

# ***CR 2022/108 - Commonwealth Bank of Australia - CommBank PERLS XV Capital Notes***

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## Class Ruling

# Commonwealth Bank of Australia – CommBank PERLS XV Capital Notes

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### **📌 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.

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### **What this Ruling is about**

1. This Ruling sets out the income tax consequences for specified entities who subscribed for and acquired CommBank PERLS XV Capital Notes (PERLS XV) issued by the Commonwealth Bank of Australia (CBA).
2. Details of this scheme are set out in paragraphs 47 to 72 of this Ruling.
3. In this Ruling, unless otherwise defined, capitalised terms have the meaning specified in the Terms of the PERLS XV (the Terms) which are contained in Appendix A of the CommBank PERLS XV Capital Notes Prospectus dated 26 October 2022 (the Prospectus) or in the glossary contained in section 8 of the Prospectus.
4. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

### **Who this Ruling applies to**

5. This Ruling applies to you if you are an investor (also referred to as a Holder) who:
  - acquired PERLS XV by initial application under the Prospectus
  - is a resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)) during the period you hold your PERLS XV
  - holds your PERLS XV on capital account, and

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- is not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on your PERLS XV.

#### **What this Ruling does not consider**

6. This Ruling does not deal with:

- the tax implications in relation to a non-resident who holds their PERLS XV through a permanent establishment (as defined in subsection 6(1) of the ITAA 1936) in Australia
- the tax implications of an automatic early Exchange of PERLS XV on the occurrence of a Capital Trigger Event, Non-Viability Trigger Event or Change of Control Event
- how the taxation law applies to a Purchaser who acquires PERLS XV under a Resale Notice
- the tax implications for Eligible PERLS VII Holders in respect of the transfer or redemption of some or all of their PERLS VII, or receiving distributions (including pro rata distributions) on PERLS VII, or
- how the gross-up and tax offset rules in Division 207 apply to partnership or trustee investors (other than a partnership or trustee that is a corporate tax entity, or a trustee of a trust that is a complying superannuation entity), or to indirect distributions to partners in a partnership or beneficiaries or trustees of a trust.

#### **When this Ruling applies**

7. This Ruling applies from 1 July 2022 to 30 June 2031.

## **Ruling**

#### **Consequences of acquiring CommBank PERLS XV Capital Notes**

##### ***Acquisition date of CommBank PERLS XV Capital Notes***

8. You acquired your PERLS XV on 15 November 2022 under table item 2 of section 109-10.

##### ***Cost base and reduced cost base of each of the CommBank PERLS XV Capital Notes***

9. The first element of the cost base and reduced cost base of each PERLS XV is \$100, being the money you paid to acquire each of your PERLS XV (subsections 110-25(2) and 110-55(2)).

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**Consequences of holding CommBank PERLS XV Capital Notes*****Distributions on CommBank PERLS XV Capital Notes and entitlement to tax offset for franking credits***

10. A Distribution on PERLS XV is a non-share dividend under section 974-120 and is included in your assessable income (subparagraph 44(1)(a)(ii) of the ITAA 1936).
11. In the income year in which the Distribution is made (section 207-20), you also:
- include the amount of the franking credit attached to a Distribution in your assessable income, and
  - are entitled to a tax offset equal to the franking credit.
12. To the extent that a Distribution (or a part of it) is either exempt income or non-assessable non-exempt income in your hands (and none of the exceptions in Subdivision 207-E apply), the amount of any franking credit on the Distribution that is exempt income or non-assessable non-exempt income is not included in your assessable income and you are not entitled to a tax offset under Division 207 (Subdivision 207-D).
13. The franking credit tax offset that you are entitled to under Division 207 is subject to the refundable tax offset rules in Division 67, provided you are not excluded by the operation of section 67-25. Entities excluded by section 67-25 include corporate tax entities (such as companies, corporate limited partnerships and public trading trusts), unless they satisfy the requisite conditions in subsections 67-25(1C) or (1D).

***Determination under paragraph 177EA(5)(b) of the ITAA 1936***

14. The Commissioner will not make a determination under paragraph 177EA(5)(b) of the ITAA 1936 to deny the whole, or any part, of the imputation benefits you receive in relation to a Distribution.

***Determination under paragraph 204-30(3)(c)***

15. The Commissioner will not make a determination under paragraph 204-30(3)(c) to deny the whole, or any part, of the imputation benefits you receive in relation to a Distribution.

***Gross-up and tax offset cancelled in certain circumstances***

16. Paragraph 207-145(1)(a) will not apply to cancel the effect of the gross-up and tax offset in respect of a franked Distribution if you are a qualified person in respect of that Distribution.
17. You will be a qualified person in relation to a Distribution if, during the primary qualification period, you held your PERLS XV for a continuous period of at least 90 days during which you did not have 'materially diminished risks or loss of opportunities for gain' (as defined in former section 160APHM of the ITAA 1936) in respect of PERLS XV.
18. The Resale and Exchange features of PERLS XV will not affect your risks of loss or opportunities for gain in respect of PERLS XV. This is because neither the Resale nor the Exchange mechanism constitutes a separate position (former sections 160APHM and 160APHJ of the ITAA 1936).

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19. Paragraphs 207-145(1)(b) to (db) will not apply to cancel the effect of the gross-up and tax offset rules in respect of a franked Distribution.
20. In respect of paragraphs 207-145(1)(b) and (c), refer to paragraphs 14 and 15 of this Ruling.
21. In respect of paragraph 207-145(1)(d), there is no evidence that the Distributions will be made as part of a dividend stripping operation.
22. In respect of paragraph 207-145(1)(da), the distribution washing provision does not apply (refer to subparagraph 72(u) of this Ruling).
23. In respect of paragraph 207-145(1)(db), the PERLS XV are equity interests which form part of CBA's Additional Tier 1 Capital (refer to subsection 207-158(2) and subparagraph 72(d) of this Ruling).

### **Consequences of disposing of CommBank PERLS XV Capital Notes**

#### ***CommBank PERLS XV Capital Notes are not traditional securities***

24. A PERLS XV is not a 'traditional security' as defined in subsection 26BB(1) of the ITAA 1936.
25. Section 26BB of the ITAA 1936 will not apply to include any gain on the disposal or Redemption of PERLS XV in your assessable income.
26. Section 70B of the ITAA 1936 will not apply to allow any loss on the disposal or Redemption of PERLS XV as a deduction to you.

### **Exchange of CommBank PERLS XV Capital Notes for Ordinary Shares**

27. Each PERLS XV is a convertible interest.
28. CGT event C2 will happen for Holders on Exchange (section 104-25).
29. A capital gain or capital loss made by a Holder from CGT event C2 happening on Exchange will be disregarded (subsection 130-60(3)).
30. Ordinary Shares acquired on Exchange will be taken to have been acquired when the conversion happens on the relevant Exchange Date (subsection 130-60(2)).
31. The first element of the cost base and reduced cost base of Ordinary Shares acquired on Exchange will be equal to the cost base and reduced cost base of the relevant PERLS XV at the time of Exchange (table item 2 of subsection 130-60(1)).
32. As you hold PERLS XV on capital account, no amount will be included in your assessable income on the Exchange of a PERLS XV under section 6-5.
33. In addition, you will not incur a deductible loss under section 8-1 as a consequence of the Exchange.
34. On the Exchange of PERLS XV for Ordinary Shares in CBA, you will not be taken to have received a dividend or a non-share dividend.

### **Early Redemption of CommBank PERLS XV Capital Notes**

35. CGT event C2 will happen on the Redemption of PERLS XV, where Redemption is constituted by the Redemption of all or some of the PERLS XV for their Face Value (section 104-25).

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36. The capital proceeds received by Holders on Redemption of the PERLS XV will be replaced with the market value of the PERLS XV on the Redemption Date, worked out as if the Redemption had not occurred and was never proposed to occur, if the capital proceeds are more or less than the market value of the PERLS XV (subparagraph 116-30(2)(b)(ii)).

37. You will make a capital gain (or capital loss) on Redemption of your PERLS XV if the capital proceeds you receive are greater than (or less than) the cost base of your PERLS XV.

38. As you hold your PERLS XV on capital account, no amount will be included in your assessable income on the Redemption under section 6-5.

39. In addition, you will not incur a deductible loss under section 8-1 as a consequence of the Redemption.

#### ***Resale of CommBank PERLS XV Capital Notes***

40. CGT event A1 in section 104-10 happens on the Resale of PERLS XV. The Resale of PERLS XV to the Purchaser will be for the Face Value of the PERLS XV.

41. As the capital proceeds you receive will not be more than the cost base of your PERLS XV, you will not make a capital gain as a result of the Resale.

42. As you hold your PERLS XV on capital account, no amount will be included in your assessable income on the Resale under section 6-5.

43. In addition, you will not incur a deductible loss under section 8-1 as a consequence of the Resale.

#### ***Other integrity provisions***

##### ***Section 45 of the ITAA 1936***

44. Section 45 of the ITAA 1936 will not apply to treat the value of Ordinary Shares issued to you on Exchange as an unfrankable dividend.

##### ***Section 45A of the ITAA 1936***

45. The Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies to treat the whole or a part of the capital benefit provided to you on Exchange or Redemption as an unfranked dividend.

##### ***Section 45B of the ITAA 1936***

46. The Commissioner will not make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to treat the whole or a part of the capital benefit provided to you on Exchange or Redemption as an unfranked dividend.

## **Scheme**

47. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

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### **Background**

48. The operations of CBA are predominantly conducted in Australia and New Zealand through its subsidiary ASB.

49. CBA is an authorised deposit-taking institution for the purposes of the *Banking Act 1959* and is regulated by the Australian Prudential Regulation Authority (APRA) and other regulatory bodies.

50. CBA is an Australian resident as defined in subsection 995-1(1) and is not a resident of any other jurisdiction.

### **Main features of CommBank PERLS XV Capital Notes**

51. PERLS XV are Australian dollar-denominated perpetual, subordinated unsecured notes issued by CBA.

52. PERLS XV are listed on the Australian Securities Exchange and trade under the code CBAPL.

53. The PERLS XV offer raised Tier 1 capital to primarily satisfy CBA's regulatory capital requirements and otherwise maintain the diversity of its sources and types of funding.

54. The Offer for subscription in PERLS XV was made to any investor who qualified under the Target Market Determination created by CBA and was an eligible client of a Syndicate Broker, and to Institutional Investors.

### **Issue price**

55. The issue price (Face Value) of each PERLS XV was A\$100. PERLS XV were fully-paid on the Issue Date, being 15 November 2022.

### **Distributions**

56. Each PERLS XV will accrue quarterly interest (Distributions) on its Face Value equal to the 3-month Bank Bill Swap Reference Rate plus a margin, grossed-down by the corporate tax rate. The Margin was set under a Bookbuild.

57. Distributions are expected to be fully franked. However, Distributions will be grossed-up to the extent that they are not fully franked.

58. The payment of a Distribution is subject to CBA's absolute discretion and the payment not breaching certain APRA conditions (such conditions relate to, for example, CBA's capital or solvency requirements).

59. Distributions are non-cumulative. To the extent that all or part of a Distribution is not paid on a scheduled Distribution Payment Date, Holders of PERLS XV will have no claim or entitlement in respect of the non-payment of the Distribution. A Distribution that is not paid on a Distribution Payment Date for any reason does not accrue interest for the period during which it remains unpaid.

60. Subject to certain exceptions, if a Distribution is not paid in full on the relevant Distribution Payment Date, CBA will be restricted from declaring or determining a dividend (absent a Special Resolution), returning capital or undertaking any buy-backs or repurchases in relation to any Ordinary Shares unless the amount of any unpaid Distribution is paid in full within 5 Business Days of that date.

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### ***Mandatory Exchange***

61. PERLS XV will be Exchanged for Ordinary Shares on the date that is the earlier of (each a Mandatory Exchange Date):

- 16 June 2031 (Scheduled Mandatory Exchange Date), subject to the satisfaction of the Mandatory Exchange Conditions, and
- the first Distribution Payment Date after the Scheduled Mandatory Exchange Date on which the Mandatory Exchange Conditions are satisfied.

62. If the Mandatory Exchange Conditions are not satisfied on the relevant Mandatory Exchange Date, CBA will not proceed with the Exchange on that date. The Exchange will be postponed until the first Distribution Payment Date after the Scheduled Mandatory Exchange Date on which the Mandatory Exchange Conditions are satisfied.

### ***Early Exchange***

63. PERLS XV may be Exchanged for Ordinary Shares before a Mandatory Exchange Date if a Capital Trigger Event, Non-Viability Trigger Event or a Change of Control Event occurs (each an early Exchange). Such events are triggered by certain circumstances affecting the capital adequacy or viability of CBA and/or takeover bids and schemes of arrangement relating to Ordinary Shares in CBA.

### ***Exchange***

64. Upon Exchange:

- you will be allotted and issued a number (the Exchange Number) of Ordinary Shares for each PERLS XV held, and
- your rights (including to payment of Distributions, other than the Distribution, if any, payable on an Exchange Date where the Exchange is not as a result of a Capital Trigger Event or a Non-Viability Trigger Event) in relation to each PERLS XV that is being Exchanged will be immediately and irrevocably terminated for an amount equal to the Face Value and CBA will apply the Face Value of each PERLS XV by way of payment for the subscription for the Ordinary Shares to be allotted and issued on Exchange.

### ***Early Redemption***

65. CBA may Redeem PERLS XV for their Face Value:

- at its option on a Call Date, being 15 June 2028, 15 December 2028 or 15 June 2029
- for certain taxation reasons, or
- for certain regulatory reasons.

66. CBA is not required to Redeem all PERLS XV if it chooses to Redeem PERLS XV on a Call Date. However, CBA must Redeem all (but not some) PERLS XV if it redeems PERLS XV for taxation or regulatory reasons. In all cases, the Redemption Date will be a Distribution Payment Date.

67. Redemption is discretionary and subject to APRA's prior written approval.

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**Resale on a Call Date**

68. CBA may elect that Holders of PERLS XV Resell some or all of their PERLS XV to a Purchaser on a Call Date (being 15 June 2028, 15 December 2028 or 15 June 2029) by giving a Resale Notice to you and to the Australian Securities Exchange.

69. The Purchaser will be one or more third parties selected by CBA and cannot be CBA itself, a member of the CBA Group, or a Related Body Corporate of CBA.

70. If CBA issues a Resale Notice:

- you will be taken irrevocably to offer to sell the relevant number of your PERLS XV to the Purchaser for the Face Value, and
- subject to payment by the Purchaser of the Face Value, all right, title and interest in the relevant number of PERLS XV will be transferred from you to the Purchaser on the Call Date.

71. If the Purchaser does not pay the Face Value to you on the Call Date, the relevant number of PERLS XV will not be transferred to the Purchaser and you have no claim on CBA as a result of that non-payment.

**Other matters**

72. This Ruling is made on the basis that:

- (a) During the term of the scheme, CBA is a resident of Australia under the income tax laws of Australia and of no other jurisdiction.
- (b) The majority of the Holders who acquired PERLS XV under the Offer were residents of Australia for income tax purposes, although some may be non-residents.
- (c) PERLS XV are equity interests in CBA and non-share equity interests as defined in subsection 995-1(1).
- (d) PERLS XV form part of CBA's Additional Tier 1 Capital for the purposes of the prudential standards determined by APRA and in force under section 11AF of the *Banking Act 1959*.
- (e) Distributions will be frankable distributions as defined in section 202-40.
- (f) CBA will frank Distributions at the same franking percentage as the benchmark franking percentage for the franking period in which the distributions are made.
- (g) Distributions on PERLS XV are not sourced, directly or indirectly, from CBA's share capital account or its non-share capital account.
- (h) Distributions paid on PERLS XV will not be debited to CBA's share capital account or its non-share capital account.
- (i) Immediately before the payment of a Distribution, CBA expects that the amount of its available frankable profits will be such that no part of a Distribution will be taken to be unfrankable under section 215-15.
- (j) CBA expects that future tax payments will generate sufficient franking credits for CBA to continue its current policy of fully franking frankable distributions on all equity interests.

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- (k) CBA will not differentially frank Distributions to different Holders according to their tax status or on any other basis.
- (l) CBA's distribution/dividend payout ratios in relation to its Ordinary Shares and other equity interests are not expected to change as a result of issuing PERLS XV.
- (m) CBA's share capital account did not become tainted under Division 197 as a result of issuing PERLS XV and will not become tainted as a result of issuing Ordinary Shares on Exchange.
- (n) On Exchange of PERLS XV for Ordinary Shares, CBA will debit the Face Value of the PERLS XV to its non-share capital account.
- (o) If PERLS XV are Redeemed, the Face Value payable to you will be debited in full to CBA's non-share capital account.
- (p) Ordinary Shares issued on Exchange will be equity interests in CBA as defined in Subdivision 974-C.
- (q) CBA does not currently have on issue any non-share equity interests that constitute Tier-1 Capital issued at or through a permanent establishment which pays distributions that are unfrankable pursuant to section 215-10.
- (r) You will not take any 'positions' (as defined in former section 160APHJ of the ITAA 1936) at any time in relation to your PERLS XV apart from holding your PERLS XV.
- (s) You (or an associate) will not make, be under an obligation to make, or be likely to make, a 'related payment' (as defined under former section 160APHN of the ITAA 1936) in relation to a Distribution.
- (t) You will hold your PERLS XV for a continuous period of at least 90 days (excluding the day of acquisition and disposal (if relevant)), during the 'primary qualification period' (as defined in former section 160APHD of the ITAA 1936) in relation to a Distribution.
- (u) You (or your connected entities) will not engage in distribution washing (as outlined in section 207-157) in relation to a Distribution (unless entitled to the exception under subsection 207-157(4)).
- (v) All parties to the transaction are dealing with each other on arm's length terms.

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**Commissioner of Taxation**

30 November 2022

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 Status: **not legally binding**


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## 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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### **Determination under paragraph 177EA(5)(b) of the ITAA 1936**

73. Section 177EA of the ITAA 1936 is a general anti-avoidance provision that applies where one of the purposes (other than an incidental purpose) of a particular scheme is to enable a taxpayer to obtain an imputation benefit.

74. The conditions in paragraphs 177EA(3)(a) to (d) of the ITAA 1936 will be satisfied, therefore the relevant circumstances of the scheme must be considered to establish whether any person who entered into or carried out the scheme, or any part of the scheme, did so for a more than incidental purpose of enabling a Holder to obtain an imputation benefit (paragraph 177EA(3)(e) of the ITAA 1936).

75. The Commissioner considers that the relevant circumstances of the scheme do not, on balance, lead to a conclusion that the purpose of enabling Holders to obtain imputation benefits is more than incidental to CBA's primary purpose of raising additional Tier 1 capital for regulatory capital requirements and otherwise to maintain the diversity of its sources and types of funding.

### **Determination under paragraph 204-30(3)(c)**

76. Subsection 204-30(1) empowers the Commissioner to make a determination under paragraph 204-30(3)(c) if an entity streams distributions in a certain way.

77. Based on the scheme, there is no evidence of streaming. Distributions will be received by all Holders by reason of their proportionate holding of PERLS XV and not by reference to their tax profiles or individual tax positions. There is nothing in the Terms that allows CBA to treat Holders differently in respect of their entitlement to a franked Distribution.

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**Gross-up and tax offset denied in certain circumstances – qualified persons**

78. If you are not a qualified person in relation to a Distribution, you:

- do not include the franking credit attached to the Distribution in your assessable income (paragraph 207-145(1)(e)), and
- are not entitled to a tax offset equal to the amount of the franking credit attached to the Distribution (paragraph 207-145(1)(f)).

79. As this Ruling is made on the basis that you have not made a related payment in respect of a Distribution, the relevant qualification period is the primary qualification period (as defined in former section 160APHD of the ITAA 1936). The primary qualification period begins on the day after you acquired your PERLS XV and ends on the 90th day after the day PERLS XV becomes ex-distribution.

80. You need to have held your PERLS XV 'at risk' for a continuous period of 90 days (excluding the days of acquisition and disposal, if relevant) during the primary qualification period. Any days you had materially diminished risks of loss or opportunities for gain in respect of your holding are also excluded (former subsection 160APHO(3) of the ITAA 1936).

81. Under former subsection 160APHM(2) of the ITAA 1936, you are taken to have materially diminished the risks of loss and opportunities for gain on a particular day with respect to your PERLS XV if your net position on that day does not retain 30% or more of the risks and opportunities associated with holding PERLS XV.

82. Embedded options such as the Resale and Exchange mechanisms do not represent separate positions in relation to PERLS XV (see also Taxation Determination TD 2007/29 *Income tax: holding period rule: is an embedded share option a position in relation to the share if it is exercisable by or against a party other than the issuer of the share?*). Under the Resale mechanism, you will only be taken to have made an offer to sell PERLS XV if CBA issues a Resale Notice. As CBA is the only party entitled to make an election to exercise the Resale option, it is not a separate position that you have taken in relation to PERLS XV. Similarly, under the Exchange mechanism you do not have the right to elect Exchange of your PERLS XV and neither does CBA have an obligation to Exchange.

83. Therefore, the Resale and Exchange mechanisms will not, of themselves, affect your risks of loss or opportunities for gain in respect of PERLS XV.

84. However, if you do enter into any risk management strategies in respect of your PERLS XV that have the effect of reducing your risks of loss and opportunities for gain below 30% (for example, by the use of limited recourse loans, options or other derivatives), then you will not be considered a qualified person in respect of a Distribution.

**Ordinary Shares received on Exchange not a dividend or a non-share dividend**

85. You are not a shareholder of CBA in respect of your PERLS XV holding. Accordingly, you will not receive a dividend as defined in subsection 6(1) of the ITAA 1936.

86. The application of the Face Value to subscribe for Ordinary Shares on Exchange of PERLS XV is a crediting of that amount to you and, therefore, a non-share distribution under section 974-115.

87. All non-share distributions are non-share dividends unless they are debited against the distributing company's non-share capital account or its share capital account (section 974-120).

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88. The allocation and issue of Ordinary Shares to you on Exchange of PERLS XV will not be a non-share dividend as defined in section 974-120, as the Face Value of PERLS XV will be debited against CBA's non-share capital account.

#### **Market value of CommBank PERLS XV Capital Notes on early Redemption**

89. The capital proceeds received by Holders on Redemption will be replaced with the market value of the PERLS XV on the date of Redemption, worked out as if the Redemption had not occurred and was never proposed to occur, if the capital proceeds are more or less than the market value (subparagraph 116-30(2)(b)(ii)).

90. If the PERLS XV are Redeemed on a Redemption Date before the Mandatory Exchange Date, the market value of the PERLS XV which are Redeemed will need to be determined in accordance with Practical Compliance Guideline PCG 2021/1 *Application of market value substitution rules when there is a buy-back or redemption of hybrid securities – methodologies for determining market value for investors holding their securities on capital account*.

#### **Section 45 of the ITAA 1936**

91. Section 45 of the ITAA 1936 applies where a company streams the provision of shares and the payment of minimally franked dividends to its shareholders in such a way that:

- the shares are received by some shareholders but not all shareholders, and
- some or all of the shareholders who do not receive the shares receive or will receive minimally franked dividends.

92. CBA's distribution or dividend payout ratios in relation to its Ordinary Shares and other equity interests are not expected to change as a result of issuing PERLS XV. Further, CBA has a history of fully franking its frankable distributions, which is also not expected to change.

93. Under the Terms, CBA is unable to issue Ordinary Shares to all or some Holders in satisfaction of their Distribution entitlement under PERLS XV. The issue of Ordinary Shares on Exchange merely reflects a change in the type of equity interests held by Holders in CBA.

94. Based on the information provided and having regard to the circumstances of the scheme, section 45 of the ITAA 1936 will not apply to treat the value of Ordinary Shares issued to you on Exchange as an unfrankable dividend.

#### **Section 45A of the ITAA 1936**

95. Section 45A of the ITAA 1936 applies where a company streams capital benefits and the payment of dividends to shareholders who would derive a greater benefit from receiving the capital benefits (the advantaged shareholders), and it is reasonable to assume that other shareholders (the disadvantaged shareholders) have received, or will receive, dividends.

96. Both the issue of Ordinary Shares on Exchange and the Redemption of PERLS XV will constitute the provision of a capital benefit to Holders (paragraph 45A(3)(a) of the ITAA 1936 for an Exchange, and paragraph 45A(3)(b) of the ITAA 1936 as affected by subsection 45A(3A) of the ITAA 1936 for a Redemption).

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97. However, the issue of Ordinary Shares on Exchange and the Redemption of PERLS XV will not constitute the streaming of capital benefits because, under an Exchange or Redemption, CBA will not selectively direct the flow of capital benefits to Holders who could most benefit from the receipt of capital. Accordingly, as this requirement does not apply to the Exchange or Redemption of PERLS XV, the Commissioner will not make a determination to treat the whole or a part of the capital benefit received by Holders as an unfranked dividend.

#### **Section 45B of the ITAA 1936**

98. Section 45B of the ITAA 1936 applies where certain capital benefits are provided to shareholders in substitution for dividends. Where the conditions are met, the Commissioner may make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole, or a part, of the capital benefit such that it will be treated as an unfranked dividend.

99. The issue of Ordinary Shares to Holders on Exchange and the Redemption of PERLS XV will each constitute a scheme under which Holders are provided with a capital benefit by CBA (paragraph 45B(5)(a) of the ITAA 1936 for an Exchange and paragraph 45B(5)(b) of the ITAA 1936 as affected by subsection 45B(7) of the ITAA 1936 for a Redemption). As a result, paragraph 45B(2)(a) of the ITAA 1936 will be satisfied.

100. At least some Holders will obtain a tax benefit as defined in subsection 45B(9) of the ITAA 1936 as a result of an Exchange or Redemption. Accordingly, paragraph 45B(2)(b) of the ITAA 1936 will be satisfied.

101. Therefore, whether section 45B of the ITAA 1936 will apply to an Exchange or Redemption turns on whether paragraph 45B(2)(c) of the ITAA 1936 will be satisfied. This involves considering the relevant circumstances, including but not limited to those listed in subsection 45B(8) of the ITAA 1936, of the Exchange and Redemption schemes to establish whether one of the persons who will enter into or carry out the schemes will do so for a more than incidental purpose of enabling a relevant taxpayer (the Holder) to obtain a tax benefit.

102. Having regard to the relevant circumstances, it could not be concluded that the Exchange or Redemption of PERLS XV will be entered into for a more than incidental purpose of enabling Holders to obtain a tax benefit. Accordingly, paragraph 45B(2)(c) of the ITAA 1936 would not be satisfied and the Commissioner will not make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole or a part of the capital benefit provided to Holders on Exchange or Redemption.

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 Status: **not legally binding**


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## References

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### *Related Rulings/Determinations:*

TD 2007/29

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Income tax ~~ Capital management ~~ Anti avoidance rules ~~  
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Income tax ~~ Capital management ~~ Franking credits / tax offsets

Income tax ~~ Capital management ~~ Hybrid capital raisings

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