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28 April 2009

PRIVILEGED

Mr Michael Brown
General Manager – Taxation
Perpetual Limited
Level 12
Angel Place
123 Pitt Street
SYDNEY NSW 2000

Dear Michael,

Perpetual Protected Investments - Series 1, 2 and 3 Supplement investor income tax opinion

We refer to the Perpetual Protected Investments - Series 1, 2 and 3 offered under Product Disclosure Statements (*PDSs*) dated 5 March 2007, 6 September 2007 and 17 March 2008 (collectively referred to as *PPI*). Capitalised undefined terms have the same meaning as in the *PDSs*.

This letter supplements the tax disclosure in the *PDS* for *PPI* - Series 1 and 2 and the tax letter prepared by us in respect of *PPI* - Series 3 (*Tax Opinions*). Specifically, this letter expands on our comments in the *Tax Opinions* regarding the deductibility of Early Repayment Fees payable as a consequence of repaying prior to the maturity date all or a part of the amounts borrowed under the Loan and Security Agreement in the *PDSs*.

This letter is based on the law as at 28 April 2009. We have not discussed the tax consequences of this transaction in any other jurisdiction. It is provided solely for the benefit of Perpetual Limited. Parties must seek their own independent tax and general legal advice on this transaction before making any decision to invest in *PPI*. Investors must not rely on this letter.

Baker & McKenzie's instructions are limited to the provision of tax advice. Baker & McKenzie is not involved in the marketing of this transaction and its role should not be interpreted to mean that it encourages any party to participate in this transaction.

1. Facts & Assumptions

1.1 We refer to the *PDSs* and our *Tax Opinions*. Investors still need to refer to these *Tax Opinions* as they provide a more comprehensive review of the tax issues relevant to an investment in *PPI*. The letter is drafted subject to the same qualifications as set out in those *Tax Opinions*.

2. Deductibility of Early Repayment Fee

- 2.1 An Early Repayment Fee will generally be deductible under section 8-1(1) of the *Income Tax Assessment Act 1997* to the extent to which the amount is incurred in gaining or producing for producing assessable income, or is necessarily incurred in carrying on a business for that purpose.
- 2.2 However, an Early Repayment Fee is not deductible under this section if, relevantly, it is an outgoing of a capital nature.
- 2.3 We consider that where the advantage sought is the release from the contractual obligation to incur a recurrent liability to pay interest on a loan, the Early Repayment Fee should be on revenue account and should not be capital in nature – and should therefore be deductible under section 8-1(1).
- 2.4 The Commissioner of Taxation has provided guidance regarding the tax treatment of amounts like the Early Repayment Fee in Income Tax Ruling TR93/7. In this ruling, the Commissioner states that such amounts should be deductible if:

(a) the loan moneys were borrowed for the purpose of gaining or producing assessable income or for use in a business carried on for that purpose; and

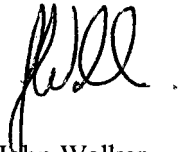
(b) the payment is made in order to rid the taxpayer of the recurring obligation to pay interest on the loan, where such interest would have itself been deductible if incurred.

- 2.5 In applying the test set out in paragraph (b) in 2.4 above, it is necessary to consider for what purpose the Early Repayment Fee is made. If the Early Repayment Fee is incurred by Investors for the purpose of ridding themselves of the recurring obligation to pay interest on an amount of money borrowed under a Loan and Security Agreement, we would expect that, subject to one qualification set out in paragraph 2.6 below, the fee should be deductible at the time of payment. (The Commissioner also states that where the break costs are incurred to rid the taxpayer of a "troublesome capital asset" or are merely "incidental to the realisation of the asset" the amount is not deductible - being capital in nature. While this will depend on the facts of each particular Investor, we consider an Early Repayment Fee should generally not be characterised in this manner.)
- 2.6 The qualification relates to the use of the phrase "where such interest would have itself been deductible" in the quote from TR93/7. Interest is not be deductible if it exceeds the "benchmark rate" in Division 247 of Part 3-10 the 1997 Act. For PPI - Series 3, there is a risk that the benchmark rate will be breached if it is adjusted downwards by the Federal Treasurer as discussed in paragraph 9.11 of the PPI - Series 3 Tax Opinion. If this occurs, a portion of Early Repayment Fee is, according to the test set out by the Commissioner above, not deductible. While there is no direct authority on this point, we consider determining the deductible portion of the Early Repayment Fee by reference to deductible interest expense should be considered reasonable.

- 2.7 If a portion of the Early Repayment Fee is not deductible under section 8-1, it should be included in the cost base of the Units. The non-deductible portion of the Early Repayment Fee (if any) should be included in the cost base of the Units via section 110-35(9) of the 1997 Act.

If you have any questions with respect to the above, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Walker', with a stylized flourish at the end.

John Walker
Partner
+612 8922 5206
john.walker@bakernet.com