TAX INFORMATION BULLETIN

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Inland Revenue
Te Tari Taake

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If you find that you prefer the *TIB* from our website and no longer need a paper copy, please let us know so we can take you off our mailing list. You can email us from our website.

THIS MONTH'S OPPORTUNITY FOR YOU TO COMMENT

Inland Revenue produces a number of statements and rulings aimed at explaining how taxation law affects taxpayers and their agents.

Because we are keen to produce items that accurately and fairly reflect taxation legislation, and are useful in practical situations, your input into the process—as perhaps a user of that legislation—is highly valued.

The following draft items are available for review/comment this month, having a deadline of 31 March 2001. Please see page 45 for details on how to obtain copies:

Ref.	Draft type	Description
PU0054	Public ruling	The provision of benefits by third parties: fringe benefit tax (FBT) consequences – section CI 2(1). The arrangement is the receipt of a benefit by an employee from a third party where there is an arrangement between the employer and the third party and where the benefit would be subject to FBT if it had been provided by the employer.
ED0016	Standard practice statement	Release of information. Guidelines for dealing with requests for information made under the Official Information Act 1982 and the Privacy Act 1993.
ED0017	Standard practice statement	Late rebate claims. The Commissioner's practice when considering late rebate claims.
ED0019	Standard practice statement	Arrangements for payment of tax debts. The Commissioner's practice on providing relief by way of an arrangement when taxpayers are in debt with Inland Revenue.

BINDING RULINGS

This section of the *TIB* contains binding rulings that the Commissioner of Inland Revenue has issued recently.

The Commissioner can issue binding rulings in certain situations. Inland Revenue is bound to follow such a ruling if a taxpayer to whom the ruling applies calculates tax liability based on it.

For full details of how binding rulings work, see our information booklet *Adjudication & Rulings, a guide to Binding Rulings (IR 715)* or the article on page 1 of *Tax Information Bulletin* Vol 6, No 12 (May 1995) or Vol 7, No 2 (August 1995).

You can download these publications free of charge from our website at **www.ird.govt.nz**

PRODUCT RULING – BR PRD 00/09

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 Barkworth Olive Groves Pty Limited ("BOGL").

Taxation Laws

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

This Ruling applies in respect of sections EP 1, BD 2(1)(b)(i), BD 2(2)(e), EG 1, and the section OB 1 definition of "depreciable property".

This Ruling does not consider or rule on the potential application (if any) of sections EF 1 and BG 1 or Determination E10.

This Ruling considers expense deductibility in relation to section BD 2(1)(b)(i) (incurred by the taxpayer in deriving the taxpayer's gross income). Accordingly it has not been necessary for the purposes of this Ruling to consider or rule on whether investors are carrying on a business for the purposes of the Act.

The Arrangement to which this Ruling applies

The Arrangement is the purchase of a minimum of 250 "C" class shares in BOGL, and the growing of olives on certain land situated in Australia in respect of which the shares provide the right to grow olives, and the appointment of Barkworth Olive Management Limited ("BOML") to manage the growing, processing and marketing of those olives. This Ruling only applies to investors who appoint BOML to manage their Farms.

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

1. The Arrangement is governed by the terms of the "Barkworth Olive Groves Project No. 3" prospectus dated 11 March 1999 ("the prospectus"). Key aspects of the prospectus are as follows:

(i) Investors (also referred to as "members" or "growers") purchase a minimum parcel of 250 "C" class shares of $1 each in a land owning company (BOGL): additional shares may be applied for in parcels of 250.

(ii) Holders of "C" class shares have the following rights:

- A member shall have the absolute right to occupy one 'Farm' (or section of olive grove) in respect of each 250 "C" Class shareholding held by that member, subject to the payment of all moneys due to BOGL. The farm shall be an identified area of land as nearly as practicable in area to 0.08 hectares and suitable for the planting of 20 olive trees at spacings of approximately 5 metres by 8 metres. The member's Farm or Farms will be separately identified on a master plan maintained under the supervision of the directors of BOGL.
- A member shall have an absolute right to process up to 1.5 tonnes of olives per annum in respect of each 250 "C" Class shareholding, subject to the payment of Factory Access Fees. The time allotted for each member's processing operations will be advised at least two weeks prior to commencement of the harvest period. The member may exchange his or her allotted time with any other member or members with the approval of BOGL: such approval not to be unreasonably withheld.

The time allotted per 250 "C" Class shareholding will be as near as practicable to one half-hour and will be with respect to a machine or machines capable of processing in excess of 3 tonnes per hour.

- A member shall have the right to own and operate a business, as defined by the Constitution of BOGL, for the commercial cultivation and harvesting of olives on the member's Farm and the sale of produce therefrom.
- A member shall also have the right to own and operate a business as defined in the Constitution of BOGL, for the commercial processing and marketing of processed olive products which includes, but is not necessarily limited to, olive oil and pickled table olives.
- A member shall have the right to use the agricultural infrastructure which includes, but is not necessarily limited to, roads around the property, access to irrigation mains and storage areas. This will be subject to the reasonable regulations imposed by BOGL's directors.
- A member shall have the right to use the processing infrastructure which includes, but is not necessarily limited to, loading and unloading equipment, storage areas, grading and sampling equipment. This will be subject to the reasonable regulations imposed by BOGL's directors.
- A member shall have the right to appoint BOML to manage his or her interests in accordance with the Management Agreement. Alternatively, growers have the right to manage the business personally or to appoint an employee, contractor, or agent to manage the business on their behalf.
- A member shall have the right to assign, transfer, or otherwise deal with the abovementioned special rights to any person, persons, or corporation with the approval of the directors of BOGL: such approval not to be unreasonably withheld.

(iii) The rights attaching to "C" Class shares expire on 1 July 2019 and, in accordance with the Constitution of BOGL, become ordinary shares. At that time BOGL will assume responsibility for, and the benefits of, the olive trees and from then on the member's benefits will be derived from the member's interest in BOGL by virtue of shares held.

(iv) A member or his or her assignee is obliged to ensure the efficient running of the business. If an employee, contractor, or agent is engaged to fulfil this function, BOGL must be satisfied in regard to the competence of that person or corporation and give its written approval.

Relationship between BOGL and members

(v) The members' interests are separate from the operation of the business of BOGL.

(vi) BOGL will derive income from annual Farm Administration Fees received from members. The year one Administration Fee in respect of the 1999 – 2000 year will be $88 for each parcel of 250 "C" Class shares allotted to the member.

(vii) In year two the Administration Fee will be $75 payable in advance.

(viii) Thereafter, until and including the year 2019, the annual Administration Fee shall be 10% of the gross income generated from the sale of olives attributable to the member's Farm.

(ix) BOGL will also derive income from the payment by the member of Factory Access Fees for each 250 "C" Class shareholding as follows:

- Year 1 - $225
- Year 2 - $225
- Year 3 and thereafter – 15% of the gross income generated from the sale of processed olive products attributable to the member's processing allocation. 90% of all income derived by BOGL for Factory Access Fees will be paid to the Factory Owner and the remaining 10% will be retained by BOGL to cover administration costs. BOGL may also derive income from the commercial use of that residue of BOGL land not being used for olive growing and from any direct interest in olive processing which BOGL may acquire.

2. The members may appoint BOML as the manager of the Farms. The Management Agreement is entered into between BOML and BOGL (as the agent of the members).

3. The Manager's duties in respect of the first 13 months (as provided in clause 4.1 of the Management Agreement) are as follows:

(i) BOML will carry out the duties required to supply olive trees, plant olive trees on the grower's Farm, bring the trees to an initial harvest, process olives (whether those olives are sourced from the Farm or elsewhere), and market olives and processed olive product. Without limiting the generality of this clause BOML must:

- Supply at least 20 olive trees to the grower selected from high yield stock in healthy condition.
- Carry out irrigation works to benefit the grower's Farm.
- Carry out drainage work and work to help prevent soil erosion on the grower's Farm.
- Prepare the Farm so that it will be suitable for the planting and growing of at least 20 olive trees.
- Tend the olive trees.
- Tend the trees and Farm in a proper and skilful manner.
- Comply with BOGL's constitution in so far as it relates to the use of the Farm and grower's processing allocation (except for the payment of Administration Fees and Factory Licence Fees).
- At BOML's discretion, procure raw olives, olive products or both from sources other than the Farms for processing.
- Determine the products into which those olives will be processed and the proportions of the various products.
- Carry out the processing of some or all of those olives or olive products pursuant to and during the processing time allowed under the grower's processing allocation.
- Package, market and sell the processed olives attributable to the grower using reasonable endeavours to obtain the maximum price available.
- If BOML markets and sells the processed olives attributable to the grower's processing allocation, account to the grower for the proceeds of sale.
- Eradicate as far as reasonably possible any pests and competitive weeds which may affect the growth or yield of trees.
- Repair damage to roads, tracks, or fences on the Farms or on neighbouring land resulting from the actions of BOML or its contractors.
- Embark on such operations as may be required to prevent or combat land degradation on the Farm or land.

4. The ongoing duties of the Manager (as provided in clause 4.3 of the Management Agreement) are as follows:

(i) BOML must continue to maintain the Farm and source, process, and market olives and olive products following the completion of the duties outlined in clause 4.1.

(ii) BOML's duties must be carried out according to sound agricultural, environmental, and proper workplace practices as well as in accordance with industry practices applicable to growing olive trees and processing and marketing olives or olive products. Without limiting the generality of this clause, BOML must:

- Eradicate as far as reasonably possible any pests or competitive weeds which may affect growth or yield of the trees.
- Comply with BOGL's constitution in so far as it relates to the use of the grower's Farm and the grower's processing allocation (except for the payment of Administration Fees and, if applicable, Factory Licence Fees).
- Repair damage to roads, tracks, or fences on the grower's Farm or on neighbouring land resulting from the actions of BOML or its contractors.
- Embark on such operations as may be required to prevent or combat land degradation on the grower's Farm or land surrounding the grower's Farm.
- Subject to the grower's right to harvest its own trees under clause 6.2, harvest the trees on the grower's Farm at or around the time estimated by BOML to maximise the produce from all the Farms established at or around the same time as the grower's Farm.
- Procure raw olives or olive products whether from the Farm or from other sources other than the Farms for processing.
- Determine the products into which those olives or olive products will be processed and the proportions of the various products.

- During the processing time allowed under the grower's processing allocation, carry out the processing of some or all of the olives attributable to the grower's Farm following harvest and olives procured from sources other than the Farms, in a proper and workmanlike manner having regard to proper workplace practices as well as in accordance with acceptable industry practices applicable to processing olives.
- Subject to the grower's rights to take and market olives and processed olive products under clauses 6.3 and 6.4, package, market, and sell the olives attributable to the grower's Farm and the processed olives attributable to the grower's processing allocation using reasonable endeavours to obtain the maximum price available.
- If BOML markets and sells the olives attributable to the grower's Farm and the processed olives attributable to the grower's processing allocation, account to the grower for the proceeds of sale.

5. Subject to complying with the conditions set out in clause 6 of the Management Agreement, growers may elect to:

   (i) Carry out their own maintenance work;

   (ii) Have their trees harvested separately;

   (iii) Harvest their own trees; and

   (iv) Market their own olives.

6. The Management Agreement (at clause 7.1) makes the following provision for remuneration in the first year:

   (i) In consideration of BOML carrying out its duties (as set out in clause 4.1 of the Management Agreement), BOML is entitled to be paid:

   - $20 deposit for the supply of 20 olive trees to the grower (payable on application).
   - $70 for the balance of the cost of supplying 20 olive trees to the grower (payable within three months of application).
   - $1,025 for irrigation works (payable within three months of application). Irrigation works consist of the supply and installation (above ground) of trickle tapes and sprinkler heads (together the "irrigation equipment") on growers' land. The irrigation equipment is bought by BOML as agent for the grower.
   - $1,293 for procuring, processing, packaging and marketing olives sourced externally. (The fee is payable by twelve equal monthly instalments in arrears on the first day of each calendar month. If the fee is paid in full within three months of application, then it will be reduced to $1,175.)
   - $3,776 for the balance of the management duties. (The fee is payable by twelve equal monthly instalments in arrears on the first day of each calendar month. If the fee is paid in full within three months of application, it will be reduced to $3,433.)

   (ii) BOML is also entitled to be paid $550 for granting the grower a licence to use the "Barkworth" name in carrying on the grower's business. The grower must pay this fee by twelve equal monthly instalments in arrears on the first day of each calendar month during the first twelve months of the Management Agreement. However, the fee is $500 if the grower pays these amounts in full within three months of application.

   (iii) In addition, if BOML procures and markets processed olive products on behalf of the grower, then BOML is entitled to be paid 85% of the amount by which the gross proceeds from the sale of the processed olive products exceed the prospectus projections. From this fee BOML must pay all costs associated with procuring and marketing processed olive products.

7. The Management Agreement (at clause 7.2) makes the following provision for remuneration in the second year:

   (i) In consideration of BOML carrying out its duties from the beginning of the 14th month to the end of the 24th month, BOML is entitled to be paid:

   - $1,293 for procuring, processing, packaging, and marketing olives sourced externally. (The fee is payable by twelve equal monthly instalments in arrears on the first day of each calendar month. If the fee is paid in full within three months of application, it will be reduced to $1,175); and
   - $962 for the balance of the duties. (The fee is payable by twelve equal monthly instalments in arrears on the first day of each calendar month. If the fee is paid in full within three months of application, it will be reduced to $875.)

(ii) BOML is also entitled to be paid $500 in year two for granting the grower a licence to use the "Barkworth" name in carrying on the grower's business. The fee is payable from the gross income generated from the sale proceeds generated under the Management Agreement. The fee for the licence to use the "Barkworth" name is capped at the amount of gross income generated from the sale proceeds generated under the Management Agreement.

(iii) In addition, if BOML procures and markets processed olive products on behalf of the grower, then BOML is entitled to be paid 85% of the amount by which the gross proceeds from the sale of the processed olive products exceed the prospectus projections. From this fee, BOML must pay all costs associated with procuring and marketing processed olive products.

8. The Management Agreement makes the following provision for remuneration in the third year:

(i) In consideration of BOML carrying out its duties for the third year of the Management Agreement, BOML is entitled to be paid 70% of the gross income generated from the sale of processed olives attributable to the grower's processing allocation.

(ii) Payment of the above fees includes a fee to use the "Barkworth" name in carrying on the business of the grower. The amount of that fee is the amount paid under year two increased by the same proportion as the increase in the Consumer Price Index over the one-year period from year two to year three. If there is insufficient income earned from the sale of processed olives to pay this amount, the fee is capped at the income earned.

(iii) In addition, if BOML procures and markets processed olive products on behalf of the grower, then BOML is entitled to be paid 85% of the gross proceeds from the sale of the processed olive products. From this fee BOML must pay all costs associated with procuring and marketing processed olive products.

9. The Management Agreement makes the following provision for remuneration in the fourth and following years:

(i) In consideration of BOML carrying out its duties under clause 4.3 for the fourth year and all subsequent years, BOML is entitled to be paid fees calculated according to the following table:

Year No.	% of Gross Income Of Olives	% of Gross Income of Processed Olives
4	90%	70%
5	90%	70%
6	60%	60%
7	50%	70%
8 to 20	40%	70%

(ii) In the above table, "Gross Income of Olives" means the gross income generated from the sale of olives attributable to the grower's Farm, and "Gross Income of Processed Olives" means the gross income generated from the sale of processed olives attributable to the grower's processing allocation.

(iii) The fees payable are calculated in respect of the olives attributable to the grower's Farm which are produced during the year corresponding with the percentage of gross income of olives.

(iv) If the grower has made an election to have his or her trees harvested separately or to harvest the trees themselves such that the gross income of olives is not readily calculable by BOML, the fees payable in consideration of BOML carrying out its management duties under clause 4.3 of the Management Agreement are as per the fees in the following table plus or minus an adjustment.

Year No.	Management Fees $
4	369
5	538
6	565
7	659
8	692
9	850
10	1042
11	1094
12	1149
13	1206
14	1266
15	1330
16	1396
17	1466
18	1539
19	1616
20	1697

(v) That adjustment will be that amount actually paid in respect of Farms owned by growers who have not made the election. The adjustment will be credited or charged to the grower upon it being calculated by BOML.

(vi) If the grower has made an election to market his or her own processed olive products, fees payable to BOML for duties carried out under clause 4 of the Management Agreement will be the sum of the percentage of gross income of olives plus additional fees in respect of sourcing, processing, and related activities as set out below subject to adjustment in respect of years 3 to 20.

Year No.	% of Gross Income of Olives	Additional Fees for Sourcing/Procuring
1	-	0
2	-	500
3	-	1388
4	90%	2107
5	90%	2592
6	60%	2723
7	50%	2859
8	40%	3002
9	40%	3150
10	40%	3308
11	40%	3473
12	40%	3647
13	40%	3830
14	40%	4021
15	40%	4224
16	40%	4436
17	40%	4659
18	40%	4893
19	40%	5139
20	40%	5396

10. The projected cashflows for growers from the operation of a minimum holding of 250 "C" Class shares in BOGL, if BOML is appointed manager, are as follows:

Year	Net Project Income
1999	(108)
2000	(6,428)
2001	(1,965)
2002	416
2003	632
2004	777
2005	1,099
2006	1,385
2007	1,765
2008	2,008
2009	2,294
2010	2,409
2011	2,294
2012	2,656
2013	2,789
2014	2,930
2015	3,076
2016	3,230
2017	3,392
2018	3,562
2019	3,741

11. This Ruling does not consider or rule on the taxation implications of financing arrangements (if any) entered into by growers in order to invest in this Arrangement.

Assumptions made by the Commissioner

This Ruling is made subject to the following assumptions:

i) Growers are liable for any repairs to or enhancement of the irrigation equipment required during the life of the project.

ii) Growers will participate in the project for the full 20 years (until 2019) and have an intention to make a profit from investing in the Arrangement.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

Balance date

a) This Ruling applies only to New Zealand resident taxpayers.

b) The balance date of any grower for the purposes of Australian income tax, is 30 June.

c) Any foreign source income and foreign expenditure that arises in respect of any grower's investment in BOGL has been included in the grower's annual returns of income in Australia.

d) No foreign source income, nor foreign expenditure arising from the investment in BOGL, has been included in the grower's income tax return for the base year.

e) Any dividends received from BOGL are to be returned when derived and not in accordance with section EP 1.

f) The total net foreign source income (derived from all foreign activities) of the grower is less than $100,000.

g) The income derived and expenditure incurred by the grower from the sale of raw olives and processed olive products is not income derived or expenditure incurred under the "accrual rules".

h) The shares in BOGL do not give rise to any "attributed foreign income" as defined in section OB 1.

i) The shares in BOGL do not give rise to "foreign investment fund income" as defined in section CG 16.

j) BOGL is not a "controlled foreign company" as defined in section CG 4.

Factory access fees; procuring, processing and marketing fees; and brand name licensing fees

k) The "year one" factory access fee is payable in respect of the year ended 30 June 2000.

l) The factory access fee; the procuring, processing and marketing fee; and the brand name licensing fee are all set at an arm's length rate.

m) In the year ended 30 June 2000, BOML processed olives on behalf of growers using a part, or all of, their annual allocation of factory access time for the year ended 30 June 2000.

n) The "year one" procuring, processing and marketing fee is payable in respect of the year ended 30 June 2000.

o) In the year ended 30 June 2000, BOML procured and processed olives on behalf of growers.

p) The "year one" brand name licensing fee is payable in respect of the year ended 30 June 2000.

q) In the year ended 30 June 2000, growers used the brand name "Barkworth" for marketing and selling olives and olive products.

Irrigation equipment

r) Growers acquire legal and beneficial ownership of the irrigation equipment by virtue of the $1,025 payment.

s) Growers have not elected to treat the right to use the irrigation equipment as low value property under section EG 16.

t) Growers have not been allowed a deduction in respect of the irrigation equipment under any of sections BD 2(1)(b)(i) and (ii), DJ 6, DJ 11, DL 6, DM 1, DO 3, DO 6, DO 7, DZ 1, DZ 3, EO 5, EZ 5, and EZ 6, or by virtue of an amortisation or other similar deduction allowed under any section of the Act.

u) Growers are not entitled to receive compensation for any decline in the value of the right to use the irrigation equipment.

v) No other taxpayers have been allowed a deduction for the right to use the irrigation equipment.

w) Growers have not elected to treat the property as not depreciable under section EG 16A.

x) Growers have not elected to treat the right to use the irrigation equipment as a financial arrangement under section EH 25.

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:

- Growers may make an election under section EP 1 to use a foreign tax balance date.
- The cost of acquiring shares in BOGL is a capital expense and not deductible by virtue of section BD 2(2)(e).
- The cost of acquiring olive trees is a capital expense and not deductible by virtue of section BD 2(2)(e).
- The annual Farm Administration Fee payable to BOGL is deductible under section BD 2(1)(b)(i).
- The payment of the annual Factory Access Fee is deductible under section BD 2(1)(b)(i).
- The annual Procuring, Processing, Packaging and Marketing Fee is deductible under section BD 2(1)(b)(i).
- The annual Brand Name Fee is deductible under section BD 2(1)(b)(i).
- The irrigation equipment is "depreciable property".
- The $1,025 payment for the irrigation equipment is depreciable under section EG 1.

The period or income year for which this Ruling applies

This Ruling will apply for the period 1 July 1999 until 30 June 2002.

This Ruling is signed by me on the 30th day of November 2000.

Martin Smith

General Manager (Adjudication & Rulings)

PRODUCT RULING – BR PRD 00/14

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:

- Australia and New Zealand Banking Group Limited;
- ANZ Banking Group (New Zealand) Limited;
- ANZ Sub I;
- SPV 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, BG 1, CD 4, CF 2, DJ 13, EH 22, EH 26, EH 33, EH 47, EH 48, GC 22, GC 23, LB 2(7), ME 1, and OB 1 ("share", "shareholder", "tax avoidance arrangement" and "unit trust").

This Ruling also applies in respect of sections 2 ("dutiable gift", "disposition of property", and "gift"), 61, 63, 66, and 67 of the Estate and Gift Duties Act 1968.

The Arrangement to which this Ruling applies

The Arrangement is the raising of capital by the Australia and New Zealand Banking Group of companies (the "ANZ Group") through the issue of units to Investors by SPV Trust and the subsequent lending of the funds received from Investors by SPV Trust to ANZ Sub I, by ANZ Sub I to ANZ Sub II, and by ANZ Sub II to the New York branch of ANZBG ("ANZBG NY").

Further details of the Arrangement are set out below.

1. The ANZ Group has its parent company (Australia and New Zealand Banking Group Limited ("ANZBG")) in Australia. ANZBG has the following subsidiaries:
    - ANZ Funds Pty Ltd ("ANZ Funds") which is wholly owned by ANZBG and is incorporated in Australia.
    - ANZ Holdings (New Zealand) Limited ("ANZ Holdings") which is wholly owned by ANZ Funds and is incorporated in New Zealand.
    - ANZ Banking Group (New Zealand) Limited ("ANZNZ") which is wholly owned by ANZ Holdings and is incorporated in New Zealand.
2. For the purposes of this Arrangement three new entities will be established in New Zealand:
    - A wholly owned subsidiary of ANZNZ which is as yet unnamed but referred to in this Ruling as ANZ Sub II which will be incorporated in New Zealand.
    - A wholly owned subsidiary of ANZNZ which is as yet unnamed but referred to in this Ruling as ANZ Sub I which will be incorporated in New Zealand.
    - A trust in which ANZ Sub I will hold all of the ordinary units as yet unnamed but referred to in this Ruling as SPV Trust, which will be established in New Zealand. The SPV Trust will be a New Zealand resident for tax purposes.
3. The above entities are being set up for regulatory, corporate governance (particularly, prudential reporting), and marketing reasons. In relation to the prudential reporting purposes, it is a priority that the Australian Prudential Regulation Authority ("APRA") classifies the capital raised in New Zealand as Tier One capital. For this to be achieved it is necessary for the funds to be traced from the issue of the capital in New Zealand through to ANZBG in Australia solely through non-operating entities. To achieve this and the requisite degree of flexibility required to manage any possible future legal, fiscal, regulatory, and accounting changes in any of the three jurisdictions over the next 30 years without altering SPV Trust, it was thought prudent to use two separate companies for the transactions (i.e. ANZ Sub I and ANZ Sub II). Other considerations in setting up the above entities are:
    - To achieve transparency for capital raising from both the bank's and the New Zealand Investors' perspectives;
    - From the Investors' perspective, it was considered preferable that the entity in which they are investing has a simple and predetermined cashflow; and

- From the Investors' and the bank's perspectives, it was considered preferable that ANZ entities, rather than the issuing entity, are parties to the swap and loan as this allows greater flexibility to operate and react to commercial changes in relation to the swap and the loan**.**

4. The ANZ Group wants to raise capital in New Zealand for the following reasons:
   - Increase the percentage of New Zealand shareholders.
   - Increase the level of retail investors.
   - Strengthen the link between customers and shareholders.
   - Establish a deeper capital base for future needs.
   - Increase ANZ's profile in the New Zealand market.
   - Raise Tier 1 capital.

5. The following transactions will be carried out for that purpose.

Issue of SPV Trust units and forward sale arrangement

6. A special purpose trust ("SPV Trust") will be established in New Zealand pursuant to a Deed of Trust (the "Trust Deed") between ANZ Investment Services (New Zealand) Limited as manager and The Trustees Executors and Agency Company of New Zealand Limited (the "Trustee"), trading as Tower Trust as trustee. The Trustee is a professional corporate trustee, which is independent of the ANZ Group.

7. The purpose of SPV Trust will be to raise capital in New Zealand for the ANZ Group through the issue of units and to invest in variable rate debentures issued by ANZ Sub I. The total value of units to be issued to Investors by SPV Trust will be determined by demand. The units will be listed on the New Zealand Stock Exchange. The issue price of each unit will be determined in accordance with the following method which will be specified in the prospectus. Section 3.10 of the prospectus will state the following:

   3.10 Pricing

   The total cost per Unit to investors is made up of the Application Price and the Final Payment, together being the Total Price. The Total Price payable will be a fixed price, being the lower of:

   - the simple average of the three days' volume weighted average ASX traded price of ANZ ordinary shares, from [date] to [date], converted to New Zealand dollars at the NZ$/A$ exchange rate on each day; and
   - the volume weighted average ASX traded price of ANZ ordinary shares, on [date - closing date of the offer] converted to New Zealand dollars at the NZ$/A$ exchange rate on that day.

   The daily volume weighted average price of ANZ ordinary shares, for any one day means the average prices at which ANZ ordinary shares (excluding the effect of' any special crossings as defined in the listing rules of the ASX) were sold on the ASX on that day, which is calculated by dividing the total amount for which ANZ ordinary shares were sold on the ASX that day by the number of ANZ ordinary shares sold on the ASX that day.

   The applicable NZ$/A$ exchange rate is the average of the buy and the sell rates taken at two times each day (when both the NZSE and the ASX are open, for business). ANZ will calculate the average of the buy and sell rates from quotes obtained by ANZ from a minimum of five selected banks for the exchange of New Zealand and Australian dollars for value spot, after eliminating the highest and lowest quotes. Should the rates so calculated not be (in the opinion of the Chairman of ANZ) representative of a fair average NZ$/A$ exchange rate (for value spot),for the day, then an alternative point of reference may be determined by the Chairman of ANZ.

   If, in the opinion of the Chairman, there has been abnormal market trading or other similar circumstances resulting in distortions in the price of ANZ ordinary shares during the pricing period for ANZ Tracking Units, then the Chairman may elect to adjust the ANZ ordinary share price to be used as the reference for the pricing of ANZ Tracking Units. The Chairman shall consult with the Joint Lead Managers prior to determining first, that such circumstances exist and, secondly, what the appropriate ANZ ordinary share reference price should be. Also, in determining both these matters, the Chairman shall have regard to:

   - the movement in the ANZ ordinary share price during the pricing period;
   - the movement in the Australian Banking and Finance Accumulation Index (published by, or on behalf of, the ASX during the pricing period);
   - the extent to which any new information that has been received by the market has impacted on the price of ANZ ordinary shares and/or other major banking stocks; and
   - such other matters as the Chairman considers relevant.

   If the Chairman elects to adjust the reference price of ANZ ordinary shares, the reasons for the adjustment shall be advised to the NZSE for public announcement. The Chairman's determination shall be final.

8. One ordinary unit (with voting rights) will be held by ANZ Sub I. This unit will have the same issue price as the units issued to Investors.

9. Units will be issued to Investors on a partly paid basis. The first instalment is expected to be around 60% of the unit offer price and will be payable on issue. The second instalment will be the unit offer price less the first instalment payment and will be payable at a predetermined date, probably nine to twelve months after the first instalment date. All Investors will pay the same price for each unit allocated to them in the offer. In relation to the instalment payment arrangement for the units, clause 1.8 of the forward sale and purchase agreement between the Investors and ANZBG will state the following:

   1.8 Lowest price for purchase of Units

   For the purposes of determining the consideration in section EH 48 of the Income Tax Act 1994 (New Zealand), the Unitholders agree that the Total Price is the "lowest price" for the Units on the basis of payment in full at the time at which the first rights in the Units are to be transferred. The agreement of the Unitholders in this clause 1.8 is not affected by:

   (a) any change to the Exchange Factor at any time; or

   (b) any change to the total number of outstanding Units at any time; or

   (c) any other matter.

10. The units will have limited voting rights. Broadly, these rights are limited to extraordinary resolutions relating to the alteration of rights attached to their units (paragraph 10 of Schedule 2 to the Trust Deed).

11. Distributions (dividends for tax purposes) will be paid on the units to coincide with the dividends paid by ANZBG on its ordinary shares. The amount of distribution on each unit will match, in New Zealand dollars, the cash dividend paid in Australian dollars by ANZBG on an ordinary share. Full distributions will be payable to Investors even while the units are only partly paid.

12. If ANZBG does not pay any dividends on its ordinary shares, then no distribution will be paid on the units. To the extent that imputation credits are available, they will be attached to the distributions paid to Investors. However, the attachment of imputation credits is not guaranteed, nor will the cash distribution be grossed up if it is not fully imputed. ANZBG is liable to income tax in Australia by reason of domicile, residence, place of incorporation, or place of management.

13. ANZ expects to elect to use the foreign investor tax credit ("FITC") regime in relation to the units in the SPV Trust. This is specifically contemplated by paragraph 8.2 of Schedule 2 of the Trust Deed. Accordingly, SPV Trust will be a section LE 3 holding company and ANZ Sub I will pay supplementary "dividends" to SPV Trust (to the extent of its non-resident unitholders) which will be passed on to the non-resident unitholders. As with imputation credits, supplementary dividends under the FITC regime will not be guaranteed nor will the dividend be grossed up if a full supplementary dividend is not paid.

14. Where certain Adjustment Events (broadly, these are defined as a conversion of ANZBG shares into larger or smaller units, bonus issues, rights issues, or other events that affect all the holders of ANZ shares pro rata) happen in relation to the ANZBG ordinary shares, SPV Trust will attempt to mirror the events in the units so that the direct (i.e. one for one) relationship between an SPV Trust unit and an ANZBG share is maintained. Paragraph 5 Schedule 2 of the Trust Deed provides for additional units to issued to replicate the ANZBG shares. It states:

   5.1 Adjustment Event

   Without limiting clauses 4.1 and 4.2, the Manager may issue Tracking Units upon, or as a consequence of, an Adjustment Event where the issue is made in order to effect an Equivalent Unit Entitlement.

   5.2 Manager may not reject or refuse

   The Manager may not reject an application for Tracking Units or refuse to issue Tracking Units where the application or issue is made as a result of or in connection with an Equivalent Unit Entitlement.

15. Equivalent Unit Entitlement is defined in the forward sale and purchase agreement (described below) as:

   Equivalent Unit Entitlement means, in relation to an Adjustment Event, an alteration to the entitlement of the Unit Holders to Units such that, following the making or the declaring of that alteration, the Unit Holders as a class are or would be in an equivalent position to that that they would have been in if they had exchanged their Units for ANZ Shares immediately prior to the Record Date for that Adjustment Event; for the purpose of this definition:

   (a) whether the Manager has declared an Equivalent Unit Entitlement may be specified by ANZ Determination; and

   (b) the N.Z.$ value of the relevant adjustment or entitlement payable or receivable by the holders of ANZ Shares in connection with the Adjustment Event is to be determined by reference to the Exchange Rate on the Adjustment Declaration Date;

16. Therefore, where an Adjustment Event, such as a conversion of ANZBG shares into larger or smaller units, bonus issues, and rights issues, occurs then the Manager may issue additional units to ensure that the units match the ANZBG shares.

17. However, in some situations an event in relation to the ANZBG shares may not be able to be replicated in the issue of further units. If this occurs, the number of ANZBG shares received under the forward sale and purchase agreement will be altered. The way in which this will be effected is through the alteration of the exchange factor. Under normal circumstances the exchange factor is one. This means that the Investors receive one share for one unit. However, where an Adjustment Event occurs and the number of units held by the Investors does not change to reflect this, then the exchange factor changes to take account of this. This exchange factor takes into account the relevant Adjustment Event so that the number of shares that an Investor receives will be adjusted. Adjustments to the exchange factor are provided for in clause 4.2 of the forward sale and purchase agreement.

Forward Sale and Purchase Agreement

18. The units are not redeemable while they are held by a person outside of the ANZ Group. However, they may be effectively exchanged for ANZBG shares in certain circumstances. At the time the units are issued, the Trustee of SPV Trust, as agent for the Investors, will enter into a forward sale and purchase agreement with ANZBG.

19. Under the forward sale and purchase agreement the Investors will agree to sell and ANZBG will agree to buy the units for an agreed amount (being the issue price of the units). In addition, Investors will agree to purchase and ANZBG will agree to issue ANZBG shares for the same amount. These amounts will be offset against each other.

20. Clause 2 of this agreement provides for the sale and purchase of units and ANZ shares. It states:

> **2. Sale and purchase of Units and ANZ Shares**
>
> **2.1 Sale of Units**
>
> The Agent agrees to sell to ANZ, and ANZ agrees to purchase from the Agent, the Units in accordance with the terms of this Agreement. The purchase price for the Units shall be the Units Purchase Price, which ANZ shall pay to the Agent on the Issue Date.
>
> **2.2 Issue of ANZ Shares**
>
> ANZ agrees to issue to the Agent, and the Agent agrees to purchase from ANZ, ANZ Shares in accordance with the terms of this Agreement. The purchase price for those ANZ Shares shall be the ANZ Shares Purchase Price, which the Agent shall pay to ANZ on the Issue Date.
>
> **2.3 Set-off of purchase prices**
>
> The Units Purchase Price and the ANZ Shares Purchase Price shall be set off against each other so that no amount is actually paid by either party on the Issue Date.
>
> **2.4 Lowest Price**
>
> For the purposes of determining the consideration in section EH 48 of the Income Tax Act 1994, the parties agree that the Units Purchase Price and the ANZ Shares Purchase Price are the "lowest price" for the Units and the relevant ANZ Shares, respectively, on the basis of payment in full at the time at which the first rights in the Units or those ANZ Shares, as the case may be, is to be transferred. The agreement of the parties in this clause 2.4 is not affected by:
>
> (a) any change to the Exchange Factor at any time; or
>
> (b) any change to the total number of outstanding Units at any time; or
>
> (c) any other matter.

21. The forward sale and purchase agreement will be entered into on or about the date that the units are issued. On that date ANZBG will pay for the units and the Investors will pay for the shares. The price paid for the shares and units will be the same and will be the issue price of the units. This is because economically the Investors are acquiring a synthetic interest comparable to shares in ANZBG from the outset at a price equal to the value of ANZBG's shares on the date the units are issued. It is also expected that the market value of the units and the ANZBG shares will be materially the same on the exchange date.

22. The Units Purchase Price and the ANZ Shares Purchase Price will be the same as the issue price of the units as determined under section 3.10 of the prospectus (referred to above).

23. Even though the term used above is "exchange", clause 1.4 states:

> **1.4 Use of term "exchange"**
>
> The term "exchange" is used throughout this Agreement solely for the sake of simplicity. Despite the use of this term, the intention of the parties is that the legal nature of the arrangements effected by this Agreement constitutes two separate transactions for forward transfer - one being the sale of the Units for the Units Purchase Price and the other being the issue of ANZ Shares for the ANZ Shares Purchase Price. Also, in this Agreement "exchange" includes the alternative arrangements contemplated in Clause 3.4.

24. Delivery of the units and issue of the ANZBG shares pursuant to the forward sale and purchase agreement will be deferred, with delivery of the units triggering the immediate issue of shares.

25. Clause 3.2 of the forward sale and purchase agreement provides for the situations in which the effective exchange will occur. Generally, exchange can occur in one of the following circumstances:

- Between the date of issue of the units and the 30th anniversary of that date, on the occurrence of certain Extraordinary Events or on the occurrence of a Change in Circumstance.
- After the third anniversary of the date of issue, ANZBG can elect to effectively exchange at any time.
- After the first anniversary of the date of issue, Investors can elect to effectively exchange at any time.
- On the happening of a Mandatory Exchange Event.

26. Extraordinary Events are essentially situations where:

- The Manager of the SPV Trust does not make a distribution to the Investors following the payment of a dividend on the ANZBG shares;
- ANZ Sub I fails to attach imputation credits to the fullest extent available on the section FC 1 debentures issued to the SPV Trust;
- The SPV Trust fails to attach imputation credits to the fullest extent available to the Investors;
- An Adjustment Event occurs and the Manager does not take account of these;
- The SPV Trust is insolvent;
- The ANZ Board recommends that a takeover offer for ANZ be accepted;
- The ANZ Board recommends that a merger proposal for ANZ be accepted;
- A person has a substantial holding of more than fifty percent of all ANZBG shares;
- SPV Trust does not list on the NZSE within 30 days from the issue date;
- The SPV Trust is no longer listed on the NZSE or the quotation of units is suspended for more than 15 consecutive business days.

27. To summarise, a Change in Circumstance occurs if:

- There is either:

  (a) a introduction of, or a change (including the announcement of a change) in a law, treaty, directive or policy of an agency of state or other regulatory or monetary authority or in its interpretation; or

  (b) one or more rulings made by the New Zealand Inland Revenue Department in relation to those arrangements being withdrawn or not applicable (in whole or in part);

  which has a materially adverse effect on the rights of ANZ, any subsidiary of ANZ, or the Investors or on the benefits or credits available to ANZ shareholders in relation to or in the context of the arrangements surrounding the offer of units or the investment of subscription proceeds;
- One person (other than ANZ or a subsidiary of ANZ) has a "relevant interest" (as defined in section 5 and 6 of the Securities Amendment Act 1988) of at least 50 percent of all the units in the SPV Trust;
- The SPV Trust does not list within 30 days from the date the units are first issued;
- The SPV Trust's listing on the NZSE is cancelled or the quotation of the units is suspended for more than 15 consecutive business days;
- ANZNZ ceases to be a subsidiary of ANZ other than under certain situations.

28. Essentially, Mandatory Exchange Events are:

- The thirtieth anniversary of the date the units are issued;
- Where certain regulations by the APRA or the Reserve Bank of New Zealand ("RBNZ") are not complied with;
- Where APRA issues a written directive to ANZBG under section 11CA of the Banking Act 1959 (Australia) for ANZBG to increase its capital or appoints a statutory manager to ANZBG pursuant to section 13A(1) of the Banking Act 1959 (Australia);
- Where an application or order is made, or resolution passed, for the winding up of ANZBG;
- Where ANZBG's retained earnings are negative, the manager of the trust ceases to be ANZ Investment Services or another subsidiary of ANZ, or ANZNZ is made subject to statutory management in New Zealand.

29. Where the delivery occurs on the happening of a Extraordinary Event, Change in Circumstance, or a Mandatory Exchange Event, or at the election of ANZBG between year three and the end of year 30, Investors will receive their full potential entitlement to ANZBG shares (effectively one per unit).

30. Where Investors elect to effectively exchange between years one and 30, they will receive between 100% and 95% of that entitlement. The number of shares that each Investor receives is determined by the definition of the "exchangeable number" in the forward sale and purchase agreement. That definition states:

Exchangeable Number means, on a Relevant Exchange Date in relation to a Relevant Unitholder, the number, rounded down to the nearest whole number, determined in accordance with the following formula:

$$EN = \frac{U \times EF \times Y \times P_U}{P_{ANZ}}$$

where:

EN = the Exchangeable Number;

U = the Relevant Units held by that Relevant Unitholder on that Relevant Exchange Date;

EF = the Exchange Factor on that Relevant Exchange Date;

Y = where the relevant Exchange Event is that set out in clause 3.2(b)(i), 0.98 and, in any other case, 1.0;

P_U = (a) where the relevant Exchange Event is that set out in clause 3.2(b)(i), the average, for the 10 business days immediately following the date of ANZ's receipt of the relevant Unitholder Notice of Exchange, of the A$ equivalent of the volume weighted average sale price (rounded to the nearest four decimal places) per Unit on the NZSE for each business day during that period (converted into A$ at the Exchange Rate on that business day); and

(b) in any other case, 1.0; and

P_{ANZ} = (a) where the relevant Exchange Event is that set out in clause 3.2(b)(i), the average, for the 10 business days immediately following the date of ANZ's receipt of the relevant Unitholder Notice of Exchange, of the volume weighted average sale price (in A$) (rounded to the nearest four decimal places) per ANZ Share on the ASX for each business day during that period; and

(b) in any other case, 1.0,

provided that:

(a) $\frac{P_U}{P_{ANZ}}$ cannot be less than 0.97 or greater than 1.02: and

(b) $Y \times \frac{P_U}{P_{ANZ}}$ must be rounded to the nearest two decimal places;

31. Should such an exchange occur prior to the payment of the second instalment on the units, the ANZBG shares delivered pursuant to the forward sale and purchase agreement will be partly paid to correspond with the amount paid up on the units.

32. Once the units have effectively been exchanged for ANZBG shares, the units continue to exist but will be held by a member of the ANZ group. Such a holder of the "exchanged units" may request the redemption of the units for an amount equal to their subscription price, adjusted where the redemption occurs prior to payment of the second instalment. However, the holder of the exchanged units has no right to require the redemption of these units.

Loan to ANZ Sub I

33. SPV Trust will enter into a variable rate debenture agreement with ANZ Sub I whereby the SPV Trust will lend the funds invested by Investors to ANZ Sub I by way of a number of debentures which will be perpetual. The debentures will be issued in two series to coincide with the instalment payments made by Investors. The first series of debentures will be issued on the first instalment date and will be for a total amount equal to the amount raised in the first instalment (expected to be approximately 60% of the total issue size) plus the ordinary unit (that SPV Trust will issue to ANZ Sub I) subscription amount. The second series of debentures will be issued on the date of the second instalment expected to be nine to twelve months later and will equate to approximately 40% of the total proceeds obtained from the unit issue.

34. Interest on the debenture will be paid to coincide (in respect of dates and amounts) with the dividends paid by ANZBG on its ordinary shares. Until the second series of debentures is issued, the rate of interest on the first series will be payable as if the full number of debentures had been subscribed for. It is expected that ANZ Sub I will declare and pay dividends to ANZNZ on its ordinary shares. The amount of the dividends per share paid on ANZ Sub I's ordinary shares is expected to be the New Zealand dollar equivalent of the amount of dividends per share paid by ANZBG on its ordinary shares. The timing of the payments by ANZ Sub I will be triggered by the payment of dividends by ANZBG on its ordinary shares. At the same time as ANZBG pays dividends on its ordinary shares, ANZ Sub II will pay amounts under the swap and the loan to ANZ Sub I. When ANZ Sub I receives these amounts it will pay dividends on the ordinary shares to ANZNZ and interest on the section FC 1 debentures to SPV Trust. The rate of interest paid on the section FC 1 debentures to SPV Trust will be calculated under a formula based on the amount of the dividend per share paid on ANZ Sub I's ordinary shares to ANZNZ.

35. Because the debentures will fall under section FC 1 of the Act, the interest payments will be deemed to be dividends and, together with dividends paid on ANZ Sub I's ordinary shares, will have imputation credits attached to the extent that the credits are available. In addition, ANZ Sub I will elect to use the FITC regime in relation to SPV Trust. SPV Trust will be a section LE 3 holding company and ANZ Sub I will pay supplementary dividends to SPV Trust to the extent of SPV Trust's non-resident Investors. However, imputation credits are not guaranteed to SPV Trust nor is there provision for the interest to be grossed up to the extent that imputation credits are not available. If no dividend is declared on ANZ Sub I's ordinary shares, no interest will be paid on the loan from SPV Trust.

Loan to ANZ Sub II

36. ANZ Sub I will enter into a loan agreement with ANZ Sub II whereby ANZ Sub I will lend the funds borrowed from SPV Trust to ANZ Sub II in the form of a loan. The loan will be made to ANZ Sub II in two tranches matching the funds raised by each series of the section FC 1 debentures (and ultimately reflecting the instalment payments made by Investors).

37. The loan will be perpetual. Interest will be payable semi-annually. The interest rate will be the six-month bank bill rate plus a margin to reflect the subordinated nature of the debt. The margin will be set in accordance with prevailing market rates.

Loan to ANZBG NY

38. ANZ Sub II will enter into a variable rate debenture agreement with ANZBG NY (the New York branch of ANZBG) whereby ANZ Sub II will lend the money borrowed from ANZ Sub I to ANZBG NY by way of a number of section FC 1 debentures issued under a single agreement. The debentures will be issued in two series to coincide with the amount advanced under the loan from ANZ Sub I (and ultimately reflecting the instalment payments made by Investors).

39. The debentures will be denominated in New Zealand dollars. Interest will be payable to coincide with the dividend payable by ANZBG on its ordinary shares. The amount will be determined by a formula which will be based on the New Zealand dollar equivalent of the ANZBG cash dividend grossed up for withholding tax (if any).

40. ANZBG has conducted a branch in New York since the late 1970s. The operation includes an International Banking Facility, offers a wide range of wholesale banking services, and has a significant balance sheet of its own. ANZBG NY has total borrowings from third parties of approximately US$3-4 billion. The funds which ANZBG NY borrows from ANZ Sub II will be used in full to repay some of this third party debt to parties other than ANZ entities and/or acquire new income producing assets.

41. Despite the debentures being issued in two series, interest will be payable on the full amount from the beginning of the Arrangement, even though only the first series will have been issued during the first nine to twelve months.

Swap

42. ANZ Sub I and ANZ Sub II will also enter into a dividend for interest swap. Under the swap agreement, ANZ Sub I will be obligated to pay ANZ Sub II an amount equal to the interest it receives from ANZ Sub II under the loan. In return, ANZ Sub II will be obligated to pay ANZ Sub I an amount equal to a multiple of the net cash dividend received on the ANZBG section FC 1 debentures. The multiple is a function of the New Zealand corporate tax rate and, based on the current tax rate of 33 %, will be 1.4925. The multiple is required to cover the tax payable by ANZ Sub I on the swap payment received. Therefore, if the tax rate changes, the multiple by which the dividend element of the swap payment is calculated will also change. Termination of the swap will be linked to termination of either the loan between ANZ Sub I and ANZ Sub II or the ANZBG NY section FC 1 debentures.

43. The payment that ANZ Sub I makes to ANZ Sub II under the swap will be made at the time ANZ Sub II makes the interest payment to ANZ Sub I under the loan. The payment that ANZ Sub II makes to ANZ Sub I under the swap will be made at the time ANZBG NY pays a dividend to ANZ Sub II on its section FC 1 debentures.

Subvention payments

44. To the extent that ANZ Sub II is in a tax loss position due to the above arrangements, its loss will be reduced to nil by a combination of subvention payments received from ANZNZ (or other New Zealand group company) and offset elections. The subvention payments will be used by ANZ Sub II to satisfy part of its swap payment obligations to ANZ Sub I. It is contemplated that ANZ Sub II will be in a loss situation because it receives interest on the

section FC 1 debentures which it multiplies by 1.4925 and pays out to ANZ Sub I under the swap agreement. ANZ Sub II also has an obligation to pay interest on the loan that it has received from ANZ Sub I. However, this obligation is offset against the obligation that ANZ Sub I has under the swap agreement. The obligation being the payment of interest by ANZ Sub I to ANZ Sub II.

Additional forward sale agreements

45. Pursuant to the forward sale agreement between ANZBG and the SPV Trust Investors, ANZBG will acquire the units in SPV Trust.

46. The intention is that these units will be held ultimately by ANZNZ so that the capital raised by New Zealand remains in New Zealand. This will be achieved via the following contemporaneous forward sale agreements:

- ANZBG will enter into a forward sale agreement with ANZ Funds pursuant to which ANZ Funds will purchase units in SPV Trust from ANZBG for an amount equal to the issue price of the units. In addition, ANZBG will purchase preference shares to be issued by ANZ Funds for an amount equal to the price paid by ANZ Funds for the units. On the date of the agreement, the total value of all of the shares to be issued (and the amount that ANZBG pays for them) will be the same as the total value of all of the units to be acquired by ANZ Funds. No additional consideration will be paid to either party for entering into the forward sale agreement. Delivery of the units and issue of the shares will be similarly deferred as under the forward sale agreement between Investors and ANZBG.
- ANZ Funds will enter into a forward sale agreement with ANZ Holdings pursuant to which ANZ Holdings will purchase units in SPV Trust from ANZ Funds for an amount equal to the issue price of the units. In addition, ANZ Funds will purchase preference shares to be issued by ANZ Holdings for an amount equal to the price paid by ANZ Holdings for the units. On the date of the agreement, the total value of all of the shares to be issued (and the amount that ANZ Funds pays for them) will be the same as the total value of all of the units. No additional consideration will be paid to either party for entering into the forward sale agreement. Delivery of the units and issue of the shares will be similarly deferred as under the forward sale agreement between ANZBG and ANZ Funds.
- ANZ Holdings will enter into a forward sale agreement with ANZNZ pursuant to which ANZNZ will purchase the units in SPV Trust from ANZ Holdings, for an amount equal to the issue price of the units. In addition, ANZ Holdings will purchase ordinary shares to be issued by ANZNZ for an amount equal to the price paid by ANZNZ for the units. On the date of the agreement the total value of all of the shares to be issued (and the amount that ANZ Holdings pays for them) will be the same as the total value of all of the units. No additional consideration will be paid to either party for entering into the forward sale agreement. Delivery of the units and issue of shares will be similarly deferred as under the forward sale agreement between ANZ Funds and ANZ Holdings.

47. All forward sale agreements will be entered into on or about the date that the units are issued. Delivery under the various forward sale agreements will occur simultaneously and will be triggered by the delivery to ANZBG of SPV Trust units by Investors.

At the end of year 30

48. On the 30th anniversary of the date of issue of the units in SPV Trust to Investors, all units which have not been exchanged for ANZBG shares will be mandatorily exchanged under the forward sale agreement. Exchanges will also take place under the additional forward sale agreements between the ANZ companies in order for ANZNZ to hold the units.

49. The two section FC 1 debentures and the loan between ANZ Sub I and ANZ Sub II are perpetual and there is no present intention, arrangement, agreement, or understanding between the parties to make repayment of the instruments at a certain date or within or beyond a certain timeframe.

Accounting treatment

50. SPV Trust will be consolidated with ANZNZ and the units in SPV Trust will be treated as equity in ANZNZ's accounts. It is also anticipated that the capital will be Tier 1 capital for the ANZ Group and APRA has been approached to confirm this status.

Exclusions

51. This Ruling does not consider or rule on any potential application of the interest allocation rules in subpart FH of the Act to the Arrangement.

52. This Ruling does not consider or rule on any potential taxation implications of the alternative arrangements referred to in clause 3.4 of the forward sale and purchase agreement between the Investors and ANZBG.

Assumption made by the Commissioner

This Ruling is made subject to the following assumption:

i) The Trust Deed setting up the SPV Trust, the loan agreement between ANZ Sub I and SPV Trust, the loan agreement between ANZ Sub I and ANZ Sub II, the loan agreement between ANZBG NY and ANZ Sub II, and the swap agreement between ANZ Sub I and ANZ Sub II will not be materially different to the drafts provided to the Inland Revenue dated 18 May 2000. The forward sale and purchase agreement between ANZ Holdings and ANZNZ will not be materially different to the draft provided to the Inland Revenue dated 6 April 2000. The forward sale and purchase agreement between ANZ Funds and ANZ Holdings will not be materially different to the forward sale and purchase agreement between ANZ Holdings and ANZNZ. The forward sale and purchase agreement between the Investors and ANZBG will not be materially different to the draft provided to the Inland Revenue dated 2 November 2000.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

a) All "dividends" (as defined in section CF 2) paid by ANZ Sub I and SPV Trust will be imputed at the same "imputation ratio" (as defined in section OB 1).

b) The ANZBG shares will not be registered in a branch register in New Zealand under a law in force in another part of the Commonwealth.

c) The value of the units at the date of entering into the forward sale and purchase agreement will not be materially different to the actual contracted price paid for the units by ANZBG.

d) The events that give rise to the alternative arrangements under clause 3.4 of the forward sale and purchase agreement between the Investors and ANZBG will not arise as a result of actions or inactions arranged or agreed between ANZBG and any of the unitholders. ANZBG will use its best endeavours to ensure that it is lawfully able to issue ANZBG shares to the unitholders under the forward sale and purchase agreement.

e) In relation to setting the price of the units (as described in clause 3.1 of the prospectus), where the Chairman of the ANZ exercises a discretion either where:

   (i) the rate determined using the formula in the prospectus is not a fair average NZ$/A$ exchange rate; or

   (ii) there is an abnormal market trading or other similar circumstance resulting in distortions in the price of ANZBG ordinary shares during the pricing period;

   the resulting unit price will be a fair arm's length price.

How the Taxation Laws apply to the Applicants and the Arrangement

Subject in all respects to any assumption and condition stated above, the Taxation Laws apply to the Applicants and the Arrangement as follows:

- SPV Trust is a "unit trust" as defined in section OB 1.
- Units in SPV Trust are "shares" for the purposes of the Act.
- Investors in SPV Trust are "shareholders" for the purposes of the Act.
- SPV Trust can maintain an imputation credit account under section ME 1(1).
- The forward sale agreement between ANZBG and each Investor (through the Trustee of SPV Trust as agent) is a "financial arrangement" as defined in section EH 22.
- The following amounts are the only amounts of consideration paid, to be paid, and payable to the Investors for the purposes of sections EH 33 and EH 47:
  - The amount payable for SPV Trust units by ANZBG to the Investors on the day that the forward sale agreement is entered into.
  - The ANZBG shares. Under section EH 48 the value of the shares, and therefore the consideration provided to the Investors, is the total issue price of the Investor's parcel of units.
- The following amounts are the only amounts of consideration paid, to be paid, and payable by the Investors for the purposes of sections EH 33 and EH 47:

  - The amount payable for the ANZBG shares by the Investors to ANZBG on the day that the forward sale agreement is entered into.
  - The units in SPV Trust. Under section EH 48 the value of the units, and therefore the consideration provided by the Investors, is the total issue price of the Investor's parcel of units.
- Where the number of shares received under the forward sale agreement increases prior to the transfer date due to an event in relation to the ANZBG ordinary shares not being replicated in the units, the consideration received by the Investors does not change.
- In relation to the forward sale agreement between the Investors and ANZBG, there is no amount to allocate as income or expenditure to the Investors under section EH 33 and the base price adjustment calculation for the Investors under section EH 47 is nil.
- In relation to the instalment payment arrangement for the units between SPV Trust and the Investors, there is no amount to allocate as income or expenditure to the Investors or to SPV Trust under section EH 33 and the base price adjustment calculation for both the Investors and SPV Trust is nil.
- Where Investors acquire the units for the purpose of sale or other disposal the amount received for the units under the forward sale agreement will be gross income to the Investors under section CD 4 and a deduction will be allowable for the cost of the shares under sections BD 2 and DJ 13. The gross income is derived and the deduction allowed at the time the forward sale agreement is entered into under section EF 2. Under sections EH 26 and EH 48(3)(a), the amount received for the units will be the total issue price of the Investors parcel of units. Therefore, there will be no net income or expenditure to the Investors on the disposal of the units under the forward sale agreement.
- Where Investors acquire the ANZBG ordinary shares for the purpose of sale or disposal and the amounts received for the shares are gross income under section CD 4, a deduction is allowed to Investors under sections BD 2 and DJ 13 for the cost of the shares in the year of disposal under section EF 2.
- The Investors will not become "shareholders" (as defined in section OB 1) in ANZBG by virtue of them entering into the forward sale agreement, until such time as the ANZBG shares are transferred to them under that agreement.
- The forward sale and purchase agreement and the transfer of shares under the agreement will not give rise to a dividend under sections CF 2 and OB 1.
- Neither section GC 22 nor section GC 23 will apply to any payment of dividends or attachment of imputation credits under the Arrangement.
- Provided that the SPV Trust and ANZ Sub I are able to attach and do attach sufficient imputation credits to dividends, and that amount of credits is the only amount of credit of tax claimed by the relevant shareholder (being in the case of dividends paid by ANZ Sub I, ANZNZ and the SPV Trust; and in the case of dividends paid by the SPV Trust, ANZ Sub I and the Investors) then, of itself, the Arrangement will not result in the application of section LB 2(7).
- The sale and the purchase of the shares in terms of the contract entered into on behalf of the unit holders on the issue date will not give rise to a dutiable gift for the purposes of gift duty.
- The sale and the purchase of the units in terms of the contract entered into on behalf of the unit holders on the issue date will not give rise to a dutiable gift for the purposes of gift duty.
- Section BG 1 does not apply to vary or negate the application of the Taxation Laws referred to above.

The period or income year for which this Ruling applies

This Ruling will apply for the period from 19 December 2000 to 19 December 2005.

This Ruling is signed by me on the 19th day of December 2000.

Martin Smith

General Manager (Adjudication & Rulings)

PRODUCT RULING – BR PRD 00/15

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 Russell Investment Management Limited ("RIML").

Taxation Laws

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

This Ruling applies in respect of sections CG 1, CG 4, CG 6, CG 7, CG 13 and the definitions of "accounting period" and "income interest of 10% or greater" in section OB 1.

The Arrangement to which this Ruling applies

The Arrangement is the investment by New Zealand resident investors in the Russell International Bond Fund – $A Hedged ("RIBF"), an Australian resident unit trust. The RIBF is a Fund established under the umbrella trust deed of the Russell Multi- Manager Unit Trust ("RMMUT"), dated 21 November 1997. The operation of the RIBF and the RMMUT is governed by the New Zealand Amended Russell Multi-Manager Unit Trust Constitution, in the form provided to Rulings with a covering letter dated 20 November 2000 and lodged with the Australian Securities and Investments Commission on 1 December 2000. The prospectus in respect of the RIBF and other Funds established under the RMMUT was lodged with the Australian Securities and Investments Commission on 25 September 1999. Further details of the Arrangement are set out in the paragraphs below.

1. The manager and trustee of the RIBF has been changed to the responsible entity as a result of a change to Australian legislation. The responsible entity is RIML, an Australian resident company. The centre of management and control of the RIBF is in Australia.
2. RIML, in its capacity as responsible entity of the RIBF, will at all times during the accounting periods covered by this Ruling be liable to income tax in Australia by reason of domicile, residence, place of incorporation or place of management in Australia.
3. The RIBF commenced on 1 December 1997 and terminates on 30 November 2077.
4. The investment objective of the RIBF, as set out in the prospectus, is to provide investors with exposure to a portfolio of international fixed income securities.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

a) For New Zealand tax purposes the RIBF is a unit trust as defined in section OB 1.

b) The responsible entity of the RIBF will calculate its income liable to income tax without applying any features of the taxation law of Australia specified in Part B of Schedule 3 of the Income Tax Act 1994.

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:

- If the RIBF is a Controlled Foreign Company ("CFC") as defined in section CG 4:
  - A New Zealand resident investor will not be required to return attributed foreign income or loss from the RIBF pursuant to section CG 1 by virtue of section CG 13(1); and
  - Subject to section CG 6(1)(a), an investor with an "income interest of 10% or greater" (as defined in section OB 1) for any "accounting period" (as defined in section OB 1) in the RIBF will be required to return Foreign Investment Fund ("FIF") income or loss of the RIBF pursuant to section CG 1, attributed to the investor pursuant to section CG 7(5).
  - A New Zealand resident investor that does not have an "income interest of 10% or greater" (as defined in section OB 1) in the RIBF is not required to return FIF income or loss pursuant to section CG 7(5).

- If the RIBF is a CFC as defined in section CG 4 (the first tier CFC) and the RIBF has "qualified control interests" (as defined in section CG 4(6)) in another foreign company (the underlying foreign company) and as a consequence the underlying foreign company is a CFC as defined in section CG 4:
    - Subject to section CG 6(1)(a) and section CG 13, where an investor in the RIBF has an "income interest of 10% or greater" (as defined in section OB 1) for any "accounting period" (as defined in section OB 1) in the underlying CFC, the investor will be required to return attributed foreign income or loss of the underlying CFC pursuant to section CG 1; and
    - Subject to section CG 6(1)(a), where an investor in the RIBF has an "income interest of 10% or greater" (as defined in section OB 1) for any "accounting period" (as defined in section OB 1) in the underlying CFC, the investor will be required to return FIF income or loss of the underlying CFC pursuant to section CG 1, attributed to the investor pursuant to section CG 7(5).
    - Where an investor in the RIBF does not have an "income interest of 10% or greater" (as defined in section OB 1) in the underlying CFC, FIF income or loss of the underlying CFC will not be attributed to the investor pursuant to section CG 7(5) and the investor will not be required to return FIF income or loss of the underlying CFC pursuant to section CG 1.

    If the underlying foreign company is a CFC and has "qualified control interests" (as defined in section CG 4(6)) in another foreign company, and as a consequence the other foreign company is a CFC as defined in section CG 4, and so on down the chain of CFCs, the above three rulings shall also apply on the basis that any other foreign company is the underlying foreign company.

The period or income year for which this Ruling applies

This Ruling will apply for the period 1 December 2000 to 10 January 2001.

This Ruling is signed by me on the 21st day of December 2000.

Martin Smith

General Manager (Adjudication & Rulings)

PRODUCT RULING – BR PRD 00/16

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 Russell Investment Management Limited ("RIML").

Taxation Laws

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

This Ruling applies in respect of sections CG 1, CG 4, CG 6, CG 7, CG 13, and the definitions of "accounting period" and "income interest of 10% or greater" in section OB 1.

The Arrangement to which this Ruling applies

The Arrangement is the investment by New Zealand resident investors in the Russell International Shares Fund ("RISF"), an Australian resident unit trust. The RISF is a Fund established under the umbrella trust deed of the Russell Multi- Manager Unit Trust ("RMMUT"), dated 21 November 1997. The operation of the RISF and the RMMUT is governed by the New Zealand Amended Russell Multi Manager Unit Trust Constitution, in the form provided to Rulings with a covering letter dated 20 November 2000 and lodged with the Australian Securities and Investments Commission on 1 December 2000. The prospectus in respect of the RISF and other Funds established under the RMMUT was lodged with the Australian Securities and Investments Commission on 25 September 1999. Further details of the Arrangement are set out in the paragraphs below.

1. The manager and trustee of the RISF has been changed to the responsible entity as a result of a change to Australian legislation. The responsible entity is RIML, an Australian resident company. The centre of management and control of the RISF is in Australia.
2. RIML, in its capacity as responsible entity of the RISF, will at all times during the accounting periods covered by this Ruling be liable to income tax in Australia by reason of domicile, residence, place of incorporation or place of management in Australia.
3. The RISF commenced on 1 December 1997 and terminates on 30 November 2077.
4. The investment objective of the RISF, as set out in the prospectus, is to provide investors with exposure to a highly diversified portfolio of international equities.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

a) For New Zealand tax purposes the RISF is a unit trust as defined in section OB 1.

b) The responsible entity of the RISF will calculate its income liable to income tax without applying any features of the taxation law of Australia specified in Part B of Schedule 3 of the Income Tax Act 1994.

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:

- If the RISF is a Controlled Foreign Company ("CFC") as defined in section CG 4:
    - A New Zealand resident investor will not be required to return attributed foreign income or loss from the RISF pursuant to section CG 1 by virtue of section CG 13(1); and
    - Subject to section CG 6(1)(a), investor with an "income interest of 10% or greater" (as defined in section OB 1) for any "accounting period" (as defined in section OB 1) in the RISF will be required to return Foreign Investment Fund ("FIF") income or loss of the RISF pursuant to section CG 1, attributed to the investor pursuant to section CG 7(5).
    - A New Zealand resident investor that does not have an "income interest of 10% or greater" (as defined in section OB 1) in the RISF is not required to return FIF income or loss pursuant to section CG 7(5).

- If the RISF is a CFC as defined in section CG 4 (the first tier CFC) and the RISF has "qualified control interests" (as defined in section CG 4(6)) in another foreign company (the underlying foreign company) and as a consequence the underlying foreign company is a CFC as defined in section CG 4:
  - Subject to section CG 6(1)(a) and section CG 13, where an investor in the RISF has an "income interest of 10% or greater" (as defined in section OB 1) for any "accounting period" (as defined in section OB 1) in the underlying CFC, the investor will be required to return attributed foreign income or loss of the underlying CFC pursuant to section CG 1; and
  - Subject to section CG 6(1)(a), where an investor in the RISF has an "income interest of 10% or greater" (as defined in section OB 1) for any "accounting period" (as defined in section OB 1) in the underlying CFC, the investor will be required to return FIF income or loss of the underlying CFC pursuant to section CG 1, attributed to the investor pursuant to section CG 7(5).
  - Where an investor in the RISF does not have an "income interest of 10% or greater" (as defined in section OB 1) in the underlying CFC, FIF income or loss of the underlying CFC will not be attributed to the investor pursuant to section CG 7(5) and the investor will not be required to return FIF income or loss of the underlying CFC pursuant to section CG 1.

  If the underlying foreign company is a CFC and has "qualified control interests" (as defined in section CG 4(6)) in another foreign company, and as a consequence the other foreign company is a CFC as defined in section CG 4, and so on down the chain of CFCs, the above three rulings shall also apply on the basis that any other foreign company is the underlying foreign company.

The period or income year for which this Ruling applies

This Ruling will apply for the period 1 December 2000 to 10 January 2001.

This Ruling is signed by me on the 21st day of December 2000.

Martin Smith

General Manager (Adjudication & Rulings)

PRODUCT RULING – BR PRD 00/17

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 Russell Investment Management Limited ("RIML").

Taxation Laws

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

This Ruling applies in respect of sections CG 1, CG 4, CG 6, CG 7, CG 13 and the definitions of "accounting period" and "income interest of 10% or greater" in section OB 1.

The Arrangement to which this Ruling applies

The Arrangement is the investment by New Zealand resident investors in the Russell World Bond Fund ("RWBF"), an Australian resident unit trust. The RWBF is a Fund established under the umbrella trust deed of the Russell Multi- Manager Unit Trust ("RMMUT"), dated 21 November 1997, and the Second Supplemental Deed for RMMUT, dated 15 June 1998. The operation of the RWBF and the RMMUT is governed by the New Zealand Amended Russell Multi-Manager Unit Trust Constitution, in the form provided to Rulings with a covering letter dated 20 November 2000 and lodged with the Australian Securities and Investments Commission on 1 December 2000. The prospectus in respect of the RWBF and other Funds established under the RMMUT was lodged with the Australian Securities and Investments Commission on 25 September 1999. The investment statement is dated 31 May 2000. Further details of the Arrangement are set out in the paragraphs below.

1. The manager and trustee of the RWBF has been changed to the responsible entity as a result of a change to Australian legislation. The responsible entity is RIML, an Australian resident company. The centre of management and control of the RWBF is in Australia.
2. RIML, in its capacity as responsible entity of the RWBF, will at all times during the accounting periods covered by this Ruling be liable to income tax in Australia by reason of domicile, residence, place of incorporation or place of management in Australia.
3. The RWBF commenced on 15 June 1998 and terminates on 14 June 2078.
4. The investment objective of the RWBF, as set out in the prospectus and the investment statement, is to provide investors with long term returns by investing in a portfolio of international, and New Zealand fixed income investments.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

a) For New Zealand tax purposes the RWBF is a unit trust as defined in section OB 1.

b) The responsible entity of the RWBF will calculate its income liable to income tax without applying any features of the taxation law of Australia specified in Part B of Schedule 3 of the Income Tax Act 1994.

How the Taxation Laws apply to the Arrangement

Subject in all respects to any conditions stated above, the Taxation Laws apply to the Arrangement as follows:

- If the RWBF is a Controlled Foreign Company ("CFC") as defined in section CG 4:
  - A New Zealand resident investor will not be required to return attributed foreign income or loss from the RWBF pursuant to section CG 1 by virtue of section CG 13(1); and
  - Subject to section CG 6(1)(a), an investor with an "income interest of 10% or greater" (as defined in section OB 1) for any "accounting period" (as defined in section OB 1) in the RWBF will be required to return Foreign Investment Fund ("FIF") income or loss of the RWBF pursuant to section CG 1, attributed to the investor pursuant to section CG 7(5).
  - A New Zealand resident investor that does not have an "income interest of 10% or greater" (as defined in section OB 1) in the RWBF is not required to return FIF income or loss pursuant to section CG 7(5).

- If the RWBF is a CFC as defined in section CG 4 (the first tier CFC) and the RWBF has "qualified control interests" (as defined in section CG 4(6)) in another foreign company (the underlying foreign company) and as a consequence the underlying foreign company is a CFC as defined in section CG 4:
  - Subject to section CG 6(1)(a) and section CG 13, where an investor in the RWBF has an "income interest of 10% or greater" (as defined in section OB 1) for any "accounting period" (as defined in section OB 1) in the underlying CFC, the investor will be required to return attributed foreign income or loss of the underlying CFC pursuant to section CG 1; and
  - Subject to section CG 6(1)(a), where an investor in the RWBF has an "income interest of 10% or greater" (as defined in section OB 1) for any "accounting period" (as defined in section OB 1) in the underlying CFC, the investor will be required to return FIF income or loss of the underlying CFC pursuant to section CG 1, attributed to the investor pursuant to section CG 7(5).
  - Where an investor in the RWBF does not have an "income interest of 10% or greater" (as defined in section OB 1) in the underlying CFC, FIF income or loss of the underlying CFC will not be attributed to the investor pursuant to section CG 7(5) and the investor will not be required to return FIF income or loss of the underlying CFC pursuant to section CG 1.

  If the underlying foreign company is a CFC and has "qualified control interests" (as defined in section CG 4(6)) in another foreign company, and as a consequence the other foreign company is a CFC as defined in section CG 4, and so on down the chain of CFCs, the above three rulings shall also apply on the basis that any other foreign company is the underlying foreign company.

The period or income year for which this Ruling applies

This Ruling will apply for the period 1 December 2000 to 10 January 2001.

This Ruling is signed by me on the 21st day of December 2000.

Martin Smith

General Manager (Adjudication & Rulings)

PRODUCT RULING – BR PRD 00/18

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 Russell Investment Management Limited ("RIML").

Taxation Laws

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

This Ruling applies in respect of sections CG 1, CG 4, CG 6, CG 7, CG 13 and the definitions of "accounting period" and "income interest of 10% or greater" in section OB 1.

The Arrangement to which this Ruling applies

The Arrangement is the investment by New Zealand resident investors in the Russell World Shares Fund ("RWSF"), an Australian resident unit trust. The RWSF is a Fund established under the umbrella trust deed of the Russell Multi- Manager Unit Trust ("RMMUT"), dated 21 November 1997, and the Second Supplemental Deed for RMMUT, dated 15 June 1998. The operation of the RWSF and the RMMUT is governed by the New Zealand Amended Russell Multi-Manager Unit Trust Constitution, in the form provided to Rulings with a covering letter dated 20 November 2000 and lodged with the Australian Securities and Investments Commission on 1 December 2000. The prospectus in respect of the RWSF and other Funds established under the RMMUT was lodged with the Australian Securities and Investments Commission on 25 September 1999. The investment statement is dated 31 May 2000. Further details of the Arrangement are set out in the paragraphs below.

1. The manager and trustee of the RWSF has been changed to the responsible entity as a result of a change to Australian legislation. The responsible entity is RIML, an Australian resident company. The centre of management and control of the RWSF is in Australia.
2. RIML, in its capacity as responsible entity of the RWSF, will at all times during the accounting periods covered by this Ruling be liable to income tax in Australia by reason of domicile, residence, place of incorporation or place of management in Australia.
3. The RWSF commenced on 15 June 1998 and terminates on 14 June 2078.
4. The investment objective of the RWSF, as set out in the prospectus and the investment statement, is to provide long term returns by investing in a highly diversified portfolio of international, Australian and New Zealand equities.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

a) For New Zealand tax purposes the RWSF is a unit trust as defined in section OB 1.

b) The responsible entity of the RWSF will calculate its income liable to income tax without applying any features of the taxation law of Australia specified in Part B of Schedule 3 of the Income Tax Act 1994.

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:

- If the RWSF is a Controlled Foreign Company ("CFC") as defined in section CG 4:
  - A New Zealand resident investor will not be required to return attributed foreign income or loss from the RWSF pursuant to section CG 1 by virtue of section CG 13(1); and
  - Subject to section CG 6(1)(a), an investor with an "income interest of 10% or greater" (as defined in section OB 1) for any "accounting period" (as defined in section OB 1) in the RWSF will be required to return Foreign Investment Fund ("FIF") income or loss of the RWSF pursuant to section CG 1, attributed to the investor pursuant to section CG 7(5).
  - A New Zealand resident investor that does not have an "income interest of 10% or greater" (as defined in section OB 1) in the RWSF is not required to return FIF income or loss pursuant to section CG 7(5).

- If the RWSF is a CFC as defined in section CG 4 (the first tier CFC) and the RWSF has "qualified control interests" (as defined in section CG 4(6)) in another foreign company (the underlying foreign company) and as a consequence the underlying foreign company is a CFC as defined in section CG 4:
  - Subject to section CG 6(1)(a) and section CG 13, where an investor in the RWSF has an "income interest of 10% or greater" (as defined in section OB 1) for any "accounting period" (as defined in section OB 1) in the underlying CFC, the investor will be required to return attributed foreign income or loss of the underlying CFC pursuant to section CG 1; and
  - Subject to section CG 6(1)(a), where an investor in the RWSF has an "income interest of 10% or greater" (as defined in section OB 1) for any "accounting period" (as defined in section OB 1) in the underlying CFC, the investor will be required to return FIF income or loss of the underlying CFC pursuant to section CG 1, attributed to the investor pursuant to section CG 7(5).
  - Where an investor in the RWSF does not have an "income interest of 10% or greater" (as defined in section OB 1) in the underlying CFC, FIF income or loss of the underlying CFC will not be attributed to the investor pursuant to section CG 7(5) and the investor will not be required to return FIF income or loss of the underlying CFC pursuant to section CG 1.

  If the underlying foreign company is a CFC and has "qualified control interests" (as defined in section CG 4(6)) in another foreign company, and as a consequence the other foreign company is a CFC as defined in section CG 4, and so on down the chain of CFCs, the above three rulings shall also apply on the basis that any other foreign company is the underlying foreign company.

The period or income year for which this Ruling applies

This Ruling will apply for the period 1 December 2000 to 10 January 2001.

This Ruling is signed by me on the 21st day of December 2000.

Martin Smith

General Manager (Adjudication & Rulings)

NEW LEGISLATION

STUDENT LOAN SCHEME AMENDMENT ACT (NO 2) 2000

Sections 2, 35, 38A, 38B, 38C, 38D, 39, 40, 41, 50, 55, 59, 61, 62 and 87 of the Student Loan Scheme Act 1992

Sections 33A, 81 and 85D of the Tax Administration Act 1994

Third Schedule of the Privacy Act 1993

Introduction

New legislation gives effect to the Government's decision not to charge interest on student loans for full-time, full-year students and low-income part-time and/or part-year students while they are studying. This will be achieved by way of an interest write-off by Inland Revenue after the end of each income year in which a borrower qualifies.

The legislation also introduces a new base interest write-off, for those borrowers who do not qualify for the full interest write-off, which ensures that at least 50% of the compulsory repayment obligation is credited first to the CPI component of the interest charged, with any balance being credited to the loan principal. This will accelerate repayment of principal and therefore reduce the length of time that it will take borrowers to repay their loan.

To qualify for either of these provisions, the borrower must be resident in New Zealand for income tax purposes.

Background

One of the Government's stated objectives is to make tertiary education more affordable. The new legislation addresses the issues of debt escalation as a result of interest compounding on loans while borrowers are studying and the burden of long repayment periods faced by some borrowers.

Key features

Full-time, full-year students and part-time and/or part-year students whose net income (before tax) is $24,596 or less will receive a full interest write-off. The existing base interest write-off provisions have been amended and a number of consequential changes arising from the two amendments have been made.

Full interest write-off for full-time, full-year students

Full-time, full-year students will qualify for a full interest write-off if they meet all of the following criteria:

- they completed their course, or withdrew from the course without receiving a refund of any part of their tuition fees
- the course was at least 32 weeks in duration in a 52-week period that ended during the income year
- the course(s) was at least 80% equivalent full-time study (as that is determined for the purposes of the Education Act 1989)
- they have supplied Inland Revenue with any information it needs to confirm their study status
- they are resident in New Zealand for income tax purposes.

Full interest write-off for part-time and/or part-year students

Part-time and/or part-year students will qualify for a full interest write-off if they meet all of the following criteria:

- they completed their course, or withdrew from the course without receiving a refund of any part of their tuition fees
- the course was approved under section 258 of the Education Act 1989
- their net income[1] was $24,596 or less
- they have supplied Inland Revenue with the appropriate confirmation of their income
- they have supplied Inland Revenue with any information it needs to confirm their study status
- they are resident in New Zealand for income tax purposes.

[1] This is net income as it is defined for the purposes of the Income Tax Act 1994 and therefore means a before tax amount.

The interest that may be written off is any interest charged on or after 1 January 2000 on a loan taken out from that date, and on or after 1 April 2000 on any prior years' borrowings.

Amended base interest write-off provisions

Those borrowers who do not qualify for a full interest write-off may qualify for the new base interest write-off.[2] To qualify for this borrowers must:

- have supplied Inland Revenue with the appropriate confirmation of their income, and
- be resident in New Zealand for income tax purposes.

For those borrowers who qualify for the new base interest write-off, the repayment obligation will be divided into two. The first 50% will be credited to the base interest charged. If the base interest exceeds this, the difference will be written off. If the base interest is less than this, the excess will be applied in reducing the loan principal. The other 50% will be credited first to the CPI component of the interest charged and anything remaining will be credited to the loan principal.

The following examples demonstrate the operation of the new base interest write-off. For simplicity these examples assume that no payments were made during the year. Had payments been made, the interest charged would be less. In each case the opening loan balance is $10,000, and the base interest and CPI components are $610 and $90 respectively.

Repayment obligation $80

Opening loan balance 1 April 2000		$10,000
Base interest write-off		
Base interest charged	610	
Less 50% of repayment obligation	40	
Written off	570	
CPI interest	90	
Less 50% of repayment obligation	40	
Capitalised interest		50
Closing loan balance 31 March 2001		$10,050

Repayment obligation $1,000

Opening loan balance 1 April 2000		$10,000
Base interest write-off		
Base interest charged	610	
Less 50% of repayment obligation	500	
Written off	110	
CPI interest	90	
Less 50% of repayment obligation	500	
Reduction in principal		(410)
Closing loan balance 31 March 2001		$9,590

Repayment obligation $1,600

Opening loan balance 1 April 2000		$10,000
Base interest write-off		
Base interest charged	610	
Less 50% of repayment obligation	800	
Written off	Nil	
Reduction in principal		(190)
CPI interest	90	
Less 50% of repayment obligation	800	
Further reduction in principal		(710)
Closing loan balance 31 March 2001		$9,100

Consequential changes

A number of consequential changes have been made as a result of the full interest write-off to be allowed to full-time, full-year students and to part-time and/or part-year students. The principal change is amendments to both the Student Loan Scheme Act 1992 and the Tax Administration Act 1994 to allow for the exchange of information between tertiary institutions, the Ministry of Education and Inland Revenue to allow a borrower's study status to be determined.

[2] Those borrowers who are resident in New Zealand for income tax purposes, and who do not qualify for a full interest write-off, will continue to receive a full base interest write-off if their income is less than the repayment threshold.

Other consequential changes to the Student Loan Scheme Act are amendments that allow:

- the interest write-off threshold to be amended by an Order in Council
- when a borrower leaves or returns to New Zealand, or has a change in balance date resulting in a return for a period other than 12 months, the interest write-off threshold to be pro-rated according to the appropriate number of days
- the Department of Work and Income to transfer information to Inland Revenue when borrowers have fully repaid their loans to enable Inland Revenue to calculate any interest write-off. The interest overpaid will be refunded unless there is a debt owing to Inland Revenue.

The Tax Administration Act 1994 has also been amended to require part-time and/or part-year borrowers to file a tax return or respond to an income statement so that their income may be verified before a full interest write-off is allowed.

Transitional borrowers

Most loans begin and terminate within the same calendar year. However, it is possible for loans to span two calendar years, and there are a small number of borrowers who had loans that began in 1999 and terminated in 2000. The loans for these borrowers will be treated as prior year borrowing, and only interest charged on or after 1 April 2000 may be written off under the new rules for a full interest write-off.

Overseas borrowers

Two groups of overseas students may borrow from the student loan scheme. They are students who meet the normal eligibility criteria and:

- are undertaking short periods of study as part of their approved course in New Zealand, or
- are participating in recognised overseas exchange programmes for which student allowances are payable.

Provided these students meet the other criteria (including that they are resident in New Zealand for income tax purposes), they will be entitled to a full interest write-off. The Ministry of Education will determine the study status for these borrowers and advise Inland Revenue of it in the usual manner.

The provisions for borrowers studying overseas who are non-resident in New Zealand for income tax purposes are unchanged. These borrowers will continue to be entitled to a write-off of the base interest charged during the period of their study[3] if, in the Commissioner's view, they would suffer serious hardship if payment of the non-resident repayment obligation (which includes the full amount of interest charged on the loan balance) was required and they:

- had not had a loan transferred to Inland Revenue for collection in the income year under consideration, and
- were engaged in full-time study outside New Zealand, and
- would suffer hardship if required to pay the base interest charged for the period of their study.

Application date

The legislation came into force on 15 December 2000, being the day after that on which it received the Royal assent.

The full interest write-off applies to interest charged on or after:

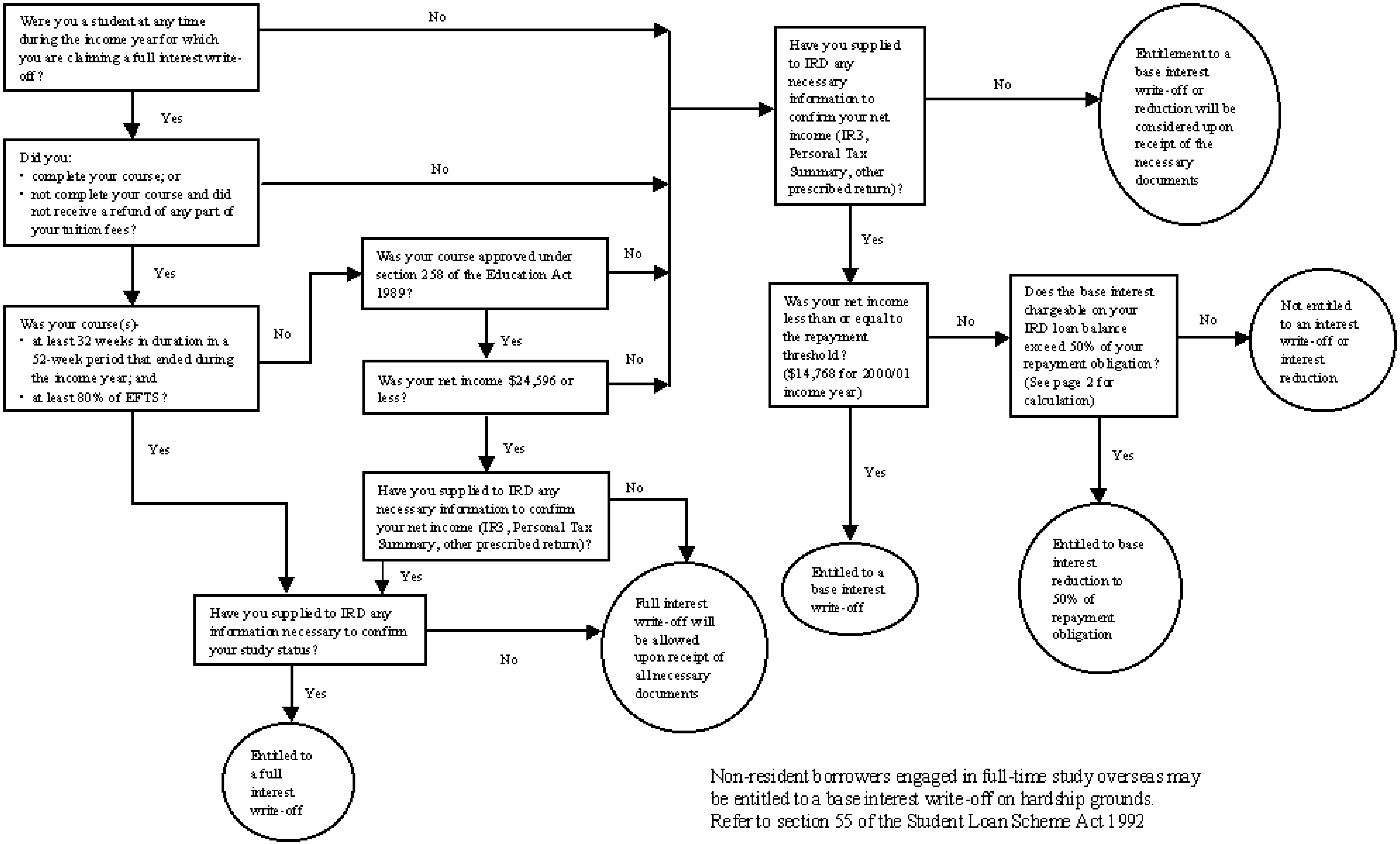
- 1 January 2000 on money advanced under a loan contract entered into on or after that date, and
- 1 April 2000 in respect of any prior years' borrowings.

The new base interest write-off provisions apply from the 2000–2001 income year.

[3] Depending on the borrower's circumstances, this may be a partial write-off only.

Do you qualify for an interest write-off or reduction?

(NZ resident borrowers only)



Non-resident borrowers engaged in full-time study overseas may be entitled to a base interest write-off on hardship grounds. Refer to section 55 of the Student Loan Scheme Act 1992

Calculating the 2000–2001 base interest reduction

1. Take the total interest charged* to 31 March 2001 $……………..(a)

2. Calculate the base interest component

$$\frac{a \times 6.1}{7} = \$\ldots\ldots\ldots\ldots(b)$$

3. Calculate 50% of your repayment obligation

Net income for 2000–2001	$
Deduct	$14,768
	$………(c)

Multiply (c) by 5% (half the 10% rate) $…………..….(d)

4. Enter figure at (b) $…………………

Subtract figure at (d) $…………………

Base interest reduction is $…………………

If the figure at (d) is greater than (b), you do not qualify for a base interest reduction.

*From your loan statement from Inland Revenue. If you wish to make the calculation before 31 March 2001, multiply your loan balance by 6.1% for the **approximate** amount of your **base** interest and enter this figure at (b).

How much will the new base interest write-off save borrowers in the 2000–2001 income year?

	Loan balance								
Income	**$5,000**	**$10,000**	**$15,000**	**$20,000**	**$25,000**	**$30,000**	**$40,000**	**$50,000**	**$60,000**
$15,000	$12	$12	$12	$12	$12	$12	$12	$12	$12
$20,000	$43	$262	$262	$262	$262	$262	$262	$262	$262
$25,000		$98	$403	$512	$512	$512	$512	$512	$512
$30,000			$153	$458	$762	$762	$762	$762	$762
$35,000				$208	$513	$818	$1,012	$1,012	$1,012
$40,000					$263	$568	$1,178	$1,262	$1,262
$45,000					$13	$318	$928	$1,512	$1,512
$50,000			**No**			$68	$678	$1,288	$1,762
$60,000			**change**				$178	$788	$1,398
$70,000								$288	$898
$80,000									$398
$90,000									

Note: The figures above are the maximum savings for borrowers who do not qualify for a full interest write-off. The savings arise because, from the 2000–2001 income year, only 50% of the repayment obligation will be credited to the base interest charged and any excess will be written off. The other 50% will be credited first to the interest adjustment interest (this is equivalent to the CPI and until now has been capitalised as at 31 March each year) charged for the year and second to the loan principal. This means that your loan balance will reduce faster.

The savings vary according to the size of the loan balance (which determines the amount of base interest charged) and the borrower's income (which determines the amount of the repayment obligation). The maximum amount saved is 50% of the compulsory repayment obligation. For simplicity, the above figures assume that no payments were made during the year. Because the maximum amount that can be saved is 50% of the repayment obligation, payments (which would reduce the interest charge) may not reduce the above savings.

The savings for any particular borrower can only be determined on the basis of his or her income and loan balance.

LEGISLATION AND DETERMINATIONS

This section of the *TIB* covers items such as recent tax legislation, accrual and depreciation determinations, livestock values and changes in FBT and GST interest rates.

LIVESTOCK VALUES – 2001 NATIONAL STANDARD COSTS FOR SPECIFIED LIVESTOCK

The Commissioner of Inland Revenue has released a determination, reproduced below, setting the national standard costs for specified livestock for the 2000/2001 income year.

These costs are used by livestock owners to value livestock on hand at the end of the income year where they have adopted the national standard cost (NSC) scheme to value any class of livestock.

The NSC scheme reflects the national average costs of production of various types and classes of livestock. Farmers using the scheme apply national standard costs to stock bred on the farm during the year and to immature animals on hand at the beginning of the year. Livestock they buy are valued at their purchase price. The average of these costs is used to find the closing value of livestock on hand.

NATIONAL STANDARD COSTS FOR SPECIFIED LIVESTOCK DETERMINATION 2001

This determination may be cited as "The National Standard Costs for Specified Livestock Determination, 2001".

This determination is made in terms of section EL 3A of the Income Tax Act 1994. It shall apply to any specified livestock on hand at the end of the 2000/2001 income year, where the taxpayer has elected to value that livestock under the national standard cost scheme for that income year.

For the purposes of section EL 3A of the Income Tax Act 1994, the national standard costs for specified livestock for the 2000/2001 income year are as set out in the following table.

Table

Kind of Livestock	Category of Livestock	National Standard Cost $
Sheep	Rising 1 year	17.00
	Rising 2 year	10.70
Dairy Cattle	Purchased bobby calves	156.00
	Rising 1 year	427.00
	Rising 2 year	77.60
Beef Cattle	Rising 1 year	152.00
	Rising 2 year	89.30
	Rising 3 year male non-breeding cattle (all breeds)	89.30

Kind of Livestock	Category of Livestock	National Standard Cost $
Deer	Rising 1 year	55.60
	Rising 2 year	27.80
Goats (Meat and Fibre)	Rising 1 year	12.70
	Rising 2 year	8.40
Goats (Dairy)	Rising 1 year	81.50
	Rising 2 year	14.00
Pigs	Weaners to 10 weeks of age	71.30
	Growing pigs 10 to 17 weeks of age	53.40

This determination is signed by me on the 24th day of January 2001.

Martin Smith
General Manager (Adjudication & Rulings)

QUESTIONS WE'VE BEEN ASKED

This section of the TIB sets out the answers to some day-to-day questions that people have asked. We have published these as they may be of general interest to readers.

These items are based on letters we've received. A general similarity to items in this package will not necessarily lead to the same tax result. Each case will depend on its own facts.

QUALIFYING FOREIGN PRIVATE ANNUITY EXEMPTION FROM THE FOREIGN INVESTMENT FUND REGIME

Section CG 15(2)(g), Income Tax Act 1994 – what constitutes an interest in a Foreign Investment Fund

A taxpayer has asked for clarification of the operation of the qualifying foreign private annuity ("QFPA") exemption in section CG 15(2)(g). In particular, she has asked at what point the test for a QFPA is to be applied. This query was raised in the context of Example 2 of Part 2, and Example 9 of Part 5, of the Appendix to *Tax Information Bulletin* Vol 8, No 5 (September 1996) which contains a description of the QFPA rules.

Section CG 15(2)(g) states:

> An interest held by a person in a foreign entity **at any time** during an income year shall not be treated as an interest in a foreign investment fund –
>
> …
>
> (g) If, subject to subsections (3) and (4), **at the time**, the interest is a **qualifying foreign private annuity**. (Emphasis added)

Section OB 1 defines the qualifying foreign private annuity in part as follows:

> "Qualifying foreign private annuity" means an entitlement of a natural person to benefit from a pension or annuity provided by a foreign entity while the person is resident in New Zealand, if—
>
> (a) The consideration for the entitlement to the pension or annuity is provided to the foreign entity—
>
> (i) At a time when the person is not resident in New Zealand; or
>
> (ii) At a time when the person is resident in New Zealand falling before the first day of the 4th income year succeeding the income year in which the person last becomes a resident of New Zealand; or
>
> (iii) From the accumulated balance or proceeds of an interest of the person in a superannuation fund and that interest is commuted or transferred in anticipation of, or following, the person ceasing to be a resident of New Zealand; and … .

To be a QFPA within the definition of that term in section OB 1, a pension or annuity must meet certain criteria. One requirement is that the consideration for the QFPA must be provided "at a time when the person is resident in New Zealand falling before the first day of the 4th income year succeeding the income year in which the person last becomes a resident of New Zealand".

The exemption in section CG 15(2)(g) uses the words "at the time", indicating that it is the QFPA status at a particular time that is important. The taxpayer has asked if, when a breach occurs, this means that:

- the annuity was never a QFPA at any time, or
- it fails to be a QFPA only from the time of the breach.

Example 2 in the above mentioned *Tax Information Bulletin* implies that if taxpayers breach the above criterion they will be said never to have met the QFPA definition, and will therefore have been subject to the foreign investment fund ("FIF") regime from the point when they last became resident in New Zealand.

The test is whether the consideration is paid before the first day of the 4th income year after the taxpayer becomes resident in New Zealand. There are two possible interpretations of the Act as to the consequences of this requirement. One is to say that if the time limit is breached, the taxpayer has failed to meet the definition from the beginning of the grace period, i.e. from the point when the person last became resident. In that case a breach would mean that the FIF interest was never a QFPA.

The alternative interpretation is to say that the definition may be met up until the beginning of the income year in which the time limit requirement is breached. This would mean that the FIF interest ceases to be a QFPA when this particular criterion is not met.

The legislation is ambiguous as to when the test is to be applied. In *CIR v Alcan New Zealand Ltd* [1994] 3 NZLR 43 the Court of Appeal said that words in legislation must be given their ordinary meaning, but that if the meaning is unclear it is permissible to consider the purpose of the legislation, having regard to the total context of the words used while still being constrained by the actual words used in the section, in order to arrive at the meaning intended by the legislature. This ensures that an anomalous interpretation is not favoured when two or more interpretations are available. The Court also said that one should approach the question of statutory interpretation on the premise that the legislature will not have intended absurdity or injustice. Therefore, it is worth considering the scheme and purpose behind the QFPA definition and section CG 15(2)(g) to see which of the two possible interpretations is to be preferred.

The QFPA exemption (relating to returning residents) may be compared with the "new resident exemption" in section CG 15(2)(f). It is arguable that the two exemptions were intended by the legislature to parallel each other, and that accordingly the same result should be reached under both types of exemption. The new resident exemption does not require that consideration be provided within any particular time period. New residents with interests in foreign pension plans simply have 3 years before they must return FIF income. The QFPA exemption was introduced some time after the new resident exemption. It is not clear why the QFPA exemption imposes the time limit on consideration paid to foreign annuities while the new resident exemption does not. However, it is strongly arguable that Parliament did not intend returning residents to be treated more harshly than new residents.

Also, interpreting the exemption so that taxpayers who breach fall outside the exemption from when they last became resident, would have practical consequences as taxpayers breaching the 4-year limit would have to amend their returns for the previous 4 years in order to comply with the FIF regime. In addition to these compliance costs, potentially harsh interest and penalties may be imposed on taxpayers that breach the time limit but have not previously returned their FIF income.

It is considered that the correct interpretation of this exemption is that taxpayers who breach the consideration requirement are deemed to hold a FIF interest from the first day of the 4th income year from when they last became resident. In other words, a FIF interest ceases to be a QFPA from the beginning of the income year in which the time limit requirement is breached.

This means that in Example 2 in Part 2 of the Appendix to *Tax Information Bulletin* Vol 8, No 5 (September 1996) (pages 4-5) the taxpayer's interest in her foreign superannuation scheme would cease to be a QFPA from 1 April 2001 (the fourth income year), as Mrs P (the taxpayer in that example) continues to make contributions after this date. The definition of a QFPA would be met for the period from 11 July 1997 (the date that she returned to New Zealand) until 31 March 2001.

It should be noted that although a QFPA is not taxable under the FIF regime, distributions may still be taxable under other provisions of the Act.

TOURISM SERVICE PROVIDERS' PAYMENTS MADE TO TOUR GUIDES OR DRIVERS – THE INCOME TAX LIABILITY OF THOSE PARTIES AND THE TOUR OPERATOR EMPLOYING THE GUIDE OR DRIVER

Income Tax Act 1994 and Income Tax (Withholding Payments) Regulations 1979

We have been asked about the tax implications of payments made by tourism service providers (those selling services or goods to tourists) to those employed in the tourism industry, such as coach drivers and tour escorts, to encourage the taking of passengers or clients to those particular tourism service providers. The payments are colloquially known as "commissions".

This item considers the application of the Income Tax Act 1994 to each of the following parties:

- The tour operator—the business principal (e.g. a company or partnership) providing the service of tours. The tour operator is generally the employer of the tour guide or coach driver who receives the payments. References to the tour operator in this item are references to this entity.
- The tourism service provider—the entity making the payments. The person in the business of providing goods or services to tourists, e.g. tourist attractions or activities, motels and tearooms. In this item the tourism service provider is referred to as the payer.
- The tour guides, tour escorts, or coach drivers—mostly individuals employed by the tour operators – referred to as the payee in this item. It is the payee who receives payment from the tourism service provider. Occasionally, a business entity, rather than an individual, may contract with the tour operator to provide tour escort or driving services.

This item assumes that no employment relationship exists between the payer and the payee. It is further assumed that no arrangement exists between the tour operator and the payer, e.g. a tour operator instructs the payee to favour a particular tourism service provider who will provide payments.

Application of the legislation

The tour operator's position

Sections BE 1(1) and NC 2(1) require PAYE to be deducted where an employee receives a source deduction payment from an employer.

"Source deduction payment" is defined in section OB 2(1) as:

> … a payment by way of **salary or wages**, **an extra emolument**, a payment made to a specified office holder in respect of the activities of a specified office, **or a withholding payment**. [Emphasis added.]

The tour operators have no PAYE liability in respect of these payments under sections BE 1(1) and NC 2(1). Firstly, given the assumption above that no relationship exists between the payer and the tour operator, the payments are not from the tour operators. Secondly, the payments are not made in respect of or in relation to employment. Case law shows that the employment must give rise to the payment, rather than simply being the context or setting for it. Although the payee would not receive the payment but for being an employee, the "but for" test is not the test applied by the courts. The payee does not receive the payment in respect of, or in relation to his or her job, as the payment is premised on the payee doing something more than his or her job entails, namely choosing where to go on the basis of the payment.

Accordingly, the tour operator has no tax obligations in respect of the payments.

The payer's position

If the payments are made to New Zealand residents no obligation to deduct PAYE arises for the payer unless the payee is an employee of the tourism service provider. It has been assumed for the purposes of this item that no such employment relationship exists. Therefore, the payments are not "in respect of or in relation to employment" and no PAYE need be deducted.

Where the payments are made to non-residents there is an obligation on the payer, subject to the payee having a certificate of exemption, to make withholding deductions as the payments are within Schedule E (contract payments made to a non-resident contractor) of the Income Tax (Withholding Payments) Regulations 1979.

In relation to deductibility to the payer, while the matter will depend on the circumstances of the case, assuming the making of the payments to the payees can be substantiated, the Commissioner's practice is that these payments will generally be deductible.

The payee's position

The payments are not assessable as monetary remuneration under section CH 3 as, for the reasons stated above, they are not "in respect of or in relation to" employment. However, the payee remains assessable under section CD 5 as the payments are income according to ordinary concepts. This is because the receipts in question have the hallmarks of income (refer *Reid v CIR* (1985) 7 NZTC 5,176). In terms of the payment's quality in the hands of the recipient, it is clearly a payment received for doing something. Even if paid in advance, the payments are premised on the payee eventually bringing in clients. Thus they are payments made in respect of services. The payments are made for services rather than being gifts, because they are made in the context of business dealings.

In some instances, instead of a cash sum, the payee may receive goods or services. In those circumstances, the convertibility principle (*Tennant v Smith* [1892] AC 150 (HL), *Dawson v CIR* [1978] ATC 6,012) will operate to include as income benefits received that can be converted into money. However, not all benefits will be income as income does not include what is saved from going out. So, for example, clothing or passes to an attraction would be income as they could be sold by the recipient; but a free meal received by a coach driver every time he or she brought in tourists would not be.

Some payees will be assessable as New Zealand tax residents as they will satisfy the tests for residency in sections OE 1 and OE 2. However, subject to any relevant Double Taxation Agreement, non-residents remain assessable as the income is deemed to be derived in New Zealand by section OE 4(l)(q)—income derived from contracts made or wholly or partly performed in New Zealand, or section OE 4(1)(u)—income derived directly or indirectly from any other source in New Zealand. As noted above, there may be an obligation on the payer to deduct withholding deductions when the payments are to non-residents.

A payee may be a business entity that, as part of its business, contracts services to the tour operator. In this event, the payments will be gross income under section CD 3 as amounts derived from a business, or under section CD 5 for the reasons stated earlier.

Conclusion

The tour operator has no tax obligations in respect of the payments as the payments are not from the tour operators, nor received in respect of or in relation to the employment of the payee. Where the payments are made to New Zealand tax residents, the payer has no tax obligations. Where the payments are made to non-residents, the payer has, subject to the payee having a certificate of exemption, an obligation to deduct withholding deductions. A payee is liable, subject to the provisions of any relevant Double Taxation Agreement, to pay tax on the payments regardless of the outcome of the residence tests in sections OE 1 and OE 2, as the income is deemed to be derived in New Zealand under section OE 4(1)(q) or section OE 4(1)(u). If the payee receives the payment in the course of the payee's business, the payment is gross income under section CD 3. In other situations, the payments will be gross income under section CD 5.

LEGAL DECISIONS – CASE NOTES

This section of the *TIB* sets out brief notes of recent tax decisions made by the Taxation Review Authority, the High Court, the Court of Appeal and the Privy Council.

We've given full references to each case, including the citation details where it has already been reported. Details of the relevant Act and section will help you to quickly identify the legislation at issue. Short case summaries and keywords deliver the bare essentials for busy readers. The notes also outline the principal facts and grounds for the decision. Where possible, we have indicated if an appeal will be forthcoming.

These case reviews do not set out Inland Revenue policy, nor do they represent our attitude to the decision. These are purely brief factual reviews of decisions for the general interest of our readers.

WHETHER ANTI-AVOIDANCE PROVISIONS OF THE ACCRUALS RULES APPLY TO GIFTS MADE TO TRUSTS BY THE RESPONDENT

Case:	*CIR v Auckland Harbour Board*
Decision date:	24 January 2001
Act:	Income Tax Act 1976

Summary

This was the Commissioner's appeal from part of the Court of Appeal judgment at (1999) 19 NZTC 15,433. The taxpayer had discontinued its appeal against that part of the Court of Appeal judgment that found for the Commissioner. Consequently, the result in the Court of Appeal judgment remains unaltered.

Facts

The case concerns the application of the base price adjustment and anti-avoidance provisions of the accrual rules in relation to gifts made on 22 and 23 December 1988 by the Auckland Harbour Board ("AHB") to two trusts of financial arrangements which were subsequently vested in the Auckland Regional Council. The Commisioner accepted that, in the absence of the invocation of an anti-avoidance provision, the transfer to the trusts falls within section 64F and allows the AHB to make a base price adjustment on a 100% loss. He argued however, that section 64J applies and under that section he had regard to the connection between the parties and to other relevant circumstances, and determined that the parties were dealing with each other in relation to the transfer in a manner that had the effect of defeating the intent and application of sections 64B to 64M of the Act (the accruals rules).

Decision

Their Lordships found that the transfer for nil consideration did not defeat the intent and application of the accruals rules. Section 64J(1) contemplates that the circumstances that justify its application will be specific to a particular transaction, arising out of the relationship between the parties and other relevant circumstances. Its use is similar to section 99, in that it is aimed at transactions that, in commercial terms, fall within the charge for tax but have been, intentionally or otherwise, structured in such a way that on a purely juristic analysis they do not.

In the present case they held that there was no such tension. A transfer of financial arrangements for no consideration attracts a deduction, and their Lordships did not find any principle that would be infringed by taking the terms of section 64F at face value. Other sections appear to contemplate that a transfer for no consideration will nevertheless be covered by and affected by the accruals rules.

Observation on "Fiscal Nullity" cases and anti-avoidance provisions

The Privy Council observed of general anti-avoidance provisions that:

> "Some of the work such provisions used to do has nowadays been taken over by the more realistic approach to the construction of taxing acts exemplified *by WT Ramsay Ltd v Inland Revenue Commissioners* [1982] AC 300, although their Lordships should not be taken as casting doubt on the usefulness of such tax avoidance provisions as a long stop for the Revenue."

WHETHER PROFIT ON SALE OF PROPERTIES ASSESSABLE INCOME

Case:	*TRA Number 030/99. Decision Number 23/2001*
Decision date:	1 December 2000
Act:	Income Tax Act 1994
Keywords:	*Property sales, capital v revenue*

Summary

Judge Barber found partially for the CIR and partially for the disputant

Facts

The disputant was formed pursuant to a Deed of Trust dated 25 September 1990. Since its inception, the disputant had purchased a number of residential properties and some had been on-sold. This case specifically concerns nine of those properties that were purchased on various dates but that were all sold together on one date, 5 April 1993. The disputant's interest in three additional properties was assigned on the same date. All twelve properties were purchased by another company as part of its development of a mall.

In March 1999 the Commissioner assessed the profits derived from the sale of nine of those properties as the disputant's assessable income.

Decision

In regards to five of the properties, Judge Barber, found that the disputant had bought them for speculation and knew that it was almost certain to be able to sell them at a very good profit to another company in the reasonably near future. With regard to the evidence overall, His Honour found that the Disputant's intention with regard to those properties was that of resale and that they were acquired as part of a land dealing business.

His Honour also found that those particular properties were part of a scheme or undertaking entered into for the purpose of making a profit and that the scheme or undertaking commenced at least from the time that the disputant learnt that another company was to purchase the mall. The disputant knew that the owner of the mall would need to acquire those properties, or that they could be sold to a competitor and so it bought them with the intention of resale.

In regards to the remaining four properties, as these properties had been bought earlier, His Honour accepted that up to a particular point in time, probably till October 1992, the disputant may have been purchasing properties for residential letting purposes with conversion to a commercial leasing a desired prospect at some indefinite time in the future. On that basis His Honour considered that the profits from the sale of those four properties are not assessable to the disputant unless caught by section 67(4)(d).

Section 67(4)(d) assesses profits from the sale of land held for less than ten years where at least 20% of the profit is due to zoning or similar change, or the likelihood of it. If 20% of the profit arises in that manner, then the whole of the profit is taxable. His Honour considered the conflicting evidence of two expert valuers and found that it was not correct to regard at least 20% of the profits on sale of those four properties as being due to the likelihood of zoning changes. His Honour considered that such profits flowed from the importance of the properties to the plans and strategies of the other company and that, even though those plans and strategies must have involved the likelihood of the other company obtaining appropriate zoning changes to develop the mall, it is too imprecise and indirect a matter when looked at in respect of the application of section 67(4)(d) to the disputant.

REGULAR FEATURES

DUE DATES REMINDER

March 2001

5 **Employer deductions and employer monthly schedule**

Large employers ($100,000 or more PAYE and SSCWT deductions per annum)

- *Employer deductions (IR 345)* or *(IR 346)* form and payment due
- *Employer monthly schedule (IR 348)* due

7 **Provisional tax instalments due for people and organisations with a March balance date**

20 **Employer deductions**

Large employers ($100,000 or more PAYE and SSCWT deductions per annum)

- *Employer deductions (IR 345)* or *(IR 346)* form and payment due

Employer deductions and employer monthly schedule

Small employers (less than $100,000 PAYE and SSCWT deductions per annum)

- *Employer deductions (IR 345)* or *(IR 346)* form and payment due
- *Employer monthly schedule (IR 348)* due

30 **GST return and payment due**

These dates are taken from Inland Revenue's Smart business tax due date calendar 2000–2001

The 2001–2002 calender was unavailable when this publication went to print

YOUR CHANCE TO COMMENT ON DRAFT TAXATION ITEMS BEFORE THEY ARE FINALISED

This page shows the draft public binding rulings, interpretation statements, standard practice statements, and other items that we now have available for your review. You can get a copy and give us your comments in these ways:

By post: Tick the drafts you want below, fill in your name and address, and return this page to the address below. We'll send you the drafts by return post. Please send any comments *in writing, to the address below*. We don't have facilities to deal with your comments by phone or at our other offices.

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____

	Public rulings	***Comment deadline***
☐	**PU0054:** The provision of benefits by third parties: fringe benefit tax (FBT) consequences – section CI 2(1)	31 March 2001

	Standard practice statements	***Comment deadline***
☐	**ED0016:** Release of information	31 March 2001
☐	**ED0017:** Late rebate claims	31 March 2001
☐	**ED0019:** Arrangements for payment of tax debt	31 March 2001

Items are not generally available once the comment deadline has passed

No envelope needed—simply fold, tape shut, stamp and post.

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