

RULINGS > PRODUCT

Everlasting Nominees Limited

Issued: 8 November 2023

BR Prd 23/04

This Ruling applies to a transfer of Digital Assets into Everlasting's Estate or Staking investment products in circumstances where the Client does not hold the Digital Assets in a business of dealing in cryptocurrency, and did not originally acquire the Digital Assets for the dominant purpose of disposal. This Ruling also applies to subsequent transfers out of the Estate and Staking investment products (eg to beneficiaries).

START DATE – END DATE

8 November 2023 – 8 November 2028

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

Product Ruling – BR Prd 23/04

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 Everlasting Nominees Limited (Everlasting).

Taxation Laws

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

This Ruling applies in respect of ss CA 1(2), CB 1, CB 2, CB 3, CB 4, CB 5, DA 1, FB 1B(a), FB 1C(2), FC 1, FC 2, FC 3 and YB 21, and subpart YF.

The Arrangement to which this Ruling applies

The Arrangement is the transfer of a Client's Digital Assets into the following products provided by Everlasting, where the Client does not hold the Digital Assets in a business of dealing in cryptocurrency for the purposes of ss CB 1 and/or CB 5, and the Client's Digital Assets were not originally acquired for the dominant purpose of disposal:

- a) **Estate:** The Client's Digital Assets are stored in the Client's (exclusive access) Wallet until any Authorised Instruction for withdrawal is received and verified. The Client does not earn Staking Rewards.
- b) **Staking:** Staking is facilitated from the Client's corresponding vault (which has the same security settings as the Wallet). The Client's Digital Assets that are staked and the Staking Rewards earned are subsequently transferred back to the Client's vault and (unless further staking is facilitated) to the Client's corresponding Wallet where they are stored until an Authorised Instruction for withdrawal is received and verified. Clients retain legal ownership of their Digital Assets throughout the staking process.

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

Documents

- 1) The following documents provided to Inland Revenue on 4 May 2023 describe the Arrangement, and are collectively referred to as the Contract:

- Letter of Engagement;
 - General Terms and Conditions Everlasting Nominees Ltd (last updated 24 April 2023) (General Terms);
 - Estate Terms and Conditions Everlasting Nominees Ltd (last updated 24 April 2023) (Estate Terms); and
 - Digital Assets Staking Services Terms and Conditions (Staking Terms).
- 2) The final executed documentation will not be materially different from the documentation provided to Inland Revenue on 4 May 2023, as set out above.
- 3) Unless otherwise specified, capitalised terms have the same meaning as defined in the Contract.
- 4) In addition to defined terms in the Contract, in this Ruling:
- A reference to a "Client's spouse" means their surviving spouse, de facto partner or civil union partner;
 - a reference to a "Client's will" includes a reference to the rules governing intestacy; and
 - a reference to an "executor" includes an administrator or trustee.

Everlasting Nominees Limited

- 5) Everlasting was incorporated in New Zealand on 12 August 2022.

The Contract

- 6) The Clients are individuals (provided they are over the age of 16 years) and/or their spouse, civil union or de facto partner, or a trustee of a trust, who choose to purchase Everlasting's products.
- 7) In respect of the Estate and Staking products, the Clients enter into the Agreements with Everlasting and, in relation to the Estate product, a Digital Executor. The Digital Executor (unless otherwise agreed by Everlasting) must be a solicitor, financial advice provider, chartered accountant, professional fiduciary or other member of a regulated professional body.
- 8) The Digital Assets have two data parameters:

- a public key, which is disclosed to all participants in the system and has encoded information about the Digital Asset such as its ownership, value and transaction history; and
 - a private key, which permits transfers or other dealing in the Digital Asset to be cryptographically authenticated by digital signature.
- 9) The Clients (or their Authorised Representative) provide Everlasting and/or the Digital Executor (as applicable) with their signed Authorised Instructions in relation to the:
- carrying out of any action (including staking) affecting the Client's Digital Assets and/or Wallets (Staking Terms cl 4.2 and Estate Terms cl 6.2(a));
 - transfer of the Client's Digital Assets to one or more other wallets that the Client has knowledge and control of (Estate Terms cl 6.1(b));
 - transfer of the Client's Digital Assets to their beneficiaries' wallets on the Client's death or incapacitation (Estate Terms cl 6.1(c)); and
 - issuance of a new Client Key or revocation of a Permissioned Key (General Terms cl 11.1).

Wallets and Permissioned Keys

- 10) Using a third-party software development platform, Everlasting establishes the Wallet(s) for the Client's Digital Assets on behalf of the Client. The smart contract that gives effect to the Wallet has programmable rules that hold the Client's Digital Assets at the contract and it only has a public key (being the address).
- 11) Each Wallet will have at least five individual private cryptographic Permissioned Keys (either pre-existing and/or created for the purposes of the Agreements) associated with it (Estate Terms cl 3.2(a)–(c)):
- Everlasting Keys (two): The Everlasting Keys can only be used by Everlasting for the limited purposes of providing Estate Services in accordance with the Estate Terms and to give effect to Authorised Instructions.
 - Client Keys (two): The Client Keys are retained and controlled by the Client and will comprise their pre-existing key or a key created by the Client specifically for the purposes of the Estate Terms.
 - Digital Executor Key (one): The Digital Executor Key is retained and controlled by the Digital Executor (as either a pre-existing key or one created specifically for the purposes of the Estate Terms). The Digital Executor Key can only be used for the purpose of giving effect to Authorised Instructions.

- 12) In some instances (eg when spouses, civil union partners or de facto partners enter into the Agreements in relation to Digital Assets that are relationship property), there may be more than five Permissioned Keys. However, there will never be more Everlasting Keys or Digital Executor Keys than Client Keys.

Deposit of Digital Assets into Wallet

- 13) The Client is responsible for transferring their Digital Assets into the Wallet.

Withdrawal transactions where the Client is alive and not incapacitated

- 14) To withdraw the Digital Assets from the Client's Wallet, more than half of the total keys are required and at least one of those Keys must be a non-Client Key. Before the Digital Asset can be withdrawn from the Wallet, the Client must first load the transaction into the Wallet using a Client Key. Two other Permissioned Keys (usually the other Client Key and an Everlasting Key) must subsequently authorise the withdrawal. Before Everlasting uses an Everlasting Key to withdraw the Digital Asset, it completes various due diligence checks (including identity verification and liveness tests) to establish that the Client has requested the withdrawal.
- 15) Other than on the Client's death or incapacitation, Everlasting will only authorise transactions from the Wallet to the vault or to another wallet or vault that has not been established under the General Terms if it is satisfied the Client has knowledge of and control over this other wallet or vault. Should the Client then wish to on-transfer the Digital Asset to a third party, the Client (without Everlasting's involvement) must transfer their Digital Assets to that third party from their wallet that has not been established under the General Terms.
- 16) The Digital Executor Key is not usually used to authorise a withdrawal from the Wallet unless the Client has lost control over their Client Keys (and a withdrawal is required before that Client Key has been decommissioned and new Client Key created) or the Client has died or become incapacitated.

Vault and staking where the Client is alive and not incapacitated

- 17) In relation to the Staking services, using a third-party platform, Everlasting (on behalf of the Client) establishes one or more vaults to facilitate staking. The smart contract that gives effect to the Client's vault inherits the same security settings as the Client's Wallet(s). A Wallet will only be able to transact with the corresponding vault if the Client has loaded the transaction to the vault and, provided Everlasting is satisfied with

the due diligence checks, the other Client Key(s) and Everlasting Key are used to authorise the transaction.

- 18) Once the Client's Digital Assets are transferred into the corresponding vault (referred to as Staked Assets), they are transferred to a global deposit contract (a smart contract), which issues a "Deposit Receipt". The Deposit Receipt establishes:
 - that the Client has at least 32 ETH to stake;
 - that the Client's Digital Assets originated from the Client's Wallet;
 - that the Client's Digital Assets are locked-up in the global deposit contract;
 - the unique validator node key that identifies the validator node that is coupled to the Staking Rewards; and
 - the withdrawal address (a public key) to receive any Staking Rewards.
- 19) Everlasting appoints an entity with the necessary infrastructure (including access to Nodes, computer hardware and software) to help facilitate the staking services (Staking Participant). No Digital Assets or Permissioned Keys are provided to the Staking Participant.
- 20) Everlasting provides the deposit receipt to the Staking Participant, which then registers the Deposit Receipt on the Ethereum Blockchain. Once accepted as a valid receipt, the validator node key participates in the security of the network by signing messages and attestations and participating in sync committees in return for rewards that accrue net of any 'slashing' when the blockchain detects inconsistencies in the validator activity. The Staking Rewards accumulate in the Client's validator balance which is updated at least once per epoch (384 seconds) for all active validators. However, the balance in the Client's Wallet does not change.
- 21) Everlasting monitors the staking process and engages with the Staking Participant on behalf of the Client to ensure that the staking is occurring as intended.
- 22) Unilateral withdrawals of the Staked Assets and/or Staking Rewards can be made from the validator balance, so that the Staked Assets and/or Staking Rewards are transferred back to the Client's vault and the Client's Wallet.

Relationship property

- 23) During the term of the Arrangement, the Digital Assets may be the subject of a settlement of relationship property.

Death or incapacitation

- 24) To the extent that legal title to a Client's Digital Assets is held by Everlasting or the Digital Executor, Everlasting or the Digital Executor (as applicable) holds that title for the Client as a bare trustee (General Terms cl 8.5(b)).
- 25) On the verification of the Client's death or incapacitation, Everlasting will transfer the Digital Assets in accordance with the Authorised Instructions from the Client's Wallet to another wallet that the Client's beneficiaries have knowledge of and control over (Estate Terms cls 6.1(c) and 7.2)).
- 26) Where a Client dies without a valid will, Everlasting is entitled to (Estate Terms cl 7.3):
 - treat any person entitled to inherit the Digital Assets as the Client's Authorised Representative, provided Everlasting is satisfied that the person is entitled to inherit the relevant Digital Asset; and/or
 - facilitate, at the Client's cost, an order from the High Court of New Zealand to have an administrator appointed to oversee the inheritance of the Digital Assets.
- 27) If the Client becomes Mentally Incapable without valid enduring power(s) of attorney in place, Everlasting is entitled to (Estate Terms cl 7.4):
 - treat any person entitled to apply to the court for appointment as the Client's property manager and/or welfare guardian as the Client's Authorised Representative, provided that Everlasting is satisfied that the person is entitled to make such an application; and/or
 - facilitate, at the Client's cost, an order from the court to have a property manager and/or welfare guardian appointed to oversee the management of the Client's Digital Assets.
- 28) On the Client's death or incapacitation, the following may occur:
 - Everlasting may deduct or set off, from any Digital Assets transferred or otherwise dealt with, the fees specified in the Fee Schedule, as well as any fees, disbursements, taxes or other sums that are due and outstanding to Everlasting or to any related company of Everlasting or the Digital Executor and any costs incurred in facilitating any court applications or making inquiries.
 - Unless the Client's Authorised Representative has access to the Client Keys, the Client Keys become dormant, and the Everlasting Keys (two) and the Digital Executor Key (one) are used to transact with the Wallet and carry out the Client's Authorised Instructions.

- 29) In limited circumstances, on the Client's death or incapacitation, the Client's Authorised Representative may provide an Authorised Instruction to Everlasting to maintain the Client's Wallet, vault or Permissioned Keys so that the Client's estate can continue to benefit from Everlasting's products. In these circumstances, the Client's Authorised Representative will get new Permissioned Keys to replace the Client Keys.

Termination

- 30) Everlasting may suspend or terminate the Client's access to the Services with immediate effect where (General Terms cl 15.2; Estate Terms cl 9.2; Staking Terms cl 6.2):
- there is a material or persistent breach by the Client of the Estate, Staking or General Terms, which is either incapable of remedy or (if capable of remedy) has not been remedied within a reasonable time after Everlasting's notice to the Client specifying the default and requiring it to be remedied; or
 - any Wallet associated with the Client is engaged in any activity in violation of applicable laws.
- 31) Either Everlasting or the Client may terminate the Contract, in whole or in part, with or without cause, by giving the requisite written notice to the other. The Client cannot terminate without cause prior to the end of the Minimum Period. If the Client chooses to terminate the engagement and cease using the Services, the Client must sign an exit signature and broadcast an exit transaction to Ethereum. If by the Termination Date the Client has not given instructions to Everlasting regarding how or where to deliver the Digital Asset, Everlasting will hold the Digital Asset on trust as bare trustee for the Client until it is given Authorised Instructions. On termination, the following occurs:
- Under the General and Estate Terms, any Everlasting Keys for the Wallet(s) will be revoked.
 - Under the Staking Terms, the Client's Keys for the Wallet(s) will no longer be functional. Following delivery of the Digital Asset in accordance with the Authorised Instructions, (to the extent not automatically revoked) Everlasting revokes the Everlasting Keys relating to that Wallet.

Fees payable to Everlasting

- 32) In consideration for the Services, the Client pays Everlasting fees as set out in the Contract. The fees may be payable in ETH, stablecoin or fiat currency depending on the Client's preference.

Other clauses

33) Under the General Terms, the following applies:

- To the extent there is a bare trust and Everlasting has or is deemed to have custody of the Digital Assets under that bare trust, it is required to segregate each Client's Digital Assets such that they can be separately identified from any other Client's digital assets (General Terms cl 8.5(c)).
- Everlasting may take such steps that it determines, in its sole discretion, may be necessary or advisable to maintain and protect the security of the Client's Digital Assets, the Wallet(s) and Everlasting Keys (General Terms cl 8.6).
- The Client is solely responsible for the payment of any applicable taxes with respect to their Digital Assets, including any gain in the value of their Digital Assets (General Terms cl 4.4).

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

- (a) The Client transfers the Digital Assets into an Everlasting product for the secure, long-term and self-custodial holding of their Digital Assets, including Staking Rewards (where relevant).
- (b) The Digital Assets do not meet the requirements of s EW 5(3BAB).

How the Taxation Laws apply to the Arrangement

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

- (a) For the purposes of the Arrangement, Everlasting and the Digital Executor are nominees as defined in s YB 21.
- (b) Under subpart YF, any amount of income derived or expenditure incurred by a Client under the Arrangement must be converted into New Zealand dollars for tax purposes.
- (c) Where a Client purchases the Staking Product:
 - (i) The Client will derive income under s CA 1(2), CB 1 or CB 3 when Staking Rewards are transferred to the vault. The amount of income derived is the value of the Staking Rewards on that date.

- (ii) The Client can deduct, under s DA 1, the portion of the Service Fee related to the Staking Services (as set out in the Letter of Engagement or Fee Schedule). The expenditure is deductible in the income year that the Client has a definitive commitment to pay for the Staking Services.
- (d) A Client's Digital Assets (including Staking Rewards) are not acquired for the purpose of disposal under s CB 4, where the Client:
 - (i) acquires the Digital Assets for the purpose of transferring those assets into an Everlasting Wallet; or
 - (ii) did not acquire the Digital Asset for the dominant purpose of disposal.

For the avoidance of doubt, Staking Rewards earned in the Everlasting Staking product are not acquired for the dominant purpose of disposal.

- (e) Sections CB 1, CB 2, CB 3, CB 4 and CB 5 do not apply where a Client's Digital Assets (including any Staking Rewards) are transferred into an Everlasting Wallet, or out of an Everlasting Wallet:
 - (i) to another wallet that the Client legally owns (whether governed by the Contract or not), and on the transfer out of the Client's other wallet to another person for consideration, provided that the transfer does not form part of any new business or profit-making scheme; or
 - (ii) to another person for no consideration:
 - where the Client is incapacitated and a transfer is made in accordance with their Authorised Instructions under cl 6.1(c) of the Estate Terms;
 - on a "settlement of relationship property" as defined in s FB 1B(a); or
 - under the Client's will.
- (f) A transfer of Digital Assets (including Staking Rewards) out of a Client's Everlasting Wallet to their spouse, under the Client's will (including any intervening transfer to an executor) is treated as a settlement of relationship property under s FC 3.
- (g) Where a transfer of Digital Assets (including Staking Rewards) out of a Client's Everlasting Wallet is a "settlement of relationship property" (as defined in s FB 1B(a) or as provided in Ruling (f) above), the value of the transfer is the cost (if any) of the Digital Assets to the Client (on the date on which the Client first acquired those Digital Assets) under s FB 1C(2).
- (h) For all other transfers out of a Client's Everlasting Wallet to another person for no consideration, the value of the transfer is the market value of the Digital Assets

(including Staking Rewards) on the date of the transfer under s FC 2. This includes the following transfers where the Client is a trustee:

- (i) the transfer of Digital Assets on a distribution to a beneficiary of the trust (unless the beneficiary provides arm's length consideration for the Digital Assets) under s FC 1(1)(c); and
- (ii) a settlement by the trustee on the trustee of another trust (if authorised under a trust instrument as a power of advancement or resettlement, or under s 64 of the Trusts Act 2019 as the payment or application of capital money or other capital assets) under s FC 1(1)(f).

For the avoidance of doubt, this Ruling does not consider the application of the Trust rules in subpart HC.

The period or income year for which this Ruling applies

This Ruling will apply for the period beginning on 8 November 2023 and ending on 8 November 2028.

This Ruling is signed by me on the 8th day of November 2023.

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.