

PRODUCT RULING - BR Prd 04/09

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 ASB New Zealand Shares Trust.

Taxation Laws

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

This Ruling applies in respect of sections CF 2(1)(i), CF 3(1)(b) and GB 1(3).

The Arrangement to which this Ruling applies

The Arrangement is the establishment and continued operation of the ASB NZ Shares Trust (the “ASB NZ Trust” or the “Trust” or the “Fund”) pursuant to the Master Deed (which is dated 17 October 1997) (the “Master Deed”), the Establishment Deed (which is also dated 17 October 1997) (the “Establishment Deed”), a “Variation of Master Unit Trust Deed Dated 17 October 1997” (dated 27 April 1999), a Deed of Amendment to ASB NZ Shares Trust Establishment Deed (dated 18 June 2001) and the ASB Unit Trusts Prospectus (dated 5 August 2003).

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

1. The ASB NZ Trust is a unit trust pursuant to the Unit Trusts Act 1960 and is a “unit trust” for the purposes of the definition of that term in section OB 1.
2. The trustee of the ASB NZ Trust is Trustees Executors Limited (the “Trustee”). It is registered as a trustee company under the Trustee Companies Act 1967. The manager of the Trust is ASB Group Investments Limited (formerly ASB Investment Services Limited) (the “Manager”), part of the ASB Group of Companies. The beneficial interests in the Trust are divided into units. Each unit confers an equal interest in the Trust, but units do not confer any interest in any particular investment of the Trust.
3. The Applicant has confirmed that the Fund has complied with the previous ruling (BR Prd 01/19). There has been no material change to the management or operation of the Fund.

Investment

4. The ASB NZ Trust acts as a special purpose vehicle, which holds units in the AMP Investments’ Tracker Fund (the “AMP Tracker Fund”). Ownership of units in the AMP Tracker Fund enable the ASB NZ Trust to obtain the same

financial results through one investment as would be achieved by direct investment in the securities which make up the Russell Ord Minnett Tradeable Index (“the Index”) tracked by the Tracker Fund. The AMP Tracker Fund intends to switch in 2004 to tracking the NZSX 50 Index as soon as it obtains a replacement ruling that refers to the new Index. There will be no realisation of any investment by the ASB NZ Trust or change in the way that it will operate as a result of this change.

5. ASB selected the AMP Tracker Fund as its underlying investment for the following reasons:
 - The corporate strength and stability of AMP Limited (“AMP”), and the strong likelihood that AMP would be able to support an index-tracking fund well into the foreseeable future;
 - AMP’s technical expertise, particularly the investment management skill and capability of AMP Capital Investors (New Zealand) Limited in being able to construct and efficiently manage an index-tracking fund;
 - The high standard of service provided by AMP eg, regular statements and reporting on the AMP Tracker Fund; good working relationship; and
 - AMP’s competitive investment management fees resulting in a lower cost to ASB NZ Trust Fund investors in having their funds invested in the AMP Tracker Fund through the ASB NZ Trust.

6. Clauses 3.1 and 3.2 of the ASB NZ Trust’s Establishment Deed state the “investment objectives” of the ASB NZ Trust and identify the “authorised investments” as follows:
 - 3 Investment Policy
 - 3.1 Objectives: The objective of the Trust is to invest in the AMP Investments Tracker Fund, subject to the need for the Trust to hold some cash for liquidity and administrative purposes. The funds of the Trust that are available for investment shall be invested in the AMP Investment Tracker Fund as soon as practicable after receipt by the Trustee. The Trust and the Trustee do not have an intention to profit from holding, acquiring or selling AMP Investments’ Tracker Fund units. The Trust and the Trustee do not have an intention to profit from holding, acquiring or selling AMP Investments’ Tracker Fund units.
 - 3.2 Authorised Investments: For the purposes of this Trust “Authorised Investments” means:
 - (a) the AMP Investments’ Tracker Fund;
 - (b) cash balances with banks, brokers, agents, funds, including, without limitation, the ASB Money Market Trust, or custodians held for the liquidity and administrative purposes of the Trust referred to at Clause 3.1;

7. Pursuant to the Establishment Deed, the ASB NZ Trust is only authorised to invest contributions from members in: (a) the AMP Tracker Fund and (b) cash investments. The Fund may hold cash investments to facilitate the easier administration of the Fund. The cash investments are held as cash by the Fund in bank deposits. The Fund will hold cash in the following instances:
 - Following a contribution to the Fund, pending the investment of that contribution;
 - Following the sale of AMP Tracker Fund units to meet a request to redeem Trust units in cash;
 - To make income distributions to unitholders; and
 - To meet administration expenses of the Fund.
8. It is the intention of the ASB NZ Trust that investment in AMP Tracker Fund units, taking into account the appropriate distribution of excess cash, will be completed on a weekly basis. The level of funds is monitored on a weekly basis and invested if in excess of the cash pool. Funds passed to the Manager are invested in the underlying pool within 24 hours.
9. Under clause 11.3(h) of schedule 1 to the Master Deed the unitholders can sanction any variation of the “authorised investments” of the Trust by extraordinary resolution. However, the Fund intends to maintain its current investment strategy.

AMP Tracker Fund

10. The AMP Tracker Fund is a “group investment fund” within the meaning of section OB 1. The AMP Tracker Fund is required to buy and sell shares as required to ensure that it continues to track the Index. The AMP Tracker Fund has a current binding ruling (BR Prv 01/84) which states that such buying and selling is not motivated by any intention to derive a profit or gain from such sales.
11. The AMP Tracker Fund makes taxable distributions to the ASB NZ Trust. The taxable distributions from the AMP Tracker Fund to the ASB NZ Trust are from any dividends received by the AMP Tracker Fund, according to the Prospectus, either on receipt or quarterly, depending on the size of the ASB NZ Trust’s investment. However, in practice, the dividends are received on a monthly basis.
12. The ASB NZ Trust will generally distribute to its unitholders part of the distributions it receives from the AMP Tracker Fund six-monthly. To determine the amount of the distribution, the Manager of the ASB NZ Trust will determine the Trust’s “net income” by taking into account, not only the distributions received by the AMP Tracker Fund, but also all costs, charges and expenses due by or to the ASB NZ Trust.
13. The Establishment Deed also provides for special distributions to occur at other times determined by the Manager. However, in the period between receipt of income from the AMP Tracker Fund and any distribution the ASB

NZ Trust is required to invest amounts not held for administrative or liquidity purposes in units in the AMP Tracker Fund.

14. The AMP Tracker Fund units will be issued subject to the reverse ordering rule (subparagraph CF 3(1)(b)(iv)(B)) and may only be redeemed in whole, and not in part. Units in the AMP Tracker Fund are not quoted on any exchange.

Suspensions

15. The Fund has not previously suspended redemptions. A suspension from issuing or redeeming units will only occur in exceptional circumstances, being:
 - (1) If 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 a terrorist attack; or
 - (2) if there is a fundamental breakdown in the functioning of financial markets, namely, the failure of pricemaking software; or
 - (3) If it is required so as to avoid a breach of any applicable law.

Any such suspension will be for a maximum period of 3 business days, unless the exceptional circumstance giving rise to the need to suspend is beyond the control of the Trustee and Manager of the Fund, in which case the suspension shall be only for such period as is strictly necessary for the Fund and/or the Manager to recover from that event.

Redemption of ASB NZ Trust Units

16. The Manager has the power to purchase units from unitholders, when unitholders wish to redeem or sell their units. The Manager may use this power only when the Fund does not have enough funds in the cash pool to redeem the units requested and the Fund is unable to borrow to meet the unitholders' requests. To date, the Manager has not utilised this power.

Redemption of AMP Tracker Fund Units

17. When the ASB NZ Trust is required to redeem units in the AMP Tracker Fund, the parcel of securities held by the AMP Tracker Fund attributable to the ASB NZ Trust's investment can be returned to the ASB NZ Trust. Alternatively, the redemption parcel of securities can be delivered to the AMP Tracker Fund manager as agent for the unitholder (ie, the ASB NZ Trust). In this alternative situation, the AMP Tracker Fund manager will sell the basket of securities comprising the redemption parcel as agent for the ASB NZ Trust, and the AMP Tracker Fund manager will pay the proceeds to the ASB NZ Trust (or in certain circumstances, the AMP Tracker Fund manager will hold the securities and transfer to the ASB NZ Trust the equivalent dollar value of the redeemed securities).

18. The ASB NZ Trust always requests the AMP Tracker Fund manager to redeem the basket of securities for cash, instead of receiving the basket of securities. Therefore, the ASB NZ Trust, upon redemption of units in the AMP Tracker Fund, will receive a transfer of securities followed by an immediate sale of those securities by the AMP Tracker Fund manager as agent for the ASB NZ Trust.
19. Although the AMP Tracker Fund's prospectus refers to a threshold of 100,000 units being the minimum redemption amount (in order to redeem the units in the AMP Tracker Fund), ASB Bank have agreed with the AMP Tracker Fund manager that the treatment of redemptions for parcels of 100,000 units or greater will also apply to parcels of 50,000 or greater in respect of redemptions for the ASB NZ Trust.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

- a) There is no agreement, arrangement or understanding between the Fund or the Trustee or the Manager and any unitholder (or any person associated with any unitholder) which directly or indirectly has a purpose or effect of the redemption or disposition of any of a unitholder's units occurring in substitution for or instead of one or more distributions from the Fund.
- b) The Trust will be a widely-held trust, as that term is defined in section CF 3(14).
- c) Any cancellation of ASB NZ Trust units will not be part of a pro-rata cancellation as that term is defined in section CF 3(14).
- d) The ASB NZ Trust units will not be quoted on the official list of any recognised exchange as that term is defined in section OB 1.
- e) The ASB NZ Trust 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) The income of the Fund, net of any expenses incurred by the Fund, will be paid out to unitholders either as cash or additional units in the Fund. However, the Manager may use its discretion, and decide not to make such a payment if the amount to be paid is so minimal that the administrative costs of making the payment would exceed the amount to be distributed. The payment of income to unitholders on this basis is consistent with the Fund's normal dividend policy and Trust Deed. Not necessarily paying out the full value of the Tracker Fund units received as income reflects the Trustee's normal prudence in only distributing the "profits" of the Fund and does not occur for tax purposes;

- g) The Manager has the power to purchase units from unitholders, when unitholders wish to redeem or sell their units. The Manager may use this power only when the Fund does not have enough funds in the cash pool to redeem the units requested and the Fund is unable to borrow to meet the unitholders' requests.
- h) Where unitholders elect to receive distributions as additional Fund units instead of cash, these constitute a "taxable bonus issue" as that term is defined in section OB 1.
- i) The AMP Tracker Fund was chosen to provide a cost effective means for simulating an investment that matches the composition and weighting of the Index. The AMP Tracker Fund was not selected in order to maximise returns.
- j) The Fund has not taken into account historical returns in deciding to maintain its current investment strategy.
- k) The investment objectives and authorised investments of the Trust will not be amended.
- l) The cash pool is held in cash deposits which are held on call in bank deposits. The holding of such cash will arise only from the following circumstances:
 - To meet the administration expenses of the Fund;
 - Pending investment in AMP Tracker Fund units;
 - To meet a withdrawal from the Trust; or
 - To make income distributions to unitholders.

The proportion of the Fund's assets to be held as cash will not be greater than what strictly arises out of the above described circumstances, and in any event will not exceed the greater of \$200,000 or 4% of the total assets of the Fund.

- m) Condition (l) shall not be breached if the limit referred to in condition (l) is exceeded when this occurs due to the following reasons:
 - Where a large cash subscription has been paid into the cash pool; or
 - Receipt of dividends from the AMP Tracker Fund, and

the Fund takes immediate action to remedy this within the shortest practicable time, and in any event, no longer than five business days.

- n) In the event that the Fund has insufficient cash available to meet redemptions, the Fund may temporarily borrow in order to redeem units. Any borrowing that occurs will be: (i) only to the extent that is strictly necessary and will not in any event exceed 2% of the value of the Fund; and (ii) repaid as soon as possible and in any event within five business days.
- o) The Fund will only sell or otherwise dispose of AMP Tracker Fund units in the following circumstances:

- To meet the administration expenses of the Fund;
 - The Manager must purchase or redeem AMP Tracker Fund units in order to meet the needs of the Fund’s unitholders; or
 - In order to wind up the Trust.
- p) When the Fund is given the option of re-investing its dividends for additional units in the AMP Tracker Fund, the Fund will always accept the reinvestment option. In any such case, the value of the units received is equivalent to the value of the cash dividend (net of tax, fees and expenses) and the distribution of cash or units constitutes a “dividend” as that term is defined in section CF 2.
- q) This ruling shall cease to apply if at any time:
- (i) there is a unitholder, or two or more unitholders that are associated with each other, or are acting in concert in relation to their investments in the Fund, who hold/s more than 75% of the issued units of the Fund; and
 - (ii) if that unitholder, or one or more of such unitholders, ordinarily hold securities on revenue account or the disposal of securities by that unitholder, or one or more of such unitholders, would ordinarily give rise to gross income for income tax purposes.

For the purposes of this condition unitholders are associated with each other if they are “associated persons” within the meaning of section OD 7 or OD 8(3).

- r) This Ruling only applies while this Fund remains a widely-held trust (as that term is defined in section CF 3(14)), and the Fund units are offered to the public.
- s) Apart from the Trust Deed and/or Prospectus and/or any Rules of the Fund that have been supplied to Inland Revenue as part of the application for this ruling, there is no agreement, arrangement or understanding between the Fund or the Trustee or the Manager (or any party acting on behalf of the Fund) and any unitholder (or any person associated with or acting on behalf of any unitholder) regarding the control of the Fund, the nature and timing of its investments, or the timing of the investing or withdrawal of funds.

For the avoidance of doubt, (i) the fact that a unitholder has the ability to invest, or withdraw at any time and/or (ii) the entry into of agreements, arrangements or understandings contemplated by the Trust Deed for the purpose of enabling investment or withdrawal, will not alone constitute an agreement, arrangement or understanding to which the preceding sentence applies.

- t) The Fund will not exercise any voting rights associated with the holding of AMP Tracker Fund units.

- u) If the Fund is resettled this Ruling shall not apply from the date of resettlement. The Fund will not be resettled in order to enhance the performance of the Fund or to minimise the losses of the Fund in any way.
- v) A suspension from issuing or redeeming units will only occur in exceptional circumstances, being:
 - (1) If 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 a terrorist attack;
 - (2) If there is a fundamental breakdown in the functioning of financial markets namely, the failure of pricemaking software; or
 - (3) If it is required so as to avoid a breach of any applicable law.

Any such suspension will be for a maximum period of 3 business days, unless the exceptional circumstance giving rise to the need to suspend is beyond the control of the Trustee and Manager of the Fund, in which case the suspension shall be only for such period as is strictly necessary for the Fund and/or the Manager to recover from that event.

- w) The distribution period of the Fund will only be altered for administrative reasons and shall not be altered to enhance the performance of the Fund in any way.
- x) The Manager has the power to purchase units from unitholders, when unitholders wish to redeem or sell their units. The Manager may use this power only when the Fund does not have enough funds in the cash pool to redeem the units requested and the Fund is unable to borrow to meet the unitholders' requests.
- y) The AMP Tracker Fund is an "unlisted trust" in terms of the definition of that term in section CF 3(14).
- z) Cancellation of AMP Tracker Fund units will not be made as part of a pro rata cancellation of units.
- aa) AMP Tracker Fund units will not be quoted on the official list of a recognised exchange.
- bb) The AMP Tracker Fund 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).
- cc) There is no agreement, arrangement or understanding between the AMP Tracker Fund or its trustee or its manager and the ASB NZ Trust (or any person associated with the ASB NZ Trust) which directly or indirectly has a purpose or effect of the redemption or disposition of any of the ASB NZ Trust's units occurring in substitution for or instead of one or more distributions from the AMP Tracker Fund.

- dd) The Trust will either: (1) redeem its AMP Tracker Fund units to the AMP Tracker Fund or (2) sell its units to the AMP Tracker Fund manager. The Trust will not dispose of its units in any other manner.
- ee) All distributions received by the AMP Tracker Fund will be paid out, (either as cash or AMP Tracker Fund units) to investors in the AMP Tracker Fund net of any expenses incurred by the AMP Tracker Fund.
- ff) Any powers exercised by the Trustee under the Master Deed and Establishment Deed are for the purposes of either buying units in the AMP Tracker Fund to reflect the level of funds invested in the Trust or, selling or redeeming units in the AMP Tracker Fund to fund redemptions of units in the Trust.
- gg) The existing binding ruling for the AMP Tracker Fund (BR Prv 01/84) or any such replacement ruling or rulings in respect of the same taxation laws remain current and in force.
- hh) The Fund will not be wound up with a view to enhancing the performance of the Fund or to minimise losses of the Fund in any way. This condition will not be breached if:
 - (i) the Manager decides to wind up the Fund for reasons unrelated to the performance of the investments of the Fund; or
 - (ii) if the unitholders independently resolve to wind up the Fund.

How the Taxation Laws apply to the Arrangement

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

- Income distributed by the Trustee will be treated as a dividend pursuant to section CF 2(1)(i).
- Any amount received by unitholders on redemption of units in the Fund will be excluded from the definition of dividend in section CF 2, by section CF 3(1)(b) to the extent that that amount does not exceed the available subscribed capital per share cancelled.
- Section GB 1(3) does not apply to the arrangement.

The period or income year for which this Ruling applies

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

This Ruling is signed by me on the 22nd day of June 2004.

Martin Smith
General Manager (Adjudication & Rulings)