# TAX INFORMATION BULLETIN

Vol 15, No 4
April 2003

## CONTENTS



*This TIB has no appendix*

Inland Revenue
*Te Tari Taake*

ISSN 0114–7161

# GET YOUR TIB SOONER ON THE INTERNET

This *Tax Information Bulletin* is also available on the internet in PDF format. Our website is at:

**www.ird.govt.nz**

It has other Inland Revenue information that you may find useful, including any draft binding rulings and interpretation statements that are available.

If you find that you prefer to get 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 do this by completing the form at the back of this TIB, or by emailing us at **IRDTIB@datamail.co.nz** with your name and details.

# 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 item is available for review/comment this month, having a deadline of 30 May 2003.

| Ref. | Draft type | Description |
|---|---|---|
| PU3855a-d | Public rulings | Fishing quota and secondhand goods |

Please see page 46 for details on how to obtain a copy.

# 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 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 from our website at **www.ird.govt.nz**

## PRODUCT RULING – BR PRD 03/01

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 Restaurant Brands Limited.

### Taxation Laws

This Ruling applies in respect of the following sections of the Income Tax Act 1994 and the Goods and Services Tax Act 1985:

- Income Tax Act 1994, sections BD 2(2)(c), DE 1 and the definition of "income from employment" in section OB 1.
- Goods and Services Tax Act 1985, the definition of "taxable activity" in section 6, and the definition of "employment under any contract of service" in section 6(3)(b).

### The Arrangement to which this Ruling applies

The Arrangement is the engagement of a delivery driver by Restaurant Brands Limited ("RBL") pursuant to the Delivery Contract (dated October 2000), and in accordance with information in the Pizza Hut Contract Driver Information Driver's Copy (dated 30 October 2001), the KFC documentation (dated 19 September 2002) and the standard practice information provided to Inland Revenue in the ruling application (dated 30 October 2001) (collectively referred to as "the relevant documents"), to deliver RBL products to RBL customers. Further details of the Arrangement are set out in the paragraphs following.

### Relationship between RBL and its delivery drivers

1. RBL prepares and sells a range of "fast food" products via Pizza Hut and KFC businesses. RBL sells its products through a chain of restaurants and provides a delivery service to its customers at some of these restaurants. RBL engages the services of delivery drivers to deliver its products to its customers from either Pizza Hut or KFC stores.
2. The relationship between the delivery drivers and Pizza Hut are governed by the following documents:
   - The "Delivery Contract"
   - The guideline on "Delivery Driver Payments"
   - A form to compile the details of the driver, bank account, vehicle and motor insurance (currently known as the "Driver and Vehicle Details Form")
   - The "Contract Delivery Drivers Notice of Taxation Requirements"
   - The guideline on "Making a Delivery"
   - The "CHAMPS – The Customer Is Why" guidelines on dealing with a customer, and
   - The "Standard Practice Information" provided to Inland Revenue in the rulings application.
3. The relationship between the delivery drivers and KFC is governed by the following documents:
   - The "Delivery Contract"
   - The "Contract Delivery Drivers' Notice of Taxation Requirements"
   - The "Driver and Vehicle Details Form"
   - The "CHAMPS – The Customer Is Why" guidelines on dealing with a customer, and

- The "Standard Practice Information" provided to Inland Revenue in the rulings application.

The KFC documentation does not contain a copy of the guideline on "Delivery Driver Payments", or a copy of the guideline on "Making a Delivery".

4. The only difference of relevance is that KFC does not have its own company delivery vehicles, and no employees carry out home deliveries, whereas some of the Pizza Hut stores have company delivery vehicles that are used by employees to carry out home deliveries. Also, in some cases employees and the delivery drivers may deliver for the same Pizza Hut store. At one Pizza Hut store no delivery drivers are employed and therefore the employees carry out home deliveries in their personal cars.

**Terms of the Delivery Contract**

5. Under the terms of the Delivery Contract the delivery driver agrees to:

   (a) use only the motor vehicles detailed in the Driver/Vehicle details ("Vehicles") in the performance of the contract (clause 4)

   (b) at all times observe all reasonable instructions given by RBL or its duly authorised representative in connection with delivery services (clause 4) (attention is drawn to any delivery driver guidelines issued by RBL from time to time)

   (c) be responsible for all costs and expenses of the drivers' business including the costs and expenses of operating and maintaining all delivery vehicles (clause 5)

   (d) be liable for and shall indemnify RBL against any liability, loss, claim or proceedings arising out of or relating to the use of the vehicles in the provision of delivery services (clause 6)

   (e) maintain throughout the continuance of the agreement, at their own expense (clause 7):

      - ACC contributions, where the delivery drivers engage employees to perform services under the contract, make the appropriate ACC employer contribution as required on behalf of those employees (if any)
      - a minimum of Third Party Property Damage Liability Insurance in respect of the vehicle.

   (f) produce to RBL's authorised representative documents that are necessary in the opinion of RBL to establish that the delivery driver has complied and continues to comply with their obligations under the contract (clause 9)

   (g) immediately refer any discrepancies on delivery with regard to collection of monies and delivery records to RBL (clause 10)

   (h) at the end of each delivery period provide to RBL's authorised representative:

      - a complete account and record in the format specified by RBL (clause 11), and
      - all monies collected by the delivery driver from customers of RBL during the course of that delivery period (clause 12).

   (i) be responsible to account for any cheques, credit card slips or monies received on behalf of RBL as soon as possible and make good any shortfall (clause 13)

   (j) wear any uniforms provided by RBL and ensure their proper care and maintenance. A $30 deposit is retained out of the first payment, to be returned to the delivery driver on return of the uniform in good conditions (fair wear and tear excepted) (clause 14)

   (k) provide and wear any additional uniform items as may be requested by RBL (eg black trousers) (clause 15)

   (l) provide a float of $30 for the purpose of making change during each delivery period (clause 16)

   (m) ensure that the RBL signage is correctly attached to Vehicles in accordance with instructions supplied (clause 17)

   (n) return upon request, clean and in good condition uniforms, delivery pouches and signage. Failure to do so will entitle RBL to deduct replacement cost from any monies owing to the delivery driver (clause 18).

6. The delivery driver is not liable to take out any insurance or be responsible for loss or damage to the products delivered (as long as the loss or damage does not result from the delivery driver's wilful default, negligence or breach of the Contract) (clause 8).

7. The delivery driver may not assign their rights under the contract without the prior written consent of RBL (clause 20).

8. In terms of RBL's obligations under the Delivery Contract:

   (a) RBL agrees to pay the delivery driver:

      - for services on a per delivery basis (clause 1)
      - within 14 days of submission of an invoice for services in accordance with the rates set out in schedule A (currently an all inclusive payment of $3.90 per delivery [as at 30 September 2001]

(including GST if any)). The delivery driver is eligible for a petrol surcharge of 10 cents per delivery while petrol prices are above $1 per litre to be removed if petrol prices fall below $1 per litre as set out in the Attachment to the Delivery Contract. These rates may be reviewed from time to time by RBL at its discretion (clause 3)

(b) Products carried by the delivery driver shall be at the risk of RBL (clause 8)

(c) The engagement of the delivery driver does not commit RBL to a guarantee of any minimum remuneration (clause 1)

(d) RBL is not responsible for any vehicle damage sustained as a result of the delivery driver's negligence or omission (clause 17)

(e) RBL also reserves the right to engage the services of other contractors (clause 2)

(f) The uniforms, delivery pouches and signage remain the property of RBL (clause 18).

9. Under clause 1 either party may terminate the Delivery Contract upon notice to the other party at the conclusion of any delivery.

10. The legal relationship between the delivery driver and RBL is described as that of "principal and independent contractor and not that of employer and employee" (clause 19).

**Delivery Driver Payments**

11. The guideline on "Delivery Driver Payments" states that the delivery drivers will be reimbursed at the current delivery payment rate per delivery, at a maximum of 2 deliveries per round trip (para 1).

12. In the case of a mistake and redelivery is required, the delivery driver will receive another delivery payment if the mistake was through no fault of their own (para 2). The following are examples of delivery driver payments/reimbursements that are available.

13. The delivery drivers receive payments/ reimbursements for:

- redeliveries that have resulted through overdue order complaints, only if the initial order was logged out from the restaurant (ie order has left the restaurant) after a 20 minute timeframe has lapsed
- redelivery due to wrongly supplied delivery details (eg wrong address/phone number supplied by RBL to the delivery driver)
- delivery of hoax orders or orders cancelled after the product has left the restaurant (the product must be returned to the restaurant)
- redelivery due to miscellaneous circumstances outside the delivery driver's control
- cost of phone calls made to customers or back to the restaurant from a payphone.

14. The delivery drivers do not receive payments/ reimbursements for:

- three or more home deliveries per delivery round, RBL policy is a maximum of 2
- complaints indicating driver's mishandling of the order (eg pizza has been dropped by the delivery driver)
- redelivery due to the delivery driver not finding the address where the original delivery details are correct (where possible delivery drivers are required to call from a payphone to clarify the delivery details)
- cost of cellphone calls back to the restaurant
- redelivery due to missing items off the order (eg missing garlic bread). [It is the delivery driver's responsibility to check that they have the entire order before leaving the restaurant]
- transporting stock between stores, stock transfers are the shift manager's responsibility, and not the delivery driver's responsibility.

15. Delivery drivers are not guaranteed any minimum per hour delivery payment.

**Notice of Taxation Requirements**

16. The Contract Delivery Drivers Notice of Taxation Requirements is a guide which states that:

- The delivery driver is not an employee of RBL
- The delivery driver should seek independent taxation advice to understand their rights and obligations
- PAYE will not be deducted from payments for deliveries
- The gross values of all payments received by the delivery driver for deliveries must be included in the delivery driver's annual income tax return (IR 3)
- The delivery driver may be liable to pay provisional tax, and
- The delivery driver must register for GST if the delivery driver has income of $40,000 or more.

**Delivery guidelines on making a delivery**

17. The guidelines on "Making a Delivery" have suggestions for the manner in which deliveries are to be made, handling customer complaints, and what to do in the event of emergencies.

**CHAMPS – The Customer Is Why guidelines on dealing with a customer**

18. The CHAMPS guidelines on dealing with a customer includes sample dialogue to address the customer in various circumstances (eg if the order has missing items), and the dress code requirements that must be met.

19. The delivery driver is also required to complete a shadow shift. A shadow shift is where a delivery driver goes out on the road with an experienced driver and watches them carry out a delivery shift.

20. Under these guidelines the delivery drivers are also required to wear name tags at all times.

**Standard Practice Information**

21. The delivery drivers are not:

    - entitled to overtime or sick pay
    - required to belong to any union
    - able to supervise employees of RBL
    - able to access RBL's administration or support services, (they do have access to staff toilets and product discount)
    - advertising for work or have their own client base, however there is no restriction for them doing this.

22. Also, the delivery drivers:

    - are able to decide the hours they work (provided work is expected to be available). It is standard practice that the delivery drivers make themselves available for rostered hours.
    - provide their own vehicles and associated equipment
    - are free to work for another principal
    - must hold an appropriate driver's licence.

23. RBL trains the delivery drivers as to the manner in which deliveries are made. The delivery drivers are instructed as to what geographical area they will work in.

24. RBL employees take orders over the phone and decide the delivery sequence of the orders. A maximum of two to four separate orders can be delivered at any one time (to ensure quality control of the product).

25. From time to time RBL may pay at its discretion the delivery drivers a minimum of two deliveries per hour during certain hours, in order to ensure minimum coverage for RBL during quiet periods.

26. Although the delivery driver may find their own replacement driver, in practice this does not happen and generally another delivery driver is used by RBL.

27. RBL may from time to time at its discretion provide incentive payments or gifts to certain delivery drivers for maintaining delivery standards. The incentive payments are not contractually guaranteed. RBL proposes to implement a "Driver-Bank" scheme whereby drivers will be "credited" with 20 cents for every delivery they make. This amount will accumulate during the year and will be paid out as a lump sum on each driver's contract anniversary date. The scheme will not be included as a term of the Delivery Contract. There is no similar incentive scheme operating for RBL employees.

## Relationship between RBL's employees (employed under a different contract) and delivery drivers

28. RBL has a number of company owned delivery vehicles ("company delivery vehicles") assigned to various Pizza Hut stores (these vehicles have the Pizza Hut logo painted on them and an identifiable red phone on the roof). Only RBL employees drive these vehicles (the delivery drivers do not drive these vehicles). The ratio of company delivery vehicles to the number of Pizza Hut stores is less than 50%.

29. In certain cases employees and delivery drivers may deliver for the same store. In the Pizza Hut stores where both employees and delivery drivers deliver for the same store, the employees also do other tasks (ie make the pizzas, cleaning etc). The delivery drivers are contracted purely to deliver the pizzas and are not asked to perform other tasks.

30. Where no company delivery vehicles are allocated to a store that store will only use delivery drivers and not RBL employees to deliver its products to customers. All KFC stores do not have company delivery vehicles and therefore rely solely on delivery drivers to carry out home deliveries. At one Pizza Hut store no delivery drivers are employed and therefore the employees carry out home deliveries in their personal cars.

31. No other collateral contracts, agreements, terms or conditions, written or otherwise, have a bearing on the conclusions reached in this Ruling.

## Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

(a) The terms of the relevant documents entered into by RBL and the delivery driver are exactly the same as those provided to Inland Revenue in the ruling application dated 30 October 2001, except in relation to the following clauses of the Delivery Contract (dated October 2000) where the number of days or dollar amounts (as appropriate) may vary from time to time:

- Clause 3, which states that RBL agrees to pay the delivery drivers within 14 days of submission of an invoice for their services in accordance with the rates set out in Schedule A. Schedule A only contains reference to the rate per delivery.
- Clause 14, which states that a $30 deposit will be retained out of the delivery driver's first payment, to be returned to the delivery driver on the return of the uniform in good condition.
- Clause 16, which provides that a float of $30 be carried by the delivery driver.

(b) RBL will provide the delivery drivers with the notice of taxation requirements at the commencement of the contract and advise the delivery drivers that as independent contractors they are required to comply with their own income tax, GST and ACC obligations.

(c) The actual relationship between RBL and the delivery driver is, and will continue to be during the period this Ruling applies, in accordance with the terms of the relevant documents in all material respects.

## 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:

- For the purposes of sections BD 2(2)(c) and DE 1, payments made by RBL to the delivery driver are not "income from employment" as defined in section OB 1, so the driver is not prevented from claiming deductions under these sections by reason only that the driver earns "income from employment", and
- For the purposes of the GST Act, the provision of services by the driver to RBL will not be excluded from the definition of "taxable activity" in section 6 of the GST Act by section 6(3)(b) of that Act as they are not made under "contracts of service".

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

This Ruling will apply for the period from 26 October 2001 until 26 October 2006.

This Ruling is signed by me on the 10th day of February 2003.

**Martin Smith**

General Manager (Adjudication & Rulings)

# PRODUCT RULING – BR PRD 03/02

This is a product ruling made under section 91F of the Tax Administration Act 1994.

## Name of the Persons who applied for the Ruling

This Ruling has been applied for by Johnson & Johnson (New Zealand) Limited and Depuy New Zealand Limited.

## Taxation Laws

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

This Ruling applies in respect of sections CH 2, CH 3, CD 5, EB 1, EH 21, EH 22, EH 23, EH 24, BG 1 and GB 1.

## The Arrangement to which this Ruling applies

The Arrangement is the establishment and operation of a Deferred Employee Share Plan ("DESP") for the benefit of the employees of Johnson & Johnson (New Zealand) Limited and Depuy New Zealand Limited ("the Johnson & Johnson NZ Group"). The Trustee of the DESP will be a New Zealand resident subsidiary of Johnson & Johnson (New Zealand) Limited, being Johnson & Johnson New Zealand Share Plans Limited ("the Trustee").

The Trust Deed, the Plan Rules and the Participation Contract ("PC") provided to the Inland Revenue Department on 8 March 2001 together form the basis of the Arrangement subject to this Ruling. These documents supersede all previous documents provided to the Commissioner in relation to this Ruling.

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

1. The DESP will be a key part of the Johnson & Johnson's remuneration performance pay regime for its employees. The purpose of the DESP is to attract, retain and motivate such employees and to act as a deterrent to theft or misbehaviour and to give employees a clear identity as shareholders in Johnson & Johnson Inc. (the parent company of Johnson & Johnson in the United States ("Parent Company")). The DESP provides the employees with a chance to acquire rights to purchase shares in the Parent Company ("Allocation Rights").

2. The DESP is part of the Johnson & Johnson Worldwide Incentive Plan ("WWIP"). The WWIP is a plan operated by the Parent Company. Under the DESP, Allocation Rights will be offered to employees of the Johnson & Johnson NZ Group companies having regard to the following factors:

   - Employee category: Employees are divided into various position levels and awards vary according to the level of the employees
   - Individual performance: Each position has key performance targets, which are negotiated each year. The performance targets can vary from position to position (for example, sales budgets are set for sales positions) and individual performance is rated against the individual's specific targets, and
   - Company performance: The award available is multiplied by a company performance multiplier of 80% to 120%, which is determined by reference to the performance of the relevant operating subsidiary measured against factors such as sales, income, inventory level, cash flow, and profitability determined each year.

3. The number of shares subject to Allocation Rights each participating employee ("Participant") would receive will be determined by the Johnson & Johnson Compensation Committee in the United States having regard to the above criteria and will be notified by the Parent Company to the Trustee. All shares are ordinary listed shares.

4. The quantum of awards (ie the shares) varies by position level, individual and company performance as stated above. Awards can range from a minimum of 3% to 10% of a Participant's salary subject to the company performance multiplier of 80% to 120%, so that the actual minimum and maximum could range between 2.4% to 12% of the Participant's salary.

5. To meet the entitlements of a Participant, shares are provided directly to the Trustee by the Parent Company. Neither the Parent Company nor the Johnson & Johnson NZ Group companies will provide monetary contributions to the Trustee to purchase shares. No company in the Group will claim any income tax deduction in New Zealand in respect of any shares the Parent Company provides to the Trustee.

6. The Johnson & Johnson NZ Group companies will provide monetary contributions to the Trust to undertake services such as accounting, auditing, consulting, and trust management ("Services") or pay for these services directly to third parties.

7. Each company will claim income tax deductions in relation to their proportion of contributions paid for Services, which will be calculated and invoiced to each company on the basis of proportionate total head count of each company.

8. Each company will expense contributions in the year in which they are paid for financial reporting purposes and claim income tax deductions in New Zealand in respect of contributions in the year in which they are paid by that company.

9. While a Participant will receive Allocation Rights under PC, those rights will not be in respect of specific shares and no specific shares will be allocated notionally or beneficially to the Participant. The Allocation Rights will be operative for up to a maximum period of ten years or earlier on termination of employment.

10. The Allocation Rights will be granted for nil consideration. A Participant may exercise their Allocation Rights, and for a consideration not exceeding $1 purchase the shares from the Trustee or receive proceeds from the sale of the shares by the Trustee.

11. There is no minimum vesting or non-exercise period in respect of the Allocation Rights the Participants would receive under the DESP.

12. Dividends received by the Trustee during any period will be either accumulated or allocated to deserving employees of the Johnson & Johnson NZ Group companies under the discretion of the Trustee acting on advice of the Johnson & Johnson Compensation Committee.

13. A Participant's interest in shares in the Trust cannot be transferred but will be subject to cancellation by the Trustee in the case of theft, defalcation or misbehaviour, etc.

14. On exercise of the Allocation Rights of a Participant, shares may be transferred in specie to the Participant, or cash distributions made by the Trustee to the Participant funded from the sale of shares. Exercise may take place at the discretion of the Participant and shall take place on termination of employment or 10 years after the date of purchase of the shares.

15. Further details of the Arrangement as contained in the Trust Deed, the Plan Rules and the PC ("the documents") are detailed below.

**Trust Deed**

16. The Trust Deed provides that Johnson & Johnson (New Zealand) Limited wishes to establish a Trust for the employees of the Johnson & Johnson NZ Group companies.

17. The Trust Deed provides that the Trustee will apply Trust funds in accordance with the Plan Rules.

18. The Trust Deed incorporates the Plan Rules as part of the Trust Deed.

**Plan Rules**

19. The Johnson & Johnson NZ Group companies may from time to time direct the Trustee to offer one or more Participants the right to enter a PC in the form set out in the Schedule to the Plan Rules (Rule 7). Offers will be made to selected employees of the Johnson & Johnson NZ Group companies as outlined earlier.

20. A Participant may accept an offer to enter a PC by signing a PC and returning it to the Trustee or by following such other method of acceptance set out in the offer (Rule 7.3).

21. A Participant, by entering into a PC, receives Allocation Rights (a right granted by the Trustee to the Participant to purchase shares under the DESP).

22. A Participant may exercise their Allocation Rights, and purchase all or part of the shares the subject of the PC from the Trustee for a consideration of $1, or receive proceeds from the sale of those shares by the Trustee (Rule 9.1(a)).

23. A Participant, on termination of employment or on the expiry of 10 years from the close of the offer period, is deemed to have exercised their Allocation Rights under the PC, and at the Participant's election, is to receive shares or proceeds from the sale by the Trustee of shares on which the Participant has Allocation Rights for a consideration of $1. (Rule 9.1(b) and (c)).

24. The Johnson & Johnson NZ Group companies may direct the Trustee in respect of Plan Shares to:

    - Transfer the shares to any other incentive plan or scheme for the benefit of Employees, or
    - Transfer the shares to a superannuation or similar fund for the benefit of Employees (Rule 11).

25. The Trustee may pay, apply or appropriate all or any part of income arising under the Trust fund to one or more of the Participants to meet the expenses of the Plan or for any other purpose relevant to the Plan (Rule 12.2).

26. All voting rights in respect of plan shares are vested in the Trustee and the Trustee will abstain from exercising those rights (Rule 13).

27. Upon termination or winding up of the Trust, each Participant will be deemed to have exercised their Allocation Rights under the PC and for a consideration not exceeding $1 can elect to purchase shares from the Trustee, or elect to receive the proceeds from the sale by the Trustee of shares.

**Participation Contract (PC)**

28. The PC is between the Trustee and a Participant under which the Trustee provides Allocation Rights to the Participant (Clause 2).

29. A Participant may exercise their Allocation Rights to purchase shares from the Trustee by giving the Trustee an "Exercise Notice" (Clause 3). The Exercise Notice must specify (Clause 3.1):

    - The number of shares the Participant wishes to purchase, and
    - Whether the Participant wishes to request the Trustee to sell on behalf of the Participant the shares the Participant has so purchased from the Trustee.

30. A Participant is deemed to have given an Exercise Notice in the following circumstances (Clause 3.2):

    - Termination of employment
    - 10 years from date of purchase of the shares by the Trustee
    - Termination of Trust.

31. On the receipt of a valid Exercise Notice, and for a consideration of $1, the Trustee shall either transfer the shares to the Participant or sell the shares on the Participant's behalf (Clause 3.5).

32. The number of shares to which a Participant is entitled will be adjusted for any bonus or rights issues (Clauses 4.1 and 4.2).

## Condition stipulated by the Commissioner

This Ruling is made subject to the following condition:

The executed documents being the Trust Deed, the Plan Rules and the Participation Contract will not differ in any material way to the draft documents provided to the Commissioner of Inland Revenue on 8 March 2001.

## 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:

- There is no gross income deemed to be derived or expenditure deemed to be incurred by the Participants pursuant to the accrual rules by virtue of sections EH 21 to EH 24 in relation to their participation in the DESP.
- The benefit received by a Participant under the DESP is "monetary remuneration" by virtue of section CH 2. The benefit is included in the gross income of the Participant under section CH 3.
- Under section CH 2(6), a Participant derives gross income in respect of the shares obtained under the DESP when the Participant exercises their right to acquire shares from the Trustee.
- The taxable value of the benefit received by a Participant under section CH 2 is the difference between the amount paid for the shares, being $1 (one dollar), and the market value of the shares on the day the right is exercised by the Participant. If the shares acquired by the Participant are listed on the New York Stock Exchange, the value of the shares is the market value of the shares, on the day the rights are exercised, converted into New Zealand dollars using the relevant foreign exchange rate on that day.
- The shares the Parent Company provides to the Trustee for the benefit of a Participant do not constitute gross income derived by the Participant under sections CD 5, CH 3, or EB 1.
- Any monetary contributions the Johnson & Johnson NZ Group companies provide to the Trustee in respect of Services do not constitute gross income derived by the Participant under sections CD 5, CH 3, or EB 1.
- Sections BG 1 and GB 1 will not apply to negate or vary the conclusions above.

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

This Ruling will apply for the income years ending 31 March 2001 to 31 March 2006.

This Ruling is signed by me on the 10th day of February 2003.

**Martin Smith**

General Manager (Adjudication & Rulings)

# PRODUCT RULING – BR PRD 03/03

This is a product ruling made under section 91F of the Tax Administration Act 1994.

## Name of the Person who applied for the Ruling

This Ruling has been applied for by ORIX New Zealand Limited ("ORIX").

## Taxation Laws

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

This Ruling applies in respect of sections CI 2, GC 15, GC 17 and BG 1, and Schedule 2, Part A clause 1(c).

## The Arrangement to which this Ruling applies

The Arrangement is the leasing of a motor vehicle by ORIX under its 12 x 12 x 12-month lease product, to a lessee who in turn provides the motor vehicle to an employee of the lessee, for their private use or enjoyment, or makes the motor vehicle available for such private use or enjoyment. Further details of the Arrangement are set out in the paragraphs below.

1. ORIX's 12 x 12 x 12-month lease product ("the Product") provides for a 12-month lease of a motor vehicle, with the possibility of the lessee entering into up to two further leases of that vehicle, each further lease being for a period of 12-months. The lease or leases granted under ORIX's 12 x 12 x 12-month lease product are subject to the terms and conditions contained in ORIX's Master Hire Agreement ("MHA") and Identification Schedule ("IDS").

2. There are no penalties imposed on the lessee if they do not take up one or both of the possible further leases of the vehicle under the Product.

3. There is no provision in the lease documentation that offers an incentive to the lessee if they take up one or both of the possible further leases of the vehicle under the Product.

4. The leasing process under the Product is as follows:

   - After initial consultation to determine the leasing needs of the customer, ORIX will prepare a vehicle quotation outlining details of the vehicle and accessories, the lease term, the lease rate, the expected usage, the services included in the lease, and estimated market values of the vehicle at the commencement of each 12-month period under the Product. The lease term in the quote is described as *"a 12-month contract with the option of 2 further leases of 12 and 12-months respectively"*. The lease rates quoted in respect of the two possible further leases are stipulated in the quote as being estimates only. At this time a credit form application will also be required to be completed if the lessee is a new customer.
   - Once the lessee's credit application is approved, an MHA is drafted and sent to the lessee. The MHA contains all the terms and conditions under which ORIX will grant the lease of a vehicle to the lessee. Any vehicle subsequently leased to the customer will be subject to the terms and conditions of the MHA.
   - If the lessee accepts the quotation and wishes to lease the vehicle, a Vehicle Request Form ("VRF") is prepared by ORIX and sent to the customer for signing. Once this form is signed, an order is placed with the vehicle dealer by ORIX.
   - Upon delivery of the vehicle, the customer signs an acknowledgment of receipt of delivery, and the vehicle contract is loaded onto the ORIX system. ORIX then issues an IDS outlining the specific details of that individual vehicle lease. In respect of this Product, the IDS specifies a 12-month lease term.
   - The MHA requires that an IDS must be completed in respect of each vehicle hired by ORIX to the customer, and provides that each IDS is required to be read and construed by reference to the MHA, as if each provision of the MHA were set out in the particular IDS.
   - There is no obligation or right of renewal for either the lessee or the lessor in respect of the lease.
   - Prior to the end of each of the first two 12-month leases taken up under the Product, ORIX will advise the lessee in writing that the vehicle lease is due to expire, and ask whether the lessee requires a further 12-month lease of that vehicle. At this point the lessee is also required to provide the vehicle's odometer reading, and an excess kilometre charge (if any) is calculated.
   - The lessee may choose to roll over the excess kilometre charge (if any), so that it may be paid by way of instalments, together with the lease payments for the next 12-month lease under the Product, if such a further lease is taken up, as a convenient means of paying the charge. Similarly, the lessee may choose to roll over any refund for kilometres unused into the lease payments for the next 12-month lease under the Product, if such a further lease is taken up.

- The projected market values and lease rates for subsequent 12-month leases provided in the initial vehicle quotation are estimates only, taking into account anticipated depreciation on that vehicle in any prior leasing period. ORIX may seek a revision of the market value and/or lease rate prior to commencement of any subsequent lease, and is not bound to the initial quotation for any subsequent lease.
- If the lessee does not wish to lease the vehicle for a further 12-month term, the vehicle is returned to ORIX upon expiry of the lease, and any excess kilometre charge is to be paid to ORIX by the lessee, or any refund for kilometres unused is to be paid to the lessee by ORIX.

5. The total term of the leases under the Product does not exceed 75% of the estimated useful life of the vehicle.

## Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

a) The motor vehicle leased by the lessee under the Product is provided to an employee of the lessee, for their private use or enjoyment, or made available for such private use or enjoyment.

b) The lease does not constitute a "finance lease", as defined in section OB 1 of the Act.

c) Any rental rate for a lease period under the Product is the same rental rate that would be offered to any other customer for that particular vehicle and lease period (taking into account the customer credit rating, customer fleet size, kilometre allowances, options, accessories, and general service components of the lease including vehicle maintenance) irrespective of whether a previous lease for that vehicle was entered into by that lessee.

d) There is no contract, agreement, arrangement, plan, undertaking or understanding (whether enforceable or unenforceable) at the time of entering into any lease under the Product:

- that any party will, or will if requested, renew, extend or vary the lease term
- that the parties will enter into a further lease in respect of the vehicle
- that there will be penalties for choosing not to enter into a further lease in respect of the vehicle, or
- concerning, or otherwise affecting the Arrangement, other than the vehicle quotation, the MHA, the VRF and the IDS.

e) All calculations, factors, and/or projections which are taken into account in formulating the rental rates applicable to each lease are not in any way based on a lease of the relevant motor vehicle for more than 12-months.

f) ORIX may adjust the projected market value and lease rate prior to the commencement of any subsequent period under the Product, and is not bound by the initial quotation in this regard.

g) The lease term in the quote is described as *"a 12-month contract with the option of 2 further leases of 12 and 12-months respectively"*.

h) The lease rates quoted in respect of the two possible further leases are stipulated in the quote as being estimates only.

i) The number of replacement tyres stipulated in the IDS for the first lease period under the Product will reflect the number in the corresponding quote, and the lessee is entitled to the full amount thereof in that lease period, irrespective of whether a further lease of the vehicle is taken up. The number of replacement tyres for any subsequent lease periods will be negotiated at the commencement of that period, and will be reflected in the lease rate for that period.

j) Any surplus replacement tyre allowance is forfeited, without refund, at the conclusion of a lease, if no subsequent lease term is taken up.

k) ORIX and the lessee are not associated persons pursuant to section OD 7.

## 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:

- The market value of motor vehicles leased under the Arrangement, for the purposes of calculating the value of any fringe benefit arising in respect of those vehicles, in accordance with section CI 3(1) and clause 1(c) of Schedule 2 Part A, is determined on the date on which each 12-month lease commences.
- Section CI 2 does not apply in respect of the Arrangement.
- Section GC 15 does not apply in respect of the Arrangement.
- Section GC 17 does not apply in respect of the Arrangement.
- Section BG 1 does not apply in respect of the Arrangement.

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

This Ruling will apply for the period 14 February 2003 to 14 February 2006.

This Ruling is signed by me on the 14th day of February 2003.

**Martin Smith**

General Manager (Adjudication & Rulings)

# PRODUCT RULING – BR PRD 03/04

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 ORIX New Zealand Limited ("ORIX").

## Taxation Laws

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

This Ruling applies in respect of sections CI 2, GC 15, GC 17 and BG 1, and Schedule 2, Part A clause 1(c).

## The Arrangement to which this Ruling applies

The Arrangement is the leasing of a motor vehicle by ORIX under its 12 x 12 x 12 x 9-month lease product, to a lessee who in turn provides the motor vehicle to an employee of the lessee, for their private use or enjoyment, or makes the motor vehicle available for such private use or enjoyment. Further details of the Arrangement are set out in the paragraphs below.

1. ORIX's 12 x 12 x 12 x 9-month lease product ("the Product") provides for a 12-month lease of a motor vehicle, with the possibility of the lessee entering into up to three further leases of that vehicle, each of the first two further leases being for a period of 12-months, and the third further lease being for a period of 9-months. The lease or leases granted under ORIX's 12 x 12 x 12 x 9-month lease product are subject to the terms and conditions contained in ORIX's Master Hire Agreement ("MHA") and Identification Schedule ("IDS").

2. There are no penalties imposed on the lessee if they do not take up one, two or all three of the possible further leases of the vehicle under the Product.

3. There is no provision in the lease documentation that offers an incentive to the lessee if they take up one, two or all three of the possible further leases of the vehicle under the Product.

4. The leasing process under the Product is as follows:

    - After initial consultation to determine the leasing needs of the customer, ORIX will prepare a vehicle quotation outlining details of the vehicle and accessories, the lease term, the lease rate, the expected usage, the services included in the lease, and estimated market values of the vehicle at the commencement of

each 12-(or 9-) month period under the Product. The lease term in the quote is described as *"a 12-month contract with the option of 3 further leases of 12, 12 and 9-months respectively"*. The lease rates quoted in respect of the three possible further leases are stipulated in the quote as being estimates only. At this time a credit form application will also be required to be completed if the lessee is a new customer.

- Once the lessee's credit application is approved, an MHA is drafted and sent to the lessee. The MHA contains all the terms and conditions under which ORIX will grant the lease of a vehicle to the lessee. Any vehicle subsequently leased to the customer will be subject to the terms and conditions of the MHA.
- If the lessee accepts the quotation and wishes to lease the vehicle, a Vehicle Request Form ("VRF") is prepared by ORIX and sent to the customer for signing. Once this form is signed, an order is placed with the vehicle dealer by ORIX.
- Upon delivery of the vehicle, the customer signs an acknowledgment of receipt of delivery, and the vehicle contract is loaded onto the ORIX system. ORIX then issues an IDS outlining the specific details of that individual vehicle lease. In respect of this Product, the IDS specifies a 12-(or, in the case of the third further possible lease, 9-) month lease term.
- The MHA requires that an IDS must be completed in respect of each vehicle hired by ORIX to the customer, and provides that each IDS is required to be read and construed by reference to the MHA, as if each provision of the MHA were set out in the particular IDS.
- There is no obligation or right of renewal for either the lessee or the lessor in respect of the lease.
- Prior to the end of each of the 12-month leases taken up under the Product, ORIX will advise the lessee in writing that the vehicle lease is due to expire, and ask whether the lessee requires a further 12-(or, in the case of the third further possible lease, 9-) month lease of that vehicle. At this point the lessee is also required to provide the vehicle's odometer reading, and an excess kilometre charge (if any) is calculated.
- The lessee may choose to roll over the excess kilometre charge (if any), so that it may be paid by way of instalments, together with the lease payments for the next 12-(or 9-) month lease under the Product, if such a further lease is taken up, as a convenient means of paying the charge. Similarly, the lessee may choose to roll over any refund for kilometres unused into the lease payments for the next 12-(or 9-) month lease under the Product, if such a further lease is taken up.
- The projected market values and lease rates for subsequent 12-(or 9-) month leases provided in the initial vehicle quotation are estimates only, taking into account anticipated depreciation on that vehicle in any prior leasing period. ORIX may seek a revision of the market value and/or lease rate prior to commencement of any subsequent lease, and is not bound to initial quotation for any subsequent lease.
- If the lessee does not wish to lease the vehicle for a further 12-(or 9-) month term, the vehicle is returned to ORIX upon expiry of the lease, and any excess kilometre charge is to be paid to ORIX by the lessee, or any refund for kilometres unused is to be paid to the lessee by ORIX.

5. The total term of the leases under the Product does not exceed 75% of the estimated useful life of the vehicle.

## Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

a) The motor vehicle leased by the lessee under the Product is provided to an employee of the lessee, for their private use or enjoyment, or made available for such private use or enjoyment.

b) The lease does not constitute a "finance lease", as defined in section OB 1 of the Act.

c) Any rental rate for a lease period under the Product is the same rental rate that would be offered to any other customer for that particular vehicle and lease period (taking into account the customer credit rating, customer fleet size, kilometre allowances, options, accessories, and general service components of the lease including vehicle maintenance) irrespective of whether a previous lease for that vehicle was entered into by that lessee.

d) There is no contract, agreement, arrangement, plan, undertaking or understanding (whether enforceable or unenforceable) at the time of entering into any lease under the Product:

- that any party will, or will if requested, renew, extend or vary the lease term
- that the parties will enter into a further lease in respect of the vehicle
- that there will be penalties for choosing not to enter into a further lease in respect of the vehicle, or

- concerning, or otherwise affecting the Arrangement, other than the vehicle quotation, the MHA, the VRF and the IDS.

e) All calculations, factors, and/or projections which are taken into account in formulating the rental rates applicable to each lease are not in any way based on a lease of the relevant motor vehicle for more than 12-(or, in the case of the third further possible lease, 9-)months.

f) ORIX may adjust the projected market value and lease rate prior to the commencement of any subsequent period under the Product, and is not bound by the initial quotation in this regard.

g) The lease term in the quote is described as *"a 12-month contract with the option of 3 further leases of 12, 12 and 9 months respectively"*.

h) The lease rates quoted in respect of the three possible further leases are stipulated in the quote as being estimates only.

i) The number of replacement tyres stipulated in the IDS for the first lease period under the Product will reflect the number in the corresponding quote, and the lessee is entitled to the full amount thereof in that lease period, irrespective of whether a further lease of the vehicle is taken up. The number of replacement tyres for any subsequent lease periods will be negotiated at the commencement of that period, and will be reflected in the lease rate for that period.

j) Any surplus replacement tyre allowance is forfeited, without refund, at the conclusion of a lease, if no subsequent lease term is taken up.

k) ORIX and the lessee are not associated persons pursuant to section OD 7.

## 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:

- The market value of motor vehicles leased under the Arrangement, for the purposes of calculating the value of any fringe benefit arising in respect of those vehicles, in accordance with section CI 3(1) and clause 1(c) of Schedule 2 Part A, is determined on the date on which each 12-(or 9-) month lease commences.
- Section CI 2 does not apply in respect of the Arrangement.
- Section GC 15 does not apply in respect of the Arrangement.
- Section GC 17 does not apply in respect of the Arrangement.
- Section BG 1 does not apply in respect of the Arrangement.

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

This Ruling will apply for the period 14 February 2003 to 14 February 2006.

This Ruling is signed by me on the 14th day of February 2003.

**Martin Smith**

General Manager (Adjudication & Rulings)

# PRODUCT RULING – BR PRD 03/05

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 National Mutual Funds Management Limited ("NMFML").

## Taxation Laws

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

This Ruling applies in respect of sections CF 2, CF 3, CF 8, CG 1, CG 4, CG 6, CG 7, CG 13, CG 15 and the definitions of "accounting period", "non-taxable bonus issue" 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 unit holders in the Wholesale Global Equity Value Fund ("the Fund"), an Australian resident unit trust, pursuant to a constitution dated 12 October 2001 and a Supplemental Deed which will be the same as, or not materially different from the draft deed provided to Inland Revenue on 23 January 2003 (together the "Constitution"), a prospectus (the "Prospectus"), and a New Zealand investment statement (as required by the Securities Act 1978) (the "Investment Statement"). Further details of the Arrangement are set out in the paragraphs below.

1. The Fund is a managed investment scheme. National Mutual Assets Management Limited (AXA New Zealand) is the promoter of the Fund. The Fund is an Australian resident unit trust, and a unit trust for New Zealand tax purposes.

2. Under Australian law there is now a single "Responsible Entity" for a managed investment scheme, rather than a trustee and a manager. The Responsible Entity performs the functions of both trustee and manager. The Responsible Entity for the Funds is NMFML (an Australian resident company).

3. The central management and control of the Fund is in Australia.

4. The Fund has two classes of units—Class A and Class B. Class A unit holders have a choice as to whether to reinvest distributions or to have distributions paid out to them. Distributions are reinvested unless the unit holder requests otherwise on their application form.

5. Class B units will be issued on the basis that some of the income earned by the Fund will be automatically applied to the extent determined by the Responsible Entity to the issue of new Class B units in the Fund. The Responsible Entity may also make cash distributions to the Class B unit holders at its sole discretion.

6. The investment objective of the Fund is to provide unit holders with long-term capital growth and to outperform the Morgan Stanley Capital International World Index (total returns with gross dividends reinvested in Australian dollar terms) after costs and over rolling five year periods.

7. The Fund will invest predominantly in global equities but may also invest in derivative instruments and other managed investment schemes or investment companies.

8. The Fund is a wholesale investment. Investors can gain exposure to the Fund via an investment or reporting service such as a master trust, wrap account, investor-directed portfolio service or nominee or custody services. These services are the registered unit holders of the Fund.

9. It is possible for larger individual investors to invest in their own name if they meet the minimum investment levels. The current minimum investment level is AUD$100,000 for the initial investment and AUD$1,000 for additional investments.

10. NMFML, in its capacity as Responsible Entity for the Fund, will at all times during the accounting periods covered by the ruling be liable to income tax in Australia by reason of domicile, residence, place of incorporation or place of management in Australia.

**The units**

11. Each unit entitles an investor to an equal interest in the Fund. However, it does not confer an interest in any particular asset of the Fund or the right to interfere with the management of the Fund. Specifically investors do not have:

    - Any entitlement to, or any entitlement to acquire, any shares in a foreign company held by the Fund
    - Any entitlement to, or any entitlement to acquire, a right to vote in respect of a foreign company in which the Fund holds shares
    - Any entitlement to, or any entitlement to acquire, a right to receive, or to have dealt with on their behalf, any income of any company in which the Fund holds shares
    - Any entitlement to, or any entitlement to acquire, a right to receive, or have dealt with on their behalf, any assets of any company in which the Fund holds shares.

12. All transactions between the investors and the Fund will occur at market value.

## Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

a) The Responsible Entity will not make an election that the issue of the additional units shall be treated as a taxable bonus issue under section CF 8.

b) The Responsible Entity will act solely in a capacity of trustee and not as an agent of unit holders.

c) The Fund calculates its income liable to tax without applying any of the features specified in Part B of Schedule 3 of the Act.

d) The Responsible Entity is resident in Australia for Australian tax purposes.

e) The central management and control of the Fund is in Australia.

f) At the date of issue of this ruling, the Fund is subject to the provisions of Division 6 of the Income Tax Assessment Act 1936 (Aus) (the "ITAA").

g) At the date of issue of this ruling, the Responsible Entity is liable to pay tax under Division 6 of the ITAA on the worldwide income of the Fund to which the beneficiaries of the Fund are not presently entitled.

h) There will be no material changes to the way the Fund is taxed in Australia for the period of this ruling.

i) The Fund will at all times during the accounting periods covered by this ruling be a unit trust resident in Australia for Australian tax purposes.

j) The Fund is not resident in New Zealand for tax purposes.

k) The Fund is not a foreign entity or a member of a class of foreign entities specified in Part B of Schedule 4 of the Act.

## 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:

- Where units are issued on the terms that the Responsible Entity has the power to reinvest the whole or part of the income entitlements in additional units, the issue of additional units to unit holders will constitute a non-taxable bonus issue under section CF 8(b) and the definition of "non-taxable bonus issue" in section OB 1.
- Additional units will be excluded from the definition of a dividend in terms of section CF 3(1)(a) of the Act.
- If the Fund is a Controlled Foreign Company ("CFC") (as defined in section CG 4):
  - A New Zealand resident investor will not derive attributed foreign income or loss in respect of the Fund pursuant to section CG 1, by virtue of section CG 13.
  - A New Zealand resident 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 Fund will derive foreign investment fund (FIF) income or loss of the Fund pursuant to section CG 1, attributed to the investor under 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 Fund for any "accounting period" (as defined in section OB 1) will not derive FIF income or loss under section CG 7(5).
- If the Fund is a CFC as defined in section CG 4 (the first tier CFC) and it holds "qualified control interests" (as defined in section CG 4(6)) in another foreign company and as a consequence the other foreign company (the underlying CFC) is a CFC:
  - Subject to section CG 13(1), a New Zealand resident investor in the Fund 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 underlying CFC will derive attributed foreign income or loss in respect of the underlying CFC under section CG 1.
  - A New Zealand resident investor in the Fund 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 underlying CFC, will derive FIF income or loss of the underlying CFC under section CG 1, attributed to the investor under section CG 7(5).
  - A New Zealand resident investor in the Fund who does not have 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 will not derive FIF income or loss of the underlying CFC under section CG 1, attributed to the investor under section CG 7(5).

[The above three conclusions apply equally down the chain of CFCs on the basis of the underlying foreign company being the first tier CFC by virtue of section CG 4(5)(b).]

- If a Fund is not a CFC, or the Fund is a CFC and the investor does not have an "income interest of 10% or greater" (as defined in section OB 1) in the Fund for any "accounting period" (as defined in section OB 1), a New Zealand resident investor's interest in the Fund will not constitute an interest in an FIF by virtue of the exemption contained in section CG 15(2)(b).

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

This Ruling will apply for the period 1 April 2002 to 31 March 2007.

This Ruling is signed by me on the 21st day of February 2003.

**John Mora**

Assistant General Manager (Adjudication & Rulings)

# PRODUCT RULING – BR PRD 03/06

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 National Mutual Funds Management Limited (NMFML).

## Taxation Laws

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

This Ruling applies in respect of sections CF 2, CF 3, CF 8, CG 1, CG 4, CG 6, CG 7, CG 13, CG 15 and the definitions of "accounting period", "non-taxable bonus issue" 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 unit holders in the Wholesale US Equity Premier Growth Fund ("the Fund"), an Australian resident unit trust, pursuant to a constitution dated 29 January 2001 and a Supplemental Deed which will be the same as, or not materially different from the draft deed provided to Inland Revenue on 23 January 2003 (the "Constitution"), a prospectus (the "Prospectus"), and a New Zealand investment statement (as required by the Securities Act 1978) (the "Investment Statement"). Further details of the Arrangement are set out in the paragraphs below.

1. The Fund is a managed investment scheme. National Mutual Assets Management Limited (AXA New Zealand) is the promoter of the Fund. The Fund is an Australian resident unit trust, and a unit trust for New Zealand tax purposes.

2. Under Australian law there is now a single "Responsible Entity" for a managed investment scheme, rather than a trustee and a manager. The Responsible Entity performs the functions of both trustee and manager. The Responsible Entity for the Funds is NMFML (an Australian resident company).

3. The central management and control of the Fund is in Australia.

4. The Fund has two classes of units—Class A and Class B. Class A unit holders have a choice as to whether to reinvest distributions or to have distributions paid out to them. Distributions are reinvested unless the unit holder requests otherwise on their application form.

5. Class B units will be issued on the basis that some of the income earned by the Fund will be automatically applied to the extent determined by the Responsible Entity to the issue of new Class B units in the Fund. The Responsible Entity may also make cash distributions to the Class B unit holders at its sole discretion.

6. The investment objective of the Fund is to provide unit holders with long term capital growth and to outperform the S&P 500 Index (Total Returns) after costs and over rolling five year periods.

7. The Fund will invest predominantly in United States equities but may also invest in non-US companies listed on US share markets, derivative instruments and other managed investment schemes or investment companies.

8. The Fund is a wholesale investment. Investors can gain exposure to the Fund via an investment or reporting service such as a master trust, wrap account, investor directed portfolio service or nominee or custody services. These services are the registered unit holders of the Fund.

9. It is possible for larger individual investors to invest in their own name if they meet the minimum investment levels. The current minimum investment level is AUD$100,000 for the initial investment and AUD$1,000 for additional investments.

10. NMFML, in its capacity as Responsible Entity for the Fund, will at all times during the accounting periods covered by the ruling be liable to income tax in Australia by reason of domicile, residence, place of incorporation or place of management in Australia.

**The units**

11. Each unit entitles an investor to an equal interest in the Fund. However, it does not confer an interest in any particular asset of the Fund or the right to interfere with the management of the Fund. Specifically investors do not have:

    - Any entitlement to, or any entitlement to acquire, any shares in a foreign company held by the Fund
    - Any entitlement to, or any entitlement to acquire, a right to vote in respect of a foreign company in which the Fund holds shares
    - Any entitlement to, or any entitlement to acquire, a right to receive, or to have dealt with on their behalf, any income of any company in which the Fund holds shares
    - Any entitlement to, or any entitlement to acquire, a right to receive, or have dealt with on their behalf, any assets of any company in which the Fund holds shares.

12. All transactions between the investors and the Fund will occur at market value.

## Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

a) The Responsible Entity will not make an election that the issue of the additional units shall be treated as a taxable bonus issue under section CF 8.

b) The Responsible Entity will act solely in a capacity of trustee and not as an agent of unit holders.

c) The Fund calculates its income liable to tax without applying any of the features specified in Part B of Schedule 3 of the Act.

d) The Responsible Entity is resident in Australia for Australian tax purposes.

e) The central management and control of the Fund is in Australia.

f) At the date of issue of this ruling, the Fund is subject to the provisions of Division 6 of the Income Tax Assessment Act 1936 (Aus) ("ITAA").

g) At the date of issue of this ruling, the Responsible Entity is liable to pay tax under Division 6 of the ITAA on the worldwide income of the Fund to which the beneficiaries of the Fund are not presently entitled.

h) There will be no material changes to the way the Fund is taxed in Australia for the period of this ruling.

i) The Fund will at all times during the accounting periods covered by this ruling be a unit trust resident in Australia for Australian tax purposes.

j) The Fund is not resident in New Zealand for tax purposes.

k) The Fund is not a foreign entity or a member of a class of foreign entities specified in Part B of Schedule 4 of the Act.

## 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:

- Where units are issued on the terms that the Responsible Entity has the power to reinvest the whole or part of the income entitlements in additional units, the issue of additional units to unit holders will constitute a non-taxable bonus issue under section CF 8(b) and the definition of "non-taxable bonus issue" in section OB 1.

- Additional units will be excluded from the definition of a dividend in terms of section CF 3(1)(a) of the Act.
- If the Fund is a Controlled Foreign Company ("CFC") (as defined in section CG 4):
  - A New Zealand resident investor will not derive attributed foreign income or loss in respect of the Fund pursuant to section CG 1, by virtue of section CG 13.
  - A New Zealand resident 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 Fund will derive foreign investment fund (FIF) income or loss of the Fund pursuant to section CG 1, attributed to the investor under 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 Fund for any "accounting period" (as defined in section OB 1) will not derive FIF income or loss under section CG 7(5).
- If the Fund is a CFC as defined in section CG 4 (the first tier CFC) and it holds "qualified control interests" (as defined in section CG 4(6)) in another foreign company and as a consequence the other foreign company (the underlying CFC) is a CFC:
  - Subject to section CG 13(1), a New Zealand resident investor in the Fund 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 underlying CFC will derive attributed foreign income or loss in respect of the underlying CFC under section CG 1.
  - A New Zealand resident investor in the Fund 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 underlying CFC, will derive FIF income or loss of the underlying CFC under section CG 1, attributed to the investor under section CG 7(5).
  - A New Zealand resident investor in the Fund who does not have 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 will not derive FIF income or loss of the underlying CFC under section CG 1, attributed to the investor under section CG 7(5).

  [The above three conclusions apply equally down the chain of CFCs on the basis of the underlying foreign company being the first tier CFC by virtue of section CG 4(5)(b).]
- If a Fund is not a CFC, or the Fund is a CFC and the investor does not have an "income interest of 10% or greater" (as defined in section OB 1) in the Fund for any "accounting period" (as defined in section OB 1), a New Zealand resident investor's interest in the Fund will not constitute an interest in an FIF by virtue of the exemption contained in section CG 15(2)(b).

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

This Ruling will apply for the period 1 April 2002 to 31 March 2007.

This Ruling is signed by me on the 21st day of February 2003.

**John Mora**

Assistant General Manager (Adjudication & Rulings)

# PRODUCT RULING – BR PRD 03/07

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 National Mutual Funds Management Limited ("NMFML").

## Taxation Laws

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

This Ruling applies in respect of sections CF 2, CF 3, CF 8, CG 1, CG 4, CG 6, CG 7, CG 13, CG 15 and the definitions of "accounting period", "non-taxable bonus issue" 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 unit holders in the Wholesale Global Equity Healthcare Fund ("the Fund"), an Australian resident unit trust, pursuant to a constitution dated 29 January 2001 and a Supplemental Deed which will be the same as, or not materially different from the draft deed provided to Inland Revenue on 23 January 2003 (together the "Constitution"), a prospectus (the "Prospectus"), and a New Zealand investment statement (as required by the Securities Act 1978) (the "Investment Statement"). Further details of the Arrangement are set out below.

1. The Fund is a managed investment scheme. National Mutual Assets Management Limited (AXA New Zealand) is the promoter of the Fund. The Fund is an Australian resident unit trust, and a unit trust for New Zealand tax purposes.

2. Under Australian law there is now a single "Responsible Entity" for a managed investment scheme, rather than a trustee and a manager. The Responsible Entity performs the functions of both trustee and manager. The Responsible Entity for the Funds is NMFML (an Australian resident company).

3. The central management and control of the Fund is in Australia.

4. The Fund has two classes of units—Class A and Class B. Class A unit holders have a choice as to whether to reinvest distributions or to have distributions paid out to them. Distributions are reinvested unless the unit holder requests otherwise on their application form.

5. Class B units will be issued on the basis that some of the income earned by the Fund will be automatically applied to the extent determined by the Responsible Entity to the issue of new Class B units in the Fund. The Responsible Entity may also make cash distributions to the Class B unit holders at its sole discretion.

6. The investment objective of the Fund is to provide unit holders with long-term capital growth and to outperform the S&P 500 Health Care Index (Total Return), after costs and over rolling five-year periods.

7. The Fund will invest predominantly in global health care product and service company equities, but may also invest in derivative instruments and other managed investment schemes or investment companies.

8. The Fund is a wholesale investment. Investors can gain exposure to the Fund via an investment or reporting service such as a master trust, wrap account, investor-directed portfolio service or nominee or custody services. These services are the registered unit holders of the Fund.

9. It is possible for larger individual investors to invest in their own name if they meet the minimum investment levels. The current minimum investment level is AUD$100,000 for the initial investment and AUD$1,000 for additional investments.

10. NMFML, in its capacity as Responsible Entity for the Fund, will at all times during the accounting periods covered by the ruling be liable to income tax in Australia by reason of domicile, residence, place of incorporation or place of management in Australia.

**The units**

11. Each unit entitles an investor to an equal interest in the Fund. However, it does not confer an interest in any particular asset of the Fund or the right to interfere with the management of the Fund. Specifically investors do not have:

    - Any entitlement to, or any entitlement to acquire, any shares in a foreign company held by the Fund
    - Any entitlement to, or any entitlement to acquire, a right to vote in respect of a foreign company in which the Fund holds shares
    - Any entitlement to, or any entitlement to acquire, a right to receive, or to have dealt with on their behalf, any income of any company in which the Fund holds shares
    - Any entitlement to, or any entitlement to acquire, a right to receive, or have dealt with on their behalf, any assets of any company in which the Fund holds shares.

12. All transactions between the investors and the Fund will occur at market value.

## Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

a) The Responsible Entity will not make an election that the issue of the additional units shall be treated as a taxable bonus issue under section CF 8.

b) The Responsible Entity will act solely in a capacity of trustee and not as an agent of unit holders.

c) The Fund calculates its income liable to tax without applying any of the features specified in Part B of Schedule 3 of the Act.

d) The Responsible Entity is resident in Australia for Australian tax purposes.

e) The central management and control of the Fund is in Australia.

f) At the date of issue of this ruling, the Fund is subject to the provisions of Division 6 of the Income Tax Assessment Act 1936 (Aus) ("ITAA").

g) At the date of issue of this ruling, the Responsible Entity is liable to pay tax under Division 6 of the ITAA on the worldwide income of the Fund to which the beneficiaries of the Fund are not presently entitled.

h) There will be no material changes to the way the Fund is taxed in Australia for the period of this ruling.

i) The Fund will at all times during the accounting periods covered by this ruling be a unit trust resident in Australia for Australian tax purposes.

j) The Fund is not resident in New Zealand for tax purposes.

k) The Fund is not a foreign entity or a member of a class of foreign entities specified in Part B of Schedule 4 of the Act.

## 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:

- Where units are issued on the terms that the Responsible Entity has the power to reinvest the whole or part of the income entitlements in additional units, the issue of additional units to unit holders will constitute a non-taxable bonus issue under section CF 8(b) and the definition of "non-taxable bonus issue" in section OB 1.
- Additional units will be excluded from the definition of a dividend in terms of section CF 3(1)(a) of the Act.
- If the Fund is a Controlled Foreign Company ("CFC") (as defined in section CG 4):
  - A New Zealand resident investor will not derive attributed foreign income or loss in respect of the Fund pursuant to section CG 1, by virtue of section CG 13.
  - A New Zealand resident 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 Fund will derive foreign investment fund (FIF) income or loss of the Fund pursuant to section CG 1, attributed to the investor under 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 Fund for any "accounting period" (as defined in section OB 1) will not derive FIF income or loss under section CG 7(5).
- If the Fund is a CFC as defined in section CG 4 (the first tier CFC) and it holds "qualified control interests" (as defined in section CG 4(6)) in another foreign company and as a consequence the other foreign company (the underlying CFC) is a CFC:
  - Subject to section CG 13(1), a New Zealand resident investor in the Fund 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 underlying CFC will derive attributed foreign income or loss in respect of the underlying CFC under section CG 1.
  - A New Zealand resident investor in the Fund 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 underlying CFC, will derive FIF income or loss of the underlying CFC under section CG 1, attributed to the investor under section CG 7(5).
  - A New Zealand resident investor in the Fund who does not have 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 will not derive FIF income or loss of the underlying CFC under section CG 1, attributed to the investor under section CG 7(5).

[The above three conclusions apply equally down the chain of CFCs on the basis of the underlying foreign company being the first tier CFC by virtue of section CG 4(5)(b).]

- If a Fund is not a CFC, or the Fund is a CFC and the investor does not have an "income interest of 10% or greater" (as defined in section OB 1) in the Fund for any "accounting period" (as defined in section OB 1), a New Zealand resident investor's interest in the Fund will not constitute an interest in an FIF by virtue of the exemption contained in section CG 15(2)(b).

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

This Ruling will apply for the period 1 April 2002 to 31 March 2007.

This Ruling is signed by me on the 21st day of February 2003.

**John Mora**

Assistant General Manager (Adjudication & Rulings)

# PRODUCT RULING – BR PRD 03/08

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 National Mutual Funds Management Limited ("NMFML").

## Taxation Laws

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

This Ruling applies in respect of sections CF 2, CF 3, CF 8, CG 1, CG 4, CG 6, CG 7, CG 13, CG 15 and the definitions of "accounting period", "non-taxable bonus issue" 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 unit holders in the Wholesale Global Equity Technology Fund ("the Fund"), an Australian resident unit trust, pursuant to a constitution dated 29 January 2001 and a Supplemental Deed which will be the same as, or not materially different from the draft deed provided to Inland Revenue on 23 January 2003 (together the "Constitution"), a prospectus (the "Prospectus"), and a New Zealand investment statement (as required by the Securities Act 1978) (the "Investment Statement"). Further details of the Arrangement are set out in the paragraphs below.

1. The Fund is a managed investment scheme. National Mutual Assets Management Limited (AXA New Zealand) is the promoter of the Fund. The Fund is an Australian resident unit trust, and a unit trust for New Zealand tax purposes.

2. Under Australian law there is now a single "Responsible Entity" for a managed investment scheme, rather than a trustee and a manager. The Responsible Entity performs the functions of both trustee and manager. The Responsible Entity for the Funds is NMFML (an Australian resident company).

3. The central management and control of the Fund is in Australia.

4. The Fund has two classes of units—Class A and Class B. Class A unit holders have a choice as to whether to reinvest distributions or to have distributions paid out to them. Distributions are reinvested unless the unit holder requests otherwise on their application form.

5. Class B units will be issued on the basis that some of the income earned by the Fund will be automatically applied to the extent determined by the Responsible Entity to the issue of new Class B units in the Fund. The Responsible Entity may also make cash distributions to the Class B unit holders at its sole discretion.

6. The investment objective of the Fund is to provide unit holders with long-term capital growth.

7. The Fund will invest predominantly in global technology company equities, but may also invest in derivative instruments and other managed investment schemes or investment companies.

8. The Fund is a wholesale investment. Investors can gain exposure to the Fund via an investment or reporting service such as a master trust, wrap account, investor directed portfolio service or nominee or custody services. These services are the registered unit holders of the Fund.

9. It is possible for larger individual investors to invest in their own name if they meet the minimum investment levels. The current minimum investment level is AUD$100,000 for the initial investment and AUD$1,000 for additional investments.

10. NMFML, in its capacity as Responsible Entity for the Fund, will at all times during the accounting periods covered by the ruling be liable to income tax in Australia by reason of domicile, residence, place of incorporation or place of management in Australia.

**The units**

11. Each unit entitles an investor to an equal interest in the Fund. However, it does not confer an interest in any particular asset of the Fund or the right to interfere with the management of the Fund. Specifically investors do not have:

    - Any entitlement to, or any entitlement to acquire, any shares in a foreign company held by the Fund
    - Any entitlement to, or any entitlement to acquire, a right to vote in respect of a foreign company in which the Fund holds shares
    - Any entitlement to, or any entitlement to acquire, a right to receive, or to have dealt with on their behalf, any income of any company in which the Fund holds shares
    - Any entitlement to, or any entitlement to acquire, a right to receive, or have dealt with on their behalf, any assets of any company in which the Fund holds shares.

12. All transactions between the investors and the Fund will occur at market value.

## Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

a) The Responsible Entity will not make an election that the issue of the additional units shall be treated as a taxable bonus issue under section CF 8.

b) The Responsible Entity will act solely in a capacity of trustee and not as an agent of unit holders.

c) The Fund calculates its income liable to tax without applying any of the features specified in Part B of Schedule 3 of the Act.

d) The Responsible Entity is resident in Australia for Australian tax purposes.

e) The central management and control of the Fund is in Australia.

f) At the date of issue of this ruling, the Fund is subject to the provisions of Division 6 of the Income Tax Assessment Act 1936 (Aus) (the "ITAA").

g) At the date of issue of this ruling, the Responsible Entity is liable to pay tax under Division 6 of the ITAA on the worldwide income of the Fund to which the beneficiaries of the Fund are not presently entitled.

h) There will be no material changes to the way the Fund is taxed in Australia for the period of this ruling.

i) The Fund will at all times during the accounting periods covered by this ruling be a unit trust resident in Australia for Australian tax purposes.

j) The Fund is not resident in New Zealand for tax purposes.

k) The Fund is not a foreign entity or a member of a class of foreign entities specified in Part B of Schedule 4 of the Act.

## 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:

- Where units are issued on the terms that the Responsible Entity has the power to reinvest the whole or part of the income entitlements in additional units, the issue of additional units to unit holders will constitute a non-taxable bonus issue under section CF 8(b) and the definition of "non-taxable bonus issue" in section OB 1.

- Additional units will be excluded from the definition of a dividend in terms of section CF 3(1)(a) of the Act.
- If the Fund is a Controlled Foreign Company ("CFC") (as defined in section CG 4):
  - A New Zealand resident investor will not derive attributed foreign income or loss in respect of the Fund pursuant to section CG 1, by virtue of section CG 13.
  - A New Zealand resident 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 Fund will derive foreign investment fund (FIF) income or loss of the Fund pursuant to section CG 1, attributed to the investor under 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 Fund for any "accounting period" (as defined in section OB 1) will not derive FIF income or loss under section CG 7(5).
- If the Fund is a CFC as defined in section CG 4 (the first tier CFC) and it holds "qualified control interests" (as defined in section CG 4(6)) in another foreign company and as a consequence the other foreign company (the underlying CFC) is a CFC:
  - Subject to section CG 13(1), a New Zealand resident investor in the Fund 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 underlying CFC will derive attributed foreign income or loss in respect of the underlying CFC under section CG 1.
  - A New Zealand resident investor in the Fund 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 underlying CFC, will derive FIF income or loss of the underlying CFC under section CG 1, attributed to the investor under section CG 7(5).
  - A New Zealand resident investor in the Fund who does not have 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 will not derive FIF income or loss of the underlying CFC under section CG 1, attributed to the investor under section CG 7(5).

  [The above three conclusions apply equally down the chain of CFCs on the basis of the underlying foreign company being the first tier CFC by virtue of section CG 4(5)(b).]
- If a Fund is not a CFC, or the Fund is a CFC and the investor does not have an "income interest of 10% or greater" (as defined in section OB 1) in the Fund for any "accounting period" (as defined in section OB 1), a New Zealand resident investor's interest in the Fund will not constitute an interest in an FIF by virtue of the exemption contained in section CG 15(2)(b).

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

This Ruling will apply for the period 1 April 2002 to 31 March 2007.

This Ruling is signed by me on the 21st day of February 2003.

**John Mora**

Assistant General Manager (Adjudication & Rulings)

# PRODUCT RULING – BR PRD 03/09

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 National Mutual Funds Management Limited ("NMFML").

## Taxation Laws

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

This Ruling applies in respect of sections CF 2, CF 3, CF 8, CG 1, CG 4, CG 6, CG 7, CG 13, CG 15 and the definitions of "accounting period", "non-taxable bonus issue" 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 unit holders in the Wholesale Global Equity Growth Fund ("the Fund"), an Australian resident unit trust, pursuant to a constitution dated 4 February 2000, a Supplemental Deed dated 4 December 2000, a Supplemental Deed dated 29 January 2001 and a Supplemental Deed which will be the same as, or not materially different from the draft deed provided to Inland Revenue on 23 January 2003 (together the "Constitution"), a prospectus (the "Prospectus"), and a New Zealand investment statement (as required by the Securities Act 1978) (the "Investment Statement"). Further details of the Arrangement are set out in the paragraphs below.

1. The Fund is a managed investment scheme. National Mutual Assets Management Limited (AXA New Zealand) is the promoter of the Fund. The Fund is an Australian resident unit trust, and a unit trust for New Zealand tax purposes.

2. Under Australian law there is now a single "Responsible Entity" for a managed investment scheme, rather than a trustee and a manager. The Responsible Entity performs the functions of both trustee and manager. The Responsible Entity for the Funds is NMFML (an Australian resident company).

3. The central management and control of the Funds is in Australia.

4. The Fund has two classes of units—Class A and Class B. Class A unit holders have a choice as to whether to reinvest distributions or to have distributions paid out to them. Distributions are reinvested unless the unit holder requests otherwise on their application form.

5. Class B units will be issued on the basis that some of the income earned by the Fund will be automatically applied to the extent determined by the Responsible Entity to the issue of new Class B units in the Fund. The Responsible Entity may also make cash distributions to the Class B unit holders at its sole discretion.

6. The investment objective of the Fund is to provide unit holders with long-term capital growth and to outperform the Morgan Stanley Capital International World Index (Total Returns with Gross Dividends Reinvested in Australian dollar terms) after costs and over rolling five-year periods.

7. The Fund will invest predominantly in global equities but may also invest in derivative instruments and other managed investment schemes or investment companies.

8. The Fund is a wholesale investment. Investors can gain exposure to the Fund via an investment or reporting service such as a master trust, wrap account, investor-directed portfolio service or nominee or custody services. These services are the registered unit holders of the Fund.

9. It is possible for larger individual investors to invest in their own name if they meet the minimum investment levels. The current minimum investment level is AUD$100,000 for the initial investment and AUD$1,000 for additional investments.

10. NMFML, in its capacity as Responsible Entity for the Fund, will at all times during the accounting periods covered by the ruling be liable to income tax in Australia by reason of domicile, residence, place of incorporation or place of management in Australia.

**The units**

11. Each unit entitles an investor to an equal interest in the Fund. However, it does not confer an interest in any particular asset of the Fund or the right to interfere with the management of the Fund. Specifically investors do not have:

    - Any entitlement to, or any entitlement to acquire, any shares in a foreign company held by the Fund
    - Any entitlement to, or any entitlement to acquire, a right to vote in respect of a foreign company in which the Fund holds shares
    - Any entitlement to, or any entitlement to acquire, a right to receive, or to have dealt with on their behalf, any income of any company in which the Fund holds shares
    - Any entitlement to, or any entitlement to acquire, a right to receive, or have dealt with on their behalf, any assets of any company in which the Fund holds shares.

12. All transactions between the investors and the Fund will occur at market value.

## Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

a) The Responsible Entity will not make an election that the issue of the additional units shall be treated as a taxable bonus issue under section CF 8.

b) The Responsible Entity will act solely in a capacity of trustee and not as an agent of unit holders.

c) The Fund calculates its income liable to tax without applying any of the features specified in Part B of Schedule 3 of the Act.

d) The Responsible Entity is resident in Australia for Australian tax purposes.

e) The central management and control of the Fund is in Australia.

f) At the date of issue of this ruling, the Fund is subject to the provisions of Division 6 of the Income Tax Assessment Act 1936 (Aus) (the "ITAA").

g) At the date of issue of this ruling, the Responsible Entity is liable to pay tax under Division 6 of the ITAA on the worldwide income of the Fund to which the beneficiaries of the Fund are not presently entitled.

h) There will be no material changes to the way the Fund is taxed in Australia for the period of this ruling.

i) The Fund will at all times during the accounting periods covered by this ruling be a unit trust resident in Australia for Australian tax purposes.

j) The Fund is not resident in New Zealand for tax purposes.

k) The Fund is not a foreign entity or a member of a class of foreign entities specified in Part B of Schedule 4 of the Act.

## 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:

- Where units are issued on the terms that the Responsible Entity has the power to reinvest the whole or part of the income entitlements in additional units, the issue of additional units to unit holders will constitute a non-taxable bonus issue under section CF 8(b) and the definition of "non-taxable bonus issue" in section OB 1.
- Additional units will be excluded from the definition of a dividend in terms of section CF 3(1)(a) of the Act.
- If the Fund is a Controlled Foreign Company ("CFC") (as defined in section CG 4):
  - A New Zealand resident investor will not derive attributed foreign income or loss in respect of the Fund pursuant to section CG 1, by virtue of section CG 13.
  - A New Zealand resident 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 Fund will derive foreign investment fund (FIF) income or loss of the Fund pursuant to section CG 1, attributed to the investor under 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 Fund for any "accounting period" (as defined in section OB 1) will not derive FIF income or loss under section CG 7(5).
- If the Fund is a CFC as defined in section CG 4 (the first tier CFC) and it holds "qualified control interests" (as defined in section CG 4(6)) in another foreign company and as a consequence the other foreign company (the underlying CFC) is a CFC:
  - Subject to section CG 13(1), a New Zealand resident investor in the Fund 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 underlying CFC will derive attributed foreign income or loss in respect of the underlying CFC under section CG 1.
  - A New Zealand resident investor in the Fund 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 underlying CFC, will derive FIF income or loss of the underlying CFC under section CG 1, attributed to the investor under section CG 7(5).
  - A New Zealand resident investor in the Fund who does not have 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 will not derive FIF income or loss of the underlying CFC under section CG 1, attributed to the investor under section CG 7(5).

[The above three conclusions apply equally down the chain of CFCs on the basis of the underlying foreign company being the first tier CFC by virtue of section CG 4(5)(b).]

- If a Fund is not a CFC, or the Fund is a CFC and the investor does not have an "income interest of 10% or greater" (as defined in section OB 1) in the Fund for any "accounting period" (as defined in section OB 1), a New Zealand resident investor's interest in the Fund will not constitute an interest in an FIF by virtue of the exemption contained in section CG 15(2)(b).

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

This Ruling will apply for the period 1 April 2002 to 31 March 2007.

This Ruling is signed by me on the 21st day of February 2003.

**John Mora**

Assistant General Manager (Adjudication & Rulings)

# PRODUCT RULING – BR PRD 03/10

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 National Mutual Funds Management Limited ("NMFML").

## Taxation Laws

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

This Ruling applies in respect of sections CF 2, CF 3, CF 8, CG 1, CG 4, CG 6, CG 7, CG 13, CG 15 and the definitions of "accounting period", "non-taxable bonus issue" 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 unit holders in the Wholesale Global Diversified Hedge Fund ("the Fund"), an Australian resident unit trust, pursuant to a constitution dated 12 October 2001 and a Supplemental Deed which will be the same as, or not materially different from the draft deed provided to Inland Revenue on 23 January 2003 (together the "Constitution"), a prospectus dated (the "Prospectus"), and a New Zealand investment statement (as required by the Securities Act 1978) (the "Investment Statement"). Further details of the Arrangement are set out in the paragraphs below.

1. The Fund is a managed investment scheme. National Mutual Assets Management Limited (AXA New Zealand) is the promoter of the Fund. The Fund is an Australian resident unit trust, and a unit trust for New Zealand tax purposes.

2. Under Australian law there is now a single "Responsible Entity" for a managed investment scheme, rather than a trustee and a manager. The Responsible Entity performs the functions of both trustee and manager. The Responsible Entity for the Funds is NMFML (an Australian resident company).

3. The central management and control of the Fund is in Australia.

4. The Fund has two classes of units—Class A and Class B. Class A unit holders have a choice as to whether to reinvest distributions or to have distributions paid out to them. Distributions are reinvested unless the unit holder requests otherwise on their application form.

5. Class B units will be issued on the basis that some of the income earned by the Fund will be automatically applied to the extent determined by the Responsible Entity to the issue of new Class B units in the Fund. The Responsible Entity may also make cash distributions to the Class B unit holders at its sole discretion.

6. The investment objective of the Fund is to generate consistent returns in the medium to long-term with low correlation to equity and fixed interest markets. The Fund aims to achieve this objective by providing exposure to a diversified range of global hedge funds that use a variety of strategic investment approaches.

7. The Fund will invest primarily in AXA New Horizons Cayman Fund Limited (the "Underlying Fund"), but may also invest in derivative instruments and other managed investment schemes or investment companies. The Underlying Fund makes investments in individual hedge funds.

8. The Fund is a wholesale investment. Investors can gain exposure to the Fund via an investment or reporting service such as a master trust, wrap account, investor-directed portfolio service or nominee or custody services. These services are the registered unit holders of the Fund.

9. It is possible for larger individual investors to invest in their own name if they meet the minimum investment levels. The current minimum investment level is AUD$100,000 for the initial investment and AUD$1,000 for additional investments.

10. NMFML, in its capacity as Responsible Entity for the Fund, will at all times during the accounting periods covered by the ruling be liable to income tax in Australia by reason of domicile, residence, place of incorporation or place of management in Australia.

**The units**

11. Each unit entitles an investor to an equal interest in the Fund. However, it does not confer an interest in any particular asset of the Fund or the right to interfere with the management of the Fund. Specifically investors do not have:

    - Any entitlement to, or any entitlement to acquire, any shares in a foreign company held by the Fund
    - Any entitlement to, or any entitlement to acquire, a right to vote in respect of a foreign company in which the Fund holds shares
    - Any entitlement to, or any entitlement to acquire, a right to receive, or to have dealt with on their behalf, any income of any company in which the Fund holds shares
    - Any entitlement to, or any entitlement to acquire, a right to receive, or have dealt with on their behalf, any assets of any company in which the Fund holds shares.

12. All transactions between the investors and the Fund will occur at market value.

## Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

a) The Responsible Entity will not make an election that the issue of the additional units shall be treated as a taxable bonus issue under section CF 8.

b) The Responsible Entity will act solely in a capacity of trustee and not as an agent of unit holders.

c) The Fund calculates its income liable to tax without applying any of the features specified in Part B of Schedule 3 of the Act.

d) The Responsible Entity is resident in Australia for Australian tax purposes.

e) The central management and control of the Fund is in Australia.

f) At the date of issue of this ruling, the Fund is subject to the provisions of Division 6 of the Income Tax Assessment Act 1936 (Aus) ("ITAA").

g) At the date of issue of this ruling, the Responsible Entity is liable to pay tax under Division 6 of the ITAA on the worldwide income of the Fund to which the beneficiaries of the Fund are not presently entitled.

h) There will be no material changes to the way the Fund is taxed in Australia for the period of this ruling.

i) The Fund will at all times during the accounting periods covered by this ruling be a unit trust resident in Australia for Australian tax purposes.

j) The Fund is not resident in New Zealand for tax purposes.

k) The Fund is not a foreign entity or a member of a class of foreign entities specified in Part B of Schedule 4 of the Act.

## 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:

- Where units are issued on the terms that the Responsible Entity has the power to reinvest the whole or part of the income entitlements in additional units, the issue of additional units to unit holders will constitute a non-taxable bonus issue under section CF 8(b) and the definition of "non-taxable bonus issue" in section OB 1.
- Additional units will be excluded from the definition of a dividend in terms of section CF 3(1)(a) of the Act.
- If the Fund is a Controlled Foreign Company ("CFC") (as defined in section CG 4):
    - A New Zealand resident investor will not derive attributed foreign income or loss in respect of the Fund pursuant to section CG 1, by virtue of section CG 13.
    - A New Zealand resident 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 Fund will derive foreign investment fund (FIF) income or loss of the Fund pursuant to section CG 1, attributed to the investor under 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 Fund for any "accounting period" (as defined in section OB 1) will not derive FIF income or loss under section CG 7(5).
- If the Fund is a CFC as defined in section CG 4 (the first tier CFC) and it holds "qualified control interests" (as defined in section CG 4(6)) in another foreign company and as a consequence the other foreign company (the underlying CFC) is a CFC:
    - Subject to section CG 13(1), a New Zealand resident investor in the Fund 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 underlying CFC will derive attributed foreign income or loss in respect of the underlying CFC under section CG 1.
    - A New Zealand resident investor in the Fund 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 underlying CFC, will derive FIF income or loss of the underlying CFC under section CG 1, attributed to the investor under section CG 7(5).
    - A New Zealand resident investor in the Fund who does not have 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 will not derive FIF income or loss of the underlying CFC under section CG 1, attributed to the investor under section CG 7(5).

    [The above three conclusions apply equally down the chain of CFCs on the basis of the underlying foreign company being the first tier CFC by virtue of section CG 4(5)(b).]
- If a Fund is not a CFC, or the Fund is a CFC and the investor does not have an "income interest of 10% or greater" (as defined in section OB 1) in the Fund for any "accounting period" (as defined in section OB 1), a New Zealand resident investor's interest in the Fund will not constitute an interest in an FIF by virtue of the exemption contained in section CG 15(2)(b).

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

This Ruling will apply for the period 1 April 2002 to 31 March 2007.

This Ruling is signed by me on the 21st day of February 2003.

**John Mora**

Assistant General Manager (Adjudication & Rulings)

# NEW LEGISLATION

## RACING ACT 2003 – ASSOCIATED TAX CHANGES

The Racing Act 1971 has been replaced with the Racing Act 2003, enacted on 10 March 2003. The new Act will provide effective governance arrangements for the racing industry, facilitate betting on galloping, harness, and greyhound races and other sporting events, and promote the long-term viability of New Zealand racing.

The Act makes consequential amendments to the Gaming Duties Act 1971, the Goods and Services Tax Act 1985, and the Income Tax Act 1994.

### Background

Previous reviews of the racing industry have highlighted that the dual governance structure of the racing industry was neither efficient nor effective, was not appropriate for the future performance of the industry, and an impediment to effective coordination of industry policy. The Racing Bill was introduced into Parliament on 30 May 2001.

### Key features

The Racing Act 2003 replaces the New Zealand Racing Industry Board and the Totalisator Agency Board (TAB) with one single board—the New Zealand Racing Board. One board will simplify the governance of the racing industry.

The New Zealand Racing Board will determine the racing calendar, conduct racing betting and sports betting (previously undertaken by the TAB), make rules relating to betting, and distribute funds obtained from betting to the racing codes (New Zealand Thoroughbred Racing Incorporated, Harness Racing New Zealand Incorporated, and New Zealand Greyhound Racing Association (Incorporated)).

The Racing Board will undertake betting which was previously undertaken by the racing clubs and the TAB. The Board will retain the "TAB" brand name.

### Changes to the Gaming Duties Act 1971

The Act repeals a number of the definitions in section 3 of the Gaming Duties Act. The definitions repealed are:

- Betting profits
- Fixed-odds race betting losses
- Fixed-odds sports betting profits
- Race
- Racing club
- Special investments
- Totalisator club
- Fixed-odds race betting losses
- Fixed-odds sports betting losses
- Gross investments
- Race meeting
- Restricted totalisator club
- Sports event

The Act inserts new definitions into section 3 of the Gaming Duties Act of "Board", "fixed-odds racing betting", "sports betting", "totalisator racing betting", "equalisator betting", and "winning dividend".

The new Act repeals sections 4-7 of the Gaming Duties Act and inserts new sections 4 and 5 in their place. The new section 4 provides a simpler formula to determine betting, profits for totalisator racing, sports betting and fixed-odds racing betting on which gaming duty, at a rate of 20%, is imposed.

#### Totalisator racing

The new betting profit formula for totalisator racing betting is:

8/9 x (amounts - refunds) - winning dividends - fractions

where:

**amounts** is the amounts received by the Board or its agent (including GST) for totalisator racing betting including the net return from bets laid off

**refunds** is the amount of refunds (including GST)

**winning dividends** is the amount of all winning dividends

**fractions** is the amount retained by the Board under section 60(3) of the Racing Act 2003 in respect of totalisator race betting.

#### Sports betting and fixed-odds racing betting

The betting profits for sports betting and fixed-odds racing betting is:

amounts - refunds - dividends

where:

**amounts** is the amount received by the Board (or agent) for sporting or racing events

**refunds** is the total amount of refunds (including GST)

**dividends** is the total amount of dividends for the sporting or racing event.

The new section 5(1) provides that the Board must provide a return to the Commissioner, in the prescribed form, of the totalisator duty payable by the Board for all racing betting and sports betting on events for which results have been declared in the previous month. The return and payment of the duty is due on the 20th of each month.

Section 5(2) provides that if the event is held over two or more days which straddle a month, the event is regarded as having been held in the month in which the last day occurs.

Section 5(3) states that totalisator duty payable by the Board constitutes a debt due and payable to the Crown.

## Changes to the Goods and Services Tax Act 1985

The meaning of the term "supply" in section 5 of the GST Act is amended by repealing subsections (8) and (9), which deemed money bet on any race or sporting event to be a supply of services. The Act inserts a new subsection (8) which provides that any racing betting or sports betting conducted by the Board must be regarded as a supply of services by the Board.

Section 10 of the GST Act is amended by repealing subsections (12), (12A) and (13), which deal with determining the consideration in money for the supply of betting services. The Racing Act inserts two new subsections, (12) and (13).

The new subsection (12) provides that the consideration in money for the supply of services for:

- Racing betting or sports betting is treated as the amount received by the New Zealand Racing Board (or its agent), plus the net return of bets laid off by the Board less all refunds and winning dividends
- Equalisator betting is treated as the amount received by a racing club.

The new subsection (13) provides that "equalisator betting", "New Zealand Racing Board", "racing club", "racing betting", and "sports betting" have the same meaning as set out in section 5 of the Racing Act 2003.

## Changes to the Income Tax Act 1994

The Racing Act also makes a number of minor consequential amendments to the Income Tax Act, namely:

- The reference to "Totalisator Agency Board" in section CB 4(1)(i)(i) has been changes to "New Zealand Racing Board".
- CB 4(1)(i)(ii), which refers to the "New Zealand Racing Industry Board" has been changed.
- The reference to "The New Zealand Racing Conference" in section CB 4(1)(i)(iii) has been changed to "New Zealand Thoroughbred Racing".
- The reference to "section 2 of the Racing Act 1971" in section CB 4(1)(i)(vi), section EH24(1)(c)(i) and in the definition of excepted financial arrangment in section EH14 has been replaced with "section 5 of the Racing Act 2003".
- The reference to the "Racing Act 1971" in section CB 9(c) has been replaced with the "Racing Act 2003".
- The reference to "established under part VB of the Racing Act 1971" in sections EH24(1)(c)(ii) and in the definition of excepted financial arrangment in section EH 14 has been replaced with "administered under Part 6 of the Racing Act 2003".

## Application date

The Racing Act 2003 comes into force on a date to be appointed by the Governor-General by Order in Council.

## HIGHER THRESHOLD FOR AUTOMATIC RELEASE OF INCOME TAX REFUNDS

The threshold under which income tax refunds arising from income statements (personal tax summaries) are automatically released to taxpayers has been raised from $50 to $200 by Order-in-Council. Under the change to section MD 1(1A) of the Income Tax Act 1994, taxpayers with refunds of $200 or less will have these refunds released to them without having to confirm that the particulars contained in an income statement are correct, 30 days after the issue of the income statement. These taxpayers will need to contact Inland Revenue only if the details in the income statement are incorrect or if they have other income. For refunds over $200, taxpayers will still need to contact Inland Revenue to confirm that the income statement is correct, and the refund is owed to them.

The Government announced the change to the threshold in December 2002. The higher threshold will apply to income tax refunds arising from income statements issued in respect of the 2002-03 and future income years.

*Income Tax (Refund of Excess Tax) Order 2003*

# 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.

## 2003 INTERNATIONAL TAX DISCLOSURE EXEMPTION ITR14

### Introduction

Section 61 of the Tax Administration Act 1994 (TAA) requires people to disclose interests they hold in foreign entities.

Under section 61(1) of the TAA, a person who has a control or income interest in a foreign company or an interest in a foreign investment fund (FIF) at any time during the income year must disclose the interest held. However, section 61(2) allows the Commissioner of Inland Revenue to exempt any person or class of persons from this requirement if disclosure is not necessary for the administration of the international tax rules (as defined by section OZ 1) contained in the Income Tax Act 1994 (ITA).

Under section 61(2), the Commissioner has issued an international tax disclosure exemption which applies for the income year ended 31 March 2003. This exemption may be cited as "International Tax Disclosure Exemption ITR14", and the full text appears at the end of this item.

### Scope of exemption

The scope of the 2003 disclosure exemption is the same as the 2002 exemption.

### Interests held by residents

Disclosure is required by residents for these interests:

- an interest held in an FIF
- an "income interest of 10% or greater" held in a foreign company. The disclosure obligation applies in respect of all foreign companies regardless of the country of residence.

An "income interest of 10% or greater" is defined in section OB 1 of the ITA. For the purposes of determining exemption from disclosure it includes these interests:

1. an income interest held directly in a foreign company
2. an income interest held indirectly through any interposed foreign company
3. an income interest held by an associated person (which is not a controlled foreign company) as defined by section OD 8 (3) of the ITA.

#### *Example*

If a husband and wife each hold an income interest of 5% in a Cayman Islands company, the interests would not be exempt from disclosure because the husband and wife are associated persons under section OD 8(3)(d). Under the associated persons test they are each deemed to hold the other's interests, so they each hold an "income interest of 10% or greater" which must be disclosed.

They are not required to account for attributed foreign income or loss under the controlled foreign company rules. However, they would have to account for FIF income or loss under the FIF rules.

In this example the husband and wife must disclose their interests as interests in a foreign company and as interests in a FIF. However, only the FIF interests should be disclosed on an IR 478, IR 439, IR 440, IR 441, IR 442 or IR 443 forms (see "Overlap of interests" below).

### Foreign company interests

A resident who holds a control or income interest in a foreign company must disclose that interest, regardless of the company's country of residence. The 2003 international tax disclosure exemption also makes no distinction about residence, and any interest in a foreign company which is an "income interest of 10% or greater" must be disclosed. Disclosure is to be made on an *Interest in a foreign company disclosure schedule* (IR 477 or IR 479) form.

The disclosure exemption makes no distinction on the residence of a foreign company for these reasons:

- Attributed (non-dividend) repatriation rules apply to an "income interest of 10% or greater" in a controlled foreign company (CFC) regardless of the CFC's country of residence.
- To identify tax preferences applied by the taxpayer (whether or not specified in Schedule 3, Part B of the ITA) in respect of an interest held in a foreign company which is resident in a Schedule 3, Part A of the ITA jurisdiction (ie, Australia, Canada, Federal Republic of Germany, Japan, Norway, United Kingdom and the United States of America).

- The requirement for a CFC which is resident in a country not listed in Schedule 3, Part A of the ITA to attribute foreign income or loss from 1 April 1993.

## Foreign investment fund interests

An interest in a foreign entity must be disclosed if it constitutes an "interest in a foreign investment fund" specified within section CG 15(1) of the ITA. These types of interest must be disclosed:

- rights in a foreign company or anything deemed to be a company for the purposes of the ITA (eg a unit trust)
- an entitlement to benefit from a foreign superannuation scheme
- an entitlement to benefit from a foreign life insurance policy
- an interest in an entity specified in Schedule 4, Part A of the ITA (no entities were listed when this *TIB* went to press).

However, any interest that does not fall within the above types or which is specifically excluded as an interest in an FIF under section CG 15(2) does not have to be disclosed. The following are listed in section CG 15(2) as exclusions from what constitutes an interest in an FIF:

- An "income interest of 10% or greater" in a CFC (separate disclosure is required of this as an interest in a foreign company).
- An interest in a foreign company that is resident and liable to income tax in a country or territory specified in Schedule 3, Part A of the ITA (ie Australia, Canada, Federal Republic of Germany, Japan, Norway, United Kingdom and the United States of America).
- An interest in an employment-related foreign superannuation scheme.
- A qualifying foreign private annuity, unless an election has been made to remain within the FIF regime, by the due date for filing the person's 2003 tax return. See Inland Revenue's booklet *Overseas private pensions* (IR 257) for more information.
- Interests in foreign entities held by a natural person other than in that person's capacity as a trustee, if the aggregate cost or expenditure incurred in acquiring the interests remains under $50,000 at all times during the income year.
- An interest held by a natural person in a foreign entity located in a country where exchange controls prevent the person deriving any profit or gain or disposing of the interest for New Zealand currency or consideration readily convertible to New Zealand currency.
- An interest in a foreign life insurance policy or foreign superannuation scheme acquired by a natural person before he or she became a New Zealand resident for the first time, for a period of up to four years.

A resident who holds an interest in an FIF at any time during the 2003 income year must disclose the interest and calculate FIF income or loss on the form *Interest in foreign investment fund disclosure schedule and worksheet* (IR 439, IR 440, IR 441, IR 443). The FIF rules allow a person four options to calculate FIF income or loss (accounting profits method, branch equivalent method, comparative value method and deemed rate of return method), so the Commissioner has prescribed four forms to disclose and calculate FIF income or loss from an interest in an FIF using one of the methods. The respective forms to use for whichever FIF income calculation method you choose to apply is as follows:

- IR 439 form for the accounting profits method
- IR 440 form for the branch equivalent method
- IR 441 form for the comparative value method
- IR 443 form for the deemed rate of return method.

## Overlap of interests

A situation may arise where a person is required to furnish a disclosure for an interest in a foreign company which is also an interest in an FIF. For example, a person with an "income interest of 10% or greater" in a foreign company which is not a CFC is strictly required to disclose both an interest held in a foreign company and an interest held in an FIF.

However, to meet the disclosure obligations only one disclosure return (either the IR 477 or IR 479 forms or the IR 439, IR 440, IR 441 or IR 443 forms) is required for each interest a person holds in a foreign entity.

Here are the general rules for determining which disclosure return to file:

1. Use the appropriate IR 439, IR 440, IR 441, IR 442 or IR 443 form to disclose all FIF interests, and in particular:
   - an interest in a foreign company which is not resident in a Schedule 3, Part A country and is not a CFC (regardless of the level of interest held)
   - an income interest of less than 10% in a CFC which is not resident in a Schedule 3, Part A country
   - an interest in a foreign life insurance policy or foreign superannuation scheme, regardless of the country or territory in which the entity was resident.

2. Use the IR 447 or IR 479 forms to disclose:an "income interest of 10% or greater" in a foreign company (regardless of the country of residence) that is not being disclosed on the IR 439, IR 440, IR 441, IR 442 or IR 443 forms.

Disclosure is not required on any of the forms for an income interest of less than 10% in a foreign company (whether a CFC or not) which is also not a FIF interest. An example is an interest which is covered by the Schedule 3, Part A exclusion from the FIF rules.

## Interests held by non-residents

The 2003 disclosure exemption removes the need for interests held by non-residents in foreign companies and FIFs to be disclosed.

This would apply for example to an overseas company operating in New Zealand (through a branch) in respect of its interests in foreign companies and FIFs.

The purpose of the international tax rules is to make sure that New Zealand residents are taxed on their share of the income of any overseas interests they hold. However, under the international tax rules non-residents are not required to calculate or attribute income under the CFC regime (section CG 6(1) of the ITA 1994). In addition, under section CG 16(4) of the ITA 1994 a non-resident is not to be treated as deriving or incurring any FIF income or loss. The disclosure of non-residents holdings in foreign companies or FIFs is not necessary for the administration of the international tax rules.

## Summary

The 2003 international tax disclosure exemption removes the requirement of a resident to disclose an interest held in a foreign company (if the interest is not also an interest in an FIF) that does not constitute an "income interest of 10% or greater" (ie it is less than 10%). The disclosure exemption is not affected by the foreign company's country of residence. Further, an interest in an FIF must be disclosed.

The 2003 disclosure exemption also removes the requirement for a non-resident to disclose interests held in foreign companies and FIFs.

## Persons not required to comply with section 61 of the Tax Administration Act 1994

This exemption may be cited as "International Tax Disclosure Exemption ITR14"

**1. Reference**

This exemption is made under section 61(2) of the Tax Administration Act 1994. It details interests in foreign companies in relation to which any person is not required to comply with the requirement in section 61 of the Tax Administration Act 1994 to make disclosure of their interests, for the income year ending 31 March 2003. This exemption does not apply to interests in foreign companies which are interests in foreign investment funds, unless that interest is held by a non-resident of New Zealand.

**2. Interpretation**

In this exemption, unless the context otherwise requires, expressions used have the same meaning as in section OB 1 of the Income Tax Act 1994 or the international tax rules (as defined by section OZ 1 of the Income Tax Act 1994).

**3. Exemption**

(i) Any person who has an income interest or a control interest in a foreign company (not being an interest in a foreign investment fund), in the income year ending 31 March 2003, is not required to comply with section 61(1) of the Tax Administration Act 1994 in respect of that interest and that income year, unless the interest held by that person during any accounting period of the foreign company (the last day of which falls within that income year of the person), would constitute an "income interest of 10% or greater", as defined by section OB 1 of the Income Tax Act 1994, as if the foreign company was a controlled foreign company.

(ii) Any non-resident person who has an income interest or a control interest in a foreign company or an interest in a foreign investment fund in the income year ending 31 March 2003, is not required to comply with section 61(1) of the Tax Administration Act 1994 in respect of that interest and that income year if either or both of the following apply:

- no attributed foreign income or loss arises in respect of that interest in that foreign company by virtue of section CG 6(1) of the Income Tax Act 1994, and/or
- no foreign investment fund income or loss arises in respect of that interest in that foreign investment fund by virtue of section CG 16(4) of the Income Tax Act 1994.

This exemption is made by me acting under delegated authority from the Commissioner of Inland Revenue pursuant to section 7 of the Tax Administration Act 1994.

This exemption is signed on the 2nd day of April 2003.

**Max Carr**

National Manager, Corporates

# FOREIGN CURRENCY AMOUNTS – CONVERSION TO NEW ZEALAND CURRENCY

The tables in this item list exchange rates acceptable to Inland Revenue for converting foreign currency amounts to New Zealand currency under the controlled foreign company (CFC) and foreign investment fund (FIF) rules for the six months ending 31 March 2003.

The conversion rates for the first six months of each income year are published in the *Tax Information Bulletin* following the end of the September quarter and the rates for the full 12-month rates at the end of each income year.

To convert foreign currency amounts to New Zealand dollars for any country listed, divide the foreign currency amount by the exchange rate shown.

## Table A

Use this table to convert foreign currency amounts to New Zealand dollars for:

- branch equivalent income or loss under the CFC or FIF rules under section CG 11(3) of the Income Tax Act 1994
- foreign tax credits calculated under the branch equivalent method for a CFC or FIF under section LC 4(1)(b) of the Income Tax Act 1994
- FIF income or loss calculated under the accounting profits, comparative value (except if Table B applies) or deemed rate of return methods under section CG 16(11) of the Income Tax Act 1994.

### *Key*

$$\frac{X}{Y}$$

"x" is the exchange rate on the 15th day of the month, or if no exchange rates were quoted on that day, on the next day on which they were quoted.

"y" is the average of the mid-month exchange rates for that month and the previous 11 months.

### *Example 1*

A CFC resident in Hong Kong has an accounting period ending on 30 September 2002. Branch equivalent income for the period 1 October 2001 to 30 September 2002 is 200,000 Hong Kong dollars (HKD).

HKD 200,000 ÷ 3.4624 = NZ$57,763.40

A similar calculation would be needed for an FIF using the branch equivalent or accounting profits methods.

### *Example 2*

A taxpayer with a 31 March balance date purchases shares in a Philippines company (which is an FIF) for 350,000 pesos (PHP) on 7 September 2002. Using the comparative value or deemed rate of return methods, the cost is converted as follows:

PHP 350,000 ÷ 24.4034 = NZ$14,342.26

Alternatively, the exchange rate can be calculated by averaging the exchange rates "x" that apply to each complete month in the foreign company's accounting period.

### *Example 3*

A CFC resident in Singapore was formed on 21 April 2002 and has a balance date of 31 March 2003. During this period, branch equivalent income of 500,000 Singapore dollars was derived.

(i) Calculating the average monthly exchange rate for the complete months May-September 2002:

(0.8216 + 0.8627 + 0.8440 + 0.8047 + 0.8349) ÷ 5 = 0.83358

(ii) Conversion to New Zealand currency:

SGD 500,000 ÷ 0.83358 = NZ$599,822.45

## Table B

Table B lists the end-of-month exchange rates acceptable to Inland Revenue for the six-month period ending 31 March 2003. Use this table for converting foreign currency amounts to New Zealand dollars for:

- Items "a" (market value of the FIF interest on the last day of the income year) and "c" (market value of the FIF interest on the last day of the previous income year) of the comparative value formula.
- Foreign tax credits paid on the last day of any month calculated under the branch equivalent method for a CFC or FIF under section LC 4(1)(a) of the Income Tax Act 1994.

### *Example 4*

A New Zealand resident with a balance date of 30 September 2002 held an interest in an FIF resident in Thailand. The market value of the FIF interest at 30 September 2002 (item "a" of the comparative value formula) was 500,000 Thailand baht (THB).

THB 500,000 ÷ 20.0730 = NZ$24,909.08

**Note:** If you need an exchange rate for a country or a day not listed in these tables, contact one of New Zealand's major trading banks.

# Table A: Mid-month and 12-month cumulative exchange rates

| Country | Foreign currency to NZ $ | | 15-Apr-02 | 15-May-02 | 17-Jun-02 | 15-Jul-02 | 15-Aug-02 | 16-Sep-02 | 15-Oct-02 | 15-Nov-02 | 16-Dec-02 | 15-Jan-03 | 17-Feb-03 | 17-Mar-03 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | 12-month rate | 12-month rate | 12-month rate | 12-month rate | 12-month rate | 12-month rate | 12-month rate | 12-month rate | 12-month rate | 12-month rate | 12-month rate | 12-month rate |
| Australia | Dollar | AUD | 0.8264 | 0.8316 | 0.8613 | 0.8671 | 0.8594 | 0.8591 | 0.8748 | 0.8868 | 0.9094 | 0.9231 | 0.9315 | 0.9214 |
| | | | 0.8132 | 0.8153 | 0.8210 | 0.8267 | 0.8297 | 0.8329 | 0.8374 | 0.8439 | 0.8525 | 0.8614 | 0.8711 | 0.8793 |
| Bahrain | Dollar | BHD | 0.1665 | 0.1715 | 0.1820 | 0.1828 | 0.1740 | 0.1781 | 0.1801 | 0.1884 | 0.1936 | 0.2028 | 0.2079 | 0.2076 |
| | | | 0.1588 | 0.1600 | 0.1620 | 0.1644 | 0.1654 | 0.1674 | 0.1693 | 0.1718 | 0.1748 | 0.1784 | 0.1825 | 0.1863 |
| Canada | Dollar | CAD | 0.7006 | 0.7093 | 0.7469 | 0.7427 | 0.7211 | 0.7460 | 0.7585 | 0.7869 | 0.8033 | 0.8284 | 0.8398 | 0.8114 |
| | | | 0.6613 | 0.6663 | 0.6756 | 0.6854 | 0.6904 | 0.6974 | 0.7065 | 0.7164 | 0.7289 | 0.7418 | 0.7558 | 0.7662 |
| China | Yuan | CNY | 3.6598 | 3.7707 | 3.9990 | 4.0130 | 3.8210 | 3.9113 | 3.9658 | 4.1398 | 4.2615 | 4.4618 | 4.5720 | 4.5653 |
| | | | 3.4981 | 3.5229 | 3.5682 | 3.6219 | 3.6431 | 3.6767 | 3.7207 | 3.7755 | 3.8419 | 3.9071 | 3.9972 | 4.0801 |
| Denmark | Krone | DKK | 3.7321 | 3.7496 | 3.7957 | 3.6299 | 3.4950 | 3.6055 | 3.5984 | 3.6900 | 3.7261 | 3.7819 | 3.7973 | 3.8021 |
| | | | 3.5436 | 3.5581 | 3.5736 | 3.5811 | 3.5767 | 3.5923 | 3.6092 | 3.6222 | 3.6452 | 3.6888 | 3.7064 | 3.7211 |
| European Community | Euro | EUR | 0.5023 | 0.5043 | 0.5111 | 0.4888 | 0.4714 | 0.4864 | 0.4847 | 0.4972 | 0.5022 | 0.5095 | 0.5113 | 0.5116 |
| | | | 0.4761 | 0.4782 | 0.4804 | 0.4815 | 0.4811 | 0.4834 | 0.4858 | 0.4876 | 0.4910 | 0.4941 | 0.4964 | 0.4984 |
| Fiji | Dollar | FJD | 0.9869 | 1.0018 | 1.0254 | 1.0254 | 0.9975 | 1.0090 | 1.0246 | 1.0480 | 1.0693 | 1.0864 | 1.0979 | 1.0959 |
| | | | 0.9599 | 0.9641 | 0.9705 | 0.9773 | 0.9791 | 0.9835 | 0.9897 | 0.9979 | 1.0080 | 1.0186 | 1.0291 | 1.0390 |
| French Polynesia | Franc | XPF | 59.7052 | 60.1474 | 60.9176 | 58.0953 | 56.0110 | 57.8054 | 57.6045 | 59.1104 | 59.7311 | 60.5728 | 60.8018 | 60.8207 |
| | | | 56.4317 | 56.6807 | 56.9457 | 57.0552 | 56.9846 | 57.2388 | 57.5107 | 57.7155 | 58.1224 | 58.4907 | 58.7585 | 59.2891 |
| Hong Kong | Dollar | HKD | 3.4465 | 3.5506 | 3.7690 | 3.7791 | 3.5986 | 3.6817 | 3.7314 | 3.8980 | 4.0092 | 4.1991 | 4.3031 | 4.2966 |
| | | | 3.2940 | 3.3174 | 3.3601 | 3.4107 | 3.4308 | 3.4624 | 3.5034 | 3.5551 | 3.6172 | 3.6929 | 3.7772 | 3.8552 |
| India | Rupee | INR | 21.4744 | 22.0578 | 23.4145 | 23.4205 | 22.2745 | 22.7323 | 23.0003 | 23.9605 | 24.5974 | 25.6545 | 26.1905 | 26.0841 |
| | | | 20.1058 | 20.3111 | 20.6358 | 20.9991 | 21.1754 | 21.3953 | 21.6583 | 21.9817 | 22.3715 | 22.8208 | 23.3032 | 23.7385 |
| Indonesia | Rupiah | IDR | 4,220.5000 | 4,223.0900 | 4,187.7550 | 4,400.1900 | 4,051.2450 | 4,241.3000 | 4,478.0550 | 4,512.8100 | 4,569.5000 | 4,781.1450 | 4,936.8650 | 4,918.6600 |
| | | | 4,310.3133 | 4,263.6525 | 4,222.1817 | 4,204.5346 | 4,237.4771 | 4,269.0983 | 4,297.2150 | 4,300.0325 | 4,325.0963 | 4,357.0033 | 4,408.7733 | 4,460.0929 |
| Japan | Yen | JPY | 58.2986 | 58.5050 | 59.9791 | 56.6314 | 54.1180 | 57.4808 | 59.4371 | 60.1379 | 61.9299 | 63.5008 | 66.3690 | 64.9990 |
| | | | 52.9319 | 53.5000 | 54.2767 | 54.7668 | 54.9088 | 55.5620 | 56.3211 | 57.0766 | 57.7967 | 58.4466 | 59.3254 | 60.1155 |
| Korea | Won | KOR | 584.5000 | 578.2100 | 590.4450 | 566.1900 | 543.0200 | 573.1850 | 598.4350 | 601.0100 | 619.8600 | 630.4350 | 659.2150 | 684.5700 |
| | | | 547.1854 | 550.0254 | 554.3258 | 557.4813 | 556.9929 | 558.9792 | 564.2408 | 569.6575 | 576.7967 | 583.4617 | 592.4800 | 602.4229 |
| Kuwait | Dollar | KWD | 0.1347 | 0.1390 | 0.1467 | 0.1460 | 0.1392 | 0.1429 | 0.1443 | 0.1503 | 0.1543 | 0.1610 | 0.1651 | 0.1650 |
| | | | 0.1294 | 0.1302 | 0.1317 | 0.1335 | 0.1341 | 0.1353 | 0.1367 | 0.1385 | 0.1407 | 0.1434 | 0.1463 | 0.1490 |
| Malaysia | Ringgit | MYR | 1.6801 | 1.7310 | 1.8374 | 1.8423 | 1.7542 | 1.7956 | 1.8206 | 1.9005 | 1.9563 | 2.1839 | 2.0989 | 2.0959 |
| | | | 1.6059 | 1.6173 | 1.6382 | 1.6628 | 1.6726 | 1.6880 | 1.7082 | 1.7334 | 1.7638 | 1.8120 | 1.8533 | 1.8914 |
| Norway | Krone | NOK | 3.8230 | 3.8065 | 3.7974 | 3.5820 | 3.5070 | 3.5661 | 3.5276 | 3.6364 | 3.6804 | 3.7286 | 3.8411 | 3.9793 |
| | | | 3.7673 | 3.7648 | 3.7590 | 3.7422 | 3.7135 | 3.7039 | 3.6959 | 3.6878 | 3.6850 | 3.6830 | 3.6899 | 3.7063 |
| Pakistan | Rupee | PKR | 26.4536 | 27.0839 | 28.7644 | 28.6915 | 27.2301 | 27.8403 | 28.1071 | 28.9716 | 29.8773 | 31.0832 | 31.7897 | 31.6493 |
| | | | 25.8954 | 26.0232 | 26.2468 | 26.4860 | 26.4870 | 26.5548 | 26.7598 | 27.0464 | 27.4235 | 27.9152 | 28.4648 | 28.9618 |
| Papua New Guinea | Kina | PGK | 1.5123 | 1.6792 | 1.7726 | 1.8893 | 1.8296 | 1.8586 | 1.9465 | 2.1938 | 1.9635 | 2.0861 | 2.0695 | 1.9198 |
| | | | 1.3795 | 1.4199 | 1.4630 | 1.5144 | 1.5535 | 1.5952 | 1.6435 | 1.7078 | 1.7500 | 1.8036 | 1.8558 | 1.8934 |
| Philippines | Peso | PHP | 22.3963 | 22.4249 | 24.1078 | 24.1868 | 23.6613 | 24.4034 | 24.7397 | 26.4185 | 27.2460 | 28.5572 | 29.4985 | 29.8676 |
| | | | 21.6089 | 21.7265 | 21.9638 | 22.1983 | 22.3410 | 22.5743 | 22.8543 | 23.2446 | 23.7112 | 24.3247 | 24.9880 | 25.6575 |
| Singapore | Dollar | SGD | 0.8108 | 0.8216 | 0.8627 | 0.8440 | 0.8047 | 0.8349 | 0.8600 | 0.8784 | 0.8952 | 0.9306 | 0.9663 | 0.9670 |
| | | | 0.7646 | 0.7695 | 0.7783 | 0.7865 | 0.7907 | 0.7992 | 0.8081 | 0.8174 | 0.8280 | 0.8410 | 0.8577 | 0.8730 |
| Solomon Islands | Dollar | SBD | 2.5644 | 2.9199 | 3.2032 | 3.4292 | 3.4004 | 3.4158 | 3.5747 | 3.7531 | 3.8688 | 3.9957 | 4.1556 | 4.1528 |
| | | | 2.2738 | 2.3374 | 2.4238 | 2.5335 | 2.6306 | 2.7313 | 2.8466 | 2.9732 | 3.1084 | 3.2487 | 3.3972 | 3.5361 |
| South Africa | Rand | ZAR | 4.9343 | 4.6249 | 5.0563 | 4.8175 | 4.8604 | 4.9619 | 4.9899 | 4.8467 | 4.4872 | 4.7470 | 4.5938 | 4.5087 |
| | | | 4.1523 | 4.2594 | 4.4010 | 4.5225 | 4.6309 | 4.7406 | 4.8414 | 4.9075 | 4.8564 | 4.8494 | 4.8272 | 4.7857 |
| Sri Lanka | Rupee | LKR | 42.1127 | 43.5509 | 46.3046 | 46.3419 | 44.0762 | 45.0899 | 45.8204 | 47.8613 | 49.3650 | 51.7832 | 53.6539 | 53.1533 |
| | | | 38.6043 | 39.1179 | 39.8640 | 40.6848 | 41.1502 | 41.7409 | 42.4583 | 43.2369 | 44.1218 | 45.1700 | 46.3703 | 47.4261 |
| Sweden | Krona | SEK | 4.5552 | 4.6622 | 4.6658 | 4.5172 | 4.3421 | 4.5016 | 4.4128 | 4.5130 | 4.5857 | 4.6627 | 4.6508 | 4.7062 |
| | | | 4.4166 | 4.4455 | 4.4617 | 4.4726 | 4.4676 | 4.4736 | 4.4800 | 4.4860 | 4.5005 | 4.5264 | 4.5435 | 4.5646 |
| Switzerland | Franc | CHF | 0.7362 | 0.7347 | 0.7535 | 0.7183 | 0.6895 | 0.7126 | 0.7086 | 0.7291 | 0.7413 | 0.7453 | 0.7516 | 0.7510 |
| | | | 0.7104 | 0.7104 | 0.7115 | 0.7114 | 0.7086 | 0.7108 | 0.7135 | 0.7161 | 0.7210 | 0.7249 | 0.7278 | 0.7310 |
| Taiwan | Dollar | TAI | 15.4300 | 15.7100 | 16.3950 | 16.0400 | 15.4600 | 16.2150 | 16.8000 | 17.3000 | 17.8600 | 18.5250 | 19.2300 | 19.1150 |
| | | | 14.5863 | 14.7475 | 14.9196 | 15.0717 | 15.1196 | 15.2521 | 15.4588 | 15.6950 | 15.9813 | 16.2946 | 16.6675 | 17.0067 |

| Country | Foreign currency to NZ $ | | 15-Apr-02 | 15-May-02 | 17-Jun-02 | 15-Jul-02 | 15-Aug-02 | 16-Sep-02 | 15-Oct-02 | 15-Nov-02 | 16-Dec-02 | 15-Jan-03 | 17-Feb-03 | 17-Mar-03 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | 12-month rate | 12-month rate | 12-month rate | 12-month rate | 12-month rate | 12-month rate | 12-month rate | 12-month rate | 12-month rate | 12-month rate | 12-month rate | 12-month rate |
| Thailand | Baht | THB | 19.0888 | 19.3984 | 20.3038 | 19.7746 | 19.1427 | 19.9609 | 20.8272 | 21.4512 | 22.0099 | 22.7924 | 23.5212 | 23.3065 |
| | | | 18.6394 | 18.6738 | 18.7951 | 18.9059 | 18.9012 | 19.0127 | 19.2087 | 19.4475 | 19.7630 | 20.1296 | 20.5644 | 20.9648 |
| Tonga | Pa'anga | TOP | 0.9489 | 0.9883 | 1.0344 | 1.0232 | 1.0140 | 1.0444 | 1.0517 | 1.1126 | 1.1392 | 1.1813 | 1.1942 | 1.2032 |
| | | | 0.9121 | 0.9217 | 0.9344 | 0.9467 | 0.9540 | 0.9643 | 0.9758 | 0.9925 | 1.0114 | 1.0333 | 1.0556 | 1.0779 |
| United Kingdom | Pound | GBP | 0.3074 | 0.3141 | 0.3270 | 0.3119 | 0.3000 | 0.3042 | 0.3071 | 0.3162 | 0.3235 | 0.3351 | 0.3418 | 0.3474 |
| | | | 0.2944 | 0.2960 | 0.2984 | 0.3003 | 0.3002 | 0.3016 | 0.3033 | 0.3054 | 0.3084 | 0.3121 | 0.3160 | 0.3196 |
| United States | Dollar | USD | 0.4420 | 0.4553 | 0.4833 | 0.4846 | 0.4615 | 0.4721 | 0.4785 | 0.4998 | 0.5142 | 0.5386 | 0.5518 | 0.5510 |
| | | | 0.4224 | 0.4254 | 0.4308 | 0.4373 | 0.4399 | 0.4440 | 0.4492 | 0.4559 | 0.4639 | 0.4736 | 0.4844 | 0.4944 |
| Vanuatu | Vatu | VUV | 62.5139 | 63.1594 | 65.0988 | 65.1272 | 63.5269 | 64.1108 | 65.0332 | 66.6973 | 68.1821 | 69.6218 | 70.3395 | 70.3551 |
| | | | 60.8973 | 61.0720 | 61.5130 | 61.9640 | 62.0877 | 62.3888 | 62.7608 | 63.2819 | 63.9332 | 64.6873 | 65.4373 | 66.1472 |
| Western Samoa | Tala | WST | 1.5305 | 1.5547 | 1.5934 | 1.6002 | 1.5608 | 1.5809 | 1.5955 | 1.6439 | 1.6687 | 1.7070 | 1.7189 | 1.7220 |
| | | | 1.4594 | 1.4735 | 1.4915 | 1.5110 | 1.5163 | 1.5256 | 1.5377 | 1.5517 | 1.5680 | 1.5869 | 1.6055 | 1.6230 |

## Table B: End-of-month exchange rates

| Country | Currency | Code | 30-Apr-02 | 31-May-02 | 28-Jun-02 | 31-Jul-02 | 30-Aug-02 | 30-Sep-02 | 31-Oct-02 | 30-Nov-02 | 31-Dec-02 | 31-Jan-03 | 28-Feb-03 | 31-Mar-03 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Australia | Dollar | AUD | 0.8309 | 0.8415 | 0.8677 | 0.8607 | 0.8485 | 0.8648 | 0.8729 | 0.8826 | 0.9301 | 0.9270 | 0.9282 | 0.9173 |
| Bahrain | Dollar | BHD | 0.1686 | 0.1792 | 0.1839 | 0.1763 | 0.1766 | 0.1774 | 0.1821 | 0.1866 | 0.1976 | 0.2053 | 0.2115 | 0.2076 |
| Canada | Dollar | CAD | 0.7011 | 0.7286 | 0.7382 | 0.7364 | 0.7299 | 0.7424 | 0.7567 | 0.7780 | 0.8273 | 0.8324 | 0.8397 | 0.8103 |
| China | Yuan | CNY | 3.7077 | 3.9335 | 4.0439 | 3.8756 | 3.8806 | 3.8966 | 4.0016 | 4.0985 | 4.3461 | 4.5098 | 4.6524 | 4.5599 |
| Denmark | Krone | DKK | 3.6820 | 3.7595 | 3.6685 | 3.5304 | 3.5318 | 3.5663 | 3.6477 | 3.6920 | 3.7164 | 3.7510 | 3.8752 | 3.7861 |
| European Community | Euro | EUR | 0.4952 | 0.5066 | 0.4939 | 0.4754 | 0.4760 | 0.4797 | 0.4910 | 0.4976 | 0.5004 | 0.5048 | 0.5219 | 0.5100 |
| Fiji | Dollar | FJD | 0.9867 | 1.0145 | 1.0339 | 1.0085 | 1.0037 | 1.0143 | 1.0283 | 1.0445 | 1.0819 | 1.0896 | 1.1049 | 1.0939 |
| French Polynesia | Franc | XPF | 59.0495 | 60.3962 | 58.7268 | 56.5173 | 56.5911 | 57.0126 | 58.3771 | 59.1890 | 59.6766 | 60.0298 | 62.0625 | 60.6566 |
| Hong Kong | Dollar | HKD | 3.4907 | 3.7057 | 3.8083 | 3.6487 | 3.6544 | 3.6691 | 3.7679 | 3.8581 | 4.0913 | 4.2468 | 4.3802 | 4.2952 |
| India | Rupee | INR | 21.6830 | 23.0207 | 23.6224 | 22.5859 | 22.5874 | 22.6328 | 23.2210 | 23.7572 | 24.9862 | 25.9035 | 26.5687 | 26.0089 |
| Indonesia | Rupiah | IDR | 4,177.2800 | 4,202.8300 | 4,221.2900 | 4,268.3150 | 4,156.5150 | 4,245.1350 | 4,460.9500 | 4,447.8400 | 4,699.4300 | 4,831.2650 | 5,001.0600 | 4,905.9700 |
| Japan | Yen | JPY | 57.3079 | 58.5721 | 58.2865 | 56.2054 | 55.3642 | 57.6266 | 59.3341 | 60.4309 | 62.0892 | 64.9763 | 65.9899 | 65.9310 |
| Korea | Won | KOR | 574.9650 | 576.2200 | 580.3300 | 551.6250 | 558.1950 | 573.3050 | 595.1100 | 597.9250 | 628.4700 | 633.4100 | 663.7650 | 693.0100 |
| Kuwait | Dollar | KWD | 0.1369 | 0.1445 | 0.1471 | 0.1411 | 0.1414 | 0.1422 | 0.1459 | 0.1494 | 0.1568 | 0.1626 | 0.1681 | 0.1651 |
| Malaysia | Ringgit | MYR | 1.7021 | 1.8059 | 1.8564 | 1.7792 | 1.7815 | 1.7887 | 1.8370 | 1.8815 | 1.9951 | 2.0695 | 2.1358 | 2.0934 |
| Norway | Krone | NOK | 3.7535 | 3.7683 | 3.6566 | 3.5384 | 3.5166 | 3.5115 | 3.6202 | 3.6235 | 3.6417 | 3.7520 | 4.0386 | 4.0196 |
| Pakistan | Rupee | PKR | 26.5380 | 28.2641 | 28.9901 | 27.5441 | 27.6172 | 27.6993 | 28.2923 | 28.7408 | 30.3816 | 31.4956 | 32.4123 | 31.6107 |
| Papua New Guinea | Kina | PGK | 1.6344 | 1.7380 | 1.8886 | 1.8485 | 1.8523 | 1.8523 | 2.0760 | 2.0447 | 2.0454 | 2.1076 | 2.0251 | 1.9832 |
| Philippines | Peso | PHP | 22.3811 | 23.5180 | 24.3157 | 23.6187 | 24.0417 | 24.3946 | 25.3974 | 26.3057 | 27.7720 | 29.0474 | 30.2682 | 29.3462 |
| Singapore | Dollar | SGD | 0.8084 | 0.8472 | 0.8614 | 0.8236 | 0.8182 | 0.8350 | 0.8542 | 0.8700 | 0.9085 | 0.9451 | 0.9726 | 0.9734 |
| Solomon Islands | Dollar | SBD | 2.6019 | 3.0881 | 3.4044 | 3.4196 | 3.4615 | 3.3992 | 3.6293 | 3.7167 | 3.9514 | 4.0956 | 4.2320 | 4.1398 |
| South Africa | Rand | ZAR | 4.7192 | 4.5955 | 5.0626 | 4.7447 | 4.9663 | 4.9667 | 4.8667 | 4.5749 | 4.5232 | 4.6728 | 4.4868 | 4.3894 |
| Sri Lanka | Rupee | LKR | 42.6480 | 45.4442 | 46.7409 | 44.7025 | 44.7945 | 45.0170 | 46.2445 | 39.9659 | 50.3917 | 52.4405 | 54.1293 | 53.1797 |
| Sweden | Krona | SEK | 4.5660 | 4.6245 | 4.4853 | 4.3924 | 4.3584 | 4.3606 | 4.4476 | 4.5168 | 4.5855 | 4.6338 | 4.7593 | 4.6938 |
| Switzerland | Franc | CHF | 0.7247 | 0.7416 | 0.7276 | 0.6931 | 0.7005 | 0.7035 | 0.7191 | 0.7342 | 0.7578 | 0.7409 | 0.7638 | 0.7533 |
| Taiwan | Dollar | TAI | 15.5150 | 16.1350 | 16.3150 | 15.7100 | 15.9750 | 16.3900 | 16.7800 | 17.2100 | 17.2150 | 18.8200 | 19.5000 | 19.1450 |
| Thailand | Baht | THB | 19.1985 | 20.0488 | 20.1234 | 19.3510 | 19.5558 | 20.0730 | 20.8131 | 21.2714 | 22.4848 | 23.0744 | 23.7403 | 23.4273 |
| Tonga | Pa'anga | TOP | 0.9628 | 1.0175 | 1.0464 | 1.0179 | 1.0292 | 1.0467 | 1.0825 | 1.1050 | 1.1702 | 1.1854 | 1.2142 | 1.2006 |
| United Kingdom | Pound | GBP | 0.3068 | 0.3241 | 0.3195 | 0.2977 | 0.3026 | 0.3019 | 0.3101 | 0.3186 | 0.3269 | 0.3301 | 0.3555 | 0.3496 |
| United States | Dollar | USD | 0.4477 | 0.4752 | 0.4883 | 0.4679 | 0.4686 | 0.4705 | 0.4832 | 0.4948 | 0.5247 | 0.5446 | 0.5617 | 0.5508 |
| Vanuatu | Vatu | VUV | 62.2021 | 64.9691 | 65.5857 | 63.7614 | 63.7590 | 64.3775 | 65.1610 | 66.5334 | 69.3677 | 69.7515 | 71.7706 | 70.8094 |
| Western Samoa | Tala | WST | 1.5363 | 1.5829 | 1.6081 | 1.5713 | 1.5708 | 1.5771 | 1.6038 | 1.6242 | 1.6921 | 1.7122 | 1.7469 | 1.7221 |

# REGULAR FEATURES

## DUE DATES REMINDER

### May 2003

**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

**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 and return payment due**

### June 2003

**3 FBT return and payment due**

**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

**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 and return payment due**

*These dates are taken from Inland Revenue's Smart business tax due date calendar 2003 - 2004*

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

This page shows the draft 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.

**By internet**: Visit **www.ird.govt.nz**
On the homepage, click on "The Rulings Unit welcomes your comment on drafts of public rulings/interpretation statements before they are finalised . . ." Below the heading "Think about the issues", click on the drafts that interest you. You can return your comments by internet.

Name _____

Address _____

_____

| | *Draft public rulings* | *Comment deadline* |
|---|---|---|
| ☐ | PU3855a-d: Fishing quota and secondhand goods | 30 May 2003 |

*Items are not generally available once the comment deadline has passed*

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

Affix Stamp Here

**The Manager (Field Liaison)**
**Adjudication & Rulings**
**National Office**
**Inland Revenue Department**
**PO Box 2198**
**Wellington**