


CR 2024/3 - Westpac Banking Corporation - Westpac Capital Notes 10

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Status: **legally binding**

Class Ruling

Westpac Banking Corporation – Westpac Capital Notes 10

📌 Relying on this Ruling

This publication (excluding appendixes) 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.

Table of Contents	Paragraph
What this Ruling is about	1
Who this Ruling applies to	5
What this Ruling does not consider	6
When this Ruling applies	7
Ruling	8
Scheme	46
Appendix 1 – Explanation	84
Appendix 2 – Legislative provisions	114

What this Ruling is about

1. This Ruling sets out the income tax consequences for entities who subscribed for and acquired Westpac Capital Notes 10 (WCN10) issued by Westpac Banking Corporation (Westpac).
2. Details of this scheme are set out in paragraphs 46 to 83 of this Ruling.
3. In this Ruling, unless otherwise defined, capitalised terms have the meaning specified in the Glossary contained in Appendix A of the Prospectus for the issue of WCN10 dated 28 November 2023 (the Prospectus) or the Terms of WCN10 (the Terms), which are contained in Appendix B of the Prospectus.
4. All legislative references in this Ruling are to provisions of the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* (as detailed in the table in the Appendix 2 of this Ruling), unless otherwise indicated.

Note: By issuing this Ruling, the ATO is not endorsing this product. Potential investors must form their own view about the product.

Status: **legally binding**

Who this Ruling applies to

5. This Ruling applies to you if you are an investor (also referred to as a Holder) who:
- acquired your WCN10 by initial application under the Prospectus
 - is a resident of Australia within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) during the period in which you hold your WCN10
 - holds your WCN10 on capital account, and
 - is not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on your WCN10.

Note: Division 230 will not apply to individuals unless they have made an election for it to apply.

What this Ruling does not consider

6. This Ruling does not consider:
- the tax implications in relation to a non-resident who holds their WCN10 through a 'permanent establishment' (as defined in subsection 6(1) of the ITAA 1936) in Australia
 - the tax implications of Conversion of WCN10 on the occurrence of a Capital Trigger Event, Non-Viability Trigger Event or Acquisition Event
 - how the taxation law applies to a Nominated Party who acquires their WCN10 under the Transfer facility
 - the tax implications for Westpac Capital Notes 6 (WCN6) holders of transferring their WCN6 under a Reinvestment Offer or of receiving distributions on WCN6, or
 - how the gross-up and tax offset rules in Division 207 apply to a 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 2023 to 30 June 2034.

Ruling

Consequences of acquiring Westpac Capital Notes 10

Acquisition date

8. You acquired your WCN10 on 18 December 2023 under table item 2 of section 109-10.

Status: **legally binding**

Cost base and reduced cost base of each Westpac Capital Note 10

9. The first element of the cost base and reduced cost base of each WCN10 is A\$100, being the money you paid to acquire your WCN10 (subsections 110-25(2) and 110-55(2)).

Consequences of holding Westpac Capital Notes 10

Distributions on Westpac Capital Notes 10 and entitlement to tax offset for franking credits

10. A Distribution on a WCN10 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 WCN10 for a continuous period of at least 90 days (excluding the day of acquisition and, if you have disposed of your WCN10, the day of disposal) during which you did not have 'materially diminished risks of loss or opportunities for gain' (as defined in former section 160APHM of the ITAA 1936) in respect of your WCN10.

Status: **legally binding**

18. The Transfer facility and Conversion mechanism of WCN10 will not affect your risks of loss or opportunities for gain in respect of your WCN10. This is because neither the Transfer facility nor the Conversion mechanism constitutes a separate position (former sections 160APHM and 160APHJ of the ITAA 1936).

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), this Ruling is made on the basis that the distribution washing provision does not apply.

23. In respect of paragraph 207-145(1)(db), this Ruling is made on the basis that the WCN10 are equity interests which form part of Westpac's Additional Tier 1 Capital (refer to subsection 207-158(2)).

Consequences of disposing of Westpac Capital Notes 10

Westpac Capital Notes 10 are not traditional securities

24. A WCN10 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 a WCN10 in your assessable income.

26. Section 70B of the ITAA 1936 will not apply to allow any loss on the disposal or Redemption of a WCN10 as a deduction to you.

Conversion of Westpac Capital Notes 10 for Ordinary Shares

27. Each WCN10 is a convertible interest (being an interest of the kind referred to in table item 4 of subsection 974-75(1)).

28. CGT event C2 will happen on Conversion, where Conversion is constituted by all or some of the WCN10 being converted into Ordinary Shares (section 104-25).

29. A capital gain or capital loss you make from CGT event C2 happening on Conversion will be disregarded (subsection 130-60(3)).

30. Ordinary Shares acquired on Conversion will be taken to have been acquired when the Conversion happens on the relevant Conversion Date (subsection 130-60(2)).

31. The first element of the cost base and reduced cost base of Ordinary Shares acquired on Conversion will be equal to the cost base and reduced cost base of the relevant WCN10 at the time of Conversion (table item 2 of subsection 130-60(1)).

32. As you hold your WCN10 on capital account, no amount will be included in your assessable income under section 6-5 on the Conversion of a WCN10.

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

34. On the Conversion of WCN10 for Ordinary Shares in Westpac, you will not be taken to have received a dividend or a non-share dividend.

Status: **legally binding**

Redemption of Westpac Capital Notes 10

35. CGT event C2 will happen on the Redemption of the WCN10, where Redemption is constituted by the Redemption of all or some of the WCN10 for their Face Value (section 104-25).

36. The capital proceeds received by Holders on Redemption of the WCN10 on a Redemption Date will be replaced with the market value of the WCN10 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 WCN10 (subparagraph 116-30(2)(b)(ii)). Accordingly, where the market value of the WCN10 at the time of Redemption is more or less than the cost base, you will make a capital gain or capital loss (as applicable).

37. As you hold your WCN10 on capital account, no amount will be included in your assessable income under section 6-5 on the Redemption.

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

Transfer of Westpac Capital Notes 10

39. CGT event A1 will happen on the Transfer of a WCN10 (section 104-10). The Transfer of WCN10 to the Nominated Party will be for the Face Value of WCN10.

40. As the capital proceeds you receive will not be more than the cost base of your WCN10, you will not make a capital gain as a result of the Transfer.

41. As you hold your WCN10 on capital account, no amount will be included in your assessable income under section 6-5 on the Transfer.

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

Other integrity provisions**Section 45 of the ITAA 1936**

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

Section 45A of the ITAA 1936

44. 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 Conversion or Redemption as an unfranked dividend.

Section 45B of the ITAA 1936

45. 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 Conversion or Redemption as an unfranked dividend.

Status: **legally binding**

Scheme

46. 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.

Background

47. Westpac is one of the 4 major banking organisations in Australia and is an Australian-resident company for income tax purposes. Westpac is listed on the Australian Securities Exchange (ASX).

48. Westpac is an authorised deposit-taking institution for the purposes of the *Banking Act 1959* and is subject to regulatory compliance requirements as administered by the Australian Prudential Regulation Authority (APRA), including maintenance of mandatory levels of Tier 1 Capital.

49. Under the Prospectus, Westpac announced its intention to raise A\$1.75 billion of Additional Tier 1 Capital through the offer of WCN10, with the ability to raise more or less (the Offer).

50. The Offer included a Reinvestment Offer and a New Money Offer. The Reinvestment Offer was made to clients of the Syndicate Brokers, and to Institutional Investors, who are Eligible WCN6 Holders – registered holders of WCN6 shown on the Register at 7:00 pm (Sydney time) on the Reinvestment Offer Record Date – wishing to reinvest some or all of their WCN6 in WCN10. The New Money Offer was made to eligible clients of the Syndicate Brokers, and to Institutional Investors, wishing to make new investments in WCN10. The Reinvestment Offer and New Money Offer were subject to eligibility requirements, including:

- being a company or an individual (including as a trustee of a family, hybrid or unit trust) aged 18 years or older
- having a registered address in Australia, and
- being either an investor who is within the Target Market and has received personal advice from a financial adviser to acquire WCN10, or a Wholesale Client.

51. WCN10 were issued on 18 December 2023 (Issue Date).

52. WCN10 are listed on the ASX and trade under the ASX code WBCPM.

53. WCN10 were issued by Westpac in Australia. WCN10 were not issued at or through an offshore permanent establishment or subsidiary of Westpac.

54. The Offer was made as part of Westpac's ongoing capital management strategy to satisfy the regulatory capital requirements prescribed by APRA. The proceeds from the issue of the WCN10 are being used by Westpac in its Australian operations for the general corporate purposes of Westpac.

Main features of Westpac Capital Notes 10

55. The WCN10 are Australian dollar-denominated, fully paid, non-cumulative, convertible, transferable, redeemable, subordinated, perpetual, unsecured notes issued by Westpac.

56. A Holder of WCN10 does not have voting rights at any general meeting of Westpac shareholders before Conversion.

Status: **legally binding**

Issue Price

57. The Issue Price and Initial Face Value of each WCN10 is A\$100. WCN10 were fully paid on the Issue Date.

Distributions

58. Westpac will pay floating-rate Distributions in cash, and on a quarterly basis, in respect of each WCN10 on each Distribution Payment Date in accordance with the Terms.

59. The Distribution payable is calculated on the Face Value of each WCN10 using a Distribution Rate which is equal to the 3-month BBSW Rate¹ plus a Margin, together adjusted by the Tax Rate and based on the number of days in the Distribution Period divided by 365. The Margin is 3.10% per annum.

60. The Distributions are expected to be fully franked. If a Distribution is not fully franked, then the Distribution will be adjusted to compensate for the unfranked amount.

61. The payment of a Distribution is subject to the absolute discretion of Westpac and certain payment conditions relating to, for example, Westpac's capital requirements or solvency.

62. Distributions are non-cumulative and if all or any part of a Distribution is not paid, Holders have no claim or entitlement in respect of such non-payment and such non-payment does not constitute an event of default.

63. Subject to certain exceptions, if a Distribution is not paid in full on the relevant Distribution Payment Date, Westpac will be restricted from determining or paying Dividends on its Ordinary Shares or undertaking any discretionary Buy Back or Capital Reduction, unless and until one of the following requirements are satisfied:

- (a) the amount of the unpaid Distribution has been paid in full within 20 Business Days of the relevant Distribution Payment Date
- (b) all WCN10 have been Converted at their full Face Value, Redeemed or terminated following a failure to Convert
- (c) a Distribution for any subsequent Distribution Period is paid in full on the relevant Distribution Payment Date, or
- (d) a Special Resolution of the Holders has been passed approving such action and, in respect of the actions contemplated by subparagraphs (b), (c) and (d) above, APRA does not otherwise object.

Conversion

64. Conversion of the WCN10 involves the following:

- each Holder is allotted and issued the Conversion Number of Ordinary Shares for each WCN10 held on the Conversion Date, and

¹ In this Ruling, BBSW Rate takes the definition provided in Clause 3.1 of the Terms (which is not replicated here).

Status: **legally binding**

- each Holder's rights (including to Distributions, other than the Distribution, if any, payable on a Conversion Date that is not a Capital Trigger Event Conversion Date or a Non-Viability Trigger Event Conversion Date) in relation to each WCN10 that is being Converted are immediately and irrevocably terminated for an amount equal to the Face Value and Westpac applies the Face Value by way of payment for the subscription of the Conversion Number of Ordinary Shares to be allotted and issued on Conversion.

65. Each Ordinary Share allotted and issued upon Conversion ranks equally with and has the same rights as all other fully paid Ordinary Shares, provided that the rights attaching to the Ordinary Shares do not take effect until 5:00 pm (Sydney time) on the Conversion Date (or such other time required by APRA).

Scheduled Conversion

66. Westpac must convert all (but not some) of the WCN10 on issue into Ordinary Shares on the date on which the Scheduled Conversion Conditions are satisfied (each a Scheduled Conversion Date) that is the earlier of:

- 22 June 2034, and
- the first Distribution Payment Date after 22 June 2034.

67. If the Scheduled Conversion Conditions are not satisfied, Conversion will be postponed until the next Distribution Payment Date on which the Scheduled Conversion Conditions are satisfied.

Automatic Conversion

68. Automatic Conversion will occur upon a Capital Trigger Event, a Non-Viability Trigger Event, or an Acquisition Event.

69. A Capital Trigger Event or Non-Viability Trigger Event is triggered by certain circumstances affecting the capital adequacy or viability of Westpac and an Acquisition Event is triggered by events such as takeover bids and schemes of arrangement relating to Ordinary Shares in Westpac.

70. If a Capital Trigger Event occurs, Westpac must Convert such number of WCN10 or percentage of the Face Value of each WCN10 as is sufficient to return Westpac's relevant Common Equity Tier 1 Capital Ratio to above the required percentage.

71. If a Non-Viability Trigger Event occurs, Westpac must Convert such number of WCN10 or percentage of the Face Value of each WCN10 as is necessary to satisfy APRA that Westpac will no longer be non-viable (and may in certain circumstances be required to Convert all the WCN10).

72. On Conversion following a Non-Viability Trigger Event or a Capital Trigger Event, Holders will receive a variable number of Ordinary Shares up to the Maximum Conversion Number. However, if Conversion does not occur within 5 Business Days, then the rights of Holders will be immediately and irrevocably terminated, and they will lose all of the value of their investment and will not receive any compensation or unpaid Distributions.

73. If an Acquisition Event occurs, Westpac must Convert all (but not some) of the WCN10 (subject to applicable conversion conditions).

Status: **legally binding**

Optional Conversion

74. Subject to the Terms, Westpac may at its option Convert:
- all or some WCN10 on 22 September 2031, 22 December 2031, 22 March 2032 or 22 June 2032, or
 - all (but not some) WCN10 on an Optional Conversion Date following the occurrence of a Tax Event or a Regulatory Event.
75. A Holder does not have the right to request Conversion at any time.

Optional Redemption

76. Subject to the Terms, Westpac may at its option Redeem:
- all or some WCN10 on 22 September 2031, 22 December 2031, 22 March 2032 or 22 June 2032, or
 - all (but not some) WCN10 on a Redemption Date following the occurrence of a Tax Event or a Regulatory Event.
77. Westpac may only Redeem WCN10 where APRA has given its prior written approval of the Redemption and either Westpac replaces the WCN10 with a capital instrument of the same or better quality (and the replacement is done under conditions that are sustainable for the income capacity of Westpac), or obtains confirmation that APRA is satisfied that Westpac does not need to replace the WCN10.
78. The WCN10 are Redeemed by payment on the Redemption Date of an amount equal to the Face Value to the Holder.
79. A Holder does not have the right to request Redemption at any time.

Optional Transfer

80. Subject to the Terms, Westpac may elect to Transfer to a Nominated Party:
- all or some WCN10 on 22 September 2031, 22 December 2031, 22 March 2032 or 22 June 2032, or
 - all (but not some) WCN10 on a Transfer Date following the occurrence of a Tax Event or a Regulatory Event.
81. Upon the issue of a Transfer Notice by Westpac, each Holder is taken irrevocably to offer to sell the relevant number of WCN10 to the Nominated Party on the Transfer Date for a cash amount per each WCN10 equal to the Face Value.
82. A Holder does not have the right to request Transfer at any time.

Other matters

83. This Ruling is made on the basis that:
- (a) During the term of the scheme, Westpac is a resident of Australia under the income taxation laws of Australia and of no other jurisdiction.
 - (b) The majority of the Holders who acquired the WCN10 under the Offer are expected to be residents of Australia for tax purposes, although some may be non-residents.

Status: **legally binding**

- (c) The WCN10 are equity interests in Westpac under Division 974 and are 'non-share equity interests' as defined in subsection 995-1(1).
- (d) The WCN10 form part of Westpac'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) The Distributions are frankable distributions under section 202-40.
- (f) In accordance with Division 203, Westpac will frank Distributions in respect of the WCN10 at the same franking percentage as the Westpac benchmark for the franking period in which the frankable distribution is made.
- (g) Distributions on the WCN10 are not sourced, directly or indirectly, from Westpac's share capital account or its non-share capital account.
- (h) Distributions on the WCN10 will not be debited to Westpac's share capital account or its non-share capital account.
- (i) Immediately before the payment of a Distribution on the WCN10, Westpac will have available frankable profits (worked out under section 215-20) of an amount at least equal to the Distribution.
- (j) Westpac expects to continue with its policy of fully franking all frankable distributions (to the extent that franking credits are available in its franking account).
- (k) Westpac will not differentially frank Distributions to different Holders according to their tax status or on any other basis.
- (l) The dividend payout ratios and Westpac's policies in relation to the franking of its distributions on ordinary share capital and other preference share capital of Westpac (to the extent such dividends and distributions are frankable) are not expected to change as a result of the issue of the WCN10.
- (m) The share capital account of Westpac will not become tainted (within the meaning of Division 197) by the issue of the WCN10 or the allotment of Ordinary Shares on Conversion of the WCN10.
- (n) On Conversion or Redemption of the WCN10, Westpac will debit the Face Value of the WCN10 to its non-share capital account.
- (o) Ordinary Shares issued to the Holders on Conversion of the WCN10 will be equity interests under Division 974.
- (p) The accounts of the Westpac Group will be prepared in accordance with the applicable accounting standards.
- (q) All parties to the scheme will deal with each other at arm's length.
- (r) You will not take any 'positions' (as defined in former section 160APHJ of the ITAA 1936) at any time in relation to your WCN10 apart from holding your WCN10.
- (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.

Status: **legally binding**

- (t) You will hold your WCN10 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)).

Commissioner of Taxation

24 January 2024

 Status: **not legally binding**

Appendix 1 – Explanation

ⓘ *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.*

Table of Contents	Paragraph
Determination under paragraph 177EA(5)(b) of the ITAA 1936	84
Determination under paragraph 204-30(3)(c)	87
Gross-up and tax offset cancelled in certain circumstances	89
Ordinary Shares received on Conversion not a dividend or a non-share dividend	96
Market value of Westpac Capital Notes 10 on Redemption	100
Section 45 of the ITAA 1936	102
Section 45A of the ITAA 1936	106
Section 45B of the ITAA 1936	109

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

84. 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.

85. The conditions in paragraphs 177EA(3)(a) to (d) of the ITAA 1936 are 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).

86. 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 Westpac'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)

87. 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.

88. Based on the scheme, there is no evidence of streaming. Distributions will be received by all Holders by reason of their proportionate holding of WCN10 and not by reference to their tax profiles or individual tax positions. There is nothing in the Terms that allows Westpac to treat Holders differently in respect of their entitlement to a franked Distribution.

Status: **not legally binding**

Gross-up and tax offset cancelled in certain circumstances

89. 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)).
90. 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 acquire your WCN10 and ends on the 90th day after the day WCN10 becomes ex-distribution.
91. You need to have held WCN10 '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 excluded (former subsection 160APHO(3) of the ITAA 1936).
92. 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 WCN10 if your net position on that day does not retain 30% or more of the risks and opportunities associated with holding WCN10.
93. Embedded options such as the Transfer and Conversion mechanisms do not represent separate positions in relation to WCN10 (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 Transfer mechanism, you will only be taken to have made an offer to sell WCN10 if Westpac issues a Transfer Notice. As Westpac is the only party entitled to make an election to exercise the Transfer option, it is not a separate position that you have taken in relation to your WCN10. Similarly, under the Conversion mechanism you do not have the right to request Conversion of your WCN10 and Westpac is the only party entitled to exercise the Optional Conversion option.
94. Therefore, the Transfer and Conversion mechanisms will not of themselves affect your risks of loss or opportunities for gain in respect of your WCN10.
95. However, if you do enter into any risk management strategies in respect of your WCN10 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 Conversion not a dividend or a non-share dividend

96. You are not a shareholder of Westpac in respect of your WCN10 holding. Accordingly, you will not receive a 'dividend' as defined in subsection 6(1) of the ITAA 1936.
97. The application of the Face Value to subscribe for Ordinary Shares on Conversion of WCN10 is a crediting of that amount to you and, therefore, a non-share distribution under section 974-115.
98. 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).

Status: **not legally binding**

99. The allocation and issue of Ordinary Shares to you on Conversion of WCN10 will not be a non-share dividend as defined in section 974-120, as the Face Value of WCN10 will be debited against Westpac's non-share capital account.

Market value of Westpac Capital Notes 10 on Redemption

100. The capital proceeds received by Holders on Redemption will be replaced with the market value of the WCN10 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)).

101. If Westpac elects to Redeem WCN10 on a Redemption Date before the Scheduled Conversion Date, the market value of the WCN10 which are Redeemed may be determined in accordance with the 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 value for investors holding their securities on capital account.*

Section 45 of the ITAA 1936

102. 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.

103. Westpac's distribution and dividend payout ratios in relation to its Ordinary Shares and other equity interests are not expected to change as a result of issuing WCN10. Further, Westpac has a history of fully franking its frankable distributions, which is also not expected to change.

104. Under the Terms, Westpac is unable to issue Ordinary Shares to all or some Holders in satisfaction of their Distribution entitlement under WCN10. The issue of Ordinary Shares on Conversion merely reflects a change in the type of equity interests held by Holders in Westpac.

105. 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 Conversion as an unfrankable dividend.

Section 45A of the ITAA 1936

106. Section 45A of the ITAA 1936 applies where a company streams capital benefits and the payment of dividends in such a way that capital benefits are received by 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.

107. Both the issue of Ordinary Shares on Conversion and the Redemption of WCN10 will constitute the provision of a capital benefit to Holders (paragraph 45A(3)(a) of the ITAA 1936 for a Conversion, and paragraph 45A(3)(b) of the ITAA 1936 as affected by subsection 45A(3A) of the ITAA 1936 for a Redemption).

Status: **not legally binding**

108. However, the issue of Ordinary Shares on Conversion and the Redemption of WCN10 will not constitute the streaming of capital benefits because under a Conversion or Redemption, Westpac 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 Conversion or Redemption of WCN10, 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

109. 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.

110. The issue of Ordinary Shares to Holders on Conversion and the Redemption of WCN10 will each constitute a scheme under which Holders are provided with a capital benefit by Westpac (paragraphs 45B(5)(a) and (b), and subsection 45B(7) of the ITAA 1936). As a result, paragraph 45B(2)(a) of the ITAA 1936 will be satisfied.

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

112. Therefore, whether section 45B of the ITAA 1936 will apply to a Conversion 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 Conversion 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.

113. Having regard to the relevant circumstances, it could not be concluded that the Conversion or Redemption of WCN10 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 Conversion or Redemption.

Status: **not legally binding**

Appendix 2 – Legislative provisions

114. This paragraph sets out the details of the provisions ruled upon or referenced in this Ruling.

Table 1: Provisions of the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997 ruled upon or referenced in this Ruling

<i>Income Tax Assessment Act 1936</i>	subsection 6(1)
<i>Income Tax Assessment Act 1936</i>	section 26BB
<i>Income Tax Assessment Act 1936</i>	subsection 26BB(1)
<i>Income Tax Assessment Act 1936</i>	subparagraph 44(1)(a)(ii)
<i>Income Tax Assessment Act 1936</i>	section 45
<i>Income Tax Assessment Act 1936</i>	section 45A
<i>Income Tax Assessment Act 1936</i>	subsection 45A(2)
<i>Income Tax Assessment Act 1936</i>	paragraph 45A(3)(a)
<i>Income Tax Assessment Act 1936</i>	paragraph 45A(3)(b)
<i>Income Tax Assessment Act 1936</i>	subsection 45A(3A)
<i>Income Tax Assessment Act 1936</i>	section 45B
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(2)(a)
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(2)(b)
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(2)(c)
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(3)(b)
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(5)(a)
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(5)(b)
<i>Income Tax Assessment Act 1936</i>	subsection 45B(7)
<i>Income Tax Assessment Act 1936</i>	subsection 45B(8)
<i>Income Tax Assessment Act 1936</i>	subsection 45B(9)
<i>Income Tax Assessment Act 1936</i>	section 45C
<i>Income Tax Assessment Act 1936</i>	section 70B
<i>Income Tax Assessment Act 1936</i>	former section 160APHD
<i>Income Tax Assessment Act 1936</i>	former section 160APHJ
<i>Income Tax Assessment Act 1936</i>	former section 160APHM
<i>Income Tax Assessment Act 1936</i>	former subsection 160APHM(2)
<i>Income Tax Assessment Act 1936</i>	former section 160APHN
<i>Income Tax Assessment Act 1936</i>	former subsection 160APHO(3)
<i>Income Tax Assessment Act 1936</i>	section 177EA
<i>Income Tax Assessment Act 1936</i>	paragraph 177EA(3)(a)
<i>Income Tax Assessment Act 1936</i>	paragraph 177EA(3)(b)

Status: **not legally binding**

<i>Income Tax Assessment Act 1936</i>	paragraph 177EA(3)(c)
<i>Income Tax Assessment Act 1936</i>	paragraph 177EA(3)(d)
<i>Income Tax Assessment Act 1936</i>	paragraph 177EA(3)(e)
<i>Income Tax Assessment Act 1936</i>	paragraph 177EA(5)(b)
<i>Income Tax Assessment Act 1997</i>	section 6-5
<i>Income Tax Assessment Act 1997</i>	section 8-1
<i>Income Tax Assessment Act 1997</i>	Division 67
<i>Income Tax Assessment Act 1997</i>	section 67-25
<i>Income Tax Assessment Act 1997</i>	subsection 67-25(1C)
<i>Income Tax Assessment Act 1997</i>	subsection 67-25(1D)
<i>Income Tax Assessment Act 1997</i>	section 104-10
<i>Income Tax Assessment Act 1997</i>	section 104-25
<i>Income Tax Assessment Act 1997</i>	section 109-10
<i>Income Tax Assessment Act 1997</i>	subsection 110-25(2)
<i>Income Tax Assessment Act 1997</i>	subsection 110-55(2)
<i>Income Tax Assessment Act 1997</i>	subparagraph 116-30(2)(b)(ii)
<i>Income Tax Assessment Act 1997</i>	subsection 130-60(1)
<i>Income Tax Assessment Act 1997</i>	subsection 130-60(2)
<i>Income Tax Assessment Act 1997</i>	subsection 130-60(3)
<i>Income Tax Assessment Act 1997</i>	Division 197
<i>Income Tax Assessment Act 1997</i>	section 202-40
<i>Income Tax Assessment Act 1997</i>	Division 203
<i>Income Tax Assessment Act 1997</i>	subsection 204-30(1)
<i>Income Tax Assessment Act 1997</i>	paragraph 204-30(3)(c)
<i>Income Tax Assessment Act 1997</i>	Division 207
<i>Income Tax Assessment Act 1997</i>	Subdivision 207-D
<i>Income Tax Assessment Act 1997</i>	Subdivision 207-E
<i>Income Tax Assessment Act 1997</i>	section 207-20
<i>Income Tax Assessment Act 1997</i>	paragraph 207-145(1)(a)
<i>Income Tax Assessment Act 1997</i>	paragraph 207-145(1)(b)
<i>Income Tax Assessment Act 1997</i>	paragraph 207-145(1)(c)
<i>Income Tax Assessment Act 1997</i>	paragraph 207-145(1)(d)
<i>Income Tax Assessment Act 1997</i>	paragraph 207-145(1)(da)
<i>Income Tax Assessment Act 1997</i>	paragraph 207-145(1)(db)
<i>Income Tax Assessment Act 1997</i>	paragraph 207-145(1)(e)
<i>Income Tax Assessment Act 1997</i>	paragraph 207-145(1)(f)
<i>Income Tax Assessment Act 1997</i>	section 207-157

Status: **not legally binding**

<i>Income Tax Assessment Act 1997</i>	subsection 207-157(4)
<i>Income Tax Assessment Act 1997</i>	subsection 207-158(2)
<i>Income Tax Assessment Act 1997</i>	section 215-20
<i>Income Tax Assessment Act 1997</i>	Division 230
<i>Income Tax Assessment Act 1997</i>	Division 974
<i>Income Tax Assessment Act 1997</i>	subsection 974-75(1)
<i>Income Tax Assessment Act 1997</i>	section 974-115
<i>Income Tax Assessment Act 1997</i>	section 974-120
<i>Income Tax Assessment Act 1997</i>	subsection 995-1(1)

Status: **not legally binding**

References

Related Rulings/Determinations:

TD 2007/29

Other references:

- PCG 2021/1

Legislative references:

- Banking Act 1959 11AF

ATO references

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