PR 2008/57 - Income tax: tax consequences of investing in the Retirement Booster - Prospectus 1

Product Ruling

Income tax: tax consequences of investing in the Retirement Booster – Prospectus 1

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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 Product Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified in the Ruling section (below) apply to the defined class of entities, who take part in the scheme to which this Ruling relates. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise indicated. In this Product Ruling this scheme relates to the acquisition of a Retirement Booster (the Debenture) using funds provided by a Retirement Booster Loan (the Loan) made by Provident Capital Limited (Provident Capital).

Class of entities

2. This part of the Product Ruling specifies which entities can rely on the tax benefits set out in the Ruling section of this Product Ruling and which entities cannot rely on those tax benefits. In this Product Ruling, those entities that can rely on the tax benefits set out in this Ruling are referred to as 'Investors'.

3. The class of entities who can rely on those tax benefits consists of entities that are accepted to participate in the scheme specified below on or after the date this Product Ruling is made and which execute the mortgage mentioned in paragraph 26 of this Ruling on or before the expiry of the Retirement Booster – Prospectus 1 (the Debenture Prospectus). 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.

4. The class of entities who can rely on the tax benefits set out in the Ruling section of this Product Ruling does **not** include entities who:

- are not Australian resident for taxation purposes;
- are not individuals;
- acquire a Debenture with Provident Capital but are not registered on the title of the security property;
- acquire a Debenture with Provident Capital but are less than 60 years old;
- participate in the scheme through offers made other than through the Debenture Prospectus;
- acquire a Debenture prior to the issue of this Ruling or after the expiry of the Debenture Prospectus; or
- pay an Early Repayment Fee as described in paragraph 42 of this Ruling.

Qualifications

5. The class of entities defined in this Product Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 26 to 58 of this Ruling.

6. 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.

Date of effect

8. This Product Ruling applies prospectively from 18 June 2008, the date this Product Ruling is made or the issue of the Debenture Prospectus, which ever is the later. It therefore applies only to the specified class of entities that enter into the scheme from the date this Product Ruling is made or the issue of the Debenture Prospectus, which ever is the later until the expiry of the Debenture Prospectus, being the closing date for entry into the scheme. This Product Ruling provides advice on the availability of tax benefits to the specified class of entities for the income years up to 30 June 2011.

9. 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.

10. 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)).

11. 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.

12. 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 this Product 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.

Ruling

Application of this Ruling

16. Subject to the stated qualifications, this part of the Product Ruling sets out the taxation consequences in investing in the Debenture Prospectus for an Investor in the defined class of entities who enters into the scheme described at paragraphs 26 to 58 of this Ruling. The Ruling will apply to an Investor who executes the mortgage on or before the expiry of the Debenture Prospectus. This Product Ruling provides advice on the availability of tax benefits to the specified class of entities for the income years up to 30 June 2011.

Debenture income

17. Interest received from the Debenture acquired under the scheme will be assessable income under section 6-5.

Deduction for Loan interest

18. For each income year, interest incurred on that part of the Loan that is applied to acquire the Debenture under the scheme will be allowable as a deduction under section 8-1, but only to the extent of the interest received from the Debenture.

19. The excess interest, including interest on capitalised interest, incurred on the Loan that is used to acquire the Debenture is not deductible under section 8-1.

20. This Ruling does not deal with the tax consequences of that part of the interest on the Loan not used to acquire the Debenture. The deductibility of interest on this part of the Loan will depend on the use and purpose to which these funds are put. Investors may request a private ruling on the deductibility of the interest incurred on that part of the Loan not used to acquire the Debenture.

Deduction for the valuation and legal fees, mortgage registration and stamp duty

21. Mortgage registration, stamp duty and the application fee, which consist of valuation and legal fees, are expenses of borrowing money. Under subsections 25-25(1) and 25-25(3), these borrowing expenses will be deductible to the extent that the Loan proceeds are used to purchase the Debenture under the scheme. Where the borrowing expenses exceed $100 the deduction is spread over the period of the loan or 5 years, whichever is the shorter.

Capital loss from redemption of the Debenture

22. A Debenture is a 'CGT asset' according to the definition of that term in section 108-5.

23. CGT event C2 happens as a result of the 'redemption' of the Debenture under section 104-25.

24. No part of the interest incurred by the Investor under the Loan is included in the Investor's reduced cost base for the purposes of working out the amount, if any, of the Investor's capital loss from CGT event C2 under subsections 110-25(2) and 110-55(2).

Anti-avoidance provision

Part IVA

25. The anti-avoidance provisions contained in Part IVA of the *Income Tax Assessment Act 1936* (ITAA 1936) will not be applied to deny deductibility of the interest, the mortgage registration, the stamp duty or the application fee incurred on that part of the Loan used to fund the purchase of the Debenture.

Scheme

26. The scheme that is the subject of this Ruling is identified and described in the following documents:

- Application for Product Ruling constituted by documents provided on 6 and 9 January 2007, 7, 19 and 28 February 2007 and additional correspondence and emails provided on 3, 13 and 16 April 2007, 15, 29, 30 and 31 May 2007, 26 June 2007, 2, 3, 20 25 July 2007, 4, 8 and 9 October 2007, 2, 5, 13, 21, 23, and 25 November 2007 and 18 December 2007, 9 and 10 January 2008, 11, 15, 19, 20, 28 and 29 February 2008, 6, 27 March 2008, 7, 8 and 23 April 2008, 2, and 5 May 2008;
- Draft Prospectus for the Retirement Booster Prospectus 1 (the Debenture Prospectus) and **Application Form Retirement Booster Prospectus 1** received on 7 April 2008;
- Draft Provident Capital Retirement Booster Mortgage Memorandum, (the Mortgage Memorandum) received on 7 April 2008 and **Mortgage** form issued from the Department of Lands in New South Wales, received 8 April 2008;
- Retirement Booster – an income for living brochure and **Retirement Booster Loan Application** received on 9 October 2007;
- Australian Financial Services Licence number 225172 issued to Provident Capital Limited (Provident Capital) dated 14 February 2003, received on 6 January 2007; and
- Debenture Trust Deed between Provident Capital and Trustee for the holders of debenture dated 11 December 1998.

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

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

28. The documents highlighted are those that an Investor may enter into. For the purposes of describing the scheme to which this 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.

Overview

29. Provident Capital has been issued with an Australian Financial Service Licence which authorises it to deal in financial products by issuing securities under a Debenture Prospectus.

30. The scheme involves a combination of a fixed interest reverse mortgage loan and a fixed interest debenture where a minimum of 75% of the Loan Amount is invested in a Debenture.

31. To be eligible to enter into the scheme, applicants must be individuals 60 years of age or over, and have equity in their own home or another residential investment property that the Investor owns (the Property). The scheme may be entered into by either an individual applicant or joint applicants, where a home is owned jointly. Where there are joint applicants all parties must be 60 years of age or over.

32. To participate in the scheme applicants must complete the application form included in the Debenture Prospectus. A non refundable application fee, to cover the cost of property valuation and legal fees for the primary security property, associated with the Retirement Booster Loan is payable on submitting the application. If a second security property is used, additional valuation and legal fees will be payable by the applicant.

The Loan

33. Once the Investor becomes eligible for a Loan they will not be required to make any periodic repayments of principal or interest for the term of the Loan. The Loan has no predetermined duration and each year the interest is added to the Balance of the Loan. Over the duration of the Loan the Investor is charged interest on the interest which is included in the Balance of the Loan owing on the termination of the scheme. The interest rate on the Loan is fixed at the time the Loan is entered into, being an amount up to 2% higher than the interest payable on the Debenture.

34. The Loan Amount that may be borrowed will depend on a number of factors and these include as follows:

- the value of the Property based on Provident Capital's independent valuation;
- the maximum loan-to-valuation ration which range between 20% and 45% depending on the age of the youngest borrower; and
- minimum and maximum loan restrictions.

35. The minimum amount that an Investor or joint Investors can borrow is $40,000 and the maximum is $2,000,000.

36. Provident Capital will register a mortgage over the Property as security to pay the Balance of the Loan. In addition, Provident Capital will hold a lien over the Debenture purchased with the Loan.

37. Under the terms of the Loan the Investor, among other things, is obliged to:

- comply with all laws affecting the Property;
- pay on time all council rates, water rates, land tax and any other tax or charge assessed on the Property;
- insure the Property for its replacement value against fire, storm and tempest and any other risk, loss of rents and against default under the mortgage if required; and
- keep the Property in good condition.

38. The recourse that Provident Capital has to the assets of the Investor in recovering the amount of the Loan is limited. This is set out at paragraph 44 of this Ruling.

Repayment of the Loan

39. The Mortgage Memorandum details when the Investor or the Investor's estate must repay the Balance of the Loan.

40. Where the Investor has sold the Property, the Debenture will be redeemed and applied to reduce the Loan and the Investor must pay the Net Balance of the Loan from out of the proceeds of sale of the Property at the time the sale is completed.

41. Where the Investor has died, or the last surviving Investor has died in the case of multiple Investors, the Debenture will be redeemed and applied to reduce the Loan and the Investor's estate must pay the Net Balance of the Loan either out of the proceeds of the sale of the Property or within 6 months after the death of the last surviving Investor, which ever is earlier.

42. An Investor may repay part or all of the Net Balance of the Loan at any time. If the Net Balance of the Loan is repaid before any of the events described in paragraphs 40 and 41 of this Ruling happen, the Investor authorises Provident Capital to redeem the Debenture. If this occurs within the first 3 years after the date of the mortgage, the Investor must pay an Early Repayment Fee. **This Ruling does not apply to Investors who are required to pay an Early Repayment Fee. Any Investor who pays an Early Repayment Fee may request a private ruling on the deductibility of the Early Repayment Fee.**

43. If the Investor wants to sell their Property, they must obtain Provident Capital's written approval of the selling price and sale terms before entering into a binding agreement for sale. Provident Capital will not withhold approval if Provident Capital are satisfied that:

- the sale price and sales terms reflect a genuine arm's length transaction;
- the sale price is at least the market value of the Property as determined within the three months prior to that date by a valuer appointed by Provident Capital; and
- the sale terms reflect usual conveyancing practice.

44. Provident Capital's recourse to the Investor's assets under the Loan is limited to recovering the aggregate of the amount realised by the sale of the Property plus the value of the Debenture. If the aggregate amount is less than the Loan account balance, Provident Capital will not sue for the shortfall from the Investor or their estate, except where:

- there has been fraud or dishonesty on the part of the Investor or their estate;
- the mortgage does not effectively create a first ranking mortgage as intended by the Mortgage Memorandum; or
- the Investor or their estate deliberately:
  - damages the Property, or allows it to be damaged, or
  - does anything to the Property with the intention of reducing its value, or allows any such thing to be done.

45. The Mortgage Memorandum also details Default and Termination Events.

46. A Default Event includes:

- not doing something which an Investor must do; or
- doing something which an Investor must not do under the mortgage, or the terms of the Debenture, or under any third party security; or
- not receiving on time any payment required under the mortgage.

47. A Termination Event includes:

- an Investor or their estate not doing on time what a notice of default requires;
- an Investor or their estate making any statement about the Property which is not true or is misleading; or
- the mortgage being affected by fraud not caused by Provident Capital.

48. Where a Termination Event occurs, Provident Capital may do any one or more of the things listed in clause 20.5 which include:

- redeem the Investor's Debenture and apply the Debenture amount to reduce the balance of the Loan;
- demand immediate payment of the Balance of the Loan; and
- do anything with the Property as if Provident Capital owned it, as provided in clause 20.5.3, which may include requiring the Investor to vacate, take possession, manage, lease or sell all or any part of the Property.

Debenture

49. An application for a Retirement Booster Debenture can only be made after Provident Capital has considered the Investor's eligibility for a Loan.

50. At least 75% of the proceeds of the Loan Amount must be invested in the Debenture and the Investor may elect to receive a lump sum of up to 25% of the Loan Amount.

51. The Loan Amount will be drawn against the following:

- the Retirement Booster Debenture Investment amount to make the investment in the Retirement Booster Debenture;
- mortgage registration and stamp duty on the mortgage and other expenses; and
- pay the rest of the Loan Amount to the Investor to be used for whatever purpose the Investor determines.

52. If the Property is not owned outright, the Loan Amount must be sufficient to discharge any current mortgage and invest at least 75% of the total Loan Amount in a Debenture.

53. Provident Capital will keep a register of the Investors and must enter into the register the name and address of each Investor, the date on which the Investor was entered into the register, and details of each Debenture including the date of issue, face value of the Debenture and the interest rate paid on the Debenture.

54. Interest is payable on the Debenture as provided for under the Debenture Prospectus. As is the case with the Loan, the interest payable on the Debenture is fixed at the time that the scheme is entered into, at an amount up to 2% lower than the interest payable on the Loan.

55. Interest earned on the Debenture will be payable to the Investor monthly in arrears and may be used by the Investor in any way that they determine. Interest from the Debenture is not required to be offset against the Balance of the Loan.

56. The Debenture will be redeemed for its face value and the proceeds used to reduce the Loan by way of offset when the Investor sells the Property or the Investor dies (or the last of the Investors dies) or the Investor repays the balance of that Loan or Provident Capital redeems the Debenture.

Debenture Trust Deed

57. Provident Capital has appointed a Trustee in relation to the issue of the Debentures under the Debenture Prospectus.

58. The Trustees duties among others include an obligation to exercise reasonable diligence in monitoring Provident Capital's ability to repay the Debenture. To fulfil the Trustee's duties the Trustee may notify ASIC, seek appropriate court orders or call a meeting of Debenture holders.

Commissioner of Taxation
18 June 2008

Appendix 1 – Explanation

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.

Debenture income

Section 6-5

59. Interest received from the Debenture acquired under the scheme is ordinary income. Therefore, the interest will be assessable income under section 6-5.

Deduction for interest in relation to funds used to acquire the Debenture

Section 8-1

60. Interest incurred on borrowings used to acquire income producing assets such as shares in a company, units in a unit trust or a debenture, is generally treated as deductible under section 8-1, where it is expected that assessable income would be derived from the investment (see Taxation Ruling TR 95/33). Under the scheme, the Investor borrows money, some of which is used to invest in an income producing asset being the Debenture.

'Incurred'

61. The Investor has no immediate requirement to pay interest on the Loan. Instead interest accrued will be capitalised on the Loan account balance and no repayments are required until the scheme is terminated. This raises the question of whether interest is incurred by the Investor under the scheme.

62. The leading authority on the meaning of 'incurred' is *Federal Commissioner of Taxation v. James Flood Pty Ltd* (1953) 88 CLR 492; (1953) 5 AITR 579; (1953) 10 ATD 240, where it was established that a liability is incurred if there is a presently existing liability. It is not necessary that the sum in question be presently payable nor that it has been paid.

63. The liability to pay interest under the scheme is calculated on a daily basis with the interest added to the Loan balance on a monthly basis. The interest is therefore incurred as it accrues notwithstanding that payment is not actually required until a later time.

Limits on deduction

64. Section 8-1 states that you can deduct from your assessable income a loss or outgoing to the extent that it relates to gaining or producing assessable income.

65. This Ruling only deals with the tax consequences of that part of the interest on the Loan that relates to the acquisition of the Debenture. Apart from discharging existing debt in relation to the Property, the rest of the Loan proceeds after acquiring the Debenture may be used for any purpose, as determined by the Investor. The deductibility of interest on this part of the Loan will depend on the use and purpose to which these funds are put.

66. The High Court in *Fletcher v. Federal Commissioner of Taxation* (1991) 173 CLR 1; 91 ATC 4950; (1991) 22 ATR 613 (*Fletcher*) considered the circumstances where the outgoings of a taxpayer exceed the assessable income of a taxpayer. The court stated at page 18-19 that:

> ….it is commonly possible to characterise an outgoing as being wholly of the kind referred to in the first limb of s 51(1) without any need to refer to the taxpayer's subjective thought processes. That is ordinarily so in a case where the outgoing gives rise to the receipt of a larger amount of assessable income…
>
> ….The position may, however, well be different in a case where no relevant assessable income can be identified or where the relevant assessable income is less than the amount of the outgoing…
>
> Where that is so, **it is a 'commonsense' or 'practical' weighing of all the factors which must provide the ultimate answer**: see eg *BP Australia Ltd v. FCT* [1966] AC 224 at 264; (1965) 112 CLR 386; 9 AITR 615; *Hallstroms Pty Ltd v. FCT* (1946) 72 CLR 634 at 648; 3 AITR 436; *FCT v Foxwood (Tolga) Pty Ltd* (1981) 147 CLR 278 at 285, 293; 11 ATR 859; 35 ALR 1. If, upon consideration of all those factors, it appears that, notwithstanding the disproportion between outgoing and income, the whole outgoing is properly to be characterised as genuinely and not colourably incurred in gaining or producing assessable income, the entire outgoing will fall within the first limb of s 51(1)… [Emphasis added]

67. The High Court also stated at page 19 that:

> If…that consideration reveals that the disproportion between outgoing and relevant assessable income is essentially to be explained by reference to the independent pursuit of some other objective and that part only of the outgoing can be characterised by reference to the actual or expected production of assessable income, apportionment of the outgoing between the pursuit of assessable income and the pursuit of that other objective will be necessary. [see also paragraph 6 of TR 95/33].

68. That is the High Court stated that where the assessable income derived from an arrangement is less than the relevant outgoings and the facts lead to the conclusion that there is another objective, only part of the outgoing is an allowable deduction.

69. The amount of interest payable to an investor under the Debenture is capped at an amount up to 2% lower than the interest payable on the Loan.

70. The only assessable income with the relevant nexus to the interest payable under the arrangement is the interest derived by the investor from the debenture.

71. Therefore, the amount of interest payable under the loan will exceed the amount of assessable income derived from the Debenture.

72. The difference between the interest incurred and the interest earned in these circumstances is explained by the Investor's desire to access and utilise the equity in their Property in order to fund their retirement.

73. Therefore, applying the principles in *Fletcher* and TR 95/33, the interest incurred on the part of the Loan that relates to the acquisition of the Debenture under the scheme will be an allowable deduction under section 8-1, to the extent of the interest derived by the Investor from the Debenture.

74. The principles derived in *Fletcher* are also applied to deny deductions for the excess interest and interest on capitalised interest on that part of the Loan that is applied to acquire the Debenture under the scheme.

Deduction for valuation and legal fees, mortgage registration and stamp duty as a borrowing expense

Section 25-25

75. Subsection 25-25(1) allows a deduction for expenditure incurred by the taxpayer for borrowing money to the extent that the borrowed money is used for the purpose of producing assessable income.

76. Mortgage registration, stamp duty and the application fee, which consists of valuation and legal fees, are expenses of borrowing money. Under subsections 25-25(1) and 25-25(3), these will be deductible to the extent that the Loan proceeds are used to purchase the Debenture under the scheme. For instance, if 80% of the Loan is used to purchase the Debenture, then 80% of the borrowing expense will be allowable as a deduction over the relevant period.

77. This Ruling only deals with the tax consequences with that part of the mortgage registration, stamp duty and the application fee that relates to the acquisition of the Debenture. Apart from discharging existing debt in relation to the Property and acquiring the Debenture, the rest of the Loan proceeds may be used for any purpose, as determined by the Investor. The deductibility of the mortgage registration, stamp duty and application fee, on this part of the Loan will depend on the use and purpose to which these funds are put.

78. The period of the Loan is not known at the time the scheme is entered into. Therefore, under subsection 25-25(5), the deduction is allowable over 5 years or the period of the loan as specified in the original Loan contract or the period starting on the first day on which the money was borrowed and ending on the day the Loan is repaid, whichever is the shortest of these periods.

79. The maximum amount of the deduction that can be claimed in any income year is calculated under subsection 25-25(4). This amount is obtained by dividing the remaining expenditure (that is, assuming that the borrowed money being solely used to produce assessable income) by the number of days in the remaining loan period and multiplying the result by the number of days in the Loan period that are in the income year.

80. The percentage representing the extent to which the Loan funds are applied to acquire the Debenture (see paragraph 76 of this Ruling) is then applied to this amount to work out the deduction in any given income year.

Capital loss from redemption of Debenture

81. A Debenture is a CGT asset (section 108-5). CGT event C2 will happen as a result of the redemption of the Debenture (section 104-25).

82. The first element of the cost base and reduced cost base of the Debenture, pursuant to subsections 110-25(2) and 110-55(2), is the face value of the Debenture, being the amount paid by the Investor for its acquisition. The Investor's capital proceeds from the redemption of the Debenture will be limited to its face value. Accordingly, an Investor will not make a capital gain from the redemption.

83. The amount, if any, of the Investor's capital loss from the redemption is worked out by deducting the capital proceeds in respect of the CGT event happening from the Debenture's *reduced* cost base under section 100-45. Under subsections 110-55(2) and (3), the reduced cost base does not include costs of owning the asset such as interest on money borrowed to acquire the asset. It follows that no part of the interest incurred by the Investor under the Loan is taken into account in working out the amount, if any, of the Investor's capital loss from the redemption of the Debenture.

Part IVA

84. Provided that the scheme ruled on is entered into and carried out as disclosed (see the Scheme part of this Ruling), it is accepted that the scheme is a normal commercial transaction entered into by the Investor predominantly for the purpose of accessing and utilizing the equity in their Property in order to fund their retirement, with part of that funding being provided by the generation of an income stream. Therefore, Part IVA of the ITAA 1936 will not be applied to deny deductibility of the interest, the mortgage registration the stamp duty or the application fee, incurred on that part of the Loan used to fund the purchase of the Debenture.

Appendix 2 – Detailed contents list

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

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 95/33

Subject references:

- capital gains
- main residence
- ordinary income
- product rulings
- public rulings
- tax avoidance
- tax benefits under tax avoidance schemes
- tax shelters
- tax shelters project
- taxation administration

Legislative references:

- ITAA 1936 Pt IVA
- ITAA 1997
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 25-25
- ITAA 1997 25-25(1)
- ITAA 1997 25-25(3)
- ITAA 1997 25-25(4)
- ITAA 1997 25-25(5)
- ITAA 1997 100-45
- ITAA 1997 104-25
- ITAA 1997 108-5
- ITAA 1997 110-25(2)
- ITAA 1997 110-55
- ITAA 1997 110-55(2)
- ITAA 1997 110-55(3)
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

Case references:

- BP Australia Ltd v. Federal Commissioner of Taxation (1965) 112 CLR 386; [1966] AC 224; 9 AITR 615
- Federal Commissioner of Taxation v. Foxwood (Tolga) Pty Ltd (1981) 147 CLR 278; 81 ATC 4261; 11 ATR 859; 35 ALR 1
- Federal Commissioner of Taxation v. James Flood Pty Ltd (1953) 88 CLR 492; (1953) 5 AITR 579; (1953) 10 ATD 240
- Fletcher v. Federal Commissioner of Taxation (1991) 173 CLR 1; 91 ATC 4950; (1991) 22 ATR 613
- Hallstroms Pty Ltd v. Federal Commissioner of Taxation (1946) 72 CLR 634; 3 AITR 436

ATO references

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