

PR 2008/26A1 - Addendum - Income tax: deductibility of interest incurred on borrowings in relation to the Macquarie Fusion Funds - June 2008 Offer

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Addendum

Product Ruling

Income tax: deductibility of interest incurred on borrowings in relation to the Macquarie Fusion Funds – June 2008 Offer

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Product Ruling PR 2008/26 to:

- incorporate amendment to Division 247 of the *Income Tax Assessment Act 1997* (ITAA 1997) and Division 247 of the *Income Tax (Transitional Provisions) Act 1997* to adjust the benchmark interest rate used to determine the cost of capital protection on a capital protected borrowing from the Reserve Bank of Australia's (RBA's) Indicator Lending Rate for Personal Unsecured Loans to the RBA's Indicator Lending Rate for Standard Variable Housing Loans plus 100 basis points; and
- reflect the ATO view with respect to the application of Division 247 of the ITAA 1997 to interest incurred on the Interest Loan, as set out in Taxation Determination TD 2013/1.

PR 2008/26 is amended as follows:

1. Paragraph 17

- (a) Omit subparagraph 17(a); substitute:
- (a) an amount equal to the interest incurred on the Investment Loan, in an income year, reduced by an amount reasonably attributable to the cost of capital protection worked out under step 3 of the method statement in subsection 247-20(3) of the *Income Tax Assessment Act 1997* (ITAA 1997) or subsection 247-75(1) of the *Income Tax (Transitional Provisions) Act 1997* (IT(TP)A 1997), as applicable, will be deductible under section 8-1 of the ITAA 1997;

- (b) Omit subparagraph 17(b); substitute:
- (b) where the Investor enters into the Investment Loan on or after 1 May 2008 but at or before 7.30 pm by legal time in the Australian Capital Territory on 13 May 2008, under subsection 247-75(1) of the IT(TP)A 1997, the amount reasonably attributable to the cost of capital protection under Division 247 of the IT(TP)A 1997, in an income year, is the amount by which the interest incurred on the Investment Loan exceeds an amount representing the interest that would have been incurred for the income year on the Investment Loan if the following interest rates applied:
- where the interest rate incurred on the Investment Loan is at a fixed rate for all or part of the term of the loan and that fixed rate is applicable to the loan for all or part of the income year – the relevant rate is the Reserve Bank of Australia’s Indicator Lending Rate for Personal Unsecured Loans – Variable Rate (the ‘personal unsecured loan rate’) at the first time an interest amount is incurred during the term of the loan, or the relevant part of the term of the loan (subsection 247-75(2) of the IT(TP)A 1997); and
 - where the interest rate incurred on the Investment Loan is at a variable rate for all or part of the term of the loan and a variable rate is applicable to the loan for all or part of the income year – the relevant rate is the average of the personal unsecured loan rates published by the Reserve Bank of Australia during the relevant part of the income year (subsection 247-75(3) of the IT(TP)A 1997);
- (ba) where the Investor enters into the Investment Loan after 7.30 pm by legal time in the Australian Capital Territory on 13 May 2008 and on or before 30 June 2008, under subsection 247-20(3) of the ITAA 1997, the amount reasonably attributable to the cost of capital protection under Division 247 of the ITAA 1997, in an income year, is the amount by which the interest incurred on the Investment Loan exceeds an amount representing the interest that would have been incurred for the income year on the Investment Loan if the following interest rates applied:

- where the interest rate incurred on the Investment Loan is at a fixed rate for all or part of the term of the loan and that fixed rate is applicable to the loan for all or part of the income year – the relevant rate is the sum of the Reserve Bank of Australia’s Indicator Lending Rate for Standard Variable Housing Loans and 100 basis points (the ‘adjusted loan rate’) at the first time an interest amount is incurred during the term of the loan, or the relevant part of the term of the loan (subsections 247-20(4) and (5) of the ITAA 1997); and
 - where the interest rate incurred on the Investment Loan is at a variable rate for all or part of the term of the loan and a variable rate is applicable to the loan for all or part of the income year – the relevant rate is the average of the adjusted loan rates during the relevant part of the income year (subsections 247-20(5) and (5A) of the ITAA 1997);
- (c) Omit subparagraph 17(c); substitute:
- (c) the amount reasonably attributable to the cost of capital protection under Division 247 of the ITAA 1997 or Division 247 of the IT(TP)A 1997 (the Excess Amount), as applicable and as worked out under paragraph 17(b) or 17(ba) of this Ruling, is treated as if it were incurred only for a notional put option under subsection 247-20(6) of the ITAA 1997 (Division 247 Put Option). The Excess Amount (if any) is not deductible under section 8-1 of the ITAA 1997;
 - (ca) Division 247 of the ITAA 1997 and IT(TP)A 1997 will not apply to the Interest Loan. An amount equal to the interest incurred on the Interest Loan will be deductible under section 8-1 of the ITAA 1997;

2. Paragraph 22

Omit subparagraph 22(i); substitute:

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

3. Paragraph 25

Omit the paragraph; substitute:

25. Division 247 of the IT(TP)A 1997 sets out a methodology for reasonably attributing the cost of capital protection incurred by a borrower under a CPB entered into on or after 1 May 2008 but on or before 7.30 pm by legal time in the Australian Capital Territory on 13 May 2008 (section 247-75 of the IT(TP)A 1997). Division 247 of the IT(TP)A 1997 ignores any amount which is not in substance for capital protection or interest, in calculating the cost of capital protection (subsection 247-75(1) of the IT(TP)A 1997).

25A. Division 247 of the ITAA 1997 sets out a methodology for reasonably attributing the cost of capital protection incurred by a borrower under a CPB entered into after 7.30 pm by legal time in the Australian Capital Territory on 13 May 2008 (section 247-20 of the ITAA 1997). Division 247 of the ITAA 1997 ignores any amount which is not in substance for capital protection or interest, in calculating the cost of capital protection (subsection 247-20(3) of the ITAA 1997).

4. Paragraph 26

Omit the paragraph; substitute:

26. Where a borrower enters into an Investment Loan, the amount reasonably attributable to capital protection, is worked out under the method statement in subsection 247-75(1) of the IT(TP)A 1997 or subsection 247-20(3) of the ITAA 1997, as applicable and as set out in paragraph 17(b) or 17(ba) of this Ruling.

5. Paragraph 27

Omit the paragraph; substitute:

27. Under step 1 of the method statement, the total amount incurred by the Investor under or in respect of the CPB for the income year is the interest incurred on the Investment Loan for the income year.

6. Paragraph 28

Omit the paragraph; substitute:

28. Where the total amount incurred by the Investor worked out under step 1 of the method statement is less than the total interest that would have been incurred by the Investor worked out under step 2 of the method statement, there is no amount reasonably attributable to the cost of capital

protection. In these circumstances, the total amount of interest incurred on the Investment Loan will be deductible.

7. Paragraph 29

Omit the paragraph; substitute:

29. Where the total amount incurred by the Investor worked out under step 1 of the method statement is greater than the total interest that would have been incurred by the Investor worked out under step 2 of the method statement, the Excess Amount is reasonably attributable to the cost of capital protection and is treated as if it were incurred only for a Division 247 Put Option. The Division 247 Put Option is a capital asset for an investor in the Fusion Fund. Therefore, the amount reasonably attributable to the cost of capital protection is capital in nature and not deductible under section 8-1 of the ITAA 1997.

29A. There is no element of capital protection connected with the Interest Loan. No part of the interest incurred by the Investor on the Interest Loan for the income year will therefore be attributable to the cost of capital protection.

8. Paragraph 30

Omit the last sentence of the paragraph; substitute: 'As the interest incurred on the Investment Loan, to the extent that it is not reasonably attributable to the cost of capital protection, and the interest incurred on the Interest Loan will be deductible under section 8-1 of the ITAA 1997, notwithstanding the inclusion of a net capital gain in assessable income, section 51AAA of the ITAA 1936 has no application to an Investor.'

9. Paragraph 45

Omit the first sentence of the paragraph; substitute: 'If there is an Excess Amount under the method statement in subsection 247-75(1) of the IT(TP)A 1997 or subsection 247-20(3) of the ITAA 1997, as applicable, and at the Maturity Date the Investor invokes capital protection, the Investor is taken to have exercised the Division 247 Put Option pursuant to subsection 247-30(1) of the ITAA 1997.'

10. Paragraph 46

Omit the first sentence of the paragraph; substitute: 'If there is an Excess Amount under the method statement in subsection 247-75(1) of the IT(TP)A 1997 or subsection 247-20(3) of the ITAA 1997, as applicable, and the Investor repays the Investment Loan from their own funds, the Investor will not have invoked the capital protection of the Investment Loan.'

11. Legislative references

Insert:

- ITAA 1997 247-20(4)
- ITAA 1997 247-20(5)
- ITAA 1997 247-20(5A)
- IT(TP)A 1997 Div 247
- IT(TP)A 1997 247-75
- IT(TP)A 1997 247-75(1)
- IT(TP)A 1997 247-75(2)
- IT(TP)A 1997 247-75(3)

This Addendum applies on and from 19 March 2008.

Commissioner of Taxation

20 March 2013

ATO references

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