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Kiwibank Limited

Issued | Tukuna: 18 October 2024

BR Prd 24/04

The Arrangement is the issue by Kiwibank Limited of perpetual preference shares (PPS) of up to \$275 million in 2024. The PPS will be issued directly to investors by way of a public offer, such that they are recognised as Additional Tier 1 capital in accordance with the relevant requirements of the Reserve Bank of New Zealand's BPR110 *Capital Definitions*.

START DATE – END DATE | RĀ TĪMATA – RĀ MUTUNGA

18/10/24 – 30/04/2030

(THIS TITLE PAGE DOES NOT FORM PART OF THE RULING. | KĀORE TĒNEI WHĀRANGI TAITARA I WHAI WĀHI I TE WHAKATAUNGA.)

Product Ruling | Whakataunga Whakaputanga – BR Prd 24/04

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

Name of person who applied for the Ruling | Ingoa o te tangata i tono i te Whakatau

This Ruling has been applied for by Kiwibank Limited and Kiwibank Consolidated Tax Group.

Taxation Laws | Ture Tāke

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) and (3).

The Arrangement to which this Ruling applies | Te Whakaritenga i pāngia e tēnei Whakataunga

The Arrangement is the issue by Kiwibank Limited (Kiwibank) of perpetual preference shares (PPS) of up to \$275 million in October 2024 (with the ability to accept unlimited oversubscriptions at Kiwibank's discretion). The PPS will be issued directly to investors by way of a public offer, such that they are recognised as Additional Tier 1 capital in accordance with the relevant requirements of the Reserve Bank of New Zealand's BPR110 *Capital Definitions*, first issued on 1 July 2021 and most recently revised on 1 October 2023. The proceeds of the public offer of the PPS will be used for Kiwibank's general banking purposes.

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

Terms on which the PPS will be issued

- 1) Under clause 4.1 of Kiwibank's constitution (provided to Inland Revenue on 31 July 2024) Kiwibank's board of directors may issue equity securities of any class, including redeemable shares, at any time, to any person and in such numbers and on such terms as the board of directors thinks fit, subject to the Companies Act 1993, Kiwibank's constitution and the terms of issue of any existing equity securities.

- 2) The terms on which the PPS will be issued are:
 - a) set out in a document entitled *Kiwibank Limited 2024 Perpetual Preference Share Terms* provided to Inland Revenue on 8 October 2024 (the 2024 PPS Terms); and
 - b) summarised and explained in a document entitled *Limited Disclosure Document for an Offer of Perpetual Preference Shares by Kiwibank Limited* dated 11 October 2024, provided to Inland Revenue on 10 October 2024.
- 3) Except for the term "2024 PPS Terms" (defined in [2)a]), all capitalised terms and phrases referred to in the remainder of this Ruling have the meaning defined in the 2024 PPS Terms.
- 4) The key 2024 PPS Terms are summarised below. All clause references in the remainder of the Ruling are to the clauses of the 2024 PPS Terms.

Voting rights

- 5) The PPS confer no rights on a Holder to attend or vote at any meeting of holders of Ordinary Shares or to participate in any other decision or resolution of holders of Ordinary Shares or any other class of shares in Kiwibank (other than the PPS) (clause 1.8(a)).
- 6) Holders of the PPS have the protective voting rights conferred by s 117 of the Companies Act 1993 (clause 1.9).
- 7) Except as provided in clause 6.3(b) and 6.3(c), Kiwibank may not amend the 2024 PPS Terms while any PPS remain on issue. Clause 6.3(b) sets out the instances in which Kiwibank is entitled to amend the 2024 PPS Terms without authority, assent or approval of Holders. Without limiting clause 6.3(b), Kiwibank may amend the 2024 PPS Terms if the amendment is approved by a special resolution of Holders (clause 6.3(c)).
- 8) At the time of issue of the PPS, it is not expected that any protective voting rights conferred by s 117 of the Companies Act 1993 or under clause 6.3(c) will arise.

Issue price

- 9) The Issue Price of each PPS is NZ\$1.00 (clause 1.3).

Distributions

- 10) Each PPS entitles the Holder to receive a Distribution payable in arrear on each Distribution Payment Date (clause 2.1(a)).

- 11) Kiwibank has full discretion at all times to cancel Distributions on the PPS (although Kiwibank expects to pay regular dividends where possible). In addition, the payment of any Distribution on any Distribution Payment Date is subject to certain conditions being satisfied (clause 2.6).
- 12) Under clause 2.7, Distributions are non-cumulative. If payment of any Distribution is not made for any reason, Kiwibank has no liability to pay that unpaid Distribution to the Holder. No interest accrues on any unpaid Distributions and a Holder has no claim or entitlement in respect of such non-payment.
- 13) Clause 2.10 contains restrictions on Kiwibank in the case of non-payment of Distributions. If for any reason a Distribution is not paid in full on a Distribution Payment Date, Kiwibank must not authorise or pay a dividend on its Ordinary Shares or acquire its Ordinary Shares or otherwise undertake a capital reduction in respect of its Ordinary Shares unless and until:
 - a) Kiwibank pays a Distribution in full on a subsequent Scheduled Distribution Payment Date; or
 - b) there are no PPS outstanding.
- 14) Distributions in relation to the PPS are calculated in accordance with clauses 2.3 and 2.5 (clause 2.1(a)). Payment of the Distribution on each PPS is subject to clauses 2.6, 2.7 and 5 (clause 2.1(b)).
- 15) The Distribution Rate (expressed as a percentage per annum) to be used for calculating Distributions in accordance with clause 2.3(a) or (b) for each Distribution Payment Date on or before the First Optional Redemption Date, is equal to the Swap Rate plus the Margin (clause 2.2(a)).
- 16) The Distribution Rate (expressed as a percentage per annum) to be used for calculating Distributions in accordance with clause 2.3(c) for each Distribution Payment Date after the First Optional Redemption Date is equal to the Base Rate plus the Margin, provided that, if the rate so determined is less than 0% per annum, the Distribution Rate will be deemed to be 0% per annum (clause 2.2(b)).
- 17) The Margin will be announced on or about the Rate Set Date and will apply for the duration of the PPS.
- 18) Kiwibank is required to attach Imputation Credits to each Distribution at the rate necessary for the Distribution to be Fully Credited (clause 2.4). However, if any Distribution is not Fully Credited in accordance with clause 2.4, the Distribution will be increased by an amount in New Zealand dollars equal to the shortfall in Imputation

Credits that would otherwise have been attached to the Distribution had the Distribution been Fully Credited (clause 2.5).

- 19) The Applicants state that while the PPS are on issue, it is anticipated that dividends paid by any members of the Kiwibank Consolidated Tax Group (including Kiwibank) will apply the same imputation credit ratio (that is, be fully imputed), provided sufficient imputation credits are available.

Redemption

- 20) The PPS are perpetual, so have no fixed maturity date.
- 21) Holders do not have a right to require Redemption of their PPS at any time (clause 3.6).
- 22) Subject to the provisions of clause 3, Kiwibank may at its option Redeem all (but not some) of the PPS for an amount in cash equal to their Issue Price:
- a) on an Optional Redemption Date; or
 - b) following the occurrence of a Tax Event or Regulatory Event.
- 23) Under clause 3.3, Kiwibank may only Redeem the PPS if:
- a) either:
 - i) prior to, or concurrent with, Redemption, Kiwibank replaces the PPS with a paid-up capital instrument:
 - of the same, or better, quality and contributing at least the same regulatory capital amount (for the purposes of the RBNZ's capital adequacy requirements applying to Kiwibank at the time); and
 - the terms and conditions of which are sustainable for the income capacity of the Kiwibank Group; or
 - ii) if Kiwibank does not intend to replace the PPS, it has demonstrated to the RBNZ's satisfaction that, after the Redemption, the Kiwibank Group's:
 - capital ratios would be sufficiently above their respective minimums; and
 - prudential capital buffer ratio would be sufficiently above its buffer trigger ratio;
 - b) Kiwibank has provided to the RBNZ any information and supporting documentation required by the RBNZ's prudential regulatory requirements;
 - c) the RBNZ has given its prior written approval to the Redemption; and

- d) Kiwibank is Solvent on the Redemption Date and will remain Solvent immediately after the Redemption of the PPS.
- 24) The First Optional Redemption Date in relation to the PPS is the date that is the five-and-a-half-year anniversary of the Issue Date.

How the Taxation Laws apply to the Arrangement | Ko te pānga o ngā Ture Tāke ki te Whakaritenga

The Taxation Laws apply to the Arrangement as follows:

- (a) Section GB 35(2) and (3) 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 | Te wā, te tau moni whiwhi rānei i pāngia ai e tēnei Whakataunga

This Ruling will apply for the period beginning on 18 October 2024 and ending on 30 April 2030.

This Ruling is signed by me on the 18th day of October 2024.

Raymond Yee

Senior Tax Counsel | Rōia Tāke
Tax Counsel Office | Te Tari Tohutohu Tāke

About this document | Mō tēnei tuhinga

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.