



Australian Government

Gift card expiry dates

Consultation paper on proposed regulations

July 2018

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CONSULTATION PROCESS

REQUEST FOR FEEDBACK AND COMMENTS

Interested parties are invited to comment on this consultation paper and accompanying draft legislation.

While submissions may be lodged electronically or by post, electronic lodgement is preferred. For accessibility reasons, please submit responses sent via email in a Word or RTF format. An additional PDF version may also be submitted.

All information (including name and address details) contained in submissions will be made available to the public on the Treasury website unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain confidential should provide this information marked as such in a separate attachment.

Closing date for submissions: 5pm Thursday, 9 August 2018

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NEW GIFT CARD REQUIREMENTS

INTRODUCTION

1. The Government is proposing to introduce new requirements for gift cards aimed at ensuring consumers are given a reasonable period of time to use their cards, improved access to expiry date information and limiting post-purchase fees. Implementing the gift card reforms at the Commonwealth level will provide national consistency for gift card regulation, businesses with certainty and keep compliance costs to a minimum. The reforms are subject to the agreement of state and territory Consumer Affairs Ministers.
2. The key elements of the reforms are:
 - mandating minimum three year expiry dates for gift cards;
 - requiring gift cards to display expiry dates; and
 - banning post-purchase fees on gift cards (other than fees associated with settling individual purchases using gift cards).
3. To implement these reforms the Government is currently consulting on the *Competition and Consumer Amendment (Gift Cards) Bill 2018* (the Bill). It sets out: the definition of a gift card; obligations relating to the expiry period; post-purchase fees and displaying expiry dates; associated penalties for non-compliance; and a regulation-making power.
4. This consultation paper provides additional information on how the Government intends to use the Bill's regulation making power to further clarify the scope of the reforms in relation to defining which gift cards are subject to the reforms.
5. In addition, the Bill's regulation-making power will provide an ability to exempt certain gift cards, persons and circumstances from the reforms. This will allow the Government to provide certainty about the operation of the reforms and a mechanism to accommodate normal business activities involving gift cards. This flexible approach will also allow the Government to make timely changes based on the changing environment and to take into account future changes and developments to technology.
6. The Bill's regulation-making power will also allow the Government to provide an exhaustive list of fees that suppliers of a gift card can charge post-purchase. This will provide certainty for businesses. Using regulations allows the Government to make timely changes based on the environment and changes to technology to ensure the list stays fit for purpose.
7. The Government will release the proposed regulations for consultation with stakeholders and the states and territories at a later date.
8. The reforms will commence on 1 November 2019, providing industry with a transitional period for both the legislation and regulations to allow businesses sufficient time to adjust their practices if necessary.

CLARIFYING THE DEFINITION OF GIFT CARDS

Commonly known as a gift card or voucher

9. The Bill provides that any card or voucher 'of a kind commonly known as a gift card or gift voucher' will: have a minimum expiry period of three years, will display an expiry date and will not be subject to post-purchase fees.
10. Items that would not be 'of a kind commonly known as a gift card or gift voucher' include such things as:
 - credit, charge and debit cards;
 - bus tickets;
 - travellers cheques;
 - travel cards;
 - digital currency; and
 - stamps.

Discount coupons and vouchers

11. Discount coupons and vouchers are offered in a variety of forms, but would not meet the definition of a gift card. A common feature of discount coupons and vouchers is that they cannot, alone, be exchanged for goods and services. Generally, a consumer would need to make a payment/provide consideration with the discount coupons or discount voucher to obtain the good or service.
12. Examples of coupons and discount vouchers include:
 - a dollar discount on the price of a good or service (e.g. a store voucher offering \$10 off the recommended retail price of a book);
 - a percentage discount on the price of a good or service (e.g. a store voucher offering 20 per cent off the recommended retail price of a laptop);
 - a voucher offering a bonus gift with a purchase (e.g. a store voucher entitling the holder to buy one pair of jeans and get one free); or
 - a docket discount or purchased discount book offering deals similar to the above.
13. For the avoidance of doubt, the regulations could provide that discount coupons and discount vouchers are not gift cards.

Stakeholders are invited to comment on whether it is necessary for the regulations to explicitly exempt discount coupons and discount vouchers.

Re-loadable prepaid cards used to purchase goods or services

Some cards can be used to pay for goods or services, but can also have their value increased after they've been issued. These are typically used repeatedly by a single individual to make

payments using their own funds, rather than as gift cards. These cards are commonly known as reloadable prepaid cards and are generally provided by VISA, Mastercard and Eftpos.

14. It is proposed these cards would be specifically excluded by the regulations from the definition of a gift card:

For the purposes of section 99A of the Australian Consumer Law, an article of any of the following kinds is not a gift card:

- a. articles that:
 - i. can be used to make a payment for goods or services; and
 - ii. can have its value increased after it is issued other than because of a reversal of a payment made using the article or the correction of an error.
15. Prepaid cards that are not reloadable are more likely to be 'commonly known' to be gift cards. As such, they would not be exempt and would need to comply with the new requirements.

Stakeholders are invited to comment on whether the distinction between reloadable and non-reloadable cards has been adequately described.

EXEMPTIONS

Cards redeemable for electricity, gas and telecommunications

16. It is proposed the Regulations would provide an exemption for cards or vouchers that are only redeemable for electricity, gas and telecommunications. Such cards are typically in the form of pre-paid cards and vouchers used by an individual who purchases it to pay for their use of utilities.
17. Examples include:
- a \$60 prepaid mobile broadband voucher entitling the consumer to 25GB of data for use within 30 days; or
 - a \$50 pay-as-you-go electricity card. The card has a 60 day expiry period. The card enables the consumer to transfer the \$50 value of the card to their home electricity meter by swiping (effectively prepaying their use).
18. Gift cards for digital goods such as online games or music (generally obtained using data through a telecommunications service) would not be exempt.
19. Similarly, gift cards that may be redeemable for a range of goods or services, but incidentally applied to utilities would also not be exempt, such as:
- A consumer purchases a \$100 shopping centre gift card. The consumer can use the card at any store at their local shopping centre, but chooses to purchase \$100 phone credit.
20. A similar exemption is currently in place in New South Wales (NSW) in Regulation 23A(1)(d) of the *Fair Trading Regulation 2012*.

Time-limited goods and services

21. It is proposed the Regulations would provide an exemption for cards or vouchers redeemable for goods or services that: are only available for a limited period of time; and expire at the end of that specified period. It is aimed at one off, time-bound events that cannot be exchanged for another event; or limited edition goods that are not available at any other time.
22. Examples include:
 - gift cards providing entry to a temporary exhibition, a festival, or theatre production with a limited season; or
 - a restaurant gift voucher for a Christmas in July menu only available in July.
23. A similar exemption is currently in place in NSW in Regulation 23A(1)(i) of the *Fair Trading Regulation 2012*.

Cards and vouchers issued for temporary marketing purposes

24. It is proposed the Regulations would provide exemptions for cards or vouchers supplied as part of a short-term promotion or marketing strategy and:
 - only redeemable for the particular good or service and sold at a genuine discount to the price of the good or service;
 - given in connection with a purchase of a good or service and only redeemable in-store; or
 - given for no consideration.
25. These proposed exemptions are aimed at supporting new businesses to build up their customer base and other businesses, especially small businesses, which use temporary promotions to manage demand during off-peak periods and stock levels.

Cards and vouchers that can be exchanged for a particular good or service and sold at a genuine discount

26. This proposed exemption is intended to support businesses wishing to clear inventory or increase demand for goods and services, while also ensuring that consumers receive a genuine discount.
27. Examples include:
 - a consumer visits a website and buys a 3-day theme park pass for \$105 (normally sold for \$150 = a 30 per cent discount) to be used within three months;
 - a consumer purchases a voucher for a facial and massage valid for six months. The voucher cost \$210, which is \$90 (40 per cent) less than the regular price for the massage;
 - a consumer purchases a movie deal package entitling them to attend the screening of a particular blockbuster movie, a drink and gold class seating, where the package is sold at a 35 per cent discount to the usual price; or

- a consumer purchases a book of 10 movie vouchers which they can exchange for a movie ticket at a cinema chain and will expire in 6 months. The consumer purchases the vouchers at a 40 per cent discount to the regular price of a movie ticket.
28. A similar exemption is currently in place in NSW in Regulation 23A(1)(j) of the *Fair Trading Regulation 2012*.
29. Consistent with the NSW laws relating to gift cards, it would be expected that the discount offered by the business would reflect a genuine promotion rather than a small discount to circumvent the new requirements.

Stakeholders are invited to comment on the need to set a benchmark for a genuine discount. For example, would a 30 per cent threshold be an appropriate benchmark?

Cards and vouchers given in connection with a purchase of a good or service for use in the same business

30. This proposed exemption would address situations where a business runs a temporary promotion in which consumers receive a bonus gift when they purchase goods and services and consumer can only use the gift at the same business.
- For example, an online clothing retailer has a marketing promotion where they provide a \$10 gift card for use at the same business when a consumer buys any three shirts of a particular brand. The voucher expires in 90 days.
31. The proposed exemption would not apply to situations where the business running the promotion provides a gift card for use at a different business.
- For example a health insurer has a marketing promotion where they offer a \$200 gift card (for use at a major retailer) if a new customer takes out a health insurance policy.
32. The limitation is aimed at achieving a balance between:
- the need for businesses to offer temporary marketing promotions to manage stock and demand; and
 - reducing the confusion for consumers who may receive the same gift card under different circumstances (e.g. with a purchase or as a gift) resulting in different expiry periods.

Stakeholders are invited to comment on the proposed exemption including any consequences of limiting this exemption to gift cards for use in the same business.

33. A similar exemption is currently in place in NSW in Regulation 23A(1)(g) of the *Fair Trading Regulation 2012*.

Cards and vouchers where no consideration has been provided in exchange for the card or voucher

34. This exemption addresses circumstances where a business supplies a gift card or voucher as part of a temporary marketing promotion and the consumer receiving the

free gift card or voucher has not paid for the voucher directly or indirectly. These would be captured as they are supplied for promotional purposes.

35. For example:

- a local shopping centre has a one-day marketing promotion where each visitor to the shopping centre on that day is handed a \$20 shopping centre gift card. The gift card is valid for use at any store in the shopping centre for that day only;¹
- a \$50 wine voucher valid for one month that is mailed to a consumer as a free bonus with a purchased item (i.e. it was not part of the purchase offer); or
- a new suburban bakery business distributes a voucher to each residential letterbox in the suburb for three free cinnamon doughnuts. Recipients can claim the doughnuts during the first two weeks of opening.

36. This exemption would not be available for gift cards or vouchers provided where consumers provide some kind of consideration. This may occur, for example, when:

- a gift card is provided under a customer loyalty scheme when the consumer signs up a friend, fills out a market research survey, or exchanges points, miles, or credits obtained from other purchases;
- a consumer buys five packs of cereal and sends the bar codes to the manufacturer to receive a \$10 gift card;
- a consumer wins a gift card after buying a ticket in a raffle or entering a raffle after they purchased a product; or
- a consumer who pays a fee to become a club member and is sent a birthday gift voucher for a free meal and drink at the club bistro.

37. While there is no similar exemption in the NSW laws, the NSW laws only apply to gift cards that are sold. The proposed Bill would apply to cards that are supplied in trade or commerce.

Stakeholders are invited to provide other examples of cards and vouchers where no consideration is provided.

Stakeholders are also invited to comment on whether the above examples would be commonly known to be gift cards and whether such an exemption is necessary.

EXTENT OF THE EXEMPTIONS

38. The Government is considering whether it is appropriate to exempt cards and vouchers from all of the new requirements (three year expiry period, displaying an expiry date and a ban on post-purchase fees) or only particular requirements (such as the three year expiry period).

¹ Note that the time limited goods and services exemption would not apply to this example, because the gift card does not relate to goods or services that are only available for a limited period of time. Rather, the gift card is limited in time by the promotion.

39. For example, cards and vouchers that meet the definition of a gift card, but are exempt (as outlined above) may provide an expiry period of less than three years. In these circumstances, it may be appropriate for these cards to still be required to display an expiry date. This would give consumers the information they need to understand when their gift card expires, assisting them to use the full value of the card before it expires.

Stakeholders are invited to comment on any practical consequences of requiring gift cards that meet any one of the exemption categories to still display an expiry date and/or be prevented from charging post-purchase fees.

POST-PURCHASE FEES

40. The Bill provides that post supply fees may not be charged in relation to gift cards.
41. Consumers may suffer losses where businesses charge fees for services such as card activation, account keeping and balance checking.
42. A similar problem can arise if businesses charge a fee when a gift card has been inactive for a period of time. For example, where a consumer does not use a gift card for six months, a business may have a policy of charging a monthly fee against the balance of the card until: the card is used or the value of the card reaches zero. These types of fees could undermine the benefits of providing a longer expiry period if the fees reduce gift card balances to zero before the end of the minimum three year expiry period.
43. The ban would not cover fees businesses charge to recover the costs of settling individual purchases made by consumers through payment systems. Examples include currency conversion fees (when consumers buy goods from overseas websites), booking fees and surcharges included in the cost of a purchase. Businesses would also continue to be able to charge an upfront fee when a consumer purchases a gift card.
44. All post-supply fees would be banned, except those excluded by the regulations. The regulations would cover:
- fees or charges for making a booking;
 - fees or charges for disputing a transaction;
 - foreign currency transaction fees or charges;
 - fees or charges for the reissue of a gift card that has been lost, stolen or damaged;
 - fees or charges for processing a transaction if:
 - the transaction involves a gift card; and
 - the fees or charges do not exceed the amount of the fees or charges payable to the operator of the payment system used to process the transaction.

Given the intent of the policy described above, stakeholders are invited to comment on:

- any other fees that should be considered for exclusion (i.e. be allowed) because they relate to the settlement of individual purchases made by consumers through payment systems; and
- the effectiveness of the above clause in describing the fees and any unintended consequences.