

RULINGS > PRODUCT

Kiwibank Limited

Issued: 4 October 2021

BR Prd 21/06

The Arrangement is the issue by Kiwibank of certain perpetual preference shares of up to \$300 million to third party investors by way of a public offer.

START DATE – END DATE

03/11/2021 - 30 /11/2026

(THIS TITLE PAGE DOES NOT FORM PART OF THE RULING.)

Product Ruling – BR Prd 21/06

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

Name of person who applied for the Ruling

This Ruling has been applied for by Kiwibank Limited (Kiwibank) - IRD No. 79-167-495 and the Kiwibank Consolidated Tax Group – IRD No. 121-260-735.

Taxation Laws

All legislative references are to the Income Tax Act 2007 unless otherwise stated.

This Ruling applies in respect of ss BG 1 and GB 35(2).

The Arrangement to which this Ruling applies

The Arrangement is the issue by Kiwibank of certain redeemable perpetual preference shares (PPS) of up to \$300 million to third party investors by way of a public offer.

Kiwibank intends to recognise the PPS as Additional Tier 1 capital for the purposes of the Reserve Bank of New Zealand (RBNZ) capital adequacy rules.

Kiwibank will use the proceeds of the issue of the PPS for its general banking business.

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

Documents

1. The following documents describe the Arrangement:
 - a) Kiwibank's constitution provided to Inland Revenue on 10 September 2021
 - b) Kiwibank 2021 perpetual preference share terms (Terms) provided to Inland Revenue on 23 September 2021
 - c) RBNZ document: BPR110 Capital Definitions (1 July 2021)

Terms of PPS

Issue of PPS

2. Each of the PPS will have an issue price of \$1 (cl 1.3 of the Terms).
3. Clause 2.1 of Kiwibank's constitution permits the issue of redeemable shares.

Voting rights

4. PPS holders will have no right to attend or vote at meetings of holders of Kiwibank ordinary shares, nor will they have the right to participate in or vote on decisions of ordinary shareholders made outside of shareholder meetings (cl 1.8(a) of the Terms).
5. PPS holders will have the protective voting rights conferred by section 117 of the Companies Act 1993 and certain changes to the Terms require the approval (by way of special resolution) of PPS holders (cl 6.2(c) of the Terms).

Distributions

6. The PPS will carry a right to quarterly distributions.
7. The distribution payable on each scheduled distribution date is calculated in accordance with the following formula (cl 2.3 of the Terms):

$$\text{Distribution payable} = \frac{\text{Distribution Rate} \times (1 - \text{Tax Rate}) \times \text{Issue Price}}{4}$$

8. The "Distribution Rate" is calculated according to the following formula (cl 2.2 of the Terms):

$$\text{Distribution Rate} = (\text{Swap Rate} + \text{Margin})$$

9. Where:

"Swap Rate" means:

- a) in respect of the first Fixed Rate Period:
 - i) the mid-market swap rate for an interest rate swap with a term of 5 years commencing on the Rate Set Date, as calculated by Kiwibank on the Rate Set Date in accordance with market convention with reference to Bloomberg page 'ICNZ4' (or its successor page); or

- ii) if a rate is unable to be determined in accordance with i) above, or if Kiwibank forms a view, on reasonable grounds, that the rate so determined is not an accurate reflection of market rates, the average of the mean bid and offered swap rates quoted by each of the Reference Banks on the Rate Set Date for an interest rate swap with a term of 5 years commencing on the Rate Set Date,
- b) in respect of any other Fixed Rate Period:
 - i) the mid-market swap rate for an interest rate swap with a term of 5 years commencing on the applicable rate reset date, as calculated by Kiwibank at or about 11am on the Rate Reset Date in accordance with market convention with reference to Bloomberg page 'ICNZ4' (or its successor page); or
 - ii) if a rate is unable to be determined in accordance with i) above, or if Kiwibank forms a view, on reasonable grounds, that the rate so determined is not an accurate reflection of market rates, the average of the mean bid and offered swap rates quoted by each of the reference banks at or about 11am on the Rate Reset Date for an interest rate swap with a term of 5 years commencing on the Rate Reset Date,

in each case expressed on a percentage basis, adjusted for quarterly payments and rounded, if necessary, to the nearest two decimal places with five being rounded up.

"Margin" means the margin (expressed as a percentage per annum) determined by Kiwibank in consultation with the Joint Lead Managers following the Bookbuild and announced by Kiwibank via NZX on the Rate Set Date.

10. If the Distribution Rate determined in accordance with clause 2.2 of the Terms is less than 0% per annum, the Distribution Rate will be deemed to be 0% per annum.
11. The "Tax Rate" means the New Zealand corporate tax rate on the relevant Distribution Payment Date (expressed as a decimal).
12. Kiwibank is obliged to fully impute the distributions on the PPS (cl 2.4 of the Terms). If any distribution is not fully imputed, then Kiwibank must increase the cash component of the distribution to equal the shortfall in imputation credits (cl 2.5 of the Terms).
13. Distributions are payable at Kiwibank's absolute discretion (cl 2.6 of the Terms) although PPS holders will expect regular dividends to be paid where possible. In addition, the payment of any distribution on any distribution payment date is subject to:

- a) the payment of the distribution not resulting in a breach of Kiwibank's Conditions of Registration as at the time of the payment; and
 - b) Kiwibank being solvent on the distribution payment date and remaining solvent immediately after such payment is made.
14. If a distribution is not paid on a scheduled distribution date for any reason it does not accrue and is not payable at any time (cl 2.7 of the Terms).
15. If a distribution on the PPS is not paid, then a "dividend-stopper" applies to Kiwibank, meaning that no dividends or other distributions may be paid on Kiwibank ordinary shares, or any payments with respect to any other capital instruments that rank equally with or junior to the PPS may be made, until Kiwibank pays PPS distributions in full on two subsequent scheduled distribution dates or there are no PPS outstanding (cl 2.10 of the Terms).

Redemption

16. The PPS are perpetual and have no fixed maturity date. PPS holders do not have a right to require redemption of their PPS (cl 3.5 of the Terms).
17. Under cl 3.1 of the Terms, all (but not some) of the PPS may be redeemed for:
- a) their issue price at the option of Kiwibank on an Optional Redemption Date, the first of which is the fifth anniversary of the Issue Date and then every five years after that date; or
 - b) the greater of the issue price and the market value of the PPS on the occurrence of a Tax Event or Regulatory Event (as defined in the Terms).
18. Kiwibank's constitution at cl 4.1 provides that Kiwibank may repurchase any of its securities.
19. Kiwibank can only redeem the PPS if (cl 3.3 of the Terms):
- a) Either:
 - (i) prior to or concurrent with the redemption, Kiwibank replaces the PPS with a paid-up capital instrument of the same or better quality for RBNZ capital adequacy purposes, and with terms and conditions that are sustainable for the income capacity of the Kiwibank Group; or
 - (ii) Kiwibank does not intend to replace the PPS and it has demonstrated to the RBNZ's satisfaction that after the redemption the Kiwibank Group's capital is adequate; and

- b) Kiwibank has provided to the RBNZ any information and supporting documentation required;
- c) the RBNZ has given its prior written approval to the redemption; and
- d) Kiwibank will remain solvent immediately after the redemption, and otherwise comply with any applicable law, directive or requirement.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- (a) Section GB 35(2) will not apply to the Arrangement.
- (b) Section BG 1 will not apply to the Arrangement.

The period or income year for which this Ruling applies

This Ruling will apply for the period beginning on 3 November 2021 and ending on 30 November 2026.

This Ruling is signed by me on the 4th day of October 2021.

Howard Davis

Group Leader, Tax Counsel Office

About this document

Product Rulings are issued by the Tax Counsel Office and Customer and Compliance Services. Product Rulings set out the Commissioner's view on how tax laws apply to a particular "product" – which is an arrangement that a specified taxpayer is likely to enter into with a number of people on identical terms. Taxpayers who enter into the arrangement described in a Product Ruling may apply the ruling but are not obliged to do so. Product Rulings are binding on the Commissioner. This means that if you are entitled to apply a Product Ruling and you have calculated your tax liability in accordance with the ruling, the Commissioner must accept that assessment. A Product Ruling applies only to the taxation

laws and arrangement set out in the ruling, and only for the period specified in the ruling. It is important to note that a general similarity to an arrangement covered by a Product Ruling will not necessarily lead to the same tax result.