


# ***PR 2017/13 - Income tax: tax consequences for a borrower being charged a discounted home loan interest rate calculated under the Pivot Portfolio Loan Facility***

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## Product Ruling

### Income tax: tax consequences for a borrower being charged a discounted home loan interest rate calculated under the Pivot Portfolio Loan Facility

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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

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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 provisions 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 1936* (ITAA 1936) unless otherwise indicated.
2. In this Product Ruling the scheme is the Pivot Portfolio Loan Facility, marketed as the 'Synergy Pivot Portfolio Loan' and the 'Switzer Pivot Home Loan', and involves the application of a 'customer loyalty rebate' to calculate a discounted interest rate that is charged by Synergy Home Loans Australia Pty Ltd (Synergy) on a home loan of a borrower who (directly or indirectly via an associated entity) also has one or more investment loans with Synergy.
3. This Product Ruling does not address:
  - the tax consequences associated with the home loan of the borrower, or with any offset account linked to the home loan and/or investment loan(s) of the borrower
  - the deductibility of interest incurred by the borrower under their investment loan(s) pursuant to section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997)<sup>1</sup>
  - the treatment of any costs, fees and expenses payable by the borrower in respect of their home loan or investment loan(s), including the annual portfolio review fee, discharge fee and variation fee
  - the borrower's tax obligations and benefits in relation to the acquisition, holding and sale of a property, or any other asset acquired with the proceeds of their investment loan(s), and
  - whether the scheme constitutes a financial arrangement for the purposes of Division 230 of the ITAA 1997 (Taxation of financial arrangements).

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<sup>1</sup> For the purposes of this Product Ruling, it is assumed at paragraph 20(b) that interest incurred by the borrower under their investment loan(s) is deductible under section 8-1 of the ITAA 1997.

**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 the borrower. Where the borrower under the home loan is associated with the borrower under the investment loan(s) (but is not the same borrower), all references to the borrower under this Product Ruling are to be read as a reference to the applicable borrower under either loan, as the context requires.

5. The class of entities who can rely on the Ruling section of this Product Ruling consists of those entities that, as the borrower, enter into the scheme described in paragraphs 16 to 20 of this Product Ruling on or after the date this Ruling is made and on or before 30 June 2020.

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

- are non-residents for Australian taxation purposes, or
- as the borrower, enter into the scheme described in paragraphs 16 to 20 of this Product Ruling before the date of this Ruling or after 30 June 2020.

***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. 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 16 to 20 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

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10. This Product Ruling applies prospectively from 27 September 2017, the date it is published. It therefore applies only to the specified class of entities that enter into the scheme from 27 September 2017 until 30 June 2020, 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 during the period of application.

11. 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

12. 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.

13. 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

14. 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.

## Ruling

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15. The application of Part IVA of the ITAA 1936 depends on a careful weighing of all the relevant facts and circumstances of each case. Provided the scheme ruled on is entered into and carried out as described in this Product Ruling, the anti-avoidance provisions in Part IVA of the ITAA 1936 will not apply to deny the borrower of a deduction allowed under section 8-1 of the ITAA 1997 for interest incurred under their investment loan(s).

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## Scheme

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16. The scheme that is the subject of this Ruling is identified and described in the application for a Product Ruling as constituted by documents and information received on 3 August 2017 and 14 August 2017.

**Note:** certain information has been provided on a commercial-in-confidence-basis and will not be disclosed or released under Freedom of Information legislation.

17. For the purposes of describing the scheme to which this Ruling applies, and aside from the relevant home and investment loan documentation to be executed between the borrower and Synergy, there are no other agreements, whether formal or informal, and whether or not legally enforceable, which the borrower, or any associate of the borrower, will be a party to, which are a part of the scheme.

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

19. Following is a summary of the scheme:

- (a) The Pivot Portfolio Loan Facility is a facility under which Synergy will apply a customer loyalty rebate in recognition of the borrower's broader loan portfolio. Synergy will offer this by calculating on an ongoing basis a level of discount that can be applied to a borrower's home loan interest rate as against the standard variable home loan rate, whilst maintaining a total return on all money loaned to the borrower at a rate which produces an acceptable return for Synergy.
- (b) Synergy will arrange for new loans or refinance existing loans under the terms of the Pivot Portfolio Loan Facility offered to a borrower who has or will procure both a home loan in respect of a residential property that is their principal place of residence (the owner-occupied property) and (directly or indirectly via an entity associated with the borrower) one or more investment loans used to fund an asset (the investment asset) acquired for the purposes of producing assessable income. The investment asset may be a residential property other than the owner-occupied property, or any other asset.
- (c) The home loan will be secured by the underlying owner-occupied property.
- (d) Where the investment asset is a residential property, the investment loan will be secured by that property. The principal borrowed under that investment loan will be capped at 80 per cent of the value of the residential

- property. If the principal required to be borrowed to fund the acquisition of the residential property would exceed 80 per cent of its value, a second investment loan will be provided to fund that balance on the same terms as the first investment loan.
- (e) Where the borrower procures a second investment loan in the circumstances contemplated by paragraph 19(d) of this Product Ruling:
- the second investment loan will be secured by the owner occupied property, and
  - the sum of the home loan and the second investment loan will not exceed 80 per cent of the owner occupied property.
- (f) Where the investment asset is not a residential property, the security for both the home loan and the investment loan will be the owner occupied property, and the combined total principal borrowed under both loans will not exceed 80 per cent of the value of the owner occupied property.
- (g) Synergy will automatically apply a re-calculated interest rate to a borrower's home loan where:
- Synergy varies its acceptable return
  - Synergy's standard variable rate for either home loans and/or investment loans is varied
  - either of the borrower's home loan or investment loan(s) is substantially repaid, and/or
  - a new/refinanced loan is advanced.
- (h) Subject to the occurrence of any of the factors listed in paragraph 19(g) of this Product Ruling, a discounted interest rate on a borrower's home loan, as calculated under the Pivot Portfolio Loan Facility, will be applied for twelve months, following which the borrower's loan portfolio with Synergy will be reviewed and may result in a further home loan interest rate adjustment.
- (i) Except for the discounted interest rate (which is subject to a floor rate of 0.40% above the RBA cash rate), home loans subject to the Pivot Portfolio Loan Facility will be offered, struck and maintained on standard terms in all respects. Any part of the customer loyalty rebate that would otherwise entitle the borrower to a discounted home loan interest rate that is lower than the floor rate would instead be applied to lower the borrower's investment loan interest rate.

- (j) Except for what is contemplated in paragraph 19(i) of this Product Ruling, the borrower's investment loan will not be impacted by the Pivot Portfolio Loan Facility and will remain on standard terms in all respects (subject to a ceiling on the rate of interest charged). The ceiling on the rate of interest will be set at a rate not exceeding the highest interest-only investment loan rate offered by any of the four major Australian banks.
- (k) Neither of the borrower's home loan or investment loan(s):
- will be part of a linked or split loan facility as described in paragraphs 3 to 6 of Taxation Ruling TR 98/22 *Income tax: the taxation consequences for taxpayers entering into certain linked or split loan facilities*
  - will involve any capitalisation of interest
  - will be subject to any cross collateralisation (outside of any standard bank security arrangements), or
  - will be part of an 'investment loan interest payment arrangement' as described in Taxation Determination TD 2012/1 *Income tax: can Part IVA of the Income Tax Assessment Act 1936 apply to deny a deduction for some, or all, of the interest expense incurred in respect of an 'investment loan interest payment arrangement' of the type described in this Determination?*

### **Assumptions**

20. This Ruling is made on the basis of the following assumptions:
- (a) the borrower is an Australian resident for taxation purposes
  - (b) the investment loan relates to an asset held by the borrower for the purposes of gaining or producing assessable income, and the interest incurred by the borrower under that loan is deductible from their assessable income pursuant to section 8-1 of the ITAA 1997
  - (c) the borrower does not draw down on a line of credit to pay the interest on the investment loan(s)



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- (d) all dealings between the borrower and Synergy is at arm's length, and
- (e) the scheme is executed in the manner described in the Scheme section of this Ruling.

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**Commissioner of Taxation**

27 September 2017

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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.*

### Refinancing an original loan

21. The interest expense on a new loan will be deductible if the new loan is used to repay an existing loan which, at the time of the second borrowing, was being used in an assessable income producing activity (see paragraph 42 of Taxation Ruling TR 95/25 *Income tax: deductions for interest under section 8-1 of the Income Tax Assessment Act 1997* following *FC of T v. Roberts*; *FC of T v. Smith* referring to *FC of T v. Roberts*; *FC of T v. Smith* 92 ATC 4380; (1992) 23 ATR 494 at ATC 4388; ATR 504).

22. Pursuant to the assumption at paragraph 20(b) of this Product Ruling, the borrower's investment loan is used in an assessable income producing activity. On the basis of that assumption and consistent with the principle set out in the above paragraph of this Product Ruling, interest incurred on any refinanced investment loan of the borrower will therefore also be deductible under section 8-1 of the ITAA 1997.

### Application of Part IVA

23. Part IVA is a general anti-avoidance rule which gives the Commissioner the power to cancel all or part of a tax benefit that has been obtained, or would, but for section 177F, be obtained, by a taxpayer in connection with a scheme to which Part IVA applies.

24. In broad terms, Part IVA will apply where the following requirements are satisfied:

- there is a 'scheme' as defined in section 177A
- there is a 'tax benefit' that, in relation to allowable deductions, is defined in paragraph 177C(1)(b) as a deduction being allowable to the taxpayer in relation to a year of income where the whole or part of that deduction would not have been allowable, or might reasonably be expected not to have been allowable, to the taxpayer in relation to that year of income if the scheme had not been entered into or carried out
- having regard to the eight objective matters identified in subsection 177D(2), it would be concluded by a reasonable person that there was the necessary dominant purpose of enabling the taxpayer to obtain the tax benefit in connection with the scheme, and

- the Commissioner makes a determination that the whole or part of the amount of the tax benefit that is referable to the deduction shall not be allowable: paragraph 177F(1)(b).

### ***Identification of the scheme***

25. The term 'scheme' is defined very broadly in section 177A to mean:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct.

26. The precise description of a scheme for the purposes of Part IVA will depend on the facts of the particular case. The circumstances described in paragraphs 16 to 20 of this Product Ruling constitute a scheme for the purposes of the definition set out in section 177A.

### ***The tax benefit test***

27. A tax benefit can arise in relation to a year of income where the amount of deductible interest incurred on an investment loan is greater than the amount of deductible interest that would have been allowable, or might reasonably be expected to have been allowable, under an investment loan but for entering into a scheme.

28. The amount of deductible interest incurred on the investment loan(s) of the borrower is not expected to be greater than the amount of deductible interest that would have been allowable to the borrower but for entering into the scheme described in paragraphs 16 to 20 of this Product Ruling. A tax benefit should therefore not arise to the borrower in relation to a year of income in connection with this scheme.

## **Appendix 2 – Detailed contents list**

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

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 95/25; TR 98/22; TD 2012/1

*Legislative references:*

- ITAA 1936
- ITAA 1936 Pt IVA
- ITAA 1936 177A
- ITAA 1936 177C(1)(b)
- ITAA 1936 177D(2)
- ITAA 1936 177F

- ITAA 1936 177F(1)(b)

- ITAA 1997

- ITAA 1997 8-1

- ITAA 1997 Div 230

- SISA 1993

- TAA 1953

*Case references:*

- Federal Commissioner of Taxation v. Roberts - (1992) 37 FCR 246; (1992) 108 ALR 385; (1992) 23 ATR 494; 92 ATC 4380

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ATO references

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