

PR 2008/62 - Income tax: tax consequences of changing the portfolio structure, contributing to and partially redeeming an investment in a unit in Perpetual's Investor Choice Fund

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Product Ruling

Income tax: tax consequences of changing the portfolio structure, contributing to and partially redeeming an investment in a unit in Perpetual’s Investor Choice Fund

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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. 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.

Terms of use of this Product Ruling

This Product Ruling has been given on the basis that the entity(s) who applied for the Product 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 Product 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 in the Ruling part apply to the defined class of entities, who participate in the scheme to which this Product Ruling relates.
2. In this Product Ruling this scheme is referred to as Perpetual's Investor Choice Fund (the Fund).
3. This Ruling provides certainty as to the tax consequences of only certain aspects of the scheme, being changing their Portfolio Structure, contributing to an investment in a Unit and partially redeeming the investment in a Unit in the Fund. It does not provide and should not be taken to provide guidance as to any other tax consequences of investing in the Fund.

Class of entities

4. The class of entities who can rely on this Product Ruling consists of those entities that are accepted to participate in the scheme specified below on or after the date this Product Ruling is published and which execute relevant agreements mentioned in paragraph 18 of this Ruling on or before 30 June 2012. They must have a purpose of staying in the scheme until it is completed (that is being a party to the relevant agreements until their term expires), and deriving assessable income from this involvement. These entities are referred to as Investor/s.

Superannuation Industry (Supervision) Act 1993

5. This Product Ruling does not address the provisions of the *Superannuation Industry (Supervision) Act 1993* (SISA 1993). The Tax Office gives no assurance that the product is an appropriate investment for a superannuation fund. The trustees of superannuation funds are advised that no consideration has been given in this Product Ruling as to whether investment in this product may contravene the provisions of SISA 1993.

Qualifications

6. The class of entities defined in this Product Ruling may rely on it provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 17 to 21 of this Ruling.
7. If the scheme actually carried out is materially different from the scheme that is described in this Product Ruling, then:
 - this Product 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 Product Ruling may be withdrawn or modified.

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Date of effect

9. This Product Ruling applies prospectively from 10 September 2008, the date this Ruling is published. It therefore applies to the specified class of entities that enter into the scheme from 10 September 2008 until 30 June 2012, being its period of application. This Product Ruling will continue to apply to those entities even after its period of application for schemes entered into during the period of application.

10. However, the Product Ruling only applies to the extent that:

- there is no change in the scheme or in the entity's involvement in the scheme;
- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

11. 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)).

12. 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.

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).

Changes in the law

13. Although this Product Ruling deals with the laws enacted at the time it was issued, later amendments may impact on this Product Ruling. Any such changes will take precedence over the application of the Ruling and, to that extent, this Product Ruling will have no effect.

14. Entities who are considering participating in the scheme are advised to confirm with their taxation adviser that changes in the law have not affected this Product Ruling since it was issued.

Note to promoters and advisers

15. Product Rulings were introduced for the purpose of providing certainty about tax consequences for entities in schemes such as this. In keeping with that intention, the Tax Office suggests that promoters and advisers ensure that participants are fully informed of any legislative changes after the Product Ruling is issued.

Ruling

16. Subject to the assumptions in paragraph 21 of this Ruling:
- (a) changing the Investor's Portfolio Structure (see paragraph 20(c) of this Ruling), will not constitute a CGT event for an Investor for the purposes of Division 104 of the *Income Tax Assessment Act 1997* (ITAA 1997);
 - (b) an additional investment made by an Investor adding to an existing Unit will be included in the cost base of the Investor's Unit in the Fund under section 110-25 of the ITAA 1997;
 - (c) additional investments into the Fund by the Investor adding to an existing Unit will not alter the acquisition date of that Unit under section 109-10 of the ITAA 1997;
 - (d) CGT event E4 happens to an Investor under section 104-70 of the ITAA 1997 when an Investor makes a partial redemption of their investment in the Unit; and
 - (e) the anti-avoidance provisions contained in Part IVA of the *Income Tax Assessment Act 1936* (ITAA 1936) will not apply to a change in an Investor's Portfolio Structure, the acquisition of a Unit, the making of an additional investment to, or a partial redemption of, a Unit.

Scheme

17. The scheme that is the subject of this Product Ruling is described below. The scheme is incorporated within the following documents:

- Application for a Product Ruling received from Perpetual Investment Management Limited (PIML) on 30 June 2008;
- Trust Deed dated 16 May 1995 as amended by:
 - Deed of Amendment dated 7 May 1996;
 - Deed of Amendment dated 9 April 1998;
 - Deed Poll dated 14 December 1999;
 - Amending Deed dated 27 June 2000;
 - Amending Deed dated 12 September 2001;
 - Amending Deed dated 14 January 2002;
 - Deed of Amendment dated 21 September 2005; and
 - Amending Deed dated 30 March 2006; and
- Product Disclosure Statement Issue Number 2 dated 4 March 2005 including:
 - Supplementary Product Disclosure Statement Number 1 dated 1 May 2006; and
 - Supplementary Product Disclosure Statement Number 2 dated 15 May 2008.

Note: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

18. These documents, other than the Application for a Ruling, are those that an Investor must agree to be bound by. For the purposes of describing the scheme to which this Product Ruling applies, there are no other agreements, whether formal or informal, and whether or not legally enforceable, which an Investor or any associate of an Investor, will be a party to, which are a part of the scheme. The effect of these agreements is summarised in paragraph 20 of this Ruling.

19. All Australian Securities and Investment Commission (ASIC) requirements are, or will be, complied with for the term of the agreements.

Overview

20. The following is a summary of the scheme:
- (a) the Fund constitutes a trust. The responsible entity is PIML. The beneficial interest in the Fund is divided into units (Units). Each Investor holds one Unit in the Fund. Each Unit confers an undivided, but not necessarily equal interest;
 - (b) the Fund is notionally divided into asset groups (Asset Groups) comprising different types of investment portfolios. There are eight Asset Groups;
 - (c) an Investor is able to choose one Asset Group or a combination of Asset Groups (the Investor's Portfolio Structure);
 - (d) an Investor can change their Portfolio Structure at any time by reallocating their investment between Asset Groups without a payment or transfer of their Unit. Changing the Portfolio Structure may not change the value of the Unit (other than through any fees payable at the time and a provision for the transaction costs in adjusting the investments in the Asset Groups) however, it causes the proportion of each Asset Group within their Portfolio Structure to be recalculated;
 - (e) an Investor's entitlement to distributions from the Fund is based on their Portfolio Structure;
 - (f) the value of an Investor's Unit is initially the amount originally invested less any fees payable at the time;
 - (g) the value of an Investor's Unit changes based on changes in the net asset value, and proportion of, each Asset Group within their Portfolio Structure;
 - (h) an Investor can make additional investments. The value of their Unit is increased by the amount of the additional investment less any fees payable at the time. There is no additional Unit issued;
 - (i) an Investor can withdraw some of the value of their Unit by partially redeeming their investment in the Unit, subject to maintaining an overall minimum balance. The value of their Unit is reduced by the amount of the withdrawal; and
 - (j) although an Investor's entitlements are calculated based on their Portfolio Structure, their interest as a Unit holder in the Fund is in the Fund's assets as a whole and not any particular Asset Group.

Assumptions

21. This Ruling is made on the basis of the following assumptions:
- (a) each Investor is an Australian resident for income tax purposes;
 - (b) the Investors are not traders in investments and are not treated for taxation purposes as trading in interests in a Fund, carrying on a business of investing in a Fund, or holding their interests in a Fund as trading stock or as a revenue asset; and
 - (c) all dealings by the Investors, PIML and the Fund will be at arm's length.

Commissioner of Taxation10 September 2008

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.*

Division 104 of the ITAA 1997 – Investors changing their Portfolio Structure

22. The Investor holds a Unit in the Fund which constitutes an asset for CGT purposes (see Taxation Determination TD 2000/32).

23. Under the Trust Deed an Investor does not have a right to any particular asset of the Fund. If an Investor wishes to transfer their interests in the Fund, they must do so by transferring the Unit.

24. When an Investor changes their Portfolio Structure, they continue to hold that same Unit in the Fund.

25. No CGT event happens in respect of that Unit as there has been no change in its beneficial ownership and no surrendering of any entitlements. As such, no capital gain or loss is realised by the Investor at this time.

Section 110-25 – Additional investments

26. The Unit held by the Investor represents a right to a proportionate undivided interest in the assets of the Fund. If an Investor makes an additional investment, a new Unit will not be issued. The Investor will have a right to a greater proportion of the assets of the Fund (as opposed to the Fund assets simply having increased).

27. Additional amounts invested by an Investor will be included in the cost base of the Investor's Unit under section 110-25 of the ITAA 1997.

Section 109-10 – Acquisition date

28. The Unit is acquired otherwise than as a result of a CGT event happening. Item 3 of the table in section 109-10 of the ITAA 1997 provides that the Investor acquires the Unit when a contract is entered into or, if there is no contract, when the Unit is issued.

29. Additional contributions to an existing investment in a Unit will not alter the acquisition date of that Unit.

Section 104-70 – Partial redemption

30. If an Investor makes a partial withdrawal of the value of their Unit, CGT event C2 does not happen because the Unit continues to exist. CGT event E4 will happen to the Investor under section 104-70 of the ITAA 1997. If some or all of the partial redemption is a non-assessable payment, the cost base of the Investor's Unit is reduced by the non-assessable amount.

Part IVA

31. Provided that the scheme ruled on is entered into and carried out as disclosed (refer to the Scheme part of this Ruling) Part IVA of the ITAA 1936 will not apply to a change in the Portfolio Structure, the making of an additional investment in an existing Unit or a partial redemption of an investment in an existing Unit.

Appendix 2 – Detailed contents list

32. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TD 2000/32

Subject references:

- capital gains tax
- cost base
- financial products

Legislative references:

- ITAA 1936 Pt IVA
 - ITAA 1997 Div 104
 - ITAA 1997 104-70
 - ITAA 1997 109-10
 - ITAA 1997 110-25
 - SISA 1993
 - TAA 1953
 - TAA 1953 Sch 1 357-75(1)
 - Copyright Act 1968
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ATO references

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