


PR 2009/21A1 - Addendum - Income tax: tax consequences of investing in ANZ Protected Equity Leveraged Solutions II

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Addendum

Product Ruling

Income tax: tax consequences of investing in ANZ Protected Equity Leveraged Solutions II

This Addendum amends Product Ruling PR 2009/21 to include an additional Security covered by the Ruling.

PR 2009/21 is amended as follows:

1. Paragraph 3

After '29 April 2009'; insert 'and as amended on 6 December 2010'.

2. Paragraph 4

After the paragraph; insert:

4A. The class of entities who can rely on this Product Ruling does not include entities that are subject to Division 230 of the *Income Tax Assessment Act 1997* (ITAA 1997) in respect of this scheme. Division 230 will generally not apply to individuals, unless they have made an election for it to apply to them.

3. Paragraphs 11 and 12

Omit paragraphs; substitute:

11. On 11 May 2010, the Government released for consultation draft legislation that gives effect to announced changes to the benchmark interest rate in the capital protected borrowing rules referred to in subparagraph 14(a), (b) and (c) of this Ruling. These changes apply to capital protected borrowings entered into after 7:30pm (AEST) on 13 May 2008. If enacted, such changes will take precedence over the application of this Ruling and, to that extent, this Product Ruling will cease to have effect.

12. As this proposed law has not been enacted, the Commissioner cannot give a legally binding ruling on these changes until the relevant legislation is enacted. Once the changes are enacted, this Product Ruling will be reviewed to reflect the changes in the law.

4. Subparagraph 14(a)

Omit '*Income Tax Assessment Act 1997* (ITAA 1997)'; substitute 'ITAA 1997'.

5. Paragraph 15

Omit last two dot points, substitute:

- APELS II IM dated 29 April 2009 issued by ANZ and as amended 6 December 2010, which includes the Terms and Conditions of entering into APELS II; and
- Additional information and correspondence provided on 25 February 2009, 27 February 2009, 5 March 2009, 4 April 2009, 30 April 2010, 7 June 2010, 21 June 2010, 1 July 2010; 13 July 2010; 1 December 2010 and 6 December 2010.

6. Paragraph 18

(a) Omit subparagraphs 18(a) and 18(b); substitute:

- (o) APELS II consists of a limited recourse loan (Loan) from ANZ, used by the Investor to finance up to 100% of the purchase price of a Parcel of Australian Securities Exchange (ASX) listed shares, units or Clearing House Electronic Subregister System (CHESS) Depositary Interests (CDIs).
- (p) The Investor selects from a range of shares, units or CDIs listed on the ASX that the ANZ has approved for inclusion in APELS II (Security). The Investor grants a mortgage to ANZ over the Security as security for the Loan.

(b) Insert subparagraph 18(o):

- (o) A Deposit Account in APELS II does not earn any interest for the Investors.

7. Subparagraph 19(b) to (d)

Omit the subparagraphs; substitute:

- (b) the Security consists solely of ordinary shares in an ASX listed company or units in an ASX listed unit trust or ASX listed CDIs;
- (c) at all times during the arrangement, where the Security consists of units in a trust, the trust satisfies the requirements of subparagraph 82KZME(5)(b)(iii) of the ITAA 1936;

- (ca) at all times during the arrangement, where the underlying securities in the CDIs are shares in a company, the shares will satisfy the requirements of subparagraph 82KZME(5)(b)(ii) of the ITAA 1936;
- (cb) at all times during the arrangement, where the underlying securities in the CDIs are units in a unit trust, the trust will satisfy the requirements of subparagraph 82KZME(5)(b)(iii) of the ITAA 1936;
- (d) Investors hold the legal and (unless they are trustees) beneficial interest in the Security;

8. Paragraphs 20 to 22

Omit the paragraphs; substitute:

20. The interest paid on a borrowing used to acquire income producing assets such as shares, units in a unit trust or CDIs is generally treated as deductible under section 8-1 of the ITAA 1997 where it is expected that dividends, trust distributions or other assessable income would be derived from the investment (see Taxation Ruling TR 95/33). However, the ability to claim interest deductions may be subject to Division 247 of the ITAA 1997.

21. Division 247 of the ITAA 1997 limits the allowable deductions for expenditure incurred under a 'capital protected borrowing'. Broadly, a capital protected borrowing is created where an amount is borrowed under an arrangement where the borrower is protected against the fall in value of some specified shares, units or CDIs, where that borrowing is made for the purpose of investing in those shares, units or CDIs.

22. Division 247 of the ITAA 1997 applies to the Loan, as:

- (a) the Investor uses the Loan from ANZ to acquire ASX listed shares, units or CDIs; and
- (b) the Investor is protected against the fall in the market value of the Security.

9. Paragraph 34

Omit the paragraph; substitute:

34. For the purposes of section 82KZME of the ITAA 1936, 'agreements' are broadly defined to include an entire scheme of which a contract may form part. Under subsection 82KZME(4) of the ITAA 1936, the relevant agreement is all the contractual arrangements and activities associated with the participation in APELS II, including the financing; share, unit or CDI acquisition; and share, unit or CDI disposal arrangements.

10. Legislative references

Insert:

- ITAA 1997 Div 230

This Addendum applies on and from 12 January 2011.

Commissioner of Taxation

12 January 2011

ATO references

NO: 1-22BTRM7

ISSN: 1441-1172

ATOLaw topic: Income Tax ~~ Product ~~ finance