

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?

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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 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 customers;
- employees, including shareholder 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;
- shareholders, when trade customers provide the gift cards or products to (non-employee) shareholders or to persons associated with shareholders; and
- the trade suppliers?

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” cards are money, and when they are provided directly or indirectly by trade customer employers to:
 - non-shareholder employees they 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 they 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” 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 are allowed a deduction for the amount of the face value of the gift cards treated as income and provided directly or indirectly to:
 - employees; and
 - shareholder employees (when they receive the cards in their capacity as employees).
- Trade customers that are companies are not allowed a deduction for gift cards provided to shareholders or to persons associated with shareholders because the cards are dividends.
- Trade customers who use a gift card to purchase goods and/or services for use in their business are allowed a deduction for the expenditure (ie, the expenditure includes the face value of the card applied to the purchase of the goods and/or services).

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”).
- 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 customers are allowed a deduction for the amount of the realisable (secondhand) value of the products treated as income and provided directly or indirectly to:
 - employees; and
 - shareholder employees (when they receive the products in their capacity as employees).
- Trade customers that are companies are not allowed a deduction for products provided to shareholders because the products are dividends.

- Trade customers are allowed a deduction for the amount of the realisable (secondhand) value of the products treated as income, if they sell the products. The amount received for the products is income for the trade customers.

Shareholders – cards and products

- Cards and products provided by trade customers to their shareholders, or to persons associated with the shareholders, are dividend income of the recipients.¹

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 mean 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. Product and card trade rebates are a form of purchase rebate.

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.

¹ Trade customers can elect that products and closed loop cards provided to shareholder-employees are treated as fringe benefits or dividends.

Scope of this item

This QWBA considers how the income tax laws apply to trade rebate arrangements between businesses where trade suppliers provide products or gift cards to their trade customers as rewards for purchasing goods and services.

This QWBA does not consider how the taxation laws apply to business to consumer loyalty schemes. Nor does it consider similar arrangements involving customer loyalty points schemes where trade customers are provided with (earn) points for purchasing goods and services from trade suppliers that can be exchanged (redeemed) for rewards (for example, goods, services, and discounts). However, it should be assumed that similar issues to those considered in this item, arise for consideration with business-to-business loyalty points schemes.

There are other commercial arrangements, to varying degrees like the trade rebate arrangements discussed in this QWBA, that involve money or product inducements or benefits. How the income tax laws apply to such arrangements, and whether they apply in the same way as they apply to trade rebates arrangements, will depend on the facts of the arrangements and the true legal character of (the rights and obligations created by) the legal arrangements entered into and carried out.²

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

² *ANZCO Foods Ltd v CIR* [2016] NZHC 1015, (2016) 27 NZTC 22-049 at [48] – [52]; *Ben Nevis Forestry Ventures Ltd v CIR* [2008] NZSC 115, [2009] 2 NZLR 289, at [46] – [48]; *A Taxpayer v CIR* (1997) 18 NZTC 13,350 (CA) at 13,366; *Finnigan v CIR* (1995) 17 NZTC 12,170 (CA) at 12,173-12,174; *Marac Life Assurance Ltd v CIR* [1986] 1 NZLR 694 (CA); *Mills v Dowdall* [1983] NZLR 154 (CA) at 159; *Buckley & Young Ltd v CIR* [1978] 2 NZLR 485 (CA) at 489-490.

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 a deduction when trade customers dispose of product and card rebates (from [32]);
 - open loop cards provided to employees are income (from [45]); and
 - closed loop cards and products provided to employees are fringe benefits (from [58]).

Product and card trade rebates are business income

6. An amount is income of a person if it is 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.³
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)):⁴

“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.

³ *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.

⁴ Directive 2009/110/EC of the European Parliament and of the Council (European Parliament, Council of the European Union, 16 September 2009).

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.⁵

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. In *Epay New Zealand Limited BD Ezi-Pay Limited and Ors*,⁶ the New Zealand Commerce Commission discussed gift cards and described, in broad terms, the three types of cards as follows:

Gift cards

135. Gift cards are essentially, pre-paid credit that can be redeemed for goods or services in a retailer. As their name suggests, gift cards are usually purchased by consumers and given to others as a gift. As noted by epay in its application, gift cards have existed in various forms for a long time. Historically, gift cards took

⁵ *Abbott v Philbin (Inspector of Taxes)* [1960] 2 All ER 763 (HL).

⁶ *Epay New Zealand Limited and Ezi-Pay Limited & Ors* [2012] NZCC 13.

the form of paper vouchers or gift certificates. Nowadays, they are more commonly plastic magnetic swipe cards.

136. The Commission understands that there are broadly three different types of gift cards:

136.1 "Closed loop" cards, which are specific to a particular retail chain or business and can be redeemed only with that retailer. An example of a closed loop card is the Mitre 10 gift card.

136.2 "Open loop" cards, which carry credit that can be redeemed at the majority of retailers. Kiwibank's Prezzy card is an example of an open loop card.

136.3 "Network" cards, which are in between an open loop and closed loop card. An example of a network card is a Westfield gift card, which can be redeemed at any retailer within any Westfield mall.

137. Traditionally, gift cards were "closed loop" and were sold by the relevant retailer in its stores (eg Mitre 10 card purchased in store from Mitre 10). However, the introduction of open loop cards and plastic magnetic swipe cards has widened the ways through which consumers can purchase gift cards. Consumers are now able to purchase gift cards online and via stands of cards that are available in a range of retailers (eg a consumer can purchase a Mitre 10 gift card at the supermarket).

[Footnote omitted]

15. Closed loop cards are accepted by only a specific merchant and semi-open/closed loop cards are accepted by multiple merchants at the same location (for example, a 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:⁷
- a payment occurs when funds are transferred in exchange for goods and services;
 - payment instructions are used to instruct a transfer of value; and

⁷ 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.

- 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.

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)*,⁸ 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.

Trade rebates are derived from carrying on business

23. The ordinary meaning of “derive” is to obtain something from a specified source.⁹ 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 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.

⁸ *Laidler v Perry (Inspector of Taxes)* [1965] 2 All ER 121 (HL), *Laidler v Perry (Inspector of Taxes)* [1964] 3 All ER 329 (CA).

⁹ *Concise Oxford English Dictionary* (12th ed, Oxford University Press, 2011).

Trade rebate products and cards are not capital in nature

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.¹⁰ 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.¹¹
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.

Expiry of cards not relevant

27. If an open loop or closed card received by a trade customer as a trade rebate expires before the card is used the expiry of the card does not retroactively change the fact the card on its receipt is income of the trade customer.¹²

Trade rebates are not gifts and ss FC 1(1)(e) and FC 2(1) do not apply

28. Broadly, gifts are not usually subject to income tax. However, in certain circumstances the Commissioner considers gifts can be assessable income and subject to income tax. The circumstances are considered in [IS 23/11](#).¹³

¹⁰ *CIR v Wattie* [1999] 1 NZLR 529 (PC), *Birkdale Service Station Ltd v CIR* [2001] 1 NZLR 293 (CA).

¹¹ *FCT v Squatting Investment Co Ltd* [1954] 1 All ER 349 (PC), *Cromwell Jockey Club* (1954) 10 ATD 431 (SC).

¹² The expiry of a card that is income in nature is similar to the circumstance of a cheque that is income in nature that is not presented. In *Ullrich v CIR* [1964] NZLR 386, it was held the payee remains liable for income tax on the amount of an expired cheque.

¹³ Interpretation Statement IS 23/11 Income tax: Income – when gifts are assessable income (5 December 2023).

29. The word “gift” is not defined for the purposes of the Act. At common law, a gift is a truly gratuitous (voluntary) disposition of property where the owner of the property conveys the ownership of the property to another person for no consideration or advantage of a material character.¹⁴
30. Trade rebates are not gifts. Trade suppliers do not provide trade rebates gratuitously to trade customers but rather to reward them for buying goods and services and to encourage them to buy further goods and services.
31. Section FC 2(1) provides that a transfer of property described in s FC 1(1) is treated as the disposal of the property by the transferor and an acquisition by the transferee at the market value of the property. The transfer described in s FC 1(1)(e) is a transfer of property on the making of a gift. Since trade rebates are not gifts, s FC 1(1)(e) is not satisfied and s FC 2(1) has no application to trade rebates.

Deductions allowed for trade rebate products and cards

32. 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 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.
33. As previously mentioned:
- the word “amount” is defined for the purposes of the Act to “include an amount of money’s worth”;
 - 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;
 - open loop cards are money in the amount of the face value of the cards; and
 - closed loop cards are money’s worth in the amount of the face value of the cards; and
 - products are money’s worth in the amount of the realisable (secondhand) value of the product.
34. The word “expenditure” is not defined for the purposes of the Act so takes its ordinary meaning in context and having regard to any relevant case law that has considered its meaning. The ordinary meaning of expenditure is “the action of spending funds ▪ the

¹⁴ *Mills v Dowdall* (CA) [1983] NZLR 154 (CA); *Church of Jesus Christ of Latter-Day Saints Trust Board v CIR* [2020] 2 NZLR 647 (CA).

amount of money spent”.¹⁵ In *Case E48*, the Taxation Review Authority said that “the word “expenditure” seems ... to be a very wide word which simply means ... the laying out of money.”¹⁶

- 35. The Commissioner considers that “expenditure” in the phrase “an amount of expenditure” in s DA 1 means the laying out of an amount of money or an amount of money’s worth.
- 36. When a trade customer receives an open loop card or closed loop card (as a trade rebate) and uses the card to purchase goods or services for use in carrying on their business (including purchasing goods or services that are provided to employees as fringe benefits), or provides the card to an employee, the trade customer has laid out an amount of money and is allowed a deduction for the face value of the card.
- 37. When a trade customer receives a product (as a trade rebate) and provides the product in exchange (payment) for a good or service used in their business, or provides the product to the employee (a fringe benefit) the trade customer has laid out an amount of money’s worth and is allowed a deduction for the money’s worth (being the realisable (secondhand) value of the product).

Deduction not allowed for trade rebate products and cards provided to shareholders

- 38. A transfer of company value to a person is a dividend if the cause of the transfer is a shareholding in the company.¹⁷ A transfer of company value occurs when a company provides money or money’s worth to the person. If the person provides any money or money’s worth to the company under the same arrangement, there is a transfer of value to the person to the extent the market value of what the company provides is more than the market value of what the person provides.¹⁸ And a transfer of company value is caused by a shareholding in a company if the person holds shares in the company or is associated with a person who holds shares in the company and the company makes the transfer because of that shareholding.¹⁹
- 39. No specific provision in part D of the Act allows or denies a deduction for a dividend. However, the payment of a dividend is generally denied deductibility because it does not have the any nexus with the derivation of income as required by s DA 1. Further, it

¹⁵ Concise Oxford English Dictionary (12th ed, 2011).

¹⁶ *Case E48* (1982) 5 NZTC 59,285 at 52,289.

¹⁷ Section CD 4(1).

¹⁸ Section CD 5(1).

¹⁹ Section CD 6(1).

is long settled common law principle that there is a distinction between expenditure incurred in deriving profits (income), which are deductible, and the post-profit distributions, which are not deductible.

40. When a trade customer that is a company receives a trade rebate product or card and provides that product or card to a shareholder, or a person associated with a shareholder, the trade customer:
- has transferred value, and paid a dividend, to the recipient; and
 - is not allowed a deduction for the dividend.
41. Sections FC 1(1)(d) and FC 2(1) do not alter these conclusions. As mentioned earlier, s FC 2(1) treats the transfers of property described in s FC 1(1) as a disposal by the transferor and an acquisition by the transferee at the market value of the item for the transferor. The transfer described in s FC 1(1)(d) is the transfer of property on a distribution in kind²⁰ by a company in a transfer of company value caused by a shareholding in the company. Although s FC 2(1) deems there to be a disposal by the transferor and an acquisition by the transferee at market value, it does not deem the transferee to provide money or money's worth to the transferor.

Trade rebate products and cards provided to shareholders are income to the shareholders

42. A dividend derived by a person is income of the person.²¹
43. When a trade customer that is a company receives a trade rebate product or card and provides that product or card to a shareholder, or a person associated with a shareholder, the product or card is a dividend and income for the shareholders.
44. The amount of the dividend (income) is:
- when the dividend is a product, the secondhand value of the product; and
 - when the dividend is a card, the face value of the card.

Open loop cards provided to employees are income

45. 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).

²⁰ A transfer of (non-cash) property.

²¹ Section CD 1.

46. How the income tax laws apply depends on whether the employee is a shareholder in the trade customer.

Non-shareholder-employees

47. 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".²² 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.
48. Salary and wages and "extra pay" are PAYE income payments.²³ 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.
49. 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 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.
50. 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.²⁴ 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.²⁵ For comprehensive information on withholding amounts of tax for PAYE income payments,

²² Section CE 1(1)(g).

²³ Section RD 3.

²⁴ Sections BE 1(1), RA 5 and RD 4.

²⁵ Section DB 1(2)(b).

see Employer's guide – Information to help you with your responsibilities as an employer – [IR335](#)²⁶ and Weekly and fortnightly PAYE deduction tables – [IR340](#).²⁷ Further information is also available on Inland Revenue's website, including PAYE calculators.

51. 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.²⁸

Shareholder-employees

52. 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.²⁹
53. 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.
54. 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.
55. 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

²⁶ Employer's guide – Information to help you with your responsibilities as an employer – IR335 (guide, Inland Revenue, July 2024).

²⁷ Weekly and fortnightly PAYE deduction tables – Tax tables for pay periods between 31 July 2024 and 31 March 2025 – IR340 (Inland Revenue, August 2024).

²⁸ Section RD 21.

²⁹ Section YA 1 definition of "shareholder-employee".

or s RD 3C,³⁰ the amounts received during the income year not subject to PAYE are taxable in the shareholder-employee's tax returns.³¹

56. 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.
57. 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.

Closed loop cards and products provided to employees are fringe benefits

Closed loop cards are neither e-money nor money

58. As mentioned above, the Commissioner considers that closed loop cards are not e-money and are not money. It follows from this that any 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.
59. The FBT rules apply to an employer who provides a fringe benefit to their employees in connection with their employment.³²
60. 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

³⁰ 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.

³¹ 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.

³² Section RD 25(2).

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.

61. 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.
62. 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 apply.
63. 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 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 monetary (face) value.
64. 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.

65. FBT paid by an employer is generally a tax-deductible expense.³³

Products

66. Trade rebate products that trade customers provide to their employees are fringe benefits.
67. 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 person.³⁴ 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 depends on the first or second rule applying and since neither applies to trade rebate products, the third rule cannot apply.
68. 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)).³⁵ In this case, the retail price of the product.
69. 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 [64], for unclassified benefits are exceeded.

³³ Section DB 1(2)(b).

³⁴ 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).

³⁵ 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.

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

70. For the purposes of the FBT rules, an employee includes a person who is a shareholder-employee.³⁶
71. 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.³⁷ 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.³⁸
72. 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 products as dividends the dividend (and not the FBT) rules apply.³⁹ 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](#)⁴⁰ and Imputation – A guide for New Zealand companies – [IR274](#).⁴¹

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

73. 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

³⁶ 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.

³⁷ Section CX 17(1) and (2).

³⁸ Section CX 17(5).

³⁹ Section CD 20.

⁴⁰ Resident withholding tax (RWT) on dividends – payer's guide – IR284 (guide, Inland Revenue, September 2020).

⁴¹ Imputation – A guide for New Zealand companies – IR274 (guide, Inland Revenue, July 2022).

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.⁴²

74. The general permission is overridden by each of the six general limitations.⁴³ If a general limitation applies, no deduction is available under the general permission.
75. 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 expenditure on the product and card rebates is incurred. 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.

Past treatment of open loop cards

76. The Commissioner acknowledges that some employers have been incorrectly treating open loop cards provided to employees as fringe benefits (and subject to the FBT rules) and not the payment of money (and PAYE income payments). The Commissioner will not apply resources to correct previous tax positions taken in return periods ending on or before the date of this statement where an employer has incorrectly treated the provision of an open loop card to an employee as a fringe benefit and returned FBT on that basis.

⁴² Section BD 4(2).

⁴³ Section DA 2.

Examples | Tauira

Example | Tauira 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 two 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.

Example | Tauira 2 – Trade customer receives closed loop card and uses card to purchase products for their business

Facts

This example uses the same facts as Example | Tauira 1 except that Daisy Merino uses the cards towards the purchase of herbicide for use on her farm.

How the income tax laws apply

- The value of the cards (\$200) is business income of Daisy Merino.
- Daisy Merino is allowed a deduction for the cost of the herbicide (including the value of the cards (\$200)).

Example | Tauria 3 – 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 an employee, who does not hold shares in Builder Ltd.

How the income tax laws apply

- The value of the card (\$400) is business income of Builder Ltd.
- Builder Ltd is allowed a deduction for the value of the card (\$400) provided to the employee.
- 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 Ltd is liable to pay FBT on the card, it is allowed a deduction for the FBT paid.

Example | Tauira 4 – Trade customer receives open loop cards and provides cards to employees**Facts**

Builder Ltd from Example | Tauira 3 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 five gift cards. Builder Ltd uses two cards to buy materials and gives one card to each of its three employees for their private use. The employees do not hold shares in Builder Ltd.

How the income tax laws apply

- The value of the five cards (\$500) is business income of Builder Ltd.
- Builder Ltd is allowed a deduction for the expenditure on the materials (such expenditure including the face value of the two cards applied to the purchase of the materials) and for the face value of the three cards provided to the employees.
- The three 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.

Example | Tauira 5 – Trade customer receives trade rebate products and provides products to an employee and a shareholder**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 \$20,000 of materials and selects two barbecues, each with a retail value of \$750. Plumber Ltd gives one barbecue to an employee and one barbecue to X, who is a shareholder. New (unwanted) barbecues of the same type are being sold on a popular online trading platform for \$550.

How the income tax laws apply

- The “secondhand” value (\$1,100) of the barbecues is business income of Plumber Ltd.
- The barbecue provided to X is a dividend. Plumber Ltd is not allowed a deduction for the value of the barbecue. The secondhand value of the barbecue (\$550) is income for X.
- Plumber Ltd has a deduction for the secondhand value (\$550) of the barbecue provided to the employee.
- 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.

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