

PRODUCT RULING - BR Prd 04/11

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 University of Otago Foundation Trust (“the Trust”).

Taxation Laws

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

This Ruling applies in respect of sections BD 2(1)(b), BD 2(1)(e), EF 1, and the definition of “accrual expenditure” in section OB 1.

The Arrangement to which this Ruling applies

The Arrangement concerns an agreement titled the Sponsorship Agreement for Indefinite Naming Rights (“the Sponsorship Agreement”) that is entered into between the Trust, the University of Otago (“the University”), and a taxpayer in business (“the Business Sponsor”). Further details of the Arrangement are set out in the paragraphs below.

1. The Trust is a charitable trust that was established for purposes in connection with the University by a deed of trust dated 20 August 2002.
2. The University is a tertiary institution established under Part XVI of the Education Act 1989.
3. The Trust, the University, and a Business Sponsor will enter into the Sponsorship Agreement pursuant to which the Business Sponsor will make a single payment to the Trust and in consideration of the payment the Trust will grant to the Business Sponsor exclusive naming rights to a particular activity of the University (“the University Activity”) and incidental sponsorship services.
4. Upon the execution of a Sponsorship Agreement the University will assign to the Trust the right to grant for an indefinite term exclusive naming rights to a Business Sponsor by way of a deed titled “Deed of Assignment of Indefinite Naming Rights” (“the Deed of Assignment”).
5. The Trust will provide the Business Sponsor with naming rights and acknowledgement for any of the following University Activities:
 - Professorial Chairs;

- Research Centres;
 - Scholarships; and
 - Fellowships.
6. The single payment made by the Business Sponsor to the Trust upon entering into the Sponsorship Agreement is non-refundable.
 7. No party to the Sponsorship Agreement may assign any of its rights, interests, or obligations granted therein.
 8. The Business Sponsor will incur the sponsorship expenditure to secure promotion and advertising of its name and profile in connection with the University Activity it has sponsored (“the Sponsored Activity”).
 9. The Trust and the University will use the name of the Sponsored Activity in all publications, advertising, signage and other activities connected with the Sponsored Activity.
 10. The Sponsorship Agreement will be binding on the parties for an indefinite term and no party may terminate the Sponsorship Agreement by giving notice to the other parties.
 11. No party to the Sponsorship Agreement can modify its terms for as long as the Sponsored Activity continues.
 12. The Business Sponsor’s appointment as sponsor of the University Activity is subject to the guidelines contained in the University’s Guidelines on Major Sponsorship and Policy on Naming.
 13. In particular the Trust and the University will not enter into a Sponsorship Agreement that requires the University to provide consideration to the sponsor or anyone designated by the sponsor with respect to employment in the University, enrolment in a University course of study, or a University procurement contract.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

- a) The Business Sponsor must be carrying on an existing business and not establishing a market for a new business.
- b) The Business Sponsor must enter into the Agreement with the sole purpose of advertising and promoting that existing business.
- c) The University Activity in respect of which the sponsorship expenditure is made must be relevant to the actual or potential customer base of that business so that expenditure of that nature can reasonably be considered to be targeted to that customer base.

- d) No part of the sponsorship expenditure is or can be refundable to the Business Sponsor in any circumstances.
- e) Neither the Trust, the University, nor the Business Sponsor may assign any of its rights, interests or obligations under the Agreement.

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:

- Sponsorship expenditure that is made by a Business Sponsor entering into the Agreement with the Trust and the University will not be expenditure of a capital nature under section BD 2(1)(e).
- Sponsorship expenditure that is made by a Business Sponsor entering into the Agreement with the Trust and the University will be an allowable deduction under section BD 2(1)(b).
- There is no unexpired portion for the purposes of section EF 1(1)(b).

The period or income year for which this Ruling applies

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

This Ruling is signed by me on the 2nd day of July 2004.

Martin Smith
Chief Tax Counsel