Inland Revenue
Te Tari Taake

PRODUCT RULING - BR Prd 04/01

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

Name of the Person who applied for the Ruling

This Ruling has been applied for by Truck Leasing Limited trading as Esanda Fleet Partners ("Esanda").

Taxation Laws

All legislative references are to the Income Tax Act 1994 unless otherwise stated.

This Ruling applies in respect of sections BG 1, CI 3(1), GC 15, GC 17, and Schedule 2, Part A, clause 1(c).

The Arrangement to which this Ruling applies

The Arrangement is the leasing of motor vehicles by Esanda under Multi-lease agreements to employers who provide the motor vehicles to employees for their private use. The Multi-lease agreements involve a motor vehicle lease with a term of one year, with the possibility of entering into two further terms of one year each. Further details of the Arrangement are set out in the paragraphs below.

1. Esanda conducts a fleet leasing business. One of the options offered to customers is a motor vehicle lease with a term of one year, with the possibility of entering into two further terms of one year each ("Multi-lease").

2. The arrangement for which this ruling is sought is the lease (using the Multi-lease product) of a motor vehicle from Esanda to an employer and the provision of that motor vehicle by the employer to an employee for their private use and enjoyment. The lease from Esanda to the employer is made under the terms and conditions contained in the Master Lease Agreement and Agreement to Lease (copies of which were provided to Inland Revenue with the application dated 2 December 2003). The Master Lease Agreement states that the agreement is between the lessee and Truck Leasing Limited.

3. As part of Esanda's contractual obligations under the arrangement, it is required to advise employers of the market valuation of the vehicles.

4. The leases are operating leases rather than finance leases for income tax purposes.

5. Employers find the Multi-lease product appealing because of its flexibility. There are no penalties payable as a result of a customer choosing not to take

up a further lease of the vehicle concerned. At the expiry of each 12-month period, lease obligations have been met under the Multi-lease product.

6. By comparison, Esanda imposes a significant potential penalty for early termination under its three year lease (under clause 28 of the Master Lease Agreement, Esanda can determine the amount of the penalty).

7. The flexibility provided by the Multi-lease is particularly valuable when employers are unsure of the number of employees for whom they will require vehicles or are unsure of the type of vehicle the employees may wish to have available. As a result, the employers prefer short lease terms so that they are not required to continue either renting vehicles that they do not require or pay significant penalties for early termination.

8. The leasing of the motor vehicles by Esanda to customers/lessees (being, for the purposes of this ruling, the employers) comprises the following steps:

(a) Initial lease enquiry

This is the initial contact from the potential customer inquiring about leasing vehicles from Esanda.

(b) Marketing response

This involves the initial meeting and consideration of promotional material.

(c) Lease proposal

Esanda provides the customer with a "Lease Proposal". This is not a contractual document. It is a strategic/informative document that sets out the general basis for the services that Esanda can provide to customers, as lessees.

(d) Credit application

The lessee's credit application is completed and assessed.

(e) Motor Vehicle Leasing Terms and Conditions

When a lessee commences dealings with Esanda, Esanda then provides the lessee with the Motor Vehicle Leasing Terms and Conditions. This is the Master Lease Agreement ("MLA"), which sets out the general terms and conditions for motor vehicles to be subsequently leased from Esanda. There is no specific reference to actual vehicles in the MLA.

(f) Vehicle Order

The lessee then completes a "Vehicle Order" which details their precise requirements, for example, the vehicle, term, kilometres, and relevant monthly lease rental etc. The Vehicle Order also incorporates the conditions in the MLA.

The Vehicle Order is completed prior to the commencement of each new lease and reflects the details for that lease only.

(g) Acceptance

Esanda then confirms acceptance with the lessee.

(h) Agreement to Lease

Esanda and the lessee then enter into an "Agreement to Lease". The terms and conditions set out in the MLA are incorporated into this lease agreement. In a contractual sense, the lease of each vehicle is clearly created by the offer and acceptance of each specific Agreement to Lease. The actual motor vehicle is then delivered to the lessee.

Under each and every Agreement to Lease entered into between Esanda and a particular lessee, the following will apply:

- The term of the lease is 12 months.
- There will be no provision for automatic renewal of the term of the lease.
- There will be no option conferred on the lessee to renew, extend or vary the term of the lease.
- There will be no provision for an incentive to the lessee if it takes up a further lease of the vehicle.
- There will be no penalty on the lessee if it does not take up a further lease of the vehicle.

(i) Procedure at the end of the lease

As standard practice, Esanda advises the lessee of the status of the lease at least three months prior to the expiration of the 12-month lease term. Esanda is then able to determine whether the lessee wishes to lease the vehicle for a further lease term of 12 months. If not, the vehicle is returned to Esanda upon expiry of the lease. If the lessee wishes to retain the vehicle, a new lease is entered into for a further 12-month period. This new 12-month lease is assigned a separate and distinct number or record in Esanda's computer system, which is used to manage vehicles leased using its Multi-lease product. In all cases, the old record for the previous 12-month lease is noted as having terminated. In addition, a new Agreement to Lease is executed for the further 12-month lease. Again, the general conditions set out in the MLA are incorporated into that new Agreement to Lease.

The rental rates for the second and third periods are lower than the first. The rates reduce as the depreciated value of the vehicle reduces. If the customer does not renew, it does not get the benefit of reduced rates. However, there is no obligation on Esanda to provide vehicles for subsequent 12-month leases and no obligation on customers to enter into a subsequent 12-month lease.

(j) Valuation of vehicles

As noted above, Esanda is required to advise lessees of the market value of the vehicle at the commencement of each 12-month lease period. The market value assessment takes into account the type of car and its condition and mileage. Esanda advises employers/lessees of the market valuation of the vehicles, and also provides market value forecasts for subsequent periods for indicative purposes only. Market values are routinely reviewed prior to the commencement of subsequent leases to ensure that the forecasts are accurate.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

a) The motor vehicles leased by the employers under this Arrangement are leased for the private use or enjoyment of the employees or made available for the private use or enjoyment of the employees.

b) No contract, agreement, plan, or understanding (whether enforceable or unenforceable), or any other documentation that concerns or otherwise affects the terms of the leases entered into under the Arrangement, is entered into between Esanda and the Lessee in relation to the Arrangement, other than the MLA, the Agreement to Lease and the Vehicle Order.

c) Any rental rate for the Lessee for a subsequent lease period is the same rental rate that would be offered to any other customer for that particular vehicle and lease period (taking into account the customer credit rating, customer fleet size, kilometre allowances, and general service components of the lease including vehicle maintenance) irrespective of whether a previous lease for that vehicle was entered into by that Lessee.

d) There is no contract, agreement, arrangement, plan, undertaking or understanding (whether formal or informal, and whether intended to be legally enforceable or not) at the time of entering into any lease under this Arrangement:

- that any party will, or will if requested, renew, extend or vary the Lease Term;
- that the parties will enter into a further lease in respect of the vehicle; or
- that there will be penalties for choosing not to enter into a further lease in respect of the vehicle.

e) All calculations, factors, and/or projections which are taken into account in formulating the rental rates applying to each lease are not in any way based on a lease of the relevant motor vehicle for more than the relevant lease period.

f) No Lessee is associated with Esanda within the meaning of section OD 7.

g) The Lease is not a "finance lease" as defined in section OB 1.

How the Taxation Laws apply to the Arrangement

Subject in all respects to any condition stated above, the Taxation Laws apply to the Arrangement as follows:

- The market value of a motor vehicle under this Arrangement, for the purposes of calculating the fringe benefit value of that vehicle under section CI 3(1) and Schedule 2, Part A clause 1(c), is determined on the date on which each new 12-month lease commences.

- Sections GC 15 and GC 17 do not apply to the Arrangement.

- Section BG l does not apply to negate or vary the conclusions above.

The period or income year for which this Ruling applies

This Ruling will apply for the period 4 May 2004 to 3 May 2007.

This Ruling is signed by me on the 5th day of February 2004.

Martin Smith
General Manager (Adjudication & Rulings)