

PRODUCT RULING - BR Prd 13/11

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 the Minister of State Owned Enterprises and the Minister of Finance, in their capacity as holders of all of the issued shares in Meridian Energy Limited (Meridian) on behalf of Her Majesty the Queen in Right of New Zealand (the Crown).

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 1, CB 3, CB 4, CB 5, CD 1, CV 13, DB 23, DB 49, ED 1, EW 3, EW 5(13), EW 6(2), EW 31, EW 32(3), EW 35, FC 1, FC 2, HC 6, HC 17, the definition of "agreement for the sale and purchase of property or services" in s YA 1, and s YB 21.

The Arrangement to which this Ruling applies

The Arrangement is the sale of up to 49% of the ordinary shares (the Shares) in Meridian Energy Limited (Meridian), through the use of instalment receipts, by the Ministers of State Owned Enterprises and Finance (the Ministers) on behalf of Her Majesty the Queen in Right of New Zealand (the Crown) as vendor to purchasers (IR Holders), pursuant to the terms of the Retail Offer and the Institutional Offer contained in a combined Investment Statement and Prospectus (the Offer Document). For the avoidance of doubt, this Ruling does not apply to the Participating Iwi Offer contained in the Offer Document. This Ruling also does not apply to holders of Instalment Receipts to the extent to which the Shares to which those Instalment Receipts relate are held by an Australian trustee entity.

The purchase price will be paid in two instalments (the First Instalment and the Final Instalment). All Shares sold under the Offer Document (other than Shares sold to applicants whose address as recorded in the Instalment Receipt register (Registered Address) is in Australia) will be held in trust by a New Zealand trustee entity (the New Zealand IR Trustee) until payment of the Final Instalment. Upon payment of the First Instalment, an IR Holder will receive an instalment receipt for each Share acquired under the Offer Document (the Instalment Receipt), which will be evidence of the IR Holder's beneficial interest in that Share.

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

1. The Ministers currently hold all of the Shares in Meridian on behalf of the Crown. The Crown is intending to sell up to 49% of the ordinary shares in Meridian under an initial public offering (the Offer). The purchase price payable per Share under the Offer (the Final Price) will be determined under an institutional book-build process prior to the allotment date of shares under the Offer (the Allotment Date).
2. The Final Price will be paid by investors in two instalments. The First Instalment is payable on application and the Final Instalment is payable

approximately 18 months after the Allotment Date (the Final Instalment Payment Date). The Final Instalment will be the Final Price less the First Instalment. The Final Price offered to New Zealand Applicants pursuant to the Retail Offer will be capped (as described at para 7 below). No IR Holder has the ability to prepay any part of the Final Price.

3. On the Allotment Date, Shares sold by the Crown to each successful applicant (other than any applicant whose Registered Address is in Australia) (IR Holder) under the Offer will be transferred to the New Zealand IR Trustee and will be held by that New Zealand IR Trustee on behalf of and for the benefit of that IR Holder until payment of the Final Instalment. Pending payment of the Final Instalment, each IR Holder will be issued with Instalment Receipts by the New Zealand IR Trustee representing the beneficial interest of the IR Holder in the underlying Share.
4. Shares sold to each successful applicant whose Registered Address is in Australia will be transferred to an Australian trustee entity to be held subject to a separate trust deed. This Ruling does not apply to holders of Instalment Receipts to the extent to which the Shares to which those Instalment Receipts relate are held by an Australian trustee entity. References in this Ruling to "IR Holders" exclude references to any such holder of Instalment Receipts.
5. The New Zealand IR Trustee will allot Instalment Receipts as directed by the Crown. The New Zealand IR Trustee will not be an "issuer" or a "promoter" under the Securities Act 1978.
6. The underlying Share will be held on trust subject to a security interest in favour of the Crown securing the obligation to pay the Final Instalment and, if applicable, default interest, enforcement costs and certain other payments. Upon payment of the Final Instalment, IR Holders will receive legal title to the underlying Shares and the Instalment Receipts will be cancelled.
7. The Final Price payable by New Zealand Applicants who are allocated Instalment Receipts and corresponding Shares in the Retail Offer will be capped at a certain amount. This means that such New Zealand Applicants who continue to hold their Instalment Receipts in the same registered name until the Final Instalment Payment Date may pay a lesser aggregate Final Price than participants in the Institutional Offer.
8. The price cap offered to such New Zealand Applicants encourages them to participate in the offer and hold their Instalment Receipts until the Final Instalment Payment Date. The capped price will not apply to other IR Holders (such as institutional investors who participate in the Offer or any investors who acquire Instalment Receipts after the Allotment Date).
9. "New Zealand Applicant" is defined in the Offer Document as an applicant who provides, in conjunction with their application to acquire Shares, a New Zealand IRD number, a New Zealand bank account number, a New Zealand address and a declaration that the applicant is:
 - a) in the case of an individual, a New Zealand citizen or permanent resident; or
 - b) in the case of a company, incorporated in New Zealand and the majority of its ultimate beneficial owners consists

of persons who are New Zealand citizens or permanent residents; or

- c) in the case of a trust, established in New Zealand and the majority of its ultimate beneficiaries consists of persons who are New Zealand citizens or permanent residents; or
 - d) in the case of any other legal entity, incorporated or established in New Zealand and the majority of its ultimate beneficial owners, beneficiaries or members consists of persons who are New Zealand citizens or permanent residents.
10. The Offer Document will contain "lowest price" wording. This wording will form part of the agreement between the Crown as vendor and each IR Holder as purchaser. The lowest price wording will provide that the lowest price that the parties (the Crown and each IR Holder) would have agreed on the date the agreement between them was entered into for the supply of each underlying Share on the Allotment Date is the (applicable) Final Price. The Offer, therefore, will give rise to two types of contract for sale and purchase of Shares:
- a) one for New Zealand Applicants entitled to benefit from the price cap described above, which provides that those New Zealand Applicants who are allocated Instalment Receipts and corresponding Shares in the Retail Offer and who hold those Instalment Receipts to the Final Instalment Payment Date are entitled to pay the capped Final Price in respect of those Instalment Receipts; and
 - b) one for all other IR Holders, which provides for payment of the (potentially higher) Final Price in respect of Instalment Receipts held by those IR Holders, including New Zealand Applicants who acquired their Instalment Receipts other than pursuant to the Offer on the Allotment Date.
11. Meridian will apply for the Shares and the Instalment Receipts to be listed on the New Zealand and Australian stock exchanges (the NZX and ASX respectively). However, only the Instalment Receipts will be quoted on the exchanges until the Final Instalment Payment Date, after which the Shares will be quoted (and the Instalment Receipts will cease to be quoted).

Role of New Zealand IR Trustee

12. Legal title to the underlying Shares to which Instalment Receipts relate will be held by the New Zealand IR Trustee as trustee pursuant to a trust deed (the IR Trust Deed) between the Crown, Meridian and the New Zealand IR Trustee. The New Zealand IR Trustee will hold legal title to the underlying Shares on trust for IR Holders (who will hold the beneficial interest in the Shares) subject to a security interest in favour of the Crown. In this regard, cl 3.1 of the draft IR Trust Deed states:

Subject to clause 3.4, as soon as possible after the closing of the Offer (or at such later time as is contemplated in the Offer Document), the Crown will, provided any conditions to which the contract with the relevant Successful Applicant may be subject have been satisfied, and in consideration for receipt of the First Instalment and the obligation of the Holders of Instalment Receipts at the Final Instalment Record Date to pay the Final Instalment in accordance with the terms of the Offer

and this Deed, transfer to the Trustee the Shares in respect of which there are Successful Applications by Successful Applicants to be held subject to the terms of the trusts set out in this Deed and will deliver to the Trustee certificate(s), if any, relating to those Shares. With effect from the time of that transfer:

- (a) the Security Interest shall be deemed to take effect; and
- (b) the Beneficial Interest shall vest in the person entitled to the Beneficial Interest in terms of the definition of that term in clause 1.1 and the appointment of the Trustee as the nominee of each such person pursuant to clause 4 shall take effect.

13. Each Instalment Receipt corresponds to a specific Share and each will be held by the New Zealand IR Trustee on a separate trust for the holder of the corresponding Instalment Receipt. Clause 4.1(a), 4.2 and 4.3 of the draft IR Trust Deed state:

4.1 Establishment

- (a) As from the date of registration of the transfer of a Share to the Trustee under clause 3.1, a Separate Trust in respect of each such Share shall be constituted by and subject to the terms and conditions of this Deed in favour of the Trustee as nominee for the relevant Successful Applicant and in favour of the relevant Successful Applicant as beneficiary, and the Trustee shall hold that Share which is the subject of that Separate Trust as nominee for the relevant Successful Applicant on the terms and conditions of this Deed.

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4.2 Retention of Share

- (a) The Share the subject of a Separate Trust shall, during the Term of that Separate Trust, be held by the Trustee as nominee for the Holder of the Instalment Receipt which corresponds to the Share, but subject always to the Security Interest and this Deed. The provisions of this Deed which limit the rights of an Instalment Receipt Holder as holder of the Beneficial Interest are included for the purpose of giving effect to, and protecting, the Security Interest, and for no other purpose (other than where necessary to give effect to the requirements of Part 5A of the Public Finance Act 1989 or to the Crown's rights where a Holder misrepresents its status as a New Zealand Applicant (as defined in the Offer Document)) and do not impact upon or alter the status of the Trustee as the nominee for each Instalment Receipt Holder.
- (b) The holding of a Share on the trusts described in clause 4.2(a) is subject to the following qualifications:
 - (i) a Share may be retained by a Custodian or Sub-Custodian as nominee for the Trustee; and
 - (ii) the Trustee may have any certificates in relation to any Shares held in custody by any person on behalf of the Trustee.

4.3 Instalment Receipt Holders' rights and limits thereon

- (a) An Instalment Receipt Holder shall be entitled to the Beneficial Interest in each of the Shares corresponding to the Instalment Receipts registered in the name of such Holder.
- (b) Notwithstanding clause 4.3(a), the Beneficial Interest held by an Instalment Receipt Holder in any Share shall not:
 - (i) confer upon the Instalment Receipt Holder, other than as provided in this Deed, any right or power to require the transfer to it or any other person of the Share prior to it having paid the Final Instalment and any other amounts payable under this Deed by Cleared Payment in respect of that Share; or

- (ii) entitle the Instalment Receipt Holder to any further assurance of that Beneficial Interest beyond that resulting from the Acceptance of the relevant Application (in the case of a Successful Applicant) or registration of the Instalment Receipt Holder in the Instalment Receipt Register (in the case of the Successful Applicant or any other Instalment Receipt Holder), and from the terms of this Deed.
- 14. The New Zealand IR Trustee will have various duties under the IR Trust Deed, including as described below in relation to dividends paid by Meridian on underlying Shares (Dividends), voting of those Shares and the transfer of the underlying Shares to IR Holders on payment of the Final Instalment.
- 15. Other key duties imposed on the New Zealand IR Trustee include:
 - a) holding the Shares on trust for IR Holders;
 - b) selling the underlying Shares to recover the Final Instalment owed to the Crown if an IR Holder defaults in payment of the Final Instalment and cancelling the relevant Instalment Receipts; and
 - c) arranging the registration of transfers of title to Instalment Receipts (or arranging the refusal of such transfer in accordance with applicable laws or stock exchange listing requirements).

Dividends paid on Shares

- 16. Under the Trust Deed, each IR Holder will be entitled to receive Dividends paid on the underlying Shares to which that IR Holder's Instalment Receipts relate, together with any imputation credits attached to those Dividends. In the IR Trust Deed, the New Zealand IR Trustee, as registered holder of the Shares and acting in the interests of the IR Holder, agrees to ensure that payment of all Dividends will be made directly by Meridian to IR Holders, as if those IR Holders were the registered holders of the underlying Shares at the relevant time. Meridian undertakes to pay the Dividends directly to the relevant IR Holder. The New Zealand IR Trustee also agrees to take reasonable steps to confer on IR Holders the benefit of imputation credits attached to any Dividends or any other tax benefit permitted by the Act.
- 17. Clauses 16.1 and 16.4 of the draft IR Trust Deed state:

16.1 Entitlements to Dividends

Subject to clauses 16.7(a) and 18.4, if the Company pays a Dividend in respect of any Share at any time before the Final Instalment Payment Date, the Trustee shall hold the Dividend (and all its right, title and interest thereto) as a bare trustee for the relevant Eligible Instalment Receipt Holder on the terms set out in this Deed and shall (as registered holder of such Share and acting in the interests of the Eligible Instalment Receipt Holder):

- (a) in respect of a Dividend wholly or partly in cash, take all Reasonable Steps to cause the Company to pay such Dividend (or the cash portion) directly to the Eligible Instalment Receipt Holder; and
- (b) in respect of a Dividend wholly or partly other than in cash, take all Reasonable Steps to cause such Dividend (or the non-cash portion) to vest in the Eligible Instalment Receipt Holder,

and the Crown will procure the Company to provide the Trustee with all reasonable assistance to comply with this clause 16.1 and, in particular, prior to the Final

Instalment Payment Date, to pay (or vest) Dividends directly to, or with, the relevant Eligible Instalment Receipt Holder.

16.4 Method of payment of Dividends

- (a) Subject to clauses 16.7(a) and 18.4, payment of any Dividend pursuant to clause 16.1(a) to an Eligible Instalment Receipt Holder in respect of the Shares corresponding to its Instalment Receipts may be made to the Eligible Instalment Receipt Holder as if that Holder was the registered holder of the Shares at such time and otherwise in the same manner and by the same means as applies to Shareholders (other than the Trustee), or by one of the methods described in clause 29.1.
 - (b) The Trustee shall not retain for its own account any Dividends in respect of the Shares.
 - (c) Payment of any Dividend in accordance with clause 16.4(a) may be effected through the Trustee, the Company, the Instalment Receipt Registrar, or, if this can be conveniently arranged, directly through the Share Registrar.
 - (d) The payment of any Dividend to an Eligible Instalment Receipt Holder is at that Eligible Instalment Receipt Holder's risk.
 - (e) Money earned by the Company or the Trustee on the amount of a Dividend pending clearance of a cheque or other collection by an Eligible Instalment Receipt Holder shall be for the benefit of the Company or the Crown, as the case may be.
 - (f) If, for any reason, the Trustee is prevented from making a payment as provided in this clause 16.4 or in the case of a non-cash Dividend, if there are no Reasonable Steps which can be taken under clause 16.1(b), the Trustee shall continue to hold the Dividend in question as a bare trustee for the Eligible Instalment Receipt Holder and shall take or continue to take (subject to clause 16.8) all Reasonable Steps to transfer or make available the Dividend to that Eligible Instalment Receipt Holder.
 - (g) The Trustee is not responsible to any person for any neglect or default on the part of the Company in relation to any matter dealt with in this clause 16.4.
 - (h) The Crown will procure that the payment of any Dividend to an Eligible Instalment Receipt Holder pursuant to this clause 16 is made at the same time as payment by the Company or the Share Registrar of the equivalent Dividend is made to holders of Shares.
 - (i) The Trustee or other person making payment of any Dividend under clause 16.4(c) may make, and account to the relevant tax authorities for, any withholding payments required by law.
18. If the New Zealand IR Trustee does receive a Dividend (i.e. the Dividend is not paid directly by Meridian to the IR Holder) and the New Zealand IR Trustee is prevented for some reason from paying the Dividend on to the IR Holder, the New Zealand IR Trustee will hold the amount of the Dividend as bare trustee for the relevant IR Holder and must continue to take all reasonable steps to transfer or make available the Dividend to the IR Holder.
19. If the New Zealand IR Trustee receives payment of a Dividend after the Final Instalment Payment Date then:
- a) if the payment is attributable to a Share for which the Final Instalment has been paid by a cleared payment, the New Zealand IR Trustee will hold the Dividend as bare trustee for

the relevant IR Holder and must take all reasonable steps to transfer the Dividend to that IR Holder; or

- b) if the payment is attributable to a Share for which there has been a default in the payment of the Final Instalment, the Dividend is to be applied in or towards payment of the amounts due to the Crown.
20. IR Holders will not be able to elect for Dividends to be retained by Meridian or the New Zealand IR Trustee and applied towards payment of Final Instalment.

Voting rights in respect of Shares

21. Each IR Holder will be invited to attend shareholder meetings of Meridian. However, until an IR Holder pays the Final Instalment and becomes registered as the holder of the underlying Shares, the IR Holder will not be entitled to vote the underlying Shares, directly, at such meetings (IR Holders will not be registered shareholders of Meridian in terms of the Companies Act 1993 or Meridian's constitution).
22. For each meeting of Meridian's shareholders prior to the Final Instalment Payment Date, the New Zealand IR Trustee will arrange for IR Holders to be sent a form inviting them to instruct the New Zealand IR Trustee as to the manner in which the votes attached to the underlying Shares are to be exercised by the New Zealand IR Trustee at that meeting.
23. The New Zealand IR Trustee has the power, and is required, to call for a poll on each resolution put to each meeting. If valid voting instructions are received within the specified time the New Zealand IR Trustee will vote the relevant Shares in accordance with the IR Holder's instructions. The New Zealand IR Trustee will request a meeting of shareholders if requested to do so by persons holding such number of Instalment Receipts as would entitle them to request a meeting if they were shareholders.
24. The New Zealand IR Trustee will not have the right to exercise votes for any Shares for which it does not receive voting instructions, nor will it have the right to vote those Shares at its own discretion.
25. The right of an IR Holder to give voting instructions to the New Zealand IR Trustee, and the obligation of the New Zealand IR Trustee to act in accordance with those instructions, will be able to be suspended in certain circumstances, reflecting the ownership requirements under the Public Finance Act 1989 (more particularly described in section 4.3 of the current draft of the Offer Document).

Payment of Final Instalment

26. Payment of the Final Instalment is due by IR Holders at 5pm on the Final Instalment Payment Date (expected to be approximately 18 months after the Allotment Date). Once payment of the Final Instalment is made, the New Zealand IR Trustee will transfer the underlying Share to the IR Holder within four business days of cleared payment being received by the Crown. On the transfer of the Share, the underlying security interest of the Crown will be extinguished and the relevant Instalment Receipt will be cancelled. IR Holders will then be entered onto Meridian's shareholder register. The

Shares will then be traded on the ASX and NZX in place of the Instalment Receipts.

Default in payment of Final Instalment

27. If the Final Instalment is not paid when due, the New Zealand IR Trustee will be required to sell the underlying Share pursuant to the Crown's security interest and apply the proceeds in paying the Final Instalment on behalf of the IR Holder. Interest is payable by the IR Holder on the unpaid amount (being the Final Instalment, costs, expenses, taxes and other charges then owed) from the Final Instalment Payment Date. Any fees, costs, taxes, interest and similar charges are deducted from the sale proceeds with any surplus payable to the IR Holder. If the net proceeds are insufficient to pay the Final Instalment, then the New Zealand IR Trustee can recover the shortfall from the IR Holder on behalf of the Crown.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- a) The Arrangement is an "agreement for the sale and purchase of property or services" (as defined in s YA 1), and a "financial arrangement" as defined in s EW 3.
- b) The Shares are each an excepted financial arrangement under s EW 5(13) and are part of that financial arrangement.
- c) Under s EW 6(2), any amounts that are solely attributable to the Shares will not be taken into account under the financial arrangements rules (as set out in Determination S24).
- d) For an IR Holder that is issued Instalment Receipts on the Allotment Date under the Offer and holds them until the Final Instalment Payment Date (Original IR Holder), the lowest price for s EW 32(3) is the applicable Final Price and no income or expenditure will arise under the financial arrangements rules in subpart EW.
- e) Any Dividend paid prior to the Final Instalment Payment Date will be taxable under s CD 1 as dividend income of the relevant IR Holder, provided that it is solely attributable to an "excepted financial arrangement" (as set out in Determination S24), and will not be taxable to the relevant IR Holder under ss CV 13 or HC 17.
- f) The transfer of legal title to the underlying Share to an IR Holder upon payment of the Final Instalment on the Final Instalment Payment Date will not give rise to income under any of ss CA 1(2), CB 1, CB 3, CB 4, or CB 5.
- g) For each IR Holder for whom a Share is revenue account property or "trading stock" (as that term is defined in s YA 1), the cost of that Share, upon its acquisition by the IR Holder on payment of the Final Instalment, for s DB 23 and s DB 49 respectively, is:
 - i) in the case of an Original IR Holder, the aggregate of the First Instalment and the (applicable) Final Instalment paid by that Original IR Holder; and

- ii) in the case of any other IR Holder, the aggregate of the amount paid by that IR Holder to acquire the Instalment Receipt to which that underlying Share relates from another IR Holder, and the Final Instalment paid by the IR Holder.

The period or income year for which this Ruling applies

This Ruling will apply for the period beginning on 19 September 2013 and ending on 19 September 2016.

This Ruling is signed by me on the 19th day of September 2013.

Howard Davis
Director (Taxpayer Rulings)