Inland Revenue
Te Tari Taake

**TECHNICAL DECISION SUMMARY >** PRIVATE RULING

**WHAKARĀPOPOTO WHAKATAU HANGARAU >** WHAKATAUNGA TŪMATAITI

# Fringe Benefit Tax: discounted goods provided by third party

Decision date | Rā o te Whakatau: 17 November 2023

Issue date | Rā Tuku: 22 February 2024

TDS 24/03

# Subjects | Kaupapa

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

# Taxation laws | Ture tāke

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

# Facts | Meka

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

# Issues | Take

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

# Decisions | Whakatau

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

# Reasons for decisions | Pūnga o ngā whakatau

## Issue 1 | Take tuatahi: Meaning of fringe benefit

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

6. The provision of the discounted goods will be a "fringe benefit" if the following requirements in s CX 2 are satisfied:

   - a benefit exists;
   - the benefit is provided by an employer to an employee;
   - the provision of the benefit must be in connection with the employee's employment;
   - the benefit is described in ss CX 6, CX 9, CX 10 or CX 12 to CX 16, or is an unclassified benefit; and
   - the benefit is not excluded from being a fringe benefit under any provision in subpart CX.

7. TCO considered that the offer of discounted goods by the Supplier to the Applicant's employees satisfies the requirements in s CX 2 for the following reasons:

   - The offer of discounted goods is a "benefit". The term "benefit" means an advantage that is sufficiently clear and definite that it can reasonably, practically and sensibly be understood as a tangible benefit. The provision of discounted goods is a clear and definite advantage that can be understood as a tangible benefit.
   - The Applicant has arranged for the Supplier to offer discounts to the Applicant's employees and the Applicant will reimburse the Supplier for the value of the discount. On this basis, s CX 2(2) applies to treat the benefit provided by the Supplier as if it were provided by the Applicant to its employees directly because there is an arrangement for the provision of a benefit.
   - A benefit is provided in connection with a person's employment if the employment relationship is the reason for the provision of the benefit. In this case, the persons who will receive the offer of discounted goods will be the employees of the Applicant. The Arrangement has been designed as an employee retention initiative. The employment relationship is, therefore, the reason for the offer of discounted goods.

- The benefit in the Arrangement is not one referred to in ss CX 6, CX 9, CX 10 or CX 12 to CX 16 and therefore it would be an "unclassified benefit" under s CX 37 unless it is excluded under subpart CX.
- The only exclusion that is potentially relevant to the Arrangement is the exclusion in s CX 33, which applies when an employer and a non-associated third party have an arrangement for the provision of discounted goods. Section CX 33(2) excludes the discount from being a fringe benefit if the Supplier offers the same or greater discount to a group of persons that is comparable in number with the group of employees. Based on the facts presented in this ruling, the criteria in s CX 33(2) are not satisfied and, therefore, the exclusion in s CX 33 does not apply and the benefit is not excluded from being a fringe benefit under subpart CX.

## Issue 2 | Take tuarua: Valuing the fringe benefit

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

11. TCO concluded that, in some circumstances, the Commissioner can exercise his discretion and determine the value of the fringe benefit even where a market value exists.

12. Taking into account all of the facts and circumstances of this particular ruling application, the Commissioner has determined the value of the fringe benefit as follows:

    - if the Supplier manufactured, produced or processed the goods, then the value is their market value;
    - if the Supplier otherwise acquired the goods, or paid for them to be acquired, dealing at arm's length with the supplier of goods, then the value is the cost of the goods to the Supplier,

    provided that if the value of the fringe benefit determined above is more than the amount that would have been paid to the Supplier for the purchase of goods in a sale within the parameters described below, the value of the fringe benefit is the lesser amount:

    - at retail in the open market in New Zealand; and
    - freely offered; and
    - made on ordinary trade terms; and
    - to a member of the public with whom the Supplier is at arm's length.