

PR 2008/64A1 - Addendum - Income tax: deductibility of interest incurred on borrowings in relation to Macquarie Fusion Funds - November 2008 Offer

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Addendum

Product Ruling

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

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Product Ruling PR 2008/64 to:

- incorporate amendments to Division 247 of the *Income Tax Assessment Act 1997* (ITAA 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 2008/64 is amended as follows:

1. Paragraphs 15 and 16

Omit the paragraphs.

2. Paragraph 18

(a) Omit subparagraph 18(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) will be deductible under section 8-1 of the ITAA 1997;

- (b) Omit subparagraph 18(b); substitute:
- (b) 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) Insert at the end of subparagraph 18(c):
- (ca) Division 247 of the ITAA 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;

3. Paragraph 23

Omit subparagraph 23(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.

4. Paragraph 28

Omit the paragraph; substitute:

28. 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.

5. 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 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.

6. Paragraph 30

(a) Omit the paragraph; substitute:

30. 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.

(b) Insert after paragraph 30:

30A. 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.

7. Paragraph 31

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.'

8. Legislative references

Insert:

- ITAA 1997 247-20(4)
- ITAA 1997 247-20(5)
- ITAA 1997 247-20(5A)

This Addendum applies on and from 17 September 2008.

Commissioner of Taxation

20 March 2013

ATO references

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