


PR 2007/93A1 - Addendum - Income tax: tax consequences of investing in the Westpac Protected Equity Loan

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Addendum

Product Ruling

Income tax: tax consequences of investing in the Westpac Protected Equity Loan

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Product Ruling PR 2007/93 to:

- incorporate amendments to Division 247 of the *Income Tax Assessment Act 1997* (ITAA 1997) and Division 247 of the *Income Tax (Transitional Provisions) Act 1997* to adjust the benchmark interest rate used to determine the cost of capital protection on a capital protected borrowing from the Reserve Bank of Australia's (RBA's) Indicator Lending Rate for Personal Unsecured Loans to the RBA's Indicator Lending Rate for Standard Variable Housing Loans plus 100 basis points; and
- reflect the ATO view with respect to the application of Division 247 of the ITAA 1997 to interest incurred on the Interest Loan, as set out in Taxation Determination TD 2013/1.

PR 2007/93 is amended as follows:

1. Paragraph 17

Omit subparagraphs 17(a), 17(b) and 17(c); substitute:

- (a) an amount equal to the interest charged on the PEL, reduced by an amount reasonably attributable to the cost of capital protection worked out under step 3 of the method statement in subsection 247-20(3) of the *Income Tax Assessment Act 1997* (ITAA 1997) or subsection 247-75(1) of the *Income Tax (Transitional Provisions) Act 1997* (IT(TP)A 1997), as applicable, will be deductible under section 8-1 of the ITAA 1997;

- (b) where the Investor enters into the PEL on or after 21 November 2007 but at or before 7.30 pm by legal time in the Australian Capital Territory on 13 May 2008, under subsection 247-75(1) of the IT(TP)A 1997 the amount reasonably attributable to the cost of capital protection under Division 247 of the IT(TP)A 1997, in an income year, is the amount by which the interest charged on the PEL exceeds the amount of the loan multiplied by the Reserve Bank of Australia's Indicator Lending Rate for Personal Unsecured Loans – Variable Rate (the 'personal unsecured loan rate') at the time when an interest payment is first incurred during the term of the PEL, or the relevant part of the term (subsection 247-75(2) of the IT(TP)A 1997);
- (ba) where the Investor enters into the PEL after 7.30 pm by legal time in the Australian Capital Territory on 13 May 2008 and on or before 30 June 2011, under subsection 247-20(3) of the ITAA 1997 the amount reasonably attributable to the cost of capital protection under Division 247 of the ITAA 1997, in an income year, is the amount by which the interest charged on the PEL exceeds the amount of the loan multiplied by the sum of the Reserve Bank of Australia's Indicator Lending Rate for Standard Variable Housing Loans and 100 basis points (the 'adjusted loan rate') at the time when an interest payment is first incurred during the term of the loan, or the relevant part of the term (subsections 247-20(4) and (5) of the ITAA 1997);
- (c) the amount reasonably attributable to the cost of capital protection under Division 247 of the ITAA 1997 or Division 247 of the IT(TP)A 1997, as applicable and as worked out under paragraph 17(b) or 17(ba) of this Ruling, is treated as the cost of the Investor's Put Option (Put Option Premium) under subsection 247-20(6) of the ITAA 1997. The Put Option Premium (if any) is not deductible under section 8-1 of the ITAA 1997;
- (ca) Division 247 of the ITAA 1997 and IT(TP)A 1997 will not apply to the Interest Loan. An amount equal to the interest charged on the Interest Loan will be deductible under section 8-1 of the ITAA 1997;

2. Paragraph 21

Omit subparagraph 21(l); substitute:

- (l) The Investor is not required to pay a separate fee for the Put Option, rather a portion of the interest payable under the PEL is allocated to the Put Option Premium. The Put Option Premium will be determined in accordance with paragraph 17(b) or 17(ba) of this Ruling and will vary depending on the term of the PEL.

3. Paragraphs 25 and 26

Omit the paragraphs; substitute:

25. Division 247 of the IT(TP)A 1997 sets out a methodology for reasonably attributing the cost of capital protection incurred by a borrower under a capital protected borrowing entered into on or after 21 November 2007 but at or before 7.30 pm by legal time in the Australian Capital Territory on 13 May 2008. Division 247 of the IT(TP)A 1997 ignores any amount which is not in substance for capital protection or interest in calculating the cost of capital protection, pursuant to subsection 247-75(1) of the IT(TP)A 1997.

25A. Division 247 of the ITAA 1997 sets out a methodology for reasonably attributing the cost of capital protection incurred by a borrower under a capital protected borrowing entered into after 7.30 pm by legal time in the Australian Capital Territory on 13 May 2008. Division 247 of the ITAA 1997 ignores any amount which is not in substance for capital protection or interest in calculating the cost of capital protection, pursuant to subsection 247-20(3) of the ITAA 1997.

26. Under the PEL, the amount reasonably attributable to the cost of capital protection is worked out under the method statement in subsection 247-75(1) of the IT(TP)A 1997 or subsection 247-20(3) of the ITAA 1997, as applicable and as set out in paragraph 17(b) or 17(ba) of this Ruling.

4. Paragraph 27

Omit the first sentence of the paragraph; substitute 'As there is no separate charge payable by an Investor in a PEL for the Put Option, the cost of the Investor's Put Option (if any), for the purposes of Division 247 of the ITAA 1997, is only that amount worked out under subsection 247-20(3) of the ITAA 1997 or subsection 247-75(1) of the IT(TP)A 1997, as applicable (subsection 247-20(6) of the ITAA 1997).'

5. Paragraph 28

Omit the paragraph; substitute:

28. For an Investor in a PEL, the Investor's Put Option is a capital asset. As the Put Option Premium is the cost of the Investor's Put Option, this expense is capital in nature and is not deductible. The interest charged on the PEL will be deductible under section 8-1 of the ITAA 1997 only to the extent that it does not constitute the Put Option Premium.

28A. There is no element of capital protection connected with the Interest Loan. No part of the interest incurred by the Investor on the Interest Loan for the income year will therefore be attributable to the cost of capital protection.

6. Paragraph 45

Omit the first sentence of the paragraph; substitute 'The Put Option Premium is not deductible to the Investor under section 8-1 of the ITAA 1997 (refer to paragraphs 17(b), 17(ba), 17(c) and 28 of this Ruling) and is included in the cost base and reduced cost base of the Put Option(s) acquired by the Investor pursuant to subsection 110-25(2) and subsection 110-55(2) of the ITAA 1997 respectively.'

7. Legislative references

Insert:

- ITAA 1997 247-20(4)
- ITAA 1997 247-20(5)
- IT(TP)A 1997 Div 247
- IT(TP)A 1997 247-75(1)
- IT(TP)A 1997 247-75(2)

This Addendum applies on and from 21 November 2007.

Commissioner of Taxation

10 April 2013

ATO references

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