

## **PRODUCT RULING - BR Prd 11/03**

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 Bank of New Zealand.

### **Taxation Laws**

All legislative references are to the Income Tax Act 2007 unless otherwise stated.

This Ruling applies in respect of ss CA 1(2), CC 3, CC 4, CC 7, and HM 36.

### **The Arrangement to which this Ruling applies**

The Arrangement is the offering by Bank of New Zealand (BNZ) of Fly Buys points to Fly Buys members who invest in either of two portfolio investment entity (PIE) funds promoted by BNZ (the BNZ Term PIE and the BNZ Cash PIE, collectively the Funds).

This Ruling does not apply to Fly Buys members who habitually redeem Fly Buys points for rewards and then sell the rewards, who redeem Fly Buys points for the purpose of selling rewards, or who receive the relevant Fly Buys points in the course of carrying on a business.

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

#### *Background*

1. BNZ Investment Services Limited (the Manager) which is a wholly owned subsidiary of BNZ, is the Issuer and Manager of each Fund. Each Fund is a unit trust established under, and as defined in, the Unit Trusts Act 1960. A prospectus for the Funds has been registered with the Registrar of Companies. An investment statement for each Fund is available from any BNZ store. The respective investment statements set out the terms of the Funds.
2. Customers can invest in each Fund by filling out the relevant application form (provided in the respective investment statement) and depositing money into the account of a person (currently BNZ Investment Services Nominees Limited) nominated by the Trustee of the Funds (New Zealand Guardian Trust Company Limited). On acceptance of the application form, and clearance of the deposit made in the nominated account, the Manager will subsequently issue units to the investors in that Fund. Each Fund is a multi-rate PIE through which investors are taxed based on their prescribed investor rate (PIR).

#### *Key features of the Funds*

3. The relevant terms applying to both Funds include the following:

- Each Fund invests solely in a New Zealand dollar interest bearing account with BNZ.
  - An investment made in the Funds does not represent a bank deposit or other liability of BNZ.
  - An investor does not have a direct interest in any particular deposit made by a Fund with BNZ.
  - For their investment, investors acquire units in the Funds. Each unit represents an undivided beneficial interest in the assets of the Fund as a whole and does not give the investor an interest in any particular property of the Fund.
  - An investor and their associated persons cannot hold more than 20% of the units in either Fund.
  - Payments can be made at any BNZ store or with any BNZ Partner.
  - Selling and transferring units in the Funds to another person is permitted only with the Manager's approval. In the Manager's opinion there is no established market for sales or transfers.
  - An investor's units in a Fund are recorded in the investor's name.
  - A unit of each Fund has a fixed price of \$1.
4. Terms specific to the Term PIE include the following:
- Investments are not term deposits but operate similarly.
  - Each unit is issued for an agreed term and for an agreed rate of return. At the time of investing an investor must select either a maturity date or term for the investment.
  - A minimum of \$5,000 must be maintained in each investment (or other such amount as the Manager may prescribe from time to time).
  - Throughout the term of the investment, distribution dates will be calculated based on the frequency of returns selected on the application form.
  - Investors' returns are always made by the issue of further units in the Term PIE. Investors can elect that these units be redeemed with the proceeds being paid into a nominated account.
  - An investor cannot withdraw their investment before the maturity date except in exceptional circumstances and the Manager agrees at its discretion. A break fee will apply for early withdrawals.
5. Terms specific to the Cash PIE include the following:
- The initial investment by an investor must be at least \$1,000 (or other such amount as the Manager may prescribe from time to time). The investor may make further investments at any time

provided that each further investment is at least \$250 (or other such amount as the Manager may prescribe from time to time).

- An investor can withdraw all or part of their investment at any time (subject to the minimum balance requirement of the Cash PIE noted below). If an investor withdraws part of their investment, the Manager may deem the investor to have requested to withdraw also the number of units (if any) required to be cancelled to reflect tax paid or payable by the Fund on income attributed to the investor at their notified PIR. No exit fees are currently payable. The minimum amount that an investor can withdraw from the Fund is \$500 (or other such amount as the Manager may prescribe from time to time).
- An investor must maintain at least \$1,000 worth of units (or other such amount as the Manager may prescribe from time to time) unless the investor wishes to withdraw their entire investment. The Manager can require redemption of all remaining units should the investment fall below \$1,000 (or other such amount as the Manager may prescribe from time to time).
- Returns are distributed to investors on a monthly basis by the issue of further units in the Cash PIE.
- The interest rate payable on the Cash PIE's deposits is the main factor that will affect investors' returns. As at the date of this Ruling, no fees are payable by investors in the Cash PIE.

#### *Fly Buys*

6. Fly Buys is New Zealand's largest loyalty programme. Fly Buys is administered by Loyalty New Zealand Limited (Loyalty NZ) which is jointly owned by BNZ, Foodstuffs Ventures (NZ) Limited, IAG New Zealand Limited, and Z Energy Limited, each company having a 25% shareholding. BNZ and Loyalty NZ are therefore not associated persons (as defined in s YB 2).
7. More than 70% of New Zealand households actively engage in the Fly Buys programme and it has high brand recognition with New Zealand consumers.
8. Membership of Fly Buys is free. Under the programme, Fly Buys points are recorded in a member's points record for qualifying purchases of goods and services from participating retailers. At the date of this Ruling, the programme has over 40 participating retailers.
9. Each participating retailer and Loyalty NZ agree on the level of Fly Buys points that may be awarded to members by Loyalty NZ. By way of example, as at the date of this Ruling, Z Energy Limited awards 1 point per 20 litres of fuel purchased, New World awards 1 point per \$25 spent, and Contact Energy awards 1 point per \$50 spent. Participating retailers may also offer bonus points from time to time.
10. From time to time, Loyalty NZ provides members with a points summary setting out the opening points balance, points recorded and deducted during the period, and the closing points balance.

11. A member who has sufficient points credited with the Fly Buys programme may request a reward from the then current reward schedule made available by Loyalty NZ. Requests must be made by the member personally, in a way specified by Loyalty NZ from time to time. The number of points required to claim a reward is subject to change without notice. In the reward schedule as at the date of this Ruling, a member requires a minimum of 80 points to claim a reward. All rewards are subject to availability. Kinds of reward include: accommodation, appliances, books, electronics, flights, food and drink, music, tools, and toys. At Loyalty NZ's option, rewards are posted or delivered to the address of the member, or made available for collection at a location notified to the member. The number of points for redemption of a reward claimed is deducted from the balance in the member's points record, with the oldest points being deducted first. Points that are awarded but not used by a member within 36 months expire, and are deducted from the balance in the member's points record.
12. Fly Buys points cannot be sold, transferred, or assigned for cash or other consideration under the Fly Buys Terms and Conditions. The Fly Buys Terms and Conditions do not, however, prohibit rewards received from being sold, transferred, or assigned for cash or other consideration. Fly Buys points cannot be redeemed for, or refunded in, cash.

*Fly Buys and BNZ*

13. As at the date of this Ruling, BNZ offers Fly Buys points on several of its products (the level of which may change from time to time) as follows:

**Credit Cards**

Classic Visa or MasterCard	\$50 spend on purchases = 1 point
Classic American Express	\$25 spend on purchases = 1 point
Gold Visa or MasterCard	\$40 spend on purchases = 1 point
Gold American Express	\$20 spend on purchases = 1 point
All Blacks Master Card	\$40 spend on purchases = 1 point
BNZ Platinum Visa	20 Platinum reward points = 1 point

**Insurance**

Life insurance, travel insurance and general insurance	\$20 spend on premiums = 1 point
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**Home Loans** (annual average balance)

Less than \$50,000	108 points per year
\$50,000 - \$149,999	408 points per year
More than \$149,999	1008 points per year

**Out of the Box Banking**

50 points per banking combo selected

**Foreign Exchange**

NZ\$100 = 1 point

*Fly Buys and the Funds*

14. Under the Arrangement, BNZ will offer Fly Buys points to Fly Buys members who invest in either Fund. Those Fly Buys points will be credited to the member's points record by Loyalty NZ at the direction of BNZ. Fly Buys points may be offered to investors in several ways (all, none, or some of which may be offered at any time). The ways of awarding Fly Buys points that form part of this Arrangement are by awarding:

- points on opening a new investment in a Fund;

- points on re-investing a maturing Term PIE investment into a new Term PIE investment;
  - points to investors who choose to receive their investment information online;
  - points on an annual basis assuming the minimum balance is maintained;
  - points on a points per unit held basis;
  - points annually based on the average balance for the year;
  - points on a monthly basis based on the average balance per month;
  - points when an investor reaches a certain saving hurdle in addition to any points awarded per dollar invested;
  - points based on the term of the investment;
  - points to investors who set up regular investment amounts by automatic payment or other regular contribution method.
15. From time to time, BNZ may also consider additional ways to award Fly Buys points in respect of each Fund. This Ruling does not consider or rule on the tax treatment of other ways of awarding Fly Buys points.
16. The Funds pay a market rate of return on amounts invested with them, independently of any Fly Buys points awarded. Investors in each Fund will be entitled to receive the same pre-tax rate of return on their units in the Fund, regardless of whether they hold a Fly Buys membership. Investors who are not Fly Buys members or members who do not provide their membership number to the Manager will not receive points, and will not receive any other reward from BNZ or Loyalty NZ in lieu of the points. A member cannot require BNZ or Loyalty NZ to pay a cash amount in substitution for points.
17. At present, the cost to BNZ of the Fly Buys points awarded to the investors in a Fund, do not impact on the rate of return BNZ pays to a Fund (and therefore the rate of return a Fund pays to individual investors). In any event, the cost to BNZ of awarding Fly Buys points will only ever be taken into account in determining the rate of return payable by BNZ to the Fund to the extent the total costs incurred by BNZ in relation to the Fund are taken into account in determining that rate and the costs associated with the award of Fly Buys points are included in those total costs.
18. An investment in each Fund is a separate contractual arrangement to a member's Fly Buys membership and each one can (and does) exist without the other. BNZ and Loyalty NZ reserve the right to withdraw or amend any points offer at any time, and this does not affect a member's return from their investment in each Fund or give them any contractual basis to terminate that investment. Members have no recourse against the Fund if the advertised points are not awarded because of the failure of Loyalty NZ.

### *How Fly Buys points will be awarded*

19. Investors in each Fund who are Fly Buys members will be able to record their Fly Buys membership number on their application form. The Manager will pass this information on to BNZ. The Manager (and therefore each Fund and the underlying investors) does not have any additional costs associated with the award of points.
20. BNZ will send regular data to Loyalty NZ to enable the points to be awarded to each Fly Buys member for the relevant period. (This information will include Fly Buys points in relation to the Funds, and any other BNZ product offering Fly Buys points.) Loyalty NZ, through its relationship with the Fly Buys member, will credit the requisite number of points to the member's points record.
21. Points awarded by all participating retailers are recorded in a similar manner. The points awarded by BNZ to a Fly Buys member will accumulate alongside points awarded to that member from other participating retailers. At this point the points are homogenous. Fly Buys does, however, track when points are awarded to measure whether the points have expired.
22. BNZ will share with Loyalty NZ the revenue generated by investors purchasing units in each Fund, in consideration for Loyalty NZ promoting, and for the administration of, the Fly Buys programme.
23. It is possible that from time to time BNZ may promote a product with a bonus level of points (e.g. on initial investment). The total volume of Fly Buys points awarded under the Arrangement to an investor in an income year and any reward those points may be redeemed for are not significant compared with the return to the investor from their investment in the Funds.

### **Conditions stipulated by the Commissioner**

This Ruling is made subject to the following conditions:

- a) Each Fund pays a market rate of return to investors.
- b) The award of Fly Buys points will only ever be taken into account in determining the rate of return payable by BNZ to each Fund (and therefore the rate of return each Fund pays to its individual investors) to the extent the total costs incurred by BNZ in relation to the Fund's deposit with BNZ are taken into account in determining that rate and the costs associated with the award of Fly Buys points are included in those total costs.

### **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:

- No income arises to a Fly Buys member under s CA 1(2) when the member receives Fly Buys points.

- No income arises to a Fly Buys member under s CC 3(1) when the member receives Fly Buys points.
- No interest income arises to a Fly Buys member under s CC 4(1) when the member receives Fly Buys points.
- No deemed interest income arises to a Fly Buys member under s CC 7 when the member receives Fly Buys points.
- The award of Fly Buys points is not attributed PIE income for an investor under s HM 36.

**The period or income year for which this Ruling applies**

This Ruling will apply for the period beginning on 23 September 2011 and ending on 30 September 2014.

This Ruling is signed by me on the 22<sup>nd</sup> day of July 2011.

**Fiona Heiford**  
Manager (Taxpayer Rulings)