

PR 2023/11 - Mortgage House Blended Plus Loan Facility



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Product Ruling

Mortgage House Blended Plus Loan Facility

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 entities that participate as a borrower in a Blended Plus Loan Facility, marketed as the Mortgage House Blended Plus Loan Facility.

Status: **legally binding**

2. All legislative references in this Ruling are to the *Income Tax Assessment Act 1936*, unless otherwise indicated.
3. The scheme involves the application of a customer loyalty rebate to calculate a discounted interest rate that is charged by Mortgage House Capital Funding No. 1 Pty Ltd, Well Nigh Capital Funding No. 1 Pty Ltd, Mortgage Street Capital Funding Pty Ltd and RM Funding Capital Pty Ltd (collectively referred to as Mortgage House) on a home loan of a borrower who (directly or indirectly via an associated entity) also has one or more investment loans with Mortgage House.
4. This Ruling does not address:
- the tax consequences associated with the home loan of the borrower or with any offset account linked to the home loan or investment loan of the borrower
 - the deductibility of interest incurred by the borrower under their investment loan pursuant to section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997)¹
 - the tax treatment of any costs, fees and expenses payable by the borrower in respect of their home loan or investment loan
 - the tax consequences for the borrower in relation to the acquisition, holding and sale of a property or any other asset acquired with the proceeds of their investment loan, and
 - whether the scheme constitutes a financial arrangement for the purposes of Division 230 of the ITAA 1997 (taxation of financial arrangements).

Who this Ruling applies to

5. This part of the Ruling specifies which entities can rely on the Ruling section and which entities cannot rely on the Ruling section. Those entities that can rely on the Ruling section are referred to as 'the borrower'. Where the borrower under the investment loan is an associate² of the borrower under the home loan, all references to the borrower under this Ruling are to be read as a reference to the applicable borrower under either loan, as the context requires.
6. The class of entities that can rely on the Ruling section of this Ruling consists of those entities that, as the borrower, enter into the scheme described in paragraphs 12 to 25 of this Ruling on or after 1 July 2023 and on or before 30 June 2026.
7. The class of entities that can rely on the Ruling section of this Ruling does **not** include entities that:
- are non-residents for Australian tax purposes, or
 - as the borrower, enter into the scheme described in paragraphs 12 to 25 of this Ruling before 1 July 2023 or after 30 June 2026.

¹ For the purposes of this Ruling, it is assumed at subparagraph 11(b) of this Ruling that interest incurred by the borrower under their investment loan is deductible under section 8-1 of the ITAA 1997.

² Where used in this Ruling, the word 'associate' has the meaning given in section 318.

Status: **legally binding**

Date of effect

8. This Ruling applies to the specified class of entities that enter into the scheme from 1 July 2023 until 30 June 2026, being its period of application. This Ruling will continue to apply to those entities even after its period of application has ended for the scheme.

9. However, this Ruling only applies and may be relied on to the extent that there is no change in the scheme or in the entity's involvement in the scheme. If the scheme carried out is materially different from the Scheme described at paragraphs 12 to 25 of this Ruling, this Ruling cannot be relied upon and may be withdrawn or modified.

Ruling

10. The application of Part IVA depends on a careful weighing of all the relevant facts and circumstances of each case. Provided the scheme ruled on is entered into and carried out as described in this Ruling, the anti-avoidance provisions in Part IVA will not apply to deny the borrower any deduction allowable under section 8-1 of the ITAA 1997 for interest incurred on their investment loan.

Assumptions

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

- (a) The borrower is an Australian resident for tax purposes.
- (b) The investment loan is used to acquire or refinance an asset held by the borrower for the purposes of gaining or producing assessable income and the interest incurred by the borrower under that loan is deductible from their assessable income pursuant to section 8-1 of the ITAA 1997.
- (c) The borrower does not draw-down on a line of credit to pay the interest on the investment loan.
- (d) All dealings between the borrower and Mortgage House is at arm's length.
- (e) The scheme is executed in the manner described in the Scheme section of this Ruling.

Scheme

12. The scheme that is the subject of this Ruling is identified and described in the application for a product ruling as constituted by documents and information received on 19 April 2023.

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

13. For the purposes of describing the scheme to which this Ruling applies, and aside from the relevant home and investment loan documentation to be executed between the borrower and Mortgage House, there are no other agreements (whether formal or informal

Status: **legally binding**

and whether legally enforceable) which the borrower, or any associate of the borrower, will be a party to which are a part of the scheme.

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

Overview of scheme

15. The Blended Plus Loan Facility is a facility under which Mortgage House applies a customer loyalty rebate in recognition of the borrower's broader loan portfolio. Mortgage House offers this by calculating on an ongoing basis a level of discount that can be applied to a borrower's home loan interest rate against the standard variable home loan rate, while maintaining a total return on all money loaned to the borrower at a rate which produces an acceptable return for Mortgage House.

16. Mortgage House will arrange for new loans or refinance existing loans under the terms of the Blended Plus Loan Facility offered to a borrower. The borrower has or will procure both a home loan in respect of a residential property that is their principal place of residence (the owner-occupied property) and (directly or indirectly via an entity that is an associate of the borrower) one or more investment loans used to fund an asset (the investment asset) acquired for the purposes of producing assessable income. The investment asset may be a residential property other than the owner-occupied property, or any other asset.

17. The home loan will be secured by the underlying owner-occupied property. The principal borrowed under that home loan will be capped at 95% of the value of the owner-occupied property (with lenders mortgage insurance applying for home loans where the principal borrowed is above 80% of the value of the owner-occupied property).

18. Where the investment asset is a residential property, the investment loan will be secured by that property. The principal borrowed under that investment loan will be capped at 90% of the value of the residential property (with lenders mortgage insurance applying for investment loans where the principal borrowed is above 80% of the value of the residential property).

19. Mortgage House will automatically apply a re-calculated interest rate to a borrower's home loan where:

- Mortgage House varies its acceptable return
- either of the borrower's home loan or investment loan is substantially repaid, or
- a new or refinanced loan is advanced.

20. Subject to the occurrence of any of the factors listed in paragraph 19 of this Ruling, a discounted interest rate on a borrower's home loan, as calculated under the Blended Plus Loan Facility, will be applied for 3 months, following which the borrower's loan portfolio with Mortgage House will be reviewed and may result in a further home loan interest rate adjustment.

21. Except for the discounted interest rate (which is subject to a floor rate of 0.75% above the Reserve Bank of Australia (RBA) cash rate), home loans subject to the Blended Plus Loan Facility will be offered, struck and maintained on standard terms offered by Mortgage House in all respects. Any part of the customer loyalty rebate that would otherwise entitle the borrower to a discounted home loan interest rate that is lower than the floor rate would instead be applied to lower the borrower's investment loan interest rate.

Status: **legally binding**

22. Except for what is contemplated in paragraph 21 of this Ruling, the borrower's investment loan will not be impacted by the Blended Plus Loan Facility and will remain on standard terms offered by Mortgage House in all respects (subject to a ceiling on the rate of interest charged above the RBA cash rate³). The ceiling on the rate of interest is:

- set at 3.09% above the RBA cash rate as at 12 July 2023, and
- reviewed on a monthly basis against the market.

23. Except for what is contemplated in paragraph 21 of this Ruling, the Blended Plus Loan Facility does not apply a recalculated interest rate to a borrower's investment loan. **A borrower cannot rely on the Ruling section of this Ruling if the interest rate charged on the borrower's investment loan increases as a result of, or in connection with, a discount of the interest rate applied to the borrower's home loan.**

24. The Blended Plus Loan Facility does not allow for the interest rate charged on a new or refinanced investment loan to a borrower to be either a leading rate⁴ or higher than Mortgage House's standard variable rate for that particular type of investment loan⁵ (even where Mortgage House's standard variable rate for that type of investment loan is lower than the ceiling referred to in paragraph 22 of this Ruling). **A borrower cannot rely on the Ruling section of this Ruling if the restrictions set out in this paragraph are not adhered to.**

25. Neither of the borrower's home loan or investment loan:

- is or will be part of a linked or split loan facility as described in paragraphs 3 to 6 of Taxation Ruling TR 98/22 *Income tax: the taxation consequences for taxpayers entering into certain linked or split loan facilities*
- involves or will involve any capitalisation of interest
- is or will be subject to any cross collateralisation (outside of any standard bank security arrangements), or
- is or will be part of an 'investment loan interest payment arrangement' as described in Taxation Determination TD 2012/1 *Income tax: can Part IVA of the Income Tax Assessment Act 1936 apply to deny a deduction for some, or all, of the interest expense incurred in respect of an 'investment loan interest payment arrangement' of the type described in this Determination?*

Commissioner of Taxation

12 July 2023

³ Notwithstanding this ceiling, the interest rate charged on the investment loan cannot exceed Mortgage House's standard variable rate for that particular type of investment loan (for example, Mortgage House's standard variable rate for interest only investment loans).

⁴ For the purposes of this Ruling, a 'leading rate' refers to an investment loan interest rate that is higher than the average standard variable rate for an equivalent investment loan offered by the 'Big 4' banks at the time.

⁵ For example, if the borrower's new or refinanced investment loan is an interest only loan, the interest rate charged to the borrower cannot be higher than Mortgage House's standard variable interest rate for interest-only investment loans.

Status: **not legally binding**

Appendix – Explanation

❶ ***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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Refinancing an original loan

26. The interest expense on a new loan will be deductible if the new loan is used to repay an existing loan which, at the time of the second borrowing, was being used in an assessable income producing activity (see paragraph 42 of Taxation Ruling TR 95/25 *Income tax: deductions for interest under section 8-1 of the Income Tax Assessment Act 1997 following FC of T v. Roberts; FC of T v. Smith* referring to *Commissioner of Taxation v Roberts, J.D. Commissioner of Taxation v Smith, V.R. [1992] FCA 543*).

27. Pursuant to the assumption at subparagraph 11(b) of this Ruling, the borrower's investment loan is used in an assessable income producing activity. On the basis of that assumption and consistent with the principle set out in paragraph 26 of this Ruling, interest incurred on any refinanced investment loan of the borrower will therefore also be deductible under section 8-1 of the ITAA 1997.

Application of Part IVA

28. Part IVA is a general anti-avoidance rule which gives the Commissioner the ability to cancel all or part of a tax benefit that has been obtained, or would, but for section 177F, be obtained, by a taxpayer in connection with a scheme to which Part IVA applies.

29. In broad terms, Part IVA will apply where the following requirements are satisfied:

- there is a 'scheme' as defined in section 177A
- there is a 'tax benefit' that, in relation to allowable deductions, is defined in paragraph 177C(1)(b) as
 - a deduction being allowable to the taxpayer in relation to a year of income where the whole or part of that deduction would not have been allowable, or might reasonably be expected not to have been allowable, to the taxpayer in relation to that year of income if the scheme had not been entered into or carried out
- having regard to the 8 objective matters identified in subsection 177D(2), it would be concluded that the person, or one of the persons, who entered into or carried out the scheme (or any part of it) did so for the dominant purpose of enabling the taxpayer to obtain the tax benefit in connection with the scheme, and
- the Commissioner makes a determination that the whole or part of the amount '... of a tax benefit that is referable to a deduction ... shall not be allowable ...' (paragraph 177F(1)(b)).

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30. Provided that the scheme ruled on is entered into and carried out in the manner described in the Scheme section of this Ruling, and having regard to the matters in subsection 177D(2), it is not a scheme entered into or carried out for the dominant purpose of enabling the borrower to obtain a tax benefit in connection with the scheme.

Status: **not legally binding**

References

Related Rulings/Determinations:

TR 95/25; TR 98/22; TD 2012/1

- ITAA 1936 318
- ITAA 1997 8-1
- ITAA 1997 Div 230

Legislative references:

- ITAA 1936 Pt IVA
- ITAA 1936 177A
- ITAA 1936 177C(1)(b)
- ITAA 1936 177D(2)
- ITAA 1936 177F
- ITAA 1936 177F(1)(b)

Cases relied on:

- Commissioner of Taxation v Roberts, J.D.
Commissioner of Taxation v Smith, V.R.
[1992] FCA 543; 37 FCR 246; 92 ATC
4380; 23 ATR 494; 108 ALR 385

ATO references

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