



# ***PR 2003/64 - Income tax: tax consequences of investing in equities using the Investment Protected Loan provided under the Smith Barney Flexible Investment Facility***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *22 October 2003*



## Product Ruling

# Income tax: tax consequences of investing in equities using the Investment Protected Loan provided under the Smith Barney Flexible Investment Facility

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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**

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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**

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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.

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## What this Product Ruling is about

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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 grant of a put option (which provides for an exercise price equal to the outstanding loan amount) and the borrowing of moneys, on the terms of a fully protected lending product named the Smith Barney 'Investment Protected Loan' ('IPL'), from Citigroup Global Markets Australia Pty Ltd ('Citigroup'). The borrowings are used to acquire 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* ('Approved Securities'). The IPL is a 100% capital protected loan available to investors under the broader lending and investment facility named the Smith Barney Flexible Investment Facility ('FIF').

2. This Ruling only addresses the tax consequences of using the Option Writing Facility under the FIF to the extent that it is used to obtain a reduction in interest rates under the IPL, and not where a premium is received for writing an option.

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

- using the Margin Lending Loan which is available under the FIF and can be used in conjunction with the IPL;
- early repayment or termination of the IPL;
- repaying the IPL using the limited recourse provisions;
- varying the protection level during the course of the IPL;
- using the IPL to acquire stapled securities or shares not listed on the ASX under the terms of the IPL;
- using the trading facility; and
- extending the IPL at maturity.

4. This Ruling does not address an investor's entitlement to franking credits.

**Tax law(s)**

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

- section 8-1 of the Income Tax Assessment Act 1997 ('ITAA 1997');
- section 104-10 (ITAA 1997);
- section 104-25 (ITAA 1997);
- section 110-25 (ITAA 1997);
- section 115-5 (ITAA 1997);
- Division 134 (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); and
- Part IVA (ITAA 1936).

**Class of persons**

6. 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 with the 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**

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

8. 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 and it will be withdrawn or modified.

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## **Date of effect**

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10. This Ruling applies from 22 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).

11. 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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12. 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**

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

- the application for a Product Ruling, as amended 26 June 2003, lodged by Baker & McKenzie on behalf of Citigroup;
- the amended draft FIF Terms & Conditions received 26 June 2003 from Baker and McKenzie on behalf of Citigroup, incorporating:
  - (i) the Loan Agreement;
  - (ii) the Margin Loan Clauses;
  - (iii) the Investment Protected Loan Clauses;
  - (iv) the Option Writing Facility;
  - (v) the CHESS sponsorship agreement; and
  - (vi) the Terms of Business and Definitions;
- a sample Smith Barney Flexible Investment Facility Confirmation of Facility (the 'Confirmation Letter'), as amended received 5 September 2003; and
- further information dated 28 February 2003, 11 March 2003, 14 March 2003, 11 August 2003, 13 August 2003 and 28 August 2003.

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

- (a) an Investor contacts their broker/financial advisor or Citigroup to obtain an IPL;
- (b) on acceptance of the Investor's request, Citigroup will send the Investor a Confirmation Letter outlining the details of the IPL including the rate of interest to be charged, the Put Option premium, the Put Option exercise price (the outstanding loan amount), details of the call option (if applicable) and the term of the IPL;
- (c) Citigroup will make an IPL available to Investors according to Parts A and C of the FIF Terms & Conditions;
- (d) the Confirmation Letter will specify the deductible rate of interest and the non-deductible rate of interest (which will equal the Put Option premium);

- (e) the funds provided under the IPL must be used by the Investor to acquire Approved Securities, which are not stapled securities;
- (f) the IPL term will be 1, 2, 3, 4 or 5 years, at the Investor's choice. The IPL term will be specified in the Confirmation Letter;
- (g) the IPL will be a fixed rate loan. Interest must be paid in advance at the rate specified by Citigroup on or before the drawdown date;
- (h) the rate of interest will be calculated according to the Approved Securities to be acquired and the term of the IPL;
- (i) a share brokerage fee and stamp duty may apply whenever the Investor acquires or sells Approved Securities. Registration fees and legal fees may also be payable;
- (j) there may be costs associated with an early unwind of the IPL;
- (k) the IPL is a limited recourse loan;
- (l) the Investor obtains 100% capital protection through an option (the 'Put Option') granted to the Investor by Citigroup. Citigroup's ability to recover the outstanding loan amount is limited to the Put Option exercise price. The Put Option exercise price is equal to the loan amount outstanding;
- (m) the Put Option is only exercisable at maturity of the IPL;
- (n) the Investor may cap the level of capital growth in relation to the Approved Securities and obtain a reduction of the interest payable on the loan. This is facilitated by the Investor writing an option over the Approved Securities to Citigroup (the 'Call Option'). The availability of the Call Option is subject to Citigroup's discretion. The Call Option is an irrevocable offer by the Investor to sell the Approved Securities to Citigroup for a predetermined amount (the 'Capped Amount') (which will be greater than the outstanding loan amount) or to cash settle the Call Option;
- (o) the Investor may retain part of the capital growth above the Capped Amount as agreed between the Investor and Citigroup and recorded in the Confirmation Letter;

- (p) generally no premium is payable by Citigroup to an Investor for the Call Option where the Call Option relates to Approved Securities that are the subject of an IPL. In this circumstance, the interest rate on the IPL will be reduced and will be detailed in the Confirmation Letter. In some instances a premium will be payable by Citigroup to the Investor for the Call Option, and in that case, the interest rate on the IPL will not be reduced;
- (q) at maturity of the IPL, Citigroup may elect to exercise its Call Option. If Citigroup exercises its Call Option:
  - (i) the Investor will transfer the Approved Securities to Citigroup and receive the Capped Amount and any agreed excess capital growth (the 'Settlement Amount'); or
  - (ii) the Investor may choose to cash settle the Call Option, in which case the Investor is required to pay Citigroup the amount equal to the Settlement Amount;
- (r) any dividends paid in respect of the Approved Securities acquired under the IPL are paid to the Investor;
- (s) where Dividend Reinvestment Plan securities are part of the mortgaged property, they become part of the mortgaged property from the time the Investor acquires any rights to them;
- (t) at maturity of the IPL, the Investor may:
  - (i) repay the IPL in accordance with Part A of the FIF Terms & Conditions;
  - (ii) exercise the Put Option by giving notice in writing 5 days before the maturity date, in which case Citigroup will pay the Investor the Put Option exercise price which will be applied towards repaying the outstanding Loan Amount;
  - (iii) do nothing. If the Investor does not give Citigroup notice 5 business days in advance of the maturity date, the investor will be taken to have elected to exercise the Put Option;
  - (iv) subject to Citigroup's absolute discretion, if Citigroup has notified the Investor that they may extend the maturity date of the IPL, the Investor may elect to do so on the terms specified by Citigroup; and

- (u) an Investor may sell any of the Approved Securities the subject of the IPL only if consent has been obtained by Citigroup and the sale proceeds are deposited into a 'Deposit Account' being a cash management trust that satisfies the requirements of subparagraph 82KZME(5)(b)(iii) of the ITAA 1936 and held as security for the Investor's obligations. Citigroup may authorise the Investor to apply any such funds to acquire other Approved Securities pursuant to a new IPL.

## The Participants

- 15. Citigroup is the provider of the IPL to Investors in order to fund the acquisition of Approved Securities. Smith Barney Citigroup Australia Pty Limited or Citigroup are the brokers/dealers of the IPL.
- 16. The Investors may be individuals, companies or trusts.

## Ruling

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- 17. Subject to paragraphs 2, 3, 4 and 18 of this Ruling:
  - (a) the amount allowable as a deduction (the 'amount allowable') under section 8-1 of the ITAA 1997 is the amount that does not exceed the lower of the Reserve Bank Bulletin Indicator Lending Rates for Personal Unsecured Loans – Fixed and the relevant percentage of the total interest charged by Citigroup under the Investment Protected Loan calculated as follows:
    - (i) 60% (for an IPL with a term of one year);
    - (ii) 72.5% (for an IPL with a term of two years);
    - (iii) 80% (for an IPL with a term of three years);
    - (iv) 82.5% (for an IPL with a term of four years);
    - and
    - (v) 85% (for an IPL with a term of five years).
  - (b) the difference between the total interest charged by Citigroup and the amount allowable as calculated in paragraph 17(a) above is not deductible under section 8-1 of the ITAA 1997 and forms part of the cost base of the Put Option under subsection 110-25(2) of the ITAA 1997;

- (c) section 51AAA of the ITAA 1936 will not apply to deny a deduction for the amount allowable under section 8-1 of the ITAA 1997;
- (d) section 82KL of the ITAA 1936 will not apply to deny deductibility of the amount 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 the amount allowable under section 8-1 of the ITAA 1997;
- (f) section 82KZM of the ITAA 1936 will not apply to deny the Investor immediate deductibility of that part of the amount allowable under section 8-1 of the ITAA 1997 where at least one of the following applies for the year of income:
  - (vi) the Investor is an STS taxpayer; or
  - (vii) the Investor is an individual taxpayer who does not incur the interest charges in carrying on a business;
- (g) sections 82KZMA and 82KZMD of the ITAA 1936 will apply to set the amount and timing of deductions for that part of the amount allowable under section 8-1 of the ITAA 1997 to the 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;
- (h) the grant of the Call Option by the Investor over Approved Securities is a CGT event which does not result in a capital gain or a capital loss to the Investor;
- (i) if Citigroup exercises the Call Option at the maturity date and the Investor transfers the Approved Securities to Citigroup, CGT event A1 will occur. The Investor will make a capital gain equal to the capital proceeds received from Citigroup less the Investor's cost base for the Approved Securities.
- (j) if Citigroup exercises its Call Option and the Investor chooses to cash settle the Call Option, the Settlement Amount will be included in the cost base of the Approved Securities under subsection 110-25(6) of the ITAA 1997;
- (k) if the Put Option is not exercised at maturity, the Investor will make a capital loss at that time equal to the reduced cost base of the Put Option;

- (l) where the Investor exercises or is deemed to have exercised the Put Option, any gain or loss on exercise of the Put Option is disregarded and the premium made to acquire the Put Option will be added to the cost base of the Approved Securities disposed of to Citigroup;
- (m) any capital gain realised by an Investor on sale of the Approved Securities will be treated as a discount capital gain pursuant to section 115-5 of the ITAA 1997 where the Investor is an individual or a trust and has held the Approved Securities for at least 12 months; and
- (n) the anti-avoidance provisions in Part IVA of the ITAA 1936 will not be applied to deny deductibility of the amount allowable to the Investor under the IPL.

## Assumptions

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

- (a) 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 Approved Securities, carrying on a business of investing in Approved Securities, or holding the Approved Securities as trading stock or as a revenue asset;
- (c) interest paid in advance under the IPL is prepaid only in relation to a loan 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 Investor entering into the arrangement is to derive assessable income comprising dividends or trust distributions and capital gains;
- (e) all dealings by the Investor and Citigroup will be at arm's length; and
- (f) the arrangement ruled on will be executed in the manner described in the 'Arrangement' section of this Ruling.

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## **Explanation**

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

19. The ATO generally accepts that interest incurred on borrowings to acquire shares or units in a trust that produce or may in the future produce assessable income is deductible (Taxation Ruling TR 95/33).

20. The deductible interest amount will be - the lower of the applicable Reserve Bank Bulletin Indicator Lending Rates for Personal Unsecured Loans – Fixed and the relevant percentage of the interest calculated in accordance with the formula described in paragraph 17(a).

21. The difference between the total interest charged on the IPL and the amount allowable is the portion of interest allocated to the Put Option premium as an instalment of the cost of the Put Option. The Put Option ensures that the borrower is protected from liability to repay the principal if the market value of the Approved Securities falls below their original purchase price. The premium charged for the Put Option is not deductible under section 8-1.

22. The amount not deductible under section 8-1 of the ITAA 1997 forms the cost base of a Put Option and constitutes an asset for capital gains tax purposes which is separate and in addition to the other rights created under the IPL as described in this Ruling.

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

23. By entering into the IPL it is contemplated that an Investor will derive assessable income by the receipt of dividend or trust income and capital gains. As the 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 in the IPL.

### **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 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.

***Subdivisions 328-F & 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 charge on the IPL allowable under section 8-1 of the ITAA 1997 is in relation to a prepayment of loan interest for a period that is 12 months or less. 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, 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 IPL, including the financing, share and/or unit acquisition, and share and/or unit disposal arrangements.

31. Exception 1, as contained in subsection 82KZME(5), applies to exclude the amount allowable for interest on borrowings under the IPL from the operation of section 82KZMF, as:

- the prepaid interest expenditure under the IPL is incurred in respect of money borrowed to acquire shares that are listed for quotation on the ASX or units in a unit trust as described in subparagraph 82KZME(5)(b)(iii);
- the Investor can reasonably be expected to obtain dividends or 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 IPL are at arm's length.

32. 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 payment under the IPL 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 amount allowable for the interest incurred under the IPL.

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

36. Sections 82KZMA and 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 an Investor that is not an individual and does not incur the expenditure in carrying 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 amount allowable for prepaid interest incurred on the borrowings under the IPL will be apportioned over the relevant interest payment period.

**Call Option**

39. Under the IPL, the Investor may, at Citigroup's discretion, sell a Call Option to Citigroup. The Call Option may be exercised if the market value of the Approved Securities on maturity is equal to or greater than the Capped Amount that is chosen by the Investor.

40. The grant of the Call Option by the Investor to Citigroup is a CGT event which will not result in a capital gain or loss arising for the Investor.

41. Where, at the maturity date, the Investor chooses to sell the Approved Securities to Citigroup on exercise of the Call Option, CGT event A1 will occur (section 104-10 of the ITAA 1997). Any capital proceeds received by the Investor in respect of the Call Option will be included as part of the capital proceeds received on the disposal of the

Approved Securities. Where the capital proceeds of the disposal exceed the Investor's cost base of the Approved Securities, the Investor will make a capital gain.

42. The capital proceeds received by the Investor pursuant to the Call Option will be the Settlement Amount. The Settlement Amount is comprised of the Capped Amount and any excess capital growth above the Capped Amount agreed to between the Investor and Citigroup as having been retained by the Investor.

43. Alternatively, the Investor may choose to cash settle the Call Option and repay the IPL, thereby retaining ownership of the Approved Securities. No CGT event will arise in respect of the Approved Securities that have been retained by the Investor in these circumstances.

44. In such a case, the amount paid by the Investor, that is the Settlement Amount, is capital expenditure made to preserve the Investor's title to the Approved Securities and will form part of the Investor's cost base in the Approved Securities (subsection 110-25(6) of the ITAA 1997).

#### **Section 110-25 of the ITAA 1997 – Cost Base of the Put Option**

45. The amount of interest charged on the IPL which is not deductible to the Investor under section 8-1 of the ITAA 1997 forms part of the cost base of the Put Option under subsection 110-25(2) of the ITAA 1997.

#### **Sections 104-10, 104-25, and 134-1 of the ITAA 1997**

46. Where, at the maturity date, the Investor repays the IPL, the Put Option will expire. The expiration of the Put Option gives rise to CGT event C2 (paragraph 104-25(1)(c) of the ITAA 1997). The Investor will make a capital loss at the time when the Put Option expires equal to the reduced cost base of the Put Option.

47. Where the Investor exercises or is deemed to have exercised the Put Option, the Approved Securities will be transferred to Citigroup in satisfaction of the outstanding loan. The premium paid by the Investor to acquire the Put Option will be included in the cost base (and reduced cost base) of the Approved Securities (subsection 134-1(1), Item 2 of the ITAA 1997).

#### **Section 115-5 of the ITAA 1997: CGT discount**

48. Division 115 allows a taxpayer a discount on capital gains in certain circumstances. Under section 115-5, any capital gain realised by an Investor from the transfer of Approved Securities to Citigroup at

maturity and/or pursuant to the Call Option will be treated as a discount capital gain where the Investor is an individual or a trust and has held the Approved Securities for at least 12 months.

#### **Part IVA of the ITAA 1936**

49. Provided that the IPL arrangement ruled on is entered into and carried out as disclosed in this Ruling, it is accepted as a normal commercial transaction and Part IVA would not apply.

### **Detailed contents list**

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

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**Commissioner of Taxation**

22 October 2003

<i>Previous Rulings:</i>	- ITAA 1936 82KZM
Not previously released in draft form	- ITAA 1936 82KZMA
	- ITAA 1936 82KZMD
	- ITAA 1936 82KZME
<i>Related Rulings/Determinations:</i>	- ITAA 1936 82KZME(4)
TR 92/1; TR 92/20; TD 93/34;	- ITAA 1936 82KZME(5)
TR 95/33; TR 97/16; PR 1999/95	- ITAA 1936 82KZME(5)(b)(iii)
	- ITAA 1936 82KZMF
<i>Subject references:</i>	- ITAA 1936 Subdiv H, Div 3, Pt III
- debt deductions	- ITAA 1936 Pt IVA
- financial products	- ITAA 1997 8-1
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- product rulings	- ITAA 1997 104-25(1)(c)
- public rulings	- ITAA 1997 110-25
- small business investor	- ITAA 1997 110-25(2)
- taxation administration	- ITAA 1997 110-25(6)
- tax avoidance	- ITAA 1997 115-5
	- ITAA 1997 Division 134
<i>Legislative references:</i>	- ITAA 1997 134-1
- TAA 1953 Part IVAAA	- ITAA 1997 134-1(1)
- ITAA 1936 51AAA	- ITAA 1997 Subdiv 328-F
- ITAA 1936 82KL	- ITAA 1997 Subdiv 328-G
- ITAA 1936 82KZL(1)	- Copyright Act 1968
- ITAA 1936 82KZL(2)(a)	

## ATO references

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