were incurred as if the employee had sought to claim a personal deduction on their income tax return.

NOTES:

Concessional Contributions Limits

Changes to federal legislation governing superannuation contributions effective 1 July 2009 provide for a concessional tax rate of 15% of superannuation contributions up to a maximum of \$25,000 per year.

Transitional arrangements will apply to 2011-2012, allowing persons aged 50 or over to receive up to \$50,000 of concessional tax employer contributions per year. A person who turns 50 during that period will be able to use the transitional arrangements. For example a person who turns 50 on 1 January 2011 will be able to receive \$50,000 of concessional tax employer contributions in the 2010-2011 and 2011-12 financial years.

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The transitional limit of \$50,000 will not be indexed but the standard \$25,000 limit will be indexed (in \$5000 increments) in line with Average Weekly Ordinary Time Earnings

An employee who receives employer/salary sacrifice contributions in excess of the maximum limits will effectively be taxed on the excess contributions at the top marginal tax rate plus Medicare levy. The maximum \$25,000 (\$50,000 for employees 50 years and over) consists of the following:

- Employer contributions
- Salary sacrificed contributions made by the employee

In addition, excess contributions will also be counted towards the maximum limit applying to non-concessional (or personal) contributions, which is set at three times the standard limit for employer/salary sacrifice contributions. Excess non-concessional contributions will also be taxed at the top marginal tax rate plus Medicare levy.

Reportable Employer Super Contributions (RESC)

Where an employee enters into salary sacrifice for superannuation contributions, Commonwealth legislation requires the employer to show on the employee's payment summary the amount of the sacrificed superannuation. This amount is known as the Reportable Employer Super Contribution (RESC) and will be required to be included in your income tax return.

For the 2009–10 income year and all future years, your reportable super contributions will affect the income tests for some tax offsets, the Medicare levy surcharge, and certain government benefits and obligations. RESCs are not included in an employee's assessable income.

Depending on an individual's specific circumstances, the taxation impact of salary sacrifice arrangements may be affected and **it is strongly recommended** that independent financial advice is sought.

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ATTACHMENT TWO FRINGE BENEFITS TAX DEBTS AND RECOVERY POLICY

For the purposes of this Attachment:

"Non-salary sacrifice fringe benefits" means those benefits that the employer provides or occur through means other than via the arrangements administered by the external salary packaging bureau service provider. Non-salary sacrifice fringe benefits include, but are not limited to, home garaging of a pool car, private use of an employer-provided car, housing assistance, living away from home allowance, remote area holiday travel, and salary overpayment loan fringe benefits.

The following policy principles apply to all Queensland public sector agencies and employees except where otherwise approved by the Queensland Government.

- Non-salary sacrifice fringe benefits have first priority over any general FBT exemption cap (e.g. \$17,000 or \$30,000 FBT exemption cap currently applicable to certain Queensland Health, Department of Emergency Services and Legal Aid Queensland employees) which can be applied on any taxable benefits, including non-salary sacrifice fringe benefits as it is Government policy that the salary packaging arrangements must involve no additional cost to agencies. The FBT concessions for electricity and public transport applicable in certain agencies are not included in the threshold caps referred to above.
- Any general FBT exemption cap is not an employee entitlement. The general FBT exemption cap is a tax concession under the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) for limited categories of employers, not employees. Therefore, the manner of the application of this FBT concession is determined by the employer in accordance with the FBT legislation.
- Employees relying on the ongoing existence of and/or access to the FBT exemption cap as part of their salary sacrifice arrangements do so solely at their own risk. Employees will not be compensated for the permanent or temporary loss of access to the FBT exemption cap.
- Subject to this Policy, employees' FBT debts should not be waived, written off, forgiven, ignored or adjusted regardless of the circumstances. Employees incurring an FBT liability have incurred a debt due to the Crown, and as such **must** repay the full FBT amount outstanding within a reasonable timeframe as appropriate for the circumstances, or be subject to debt recovery action which should include the use of debt collection agencies and/or legal action if required.
- Due to the requirements of this Policy, the writing off an employee's FBT debt should only occur in very exceptional circumstances involving **ex-Queensland** public sector employees who are either deceased or who cannot be located, and, in the latter case only after:
 - proper steps have been taken to investigate the raising and non-recovery of the debt;
 - legal prosecution is unlikely to be successful or cost effective;
 - all reasonable steps have been taken to recover the debt including if necessary the use of debt collection agencies;
 - the debt is reasonably considered to be non-recoverable;

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- the circumstances surrounding the loss are examined fully to ensure that satisfactory controls are put in place to limit similar occurrences in the future; and
 - documentation regarding the debt is placed on the former employee's personal file to ensure the debt is reinstated and recovered in the event of re-employment in the future.
- There are no circumstances where it would be in accordance with this policy to write off an FBT debt for a current employee. As FBT replaces normal income tax (PAYG) deductible had salary packaging not occurred, financial hardship is not considered a valid reason for write-off for a current employee.
- Employees **must** either pay the FBT immediately or negotiate reasonable repayment arrangements with the employer within a period of 28 days of receiving written advice of an FBT liability (including acknowledgement that the full amount outstanding becomes payable on or by the date of termination of employment). Failure to do so will result not only in debt recovery processes, but also in the employer cancelling or suspending the employee's salary packaging arrangements after the required notice, until such time as the FBT debt is satisfied or an appropriate debt repayment arrangement is entered into.
- Some FBT debt recovery issues may involve the employee disputing departments' application of the FBT legislation. However, interpretation of the FBTAA and FBT treatment decisions are at the sole discretion of the employer. The employer is obliged to exercise due care and diligence in this respect, and respond to reasonable questions from employees regarding FBT calculations. Lengthy discussions or correspondence with an employee or the employee's representative regarding matters of FBT interpretation and treatment will not be entered into.
- Employees must raise any queries with respect to FBT with the employer (or the bureau service provider in case of salary sacrificed fringe benefits) as soon as possible, and must not unduly delay the FBT debt recovery process. The employer is not obliged to respond to any further queries after 21 December following the receipt of employee FBT information after end of FBT year. Also, the employer is not obliged to amend its FBT information once the post-lodgement period for processing FBT return amendments has expired and it has been finalised with Queensland Treasury.
- It is not the employer's responsibility to inform individual employees regarding the FBT impact of any fringe benefit occurring or provided to them, nor to predict and/or advise employees of any emerging issues which may give rise to the existence of or changes in the value of taxable fringe benefits that may or may not affect an employee's salary packaging arrangements. This is because the FBT law is inherently very broad and subject to interpretation, and as a result there are developments unfolding constantly in the ATO and the Courts.
- Entering into salary packaging arrangements is at the sole risk of the **employee**. Therefore it is **strongly** recommended that employees obtain independent financial advice.
- The employee must obtain and provide to the salary packaging bureau service provider, the employer, the Australian Taxation Office and/or any other relevant person or body all necessary declaration forms, receipts and supporting documentation and information reasonably required by the employer or required to be provided for the purposes of

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taxation legislation in respect of any benefits provided to the employee under the salary packaging arrangements ("*required information*").

- The employee is responsible for all costs, losses, outgoings and liabilities of every description including, without limitation, any penalties, or general interest charge payable under any taxation legislation suffered or incurred by the employer, arising out of any failure on the employee's part to provide any required information or for any inaccuracies or omissions in any required information provided by the employee.

The Division of Public Sector Industrial and Employee Relations provides policy advice and consultancy and training services to Queensland Government departments and agencies. It is part of the Department of Justice and Attorney-General. Agency enquiries about this circular should be directed to Noel Cavanough on telephone 07 322 52350. For information about salary packaging go to RemServ's web site at www.remserv.com.au. Specific information about the electricity and public transport FBT exemptions can be found at <http://www.remserv.com.au/electricityPublicTransport.cfm?refer=government>

- General enquiries about public sector industrial and employee relations matters should be directed to telephone 07 3225 2347.
- Written enquiries should be addressed to:
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Department of Employment and Industrial Relations
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Copies of all current circulars issued by Public Sector Industrial and Employee Relations are available from the division's web site at www.psier.qld.gov.au

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