


***CR 2021/24 - Uber Australia Pty Ltd - promotions received by employees under the Uber Rewards loyalty program and Uber for Business platform***

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## Class Ruling

# Uber Australia Pty Ltd – promotions received by employees under the Uber Rewards loyalty program and Uber for Business platform

### **📌 Relying on this Ruling**

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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### **What this Ruling is about**

1. This Ruling sets out the income and fringe benefits tax (FBT) consequences of promotions received by Uber Australia Pty Ltd (Uber) and other employees under the Uber Rewards loyalty program (Uber Rewards) and Uber for Business platform (Uber for Business) that are wholly or partly derived from tax-deductible expenditure.
2. Full details of this scheme are set out in paragraphs 14 to 39 of this Ruling.

**Note:** By issuing this Ruling, the ATO is not endorsing this product. Potential purchasers/users must form their own view about the product.

### **Who this Ruling applies to**

3. This Ruling applies to you if you are:
  - an Uber employee in receipt of promotions wholly or partly derived from tax-deductible expenditure, and
  - an employer (excluding Uber Technologies, Inc and its affiliates (Uber Group)) who incurs expenditure in such a way that it may allow an employee to access promotions under Uber Rewards via a personal,

business or company profile, and Uber for Business under a company profile.

### When this Ruling applies

4. This Ruling applies from 1 April 2020 to 31 March 2025.

### Ruling

5. A liability for FBT, subject to an exception, does not arise for employers in respect of promotions received by employees from Uber under:

- Uber Rewards that are wholly or partly derived from tax-deductible expenditure via a personal, business or company profile, and
- Uber for Business that are wholly or partly derived from tax-deductible expenditure via a company profile.

6. The receipt of the promotions results from a personal contractual relationship between the employee and Uber and its affiliates, and not in respect of employment.

7. The exception is where the facts demonstrate that there is an arrangement between the employee and employer so that the provision of the promotion has a sufficient and material connection to employment. An employer will need to consider their circumstances and level of involvement to determine if the actions fall within the meaning of 'arrangement' such that they have an FBT liability in respect of the promotions received by employees.

8. Where the employer's involvement is limited to that set out in tiers 1 to 3 of the table in paragraph 39 of this Ruling, the Commissioner does not consider there to be an arrangement in relation to the promotions received by an employee under a company profile. The employer's involvement is not considered to be sufficient to constitute participating, facilitating, or promoting a benefit to their employees.

9. Where an employer's level of involvement is the same or more than that set out in tier 4 of the table in paragraph 39 of this Ruling, that involvement may be considered to be an arrangement between the employee and employer such that the benefits have a sufficient and material connection to employment.

10. Subject to exceptions, promotions received by an employee, including under Uber Rewards and Uber for Business that are wholly or partly derived from tax-deductible expenditure, are not assessable income under sections 6-5 or 6-10 of the *Income Tax Assessment Act 1997* (ITAA 1997)<sup>1</sup> where the employer's involvement is limited to that set out in tiers 1 to 3 of the table in paragraph 39 of this Ruling.

11. The exceptions relate to individuals rendering a service on the basis that a reward will arise or when the activities themselves amount to a business activity. These are set out in paragraph 9 of Taxation Ruling TR 1999/6 *Income tax and fringe benefits tax: flight rewards received under frequent flyer and other similar consumer loyalty programs* and paragraph 3 of Law Administration Practice Statement PS LA 2004/4 (GA) *Taxing consumer loyalty program rewards*.

12. The receipt of the promotions results from a personal contractual relationship between the employee and Uber, and not generally in respect of employment.

<sup>1</sup> All legislative references in this Ruling are to the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) unless otherwise indicated.

13. Where an employer's level of involvement is the same or more than that set out in tier 4 of the table in paragraph 39 of this Ruling, that involvement may result in the promotions received by the employee being considered to be assessable income of the employee to the extent such promotions are not the provision of fringe benefits.

## **Scheme**

14. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

## **Uber Group**

15. Uber Group is a group of technology companies that operates a 'marketplace' business model. In Australia, Uber Group provides lead generation services and ancillary services to:

- driver partners in its Uber Rides business that allows them to connect and provide transportation services to riders, and
- either restaurant partners or delivery partners in its Uber Eats business that allows them to connect and provide meal and delivery services to eaters.

16. Uber Group does not contract with riders or eaters (Users) to provide transportation, food or delivery services.

17. From 1 March 2021, Uber Group will become a delivery company in Australia and will contract with eaters to provide delivery services via their independent delivery partners.

## **Uber for individual riders and eaters**

18. In order to be connected with driver partners or restaurant partners, Users download the Uber Rides or Uber Eats applications (apps), accept the terms and conditions, and create a user account.

19. Users can create both personal and business-ride profiles<sup>2</sup> in the Uber Rides app and eat profiles in the Uber Eats app. Each profile may have a different payment method attached.

20. An employer would not be involved in the creation of the ride or eats profile and would not typically have any knowledge of their creation by the User.

## **Uber for Business**

21. Employers can create an Uber for Business (U4B) corporate account to manage their transactions within the Uber Rides and Uber Eats apps for both employees and customers.

22. An employer authorises individuals (Managed Users) to use and link to the employer's U4B corporate account creating a company profile.

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<sup>2</sup> A business profile allows a User to manage work-related travel or food expenses and the payment method may be by way of a corporate credit card attached to the profile. A personal profile allows a User to manage private travel or food expenses and the payment method is by way of a credit card.

23. A company profile is distinct from a User's personal or business profile in that a User's personal or business profile may be independently created without the employer's authorisation or knowledge.

24. An employer is liable for all charges incurred by Managed Users for transactions made via the U4B corporate account.

25. When an employer signs up to U4B, they will supply or upload a list of their employees' email addresses into the U4B dashboard. This will then trigger an invitation email to the employees to become a Managed User. An employee has the option to activate or ignore the email.

26. If the employer falls into the 'Large enterprise account' or 'Mid-market account' categories, they will be assigned an onboarding specialist. The specialist will work with the employer to upload their employees' email addresses into the U4B dashboard. If an employee chooses to ignore the email, the employee will not become a Managed User.

## Uber Rewards

27. Eligible Users can apply for membership of Uber Rewards, Uber's User loyalty program, at no cost to them.

28. Under Uber Rewards and Uber for Business, members may earn points for:

- eligible dollars spent on rides and eats through their personal or business profile
- eligible dollars spent on rides and eats through their company profile, and
- setting up and using a business profile.

29. Uber has discretion to determine the eligible transactions for which members may earn points and the number of points attributable to each transaction.

30. Points earned in connection with Uber Rewards have no monetary value, are non-transferable, and may not be exchanged for cash. Unused points expire after a set period of time.

31. There are different tiers of membership of Uber Rewards based on the amount of points earned by a member, and different promotions are available for members at each tier.

32. Promotions that members may redeem points for, which may vary according to availability or eligibility, include:

- promotions from Uber Eats to apply toward transactions
- promotions from Uber Rides to apply towards transactions, and
- airline frequent flyer points.

33. Members may also receive promotions, which may vary according to that member's tier, including:

- premium phone support
- promotional pricing on certain routes, and
- vehicle upgrades.

34. Other promotions of a similar nature may be offered from time to time at the discretion of Uber.

**Uber for Business promotions**

35. Managed Users who make a transaction on their company profile may also receive promotions on their personal profile or points.

36. The types of promotions for Managed Users may include:

- promotional codes on their personal profile to offset against the payment for transactions in the Uber Rides or Uber Eats apps
- Uber Rewards points, including a greater number of Uber Rewards points for a transaction than an equivalent transaction via their personal profile
- Uber Rewards vehicle upgrades
- goods or services from third parties (for example, free magazine subscriptions)
- redemption/exchange for airline frequent flyer points
- Uber Rewards tier upgrade, and
- other promotions of a similar nature may be offered from time to time at the discretion of Uber.

37. Uber has the discretion to determine the eligible transactions for which Managed Users may receive promotions, as well as the promotions themselves. The employer is not able to request or instruct Uber to provide promotions to Managed Users.

38. All promotions will be offered directly by Uber to Managed Users. Details of transactions to provide such promotions will be sourced from Uber's own transaction information.

39. In relation to promotions offered to Managed Users, an employer's involvement will be as follows:

<b>Tier</b>	<b>Employers will:</b>	<b>Employers will not:</b>
1	supply or upload a list of employees' email addresses to Uber and inform employees they may choose to become a Managed User.	<ul style="list-style-type: none"> <li>• communicate the terms and conditions of specific promotions offered by Uber directly to employees</li> <li>• arrange for employees to join Uber Rewards, or</li> <li>• encourage employees to become Managed Users and to enter into transactions using their company profile for the dominant purpose of receiving promotions.</li> </ul>
2	<ul style="list-style-type: none"> <li>• supply or upload a list of employees' email addresses to Uber and inform employees they may choose to become a Managed User, and</li> <li>• respond to basic questions from employees; for instance, whether employees can avail themselves of promotions provided by Uber based on the employer's policy.</li> </ul>	<ul style="list-style-type: none"> <li>• communicate the terms and conditions of specific promotions offered by Uber directly to employees</li> <li>• arrange for employees to join Uber Rewards, or</li> <li>• encourage employees to become Managed Users and to enter into transactions using their company profile for the dominant purpose of receiving promotions.</li> </ul>
3	<ul style="list-style-type: none"> <li>• supply or upload a list of employees' email addresses to Uber and inform employees they</li> </ul>	<ul style="list-style-type: none"> <li>• communicate the terms and conditions of specific promotions offered by Uber directly to employees</li> </ul>

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	<p>may choose to become a Managed User</p> <ul style="list-style-type: none"> <li>respond to basic questions from employees; for instance, whether employees can avail themselves of promotions provided by Uber based on the employer's policy, and</li> <li>share with employees some examples of the type of promotions that they may generally receive using their personal or business profile by directing the employees to an Uber-branded website or share an Uber-branded flyer, to encourage them to create a company profile to allow employers to simplify and streamline group travel management, and provide better control over employee expenses.</li> </ul>	<ul style="list-style-type: none"> <li>arrange for employees to join Uber Rewards, or</li> <li>encourage employees to become Managed Users and to enter into transactions using their company profile for the dominant purpose of receiving promotions.</li> </ul>
4	<ul style="list-style-type: none"> <li>supply or upload a list of employees' email addresses to Uber and inform employees they may choose to become a Managed User</li> <li>respond to basic questions from employees; for instance, whether employees can avail themselves of promotions provided by Uber based on the employer's policy, and</li> <li>encourage employees to take a specific business or personal action that would give them access to an Uber promotion; for example, 'All staff will receive 500 bonus Rewards points if they link to a corporate managed account today or take a first ride today', to encourage them to create a company profile to allow employers to simplify and streamline group travel management, and provide better control over employee expenses.</li> </ul>	<ul style="list-style-type: none"> <li>communicate the terms and conditions of specific promotions offered by Uber directly to employees</li> <li>arrange for employees to join Uber Rewards, or</li> <li>encourage employees to become Managed Users and to enter into transactions using their company profile for the dominant purpose of receiving promotions.</li> </ul>

**Appendix – Explanation**

**❶** *This Explanation 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.*

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**Does an employer have an FBT liability via a personal or business profile?**

40. The term 'fringe benefit' is defined in subsection 136(1) as a benefit provided by an employer (or by an associate, or by a third party at the request of an employer) to an employee (or to an associate of an employee), where that benefit is provided in respect of employment.

41. A 'benefit' is defined in subsection 136(1) to include any right, privileges, services and facilities provided under a wide range of employment and other contractual situations.

42. The promotions provided by Uber to its Users under Uber Rewards are rights, benefits, privileges or services.

43. In determining the tax implications of the promotions received by employees, considerations include whether the benefit has been provided by the employer, or an associate of the employer, and if the benefit is provided in respect of employment.

44. The benefits are not typically provided to an employee by their employer or an associate of an employer. Uber provides the benefits to Users of its products and services, which for the purposes of this Ruling do not include benefits provided to employees (or their associates) of Uber.

45. Whether a benefit received under a consumer loyalty program is in respect of employment has been considered in TR 1999/6 having regard to the decision in *Payne, Janet Lynn v Commr of Taxation* [1996] FCA 347 (*Payne*). TR 1999/6 provides guidance on whether an employer has an FBT liability for flight rewards received by an employee and if flight rewards are assessable income of an employee.

46. In *Payne*, the Federal Court decided that if there was a benefit given, it was given as a result of the personal contract between the taxpayer and the consumer loyalty program provider, notwithstanding the benefit arose as a 'consequence' of the employment. The Federal Court concluded that an employer did not have an FBT liability in respect of a flight reward received by an employee under a consumer loyalty program because the benefit resulted from a personal (non-employment) contractual relationship.

47. The Commissioner considers the principles outlined in TR 1999/6 would equally apply to the promotions received by an employee under Uber Rewards as explained in paragraphs 48 to 58 of this Ruling.

48. TR 1999/6 sets out the definition of 'consumer loyalty programs' based on the decision in *Payne*.



49. A consumer loyalty program is defined in TR 1999/6 as a ‘... marketing tool operated by a supplier of goods or services (including credit card providers), or a group of such suppliers, to encourage customers to be loyal to the supplier(s)’. While Users are not the customers of Uber Group (except for delivery services under the Uber Eats business from 1 March 2021), Uber Rewards is akin to the consumer loyalty program in TR 1999/6 as it is a marketing tool operated by a supplier of a marketplace and encourages Users to be loyal to participating partners in the marketplace.

50. Uber Rewards shares the following similar standard features to that of a consumer loyalty program outlined in paragraph 3 of TR 1999/6:

- the User is dealing with Uber in a personal capacity, that is, in accordance with the normal arm’s length commercial terms and conditions between Uber and Users
- membership is restricted to natural persons
- membership is by way of application
- points are received for eligible dollars spent on eligible transactions
- no fee is payable for membership by a User, and
- points are redeemable for benefits on goods and services.

51. In addition, Uber Rewards promotions have the following similar characteristics as the flight rewards outlined in paragraph 2 of TR 1999/6:

- rewards consist of promotions, such as offsets against payment for transactions in the Uber Rides or Uber Eats apps, frequent flyer points, vehicle upgrades, or reduced pricing on certain routes
- promotions are only offered to the User
- promotions are not transferable, and
- promotions are not redeemable for cash.

52. The promotions received by employees, including under Uber Rewards by way of a personal or business profile, would therefore be considered to result from a personal (non-employment) contractual relationship with Uber. Subject to the exceptions discussed in paragraphs 53 and 54 of this Ruling, the promotions received by an employee are not in respect of employment notwithstanding their employment was an indirect or ‘contributory cause’ of the receipt of the benefit – that is, wholly or partly derived from tax-deductible expenditure. An employer would not be subject to an FBT liability for the promotions received by their employees unless an exception applies.

53. The exceptions to those outlined in paragraph 52 of this Ruling are the same as those outlined in paragraph 7 of TR 1999/6. The first exception is not relevant as Uber Rewards membership is restricted to natural persons. The second exception is where, in respect of the employment of an employee, a promotion is provided to an employee, or the employee’s associate, under an arrangement for the purposes of the FBTAA – that is, wholly or partly derived from tax-deductible expenditure.

54. The second exception acknowledges that benefits provided to employees other than by their employer, or an associate of that employer, may be caught under the ‘arranger’ provisions in paragraphs (e) or (ea) of the definition of fringe benefit in subsection 136(1). These paragraphs state:

- (e) a person (in this paragraph referred to as the **arranger**) other than the employer or an associate of the employer under an arrangement covered by paragraph (a) of the definition of **arrangement** between:

- (i) the employer or an associate of the employer; and
  - (ii) the arranger or another person; or
- (ea) a person other than the employer or an associate of the employer, if the employer or an associate of the employer:
- (i) participates in or facilitates the provision or receipt of the benefit; or
  - (ii) participates in, facilitates or promotes a scheme or plan involving the provision of the benefit;

and the employer or associate knows, or ought reasonably to know, that the employer or associate is doing so ...

55. Paragraph (e) of the definition of fringe benefit in subsection 136(1) will not require consideration by an employer to the extent that Uber does not have an arrangement with an employer (or an associate of the employer) for Uber to provide promotions to their employees under Uber Rewards.

56. It cannot be known by Uber the extent to which individual employers promote Uber Rewards to their employees, and whether such promotion by an employer will be considered to be an arrangement.

57. Individual employers will therefore need to consider whether their circumstances fall within the meaning of an arrangement under paragraph (ea) of the definition of fringe benefit in subsection 136(1) and have an FBT liability in respect of the promotions received by employees.

58. PS LA 2004/4 (GA) provides further guidance on when a reward received by an employee under a consumer loyalty program may be a fringe benefit for the purposes of the FBTAA. In essence, it is where the facts demonstrate that there is an arrangement between the employee and employer so that the provision of the reward has a sufficient and material connection to employment. For example, it could be because:

- the arrangement is so contrived and artificial that it has no commercial purpose other than to allow the recipient to receive the rewards, or
- the nature of the arrangements suggests that the rewards are a substitute for income which would otherwise be earned.

### **Does an employer have an FBT liability via a company profile?**

59. The Commissioner considers that the promotions received by employees under Uber for Business or Uber Rewards by way of a company profile would be the result from a personal (non-employment) contractual relationship with Uber for the same reasons outlined in paragraphs 40 to 58 of this Ruling. An employer would therefore not be subject to an FBT liability for the promotions received by their employees that are wholly or partly derived from tax-deductible expenditure subject to the same exceptions as discussed in paragraphs 40 to 58 of this Ruling.

60. In respect of the second exception, the Commissioner does not consider there to be an arrangement between an employer and Uber for the purposes of paragraph (e) of the definition of fringe benefit in subsection 136(1).

61. The establishment of the U4B corporate account and the authorisation of Managed Users by the employer does not of itself constitute an arrangement for the provision of benefits to an employee by Uber.

62. The purpose of the U4B corporate account is to enable the employer to manage their transactions within the Uber Rides and Uber Eats apps for employees. It is not for the

provision of benefits to an employee such as promotions under Uber for Business or Uber Rewards.

63. The act of the employer to authorise an employee as a Managed User is to facilitate which employees may enter into transactions under a U4B corporate account. It is the choice of the employee to register as a Managed User. It is also the employee's choice to become a member of Uber Rewards independent of registering as a Managed User. An employer also cannot request or instruct Uber to provide promotions to an employee.

64. In contrast, therefore, to the facts in *Smith v Commissioner of Taxation* [1987] HCA 48 in which the reward payment was made pursuant to a scheme instituted and arranged by the employer, promotions provided by Uber to Managed Users via a company profile are provided under a program instituted and arranged by Uber for its own benefit. The employer does not arrange the provision of the promotions by Uber.

65. In respect of paragraph (ea) of the definition of fringe benefit in subsection 136(1), it is noted that the involvement of an employer in an employee becoming a Managed User and choosing to join Uber Rewards may vary to the degrees as set out in tiers 1 to 4 of the table in paragraph 39 of this Ruling.

66. To the extent an employer's level of involvement is limited to the activities set out in tiers 1 to 3 of the table in paragraph 39 of this Ruling, the Commissioner considers the employer's involvement is not sufficient to constitute participating, facilitating, or promoting the benefit to their employees, and the benefit is not provided under an arrangement between the employer and Uber. The provision of promotions to employees would not have a sufficient and material connection to employment.

67. To the extent an employer's involvement is covered by (or greater than) tier 4 of the table in paragraph 39 of this Ruling, or is similar to the circumstances discussed in PS LA 2004/4 (GA), the involvement or other circumstances may be considered to be an arrangement between the employee and employer such that the benefits have a sufficient and material connection to employment. The receipt of the promotions by an employee under Uber for Business or Uber Rewards may therefore result in an FBT liability for the employer.

68. Each employer will need to assess their circumstances and level of involvement to determine if such circumstances would be considered an arrangement between themselves and the employee.

### **Are promotions received by an individual recipient assessable under sections 6-5 or 6-10 of the ITAA 1997?**

69. Whether a flight reward received by a recipient under a consumer loyalty program is assessable income of an employee under sections 6-5 or 6-10 of the ITAA 1997 has been considered in Taxation TR 1999/6 having regard to the decision in *Payne*. The Commissioner considers the principles outlined in TR 1999/6 would equally apply to the promotions received by an employee under Uber Rewards or Uber for Business for the reasons explained in the paragraphs 40 to 58 of this Ruling.

70. Paragraphs 17 to 19 and 21 of TR 1999/6 state:

17. The first consideration is whether the flight reward has the characteristics of ordinary income. The 'Note in subsection 6-5(1) requires section 10-5 to be consulted as specific provisions may affect the treatment of some ordinary income. Section 10-5 has a listing for 'non-cash benefits' that directs one to 'benefits' and 'employment'. Under 'benefits' is a listing for 'business, non-cash' that directs one to section 21A of the *Income Tax Assessment Act 1936* (ITAA 1936). Under 'employment' is a listing for 'allowances and

benefits in relation to employment or rendering services' that directs one to section 15-2 of the ITAA 1997 (formerly paragraph 26(e) of the ITAA 1936).

18. In Payne's case, Foster J considered whether the flight reward was income according to ordinary concepts. He determined it was not income, based on the reasoning of the Full Federal Court in *FC of T v. Cooke and Sherden* 80 ATC 4140; (1980) 10 ATR 696; (1980) 29 ALR 202. The key findings were the flight reward was not 'money' or 'money's worth' (characteristics listed by Halsbury LC in *Alexander Tennant v. Robert Sinclair Smith (Surveyor of Taxes)* [1892] AC 150 at 157) and the flight reward was not convertible into cash. Hence, for an employee, the flight reward was not income.

19. Section 21A of the ITAA 1936 requires that 'in determining the income derived by a taxpayer, a non-cash business benefit that is not convertible to cash shall be treated as if it were convertible to cash'. The issue of whether there is a 'non-cash business benefit' is considered in paragraphs 22 to 25. For a flight reward to be assessable to a business taxpayer, it must have the characteristics of ordinary income with the exception that it is not convertible to cash.

...

21. It is concluded only a business taxpayer could have a flight reward assessed as ordinary income under section 6-5 because only a business taxpayer can have a non-cash benefit treated as if it were cash and, hence, be ordinary income. Other taxpayers must be considered under section 6-10 (statutory income) which directs one to section 10-5 and in turn section 15-2. ...

71. The promotions received by employees are not 'money' or 'money's worth' and are not convertible into cash. The promotions received by an employee, therefore, are not ordinary income under section 6-5 of the ITAA 1997.

72. However, consideration must be had to section 6-10 (statutory income) of the ITAA 1997 which directs one to section 10-5 of the ITAA 1997 and in turn section 15-2 of the ITAA 1997. Subsection 15-2(1) of the ITAA 1997 states:

Your assessable income includes the value to you of all ... benefits, ... provided to you in respect of, or for or in relation directly or indirectly to, any employment of or services rendered by you ...

73. This requires consideration of identifying whether, in the provision of the promotion, there exists the necessary employment or business relationship.

74. This was addressed in paragraphs 24 and 25 of TR 1999/6 as follows:

24. In *Payne's* case ... [t]he Federal Court decided if there was a benefit given, it was given as a result of the personal contract between the taxpayer and the consumer loyalty program provider, notwithstanding the benefit arose as a 'consequence' of the employment. The Court found paragraph 26(e) of the ITAA 1936 (now section 15-2 of the ITAA 1997) did not apply as the points were not earned because of the employment relationship but because of the relationship between the passenger and the airline, a relationship that was not productive of income for the passenger.

25. The Court further found the flight tickets were provided in 'consequence' of the taxpayer's employment in that the flights that earned the necessary points were undertaken in the course of her employment and paid for by her employer. The employment was, therefore, an indirect or 'contributory cause' of the receipt of the benefit. However, this was not sufficient for the benefit to be taxable under paragraph 26(e) of the ITAA 1936 (now section 15-2 of the ITAA 1997) as, per Foster J (FCR at 321; ATC at 4425; ATR at 535), 'for a benefit, etc, to be caught by the section, there needed to be a role played by the employer in the giving, etc, of the benefit'. This is lacking where the employee is the person who makes the decision to join or not join the loyalty program. ...

75. There is not a business relationship between the recipient of the promotions, the Users (or employees), and the promotion provider, Uber. The promotions have been

provided directly by Uber to the individual recipient because of the relationship between them and not because of the employment relationship. Therefore, subject to the exceptions in paragraph 11 of this Ruling, the Commissioner considers that promotions received by employees, from their personal or business profiles, would not be assessable income.

76. However, it is noted that the involvement of an employer in an employee becoming a Managed User and choosing to join Uber Rewards may vary to the degrees as set out in tiers 1 to 4 of the table in paragraph 39 of this Ruling.

77. To the extent an employer's level of involvement is limited to the activities set out in tiers 1 to 3 of the table in paragraph 39 of this Ruling, the Commissioner considers this would be insufficient for the promotion to be assessable under section 15-2 of the ITAA 1997. That is, notwithstanding that the promotions were provided in 'consequence' of the employee's employment (having been work-related transactions paid for by the employer), the employment was an indirect or 'contributory cause' of the receipt of the promotion.

78. To the extent an employer's involvement is covered by (or greater than) tier 4 of the table in paragraph 39 of this Ruling, it may be considered that the employer is providing a benefit to the employee in respect of their employment. The receipt of the promotions by an employee under Uber Rewards or Uber for Business may, therefore, be assessable income under section 15-2 of the ITAA 1997 to the extent the promotions are not also considered to be a fringe benefit.<sup>3</sup>

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<sup>3</sup> Section 23L of the *Income Tax Assessment Act 1936* provides that benefits received by an employee that are the provision of a fringe benefit are not assessable income and are not exempt income of the employee.

**References***Previous draft:*

Not previously issued as a draft

- FBTA 136(1)
- TAA 1953

*Related Rulings/Determinations:*

TR 1999/6

*Case references:*

- Payne, Janet Lynn v Commr of Taxation [1996] FCA 347; 66 FCR 299; 96 ATC 4407; 32 ATR 516
- Smith v Commissioner of Taxation [1987] HCA 48; 164 CLR 513; 87 ATC 4883; 19 ATR 274

*Legislative references:*

- ITAA 1936 23L
- ITAA 1997 6-5
- ITAA 1997 6-10
- ITAA 1997 10-5
- ITAA 1997 15-2
- ITAA 1997 15-2(1)

*Other references:*

- PS LA 2004/4 (GA)

## ATO references

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