TR 93/2 - Income tax and fringe benefits tax: Benefits received under frequent flyer and other similiar consumer award type programs

Australian Taxation Office

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This Ruling, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the ***Taxation Administration Act 1953****, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Ruling is a public ruling and how it is binding on the Commissioner.*

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What this Ruling is about

1. The purpose of this Ruling is to set out:

   (a) to what extent are fringe benefits received as a result of participation in a frequent flyer or other similar consumer award type programs ("frequent flyer type program");

   (b) to what extent is any taxpayer assessable on a benefit received as a result of participation in a frequent flyer type program;

   (c) how the benefit should be valued: and

   (d) how the benefit should be apportioned where there has been both private and business transactions which have contributed towards the receipt of the benefit.

Ruling

2. Benefits received by employees as a result of their participation in a frequent flyer type program do not generally constitute fringe benefits for the purposes of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA).

3. Benefits received by any taxpayer, whether employee or otherwise, as a result of their participation in a frequent flyer type program may constitute assessable income in that taxpayer's hands under subsection 25(1) of the *Income Tax Assessment Act 1936* (ITAA). Benefits received by employees may also constitute assessable income under paragraph 26(e) of the ITAA.

4. For the purposes of determining assessable income, benefits received by a taxpayer which have a monetary value, other than non-cash business benefits which are dealt with under section 21A of the ITAA, should be valued at a fair market value at the time the benefit is derived. In most cases, this Office will accept as a fair market value, the lowest cash price that the taxpayer would have normally been charged by an arm's length supplier for the purchase of the benefit.

5. Where both employer-paid and private transactions have contributed to a taxpayer's entitlement to a benefit, the value of the benefit will need to be apportioned. For example, in a frequent flyer type program, the value of the benefit should be reduced by an apportionment based on the amount of points obtained by the taxpayer due to private transactions divided by the total number of points required to obtain the benefit (see example at paragraph 18).

Date of effect

6. This Ruling sets out the current practice of the Australian Taxation Office and is not concerned with a change in interpretation. However, this Ruling will only apply (subject to any limitations imposed by statute) for years of income commencing 1 July 1992 and income years subsequent to that date.

Explanations

Frequent Flyer Type Programs

7. Although not all the same, frequent flyer type programs have many similar characteristics. The principal characteristics are that:

(a) points are accumulated when a member of the program makes certain transactions. These transactions include, for example, air travel (different classes of air travel will accrue different point values), the patronage of particular hotels, the hiring of rental cars from particular rental car agencies and the use of particular credit cards.

(b) points which have accumulated are used by the member of the program to acquire benefits. These benefits include free air travel, free hotel accommodation, free car rental, and

various items of property. Some of these benefits may be transferable.

Fringe Benefits Tax

8. Where an employee accumulates points as a result of payments or reimbursements by the employer, the question arises whether any benefit received by the employee from the frequent flyer type program is a fringe benefit for the purposes of the FBTAA.

9. For the benefit received by the employee to be a "fringe benefit" as defined in section 136 of the FBTAA, the benefit must have been provided by the employer, an associate of the employer, or any other person who has made an arrangement with the employer or associate of the employer. Where the employer has not entered into any separate arrangement or has no other relationship with the organisations operating the frequent flyer type programs, the benefit is not considered to be provided by the employer or an associate of the employer. It is also considered that no "arrangement" as defined in section 136 of the FBTAA exists between these organisations and the employer. Accordingly, as no fringe benefit exists, no fringe benefits tax is payable on the benefit received by the employee.

10. It is particularly relevant that most frequent flyer type programs are specifically targeted at and provide benefits to the individual member and have not attempted to involve the employer in any way. Further, the benefits being provided to the member have been instituted as part of a campaign by these organisations to build brand loyalty.

11. Where the membership of a frequent flyer type program involves a personal contract between the organisation operating the frequent flyer type program and the employee, it is not relevant to consider how the employee became a member (ie. whether the membership was paid/reimbursed by employer or paid by employee) when determining whether there is any fringe benefits tax liability on the benefits received from the program. However, where an employer pays an employee's membership fee into a frequent flyer type program, that fee will itself be a fringe benefit. The value of that benefit will vary depending upon the extent to which the fee would be "otherwise deductible" (for example, under section 24 of the FBTAA).

12. Where the membership of a frequent flyer type program involves a contract between the organisation operating the frequent flyer type program and the employer, it is considered that an "arrangement" or an

associate relationship is formed between the organisations operating the frequent flyer type programs and the employer. Accordingly, under this arrangement, benefits received by an employee which relate to points accrued from employer-paid transactions will constitute fringe benefits under section 136 of the FBTAA. For example, where an employer contracts with an organisation operating a frequent flyer type program to enrol their employees as members of the program, any benefits received by those employees which relate to business transactions would be a fringe benefit. However, as happens in some cases, where the employer enters into an arrangement whereby all frequent flyer type benefits which arise from the business transactions of its employees accrue to the employer only, no fringe benefits tax liability would arise unless that employer subsequently passes those benefits to its employees.

Income Tax

Employees

13. In those cases where no "arrangement" exists for the purposes of the FBTAA, a close nexus will still exist between the benefit received by the employee and their employment where the employer pays for (directly or indirectly) the transactions which give rise to the award of points (referred to here as "employer-paid transactions"). As such, it is considered that any benefit received by the employee as the result of employer-paid transactions will be subject to both section 25 and paragraph 26(e) of the ITAA (*Kelly v F.C. of T* 85 ATC 478;(1985) 16 ATR 478, *Hayes v F.C. of T.* (1956) 96 CLR 47, *Scott v F.C. of T.* (1966) 117 CLR 514). Where the transactions which give rise to the award of points are not paid (directly or indirectly) by the employer (referred to here as "private transactions"), any benefits received as a result of those transactions would not be subject to income tax. Where both employer-paid and private transactions have contributed to a employee's entitlement to a benefit, the value of the benefit should be reduced by an apportionment based on the amount of points obtained by the employee due to private transactions divided by the total number of points required to obtain the benefit.

Non-employees

14. Similarly, it is considered that benefits received by self-employed persons as the result of business transactions are subject to section 25 of the ITAA (section 21A will also apply in the case of non-

cash business benefits - refer to Taxation Ruling IT 2631 for a full discussion on section 21A).

15. For a benefit to be included under section 25 or paragraph 26(e) it is necessary that the amount be received or receivable as money, in the form of money's worth or in a form which can be employed in the acquisition of some other right or commodity (*F.C. of T. v. Cooke & Sherden* 80 ATC 4140; 10 ATR 696). Where property is received, this Office will accept a fair market value as adequately reflecting the money value of that property for the purposes of determining the amount to be included under section 25. The fair market value is not the personal value of the property to the taxpayer but the lowest value of the property if purchased by the taxpayer through an arm's length transaction. This Office will also use a fair market value in determining the "value to the taxpayer" under paragraph 26(e). It is considered that as the taxpayer has the ability to choose the benefit received, albeit limited, the value to the taxpayer is a market value.

16. Where the benefit cannot be converted to money's worth, such as the case with non-transferable airline tickets, no amount can be assessable under section 25 or paragraph 26(e) unless it falls for consideration as a non-cash business benefit under section 21A of the ITAA.

17. This Office is aware, however, that some airlines, while not permitting the airline tickets to be "cashed in", do permit the tickets to be written in the name of a person other than the taxpayer who derived the benefit. Regardless of whether those tickets are actually written in another person's name, they are considered to be transferable airline tickets, and therefore do not fall within the category of non-assessable tickets described in paragraph 16. The fair market value of these tickets will be included in the assessable income of the taxpayer who initially derived the benefit. That is, for example, if a taxpayer is entitled to an airline ticket but requests that it be written in the name of his/her spouse, it is the taxpayer not the spouse who will be assessed on the fair market value of the ticket.

Examples

18. Jim Smith is an employee of Sales Co. Pty Ltd ("Sales"). Jim is a member of a frequent flyer program. Jim's membership is a personal contract between himself and ABC Airlines. His employer reimbursed his frequent flyer membership fee. Jim travelled on the ABC Airlines a number of times, each time earning frequent flyer points. Some of the trips were paid (either directly or by reimbursement) by Sales as Jim was travelling on business, other trips

were paid by Jim as the travel was for private purposes. Jim also earned frequent flyer points when he regularly rented a hire vehicle for private purposes.

19. In total, Jim earned 20000 frequent flyer points of which 15000 were attributable to private transactions. Jim redeemed his points for a set of golf clubs which had a fair market value of $2000.

20. The taxation consequences of the above example are:

(a) Sales is liable to pay fringe benefits tax on the value of the membership fee reimbursed (that value is reduced by the amount which would have been otherwise deductible - see paragraph 11); and

(b) Jim must return $500 as assessable income in his income tax return. The assessable value of the benefit is calculated as follows -

$$\textit{Value of Benefit} - \frac{\textit{(Value of Benefit x Private Points)}}{\textit{Total Points}}$$

$$\$2000 - \frac{(\$2000 \times 15000)}{20000} = \$500$$

Note: If the membership fee to the frequent flyer program had been paid by Jim and not by Sales through a reimbursement to Jim, the calculation shown in b. would not change. The only difference would be that Sales would not be liable to fringe benefits tax as shown in a.

Commissioner of Taxation

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- apportionment
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legislative references
- ITAA 21; 21A; 25; 26(e); 51
- FBTAA 136

case references
- F.C. of T. v. Cooke & Sherden
  80 ATC 4140; 10 ATR 696
- Hayes v F.C. of T. (1956)
  96 CLR 47
- Kelly v F.C. of T 85 ATC 478;
  (1985) 16 ATR 478
- Scott v F.C. of T. (1966)
  117 CLR 514