

## **PRODUCT RULING - BR Prd 13/08**

This is a product ruling made under s 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), CB 4, CC 3, CE 1, CP 1 and BG 1.

This Ruling does not apply if there is an employment relationship between the Fly Buys member who redeems their Fly Buys points for a contribution and the BNZ KiwiSaver member who receives the contribution.

This Ruling does not apply if there is a contract for services (i.e., independent contractor relationship) between the Fly Buys member who redeems their Fly Buys points for a contribution and the BNZ KiwiSaver member who receives the contribution.

This Ruling does not apply to a Fly Buys member who is a participant in the Fly Buys for Business programme.

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

The Arrangement is for the redemption of Fly Buys points for a contribution to a KiwiSaver account in a KiwiSaver scheme that Bank of New Zealand (the Bank) has established (the BNZ KiwiSaver Scheme). Under an agreement between the Bank and Loyalty New Zealand Limited (Loyalty NZ), persons who are members of the Fly Buys loyalty programme will be able to request the redemption of their Fly Buys points for a contribution to their own, or another person's, member's account in the BNZ KiwiSaver Scheme. In order to request the redemption of Fly Buys points a person does not have to be a Bank customer. As a separate and independent obligation under an agreement between the Bank and Loyalty NZ and signed on 13 May 2013, the Bank will make a payment to Loyalty NZ in relation to each contribution Loyalty NZ makes to a member's account in the BNZ KiwiSaver Scheme.

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

### ***KiwiSaver Act 2006***

1. The KiwiSaver Act 2006 enables the establishment of KiwiSaver schemes. These schemes aim to encourage individuals to save for their retirement, principally through the workplace.
2. Section 3 of the Act KiwiSaver Act 2006 states:
  - the purpose of the Act is encourage a long-term savings habit and asset accumulation by individuals who are not in a position to enjoy standards of living in retirement similar to those in pre-retirement; and
  - the Act aims to increase individuals' well-being and financial independence, particularly in retirement, and to provide retirement benefits.
3. Savings are primarily for retirement and are "locked in", subject to permitted withdrawals, until a member reaches the New Zealand superannuation qualification age (which is currently 65 years). Permitted withdrawals include withdrawals to purchase a first home, on death, in cases of significant financial hardship, and in cases of serious illness, and withdrawals or transfers to a foreign scheme in cases of permanent emigration.
4. Inland Revenue administers Parts 1 to 3 and Schedule 3 of the KiwiSaver Act 2006. The Commissioner of Inland Revenue oversees the provisions of the KiwiSaver Act 2006 that Inland Revenue administers. Among other administrative functions, Inland Revenue collects contributions from employers as part of the PAYE rules, and pays contributions to providers of KiwiSaver schemes.

### ***The Bank's KiwiSaver Scheme***

5. Until recently, the Bank directed its customers who wished to enrol in a KiwiSaver scheme to the AXA KiwiSaver Scheme, which AMP Wealth Management Limited (AMP) manages and promotes. The Bank is not a promoter of the AXA KiwiSaver Scheme. However, the Bank distributed information about the AXA KiwiSaver Scheme to its retail customers and received fees from AMP in respect of retail customers who became members of the AXA KiwiSaver Scheme.
6. The Bank has now established its own KiwiSaver scheme.
7. The BNZ KiwiSaver Scheme was established by a trust deed dated 8 January 2013 (the Trust Deed).
8. For the purposes of the Securities Act 1978, the manager and issuer of the BNZ KiwiSaver Scheme is BNZ Investment Services Limited (a wholly owned subsidiary of the Bank). The Bank and its directors are (for the purposes of the Securities Act 1978) the promoters of the BNZ KiwiSaver Scheme.
9. As at the date of the Bank's application for this ruling, the registrar, trustee, investment manager, and accountant for the BNZ KiwiSaver Scheme are respectively Trustees Executors Limited, the New Zealand Guardian Trust Company Limited, Russell Investments Limited and MMC Limited.

10. The BNZ KiwiSaver Scheme will be a portfolio investment entity for the purposes of the Income Tax Act 2007. Specifically, the BNZ KiwiSaver Scheme will be a multi-rate portfolio investment entity.
11. The five funds in the BNZ KiwiSaver Scheme at the date of establishment are as follows:
  - cash fund;
  - conservative fund;
  - balanced fund;
  - moderate fund; and
  - growth fund.
12. It is possible that additional funds could be established within the BNZ KiwiSaver Scheme from time to time, pursuant to and in accordance with the terms of the Trust Deed.

### ***Fly Buys***

13. Fly Buys is New Zealand's largest loyalty programme.
14. Loyalty NZ administers Fly Buys. The Bank, Foodstuffs Ventures (NZ) Limited, IAG New Zealand Limited, and Z Energy Limited own Loyalty NZ in equal shares.
15. The Bank has an existing relationship with Loyalty NZ whereby the Bank's customers may accrue Fly Buys points on various Bank products, for example, by making purchases using a Bank credit card and on the outstanding balance on certain home loans.
16. Any person may become a Fly Buys account holder by completing the appropriate Loyalty NZ application form. Membership is free. Under the terms and conditions established by Loyalty NZ, Fly Buys points have no cash or monetary value and cannot be sold, transferred or assigned for cash or other consideration. Additionally, a member cannot redeem or refund Fly Buys points for the payment of an amount of money directly to the member. Any Fly Buys points awarded but unused expire after 36 months. The terms and conditions of the Fly Buys loyalty programme do not prohibit a member redeeming points for any particular reward or class of rewards. Following the redemption of Fly Buys points for a reward, a member may (as a subsequent and separate transaction) transfer or assign the reward for money or other consideration (i.e. sell it).
17. Once a person is a Fly Buys account holder, they "collect" Fly Buys points (by way of a credit to an account maintained by Loyalty NZ) as a consequence of purchasing goods or services from participating reward partners (Partners). Fly Buys members pay the same price for qualifying goods and services as non-Fly Buys members. There are currently more than 40 Partners. Loyalty NZ and Partners agree on the level of Fly Buys points that Loyalty NZ may award to account holders. For example, one point may be awarded to an account holder for every \$25 (or some other amount) spent with a Partner. From time to time, Loyalty NZ provides account holders with a points summary statement that details the holder's opening points balance, credits and debits of points, and closing points balance.

18. Once an account holder has collected sufficient Fly Buys points, the account holder may redeem the Fly Buys points for specified rewards, being goods and services provided by Partners or other third parties that have entered into an agreement with Loyalty NZ to provide such rewards. The account holder contacts Loyalty NZ to request the redemption of their Fly Buys points, and Loyalty NZ arranges for the relevant Partner or other reward provider to provide the reward to the account holder. At Loyalty NZ's option, rewards are posted or delivered to the address of the account holder or made available for collection at a location notified to the account holder.

***Fly Buys and contributions to the BNZ KiwiSaver Scheme***

19. The Bank proposes to integrate a Fly Buys feature with the BNZ KiwiSaver Scheme.
20. Under an agreement between the Bank and Loyalty NZ, a Fly Buys member will be able to redeem their Fly Buys points for a contribution to their own, or another person's, member's account in the BNZ KiwiSaver Scheme. Where a Fly Buys member redeems his or her Fly Buys points for a contribution to another person's member's account, the contribution will be a gift from the Fly Buys member to the other person.
21. In the case of a redemption request for a BNZ KiwiSaver contribution, the Fly Buys account holder will contact Loyalty NZ and request the redemption of a specified number of Fly Buys points for a contribution of a specified amount of money to a nominated member's account in the BNZ KiwiSaver Scheme.
22. Loyalty NZ will provide details of the BNZ KiwiSaver member who is receiving the contribution reward and the dollar amount of the reward to the Bank. Loyalty NZ will pay the money into a BNZ suspense account. The contribution will be applied to the nominated member's account in the BNZ KiwiSaver Scheme and to the relevant fund(s) most recently selected by the member.
23. As a separate and independent obligation, the Bank will make a payment to Loyalty NZ in relation to each contribution made by Loyalty NZ to a member's account with the BNZ KiwiSaver Scheme.
24. Contributions to a member's account in the BNZ KiwiSaver Scheme arising from the redemption of Fly Buys points will be treated no differently under the BNZ KiwiSaver Scheme than any other voluntary contributions to the scheme.
25. A Bank customer's membership in the Fly Buys programme will be contractually separate to the customer's agreement (if any) relating to their investment in the relevant fund within the BNZ KiwiSaver Scheme. Each arrangement will exist independently.

***Bank's objectives***

26. The Bank's goals and objectives in integrating the Fly Buys feature into the BNZ KiwiSaver scheme are to:
  - increase customer benefits, satisfaction and customer retention;
  - encourage retirement savings by providing an innovative savings solution to its customers; and

- improve the Bank's brand awareness among the public, so the Bank is seen as a market leader.

### **How the Taxation Laws apply to the Arrangement**

The Taxation Laws apply to the Arrangement as follows:

- a) No income arises under s CA 1(2) for a BNZ KiwiSaver member in relation to the Arrangement.
- b) No income arises under s CB 4 for a Fly Buys member or for a BNZ KiwiSaver member in relation to the Arrangement.
- c) No income arises under s CC 3 for a BNZ KiwiSaver member in relation to the Arrangement.
- d) No income arises under s CE 1 for a BNZ employee in relation to the Arrangement.
- e) No income arises under s CP 1 for a BNZ KiwiSaver member in relation to the Arrangement.
- f) Section BG 1 does not apply to the Arrangement.

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

This Ruling will apply for the period beginning on 10 June 2013 and ending on 31 March 2016.

This Ruling is signed by me on the 7<sup>th</sup> day of June 2013.

**Howard Davis**  
Director (Taxpayer Rulings)