



# ***PR 2004/25 - Income tax: tax consequences of investing in Macquarie Self Funding Instalments SMT Series 2004 Product Disclosure Statement - cash applicants and on-market purchasers***

 This cover sheet is provided for information only. It does not form part of *PR 2004/25 - Income tax: tax consequences of investing in Macquarie Self Funding Instalments SMT Series 2004 Product Disclosure Statement - cash applicants and on-market purchasers*

 This document has changed over time. This is a consolidated version of the ruling which was published on *10 March 2004*



## Product Ruling

### Income tax: tax consequences of investing in Macquarie Self Funding Instalments SMT Series 2004 Product Disclosure Statement – cash applicants and on-market purchasers

Contents	Para
What this Product Ruling is about	1
Date of effect	8
Withdrawal	10
Arrangement	11
Ruling	18
Assumptions	19
Explanation	20
Detailed contents list	54

Potential participants may wish to refer to the ATO's Internet site at <http://www.ato.gov.au> or contact the ATO directly to confirm the currency of this Product Ruling or any other Product Ruling that the ATO has issued.

#### **Preamble**

*The number, subject heading, and the **What this Product Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. Product Ruling PR 1999/95 explains Product Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

## No guarantee of commercial success

The Australian Taxation Office (ATO) **does not** sanction or guarantee this product. Further, we give 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.

Participants must form their own view about the commercial and financial viability of the product. This will involve a consideration of important issues such as whether projected returns are realistic, the 'track record' of the management, the level of fees in comparison to similar products, how the investment fits an existing portfolio, etc. We recommend a financial (or other) adviser be consulted for such information.

This Product Ruling provides certainty for participants by confirming that the tax benefits set out below in the **Ruling** part of this document are available, **provided that** the arrangement is carried out in accordance with the information we have been given, and have described below in the **Arrangement** part of this document.

If the arrangement is not carried out as described below, participants lose the protection of this Product Ruling. Participants may wish to seek assurances from the promoter that the arrangement will be carried out as described in this Product Ruling.

Participants should be aware that the ATO will be undertaking review activities to confirm the arrangement has been implemented as described below and to ensure that the participants in the arrangement include in their income tax returns income derived in those future years.

## Terms of use of this Product Ruling

This Product Ruling has been given on the basis that the person(s) 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.

## **What this Product Ruling is about**

---

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates. In this Ruling the arrangement is the acquisition of a Macquarie Self Funding Instalment SMT Series ('Macquarie Self Funding Instalment') under the 2004 Product Disclosure Statement which provides an investment in shares that are listed for quotation on the Australian Stock Exchange ('ASX') and/or units in a widely held trust and a put option using a loan made by Macquarie Bank Limited ('Macquarie').

### **Tax law(s)**

2. The tax laws dealt with in this Ruling are:

- subsection 6-5(4) of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 8-1 (ITAA 1997);
- section 25-25 (ITAA 1997);
- section 104-10 (ITAA 1997);
- section 104-25 (ITAA 1997);
- section 109-5 (ITAA 1997);
- section 110-25 (ITAA 1997);
- subsection 110-45(3) (ITAA 1997);
- section 112-35 (ITAA 1997);
- section 115-5 (ITAA 1997);
- section 134-1 (ITAA 1997);
- section 51AAA of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 82KL (ITAA 1936);
- section 82KZM (ITAA 1936);
- section 82KZMA (ITAA 1936);
- section 82KZMD (ITAA 1936);
- section 82KZME (ITAA 1936);
- section 82KZMF (ITAA 1936);
- section 97 (ITAA 1936); and

- Part IVA (ITAA 1936).

**Class of persons**

3. The class of persons to whom this Ruling applies is those who enter into the arrangement described below, through Cash Applications or on-market purchases, on or after the date this Ruling is made. They will have a purpose of staying in the arrangement until it is completed and deriving assessable income from their involvement as set out in the description of the arrangement. In this Ruling these persons are referred to as 'Investors'.

4. This Ruling does not apply to Shareholder or Rollover Applicants. Details of these types of applications are set out in the Product Disclosure Statement.

**Qualifications**

5. The Commissioner rules on the precise arrangement identified in the Ruling.

6. If the arrangement described in the Ruling is materially different from the arrangement that is actually carried out:

- the Ruling has no binding effect on the Commissioner, as the arrangement entered into is not the arrangement ruled upon; and
- the Ruling will be withdrawn or modified.

7. A Product Ruling may only be reproduced in its entirety. Extracts may not be reproduced. As each Product Ruling is copyright, apart from any use as permitted under the *Copyright Act 1968*, no Product Ruling may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to the:

Commonwealth Copyright Administration  
Intellectual Property Branch  
Department of Communications, Information Technology and  
the Arts  
GPO Box 2154  
Canberra ACT 2601

or by e-mail: [commonwealth.copyright@dcita.gov.au](mailto:commonwealth.copyright@dcita.gov.au)

## Date of effect

---

8. This Ruling applies prospectively from 10 March 2004, the date this Ruling is made. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

9. If a taxpayer has a more favourable private ruling (which is legally binding), the taxpayer can rely on the private ruling if the income year to which the private ruling relates has ended, or has commenced but not yet ended. However, if the arrangement covered by the private ruling has not begun to be carried out, and the income year to which it relates has not yet commenced, this Product Ruling applies to the taxpayer to the extent of the inconsistency only (see Taxation Determination TD 93/34).

## Withdrawal

---

10. This Product Ruling is withdrawn and ceases to have effect after 30 June 2007. The Ruling continues to apply, in respect of the tax laws ruled upon, to all persons within the specified class who enter into the specified arrangement during the term of the Ruling. Thus, the Ruling continues to apply to those persons, even following its withdrawal, who entered into the specified arrangement prior to withdrawal of the Ruling. This is subject to there being no material difference in the arrangement or in the persons' involvement in the arrangement.

## Arrangement

---

11. The arrangement that is the subject of this Ruling is described below. This description incorporates the following documents:

- Application for a Product Ruling dated 10 February 2004 received from Allens Arthur Robinson on behalf of Macquarie Bank Limited;
- Self Funding Instalment Warrants Trust Deed dated 21 July 2003;
- Supplemental Amendment Deed dated 5 February 2004;
- Product Disclosure Statement for Macquarie Self Funding Instalments (SMT Series) dated 2 February 2004; and

- Loan Agreement which is incorporated in the Product Disclosure Statement.

In this Product Ruling, unless otherwise defined, capitalised terms take their meaning as per the Product Disclosure Statement.

12. Macquarie Self Funding Instalments are a moderately geared product that allows Investors to gain exposure to share price movements and dividends without paying the full price of the share. The gearing level is initially within a range of approximately 40-60% of the underlying share price and may vary from that time depending on a number of factors including interest rates, dividends and prices of the underlying shares.

13. Macquarie Self Funding Instalments are offered over shares and units in certain widely held listed trusts. In this Ruling the underlying shares and units are referred to as 'Underlying Parcel'. Where the Underlying Parcel includes a stapled security, the stapled security comprises share/s and unit/s that are jointly listed for quotation on the ASX. Any reference to shares and shareholders includes units and unitholders.

14. The details of the aspects of the arrangement subject to this Ruling are summarised as follows:

- (a) Macquarie Self Funding Instalments provide a leveraged investment in the Underlying Parcel using a Loan made by Macquarie. There are three methods by which Macquarie Self Funding Instalments are created, one of which is by Cash Application:

The Cash Applicant pays the varying First Payment. The First Payment is applied by Macquarie Bank to partially fund the purchase of the Underlying Parcel and to pay the Borrowing Fee. Macquarie lends the Completion Payment amount to the Cash Applicant. The proceeds of the Loan are applied toward:

- prepayment of interest to Macquarie; and
- the purchase of the Underlying Parcel.

Macquarie buys the Underlying Parcel in the name of the Security Trustee and takes a security interest over the Underlying Parcel. The Macquarie Self Funding Instalment is issued in the name of the Cash Applicant;

- (b) Macquarie Self Funding Instalments can also be acquired by an on-market purchase;
- (c) Investors can obtain the Underlying Parcels at any time before the Maturity Date by making the Completion Payment;

- (d) the Completion Payment is equal to the Loan Amount on the date the Completion Payment is made;
- (e) the Loan is made on a limited recourse basis, secured by a mortgage over the Underlying Parcel which will be held by the Security Trustee as nominee for the Investor;
- (f) in the case of a Cash Applicant, the borrowing fee will comprise two components, a fee for the grant of the Holder's Put Option and an amount which is paid for acquiring the Loan from Macquarie;
- (g) interest is also payable on each Annual Interest Date, and is funded by drawing down on the existing Loan;
- (h) during the term of the Macquarie Self Funding Instalment, the Investor directs the Security Trustee to pay the full amount of distributions received in respect of the Underlying Parcel to Macquarie and directs Macquarie to apply those distributions to reduce the Investor's outstanding Loan;
- (i) where the Security Trustee is required to withhold an amount from a distribution received in respect of the Underlying Parcel, the Investor's outstanding Loan will still be reduced by the full amount of the distribution, and the Investor will be required to fund the amount withheld by making a cash payment or by forfeiting instalments to the same value;
- (j) at Maturity, the Investor has four options:
  - i. pay the Completion Payment  
The Loan is repaid, the security interest is extinguished and the shares are delivered to a holding in the Investor's name;
  - ii. exercise the Holder's Put Option  
The shares are purchased by Macquarie at the higher of the Completion Payment or the market price and the proceeds are applied to repayment of the Loan with any residual paid to the Investor;
  - iii. rollover  
A rollover is economically equivalent to the Investor completing the expiring series by making the Completion Payment and then investing in the new series by way of a Shareholder Application. Under the rollover,

the Underlying Parcel is not sold rather, the expiring warrant is cancelled and the Investor is allotted a Macquarie Self Funding Instalment in the new series; and

- iv. do nothing

At Maturity if the Completion Payment is not made, and the Holder's Put Option is not exercised, the Underlying Parcel will be sold and any surplus from net proceeds after repayment of the Loan and costs will be paid to the Investor. If the sale proceeds are insufficient to repay the Loan, Macquarie has no recourse against the Investor to recover the shortfall;

- (k) at any time during the life of the Macquarie Self Funding Instalments, the Investor has the option to make the Completion Payment, rollover into a new series of instalment warrants or sell their instalments on the ASX; and
- (l) where the Macquarie Self Funding Instalments are purchased on the ASX, the on-market purchaser acquires the Macquarie Self Funding Instalments on the same terms and conditions under which they were originally issued. In particular, the on-market purchaser will be offered and will accept a Loan from Macquarie upon the transfer of the Macquarie Self Funding Instalments from the previous owner to the on-market purchaser. The Loan provided by Macquarie will be equal to the previous owner's Loan and will be applied to discharge the previous owner's Loan, refund part of the interest prepaid by the previous owner and to prepay the Interest Amount on the newly acquired Loan.

### **The Participants**

15. Macquarie is the Issuer of the Macquarie Self Funding Instalments. Macquarie is also the provider of the Loans to Investors to fund the acquisition of the Underlying Parcels.

16. Belike Nominees Pty Ltd holds the legal title to the Underlying Parcels as Security Trustee and as nominee for each Investor.

17. The Investors may be individuals, companies, trusts or superannuation funds.



## Ruling

---

18. Subject to the Assumptions listed in paragraph 19 of this Ruling:

- (a) section 8-1 of the ITAA 1997 will apply to allow an Investor a deduction for the interest charged under the Loan Agreement;
- (b) section 51AAA of the ITAA 1936 will not apply to deny an Investor a deduction for the interest allowable under section 8-1 of the ITAA 1997;
- (c) section 82KL of the ITAA 1936 will not apply to deny deductibility of the interest allowable under section 8-1 of the ITAA 1997;
- (d) section 82KZMF of the ITAA 1936 will not apply to set the amount and timing of deductions for the interest charge incurred under the Macquarie Self Funding Instalment;
- (e) section 82KZM of the ITAA 1936 will not apply to deny an Investor immediate deductibility of any part of the Macquarie Self Funding Instalment interest charge allowable under section 8-1 of the ITAA 1997, where at least one of the following applies for the year of income:
  - the Investor is an STS taxpayer; or
  - Investor is an individual who does not incur the interest charge in carrying on a business;
- (f) sections 82KZMA and 82KZMD of the ITAA 1936 will apply to set the amount and timing of the deductions for the Macquarie Self Funding Instalment interest charge that is deductible to an Investor (other than an STS taxpayer for the year of income) who is a taxpayer that is not an individual and does not carry on a business;
- (g) the portion of the Borrowing Fee that is paid for acquiring the Loan from Macquarie will be deductible to the Investors under section 25-25 of the ITAA 1997;
- (h) for Cash Applicants, that part of the Borrowing Fee which is applicable to the purchase of the Holder's Put Option forms the cost base of the Underlying Parcel under section 134-1 of the ITAA 1997 if the Holder's Put Option is exercised;

- (i) for Cash Applicants, that part of the Borrowing Fee which is applicable to the purchase of the Holder's Put Option forms the cost base of the Holder's Put Option under section 110-25 of the ITAA 1997 if the Holder's Put Option is not exercised;
- (j) for on-market purchasers the cost base of the Holder's Put Option is calculated as follows:
  - if the market value of the share at the time of purchase is greater than the Completion Payment (the Loan Amount) the cost base of the Holder's Put Option is the total consideration as determined by sections 110-25 and 112-35 of the ITAA 1997 (the price of the Macquarie Self Funding Instalment plus the Completion Payment) less the sum of the market value of the share and the interest prepaid on the newly acquired Loan;
  - if the market value of the share at the time of purchase is less than the Completion Payment the cost base of the Holder's Put Option is the total consideration as determined by sections 110-25 and 112-35 of the ITAA 1997 (the price of the Macquarie Self Funding Instalment plus the Completion Payment) less the sum of the Completion Payment and the interest prepaid on the newly acquired Loan;
- (k) for on-market purchasers the amount determined under paragraph 18(j) above will be included in the cost base of the Underlying Parcel under section 134-1 of the ITAA 1997 if the Holder's Put Option is exercised;
- (l) for on-market purchasers the amount determined under paragraph 18(j) above will be included in the cost base of the Holder's Put Option under section 110-25 of the ITAA 1997 if the Holder's Put Option is not exercised;
- (m) for capital gains tax ('CGT') purposes, including for the purposes of the CGT discount, the date of acquisition of the Underlying Parcel for Investors, is the date on which they acquire the related Macquarie Self Funding Instalment;
- (n) no CGT event arises when the legal title to the Underlying Parcel is transferred by the Security Trustee to the Investor;

- (o) a CGT event will arise under section 104-10 of the ITAA 1997 to the Investor where the Completion Payment is not made and the Macquarie Self Funding Instalment is sold;
- (p) if the sale proceeds are insufficient to repay the Loan, Macquarie has no recourse against the Investor to recover the shortfall and the Investor will need to reduce the cost base of the shares by the amount of the shortfall under subsection 110-45(3) of the ITAA 1997;
- (q) the Investors in Macquarie Self Funding Instalments (and not the Security Trustee) are assessable on all of the income derived from the Underlying Parcel while the Underlying Parcel is the subject of the Separate Trust;
- (r) Investors will be assessed on the full amount of the distributions pursuant to section 6-5(4) of the ITAA 1997 despite distributions being directed to reduce the Loan Amount; and
- (s) the anti-avoidance provisions contained in Part IVA of the ITAA 1936 will not be applied to deny deductibility of the interest incurred by the Investor in respect of borrowings used to fund the purchase of the Underlying Parcel.

## Assumptions

---

19. This Ruling is made on the basis of the following assumptions:
- (a) all of the Investors are Australian residents for taxation purposes;
  - (b) the Investors are not traders in investments and are not treated for taxation purposes as either trading in the Underlying Parcel, carrying on a business of investing in the Underlying Parcel, or holding the Underlying Parcel as trading stock or as a revenue asset;
  - (c) in respect of any interest charges to be paid in advance under the Loan Agreement, these may be prepaid, but only in relation to a loan interest payment period of 12 months or less that ends on or before the last day of the income year following the expenditure year;
  - (d) the dominant purpose of an Investor in entering the arrangement is to derive assessable income from their investment in the Macquarie Self Funding Instalments;

- (e) the arrangement will be executed in the manner described in the 'Arrangement' section of this Ruling;
- (f) all dealings by the Investors and Macquarie will be at arm's length;
- (g) the Underlying Parcel will not be the subject of any securities lending arrangement; and
- (h) at all times during an arrangement, where the Underlying Parcel includes units in a trust, the trust satisfies the requirements of subparagraph 82KZME(5)(b)(iii) of the ITAA 1936.

## **Explanation**

---

### **Section 8-1 of the ITAA 1997**

20. The cost (or interest paid) of a borrowing used to acquire income producing assets such as shares is generally treated as deductible under section 8-1 where it is expected that dividends or other assessable income would be derived from the investment (see Taxation Ruling TR 95/33).

21. No part of the interest charged on an investment in Macquarie Self Funding Instalments is a capital protection fee. The capital protection is provided by the Holder's Put Option. Therefore, Investors will not be denied a deduction for any part of the interest under section 8-1, provided that the other requirements of that section are satisfied. This is the case regardless of whether the Investor acquired the Macquarie Self Funding Instalment by cash application or by purchase on the ASX.

### **Section 51AAA of the ITAA 1936**

22. By investing in Macquarie Self Funding Instalments, it is contemplated that an Investor will derive assessable income by the receipt of dividend income and capital gains. As, the interest would have been deductible under section 8-1 of the ITAA 1997 notwithstanding the inclusion of a net capital gain in assessable income, section 51AAA has no application to an Investor in Macquarie Self Funding Instalments.

## **Section 82KL of the ITAA 1936**

23. The operation of section 82KL depends, among other things, on the identification of a certain quantum of 'additional benefit(s)'. Insufficient additional benefits will be provided to trigger the application of section 82KL. It will not apply to deny the deductions otherwise allowable under section 8-1 of the ITAA 1997.

## **Subdivision H of Division 3 of Part III of the ITAA 1936**

24. This Subdivision deals with the timing of deductions for certain advance expenditure incurred under an agreement in return for the doing of a thing under that agreement that will not be wholly done within the same year of income. Separate rules apply depending on whether the expenditure is incurred in carrying on a business, whether the Investor is an 'STS taxpayer', whether the Investor is an individual and whether the Investor is not an individual and incurs the expenditure otherwise than in carrying on a business. This Subdivision does not apply to 'excluded expenditure' which is defined in subsection 82KZL(1) to include amounts of less than \$1,000, or amounts of expenditure that are of a capital nature.

## ***Subdivisions 328-F & 328-G of the ITAA 1997 – STS taxpayer***

25. An Investor will be an STS taxpayer for an income year if the Investor is eligible to be an STS taxpayer for that year and the Investor notifies the Commissioner of the choice to become such a taxpayer for that year.

26. An Investor will be eligible to be an STS taxpayer for an income year if the Investor carries on a business and the STS average turnover of the business and related business for that year is less than \$1 million and the business and related businesses have depreciating assets with a total adjustable value below \$3 million at the end of that year.

## ***The eligible service period for the purposes of Subdivision H of Division 3 of Part III of the ITAA 1936***

27. The interest allowable under section 8-1 of the ITAA 1997 is in relation to a prepayment of loan interest for a period that is not more than 12 months. Subparagraph 82KZL(2)(a) of the ITAA 1936 provides that a payment of interest that is made in return for the making available of a loan principal is to be taken, for the purposes of Subdivision H, to be expenditure incurred under an agreement in return for the doing of a thing under the agreement for the period to which the interest payment relates. The eligible service period in

relation to a payment of loan interest is determined by reference to the period to which the interest relates, which is 12 months, and not to the period of the loan.

***Sections 82KZME and 82KZMF of the ITAA 1936: prepaid expenditure and 'tax shelter' type arrangements***

28. The rules in sections 82KZME and 82KZMF apply, subject to the exceptions in section 82KZME, where expenditure is incurred in relation to a 'tax shelter' type arrangement for the doing of a thing that is not to be wholly done within the expenditure year.

29. For the purposes of section 82KZME, 'agreements' are broadly defined to include an entire arrangement of which a contract may form part. Under subsection 82KZME(4), the relevant 'agreement' is all the contractual arrangements and activities associated with the participation in the Macquarie Self Funding Instalments, including the financing, share purchase, shareholding and disposal arrangements.

30. Under the arrangement, when the Investor acquires the Macquarie Self Funding Instalment, they acquire beneficial ownership of the Underlying Parcel of shares.

31. Exception 1, as contained in subsection 82KZME(5), applies to exclude the interest incurred on borrowings under the Macquarie Self Funding Instalments from the operation of section 82KZMF, as:

- the prepaid interest expenditure under the Macquarie Self Funding Instalments is incurred in respect of money borrowed to acquire shares that are listed for quotation on the ASX or units in a trust as described in subparagraph 82KZME(5)(b)(iii);
- the Investor can reasonably be expected to obtain dividends or trust income from the investment;
- the Investor will not obtain any other kind of assessable income from the investment, except for the capital gains; and
- all aspects of the Macquarie Self Funding Instalments are at arm's length.

Deductibility of expenditure must therefore be considered under the prepayment rules outlined in paragraphs 32 to 37 below.

***Section 82KZM of the ITAA 1936: prepaid expenditure incurred by STS taxpayers and individuals incurring non-business expenditure***

32. Section 82KZM operates to spread over more than one income year a deduction for prepaid expenditure incurred by a taxpayer that is either:

- an STS taxpayer for the year of income; or
- a taxpayer that is an individual and the expenditure is not incurred in carrying on a business.

33. The expenditure must not be excluded expenditure and must be incurred otherwise than in carrying on a business. Section 82KZM applies if the eligible service period for the expenditure is longer than 12 months, or the eligible service period for the expenditure is 12 months or shorter but ends after the last day of the year of income after the one in which the expenditure was incurred and the expenditure would otherwise be immediately deductible under section 8-1 of the ITAA 1997.

34. As the eligible service period in relation to the deductible interest for Macquarie Self Funding Instalments is not more than 12 months and does not end after the last day of the year of income after the one in which the expenditure was incurred, section 82KZM will have no application to Investors who are STS taxpayers for the year of income, or to Investors who are individuals and the expenditure is not incurred in carrying on a business. Investors who satisfy these tests will be able to claim an immediate deduction for the allowable interest incurred.

***Sections 82KZMA and 82KZMD of the ITAA 1936: prepaid non-business expenditure incurred by non-individual and non-STS taxpayers***

35. Sections 82KZMA and 82KZMD set the amount and timing of deductions for expenditure for an Investor (other than an STS taxpayer for the year of income) who is a taxpayer that is not an individual and does not carry on a business.

36. The expenditure must not be excluded expenditure and must be incurred in return for the doing of a thing under an agreement that is not to be wholly done within the expenditure year.

37. For these taxpayers, the deduction for prepaid interest on the Macquarie Self Funding Instalment will be apportioned over the relevant interest payment period.

**Borrowing Fee**

38. Part of the Borrowing Fee is for the purchase of the Holder's Put Option and the balance represents a payment for acquiring the Loan from Macquarie. The latter payment is deductible under section 25-25 of the ITAA 1997.

39. The part of the Borrowing Fee that is applicable to the Holder's Put Option ensures that the Investor is protected from liability to repay the principal if the market value of the shares falls below their original purchase price. In effect, the Holder's Put Option ensures that Macquarie will acquire the shares in full satisfaction of the Loan Amount if the shares have fallen in value below the amount borrowed. The payment is capital in nature, being paid to acquire an asset, namely, the Holder's Put Option.

***Cost Base of the Holder's Put Option for Cash Applicants***

40. If the Holder's Put Option is exercised the part of the Borrowing Fee which is applicable to the purchase of the Holder's Put Option is included in the cost base of the Underlying Parcel under section 134-1 of the ITAA 1997.

41. If the Holder's Put Option is not exercised the part of the Borrowing Fee which is applicable to the purchase of the Holder's Put Option forms the cost base of the Holder's Put Option under subsection 110-25(2) of the ITAA 1997.

***Cost Base of the Holder's Put Option for on-market purchasers***

42. If the market value of the share at the time of purchase is greater than the Completion Payment (the Loan Amount) the cost base of the Holder's Put Option is the total consideration as determined by sections 110-25 and 112-35 of the ITAA 1997 (the price of the Macquarie Self Funding Instalment plus the Completion Payment) less the sum of the market value of the share and the interest prepaid on the newly acquired Loan.

43. If the market value of the share at the time of the purchase is less than the Completion Payment the cost base of the Holder's Put Option is the total consideration as determined by sections 110-25 and 112-35 (the price of the Macquarie Self Funding Instalment plus Completion Payment) less the sum of the Completion Payment and the interest prepaid on the newly acquired Loan.

44. If the Holder's Put Option is exercised, the amount determined under paragraph 18(j) above is included in the cost base of the Underlying Parcel under section 134-1 of the ITAA 1936.



45. If the Holder's Put Option is not exercised, the amount determined under paragraph 18(j) above is included in the cost base of the Holder's Put Option under section 110-25.

## **Section 109-5 of the ITAA 1997: time of acquisition**

46. Section 109-5 applies to Investors to treat them as having acquired the Underlying Parcel at the same time that the Investor obtains the beneficial ownership of the Underlying Parcel. The acquisition time for a Cash Applicant, is the time the application was accepted, and for an on-market purchaser, is the contract date for the transfer of the Macquarie Self Funding Instalment.

## **Subsection 104-10(7) of the ITAA 1997: no CGT event when Completion Payment made**

47. When the Completion Payment is made, no CGT event will arise in respect of the transfer of the legal title to the Underlying Parcel from the Security Trustee to the Investor by virtue of subsection 104-10(7).

## **Section 104-10 of the ITAA 1997: CGT event A1**

48. A CGT event will arise to the Investor if the Investor does not make the Completion Payment and the Macquarie Self Funding Instalment is sold to Macquarie or to a third party.

49. If the sale proceeds are insufficient to repay the Loan, Macquarie has no recourse against the Investor to recover the shortfall. In this circumstance the Investor will need to reduce the cost base of the Underlying Parcel by the amount of the shortfall under subsection 110-45(3) of the ITAA 1997.

## **Section 115-5 of the ITAA 1997: CGT discount**

50. In accordance with section 115-5, the 12 month period for the purposes of the CGT discount will run from the date of acquisition of the Macquarie Self Funding Instalment.

## **Section 97 of the ITAA 1936**

51. The Investors are presently entitled to all of the income derived from the Underlying Parcel. Therefore, section 97 will apply to assess the Investors on the income derived from the Underlying Parcel. The Security Trustee will not be subject to tax on this income.

**Section 6-5(4) of the ITAA 1997**

52. To the extent that distributions are not physically received by an Investor because the Investor has directed the Security Trustee to pay the distributions to Macquarie and directed Macquarie to apply the distributions to reduce their outstanding Loan, the Investor will still be assessed on the full amount of the distributions pursuant to section 6-5(4).

**Part IVA of the ITAA 1936**

53. Provided that the arrangement ruled on is entered into and carried out as disclosed (see the **Arrangement** part of this Ruling), it is accepted that the arrangement is an ordinary commercial transaction and Part IVA will not apply.

**Detailed contents list**

54. Below is a detailed contents list for this Product Ruling:

	<b>Paragraph</b>
<b>What this Product Ruling is about</b>	<b>1</b>
Tax law(s)	2
Class of persons	3
Qualifications	5
<b>Date of effect</b>	<b>8</b>
<b>Withdrawal</b>	<b>10</b>
<b>Arrangement</b>	<b>11</b>
The Participants	15
<b>Ruling</b>	<b>18</b>
<b>Assumptions</b>	<b>19</b>
<b>Explanation</b>	<b>20</b>
Section 8-1 of the ITAA 1997	20
Section 51AAA of the ITAA 1936	22
Section 82KL of the ITAA 1936	23
Subdivision H of Division 3 of Part III of the ITAA 1936	24
<i>Subdivisions 328-F &amp; 328-G of the ITAA 1997 – STS taxpayer</i>	25

**PR 2004/25**

<i>The eligible service period for the purposes of Subdivision H of Division 3 of Part III of the ITAA 1936</i>	27
<i>Sections 82KZME and 82KZMF of the ITAA 1936: prepaid expenditure and 'tax shelter' arrangements</i>	28
<i>Section 82KZM of the ITAA 1936: prepaid expenditure incurred by STS taxpayers and individuals incurring non-business expenditure</i>	32
<i>Sections 82KZMA and 82KZMD of the ITAA 1936: prepaid non-business expenditure incurred by non-individual and non-STs taxpayers</i>	35
Borrowing Fee	38
<i>Cost Base of the Holder's Put Option for Cash Applicants</i>	40
<i>Cost Base of the Holder's Put Option for on-market purchasers</i>	42
Section 109-5 of the ITAA 1997: time of acquisition	46
Subsection 104-10(7) of the ITAA 1997: no CGT event when Completion Payment made	47
Section 104-10 of the ITAA 1997: CGT event A1	48
Section 115-5 of the ITAA 1997: CGT discount	50
Section 97 of the ITAA 1936	51
Section 6-5(4) of the ITAA 1997	52
Part IVA of the ITAA 1936	53
<b>Detailed contents list</b>	<b>54</b>

**Commissioner of Taxation**

10 March 2004

<i>Previous draft:</i>	- taxation administration
Not previously issued in draft form	- tax avoidance
<i>Related Rulings/Determinations:</i>	<i>Legislative references:</i>
TR 92/1; TR 92/20; TR 95/33,	- TAA 1953 Part IVAAA
TR 97/16; TD 93/34; PR 1999/95	- ITAA 1936 51AAA
	- ITAA 1936 82KL
<i>Subject references:</i>	- ITAA 1936 82KZL(1)
- financial products	- ITAA 1936 82KZL(2)(a)
- interest expenses	- ITAA 1936 82KZM
- prepaid expenses	- ITAA 1936 82KZMA
- product rulings	- ITAA 1936 82KZMD
- public rulings	- ITAA 1936 82KZME
- small business taxpayer	- ITAA 1936 82KZME(4)
	- ITAA 1936 82KZME(5)

- ITAA 1936 82KZME(5)(b)(iii)
  - ITAA 1936 82KZMF
  - ITAA 1936 Subdiv H, Div 3, Pt III
  - ITAA 1936 97
  - ITAA 1936 Pt IVA
  - ITAA 1997 6-5(4)
  - ITAA 1997 8-1
  - ITAA 1997 25-25
  - ITAA 1997 104-10
  - ITAA 1997 104-10(7)
  - ITAA 1997 104-25
  - ITAA 1997 109-5
  - ITAA 1997 110-25
  - ITAA 1997 110-45(3)
  - ITAA 1997 112-35
  - ITAA 1997 115-5
  - ITAA 1997 134-1
  - ITAA 1997 Subdiv 328-F
  - ITAA 1997 Subdiv 328-G
  - Copyright Act 1968
- 

## ATO references

NO: 2004/2448  
ISSN: 1441-1172