

PR 2011/18A1 - Addendum - Income tax: tax consequences for a Nominee Investor in the Australian Securities Property Fund

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Addendum

Product Ruling

Income tax: tax consequences for a Nominee Investor in the Australian Securities Property Fund

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Product Ruling PR 2011/18 to incorporate and reflect changes made by *Tax Laws Amendment (2011 Measures No. 5) Act 2011* to improve the taxation of trust income and to correct minor typographical errors.

PR 2011/18 is amended as follows:

1. Paragraph 11

After first occurrence of 'scheme'; insert 'between'.

2. Paragraph 17

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

(b) The Nominee Investor is assessable under section 97 of the *Income Tax Assessment Act 1936* (ITAA 1936) on so much of that share of the net income of the trust estate (as adjusted by Division 6E of the ITAA 1936) to which the Nominee Investor is presently entitled. The present entitlement of the Nominee Investor will reflect the Nominee Investor's fixed rights to income and capital gains derived from the Sub-scheme in which the Nominee Investor has a Membership Interest, commensurate to the proportion of the Sub-scheme Property funded by the Nominee Investor;

(c) The Nominee Investor is assessable under Division 102 on so much of the share of the net capital gain of the trust estate as determined by Subdivision 115-C. The Nominee Investor's share of the net capital gain of the trust estate will include fixed rights to capital gains derived from the sale of the Sub-scheme Property in which the Nominee Investor has an interest and in proportion to that interest held;

(b) Omit from subparagraph 17(i) 'subsection 1085(1)'; substitute 'subsection 108-5(1)'.

3. Paragraphs 47 and 48

Omit the paragraphs; substitute:

47. To the extent that the net income of a trust created under a Nominee Property Investment constitutes net income other than capital gains (that is, rental income), the Nominee Investor shall be assessable under section 97 of the ITAA 1936 on so much of the share of that net income of the trust as reflects the proportion of income of the trust estate to which the Nominee Investor is presently entitled, as adjusted by Division 6E of the ITAA 1936.

48. Where the net income of a trust created under a Nominee Property Investment includes a net capital gain from the sale of a Sub-scheme Property, the Nominee Investor is assessable under Division 102 on so much of the share of the net capital gain of the trust estate as determined and adjusted by Subdivision 115-C. Subsection 115-215(3) may deem the Nominee Investor to have made a capital gain referable to their attributable gain as calculated under section 115-225. This deemed amount may then be used to determine the assessable capital gain of the Nominee Investor in order to take into account certain capital gains tax concessions claimed by ASL as the Trustee. The capital gains of the Nominee Investor may be further adjusted by subsection 115-215(4), if applicable, to ensure they are taxed on the gain as if they had made the gain and not the Trustee.

4. Legislative references

Insert:

- ITAA 1936 Pt III Div 6E
- ITAA 1997 Subdiv 115-C
- ITAA 1997 115-215(3)
- ITAA 1997 115-215(4)
- ITAA 1997 115-225

This Addendum applies on and from 2 November 2011.

Commissioner of Taxation

7 March 2012

ATO references

NO: 1-304Q7RG

ISSN: 1441-1172

ATOlaw topic: Income Tax ~~ Product ~~ real property