



Status: **legally binding**

Product Ruling

C2 Equity Optimiser

❶ Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Terms of use of this Ruling

This Ruling has been given on the basis that the entity who applied for the Ruling, and their associates, will abide by strict terms of use. Any failure to comply with the terms of use may lead to the withdrawal of this Ruling.

Changes in the law

Product Rulings were introduced for the purpose of providing certainty about tax consequences for entities in schemes such as this. In keeping with that intention, the Commissioner suggests promoters and advisers ensure that participants are fully informed of any legislative changes after the Ruling has issued. Similarly, entities that are considering participating in the Project are advised to confirm with their tax adviser that changes in the law have not affected this Ruling since it was issued.

No guarantee of commercial success

The Commissioner does not sanction or guarantee this product. Further, the Commissioner gives no assurance that the product is commercially viable, that charges are reasonable, appropriate or represent industry norms, or that projected returns will be achieved or are reasonably based.

Potential participants must form their own view about the commercial and financial viability of the product. The Commissioner recommends a financial (or other) adviser be consulted for such information.

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What this Ruling is about

1. This Ruling sets out the income tax consequences for entities that participate as an Investor in the scheme referred to as C2 Equity Optimiser – Deferred Purchase Agreement

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(C2 Equity Optimiser) offered by C2 Specialist Investments Pty Ltd (the Issuer) and arranged by C2 Financial Services Pty Ltd (the Arranger).

2. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated. Terms which are defined in the C2 Equity Optimiser – Deferred Purchase Agreement Master Product Disclosure Statement (Master PDS) referred to in paragraph 11 of this Ruling have been capitalised.

3. This Ruling does not address:

- the tax consequences
 - of borrowing funds to pay the Investment Amount
 - of paying any fee (including any Adviser Fee or Application Fee)
 - of an assignment and novation of an Investor's rights and obligations under the Terms
 - of an Investor Insolvency, Early Maturity Event, Issuer Buy-Back or Adjustment Event
 - upon enforcement of the Security Trust Deed by the Security Trustee on behalf of the Investors
 - upon enforcement of the Hedge Security Deed by the Security Trustee on behalf of the Investors
 - of taking delivery of, holding and disposing of the Delivery Parcel, and
 - associated with the holding of a Beneficial Interest
- whether the scheme constitutes a deferred purchase agreement, and
- whether the scheme constitutes a financial arrangement for the purposes of Division 230 (taxation of financial arrangements).

Who this Ruling applies to

4. This Ruling applies to you if:

- you are accepted to participate in the scheme described in paragraphs 11 to 23 of this Ruling, as an Investor
- your rights and obligations under the Terms commence on a relevant Issue Date, being an Issue Date on or between 2 October 2024 and 30 June 2027, and
- you have a purpose of staying in the scheme until it is completed (that is, being a party to the Terms until Maturity) and deriving a capital gain from the scheme.¹

5. This Ruling does not apply to you if you:

- are a non-resident for Australian tax purposes
- are an entity whose rights and obligations under the Terms commence other than on a relevant Issue Date (see paragraph 4 of this Ruling)

¹ A capital gain realised in connection with the disposal of any Delivery Asset delivered to the Investor does not constitute 'a capital gain from the scheme'.

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- intend to terminate your involvement in the scheme prior to its completion, or do not intend to derive a capital gain from it
- participate in the scheme through offers made other than through the Master PDS and a C2 Equity Optimiser Term Sheet Product Disclosure Statement (Term Sheet PDS); or you enter into an undisclosed arrangement with the promoter or a promoter associate, or an independent adviser that is interdependent with scheme obligations or scheme benefits (which may include tax benefits) in any way
- trade in financial instruments or securities and are treated for tax purposes as trading in the Units or the Delivery Assets, carrying on a business of investing in the Units or the Delivery Assets, or holding the Units or Delivery Assets as trading stock or as revenue assets, or
- are subject to Division 230 in respect of this scheme.

Requirements of the Superannuation Industry (Supervision) Act 1993

6. This Ruling does not address the provisions of the *Superannuation Industry (Supervision) Act 1993*. We give no assurance that the scheme is an appropriate investment for a superannuation fund. The trustees of superannuation funds are advised that no consideration has been given in this Ruling as to whether investment in this scheme may contravene the provisions of the *Superannuation Industry (Supervision) Act 1993*.

Date of effect

7. This Ruling applies from 2 October 2024, the date it was published to an Investor specified in paragraph 4 of this Ruling that enters into the scheme described in paragraphs 11 to 23 of this Ruling on a relevant Issue Date from 2 October 2024 until 30 June 2027.

8. However, the Ruling only applies and may be relied on to the extent that there is no change in the scheme or in the Investor's involvement in the scheme. If the scheme carried out is materially different from the scheme described at paragraphs 11 to 23 of this Ruling, this Ruling cannot be relied upon and may be withdrawn or modified.

Ruling

9. Subject to paragraph 3 of this Ruling and the assumptions in paragraph 10 of this Ruling:

- (a) The Investor's legally enforceable contractual rights in respect of their Units under the Terms are, in their totality, a CGT asset under subsection 108-5(1).
- (b) Following their acquisition (and subject to subparagraph 9(c) of this Ruling), the cost base or reduced cost base of the Investor's contractual rights in respect of their Units includes the Investment Amount (subsections 110-25(2) and 110-55(2)).

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- (c) Any Capital Return paid to the Investor under C2 Equity Optimiser will be received as recoupment of the Investment Amount and will not form part of any element of the cost base or reduced cost base of the Investor's contractual rights in respect of their Units (subsections 110-45(3) and 110-55(6)).
- (d) The Investor's ownership of the contractual rights in respect of their Units under the C2 Equity Optimiser comes to an end by reason of those rights being discharged or satisfied upon either the sale of the Delivery Parcel and payment of the Sale Monies using the Agency Sale Option, or the delivery of the Delivery Parcel to the Investor. A CGT event C2 happens under section 104-25 at this time.
- (e) The Investor's capital proceeds under section 116-20 from the CGT event will, as applicable, be equal to the Sale Monies obtained under the Agency Sale Option, or the market value of the Delivery Parcel received by the Investor on (or shortly after) the Settlement Date.
- (f) Any capital gain realised by the Investor as a result of the satisfaction of the of the Investor's contractual rights in respect of their Units will be treated as a discount capital gain pursuant to section 115-5 where the Investor is an individual, a complying superannuation entity or a trust and has held the Units for at least 12 months.
- (g) The Units under the C2 Equity Optimiser are not 'securities', as defined in subsection 159GP(1) of the *Income Tax Assessment Act 1936* (ITAA 1936).
- (h) A Capital Return paid by the Issuer will not be an amount of any annuity derived by the Investor, and will not be assessable income of the Investor under section 27H of the ITAA 1936.
- (i) Provided the scheme ruled on is entered into and carried out as described in this Ruling, the anti-avoidance provisions in Part IVA of the ITAA 1936 will not apply to the Investor in respect of an investment in the Units offered under the C2 Equity Optimiser.

Assumptions

10. This Ruling is made on the basis of the following necessary assumptions:
- (a) The Investor is an Australian resident for tax purposes.
 - (b) The Investor is not a trader in financial instruments or securities and is not treated for tax purposes as trading in the Units or the Delivery Assets, carrying on a business of investing in the Units or the Delivery Assets, or holding the Units or the Delivery Assets as trading stock or as revenue assets.
 - (c) The Investor has not made an election under section 230-455 to have Division 230 apply to their financial arrangements and is
 - (i) an individual
 - (ii) a superannuation entity, a managed investment scheme or an entity substantially similar to a managed investment scheme under foreign law with assets of less than \$100 million
 - (iii) an ADI, a securitisation vehicle or other financial sector entity with an aggregated turnover of less than \$20 million, or

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- (iv) another entity with an aggregated turnover of less than \$100 million, financial assets of less than \$100 million and assets of less than \$300 million.
- (d) A purpose of the Investor in entering into the scheme is to make a capital gain from the investment.
- (e) An Investor that is a complying superannuation fund is not prevented from investing in the scheme by any particular terms of its trust deed, and is not in breach of any stated investment strategy.
- (f) The scheme will be executed in the manner described in the Scheme section of this Ruling and the scheme documentation mentioned in paragraph 11 of this Ruling.
- (g) All dealings between the Investor, the Issuer, the Arranger, the Security Trustee and the Custodian will be at arm's length.

Scheme

11. The scheme is identified and described in the following:

- application for a product ruling as constituted by documents and information received on 20 March 2024, 16 July 2024 and 9 September 2024
- draft C2 Equity Optimiser – Deferred Purchase Agreement – Master Product Disclosure Statement, received on 20 March 2024
- draft C2 Retirement Equity Optimiser Term Sheet Product Disclosure Statement, received on 16 July 2024
- Hedge Security Deed dated 20 March 2018 and First Supplemental Deed (Hedge Security Deed) dated 29 May 2020
- Custody Deed Poll dated 6 March 2020, First Supplemental Deed Poll (Custody Deed Poll) dated 11 March 2020 and Second Supplemental Deed Poll (Custody Deed Poll) dated 29 May 2020², and
- Security Trust Deed dated 20 March 2018 and First Supplemental Deed (Security Trust Deed) dated 29 May 2020.

Note: Certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under freedom of information legislation.

12. For the purposes of describing the scheme, there are no other agreements (whether formal or informal, and whether or not legally enforceable) which an Investor, or any associate of an Investor, will be a party to which are a part of the scheme.

13. All Australian Securities and Investments Commission requirements are, or will be, complied with for the term of the agreements.

Overview of scheme

14. An offer to participate in the C2 Equity Optimiser will be made to prospective investors in various Series by way of the Master PDS and a Term Sheet PDS. Each Series

² Referred to as the Custody Deed in the Master PDS.

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will be governed by the general terms in the Master PDS and specific terms in the Term Sheet PDS which are applicable to that Series (the Terms).

15. On acceptance of an Investor's Application and receipt by the Issuer of the amounts payable by the Investor by the Offer Closing Date (including the Investment Amount), the Issuer will issue Units on the Issue Date to the Custodian to hold in separate Investor Trusts for the Investor on the terms of the Custody Deed Poll. Upon the issue of those Units, the Investor will receive a beneficial interest in a Portion of the Delivery Assets (Beneficial Interest). That Beneficial Interest may not be dealt with separately in any way from the Investor's interest in the Units.

16. The Minimum Investment Amount required to be invested by each Investor will be set out in the relevant Term Sheet PDS for a Series. The Issue Price of a Unit will also be set out in the Term Sheet PDS.

17. The Issuer may return (refund) some or all of the Issue Price to the Investor during the Investment Term via a Capital Return, as specified in the relevant Term Sheet PDS and contingent on the credit rating of the Issuer's Hedge Counterparty. The amount of each Capital Return (if any) and the dates on which each Capital Return will be delivered is set out in the relevant Term Sheet PDS.

18. In consideration for the Investment Amount (and any Fees which may be payable under the Term Sheet PDS), the Investor purchases the Delivery Parcel from the Issuer on a deferred basis. The size of the Delivery Parcel purchased by the Investor is calculated by reference to the Final Value per Unit at Maturity multiplied by the number of Units held by the Investor, and the Final Value of a Unit depends, in part, on the performance of the Reference Asset during the Investment Term.

19. Where the Investor does not validly elect to use the Agency Sale Option under a Notice of Maturity at least 10 Business Days before the Maturity Date, physical delivery of the Delivery Parcel will occur. Where this occurs, the Issuer will purchase the Delivery Assets constituting the Delivery Parcel, register the Delivery Assets on the issuer-sponsored subregister in the name of the Investor, and deliver the Delivery Parcel to the Investor on the Settlement Date or as soon as possible thereafter.

20. Where the Investor validly elects to use the Agency Sale Option under a Notice of Maturity at least 10 Business Days before the Maturity Date, the Issuer will purchase the Delivery Assets constituting the Delivery Parcel and deliver the Delivery Parcel to the Custodian (or its nominee) for and on behalf of the Investor, and the Custodian (or its nominee) will sell the Delivery Parcel for and on behalf of the Investor and pay the Sale Monies to the Investor within 10 Business Days of the Settlement Date (or as soon as reasonably practicable thereafter).

21. Upon delivery of the Delivery Parcel as outlined in paragraph 19 of this Ruling or the payment of the Sale Monies in accordance with paragraph 20 of this Ruling, the Issuer's obligations to the Investor under the Terms will be satisfied and discharged.

22. The features of each Series described in a Term Sheet PDS will include:

- (a) the Reference Asset
- (b) the Investment Term
- (c) the Issue Price
- (d) applicable Fees
- (e) calculation of any Capital Return and the dates on which those Capital Returns will be paid

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- (f) any applicable Participation Rate
- (g) key risks to Investors
- (h) the Delivery Asset (being a share in a company listed on the Australian Securities Exchange)
- (i) the calculation of the Final Value of a Unit on the Maturity Date, and
- (j) the Minimum Investment Amount.

23. The Reference Asset to which the Units will provide exposure over the Investment Term will be any one or more of the following:

- (a) an equities index
- (b) an exchange traded security or fund
- (c) a hedge fund
- (d) an unlisted managed investment scheme
- (e) a proprietary index
- (f) a commodity, or
- (g) a basket comprised of 2 or more of the Reference Assets listed in this paragraph.

Commissioner of Taxation

2 October 2024

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Appendix – Explanation

❶ *This Explanation is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

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Application of the capital gains tax provisions to Units under the C2 Equity Optimiser Deferred Purchase Agreement

24. Under subsection 108-5(1) a CGT asset is any kind of property or a legal or equitable right that is not property. The rights of an Investor under the Terms to the C2 Equity Optimiser are legally enforceable rights and therefore, in their totality, a CGT asset according to the definition in subsection 108-5(1).

25. Following the acquisition of the Investor's rights under the Terms, and subject to the payment of any Capital Return during the Investment Term, the cost base or reduced cost base of those rights includes, as its first element, the Investment Amount (subsections 110-25(2) and 110-55(2)).

26. Any Capital Return received by the Investor is not included in the Investor's assessable income under any provision of the income tax Acts. Such a payment represents a refund of the Investment Amount and, to the extent of the payment, therefore constitutes a recoupment³ of the Investment Amount which does not form part of any element of the cost base or reduced cost base of the Investor's rights under the Terms pursuant to subsection 110-45(3) or 110-55(6), as applicable. The adjustment effectively reduces the original total acquisition costs by the amount of the recoupment as if the recouped amount had not been incurred.

27. Where the Delivery Parcel is delivered to the Investor or the Sale Monies under the Agency Sale Option are paid to the Investor, the Investor's ownership of the contractual rights under the C2 Equity Optimiser is discharged or satisfied. This discharge or satisfaction of the contractual rights gives rise to CGT event C2 (paragraph 104-25(1)(b)).

28. The Investor will make a capital gain from this CGT event if the capital proceeds from the ending of the Investor's ownership of the asset are more than the asset's cost base or, alternatively, a capital loss from this CGT event if those capital proceeds are less than the asset's reduced cost base (subsection 104-25(3)).

29. The Investor's capital proceeds from the CGT event will be equal to the Sale Monies received by the Investor under the Agency Sale Option, or the market value of the Delivery Parcel received on (or shortly after) the Settlement Date, as applicable (section 116-20).

³ Refer to paragraph 20-25(1)(a).

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30. Division 115 allows a taxpayer a discount on capital gains in certain circumstances. In accordance with section 115-5, any capital gain realised by an Investor as a result of the satisfaction of the Investor's contractual rights in respect of the Units will be treated as a discount capital gain where the Investor is an individual, a complying superannuation entity, or a trust and has held those Units for at least 12 months (excluding the days of acquisition and disposal).

Subsection 159GP(1) of the ITAA 1936 – a Unit is not a 'security'

31. Under subsection 159GP(1) of the ITAA 1936, a 'security' means:

- (a) stock, a bond, debenture, certificate of entitlement, bill of exchange, promissory note or other security;
- (b) a deposit with a bank or other financial institution;
- (c) a secured or unsecured loan; or
- (d) any other contract, whether or not in writing, under which a person is liable to pay an amount or amounts, whether or not the liability is secured.

32. The Units issued under the C2 Equity Optimiser are not considered to have sufficient debt like obligations to be a contract to which paragraph (d) of the definition of security in subsection 159GP(1) of the ITAA 1936 applies, nor do they fall within paragraphs (a), (b) or (c) of that definition. Therefore, such Units do not meet the definition of security under subsection 159GP(1) of the ITAA 1936.

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References

Legislative references:

- ITAA 1936 27H
- ITAA 1936 159GP(1)
- ITAA 1936 159GP(1)(a)
- ITAA 1936 159GP(1)(b)
- ITAA 1936 159GP(1)(c)
- ITAA 1936 159GP(1)(d)
- ITAA 1936 Pt IVA
- ITAA 1997 20-25(1)(a)
- ITAA 1997 104-25
- ITAA 1997 104-25(1)(b)
- ITAA 1997 104-25(3)
- ITAA 1997 108-5(1)
- ITAA 1997 110-25(2)
- ITAA 1997 110-45(3)
- ITAA 1997 110-55(2)
- ITAA 1997 110-55(6)
- ITAA 1997 Div 115
- ITAA 1997 115-5
- ITAA 1997 116-20
- ITAA 1997 Div 230
- ITAA 1997 230-455
- SISA 1993

ATO references

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