


PR 2008/47 - Income tax: tax consequences of rebalancing, contributing to and partially redeeming an investment in a unit in the Credit Suisse Asset Management Select Investment Flexible International Shares Fund - 2008 Product Disclosure Statement

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Product Ruling

Income tax: tax consequences of rebalancing, contributing to and partially redeeming an investment in a unit in the Credit Suisse Asset Management Select Investment Flexible International Shares Fund – 2008 Product Disclosure Statement

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ⓘ This publication provides you with the following level of protection:

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

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

No guarantee of commercial success

The Tax Office **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.

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

This Product Ruling provides certainty for potential participants by confirming that the tax benefits set out in the **Ruling** part of this document are available, **provided that** the scheme is carried out in accordance with the information we have been given, and have described below in the **Scheme** part of this document. If the scheme is not carried out as described, participants lose the protection of this Product Ruling.

Terms of use of this Product Ruling

This Product Ruling has been given on the basis that the entity(s) who applied for the Product 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 Product Ruling.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified in the Ruling part apply to the defined class of entities, who participate in the scheme to which this Product Ruling relates.
2. In this Product Ruling the scheme is referred to as the Credit Suisse Asset Management Select Investment Flexible International Share Fund (the Fund) under the 2008 Product Disclosure Statement.
3. This Ruling provides certainty as to the tax consequences of only certain aspects of the scheme, being rebalancing, contributing to an investment and partially redeeming the investment in a unit in the Fund. It does not provide and should not be taken to provide guidance as to any other tax consequences of investing in the Fund.

Class of entities

4. The class of entities who can rely on this Product Ruling consists of those entities that are accepted to participate in the scheme specified below on or after the date this Product Ruling is published and which execute relevant agreements mentioned in paragraph 18 of this Ruling on or before 30 June 2011. They must have a purpose of staying in the scheme until it is completed (that is being a party to the relevant agreements until their term expires), and deriving assessable income from this involvement. These entities are referred to as Investor/s.

Superannuation Industry (Supervision) Act 1993

5. This Product Ruling does not address the provisions of the *Superannuation Industry (Supervision) Act 1993* (SISA 1993). The Tax Office gives no assurance that the product is an appropriate investment for a superannuation fund. The trustees of superannuation funds are advised that no consideration has been given in this Product ruling as to whether investment in this product may contravene the provisions of SISA 1993.

Qualifications

6. The class of entities defined in this Product Ruling may rely on it provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 18 to 22 of this Ruling.

7. If the scheme actually carried out is materially different from the scheme that is described in this Product Ruling, then:

- this Product Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Product Ruling may be withdrawn or modified.

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Date of effect

9. This Product Ruling applies prospectively from 21 May 2008, the date this Ruling is published. It therefore applies to the specified class of entities that enter into the scheme from 21 May 2008 until 30 June 2011, being its period of application. This Product Ruling will continue to apply to those entities even after its period of application for schemes entered into during the period of application.

10. However, the Product Ruling only applies to the extent that:

- there is no change in the scheme or in the entity's involvement in the scheme;
- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

11. If this Product Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

12. If this Product Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Product Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Changes in the law

13. Although this Product Ruling deals with the laws enacted at the time it was issued, later amendments may impact on this Product Ruling. Any such changes will take precedence over the application of the Ruling and, to that extent, this Product Ruling will have no effect.

14. Entities who are considering participating in the scheme are advised to confirm with their taxation adviser that changes in the law have not affected this Product Ruling since it was issued.

Note to promoters and advisers

15. 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 Tax Office suggests that promoters and advisers ensure that participants are fully informed of any legislative changes after the Product Ruling is issued.

Previous Ruling

16. This Product Ruling replaces Product Ruling PR 2007/11 Income tax: tax consequences of rebalancing, contributing to an investment and partially redeeming a unit in the Credit Suisse Asset Management Select Investment Flexible International Share Fund – 2007 Product Disclosure Statement, which is withdrawn on and from 21 May 2008 due to changes made to the scheme (initial scheme). PR 2007/11 will continue to apply to those investors who entered into the initial scheme before its withdrawal.

Ruling

17. Subject to the assumptions in paragraph 22 of this Ruling:
- (a) Rebalancing will not constitute a CGT event for an Investor for the purposes of Division 104 of the *Income Tax Assessment Act 1997* (ITAA 1997);
 - (b) an additional contribution made by an Investor will be included in the cost base of the Investor's unit (Unit) in the Fund under section 110-25 of the ITAA 1997;
 - (c) CGT event E4 happens to an Investor under section 104-70 of the ITAA 1997 if the Investor makes a partial redemption of the investment in the Unit; and
 - (d) the anti-avoidance provisions contained in Part IVA of the *Income Tax Assessment Act 1936* (ITAA 1936) will not apply to a Rebalancing, the making of an additional contribution to an investment in the Fund or a partial redemption of the investment in a Unit in the Fund.

Scheme

18. The scheme that is the subject of this Product Ruling is described below. The scheme is incorporated within the following documents:

- Application for a Product Ruling received from Credit Suisse Asset Management (Australia) Limited (CSAM) on 9 April 2008;
- Trust Deed for Credit Suisse Asset Management Select Investment Flexible International Share Fund (Trust Deed) dated 19 December 2002 as amended by:
 - the First Supplemental Deed for Credit Suisse Asset Management Select Investment Flexible International Share Fund dated 21 July 2003;
 - the Second Supplemental Deed for Credit Suisse Asset Management Select Investment Flexible International Share Fund dated 29 June 2004; and
 - the Third Supplemental Deed for Credit Suisse Asset Management Select Investment Flexible International Share Fund dated 29 June 2005; and
- Draft Product Disclosure Statement for the Select Investment Funds dated 30 April 2008, to the extent that it relates to the Fund, received 10 April 2008.

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

19. The documents highlighted are those that an Investor may enter into. For the purposes of describing the scheme to which this Product Ruling applies, 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. The effect of these agreements is summarised as follows.

20. All Australian Securities and Investment Commission (ASIC) requirements are, or will be, complied with for the term of the agreements.

Overview

21. Following is a summary of the scheme:

- (a) the Fund constitutes a trust. The responsible entity is CSAM. The beneficial interest in the Fund is divided into units. Each investor holds one Unit in the Fund. Each Unit confers an undivided, but not necessarily equal interest;
- (b) the Fund invests in the Credit Suisse Wholesale Unhedged International Shares Fund;
- (c) the Fund is notionally divided into three separate asset classes (Asset Classes) comprising of the following currency hedging options:
 - (i) Fully Hedged Option;
 - (ii) 0-50% Actively Hedged Option (where up to 50% of foreign currency exposure can be hedged); and
 - (iii) Unhedged Option,
- (d) an Investor is able to manage their foreign currency risk by allocating their investment to one or more of the Asset Classes. The Investor has a proportional interest in each Asset Class in which they invest (Asset Class Proportion);
- (e) the Asset Class Proportion is determined by the actual dollars invested in an Asset Class as a proportion of the net asset value of that particular Asset Class. An Investor's Asset Class Proportions vary each day as a result of changes in the net asset value of the relevant Asset Class;

- (f) an Investor is able to change their proportional interest in an Asset Class by reallocating their investment between Asset Classes (Rebalancing). Rebalancing causes the Investor's Asset Class Proportions to be recalculated;
- (g) if Rebalancing occurs, the Fund will modify its foreign currency hedging positions in order to align with the Investor's reallocation;
- (h) an Investor can increase their investment by contributing additional amounts to the Fund, however a new Unit will not be issued to the Investor. The additional contribution will be treated as an accretion to the existing Unit and the Investor will be entitled to a larger distributable income; and
- (i) an Investor may make a request for the full or partial redemption of their investment in the Unit, subject to maintaining an overall minimum balance of \$25,000. If an Investor requests a partial redemption of their investment in the Unit they must specify the particular Asset Class (or Asset Classes) from which the payment is to be made.

Assumptions

22. This Ruling is made on the basis of the following assumptions:
- (a) each Investor is an Australian resident for taxation purposes;
 - (b) the Investors are not traders in investments and are not treated for taxation purposes as trading in interests in a Fund, carrying on a business of investing in a Fund, or holding their interests in a Fund as trading stock or as a revenue asset; and
 - (c) all dealings by the Investors, CSAM and the Fund will be at arm's length.

Commissioner of Taxation21 May 2008

Appendix 1 – Explanation

❶ *This Appendix 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.*

Division 104 of the ITAA 1997 – Rebalancing

23. The Investor holds a Unit in the Fund which constitutes an asset for CGT purposes (see Taxation Determination TD 2000/32). As each Unit carries varying rights in relation to the assets of the Fund, each Unit will be of a different class.

24. Under the Trust Deed an Investor does not have a right to any particular asset of the Fund. If an Investor wishes to transfer their interests in the Fund, they must do so by transferring the Unit.

25. If an Investor requests a Rebalancing, because they seek to switch between the three Asset Classes, the Investor continues to hold that Unit in the Fund. However, as a result of the Investor's Asset Class Proportions being recalculated, a variation in the value of the Unit may occur.

26. Although a Rebalancing may change the value of the Unit, no CGT event happens in respect of that Unit as there has been no change in its beneficial ownership. As such, no capital gain or loss is realised by the Investor at this time.

Section 110-25 – additional contributions

27. The Unit held by the Investor represents a right to a proportionate undivided interest in the assets of the Fund. If an Investor makes an additional contribution, a new Unit will not be issued. The Investor will have a right to a greater proportion of the assets of the Fund (as opposed to the Fund assets simply having increased).

28. Additional amounts contributed by an Investor will be included in the cost base of the Investor's Unit under section 110-25 of the ITAA 1997.

Section 104-70 – partial redemption

29. If an Investor makes a partial redemption of the investment in the Unit, CGT event E4 will happen to the Investor under section 104-70 of the ITAA 1997. If some or all of the partial redemption is a non-assessable payment, the cost base of the Investor's Unit is reduced by the non-assessable amount.

Part IVA

30. Provided that the scheme ruled on is entered into and carried out as disclosed (refer to the Scheme part of this Ruling) Part IVA of the ITAA 1936 will not apply to a Rebalancing, the making of an additional contribution to an investment in the Fund or a partial redemption of the investment in a Unit in the Fund.

Appendix 2 – Detailed contents list

31. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TD 2000/32

Previous Rulings/Determinations:

PR 2007/11

Subject references:

- capital gains tax
- cost base

- financial products

Legislative references:

- ITAA 1936 Pt IVA
- ITAA 1997 Div 104
- ITAA 1997 104-70
- ITAA 1997 110-25
- SISA 1993
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

ATO references

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