

# Cover sheet for: PR 2018/4

Generated on: 20 March 2019, 02:03:28 PM

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## PR 2018/4 history

21 March 2018 **Original ruling**

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## Product Ruling

# Income tax: taxation consequences of changing the portfolio structure, contributing to and partially redeeming an investment in a unit in the Perpetual WealthFocus Investment Advantage Fund

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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

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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

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1. This Product Ruling sets out the Commissioner's opinion on the way in which the relevant provisions 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 Perpetual WealthFocus Investment Advantage Fund (the Fund).
3. This Product 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 Product Ruling does not provide guidance as to any other tax consequences of investing in the Fund.

### Class of entities

4. This part of the Product Ruling specifies which entities can rely on the Ruling section of this Product Ruling and which entities cannot rely on the Ruling section. In this Product Ruling, those entities that can rely on the Ruling section are referred to as Investor(s).
5. The class of entities that can rely on the Ruling section of this Product Ruling consists of those entities that are accepted to participate in the scheme described in the Scheme section of this Product Ruling and execute relevant agreements referred to in paragraph 16 of this Product Ruling on or after 1 July 2018 and on or before 30 June 2021.

6. The class of entities that can rely on the Ruling section of this Product Ruling does **not** include entities that:

- are accepted into the scheme described in the Scheme section of this Product Ruling and execute relevant agreements referred to in paragraph 16 of this Product Ruling before 1 July 2018 or after 30 June 2021, 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***

7. 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**

8. The class of entities defined in this Product Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 16 to 20 of this Product Ruling.

9. 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.

### **Date of effect**

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10. This Product Ruling applies prospectively from 1 July 2018. It therefore applies only to the specified class of entities that enter into the scheme from 1 July 2018 until 30 June 2021, being its period of application. This Product Ruling will continue to apply to those entities even after its period of application for schemes 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

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

- (a) Changing the Investor's portfolio structure (see paragraph 19(f) of this Ruling) 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 the 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 contained in Part IVA of the *Income Tax Assessment Act 1936* (ITAA 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.

## Scheme

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16. The scheme that is the subject of this Product Ruling is identified and described in the following documents:

- application for a Product Ruling as constituted by documents and information received from Perpetual Investment Management Limited (PIML) on 2 February 2018 and 22 February 2019
- Perpetual WealthFocus Investment Advantage Product Disclosure Statements dated 1 May 2017 and 1 March 2019
- Perpetual WealthFocus Wholesale Investment Advantage Product Disclosure Statement dated 1 May 2017
- Perpetual WealthFocus Investment Advantage Features Books dated 1 May 2017 and 1 March 2019
- Perpetual WealthFocus Wholesale Investment Advantage Features Book dated 1 May 2017
- Perpetual WealthFocus Investment Books dated 1 May 2017 and 1 March 2019, and
- Consolidated Constitution to the Perpetual WealthFocus Investment Advantage Fund dated 21 June 2017.

**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 Product 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. The effect of these agreements is summarised in paragraph 19 of this Product Ruling. Unless otherwise defined, capitalised terms in this Product Ruling take their meaning as per the Constitution referred to in paragraph 16 of this Ruling.

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

### Overview

19. The following is a summary of the scheme:

- (a) The Fund constitutes a 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.

- (b) The Fund elected into the Attribution Managed Investment Trust (AMIT) regime for the year ending 30 June 2018 and all subsequent income years pursuant to subparagraph 276-10(1)(e)(i).
- (c) 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.
- (d) 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.
- (e) An Investor is able to choose one Asset Group or a combination of Asset Groups (the Investor's portfolio structure).
- (f) 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 any fees payable at the time and 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.
- (g) An Investor's entitlement to distributions and the attribution of income to the Investor from the Fund is based on their portfolio structure.
- (h) The value of an Investor's Unit is initially the amount originally invested less any fees payable at the time.
- (i) 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.
- (j) An Investor can make additional investments. The value of their Unit is increased by the amount of the additional investment less any fees payable at the time. There is no additional Unit issued.
- (k) 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.

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

The value of their Unit is reduced by the amount of the withdrawal.

- (l) 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.

### **Assumptions**

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

- (a) each Investor is an Australian resident for income tax purposes
- (b) the Investors are not traders in investments and are not treated for taxation 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) all dealings between the Investors, PIML and the Fund will be at arm's length
- (d) the scheme will be executed in the manner described in the Scheme section of this Product Ruling and the scheme documentation referred to in paragraph 16 of this Ruling, and
- (e) the Investors are not subject to Division 230 in respect of this scheme.

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**Commissioner of Taxation**

21 March 2018

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## Appendix 1 – 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.*

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

21. 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?*).

22. Under the Constitution 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.

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

24. 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 loss is realised by the Investor at this time.

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

25. 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).

26. 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**

27. The Unit is acquired otherwise than as a result of a CGT event happening. Pursuant to item 3 of the table in 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.

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

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

29. If an Investor makes a partial withdrawal of the value of their Unit, CGT event C2 does not happen because the Unit continues to exist.

30. 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.

31. 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.

#### **Part IVA – anti-avoidance**

32. Provided that the scheme ruled on is entered into and carried out as disclosed in this Product Ruling, Part IVA of the ITAA 1936 will not apply to a change in the portfolio structure, the making of an additional investment in an existing Unit or a partial withdrawal of an investment in an existing Unit.

## **Appendix 2 – Detailed contents list**

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33. The following is a detailed contents list for this Ruling:

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## References

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<i>Previous draft:</i>	- ITAA 1997 104-107A
Not previously issued as a draft	- ITAA 1997 104-107B
	- ITAA 1997 104-107C
<i>Related Rulings/Determinations:</i>	- ITAA 1997 104-107D
PR 2015/4, PR 2012/7,	- ITAA 1997 109-10
PR 2008/62, TD 2000/32	- ITAA 1997 110-25
	- ITAA 1997 110-55
<i>Legislative references:</i>	- ITAA 1997 Div 230
- ITAA 1936	- ITAA 1997 276-10(1)(e)(i)
- ITAA 1936 Pt IVA	- ITAA 1997 276-20
- ITAA 1997	- SISA 1993
- ITAA 1997 Div 104	- TAA 1953

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### ATO references

NO: 1-DOXN82R  
ISSN: 2205-6114  
BSL: PGH  
ATOlaw topic: Income tax ~~ Financial arrangements ~~ Other

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