

PR 2024/3 - LongView Homeowner Funding Agreement



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Status: **legally binding**

Product Ruling

LongView Homeowner Funding Agreement

① Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Terms of use of this Ruling

This Ruling has been given on the basis that the entity who applied for the 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 Ruling.

Changes in the law

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 promoters and advisers ensure that participants are fully informed of any legislative changes after the Ruling has issued. Similarly, entities that are considering participating in the Scheme are advised to confirm with their tax adviser that changes in the law have not affected this Ruling since it was issued.

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.

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What this Ruling is about

1. This Ruling sets out the income tax consequences for individuals that participate as a Homeowner in a Homeowner Funding Agreement entered into with LongView SE Management QLD Pty Ltd or LongView SE Management Pty Ltd as trustee for the LongView Shared Equity Trust (together, referred to as LongView for the purposes of this Ruling) and offered by LongView Funds Management Pty Ltd.

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2. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated. Terms which are defined in a Homeowner Funding Agreement referred to in paragraph 10 of this Ruling have been capitalised.

3. This Ruling does not address:

- the tax consequences associated with the payment of the Homeowner Payment Amount by a Homeowner to Longview
- a Homeowner's tax obligations and benefits in relation to the acquisition, holding and sale of the Property
- a Homeowner's entitlement to the main residence exemption under Subdivision 118-B (except where specifically addressed in subparagraph 8(b) and paragraphs 33 and 34 of this Ruling), and
- whether this scheme constitutes a financial arrangement for the purposes of Division 230 (taxation of financial arrangements).

Who this Ruling applies to

4. This Ruling applies to you if you are:

- a resident of Australia for tax purposes, and
- accepted to participate in the scheme described in paragraphs 10 to 21 of this Ruling, as a Homeowner, on or after 1 July 2023 and on or before 30 June 2026.

5. This Ruling does not apply to you if you are:

- a non-resident for Australian tax purposes, and
- accepted to participate in the scheme described in paragraphs 10 to 21 of this Ruling before 1 July 2023 or after 30 June 2026.

Date of effect

6. This Ruling applies from 1 July 2023 to a Homeowner specified in paragraph 4 of this Ruling who enters into a Homeowner Funding Agreement from 1 July 2023 until 30 June 2026.

7. However, the Ruling only applies and may be relied on to the extent that there is no change in the scheme or in the Homeowner's involvement in the scheme. If the scheme carried out is materially different from the scheme described at paragraphs 10 to 21 of this Ruling, this Ruling cannot be relied upon and may be withdrawn or modified.

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Ruling

8. Subject to paragraph 3 of this Ruling and the assumptions in paragraph 9 of this Ruling:

- (a) The LongView Contribution received by a Homeowner from LongView under the terms of a Homeowner Funding Agreement will not be assessable to the Homeowner as ordinary income under section 6-5 or as statutory income under section 6-10.
- (b) A Homeowner's participation as the Homeowner under a Homeowner Funding Agreement will not impact the application of Subdivision 118-B.
- (c) Provided the scheme ruled on is entered into and carried out as described in this Ruling, the anti-avoidance provisions in Part IVA of the *Income Tax Assessment Act 1936* will not apply to include the LongView Contribution in the assessable income of the Homeowner.

Assumptions

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

- (a) The Homeowner is an Australian resident for tax purposes.
- (b) The scheme will be executed in the manner described in the Scheme section of this Ruling and scheme documentation referred to in paragraph 10 of this Ruling.
- (c) All dealings between the Homeowner and LongView will be at arm's length.

Scheme

10. The scheme is identified and described in the following:

- application for a product ruling as constituted by documents and information received on 18 December 2023 and 29 February 2024
- Homeowner Funding Agreement for a Homeowner that has entered into a Contract of Sale to acquire the Property, received on 19 December 2023, and
- Homeowner Funding Agreement for a Homeowner that is the owner of the Property, received on 29 February 2024.

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

11. For the purposes of describing the scheme, there are no other agreements (whether formal or informal, and whether or not legally enforceable) which a Homeowner, or any associate of a Homeowner, will be a party to which are a part of the scheme.

12. All Australian Securities and Investments Commission requirements are, or will be, complied with for the term of the agreements.

Status: **legally binding**

Overview of scheme

13. Under the terms of a Homeowner Funding Agreement entered into by Longview and a Homeowner, LongView agrees to make available to the Homeowner on the Date of Settlement the LongView Contribution for application towards:

- the Purchase Price, where the Homeowner has entered into a Contract of Sale to acquire a residential property other than an apartment (Property), or
- refinancing all or part of an existing First Ranking Loan or repatriating to the Homeowner previously contributed Homeowner Funds, where the Homeowner already owns the Property.

14. To be eligible, a Homeowner acquiring the Property must:

- have at least \$150,000 (or some other amount determined by LongView) in Homeowner Funds for their deposit, plus funds to cover stamp duty on the acquisition of the Property
- demonstrate that they can settle their acquisition of the Property with a combination of the LongView Contribution, the Homeowner Funds and any First Ranking Loan
- provide evidence that the First Ranking LVR¹ of any First Ranking Loan does not exceed the First Ranking LVR Cap set by LongView, and
- intend to occupy the Property as their residence.

15. To be eligible, a Homeowner who already owns a Property must provide evidence that the First Ranking LVR of any First Ranking Loan does not exceed the First Ranking LVR Cap set by LongView.

16. In consideration for the LongView Contribution, the Homeowner is required to pay to LongView the Homeowner Payment Amount on the earlier of the date of settlement of the sale of the Property by the Homeowner and the date on which Full Prepayment is either made or required to be made (the Closing Date).

17. Broadly, the Homeowner Payment Amount is equal to the LongView Contribution plus a percentage share of the growth in capital value of the Property (the LongView Equity Proportion). The proportion of the LongView Contribution to the Homeowner Funds will generally determine the LongView Equity Proportion², and the share of capital growth constituting the LongView Equity Proportion will be based on either:

- sale proceeds realised by the Homeowner from the sale of the Property, less approved agent fees and marketing costs and after repayment of the First Ranking Debt, or
- agreed market value in the event that the Homeowner retains the Property but elects to pay the Homeowner Payment Amount to LongView.

18. The Homeowner may at any time prepay some of the Homeowner Payment Amount to LongView without selling the Property.

19. The Homeowner's obligation to pay the Homeowner Payment Amount is secured against the Property as a second ranking mortgage ranking behind any First Ranking Mortgage securing payment of the First Ranking Debt, or as a first ranking mortgage where there is no First Ranking Loan (the LongView Security).

¹ In this Ruling LVR means loan to value ratio.

² The LongView Equity Proportion will increase by an additional 1% for each year following the 12th anniversary of the Date of Settlement.

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20. From the Date of Settlement until such time as the Homeowner has paid the Homeowner Payment Amount in full, the Homeowner agrees:

- not to grant a lease or other occupation right with respect to the Property without LongView's written consent
- not to grant any mortgage or other encumbrance in respect of the Property without LongView's written consent (other than those referred to in paragraph 19 of this Ruling)
- to maintain insurance for the full replacement value of the Property
- to notify LongView of their intention to make any material changes to the Property, and
- to be responsible for all costs associated with the maintenance of the Property.

21. The Homeowner does not grant to LongView (and the Homeowner Funding Agreement and the LongView Security do not create) any legal or equitable estate or interest in the Property (other than the LongView Security).

Commissioner of Taxation

1 May 2024

Status: **not legally binding**

Appendix – Explanation

❗ *This Explanation 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.*

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Ordinary income under section 6-5

22. Section 6-5 includes income according to ordinary concepts (ordinary income) as assessable income. The Income Tax Assessment Acts do not explain the meaning of 'income according to ordinary concepts' but a substantial body of case law exists which identifies likely characteristics.

23. In *GP International Pipecoaters Pty Ltd v Commissioner of Taxation (Cth)* [1990] HCA 25, the High Court stated:

...To determine whether a receipt is of an income or of a capital nature, various factors may be relevant. Sometimes, the character of receipts will be revealed most clearly by their periodicity, regularity or recurrence; sometimes, by the character of a right or thing disposed of in exchange for the receipt; sometimes, by the scope of the transaction, venture or business in or by reason of which money is received and by the recipient's purpose in engaging in the transaction, venture or business.

24. Ultimately, whether or not a particular amount is income according to ordinary concepts depends on the nature and character of the receipt in the hands of the recipient.

25. The LongView Contribution payable to the Homeowner by LongView under the terms of a Homeowner Funding Agreement does not possess the characteristics of ordinary income.

Statutory income under section 6-10

26. An amount that is not ordinary income may still be included in assessable income as a result of the operation of section 6-10 which includes statutory income in assessable income. Statutory income relevantly includes net capital gains under section 102-5. In broad terms, a net capital gain is the difference between an entity's capital gains and capital losses for an income year.

27. CGT event D1 under subsection 104-35(1) happens if you create a contractual right or other legal or equitable right in another entity.

28. Upon entry into a Homeowner Funding Agreement the Homeowner creates rights to LongView, including the contractual right to receive the Homeowner Payment Amount, and CGT event D1 happens in respect of the Homeowner, subject to the application of any exception under subsection 104-35(5).

29. Pursuant to paragraph 104-35(5)(a), CGT event D1 does not happen if you created the right by borrowing money or obtaining credit from another entity.

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30. The verb 'to borrow' is typically equated with the taking or obtaining of a thing on promise to return it or its equivalent or with the obtaining of the temporary use of something. The definition of the term 'borrowing' in subsection 995-1(1) is also instructive. There, borrowing is defined broadly to mean 'any form of borrowing, whether secured or unsecured, and includes the raising of funds by the issue of a bond, debenture, discounted security or other document evidencing indebtedness'.

31. The right created by the Homeowner in LongView to receive the Homeowner Payment Amount under the Agreement is considered to be created by the Homeowner's borrowing of money from LongView. That is, the Homeowner will receive the LongView Contribution, and in return will be indebted to pay the Homeowner Payment Amount (being an amount comprised, in part, of the LongView Contribution) on the Closing Date.

32. CGT event D1 will therefore not happen to the Homeowner upon entry into a Homeowner Funding Agreement.

Main residence exemption

33. CGT event A1 under subsection 104-10(1) happens when you dispose of a CGT asset. Any capital gain or capital loss made by the Homeowner from the disposal of the Property may be disregarded where relevant conditions set out under Subdivision 118-B are satisfied.

34. Where a Homeowner is otherwise eligible to disregard all or some part of a capital gain or capital loss they make under section 104-10 from the disposal of the Property (because each of the relevant conditions set out in Subdivision 118-B are satisfied), their participation as the Homeowner under a Homeowner Funding Agreement will not change that eligibility.

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References

Legislative references:

- ITAA 1936 Pt IVA
- ITAA 1997 6-5
- ITAA 1997 6-10
- ITAA 1997 102-5
- ITAA 1997 104-10
- ITAA 1997 104-10(1)
- ITAA 1997 104-35(1)
- ITAA 1997 104-35(5)
- ITAA 1997 104-35(5)(a)

- ITAA 1997 Subdiv 118-B
- ITAA 1997 Div 230
- ITAA 1997 995-1(1)

Cases relied on:

- GP International Pipecoaters Pty Ltd v Commissioner of Taxation (Cth) [1990] HCA 25; 90 ATC 4413; 21 ATR 1; 170 CLR 124

ATO references

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