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TSP Finance Limited Partnership

Issued: 21 December 2022

BR Prd 22/15

This Ruling applies in relation to the IFF Funding and Administration Agreement (the Agreement) entered into by the Tauranga City Council (the Council) and TSP Finance Limited Partnership (FSPV). Under the Agreement, the Council will collect a levy from local ratepayers on behalf of FSPV, as authorised by the Infrastructure Funding and Financing (Western Bay of Plenty Transport System Plan Levy) Order 2022.

START DATE – END DATE

6 December 2022 – 30 June 2055

(THIS TITLE PAGE DOES NOT FORM PART OF THE RULING.)

Product Ruling – BR Prd 22/15

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

Name of person who applied for the Ruling

This Ruling has been applied for by TSP Finance Limited Partnership.

Taxation Laws

This Ruling applies in respect of:

- the definition of “interest” in s YA 1 of the Income Tax Act 2007; and
- ss 5(7F), 9 and 60(1B) of the Goods and Services Tax Act 1985.

The Arrangement to which this Ruling applies

The Arrangement is the IFF Funding and Administration Agreement (the Agreement) entered into by the Tauranga City Council (the Council) and TSP Finance Limited Partnership (FSPV) on 30 November 2022. The Agreement provides for two matters:

- FSPV providing grant funding to the Council for transport system projects located in Tauranga (the Projects); and
- the Council agreeing to collect a levy from local ratepayers for FSPV to use to service the senior debt finance it raised for the purposes of the Projects.

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

Background

- 1) The Western Bay of Plenty Transport System Plan (the System Plan) comprises a series of 72 individual transport projects. Together, those projects are designed to better connect the Western Bay of Plenty region and enable Tauranga City to become a more liveable and carbon-efficient city.
- 2) The Projects comprise 13 specific transport system projects located in Tauranga, each of which forms part of the broader System Plan. Each of the Projects may be partially funded and financed under the Infrastructure Funding and Financing Act 2020 (the IFFA).

- 3) The Council issued a levy proposal under the IFFA in respect of the Projects. The Ministry of Housing and Urban Development, as recommender under the IFFA, reviewed the levy proposal and provided a recommendation report to the responsible Minister. The responsible Minister recommended authorising a levy order in respect of the Projects.
- 4) On 28 November 2022 the Infrastructure Funding and Financing (Western Bay of Plenty Transport System Plan Levy) Order (the Levy Order) was made by Order in Council. Under the Levy Order FSPV is the “responsible SPV” referred to in the IFFA for the purposes of the Levy.
- 5) FSPV is a limited partnership under the Limited Partnerships Act 2008. The sole limited partner of FSPV is CIP (IFF Holdings) Limited (the Limited Partner). The general partner is TSP Finance GP Limited, a wholly owned subsidiary of CIP. CIP and its wholly owned subsidiaries are “public purpose Crown-controlled companies” (as defined in s YA 1 of the Income Tax Act 2007). FSPV and the Limited Partner use IFRS (as defined in s YA 1) to prepare financial statements and to report for financial arrangements.
- 6) FSPV was incorporated to structure, procure and draw down debt and equity finance for the Projects. FSPV will service the senior debt finance it raised for the purposes of the Projects through a levy the Council collects on FSPV’s behalf.

IFF Funding and Administration Agreement

- 7) The two main purposes of the Agreement are to:
 - set out the process under which FSPV will provide funding to the Council to finance the Council’s construction of the Projects; and
 - operate as the “levy administration agreement” contemplated by s 55 of the IFFA, describing how the Levy will be collected.

Funding Agreement

- 8) FSPV will disburse funding for the Projects to the Council by making Drawdowns on each Quarter Date, capped in total at the Maximum Funding Amount (cl 5.1 of the Agreement). The Maximum Funding Amount is defined in cl 1.1 as the lesser of \$200,000,000 and the amount set out in a specific cell of the Financial Model as at Financial Close (in each case, excluding GST).
- 9) Other than in relation to the first Drawdown, the Council must provide a Drawdown Request at least 10 business days prior to each Quarter Date on which it wishes to

receive a Drawdown. The Drawdown Request must specify the amount of the Drawdown requested and certify (cl 5.2 of the Agreement):

- (a) the Drawdown (when aggregated with all previous Drawdowns) does not exceed the cumulative amount specified for the First Drawdown Date or the relevant Quarter Date in Schedule 3 (Drawdown Profile) (disregarding for the purpose of clause 6.1(c) any amounts previously drawn down but repaid by Council under clause 6.1(b));
- (b) the Drawdown will be applied to reimburse expenditure on Eligible Costs in respect of some or all of the Projects (including reasonable particulars of these costs and their split across Projects) where Council has not sourced and does not intend to source funding from any third party to meet such Eligible Costs;
- (c) where any part of the Drawdown will be applied towards Eligible Costs in relation to a Capped Funding Project, the cap on Eligible Costs for that Project, as set out in Schedule 1, has not been exceeded and will not be exceeded from the proceeds of the Drawdown; and
- (d) the application of the Drawdown towards the Eligible Costs for any Project will not breach the requirements of clause 5.5.

- 10) The Council will be solely responsible for meeting the funding required for any Project, without recourse to FSPV, to the extent that (cl 5.4(a) of the Agreement):
 - the relevant project is not fully funded after the Maximum Funding Amount is drawn down under the Agreement; and/or
 - in the case of a Capped Funding Project, Drawdowns applied towards the Eligible Costs of that Project have reached the cap specified.
- 11) The parties also acknowledge (cl 5.4(b) of the Agreement) that it is the Council's decision as to which of the projects a Drawdown will fund, and that the Council is able to apply for additional sources of funding for the Projects. At least ten percent of the estimated total cost of each Project must come from external sources (cl 5.5), other than in situations where the Council has:
 - included the Project in its then applicable long term plan; or
 - passed a resolution noting the Project is in the best interests of ratepayers.
- 12) The Drawdowns the FSPV provides to the Council will comprise grant funding and are not repayable by the Council in any circumstances (cl 6.1(a) of the Agreement). However, the Council must apply Drawdowns solely to the Eligible Costs of the Projects (subject to any relevant caps for Capped Cost Projects). If the Council applies the Drawdowns for any other purpose they will be repayable by the Council to FSPV on

demand with interest (cl 6.1(b) of the Agreement). The Council and FSPV agree that a Drawdown Request issued by Council will constitute a tax invoice, or taxable supply information, as applicable, at such time that FSPV accepts the Drawdown Request in full (cl 6.2(b) of the Agreement).

Levy administration and collection

- 13) FSPV appoints the Council as the exclusive agent of FSPV for the purpose of carrying out or undertaking the levy collection and enforcement services (cl 7.1 of the Agreement). The Council accepts that appointment and agrees that it must perform those services until the appointment expires or is terminated (cl 7.2 of the Agreement). No fee is payable by FSPV to the Council for undertaking these services (cl 7.4 of the Agreement).
- 14) The Levy Payments are set in accordance with the Levy Order and are based on a resolution by FSPV that sets an Annual Levy under s 45 or 50 of the IFFA. In order to assess the Levy Payments that each Levypayer will pay in each year, the Council will provide FSPV with all ratings information from its Ratings Information Database that FSPV requests (cl 8.1 of the Agreement).
- 15) The Council must notify the Levypayers of the assessment made either as part of the general rates assessment or, if agreed with FSPV in writing, as a separate notice of assessment. The Council must collect the Levy Payments and deposit all Levy Revenue it receives from Levypayers into the Levy Account by the required dates (cls 8.1 and 8.2 of the Agreement).
- 16) Clause 8.3 of the Agreement relates to GST on the Levy and states:
 - (a) For the avoidance of doubt, Council and FSPV acknowledge that the underlying supply of the Levy to the Levypayers is a taxable supply subject to GST at the prevailing rate in accordance with section 5(7F) of the GST Act.
 - (b) For GST purposes only, in accordance with section 60(1B) of the GST Act, Council and FSPV agree to opt out of the default GST agency rules in section 60 of the GST Act in respect of the Levy amounts that are collected by the Services:
 - (i) FSPV agrees that it will treat the deemed supply under section 60(1B) of the GST Act from itself to Council as a taxable supply for GST purposes; and
 - (ii) Council agrees that it will treat the deemed supply under section 60(1B) of the GST Act between itself and the Levypayers as a taxable supply for GST purposes and will invoice Levy amounts to the Levypayer on this basis.

- (c) FSPV agrees to issue a tax invoice, or taxable supply information, as applicable, to Council (or Council agrees to generate a buyer created tax invoice/buyer created taxable supply information) in respect of the taxable supply portion of the Levy Revenue.
 - (d) To the extent that supply correction information (GST credit notes or debit notes) is required to be issued under the GST Act in respect of a supply in this Agreement, Council or FSPV as applicable agrees to do so.
 - (e) In the event that the standard rate of tax applied to taxable supplies pursuant to section 8(1) of the GST Act is changed to a rate other than 15%, Council and FSPV agree to take action to endeavour to mitigate any positive or negative effect arising as a result of that tax rate change.
 - (f) In addition to clause 9.2. below, FSPV and Council agree to take all reasonable steps to manage, in a mutually beneficial manner, any GST operational complexities that arise as a result of either FSPV or Council complying with their respective obligations under the GST Act. Such reasonable steps will be agreed between FSPV and Council and recorded in a separate document.
 - (g) All words and phrases in this clause 8.3 have the same meaning as given in the GST Act unless otherwise defined in this Agreement.
- 17) Where a Ratepayer pays some, but not all, of an invoice for its combined Rates and Levy liability, the Council will first apply the amounts received toward the payment of Rates (cl 8.4 of the Agreement). The Council will impose penalties in addition to any Levy amount that a Levypayer has not been paid, at the same rate as penalties authorised by the Council in relation to unpaid Rates (cl 8.5 of the Agreement). The Council will take action to recover any Levy amounts that have not been paid in a manner consistent with its procedures for collecting unpaid Rates (cl 8.6 of the Agreement). In addition, FSPV may start legal proceedings against a Levypayer to recover as a debt due any Levy amount that remains unpaid for four months after the due date for payment (cl 11(a) of the Agreement). In certain situations, FSPV can write off a Levy Amount under s 79A of the IFFA, which will involve the debt being written off as bad in FSPV's accounts.
- 18) The Council has no liability to FSPV to pay any Levy Amount to FSPV except to the extent the Council has received that Levy Amount from a Levypayer (cl 8.9 of the Agreement).

Crown Support Deed

- 19) FSPV sought credit support from the Crown in order to provide comfort to lenders that any relevant legal or regulatory change that has the effect of reducing the Levy revenue would not impact on FSPV's ability to collect revenue to repay the bank loans.
- 20) The Crown agreed to provide FSPV with credit support on the terms set out in the Crown Support Deed. FSPV and The Sovereign in right of New Zealand, acting by and through the Minister of Finance entered into the Crown Support Deed on 1 December 2022. The Crown Support Deed provides FSPV with a Crown guarantee in three situations:
- a "Crown Support Event", where a law change (including a judicial review of the Order in Council) has the effect of reducing the total Levy that FSPV would otherwise be legally entitled to impose in any Levy Year (i.e. the relevant rating period) (cl 2.1 of the Crown Support Deed);
 - a "Terminal Event", where, following a Crown Support Event, the Crown fails to pay any amount under the Crown Support Deed by no later than ten business days after the last day for payment, or if the Crown elects to treat a Crown Support Event as a Terminal Event (cl 2.2 of the Crown Support Deed); and
 - where an "Indemnified PML Rebate Amount" arises, being an amount in respect of a refund of Levy by the Council in respect of protected Māori land (as defined in the IFFA), where relevant conditions are satisfied such that it is subject to indemnification by the Crown (cl 2.7 of the Crown Support Deed).
- 21) When one of these events occurs, and provided that the applicable demand procedures in cl 5 of the Crown Support Deed are followed, the Crown will be required to pay to FSPV the "Indemnified Amount". The definition of "Indemnified Amount" in cl 1.1 of the Crown Support Deed, provides that the amount the Crown pays will be:
- for a Crown Support Event that is not treated as a Terminal Event, the amount of the reduction in Levy that triggered the Crown Support Event (a Shortfall Amount); or
 - for a Terminal Event, the outstanding balance of the bank funding, together with certain amounts associated with early repayment of the debt and equity; and
 - in either case, any further costs incurred as a result of the Crown Support Event.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

Income Tax Act 2007

- (a) A payment of the Levy does not include an amount of “interest” (as defined in s YA 1) for the purpose of the RWT rules.

Goods and Services Tax Act 1985

- (b) Under ss 5(7F) and 60(1B), the Levy Payments will be treated as being consideration for the following supplies:
 - (i) a supply of goods and services from FSPV to the Council; and
 - (ii) a supply of those goods and services from the Council to the Levypayers, treating the Council as if it was FSPV for the purposes of the supply.
- (c) In respect of the Levy, the “time of supply” under s 9 for each of the deemed supplies of goods and services (from FSPV to the Council and from the Council to the Levypayers) arising under s 60(1B) will be the earlier of the time that each payment becomes due and the time that the payment is received (under s 9(3)(a)).

The period or income year for which this Ruling applies

This Ruling will apply for the period beginning on 6 December 2022 and ending on 30 June 2055.

This Ruling is signed by me on the 21st day of December 2022.

Howard Davis
Group Leader, Tax Counsel Office

About this document

Product Rulings are issued by the Tax Counsel Office and Customer and Compliance Services. Product Rulings set out the Commissioner's view on how tax laws apply to a particular "product" – which is an arrangement that a specified taxpayer is likely to enter into with a number of people on identical terms. Taxpayers who enter into the arrangement described in a Product Ruling may apply the ruling but are not obliged to do so. Product Rulings are binding on the Commissioner. This means that if you are entitled to apply a Product Ruling and you have calculated your tax liability in accordance with the ruling, the Commissioner must accept that assessment. A Product Ruling applies only to the taxation laws and arrangement set out in the ruling, and only for the period specified in the ruling. It is important to note that a general similarity to an arrangement covered by a Product Ruling will not necessarily lead to the same tax result.