


# ***PR 2010/19 - Income tax: tax consequences of investing in Westpac Deferred Purchase Agreements - Westpac Maximiser Series 2***

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## Product Ruling

# Income tax: tax consequences of investing in Westpac Deferred Purchase Agreements – Westpac Maximiser Series 2

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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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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 Commissioner **does not** sanction or guarantee this product. Further, the Commissioner gives 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. The Commissioner recommends 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

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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.
2. In this Product Ruling this scheme is referred to as the Westpac Maximiser Series 2 or simply as the Deferred Purchase Agreement (DPA), offered by Westpac Banking Corporation (Westpac).
3. This Product Ruling does not address:
  - the tax consequences of borrowing funds to acquire the DPA, including the deductibility of interest on funds borrowed to acquire the DPA;
  - the tax consequences of a transfer of the DPA;
  - the tax consequences of an early withdrawal of the DPA at the Investor's request;
  - the tax consequences of an early termination of the DPA upon the occurrence of an Early Termination Event; and
  - whether the DPA constitutes a financial arrangement for the purposes of Division 230 (Taxation of financial arrangements).

### Class of entities

4. This part of the Product Ruling specifies which entities can rely on the Ruling section of this Product Ruling and which entities cannot rely on the Ruling section. In this Product Ruling, those entities that can rely on the Ruling section are referred to as Investors.
5. The class of entities who can rely on the Ruling section of 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 made and on or before the Offer Closing Date. They must have a purpose of staying in the scheme until it is completed (that is, being a party to the relevant agreements mentioned in paragraph 18 of this Ruling until their term expires), and deriving capital gains from this involvement.

6. The class of entities who can rely on the Ruling section of this Product Ruling does **not** include entities who:

- intend to terminate their involvement in the scheme prior to its completion, or who otherwise do not intend to derive a capital gain from it;
- are accepted into this scheme before the date of this Ruling or after the Offer Closing Date;
- participate in the scheme through offers made other than through the Combined Financial Services Guide and Product Disclosure Statement (PDS); or who enter into an undisclosed arrangement with the promoter or a promoter associate, or an independent adviser that is interdependent with scheme obligations and/or scheme benefits (which may include tax benefits) in any way;
- trade in financial instruments or securities and are treated for taxation purposes as trading in Delivery Assets and/or DPAs, carrying on a business of investing in the Delivery Assets and/or DPAs, or holding the Delivery Assets and/or DPAs as trading stock or as revenue assets; or
- are subject to Division 230 in respect of this scheme.

### ***Superannuation Industry (Supervision) Act 1993***

7. This Product Ruling does not address the provisions of the *Superannuation Industry (Supervision) Act 1993* (SISA). The Commissioner gives no assurance that the scheme 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 scheme may contravene the provisions of SISA.

### **Qualifications**

8. 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 18 to 22 of this Ruling.

9. 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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Barton ACT 2600

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## Date of effect

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11. This Product Ruling applies prospectively from 1 September 2010, the date it is published. It therefore applies only to the specified class of entities that enter into the scheme from 1 September 2010 until the Offer Closing Date, being the closing date for entry into the scheme. This Product Ruling provides advice to the specified class of entities for the income years up to 30 June 2013 being its period of application. This Product Ruling will continue to apply to those entities even after its period of application has ended for the scheme entered into between 1 September 2010 and the Offer Closing Date (inclusive).

12. 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.

### Changes in the law

13. Although this Product Ruling deals with the income tax 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 Commissioner suggests that promoters and advisers ensure that participants are fully informed of any legislative changes after the Product Ruling has issued.

**Goods and Services Tax**

16. All fees and expenditure referred to in this Product Ruling include the Goods and Services Tax (GST) where applicable. In order for an entity (referred to in this Ruling as an Investor) to be entitled to claim input tax credits for the GST included in its expenditure, it must be registered or required to be registered for GST and hold a valid tax invoice.

**Ruling**

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**Application of this Ruling**

17. Subject to paragraph 3 and the assumptions in paragraph 22 of this Ruling:

**The DPA**

- (a) The Investor's legally enforceable rights under the DPA are, in their totality, a CGT asset under subsection 108-5(1).
- (b) Upon settlement of the DPA at Maturity, at which point delivery of the Delivery Parcel to the Investor or to Westpac (or its nominee) on behalf of the Investor is effected, the Investor's ownership of the contractual rights under the DPA comes to an end by reasons of those rights being discharged or satisfied. A CGT event C2 happens under section 104-25 at this time.
- (c) Where the Investor elects that Physical Settlement will apply to the DPA, their capital proceeds under section 116-20 will be equal to the market value of the Delivery Assets received on the date of delivery, as well as any further cash amount received from Westpac (if any) upon settlement of the DPA at Maturity.
- (d) Where the Investor elects or is deemed to have elected that Cash Settlement will apply to the DPA, their capital proceeds under section 116-20 will be equal to the market value of the Delivery Assets received on the date of delivery.
- (e) The cost base or reduced cost base of the Investor's contractual rights under the DPA includes the Application Amount (subsections 110-25(2) and 110-55(2)).

- (f) Any capital gain realised by an Investor as a result of the satisfaction of the Investor's rights under the DPA will be treated as a discount capital gain pursuant to section 115-5 where the Investor is an individual, a complying superannuation entity, or a trust and has held the DPA for at least 12 months. The CGT asset comprising the Investor's contractual rights under the DPA is taken to have been acquired when the Investor enters into the DPA (subsection 109-5(1)).
- (g) The DPA is not a traditional security as defined in subsection 26BB(1) of the *Income Tax Assessment Act 1936* (ITAA 1936).
- (h) The DPA is not a qualifying security as defined in subsection 159GP(1) of the ITAA 1936.
- (i) Division 230 will not apply to any gains or losses from the DPA held by Investors excepted from the Division applying to this scheme pursuant to section 230-455.

## **The Delivery Assets**

- (j) Each Delivery Asset received by the Investor under a Physical Settlement, or by Westpac (or its nominee) on behalf of the Investor under a Cash Settlement, is a CGT asset under subsection 108-5(1). Any subsequent disposal of a Delivery Asset by way of sale by the Investor or by Westpac (or its nominee) as agent of the Investor will give rise to a CGT event A1 under section 104-10.
- (k) The Investor's capital proceeds under section 116-20 will be the amount they receive, or are entitled to receive, from the disposal. Under a Cash Settlement, this amount will be the Cash Settlement Amount.
- (l) The cost base or the reduced cost base of the Investor's Delivery Assets is their market value on the date of delivery to the Investor or Westpac (or its nominee) to be held on behalf of the Investor, plus any incidental costs incurred by the Investor in acquiring the Delivery Assets, including, in the case of a Cash Settlement only, the Cash Settlement Fee (sections 110-25, 110-55 and 112-20).

- (m) Any capital gain realised by an Investor from the disposal of a Delivery Asset acquired under a Physical Settlement will be treated as a discount capital gain pursuant to section 115-5 where the Investor is an individual, a complying superannuation entity, or a trust and has held the Delivery Asset for at least 12 months. Each Delivery Asset is taken to have been acquired by the Investor at the time it is delivered (subsection 109-5(1)). Capital gains realised by an Investor from the disposal of a Delivery Asset acquired under a Cash Settlement will not be treated as a discount capital gain under section 115-5.

#### **Anti-avoidance provisions**

- (n) Provided the scheme ruled on is entered into and carried out as described in this Ruling, the anti-avoidance provisions in Part IVA of the ITAA 1936 will not apply to an Investor in respect of the acquisition of the DPA.

## **Scheme**

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

- application for a Product Ruling as constituted by documents and information received on 30 July 2010, 4 August 2010 and 10 August 2010;
- PDS, including the Term Sheet and Investment Conditions, dated 3 August 2010;
- Draft Westpac Maximiser – Series 2 Nominee Deed, dated 10 August 2010; and
- Draft Westpac Maximiser – Series 2 Investment Deed, received on 4 August 2010.

**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. 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.

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

**Overview**

21. The details of the Westpac Maximiser are summarised as follows:

- (a) On payment by the Investor of the Application Amount to Westpac and the acceptance of the Investor's Application for a DPA, the Investment Conditions under the PDS, as supplemented by the Term Sheet, the Investment Deed, the Nominee Deed and the Application Form, form the agreement between the Investor and Westpac that constitutes the DPA.
- (b) An Investor is required to pay a minimum Application Amount of \$10,000 per Strategy, with increments of \$5,000 per Strategy thereafter. An Adviser Deduction of 2.20% of the Application Amount is applied on the Issue Date, reflecting the amount Westpac pays the Investor's adviser by way of up front commission, unless waived by the adviser.
- (c) Each DPA issued is registered by entry in the Register. Each entry in the Register constitutes an unconditional and irrevocable undertaking by Westpac to the Investor to make each delivery required to be made by it in accordance with the Investment Conditions and an entitlement to a beneficial interest in a fraction of the Nominee Securities held on trust by Westpac, as the Nominee, in accordance with the Nominee Deed (Investment Condition 1.6).
- (d) The Delivery Parcel will contain a whole number of Delivery Assets. The number of Delivery Assets in the Investor's Delivery Parcel at Maturity will be equal to the Maturity Amount, less the Delivery Deduction, divided by the weighted average price of the Delivery Assets acquired by Westpac for delivery to the Investor. Unless substituted by Westpac in accordance with Investment Condition 4.5, the Delivery Assets in each Delivery Parcel, as selected by Westpac, will be one of the following:
  - (i) ordinary fully paid shares in Telstra Corporation Limited;
  - (ii) ordinary fully paid shares in BHP Billiton Limited;
  - (iii) ordinary fully paid shares in Woolworths Limited;
  - (iv) ordinary fully paid shares in Commonwealth Bank of Australia; or
  - (v) ordinary fully paid units in the SPDR S&P/ASX 200 Fund.

- (e) A Delivery Deduction of up to 0.22% of the Maturity Amount, reflecting the cost of processing the Investor's DPA at Maturity, applies at Maturity for both Physical Settlement and Cash Settlement and will be deducted from the Maturity Amount in determining the number of Delivery Assets in the Delivery Parcel.
- (f) The Maturity Amount is dependant on the performance of the Strategy chosen by the Investor to apply to their DPA. Each of the two investment Strategies available to the Investor, Strategy A and Strategy B, has different potential return and risk features, as set out in the PDS, and are dependant on the performance of the S&P/ASX 200 Index over the term of the DPA. Subject to meeting the minimum Application Amount for each Strategy, the Investor may apply a different Strategy to different portions of their total investment. A separate DPA is entered into for each Strategy.
- (g) The Investor may deliver a Settlement Election Form to Westpac prior to the Maturity Date, being 5 years after the Issue Date, in which it specifies that either Physical Settlement or Cash Settlement will apply in respect of some or all of each DPA. Where the Investor has not supplied a validly completed Settlement Election Form at least 5 Business Days prior to the Maturity Date in respect of any particular DPA, the Investor will be deemed to have elected Cash Settlement for that DPA (Investment Condition 4.2).
- (h) Where the Investor elects that Physical Settlement will apply to the DPA, Westpac agrees to transfer to the Investor the title to the Delivery Parcel on or prior to the Settlement Date, which is generally that day that is 15 Business Days after the Maturity Date (Investment Condition 4.4).
- (i) Where the Investor elects or is deemed to have elected that Cash Settlement will apply to the DPA, Westpac agrees to:
  - (i) arrange for the Delivery Parcel to be delivered to Westpac (or its nominee) to be held on behalf of the Investor and sold by Westpac (or its nominee) as agent of the Investor; and
  - (ii) pay the Cash Settlement Amount to the Investor on the Settlement Date, less a Cash Settlement Fee of up to 0.22% of the Maturity Amount which reflects the cost of selling the Investor's Delivery Parcel (Investment Condition 4.7).

- (j) Westpac will advise the Investor of the market value of the Delivery Assets as at the date of their delivery under either a Physical Settlement or a Cash Settlement.
- (k) On Physical Settlement or Cash Settlement of the DPA Westpac's obligations to the Investor in connection with the DPA are satisfied and discharged and the Nominee's obligations to the Investor in respect of the Investor's interest in the relevant Nominee Securities in connection with the DPA are satisfied and discharged in accordance with the terms of the Nominee Deed (Investment Condition 4.9).
- (l) Irrespective of the performance of the Investor's Strategy, their Maturity Amount, less the Delivery Deduction, will be protected to a specified level of the Investment Amount (the Protected Amount). The Maturity Amount will be capital protected to 100% and 75% of the Investment Amount at the Maturity Date under Strategy A and Strategy B respectively. Such capital protection will not apply where the DPA is not held to Maturity or is terminated early by Westpac.
- (m) The DPA does not pay any distributions, coupons or other amounts during its term.
- (n) The DPAs will not be listed for quotation on the Australian Securities Exchange, but an Investor may transfer the whole of a DPA relating to a particular Strategy pursuant to Investment Condition 2. This Ruling does not consider the tax consequences of such a transfer.
- (o) Pursuant to Investment Condition 5, the Investor may by written notice to Westpac make an irrevocable request that Westpac redeem a DPA in a particular Strategy. Westpac reserves the right to accept or reject the withdrawal request in its sole discretion. An Early Withdrawal Deduction of 1.10% of the greater of the Investor's Investment Amount or Early Withdrawal Amount is payable by the Investor upon Westpac's acceptance of such a request, reflecting the costs of processing the Investor's DPA when they withdraw early. This Ruling does not consider the tax consequences of an early withdrawal.
- (p) Westpac may, without prior notice to the Investor, determine that early termination will occur in respect of a DPA if it determines that an Early Termination Event in respect of the DPA occurs at any time during the term of the DPA (Investment Condition 6). This Ruling does not consider the tax consequences of an early termination.

**Assumptions**

22. This Ruling is made on the basis of the following assumptions:
- (a) all of the Investors are Australian residents for taxation purposes, including individuals, companies, trusts and complying superannuation funds;
  - (b) the Investors are not traders in financial instruments or securities and are not treated for taxation purposes as trading in Delivery Assets and/or DPAs, carrying on a business of investing in the Delivery Assets and/or DPAs, or holding the Delivery Assets and/or DPAs as trading stock or as revenue assets;
  - (c) the Investors' purpose in entering the scheme is to make a capital gain from their investment in the DPA;
  - (d) the scheme will be executed in the manner described in the Scheme section of this Ruling and the scheme documentation mentioned in paragraph 18 of this Ruling; and
  - (e) all dealings between the Investors and Westpac (or its nominee) will be at arm's length.

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**Commissioner of Taxation**1 September 2010

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## Appendix 1 – Explanation

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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.*

### **Application of the CGT provisions to the DPA**

#### **Section 108-5: CGT asset**

23. Under subsection 108-5(1) a CGT asset is any kind of property or a legal or equitable right that is not property.

24. The rights of an Investor under the DPA are legally enforceable rights and therefore, in their totality, a CGT asset according to the definition in subsection 108-5(1).

#### **Section 109-5: acquisition of CGT asset**

25. The CGT asset comprising the Investor's contractual rights under the DPA is taken to have been acquired when the Investor enters into the DPA (subsection 109-5(1)).

#### **Section 104-25: CGT event C2**

26. Consideration as to whether a CGT event C2 happens as a result of the satisfaction of an investor's rights under a Deferred Purchase Agreement warrant by the delivery of Delivery Assets is set out in Taxation Determination TD 2008/22, with regard to the specific features of a Deferred Purchase Agreement warrant in TD 2008/22.

27. Where the Delivery Parcel is delivered to the Investor or to Westpac (or its nominee) on behalf of the Investor at Maturity, the Investor's ownership of the contractual rights under the DPA are discharged or satisfied. This discharge or satisfaction of the contractual rights gives rise to CGT event C2 (paragraph 104-25(1)(b)).

28. The Investor will make a capital gain from this CGT event if the capital proceeds from the ending of the Investor's ownership of the asset are more than the asset's cost base or, alternatively, a capital loss from this CGT event if those capital proceeds are less than the asset's reduced cost base (subsection 104-25(3)).

29. The Investor's capital proceeds under a Physical Settlement will be equal to the market value of the Delivery Assets received on the date of delivery, as well as any further cash amount received from Westpac (if any) upon settlement of the DPA at Maturity. The Investor's capital proceeds under a Cash Settlement will be equal to the market value of the Delivery Assets received on the date of delivery (section 116-20).

30. At the time of entering into the DPA the Investor acquires a CGT asset with a cost base or reduced cost base that includes, as its first element, the Application Amount (subsections 110-25(2) and 110-55(2)).

### ***Section 115-5: discount capital gains***

31. Division 115 allows a taxpayer a discount on capital gains in certain circumstances. In accordance with section 115-5, any capital gain realised by an Investor as a result of the satisfaction of the Investor's rights under the DPA will be treated as a discount capital gain where the Investor is an individual, a complying superannuation entity, or a trust and has held those rights under the DPA for at least 12 months (excluding the days of acquisition and disposal).

### **The DPA is not a traditional security**

32. Consideration as to whether a Deferred Purchase Agreement warrant is a traditional security for the purposes of section 26BB and 70B of the ITAA 1936 is set out in Taxation Determination TD 2008/21, with regard to the specific features of a Deferred Purchase Agreement warrant in TD 2008/21.

33. A traditional security, in relation to a taxpayer, is defined in subsection 26BB(1) of the ITAA 1936. That definition requires a consideration as to whether the taxpayer holds a security, defined in subsection 26BB(1) as having the same meaning as in Division 16E of the ITAA 1936.

34. Under subsection 159GP(1) of Division 16E of the ITAA 1936, 'security' means:

- (a) stock, a bond, debenture, certificate of entitlement, bill of exchange, promissory note or other security;
- (b) a deposit at bank or other financial institution;
- (c) a secured or unsecured loan; or
- (d) any other contract, whether or not in writing, under which a person is liable to pay an amount or amounts, whether or not the liability is secured.

35. The DPA is not considered to have sufficient debt like obligations to be a contract to which paragraph (d) of the definition of security in subsection 159GP(1) of the ITAA 1936 applies, nor does it fall within paragraphs (a), (b) or (c) of that definition. Therefore, the DPA does not meet the definition of security under subsection 159GP(1) and, as such, is not a traditional security for the purposes of section 26BB and 70B of the ITAA 1936.

## **The DPA is not a qualifying security**

36. A qualifying security is defined in subsection 159GP(1) of Division 16E of the ITAA 1936. For the purposes of determining whether an arrangement is a qualifying security, that arrangement must be a security, also defined in subsection 159GP(1) (see paragraph 34 of this Ruling).

37. For reasons set out in paragraph 35 of this Ruling, the DPA does not meet the definition of security under subsection 159GP(1) of the ITAA 1936 and, therefore, is not a qualifying security for the purposes of Division 16E of the ITAA 1936.

## **Division 230: taxation of financial arrangements**

38. Division 230 sets out the tax treatment of gains or losses from a 'financial arrangement'.

39. Where an arrangement is not a qualifying security for the purposes of Division 16E of the ITAA 1936 and an election under section 230-455 to have Division 230 of the ITAA 1997 apply to financial arrangements has not been made, then pursuant to section 230-455 of the ITAA 1997, Division 230 of the ITAA 1997 does not apply in relation to gains or losses from a financial arrangement held by:

- (a) an individual; or
- (b) a superannuation entity, a managed investment scheme or an entity substantially similar to a managed investment scheme under foreign law with assets of less than \$100 million; or
- (c) an ADI, a securitisation vehicle or other financial sector entity with an aggregated turnover of less than \$20 million; or
- (d) another entity with an aggregated turnover of less than \$100 million, financial assets of less than \$100 million and assets of less than \$300 million.

## **Application of the CGT provisions to the Delivery Assets**

### ***Section 108-5: CGT asset***

40. Delivery Assets received by the Investor under a Physical Settlement, or by Westpac (or its nominee) on behalf of the Investor under a Cash Settlement, are CGT assets according to the definition in subsection 108-5(1).

**Section 109-5: acquisition of CGT asset**

41. Each Delivery Asset is taken to have been acquired by the Investor at the time it is delivered to the Investor or Westpac (or its nominee) to be held on behalf of the Investor (subsection 109-5(1)).

**Section 104-10: CGT event A1**

42. A sale of a Delivery Asset by the Investor after a Physical Settlement or by Westpac (or its nominee) as agent of the Investor under a Cash Settlement gives rise to a CGT event A1 (section 104-10).

43. The Investor will make a capital gain from this CGT event if the capital proceeds from the disposal of the Investor's asset are more than the asset's cost base or, alternatively, a capital loss from this CGT event if those capital proceeds are less than the asset's reduced cost base (subsection 104-10(4)).

44. The Investor's capital proceeds will be the amount they receive, or are entitled to receive, from the disposal. The cost base or the reduced cost base of a Delivery Asset is its market value on the date of its delivery to the Investor or Westpac (or its nominee) to be held on behalf of the Investor, plus any incidental costs incurred by the Investor in acquiring the Delivery Asset, including, in the case of a Cash Settlement only, the Cash Settlement Fee (sections 110-25, 110-55 and 112-20).

45. The Investor will realise a capital gain or loss under a Cash Settlement where the market value of their Delivery Assets on the date of delivery to Westpac (or its nominee) to be held on behalf of the Investor differs to the amount of the cash proceeds from their subsequent sale by Westpac (or its nominee) on the Investor's behalf.

**Section 115-5: discount capital gains**

46. Division 115 allows a taxpayer a discount on capital gains in certain circumstances. In accordance with section 115-5, any capital gain realised by an Investor as a result of the sale of the Delivery Assets will be treated as a discount capital gain where the Investor is an individual, a complying superannuation entity, or a trust and has held those Delivery Assets for at least 12 months (excluding the days of acquisition and disposal).

**Part IVA – anti-avoidance**

47. Provided that the scheme ruled on is entered into and carried out as disclosed in this Ruling, it is accepted that the scheme is an ordinary commercial transaction and Part IVA of the ITAA 1936 will not apply.

**Appendix 2 – Detailed contents list**

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

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## References

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- Previous draft:*
- ITAA 1997
  - ITAA 1997 104-10
  - ITAA 1997 104-10(4)
- Not previously issued as a draft
- Related Rulings/Determinations:*
- ITAA 1997 104-25
  - ITAA 1997 104-25(1)(b)
  - ITAA 1997 104-25(3)
  - ITAA 1997 108-5
  - ITAA 1997 108-5(1)
- TD 2008/21; TD 2008/22
- Subject references:*
- capital gains tax
  - deferred purchase agreements
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- ITAA 1997 109-5
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  - ITAA 1997 115-5
  - ITAA 1997 116-20
  - ITAA 1997 Div 230
  - ITAA 1997 230-455
  - SISA 1993
  - TAA 1953
  - Copyright Act 1968
- Legislative references:*
- ITAA 1936 26BB
  - ITAA 1936 26BB(1)
  - ITAA 1936 70B
  - ITAA 1936 Div 16E
  - ITAA 1936 159GP(1)
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- 

### ATO references

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