


PR 2008/6A1 - Addendum - Income tax: tax consequences of investing in the UBS Protected Geared Investment - 2007 Product Disclosure Statement

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Addendum

Product Ruling

Income tax: tax consequences of investing in the UBS Protected Geared Investment – 2007 Product Disclosure Statement

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Product Ruling PR 2008/6 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 Funding Loan, as set out in Taxation Determination TD 2013/1.

PR 2008/6 is amended as follows:

1. Paragraph 17

- (a) Omit subparagraph 17(a); substitute:
- (a) an amount equal to the interest incurred on the Protected Loan in an income year, reduced by an amount reasonably attributable to the cost of capital protection 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 PGI on or after 30 January 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 that is reasonably attributable to the cost of capital protection under Division 247 of the IT(TP)A 1997 in an income year will be the amount by which the interest incurred on the Protected Loan exceeds an amount representing the interest that would have been incurred in an income year if the Reserve Bank of Australia's Indicator Lending Rate for Personal Unsecured Loans – Variable Rate (the 'personal unsecured loan rate') at the time when the first interest payment is incurred during the term of the loan, or the first interest payment is incurred for the relevant part of the term of the loan, had been applied (subsection 247-75(2) of the IT(TP)A 1997);
 - (ba) where the Investor enters into the PGI after 7.30 pm by legal time in the Australian Capital Territory on 13 May 2008 and on or before 30 June 2011, under subsection 247-20(3) of the ITAA 1997 the amount that is reasonably attributable to the cost of capital protection under Division 247 of the ITAA 1997 in an income year will be the amount by which the interest incurred on the Protected Loan exceeds an amount representing the interest that would have been incurred in an income year if 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 time when the first interest payment is incurred during the term of the loan, or the first interest payment is incurred for the relevant part of the term of the loan, had been applied (subsections 247-20(4) and (5) of the ITAA 1997);
 - (bb) Division 247 of the ITAA 1997 and IT(TP)A 1997 will not apply to the Interest Funding Loan. An amount equal to the interest expense incurred on the Interest Funding Loan will be deductible under section 8-1 of the ITAA 1997;
- (c) Omit the first sentence of subparagraph 17(k); substitute:
- (k) the part of the interest incurred on the Protected Loan that is reasonably attributable to the cost of capital protection as determined in accordance with paragraph 17(b) or 17(ba) of this Ruling will be treated as having been incurred for a notional put option granted by UBS under the scheme under section 247-20 of the ITAA 1997.

2. 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 30 January 2008 but at 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).

3. Paragraph 26

Omit the first sentence of the paragraph; substitute:

26. Under the PGI, the amount reasonably attributable to the cost of capital protection is worked out according to 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.

4. 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 Protected Loan for the income year.

5. Paragraph 28

Omit the paragraph; substitute:

28. Where the total amount incurred by the Investor in 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 all of the interest incurred on the

Protected Loan will be deductible under section 8-1 of the ITAA 1997.

6. Paragraph 29

Omit the paragraph; substitute:

29. Where the total amount incurred by the Investor in 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 notional put option under Division 247 of the ITAA 1997. The notional put option is a capital asset for an Investor in the PGI. As the amount reasonably attributable to the cost of capital protection is the cost of the Investor's notional put option, this expense is capital in nature. The interest charged on the Protected Loan will therefore only be deductible under section 8-1 of the ITAA 1997 to the extent that it is not reasonably attributable to the cost of capital protection.

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

7. Paragraph 34

Omit the first sentence of the paragraph; substitute:

34. That part of the total interest incurred on the Protected Loan and, if applicable, the Interest Funding Loan (the 'Total Amount') allowable as a deduction under section 8-1 of the ITAA 1997 is in relation to a prepayment of loan interest for a period that is 12 months or less.

8. Paragraph 53

Omit the paragraph; substitute:

53. That part of the interest incurred on the Protected Loan which is reasonably attributable to the cost of capital protection (if any) will form part of the cost base and reduced cost base of the notional put option (subsections 110-25(2) and 110-55(2) of the ITAA 1997). Where the capital protection under the PGI is invoked, the notional put option is taken to have been exercised pursuant to subsection 247-30(1) of the ITAA 1997. Any capital gain or capital loss on exercise of the notional put option is disregarded (subsection 134-1(4) of the ITAA 1997). The second element of the Investor's cost base

and the reduced cost base for the Approved Securities will include that part of the interest incurred on the Protected Loan which is reasonably attributable to the cost of capital protection, being the cost of the notional put option (subsection 134-1(1) of the ITAA 1997, item 2).

9. References

Insert the legislative references:

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

This Addendum applies on and from 30 January 2008.

Commissioner of Taxation

8 May 2013

ATO references

NO: 1-3B2F1FJ

ISSN: 1441-1172

ATOlaw topic: Income tax ~~ Product ~~ finance