

PRODUCT RULING - BR Prd 09/09

This is a product ruling made under section 91F of the Tax Administration Act 1994.

Name of the Person who applied for the Ruling

This Ruling has been applied for by Air New Zealand Limited.

Taxation Laws

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

This Ruling applies in respect of sections CA 1(2), CB 1, CB 3, CB 4, CB 5, CE 1, CX 2(1), CX 2(2), EW 3, EW 5(21), and EW 31.

The Arrangement to which this Ruling applies

The Arrangement is the accruing by a Member of the Air New Zealand Airpoints Programme of Airpoints Dollars provided by Air New Zealand as a result of expenditure incurred by the Member's employer on the Member's work related travel and the redemption of those Airpoints Dollars for air travel and other rewards ("Rewards"). The Arrangement does not include employees of Air New Zealand and its subsidiaries (as they are not entitled to accrue Airpoints Dollars in respect of work related travel). Further details of the Arrangement are set out in the paragraphs below. Capitalised terms are defined in the Airpoints Members' Guide as provided to the Commissioner on 13 May 2009.

1. Air New Zealand operates a loyalty scheme known as the "Airpoints Programme", referred to in this Ruling as the Programme. Under the Programme, Airpoints Dollars accrue to Members by reference to the value of the fare paid and region of the world travelled, and Airpoints Dollars have a value identical to dollars on redemption for Rewards. Airpoints Dollars may also accrue to Members from expenditure incurred on goods and services sold by scheme partners ("Partners"), for example hotels and hire car companies.
2. Airpoints Dollars accruing to or accumulated by a Member can be used by them to purchase an equivalent dollar value of travel or to purchase other Air New Zealand products (such as Koru Club membership), or hotel accommodation, travel insurance, car hire and other rewards ("Rewards").
3. The terms and conditions of the Programme are contained in the Airpoints Members' Guide provided to the Commissioner on 13 May 2009 ("Terms and Conditions").

Employees of Air New Zealand's commercial customers

4. Employees of Air New Zealand's commercial customers may accrue Airpoints Dollars on travel undertaken for work purposes and paid for by their employer. The employer may pay for this travel by paying Air New Zealand for the tickets that are issued to the employee, or by reimbursing the employee for payments made by them. Any such employees wishing to accrue Airpoints Dollars would first need to become an Airpoints Member.

5. Airpoints Dollars accrue to Members by virtue of a Member's individual membership. The employer may pay the \$50 membership fee, by either reimbursing the employee or paying on the employee's behalf.
6. Members' employers will not provide any consideration to Air New Zealand for Airpoints Dollars provided to those Members. Air New Zealand will not provide discounts (other than an ordinarily available discount for corporate customers provided for reasons unrelated to Airpoints Dollars) to corporate customers who request that Airpoints Dollars not be issued to their employees in respect of work related travel.
7. Employers have no influence over the Airpoints Dollars to be provided to Members (except to the extent that they purchase air travel). Airpoints Dollars will accrue to Members on the basis provided for in the Terms and Conditions, regardless of whether travel is undertaken for private purposes or for work related purposes and regardless of who pays for the travel. Airpoints Dollars accrue and are redeemed for Rewards on the same basis for any Member of the Programme, irrespective of the Member's employer.

Airpoints Membership

8. Airpoints Membership is available to residents of all countries.
9. The Membership joining fee is a cost of NZ\$50 for New Zealand residents and AU\$50 for Australian Members. Residents of all other countries will be charged the local currency equivalent of NZ\$50. This fee may not be paid for using Airpoints Dollars and must be paid for in cash.
10. Complimentary Membership is available to eligible first class and business class passengers who have paid for and travelled Business Premier class on Air New Zealand Operated Flights for international Sectors. Complimentary Membership is available to current fully paid-up members of Air New Zealand Koru Club.
11. Each Member may maintain only one Account. Membership is not transferable.
12. No individual Member's Account information or details will be discussed or amended or transacted unless the Member's correct Membership number along with their Personal Access Code is first quoted.
13. The Membership Card is used to assist in the earning of Airpoints Dollars and to obtain access to or the provision of Rewards. The Member agrees that his/her signing of a Card and/or quoting his/her Membership number to Air New Zealand or to any of its Partners, employees or agents for the purposes of the Airpoints Programme means that he/she has read and understood the Terms and Conditions of the Airpoints Programme and accepts them.
14. Air New Zealand reserves the right to cancel a Member's Membership in the Programme at any time without notice and without giving a reason for so doing. Air New Zealand will not provide any consideration for Airpoints Dollars earned but not redeemed at the time of termination of Membership.
15. Membership will terminate on the death of a Member. Airpoints Dollars or any other benefits earned but not redeemed at the time of death will be

cancelled with no consideration. Transfer of Airpoints Dollars on the death of a Member is permitted in the situation set out in clause 8.8.2 in accordance with clause 8.5 of the Terms and Conditions (see paragraphs 31 to 32 below).

Earning Airpoints Dollars

16. Airpoints Dollars may be earned through expenditure on Air New Zealand and Partner Airline flights and on goods and services purchased from non-airline Partners (including car rental, hotel accommodation, GlobalPlus accounts and travel insurance). Transfer of credit card points/credits into Airpoints Dollars is available in some cases. Airpoints Dollars are provided by Air New Zealand regardless of whether the entitlement arises from the purchase of Air New Zealand or Partners' goods and services.

Using Airpoints Dollars

17. Rewards may be paid for using Airpoints Dollars. One Airpoints Dollar has the equivalent value of \$1 in relation to the number of Airpoints Dollars required to acquire Rewards. A combination of Airpoints Dollars and cash for the acquisition of a Reward is not permitted, unless otherwise specified in writing by Air New Zealand.
18. Airpoints Dollars may be used to obtain Reward flights with Air New Zealand and Partner Airlines. Any Reward ticket that is cancelled and is refundable will be refunded by a re-crediting of Airpoints Dollars. Taxes, levies, or surcharges cannot be paid for using Airpoints Dollars and must be paid for in cash. The only exception to this is where the published fare is inclusive of taxes, levies and/or surcharges, for example on Air New Zealand Operated Flights within New Zealand or where the published fare is inclusive of insurance and fuel charges.
19. Non-flight and non-airline Rewards are available, subject to the applicable Partner's terms and conditions where those Rewards are not provided by Air New Zealand. Rewards include Koru Club membership, car hire and hotel accommodation. GlobalPlus Credit Card customers may have the ability to redeem their Airpoints Dollars on a limited range of other non-airline products (such as holiday passes, wine and CD vouchers).

Non-convertibility

20. Under the Terms and Conditions, Airpoints Dollars and Rewards cannot be redeemed, sold, assigned, gifted or otherwise transferred by a Member for cash or other consideration. The relevant clauses of the Terms and Conditions in this respect are as follows.
21. Clause 3.1.24 of the Terms and Conditions states:

In accepting a Reward, you agree that (subject to these Terms and Conditions and in particular the Gifting provisions in clauses 4 below and 3.4.3.10 and 3.4.4.11) you won't combine any Rewards with anyone else or sell, assign or otherwise transfer the right to a Reward to anyone else. Air New Zealand has the right to ask you for proof that you have complied with this clause in addition to any evidence required in accordance with clause 12.

22. Clause 3.1.25 of the Terms and Conditions states:

Rewards offered by Partners will be on the applicable Partner's terms. If you redeem a Reward in conjunction with any other loyalty programme (where such

programme has our consent to use Airpoints Dollars) you agree that you won't combine any Rewards with anyone else or sell, assign or otherwise transfer Rewards for Cash or anything else. Air New Zealand is not responsible for Reward offers by Partners or their conditions, or for the Partners' performance or provision of such Rewards.

23. Clause 4.1.8 of the Terms and Conditions states:

You must not receive any Cash or other consideration as payment for any Rewards you gift.

24. Clause 9.7 of the Terms and Conditions states:

Notwithstanding any other provision in these Terms and Conditions or the terms and conditions of any other loyalty programme offered by a Partner and/or authorised by Air New Zealand, you can't redeem for Cash or sell your Airpoints Dollars and/or Rewards or assign or transfer them for Cash or any other consideration.

25. Clause 15.5 of the Terms and Conditions states:

Airpoints Dollars may not be used to acquire any goods or services other than in conjunction with:

- the Air New Zealand Airpoints Programme in accordance with these Terms and Conditions.
- any other loyalty programme, that we have given written consent to use Airpoints Dollars and in accordance with such loyalty programme's terms and conditions.

26. Clause 15.6 of the Terms and Conditions states:

Airpoints Dollars are not convertible into Cash. Any Rewards offered by Partners or any use of Airpoints Dollars in conjunction either with the Programme or with any other loyalty programme that we have authorised the use of Airpoints Dollars in conjunction with, are subject to the restriction that you can't sell, assign or transfer any Rewards or Airpoints Dollars for Cash or any other consideration.

27. If a Member cancels a refundable Ticket, then in accordance with clause 3.1.16 the refund will be a re-credit of the Airpoints Dollars to the Member's Account. Airpoints Dollars may also be re-credited if an Upgrade for which Airpoints Dollars were redeemed is not available.

Giftng

28. Gifting is the process whereby a Member authorises the deduction of Airpoints Dollars from his/her account where such Airpoints Dollars are redeemed to provide a person resident in the same Household as the Member with a Ticket for Reward Travel or for Non-Airline Rewards. Companion Tickets may not be Gifted.
29. Gold, Gold Elite Members (Members who have accrued a specified number of Airpoints Dollars from qualifying flights) or GlobalPlus Platinum cardholders are additionally entitled to nominate as giftees two individual persons who do not need to reside in the same Household as the Gold Elite Member.
30. Air New Zealand will monitor each Member's Gifting Register to ensure that no fraudulent activities occur.

Transfer of Airpoints Dollars

31. Clause 8.5 provides for the transfer for Airpoints Dollars in accordance with clauses 1.4.5.1 and 11.4.1. Clause 1.4.5.1 provides as follows:

1.4.5.1 Transfer of credit cards points/credit transfers to Airpoints Dollars are only available in certain countries – and in accordance with these Terms and Conditions and those of the relevant credit card issuer. Please contact your credit card issuer for full details including details on membership eligibility and transfer fees.

32. Clause 11.4.1.1 provides that Airpoints Dollars may be transferred between parties in accordance with clauses 11.4.1.2 and 11.4.1.3, which provide as follows:

11.4.1.2 If the Nominated Earner of a joint Global Plus branded credit card (including a joint GlobalPlus Business Card) or, a joint GlobalPlus Home Loan account or a joint BNZ Credit Card dies, 100% of the Airpoints Dollars accrued from that person's joint account, and that have not yet been redeemed, may be transferred from the Nominated Earner's Airpoints Account to the other joint account holder's Airpoints Account, once the BNZ has provided verification to us of the Member's death and type of bank account.

11.2.1.3 In the case of either separation or divorce, 50% of the Airpoints Dollars accrued from a joint GlobalPlus branded credit card (including a joint GlobalPlus Business Card) or, a joint GlobalPlus Home Loan account or a joint BNZ credit card, and which have not yet been redeemed, may be transferred from one joint account holder's Member's Account – as long as both Members ask for the transaction. The Membership details and PAC numbers for both Members must be sent to the Air New Zealand Contract Centre with supporting documentation from the solicitor of the Member from whose Account the Airpoints Dollars will be transferred. Once the Air New Zealand Contact Centre has received and verified the documentation, the relevant Airpoints Dollars that have not already been redeemed for Rewards will be equally divided and distributed into the relevant Member' Accounts.

Combining Airpoints Dollars

33. A Member may be permitted by Air New Zealand, at Air New Zealand's sole discretion, to combine his/her Airpoints Dollars with another Member's Airpoints Dollars for the purpose of booking a rental car Reward and/or a hotel Reward for a period in each case of two or more consecutive days, provided that each Member has sufficient Airpoints Dollars to redeem a rental car Reward for a minimum of one day and/or a hotel Reward for a minimum of one night.

Monitoring

34. Air New Zealand will monitor Airpoints Membership Accounts and the Programme. In particular, clause 12.2 of the Terms and Conditions states:

If you commit fraud in connection with Airpoints Dollars or abuse your Airpoints Dollars accumulation or Rewards use or breach these Terms and Conditions, you'll be subject to appropriate administrative and/or legal action by Air New Zealand that includes, but is not limited to, Membership termination, Membership suspension, the forfeiture of all accumulated Airpoints Dollars and unused Rewards and an action to recover the monetary value of the Airpoints Dollars and credits concerned.

Termination

35. A Member may terminate his/her Membership in the Programme at any time by giving notice in writing and returning the Membership Card to Air New Zealand.
36. Partners may discontinue their participation in the Programme and their provision of Rewards at any time without notice.
37. Air New Zealand gives no warranty as to the continuing availability of the Programme and reserves the right to terminate the Programme upon giving not less than six months' notice to Members, or at any time without notice if Air New Zealand ceases to operate as an airline. Air New Zealand will not provide any consideration for Airpoints Dollars earned but not redeemed at the time of termination of the Programme.

Access to other benefits

38. Under no circumstances are the Terms and Conditions interchangeable with those of the Air New Zealand Koru Club or any other club or loyalty programme operated by Air New Zealand or any of its Partners. Membership of the Programme does not give access to the benefits of any other Air New Zealand club, facility or loyalty programme unless so stated in the conditions of membership of such other club, facility or loyalty programme.

Changes to the Programme

39. The Terms and Conditions may be amended at any time, pursuant to clause 9.1 of the Terms and Conditions.

Ruling not applicable to other loyalty programmes

40. This Ruling does not consider or rule on the tax treatment of any other loyalty programme to which, in accordance with clauses 15.5 and 15.6 of the Terms and Conditions, Air New Zealand has given written consent to use Airpoints Dollars in accordance with the terms and conditions of that other loyalty programme.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

- a) Under no circumstances will the Terms and Conditions allow Airpoints Dollars or Rewards (including any goods or services received from redeeming Rewards such as vouchers) to be redeemed for cash or sold, assigned or transferred by a Member for cash or other consideration.
- b) In any circumstance where a Reward is cancelled or unavailable or where for any other reason the Member is entitled to a refund of Airpoints Dollars, the refund is by way of re-crediting to the Member's Account the Airpoints Dollars redeemed by the Member for that Reward.
- c) Employees of Air New Zealand and its subsidiaries cannot accrue Airpoints for work related travel.
- d) Membership of the Programme is a contract between a Member and Air New

Zealand. Employers are not entitled to enter into that contract on behalf of their employees.

- e) The membership fee payable to Air New Zealand constitutes a legal liability owed by the applicant to Air New Zealand.
- f) Where the Member is an employee of a Partner or a Partner Airline, the Member does not redeem Airpoints Dollars for any Reward offered by that Partner or Partner Airline.
- g) Where the employer has either paid the membership fee on behalf of the employee or reimbursed the employee for that fee, the receipt or the possibility of the receipt by the employee of Airpoints Dollars or Rewards is not taken into account by the employer in determining that employee's remuneration (whether by the relative reduction of remuneration or otherwise).
- h) Where the employer has either paid the membership fee on behalf of the employee or reimbursed the employee for that fee, the employer, when purchasing travel in respect of which that employee derives Airpoints Dollars, does not pay substantially more for that travel than the cost of equivalent air travel services with a more than incidental purpose of the provision of Airpoints Dollars or Rewards to that employee.
- i) No changes to the Programme are made pursuant to clause 9.1 of the Terms and Conditions that are material to the tax treatment of Airpoints Dollars and Rewards derived by employees in respect of work related travel.

How the Taxation Laws apply to the Arrangement

Subject in all respects to any assumption or condition stated above, the Taxation Laws apply to the Arrangement as follows:

- No income arises to the Member under sections CA 1(2), CB 1, CB 3, CB 4, CB 5 or CE 1 when they receive Airpoints Dollars or Rewards.
- The employer of the Member is not liable under sections CX 2(1) or CX 2(2) for FBT on any benefits obtained by the Member as a result of receiving Airpoints Dollars or Rewards.

The period or income year for which this Ruling applies

This Ruling will apply for the period beginning on 1 April 2009 and ending on 31 March 2014.

This Ruling is signed by me on the 10th day of August 2009.

Howard Davis
Director (Taxpayer Rulings)