

PRODUCT RULING - BR Prd 12/01

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

Name of the Person who applied for the Ruling

This Ruling has been applied for by BP Oil New Zealand Limited and AA Smartfuel Limited.

Taxation Laws

All legislative references are to the Goods and Services Tax Act 1985 unless otherwise stated.

This Ruling applies in respect of ss 2, 3A, 6, 8, 20 and 25(1)(b).

The Arrangement to which this Ruling applies

The Arrangement is the AA Smartfuel Programme (the Programme), which is a rewards scheme whereby customers obtain entitlements to buy fuel at a discounted price from certain fuel providers by purchasing goods or services from certain retailers (Participating Reward Providers (PRPs)). The fuel providers may also be PRPs in respect of both fuel and non-fuel purchases.

This Ruling applies only to PRPs that are "registered persons" (as defined in s 2).

Further details of the Arrangement are set out in the paragraphs below.

Parties to the Arrangement

1. The Arrangement involves the following parties:
 - AA Smartfuel Limited (AASL) as the scheme operator and administrator;
 - various fuel providers, currently BP Oil New Zealand Limited (BP) and Chevron New Zealand (which operates its retail fuel business under the Caltex brand);
 - various PRPs, which currently includes BP; and
 - individual people who join the scheme (customers).
2. The AA Smartfuel website (www.AAsmartfuel.co.nz) will list participating PRPs and fuel providers current at any time. PRPs and fuel providers may be subject to change.
3. Individuals will be able to join the Programme through one of the following two ways:
 - All AA members are automatically enrolled in the Programme.

- Non-AA members can obtain a free AA Smartfuel card at PRPs and fuel providers, and will need to complete an application form online or in hard copy to be able to redeem their discounts.

Documents relevant to the Arrangement

4. The documents relevant to the Arrangement are the:
 - AA Smartfuel Terms and Conditions, which relate to customers;
 - AA Smartfuel Merchant Agreement, entered into between AASL and PRPs (PRP Agreement);
 - AA Smartfuel National Fuel Merchant Agreement, entered into between BP and AASL (BP Agreement); and
 - AA Smartfuel Fuel Merchant Agreement, entered into between Chevron New Zealand and AASL (Chevron Agreement).

At the time this Ruling was issued, these documents were in the process of being amended. The finalised documents will not be materially different to the draft documents provided to Inland Revenue on 30 August 2011 and 14 December 2011.

Summary of the AA Smartfuel Programme

5. The Programme is a nationwide rewards scheme, which was launched to the public on 7 November 2011. Under the Programme, a customer will earn an entitlement to a discount on the purchase of fuel from fuel providers by purchasing qualifying goods or services from a PRP. The fuel discount entitlements will be credited to a card issued to the customer on presentation to the PRP when making qualifying purchases.
6. All fuel discount entitlements earned from all PRPs accumulate on the customer's card as they make qualifying purchases from PRPs. Fuel discount entitlements expire at the end of the month following the month in which the purchases are made (eg, a fuel discount entitlement earned in August will expire on 30 September).
7. The fuel discount entitlements will provide the customer with the right to a discount on the GST-inclusive price of fuel from fuel providers, expressed as cents per litre, limited to a maximum of 50 litres of fuel. For example, a PRP may credit the customer's card with a fuel discount entitlement of 4 cents per litre, which amounts to a \$2 discount including GST on a purchase of 50 litres of fuel. Each PRP can set the level of fuel discount entitlement they offer, and can set special fuel discount entitlements (eg, if a promotion is done over a period of time) by logging into the AA Smartfuel platform and adjusting the cents discount per dollar spent.
8. Customers will be able to check their fuel discount entitlement balance online. Generally, both types of customers (AA and non-AA members) will be entitled to the same deals, but AA may occasionally offer a special deal to its members.
9. When a customer purchases fuel from a fuel provider and presents the provider with their card, the accumulated discounts on the card will be credited against the purchase price of the fuel (petrol, diesel or both), up

to a maximum of 50 litres, such that the customer pays a discounted amount. Accumulated discounts on the reward card could be sufficient to discount up to 50 litres of fuel purchased.

Payment flows involving AA Smartfuel Limited

10. When a customer makes a qualifying purchase from a PRP and earns a fuel discount entitlement, under clause 4.1 of the PRP, BP and Chevron Agreements, the PRP must pay an amount equivalent to the value of the discount entitlement to AASL. Each week on Sunday night, AASL will determine the total amount of discounts provided to customers in the preceding week and either:
 - AASL will send a tax invoice to the PRP; or
 - (if s 24(2) is satisfied) the PRP will send a buyer created tax invoice to AASL.

The PRP will pay the amount on Tuesday night.

11. Clause 4.1 of the PRP Agreement states:

4.1 In consideration of us undertaking to procure the Participating Redemption Parties' agreement to honour the rights arising from AA Smartfuel Discounts awarded by you each week, you undertake to pay us an amount equal to the aggregate amount of AA Smartfuel Discounts sponsored and awarded by you to AA Smartfuel Members at each of the Business Premises each week (including any AA Smartfuel Discounts awarded under clause 16.2) which amount will be paid irrevocably by you to the AA Smartfuel Account by direct debit, weekly in arrears on Tuesday of the week following the week in which the relevant AA Smartfuel Discount Award Transactions occurred.

12. When a customer redeems their discount entitlement by purchasing fuel from a fuel provider and presenting their AA Smartfuel card, AASL will pay the fuel provider an amount equivalent to the discount given, under clause 4.4 of the BP and Chevron Agreements. The AA Smartfuel system will identify transactions when fuel discount entitlements are redeemed, and each week either:
 - the fuel provider will issue a tax invoice to AASL; or
 - (if s 24(2) is satisfied) AASL will issue a buyer created tax invoice to the fuel provider.

The payment to the fuel provider is made on Thursdays by AASL.

13. Clause 4.4 of the BP Agreement states:

4.4 In consideration of you redeeming AA Smartfuel Discounts, we will pay you an amount equal to the aggregate amount of AA Smartfuel Discounts redeemed by you at each of the Business Premises each week, less the aggregate value of any AA Smartfuel Discounts awarded by you on transactions where AA Smartfuel Discounts have been awarded and redeemed in the same transaction. We will pay you from the AA Smartfuel Account by direct debit, weekly in arrears on the Thursday of the following week.

14. Clause 4.4 of the Chevron Agreement is materially the same as the BP Agreement, other than the reference to discounts being awarded and redeemed in the same transaction.

15. To the extent any fuel discount entitlements are not used before expiry, either:

- AASL will issue a credit note to the PRP, or
- (if s 25(3A) is satisfied) the PRP will issue a buyer created credit note to AASL.

AASL will then refund an amount equivalent to the unused discount to the relevant PRP, under clause 4.2 of the PRP, BP and Chevron Agreements. This amount is then paid out within 10 days.

16. Clause 4.2 of the PRP Agreement states:

- 4.2 Where the AA Smartfuel Discounts sponsored and awarded by you (and paid for under clause 4.1) have expired (by passage of time or because they are in excess of your Pro Rata Share of the AA Smartfuel Discounts redeemed in an AA Smartfuel Discount Redemption Transaction), the amount of the consideration payable by you under clause 4.1 will be reduced by an amount equal to the amount of such expired AA Smartfuel Discounts and an amount equal to the amount of such reduction will be paid to you in respect of the relevant Business Premises by direct credit on or about the 10th of the month following the month in which the AA Smartfuel Discounts expired.

17. The fuel providers and PRPs also make additional payments to AASL for other services AASL provides in respect of the information technology platform that enables it to operate the Programme, as well as administration, establishment, transaction and other sundry fees.

Instant discounts by fuel providers

18. The Ruling does not apply to the provision of an "instant discount" by a fuel provider, being part of any discount on the price of goods or services supplied by a fuel provider to a customer, which is not referable to points accumulated under the Programme and does not result in a PRP having to reimburse the fuel provider.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- The sale of goods and services by a PRP results in the customer providing "consideration" (as defined in s 2) for a single supply of goods and services and the right to buy fuel at a discount, under s 6. To the extent the PRP makes a taxable supply to the customer, the amount paid by the customer is subject to GST under s 8.
- Payments AASL makes to a fuel provider are "consideration" (as defined in s 2) for a taxable supply of services from the fuel provider to AASL. The amount AASL pays to the fuel provider is therefore subject to GST under s 8.
- In calculating the amount of tax payable in a taxable period under s 20, AASL will be entitled to an input tax (as defined in s 3A) deduction for all the GST charged in respect of supplies made by a fuel provider to AASL in that taxable period.

- Where a customer uses fuel discount entitlements to purchase fuel at a discounted price, under s 8(1) GST on that supply is chargeable only on the discounted price payable by the customer to the fuel provider.
- Payments a PRP makes to AASL are “consideration” (as defined in s 2) for a supply of services from AASL to the PRP. The amount the PRP pays to AASL is therefore subject to GST under s 8.
- To the extent that the single supply (comprising of goods and services and the right to buy fuel at a discount) made by a PRP to a customer is a taxable supply, in calculating the amount of tax payable in a taxable period under s 20, the PRP will be entitled to an input tax (as defined in s 3A) deduction, or (where s 20(3) applies) a deduction from the amount of output tax payable by that PRP, for the GST charged on supplies made by AASL to the PRP in that taxable period.
- When an amount is refunded to a PRP under clause 4.2 of the relevant Agreement, s 25(1)(b) will apply and either:
 - AASL will be required to provide the PRP with a credit note, or
 - (if s 25(3A) is satisfied) the PRP will be required to provide AASL with a buyer created credit note.

The period or income year for which this Ruling applies

This Ruling will apply for the period beginning on 1 November 2011 and ending on 31 December 2014.

This Ruling is signed by me on the 31st day of May 2012.

Howard Davis
Director (Taxpayer Rulings)