



Class Ruling

Fringe benefits tax: Corporate clients of Dell Australia Pty Ltd (Dell Australia) who participate in the Dell Australia employee purchase program (EPP)

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❶ 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 40 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA)
- section 43 of the FBTAA
- section 58P of the FBTAA
- section 58X of the FBTAA, and
- subsection 136(1) of the FBTAA.

All 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 employers who enter into an agreement with Dell Australia Pty Ltd (Dell Australia) to enable the employees to participate in the Dell Employee Purchase Program (EPP).

Qualifications

4. 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 7 to 26 of this Ruling.

5. 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

6. This Ruling applies from 1 April 2012. 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

7. The following description of the scheme is based on information provided by the applicant:

- Class Ruling Application dated 7 February 2014
- sample Dell Employee Purchase Program Agreement, and
- information from the Dell Australia website.

8. Corporate clients of Dell Australia may participate in the EPP.

9. Under the EPP, Dell Australia product/s are made available for purchase at various discounted prices to the employees of corporate clients of Dell Australia participating in the program.

10. The discounted rates and terms under the EPP are made available only to the employees of participating corporate clients of Dell Australia and are not made available to members of the general public.

11. The corporate clients of Dell Australia who participate in the EPP do not negotiate any of the discounted rates and terms made available to their employees under the EPP.
12. The discounted rates and terms offered by Dell Australia under the EPP are the same for all employees of the participating corporate clients of Dell Australia.
13. The rate of the discount offered under the EPP differs depending on the normal before-discount price of the Dell Australia product and/or the type of Dell Australia product purchased.
14. The participating corporate clients of Dell Australia will help facilitate, and otherwise allow, Dell Australia to promote the EPP to employees of the participating corporate clients of Dell Australia.
15. The participating corporate clients of Dell Australia do not provide monetary or any other incentives to Dell Australia to provide the discounted Dell Australia products to employees under the EPP.
16. Dell Australia does not provide monetary or any other incentives to the participating corporate clients of Dell Australia to provide the discounted Dell Australia products under the EPP.
17. Employees who choose to purchase a discounted Dell Australia product under the EPP will deal directly with Dell Australia.
18. The employee is dealing with Dell Australia in a personal capacity only when purchasing a discounted Dell Australia product under the EPP.
19. To purchase a discounted product under the EPP, the employee at the time of purchase must identify themselves as an employee of the participating corporate client of Dell Australia.
20. The EPP login page on the Dell Australia website has a number of discounted coupon offers and each coupon offer has a particular code that needs to be entered at the time the employee purchases the Dell Australia product/s.
21. A discount on a Dell Australia product under the EPP is available only on new products sold by Dell Australia.
22. A discount on a Dell Australia product under the EPP is available only where the product is for the employee's own personal use.
23. All purchases by employees under the EPP are subject to Dell Australia's then current EPP coupon terms and conditions.
24. All purchases by employees under the EPP are, otherwise, subject to Dell Australia's then-current standard terms and conditions of sale.
25. The EPP is not part of any employee's salary sacrifice arrangements.
26. Dell Australia is not an associate, as defined in section 318 of the *Income Tax Assessment Act 1936*, of any of the employers who enter into the EPP.

Ruling

27. The issue of the discount coupon offers do not give rise to a fringe benefit pursuant to subsection 136(1).

28. A fringe benefit arises pursuant to subsection 136(1) at the time the product/s are purchased.

29. The provision of the discounted product/s under the EPP to employees of the employer gives rise to a fringe benefit pursuant to subsection 136(1).

30. The provision of the discounted product/s under the EPP gives rise to a property benefit pursuant to section 40 and a property fringe benefit pursuant to subsection 136(1).

31. The taxable value of the property fringe benefits, determined under section 43, is 'nil'.

32. Nevertheless, an exemption under section 58X and section 58P will apply where the requirements are met.

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.*

Do property benefits arise from the scheme?

33. Section 40 deals with 'property benefits' and states:

Where, at a particular time, a person (in this section referred to as the 'provider') provides property to another person (in this section referred to as the 'recipient'), the provision of the property shall be taken to constitute a benefit provided by the provider to the recipient at that time.

34. Subsection 136(1) provides the following definitions relevant to property benefits:

'property' means:

- (a) intangible property; and
- (b) tangible property.

'tangible property' means goods and includes:

- (a) animals, including fish; and
- (b) gas and electricity.

'intangible property' means:

- (a) real property;
- (b) a chose in action; and

any other kind of property other than tangible property; but does not include:

- (c) a right arising under a contract of insurance; or
- (d) a lease or licence in respect of real property or tangible property.

'property benefit' means a benefit referred to in section 40, but does not include a benefit that is a benefit by virtue of a provision of Subdivision A of Divisions 2 to 10 (inclusive) of Part III.

'property fringe benefit' means a fringe benefit that is a property benefit.

35. The term 'benefit' is defined subsection 136(1) as including 'any right (including any right in relation to, and an interest in, real or personal property), privilege, service or facility.'

36. As discussed at paragraph 20 of this Ruling, upon entering the EPP login page, the employee is presented with a number of discounted coupon offers and the relevant coupon code needs to be entered at the time the employee purchases the Dell Australia product/s.

37. The provision of the discounted coupon offer and the later use of that coupon code to obtain discounted product/s involve two distinct actions.

38. The issue of the discounted coupon offer does not constitute a fringe benefit for the purposes of the FBTAA at the time of issue but is merely an administrative aid in facilitating the later provision of discounted products to the employee.

39. Dell Australia 'provides' the benefit when the employee redeems the discount coupon offer for the discounted product/s.

40. Provide is defined in subsection 136(1) as:

- (a) in relation to a benefit – includes allow, confer, give, grant or perform; and
- (b) in relation to property – means dispose of (whether by sale, gift, declaration of trust or otherwise):
 - (i) if the property is a beneficial interest in property but does not include legal ownership – the beneficial interest; or
 - (ii) in any other case – the legal ownership of the property.

41. Therefore, the only relevant 'benefit' provided to the employee for the purposes of the FBTAA is the supply of the discounted product/s to the employee by Dell Australia.

42. Support for the view that the relevant benefit in this case is the provision of the product/s rather than the issue of the discounted coupon offer can be found in TR 1999/10 *Income tax and fringe benefits tax: Members of Parliament – allowances, reimbursements, donations and gifts, benefits, deductions and recoupments*.

43. TR 1999/10 provides the following guidance in respect of 'Life Gold Passes' and 'Severance Passes' given to members of Federal Parliament on their 'retirement':

22. On 'retirement' from Federal Parliament, Members may be issued with either a Life Gold Pass or a Severance Pass which may entitle the holder of the pass and his or her spouse to travel benefits. Similar travel entitlements are available for Members of State and Territory Parliaments.

23. We consider that the issuing of a Life Gold Pass or Severance Pass has no income taxation implications. The value of travel benefits received through the use of these passes does not form part of either a Member's or a Member's spouse's assessable income. However, travel benefits received from the use of a Life Gold Pass or Severance Pass are residual fringe benefits and the provider of the pass may be subject to fringe benefits tax when the passes are used for travel (paragraphs 84 to 88).

...

86. We do not consider that the issuing of passes under the Life Gold Pass and Severance Pass Schemes attracts any income tax implications. However, travel benefits received in relation to each use of a Gold Pass or Severance Pass by a Member will be taxed as a residual benefit, within the meaning of section 45 of Division 12 of the FBTAA, to the provider of the pass.

44. As goods constitute tangible property for the purposes of the FBTA, the provision of the product/s by Dell Australia to the employees constitute the provision of property benefits for the purposes of section 40.

Do property fringe benefits arise under the scheme?

45. In general terms, the definition of 'fringe benefit' in subsection 136(1) provides that a fringe benefit arises when:

- (a) a benefit is provided;
- (b) to an employee or an associate of an employee
- (c) by:
 - (i) the employer, or
 - (ii) an associate of the employer, or
 - (iii) another person under an arrangement with the employer or an associate of the employer, or
 - (iv) another person in circumstances that come within paragraph (ea) of the fringe benefit definition
- (d) the benefit is provided in respect of the employment of the employee
- (e) the benefit is not excluded from being a 'fringe benefit' under any of the paragraphs (f) to (s) inclusive of the definition of that term.

(a) Does the scheme involve the provision of a benefit?

46. As discussed at paragraph 44, a property benefit is provided under the scheme.

(b) Are the benefits provided to an employee or an associate of an employee?

47. The benefits are provided to an employee. The EPP is available to all employees of employers who choose to participate in the EPP.

(c) Will the benefits be provided by one of the persons listed in paragraph 45(c) (above)?

48. 'Provider' is defined in subsection 136(1) to mean the person who provides the benefit'.

49. The benefits are provided by Dell Australia to the employer's employees. The benefits are not provided by the employer.

50. Dell Australia is not an associate of any of the participating corporate clients of the EPP for the purposes of the FBTA.

51. Paragraph (e) of the definition of the term 'fringe benefit' in subsection 136(1) applies to a benefit provided under an arrangement between the employer (or an associate of the employer) and a person other than the employer (or associate).

52. An arrangement is defined in subsection 136(1) of the FBTAA as meaning:

- (a) any agreement, arrangement, understanding, promise of undertaking, whether express or implied, and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

53. The employer enters into the EPP with Dell Australia. Therefore, the requirements of paragraph (e) of the definition of fringe benefit are satisfied.

(d) Will the benefits be provided in respect of the employment of the employee?

54. The term 'in respect of', in relation to the employment of an employee, is defined in subsection 136(1) to include 'by reason of, by virtue of, or for or in relation directly or indirectly to, that employment.'

55. The meaning of this term was considered by the Full Federal Court in *J & G Knowles & Associates Pty Ltd v. FCT* 2000 ATC 4151; 44 ATR 22 (Knowles). In a joint decision the Court at ATC 4158 said:

...what must established is whether there is a sufficient or material, rather than a, causal connection or relationship between the benefit and the employment.

While the width of the definition of 'fringe benefit' was designed to capture benefits that, in truth, were other than remuneration, the stated purpose suggests that asking whether the benefit is product or incident of employment will be helpful. If it is not then the benefit is likely to be extraneous to the employment and will not bear FBT, notwithstanding that the employment might have been a causal factor in the provision of the benefit.

56. The benefits are provided in respect of the employees' employment as they cannot access the relevant benefits on the given terms unless their employer participates in the arrangements.

(e) Does the benefit come within paragraphs (f) to (s) of the 'fringe benefit' definition?

57. A benefit which comes within paragraphs (f) to (s) of the 'fringe benefit' definition in subsection 136(1) is excluded from being a fringe benefit. Relevantly, paragraph (g) excludes a benefit that is an exempt benefit from being a fringe benefit.

Exempt benefit

58. In summarising the conditions that must be met for a benefit to be an exempt benefit under section 58P, paragraph 8 of Taxation Ruling TR 2007/12 Fringe benefits tax: minor benefits states:

8. A minor benefit will be an exempt benefit under section 58P where:

- the notional taxable value of the minor benefit is less than \$300; and
- it would be concluded that it would be unreasonable, having regard to the specified criteria in paragraph 58(1)(f), to treat the minor benefit as a fringe benefit.

59. Section 58X provides an exemption for a property benefit or a residual benefit in respect of the provision of or the making available of any of the following items:

- a portable electronic device
- an item of computer software
- an item of protective clothing
- a briefcase
- a tool of trade.

60. The exemption is limited to:

- items primarily for work-related use
- one item per FBT year for items that have a substantially identical function, unless the item is a replacement item.

61. A benefit that arises from an employee obtaining a discount on property purchased under the EPP will be an exempt benefit where the requirements of section 58P (minor benefits) or section 58X (exempt benefits provision of certain work related items) are met.

62. Where no exemption or other exclusion under the FBTAA applies, the relevant benefits provided to the employee will constitute 'property fringe benefits', as that term is defined in subsection 136(1).

Valuation of property fringe benefits

63. The methods used to value a property fringe benefit are contained in sections 42 and 43. Section 42 applies if the property fringe benefit is an in-house property fringe benefit and section 43 applies if the property fringe benefit is an external property fringe benefit.

64. In-house property fringe benefit is defined in subsection 136(1) of the FBTAA as follows:

in-house property fringe benefit, in relation to an employer, means a property fringe benefit in relation to the employer in respect of tangible property;

- (a) Where both of the following conditions are satisfied:
 - (i) The provider is the employer or an associate of the employer; and
 - (ii) At or about the provision time, the provider carried on a business that consisted of or included the provision of identical or similar property principally to outsiders; or
- (b) Where all of the following conditions are satisfied:
 - (i) the provider is not the employer or an associate of the employer;
 - (ii) the property was acquired by the provider from the employer or an associate of the employer (which employer or associate in this definition called the seller); and
 - (iii) at or about the provision time, both the provider and the seller carried on a business that consisted of or included the provision of identical or similar property principally to outsiders.

65. Provider is defined in subsection 136(1) of the FBTA as 'the person who provides the benefit'.

66. The provider is therefore Dell Australia and as such paragraph (a) of the definition of in-house property benefit is not satisfied.

67. Paragraph (b) is not satisfied as the property was not acquired by the provider from the employer.

68. The provision of the property is therefore not an in-house property fringe benefit.

69. An external property fringe benefit is defined in subsection 136(1) as:

in relation to an employer, means a property fringe benefit relation to the employer other than an in-house property fringe benefit.

70. Therefore, the taxable value of the property fringe benefit that arises from the provision of the discounted product/s will be determined in accordance with section 43.

71. Section 43 provides three alternate valuation methods. The appropriate valuation method depends upon whether the provider is the employer or an associate of the employer and whether the employer incurs expenditure in relation to the provision of the property.

72. Section 43 states:

Subject to this Part, the taxable value of an external property fringe benefit in relation to an employer in relation to a year of tax is:

- (a) Where the provider was the employer or an associate of the employer and the recipients property was purchased by the provider under an arm's length transaction at or about the provision time – the cost price of the recipients property to the provider

- (b) Where the provider was not the employer or an associate of the employer and the employer, or an associate of the employer, incurred expenditure to the provider under an arm's length transaction in respect of the provision of the property – the amount of that expenditure, or
- (c) In any other case – the notional value of the recipients property at the provision time,
reduced by the amount of the recipients contribution.

73. Paragraph 43(a) will not apply to the discounted product/s provided to the employees of employer clients of Dell Australia's EPP, as Dell Australia is not an associate of these employers. Further, paragraph 43(b) will not apply as the employer clients do not incur expenditure to Dell Australia. Therefore, the taxable value of the property benefits provided to these employees will be determined under paragraph 43(c).

74. The value under paragraph 43(c) will be the notional value of the discounted product/s. 'Notional value' is defined in subsection 136(1) to mean:

The amount that the person could reasonably be expected to have been required to pay to obtain the property or other benefit from the provider under an arm's length transaction.

75. Guidance for determining this amount is provided by Taxation Determination TD 93/231 *Fringe benefits tax: what is an acceptable method for determining the 'notional value' of a property fringe benefit for the purposes of sections 42 and 43 of the Fringe Benefits Tax Assessment Act 1986?*

76. Paragraphs two to five of TD 93/231 state:

- 2. To ascertain the 'notional value' of a property fringe benefit the employer must determine the amount the employee would have to pay for a comparable (on the basis of age, type and condition) benefit under an arm's length transaction.
- 3. This Office will accept a number of ways of obtaining the notional value including:
 - the price of comparable goods advertised in local newspapers and/or relevant magazines or similar publications,
 - the price paid for comparable goods at a public auction,
 - the price of comparable goods at a second-hand store, or
 - the market value of the goods determined by a qualified valuer.
- 4. The lowest value obtained using any of these methods will be acceptable.
- 5. Valuation methods which are not acceptable to this Office include the lease residual value, the tax written value or the 'best offer' made by an employee.

77. In *Walstern v. Federal Commissioner of Taxation* [2003] FCA 1428; (2003) 138 FCR 1; 2003 ATC 5076; (2003) 54 ATR 423 Hill J in discussing notional value stated at ATC 5092:

As already noted, the valuation formula depends upon the 'notional value' in relation to the provision whether of property or of a benefit to each of the Medichs. From the definition it follows that the question to be asked is what is the amount that each of the Medichs could reasonably be expected to have been required to pay to obtain the benefit from the provider under an arm's length transaction. The provider in the present case is Walstern. Hence the question in relation to Mr Ronald Medich, is how much he could reasonably be expected to have been required (i.e., by Walstern) to pay to Walstern to obtain the interest obtained by him in the fund, assuming the transaction between Walstern and him to be at arm's length.

78. Therefore, the notional value of the benefit that arises from the provision of the discounted product/s will be the amount that an employee could reasonably be expected to have been required to pay Dell Australia for the products.

79. The Dell Australia discounted product/s are available for sale and are available to employees of corporate clients who enter into the EPP with Dell Australia.

80. The notional value of the benefit is therefore the amount the employee pays for the product/s, after taking into account the discount.

81. Recipients contribution is defined in subsection 136(1) as:

recipients contribution:

- (a) In relation to an airline transport fringe benefit, a car parking fringe benefit, a property fringe benefit, a residual fringe benefit or a board fringe benefit, being a fringe benefit provided in respect of the employment of an employee of an employer, means the amount of any consideration paid to the provider or to the employer by the recipient or by the employee in respect of the provision of the recipients transport, the recipients parking, the recipients property, the recipients benefit or the recipients meal, as the case may be, reduced by the amount of any reimbursement paid to the recipient in respect of that consideration;

and..

82. Therefore, the taxable value of the benefit is nil as the employee has made a recipients contribution equal to the taxable value of the product/s.

Appendix 2 – Detailed contents list

83. 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 2006/10; TR 1999/10;
TR 2007/12; TD 93/231*Subject references:*

- external property fringe benefits
- FBT intangible property
- FBT notional value
- FBT tangible property

Legislative references:

- TAA 1953
- ITAA 1936 318
- FBTA 1986 40

- FBTA 1986 42

- FBTA 1986 43
- FBTA 1986 58P

- FBTA 1986 58X
- FBTA 1986 136(1)
- Copyright Act 1968

Case references:

- *J & G Knowles & Associates Pty Ltd v. FCT* 2000 ATC 4151; 44 ATR 22
- *Walster v. Federal Commissioner of Taxation* [2003] FCA 1428; (2003) 138 FCR 1; 2003 ATC 5076; (2003) 54 ATR 423

ATO references

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