



# ***PS LA 2004/4 (GA) - Taxing consumer loyalty program rewards***

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This Law Administration Practice Statement provides guidance about when to refer a consumer loyalty program case to a senior technical leader to determine whether rewards are taxable.

*This practice statement is an internal ATO document, and is an instruction to ATO staff.*

*Taxpayers can rely on this practice statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty. Nor will they have to pay interest on the underpayment provided they reasonably relied on this practice statement in good faith. However, even if they don't have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.*

### 1. What this practice statement is about

TR 1999/6 and TD 1999/34 set out the precedential ATO view on whether or not a reward received under a consumer loyalty program or a flight reward are fringe benefits or assessable income. These rulings include the principles that came out of *Payne v. FC of T* (1996) 66 FCR 299; 96 ATC 4407; (1996) 32 ATR 516 (*Payne*).

However, there may be some cases where a reward from a consumer loyalty program or flight reward will fall outside the guidelines in these rulings.

This practice statement sets out factors which, if present, will require the case to be forwarded to a senior technical leader for review.

It also provides that unless the case has these factors, administrative action will not be considered warranted.

### 2. Consumer loyalty program rewards: the general principles

Note: receiving **rewards** may be subject to tax but receiving **points** is not, even if the points are transferred from one loyalty program to another.

#### Income tax

Rewards received under consumer loyalty programs will be taxable only where the facts demonstrate that the reward is received as part of an income earning activity and:

- there is a business relationship between the recipient of the reward and the reward provider, and
- the benefit is convertible directly or indirectly to money's worth, or

- the taxpayer is carrying on a business,<sup>1</sup> and section 21A of the ITAA 1936 operates to include the reasonable value of the non-cash business benefit in the taxpayer's assessable income.

#### Fringe benefits tax (FBT)

A reward received by an employee under a consumer loyalty program may be a fringe benefit for the purposes of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) 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.<sup>2</sup>

### 3. TR 1999/6 – flight rewards

TR 1999/6 provides that flight rewards received under consumer loyalty programs are generally not taxable. However, it also notes that FBT may apply where:

- the employer and the employee have a family relationship and the flight reward is received in connection with the employment, or
- a flight reward is provided to an employee, or the employee's associate, under an 'arrangement' for the purposes of the FBTAA, that results from business expenditure.<sup>3</sup>

<sup>1</sup> This also includes the instances where the activities associated with obtaining the reward themselves amount to a business or commercial activity.

<sup>2</sup> *Smith v. FC of T* (1987) 164 CLR 513; 87 ATC 4883; (1987) 19 ATR 274; and *J & G Knowles & Associates Pty Ltd v. Commissioner of Taxation* (2000) 96 FCR 402; [2000] FCA 196; 2000 ATC 4151; (2000) 44 ATR 22.

<sup>3</sup> See paragraph 7 of TR 1999/6.

The flight reward might also be subject to income tax if they are received by an individual who:

- renders a service on the basis that an entitlement to a flight reward will arise
- receives the flight reward as a result of business expenditure, or
- where the activities associated with the obtaining of the reward amount in themselves to a business activity.<sup>4</sup>

#### 4. TD 1999/34 – consumer loyalty programs

TD 1999/34 provides that rewards received under consumer loyalty programs arising from **private expenditure** are not subject to tax.

#### 5. When to escalate a case and take administrative action

Generally, the way we treat rewards derived from consumer loyalty programs will fall within the guidelines in TR 1999/6 and TD 1999/34.<sup>5</sup> You must apply those principles accordingly.

However, you must refer the case to a senior technical leader for review if the reward is considered to be assessable income or a fringe benefit because:

- The arrangement is so contrived and artificial that it has no commercial purpose other than to allow the recipient to receive the rewards.
- The nature of the arrangements suggests that the rewards are a substitute for income which would otherwise be earned.
- The points accumulated exceed 250,000 points per annum.

Administrative action is only considered warranted if at least one of the above criteria exist.

#### 6. Examples

##### Example 1

Pamela is a sole trader operating a painting and wallpapering business. She buys her paint from a paint wholesaler. The wholesaler has a loyalty program that entitles her to points that can be redeemed for shopping vouchers. There is a clear business relationship between Pamela and the paint wholesaler and it is this relationship that makes Pamela eligible to receive possible benefits.

Pamela redeems her points for vouchers worth \$2,500. She uses the vouchers to acquire clothing for herself and her children.

Redeeming the points in return for the vouchers was the result of her business purchases. The value of vouchers, \$2,500, is assessable because the benefit flows from the business relationship Pamela has with the paint supplier. The vouchers are assessable income at the time of receipt. Pamela is required to declare \$2,500 in her assessable income.

Pamela is also a member of a credit card loyalty program and she uses her credit card for all her business and personal expenses. The rewards flowing from the loyalty program points arise from her relationship with the program provider and may be assessable because the relationship has both a personal and business aspect.

It is possible that the rewards she receives for her business expenses are assessable: she pays fees for the service and, where she incurs business expenditure, the credit card provider is extending credit to her business. She therefore has a business relationship with the provider. However, as the conditions listed in section 5 of this practice statement don't apply it wouldn't be necessary to refer this case to a senior technical leader. Further administrative action isn't warranted.

##### Example 2

Paula frequently travels interstate on business. Her employer has provided her with a corporate credit card so that she can pay for her business-related accommodation – meals, taxis, hire cars, etcetera. There is a fee for operating the corporate card but the savings in administration costs far outweigh the fee charged. The credit card company has a loyalty program and Paula joins.

The credit card arrangement exists primarily because it delivers administrative benefits to Paula's employer, not to her. Accordingly, it is unlikely that a sufficiently material connection exists with her personally for any loyalty rewards to be in respect to her employment.

As the conditions listed in section 5 of this practice statement don't apply, it isn't necessary to refer this case to a senior technical leader; nor is further administrative action warranted.

##### Example 3

John is an employee of XYZ Company. He uses his personal credit card for private expenditure. Under an arrangement (which can be explicit or tacit) between John's employer and John, John is able to place all the company's business expenditure on his personal credit card. The company reimburses him for the expenditure he has paid on its behalf. Under this arrangement, John acquires points from the business expenditure exceeding 250,000 points per annum.

<sup>4</sup> See paragraph 9 to TR 1999/6.

<sup>5</sup> For further reference, see also *Payne*.

FBT may apply in this case. Any reward that arises from redeeming these points will relate directly to the significant business expenditure. The reward may have been provided under an arrangement and may be in respect of employment.

This arrangement falls within the conditions listed in section 5 of this practice statement. Such a case should be referred to a senior technical leader for review.

#### **Example 4**

Sam is employed by James' Wholesale Stationery Company. Rather than paying Sam a Christmas bonus, the employer and Sam agree to an arrangement by which Sam will accrue points in a consumer loyalty program that he can redeem for significant rewards. Sam will pay a significant portion of the company's business expenses on his credit card each October and the company will reimburse Sam when the payment on his card falls due.

This arrangement has no apparent purpose other than to enable Sam to receive significant rewards by redeeming the points accumulated from business

expenditure as a substitute for income he would otherwise have been expected to receive.

This arrangement falls within the conditions listed in section 5 of this practice statement. Such a case should be referred to a senior technical leader for review.

#### **7. More information**

For more information, see:

- [TR 1999/6](#) *Income tax and fringe benefits tax: flight rewards received under frequent flyer and other similar consumer loyalty programs*
- [TD 1999/34](#) *Income tax: Is a reward received under a 'consumer loyalty program' that results from private expenditure assessable?*
- [Rewards received under consumer loyalty programs](#)

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