

PRODUCT RULING – BR PRD 16/03

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 BG 1, CA 1(2), CB 4, CC 3, CE 1 and CP 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 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. To request the redemption of Fly Buys points a person does not have to be a customer of the Bank. As a separate and independent obligation under an agreement between the Bank and Loyalty NZ, the Bank will make a payment to Loyalty NZ for 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 regime, which started on 1 July 2007, is a voluntary work-based saving scheme established to facilitate individuals' savings habits, principally through the workplace. Savings are primarily for retirement and are "locked in" until the age of eligibility for New Zealand superannuation (which is currently 65 years old), although exceptions can be made in certain cases, such as financial hardship.
2. As stated in s 3 of the KiwiSaver Act 2006, the purpose of KiwiSaver is to:
 - encourage long-term savings habits and asset accumulation by individuals who may not otherwise enjoy standards of living in retirement similar to those enjoyed before retirement; and
 - increase individuals' well-being and financial independence, particularly in retirement, and provide retirement benefits.
3. 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

4. The Bank operates its own KiwiSaver scheme.
5. The BNZ KiwiSaver Scheme was established by trust deed dated 8 January 2013 (the Trust Deed), and set up as a portfolio investment entity (PIE). The manager/issuer of the BNZ KiwiSaver Scheme is BNZ Investment Services Limited (which is a wholly owned subsidiary of the Bank), with the Bank and its directors being promoters of the BNZ KiwiSaver Scheme. As at the date of this Ruling, the registrar, trustee, investment adviser and accountant of the BNZ KiwiSaver Scheme are Trustees Executors Limited, The New Zealand Guardian Trust Company Limited, Russell Investment Group Limited and MMC Limited respectively. The BNZ KiwiSaver Scheme is registered with the Financial Markets Authority, and is open to customers who are natural persons that join the Scheme by completing the relevant application form. Customers can elect to make their employee and employer contributions to any one of the six funds within the BNZ KiwiSaver Scheme, being:
 - the Cash Fund (comprising 100% growth assets);
 - the First Home Buyer Fund (comprising 85% income assets and 15% growth assets);
 - the Conservative Fund (comprising 80% income assets and 20% growth assets);
 - the Balanced Fund (comprising 50% income assets and 50% growth assets);
 - the Moderate Fund (comprising 65% income assets and 35% growth assets);
 - and

- the Growth Fund (comprising 30% income assets and 70% growth assets).
6. 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.
 7. It is anticipated that changes will shortly be made to the Trust Deed in order to ensure compliance with the Financial Markets Conduct Act 2013. Among the **changes will be the removal of the role of “Promoter” and changes in terminology so that the Trustee is referred to as the “Supervisor” and the Trust Deed becomes known as the “Governing Document”.** None of these changes will affect the BNZ KiwiSaver Scheme or the Arrangement.

Fly Buys

8. The Fly Buys points programme is New Zealand's largest loyalty programme. Fly Buys is administered by Loyalty NZ, which is owned in equal shares by the Bank, Foodstuffs Ventures (NZ) Limited, IAG New Zealand Limited, and Z Energy Limited.
9. Any person can become a Fly Buys member by completing an appropriate application form. Membership is free. Under the terms and conditions established by Loyalty NZ, Fly Buys points are agreed to have no value and cannot be sold, transferred, or assigned for cash or other consideration. Additionally, Fly Buys points cannot be redeemed for or refunded in cash. Any Fly Buys points that are awarded but unused expire after 36 months. The terms and conditions of the Fly Buys loyalty programme do not prohibit the points being redeemed for any particular reward or class of rewards. Once redeemed, a reward could (as a subsequent and separate transaction) be sold, transferred or assigned for cash or other consideration.
10. Once a person is a Fly Buys member, 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). There are currently over 40 Partners. Loyalty NZ and Partners agree on the level of Fly Buys points that may be awarded to Fly Buys members by Loyalty NZ. For example, 1 point may be awarded to a Fly Buys member for every \$25 (or some other amount) spent with the Partner. From time to time Loyalty NZ provides Fly Buys members with a points summary statement, which details the opening points balance, credits and debits of points, and the closing points balance.
11. Once sufficient Fly Buys points have been collected the Fly Buys member 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 Fly Buys member contacts Loyalty NZ to request a redemption of their Fly Buys points, and Loyalty NZ contacts the relevant Partner or other reward provider to arrange for the reward to be provided to the Fly Buys member. At Loyalty NZ's option, rewards are posted or delivered to the address of the Fly Buys member, or made available for collection at a location notified to the Fly Buys member.

Fly Buys and contributions to the BNZ KiwiSaver Scheme

12. The Bank has integrated a Fly Buys feature into the BNZ KiwiSaver Scheme.
13. Under an agreement between the Bank and Loyalty NZ, members in the Fly Buys programme (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 (BNZ KiwiSaver member). In the case where Fly Buys members redeem their Fly Buys points for a contribution to another person's BNZ KiwiSaver account, the contribution will be a gift from the Fly Buys members to the other persons.
14. In the case of a redemption request for a contribution **to a member's account** in the BNZ KiwiSaver Scheme, the Fly Buys member contacts Loyalty NZ and requests the redemption of a specified number of Fly Buys points for a contribution of a specified amount to a nominated BNZ KiwiSaver account.
15. Loyalty NZ then provides details of the BNZ KiwiSaver member that is receiving the contribution reward and the dollar amount of the reward to the Bank. Loyalty NZ pays the money into the BNZ KiwiSaver Scheme subscriptions account (held in the name of the Trustee). In turn, the Trustee applies the contribution to the member's BNZ KiwiSaver account and to the fund they have selected.
16. As a separate and independent obligation, the Bank will make a payment to Loyalty NZ for each contribution made by Loyalty NZ to a member's account with **the BNZ KiwiSaver Scheme. The contributions to the BNZ KiwiSaver member's** account arising from the redemption of Fly Buys points are treated no differently to any other employee or employer KiwiSaver contributions.
17. A Bank customer's membership in the Fly Buys programme is contractually separate to their agreement (if any) relating to their investment in the relevant KiwiSaver fund, and each arrangement exists independently of the other.

Bank's objectives

18. 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 1 April 2016 and ending on 31 March 2021.

This Ruling is signed by me on the 17th day of May 2016.

Howard Davis

Director (Taxpayer Rulings)