

Important update on taxation

The Australian Tax Office (ATO) recently issued two Taxation Determinations (“TDs”) outlining its current view on the taxation of Deferred Purchase Agreements (“DPAs”) (discussed below). These changes are relevant to your MERC Securities investment at Maturity. We recommend you seek independent professional taxation advice on the taxation implications of these Taxation Determinations applicable to your own individual facts and circumstances.

Update to the Macquarie Enhanced Resources and Commodity (“MERC”) Securities Product Disclosure Statements (“PDS”)¹

The PDS described the income tax implications for an Investor on Maturity of their MERC Security where the Investor receives the Delivery Securities as follows:

“There should be no income tax implications for an Investor on Maturity of their MERC Security where the Investor receives the Delivery Securities. In particular, the ATO should not treat investors as realising a capital gain on Macquarie satisfying its obligations under the Terms and Conditions to deliver the Delivery Securities to the Investor (refer National Tax Liaison Group CGT Subcommittee meeting minutes 10 June 1998). Investors should note that views expressed in this forum are not binding on the ATO and, although we are not aware of any proposal to change these views, it is possible that the ATO may change its view in the future.”

TD 2008/21 and TD 2008/22 outline the ATO’s current approach to the taxation of DPAs. The ATO view outlined in TD 2008/22 is that, contrary to the comments above, a capital gains tax event (CGT Event) “C2” will in fact occur upon delivery of the delivery assets to an investor under a DPA warrant (ie, at Maturity). This approach is based on the ATO’s view that an investor’s ownership of the contractual rights under a DPA (being a CGT asset) come to an end by reason of those rights being discharged or satisfied upon delivery of the delivery assets.

It is important to note that the Taxation Determinations will apply to transactions entered into both before and after their date of issue (being 30 July 2008). Therefore, you should seek your own independent professional taxation advice on the taxation implications of these Taxation Determinations applicable to your own individual facts and circumstances.

The Taxation Determinations can be downloaded from the ATO website at <http://law.ato.gov.au> by typing in the Taxation Determination numbers.

¹ Section 7.3 of the MERC Securities Series 1 & 2 PDS dated 13 April 2005 and section 9.3 of the MERC Securities Series 3 & 4 PDS dated 13 July 2005