PUBLIC RULING BR Pub 09/03: Charitable Organisations and Fringe Benefit Tax

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Note (not part of the Ruling): This ruling is essentially the same as public ruling BR Pub 00/08 published in *Public Information Bulletin* Vol 12, No 9 (September 2000). BR Pub 00/08 was a reissue of Public Ruling Pub 97/6 which was published in *Public Information Bulletin* Vol 9, No.5 (May 1997). This Ruling has been updated to take into account the Income Tax Act 2007 and reaches the same conclusion as the earlier rulings, despite the legislative changes that have occurred since the earlier rulings expired.

This is a public ruling made under section 91D of the Tax Administration Act 1994.

Taxation Law

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

This Ruling applies in respect of section CX 25.

The Arrangement to which this Ruling applies

The Arrangement is the provision of a non-monetary benefit by a charitable organisation, other than a benefit by way of short-term charge facilities as described in section CX 25(2) and (3), to an employee of that organisation.

In this Ruling, the term "charitable organisation" has the meaning that it has in the Act for the purposes of the fringe benefit tax (FBT) rules; that is, in relation to any quarter or (where FBT is payable on an income year basis under section RD 60) any income year, any association, fund, institution, organisation, society, or trust to which section LD 3(2) or schedule 32 applies. A local authority, a public authority, or a university are not "charitable organisations" for the purposes of section CX 25 and are therefore excluded from this fringe benefit exemption.

How the Taxation Law applies to the Arrangement

The Taxation Law applies to the Arrangement as follows.

- For the purposes of section CX 25(1), a fringe benefit **is not** provided by a charitable organisation, if a non-monetary benefit is received by an employee of the organisation mainly in connection with employment in an activity that either:
  - carries out any of the organisation's benevolent, charitable, cultural, or philanthropic purposes; or
  - does not constitute a profession, a trade, or an undertaking that is carried on for profit.

- For the purposes of section CX 25(1), a fringe benefit **is** provided by a charitable organisation, if a non-monetary benefit is received by an employee of the organisation mainly in connection with employment in an activity that:
  - cannot be characterised as carrying out any of the organisation's benevolent, charitable, cultural, or philanthropic purposes; and
  - constitutes a profession, a trade, or an undertaking that is carried on for profit (even if that profit is to be applied solely for the purposes of the charitable organisation).
- For the purposes of section CX 25(1), a non-monetary benefit that is provided to an employee of a charitable organisation is received by an employee "mainly in connection with" their employment in a business activity outside of the organisation's benevolent, charitable, cultural, or philanthropic purposes, if:
  - the employee is employed solely in the business activity of the organisation; or
  - the employee is employed in both the business activity and in activities related to the charitable purpose of the organisation, and the benefit arises mainly in connection with the employment in the business activity; or
  - the employee is employed in both the business activity and in activities related to the charitable purpose of the organisation, the benefit arises equally in connection with both the business and non-business activities, and the employee is predominantly employed in the business activities of the employer.

The period or income year for which this Ruling applies

This Ruling will apply for an indefinite period beginning on the first day of the 2008/09 income year.

This Ruling is signed by me on 30 June 2009.

Susan Price
Director, Public Rulings

COMMENTARY ON PUBLIC RULING BR Pub 09/03

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusions reached in Public Ruling BR Pub 09/03 ("the Ruling").

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

Overview

1. Benefits provided by charitable organisations to their employees are excluded from being fringe benefits by section CX 25. The exclusion does not apply, however, to any benefit that is provided mainly in connection with an employee's employment in a business activity that is outside the organisation's benevolent, charitable, cultural, or philanthropic purposes. The exclusion also does not apply to benefits provided to an employee by way of short-term charge facilities if the value of those benefits in a tax year is more than 5% of the employee's salary or wages for the tax year.

2. The issues that the Ruling addresses are when:

   - an activity will be a business activity that is outside the organisation's benevolent, charitable, cultural, or philanthropic purposes; and
   - a benefit will be received by an employee mainly in connection with such activities.

Legislation

3. Section CX 25 states:

> **CX 25 Benefits provided by charitable organisations**
>
> *When not fringe benefit*
>
> (1) A charitable organisation that provides a benefit to an employee does not provide a fringe benefit except to the extent to which—
>
> (a) the employee receives the benefit mainly in connection with their employment; and
>
> (b) the employment consists of the carrying on by the organisation of a business whose activity is outside its benevolent, charitable, cultural, or philanthropic purposes.
>
> *When employer provides charge facilities*
>
> (2) Subsection (1) does not apply, and the benefit provided is a fringe benefit, if a charitable organisation provides a benefit to an employee by way of short-term charge facilities and the value of the benefit from the short-term charge facilities for the employee in a tax year is more than 5% of the employee's salary or wages for the tax year.
>
> *Meaning of short-term charge facilities*
>
> (3) For the purposes of the FBT rules, a **short-term charge facility** means an arrangement that—
>
> (a) enables an employee of a charitable organisation to obtain goods or services that have no connection with the organisation or its

operations by buying or hiring the goods or services or charging the cost of the goods or services to an account; and

(b) places the liability for some or all of the payment for the goods or services on the organisation; and

(c) is not a fringe benefit under section CX 10.

4. "Business" is defined in section YA 1 as including:

any profession, trade, or undertaking carried on for profit.

5. "Charitable organisation" is defined in section YA 1:

charitable organisation —

(a) means, for a quarter or an income year, an association, fund, institution, organisation, society, or trust to which section LD 3(2) (Meaning of charitable or other public benefit gift) or schedule 32 (Recipients of charitable or other public benefit gifts) applies—

(i) in the quarter; or

(ii) in the income year, if fringe benefit tax is payable on an income year basis under section RD 60 (Close company option); and

(b) does not include a local authority, a public authority, or a university.

6. Section LD 3(2) states:

LD 3 Meaning of charitable or other public benefit gift

...

Description of organisations

(2) The following are the entities referred to in subsection (1)(a):

(a) a society, institution, association, organisation, or trust that is not carried on for the private pecuniary profit of an individual, and whose funds are applied wholly or mainly to charitable, benevolent, philanthropic, or cultural purposes within New Zealand:

(b) a public institution maintained exclusively for any 1 or more of the purposes within New Zealand set out in paragraph (a):

(bb) a Board of Trustees that is constituted under Part 9 of the Education Act 1989 and is not carried on for the private pecuniary profit of any individual:

(bc) a tertiary education institution that is established under Part 14 of the Education Act 1989 and is not carried on for the private pecuniary profit of any individual:

(c) a fund established and maintained exclusively for the purpose of providing money for any 1 or more of the purposes within New Zealand set out in paragraph (a), by a society, institution, association, organisation, or trust that is not carried on for the private pecuniary profit of an individual:

(d) a public fund established and maintained exclusively for the purpose of providing money for any 1 or more of the purposes within New Zealand set out in paragraph (a).

7. Schedule 32 lists certain named organisations that are "recipients of charitable or other public benefit gifts". It should be noted that the application of the exclusion from fringe benefit tax applies to a wider category of organisations (including those listed in schedule 32) than the stricter requirements for organisations to be registered under the Charities Act 2005. Section CX 25(1) applies to those organisations that are commonly referred to as "donee organisations" for the donations tax credit available under section LD 1.

8. "Charitable purpose" is defined in section YA 1 as including:

> every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community.

9. The Act does not define what is meant by benevolent, cultural, or philanthropic purposes.

Application of the Legislation

Business activities outside an organisation's benevolent, charitable, cultural, or philanthropic purposes

10. Benefits provided by charitable organisations to their employees are excluded from being fringe benefits by section CX 25. Section CX 25(1) states that the exclusion does not apply, however, to any benefit that is provided mainly in connection with an employee's employment in a business activity that is outside the organisation's benevolent, charitable, cultural, or philanthropic purposes. The first issue to be considered, therefore, is when an activity undertaken by a charitable organisation will be a business activity that is outside of the organisation's benevolent, charitable, cultural, or philanthropic purposes.

11. "Business" is defined in section YA 1 as including "any profession, trade, or undertaking carried on for profit".

12. The Court of Appeal in *Grieve v CIR* (1984) 6 NZTC 61,682 considered that underlying the use of the word "business" in the context of a taxation statute is the fundamental notion of the exercise of an activity in an organised and coherent way that is directed to an end result – the making of pecuniary profits. The Court said that the existence of a business activity is determined on the basis of the nature of the activity and whether the taxpayer has the intention of making a pecuniary profit in carrying out that activity. The Court stated (at p 61,691):

> Statements by the taxpayer as to his intentions are of course relevant but actions will often speak louder than words. Amongst the matters which may properly be considered in that inquiry are the nature of the activity, the period over which it is engaged in, the scale of operations and the volume of transactions, the commitment of time, money and effort, the pattern of activity, and the financial results.

13. Many charitable organisations engage in activities on a continuous and ongoing basis, commit time, money, and effort to those activities, and

conduct a large volume of transactions, so will have these characteristics of a business.

14. The issue is therefore whether a charitable organisation that budgets for, and has a record of making surpluses of income over expenditure has the "intention of making a profit". If it is carried on for profit, it will be a "business" for the purposes of the Income Tax Act.

15. English cases have held that the fact that a charity makes a profit does not mean that it is carried on "for profit". In *Trustees of the National Deposit Friendly Society v Skegness* UDC [1958] 2 All ER 601, the House of Lords found that a charity's objects are to advance the charitable purposes for which it is established. If profit-making is not one of their purposes but is only a means of achieving those purposes, the charity is not carried on "for profit". In *Customs and Excise Commissioners v Bell Concord Educational Trust Ltd* [1989] 2 All ER 217, the Court held that the question of whether or not an organisation is carried on "for profit" must be answered by reference to the objects for which that organisation is established, as contained in its constitution, and not by reference to the budgeting policy of that organisation.

16. Thus, a charitable organisation that carries on its activities in a business-like manner and which has the intention and record of making surpluses is not carried on "for profit", unless the organisation's constitution states that one of its purposes is to make a profit. As such organisations are not carried on "for pecuniary profit"; they are not carrying on a "business" for the purposes of the Income Tax Act and the FBT exemption.

17. For the purposes of section CX 25, however, it is only benefits provided in connection with business activities that fall outside the organisation's benevolent, charitable, cultural, or philanthropic purposes that will be fringe benefits. Once an activity is identified, applying the test outlined in *Grieve* that an activity undertaken by a charitable organisation is a business activity, the issue is whether the activity is outside of the organisation's benevolent, charitable, cultural, or philanthropic purposes.

18. A distinction between the charitable (ie, running and administering a charity and providing charitable services) and the non-charitable purposes of a charity was drawn in *Oxfam v City of Birmingham District Council* [1975] 2 All ER 289 (HL).

19. *Oxfam v City of Birmingham District Council* concerned section 40 of the United Kingdom General Rate Act 1967, which applied to premises or heriditaments that were occupied by a charity and wholly or mainly used for charitable purposes. The House of Lords considered whether Oxfam's gift shops were on premises wholly or mainly used for charitable purposes. The House of Lords found that, although the gift shops were used for purposes that indirectly related to the achievement of the objects of the charity (ie, selling donated goods to raise money for the charity), the premises were not wholly or mainly used for charitable purposes.

20. In reaching this conclusion, the House of Lords drew a line between the use of premises for purposes that are the charitable purposes of the charity and the use of premises for purposes that, though purposes of the charity, are not charitable purposes. Lord Cross said (at p 293):

> The wording of s 40(1) of the [General Rate Act 1967] shows that the Legislature did not consider that the mere fact that a hereditament in question is occupied by a charity justifies any relief from rates. That is only justified if the hereditament is being used for the "charitable purposes" of the charity. So the first question which arises is: what are the 'charitable purposes' of a charity as distinct from its other purposes? The answer must be, I think, those purposes or objects the pursuit of which make it a charity — that is to say in this case the relief of poverty, suffering and distress.

21. As well as "those purposes or objects the pursuit of which make it a charity" Lord Cross recognised that activities that are "wholly ancillary to" or "directly facilitate" the carrying out of an organisation's charitable objects will be considered to be part of fulfilling the organisation's charitable objects.

22. Activities involved in carrying out the charitable objects of a charitable organisation or directly facilitating the carrying out of the charitable objects (such as administrative or clerical activities) will be within the benevolent, charitable, cultural, or philanthropic purposes of the organisation for the purposes of section CX 25. However, trading activities carried on to raise funds for the charity that are not themselves the charitable purposes of the charity will not be within the benevolent charitable, cultural, or philanthropic purposes of the organisation for the purposes of section CX 25, even if all funds raised from the activity are applied to the charity's purpose.

23. The distinction between an organisation carrying out the functions for which the organisation was established and an organisation carrying on a business was examined in *Port Chalmers Waterfront Workers Union v CIR*; *New Zealand Waterfront Workers Union v CIR* (1995) 17 NZTC 12,059 (High Court); *CIR v Port Chalmers Waterfront Workers Union* (1996) 17 NZTC 12,523 (Court of Appeal). That case concerned section 61(23) of the Income Tax Act 1976. Section 61(23) (section CW 44 of the Income Tax Act 2007) provides an exemption from income tax for the income of a friendly society, except so far as that income is derived from business carried on beyond the circle of its membership.

24. In *Port Chalmers*, the High Court drew a distinction between a friendly society carrying on a business as a trading organisation and a friendly society discharging its functions as a friendly society. It said that where the friendly society is discharging its functions as a friendly society, it is not carrying on a business even though it may conduct transactions that have a commercial flavour. This distinction was accepted by the Court of Appeal.

25. The Ruling interprets section CX 25(1) as drawing a similar distinction as that drawn in *Port Chalmers* between the activities of a charitable organisation which discharge the purposes for which the organisation was established (ie, the discharging of its charitable, benevolent, or

philanthropic objects) and the charitable organisation carrying on a business as a trading organisation. A charitable organisation is not carrying on a business for the purposes of section CX 25(1) when it discharges its charitable objects, even though it may discharge those purposes in a business-like manner.

26. The effect of the Ruling is that the activities involved in carrying out the charitable objects of a charitable organisation, or directly facilitating the carrying out of the charitable objects (such as fundraising or administrative or clerical activities) will not be treated as being business activities for the purposes of section CX 25(1). However, trading activities which are carried on to raise funds for the charity, and which are not themselves the charitable purposes of the charity, will be treated as business activities of the charitable organisation, if they satisfy the "business" test set out in the Income Tax Act (ie, those activities are carried on for the purpose of making a pecuniary profit).

27. Thus, when a charitable organisation's employees are engaged in carrying out the charitable purposes of the organisation, benefits provided to them will not attract fringe benefit tax (FBT) liability because of section CX 25 (unless the benefits are provided by way of short-term charge facilities). However, when a charitable organisation's employees are engaged in activities of the organisation that are not in themselves charitable and that constitute business activities of the organisation, any benefits provided to them will not fall within the exclusion provided by section CX 25, so will attract FBT liability where applicable.

"Mainly in connection with"

28. The second issue arising is when a benefit will be treated as being received by an employee "mainly in connection with" business activities that fall outside a charitable organisation's benevolent charitable, cultural, or philanthropic purposes. It is necessary to consider this issue because an employee may be employed by a charitable organisation in a range of activities, some of which relate to the carrying out of the organisation's charitable purposes or other non-business activities of the organisation, and some of which are non-charitable business activities. It is only benefits provided "mainly in connection with" the non-charitable business activities that fall outside of the exclusion provided in section CX 25.

29. The expired ruling BR Pub 00/08 was issued in the context of section CI 1(m) of the Income Tax Act 1994, which is the equivalent provision to section CX 25. This section used the words "primarily and principally" where section CX 25 uses "mainly".

30. Lord Morton of Henryton discussed the meaning of the word "mainly" in *Fawcett Properties Ltd v Buckingham County Council* [1961] AC 636 (at p 639):

> The word "mainly" at once gives rise to difficulties. Probably it means **"more than half"**. [Emphasis added.]

31. This meaning was accepted in *CIR v Mitchell* (1986) 8 NZTC 5,181 where Davison CJ, after stating that he regarded "mainly" as the best synonym

for "principally", held that for a room to be "principally" used in connection with carrying on the employment of the taxpayer, the employment-related use of the room must be "greater than the total of all other uses". This equates to the room being used for employment purposes more than half the time.

32. The *Concise Oxford English Dictionary* (11th ed, revised) defines "primarily" and "principally" as follows:

> **Primarily**: for the most part; mainly
>
> **Principally**: for the most part; chiefly

33. Therefore, based on the cases discussed above and the dictionary definitions, it is considered that the replacement of the phrase "primarily and principally" with "mainly" does not change the meaning of the provision.

34. The change of the phrase "primarily and principally" to "mainly" occurred as a result of the rewrite of the Income Tax Act. This change is discussed in *Tax Information Bulletin* Vol 16, No 5 (June 2004) (at p 71):

> *Mainly*
>
> The rewritten provisions use "mainly" in place of "primarily and principally" and similar expressions. The expression "primarily and principally" was considered by Eichelbaum J in *Newman Tours Ltd v CIR* (1989) 11 NZTC 6,027 (High Court). The judge interpreted the expression as requiring that the purpose not only be the main one, in the sense of outweighing all the other purposes, singly or collectively, but also the primary one - that is, the first one. Sufficiently similar connotations can be conveyed in the single word "mainly".

35. This reasoning supports the above conclusion that "mainly" conveys a similar meaning to "primarily and principally".

36. A benefit will be provided to an employee of a charitable organisation mainly in connection with employment in a non-charitable business activity of the organisation if the benefit arises primarily in connection with such a business activity. If an employee is employed only in a non-charitable business activity of a charitable organisation, then any benefits provided to that employee will be provided mainly in connection with employment in a non-charitable business activity. If an employee is employed both in activities relating to the charitable purpose of the organisation and in non-charitable business activities, it will be necessary to determine which activity the benefit arises primarily in relation to.

37. If a benefit arises equally in connection with both the business and non-business activities carried out by an employee, the benefit will be provided mainly in connection with the activity in which the employee is predominantly employed.

38. Section CX 25(1) excludes benefits provided by charitable organisations from being fringe benefits except "to the extent to which" the benefits are provided mainly in connection with employment in a non-charitable business activity of the organisation. The use of "to the extent to which" does not, in this instance, mean that a benefit should be apportioned.

39. In the context of section CX 25(1) what must be considered is the scope of the employee's involvement in the business activities of the employer. The term "to the extent that" combined with the requirement of "mainly" is directed at making a comparison (as opposed to contemplating apportionment, as in other contexts within the Act, for example, section DA 1 of the Income Tax Act 2007 which uses a similar phrase – "to the extent to which"). This comparison is necessary to determine whether the benefit is in connection with the employee's employment in the business or charitable activities or both. Where such benefits are not mainly due to the employer's business activities then the benefit is not a fringe benefit.

40. In summary, if a benefit is provided mainly in connection with employment in a non-charitable business activity of an organisation, then the entire benefit will be a fringe benefit - it will not be apportioned between its relation to charitable activities and non-charitable business activities. This is because the use of the word "mainly" in the section is inconsistent with the concept of apportionment; rather "mainly" means that where the requirement is for the most part true for that element, the section is satisfied completely. There is no need for an apportionment, so in the context of section CX 25 the phrase "to the extent to which" is to be interpreted as meaning "where".

Organisations to which the Ruling does not apply

41. The Ruling does not apply to employers that are local authorities, public authorities, or universities. These organisations are excluded from the definition of "charitable organisation" for the purposes of the FBT rules, so the charitable organisation exclusion contained in section CX 25 does not apply to them. Benefits provided by these organisations will be subject to FBT unless some other exclusion or limitation applies to them.

The Ruling does not apply to short–term charge facilities

42. As previously stated the exclusion from being a fringe benefit provided under section CX 25(1) does not apply to the provision of short-term charge facilities in specified circumstances. Section CX 25(2) states that a fringe benefit will be provided if a charitable organisation provides a benefit to an employee by way of a short term charge facility and the value of the benefit is more than 5% of the employee's salary and wages for a tax year. Subsection (3) defines the term "short–term charge facility". Example 6, set out below, illustrates this point.

Period of Ruling

43. This ruling commences on the first day of the 2008/09 income year. The previous ruling expired on 30 June 2004. Given the terms of section 91C of the Tax Administration Act 1994, it is not possible to issue a ruling in respect of the Income Tax Act 1994 or Income Tax Act 2004 for the period from 1 July 2004 to the end of the 2007/08 income year. However, the Commissioner is of the view that the same principles and conclusions as set out in this Ruling apply in respect of any benefits provided to employees by charitable organisations during this period.

Examples

43. Some activities will usually be characterised as being within the charitable objectives of an organisation. Examples of such activities include:

- appeals for funds for the charity's purpose;
- passive investment and management of the funds of the charity, as long as the charitable organisation does not carry on a business of fund investment; and
- the administration of the above activities.

44. It will be a question of fact in each case whether other activities of a charitable organisation are activities that are not inherently charitable activities that the organisation was established to carry out. It is, therefore, possible that two organisations may carry out similar activities, with different FBT consequences for each organisation. An example of this is the sale of goods or services for valuable and adequate consideration on a similar basis to business enterprises carried on by non-charitable entities and with a view to making a profit. This type of activity would generally be considered to be outside an organisation's charitable objectives, although in some situations such an activity would fall within their charitable objectives. Examples of such cases could include if the production or provision of the goods or services served the purpose of creating job opportunities for a group that the organisation was established to assist, or if the goods or services were provided at low cost to a group that the organisation was established to assist.

45. The examples that follow provide further guidance as to when charitable organisations will and will not be liable for FBT on benefits provided to employees.

Example 1

46. A charitable organisation has the principal purpose of providing education through a private school. The organisation is a charitable organisation for the purposes of the FBT rules, because it is not carried on for the private pecuniary profit of any individual and its funds are applied wholly or principally for charitable purposes (ie, the advancement of education) within New Zealand.

47. The organisation charges tuition fees and has had surpluses of income over expenditure for the last three income years. It provides a car to its school principal for work and private use.

48. The organisation is not liable for FBT on the benefit arising from the private use or availability for private use of the car provided to the principal. This is because the benefit is provided by a charitable organisation to an employee who is employed in respect of the charitable organisation carrying out its charitable purposes. The employee is not employed in a separate business activity carried on by the school.

Example 2

49. The charitable organisation from example 1 also conducts a farming business on land adjacent to the school. The farming operation is carried out in a business-like manner for the purpose of the practical component of the school's agricultural courses. The organisation provides a car to its farm manager for work and private use.

50. The organisation is not liable for FBT on the benefit arising from the private use or availability for private use of the car provided to the farm manager. This is because the farm manager is employed in respect of the charitable organisation carrying out its charitable purposes (ie, the advancement of education). As the farming business falls within the charitable purposes of the organisation, it is not significant that the farm is run in a business-like manner.

Example 3

51. This example has the same facts as example 2, except the farming operation is carried out in a business-like manner for the purpose of making a profit that is applied to the promotion of the organisation's charitable purposes. The farm is not used to educate students at the school.

52. In this situation the organisation is liable for FBT on the benefit arising from the private use or availability for private use of the car provided to the farm manager. This is because the farm manager is employed in respect of a business activity that falls outside the charitable purposes of the organisation. It is not significant that the profit that is made from the farming activity is applied to the promotion of the organisation's charitable purposes.

Example 4

53. A charitable organisation has the principal purpose of relieving poverty by running a food bank. The organisation is a charitable organisation for the purposes of the FBT rules, because it is not carried on for the private pecuniary profit of any individual and its funds are applied wholly or principally for charitable purposes (ie, the relief of poverty) within New Zealand. The organisation also runs a shop that sells office supplies (purchased from a wholesaler) to the public. The profit made from the shop is used to purchase food for the food bank.

54. The organisation has a policy of providing low interest loans to employees who work in the food bank. The loans are not available to those whose employment consists solely of working in the shop. Peter works for the organisation three days a week in the shop and two days a week in the food bank. He receives a low interest loan from the organisation.

55. The charitable organisation is not liable for FBT on the benefit arising from the provision of the low interest loan to Peter. This is because the benefit arises in relation to Peter's employment in the food bank, which is a charitable activity of the organisation. It does not matter that the

majority of Peter's employment with the organisation is in a non-charitable business activity of the organisation, because the benefit does not arise in relation to this activity.

Example 5

56. This example has the same facts as example 4, except the low interest loans are available to all employees of the organisation.

57. In this situation the organisation is liable for FBT on the benefit arising from the provision of the low interest loan to Peter. As the low interest loans are available to all employees of the organisation, the benefit arises in relation to both Peter's employment in the charitable activities of the organisation and his employment in the non-charitable business activities of the organisation. As Peter is predominantly employed in the non-charitable business activities of the organisation, the benefit arises "mainly in connection with" those activities.

Example 6

58. A charitable organisation employs a secretary at its head office whose employment involves administrative matters relating to the running of the organisation. The secretary's salary is $40,000 for the tax year. On top of the salary, the organisation provides the secretary with a fuel card for use at a local petrol station. The fuel card is in the organisation's name and the organisation is liable to pay any amounts charged to the card. The secretary uses the card to obtain $80 worth of petrol every week.

59. The organisation is liable for FBT on the benefit arising from the provision of the fuel card to the secretary, even though the secretary is employed in respect of the charitable organisation carrying out its charitable purposes (administrative work at an organisation's head office "directly facilitates" the carrying out of an organisation's charitable purposes). The reason the organisation is liable for FBT in this situation is that the benefit is provided by way of a short-term charge facility and the value of the benefit is more than 5% of the secretary's salary or wages for the tax year. The benefit, therefore, is a fringe benefit under section CX 25(2).