



CR 2014/26 - Fringe benefits tax: employer clients of Universal Gift Card Pty Ltd who make use of Universal Gift Card Pty Ltd's Minor expenses card

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 This document has changed over time. This is a consolidated version of the ruling which was published on *12 March 2014*



Class Ruling

Fringe benefits tax: employer clients of Universal Gift Card Pty Ltd who make use of Universal Gift Card Pty Ltd's Minor expenses card

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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:

- paragraph 20(a) of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA);
- section 20A of the FBTAA;
- section 40 of the FBTAA;
- section 41 of the FBTAA;
- section 44 of the FBTAA;
- section 45 of the FBTAA;
- subsection 47(3) of the FBTAA;
- section 52 of the FBTAA;

- section 58P of the FBTA;A;
- section 58X of the FBTA;A;
- section 58Z of the FBTA;A; and
- subsection 136(1) of the FBTA;A.

All references in this Ruling are to the FBTA;A unless otherwise stated.

Class of entities

3. The class of entities to which this Ruling applies is the employer clients of Universal Gift Card Pty Ltd (UGC) who enter into arrangements for the provision and use of UGC's Minor expenses card (the Card) by current employees of the participating employers.

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 25 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 2013. 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

8. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of and are to be read with the description:

- the Application for Class Ruling dated 23 October 2013; and

- further correspondence dated 20 November 2013.

9. A participating employer will enter into an agreement with UGC for the provision of the Card. The Card will be provided by the Employer (at its discretion) to certain current employees of the participating employer.

10. The Card is aimed at employees at common law below executive level who are typically not provided with a corporate credit card and is intended to cover purchases that would generally be infrequent or ad hoc in nature.

11. The Card will be owned by the employer.

12. The Card will be required to be returned to the employer once the employee is no longer eligible for the card.

13. The employee named on the Card will be the only authorised user of the Card.

14. The use of the Card will be limited to the credit balance held on the card at all times.

15. The funds held on the Card will be held in the name of the employer at all times.

16. The Card will be preloaded with up to \$100 by the employer.

17. The use of the Card will be limited to \$100 per month and the Card will not be reloaded so as to allow any participating employee to be able to expend more than \$100 per month.

18. An employee is not permitted to load funds on to the Card at any time or to arrange for any other third party (other than the employer) to load funds on to the Card.

19. Any remaining credit on return of the Card will be retained by the employer.

20. The employer will be liable for all transactions incurred by the employees' use of the card.

21. Cash advances and Automatic teller machine withdrawals will not be allowed and the Card will not be redeemable for cash.

22. Employees will be authorised to use the Card for acquiring goods and services which had the expenditure to acquire those goods and services been incurred by the employee, they would, or would if not for section 82A of the *Income Tax Assessment Act 1936*¹ or Divisions 28 and 900 of the *Income Tax Assessment Act 1997*² have been allowed a once only deduction under either of those Acts in respect of that expenditure.

¹ Section 82A of the ITAA 1936 concerns deduction for self education expenses.

² Division 28 of the ITAA 1997 set out the rules for deducting car expenses and Division 900 of the ITAA 1997 concerns substantiating work expenses.

23. Employees will be authorised to use the card to pay an obligation they have incurred where had they incurred and paid unreimbursed expenditure they would if not for section 82A of the *Income Tax Assessment Act 1936*³ or Divisions 28 and 900 of the *Income Tax Assessment Act 1997*⁴ have been allowed a once only deduction under either of those Acts in respect of that expenditure.

24. Employees will be authorised to use the Card for acquiring work related goods and services, and in discharging an obligation of an employee including, but not limited to:

- taxi fares or other transport expenditure;
- overnight travel expenses;
- meals provided at work;
- stationary and other office supplies;
- other work related equipment;
- renewal of annual membership fees for relevant professional associations; and
- self-education expenses.

25. The promoter has technologies in place to track the use of the Card to ensure an employee only uses the Card for authorised transactions and that the Card is not being used in any manner other than the terms upon which it was provided.

26. All unauthorised transactions will be required to be reimbursed by the employee directly to the participating employer.

27. The provision of the Card does not involve any salary sacrifice arrangements between the participating employer and the employer's employees.

Ruling

28. The provision of the Card by the employer to the employee does not give rise to a fringe benefit, as that term is defined in subsection 136(1).

29. The preloading of funds and the reloading of funds by the employer on to the card will not constitute a fringe benefit as that term is defined in subsection 136(1).

³ Section 82A of the ITAA 1936 concerns deduction for self education expenses.

⁴ Division 28 of the ITAA 1997 set out the rules for deducting car expenses and Division 900 of the ITAA 1997 concerns substantiating work expenses.

30. The granting by the employer of the ownership of property or the use of the services to the employee following the use of the card by the employee to pay the suppliers of the goods and/or services (such as those mentioned at paragraph 24) may give rise to fringe benefits. These being property benefits (unless otherwise exempt under section 58P, section 58X, or section 41) in accordance with section 40 or residual benefits (unless otherwise exempt under section 47A or section 58Z) in accordance with section 45.

31. Where ownership of property purchased by the card remains with the employer a residual benefit is provided to the employee consisting of the use of the property. Where the requirements of subsection 47(3) are met the residual benefits will be exempt benefits and not fringe benefits.

32. The use of the card by the employee to pay expenditure incurred by the employee at first instance will give rise to an expense payment fringe benefit under paragraph 20(a).

33. Where the requirements of section 20A (expense payment benefit no-private use declaration) are met the expense payment fringe benefit is an exempt benefit.

34. Where use of the Card gives rise to a fringe benefit a reduction in taxable value will apply under section 24 (expense payment fringe benefit), section 44 (property fringe benefit) or section 52 (residual fringe benefit) where the respective requirements of those sections are met.

Commissioner of Taxation

12 March 2014

Appendix 1 – Explanation

ⓘ *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.*

What is a fringe benefit?

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

- (a) a benefit is provided;
- (b) the benefit is provided to an employee or an associate of an employee;
- (c) the benefit is provided by one of the four providers listed in paragraphs (c) to (ea) of the 'fringe benefit' definition;
- (d) the benefit is provided in respect of the employment of the employee; and
- (e) the benefit does not come within paragraphs (f) to (s) of the fringe benefit definition.

36. 'Provide' is defined in subsection 136(1) to mean:

- (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.

Main activities in respect of the Card

37. Under the arrangements, three main activities will occur in respect of the provision and use of the UGC Minor expenses card. These are:

1. the supply of the Card by the employer to the employee;
2. the preloading of funds onto the Card by the employer; and
3. the subsequent use of the Card by the employee to obtain goods and services.

(1) Does the supply of the Card by the employer to an employee constitute a fringe benefit?

(a) Has a benefit been provided?

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

39. In addition to this definition, several sections within the FBTAA specify that a benefit will be taken to be provided when the stated conditions are met. For example section 40 (property benefits) 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.

40. Despite the wide ambit of what can constitute a 'benefit' within the FBTAA, it is considered that at the time the Card comes to be held by the employee there is no benefit, as that term is defined in subsection 136(1).

41. The employer owns the Card and the money loaded onto the Card, and is liable (in the first instance) for all transactions arising from the use of the Card. The Card is supplied to the employee at the discretion of the employer. The Card always remains within the employer's ownership and must be returned to the employer once the employee is no longer entitled to hold the Card.

42. Employees who hold the Card are not given any interest in real or personal property or a right to any services at the time the Card is first provided. There are no rights conferred on the holder of the Card similar to that (say) of a gift card where the gift card confers rights on the bearer to enforce the merchant's promise to provide goods or services up to the stored value on the gift card.⁵

43. The initial supply of the Card to the employee is no more than simply a way to better facilitate the subsequent provision of the relevant end benefits to the employee.

44. As there is no benefit on provision of the Card there can be no fringe benefit provided at this time and it is not necessary to consider the other requirements referred to in paragraph 34 above.

⁵ See ATO Interpretative Decision ATOID 2010/135 *Fringe benefits tax Property fringe benefits: gift cards*.

(2) Does the pre-loading of funds onto the Card constitute a fringe benefit?

(a) Has a benefit been provided?

45. At the time funds are loaded on to the Card there is no benefit, as that term is defined in subsection 136(1) and discussed in paragraph 37 above. Despite the wide ambit of what can constitute a 'benefit' within the FBTA, it is considered that the deposit of funds into the employer's account by the employer, to be later potentially drawn on when an employee uses the Card, does not, in itself, result in a 'benefit' being provided.

46. The loading of funds on to the Card is merely the transfer of employer funds between its accounts and no 'benefit', as defined, is provided to the employee at the time of the transfer. The funds deposited in the employer's account always remain those of the employer unless, and until, they are expended on goods or services provided to the employee using the Card.

47. It is considered that any 'labelling' of parts of the employer's account in the employee's name, or other form of employee identifier found necessary, is merely an administrative function by the employer (or relevant financial institution) to ensure that the relevant funds are distributed correctly. Such 'labelling' does not of itself, result in a 'benefit' being provided by the employer to the employee.

48. It is further considered that an unused balance of funds in the employer's account 'earmarked', in some way, for potential later use in relation to a particular employee, does not, in itself, result in a 'benefit' being provided by the employer to that employee by the mere existence of such unused funds. Once again, the funds in the relevant account always remain that of the employer only, until such time as they are expended on good or services provided to the employee.

49. As there is no benefit on the loading of funds on to the Card there can be no fringe benefit provided at this time and it is not necessary to consider the other requirements referred to in paragraph 34 above.

(3) Does the use of the Card to obtain goods and services constitute a fringe benefit?

(a) Has a benefit been provided?

50. When the employee uses the Card in respect of the acquisition of goods or services where they are not discharging their own existing obligation it is, the employer, in the first instance, who is incurring such expenditure. Therefore, when the goods or services are initially acquired or obtained they firstly belong to the employer (and not the employee).

51. As the relevant goods or services are first acquired by the employer, the subsequent grant by the employer to the employee of either the possession of the goods (being an interest in the personal property) or the use of the services (being a right to the services) will result in a 'benefit' being an interest in the personal property being provided by the employer to the employee. The fact that the acquisition of the goods or services by the employer and the subsequent grant of the same by the employer to the employee is 'virtually instantaneous' does not alter either the order in which they occur or when the transfer of the rights attached to them occurs.

52. The particular categories of benefit are dealt with in Part III of the FBTAA. For example, a benefit that arises under section 40 will be a property benefit. A benefit that does not come within any of the specific benefits mentioned will be a residual benefit under section 45. Exempt benefits, for example, under section 58P and section 58X may also be obtained.

53. The benefits so provided by the employer to the employee will therefore depend on the type of goods or services obtained and may include, property benefits under section 40 and residual benefits under section 45, as applicable, unless otherwise exempt. For example the provision of stationary and other office supplies, other work related equipment and meals/sustenance consumed at work to an employee, where the card is used by the employer to procure the relevant goods later granted to the employee gives rise to property benefits. The payment of taxi fares or other transport expenditure used for work purposes, accommodation (associated with overnight work related travel) in the name of the employer gives rise to residual benefits.

54. Where ownership of property purchased by the card remains with the employer there is a residual benefit provided to the employee consisting of the use of the property.

55. Where the card is used to pay an existing obligation of an employee, such as the case where it is used to pay the annual membership fees for an employee's membership of a professional association an expense payment benefit under paragraph 20(a) arises. The employer is discharging an obligation of the employee to pay a third person. The use of the card to pay self education expenses may give rise to residual benefits or expense payment benefits depending on whether it is the employer or the employee who is liable for the expenditure at first instance.

(b) Has the benefit been provided to an employee?

56. The terms of the program are such that the Card has been provided to a current employee of the employer.

(c) Will the benefit be provided by one of the four prescribed providers?

57. For a benefit to be a fringe benefit the benefit must be provided by one of the providers listed in paragraphs (c),(d) ,(e), or (ea) of the fringe benefit definition in subsection 136(1). Relevantly, paragraph (c) refers to a benefit being provided to the employee or an associate of the employee by the employer.

(d) Has the benefit been provided in respect of the employment of an employee?

58. 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'.

59. The term 'in respect of' 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'.

60. 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 be 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 a product or incident of the 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.

61. In considering that the benefits are provided in respect of the employee's employment, it is relevant to note the presence of the following characteristics:

- the issue of Cards is restricted to employees of the employer; and
- employees are authorised to use the Card only for goods and services where the relevant otherwise deductible rule will apply to reduce the taxable value.

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

62. 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

63. Section 41 exempts a property benefit where the following conditions are satisfied:

- (a) it is provided to a current employee of an employer in respect of his or her employment; and
- (b) the property is provided to and consumed by the employee on a working day and on business premises of the employer or if the employer is a company, of the employer or of a company that is related to the employer.

64. However, this exemption does not apply to:

- employers that are exempt from income tax where entertainment arises as a result of providing the property benefit (section 38 Tax-exempt body entertainment fringe benefits);
- employers who choose to use the meal entertainment provision and calculate the taxable value under the 50:50 split method or the 12-week register method; and
- meals provided under a salary sacrifice arrangement after 7.30pm AEST on 13 May 2008.

65. 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 is 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.

66. 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.

67. 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.

68. A benefit that arises from an employee's use of the Card and the employer's granting of ownership of property or use of services to the employee will be an exempt benefit where the requirements of section 41 (exempt property benefits), section 58P (minor benefits) or section 58X (exempt benefits provision of certain work related items) are met. That is there is nothing about the structure or operation of the program itself that will prevent the application of these provisions.

69. Where ownership of property purchased by the card remains with the employer the residual benefit provided to the employee consisting of the use of the property is an exempt benefit under subsection 47(3) where the property is ordinarily located on business premises of and is used wholly or principally in connection with business operation of the employer or if the employer is a company, the employer or a company that is related to the employer.

70. Under subsection 58Z(1) any benefit arising from taxi travel by an employee is an exempt benefit if the travel is a single taxi trip beginning or ending at the employee's place of work.

71. Where the conditions of section 20A or section 47A (no-private use declaration) are satisfied, the expense payment fringe benefits or residual benefits covered by the declaration are exempt benefits.

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

Otherwise deductible rule – reduction of taxable value

73. Where an exemption does not apply and the conditions for the application of the otherwise deductible rule in either sections 24, 44 or 52 are met, those sections will apply to reduce the gross taxable value of the fringe benefit. That is there is nothing about the structure or operation of the Card itself that will prevent the application of those provisions.

Appendix 2 – Detailed contents list

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

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References

- Previous draft:*
- FBTA 1986 40
- Not previously issued as a draft
- FBTA 1986 44
 - FBTA 1986 45
- Related Rulings/Determinations:*
- FBTA 1986 52
 - Copyright Act 1968
- CR 2012/86; CR 2013/36;
TR 2007/12

- Subject references:*
- expense payment benefit
 - exempt benefits
 - FBT salary packaging
 - fringe benefits tax
 - residual benefits

- Case references:*
- *J&G Knowles & Associates Pty Ltd v. FCT* 2000ATC 4151; 44ATR 22

- Other references:*
- ATOID 2010/135

Legislative references:

- TAA 1953
-

ATO references

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