



PR 2006/109 - Income tax: tax consequences of investing in ABN AMRO Self Funding Instalment Warrants SZB Series 2006 Product Disclosure Statement - 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 *14 June 2006*



Product Ruling

Income tax: tax consequences of investing in ABN AMRO Self Funding Instalment Warrants SZB Series 2006 Product Disclosure Statement – cash applicants and secondary market purchasers

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ⓘ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

No guarantee of commercial success

The Tax Office **does not** sanction or guarantee this product. Further, we give no assurance that the product is commercially viable, that charges are reasonable, appropriate or represent industry norms, or that projected returns will be achieved or are reasonably based.

Potential participants must form their own view about the commercial and financial viability of the product. This will involve a consideration of important issues such as whether projected returns are realistic, the 'track record' of the management, the level of fees in comparison to similar products and how the product fits an existing portfolio. We recommend a financial (or other) adviser be consulted for such information.

This Product Ruling provides certainty for potential participants by confirming that the tax benefits set out in the **Ruling** part of this document are available, **provided that** the scheme is carried out in accordance with the information we have been given, and have described below in the **Scheme** part of this document.

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

Potential participants should be aware that the Tax Office will be undertaking review activities to confirm the scheme has been implemented as described below and to ensure that the participants in the scheme 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 entity(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 Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates. In this Ruling the scheme is the acquisition of an ABN AMRO Self Funding Instalment Warrant SZB Series (ABN AMRO SZB Self Funding Instalment(s)) under the 2006 Product Disclosure Statement, which provides an investment in shares and/or units, which are listed for quotation on the Australian Stock Exchange (ASX), and a put option (Holder's Put Option) using in part a loan made by ABN AMRO Australia Limited (ABN AMRO).

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:
- section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997);
 - section 25-25 of the ITAA 1997;
 - section 104-10 of the ITAA 1997;
 - section 104-25 of the ITAA 1997;
 - section 109-5 of the ITAA 1997;
 - section 110-25 of the ITAA 1997;
 - section 112-35 of the ITAA 1997;
 - section 115-5 of the ITAA 1997;
 - section 134-1 of the ITAA 1997;
 - section 51AAA of the *Income Tax Assessment Act 1936* (ITAA 1936);
 - section 82KL of the ITAA 1936;
 - section 82KZM of the ITAA 1936;
 - section 82KZMA of the ITAA 1936;
 - section 82KZMD of the ITAA 1936;
 - section 82KZME of the ITAA 1936;
 - section 82KZMF of the ITAA 1936;

- section 97 of the ITAA 1936; and
- Part IVA of the ITAA 1936.

Class of entities

3. The class of entities to whom this Ruling applies is those who enter into the scheme described below, either through Cash Applications or secondary market purchases with a purpose of staying in the scheme until it is completed and of deriving assessable income from their involvement as set out in the description of the scheme. In this Ruling these entities are referred to as 'Holders'.

4. This Ruling does not apply to Shareholder or Conversion Applicants. These application methods are disclosed and described in the draft combined Product Disclosure Statement dated 25 May 2005 and 18 April 2006.

Qualifications

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

6. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 14 to 22 of this Ruling.

7. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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Date of effect

9. This Ruling applies prospectively from 14 June 2006, 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. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

10. If this Product Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

11. If this Product Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Product Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

12. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Withdrawal

13. This Product Ruling is withdrawn and ceases to have effect after 30 June 2009. The Ruling continues to apply, in respect of the relevant provisions ruled upon, to all persons within the specified class who enter into the specified scheme during the term of the Ruling. Thus, the Ruling continues to apply to those persons, even following its withdrawal, who entered into the specified scheme prior to withdrawal of the Ruling. This is subject to there being no material difference in the scheme or in the persons' involvement in the scheme.

Scheme

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

- application for a Product Ruling dated 8 May 2006 received from Baker & McKenzie on behalf of ABN AMRO;

- draft combined Product Disclosure Statement (the PDS) comprising draft Part 1 of the PDS dated 18 April 2006 and Part 2 of the PDS dated 25 May 2005; and
- Trust Deed for ABN AMRO Self Funding Instalment Warrants incorporated in the PDS (the Instalment Deed) to be executed by ABN AMRO (the Issuer) and ABNED Nominees Pty Limited (as Security Trustee).

15. In this Ruling, unless otherwise defined, capitalised terms take their meaning as per the PDS.

16. On acceptance of a Holder's application for an ABN AMRO SZB Self Funding Instalment, the Holder will acquire a Loan from 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 SZB Self Funding Instalments on the terms and conditions set out in the Instalment Deed. Holders can also purchase ABN AMRO SZB Self Funding Instalments once they are listed on the ASX.

17. ABN AMRO SZB Self Funding Instalments are offered over certain shares or stapled securities listed on the ASX (the Underlying Entities' Share(s)). Where the Underlying Entities' Share is a stapled security, the stapled security is comprised of shares and units that are jointly listed for quotation on the ASX. Each ABN AMRO SZB Self Funding Instalment is comprised of one 'Underlying Parcel' which consists of one share from the list of Underlying Entities' Shares and any Accretions in respect of that share.

18. ABN AMRO SZB Self Funding Instalments provide a leveraged investment in the Underlying Parcel. ABN AMRO SZB Self Funding Instalments are a highly geared product that allows Holders to gain exposure to share price movements and dividends. Gearing results from the Loan provided by ABN AMRO to Holders to partly fund their investment in the Underlying Parcel.

19. The details of the scheme the subject of this Ruling are summarised as follows:

- (a) there are three ways of investing in ABN AMRO SZB Self Funding Instalments in the primary market, one of which is by Cash Application. ABN AMRO SZB Self Funding Instalments may also be purchased on the ASX;
- (b) a Cash Applicant pays the First Payment and draws down the Loan made by ABN AMRO. The First Payment and the Loan Amount are applied towards the purchase of the Underlying Parcel, payment of the Interest Amount and payment of the Capital Protection Fee and Borrowing Fees (if any);

- (c) 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. ABN AMRO grants the Cash Applicant a Holder's Put Option which lasts for the life of the ABN AMRO SZB Self Funding Instalment. The ABN AMRO SZB Self Funding Instalment is issued in the name of the Cash Applicant;
- (d) 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 Parcel;
- (e) 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 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 made on a limited recourse basis. ABN AMRO's ability to recover the Loan Amount from the Holder is limited to the amount received by ABN AMRO either:
 - (i) if the Holder's Put Option is exercised by the Holder – the amount payable to the Holder under the Holder's Put Option; or
 - (ii) if the Holder's Put Option is not exercised by the Holder – the amount recoverable by ABN AMRO on the enforcement of its rights in respect of the Mortgaged Property;
- (g) the Loan Amount is reduced during the term of the ABN AMRO SZB Self Funding Instalment by the amount of any dividends in respect of the Underlying Parcel traded ex-entitlement. All such dividends are applied to reduce the Loan Amount;
- (h) where a dividend has an ex-entitlement date during an Interest Period, ABN AMRO will pay to the Security Trustee the portion of the prepaid Interest Amount that is referable to the amount of the dividend for the period from and including the ex-entitlement date until and including the next Annual Interest Date or Expiry Date, as applicable. The Holder directs the Security Trustee and ABN AMRO to apply the Refund Amount to reduce the Loan Amount;
- (i) interest on the Loan is payable on Cash Application and on each Annual Interest Date. Interest is payable annually in advance for the period to the next Annual Interest Date or Expiry date, as applicable, (the Interest Amount);

- (j) the Borrowing Fee is an amount that may be charged by ABN AMRO on Cash Application for making the Loan;
- (k) the Capital Protection Fee is an amount charged by ABN AMRO on Cash Application for providing the Holder's Put Option;
- (l) where the ABN AMRO SZB Self Funding Instalments are purchased on the ASX, the purchaser acquires the ABN AMRO SZB Self Funding 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 SZB Self Funding 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;
- (m) the term of the ABN AMRO SZB Self Funding Instalments is up to 10 years; and
- (n) at the Expiry Date, the Holder has four options:
 - (i) make the Instalment Payment:

Holders can obtain the Underlying Parcel by making the Instalment Payment. The Instalment Payment is equal to the Loan Amount.

When the Instalment Payment is made the Loan is repaid, the security interest is discharged and the Underlying Parcel is delivered to the Holder;
 - (ii) rollover the Instalment Warrant:

the Holder has the ability to facilitate the payment of the Instalment Payment by rolling his or her ABN AMRO SZB Self Funding Instalment into a new series of ABN AMRO instalments, if available;
 - (iii) exercise the Holder's Put Option:

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 Holder.

The Participants

20. ABN AMRO is the Issuer of the ABN AMRO SZB Self Funding Instalments. ABN AMRO is also the provider of the Loans to Holders to fund the acquisition of the Underlying Parcel.

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

22. The Holders may be individuals, companies, trusts or superannuation funds.

Ruling

23. Subject to the Assumptions in paragraph 24 of this Ruling:
- (a) the Interest Amount charged will be deductible to a Holder 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 Amount;
 - (c) section 82KL of the ITAA 1936 will not apply to deny deductibility of the Interest Amount;
 - (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 SZB Self Funding Instalment;
 - (e) section 82KZM of the ITAA 1936 will not apply to deny immediate deductibility for an Interest Amount incurred by the Holder under the ABN AMRO SZB Self Funding 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) section 82KZMD of the ITAA 1936 will apply to set the amount and timing of deductions for the Interest Amount incurred under the ABN AMRO SZB Self Funding Instalment that is deductible to a Holder (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 on Cash Application will be deductible under section 25-25 of the ITAA 1997;
- (h) the Capital Protection Fee paid on Cash Application forms part of the cost base of the Underlying Parcel under section 134-1 of the ITAA 1997 if the Holder's Put Option is exercised;
- (i) for a Cash Applicant, the Capital Protection Fee forms 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;
- (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 Entities' Share 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 sections 110-25 and 112-35 of the ITAA 1997 (the price of the ABN AMRO SZB Self Funding Instalment plus the Instalment Payment) less the sum of the market value of the Underlying Entities' Share and the interest prepaid on the newly acquired Loan; or
 - if the market value of the Underlying Entities' Share 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 sections 110-25 and 112-35 of the ITAA 1997 (the price of the ABN AMRO SZB Self Funding Instalment plus the Instalment Payment) less the sum of the Instalment Payment and the interest prepaid on the newly acquired Loan;
- (k) for Secondary Market Purchasers the amount determined under paragraph 23(j) will be included in the cost base of the Underlying Parcel under section 134-1 of the ITAA 1997 if the Holder's Put Option is exercised;

- (l) for Secondary Market Purchasers the amount determined under paragraph 23(j) will be included in 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;
- (m) for capital gains tax (CGT) 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 Cash Application, or in the case of a Secondary Market Purchaser is the contract date for transfer of the ABN AMRO SZB Self Funding Instalment;
- (n) no CGT event arises when the legal title to the Underlying Parcel is transferred by the Security Trustee to the Holder on completion of the ABN AMRO SZB Self Funding Instalment pursuant to subsection 104-10(7) of the ITAA 1997;
- (o) CGT event A1 will occur under section 104-10 of the ITAA 1997 to the Holder 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 Holder to recover the shortfall. In these circumstances the Holder 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;
- (p) any capital gain realised by a Holder on the sale of the ABN AMRO SZB Self Funding Instalment or on sale of an Underlying Parcel received pursuant to completion of an ABN AMRO SZB Self Funding Instalment, will be treated as a discount capital gain under section 115-5 of the ITAA 1997 where the Holder is an individual, a complying superannuation entity, or a trust and has held the ABN AMRO SZB Self Funding Instalment for at least 12 months;
- (q) CGT event C2 will occur under section 104-25 of the ITAA 1997 on the Expiry Date if the Holder's Put Option is not exercised or lapses. The capital proceeds received on lapsing of the Holder's Put Option will be nil;
- (r) only the Holders in ABN AMRO SZB Self Funding Instalments (and not the Security Trustee) are assessable under section 97 of the ITAA 1936 on all of the income derived from the Underlying Parcel while the Underlying Parcel is the subject of the separate trust, including dividends and any Refund Amount which are applied in the reduction of the Loan Amount; and
- (s) the anti-avoidance provisions contained in Part IVA of the ITAA 1936 will not apply to deny deductibility of the interest incurred by a Holder in respect of the ABN AMRO SZB Self Funding Instalments.

Assumptions

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

- (a) all of the Holders are Australian residents for taxation purposes;
- (b) the Holders 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) in respect of any interest charges to be paid in advance, these may be prepaid, but only in relation to loan interest payment periods of 12 months or less that end on or before the last day of the income year following the expenditure year;
- (d) the dominant purpose of a Holder in entering the scheme is to derive assessable income from their investment in the ABN AMRO SZB Self Funding Instalments;
- (e) at all times during the scheme, where the Underlying Parcel includes units in a trust, the trust satisfies the requirements of subparagraph 82KZME(5)(b)(iii) of the ITAA 1936;
- (f) the scheme will be executed in the manner described in the 'Scheme' section of this Ruling;
- (g) all dealings between the Holders and ABN AMRO will be at arm's length; and
- (h) the Underlying Parcel will not be the subject of any securities lending arrangement entered into by or on behalf of the Holder.

Commissioner of Taxation14 June 2006

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

Section 8-1 of the ITAA 1997

25. 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).

26. No part of the interest charged on an investment in ABN AMRO SZB Self Funding Instalments is a capital protection fee. Holders 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 Holder acquired the ABN AMRO SZB Self Funding Instalment by Cash Application or by purchase on the ASX.

Section 51AAA of the ITAA 1936

27. By acquiring ABN AMRO SZB Self Funding Instalments, it is contemplated that a Holder 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 a Holder acquiring ABN AMRO SZB Self Funding Instalments.

Section 82KL of the ITAA 1936

28. 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

29. 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 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) 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 and 328-G of the ITAA 1997 – STS taxpayer

30. 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.

31. 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

32. 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.

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

33. 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.

34. 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 SZB Self Funding Instalments including the financing, share purchase, shareholding and disposal arrangements.

35. Under the scheme, when the Holder acquires an ABN AMRO SZB Self Funding Instalment, they acquire beneficial ownership of the Underlying Parcel.

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

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

Deductibility of expenditure must therefore be considered under the prepayment rules outlined in paragraphs 37 to 42 of this Ruling.

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

37. 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.

38. 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.

39. As the eligible service period in relation to the deductible interest for ABN AMRO SZB Self Funding 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

40. Section 82KZMD sets 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 carry on a business.

41. Section 82KZMA requires that 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.

42. For these taxpayers, the deduction for prepaid interest on the ABN AMRO SZB Self Funding Instalments will be apportioned over the relevant Interest Period.

Section 25-25 of the ITAA 1997: Borrowing Fees

43. The Borrowing Fee may be charged, at the discretion of the Issuer, at the time of Cash Application for making the Loan. No part of the Borrowing Fee, if charged, is a payment for the purchase of the Holder's Put Option. The Borrowing Fee is deductible in accordance with section 25-25.

Capital Protection Fee

44. 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 the 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.

45. 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.

Sections 110-25, 112-35 and 134-1 of the ITAA 1997***Cost Base of the Holder's Put Option for Cash Applicants***

46. The Capital Protection Fee paid on Cash Application forms the cost base of the Underlying Parcel under section 134-1 if the Holder's Put Option is exercised.

47. The Capital Protection Fee paid on Cash Application forms part of the cost base of the Holder's Put Option under section 110-25 if the Holder's Put Option is not exercised.

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

48. 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 sections 110-25 and 112-35 (the price of the ABN AMRO SZB Self Funding 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.

49. 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 sections 110-25 and 112-35 (the price of the ABN AMRO SZB Self Funding Instalment plus the Instalment Payment) less the sum of the Instalment Payment and the interest prepaid on the newly acquired Loan.

50. If the Holder's Put Option is exercised at the Expiry Date, the amount determined under paragraph 23(j) is included in the cost base of the Underlying Parcel under section 134-1.

51. If the Holder's Put Option is not exercised at the Expiry Date, the amount determined under paragraph 23(j) is included in the cost base of the Holder's Put Option under section 110-25.

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

52. Section 109-5 applies to Holders to treat them as having acquired the Underlying Parcel at the time from which the Holder 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 SZB Self Funding Instalment.

Subsection 104-10(7) of the ITAA 1997: no CGT event when Instalment Payment made

53. 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 Holder by virtue of subsection 104-10(7).

**Section 104-10 and subsection 110-45(3) of the ITAA 1997:
CGT event A1**

54. CGT event A1 will arise to the Holder if the Holder 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 Holder to recover the shortfall. In this circumstance the Holder will need to reduce the cost base of the Underlying Parcel by the amount of the shortfall under subsection 110-45(3).

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

55. Division 115 of the ITAA 1997 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 the ABN AMRO SZB Self Funding Instalment or on the sale of the Underlying Parcel received pursuant to the completion of an ABN AMRO SZB Self Funding 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 ABN AMRO SZB Self Funding Instalment for at least 12 months.

Section 104-25 of the ITAA 1997

56. Where, at the Expiry Date, the Holder makes the Completion Payment, 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 capital proceeds received on the lapsing of the Put Option will be nil.

Section 97 of the ITAA 1936

57. The Holder is presently entitled to all of the income derived from the Underlying Parcel including dividends and the Refund Amount which are applied to reduce the Loan. 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

58. Provided that the scheme ruled on is entered into and carried out as described (see the Scheme part of this Ruling), it would be accepted as an ordinary commercial transaction and Part IVA will not apply.

Appendix 2 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

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Subject references:

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

Legislative references:

- ITAA 1936 51AAA
- ITAA 1936 82KL
- ITAA 1936 Pt III Div 3 Subdiv H
- ITAA 1936 82KZL(1)
- ITAA 1936 82KZL(2)(a)
- ITAA 1936 82KZM
- ITAA 1936 82KZMA
- 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 97
- ITAA 1936 Pt IVA
- ITAA 1997 8-1
- ITAA 1997 25-25
- ITAA 1997 104-10
- ITAA 1997 104-10(7)
- ITAA 1997 104-25
- ITAA 1997 104-25(1)(c)
- ITAA 1997 109-5
- ITAA 1997 110-25
- ITAA 1997 110-45(3)
- ITAA 1997 112-35
- ITAA 1997 Div 115
- ITAA 1997 115-5
- ITAA 1997 134-1
- ITAA 1997 Subdiv 328-F
- ITAA 1997 Subdiv 328-G
- TAA 1953
- TAA 1953 Sch 357-75(1)
- Copyright Act 1968

ATO references

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