PR 2011/21 - Income tax: tax consequences of investing in Commonwealth Bank Vantage+ (Deferred Purchase Agreements)

Product Ruling

Income tax: tax consequences of investing in Commonwealth Bank Vantage+ (Deferred Purchase Agreements)

Contents Para

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

1. This Product Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified in the Ruling section 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 Commonwealth Bank Vantage+ or the Deferred Purchase Agreement (DPA), offered by the Commonwealth Bank of Australia (CBA).

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 Termination of the DPA at the Investor's request or 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 make an Offer to participate in the scheme specified on or after the Opening Date and on or before the Closing Date;

- whose Offer is accepted on, and whose rights and obligations under the Terms of Sale will commence on, a relevant Start Date, being a Start Date on or between 19 December 2011 and 19 December 2013; and
- that 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 other than on a relevant Start Date (see paragraph 5 of this Product Ruling);
- participate in the scheme through offers made other than through a Commonwealth Bank Vantage+ Product Disclosure Statement; 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.

Date of effect

11. This Product Ruling applies prospectively from 7 December 2011, the date it is published. It applies only to the specified class of entities that enter into the scheme on a relevant Start Date (see paragraph 5 of this Product Ruling). This Product Ruling provides advice to the specified class of entities for the income years up to 30 June 2014 being its period of application. Where relevant, this Product Ruling will continue to apply to those entities even after its period of application has ended for the scheme entered into on a relevant Start Date.

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, hold a valid tax invoice and the expenditure incurred by the Investor must qualify as a creditable acquisition.

Ruling

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 delivery of the Delivery Parcel to the Investor or to the CBA (or its nominee) on behalf of the Investor, 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 or is deemed to have elected to accept physical delivery of the Delivery Parcel, their capital proceeds under section 116-20 will be equal to the market value of the Delivery Assets received on the Settlement Date, as well as any further cash amount received from the CBA (if any) upon settlement of the DPA at maturity.

(d) Where the Investor elects to accept delivery through the Sale Service, their capital proceeds under section 116-20 will be equal to the market value of the Delivery Assets on the Trade Date.

(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 on the Start Date, that is, 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 directly by the Investor, or by the CBA (or its nominee) on behalf of the Investor under the Sale Service, 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 the CBA (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 the Sale Service, this amount will be the Sale Proceeds.

(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 the CBA (or its nominee) to be held on behalf of the Investor, plus any incidental costs incurred by the Investor in acquiring the Delivery Assets. Where the Sale Service is used, such incidental costs include the Brokerage Fee (sections 110-25, 110-55 and 112-20).

(m) Any capital gain realised by an Investor from the disposal of a Delivery Asset physically delivered to them 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 the Sale Service will not be 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

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 7 November 2011;
- Commonwealth Bank Vantage+ Product Disclosure Statement, including the Schedule of Terms and Terms of Sale; and
- Commonwealth Bank Vantage+ Nominee Deed, dated 2 November 2011.

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 Commonwealth Bank Vantage+ are summarised as follows:

(a) On payment by the Investor of the Application Amount to the CBA and the acceptance of the Investor's Application for a DPA, the relevant Commonwealth Bank Vantage+ Product Disclosure Statement, including the Terms of Sale, Schedule of Terms and Application Form therein, form the agreement between the Investor and the CBA that constitutes the DPA.

(b) The Application Amount payable by an Investor consists of the Initial Adviser Fee (if any) and the Upfront Amount. The Initial Adviser Fee is the amount agreed between the Investor and their adviser to be paid by the CBA to the adviser from the Investor's Application Amount shortly after the Start Date.

(c) The amount invested by the Investor in a Strategy as the Upfront Amount is leveraged such that they have a larger exposure to the performance of an Underlying Portfolio (the Reference Asset) as follows:

(i) under Strategy 1, between 15% to 17% of the Notional Value, as determined by the CBA prior to the Start Date; and

(ii) under Strategy 2, between 20% to 22% of the Notional Value, as determined by the CBA prior to the Start Date.

where the Notional Value represents the actual size of the Investor's exposure.

(d) An Investor is required to have a Minimum Notional Value of $25,000 per Strategy, with increments of $1,000 per Strategy thereafter.

(e) The CBA's acceptance of an Investor's offer constitutes an unconditional and irrevocable undertaking by the CBA to the Investor to make each delivery required to be made by it in accordance with the Terms of Sale and an entitlement to a Beneficial Interest in a fraction of the Nominee Security held on trust by the Nominee, in accordance with the Nominee Deed.

(f) The Delivery Parcel will contain a whole number of Delivery Assets. The number of Delivery Assets in the Investor's Delivery Parcel on the Maturity Date will be equal to the Maturity Value, divided by the Delivery Asset Price (the price per unit of the Delivery Asset paid by the CBA to acquire the Delivery Asset on the Trade Date for delivery to the Investor). Unless substituted by the CBA in accordance with clause 9 of the Terms of Sale upon occurrence of an Adjustment Event, the Delivery Asset in each Delivery Parcel will be one unit in the SPDR S&P/ASX 200 Fund.

(g) Subject to the cap set out in paragraph 21(h) of this Ruling with respect to Strategy 1, the Maturity Value 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 1 and Strategy 2, are dependant on the performance of the Reference Asset (the S&P/ASX 200 Index) over the term of the DPA. Subject to meeting the Minimum Notional Value 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.

(h) The Investor's Maturity Value will not exceed a predetermined percentage performance cap (the Capped Level) with respect to Strategy 1. The Capped Level with respect to Strategy 1 is 150% of the Initial Reference Level of the S&P/ASX 200 Index, equating to a maximum Maturity Value of 50% of the Notional Value. There is no cap in Strategy 2.

(i) The Investor's Maturity Value will not be protected to a specified level of the Notional Value. Any potential losses which may be incurred by an Investor are, however, limited to their Upfront Amount.

(j) The DPA does not pay any distributions, coupons or other amounts during its term.

(k) The Investor may deliver a Completion Notice to the CBA prior to the Maturity Date, being 3 and 5 years after the Start Date with respect to Strategies 1 and 2 respectively, in which the Investor is required to elect whether they will accept physical delivery of the

Delivery Parcel or use the Sale Service. Where the Investor has not supplied a validly completed Completion Notice by the Completion Time, the Investor will be deemed to have elected to accept physical delivery of the Delivery Parcel (clauses 3.1 to 3.3 of the Terms of Sale).

(l) Where the Investor elects or is deemed to have elected to accept physical delivery of the Delivery Parcel, the CBA agrees to transfer the Delivery Parcel to the Investor on the Settlement Date (clause 3.4 of the Terms of Sale).

(m) Where the Investor elects to accept delivery through the Sale Service, the CBA agrees to:

(i) hold the Delivery Parcel on behalf of the Investor on the Trade Date;

(ii) sell or arrange to effect the sale of the Delivery Parcel on behalf of the Investor on the Trade Date; and

(iii) pay the Sale Proceeds to the Investor on the Settlement Date, less a Brokerage Fee of up to 0.55% of the Maturity Value which reflects the cost of selling the Investor's Delivery Parcel (clause 3.5 of the Terms of Sale).

(n) The CBA will advise the Investor of the market value of the Delivery Assets as at the date of their delivery to the Investor or on the date the CBA (or its nominee) starts to hold the Delivery Parcel on behalf of the Investor.

(o) Upon physical delivery of the Delivery Parcel or payment of the Sale Proceeds to the Investor, the CBA's obligations to the Investor under the Terms of Sale will be satisfied and discharged and the Investor's interest in the relevant Nominee Security will be extinguished in accordance with the terms of the Nominee Deed (clause 3.6 of the Terms of Sale).

(p) The DPAs will not be listed for quotation on the Australian Securities Exchange, but an Investor may, with the prior written consent of the CBA, transfer the whole of a DPA relating to a particular Strategy pursuant to clause 13.11 of the Terms of Sale. This Ruling does not consider the tax consequences of such a transfer.

(q) Pursuant to clause 8.2 of the Terms of Sale, the Investor may by written notice to the CBA request an Early Termination (that is, the completion of the deferred purchase of the Delivery Parcel prior to the Maturity Date). The CBA reserves the right to accept or

reject the request in its discretion. An Early Termination Fee of up to $500 is payable by the Investor upon the CBA's acceptance of such a request on or before the Early Termination Date, reflecting the costs of processing the Investor's DPA when they terminate early. This Ruling does not consider the tax consequences of an Early Termination under such circumstances.

(r) The CBA may, in its discretion and without prior notice to the Investor, elect 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 (clause 8.1 of the Terms of Sale). This Ruling does not consider the tax consequences of an Early Termination under such circumstances.

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) a purpose of the Investors 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 the CBA (or its nominee) will be at arm's length.

Commissioner of Taxation
7 December 2011

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.

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, i.e. the Start Date (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 on the Settlement Date or to the CBA (or its nominee) on behalf of the Investor on the Trade Date, 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. Where the Delivery Parcel is physically delivered to the Investor, their capital proceeds 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 the CBA (if any) pursuant to clause 3.7 of the Terms of Sale. The Investor's capital proceeds under the Sale Service 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 Upfront Amount (subsections 110-25(2) and 110-55(2)). The cost base or reduced cost base of the Investor's rights under the DPA also includes, as its second element, the Initial Adviser Fee, if any (subsections 110-25(3) 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 sections 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 physically delivered to the Investor pursuant to clause 3.4 of the Terms of Sale, or held by the CBA (or its nominee) on behalf of the Investor under the Sale Service pursuant to clause 3.5 of the Terms of Sale, 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 the CBA (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 its physical delivery or by the CBA (or its nominee) on behalf of the Investor under the Sale Service 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 the CBA (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, under the Sale Service only, the Brokerage Fee (sections 110-25, 110-55 and 112-20).

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

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TD 2008/21; TD 2008/22

Subject references:

- capital gains tax
- deferred purchase agreements
- financial products
- product rulings
- public rulings
- qualifying securities
- tax avoidance
- taxation administration
- traditional securities

Legislative references:

- ITAA 1936 26BB
- ITAA 1936 26BB(1)
- ITAA 1936 70B
- ITAA 1936 Div 16E
- ITAA 1936 159GP(1)
- ITAA 1936 Pt IVA
- ITAA 1997
- ITAA 1997 104-10
- ITAA 1997 104-10(4)
- ITAA 1997 104-25
- ITAA 1997 104-25(1)(b)
- ITAA 1997 104-25(3)
- ITAA 1997 108-5
- ITAA 1997 108-5(1)
- ITAA 1997 109-5
- ITAA 1997 109-5(1)
- ITAA 1997 110-25
- ITAA 1997 110-25(2)
- ITAA 1997 110-25(3)
- ITAA 1997 110-55
- ITAA 1997 110-55(2)
- ITAA 1997 112-20
- ITAA 1997 Div 115
- ITAA 1997 115-5
- ITAA 1997 116-20
- ITAA 1997 Div 230
- ITAA 1997 230-455
- SISA 1993
- TAA 1953
- Copyright Act 1968

ATO references
NO: 1-3L8FLDQ
ISSN: 1441-1172
ATOlaw topic: Income Tax ~~ Capital Gains Tax ~~ CGT assets