


# ***PR 2024/7 - Perpetual WealthFocus Investment Advantage Fund***

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Status: **legally binding**

## Product Ruling

# Perpetual WealthFocus Investment Advantage Fund

### **📌 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 Project 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 specific income tax consequences for entities that participate as an Investor in the Perpetual WealthFocus Investment Advantage Fund (the Fund) offered by Perpetual Investment Management Limited (PIML) under a Product Disclosure Statement.
2. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated. Terms which are defined in the Constitution referred to in paragraph 11 of this Ruling have been capitalised.
3. This Ruling only addresses the tax consequences of certain transactions and decisions that an Investor in the scheme may make. The relevant transactions and decisions are where an Investor in the scheme:
  - changes the portfolio structure of their investment
  - contributes an amount which is in addition to their initial investment in a Unit in the Fund, and
  - partially withdraws their investment in a Unit in the Fund.

This Ruling does not provide guidance as to any other tax consequences of investing in the Fund.

### Who this Ruling applies to

4. This Ruling applies to you if you are accepted to participate in the scheme described in paragraphs 11 to 25 of this Ruling, as an Investor, on or after 1 July 2024 and on or before 30 June 2027.
5. This Ruling does not apply to you if you are:
  - accepted to participate in the scheme before 1 July 2024 or after 30 June 2027, or
  - subject to Division 230 in respect of this scheme.

### Requirements of the *Superannuation Industry (Supervision) Act 1993*

6. This Ruling does not address the provisions of the *Superannuation Industry (Supervision) Act 1993*. 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 Ruling as to whether investment in this scheme may contravene the provisions of the *Superannuation Industry (Supervision) Act 1993*.

### Date of effect

7. This Ruling applies from 1 July 2024 to an Investor specified in paragraph 4 of this Ruling that enters into the scheme from 1 July 2024 until 30 June 2027.
8. However, the Ruling only applies and may be relied on to the extent that there is no change in the scheme or in the Investor's involvement in the scheme. If the scheme carried out is materially different from the scheme described at paragraphs 11 to 25 of this Ruling, this Ruling cannot be relied upon and may be withdrawn or modified.

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## Ruling

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9. Subject to the assumptions in paragraph 10 of this Ruling:
- (a) Changing the Investor's portfolio structure will not constitute a CGT event for an Investor for the purposes of Division 104.
  - (b) An additional investment into the Fund by an Investor to an existing Unit will be included in the cost base and the reduced cost base of the Investor's Unit in the Fund under sections 110-25 and 110-55 respectively.
  - (c) An additional investment into the Fund by an Investor to an existing Unit will not alter the acquisition date of that Unit under section 109-10.
  - (d) When an Investor makes a partial withdrawal of their investment in a Unit, the amount withdrawn will, for the purposes of making an annual adjustment to the cost base and reduced cost base of the Unit under section 104-107B, be included in the Unit's 'AMIT cost base reduction amount' for the income year under section 104-107D.
  - (e) The anti-avoidance provisions in Part IVA of the *Income Tax Assessment Act 1936* will not apply to a change in an Investor's portfolio structure, the making of an additional investment to, or a partial withdrawal from, a Unit.

## Assumptions

10. This Ruling is made on the basis of the following necessary assumptions:
- (a) The Investor is an Australian resident for tax purposes.
  - (b) The Investor is not a trader in investments and is not treated for tax purposes as trading in interests in the Fund, carrying on a business of investing in the Fund, or holding their interests in the Fund as trading stock or as a revenue asset.
  - (c) The Investor is not subject to Division 230 in respect of this scheme.
  - (d) The scheme will be executed in the manner described in the Scheme section of this Ruling and the scheme documentation referred to in paragraph 11 of this Ruling.
  - (e) All dealings between the Investor, PIML and the Fund will be at arm's length.

## Scheme

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11. The scheme is identified and described in the following:
- application for a product ruling as constituted by documents and information received on 17 April 2024
  - Perpetual WealthFocus Investment Advantage Product Disclosure Statement dated 18 December 2023
  - Perpetual WealthFocus Investment Advantage Features Book dated 18 December 2023

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- Perpetual WealthFocus Investment Book dated 2 February 2024, and
- Consolidated Constitution to the Perpetual WealthFocus Investment Advantage Fund dated 11 February 2021 and Amending Deeds dated 24 June 2021, 8 December 2021, 18 November 2022 and 10 April 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.

12. For the purposes of describing the scheme, 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.

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

### Overview of scheme

14. The Fund is a fixed trust. The responsible entity is PIML. The beneficial interest in the Fund is divided into Units. Each Investor holds one Unit in the Fund. Each Unit confers an undivided, but not necessarily equal, interest in the Fund.

15. The Fund elected into the attribution managed investment trust (AMIT) regime for the year ended 30 June 2018 and all subsequent income years pursuant to subparagraph 276-10(1)(e)(i).

16. The Fund is notionally divided into Asset Groups<sup>1</sup> comprising different types of investment portfolios. Some Asset Groups may be closed, and others may be added over time.

17. Each Asset Group is not a separate AMIT pursuant to section 276-20, nor is there any other class of membership interests in the Fund which is treated as a separate AMIT pursuant to section 276-20.

18. An Investor is able to choose one Asset Group or a combination of Asset Groups (the Investor's portfolio structure).

19. 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 a provision for the transaction costs in adjusting the investments in the Asset Groups). Changing the portfolio structure will, however, cause the proportion of each Asset Group within their portfolio structure to be recalculated.

20. An Investor's entitlement to distributions and the attribution of income to the Investor from the Fund is based on their portfolio structure.

21. The value of an Investor's Unit is initially the amount originally invested.

22. The value of an Investor's Unit changes based on changes in the net asset value and the proportion of each Asset Group within their portfolio structure.

23. An Investor can make additional investments. The value of their Unit is increased by the amount of the additional investment. There is no additional Unit issued.

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<sup>1</sup> Commonly referred to as 'investment options' in the Product Disclosure Statement.

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24. 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.

25. 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.

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**Commissioner of Taxation**

29 May 2024

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## Appendix – Explanation

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**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.*

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### **Division 104 – Investors changing their portfolio structure**

26. The Investor holds a Unit in the Fund which constitutes an asset for CGT purposes – see Taxation Determination TD 2000/32 *Income tax: capital gains: for capital gains purposes is the unit held by a unit holder in a unit trust the relevant CGT asset?*

27. Under the Constitution to the Perpetual WealthFocus Investment Advantage Fund 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.

28. When an Investor changes their portfolio structure, they continue to hold that same Unit in the Fund.

29. 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 capital loss is realised by the Investor at this time.

### **Sections 110-25 and 110-55 – additional investments**

30. 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's assets having increased).

31. Additional amounts invested by an Investor will be included in the cost base and the reduced cost base of the Investor's Unit (sections 110-25 and 110-55).

### **Section 109-10 – acquisition date**

32. The Unit is acquired otherwise than as a result of a CGT event happening. Pursuant to table item 3 of section 109-10, the Investor acquires the Unit when a contract is entered into or, if there is no contract, when the Unit is issued.

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

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**Section 104-107D – partial withdrawal**

34. If an Investor makes a partial withdrawal of the value of their Unit, CGT event C2 under section 104-25 does not happen because the Unit continues to exist.

35. As a member of an AMIT, the Investor will make annual adjustments to the cost base and the reduced cost base of their Unit in the Fund pursuant to section 104-107B equal to the Unit's 'AMIT cost base net amount' worked out under section 104-107C (being the net difference between the AMIT cost base reduction amount and the 'AMIT cost base increase amount'). In determining the Unit's AMIT cost base net amount for the income year, the amount partially withdrawn by the Investor will be included in the calculation of the Unit's AMIT cost base reduction amount for the income year under section 104-107D.

36. In the event that the AMIT cost base net amount for the income year exceeds the Investor's cost base in the Unit, the cost base and the reduced cost base of the Unit will be reduced to nil and CGT event E10 under section 104-107A will happen to the Investor such that a capital gain equal to that excess will arise.

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## References

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*Related Rulings/Determinations:*

TD 2000/32

- ITAA 1997 104-107C

- ITAA 1997 104-107D

- ITAA 1997 109-10

- ITAA 1997 110-25

- ITAA 1997 110-55

- ITAA 1997 Div 230

- ITAA 1997 276-10(1)(e)(i)

- ITAA 1997 276-20

- SISA 1993

*Legislative references:*

- ITAA 1936 Pt IVA

- ITAA 1997 Div 104

- ITAA 1997 104-25

- ITAA 1997 104-107A

- ITAA 1997 104-107B

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ATO references

NO: 1-11SU7EZ4

ISSN: 2205-6114

BSL: PW

ATOlaw topic Income tax ~~ Financial arrangements ~~ Other

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