



PR 2003/54 - Income tax: tax consequences of rebalancing, contributing to an investment and partially redeeming a unit in the Credit Suisse Asset Management Private Investment Flexible International Share Fund

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 This document has changed over time. This is a consolidated version of the ruling which was published on *27 August 2003*



Product Ruling

Income tax: tax consequences of rebalancing, contributing to an investment and partially redeeming a unit in the Credit Suisse Asset Management Private Investment Flexible International Share Fund

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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.

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 the investment fits an existing portfolio, etc. We recommend a financial (or other) adviser be consulted for such information.

This Product Ruling provides certainty for 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. Participants may wish to seek assurances from the promoter that the arrangement will be carried out as described in this Product Ruling.

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 concerns an investment in the Credit Suisse Asset Management Private Investment Flexible International Share Fund (the 'Fund').
2. This Ruling provides certainty as to the tax consequences of only certain aspects of the arrangement, being rebalancing, contributing to an investment and partially redeeming a unit in the Fund. It does not provide and should not be taken to provide guidance as to any other tax consequences of investing in the Fund.

Tax law(s)

3. The tax law(s) dealt with in this Ruling are:
 - Division 104 of the *Income Tax Assessment Act 1997* ('ITAA 1997');
 - section 110-25 of the ITAA 1997; and
 - Part IVA of the *Income Tax Assessment Act 1936* ('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 are not treated for taxation purposes as either trading in units or carrying on a business of investing in units. Further, they do not otherwise hold units as revenue assets. 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. The Ruling will be withdrawn or modified.

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Date of effect

8. This Ruling applies prospectively from 27 August 2003, 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 Product 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 2007. The Ruling continues to apply, in respect of the tax laws 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. The description incorporates the following documents:

- Application for Product Ruling dated 20 December 2002 lodged by KPMG on behalf of Credit Suisse Asset Management (Australia) Ltd ('CSAM');
- Trust Deed for Credit Suisse Asset Management Private Investment Flexible International Share Fund dated 19 December 2002 (the 'Trust Deed'); and
- draft Product Disclosure Statement for the Fund, received 20 August 2003 and to be issued 1 September 2003.

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

- (a) the Fund constitutes a trust, the beneficial interest in which is divided into units. Investors hold one unit ('Unit') in the Fund;
- (b) the Fund invests in the Credit Suisse Asset Management Unhedged International Shares Fund;
- (c) The Fund is notionally divided into four separate asset classes ('Asset Classes') comprising:
 - (i) Fully Hedged International Shares;
 - (ii) 50-100% Actively Hedged International Shares (where 50-100% of foreign currency exposure can be hedged);
 - (iii) 0-50% Actively Hedged International Shares (where up to 50% of foreign currency exposure can be hedged); and
 - (iv) Unhedged International Shares;
- (d) an Investor is able to manage their foreign currency risk by allocating their investment to one or more of the Asset Classes. The Investor has a proportional interest in each Asset Class in which they invest ('Asset Class Proportion');
- (e) the Asset Class Proportion is determined by the actual dollars invested in an Asset Class as a proportion of the net asset value of that particular Asset Class. An Investor's Asset Class Proportions vary each day as a result of changes in the net asset value of the relevant Asset Class;

- (f) an Investor is able to change their proportional interest in an Asset Class by reallocating their investment between Asset Classes ('Rebalancing'). Rebalancing causes the Investor's Asset Class Proportions to be recalculated;
- (g) if Rebalancing occurs, the Fund will modify its foreign currency hedging positions in order to align with the Investor's reallocation;
- (h) an Investor can increase their investment by contributing additional amounts to the Fund and ordinarily, a new Unit will not be issued to the Investor. Where a new Unit is not issued, the additional contribution will be treated as an accretion to the existing Unit and the Investor will be entitled to a larger proportionate share of the Fund's capital and distributable income; and
- (i) an Investor may make a request for the full or partial redemption of their Unit. If an Investor requests a partial redemption of their Unit they must specify the particular Asset Class (or Asset Classes) from which the payment is to be made.

The Participants

- 13. CSAM is the responsible entity of the Fund.
- 14. The Investors may be individuals, companies or trusts.

Ruling

- 15. Subject to paragraph 2 and the assumptions listed in paragraph 16 of this Ruling:
 - (a) Rebalancing will not constitute a CGT event for an Investor for the purposes of Division 104 of the ITAA 1997;
 - (b) an additional contribution made by an Investor will be included in the cost base of the Investor's Unit in the Fund under section 110-25 of the ITAA 1997;
 - (c) CGT event E4 (section 104-70 of the ITAA 1997) happens to an Investor if the Investor makes a partial redemption of the Unit; and

- (d) the anti-avoidance provisions contained in Part IVA of the ITAA 1936 will not apply to a Rebalancing, the making of an additional contribution to an investment in the Fund or a partial redemption of a Unit in the Fund.

Assumption

16. This Ruling is made on the basis of the following necessary assumptions:

- (a) each Investor is an Australian resident;
- (b) the arrangement will be executed in the manner described in the 'Arrangement' section of this Ruling; and
- (c) all dealings by the Investors, CSAM and the Fund will be at arm's length.

Explanation

Rebalancing - Division 104 of the ITAA 1997

17. The Investor holds a Unit in the Fund which constitutes an asset for CGT purposes (see Taxation Determination TD 2000/32). As each Unit carries varying rights in relation to the assets of the Fund, each Unit will be of a different class.

18. Under the Trust Deed an Investor does not have a right to any particular asset of the Fund. If an Investor wishes to transfer their interests in the Fund, they must do so by transferring the Unit.

19. If an Investor requests a Rebalancing, the Investor continues to hold that Unit in the Fund. However, as a result of the Investor's Asset Class Proportions being recalculated, a variation in the value of the Unit may occur.

20. Although a Rebalancing may change the value of the Unit, no CGT event happens in respect of that Unit as there has been no change in its beneficial ownership. As such, no capital gain or loss is realised by the Investor at this time.

Additional contributions - section 110-25 of the ITAA 1997

21. The Unit held by the Investor represents a right to a proportionate undivided interest in the assets of the Fund. If an Investor makes an additional contribution and a new Unit is not issued, the Investor has a right to a greater proportion of the assets of the Fund (as opposed to the Fund assets simply having increased).

22. Additional amounts contributed by an Investor will be included in the cost base of the Investor's Unit under section 110-25.

Partial redemption - section 104-70 of the ITAA 1997

23. If an Investor makes a partial redemption of the Unit, CGT event E4 will happen to the Investor (section 104-70). If some or all of the partial redemption is a non-assessable payment, the cost base of the Investor's Unit is reduced by the non-assessable amount.

Part IVA of the ITAA 1936

24. Provided that the arrangement ruled on is entered into and carried out as disclosed (refer to the 'Arrangement' part of this Ruling) Part IVA will not apply to a Rebalancing, to the making of an additional contribution to an investment in the Fund or a partial redemption of a Unit in the Fund.

Detailed contents list

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Commissioner of Taxation

27 August 2003

Previous draft:

Not previously issued in draft form

- public rulings
- taxation administration
- tax avoidance

Related Rulings/Determinations:

TR 92/1; TR 92/20; TR 97/16;
TD 93/34; TD 2000/32; PR 1999/95

Legislative references:

- TAA 1953 Part IVAAA
- ITAA 1936 Pt IVA
- ITAA 1997 Division 104
- ITAA 1997 104-70
- ITAA 1997 110-25
- Copyright Act 1968

Subject references:

- capital gains tax
 - cost base
 - financial products
 - product rulings
-

ATO references

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