

PR 2009/32A1 - Addendum - Income tax: deductibility of interest incurred on borrowings in relation to Macquarie Fusion Funds - June 2009 Offer

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Addendum

Product Ruling

Income tax: deductibility of interest incurred on borrowings in relation to Macquarie Fusion Funds – June 2009 Offer

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Product Ruling PR 2009/32 to:

- incorporate amendment 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 and Put Protection Fee Loan, as set out in Taxation Determination TD 2013/1.

PR 2009/32 is amended as follows:

1. Paragraphs 13 and 14

Omit the paragraphs.

2. Paragraph 16

(a) Omit subparagraph 16(a); substitute:

- (a) an amount equal to the Protection Fee and interest incurred on the Investment Loan, in an income year (the Total Amount), reduced by the amount reasonably attributable to the cost of capital protection as 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 16(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 (Excess Amount), in an income year, is the amount by which the Total Amount 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 time when the first of the amounts included in the Total 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 16(c); substitute:
- (c) any Excess Amount, as worked out under paragraph 16(b) of this Ruling, reduced by the Protection Fee, is treated as a further cost of the Put Option under subsection 247-20(6) of the ITAA 1997 (Additional Amount). The Additional Amount (if any) and the Protection Fee are not deductible under section 8-1 of the ITAA 1997;
- (ca) Division 247 of the ITAA 1997 will not apply to the Interest and Put Protection Fee Loan. An amount equal to the interest incurred on the Interest and Put Protection Fee Loan will be deductible under section 8-1 of the ITAA 1997 to the extent that the loan is used to pay interest on the Investment Loan. The interest incurred on the Interest and Put Protection Fee Loan will not be deductible under section 8-1 of the ITAA 1997 to the extent that it corresponds to the part of the loan that is used to pay the Protection Fee (Put Option Interest);

3. Paragraph 21

Omit subparagraph 21(h); substitute:

- (h) the Investor will not choose to repay the Investment Loan or the Interest and Put Protection Fee Loan prior to their relevant terms or terminate the scheme prior to the maturity date.

4. Paragraph 26

Omit the paragraph; substitute:

- 26. 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 includes the Protection Fee and interest incurred on the Investment Loan for the income year.

5. Paragraph 27

Omit the last sentence of the paragraph; substitute: 'In these circumstances, the interest on the Investment Loan will be deductible.'

6. Paragraph 28

Omit the paragraph; substitute:

- 28. Where the Total Amount incurred by the Investor 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. In calculating the total cost of the Put Option, the Excess Amount will be reduced by any actual payment for the Put Option (the Protection Fee) in accordance with subsection 247-20(6) of the ITAA 1997 (Additional Amount). The Additional Amount, to the extent that it is greater than zero, constitutes a further cost of capital protection in addition to the Protection Fee for the Put Option. The Put Option is a capital asset for an Investor in the Fusion Fund. Therefore, the sum of the Protection Fee and Additional Amount (if any) is capital in nature and not deductible under section 8-1 of the ITAA 1997.

- 28A. There is no element of capital protection connected with the Interest and Put Protection Fee Loan. No part of the interest incurred by the Investor on the Interest and Put Protection Fee Loan for the income year will therefore be attributable to the cost of capital protection.

7. Paragraph 29

Omit the last sentence of the paragraph; substitute: 'As the Total Amount, to the extent that it is not reasonably attributable to the cost of capital protection, and the part of the interest incurred on the Interest and Put Protection Fee Loan that is used to pay interest on the Investment 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 13 May 2009.

Commissioner of Taxation

20 March 2013

ATO references

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