



**EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY | HUKIHUKI HURANGA
- MŌ TE TĀKUPU ME TE MATAPAKI ANAKE**

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Send feedback to | Tukuna mai ngā whakahokinga kōrero ki
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Notes | Pitopito kōrero:

QUESTIONS WE'VE BEEN ASKED | PĀTAI KUA UIA MAI

What is the income tax treatment of gift cards and products provided as trade rebates or promotions?

Issued | Tukuna:

QB XX/XX

This Question We've Been Asked explains the income tax treatment of gift cards and products provided by trade suppliers to trade customers (business to business) as trade rebates, promotions, or rewards for trade customers buying goods or services from trade suppliers.

Key provisions | Whakaratonga tāpua

Income Tax Act 2007 – ss CB 1, CE 1, CX 2(1), DA 1, RD 26, RD 27(2) and RD 45

Question | Pātai

What is the income tax treatment of gift cards and products provided by trade suppliers to trade customers as trade rebates and promotions for:

- the trade customer;
- employees, when trade customers provide the gift cards or products to their employees, directly or indirectly, by allowing employees to uplift and retain the cards or products; and
- the trade supplier?

Answers | Whakautu

Trade customers – gift cards

- The gift cards are income of the trade customers in the amount of the face value of the cards.
- “Open loop” gift cards are money, and when they are provided directly or indirectly by trade customer employers to:
 - non-shareholder employees are employment income. In such cases PAYE income payments, in the amount of the face value of the cards grossed up by the applicable PAYE tax rate, must be withheld and paid by the trade customer; and
 - shareholder-employees are income. The tax treatment will depend on whether a shareholder–employee has elected for amounts paid to them in their capacity as an employee to be treated as income other than from a PAYE income payment (if no election is made amounts paid are PAYE income payments).
- “Closed loop” gift cards provided directly or indirectly by trade customer employers to:
 - non-shareholder employees are an unclassified fringe benefit with a fringe benefit value of the face value of the cards. Trade customers are liable to pay FBT on that value (subject to the liability thresholds for unclassified benefits); and
 - shareholder-employees are an unclassified fringe benefit (as above) unless trade customer employers choose to have the cards treated as dividends.

Trade customers – products

- The products are income of the trade customers in the amount of the realisable value of the products (that is, their “secondhand value”).

- If the products are depreciable property of the trade customers, there is no amount of depreciation loss.
- Products provided directly or indirectly by trade customer employers to:
 - non-shareholder employees are an unclassified fringe benefit with a fringe benefit value of their market value, and the trade customers are liable to pay FBT on that value (subject to the liability thresholds for unclassified benefits); and
 - shareholder-employees are an unclassified fringe benefit (as above) unless trade customer employers choose to have the products treated as dividends.

Trade suppliers – gift cards and products

- Trade suppliers are allowed a deduction for the amount of expenditure incurred on the gift cards or products.

Key terms | Kīanga tau tāpua

Closed loop card means a prepaid card that is accepted for payment by only a specific merchant or multiple merchants at the same location (such as a shopping mall) and can be used until the preloaded monetary value is depleted or the card expires.

Open loop card means a prepaid card co-branded with a credit card (or other payment network) processor that is accepted for payment by merchants anywhere the network processor's brand is accepted (that is, in the world, in-store or online) and can be used until the pre-loaded monetary value is depleted or the card expires.

Product and card trade rebates means goods, closed loop cards and open loop cards that trade suppliers provide to trade customers because of their purchases of goods and services from the trade suppliers.

Trade customer means a person carrying on a business who buys goods or services from trade suppliers.

Trade supplier means a person carrying on a business who sells goods or services to (not necessarily exclusively) trade customers.

Explanation | Whakamāramatanga

All statutory references are to the Income Tax Act 2007 unless otherwise stated.

Introduction

1. A common commercial practice is for trade suppliers to provide rebates to their trade customers in the form of discounts to prices. Trade suppliers may provide the discounts at the time of purchase or by issuing invoices for the full (non-discounted) purchase price and credit notes for the discounts. This Question We've Been Asked (QWBA) is not concerned with price discount trade rebates.
2. However, the Commissioner is aware of an increasing practice of trade suppliers providing rebates to their trade customers in the form of product and card trade rebates and that some trade customers provide the products and cards to their employees. The Commissioner understands that in some instances the product and card trade rebates are being incorrectly viewed or are being promoted as "tax free" to the trade customers.
3. Taxpayers are subject to various statutory obligations, including an obligation, unless they are non-filing taxpayers, to correctly determine the amount of tax they have payable. Taxpayers who do not comply with their statutory obligations are liable for civil and criminal penalties under the Tax Administration Act 1994. Trade customers are filing taxpayers and must determine the correct amount of tax payable when filing returns and making assessments of tax.
4. To help taxpayers comply with their obligations, the Commissioner has been asked to explain how the income tax laws apply when:
 - trade suppliers provide product and card trade rebates to trade customers;
 - trade customers use products received as trade rebates in their businesses; and
 - trade customers provide the product and card trade rebates to their employees either directly or indirectly (that is, by allowing the employees to uplift products and cards from trade suppliers and retain them for their private use).

Trade customers

5. This section explains that:
 - product and card trade rebates are business income (from [6]);
 - there is no deduction for depreciation loss for trade rebate products used in carrying on a business (from [27]);
 - open loop cards provided to employees are income (from [30]); and
 - closed loop cards and products provided to employees are fringe benefits (from [43]).

Product and card trade rebates are business income

6. An amount is income of a person if its income under a provision in Part C.
7. Section CB 1 is the general rule for income from business:

Business generally

CB 1 Amounts derived from business

Income

- (1) An amount that a person derives from a business is income of the person.

Exclusion

- (2) Subsection (1) does not apply to an amount that is of a capital nature.

Amount

8. The definition of "amount" for the purposes of the Act has eight paragraphs – paras (a) to (h) (s YA 1). The definitions in paras (b) to (h) are for specific sections that do not include s CB 1. The general definition in para (a) is an inclusive definition and provides that the word amount "includes an amount in money's worth". Words that are inclusively defined in legislation have their ordinary meaning (which is left undefined) and an enlarged or special meaning given by the inclusive definition.

Money and money's worth

9. In the context of income tax legislation, the ordinary meaning of "amount" includes "money", which is defined in the *Concise Oxford English Dictionary* to mean a medium of exchange in the form of banknotes and coins.¹
10. In the digital era, it is also accepted that money includes "electronic money" (e-money). There is no definition of e-money in New Zealand legislation. There are definitions in overseas jurisdictions' legislation, and many articles (from the mid-1990s) by regulators and academics have considered e-money. The Commissioner considers that the definition of e-money in Directive 2009/110/EC of the European Parliament and Council reflects the essential characteristics of e-money (at art 2(2)):²

¹ *Concise Oxford English Dictionary* (12th ed, Oxford University Press, 2011). The word money is defined in the Act for specific provisions, which do not include s CB 1 or the definition of amount.

² Directive 2009/110/EC of the European Parliament and of the Council (European Parliament, Council of the European Union, 16 September 2009).

“electronic money” means electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions ... and which is accepted by a natural or legal person other than the electronic money issuer.

11. The expression “money’s worth” has a technical legal meaning – a thing is money’s worth if it is convertible, in one or more steps, into money. The idea underlying the money’s worth principle is that:
- income tax is a tax on income (that is, something that goes into a person’s pocket); and
 - for something to be income it needs to be capable of being turned (converted) into money, so its monetary value can be ascertained and tax imposed and quantified on that monetary value.

It is not necessary that the thing is in fact converted into money, all that is necessary is that it is something of a kind that can be turned into money.³

12. The money’s worth of something that can be turned into money is the market value that would be obtained for the thing if it were sold (that is, its secondhand market value).

Products are “money’s worth”

13. Products (goods) provided as trade rebates by trade suppliers to trade customers are money’s worth because the products can be sold for money. For example, a microwave oven provided as a trade rebate can be sold by a trade customer and the money’s worth of the microwave oven is the price the trade customer would receive for the microwave oven if sold.

Open loop cards are money and closed loop cards are money’s worth

14. In the payments processing industry, prepaid cards are generally described as being one of three types: open loop, closed loop, and semi-open/closed loop cards.⁴
15. Closed loop cards are accepted by only a specific merchant and semi-open/closed cards are accepted by multiple merchants at the same location (for example, a

³ *Abbott v Philbin (Inspector of Taxes)* [1960] 2 All ER 763 (HL).

⁴ For a brief discussion of the three types of cards, see *Epay New Zealand Limited and Ezi-Pay Limited & Ors* [2012] NZCC 13 at [135] – [137].

shopping mall). For the purposes of this QWBA, semi-open/closed loop cards are treated as closed loop cards.

Open loop cards are money

16. In the article “New Zealand’s payment landscape: A primer”, the authors explain:⁵
- a payment occurs when funds are transferred in exchange for goods and services;
 - payment instructions are used to instruct a transfer of value; and
 - electronic payment instruments can be categorised into interbank payments, card instruments and e-money.
17. In relation to e-money, the authors cite the European Parliament and Council definition (in [10]) and explain the following:
- E-money is an electronic representation of funds held on a piece of hardware (that is, on a prepaid card) or on software (that is, in a mobile wallet) that can be used for making payments to other parties outside the e-money issuer.
 - E-money is separate to funds issued by a commercial bank and held in a transaction account. E-money refers to funds issued by a third party in exchange for cash or commercial bank money (in a transaction account). The e-money funds are held in an account managed by the issuer.
 - E-money takes several forms, including funds held on plastic and online gift cards that can be used with multiple merchants and are recognised outside the issuer. Many types of mobile wallets issue e-money, including PayPal and Google Pay.
18. The Commissioner considers that open loop cards are e-money and money. This is because money in the form of banknotes and coins (cash) and e-money are both widely accepted mediums of exchange to pay for goods and services. Open loop cards co-branded with a credit card are (generally) accepted anywhere in the world (and online) wherever the credit card is accepted for payment, so are more widely accepted as a medium of exchange than New Zealand cash.
19. It follows that the “amount” of an open loop card is the preloaded monetary value (face value) of the card.

⁵ L Dudson, L Gillies and A Wadsworth, New Zealand’s payment landscape: A primer *Reserve Bank of New Zealand Bulletin* Vol 85, No 3 (November 2022) at 2 and 16.

Closed loop cards are money's worth

20. Closed loop cards are not widely accepted as a medium of exchange to pay for goods and services. They are recognised or accepted only by the issuer for payment. Closed loop cards include merchant-specific cards, shopping mall-specific cards and transport cards.
21. The Commissioner considers that closed loop cards are not e-money and are not money because they are not widely accepted as a medium of exchange to make payment for goods and services. However, closed loop cards are money's worth because they can be converted into money. An issue, however, is what is the money's worth of a closed loop card – its preloaded monetary (face) value or the convertible value of the thing purchased with the card?
22. The Commissioner considers the money's worth of a closed loop card is its preloaded monetary value (face value) because the card can be used to buy (or be applied towards the purchase of) goods and services up to the preloaded amount. Furthermore, the original form of prepaid cards were paper vouchers, and it has been accepted that the monetary value of such vouchers is their face value. In the English case *Laidler v Perry (Inspector of Taxes)*,⁶ an employer provided Christmas gifts to each of its 2,300 employees in the form of £10 vouchers enabling them to buy articles at shops of their choice. The taxpayer had been assessed for income tax on the £10 face value of the voucher for the 1955–56 to 1960–61 income years. The main issue before the Court of Appeal and House of Lords was whether the vouchers were a taxable benefit from employment (a reward for services) or a non-taxable gesture of goodwill. Both the Court of Appeal and House of Lords found the vouchers were rewards for services and taxable. The assessments were therefore upheld. In the Court of Appeal, the taxpayer argued that if the vouchers were taxable, the amount to be assessed was something less than their face value of £10. Before the House of Lords, the taxpayer did not dispute that the value of each voucher was its face value.

Derived from a business

23. The ordinary meaning of “derive” is to obtain something from a specified source.⁷ The requirement in s CB 1(1) is that a person obtains an amount from the specified source of a business carried on by the person. Trade customers satisfy this requirement

⁶ *Laidler v Perry (Inspector of Taxes)* [1965] 2 All ER 121 (HL), *Laidler v Perry (Inspector of Taxes)* [1964] 3 All ER 329 (CA).

⁷ *Concise Oxford English Dictionary* (12th ed, Oxford University Press, 2011).

because they obtain product and card trade rebates in the ordinary course of carrying on their businesses.

24. In income tax legislation, the meaning of derive and the principles of derivation have further aspects. These aspects are the timing of the derivation of an amount and the principle that the receipt of an amount of income is not “derived”, if the amount has not yet been earned (that is, the amount is a prepayment) and is subject to a contingency of repayment. These further aspects are not relevant to product and card trade rebates, which are derived when received by trade customers and are not subject to a contingency of repayment.

Capital in nature exclusion

25. The law is settled on the approach to apply to determine whether an amount received by a business is income or capital in nature.⁸ When a receipt arises from ordinary business operations or as an ordinary incident of the business, this stamps the receipt with the character of income. A receipt is capital in nature if it does not arise from ordinary business operations and results in an essential change in the nature or to the structure of the business. Payments made voluntarily, when the payer is under no contractual obligation to make the payment, and received in the ordinary course or as an ordinary incident of carrying on a business are income, not capital, in nature for the recipient of the payment.⁹
26. Product and card trade rebates received by trade customers are income in nature. This is because the products and cards are received in the ordinary course or as an ordinary incident of the trade customer carrying on their businesses, with the purchasing of goods and services from trade suppliers being part of those ordinary business operations. And furthermore, the receipt of product and card trade rebates by trade customers does not result in any change in the nature or to the structure of the trade customer’s business.

No deduction for depreciation loss for trade rebate products used in carrying on a business

27. Under s DA 1(1), the general permission, a person carrying on a business for the purpose of deriving assessable income or excluded income or a combination of the

⁸ *CIR v Wattie* [1999] 1 NZLR 529 (PC), *Birkdale Service Station Ltd v CIR* [2001] 1 NZLR 293 (CA).

⁹ *FCT v Squatting Investment Co Ltd* [1954] 1 All ER 349 (PC), *Cromwell Jockey Club* (1954) 10 ATD 431 (SC).

two is allowed a deduction for an amount of expenditure or loss, including an amount of depreciation loss, incurred in the course of carrying on their business.

28. Trade customers have no deduction for expenditure on product and card trade rebates because they incur no expenditure on them. Trade customers are allowed deductions for the cost of goods and services they buy from trade suppliers that give rise to the trade suppliers providing product and card trade rebates to the trade customers. However, that expenditure is for the goods and services and not for the product and card trade rebates.
29. Trade customers who receive products as trade rebates may use the products in carrying on their businesses. If the products are items of depreciable property, trade customers have no amount of depreciation loss because they incur no cost to acquire the products.¹⁰

Open loop cards provided to employees are income

30. Some trade customers who receive open loop cards as trade rebates provide the cards to their employees, either directly or indirectly (that is, by allowing the employees to uplift the cards from trade suppliers and retain them for their private use).
31. How the income tax laws apply depends on whether the employee is a shareholder in the trade customer.

Non-shareholder-employees

32. Section CE 1(1) specifies the types of amounts derived by persons in connection with their employment that are treated as (employment) income, including "any other benefit in money".¹¹ The Commissioner (as mentioned earlier) considers that open loop cards are e-money and money. It follows from this that the trade rebate open loop cards that trade customer employers provide to their employees are "any other benefit in money" and (employment) income of the employees.
33. Salary and wages and "extra pay" are PAYE income payments.¹² The term "salary or wages" is defined in s RD 5(1) and means (relevantly) a payment of salary or wages and excludes the payment of an extra pay.
34. The term extra pay is defined in s RD 7. It means a payment made to an employee that is not a payment regularly included in their salary or wages, is not overtime pay, and is

¹⁰ Sections EE 22, EE 38 and EE 57.

¹¹ Section CE 1(1)(g).

¹² Section RD 3.

made in one lump sum or two or more instalments. While it is a question of fact in each case, the Commissioner considers that in most instances when trade customer employers provide trade rebate open loop cards (money) to their employees the cards are extra pay. This is because it will be rare for such cards to be regularly included in employees' salary or wages. In the rare case when trade rebate open loop cards are regularly included in the salary or wages of employees of trade customers, the cards will be salary or wages and not extra pay.

35. When trade customers provide trade rebate open loop cards (money) to their employees, the cards are PAYE income payments, and the trade customers must withhold an amount of tax for the payments and pay the withheld amount to the Commissioner.¹³ The amount of tax that trade customers must withhold depends on whether the PAYE income payment is an extra pay or salary or wages and on the expected taxable income of the relevant employee for the income year. Trade customers will need to gross up the face value of the open loop cards (since the face value is the amount of money received by the employees) by the applicable PAYE tax rate and pay the grossed-up amount less the face value of the cards to the Commissioner. PAYE paid by an employer is a tax-deductible expense.¹⁴ For comprehensive information on withholding amounts of tax for PAYE income payments, see Employer's guide – Information to help you with your responsibilities as an employer – [IR335](#)¹⁵ and Weekly and fortnightly PAYE deduction tables – [IR340](#).¹⁶ Further information is also available on Inland Revenue's website, including PAYE calculators.
36. If an employer, for any reason, does not withhold tax from a PAYE income payment, the employee must pay the amount of the tax to the Commissioner.¹⁷

Shareholder-employees

37. A shareholder-employee is a person who is a shareholder in and an employee of the employer company and receives or is entitled to receive salary or wages or income that is not a PAYE income payment.¹⁸

¹³ Sections BE 1(1), RA 5 and RD 4.

¹⁴ Section DB 1(2)(b).

¹⁵ Employer's guide – Information to help you with your responsibilities as an employer – IR335 (guide, Inland Revenue, July 2024).

¹⁶ Weekly and fortnightly PAYE deduction tables – Tax tables for pay periods between 31 July 2024 and 31 March 2025 – IR340 (Inland Revenue, August 2024).

¹⁷ Section RD 21.

¹⁸ Section YA 1 definition of "shareholder-employee".

38. Shareholder-employees of smaller companies often do not derive regular amounts of salary or wages or do not get paid in regular periods throughout the year. Also, their remuneration for the income year often depends on the profitability of the business, and this is not known until after the end of the income year and completion of annual accounts.
39. Treating irregular amounts of income received by shareholder-employees during the income year as PAYE income payments can present compliance difficulties. To address this, s RD 3B allows shareholder-employees of smaller companies (that is, close companies or companies with 25 or fewer shareholders that are not look-through companies) to choose, if a qualifying circumstance exists, to have all amounts of income they receive as not being subject to PAYE.
40. Section RD 3C allows shareholder-employees of smaller companies to choose to split their income so that their base salary is subject to PAYE and variable amounts of income are not subject to PAYE. If a shareholder-employee chooses to apply s RD 3B or s RD 3C,¹⁹ the amounts received during the income year not subject to PAYE are taxable in the shareholder-employees' tax returns.²⁰
41. As mentioned, open loop cards are e-money and money. How the income tax laws apply to open loop cards (money) provided by trade customers to shareholder-employees of the trade customers depends on whether the shareholder-employees have made an election under s RD 3B or s RD 3C or have made no election under either section.
42. If no election is made, an open loop card a shareholder-employee receives is an extra pay (assuming the cards are not regularly included in the salary or wages of the shareholder-employee). If an election is made under s RD 3B or s RD 3C, the open loop card is not subject to PAYE and is taxable in the shareholder-employee's tax return.

¹⁹ A taxpayer makes an election to apply s RD 3B or s RD 3C by filing a return that applies the applicable section. If a taxpayer elects to have amounts paid to them in their capacity as an employee of the company treated as income other than from a PAYE income payment, that treatment applies for the income year of election and in later income years.

²⁰ Irregular amounts (non-PAYE income payment amounts) received during the income year by a shareholder-employee are commonly referred to as "drawings" and create debits in the shareholder-employee's current account. After the end of the income year and finalisation of the company's accounts, an amount is generally allocated as a shareholder-salary and/or dividends are declared and the salary and/or dividends are credited to the shareholder's current account with retrospective effect. Debit balances in shareholder-employee current accounts can have FBT consequences. These are explained in Fringe benefit tax guide – A guide to working with FBT – IR409 (guide, Inland Revenue, July 2024) at 22.

Closed loop cards and products provided to employees are fringe benefits

Closed loop cards are neither e-money nor money

43. As mentioned above, the Commissioner considers that closed loop cards are not e-money and are not money. It follows from this that the trade rebate closed loop cards that trade customer employers provide to their employees are not “any other benefit in money” and are not (employment) income of the employees.
44. The FBT rules apply to an employer who provides a fringe benefit to their employees in connection with their employment.²¹
45. The term “fringe benefit” is defined in s CX 2(1) and means a benefit an employer provides to an employee in connection with their employment that either arises in a way described in ss CX 6, CX 9 or CX 10 or ss CX 12 to CX 16 or is an unclassified benefit (that is, a fringe benefit not referred to in ss CX 6 to CX 16) and is not a benefit specifically excluded from being a fringe benefit under the exclusions in ss CX 19 to CX 33B.
46. The word “benefit” is not defined for the purposes of the Act so takes its ordinary meaning. The *Concise Oxford English Dictionary* relevantly defines benefit to mean “an advantage or profit gained from something”. In the commentary on [BR Pub 14/10: FBT – Provision of benefits by third parties – Section CX 2\(2\)](#), the Commissioner considered the purpose of the FBT rules and said fringe benefits are benefits that provide an economic advantage to an employee because they reduce an employee’s need to meet private expenditure from their income and are, in economic terms, equivalent to the payment of additional salary or wages in money to an employee.
47. A closed loop card an employer provides to an employee for the employee’s own use is a fringe benefit. This is because the card is a benefit (advantage) to the employee as it reduces the employee’s need to meet private expenditure from their salary or wages. A closed loop card is an unclassified benefit because it does not arise in a way described in ss CX 6, CX 9 and CX 10 or ss CX 12 to CX 16, and none of the exclusions in ss CX 19 to CX 33B applies.
48. The FBT rules determine the value of a fringe benefit. Section RD 27(2) contains a default valuation rule. It provides that if the value of a fringe benefit cannot be ascertained under ss RD 28, RD 29 and RD 33 to RD 41, the value is market value as defined in s RD 27(3) or otherwise as the Commissioner determines. Since the

²¹ Section RD 25(2).

valuation rules in s RD 28, RD 29 and RD 33 to RD 41 do not apply to an unclassified benefit, the default valuation rule applies. The definition of “market value” in s RD 27(3) is the price normally paid for the fringe benefit in a sale in the open market, freely offered, made on ordinary trade terms, and made to a member of the public. The price normally paid to purchase a closed loop card from the issuer of the card is the face value of the card. To provide certainty to taxpayers, the Commissioner determines that the (fringe benefit) value of a closed loop card is its preloaded (face) monetary value.

49. Whether an employer is liable to pay FBT on a trade rebate closed loop card provided to an employee depends on whether the *de minimis* exemptions for unclassified benefits are exceeded. The exemptions are in s RD 45. If the total value of unclassified benefits an employer provides do not exceed the exemption threshold for the applicable FBT period, the employer is not liable to pay FBT on the unclassified benefit. If an exemption is exceeded, the employer is liable to pay FBT on the total value of the unclassified benefits provided. The relevant exemptions depend on whether an employer pays FBT quarterly, annually, or on an income-year basis.
50. FBT paid by an employer is generally a tax-deductible expense.²²

Products

51. Trade rebate products that trade customers provide to their employees are fringe benefits.
52. Products are goods. Section RD 40 has three valuation rules for goods. The first rule applies when the person providing the goods manufactured, produced or processed them. Under the first rule, the value is the market value of the goods. The second rule applies when the person providing the goods acquired them or paid for them to be acquired, dealing at arm’s length with the supplier of the goods. Under the second rule, the value is the cost of the goods to the person²³. However, neither of these rules can apply to determine the value of trade rebate products. The first rule does not apply because trade customers do not manufacture, produce or process the products. And the second rule does not apply because the arm’s length dealing by trade customers is to acquire goods or services and not the trade rebate products (that is, trade customers incur no cost to acquire a trade rebate product). The third rule

²² Section DB 1(2)(b).

²³ Cost for a person registered for GST means the GST inclusive cost of the goods bought and for a person not registered for GST means the amount paid by the person for the goods - s RD 40(3).

depends on the first or second rule applying and since neither applies to trade rebate products, the third rule cannot apply.

53. Since the fringe benefit value of trade rebate products cannot be ascertained under s RD 40, the default valuation rule in s RD 27(2) applies – market value or otherwise as the Commissioner determines. The value of trade rebate products under the default valuation rule is market value (as defined in s RD 27(3)).²⁴ In this case, the retail price of the product.
54. Trade rebate products are unclassified fringe benefits, and whether an employer is liable to pay FBT on a trade rebate product provided to an employee depends on whether the *de minimis* thresholds, discussed at [49], for unclassified benefits are exceeded.

Closed loop cards and products provided to shareholder-employees are fringe benefits or dividends

55. For the purposes of the FBT rules, an employee includes a person who is a shareholder-employee.²⁵
56. A non-cash benefit provided to a shareholder-employee is treated as having been provided in connection with employment, and the employer can choose to treat the non-cash benefit as a fringe benefit or a dividend.²⁶ If an election is not made, the FBT rules apply. If an election is made, the dividend rules (and not the FBT rules) apply, and the company employer must give notice of the election to the Commissioner in the time allowed for filing an FBT return for the period in which the benefit is provided.²⁷
57. Trade rebate closed loop cards and products are non-cash benefits, and when trade customer company employers provide such non-cash benefits to shareholder-employees the benefits are treated as having been provided in connection with employment. Trade customer company employers can choose to treat the closed loop cards and products as fringe benefits or dividends. If the trade customer makes no election, the FBT rules apply. If an election is made to treat the closed loop cards and

²⁴ Section RD 27(3) provides that market value means the price normally paid, at the time when the fringe benefit is received by the employee, for the fringe benefit in a sale in the open market, and freely offered, and made on ordinary trade terms, and to the member of the public at arm's length.

²⁵ Section YA 1 definition of "employee", para (ab). See also para (c) of the definition, which specifies that "employee" in the FBT rules, and in the definition of shareholder-employee (para b)), does not include a person if the only PAYE income received or receivable is of a specified kind.

²⁶ Section CX 17(1) and (2).

²⁷ Section CX 17(5).

products as dividends the dividend (and not the FBT) rules apply.²⁸ An explanation of the application of the dividend rules is outside the scope of this QWBA. Information on the dividend rules is available on Inland Revenue's website and in guides such as Resident withholding tax (RWT) on dividends – payer's guide – [IR284](#)²⁹ and Imputation – A guide for New Zealand companies – [IR274](#).³⁰

Trade suppliers – deduction allowed for expenditure on products and card trade rebates

58. Under s DA 1, the general permission, a person carrying on a business for the purpose of deriving assessable income or excluded income or a combination of the two is allowed a deduction for an amount of expenditure incurred in the course of carrying on the business. The deduction is allocated to the income year in which the expenditure or loss is incurred, unless a specific rule provides for allocation on some other basis.³¹
59. The general permission is overridden by each of the six general limitations.³² If a general limitation applies, no deduction is available under the general permission.
60. Expenditure incurred by a trade supplier on product and card trade rebates is incurred in carrying on their business and is deductible under the general permission, provided no general limitation applies. If no general limitation applies, the deduction is allocated to the income year in which the product and card rebates are provided to trade customers. Although whether any general limitation applies depends on the facts and circumstances of each case, it is likely no general limitation will apply in the circumstances addressed in this QWBA.

²⁸ Section CD 20.

²⁹ Resident withholding tax (RWT) on dividends – payer's guide – IR284 (guide, Inland Revenue, September 2020).

³⁰ Imputation – A guide for New Zealand companies – IR274 (guide, Inland Revenue, July 2022).

³¹ Section BD 4(2).

³² Section DA 2.

Examples | Taurira

Example | Taurira 1 – Trade customer receives closed loop card

Facts

Daisy Merino carries on business as a farmer and purchases farming supplies from Farming Trade Supplies Ltd. To encourage customer loyalty, Farming Trade Supplies Ltd gives its trade customers a rebate in the form of a gift card with a face value of \$100 for every \$1,000 of purchases. The card is a closed loop card and can be used to buy products from only Farming Trade Supplies Ltd.

Daisy Merino purchases \$2,000 of materials and receives 2 gift cards. Daisy Merino does not return the value of the cards (\$200) as income.

How the income tax laws apply

- The value of the cards (\$200) is business income of Daisy Merino.
- Daisy Merino is liable for a shortfall penalty for the omitted business income.

Example | Tauria 2 – Trade customer receives closed loop card and provides card to employee

Facts

Builder Ltd carries on business as a builder and purchases building materials from Building Trade Supplies Ltd. To encourage customer loyalty, Building Trade Supplies Ltd gives its trade customers a rebate in the form of a gift card with a face value of \$100 for every \$1,000 of purchases. The card is a closed loop card and can be used to buy products from only Building Trade Supplies Ltd.

Builder Ltd purchases \$4,000 of materials and receives a gift card with a face value of \$400. It provides the card to a non-shareholder employee. Builder Ltd does not return the value of the card (\$400) as income and does not pay FBT and on the card provided to the employee.

How the income tax laws apply

- The value of the card (\$400) is business income of Builder Ltd.
- The card provided to the employee is an unclassified fringe benefit with a fringe benefit value of \$400. FBT is payable on the unclassified benefit (subject to the application of minimum liability thresholds in s RD 45).
- If Builder is liable to pay FBT on the card, it is allowed a deduction for the FBT paid.
- Builder Ltd will be liable for a shortfall penalty for the omitted business income.
- If it is liable to pay FBT, Builder Ltd will be liable for a separate shortfall penalty for the non-payment of the FBT.

Example | Tauria 3 – Trade customer receives open loop cards and provides cards to employees

Facts

Builder Ltd from Example | Tauria 2 also purchases building materials from Competitor Building Trade Supplies Ltd. To encourage customer loyalty, Competitor Building Trade Supplies Ltd gives its trade customers a rebate in the form of a gift card with a face value of \$100 for every \$1,000 of purchases. The card is an open loop card that is co-branded with a multinational payment card service provider, so is accepted (globally) online and instore by millions of merchants that accept the provider's cards.

Builder Ltd purchases \$5,000 of materials and receives 5 gift cards. Builder Ltd uses 2 cards to buy materials and gives 1 card to each of its 3 (non-shareholder) employees for their private use.

Builder Ltd does not return the value of the 5 cards (\$500) as income and does not pay PAYE on the 3 cards provided to the employees.

How the income tax laws apply

- The value of the 5 cards (\$500) is business income of Builder Ltd.
- The 3 cards provided to the employees are PAYE income payments. Builder Ltd must withhold and pay tax for each payment. This will require Builder Ltd to gross up the face value of each card (\$100) by the applicable PAYE tax rate that applies to each employee. If the applicable rate for each employee is 33%, Builder Ltd must pay PAYE of \$49 in relation to each card.
- Builder Ltd is allowed a deduction for the PAYE paid.
- Builder Ltd is liable for a shortfall penalty for the omitted business income and is liable for a separate shortfall penalty for the non-payment of the PAYE.

Example | Tauria 4 – Trade customer receives trade rebate products and provides product to employee

Facts

Plumber Ltd carries on business as a plumber and purchases plumbing materials from Plumbing Trade Supplies Ltd. To encourage customer loyalty, for every \$1,000 of purchases, Plumbing Trade Supplies Ltd gives its trade customers rebates in the form of a variety of products from which a customer can select.

Plumber Ltd purchases \$15,000 of materials and selects 2 barbecues, each with a retail value of \$750. Plumber Ltd keeps 1 barbecue for use at its business premises and gives the second barbecue to its (non-shareholder) head builder. New (unwanted) barbecues of the same type are being sold on a popular online trading platform for \$550.

Plumber Ltd does not return the value of the barbecues as income and does not pay FBT on the barbecue provided to the employee.

How the income tax laws apply

- The “secondhand” value (\$1,100) of the barbecues is business income of Plumber Ltd.
- Plumber Ltd has no deduction for expenditure or for depreciation loss for the barbecue it keeps because it incurred no additional expenditure or cost to acquire the barbecue (the \$15,000 expended was for the materials acquired).
- The barbecue provided to the employee is an unclassified fringe benefit with a fringe benefit value of its market value of \$750. FBT is payable on the unclassified benefit (subject to the application of minimum liability thresholds in s RD 45).
- If Plumber Ltd is liable to pay FBT on the barbecue provided to the employee, it is allowed a deduction for the FBT paid.
- Plumber Ltd will be liable for a shortfall penalty for the omitted business income.
- If it is liable to pay FBT, Plumber Ltd will be liable for a separate shortfall penalty for the non-payment of the FBT.

**EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY | HUKIHUKI HURANGA
- MŌ TE TĀKUPU ME TE MATAPAKI ANAKE**

Deadline for comment | Aukatinga mō te tākupu: **18 December 2024**

Please quote reference | Whakahuatia te tohutoro: **PUB00462**

Send feedback to | Tukuna mai ngā whakahokinga kōrero ki
public.consultation@ird.govt.nz

Notes | Pitopito kōrero:

References | Tohutoro

Legislative references | Tohutoro whakatureture

Income Tax Act 2007

Sections BD 4, BE 1, Part C, DA 1, DA 2, EE 22, EE 38, EE 57, RA 5, RD 3, RD 3B, RD 3C, RD 4, RD 5, RD 7, RD 21, RD 25, RD 27, RD 28, RD 29, RD 33 to RD 41, RD 45, YA 1 (“amount”, “employee”, “shareholder-employee”)

Tax Administration Act 1994

Case references | Tohutoro kēhi

Abbott v Philbin (Inspector of Taxes) [1960] 2 All ER 763 (HL)

Birkdale Service Station Ltd v CIR [2001] 1 NZLR 293 (CA)

CIR v Wattie [1999] 1 NZLR 529 (PC)

Cromwell Jockey Club (1954) 10 ATD 431 (SC)

Epay NZ Ltd and Ezi-Pay Ltd [2012] NZCC 13

FCT v Squatting Investment Co Ltd [1954] 1 All ER 349 (PC)

Laidler v Perry (Inspector of Taxes) [1965] 2 All ER 121 (HL)

Laidler v Perry (Inspector of Taxes) [1964] 3 All ER 329 (CA)

Other references | Tohutoro anō

BR Pub 14/10: FBT – Provision of benefits by third parties – Section CX 2(2) *Tax Information Bulletin* Vol 27, No 1 (February 2015): 9

taxtechnical.ird.govt.nz/tib/volume-27---2015/tib-vol27-no1

taxtechnical.ird.govt.nz/-/media/project/ir/tt/pdfs/rulings/public/pu14010.pdf?la=en

Concise Oxford English Dictionary (12th ed, Oxford University Press, 2011)

Directive 2009/110/EC of the European Parliament and of the Council (European Parliament, Council of the European Union, 16 September 2009)

<https://eur-lex.europa.eu/eli/dir/2009/110/oj>

Dudson L, Gillies L, and Wadsworth A, New Zealand's payment landscape: A primer *Reserve Bank of New Zealand Bulletin* Vol 85, No 3 (November 2022)

rbnz.govt.nz/-/media/project/sites/rbnz/files/publications/bulletins/2022/new-zealands-payment-landscape-primer.pdf

Employer's guide – Information to help you with your responsibilities as an employer – IR335 (guide, Inland Revenue, July 2024)

ird.govt.nz/employing-staff/deductions-from-income/deductions-from-salary-and-wages

Fringe benefit tax guide – A guide to working with FBT – IR409 (guide, Inland Revenue, July 2024)

ird.govt.nz/employing-staff/paying-staff/fringe-benefit-tax/fringe-benefit-tax-rates

Imputation – A guide for New Zealand companies – IR274 (guide, Inland Revenue, July 2022)

[ird.govt.nz/-/media/project/ir/home/documents/forms-and-guides/ir200---](https://ird.govt.nz/-/media/project/ir/home/documents/forms-and-guides/ir200---ir299/ir274/ir274-jul-2022.pdf?modified=20220928001640&modified=20220928001640)

[ir299/ir274/ir274-jul-2022.pdf?modified=20220928001640&modified=20220928001640](https://ird.govt.nz/-/media/project/ir/home/documents/forms-and-guides/ir200---ir299/ir274/ir274-jul-2022.pdf?modified=20220928001640&modified=20220928001640)

Resident withholding tax (RWT) on dividends – payer's guide – IR284 (guide, Inland Revenue, September 2020)

[ird.govt.nz/-/media/project/ir/home/documents/forms-and-guides/ir200---](https://ird.govt.nz/-/media/project/ir/home/documents/forms-and-guides/ir200---ir299/ir284/ir284-2020.pdf)

[ir299/ir284/ir284-2020.pdf](https://ird.govt.nz/-/media/project/ir/home/documents/forms-and-guides/ir200---ir299/ir284/ir284-2020.pdf)

Weekly and fortnightly PAYE deduction tables – Tax tables for pay periods between 31 July 2024 and 31 March 2025 – IR340 (Inland Revenue, August 2024)

ird.govt.nz/employing-staff/deductions-from-income/deductions-from-salary-and-wages

About this document | Mō tēnei tuhinga

Questions We've Been Asked (QWBAs) are issued by the Tax Counsel Office. QWBAs answer specific tax questions we have been asked that may be of general interest to taxpayers.

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