

PR 2007/26A1 - Addendum - Income tax: deductibility of interest incurred on borrowings in relation to the Macquarie Fusion Funds - June 2007 Offer

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Addendum

Product Ruling

Income tax: deductibility of interest incurred on borrowings in relation to the Macquarie Fusion Funds – June 2007 Offer

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Product Ruling PR 2007/26 to reflect the ATO view with respect to the application of Division 247 of the *Income Tax Assessment Act 1997* to interest incurred on the Interest and Put Protection Fee Loan, as set out in Taxation Determination TD 2013/1.

PR 2007/26 is amended as follows:

1. Paragraph 15

- (a) Omit subparagraph 15(c); substitute:
- (c) the interest charge on an Interest and Put Protection Fee Loan, when paid by the Investor, will be allowable as a deduction to the Investor under section 8-1 to the extent that the loan is used to fund any prepaid interest on the Investment Loan. The interest charge on an Interest and Put Protection Fee Loan will not be allowable as a deduction to the Investor under section 8-1 to the extent that the loan is used to fund the annual Protection Fee.
- (b) Omit subparagraph 15(g); substitute:
- (g) section 82KZM of the ITAA 1936 will not apply to deny an Investor immediate deductibility of the prepaid interest on an Investment Loan 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;¹ or

¹ For the income year beginning 1 July 2007 and later income years:

- the references to 'an STS taxpayer' or 'STS taxpayers' in paragraphs 27 and 36 of this Ruling should be read to mean 'a small business entity' (as defined in section 328-110) or 'small business entities', as appropriate; and

- the Investor is an individual who does not incur that expenditure in carrying on a business;

(c) Omit subparagraph 15(j); substitute:

- (j) if the Put Option is not exercised, the Put Premium will form part of the cost base (under subsection 110-25(2)) and the reduced cost base (under section 110-55) of the Put Option. The non-deductible portion of the interest on the Interest and Put Protection Fee Loan will form part of the third element of the cost base of the Put Option (subsection 110-25(4)) but will not form part of the reduced cost base of the Put Option (subsection 110-55(3));

2. Paragraph 20

Omit subparagraph 20(i); substitute:

- (i) the Investors will not choose to repay the Investment Loan or the Interest and Put Protection Fee Loan prior to their maturity or terminate the scheme early.

3. Paragraph 24

Omit the paragraph; substitute:

24. The proportion of the interest incurred on an Interest and Put Protection Fee Loan that is used to pay interest on the Investment Loan will be deductible under section 8-1. The proportion of the interest incurred on an Interest and Put Protection Fee Loan that corresponds to that part of the loan that is used to pay the Protection Fee is not deductible under section 8-1.

24A. No part of the interest incurred by the Investor on the Interest and Put Protection Fee Loan for the income year, including the non-deductible portion, will be attributable to the Put Premium.

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- the references to 'an STS taxpayer' in paragraphs 15(g), 15(h), 34 and 37 of this Ruling should be read to mean 'a small business entity that has not chosen to apply section 82KZMD of the ITAA 1936'.

4. Paragraph 29

Insert after paragraph 29:

Subdivision 328-C – small business entities for the purposes of Subdivision H

29A. Under section 328-110, an Investor carrying on a business in an income year will be a small business entity for that year (the current year) if:

- (a) the Investor carried on a business in the previous income year and the aggregated turnover for that year was less than \$2 million;
- (b) the aggregated turnover for the current year is likely to be less than \$2 million and, where the Investor carried on a business in each of the two previous income years, the aggregated turnover for each of those income years was less than \$2 million; or
- (c) the aggregated turnover for the current year, worked out as at the end of the year, is less than \$2 million.

5. Paragraph 41

Insert after paragraph 41:

41A. The non-deductible portion of the interest on the Interest and Put Protection Fee Loan will form part of the third element of the cost base of the Put Option (subsection 110-25(4)). It will not form part of the third element, or any other element, of the reduced cost base of the Put Option (subsection 110-55(3)).

6. Detailed Contents List

Insert:

*Subdivision 328-C – small business entities
for the purposes of Subdivision H*

29A

7. Legislative References

Insert:

- ITAA 1997 110-25(4)
- ITAA 1997 110-55(3)
- ITAA 1997 Subdiv 328-C
- ITAA 1997 328-110

This Addendum applies on and from 28 March 2007.

Commissioner of Taxation

20 March 2013

ATO references

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