

# ***PR 2022/6 - Tax consequences for a customer participating in CommBank Yello with the Commonwealth Bank of Australia***

 This cover sheet is provided for information only. It does not form part of *PR 2022/6 - Tax consequences for a customer participating in CommBank Yello with the Commonwealth Bank of Australia*

 This document has changed over time. This is a consolidated version of the ruling which was published on *2 August 2023*



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Status: **legally binding**

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## Product Ruling

# Tax consequences for a customer participating in CommBank Yello with the Commonwealth Bank of Australia

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### **📌 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.

[**Note:** *This is a consolidated version of this document. Refer to the Legal database ([ato.gov.au/law](http://ato.gov.au/law)) to check its currency and to view the details of all changes.*]

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## No guarantee of commercial success

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The Commissioner **does not** sanction or guarantee this product. Further, the Commissioner gives no assurance that the product is commercially viable, that charges are reasonable, appropriate or represent industry norms, or that projected returns will be achieved or are reasonably based.

Potential participants must form their own view about the commercial and financial viability of the product. The Commissioner recommends a financial (or other) adviser be consulted for such information.

This Product Ruling provides certainty for potential participants by confirming that the tax benefits set out in the **Ruling** part of this document are available, **provided that** the scheme is carried out in accordance with the information we have been given, and have described below in the **Scheme** part of this document. If the scheme is not carried out as described, participants lose the protection of this Product Ruling.

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Status: **legally binding**

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## **Terms of use of this Product Ruling**

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This Product Ruling has been given on the basis that the entity that applied for the Product Ruling, and their associates, will abide by strict terms of use. Any failure to comply with the terms of use may lead to the withdrawal of this Product Ruling.

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

1. This Product Ruling sets out the Commissioner's opinion on the way in which the relevant provisions identified in the Ruling section apply to the defined class of entities that participates in the scheme to which this Product Ruling relates. All legislative references in this Product Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.
2. In this Product Ruling the scheme is referred to as CommBank Yello, a consumer loyalty program offered and operated by the Commonwealth Bank of Australia (CBA).
3. This Product Ruling does not address:
  - any tax consequences for a customer of the CBA arising in connection with any dealings between them and the CBA, other than for the receipt of a benefit by the customer under CommBank Yello, or
  - the capital gains tax consequences which may arise for a customer upon disposal of any non-monetary prize benefit received under CommBank Yello.

### **Class of entities**

4. This part of the Product Ruling specifies which entities can rely on the Ruling section of this Product Ruling and which entities cannot rely on the Ruling section. Those entities that can rely on the Ruling section are referred to as the customer.
5. The class of entities that can rely on the Ruling section of this Product Ruling consists of those entities who are individual Australian residents for tax purposes and receive a benefit under the scheme described in paragraphs 15 to 25 of this Product Ruling on or after the date this Ruling is made and on or before 30 June 2025.
6. The class of entities that can rely on the Ruling section of this Product Ruling does **not** include entities who:
  - are a non-resident for Australian tax purposes
  - receive a benefit under the scheme described in paragraphs 15 to 25 of this Product Ruling before the date of this Product Ruling or after 30 June 2025, or
  - receive a benefit as an incident of their business or income-producing activities.

### **Qualifications**

7. The class of entities defined in this Product Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 15 to 25 of this Product Ruling.

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8. If the scheme actually carried out is materially different from the scheme that is described in this Product Ruling, then this Product Ruling:

- has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled, and
- may be withdrawn or modified.

#### **Date of effect**

9. This Product Ruling applies from 27 July 2022. It applies only to the specified class of entities that receive a benefit under the scheme from 27 July 2022 until 30 June 2025, being its period of application.

10. However, the Product Ruling only applies to the extent that there is no change in the scheme or in the entity's involvement in the scheme.

#### **Changes in the law**

11. Although this Product Ruling deals with the income tax laws enacted at the time it was issued, later amendments may impact on this Product Ruling. Any such changes will take precedence over the application of this Product Ruling and, to that extent, this Product Ruling will have no effect.

12. Entities who participate in the scheme are advised to confirm with their taxation adviser that changes in the law have not affected this Product Ruling since it was issued.

#### **Note to promoters and advisers**

13. Product Rulings were introduced for the purpose of providing certainty about tax consequences for entities in schemes such as this. In keeping with that intention, the Commissioner suggests that promoters and advisers ensure that participants are fully informed of any legislative changes after the Product Ruling has issued.

## **Ruling**

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14. Subject to paragraph 3 of this Product Ruling and the assumptions in paragraph 25 of this Product Ruling:

- (a) A benefit (or the value of a benefit) received by a customer under CommBank Yello will not be included in the assessable income of the customer under sections 6-5 or 6-10.
- (b) The anti-avoidance provisions in Part IVA of the *Income Tax Assessment Act 1936* (ITAA 1936) will not apply to a customer in receipt of a benefit under the scheme carried out as described in this Product Ruling.

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## Scheme

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15. The scheme that is the subject of this Product Ruling is identified and described in the following:

- application for a Product Ruling as constituted by information and documentation received on 30 March 2022, 17 May 2022 and 26 June 2023
- draft CommBank Yello Terms and Conditions dated 5 April 2022, and
- draft CommBank Yello Terms and Conditions received on 26 June 2023.

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

16. For the purposes of describing the scheme to which this Product Ruling applies, there are no other agreements, whether formal or informal, and whether or not legally enforceable, which the customer, or any associate of the customer will be a party to, which are a part of the scheme.

17. All Australian Securities and Investments Commission requirements are, or will be, complied with for the term of the agreements.

### Overview

18. CommBank Yello is a consumer loyalty program developed by the CBA and aimed at providing exclusive benefits to customers who choose to use and engage with CBA products and services.

19. For the purposes of CommBank Yello, the CBA identifies multiple categories of customer in respect of which benefits are provided. The benefits provided to customers under CommBank Yello may differ between customer categories and will generally be personalised to the products the customer already has or the nature of their relationship with the CBA, or both.

20. In order to be eligible to obtain the benefits associated with each customer category, customers will be required to meet certain base eligibility criteria (referred to in paragraph 21 of this Product Ruling), as well as any additional criteria specific to each customer category. Eligibility and access to CommBank Yello is typically assessed in the first week of each month. To the extent that a customer meets the eligibility criteria for more than one customer category, they may in certain instances be entitled to the benefits associated with each customer category for which they are eligible.

21. The base eligibility criteria for CommBank Yello includes that the customer must be an individual aged 18 years or older and must be an account holder (individually or jointly) of at least one 'eligible account', defined in the CommBank Yello Terms and Conditions to include specific CBA transaction accounts or (as of August 2023) specific CBA credit card accounts.<sup>1</sup>

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<sup>1</sup> As at the date of this Product Ruling, the eligible transaction accounts include Smart Access, Complete Access, Everyday Offset, Pensioner Security (card access only) and Private Banking Account. As of August 2023, the eligible credit card accounts include Awards, Low Fee, Low Rate, CommBank Neo, StepPay and Affinity.

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22. The benefits available to customers who meet the eligibility criteria (both base and any additional) for a relevant customer category:

- include benefits offered to all customers in the customer category, which may comprise one or more of discounts on CBA products, refunds<sup>2</sup>, property reports and exclusive shopping offers from third parties (collectively referred to as automatic benefits for the purposes of this Product Ruling), and
- may also include automatic entry into monthly draws to win monetary and non-monetary prizes (referred to as prize benefits for the purposes of this Product Ruling).

23. Any benefits provided to customers under CommBank Yello are in addition to any interest or bonus interest a customer accrues on their eligible transaction account and are not calculated by reference to any funds a customer may or may not have deposited with CBA. Interest rates applied to the relevant eligible account will not change as a result of a customer's participation in CommBank Yello.

24. Participation in CommBank Yello is voluntary and eligible customers can opt out if they so choose.

### **Assumptions**

25. This Product Ruling is made on the basis of the following assumptions:

- (a) The customer is an Australian resident for tax purposes.
- (b) Any automatic benefit received by a customer in the form of a refund will not be deductible under a provision listed in section 20-30.
- (c) No additional eligibility criteria specific to a customer category in respect of which prize benefits are provided will include the requirement to deposit funds into a CBA account on which interest can accrue.
- (d) The scheme will be executed in the manner described in the Scheme section of this Product Ruling and the CommBank Yello Terms and Conditions referred to in paragraph 15 of this Product Ruling.
- (e) All dealings between the customer and the CBA will be at arm's length.

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**Commissioner of Taxation**

27 July 2022

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<sup>2</sup> Also referred to as cashback offers.

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Status: **not legally binding**

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## Appendix – Explanation

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**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.*

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### **Automatic benefits not assessable to the customer**

26. Under Division 6, assessable income consists of both ordinary income and statutory income to the extent the ordinary or statutory income is not exempt income or non-assessable non-exempt income.

27. Section 6-5 includes income according to ordinary concepts (ordinary income) in assessable income. The assessable income of an Australian resident includes the ordinary income they derived directly or indirectly from all sources during the income year (subsection 6-5(2)).

28. Ordinary income has generally been held to include 3 categories, namely income from services rendered, income from property and income from carrying on a business. Other characteristics of ordinary income that have evolved from judicial authority include receipts that are earned, expected, relied upon and have an element of periodicity, recurrence or regularity.

29. Automatic benefits of the type referred to in paragraph 22 of this Product Ruling and received by a customer under CommBank Yello are designed to reward the customer for their relationship and engagement with CBA and CBA's products and services, and are a product of the customer having met the eligibility criteria applicable to their customer category.

30. Those automatic benefits cannot be said to be earned, expected or relied upon, nor do they relate to any of the 3 categories identified in paragraph 28 of this Product Ruling. That is:

- the benefits are not the product of any employment or rendering of services (and do not have the character of salary and wages or fees for services rendered)
- the benefits are not in the nature of interest income (or any other form of passive income from property), and
- for customers that fall within the class of entities that can rely on this Product Ruling (described in paragraphs 5 and 6 of this Product Ruling), the benefits are not received as an incident of their business or income-producing activities.

31. Accordingly, automatic benefits received by a customer under CommBank Yello are not assessable as ordinary income of the customer under section 6-5.

32. Statutory income is an amount included in assessable income by a statutory provision (subsection 6-10(2)). A list of the provisions about assessable income which are statutory income are set out in section 10-5.

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33. Of the statutory income provisions set out in section 10-5, Subdivision 20-A relating to assessable recoupments is relevant insofar as it relates to an automatic benefit received by a customer under CommBank Yello in the form of a refund.

34. Subdivision 20-A provides that your assessable income includes an assessable recoupment, broadly defined in:

- subsection 20-20(2) as an amount received as recoupment of a loss or outgoing by way of insurance or indemnity, and which is deductible under any provision of the Income Tax Acts, and
- subsection 20-20(3) as an amount received as recoupment of a loss or outgoing (except by way of insurance or indemnity), and which is deductible under a provision listed in section 20-30.<sup>3</sup>

35. Paragraph 20-25(1)(a) relevantly defines a 'recoupment' to include any kind of recoupment, reimbursement, refund, insurance, indemnity or recovery.

36. While an automatic benefit in the form of a refund received by a customer under CommBank Yello may constitute a recoupment pursuant to paragraph 20-25(1)(a), it will not be an assessable recoupment pursuant to subsections 20-20(2) or (3) as the refund will not be an amount received by way of insurance or indemnity. Additionally, the refund will not be deductible under a provision listed in section 20-30 (as assumed at paragraph 25(b) of this Product Ruling).

37. Accordingly, automatic benefits received by a customer under CommBank Yello are not assessable as statutory income of the customer under section 6-10.

#### **Prize benefits not assessable to the customer**

38. As is the case for automatic benefits, prize benefits referred to in paragraph 22 of this Product Ruling and received by a customer under CommBank Yello are designed to reward the customer for their relationship and engagement with CBA and CBA's products and services.

39. Such prize benefits are:

- a product of the customer having met the eligibility criteria applicable to their customer category and winning the prize draw, and are not solicited or the product of any employment or rendering of services
- not earned, expected or relied upon, nor are they expected to be received periodically or regularly
- not in the nature of interest income (or any other form of passive income from property), and
- not received as an incident of the customer's business or income-producing activities.

40. Accordingly, prize benefits received by a customer under CommBank Yello are not assessable as ordinary income of the customer under section 6-5.

41. Of the statutory income provisions set out in section 10-5, section 26AJ of the ITAA 1936 relating to prizes from investment-related lotteries and section 102-5 relating to

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<sup>3</sup> An amount is not an assessable recoupment to the extent it is otherwise assessable income (subsection 20-20(1)).

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capital gains tax are relevant in relation to a prize benefit received by a customer under CommBank Yello.

42. Section 26AJ of the ITAA 1936 applies to include an amount paid or the arm's length value of property or services provided in a taxpayer's assessable income if, among other requirements, the payment or the provision of property or services is by way of winnings from a lottery and the chance to participate in that lottery was provided wholly or partly in respect of an investment, or wholly or partly in relation to an investment (whether directly or indirectly).

43. While the receipt of a monetary or non-monetary prize benefit by a customer under CommBank Yello constitutes a payment or provision of property or services by way of winnings from a lottery, the chance to participate in a prize draw is provided to the customer as a direct consequence of their satisfaction of the eligibility criteria applicable to their customer category. It is not provided in respect of, or in relation to, an 'investment', defined in subsection 26AJ(11) of the ITAA 1936 as 'any mode of application of money for the purpose of gaining a return', nor is any prize benefit under CommBank Yello provided as a substitute for income which would otherwise be earned by the customer. Therefore, any prize benefits awarded to a customer under CommBank Yello will not be included as assessable income under section 26AJ of the ITAA 1936.

44. A right of a customer under CommBank Yello to be entered into a prize draw is a CGT asset under subsection 108-5(1). When the prize draw that a customer has been entered into is drawn, the customer's contractual right to participate in the draw will be discharged or satisfied. This discharge or satisfaction of the contractual right gives rise to CGT event C2 (paragraph 104-25(1)(b)).

45. Where a customer wins a prize benefit as a result of the draw, the customer will make a capital gain from this CGT event under subsection 104-25(3) equal to the capital proceeds from the ending of the ownership of their asset; that is, the money received or the market value of the property or services received.

46. However, as paragraph 118-37(1)(c) disregards a capital gain or capital loss made from a CGT event relating to a competition with prizes, any capital gain made by a customer under these circumstances is disregarded pursuant to that paragraph.

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## References

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### *Legislative references:*

- ITAA 1936 26AJ
  - ITAA 1936 26AJ(11)
  - ITAA 1936 Pt IVA
  - ITAA 1997 Div 6
  - ITAA 1997 6-5
  - ITAA 1997 6-5(2)
  - ITAA 1997 6-10
  - ITAA 1997 6-10(2)
  - ITAA 1997 10-5
  - ITAA 1997 Subdiv 20-A
  - ITAA 1997 20-20(1)
  - ITAA 1997 20-20(2)
  - ITAA 1997 20-20(3)
  - ITAA 1997 20-25(1)(a)
  - ITAA 1997 20-30
  - ITAA 1997 102-5
  - ITAA 1997 104-25(1)(b)
  - ITAA 1997 104-25(3)
  - ITAA 1997 108-5(1)
  - ITAA 1997 118-37(1)(c)
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### ATO references

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