



# ***PR 2003/59 - Income tax: tax consequences of investing in Westpac High Yield 'IWF' Series Instalment Warrants - 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 *17 December 2003*



## Product Ruling

### Income tax: tax consequences of investing in Westpac High Yield 'IWF' Series Instalment Warrants - 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.*

*[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]*

#### **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.

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## 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 laws' 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 a Westpac High Yield 'IWF' Series Instalment Warrant ('Westpac IWF Instalments'), which provides an investment in shares listed on the Australian Stock Exchange ('ASX') and/or units in a unit trust as described in subparagraph 82KZME(5)(b)(iii) of the *Income Tax Assessment Act 1936* ('ITAA 1936'), using a loan made by Westpac Banking Corporation ('Westpac') and the acquisition of a put option, which is referred to in this Ruling and the documentation for the Westpac IWF Instalments as the 'Cash Election'.

2. This Ruling does not address the tax consequences of:

- early repayment or termination of the Westpac IWF Instalments; or
- rollover into a new series of Westpac Instalments at maturity.

### Tax law(s)

3. 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 115-5 (ITAA 1997);
- section 116-20 (ITAA 1997);
- section 134-1 (ITAA 1997);

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- section 51AAA of the (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**

4. The class of persons to whom this Ruling applies is those who enter into the arrangement described below, by way of Cash Applications or secondary market purchases, on or after the date this Ruling is made. In this Ruling these persons are referred to as 'Holders'. The Holders will have, at the time of entering into the arrangement, 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.

5. This Ruling does not address the tax consequences for Securityholder Applicants or Rollover Applicants.

## **Qualifications**

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

7. 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

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9. This Ruling applies prospectively from 8 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).

10. 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

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11. This Product Ruling is withdrawn and ceases to have effect after 25 May 2005. 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

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

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- Application for Product Ruling dated 7 July 2003 lodged by PricewaterhouseCoopers Securities Limited on behalf of Westpac;
- Offering Circular dated 26 May 2003 for the Westpac IWF Instalments (the 'Offering Circular'), which includes the terms of the loan agreement between Westpac and each Holder;
- Supplementary Offering Circular dated 27 June 2003;
- Deed Poll – Warrant Terms dated 23 May 2003 (the 'Terms') executed by Westpac;
- Deed Poll – Declaration of Trust dated 23 May 2003 (the 'Trust Deed') executed by Perpetual Trustee Company Limited as the Security Trustee. Collectively, the Terms and the Trust Deed are the 'Terms of Issue';
- Second Supplementary Offering Circular, received 4 September 2003; and
- further information provided on 19 August 2003, 22 August 2003, 4 September 2003, 11 September 2003 and 16 September 2003.

13. In this Ruling, unless otherwise defined, capitalised terms take their meaning as per the Offering Circular.

14. Upon acceptance of an Application for Westpac IWF Instalments, or as a result of a purchase on the ASX, a Holder will enter into the Loan Agreement with Westpac (the 'Loan'), will accept the issue of Westpac IWF Instalments in accordance with the Terms of Issue, and will appoint Perpetual Trustee Company Limited as Security Trustee to exercise its powers, rights and discretions in accordance with the Trust Deed.

15. Westpac IWF Instalments are a geared investment product that allows Holders to gain exposure to shares listed on the ASX and/or units in a unit trust as described in subparagraph 82KZME(5)(b)(iii) of the ITAA 1936 as set out in the Offering Circular ('Security' or 'Securities') without paying the full price of the Securities at the commencement of the transaction. Where a Security includes a stapled security, the stapled security is comprised of share/s and unit/s that are jointly listed for quotation on the ASX. The Loan provided by Westpac to a Holder partly funds the investment in the relevant Securities. The gearing levels for Westpac IWF Instalments are approximately 70% or more of the market value of the Security at the date of the acceptance of an Application.

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16. The details of the arrangement the subject of this Ruling are summarised as follows:

- (a) a Westpac IWF Instalment involves the Holder acquiring Securities in the name of the Security Trustee, using a limited recourse Loan and acquiring a put option (the Cash Election) for up to two years from Westpac;
- (b) the Holder can choose to invest in one or more of the Securities listed in the Offering Circular;
- (c) each Westpac IWF Instalment comprises one 'Underlying Parcel' which consists of one Security acquired by the Security Trustee, and all Accretions in respect of that Security. However, this excludes any fractions of Securities remaining in the aggregate of Securities and Accretions in the Underlying Parcel arising from, for example, a demerger;
- (d) the amount of the Loan provided to fund the purchase of each Underlying Parcel is a fixed amount, determined by Westpac having regard to the market value of each Security on the acceptance of an Application for a Westpac IWF Instalment. The Offering Circular specifies the initial Loan for each Security. At the commencement of the Second Period, a further drawdown of the Loan will be made equal to the Second Interest Amount for each Westpac IWF Instalment;
- (e) repayment of the Loan will be secured by a mortgage over the Underlying Parcel, the legal title to which will be held by the Security Trustee on trust for the Holder. 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;
- (f) the Loan is provided on a limited recourse basis such that Westpac's right to receive the Completion Payment at the Completion Payment Date is limited to the proceeds which it can obtain from enforcing its rights pursuant to the Security Interest provided in relation to the Underlying Parcel. However, if the Holder provides a Completion Payment Notice to Westpac, then Westpac is entitled to recover the Completion Payment from the Holder in full;
- (g) Westpac IWF Instalments are open to investment by three types of investors, namely Cash Applicants,

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Securityholder Applicants and Rollover Applicants. Westpac IWF Instalments are also listed on the ASX such that investors may participate by purchasing Westpac IWF Instalments on the market;

- (h) a Cash Applicant is a person who acquires their Westpac IWF Instalments by way of Cash Application which must be accompanied by the First Payment, consisting of:
  - (i) the non-refundable Capital Component;
  - (ii) the variable Initial Interest Amount, being interest until the Initial Period End at the then current interest rate, paid in advance on the initial Loan;
  - (iii) the Cash Election Fee which is the cost of Westpac providing the Holder with the put option (the Cash Election) to require Westpac to purchase an Underlying Parcel at the Completion Payment Date using the put option (the Cash Election); and
  - (iv) any non-refundable fees incurred in acquiring the Loan ('Borrowing Fees').

The Capital Component is applied, together with the initial Loan drawn down under the Loan Agreement, towards the purchase of the Underlying Parcel by the Security Trustee;

- (i) interest on the Loan is payable in advance for each Interest Period. The Initial Interest Amount, which forms part of the First Payment made by the Cash Applicant, is paid in respect of any unexpired portion of the Initial Period. The Second Interest Amount is paid by way of a second drawdown of the Holder's Loan at the commencement of the Second Period;
- (j) during the period of the Loan, Holders will be entitled to all dividends and distributions paid on a Security comprising the Underlying Parcel. A Holder is not entitled to direct the Security Trustee to exercise any voting rights in relation to a Security;
- (k) a purchaser on the ASX will acquire the Securities comprising the Underlying Parcel from the seller. If the Westpac IWF Instalment is acquired during the Initial Period, the purchaser will drawdown a new Loan from Westpac on the trade date, part of which is a prepayment of interest for the unexpired portion of the Initial Period. If the Westpac IWF Instalment is

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acquired during the Second Period, the Loan advanced to the purchaser will include the Second Interest Amount, part of which will relate to a prepayment of interest by the purchaser for the unexpired portion of the Second Period;

- (l) on sale of a Westpac IWF Instalment the seller is entitled to an Interest Refund from Westpac of:
  - (i) if the sale occurs during the Initial Period, a portion of the initial interest being an amount equal to the amount of interest payable by the purchaser on the new Loan from the date of the sale to the Initial Period End; or
  - (ii) if the sale occurs during the Second Period, that portion of the Second Interest Amount attributable to the period from the date of the sale to the Completion Payment Date;
- (m) in addition, if an extraordinary event or other such circumstances defined in the Offering Circular occurs, then the Completion Payment Date may be brought forward (Accelerated Completion Payment Date), and a pro-rata refund of interest will be paid by Westpac to the Holder. In all other circumstances where the Completion Payment is made in advance of the Completion Payment Date, no refund of interest will be paid to the Holder;
- (n) any time on or prior to the Completion Payment Date, Holders may provide a Completion Payment Notice to Westpac together with the amount of the Completion Payment. Upon receipt of the Completion Payment, the Loan owing to Westpac will be repaid and the Security Interest over the Underlying Parcel will be discharged. At that time, the Security Trustee will deliver legal title to the Underlying Parcel to the Holder. A Holder will not be entitled to any pro-rata refund of interest where the Completion Payment Notice is provided in advance of the Completion Payment Date. Further, in the event that the Completion Payment Notice is provided during the Initial Period then an Early Completion Payment Fee, equal to the Second Interest Amount, will be payable by the Holder;
- (o) at the Completion Payment Date, the following options are available to Holders of Westpac IWF Instalments:

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- (i) make the Completion Payment (refer to paragraph 16(n) above);
- (ii) exercise the put option (the Cash Election), and sell the relevant Securities to Westpac for a price equal to the greater of their market value or the Completion Payment. Holders receive the balance of the proceeds (if any) after payment of the Completion Payment;
- (iii) do nothing. In this case, Westpac may enforce its Security Interest and sell all or part of the Underlying Parcel to repay the outstanding balance of the Loan. Where the sale proceeds exceed the outstanding Loan and any other selling costs incurred by Westpac, the Holder is entitled to receive the excess. Due to the limited recourse nature of the Loan, if a Completion Payment Notice has not been provided by the Completion Payment Date, and the sale proceeds obtained by Westpac are less than the outstanding Loan, Westpac is not entitled to recover the balance from the Holder; or
- (iv) if offered, apply to rollover the IWF Instalments to a future series of Westpac Instalments; and
- (p) Westpac may, in certain specified circumstances, fix an Accelerated Completion Payment Date. In such circumstances, the Completion Payment Date will be brought forward and the Holder's Westpac IWF Instalment will terminate on the Accelerated Completion Payment Date.

## Participants

17. Westpac is the Issuer of the Westpac IWF Instalments and is also the provider of the Loans to Holders to fund the acquisition of the Underlying Parcel.

18. Perpetual Trustee Company Limited holds the legal title to each Underlying Parcel as Security Trustee for each Holder.

19. The Holders may be individuals, companies, trusts or superannuation funds. In relation to superannuation funds, Westpac will only accept Cash Applications.

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## Ruling

20. Subject to paragraphs 2, 5 and 21 of this Ruling:
- (a) the interest incurred by a Holder under the Loan Agreement is deductible under section 8-1 of the ITAA 1997;
  - (b) section 51AAA of the ITAA 1936 will not apply to deny a Holder a deduction for the interest 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 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 the interest incurred under a Westpac IWF Instalment;
  - (e) section 82KZM of the ITAA 1936 will not apply to deny immediate deductibility for the interest incurred by a Holder under a Westpac IWF Instalment where at least one of the following applies for the year of income:
    - (i) the Holder is a Simplified Tax System ('STS') taxpayer; or
    - (ii) the Holder 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 incurred under a Westpac IWF Instalment that is deductible to a Holder (other than an STS taxpayer for that year of income) who is a taxpayer that is not an individual and does not carry on a business;
  - (g) any Borrowing Fees paid by a Cash Applicant will be deductible under section 25-25 of the ITAA 1997 over the period of the Loan;
  - (h) if the Holder's put option (the Cash Election) is not exercised, the Cash Election Fee will be included in the Holder's cost base of the put option under section 110-25 of the ITAA 1997;
  - (i) if the Holder's put option (the Cash Election) is exercised, the Cash Election Fee will be included, under section 134-1 of the ITAA 1997, in the Holder's cost base of the Underlying Parcel;

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- (j) for secondary market purchasers the cost base of the put option (the Cash Election) will be:
  - (i) if the market value of the Underlying Parcel at the time of purchase is greater than the purchaser's Loan, the cost base of the put option, determined under sections 110-25 and 112-35 of the ITAA 1997, is the price of the Westpac IWF Instalment plus the purchaser's Loan less the sum of the market value of the Underlying Parcel and the interest prepaid by the purchaser on the Loan; and
  - (ii) if the market value of the Underlying Parcel at the time of purchase is less than the purchaser's Loan, the cost base of the put option, determined under sections 110-25 and 112-35 of the ITAA 1997, is the price of the Westpac IWF Instalment plus the purchaser's Loan less the sum of the purchaser's Loan and the interest prepaid by the purchaser on the Loan;
- (k) CGT event C2 will occur under section 104-25 of the ITAA 1997 on the Completion Payment Date if a Holder has not exercised the put option (the Cash Election). In such a case, the put option will lapse. The capital proceeds received upon the happening of this CGT event will be nil;
- (l) the date of acquisition of the beneficial interest in the Underlying Parcel and the put option (the Cash Election) is, in the case of a Cash Applicant, the date of acceptance of the Application, or in the case of a secondary market purchaser of Westpac IWF Instalments, the contract date for purchase of the Westpac IWF Instalments;
- (m) no CGT event arises when the Completion Payment is made and legal title to the Underlying Parcel is transferred by the Security Trustee to a Holder of a Westpac IWF Instalment;
- (n) a CGT event will arise under section 104-10 of the ITAA 1997 for a Holder where the Completion Payment is not made and the Underlying Parcel is sold by Westpac exercising its power of sale under the Security Interest. The capital proceeds will be the amount received by Westpac upon disposal of the Underlying Parcel. The cost base in the Underlying Parcel will be reduced by the excess (if any) of the Loan over the market value of the Underlying Parcel in

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- accordance with subsection 110-45(3) of the ITAA 1997;
- (o) any capital gain realised by a Holder on sale of an Underlying Parcel received pursuant to completion of a Westpac IWF Instalment, will be treated as a discount capital gain pursuant to section 115-5 of the ITAA 1997 where the Holder is an individual, a complying superannuation entity, or a trust and has held the Underlying Parcel for at least 12 months;
  - (p) while the Underlying Parcel is the subject of the relevant separate trust, the Holders and not the Security Trustee are assessable pursuant to section 97 of the ITAA 1936 on all of the income derived from the Underlying Parcel; and
  - (q) the anti-avoidance provisions contained in Part IVA of the ITAA 1936 will not apply to the Holders in respect of a Westpac IWF Instalment.

## Assumptions

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21. This Ruling is made on the basis of the following assumptions:
- (a) the Holder is an Australian resident for tax purposes;
  - (b) the Holder is not a trader in investments and is 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 interest for each Interest Period is prepaid by a Holder but only in relation to an interest payment period of 12 months or less that ends on or before the last day of the income year following the expenditure year;
  - (d) the dominant purpose of the Holder in entering the arrangement is to derive assessable income from their investment in the Westpac IWF Instalments;
  - (e) the arrangement will be executed in the manner described in the 'Arrangement' section of this Ruling;
  - (f) all dealings by the Holder and Westpac will be at arm's length; and

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- (g) the Underlying Parcel will not be the subject of any securities lending arrangement entered into by or on behalf of the Holder.

## **Explanation**

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### **Section 8-1 of the ITAA 1997**

22. The interest incurred on a borrowing used to acquire income producing assets such as shares or units 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). Interest incurred by a Holder in relation to monies borrowed from Westpac under the Loan will be an allowable deduction pursuant to section 8-1 to the extent that the interest is incurred by the Holder in gaining or producing assessable income. This is the case regardless of whether the Holder acquired the Westpac IWF Instalment by Application or by purchase on the ASX. No part of the interest charged by Westpac under the Loan is a capital protection fee. Capital protection under the arrangement is provided by the put option (the Cash Election).

### **Section 51AAA of the ITAA 1936**

23. By acquiring the Westpac IWF Instalment it is contemplated that a Holder will derive assessable income by the receipt of dividends, trust income and/or 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 a Holder acquiring the Westpac IWF Instalment.

### **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 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**

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

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within the same year of income. Separate rules apply depending on whether the expenditure is incurred in carrying on a business, whether the Holder is an 'STS taxpayer', whether the Holder is an individual and whether the Holder 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) to include amounts of less than \$1,000, or amounts of expenditure that are of a capital nature.

### ***Subdivisions 328-F & 328-G of the ITAA 1997 - STS taxpayer***

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

27. A Holder will be eligible to be an STS taxpayer for an income year if the Holder 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. Paragraph 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 12 months or less, and not to the period of the loan, which is up to 2 years for Westpac IWF Instalments.

### ***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.

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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 a Westpac IWF Instalment, including the financing, share purchase, shareholding and disposal arrangements.

31. Under the arrangement, when the Holder acquires a Westpac IWF Instalment, they acquire beneficial ownership of the Security comprising the Underlying Parcel.

32. Exception 1, as contained in subsection 82KZME(5), applies to exclude the interest incurred on borrowings under the Westpac IWF Instalments from the operation of section 82KZMF, as

- (a) the prepaid interest expenditure under the Westpac IWF Instalments is incurred in respect of money borrowed to acquire shares that are listed for quotation on the ASX and/or units in a unit trust as described in subparagraph 82KZME(5)(b)(iii);
- (b) the Holder can reasonably be expected to obtain dividend and/or trust income from the investment;
- (c) the Holder will not obtain any other kind of assessable income from the investment, except for capital gains; and
- (d) all aspects of the Westpac IWF Instalments are at arm's length.

33. Deductibility of expenditure must therefore be considered under the prepayment rules outlined in paragraphs 34 to 39 below.

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

34. 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.

35. 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

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expenditure would otherwise be immediately deductible under section 8-1 of the ITAA 1997.

36. As the eligible service period in relation to the deductible interest for Westpac IWF 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 Holders who are STS taxpayers for the year of income, or to Holders who are individuals and the expenditure is not incurred in carrying on a business. Holders 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***

37. Sections 82KZMA and 82KZMD set the amount and timing of deductions for expenditure for a Holder (other than an STS taxpayer for the year of income) who is a taxpayer that is not an individual and does not incur the expenditure in carrying on a business.

38. 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.

39. For these taxpayers, the deduction for prepaid interest on a Westpac IWF Instalment will be apportioned over the relevant interest payment period.

### **Section 25-25 of the ITAA 1997**

40. Borrowing Fees, if any, are paid for Westpac making the Loan available to the Cash Applicant. As the funds are used for income producing purposes, any Borrowing Fees will be deductible to the Cash Applicant under section 25-25 over the term of the Loan (since this period is less than 5 years).

### **Sections 110-25, 112-35 and 134-1 of the ITAA 1997**

#### ***Cost base of put option – a Holder who is a Cash Applicant***

41. If the put option (the Cash Election) is not exercised, the Cash Election Fee paid by a Holder that is attributable to the purchase of the put option will be included in the Holder's cost base of the put option under section 110-25.

42. If the put option (the Cash Election) is exercised, the Cash Election Fee will be included in the Holder's cost base of the Underlying Parcel under section 134-1.

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## ***Cost base of put option – a Holder who is a secondary market purchaser***

43. If the market value of the Underlying Parcel at the time of purchase is greater than the purchaser's Loan, the cost base of the put option (the Cash Election), determined under sections 110-25 and 112-35, is the price of the Westpac IWF Instalment plus the purchaser's Loan less the sum of the market value of the Underlying Parcel and the interest prepaid by the purchaser on the Loan.

44. If the market value of the Underlying Parcel at the time of purchase is less than the purchaser's Loan, the cost base of the put option (the Cash Election), determined under sections 110-25 and 112-35, is the price of the Westpac IWF Instalment plus the purchaser's Loan less the sum of the purchaser's Loan and the interest prepaid by the purchaser on the Loan.

## **Sections 104-25 and 116-20 of the ITAA 1997: CGT event C2 – put option**

45. If the put option (the Cash Election) lapses on the Completion Payment Date, CGT event C2 will occur for the Holder. The capital proceeds received in respect of this event will be nil in accordance with section 116-20.

## **Section 109-5 of the ITAA 1997: acquisition of a CGT asset**

46. Section 109-5 applies to a Holder to treat them as having acquired the Underlying Parcel at the time from which the Holder obtains beneficial ownership of the Underlying Parcel. This time is, for a Holder who is a Cash Applicant, the time the Application was accepted, and for a Holder who is a secondary market purchaser, the contract date for the purchase of the Westpac IWF Instalment.

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

47. When the Completion 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 Holder by virtue of subsection 104-10(7).

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## Sections 104-10 and 116-20 of the ITAA 1997: CGT event A1

48. A CGT event will arise to the Holder if the Holder does not make the Completion Payment and the Underlying Parcel is sold by Westpac. The cost base in the Underlying Parcel will be reduced by the excess (if any) of the Loan over the market value of the Underlying Parcel in accordance with subsection 110-45(3) of the ITAA 1997. The Holder's capital proceeds will be the amount received by Westpac on disposal of the Underlying Parcel in accordance with section 116-20.

## Section 115-5 of the ITAA 1997: discount capital gains

49. Division 115 allows a taxpayer a discount on capital gains in certain circumstances. In accordance with section 115-5, any capital gain realised by a Holder on the sale of a Westpac IWF Instalment, or on the sale of the Underlying Parcel received pursuant to the completion of a Westpac IWF Instalment, will be treated as a discount capital gain where the Holder is an individual, a complying superannuation entity, or a trust and has held the Westpac IWF Instalment for at least 12 months.

## Section 97 of the ITAA 1936

50. A Holder will be presently entitled to all of the income derived from the Underlying Parcel. Therefore, section 97 will apply to assess the Holder 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

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

## Detailed contents list

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## Commissioner of Taxation

8 October 2003

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*Previous draft:*

Not previously released in draft form.

- ITAA 1936 82KZMD
- ITAA 1936 82KZME
- ITAA 1936 82KZME(4)
- ITAA 1936 82KZME(5)
- ITAA 1936 82KZME(5)(b)(iii)
- ITAA 1936 82KZMF
- ITAA 1936 Subdiv H, Div 3, Pt III
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- ITAA 1997 8-1
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- ITAA 1997 104-10
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- ITAA 1997 104-25
- ITAA 1997 109-5
- ITAA 1997 110-25
- ITAA 1997 110-45(3)
- ITAA 1997 112-35
- ITAA 1997 115-5
- ITAA 1997 116-20
- ITAA 1997 134-1
- ITAA 1997 Subdiv 328-F
- ITAA 1997 Subdiv 328-G
- Copyright Act 1968

*Related Rulings/Determinations:*

TR 92/1; TR 92/20; TD 93/34;  
TR 95/33; TR 97/16; PR 1999/95

*Subject references:*

- financial products
- interest expenses
- prepaid expenses
- product rulings
- public rulings
- small business taxpayer
- taxation administration
- tax avoidance

*Legislative references:*

- TAA 1953 Part IVAAA
- ITAA 1936 51AAA
- ITAA 1936 82KL
- ITAA 1936 82KZL(1)
- ITAA 1936 82KZL(2)(a)
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