


***CR 2008/25 - Fringe benefits tax: employer clients of
Corporate Care Australia Pty Limited whose
employees receive a Corporate Advantage Card***

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Class Ruling

Fringe benefits tax: employer clients of Corporate Care Australia Pty Limited whose employees receive a Corporate Advantage Card

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❶ This publication provides you with the following level of protection:

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

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:

- section 49 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA);
- section 51 of the FBTAA;
- section 58P of the FBTAA;
- section 62 of the FBTAA; and
- the definition of 'fringe benefit' in subsection 136(1) of the FBTAA.

All legislative references in this Ruling are to the FBTAA unless otherwise stated.

Class of entities

3. The class of entities to which this Ruling applies are employers whose employees receive a Corporate Advantage Card as part of an arrangement between the employer and Corporate Care Australia Pty Ltd (CCA).

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 13 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.

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Date of effect

8. This Ruling applies from 1 April 2007.

9. The Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

10. If this Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

11. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

12. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

13. The scheme that is the subject of this Ruling is described below and is based on the documents listed below. These documents or relevant parts of them form part of and are to be read with the description. The relevant documents or parts of documents incorporated into this description of the scheme are:

- the applicant's correspondence dated 28 August 2007;
- further information received on 12 September 2007, including the draft CCA Terms of Issue;
- further information received on 18 September 2007, including a reference to CCA's internet site;
- further information received on 9 November 2007;
- further information received on 21 November 2007; and
- further information received on 16 January 2008.

Note: certain information received from the applicant has been provided on a commercial-in-confidence basis and will not be disclosed or released by the Tax Office under the freedom of information legislation.

14. CCA is an independent marketing organisation. It is establishing a Corporate Advantage Program to provide a flexible mechanism for participating organisations to market their products to an exclusive group of consumers who have received a Corporate Advantage Card (the card).

15. Those participating organisations in the scheme, will be on an invitation only basis that is subject to annual renewal on a financial year basis.

16. The terms of the agreement by which a participating organisation is admitted to the scheme will be at the sole discretion of CCA who will negotiate with each potential participating organisation on a case by case basis.

17. Depending upon the arrangement negotiated a participating organisation may be required to:

- offer a product or service at a special rate to all cardholders in conjunction with the card;
- pay an administration fee to CCA; and/or
- pay a commission on card sales to CCA.

18. Once admitted a participating organisation will be able to nominate those people who are entitled to receive the cards. This will be at the sole discretion of the participating organisation.

19. CCA will place no restrictions on the issue of cards and will encourage participating organisations to issue the card to all customers.

20. The card will be issued to a very large group of people numbering in the many thousands, from many significant market segments including retail, telephone and broadband, hardware, travel and banking. It is anticipated that in the short term the card will be expanded into New Zealand and the United States, and that in the longer term the card will have global application with cardholders able to redeem benefits in most western countries.

21. Cardholders will be required to agree to the Terms of Issue. In accordance with the Terms of Issue:

- the card remains the property of CCA;
- the card will not identify the participating organisation;
- a card must be signed by the cardholder upon receipt;
- only cardholders can use the card to redeem an offer;
- additional cards are not available for members of a cardholder's family;
- cards are provided free of charge to cardholders;
- no fees are charged when a cardholder uses the card to redeem an offer;
- each cardholder will have an equal right to claim, on presentation of the card, any offer or discount available on the card;
- in the event a cardholder is not permitted to claim a discount or other offer, CCA shall liaise with the supplier on behalf of the cardholder. In the event cardholders continue to have difficulty redeeming an offer from a supplier the supplier shall be removed as a participating organisation;
- issued cards will remain valid until 30 June; and
- a cardholder will automatically receive a replacement card at the end of the financial year if the organisation that nominated the cardholder continues to be a participating organisation.

22. Cardholders can obtain an offer or discount available on the card by showing the card at the place of purchase, swiping the card, or quoting the card number over the telephone or internet.

23. Participating organisations may choose to distribute cards directly to cardholders or alternatively the participating organisation may provide CCA with mailing details for cards to be mailed by CCA directly to cardholders.

24. Card offers will be updated regularly on CCA's website. A participating organisation may vary or withdraw a card offer at any time by informing CCA who will publicise the change or remove the offer.

25. CCA will not attempt to reclaim cards from cardholders of a participant who is no longer a member of the scheme. However, cardholders nominated by a participant who ceases to be part of the scheme will not be issued with a new card on the expiry of their old card.

Ruling

26. The provision of a Corporate Advantage Card to an employee will be a residual fringe benefit in terms of subsection 136(1) unless the benefit is a minor benefit that satisfies the requirements of section 58P.

27. Where a card is provided to an employee of CCA, or an employee of an associate of CCA a fringe benefit that arises from the provision of the card will be an in-house period residual fringe benefit that will be valued in accordance with sections 49 and 62.

28. Where a card is provided to an employee of any other participating organisation or to an employee of an associate of such organisation, a fringe benefit that arises from the provision of the card will be an external period residual fringe benefit that will be valued in accordance with section 51.

29. The use of a Corporate Advantage Card by an employee to receive a discount or offer that is available to all such cardholders from either:

- (a) the employer, or an associate of the employer; or
- (b) a participating organisation that is not an associate of the employer;

will not be a fringe benefit in terms of subsection 136(1).

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

Provision of a Corporate Advantage Card to an employee

(a) Does the provision of a card constitute a benefit?

30. The term 'benefit' is defined in subsection 136(1) to include:
- any right (including a right in relation to, and an interest in, real or personal property), privilege, service or facility and, without limiting the generality of the foregoing, includes a right, benefit, privilege, service or facility that is, or is to be provided under:
- (a) an arrangement for or in relation to:
 - (i) the performance of work (including work of a professional nature), whether with or without the provision of property; ...
31. The provision of a card to an employee of a participating organisation will give rise to a benefit in the form of a right to receive discounts or other offers from participating organisations.

(b) Will the entitlement to receive a discount or other offer constitute a fringe benefit?

32. In general terms, the definition of 'fringe benefit' in subsection 136(1) provides that an employer will be liable to pay fringe benefits tax on the provision of a benefit to an employee where the following three requirements are satisfied:
- (i) the benefit is provided by either:
 - the employer;
 - an associate of the employer;
 - another person under an arrangement with the employer or an associate of the employer (paragraph (e)); or
 - another person where the employer or an associate of the employer participates, or facilitates the provision or receipt of the benefit (paragraph (ea));
 - (ii) the benefit is provided in respect of the employment of the employee; and
 - (iii) the benefit does not come within paragraphs (f) to (r) of the fringe benefit definition. For the purpose of this Ruling the relevant paragraph is paragraph (g) which provides that a benefit that is an exempt benefit will not be a fringe benefit.

These three requirements are discussed at paragraphs 33 to 42 of this Ruling.

(i) Will the entitlement to receive a discount or other offer be provided by one of the four prescribed providers?

33. The scheme involves CCA providing employees nominated by a participating organisation with a right to receive discounts, or other offers from suppliers and retailers who are participants in the scheme.

34. Unless the employer is CCA, or an associate of CCA it will be necessary for either paragraph (e), or (ea) of the definition 'fringe benefit' within subsection 136(1) to apply.

35. Paragraph (e) of the definition 'fringe benefit' within subsection 136(1) applies where there is an arrangement between the employer and a third party. This paragraph is satisfied as the right is provided to nominated employees as part of the agreement between CCA and the employer.

36. Alternatively, paragraph (ea) of the definition 'fringe benefit' within subsection 136(1) will be satisfied as the employer in nominating the employee as a cardholder is participating in or facilitating the provision of the benefit.

(ii) Will the entitlement to receive a discount or other offer be provided in respect of the employment of the employee?

37. 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.

38. In *J & G Knowles & Associates Pty Ltd v. FCT* 2000 ATC 4151; 44 ATR 22 (*Knowles*), the Full Federal Court in discussing whether a benefit was provided in respect of employment stated at ATC 4158:

... 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.

39. The provision of the card to an employee has the necessary material connection with the employment of the employee as:

- the employee's participation in the scheme is initiated by the employer;

- the card is only provided to employees nominated by the employer;
- the reason for the employee being nominated to receive the card is that they are an employee; and
- the cards are not available to the public in general, nor to associates of employee cardholders.

(iii) Will the entitlement to receive a discount or other offer be an exempt benefit on the basis that it is a minor benefit?

40. A benefit that is a minor benefit will be an exempt benefit where the requirements of section 58P are satisfied.

41. A benefit which is neither an airline transport benefit, nor a tax-exempt body entertainment benefit will be an exempt benefit under section 58P where:

- the benefit would not be an in-house fringe benefit if it was a fringe benefit;
- 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 58P(1)(f) to treat the minor benefit as a fringe benefit.

42. Where the entitlement to receive a discount or other offer is an exempt benefit a 'fringe benefit' as defined in subsection 136(1) will not arise from the provision of the benefit to an employee.

Calculating the taxable value of a fringe benefit that arises from the provision of a card to an employee

(a) What type of benefit arises from the provision of a card to an employee?

43. The taxable value of a fringe benefit is established from a series of valuation rules contained within the FBTAA. To determine the appropriate method it is necessary to initially determine the type of benefit provided. For the purpose of this Ruling the most relevant benefits are property benefits and residual benefits.

44. Under section 40 a property benefit will arise when a person provides property to another person. The term 'provide' is defined in subsection 136(1) in relation to property to mean:

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.

45. 'Property' is defined in subsection 136(1) to include tangible and intangible property. Both these terms are also defined in subsection 136(1).

46. As CCA in providing the employee with a right to obtain a discount does not dispose of either a beneficial interest, nor the legal ownership of property the benefit will not be a property benefit.

47. Accordingly, the benefit will be a residual benefit which is defined in section 45 as being a benefit that is not a benefit by virtue of a provision of Subdivision A of Divisions 2 to 11 (inclusive) of Part III.

48. The taxable value of a residual fringe benefit will be calculated in accordance with the valuation rules provided by sections 48 to 51. These sections provide different valuation rules depending upon whether the residual benefit is:

- an in-house, or external residual fringe benefit; and
- a period, or non-period residual fringe benefit.

(b) Will the provision of a card be an in-house or external residual fringe benefit?

49. The definition of 'in-house residual fringe benefit' in subsection 136(1) provides different requirements depending upon whether the provider is the employer or an associate of the employer.

50. Paragraph (a) of the definition 'in-house residual fringe benefit' within subsection 136(1) applies where the provider is the employer or an associate of the employer. As CCA is the provider of the card this paragraph is applicable for cards provided to employees of CCA, or an associate of CCA. In accordance with paragraph (a) the provision of a card to an employee of CCA, or an employee of an associate of CCA will be an in-house residual fringe benefit if CCA at or about the comparison time carried on a business that consisted of or included the provision of identical or similar benefits principally to outsiders.

51. For employees of other participating organisations it is necessary to consider the application of paragraph (b) of the definition 'in-house residual fringe benefit' within subsection 136(1). For subparagraphs (b)(ii) and (iii) to be satisfied:

- the provider (CCA) must have purchased the benefit from the employer or an associate of the employer; and
- at or about the comparison time, both the provider and the seller must have carried on a business that consisted of, or included the provision of identical or similar property.

52. As neither of these requirements will be satisfied the entitlement received by employees of organisations that are not an associate of CCA will not be an in-house residual fringe benefit.

(c) Will the provision of the card be a period, or non-period residual fringe benefit?

53. In determining whether the benefit provided is a period benefit subsection 149(1) states that a benefit shall be taken to be provided during a period if the benefit is provided during a period of more than one day and is not deemed by a provision of the FBTAA to be provided at a particular time or on a particular day. As the benefits are available for a period of more than one day the benefits will be a period residual benefit.

(d) The valuation if an in-house period residual fringe benefit arises from the provision of a card

54. Section 49 provides two alternative methods that can be used to calculate the taxable value of an 'in-house period residual fringe benefit'. The relevant paragraph depends upon whether identical benefits are provided by CCA:

- in the ordinary course of business to members of the public under an arm's length transaction;
- in similar circumstances; and
- subject to identical terms and conditions (other than as to price);

as those that applied in relation to the provision of the benefit to the employee.

55. If these conditions are satisfied the taxable value will be 75% of the lowest amount paid or payable by a member of the public.

56. Alternatively, if these conditions are not satisfied the taxable value will be 75% of the notional value. 'Notional value' is defined in subsection 136(1) as:

'notional value', in relation to the provision of property or another benefit to a person, means the amount that the person could reasonably be expected to have been required to pay to obtain the property or other benefit from the provider under an arm's length transaction.

57. In either situation, the taxable value may be able to be reduced under section 62 which provides for the sum of the taxable values of the 'in-house fringe benefits' provided to a particular employee to be reduced by \$1,000.

(e) The valuation if an external period residual fringe benefit arises from the provision of a card

58. Section 51 provides two alternative valuation rules for determining the taxable value of an external period residual fringe benefit that is not provided by the employer or an associate of the employer.

59. The relevant method will depend upon whether the employer, or an associate of the employer incurred expenditure to the provider under an arm's length transaction in respect of the provision of the benefit. This will be determined by the terms of the agreement between CCA and the employer.

60. Where the agreement involves the employer incurring expenditure in respect of the provision of the benefit the taxable value under paragraph 51(b) will be the amount of that expenditure.

61. Alternatively, where the agreement does not involve the employer incurring expenditure in respect of the provision of the benefit the taxable value under paragraph 51(c) will be the notional value.

Use of a Corporate Advantage Card

(a) Does the use of a card by an employee to obtain a discount or other offer constitute a benefit?

62. An employee may use a card provided by CCA to purchase a variety of goods or services at a discount. The provision of these goods or services may give rise to several types of benefits including a 'property benefit' as defined in section 40, or a 'residual benefit' as defined in section 45.

(b) Will the use of the card to purchase goods or services at a discount be a fringe benefit?

63. As discussed in paragraph 32 of this Ruling a benefit provided to an employee will be a fringe benefit where three requirements are satisfied.

64. The first of the requirements requires the provider to be one of the four prescribed providers. This requirement will be met where the employee uses the card to purchase goods or services at a discount from either:

- the employer; or
- a participating organisation that is an associate of the employer.

65. The second requirement is for the benefit to be provided in respect of the employment of the employee. As discussed in paragraphs 37 and 38 of this Ruling, for this requirement to be satisfied, there needs to be a sufficient or material connection between the provision of the benefit and the employment of the employee.

66. The identification of the relationship, if any, between the giving of the discount on the one hand and the cardholder's employment on the other, is crucial to determining whether the cardholder receives a benefit in any capacity other than that of employee.

67. In Taxation Ruling TR 1999/6 Income tax and fringe benefits tax: flight rewards received under frequent flyer and other similar consumer loyalty programs, it was concluded that flight rewards received under a consumer loyalty program, with two exceptions that do not exist in this arrangement were not subject to FBT as they result from a personal (that is, non-employment) contractual relationship.

68. In considering the views and reasoning set out in TR 1999/6, where the card is used by a cardholder to purchase goods or services at a discount, the discount will arise from the personal contractual rights the cardholder has under the Terms of Issue of the card, and not from being in respect of employment.

69. As the necessary 'sufficient or material' connection does not exist, the use of a card by an employee to receive a discount that is available to all such cardholders from either:

- (a) the employer, or an associate of the employer; or
- (b) a participating organisation that is not an associate of the employer;

will not be a fringe benefit.

Appendix 2 – Detailed contents list

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Appendix 2 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 1999/6

Subject references:

- fringe benefits
- fringe benefits tax
- in respect of employment
- property benefits

Legislative references:

- FBTAA 1986 Pt III Div 2 Subdiv A
- FBTAA 1986 Pt III Div 3 Subdiv A
- FBTAA 1986 Pt III Div 4 Subdiv A
- FBTAA 1986 Pt III Div 5 Subdiv A
- FBTAA 1986 Pt III Div 6 Subdiv A
- FBTAA 1986 Pt III Div 7 Subdiv A
- FBTAA 1986 Pt III Div 8 Subdiv A
- FBTAA 1986 Pt III Div 9 Subdiv A

- FBTAA 1986 Pt III Div 9A Subdiv A
- FBTAA 1986 Pt III Div 10 Subdiv A
- FBTAA 1986 Pt III Div 10A Subdiv A
- FBTAA 1986 Pt III Div 11 Subdiv A
- FBTAA 1986 40
- FBTAA 1986 45
- FBTAA 1986 48
- FBTAA 1986 49
- FBTAA 1986 50
- FBTAA 1986 51
- FBTAA 1986 51(b)
- FBTAA 1986 51(c)
- FBTAA 1986 58P
- FBTAA 1986 58P(1)(f)
- FBTAA 1986 62
- FBTAA 1986 136(1)
- FBTAA 1986 149(1)
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

Case references:

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

ATO references

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