

PRODUCT RULING - BR Prd 04/06

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 The New Zealand Guardian Trust Company Limited as Trustee for the NZGT30 Fund (“the Fund”).

Taxation Laws

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

This Ruling applies in respect of:

- Section CF 2(3);
- Section CF 2(3A);
- Subpart LE;
- Section CF 3(1)(b);
- Section HH 3;
- Section GB 1(3); and
- Section BG 1.

The Arrangement to which this Ruling applies

The Arrangement is the establishment and continued operation of the Fund, pursuant to the Deed of Trust dated 5 September 1996 and Deeds of Amendment dated 15 September 2000 and 26 June 2001, which acts as a specialist investment fund to hold a portfolio of shares and other securities that match the composition and weighting of the NZSE30 Capital Share Price Index (“the Index”).

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

1. The Trustee and Manager of the Fund is The New Zealand Guardian Trust Company Limited (“the Trustee” and “the Fund Manager”). It is registered as a trustee company under the Trustee Companies Act 1967. The Fund has been established under the Trustee Companies Act 1967 and meets the definition of “group investment fund” contained in section OB 1.
2. The Investment Manager of the Fund is New Zealand Guardian Trust Funds Management Limited (“the Investment Manager”). The Investment Manager was appointed to invest and manage various funds, including the NZGT30 Fund, by an Investment Management Agreement dated 16 August 2000.

3. The Fund invests in securities of those companies that make up the index formerly known as the NZSE30 Capital Share Price Index (“the Index”). The Index provides a measure of price trends of New Zealand’s top thirty listed companies and was chosen for its ability to best reflect the shares that are able to be purchased by members of the public on the New Zealand Stock Exchange (“NZSX”).
4. The beneficial interest in the Fund is divided into units. Each unit confers an undivided part or share in the beneficial interest of the Fund. Income of the Fund is distributed to unit holders twice a year.
5. The Fund has both “category A units” and “category B units”. Category B units are those units which are acquired with funds from “designated sources” as defined in section HE 2(3). As the majority of the investments in the Fund are not from “designated sources”, most of the units in the Fund are category A units. All of the units in the Fund are subject to the same rules regarding income distribution and redemption of units.
6. The Trustee receives subscriptions from each investor, with a minimum value of \$1000, with further investments being in multiples of \$100. The Trustee also receives redemption requests, of a minimum number of 100 units per investor. On a valuation day subscriptions and redemptions of units are netted off. The Trustee will then purchase securities and issue new units, if the subscriptions exceed the redemptions, or sell securities and cancel units, if the redemptions exceed the subscriptions. The valuation day is defined in clause 1 of the Trust Deed as the close of business on Thursday of each week, or, if any such date is not a Business Day, the immediately preceding Business Day.
7. The Fund Manager may also purchase units from unit holders, when unit holders wish to redeem their units. The Fund Manager may use this power only when the Fund does not have enough funds in the cash pool, and is unable to sell sufficient securities in order to redeem the units requested. To date, the Fund Manager has not utilised this power.
8. Clause 6.9 of the Trust Deed enables the Fund to suspend unit redemptions. The power to suspend unit redemptions is used in exceptional circumstances, being:
 - where a material adverse change in the financial markets occurs namely, a breakdown in liquidity caused by an act of God, or a system failure; or
 - if there is a fundamental breakdown in the functioning of financial markets namely, closure of the NZSX or a collapse of the market resulting in a lack of liquidity in the Fund’s securities.

Where it is necessary to suspend redemption of units, the suspension will be for a maximum period of 3 business days, unless the exceptional circumstances giving rise to the need to suspend are beyond the control of the Trustee and the Investment Manager, in which case the suspension shall only be for such a period as is strictly necessary for the Fund and or the Investment Manager to recover from the event.

9. This Ruling does not consider the application of sections CD 3 or CD 4 to the disposal of units by any particular unit holder.
10. The Applicant has confirmed that all aspects of the previous rulings (BR Prv 01/49 and BR Prd 01/17), relating to the Fund, have been complied with except for the statement that:

With respect to the Private Ruling BR Prv 01/49 at page 7(c), I advise that we have promptly realigned securities weightings to the NZSX30 Capital Index upon formal advice from the Index provider. There are occasionally delays between NZSX media announcements of changes and actual effective dates of changes. Our record of portfolio tracking error supports our best efforts to adhere to the conditions as required by the Commissioner for the actual portfolio construction relative to the NZSE30 Capital Index.
(letter of 17 March 2004 from Anthony Harland of NZGT Funds Management)

11. There has been no change to the Trust Deed of the Fund (except for the noted Deeds of Amendment).

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

- a) All units redeemed by the Fund will be redeemed in whole and not in part.
- b) The units are not non-participating redeemable shares as that term is defined in section CF 3(14).
- c) Any redemption of units will not be part of a pro-rata cancellation as that term is defined in section CF 3(14).
- d) The units will not be quoted on the official list of any recognised exchange as that term is defined in section OB 1.
- e) The units are issued on such terms that their redemption is subject to the reverse ordering rule as stated in section CF 3(1)(b)(iv)(B).
- f) All distributions received by the Fund will be paid out to unit holders net of any expenses incurred by the Fund.
- g) The Fund Manager has the power to purchase units from unit holders, when unit holders wish to redeem their units. The Fund Manager may use this power only when the Fund does not have enough funds in the cash pool, and is unable to sell sufficient securities in order to redeem the units requested.
- h) There is no agreement, arrangement or understanding in place between the Fund, the Trustee, the Fund Manager or the Investment Manager (or any person associated with the Fund, the Trustee, the Fund Manager or the Investment Manager) and any unit holder (or any person associated with any unit holder) which directly or indirectly has a purpose or effect of the

redemption or disposition of any of a unit holder's units occurring in substitution for or instead of one or more distributions from the Fund.

- i) The Fund is a qualifying trust as that term is 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 distribution of category A income to category A unit holders will be treated as a “dividend” pursuant to section CF 2(3).
- In respect of payments made to category A unit holders, section CF 2(3A) will treat the Fund as if it were a company for the purposes of subpart LE of the Act.
- The amount paid to category A unit holders on the redemption of their units will be excluded from the definition of dividend by section CF 3(1)(b) to the extent that the amount does not exceed the available subscribed capital per share cancelled.
- Section GB 1(3) does not apply to the sale of category A units to the Fund Manager by category A unit holders.
- In the absence of other factors relating to the circumstances of any particular category A unit holder, any gain on the sale of the category A units to the Fund Manager does not of itself give rise to the application of section BG 1.
- Any distribution of category B income to category B unit holders is included within the definition of “beneficiary income” as defined in section OB 1, and is included in the gross income of the unit holder under section HH 3(1).
- Under section HH 3(2) the Trustee is liable, as agent for the unit holder, to deduct tax from distributions of category B income made to unit holders at the unit holders' marginal tax rate.
- The amount paid to category B unit holders on the redemption of units is not gross income to the unit holders under section HH 3(5), to the extent that it does not include any “beneficiary income”.
- In the absence of other factors relating to the circumstances of any particular category B unit holder, any gain on the sale of the category B units to the Fund Manager does not of itself give rise to the application of section BG 1.

The period or income year for which this Ruling applies

This Ruling will apply for the period 1 July 2004 to 30 June 2007.

This Ruling is signed by me on the 25th day of May 2004.

Martin Smith

General Manager (Adjudication & Rulings)