

A Change in the Rules on Frequent Flyer Points

Formulating and administering rules to deal with employee taxable benefits has always posed something of a problem for the tax authorities. While the amounts involved are usually quite small on an individual taxpayer basis, the total revenue earned or forgone by the government can be significant, given the millions of taxpayers who receive such benefits. As well, even where amounts are small, receiving an employment benefit on a tax-free basis is something that most employees particularly enjoy, and a change in the rules that renders a formerly tax-free benefit taxable can create significant ill will and potential non-compliance among the taxpaying public. And finally, since benefit structures can and do vary widely among employers, it's always a chore for the tax authorities to create and administer rules that capture the intended targets, without casting the tax net wider than they meant to.

Earlier this year, in *Income Tax Technical News* No. 40 (available on the CRA Web site at <http://www.cra-arc.gc.ca/E/pub/tp/itnews-40/itnews40-e.pdf>), the Agency once again outlined a set of revisions to the tax rules governing a number of popular employee benefits. One of the changes that will affect a fairly large number of taxpayers concerns the tax treatment of what the CRA terms "loyalty programs". The best known of such loyalty programs are, of course, frequent flyer points, but the CRA's policy applies to all programs in which points are accumulated as the result of purchases, which can then be exchanged or redeemed for other goods and services, including gift certificates. Employees can accumulate points where they use personal (i.e., not the company's) credit cards to pay for business-related travel or other business-related expenses, and are then reimbursed by the employer for those business-related expenditures.

For several years, the CRA's policy on the accumulation and use of points by an employee in such circumstances has been that it is the responsibility of the employee to determine and include in income the fair market value of any benefits received. The extent to which employees actually followed the CRA's policy (or were even aware of it) is, of course, open to debate, but the requirement to self-assess and include such benefits in income did exist. (Where the employee received points resulting from the use of a company credit card, it was and remains the responsibility of the employer to include and report the value of those benefits on the employee's T4 for the year during which the points are redeemed.)

The CRA has come to recognize that employees often face "significant difficulties" in tracking, identifying, and valuing the benefits attributable to points acquired through the use of a personal credit card for business expenses and has determined that a change in policy is required. Effective for the 2009 and subsequent tax years, points accumulated by way of business-related use of credit cards will no longer be required to be included in an employee's income, assuming the following three criteria are met:

- the points are not converted to cash;
- the plan or arrangement is not indicative of an alternate form of remuneration; and
- the plan or arrangement is not for tax avoidance purposes.

The second and third of these criteria are, of course, a matter of interpretation or opinion, and the CRA has provided the following examples to demonstrate when it will consider that a taxable benefit has been received:

- where business travel and other expenses are charged to a company credit card and the bills are paid by the employer, but the employee is allowed to redeem the related points for personal use; and
- where an employee uses a personal credit card wherever possible to pay for business-related expenses, including those of co-workers, and is then reimbursed for such costs by the employer.

In the first example, the employer would be required to include and report the value of the benefits on the employee's T4 slip for the year, while in the second example, it would be the employee's responsibility to self-assess and include in income the value of any points received as a result of the business use of his or her credit card. In the CRA's view, the second example represents an alternate form of remuneration received by the employee, thus running afoul of the second of its criteria.

There will always, of course, be disputes between taxpayers and the CRA as to just when the line has been crossed such as to render an otherwise non-taxable benefit taxable. However, it's likely that, under the Agency's new policy, where an employee uses a personal credit card for business-related expenses, is reimbursed for those expenses by the employer, and then "cashes in" the points generated to receive a benefit (other than cash) the employee will be on safe ground in assuming that such a benefit has been received free of tax.