



PR 2002/93 - Income tax: Deductibility of threshold management fees and interest incurred on borrowings in relation to The Macquarie Fusion Funds

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 This document has changed over time. This is a consolidated version of the ruling which was published on *19 June 2002*



Product Ruling

Income tax: Deductibility of threshold management fees and interest incurred on borrowings in relation to The Macquarie Fusion Funds

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Participants may wish to refer to the ATO's Internet site at <http://www.ato.gov.au> or contact the ATO directly to confirm the currency of this Product Ruling or any other Product Ruling that the ATO has issued.

Preamble

*The number, subject heading, and the **What this Product Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. Product Ruling PR 1999/95 explains Product Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

No guarantee of commercial success

The Australian Taxation Office (ATO) **does not** sanction or guarantee this product. Further, we give 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. This will involve a consideration of important issues such as whether projected returns are realistic, the 'track record' of the management, the level of fees in comparison to similar products, how this product fits an existing portfolio, etc. We recommend 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 below in the **Ruling** part of this document are available **provided that** the arrangement is carried out in accordance with the information we have been given and have described below in the **Arrangement** part of this document.

If the arrangement is not carried out as described below, participants lose the protection of this Product Ruling. Potential participants may wish to seek assurances from the promoter that the arrangement will be carried out as described in this Product Ruling.

Potential participants should be aware that the ATO will be undertaking review activities to confirm the arrangement has been implemented as described below and to ensure that the participants in the arrangement include in their income tax returns income derived in those future years.

Terms of Use of this Product Ruling

This Product Ruling has been given on the basis that the person(s) who applied for the 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 Ruling.

What this Product Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons who take part in the arrangement to which this Ruling relates. In this Ruling the arrangement is the subscription for units in a Macquarie Fusion Fund ("a Fund" or "Fusion Fund"), the payment by the investor of Threshold Management Fees ("fee" or "fees") , the borrowing by the investor of money from Macquarie Bank Limited ("the Bank") to fund that subscription (if such a borrowing occurs), and the borrowing (if it occurs) of further money by the investor from the Bank to fund a payment of interest.
2. This Ruling does not deal with the treatment of any interest paid on borrowings under a Profit Lock In Loan.

Tax law(s)

3. The tax law(s) dealt with in this Ruling are:
 - section 8-1 of the *Income Tax Assessment Act 1997* ('ITAA 1997');
 - section 51AAA of the *Income Tax Assessment Act 1936* ('ITAA 1936');
 - section 82KL (ITAA 1936);
 - section 82KZL (ITAA 1936);
 - section 82KZM (ITAA 1936);
 - section 82KZMA (ITAA 1936);
 - section 82KZMB (ITAA 1936);
 - section 82KZMC (ITAA 1936);
 - section 82KZMD (ITAA 1936);
 - section 82KZME (ITAA 1936);
 - section 82KZMF (ITAA 1936); and
 - Part IVA (ITAA 1936).

Class of persons

4. The class of persons to whom this Ruling applies is those who enter into the arrangement described below on or after the date this Ruling is made. They will have a purpose of staying in the arrangement until it is completed and of deriving assessable income from their involvement as set out in the description of the

arrangement. In this Ruling these persons are referred to as 'Investors'.

Qualifications

5. The Commissioner rules on the precise arrangement identified in the Ruling.

6. If the arrangement described in the Ruling is materially different from the arrangement that is actually carried out:

- the Ruling has no binding effect on the Commissioner, as the arrangement entered into is not the arrangement ruled upon; and
- the Ruling will be withdrawn or modified.

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Date of effect

8. This Ruling applies prospectively from 19 June 2002, the date this Ruling is made. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

9. If a taxpayer has a more favourable private ruling (which is legally binding), the taxpayer can rely on the private ruling if the income year to which the private ruling relates has ended, or has commenced but not yet ended. However, if the arrangement covered by the private ruling has not begun to be carried out, and the income year to which it relates has not yet commenced, this Ruling applies to the taxpayer to the extent of the inconsistency only (see Taxation Determination TD 93/34).

Withdrawal

10. This Product Ruling is withdrawn and ceases to have effect after 30 June 2005. The Ruling continues to apply, in respect of the

tax law(s) ruled upon, to all persons within the specified class who enter into the specified arrangement during the term of the Ruling. Thus, the Ruling continues to apply to those persons, even following its withdrawal, who entered into the specified arrangement prior to withdrawal of the Ruling. This is subject to there being no material difference in the arrangement or in the persons' involvement in the arrangement.

Arrangement

11. The arrangement that is the subject of this Ruling is described below. This description of the arrangement incorporates the following documents:

- Application for a Product Ruling dated 3 May 2002 received from PricewaterhouseCoopers on behalf of Macquarie Financial Products Management Limited as Responsible Entity for the Funds ("Responsible Entity" or "RE") as amended by letters dated 4 and 7 June 2002;
- Macquarie Fusion Funds replacement Prospectus ("the Prospectus") issued by Macquarie Financial Products Management Limited dated 13 May 2002;
- Loan and Security Agreement (included in the Prospectus as Section 13);
- the Constitution for one of the ten Funds (it being understood that all ten constitutions are the same in all relevant respects); and
- application form for units in the Macquarie Fusion Funds (included in the Prospectus as Section 15).

12. For the purposes of describing the arrangement to which this Ruling applies, there are no other agreements, whether formal or informal, and whether or not legally enforceable, to which an Investor, or any associate of an Investor, will be a party.

13. The details and aspects of the arrangement subject to this Ruling are summarised as follows:

- (a) Investors will subscribe for units in one or more of a range of Fusion Funds. Investors will be able to apply to invest in a Fund on only one occasion, which will be on or before 30 June 2002;
- (b) all initial units in a Fund (known as "Equity Units") will be of the same class. Units will be issued in parcels of 5,000 with a minimum initial investment of

\$50,000 (or \$25,000 if invested in more than one Fund);

- (c) after temporary investment in cash assets pending expiry of a statutory cooling off period, each Fund will invest all initial monies raised from the issue of Equity Units in an existing public Australian unit trust ("Underlying Fund"). Each Fund will invest in a different Underlying Fund. The Underlying Funds are not listed on any stock exchange;
- (d) the RE of a Fund may, from time to time, redeem Equity Units and issue Cash Units (or vice versa) pursuant to a management technique known as Threshold Management. This technique attempts to achieve the result that the value of an Investor's investment in Equity and/or Cash Units (individually or collectively, "Units") in a Fund at the end of a "Threshold Management Period" (on or about 30 June 2007) will be at least equal to the amount of the initial investment in Equity Units in that Fund in June 2002 (although achievement of that result is not guaranteed);
- (e) monies raised by a Fund from the issue of Cash Units will be invested by the Fund in deposits and debt securities. Monies raised by a Fund from any issue of Equity Units (pursuant to Threshold Management) that occurs after 30 June 2002 will be invested by that Fund in further units in the relevant Underlying Fund;
- (f) under Threshold Management, if, for instance, the value of the Equity Units falls below certain thresholds or "trigger points", the RE will redeem Equity Units in the Fund and, on behalf of Investors, use the redemption proceeds to reinvest into Cash Units. The Fund will raise the redemption proceeds by redeeming some of its units in the Underlying Fund and will use the amounts subscribed for Cash Units to invest in deposits or other debt securities. If the value of the Equity Units subsequently rises, then the reverse situation may occur;
- (g) Equity and Cash Units have different Application and Redemption prices. They can only be redeemed and applied for as a consequence of Threshold Management, except where an Investor wishes to reduce or exit its investment (see paragraph (k) below). The Equity Units cannot be dealt with by an Investor separately from the Cash Units, and vice versa;

- (h) Investors will pay a fee to the Responsible Entity for the performance of Threshold Management. The fee will be equal to 0.275% per annum (inclusive of GST) of the value of the Investor's Equity Units. All Investors will receive the Threshold Management service, and pay fees for the performance of that service (whether or not they borrow under the credit facilities offered by the Bank, described in paragraph (p) below);
- (i) the Funds will not be listed;
- (j) the distributable income of a Fund for each year will be, at a minimum, the net income of the Fund for the purposes of section 95 of the ITAA 1936. A Fund will distribute its distributable income each year;
- (k) units will be able to be redeemed on request, at the discretion of the RE, but only in tranches of at least \$10,000 and only if the requests for redemption are made by the unitholders to the RE at least 30 days prior to the date of requested redemption. Redemptions of this nature will be funded by a proportional redemption of Equity and Cash Units. The redemption payments will be based on the net asset values of each Unit at the time of redemption. The redemption payment by the Fund on an Equity Unit, to the extent that it exceeds the application price for that unit, may include a distribution of net income for the purposes of section 95 of the ITAA 1936;
- (l) in the exercise of Threshold Management, the RE may make it compulsory for an Investor to reinvest some or all of its distribution or redemption payments into either Cash or Equity Units. At all times each Investor in a Fund will hold Equity and Cash Units in the same ratio as all other Investors;
- (m) a Fund will be an open-ended trust with a termination date no later than 80 years from its commencement;
- (n) the Prospectus states that Units will be issued only if a Fund would have 300 unitholders and would be widely held as defined in section 272-105 of Schedule 2F to the ITAA 1936;
- (o) Investors may borrow from the Bank to fund their investment in a Fund, or they may fund the investment from other sources;
- (p) there are three credit facilities available to Investors. One is a Capital Protected Loan to enable Investors to fund the subscription for their Units in a Fund. The

second is a Full Recourse Loan which allows the Investor to fund the majority of the first year's interest prepayment on the Capital Protected Loan (if the Investor wishes to prepay that interest and to take out a Full Recourse Loan to fund part of that prepayment). The third is a Profit Lock In Loan which, if made available, will allow an Investor to take out a further limited recourse loan if the value of their Units increases to the Profit Lock In Trigger, which is an amount in excess of 150% of the value of the initial investment in Equity Units;

- (q) the term of a Capital Protected Loan will be approximately five years, from 30 June 2002 to on or about 30 June 2007 (depending on the particular circumstances of a Fund). The precise date of repayment of the Capital Protected Loan is known as the Maturity Date. The interest rate will be determined by the Bank prior to the drawdown of the Capital Protected Loan. The Investor has the option to prepay annually in advance, either at a rate fixed for each year at the start of that year or at a rate fixed in June 2002 for the five year term of the Capital Protected Loan. An Investor also has the option to pay monthly in arrears at a rate fixed for five years or variable monthly or annually. Any interest prepayment will be made on 30 June (or, if that is a non-business day in 2003 or a later year, on the immediately preceding business day);
- (r) clause 20 of the Loan and Security Agreement provides for limited recourse for the Bank in respect of the principal owing on a Capital Protected Loan, but only if the Capital Protected Loan stays on foot until the Maturity Date and is repaid from the proceeds of redemption of Units on that date. If the redemption of an Investor's Units occurs at (and not before) the Maturity Date, the Bank will be unable to take any action to seek to recover any Capital Protected Loan principal over and above the redemption proceeds;
- (s) an Investor will not be obliged to redeem Units on the Maturity Date to repay a Capital Protected Loan. It will be open to an Investor to repay that Capital Protected Loan from other sources and to continue to hold its Units in the Fund; and
- (t) a Full Recourse Loan will be available to pay the majority of the first year's prepaid interest on a Capital Protected Loan. The interest rate on a Full Recourse

Loan will be determined by the Bank prior to drawdown of the loan and will be the same as the interest rate applicable to the Capital Protected Loan if paid in advance. Interest under a Full Recourse Loan must be paid annually 12 months in advance by 30 June, and the principal must be repaid on the Maturity Date. Under a Full Recourse Loan there is no limitation on the recourse of the lender.

The Participants

14. Macquarie Financial Products Management Limited is the issuer of the Prospectus and the Responsible Entity. Macquarie Bank Ltd is the provider of the Capital Protected Loans used to acquire the units in the Fusion Fund and also the Full Recourse Loans.

15. The Investors may be individuals, companies or trusts.

Ruling

16. Subject to the assumptions listed in paragraph 17 of this Ruling:

- (a) forty per cent (40%) of the annual Threshold Management Fee payable to the Responsible Entity by an Investor in relation to the performance of threshold management (net of any input tax credit allowable to the Investor in respect of that fee) will be allowable as a deduction to the Investor under section 8-1 of the ITAA 1997. The remaining sixty per cent (60%) of this fee will not be deductible under section 8-1 or any other section of the ITAA 1997;
- (b) each interest amount paid (whether annually in advance or monthly in arrears) by an Investor in respect of borrowings under a Capital Protected Loan used to fund a subscription for Units in a Fund or under the Full Recourse Loan will be allowable as a deduction to the Investor under section 8-1 of the ITAA 1997;
- (c) section 51AAA of the ITAA 1936 will not apply to deny an Investor a deduction for the interest allowable under section 8-1 of the ITAA 1997;
- (d) section 82KL, a specific anti-avoidance provision of the ITAA 1936, will not apply to deny deductibility of

the interest allowable under section 8-1 of the ITAA 1997;

- (e) section 82KZMF of the ITAA 1936 will not apply to set the amount and timing of deductions for interest prepaid in respect of borrowings under a Capital Protected Loan used to fund a subscription for Units in a Fund;
- (f) section 82KZMF of the ITAA 1936 will not apply to set the amount and timing of deductions for the interest on the Full Recourse Loan where the deductible amount of that interest is 'excluded expenditure' – that is, where the deductible interest amount on the Full Recourse Loan is less than \$1,000 in a particular income year;
- (g) section 82KZM of the ITAA 1936 will not apply to deny an Investor immediate deductibility of the interest on the Capital Protected Loan allowable under section 8-1 of the ITAA 1997 where at least one of the following applies for the year of income:
 - (i) the Investor is an STS taxpayer; or
 - (ii) the Investor is an individual who does not incur that expenditure in carrying on a business;
- (h) sections 82KZMA, 82KZMB, 82KZMC and 82KZMD of the ITAA 1936 will apply to set the amount and timing of deductions for the interest on borrowings under the Capital Protected Loan for an Investor (other than a STS taxpayer for the year of income) who either:
 - (i) carries on a business and incurs the interest in carrying on that business; or
 - (ii) is a taxpayer that is not an individual and does not carry on a business; and
- (i) the anti-avoidance provisions in Part IVA of the ITAA 1936 will not be applied to deny the deductibility of the 40% of the Threshold Management Fee or the interest incurred by the Investor in respect of borrowings under a Capital Protected Loan or a Full Recourse Loan.

Assumptions

17. This ruling is made on the basis of the following necessary assumptions:

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- (a) each Investor is an Australian resident;
- (b) the dominant purpose of an Investor entering into the arrangement is to derive assessable trust income or a capital gain from their investment in the Fund;
- (c) the Investors are not traders in investments and are not treated for taxation purposes as either trading in investments in a Fund or carrying on a business of investing in a Fund. Further, the Investors do not hold their interests in a Fund as trading stock or revenue assets;
- (d) in respect of any charges paid in advance under either the Capital Protected Loan or the Full Recourse Loan, these may be prepaid, but only in relation to a payment period of 12 months or less that ends on or before the last day of the income year following the expenditure year;
- (e) the arrangement will be executed in the manner described in the “Arrangement” section of this Ruling;
- (f) all dealings by the Investors and a Fund will be at arm’s length;
- (g) at all times during the arrangement a Fund will have at least 300 unitholders and will be widely held (in terms of section 272-105 of Schedule 2F to the ITAA 1936);
- (h) no unitholder in a Fund will be under a legal disability at any time;
- (i) the net income of a Fund for each year for purposes of section 95 of the ITAA 1936 will be included in the assessable incomes of Investors in the Fund pursuant to section 97 of the ITAA 1936;
- (j) the Bank incurs no cost to provide the capital protection inherent in the Capital Protected Loan;
- (k) the capital protection feature of the Capital Protected Loan is provided at no cost to the borrower;
- (l) neither the Capital Protected Loan nor the Full Recourse Loan will extend beyond the original Maturity Date; and
- (m) the Investors will not prepay the Capital Protected Loan or the Full Recourse Loan prior to maturity or terminate the arrangement early.

Explanations

Section 8-1 of the ITAA 1997

18. The ATO's view is that a Threshold Management Fee is paid for two purposes. The ATO considers that the first purpose is to attempt to preserve, where necessary, the capital value of an Investor's investment, and that the second is to secure the ongoing management, monitoring and administration of that investment. The ATO considers that the fee is deductible only to the extent it relates to the second purpose. The ATO's view is that the first purpose is dominant and that a reasonable apportionment in this case is that forty per cent (40%) of a Threshold Management Fee is deductible and sixty per cent (60%) is not deductible.

19. Interest on money borrowed to acquire income producing assets, such as shares or units in a unit trust, is generally treated as deductible under section 8-1 where it is expected that dividends or other assessable income will be derived from the investment (see Taxation Ruling TR 95/33).

20. Interest on money borrowed under a Capital Protected Loan is incurred in relation to deriving assessable income from an investment in a Fund. The Capital Protected Loan is a limited recourse facility, which means that the Bank depends on the value of the Units at a future time (the Maturity Date) for the repayment of the loan principal. A Fund's assets will comprise units in an Underlying Fund and, from time to time, low risk interest bearing securities. If Investors redeem their Units upon termination of the loan at the Maturity Date, Investors are entitled to receive redemption payments based on the then values of their Units in the Fund. Under the terms of the Loan and Security Agreement the borrower (if it redeems Units) authorises the Bank to apply the amount received by the borrower from a Fund upon the redemption to repay the Capital Protected Loan. This limits the Bank's ability to recover from the Investor. However, unlike many other capital protected type products, this product provides the protection at no cost to the borrower. This is largely because the risk to the Bank is mitigated by the provision to the Investor of Threshold Management, which seeks to secure that the value of an Investor's Units at the Maturity Date will always be equal to at least the original amount invested (which itself is the same as the principal under the Capital Protected Loan). Accordingly, in this particular case, the interest in respect of borrowings on a Capital Protected Loan used to fund a subscription for Units in a Fund is deductible under section 8-1.

21. Interest on money borrowed under a Full Recourse Loan is incurred in relation to deriving assessable income from an investment in a Fund. It secures a saving of interest on a Capital Protected Loan

(by virtue of the discount on the rate for prepayment). As such, interest on a Full Recourse Loan is deductible under section 8-1 as incurred subject to any application of section 82KZMF of the ITAA 1936.

Section 51AAA of the ITAA 1936

22. Under the arrangement, it is contemplated that over the period of an Investor's involvement there will be assessable income derived by way of distributions of the net income of a Fund as well as possibly by way of capital gains. Accordingly, the interest on each of a Capital Protected Loan and a Full Recourse Loan would have been deductible under section 8-1 of the ITAA 1997 irrespective of whether any capital gain is included in assessable income. Accordingly, section 51AAA has no application to an Investor in the arrangement.

Section 82KL of the ITAA 1936

23. The operation of section 82KL depends, among other things, on the identification of a certain quantum of 'additional benefit(s)'. Insufficient 'additional benefits' will be provided to trigger the application of section 82KL. It will not apply to deny the deductions otherwise allowable under section 8-1 of the ITAA 1997.

Subdivision H of Division 3 of Part III of the ITAA 1936

24. This Subdivision deals with the timing of deductions for certain advance expenditure incurred under an agreement in return for the doing of a thing under that agreement that will not be wholly done within the same year of income. Separate rules apply depending on whether the expenditure is incurred in carrying on a business, whether the Investor is a 'STS taxpayer', whether the Investor is an individual and whether the expenditure qualifies for transitional treatment. This Subdivision does not apply to 'excluded expenditure', which is defined in subsection 82KZL(1) to include amounts of less than \$1,000.

Subdivision 328-F and Subdivision 328-G of the ITAA 1997 – STS taxpayers

25. An Investor will be a STS taxpayer for an income year if the Investor is eligible to be a STS taxpayer for that year and the Investor notifies the Commissioner of the choice to become such a taxpayer for that year.

26. An Investor will be eligible to be a STS taxpayer for an income year if the Investor carries on a business and the STS average

turnover of the business and related businesses for that year is less than \$1million and the business and related businesses have depreciating assets with a total adjustable value below \$3 million at the end of that year.

The eligible service period for the purposes of Subdivision H of Division 3 of Part III of the ITAA 1936

27. The interest charges on the Capital Protected Loan or a Full Recourse Loan allowable under section 8-1 of the ITAA 1997 are in relation to a prepayment of loan interest for a period that is not more than 12 months. Paragraph 82KZL(2)(a) provides that a payment of interest that is made in return for the making available of a loan principal is to be taken, for the purposes of Subdivision H, to be expenditure incurred under an agreement in return for the doing of a thing under the agreement for the period to which the interest payment relates. The eligible service period in relation to a payment of loan interest is determined by reference to the period to which the interest relates, which is 12 months, and not to the period of the loan (which is approximately five years for each of a Capital Protected Loan and a Full Recourse Loan).

Sections 82KZME and 82KZMF of the ITAA 1936: prepaid expenditure and ‘tax shelter’ arrangements

28. The rules in sections 82KZME and 82KZMF apply, subject to the exceptions in section 82KZME, where expenditure is incurred in relation to a ‘tax shelter’ arrangement for the doing of a thing that is not to be wholly done within the expenditure year.

29. For the purposes of section 82KZME, ‘agreements’ are broadly defined to include an entire arrangement of which a contract may form part. Under subsection 82KZME(4), the relevant ‘agreement’ is all the contractual arrangements and activities associated with the participation in the Fusion Funds, including the financing and management arrangements.

30. Exception 1, as contained in subsection 82KZME(5), applies to exclude the interest incurred on borrowings under the Capital Protected Loan from the operation of section 82KZMF as:

- the prepaid interest expenditure under the Capital Protected Loan is incurred in respect of money borrowed to acquire units in a widely held unit trust;
- the Investor can reasonably expect to obtain trust income from the investment;

- the Investor will not obtain any other kind of assessable income from the investment, except for capital gains; and
- all aspects of the arrangement are at arm's length.

31. The tax shelter prepayment rules will not apply to Investors who prepay interest charges incurred under the Capital Protected Loan. Amounts incurred under the Full Recourse Loan are not for the purpose of acquiring the units and, unlike the interest on the Capital Protected Loan, will not fall within Exception 1. Where the amount of these payments are less than \$1,000, they will be 'excluded expenditure' (as defined under section 82KZL of the ITAA 1936) and Exception 3 in subsection 82KZME(7) will apply, such that the amount will be immediately deductible to the Investor.

32. If the deductible portion of the interest under the Full Recourse Loan is not excluded expenditure, section 82KZMF will apply to set the amount and timing of deductions. Investors will be entitled to a deduction for these amounts calculated using the formula set out in paragraph 82KZMF(1)(b).

Section 82KZM of the ITAA 1936: prepaid expenditure incurred by STS taxpayers and individuals incurring non-business expenditure

33. Section 82KZM operates to spread over more than one income year a deduction for prepaid expenditure incurred by a taxpayer that is either:

- (a) an STS taxpayer for the year of income; or
- (b) a taxpayer that is an individual and the expenditure is not incurred in carrying on a business.

34. The expenditure must not be excluded expenditure and must be incurred otherwise than in carrying on a business. Section 82KZM applies if the eligible service period for the expenditure is longer than 12 months, or the eligible service period for the expenditure is 12 months or shorter but ends after the last day of the year of income after the one in which the expenditure was incurred and the expenditure would otherwise be immediately deductible under section 8-1 of the ITAA 1997.

35. As the eligible service period in relation to a deductible interest prepayment under a Capital Protected Loan is not longer 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 will have no application to Investors who are STS taxpayers for the year of income, or to Investors who are individuals and the expenditure is not incurred in carrying on a business. Investors who

satisfy these tests will be able to claim an immediate deduction for the interest incurred under a Capital Protected Loan.

Sections 82KZMA – 82KZMD of the ITAA 1936: prepaid business expenditure incurred by non-STS taxpayers and prepaid non-business expenditure incurred by non-individuals and non-STS taxpayers

36. Sections 82KZMA, 82KZMB, 82KZMC and (in respect of income years after the year of income that includes 21 September 2002) section 82KZMD set the amount and timing of deductions for expenditure for an Investor (other than a STS taxpayer for the year of income) who:

- (a) carries on a business; or
- (b) is a taxpayer that is not an individual and that does not carry on a business.

The expenditure must not be excluded expenditure and must be incurred otherwise than in carrying on a business by a taxpayer that is not an individual. The expenditure must be incurred in return for the doing of a thing under an agreement that is not to be wholly done within the expenditure year.

37. For these taxpayers, the deduction for prepaid interest on the Capital Protected Loan will be apportioned over the relevant interest payment period, subject to the transitional provisions in section 82KZMB (applying to expenditure incurred before or during the Investor's year of income that includes 21 September 2002).

38. Section 82KZMD will not apply to an Investor in respect of interest payments on the Capital Protection Loan incurred before or during the Investor's year of income that includes 21 September 2002 as the eligible service period to which that interest payment relates will end not more than 13 months after the expenditure is incurred.

Part IVA of the ITAA 1936

39. Provided that the arrangement is entered into and carried out as described (see the Arrangement section of this ruling), it is accepted that the arrangement is a normal commercial transaction and that Part IVA will not apply.

Detailed contents list

40. Below is a detailed contents list for this Product Ruling:

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Commissioner of Taxation**19 June 2002**

Previous draft:

Not previously issued in draft form

- ITAA 1936 82KZL
- ITAA 1936 82KZL(1)
- ITAA 1936 82KZL(2)(a)

*Related Rulings/Determinations:*TR 92/1; TR 92/20; TR 95/33;
TR 97/16; PR 1999/95; TD 93/34

- ITAA 1936 82KZM
- ITAA 1936 82KZMA
- ITAA 1936 82KZMB
- ITAA 1936 82KZMC
- ITAA 1936 82KZMD
- ITAA 1936 82KZME
- ITAA 1936 82KZME(4)
- ITAA 1936 82KZME(5)
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