

PR 2003/56 - Income tax: tax consequences of investing in ABN AMRO High Leverage Instalment Warrants IZJ Series - cash applicants and secondary market purchasers

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 This document has changed over time. This is a consolidated version of the ruling which was published on *1 October 2003*



Product Ruling

Income tax: tax consequences of investing in ABN AMRO High Leverage Instalment Warrants IZJ Series – cash applicants and secondary market purchasers

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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 is the acquisition of an ABN AMRO High Leverage Instalment Warrant IZJ Series ('ABN AMRO IZJ Instalment(s)') which provides an investment in shares, which are listed for quotation on the Australian Stock Exchange ('ASX'), and a put option using a loan made by ABN AMRO Australia Limited ('ABN AMRO').

Tax law(s)

2. The tax laws dealt with in this Ruling are:

- section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 25-25 (ITAA 1997);
- section 104-10 (ITAA 1997);
- section 109-5 (ITAA 1997);
- section 110-25 (ITAA 1997);
- subsection 110-45(3) (ITAA 1997);
- section 112-35 (ITAA 1997);
- section 134-1 (ITAA 1997);
- section 51AAA of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 82KL (ITAA 1936);
- section 82KZM (ITAA 1936);
- section 82KZMA (ITAA 1936);
- section 82KZMD (ITAA 1936);
- section 82KZME (ITAA 1936);
- section 82KZMF (ITAA 1936);
- section 97 (ITAA 1936); and
- Part IVA (ITAA 1936).

Class of persons

3. The class of persons to whom this Ruling applies is those who enter into the arrangement described below, either through Cash Applications or secondary market purchases with 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'.

4. This Ruling does not apply to Shareholder or Rollover Applicants.

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 1 October 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 28 July 2004. 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 a Product Ruling dated 4 March 2003, as amended 26 June 2003, received from Baker & McKenzie on behalf of ABN AMRO;
- Offering Circular for the ABN AMRO High Leverage Instalments, to the extent that it relates to ABN AMRO IZJ Instalments, dated 27 June 2003 (the 'Offering Circular') prepared and issued by ABN AMRO;
- ABN AMRO Instalment Deed dated 26 June 2003 (the 'Instalment Deed') executed by ABN AMRO (the Issuer) and ABNED Nominees Pty Limited (as Security Trustee);
- ABN AMRO Instalment Loan Agreement (the 'Loan Agreement'); and
- additional information received 6 August 2003, 14 August 2003 and 5 September 2003.

12. On acceptance of an Investor's application for an ABN AMRO IZJ Instalment, the Investor will enter into the Loan Agreement with ABN AMRO, appoint ABNED Nominees Pty Limited to act as its nominee on the terms of the Instalment Deed and will accept the ABN AMRO IZJ Instalments on the terms and conditions set out in the Instalment Deed. Investors can also purchase ABN AMRO IZJ Instalments once they are listed on the ASX.

13. ABN AMRO IZJ Instalments are offered over shares listed on the ASX and in this Ruling are referred to as the 'Underlying Parcel'. In some instances, the Underlying Parcel will include Accretions conferred in respect of that share. In this Ruling, unless otherwise defined, capitalised terms take their meaning as per the Offering Circular.

14. ABN AMRO IZJ Instalments provide a leveraged investment in the Underlying Parcel. ABN AMRO IZJ Instalments are a highly geared product that allows Investors to gain exposure to share price movements and dividends without paying the full price of the Underlying Parcel upfront. Gearing results from the loan provided by ABN AMRO to Investors to partly fund their investment in the Underlying Parcel. The gearing level is within the range of 85-95% of the cost of the Underlying Parcel.

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

- (a) ABN AMRO IZJ Instalments involves the Investor acquiring the Underlying Parcel and a Holder's Put Option using a Loan made by ABN AMRO. Investors will be registered as the holder of the ABN AMRO IZJ Instalment and will have a beneficial interest in the Underlying Parcel. The legal title to the Underlying Parcel will be held by the Security Trustee;
- (b) the term of the ABN AMRO IZJ Instalment is up to 9 months. The offer period opens 29 October 2003 and closes 27 July 2004;
- (c) the amount of the Loan provided to fund the purchase of each Underlying Parcel will be fixed by ABN AMRO on Acceptance of an Application based on the market value of the underlying Share price;
- (d) repayment of the Loan will be secured by a mortgage over the Underlying Parcel. The Underlying Parcel will be held by the Security Trustee on trust for the Investor. Each trust and each Underlying Parcel to which it relates will be kept as a separate trust and there will be no pooling of interests or property to which the trust relates;

- (e) the Loan is made on a limited recourse basis. Under the Loan Agreement ABN AMRO's ability to recover the Loan Amount from the Investor is limited to the amount received by ABN AMRO either:
 - (i) if the Holder's Put Option is exercised by the Investor (Cash Election) – the amount payable to the Investor under the Holder's Put Option; or
 - (ii) if the Holder's Put Option is not exercised by the Investor – the amount recoverable by ABN AMRO on the enforcement of its rights in respect of the Mortgaged Property;
- (f) there are three ways of investing in ABN AMRO IZJ Instalments in the primary market: Cash Application, Shareholder Application and Rollover Application;
 - (i) Cash Applicants:

A Cash Applicant pays the First Payment and draws down the Loan made by ABN AMRO. The First Payment and the Loan Amount is applied towards the purchase of the Underlying Parcel, prepayment of the Interest Amount and payment of the Capital Protection Fee and Borrowing Fees (if any); and

ABN AMRO purchases the Underlying Parcel in the name of the Security Trustee for the benefit of the Cash Applicant and takes a security interest over the Underlying Parcel. The ABN AMRO IZJ Instalment is issued in the name of the Cash Applicant.
 - (ii) Shareholder Applicants:

A Shareholder Applicant transfers the legal title of their existing holding of the Underlying Parcel to the Security Trustee. ABN AMRO lends the Shareholder Applicant the Cashback Amount, which is made up of the Capital Component, the Interest Amount Supplement less any Borrowing Fees and the Capital Protection Fee. ABN AMRO takes security over the Underlying Parcel; and

The ABN AMRO IZJ Instalment is issued in the name of the Shareholder Applicant.

(iii) Rollover Applicants

A Rollover Applicant rolls over a Prior Series of ABN AMRO Instalments into the ABN AMRO IZJ Instalments. ABN AMRO advances the Loan to the Rollover Applicant and takes security over the Underlying Parcel. The Loan is applied by ABN AMRO, at the Rollover Applicant's direction, to the Instalment Payment for the Prior Series of ABN AMRO Instalments, the Interest Amount, Borrowing Fees, if any, and the Capital Protection Fee, in respect of the new ABN AMRO IZJ Instalment. The Rollover Applicant may be required to pay a cash amount or may be entitled to receive a cash amount (the 'Rollover Amount') depending on the market value of the Underlying Parcel relative to the Loan Amount. The ABN AMRO IZJ Instalment is issued in the name of the Rollover Applicant;

- (g) ABN AMRO IZJ Instalments will also be listed on the ASX so that Investors may participate by purchasing ABN AMRO IZJ Instalments on the secondary market ('Secondary Market Purchaser');
- (h) Investors can obtain the Underlying Parcel at any time prior to the Expiry Date of the ABN AMRO IZJ Instalment by making the Instalment Payment;
- (i) the Instalment Payment is fixed and equals the Loan Amount. The Loan Amount is made up of the prepaid Interest Amount and the Capital Component;
- (j) in the case of a Cash Applicant, the Borrowing Fee is an amount that may be charged by ABN AMRO for making the Loan at the time of Application;
- (k) the Capital Protection Fee is an amount charged by ABN AMRO for providing the Holder's Put Option;
- (l) at the Expiry Date, the Investor has four options:
 - (i) make the Instalment Payment:

The Loan is repaid, the security interest is discharged and the Underlying Parcel is delivered to the Investor;

- (ii) rollover the Instalment Warrant:

The Investor has the ability to facilitate the payment of the Instalment Payment by rolling his or her ABN AMRO IZJ Instalment into a new series of ABN AMRO Instalments, if available;
- (iii) exercise the Holder's Put Option (Cash Election):

ABN AMRO must purchase the Underlying Parcel for the greater of the Loan Amount or the market value. The proceeds are applied to repay the Loan and the security interest is released; or
- (iv) do nothing:

If the Instalment Payment is not made and the Holder's Put Option is not exercised ABN AMRO will sell the Underlying Parcel and any proceeds after repayment of the Loan and other costs, will be paid to the Investor; and
- (m) where the ABN AMRO IZJ Instalments are purchased on the ASX, the purchaser acquires the ABN AMRO IZJ Instalments on the same terms and conditions under which they were originally issued. In particular, the Secondary Market Purchaser will be offered and will accept a new Loan from ABN AMRO upon the transfer of the ABN AMRO IZJ Instalments from the previous owner to the Secondary Market Purchaser. The Loan provided by ABN AMRO will be equal to the previous owner's Loan and will be applied to discharge the previous owner's Loan, refund part of the interest prepaid by the previous owner and to prepay the Interest Amount on the newly acquired Loan.

The Participants

16. ABN AMRO is the Issuer of the ABN AMRO IZJ Instalments. ABN AMRO is also the provider of the Loans to Investors to fund the acquisition of the Underlying Parcel.

17. ABNED Nominees Pty Limited holds the legal title to the Underlying Parcel as Security Trustee and as nominee for the Investor.

18. The Investors may be individuals, companies, trusts or superannuation funds.

Ruling

19. Subject to paragraph 20 of this Ruling:
- (a) the Interest Amount charged under the Loan Agreement will be deductible to an Investor under section 8-1 of the ITAA 1997;
 - (b) section 51AAA of the ITAA 1936 will not apply to deny an Investor a deduction for the Interest Amount allowable under section 8-1 of the ITAA 1997;
 - (c) section 82KL of the ITAA 1936 will not apply to deny deductibility of the Interest Amount allowable under section 8-1 of the ITAA 1997;
 - (d) section 82KZMF of the ITAA 1936 will not apply to set the amount and timing of deductions for an Interest Amount incurred under the ABN AMRO IZJ Instalment;
 - (e) section 82KZM of the ITAA 1936 will not apply to deny immediate deductibility for an Interest Amount incurred by the Investor under the ABN AMRO IZJ Instalment where at least one of the following applies for the year of income:
 - (i) the Investor is a Simplified Tax System ('STS') taxpayer; or
 - (ii) the Investor is an individual who does not incur the expenditure in carrying on a business;
 - (f) sections 82KZMA and 82KZMD of the ITAA 1936 will apply to set the amount and timing of deductions for the Interest Amount incurred under the ABN AMRO IZJ Instalment that is deductible to an Investor (other than an STS taxpayer for the year of income) who is a taxpayer that is not an individual and does not carry on a business;
 - (g) the Borrowing Fees, if any, paid by a Cash Applicant will be deductible under section 25-25 of the ITAA 1997;
 - (h) the Capital Protection Fee forms part of the cost base to the Cash Applicant of the Underlying Parcel under section 134-1 of the ITAA 1997 if the Holder's Put Option is exercised;

- (i) the Capital Protection Fee forms the cost base to the Cash Applicant of the Holder's Put Option under section 110-25 of the ITAA 1997 if the Holder's Put Option is not exercised;
- (j) for Secondary Market Purchasers the cost base of the Holder's Put Option is calculated as follows:
 - if the market value of the Underlying Parcel at the time of purchase is greater than the Instalment Payment (the Loan Amount) the cost base of the Holder's Put Option is the total consideration as determined by section 110-25 and section 112-35 of the ITAA 1997 (the price of the ABN AMRO IZJ Instalment plus the Instalment Payment) less the sum of the market value of the Underlying Parcel and the interest prepaid on the newly acquired Loan;
 - if the market value of the Underlying Parcel at the time of purchase is less than the Instalment Payment the cost base of the Holder's Put Option is the total consideration as determined by section 110-25 and section 112-35 of the ITAA 1997 (the price of the ABN AMRO IZJ Instalment plus the Instalment Payment) less the sum of the Instalment Payment and the interest prepaid on the newly acquired Loan;
- (k) for capital gains tax purposes the date of acquisition of the beneficial interest in the Underlying Parcel, in the case of a Cash Applicant, is the date of acceptance of the application, or in the case of a Secondary Market Purchaser of ABN AMRO IZJ Instalments, is the contract date for transfer of the ABN AMRO Instalment;
- (l) no CGT event arises when the legal title to the Underlying Parcel is transferred by the Security Trustee to the Investor on completion of the ABN AMRO IZJ Instalment;
- (m) a CGT event will occur under section 104-10 of the ITAA 1997 to the Investor where the Instalment Payment is not made and the Underlying Parcel is sold by ABN AMRO exercising its power of sale under the Security Interest. If the sale proceeds are insufficient to repay the Loan, ABN AMRO has no recourse against the Investor to recover the shortfall. In these circumstances the Investor will need to reduce the cost

base of the shares by the amount of the shortfall under subsection 110-45(3) of the ITAA 1997;

- (n) only the Investors in ABN AMRO IZJ Instalments (and not the Security Trustee) are assessable on all of the income derived from the Underlying Parcel while the Underlying Parcel is the subject of the separate trust; and
- (o) the anti-avoidance provisions contained in Part IVA of the ITAA 1936 will not apply to an Investor in respect of the ABN AMRO IZJ Instalments.

Assumption

20. This Ruling is made on the basis of the following assumptions:
- (a) all of the Investors are Australian residents for taxation purposes;
 - (b) the Investors are not traders in investments and are not treated for taxation purposes as trading in the Underlying Parcel, carrying on a business of investing in the Underlying Parcel, or holding the Underlying Parcel as trading stock or as a revenue asset;
 - (c) the dominant purpose of an Investor in entering the arrangement is to derive assessable income from their investment in the ABN AMRO IZJ Instalments;
 - (d) the arrangement will be executed in the manner described in the 'Arrangement' section of this Ruling;
 - (e) all dealings between the Investors and ABN AMRO will be at arm's length; and
 - (f) the Underlying Parcel will not be the subject of any securities lending arrangement entered into by or on behalf of the Investor.

Explanation

Section 8-1 of the ITAA 1997

21. The interest paid on a borrowing used to acquire income producing assets such as shares, is generally treated as deductible under section 8-1 where it is expected that dividends or other assessable income would be derived from the investment (see Taxation Ruling TR 95/33).

22. No part of the interest charged on an investment in ABN AMRO IZJ Instalments is a capital protection fee. Investors will not be denied a deduction for any part of the interest under section 8-1, provided that the other requirements of that section are satisfied. This is the case regardless of whether the Investor acquired the ABN AMRO IZJ Instalment by cash application or by purchase on the ASX.

Section 51AAA of the ITAA 1936

23. By acquiring ABN AMRO IZJ Instalments, it is contemplated that an Investor will derive assessable income by the receipt of dividend income and capital gains. As interest would have been deductible under section 8-1 of the ITAA 1997 notwithstanding the inclusion of a net capital gain in assessable income, section 51AAA has no application to an Investor acquiring ABN AMRO IZJ Instalments.

Section 82KL of the ITAA 1936

24. The operation of section 82KL depends, among other things, on the identification of a certain quantum of 'additional benefits'. Insufficient additional benefits will be provided to trigger the application of section 82KL. Section 82KL 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

25. 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 an 'STS taxpayer', whether the Investor is an individual and whether the Investor is not an individual and incurs the expenditure otherwise than in carrying on a business. This Subdivision does not apply to 'excluded expenditure' which is defined in subsection 82KZL(1) of the ITAA 1936 to include amounts of less than \$1,000, or amounts of expenditure that are of a capital nature.

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

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

27. An Investor will be eligible to be an STS taxpayer for an income year if the Investor carries on a business and the STS average turnover of the business and related business for that year is less than \$1 million 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

28. The interest allowable under section 8-1 of the ITAA 1997 is in relation to a prepayment of loan interest for a period that is not more than 12 months. Subparagraph 82KZL(2)(a) of the ITAA 1936 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 less than 12 months, and not to the period of the Loan.

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

29. 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.

30. 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 ABN AMRO IZJ Instalments including the financing, share purchase, shareholding and disposal arrangements.

31. Under the arrangement, when the Investor acquires an ABN AMRO IZJ Instalment, they acquire beneficial ownership of the share comprising the Underlying Parcel.

32. Exception 1, as contained in subsection 82KZME(5), applies to exclude the interest incurred on borrowings under the ABN AMRO IZJ Instalment from the operation of section 82KZMF, as:

- the prepaid interest expenditure under the ABN AMRO IZJ Instalments is incurred in respect of money borrowed to acquire shares that are listed for quotation on the ASX;
- the Investor can reasonably be expected to obtain dividends 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 ABN AMRO IZJ Instalment are at arm's length.

Deductibility of expenditure must therefore be considered under the prepayment rules outlined in paragraphs 33 to 38 below.

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:

- an STS taxpayer for the year of income; or
- 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 the deductible interest for ABN AMRO IZJ Instalments 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 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.

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

36. Sections 82KZMA and section 82KZMD set the amount and timing of deductions for expenditure for an Investor (other than an STS taxpayer for the year of income) who is a taxpayer that is not an individual and does not carry on a business.

37. The expenditure must not be excluded expenditure and 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.

38. For these taxpayers, the deduction for prepaid interest on the ABN AMRO IZJ Instalments will be apportioned over the relevant Interest Period.

Section 25-25 of the ITAA 1997: Borrowing Fees

39. The Borrowing Fee may be charged, at the discretion of the Issuer, for making the Loan at the time of Application. No part of the Borrowing Fee, if charged, is a payment for the purchase of the Holder's Put Option or Capital Protection fee. The Borrowing Fee is deductible to a Cash Applicant under section 25-25.

Sections 110-25, 112-35 and 134-1 of the ITAA 1997: Capital Protection Fee

40. The Capital Protection Fee is the amount charged for the purchase of the Holder's Put Option. The payment ensures that the borrower is protected from liability to repay the principal if the market value of the Underlying Parcel falls below their original purchase price. In effect, the Holder's Put Option ensures that ABN AMRO will acquire the Underlying Parcel in full satisfaction of the Loan Amount if the Underlying Parcel has fallen in value below the amount borrowed.

41. The Capital Protection Fee is not deductible as it is incurred for a purpose other than to service or maintain the borrowed funds. The fee is capital in nature, being paid to acquire an asset, namely, the Holder's Put Option.

Cost Base of Holder's Put Option for Cash Applicants

42. The Capital Protection Fee forms the cost base of the Underlying Parcel under section 134-1 of the ITAA 1997 if the Holder's Put Option is exercised.

43. The Capital Protection Fee forms part of the cost base of the Holder's Put Option under section 110-25 of the ITAA 1997 if the Holder's Put Option is not exercised.

Cost Base of the Holder's Put Option for Secondary Market Purchasers

44. If the market value of the Underlying Parcel at the time of purchase is greater than the Instalment Payment (the Loan Amount) the cost base of the Holder's Put Option is the total consideration as determined by section 110-25 and section 112-35 (the price of the ABN AMRO IZJ Instalment plus the Instalment Payment) less the sum of the market value of the Underlying Parcel and the interest prepaid on the newly acquired Loan.

45. If the market value of the Underlying Parcel at the time of purchase is less than the Instalment Payment the cost base of the Holder's Put Option is the total consideration as determined by section 110-25 and section 112-35 of the ITAA 1997 (the price of the ABN AMRO IZJ Instalment plus the Instalment Payment) less the sum of the Instalment Payment and the interest prepaid on the newly acquired Loan.

Section 109-5 of the ITAA 1997: time of acquisition

46. Section 109-5 applies to Investors to treat them as having acquired the Underlying Parcel at the time from which the Investor obtains the beneficial ownership of the Underlying Parcel. The acquisition time for a Cash Applicant, is the time the application was accepted, and for a Secondary Market Purchaser, is the contract date for the transfer of the ABN AMRO IZJ Instalment.

Subsection 104-10(7) of the ITAA 1997: time of disposal

47. When the Instalment Payment is made, no CGT event will arise in respect of the transfer of the legal title to the Underlying Parcel from the Security Trustee to the Investor by virtue of subsection 104-10(7).

Section 104-10 and subsection 110-45(3) of the ITAA 1997

48. A CGT event will arise to the Investor if the Investor does not make the Instalment Payment and the Underlying Parcel is sold to ABN AMRO or a third party. If the sale proceeds are insufficient to repay the Loan, ABN AMRO has no recourse against the Investor to recover the shortfall. In this circumstance the Investor will need to

reduce the cost base of the Underlying Parcel by the amount of the shortfall under subsection 110-45(3).

Section 97 of the ITAA 1936

49. The Investor is presently entitled to all of the income derived from the Underlying Parcel. Therefore, section 97 will apply to assess the Investors on the income derived from the Underlying Parcel. The Security Trustee will not be subject to tax on this income.

Part IVA of the ITAA 1936

50. Provided that the arrangement ruled on is entered into and carried out as described (see the Arrangement part of this Ruling), it would be accepted as a normal commercial transaction and Part IVA would not apply.

Detailed contents list

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

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