


PR 2012/20 - Income tax: tax consequences of investing in ANZ Tailored Share Facility

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Product Ruling

Income tax: tax consequences of investing in ANZ Tailored Share Facility

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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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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 Commissioner **does not** sanction or guarantee this product. Further, the Commissioner gives 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. The Commissioner recommends 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 Product Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified in the Ruling section apply to the defined class of entities, who take part in the scheme to which this Ruling relates. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise indicated.
2. In this Product Ruling the scheme is referred to as the Tailored Share Facility offered by the Australia and New Zealand Banking Group Limited (ANZ), which is a financial product issued under the Tailored Share Facility Information Memorandum (IM).
3. This Product Ruling does not address:
 - (a) the taxation consequences of:
 - early termination of the Loan;
 - using the Loan to finance the exercise price of employee options;
 - Cash Settlement of the Protection where the value of the Securities is below the Protection Level on the Maturity Date;
 - roll-over of the Loan on maturity;
 - the Top-up Facility;
 - the Reset Facility;
 - buying or selling Options (other than the Protection under the Loan and the rights under the Protected Reduced Rate Facility of the Loan);
 - acquiring a Loan in respect of a Parcel (or Parcels) of Securities that an investor already holds; and
 - an Adjustment Event.which are described in the IM dated on or around 23 May 2012;
 - (b) the taxation consequences of income derived from the Securities;
 - (c) an investor's entitlement to franking credits;
 - (d) the deductibility or otherwise of an Establishment Fee for a Loan; and
 - (e) whether this scheme constitutes a financial arrangement for the purposes of Division 230 (Taxation of financial arrangements).

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 on or before 30 June 2015. They must have a purpose of remaining 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).

5. The class of entities who can rely on this Product Ruling does **not** include entities who:

- intend to terminate their involvement in the scheme prior to its completion, or who do not intend to derive assessable income from it;
- are accepted to participate in the scheme described below before the date of this Ruling or after 30 June 2015;
- participate in the scheme through offers made other than through the IM, or who enter into an undisclosed arrangement with the promoter or a promoter associate, or an independent adviser that is interdependent with scheme obligations and/or scheme benefits (which may include tax benefits) in any way;
- trade in Securities and are treated for taxation purposes as trading in Securities, carrying on a business of investing in the Securities, or holding the Securities as trading stock or as revenue assets; or
- are subject to Division 230 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.

Superannuation Industry (Supervision) Act 1993

6. This Product Ruling does not address the provisions of the *Superannuation Industry (Supervision) Act 1993* (SISA). The Commissioner gives no assurance that the scheme 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 scheme may contravene the provisions of SISA.

Qualifications

7. 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 16 to 20 of this Ruling.

8. 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

10. This Product Ruling applies prospectively from 23 May 2012, the date it is published. It therefore applies only to the specified class of entities that enter into the scheme from 23 May 2012 until 30 June 2015 being its period of application. This Product Ruling will continue to apply to those entities even after its period of application has ended for the scheme entered into during the period of application.

11. 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.

Changes in the law

12. Although this Product Ruling deals with the income tax 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 this Product Ruling and, to that extent, this Product Ruling will have no effect.

13. 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

14. 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 Commissioner suggests that promoters and advisers ensure that participants are fully informed of any legislative changes after the Product Ruling has issued.

Ruling

Application of this Ruling

15. Subject to paragraph 3 of this Ruling and the assumptions in paragraph 20 of this Ruling:

- (a) The interest charge under the Loan, 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), will be deductible under section 8-1;
- (b) Under subsection 247-20(3), the amount reasonably attributable to the cost of capital protection in an income year is the amount by which the interest charge under the Loan exceeds:
 - where interest is charged on the Loan from ANZ at a fixed rate for all or part of the term of the Loan and that fixed rate is applicable to the Loan for all or part of the income year, 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 the interest charge is first incurred during the term of the Loan, or the relevant part of the term (subsections 247-20(4) and (5)); and
 - where interest is charged on the Loan from ANZ at a variable rate for all or part of the term of the Loan and a variable rate is applicable to the Loan for all or part of the income year, the amount of the Loan multiplied by the average of the adjusted loan rates applicable during those parts of the income year when the Loan is at a variable rate (subsections 247-20(5) and (5A)).

- (c) The amount reasonably attributable to the cost of capital protection as worked out under subparagraph 15(b) of this Ruling, is treated as the cost of the put option (Protection) under subsection 247-20(6). This amount is not deductible under section 8-1;
- (d) Section 51AAA of the *Income Tax Assessment Act 1936* (ITAA 1936) will not apply to deny deductibility of the interest charge allowable as a deduction under section 8-1 of the ITAA 1997;
- (e) Section 82KL of the ITAA 1936 will not apply to deny deductibility of the interest charge allowable as a deduction under section 8-1 of the ITAA 1997;
- (f) Section 82KZMF of the ITAA 1936 will not apply to set the amount and timing of deductions for prepaid interest allowable as a deduction under section 8-1 of the ITAA 1997;
- (g) Section 82KZM of the ITAA 1936 will not apply to deny the investor immediate deductibility of any part of the interest charge allowable as a deduction under section 8-1 of the ITAA 1997, where at least one of the following applies for the year of income:
- the investor is a small business entity (as defined in subsection 328-110(1) of the ITAA 1997) that has not chosen to apply section 82KZMD of the ITAA 1936 to the expenditure; or
 - the investor is an individual who does not incur the interest charge in carrying on a business.
- (h) Sections 82KZMA and 82KZMD of the ITAA 1936 will apply to set the amount and timing of deductions for the prepaid interest charge, allowable as a deduction under section 8-1 of the ITAA 1997 to an investor (other than a small business entity for the year of income that has not chosen to apply section 82KZMD to the expenditure) who is a taxpayer that is not an individual and does not carry on a business;
- (i) If the Protection is exercised and the investor transfers the Securities to ANZ at the end of the term of the Loan, the cost of acquiring the Protection will be added to the cost base and reduced cost base of the Securities under section 134-1. Any capital gain or capital loss on exercise of the Protection will be disregarded;

- (j) If the Protection is not exercised at the end of the term of the Loan, capital gains tax (CGT) event C2 happens pursuant to paragraph 104-25(1)(c), resulting in a capital loss equal to the reduced cost base of the Protection under subsection 104-25(3);
- (k) For CGT purposes, the investor's date of acquisition of their interest in the Securities is the Commencement Date pursuant to subsection 109-5(2);
- (l) The cost base and reduced cost base that an investor has in the Securities will include the amount of the Loan used to finance the acquisition of the Securities, their Contribution (if any) towards the acquisition of the Securities, and incidental costs of acquisition and disposal pursuant to sections 110-25 and 110-55 respectively;
- (m) Any capital gain realised by an investor on the sale of Securities will be treated as a discount capital gain under section 115-5 where the investor is an individual or a trust and the sale occurs more than 12 months after the Commencement Date;
- (n) The investor's legally enforceable right under the Protected Reduced Rate Facility is a CGT asset under subsection 108-5(1). Payment by the investor under the Protected Reduced Rate Facility of the amount by which the Closing Price of the Securities exceeds the Cap Level on the Maturity Date will be included in the reduced cost base of the contractual right pursuant to subsections 110-25(2) and 110-55(2); and
- (o) The anti-avoidance provisions contained in Part IVA of the ITAA 1936 will not apply to deny deductibility of the interest incurred by the investor in respect of the Loan.

Scheme

16. 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 as constituted by documents and information received on 3 February 2012, 14 February 2012, 3 May 2012, 14 May 2012 and 15 May 2012; and
- draft Tailored Share Facility Information Memorandum dated 15 May 2012, including the Terms applicable to the Facility.

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

17. For the purposes of describing the scheme to which this 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.

18. Unless otherwise defined, capitalised terms in this Product Ruling take their meaning as per the draft IM. Any use of the singular also includes the plural unless otherwise specified.

Overview

19. Following is a summary of the scheme:

- (a) The Tailored Share Facility 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 Securities;
- (b) The investor selects from a range of Securities that ANZ have approved for inclusion in the Tailored Share Facility. The investor grants a Security Interest to ANZ over the Securities as security for the Loan;
- (c) An investor must complete an Application Form;
- (d) Unless subparagraph 19(e) of this Product Ruling applies, an investor who purchases multiple Parcels of Securities applies for a separate Loan and separate Protection for each Parcel of Securities;
- (e) An investor who purchases multiple Parcels of Securities can apply for a Basket investment structure (Basket), where offered by ANZ. A Basket consists of only one Loan and one Protection for the entire Basket;
- (f) If an Investor's Application Form has been accepted, the investor may then send a Transaction Request which specifies the Securities they propose to acquire with the Loan, the proposed Cap Level (if applicable), the proposed Protection Level, the proposed maturity (maximum 5 years) and whether the Loan is at a fixed or floating rate;
- (g) Based on the requested parameters, ANZ may offer a Loan and provide a Quote Sheet and/or a Confirmation Letter to the investor setting out the terms of the Loan;
- (h) The minimum loan amount is \$500,000 (or less at ANZ's discretion), subject to a minimum for each Parcel or Basket of Securities of \$100,000 (or less at ANZ's discretion). There is no maximum loan amount;

- (i) The Loan is made on a limited recourse basis (up to the agreed level of protection) and the proceeds are used to purchase the Securities, which is held by the investor subject to the Security Interest in accordance with the terms of the Tailored Share Facility. However, ANZ has full recourse against the investor to recover amounts in excess of the agreed level of protection, and for the payment of any other amounts owing in respect of the Loan, such as interest, costs, fees and taxes. The Securities are held by ANZ Securities Limited (or other Sponsoring Participant) as Sponsoring Participant for the purposes of CHES;
- (j) Interest on the Loan is payable in advance on each Interest Payment Date as specified in the relevant Confirmation Letter (unless agreed otherwise with ANZ);
- (k) There may be a different interest rate applicable to each Parcel of Securities or Basket. However, where an investor has acquired multiple Parcels of Securities and applied the Basket investment structure, ANZ will apply a single blended interest rate across all the Parcels of Securities held by that investor in the Basket. The interest rate will be determined prior to the Loans being made available and will be reflective of the type and size of the Parcels of Securities chosen, the Protection Level (and Cap Level, if relevant) chosen and the Maturity Date chosen;
- (l) The investor may elect to cap the level of capital growth in relation to a Parcel or Basket of Securities (Cap Level). This feature allows an investor to obtain a reduced rate of interest by agreeing to limit their entitlement to the capital growth of a Parcel or Basket of Securities. The reduction of the interest rate will depend on the Cap Level. This is the Protected Reduced Rate Facility;
- (m) At the Maturity Date, the investor can elect one of four options:
- exercise the Protection, (and specify whether the investor has elected Physical Settlement or Cash Settlement of the Protection):
 - (i) if Physical Settlement is chosen, the Securities will be transferred to ANZ for an amount equal to the Protection Level;

- (ii) if Cash Settlement is chosen, the investor will keep the Securities and will be required to pay to ANZ the Amount Outstanding. ANZ will be required to pay to the investor the amount by which the Protection Level exceeds the Closing Price (if any);
- keep the Securities and repay the Amount Outstanding using their own funds;
- authorise the sale of the Securities to ANZ, or authorise ANZ to instruct the Sponsoring Participant to sell the Securities and apply the sale proceeds to reduce the Amount Outstanding owing by the investor and ANZ to pay any excess to the investor. If the sale proceeds are insufficient to cover the Amount Outstanding, the investor must cover any shortfall;
- subject to ANZ's approval, roll-over the Loan on terms specified by ANZ.

In the absence of such an election, then:

- if the Closing Price of the relevant Parcel or Basket on the Maturity Date is less than the Protection Level, the investor will be deemed to have elected to exercise the Protection and have Physical Settlement apply; or
 - if the Closing Price of the relevant Parcel or Basket on the Maturity Date is equal to or greater than the Protection Level, that Parcel or Basket will be sold and the sale proceeds will be applied to reduce the Amount Outstanding before paying any excess to the investor.
- (n) On maturity, if the Closing Price of the Parcel or Basket on the Maturity Date exceeds the Cap Level for the Parcel or Basket, then an investor under the Protected Reduced Rate Facility must pay to ANZ on the Maturity Date an amount equal to the excess of the Closing Price over the Cap Level. Where an amount equal to the excess of the Closing Price over the Cap level is not paid by the investor, ANZ will enforce its Security Interest, sell the relevant Parcel or Basket and apply the proceeds:
- first, in paying to ANZ an amount equal to the excess of the Closing Price over the Cap Level;
 - second, in repaying the Amount Outstanding; and

- third, in paying any amount remaining to the investor.

Assumptions

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

- (a) all investors are Australian residents for taxation purposes;
- (b) the Securities consists solely of ordinary shares in an ASX-listed company or units in an ASX-listed unit trust or ASX-listed CHESS Depository Interests (CDIs);
- (c) at all times during the arrangement, where the Securities consist of units in a trust, the trust satisfies the requirements of subparagraph 82KZME(5)(b)(iii) of the ITAA 1936;
- (d) 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;
- (e) 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;
- (f) investors hold the legal and (unless they are trustees) beneficial interest in the Securities;
- (g) the investors are not traders in investments and are not treated for taxation purposes as trading in the Securities, carrying on a business of investing in the Securities, or holding the Securities as trading stock or a revenue asset;
- (h) in respect of any interest charges to be paid in advance under the Loan, these may be prepaid only in relation to a loan interest payment period of 12 months or less, and which ends on or before the last day of the income year following the expenditure year;
- (i) the dominant purpose of an investor in entering into the arrangement is to derive assessable income from the Securities acquired under the Tailored Share Facility, comprising dividends or trust distributions and capital gains;
- (j) the arrangement will be executed in the manner described in the 'Scheme' section of this Ruling and the scheme documentation referred to in paragraph 16 of this Ruling; and

- (k) all dealings by the investors and ANZ (or its nominee) under the product will be at arm's length.

Commissioner of Taxation

23 May 2012

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 and Division 247 – capital protected borrowings and deductibility of interest

21. The interest paid on a borrowing used to acquire income producing assets such as Securities is generally treated as deductible under section 8-1 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.

22. Division 247 limits the allowable deductions for expenditure incurred under a 'capital protected borrowing'. Broadly, a capital protected borrowing arises where an amount is borrowed under an arrangement where the borrower is protected against the fall in value of some specified securities, where that borrowing is made for the purpose of investing in those securities.

23. Division 247 applies to the Loan, as:

- (a) the investor uses the Loan from ANZ to acquire Securities; and
- (b) the investor is protected against the fall in the market value of those Securities.

24. Division 247 sets out a methodology for reasonably attributing the cost of capital protection incurred by a borrower under a capital protected borrowing. Division 247 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).

25. There is a cost of capital protection in an income year if the aggregate of the interest on the amount borrowed exceeds the total interest that would have been incurred for the year if the interest rate on the amount borrowed had been the adjusted loan rate (as determined when the interest rate is fixed or, if the interest rate is variable, the average of the adjusted loan rates during the variable interest rate period).

26. As there is no separate charge payable by an investor in the Tailored Share Facility for a put option, the cost of capital protection is the amount worked out under subsection 247-20(3).

27. For an investor in the Tailored Share Facility, the investor's Protection is a capital asset. As the cost of capital protection is the cost of the investor's Protection, this expense is capital in nature. The interest charge on the Loan will be deductible under section 8-1 only to the extent that it is not for the cost of capital protection.

28. Where an investor has acquired multiple Parcels of Securities (and applied the Basket investment structure) and ANZ has applied a single blended interest rate across all the Parcels of Securities held by the investor in the Basket, the investment will be treated as one arrangement for the purposes of Division 247.

Section 51AAA

29. By acquiring the Securities, it is contemplated that an investor will derive assessable income by way of the receipt of dividend income or trust distributions 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 of the ITAA 1936 has no application to an investor who enters into the Tailored Share Facility.

Section 82KL

30. The operation of section 82KL of the ITAA 1936 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

31. Subdivision H of Division 3 of Part III (Subdivision H) of the ITAA 1936 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 the carrying on of a business, whether the investor is a small business entity, whether the investor is an individual and whether the investor 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 that are of a capital nature.

Subdivision 328-C – small business entities

32. Under section 328-110, an investor carrying on a business in an income year will be a small business entity for that year (the current year) if:

- (a) the investor carried on a business in the previous income year and the aggregated turnover for that year was less than \$2 million;
- (b) the aggregated turnover for the current year is likely to be less than \$2 million and, where the investor carried on a business in each of the two previous income years, the aggregated turnover for each of those income years was less than \$2 million; or
- (c) the aggregated turnover for the current year, worked out as at the end of the year is less than \$2 million.

The eligible service period for the purposes of Subdivision H

33. The interest charge on the Loan deductible under section 8-1 of the ITAA 1997 is in relation to a prepayment of loan interest for a period that is 12 months or less. 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, and not to the period of the Loan.

Sections 82KZME and 82KZMF – prepaid expenditure and ‘tax shelter’ style arrangements

34. The rules in sections 82KZME and 82KZMF of the ITAA 1936 apply, subject to the exceptions in section 82KZME, where expenditure is incurred in relation to a ‘tax shelter’ style arrangement for the doing of a thing that is not to be wholly done within the expenditure year.

35. 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 the Tailored Share Facility, including the financing, Securities acquisition and Securities disposal arrangements.

36. Exception 1, as contained in subsection 82KZME(5) of the ITAA 1936, applies to exclude the amount allowable for interest on borrowings under the Loan from the operation of section 82KZMF of the ITAA 1936, as:

- (a) the prepaid interest expenditure under the Loan is incurred in respect of money borrowed to acquire the Securities that are listed for quotation on the ASX as described in subparagraphs 82KZME(5)(b)(ii) and (iii) of the ITAA 1936;
- (b) the investor can reasonably be expected to obtain dividends or trust distributions from the investment;
- (c) the investor will not obtain any other kind of assessable income from the investment except for capital gains; and
- (d) all aspects of the Tailored Share Facility are conducted at arm's length.

37. Deductibility of the prepaid interest must therefore be considered under the prepayment rules contained in paragraphs 38 to 43 of this Ruling.

Section 82KZM – prepaid expenditure incurred by certain small business entities and individuals incurring non-business expenditure

38. Section 82KZM of the ITAA 1936 operates to spread over more than one income year, a deduction for prepaid expenditure incurred by a taxpayer that is either:

- (a) a small business entity for the year of income that has not chosen to apply section 82KZMD of the ITAA 1936 to the expenditure; or
- (b) a taxpayer that is an individual and the expenditure is not incurred in carrying on a business.

39. The expenditure must not be excluded expenditure and must be incurred otherwise than in carrying on a business. Section 82KZM of the ITAA 1936 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.

40. As the eligible service period in relation to the deductible interest payment under the Loan 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 of the ITAA 1936 will have no application to investors who are a small business entity for the year of income that has not chosen to apply section 82KZMD of the ITAA 1936 to the expenditure, or to investors who are individuals where the expenditure is not incurred in carrying on a business. Investors who satisfy these tests will be able to claim an immediate deduction for the interest allowable under section 8-1 of the ITAA 1997 incurred under the Loan.

Section 82KZMD – prepaid non-business expenditure incurred by non-individual and non-small business entities

41. Section 82KZMD of the ITAA 1936 sets the amount and timing of deductions for expenditure for an investor (other than a small business entity for the year of income that has not chosen to apply section 82KZMD to the expenditure) that is not an individual and does not incur the expenditure in carrying on a business.

42. 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.

43. For these taxpayers, the amount of prepaid interest incurred under the Loan which is allowable as a deduction under section 8-1 will be apportioned over the relevant interest payment period.

Sections 110-25, 110-55 and 134-1 – cost base of the investor's Protection and the Securities

44. The cost of capital protection forms part of the cost base and reduced cost base of the Securities pursuant to section 134-1 if the Protection is exercised and the investor transfers the Securities to ANZ.

45. The cost of capital protection forms part of the reduced cost base of the Protection under section 110-55 if the Protection is not exercised.

46. The investor's cost base and reduced cost base in the Securities will include the amount of the Loan used to finance the acquisition of the Securities, their Contribution (if any) and incidental costs incurred by the investor in acquiring and disposing of the Securities (this includes stamp duty and costs of transfer) under section 110-25 and 110-55 respectively.

Section 109-5 – time of acquisition

47. For CGT purposes, the investor's date of acquisition of their interest in the Securities is the Commencement Date pursuant to subsection 109-5(2).

Sections 104-10, 104-25 and 134-1

48. If the Protection is exercised at the Maturity Date by transferring title to the Securities to ANZ and the proceeds are applied in repaying the Loan, any gain or loss on exercise of the Protection is disregarded (subsection 134-1(4)). The investor will include the cost base of the Protection in the second element of the cost base and reduced cost base of the Securities disposed to ANZ (item 2 of subsection 134-1(1)).

49. If the Protection is not exercised at the Maturity Date, the Protection expires and the investor will make a capital loss at that time, equal to the reduced cost base of the Protection (CGT Event C2, paragraph 104-25(1)(c)).

The Protected Reduced Rate Facility

50. The grant of a right by the investor to ANZ under the Protected Reduced Rate Facility gives rise to a CGT event D1 under section 104-35. This event will not result in a capital gain or loss arising for the investor (paragraph 116-30(3)(b)).

51. Under subsection 108-5(1) a CGT asset is any kind of property or a legal or equitable right that is not property. The right of an investor under the Protected Reduced Rate Facility, that is, the right to a reduced rate of interest on their Loan, is a legally enforceable right and therefore a CGT asset according to the definition in subsection 108-5(1).

52. At maturity, the investor's ownership of the contractual right under the Protected Reduced Rate Facility is discharged or satisfied. This discharge or satisfaction of the contractual right gives rise to CGT event C2 (paragraph 104-25(1)(b)).

53. The amount paid by the investor under the Protected Reduced Rate Facility, that is the difference between the Closing Price of the Parcel or Basket on the Maturity Date and the Cap Level, is capital expenditure made to acquire the contractual right referred to in paragraph 51 of this Product Ruling and will be included in the investor's reduced cost base in that CGT asset (subsections 110-25(2) and 110-55(2)). The investor will make a capital loss from this CGT event equal to the reduced cost base of their right under the Protected Reduced Rate Facility.

Section 115-5 – discount capital gains

54. Division 115 allows a taxpayer a discount on capital gains in certain circumstances. In accordance with section 115-5, any capital gain realised by an investor on the sale of the Securities will be treated as a discount capital gain where the investor is an individual or a trust and has held the Securities for more than 12 months (excluding the days of acquisition and disposal).

Part IVA

55. Provided that the arrangement ruled on is entered into and carried out as described (see the Scheme part of this Ruling), it will be accepted as an ordinary commercial transaction and Part IVA of the ITAA 1936 will not apply.

Appendix 2 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 95/33; PR 2009/21

Subject references:

- capital protected borrowings
- financial products
- interest expenses
- prepaid expenses
- product rulings
- public rulings
- taxation administration

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)
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- ITAA 1936 82KZMA
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