

# ***PR 2021/10A1 - Addendum - Income tax: Morgan Stanley Option and Loan Facility***

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# Addendum

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## Product Ruling

### Income tax: Morgan Stanley Option and Loan Facility

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Product Ruling PR 2021/10 to:

- update the list of documents upon which the scheme that is the subject of this Ruling is identified and described, and
- incorporate the application of subsections 82KZM(1A) and 82KZMA(2A) of the *Income Tax Assessment Act 1936*.

PR 2021/10 is amended as follows:

#### 1. Paragraph 16

In subparagraph (i), after the words ‘small business entity’, insert ‘, or an entity covered by subsection 82KZMA(2A) of the ITAA 1936,’.

#### 2. Paragraph 17

Omit all dot points; substitute:

- application for a Product Ruling as constituted by documents and information received on 17 May 2021, 21 July 2021 and 8 March 2023
- Morgan Stanley Option and Loan Facility Information Memorandum, including the Facility Terms, dated 13 January 2021
- Morgan Stanley Option and Loan Facility Information Memorandum, including the Facility Terms, dated 19 December 2022
- Morgan Stanley Private Wealth Management General Terms, dated 12 April 2022, and
- draft Morgan Stanley Security Trust Deed (Security Trust Deed), including the Nominee Deed, received on 17 May 2021.

#### 3. Paragraph 32

After the words ‘whether the investor is a small’, insert ‘or medium’.

#### 4. Paragraph 39

- (a) In the heading, after the words ‘prepaid expenditure incurred by certain small’, insert ‘and medium’.

- (b) Omit the wording of the first dot point; substitute:
- a small business entity, or an entity covered by subsection 82KZM(1A) of the ITAA 1936<sup>2</sup>, for the year of income that has not chosen to apply section 82KZMD of the ITAA 1936 to the expenditure, or

- (c) After the first instance of 'ITAA 1936' in the first dot point, insert new footnote 2:

<sup>2</sup> An entity is covered by subsection 82KZM(1A) of the ITAA 1936 for the expenditure year if the entity is not a small business entity for that year but would be a small business entity for that year if each reference in section 328-110 to \$10 million (as noted in paragraph 33 of this Product Ruling) were instead a reference to \$50 million.

## 5. Paragraph 41

Omit the wording of the paragraph; substitute:

As the eligible service period in relation to the deductible Interest payment under the Principal Loan and Supplementary Loan is not more than 12 months and does not end after the last day of the year of income after the one in which the expenditure was incurred, section 82KZM of the ITAA 1936 will have no application to investors referred to in paragraph 39 of this Product Ruling. Such investors will be able to claim an immediate deduction for prepaid Interest incurred under the Principal Loan and Supplementary Loan.

## 6. Paragraph 42

- (a) In the heading, after the words 'prepaid non-business expenditure incurred by non-individual and non-small', insert 'and medium'.

- (b) Omit the wording of the paragraph; substitute:

Sections 82KZMA and 82KZMD of the ITAA 1936 set the amount and timing of deductions for expenditure incurred by an investor (other than a small business entity or an entity covered by subsection 82KZMA(2A) of the ITAA 1936<sup>3</sup>, for the year of income that has not chosen to apply section 82KZMD to the expenditure) that is not an individual and does not incur the expenditure in carrying on a business.

- (c) After the second instance of 'ITAA 1936', insert new footnote 3:

<sup>3</sup> An entity is covered by subsection 82KZMA(2A) of the ITAA 1936 for the expenditure year if the entity is not a small business entity for that year but would be a small business entity for that year if each reference in section 328-110 to \$10 million (as noted in paragraph 33 of this Product Ruling) were instead a reference to \$50 million.

## 7. Appendix 2 – Detailed contents list

Omit:

<i>Section 82KZM of the ITAA 1936 – prepaid expenditure incurred by certain small business entities and individuals incurring non-business expenditure</i>	39
<i>Sections 82KZMA and 82KZMD of the ITAA 1936 – prepaid non-business expenditure incurred by non-individual and non-small business entities</i>	42

Substitute:

<i>Section 82KZM of the ITAA 1936 – prepaid expenditure incurred by certain small and medium business entities and individuals incurring non-business expenditure</i>	39
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This Addendum applies before and after its date of issue.

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**Commissioner of Taxation**

13 September 2023

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ATO references

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