


***CR 2009/12 - Fringe benefits tax: RewardsCorp
Resort Rewards Certificates provided by
RewardsCorp Trading Pty Limited clients to their
own employees or to the employees of third party
employers***

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Class Ruling

Fringe benefits tax: RewardsCorp Resort Rewards Certificates provided by RewardsCorp Trading Pty Limited clients to their own employees or to the employees of third party employers

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	8
Scheme	9
Ruling	22
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
Explanation	24
Appendix 2:	
Detailed contents list	61

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

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

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

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

What this Ruling is about

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

Relevant provision(s)

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

- section 40 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA); and
- section 43 of the FBTAA.

All subsequent legislative references are to the FBTAA unless otherwise stated.

Class of entities

3. The class of entities to which this Ruling applies is the clients of RewardsCorp Trading Pty Ltd who provide RewardsCorp Resort Rewards Certificates as either rewards or incentives to their own employees or to the employees of third party employers.

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 9 to 21 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 2008. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

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

- Class Ruling Application dated 11 June 2008; and
- further material provided on 2 September 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.

10. RewardsCorp Trading Pty Ltd (RewardsCorp) is a marketing services company that utilises excess capacity inventory in off-peak periods in the tourism and leisure industries to create sales promotions, rewards programs and incentive programs for its clients.

11. RewardsCorp secures excess capacity inventory in off-peak periods from tourism and leisure industry suppliers at discounted rates.

12. RewardsCorp then enters into arrangements with its clients (RewardsCorp clients) to enable those RewardsCorp clients to utilise the discounted off-peak tourism or leisure industry inventory for the client's own product promotion or as employee rewards or incentives.

13. RewardsCorp sells RewardsCorp Resort Rewards Certificates (Currency Certificates) to RewardsCorp clients for an amount less than the dollar amount stated on the face of the Currency Certificate.

14. Currency Certificates can have face values of \$250, \$500 or \$1,000. The RewardsCorp clients purchase such certificates at between 2.5% to 10% of the certificate face value depending on the contractual relationship between RewardsCorp and the RewardsCorp clients.

15. RewardsCorp clients will, usually, give such Currency Certificates to their own customers as part of their normal trading operations. However, RewardsCorp clients may also, sometimes, give such Currency Certificates to their own employees as either rewards or incentives for that employee's work for the RewardsCorp client or else give the Currency Certificates to the employees of third party employers as either rewards or incentives for promoting the RewardsCorp clients' products.

16. Any employees of a third party employer receiving Currency Certificates as either rewards or incentives from a RewardsCorp client will do so under an arrangement between that third party employer and the RewardsCorp client or otherwise under the full knowledge of that third party employer.

17. The customer or employee (end user) is subsequently able to use the Currency Certificate to obtain a reduction, up to the amount of the face value on the Currency Certificate, from the 'Average Retail Rate' (Published Rack Rate) for certain accommodation at a hotel, resort or similar holiday establishment.

18. The end user is only able to apply the Currency Certificates from amongst the range of off-peak tourism or leisure industry inventory previously secured by RewardsCorp.

19. End users can only apply one Currency Certificate to each holiday booking. Also, each Currency Certificate applied only gives a partial reduction towards the total cost of the holiday accommodation as represented by the Published Rack Rate.

20. There will always be a difference between the face value of the Currency Certificate and the higher Published Rack Rate when securing particular holiday accommodation. End users are then required to pay out of their own funds the difference between the face value of the Currency Certificate and the Published Rack Rate.

21. The Currency Certificates are only valid for use for certain limited periods and can only be redeemed through the 'RewardsCorp Redemption Centre'.

Ruling

22. The provision by RewardsCorp clients of Currency Certificates to their own employees or to the employees of third party employers as either rewards or incentives are property fringe benefits under section 40 of the FBTAA unless otherwise exempted.

23. The taxable values of any property fringe benefits, arising from the provision by the RewardsCorp clients of Currency Certificates to their own employees or to the employees of third party employers as either rewards or incentives, are the purchase costs of acquiring the Currency Certificates from RewardsCorp by the RewardsCorp clients for the purposes of section 43 of the FBTAA.

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.*

Currency Certificates to RewardsCorp clients' employees

24. Section 40 deals with 'property benefits' and states as follows:

Where, at a particular time, a person (in this section referred to as the 'provider') provides property to another person (in this section referred to as the 'recipient'), the provision of the property shall be taken to constitute a benefit provided by the provider to the recipient at that time.

25. Subsection 136(1) provides the following definitions relevant to property benefits:

'property' means:

- (a) intangible property; and
- (b) tangible property.

'tangible property' means goods and includes:

- (a) animals, including fish; and
- (b) gas and electricity.

'intangible property' means:

- (a) real property;
- (b) a chose in action; and
- (c) any other kind of property other than tangible property;

but does not include:

- (d) a right arising under a contract of insurance; or
- (e) a lease or licence in respect of real property or tangible property.

'property benefit' means a benefit referred to in section 40, but does not include a benefit that is a benefit by virtue of a provision of Subdivision A of Divisions 2 to 10 (inclusive) of Part III.

'property fringe benefit' means a fringe benefit that is a property benefit.

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

27. The Currency Certificates, not being goods of any kind, are regarded as being 'intangible property' for the purposes of the FBTAA. Therefore, the provision by the RewardsCorp clients of Currency Certificates to their employees as either rewards or incentives will constitute the provision of property benefits under section 40.

28. 'Fringe benefit' is defined in subsection 136(1) as (relevant here):

...in relation to an employee, in relation to the employer of the employee, in relation to a year of tax, means a benefit:

- (a) provided at any time during the year of tax; or
 - (b) provided in respect of the year of tax; being a benefit provided to the employee ... by:
 - (c) the employer; or
 - (d) ...
 - (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;
- in respect of the employment of the employee, but does not include:
- (f) ...
 - (g) a benefit that is an exempt benefit in relation to the year of tax; or
 - (h) ...

29. Subsection 136(1) also provides the following definition of an 'arrangement'.

'arrangement' means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

30. Therefore a 'fringe benefit' is a benefit provided to an employee, in respect of the employee's employment, by either the employee's employer or a third party under an arrangement with the employee's employer and the benefit is not otherwise exempted.

31. As determined previously (at paragraph 27 of this Ruling), the provision by the RewardsCorp clients of Currency Certificates to their employees will constitute the provision of property benefits. The Currency Certificates are being provided as either rewards or incentives for the employee's work for the RewardsCorp client and, therefore, are being provided in respect of that employee's employment.

32. The provision by the RewardsCorp clients of Currency Certificates to their own employees as either work rewards or incentives will constitute the provision of property fringe benefits unless otherwise exempted.

33. The taxable value to be applied to a particular property fringe benefit depends on whether it is an 'in-house property fringe benefit' or an 'external property fringe benefit'.

34. An 'external property fringe benefit' is defined in subsection 136(1) as meaning a property fringe benefit other than an 'in-house property fringe benefit'. However, an 'in-house property fringe benefit' as defined in subsection 136(1) can apply only to tangible property.

35. As it has been determined previously (also at paragraph 27 of this Ruling) that the Currency Certificates are intangible property then their provision cannot constitute in-house property fringe benefits. Consequently, the provision by the RewardsCorp clients of Currency Certificates to their own employees as either work rewards or incentives will constitute the provision of external property fringe benefits.

36. The taxable value of an external property fringe benefit is determined under section 43 as follows:

Subject to this Part, the taxable value of an external property fringe benefit in relation to an employer in relation to a year of tax is:

- (a) where the provider was the employer or an associate of the employer and the recipients property was purchased by the provider under an arm's length transaction at or about the provision time – the cost price of the recipients property to the provider;
- (b) where the provider was not the employer or an associate of the employer and 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 property – the amount of that expenditure; or
- (c) in any other case – the notional value of the recipients property at the provision time;

reduced by the amount of the recipients contribution.

37. As the providers of the external property fringe benefits are the employers, the relevant taxable value will be determined under paragraph 43(a) as the cost price of the Currency Certificates to the RewardsCorp clients under an arm's length transaction.

38. 'Cost price', in relation to a property fringe benefit, is defined in subsection 136(1) as meaning the expenditure incurred by the provider that is directly attributable to purchasing or obtaining delivery of the property.

39. 'Arm's length transaction' is defined in subsection 136(1) as meaning a transaction where the parties to the transaction are dealing with each other at arm's length in relation to the transaction. When a statute refers to parties dealing at arm's length, or to a specific transaction being at arm's length, the arm's length test is generally taken to refer to the terms of the transactions such as would be entered into between independent parties.

40. The relevant taxable value of the property fringe benefit is the purchase cost to the RewardsCorp clients of acquiring the Currency Certificates from RewardsCorp.

Currency Certificates to employees of third party employers

41. The provision by the RewardsCorp clients of Currency Certificates to the employees of third party employers as either rewards or incentives will constitute the provision of property benefits under section 40.

42. As the Currency Certificates are being provided to the employees of third party employers as either rewards or incentives for promoting the RewardsCorp clients' products they are being provided in respect of those employees' employment. Also, any employees of a third party employer receiving Currency Certificates from a RewardsCorp client as either rewards or incentives will do so under an arrangement between that third party employer and the RewardsCorp client or otherwise under the full knowledge of that third party employer.

43. The provision by the RewardsCorp clients of Currency Certificates to the employees of third party employers as either rewards or incentives will constitute the provision of property fringe benefits unless otherwise exempted. Again, any such property fringe benefits will be external property fringe benefits with their taxable value to be determined under section 43.

44. The RewardsCorp clients, as the providers, are not the employers (nor associates of the employers) of the employees of the third party employers. Consequently, the valuation method of paragraph 43(a) does not apply.

45. The employers (or associates) of the third party employees do not incur expenditure to the RewardsCorp clients for the provision of the Currency Certificates to their employees. Consequently, the valuation method of paragraph 43(b) does not apply.

46. Therefore, the taxable values of the relevant external property fringe benefits are determined under paragraph 43(c) as 'the notional value of the recipient's property at the provision time'.

47. 'Notional value' is defined in subsection 136(1) as follows:

'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.

48. Taxation Determination TD 93/231 Fringe benefits tax: what is an acceptable method for determining the 'notional value' of a property fringe benefit for the purposes of sections 42 and 43 of the *Fringe Benefits Tax Assessment Act 1986*? provides the following guidance on determining 'notional value' of a property fringe benefit:

1. 'Notional value' is defined in subsection 136(1) as the amount that a person could reasonably be expected to have been required to pay to obtain the property under an arm's length transaction.

2. To ascertain the 'notional value' of a property fringe benefit the employer must determine the amount the employee would have to pay for a comparable (on the basis of age, type and condition) benefit under an arm's length transaction.

3. This Office will accept a number of ways of obtaining the notional value including:

- the price of comparable goods advertised in local newspapers and/or relevant magazines or similar publications;
- the price paid for comparable goods at a public auction;
- the price of comparable goods at a second-hand store; or
- the market value of the goods determined by a qualified valuer.

4. The lowest value obtained using any of these methods will be acceptable.

5. Valuation methods which are not acceptable to this Office include the lease residual value, the tax written down value or the 'best offer' made by an employee.

6. ...

49. However, the various 'acceptable methods' outlined in paragraph 3 of TD 93/231, for determining 'notional values', are not an exhaustive list of the methods that may be acceptable to the Tax Office. Other methods may be also acceptable as long as they meet the condition that they are an 'amount that a person could reasonably be expected to have been required to pay to obtain the property under an arm's length transaction'.

50. In *Caelli Constructions (Vic) Pty Ltd v. Commissioner of Taxation* (2005) 147 FCR 449; 2005 ATC 4938; (2005) 60 ATR 542, (*Caelli Constructions*) which was examining contributions to a redundancy payment fund (Incolink), the Court found at paragraph 71, regarding 'notional values' of property benefits:

71. The definition of 'notional value' is not, however, concerned with whether the person would in fact have purchased the benefit in an arm's length transaction. It is concerned with valuing the amount of the benefit by reference to an objective value of the benefit. It is misreading s 43(c) to say that Incolink would not be expected to pay anything in order to receive a contribution to the Fund and therefore the notional value is nil. The question is how much Incolink could reasonably have been expected to pay to obtain the benefit in an arm's length transaction. The question is based on the hypothesis that Incolink and Caelli are in a market transaction for the benefit. The fact that Incolink gains no beneficial entitlement is irrelevant.

51. In *Walstern Pty Ltd v. Commissioner of Taxation* (2003) 138 FCR 1; 2003 ATC 5076; (2003) 54 ATR 423, (*Walstern*) an income tax deduction was claimed by Walstern Pty Ltd in respect of a contribution to an off-shore non-complying superannuation fund. In finding that the contributions made by the company were property fringe benefits the Court stated at paragraphs 96 to 98:

96. As already noted, the valuation formula depends upon the 'notional value' in relation to the provision whether of property or of a benefit to each of the Medichs. From the definition it follows that the question to be asked is what is the amount that each of the Medichs could reasonably be expected to have been required to pay to obtain the benefit from the provider under an arms length transaction. The provider in the present case is Walstern. Hence the question in relation to Mr Ronald Medich, is how much he could reasonably be expected to have been required (ie by Walstern) to pay to Walstern to obtain the interest obtained by him in the fund, assuming the transaction between Walstern and him to be at arms length...

97. The benefit, ie the interest under the fund as provided by Walstern, cost Walstern \$500,000. Obviously Walstern would expect to be paid that amount by Mr Medich before it would make the contribution resulting in Mr Medich having the benefit under the fund. In my mind no conclusion is open other than that the notional value of each of the benefits provided to Mr Ronald Medich and Mr Roy Medich is \$500,000 with the consequence that the valuation of Mr Banks has no relevance for what he valued was not what the statute requires.

98. The result should not be seen as extraordinary. Although the valuation formulae differ from fringe benefit to fringe benefit and the values are sometimes concessionary in favour of the employee, there is to be found in the valuation formulae generally the concept that the benefit is to be determined by reference to the cost to the employer of the benefit. In *State of Queensland v. Commonwealth of Australia* 87 ATC 4029; (1987) 162 CLR 74 Gibbs CJ described the subject of fringe benefits tax as being (see at ATC 4032; CLR 83):

‘... the value of the benefits provided by the employer, and not the value of the benefits received by the employee; a benefit to the employee within the meaning of the Assessment Act will have been provided notwithstanding that the benefit was surplus to the needs or wants of that employee, and notwithstanding that the benefit is offset by some inconvenience or disadvantage.’

52. In *Caelli Constructions* and in *Walstern* the taxable value of the property fringe benefit was determined under paragraph 43(c) as the notional value. It was considered by the Federal Court that this notional value equated to the acquisition cost paid by the provider for the relevant property.

53. The relevant notional values will be the purchase costs paid by the RewardsCorp clients to RewardsCorp for the Currency Certificates subsequently being provided to the employees of the third party employers as either rewards or incentives.

54. The relevant taxable values of the property fringe benefits are the purchase costs to the RewardsCorp clients of acquiring the Currency Certificates from RewardsCorp.

Exempt benefits

55. Due to the many and varied factual circumstances under which RewardsCorp clients may provide Currency Certificates to their own employees or to the employees of third party employers as either rewards or incentives, it cannot be determined with any certainty whether such provision will or will not constitute exempt benefits.

56. Depending on the circumstances, in some cases the provision by RewardsCorp clients of Currency Certificates to their own employees or to the employees of third party employers as either rewards or incentives may give rise to exempt benefits such as ‘minor benefits’ under section 58P.

57. The maximum amount paid to RewardsCorp by a RewardsCorp client for any one Currency Certificate will be \$100 (\$1,000 x 10%). Therefore, as paragraph 58P(1)(e) places a ‘less than \$300’ threshold test on the notional taxable value of each benefit provided, the provision of a Currency Certificate by a RewardsCorp client to one of its employees or to an employee of a third party employer either as a reward or as an incentive will meet the requirements of that aforementioned paragraph.

58. Nonetheless, as stated in paragraph 9 of Taxation Ruling TR 2007/12 Fringe benefits tax: minor benefits, in considering the application of the exemption under section 58P it is necessary to look to the nature of the benefit provided and give due weight to each of the criteria under paragraph 58P(1)(f). The weight given to each criterion will also vary depending on the circumstances surrounding the provision of each benefit.

59. TR 2007/12 also provides, in 'Example 8: staff incentive scheme', some guidance on how the various criteria of section 58P may be applied to particular given circumstances involving store vouchers provided as part of a staff incentive scheme where the value of the store voucher is below the 'minor benefits threshold' of paragraph 58P(1)(e). That example says:

88. An employer operates a monthly Sales Incentive Scheme for the benefit of its employees. Employees who achieve their monthly sales targets are rewarded with store vouchers having a face value of less than \$300 which are redeemable for goods or services at the nearby shopping centre. There is an expectation from past experience that most employees will achieve this target.

89. An employee does achieve this target and is provided with a store voucher. The employee has achieved the target on a number of occasions and has received other store vouchers both in the current and previous years of tax.

90. The value of the store voucher is below the minor benefits threshold and therefore it is necessary to consider the criteria listed in paragraph 58P(1)(f) to determine if it would be unreasonable to treat the minor benefit as a fringe benefit.

91. Vouchers, which are identical or similar, can reasonably be expected to be provided to the employee on a frequent and regular basis.

92. Even though the value of each benefit is below the minor benefits threshold, the sum of the values of the associated benefits in this year and other years is considered to be substantial.

93. There would be no difficulties in determining the value of the benefit; the benefit was not provided to assist the employee deal with an unexpected event; and the benefit is wholly or principally a reward for services rendered.

94. On balance, having regard to the various criteria in paragraph 58P(1)(f), it would be concluded that it would not be unreasonable to treat the benefit as a fringe benefit.

95. Accordingly, the benefit provided to the employee is not an exempt benefit.

60. However, albeit the result in the above example from TR 2007/12 was that the provision of the store vouchers was not exempt under section 58P this does not necessarily mean that the same result will be found where the factual circumstances of a particular case are materially different. As already stated above, due to the many and varied factual circumstances under which RewardsCorp clients may provide Currency Certificates to their own employees or to the employees of third party employers as either rewards or incentives it cannot be determined with any certainty whether such provision will or will not constitute exempt benefits without knowing the specific circumstances. Consequently, each such case would have to be examined on its own particular facts before a definite decision could be made as to whether or not the benefit provided would be an exempt minor benefit.

Appendix 2 – Detailed contents list

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

	Paragraph
What this Ruling is about	1
Relevant provision(s)	2
Class of entities	3
Qualifications	4
Date of effect	8
Scheme	9
Ruling	22
Appendix 1 – Explanation	24
Currency Certificates to RewardsCorp clients' employees	24
Currency Certificates to employees of third party employers	41
Exempt benefits	55
Appendix 2 – Detailed contents list	61

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TD 93/231; TR 2006/10;
TR 2007/12

Subject references:

- property benefits
- property fringe benefits
- in-house fringe benefits
- in-house property fringe benefits
- minor benefits
- fringe benefits

Legislative references:

- FBTAA 1986 40
- FBTAA 1986 42
- FBTAA 1986 43
- FBTAA 1986 43(a)
- FBTAA 1986 43(b)

- FBTAA 1986 43(c)
- FBTAA 1986 58P
- FBTAA 1986 58P(1)(e)
- FBTAA 1986 58P(1)(f)
- FBTAA 1986 136(1)
- Copyright Act 1968
- TAA 1953

Case references:

- Caelli Constructions (Vic) Pty Ltd v. Commissioner of Taxation (2005) 147 FCR 449; 2005 ATC 4938; (2005) 60 ATR 542
- State of Queensland v. Commonwealth of Australia 87 ATC 4029; (1987) 162 CLR 74
- Walstern Pty Ltd v. Commissioner of Taxation (2003) 138 FCR 1; 2003 ATC 5076; (2003) 54 ATR 423

ATO references

NO: 2009/2078

ISSN: 1445-2014

ATOlaw topic: Fringe Benefits Tax -- Reportable fringe benefits