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TAX INFORMATION Bulletin

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YOUR OPPORTUNITY TO COMMENT

Inland Revenue regularly produces a number of statements and rulings aimed at explaining how taxation law affects taxpayers and their agents. Because we are keen to produce items that accurately and fairly reflect taxation legislation and are useful in practical situations, your input into the process, as a user of that legislation, is highly valued.

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Public Consultation
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Inland Revenue PO Box 2198
Wellington 6140

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Your opportunity to comment

Ref	Draft type	Title	Comment deadline
PUB00364	Interpretation statements and Question we've been asked	Employee Share Schemes	26 April 2024
PUB00367	Interpretation statement Income tax	Partnership (including limited partnerships) - general guidance	24 April 2024
ED0252	Standard practice statement	Requests to change a balance date	3 May 2024

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IN SUMMARY

NEW LEGISLATION

This section of the *TIB* covers new legislation, changes to legislation including general and remedial amendments, and Orders in Council.

SL 2024/17 - Tax Administration (Reportable Jurisdictions for the Application of CRS Standard) Amendment Regulations 2024

This Order in Council adds Georgia, Kenya, Moldova, Montenegro, Morocco, Thailand, Uganda and Ukraine to New Zealand's existing list of 98 reportable jurisdictions.

Order

The Tax Administration (Reportable Jurisdictions for the Application of CRS Standard) Amendment Regulations 2024 was made on 26 February 2024 and comes into force 31 March 2024. It updates New Zealand's existing list of 98 reportable jurisdictions by adding Georgia, Kenya, Moldova, Montenegro, Morocco, Thailand, Uganda and Ukraine.

Background

Reportable jurisdictions are relevant to the Common Reporting Standard which was enacted in New Zealand in 2017 as part of New Zealand's implementation of the G20/OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters, or AEOI. Reportable jurisdictions are territories to which Inland Revenue (IRD) will provide certain information on their residents that is reported to IRD by financial institutions, in accordance with the CRS rules.

Pursuant to section 226D of the Tax Administration Act 1994 (the Act), additions and deletions to the list of reportable jurisdictions must be made by Order in Council.

Effective date

Georgia, Kenya, Moldova, Montenegro, Morocco, Thailand, Uganda and Ukraine will be reportable jurisdictions for reporting periods beginning on or after 1 April 2024.

Further information

A full list of reportable jurisdictions can be found on the IRD website at:

Automatic Exchange of Information and the Common Reporting Standard (ird.govt.nz)

The Order in Council can be found at:

Tax Administration (Reportable Jurisdictions for Application of CRS Standard) Amendment Regulations 2024 (SL 2024/17) Contents – New Zealand Legislation

LEGISLATION AND DETERMINATIONS

This section of the *TIB* covers items such as recent tax legislation and depreciation determinations, livestock values and changes in FBT and GST interest rates.

NSC 2024: National standard costs for specified livestock determination 2024

The Commissioner of Inland Revenue has released a determination, reproduced below, setting the national standard costs for specified livestock for the 2023–2024 income year.

These costs are used by farmers as part of the calculation of the value of livestock on hand at the end of the income year, where they have adopted the national standard cost (NSC) scheme to value any class of specified livestock.

Farmers using the scheme apply the rising one-year NSC to stock bred on the farm each year and add the rising two-year NSC to the value of the opening young stock available to come through into the mature inventory group at year-end. The cost of livestock purchased are also factored into the valuation of the immature and mature groupings at year-end, to arrive at a valuation reflecting the enterprise's own balance of farm bred and externally purchased animals.

NSCs are developed from independent survey data of national average costs of production for each type of livestock. Only direct costs of breeding and rearing rising one-year and two-year livestock are used. Excluded from the calculation of NSC values are all costs of owning (leasing) and operating the farm business, overheads, costs of operating non-livestock enterprises (such as cropping) and costs associated with producing and harvesting dual products (wool, fibre, milk and velvet).

For bobby calves, information from spring 2023 is used while other dairy NSCs are based on the 2022-2023 income and expenditure from a DairyBase sample of owner-operated dairy farms. For sheep, beef cattle, deer and goats, NSCs are based on survey data from the 2021-2022 sheep and beef farm survey conducted by the Beef & Lamb New Zealand Economic Service. This is the most recent information available for those livestock types at the time the NSCs are calculated in January 2024.

For the 2023–2024 income year the NSCs for almost all livestock types have decreased when compared to the previous year, due largely to decreased fertilizer costs together with lower overall spending by farmers.

The NSCs calculated each year only apply to that year's immature and maturing livestock. Mature livestock valued under this scheme retain their historic NSCs until they are sold or otherwise disposed of, albeit through a FIFO or inventory averaging system as opposed to individual livestock tracing. It should be noted that the NSCs reflect the **national average costs** of breeding and raising immature livestock and will not necessarily bear a direct relationship to either the market values (at balance date) of these livestock classes or the costs of production of any individual farmer. In particular, some livestock types such as dairy cattle, may not obtain a market value in excess of the NSC until they reach the mature age grouping.

One-off movements in expenditure items are effectively smoothed within the mature inventory grouping, by the averaging of that year's intake value with the carried forward values of the surviving livestock in that grouping. For the farm-bred component of the immature inventory group, the NSC values will appropriately reflect changes in the costs of production of those livestock in that particular year.

The NSC scheme is only one option under the current livestock valuation regime. The other options are market value, replacement value, the herd scheme, and the self-assessed cost scheme (SAC) option. SAC is calculated on the same basis as NSC but uses a farmer's own costs rather than the national average costs. There are restrictions in changing from one scheme to another and before considering such a change, farmers may wish to discuss the issue with their accountant or other adviser.

National Standard Costs for Specified Livestock Determination 2024

This determination may be cited as "The National Standard Costs for Specified Livestock Determination 2024".

This determination is made in terms of section EC 23 of the Income Tax Act 2007. It shall apply to any specified livestock on hand at the end of the 2023–2024 income year where the taxpayer has elected to value that livestock under the national standard cost scheme for that income year.

For the purposes of section EC 23 of the Income Tax Act 2007 the national standard costs for specified livestock for the 2023–2024 income year are as set out in the following table.

Kind of livestock	Category of livestock	National standard cost $
Sheep	Rising 1 year	45.60
	Rising 2 year	32.30
Dairy Cattle	Purchased bobby calves	230.50
	Rising 1 year	614.90
	Rising 2 year	364.60
Beef Cattle	Rising 1 year	476.30
	Rising 2 year	272.80
	Rising 3 year male non-breeding cattle (all breeds)	272.80
Deer	Rising 1 year	157.60
	Rising 2 year	78.80
Goats (Meat and Fibre)	Rising 1 year	37.90
	Rising 2 year	25.90
Goats (Dairy)	Rising 1 year	270.70
	Rising 2 year	57.10
Pigs	Weaners to 10 weeks of age	130.50
	Growing pigs 10 to 17 weeks of age	105.40

This determination is signed by me on the 4th day of March 2024.

Matthew Evans
Technical Lead
Technical Standards, Legal Services

ITR35: 2024 International tax disclosure exemption

Issued: 31 March 2024

Introduction

Section 61 of the Tax Administration Act 1994 ("TAA") requires taxpayers to disclose interests in foreign entities.

Section 61(1) of the TAA states that a person who has a control or income interest in a foreign company or an attributing interest in a foreign investment fund ("FIF") at any time during the income year must disclose the interest held. In the case of partnerships, disclosure needs to be made by the individual partners in the partnership. The partnership itself is not required to disclose.

Section 61(2) of the TAA allows the Commissioner of Inland Revenue to exempt any person or class of persons from this requirement if disclosure is not necessary for the administration of the international tax rules (as defined in section YA 1) contained in the Income Tax Act 2007 ("ITA").

To balance the revenue forecasting and risk assessment needs of the Commissioner with the compliance costs of taxpayers providing the information, the Commissioner has issued an international tax disclosure exemption under section 61(2) of the TAA that applies for the income year corresponding to the tax year ended 31 March 2024. This exemption may be cited as "International Tax Disclosure Exemption ITR35 "("the 2024 disclosure exemption") and the full text appears at the end of this item.

Scope of exemption

The scope of the 2024 disclosure exemption is the same as the 2023 disclosure exemption.

Application date

This exemption applies for the income year corresponding to the tax year ended 31 March 2024.

Summary

In summary, the 2024 disclosure exemption **removes** the requirement of a resident to disclose:

- An interest in a foreign company if the resident has an income interest of less than 10% in that company and either that income interest is not an attributing interest in a FIF or it falls within the $50,000 de minimis exemption (see section CQ 5(1)(d) and section DN 6(1)(d) of the ITA). The de minimis exemption does not apply to a person that has opted out of the de minimis threshold by including in the income tax return for the income year an amount of FIF income or loss.
- If the resident is not a widely-held entity, an attributing interest in a FIF that is a direct income interest of less than 10%, if the foreign entity is incorporated (in the case of a company) or otherwise tax resident in a treaty country or territory, and the fair dividend rate or comparative value method of calculation is used.
- If the resident is a widely-held entity, an attributing interest in a FIF that is a direct income interest of less than 10% (or a direct income interest in a foreign PIE equivalent) if the fair dividend rate or comparative value method is used for the interest. The resident is instead required to disclose the end-of-year New Zealand dollar market value of all such investments split by the jurisdiction in which the attributing interest in a FIF is held or listed.

The 2024 disclosure exemption also removes the requirement for a non-resident or transitional resident to disclose interests held in foreign companies and FIFs.

Commentary

Generally, residents who hold an income interest or a control interest in a foreign company, or an attributing interest in a FIF are required to disclose these interests to the Commissioner. These interests are considered in further detail below.

Attributing interest in a FIF

A resident is required to disclose an attributing interest in a FIF if FIF income or a FIF loss is calculated using one of the following calculation methods:

- attributable FIF income, deemed rate of return or cost methods; or
- fair dividend rate or comparative value methods, if the resident is a "widely-held entity"; or
- fair dividend rate or comparative value methods, if the resident is not a "widely-held entity" and either the foreign entity is incorporated or otherwise tax resident in a country or territory with which New Zealand does not have a double tax agreement in force as at 31 March 2024; or
- the resident has a direct income interest of 10% or more.

For the purpose of this disclosure exemption, the term "double tax agreement" does not include tax information exchange agreements or collection agreements and is limited to the double tax agreements in force as at 31 March 2024 with the 40 countries or territories listed below.

Australia	Indonesia	Singapore
Austria	Ireland	South Africa
Belgium	Italy	Spain
Canada	Japan	Sweden
Chile	Korea	Switzerland
China	Malaysia	Taiwan
Czech Republic	Mexico	Thailand
Denmark	Netherlands	Turkey
Fiji	Norway	United Arab Emirates
Finland	Papua New Guinea	United Kingdom
France	Philippines	United States of America
Germany	Poland	Viet Nam
Hong Kong	Russian Federation	
India	Samoa	

For the purpose of this disclosure exemption, a "widely-held entity" is an entity which is a:

- portfolio investment entity (this includes a portfolio investment-linked life fund); or
- widely-held company; or
- widely-held superannuation fund; or
- widely-held group investment fund ("GIF").

Portfolio investment entity, widely-held company, widely-held superannuation fund and widely-held GIF are all defined in section YA 1 of the ITA.

The disclosure required, by widely-held resident entities, of attributing interests in FIFs in which the resident has a direct income interest of less than 10% (or a direct income interest in a foreign PIE equivalent) and for which they use the fair dividend rate or the comparative value method of calculation is that, for each calculation method, they disclose the end-of-year New Zealand dollar market value of investments split by the jurisdiction in which the attributing interest in a FIF is held, listed, organised or managed.

In the event that the jurisdiction is not easily determined, a further option of a split by currency in which the investment is held will also be accepted as long as it is a reasonable proxy – that is at least 90-95% accurate – for the underlying jurisdiction in which the FIF is held, listed, organised or managed. Investments denominated in euros will not be able to meet this test and so euro denominated investments will need to be split into the underlying jurisdictions.

FIF interests

The types of interests that fall within the scope of section 61(1) of the TAA are:

- rights in a foreign company (a company includes any entity deemed to be a company for the purposes of the ITA (e.g. a unit trust))
- rights in a foreign superannuation scheme held by a person as a beneficiary or member, if the person acquired the interest before 1 April 2014 and treated the interest as a FIF interest in a return of income filed before 20 May 2013 and for all subsequent income years
- rights in a foreign superannuation scheme held by a person as a beneficiary or member, if the person's interest in the scheme was first acquired whilst the person was tax resident of New Zealand
- rights to benefit from a life insurance policy offered and entered into outside New Zealand
- rights in an entity specified in schedule 25, part A of the ITA.

However, interests that are exempt (under sections EX 31 to EX 43 of the ITA) from being an attributing interest in a FIF do not have to be disclosed. The following is a summary of these exemptions:

- certain interests in Australian resident companies included on the official list of the Australian Stock Exchange and required to maintain a franking account (refer to Inland Revenue's website ird.govt.nz (keyword: other exemptions))
- certain interests in Australian unit trusts that have a New Zealand RWT proxy and either a high turnover or high distributions
- interests held by a natural person in foreign superannuation schemes that are an Australian approved deposit fund, Australian exempt public sector superannuation scheme, Australian regulated superannuation fund or Australian retirement savings account
- income interests of 10% or more in controlled foreign companies ("CFCs") (although separate disclosure is required of these as interests in foreign companies – refer below)
- certain interests of 10% or more in foreign companies that are treated as resident, and subject to tax, in Australia (although separate disclosure is required of these as interests in foreign companies – refer below)
- interests in certain unlisted grey-list companies which have migrated out of New Zealand for a year which begins within 10 years of that migration, where the person has held the interests continuously since the migration and the company has retained a significant presence in New Zealand through a fixed establishment
- interests in certain unlisted grey-list companies which hold more than 50% of a New Zealand company for a year which begins within 10 years of the company first holding that 50%, where the New Zealand company has retained a significant presence in New Zealand
- certain interests in grey-list companies resulting from shares acquired under a venture investment agreement
- interests in certain grey-list companies resulting from the acquisition of shares under certain employee share schemes
- certain interests held by natural persons in FIFs located in a country where exchange controls prevent the person deriving amounts from the interests, or from disposing of the interests, in New Zealand currency or consideration readily convertible to New Zealand currency.

- certain interests in foreign superannuation schemes or life insurance policies (offered and entered into outside New Zealand) held by natural persons who acquired the interests when a non-resident or transitional resident
- beneficial interests in foreign superannuation schemes which are not FIF superannuation interests
- certain interests in pensions or annuities provided by FIFs and held by natural persons who acquired the interests when a non-resident (or in certain cases, a resident) (see Inland Revenue's guide Overseas pensions and annuity schemes (IR257) for more information)

De minimis

Interests of less than 10% in foreign companies which are attributing interests in a FIF held by a natural person not acting as a trustee also do not have to be disclosed if the total cost of the interests is $50,000 or less at all times during the income year. This disclosure exemption is made because no FIF income under section CQ 5 of the ITA or FIF loss under section DN 6 of the ITA arises in respect of these interests.

This de minimis exemption does not apply to a person who has included in the income tax return for the year a FIF income or loss. Please note that a person opting out of the de minimis threshold is generally required to continue to apply the FIF rules in each subsequent tax year. Where a person has included FIF income or loss from attributing interests in FIFs where the total cost was $50,000 or less in 1 of the preceding 4 income years, they will be required to apply the FIF rules in the current year.

Format of disclosure

The forms for the disclosure of FIF interests are as follows:

- IR443 form for the deemed rate of return method
- IR447 form for the fair dividend rate method (for individuals or non-widely-held entities)
- IR448 form for the comparative value method (for individuals or non-widely-held entities)
- IR449 form for the cost method
- IR458 spreadsheet form (this spreadsheet form can be used to make electronic disclosures for all methods)
- myIR income tax return attachment form (this form can be used to make electronic disclosures for all methods)

The IR458 spreadsheet and myIR income tax return attachment forms, which are the only disclosure options for the fair dividend rate and comparative value methods for widely-held entities, must be filed online. Disclosure of FIF interests by widely-held entities using the fair dividend rate or comparative value methods may be made by country rather than by individual investment where the direct income interests are less than 10% (or are direct income interests in a foreign PIE equivalent).

If you choose the spreadsheet option you will be able to save the form as a working paper on your computer. When completed, submit the form by logging into your myIR account and uploading it as part of the electronic income tax return filing process, or by logging into your myIR account and attaching it to a web message with 'FIF disclosure' in the subject line.

Alternatively, you can complete the myIR income tax return attachment disclosure form online when preparing your income tax return electronically in myIR.

The IR443, IR447, IR448, IR449 and IR458 forms can be found at ird.govt.nz/income-tax/income-tax-for-businesses-and-organisations/types-of-business-income/foreign-investment-funds-fifs/file-a-foreign-investment-fund-disclosure. Click 'Other ways to do this' on this web page to access the IR458 spreadsheet form.

Income interest of 10% or more in a foreign company

A resident is required to disclose an income interest of 10% or more in a foreign company. This obligation to disclose applies to all foreign companies regardless of the country of residence. For this purpose, the following income interests need to be considered:

a) an income interest held directly in a foreign company
b) an income interest held indirectly through any interposed foreign company
c) an income interest held by an associated person (not being a CFC) as defined by subpart YB of the ITA.

To determine whether a resident has an income interest of 10% or more for CFCs, sections EX 14 to EX 17 of the ITA should be applied. To determine whether a resident has an income interest of 10% or more in any entity that is not a CFC, for the purposes of this exemption, sections EX 14 to EX 17 should be applied to the foreign company as if it were a CFC.

Format of disclosure

The forms for disclosure of all interests in a CFC are:

- IR458 spreadsheet form, or
- myIR income tax return attachment form

If you choose the spreadsheet option you will be able to save the form as a working paper on your computer. When completed, submit the form by logging into your myIR account and uploading it as part of the electronic income tax return filing process.

Alternatively, you can complete the myIR income tax return attachment disclosure form online when preparing your income tax return electronically in myIR.

The IR458 spreadsheet form must be accessed online at www.ird.govt.nz (keyword: IR458).

Please note that electronic filing is a mandatory requirement for CFC disclosure.

Overlap of interests

It is possible that a resident may be required to disclose an interest in a foreign company which also constitutes an attributing interest in a FIF. For example, a person with an income interest of 10% or greater in a foreign company that is not a CFC is strictly required to disclose both an interest held in a foreign company and an attributing interest in a FIF.

To meet disclosure requirements, only one form of disclosure is required for each interest. If the interest is an attributing interest in a FIF, then the appropriate disclosure for the calculation method, as discussed previously, must be made.

In all other cases, where the interest in a foreign company is not an attributing interest in a FIF, the IR458 spreadsheet form or myIR income tax return attachment form for CFCs must be filed.

Interests held by non-residents and transitional residents

Interests held by non-residents and transitional residents in foreign companies and FIFs do not need to be disclosed.

This would apply for example to an overseas company operating in New Zealand (through a branch) in respect of its interests in foreign companies and FIFs; or to a transitional resident with interests in a foreign company or an attributing interest in a FIF.

Under the international tax rules, non-residents and transitional residents are not required to calculate or attribute income under either the CFC or FIF rules. Therefore, disclosure of non-residents' or transitional residents' holdings in foreign companies or FIFs is not necessary for the administration of the international tax rules and so an exemption is made for this group.

Persons not required to comply with section 61 of the Tax Administration Act 1994

This exemption may be cited as "International Tax Disclosure Exemption ITR35".

1. Reference

This exemption is made under section 61(2) of the Tax Administration Act 1994 ("TAA"). It details interests in foreign companies and attributing interests in foreign investment funds ("FIFs") in relation to which any person is not required to comply with the requirements in section 61 of the TAA to make disclosure of their interests, for the income year ended 31 March 2024.

2. Interpretation

For the purpose of this disclosure exemption:

- to determine an income interest of 10% or more in a foreign company, sections EX 14 to EX 17 of the Income Tax Act 2007 ("ITA") apply for interests in controlled foreign companies ("CFCs"). In the case of attributing interests in FIFs, those sections are to be applied as if the FIF were a CFC, and
- "double tax agreement" means a double tax agreement in force as at 31 March 2024 in one of the 40 countries or territories as set out in the commentary.

The relevant definition of "associated persons" is contained in subpart YB of the ITA.

Otherwise, unless the context requires, expressions used have the same meaning as in section YA 1 of the ITA.

3. Exemption

i. Any person who holds an income interest of less than 10% in a foreign company, including interests held by associated persons, that is not an attributing interest in a FIF, or that is an attributing interest in a FIF in respect of which no FIF income or loss arises due to the application of the de minimis exemption in section CQ 5(1)(d) or section DN 6(1)(d) of the ITA , is not required to comply with section 61(1) of the TAA for that person's interests in the foreign company and that income year.

ii. Any person who is a portfolio investment entity, widely-held company, widely-held superannuation fund or widely-held GIF, who has an attributing interest in a FIF, other than a direct income interest of 10% or more in a foreign company that is not a foreign PIE equivalent, and uses the fair dividend rate or comparative value calculation method for that interest, is not required to comply with section 61(1) of the TAA in respect of that interest and that income year, if the person discloses the end-of-year New Zealand dollar market value of investments, in an electronic format prescribed by the Commissioner, split by the jurisdiction in which the attributing interest in a FIF is held, organised, managed or listed.

iii. Any person who is not a portfolio investment entity, widely-held company, widely-held superannuation fund or widely-held GIF, who has an attributing interest in a FIF, other than a direct income interest of 10% or more in a foreign company, and uses the fair dividend rate or comparative value calculation method is not required to comply with section 61(1) of the TAA in respect of that interest and that income year, to the extent that the FIF is incorporated or tax resident in a country or territory with which New Zealand has a double tax agreement in force at 31 March 2024.

iv. Any non-resident person or transitional resident who has an income interest or a control interest in a foreign company or an attributing interest in a FIF in the income year corresponding to the tax year ending 31 March 2024, is not required to comply with section 61(1) of the TAA in respect of that interest and that income year if either or both of the following apply:

- no attributed CFC income or loss arises in respect of that interest in that foreign company under sections CQ 2(1)(d) or DN 2(1)(d) of the ITA; and/or
- no FIF income or loss arises in respect of that interest in that FIF under sections CQ 5(1)(f) or DN 6(1)(f) of the ITA.

This exemption is made by me acting under delegated authority from the Commissioner of Inland Revenue pursuant to section 7 of the TAA.

This exemption is signed on 31 March 2024.

Glen Holbrook
Technical Specialist

TECHNICAL DECISION SUMMARIES

Technical decision summaries (TDS) are summaries of technical decisions made by the Tax Counsel Office. As this is a summary of the original technical decision, it may not contain all the facts or assumptions relevant to that decision. A TDS is made available for information only and is not advice, guidance or a "Commissioner's official opinion" (as defined in s 3(1) of the Tax Administration Act 1994). **You cannot rely on this document as setting out the Commissioner's position more generally or in relation to your own circumstances or tax affairs**. It is not binding and provides you with no protection (including from underpaid tax, penalty or interest).

TDS 24/03: Fringe Benefit Tax: discounted goods provided by third party

Decision date | Rā o te Whakatau: 17 November 2023

Issue date | Rā Tuku: 22 February 2024

Subjects | Kaupapa

Fringe benefit: discount provided by third party; value of fringe benefit

Taxation laws | Ture tāke

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

Facts | Meka

1. The Applicant is an employer introducing a staff discount scheme for its employees. Under the Arrangement, the Applicant has contracted a third-party to provide discounted goods (the Supplier) to the Applicant's employees. The Applicant will then reimburse the Supplier for the costs incurred in providing the discounts.
2. The Applicant and the Supplier are not associated for tax purposes.

Issues | Take

3. The main issues considered in this ruling were:
   - whether the discounted goods provided by the Supplier to the Applicant's employees under the Arrangement will give rise to a "fringe benefit" as defined in s CX 2 and, therefore, any such fringe benefit will be excluded income to the employees under s CX 3; and
   - the value of the fringe benefit.

Decisions | Whakatau

4. The Tax Counsel Office (TCO) concluded that:
   - the discounted goods will give rise to a fringe benefit under s CX 2 and any such fringe benefit will be excluded income to the employees under s CX 3; and
   - the value of the fringe benefit is determined by the Commissioner under s RD 27.

Reasons for decisions | Pūnga o ngā whakatau

Issue 1 | Take tuatahi: Meaning of fringe benefit

5. Under s CX 3, a fringe benefit is excluded income of the employee. As such, it is necessary to determine whether the provision of discounted goods under the Arrangement is a "fringe benefit".

6. The provision of the discounted goods will be a "fringe benefit" if the following requirements in s CX 2 are satisfied:
   - a benefit exists;
   - the benefit is provided by an employer to an employee;
   - the provision of the benefit must be in connection with the employee's employment;
   - the benefit is described in ss CX 6, CX 9, CX 10 or CX 12 to CX 16, or is an unclassified benefit; and
   - the benefit is not excluded from being a fringe benefit under any provision in subpart CX.
7. TCO considered that the offer of discounted goods by the Supplier to the Applicant's employees satisfies the requirements in s CX 2 for the following reasons:
   - The offer of discounted goods is a "benefit". The term "benefit" means an advantage that is sufficiently clear and definite that it can reasonably, practically and sensibly be understood as a tangible benefit. The provision of discounted goods is a clear and definite advantage that can be understood as a tangible benefit.
   - The Applicant has arranged for the Supplier to offer discounts to the Applicant's employees and the Applicant will reimburse the Supplier for the value of the discount. On this basis, s CX 2(2) applies to treat the benefit provided by the Supplier as if it were provided by the Applicant to its employees directly because there is an arrangement for the provision of a benefit.
   - A benefit is provided in connection with a person's employment if the employment relationship is the reason for the provision of the benefit. In this case, the persons who will receive the offer of discounted goods will be the employees of the Applicant. The Arrangement has been designed as an employee retention initiative. The employment relationship is, therefore, the reason for the offer of discounted goods.
   - The benefit in the Arrangement is not one referred to in ss CX 6, CX 9, CX 10 or CX 12 to CX 16 and therefore it would be an "unclassified benefit" under s CX 37 unless it is excluded under subpart CX.
   - The only exclusion that is potentially relevant to the Arrangement is the exclusion in s CX 33, which applies when an employer and a non-associated third party have an arrangement for the provision of discounted goods. Section CX 33(2) excludes the discount from being a fringe benefit if the Supplier offers the same or greater discount to a group of persons that is comparable in number with the group of employees. Based on the facts presented in this ruling, the criteria in s CX 33(2) are not satisfied and, therefore, the exclusion in s CX 33 does not apply and the benefit is not excluded from being a fringe benefit under subpart CX.

Issue 2 | Take tuarua: Valuing the fringe benefit

8. Section RD 40(1) provides that the value of a fringe benefit that an employer provides to an employee in goods is determined as follows:
   - If the person providing the goods manufactured, produced, or processed them, then the value is their market value.
   - If the person providing the goods acquired them, then the value is the cost of the goods to the person.
   - If the person providing the goods is a company included in a group of companies, then the person can choose either of the above.
9. It was considered that s RD 40(1) is unable to be applied in the context of goods provided under a third-party arrangement unless the third party is in the same group of companies as the employer. Section CX 2(2) provides that if there is an arrangement with a third party, the employer is deemed to provide the benefit to the employees. As such, the Applicant is deemed to have provided the goods under the Arrangement. However, as the Applicant does not manufacture, produce, process or acquire the goods, and the Applicant and the Supplier are not in the same group of companies, s RD 40(1) does not apply to the Arrangement.
10. Under s RD 27(2), if the value of the fringe benefit cannot be ascertained under ss RD 28, RD 29, and RD 33 to RD 41, the value is the market value or otherwise as the Commissioner determines. Section RD 27(2) applies in this case as none of the provisions referred to in s RD 27(2) are appliable to ascertain the value of the fringe benefit in the Arrangement.
11. TCO concluded that, in some circumstances, the Commissioner can exercise his discretion and determine the value of the fringe benefit even where a market value exists.

12. Taking into account all of the facts and circumstances of this particular ruling application, the Commissioner has determined the value of the fringe benefit as follows:
    - if the Supplier manufactured, produced or processed the goods, then the value is their market value;
    - if the Supplier otherwise acquired the goods, or paid for them to be acquired, dealing at arm's length with the supplier of goods, then the value is the cost of the goods to the Supplier,

    provided that if the value of the fringe benefit determined above is more than the amount that would have been paid to the Supplier for the purchase of goods in a sale within the parameters described below, the value of the fringe benefit is the lesser amount:
    - at retail in the open market in New Zealand; and
    - freely offered; and
    - made on ordinary trade terms; and
    - to a member of the public with whom the Supplier is at arm's length.

REGULAR CONTRIBUTORS TO THE TIB

Tax Counsel Office

The Tax Counsel Office (TCO) produces a number of statements and rulings, such as interpretation statements, binding public rulings and determinations, aimed at explaining how tax law affects taxpayers and their agents. The TCO also contributes to the "Questions we've been asked" and "Your opportunity to comment" sections where taxpayers and their agents can comment on proposed statements and rulings.

Legal Services

Legal Services manages all disputed tax litigation and associated challenges to Inland Revenue's investigative and assessment process including declaratory judgment and judicial review litigation. They contribute the legal decisions and case notes on recent tax decisions made by the Taxation Review Authority and the courts.

Technical Standards

Technical Standards sits within Legal Services and contributes the standard practice statements which describe how the Commissioner of Inland Revenue will exercise a statutory discretion or deal with practical operational issues arising out of the administration of the Inland Revenue Acts. They also produce determinations on standard costs and amortisation or depreciation rates for fixed life property used to produce income, as well as other statements on operational practice related to topical tax matters. Technical Standards also contributes to the "Your opportunity to comment" section.

Policy and Regulatory Stewardship

Policy advises the Government on all aspects of tax policy and on social policy measures that interact with the tax system. They contribute information about new legislation and policy issues as well as Orders in Council.