

CR 2024/57 - Macquarie Group Limited - Macquarie Capital Notes 7



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Class Ruling

Macquarie Group Limited – Macquarie Capital Notes 7

❶ 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.

[Note: This is a consolidated version of this document. Refer to the Legal database (ato.gov.au/law) to check its currency and to view the details of all changes.]

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What this Ruling is about

1. This Ruling sets out the income tax consequences for entities who subscribed for and acquired Macquarie Capital Notes 7 (MCN7) issued by Macquarie Group Limited (MGL).
2. Full details of this scheme are set out in paragraphs 44 to 73 of this Ruling.
3. In this Ruling, unless otherwise defined, capitalised terms have the meaning specified in the Terms of the MCN7 (Terms), which are contained in Appendix 1 of the Macquarie Capital Notes 7 Replacement Prospectus dated 27 August 2024 (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:
 - acquired your MCN7 by initial application under the Prospectus
 - are 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 MCN7

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- hold your MCN7 on capital account – that is, you do not hold your MCN7 as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)), and
- are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on your MCN7.

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 deal with:

- the tax implications in relation to a non-resident who holds their MCN7 through a permanent establishment (as defined in subsection 6(1) of the ITAA 1936) in Australia
- the tax implications for a Nominated Party who acquires MCN7 under a Resale Notice, and
- how the gross-up and tax offset rules in Division 207 apply to
 - a partnership or trust (other than a partnership or trust that is a corporate tax entity
 - a trust that is a complying superannuation entity), or
 - 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 2024 to 30 June 2035.

Ruling

Consequences of acquiring Macquarie Capital Notes 7

Acquisition date

8. You acquired your MCN7 on 16 September 2024 under table item 2 of section 109-10.

Cost base and reduced cost base

9. The first element of the cost base and reduced cost base of the MCN7 is \$100 each, being the money you paid to acquire your MCN7 (subsections 110-25(2) and 110-55(2)).

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Consequences of holding your Macquarie Capital Notes 7***Distributions on Macquarie Capital Notes 7 and entitlement to a tax offset for franking credits***

10. A Distribution on a MCN7 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) to the extent that it is not exempt income or non-assessable non-exempt income.
11. If a Distribution is franked, your assessable income includes the amount of the franking credit on the Distribution (subsection 207-20(1)) and you are entitled to a tax offset equal to the amount of the franking credit (subsection 207-20(2)), provided you are a 'qualified person' (refer to paragraphs 17 to 18 of this Ruling).
12. To the extent that a Distribution is 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 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 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 67-25(1D).

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

14. 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.

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

15. 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.

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 for 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 MCN7 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 your MCN7.
18. The Resale and Exchange features of MCN7 will not affect your risks of loss or opportunities for gain in respect of your MCN7 as neither the Resale nor the Exchange 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 on your MCN7.

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Qualifying securities

20. As your MCN7 is not a 'qualifying security' (as defined in subsection 159GP of the ITAA 1936), Division 16E of Part III of the ITAA 1936 will not apply.

Consequences of disposing of your Macquarie Capital Notes 7**Macquarie Capital Notes 7 are not traditional securities**

21. Your MCN7 are not traditional securities as defined in section 26BB of the ITAA 1936.
22. Section 26BB of the ITAA 1936 will not apply to include any gain on the disposal or Redemption of your MCN7 in your assessable income.
23. Section 70B of the ITAA 1936 will not apply to allow any loss on the disposal or Redemption of your MCN7 as a deduction to you.

Exchange of Macquarie Capital Notes 7 for Macquarie Group Limited Ordinary Shares

24. MCN7 are each a convertible interest as defined in subsection 995-1(1).
25. CGT event C2 happens on Exchange of each of your MCN7 for MGL Ordinary Shares.
26. A capital gain or capital loss you make from CGT event C2 happening on Exchange will be disregarded (subsection 130-60(3)).
27. MGL Ordinary Shares you acquire on Exchange will be taken to have been acquired when the Exchange happens on the relevant Exchange Date (subsection 130-60(2)). The first element of the cost base and reduced cost base of MGL Ordinary Shares you acquired on Exchange will be equal to the cost base and reduced cost base of your relevant MCN7 at the time of Exchange (table item 2 of subsection 130-60(1)).
28. As you hold your MCN7 on capital account, no amount will be included in your assessable income on the Exchange of a MCN7 under section 6-5. In addition, you will not incur a deductible loss under section 8-1 as a consequence of the Exchange of a MCN7.
29. On the Exchange of a MCN7 for MGL Ordinary shares you will not be taken to have received a dividend or non-share dividend.

Resale of Macquarie Capital Notes 7

30. CGT event A1 in section 104-10 happens on the Resale of your MCN7. The capital proceeds will equal the Issue Price of the MCN7.
31. As the capital proceeds you receive will not be more than the cost base of your MCN7, you will not make a capital gain as a result of the Resale.
32. As you hold your MCN7 on capital account, no amount will be included in your assessable income on the Resale under section 6-5 and you will not incur a deductible loss under section 8-1 as a consequence of the Resale.

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Disposal of Macquarie Group Limited Ordinary Shares by a Sale Agent on Exchange

33. CGT event A1 happens where the allocation of MGL Ordinary Shares you received on Exchange are disposed of by a Sale Agent and the net proceeds are remitted to you (section 104-10).
34. You will make a capital gain if the capital proceeds exceed your cost base (subsection 104-10(4)).
35. You will make a capital loss if the capital proceeds are less than your reduced cost base (subsection 104-10(4)).
36. In calculating the capital gain or capital loss the:
- time you are taken to have acquired the MGL Ordinary Shares is worked out according to paragraph 27 of this Ruling, and
 - first element of your cost base and your reduced cost base is worked out according to paragraph 27 of this Ruling.

Redemption of Macquarie Capital Notes 7

37. CGT event C2 will happen on the Redemption of MCN7, where Redemption is constituted by the Redemption of all or some of the MCN7 for their Issue Price (section 104-25).
38. The capital proceeds received by Holders on Redemption of the MCN7 will be replaced with the market value of the MCN7 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 MCN7 (subparagraph 116-30(2)(b)(ii)).
39. The Commissioners accepts that the market value of the MCN7 on Redemption Date can 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*.
40. You will make a capital gain on Redemption of your MCN7 if the capital proceeds you receive exceed the cost base of your MCN7. You will make a capital loss on Redemption of your MCN7 if the capital proceeds you receive are less than the reduced cost base (subsection 104-25(3)).

Other integrity provisions
Section 45 of the Income Tax Assessment Act 1936

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

Subsection 45A(2) of the Income Tax Assessment Act 1936

42. 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.

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Section 45B of the Income Tax Assessment Act 1936

43. 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

44. 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

45. MGL is an Australian-resident company with shares listed on the Australian Securities Exchange. The only shares that MGL has issued are ordinary shares.

46. MGL is regulated by the Australian Prudential Regulation Authority (APRA) as a non-operating holding company (NOHC) of Macquarie Bank Limited (MBL). MBL is an authorised deposit-taking institution for the purposes of the *Banking Act 1959*.

47. For Australian income tax purposes, MGL is the head company of the MGL income tax consolidated group.

48. Under the Prospectus, MGL offered to undertake a capital raising by the issue of MCN7 for an issue price of \$100 each (the Offer).

49. The MCN7 were issued on 16 September 2024 and raised \$1,500 million.

50. The MCN7 are issued by MGL in Australia. The MCN7 are not issued at or through an offshore permanent establishment or subsidiary of MGL.

51. The Offer has been made as part of MGL's ongoing capital management strategy within the regulatory capital requirements prescribed by APRA. The issue of MCN7 is a new capital raising and the proceeds from the issue will be used for general corporate funding and capital management purposes. MCN7 will be Eligible Capital of MGL under its NOHC Authority from APRA.

Main features of Macquarie Capital Notes 7

52. MCN7 are Australian dollar-denominated fully paid unsecured subordinated non-cumulative mandatorily convertible notes issued by MGL.

53. MCN7 are listed on the Australian Securities Exchange and trade under the code MQGPG.

Issue price

54. The Issue Price of MCN7 was \$100 each. MCN7 were fully paid on the Issue Date, being 16 September 2024.

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Distributions

55. MGL will pay in arrears, quarterly cash, floating rate Distributions in respect of MCN7 on a Distribution Payment Date (each a Distribution Payment Date) in accordance with the Terms.

56. The Distribution payable is calculated on the Issue Price of each of your MCN7 using a Distribution Rate which is equal to the Bank Bill Rate plus a Margin adjusted by the corporate tax rate and based on the number of days in the relevant Distribution Period. The Margin was determined under the Bookbuild.

57. Distributions are expected to be partly franked, at the same rate as the dividends on MGL's ordinary shares. The franking percentage of the Distributions may vary over time in line with the franking percentage that applies to MGL Ordinary Shares. Distributions may be partially, fully or not franked.

58. The payment of a Distribution is subject to the absolute discretion of MGL and can also only be paid if certain Payment Conditions are met, including that payment will not breach certain APRA conditions or make MGL insolvent.

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 MCN7 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 any Distribution is not paid in full on the relevant Distribution Payment Date or within 10 Business Days, this will restrict MGL from determining, declaring or paying any MGL Ordinary Share Dividend, or undertaking any Buy-Backs or Capital Reductions in relation to any MGL Ordinary Shares.

Mandatory Exchange

61. Unless the MCN7 have already been Redeemed or Exchanged, MCN7 will be Exchanged for MGL Ordinary Shares on the date that is the earlier of (each a Mandatory Exchange Date):

- 15 December 2034 (Scheduled Mandatory Exchange Date) subject to the satisfaction of the relevant Exchange Conditions, and
- any Distribution Payment Date after the Scheduled Mandatory Exchange Date on which the relevant Exchange Conditions are satisfied.

Mandatory Exchange on Non-Viability Event

62. In certain circumstances, some or all of the MCN7 must be Exchanged for MGL Ordinary Shares before a Mandatory Exchange Date if a Non-Viability Event occurs.

63. Where Exchange of any MCN7 is required on account of a Non-Viability Event and Exchange fails to take effect within 5 Business Days after the Non-Viability Event Exchange Date for any reason, then Exchange will not occur and the relevant MCN7 will instead be Written-Off.

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Optional Exchange

64. Some or all of the MCN7 may be Exchanged for MGL Ordinary Shares before a Mandatory Exchange Date if MGL elects to do so on any Scheduled Optional Exchange Date or following the occurrence of a Tax Event or a Regulatory Event.

Acquisition Event Exchange

65. All of the MCN7 must be Exchanged for MGL Ordinary Shares before a Mandatory Exchange Date if an Acquisition Event occurs, unless the Directors make certain determinations.

Exchange mechanics

66. Upon Exchange:

- The MCN7 will each be automatically terminated.
- MGL will allot and issue the Exchange Number of MGL Ordinary Shares to the Holders for each of the Holder's MCN7 held.

Disposal of Macquarie Group Limited Ordinary Shares by a Sale Agent on Exchange

67. In certain circumstances, including by the request of a Holder, the MGL Ordinary Shares may be issued to a Sale Agent instead of the Holder. The Sale Agent will, subject to the Terms, arrange for the sale of those shares and pay the relevant Holder a cash amount equal to the net proceeds of the sale.

Redemption

68. MGL may elect to Redeem all or some of the MCN7:

- on a Scheduled Optional Exchange Date, or
- following the occurrence of a Tax Event or Regulatory Event.

69. MCN7 will be Redeemed by payment of the Issue Price to the relevant Holder (Redemption Price). Distributions for the period since the last Distribution Payment Date to (but excluding) the Redemption Date will be paid subject to the conditions for payment of a Distribution being met.

Resale

70. MGL may elect that all or some of the Holder's holding of the MCN7 will be transferred to one or more Nominated Parties (Resale).

71. The Nominated Party or Nominated Parties will be one or more third parties selected by MGL and cannot be MGL itself or a Related Entity.

72. Under a Resale, each Holder on the Resale Date is taken to irrevocably offer to sell the MCN7 that are subject to the Resale Notice to the Nominated Party on the Resale Date for a purchase price equal to the Issue Price of that MCN7. MCN7 which are to be Resold will be transferred to the Nominated Party free from any encumbrance.

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Other matters

73. This Ruling is made on the basis that:
- (a) During the term of the scheme, MGL is a resident of Australia under the income tax laws of Australia and of no other jurisdiction.
 - (b) The MCN7 are equity interests in MGL under Division 974 and are non-share equity interests as defined in subsection 995-1(1).
 - (c) The Distributions are frankable distributions under section 202-40.
 - (d) MGL expects to frank each Distribution in accordance with the franking policy that applies to ordinary shares in MGL (at such time as Distributions are made), and in a manner that satisfies the benchmark rule in Division 203 for the franking period in which a Distribution is made. The policy of MGL in relation to the franking of dividends on the MGL Ordinary Shares of MGL is not expected to change as a result of the issuance of the MCN7.
 - (e) MGL will not differentially frank Distributions to different Holders according to their tax status or on any other basis.
 - (f) Immediately before payment of a Distribution on the MCN7, MGL will have available frankable profits (worked out under section 215-20) at least equal to the Distribution.
 - (g) Distributions on the MCN7 will not be sourced directly or indirectly from MGL's non-share capital account or share capital account.
 - (h) Distributions on the MCN7 will not be debited to any extent against MGL's non-share capital account or share capital account.
 - (i) The share capital account of MGL will not become tainted (within the meaning of Division 197) by the issue of the MCN7 or the issue of MGL Ordinary Shares on Exchange of the MCN7.
 - (j) Franked distributions on the MCN7 made by MGL will not give rise to a 'foreign income tax deduction' (as defined in section 832-120) for MGL.
 - (k) MGL does not have any foreign branches through which it carries on business, although there are members of the MGL tax consolidated group (other than MGL itself) that have one or more foreign branches.
 - (l) On Exchange or Redemption, MGL will debit the Issue Price of the MCN7 to its non-share capital account (within the meaning of section 164-10).
 - (m) Any MGL Ordinary Shares issued on Exchange will be equity interests in MGL as defined in Subdivision 974-C.
 - (n) The accounts of the MGL group will be prepared in accordance with the applicable accounting standards.
 - (o) 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.
 - (p) You will hold your MCN7 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.

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- (q) You will not take any 'positions' as defined in former section 160APHJ of the ITAA 1936) at any time in relation to your MCN7 apart from holding your MCN7.
- (r) 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)).
- (s) All unrelated parties to the scheme will deal with each other at arm's length.

Commissioner of Taxation

18 September 2024

Appendix – 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.*

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Section 177EA of the *Income Tax Assessment Act 1936*

74. Section 177EA of the ITAA 1936 is a general anti-avoidance provision that applies to deny an imputation benefit in certain circumstances. In order for section 177EA to apply, the conditions in paragraphs 177EA(3)(a) to (e) must be satisfied.

75. 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).

76. 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 MGL's primary purpose of raising eligible capital for general corporate funding and capital management purposes.

Gross up and tax offset cancelled in certain circumstances

77. Subdivision 207-F may cancel the effect of the gross-up and tax offset rules where the entity concerned has manipulated the imputation system in a manner that is not permitted under the income tax law.

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78. Under subsection 207-145(1), this adjustment will occur where a franked distribution is made to an entity in one or more of the following circumstances:

- The entity is not a qualified person in relation to the distribution for the purposes of Division 1A of former Part IIIAA of the ITAA 1936 (paragraph 207-145(1)(a)).
- The 'Commissioner has made a determination under paragraph 177EA(5)(b) of the ITAA 1936 that no imputation benefit is to arise in respect of the distribution for the entity (paragraph 207-145(1)(b)).
- The Commissioner has made a determination under paragraph 204-30(3)(c) that no imputation benefit is to arise in respect of the distribution for the entity (paragraph 207-145(1)(c)).
- The distribution is made as part of a dividend stripping operation (paragraph 207-145(1)(d)).
- The distribution is one to which section 207-157 (which is about distribution washing) applies (paragraph 207-145(1)(da)).
- The distribution is one to which section 207-158 (which is about distributions entitled to a foreign income tax deductions) applies (paragraph 207-145(1)(db)).

79. Paragraphs 207-145(1)(a) to (db) will not apply to franked Distributions paid to Holders as explained in paragraphs 80 to 89 of this Ruling.

Qualified person – paragraph 207-145(a)

80. Paragraph 207-145(1)(a) will not apply to cancel the effect of the gross-up and tax offset rules for a franked Distribution provided you are a qualified person.

81. 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 MCN7 and ends on the 90th day after the day MCN7 becomes ex dividend.

82. You generally need to have held MCN7 '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).

83. 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 MCN7 if your net position on that day does not retain 30% or more of the risks and opportunities associated with holding MCN7.

84. Embedded options such as the Resale and Exchange mechanisms do not represent separate positions in relation to MCN7 (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 MCN7 if MGL issues a Resale Notice. As MGL 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

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relation to your MCN7. Similarly, under the Exchange mechanism you do not have the right to elect Exchange of your MCN7.

85. Therefore, the Resale and Exchange mechanisms will not, of themselves, affect your risks of loss or opportunities for gain in respect of your MCN7.

Paragraphs 207-145(1)(b) and (c)

86. Paragraphs 207-145(1)(b) and (c) will not apply to cancel the effect of the gross-up and tax offset rules in respect of a franked Distribution as the Commissioner will not make determinations under paragraph 204-30(3)(c) or paragraph 177EA(5)(b) of the ITAA 1936 (refer to paragraphs 14 and 15 of this Ruling).

Paragraph 207-145(1)(d)

87. Paragraph 207-145(1)(d) will not apply to cancel the effect of the gross-up and tax offset rules in respect of a franked Distribution as there is no evidence that the Distributions will be made as part of a dividend stripping operation.

Paragraph 207-145(1)(da)

88. Paragraph 207-145(1)(da) will not apply to cancel the effect of the gross-up and tax offset rules in respect of a franked Distribution as this Ruling is made on the basis the distribution washing provision does not apply (refer to subparagraph 73(r) of this Ruling).

Paragraph 207-145(1)(db)

89. This ruling is made on the basis that Distributions on MCN7 do not give rise to any 'foreign income tax deductions' (as defined in section 832-120) for MGL. Accordingly, subsection 207-158(1) does not apply to the Distributions on MCN7 and therefore paragraph 207-145(db) will not apply to cancel the effect of the gross-up and tax offset rules in respect of a franked Distribution.

Macquarie Group Limited Ordinary Shares received on Exchange not a dividend or non-share dividend

90. The Exchange of MCN7 for MGL Ordinary Shares will not result in Holders being taken to have received a dividend or a non-share dividend.

91. Holders are not shareholders of MGL in respect of their MCN7 holdings. Accordingly, the Holders will not receive a dividend as defined in subsection 6(1) of the ITAA 1936.

92. The application of the Issue Price to subscribe for MGL Ordinary Shares on Exchange of the MCN7 is a crediting of that amount to the Holder and, therefore, a non-share distribution under section 974-115. All non-share distributions are non-share dividends unless they are debited against the distributing company's share capital account (section 974-120). The issue of MGL Ordinary Shares to Holders on Exchange of MCN7 will not be a non-share dividend as defined in section 974-120, as the Issue Price of the MCN7 will be debited against MGL's non-share capital account.

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Section 45 of the *Income Tax Assessment Act 1936*

93. 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.

94. The Terms do not provide for the issue of shares to all or some Holders in satisfaction of their Distribution entitlement. The issue of MGL Ordinary Shares on Exchange merely reflects a change in the type of equity interests held by Holders.

95. 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 MGL ordinary shares on Exchange as an unfranked dividend in the hands of Holders.

Section 45A of the *Income Tax Assessment Act 1936*

96. 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.

97. Both the issue of MGL Ordinary Shares on Exchange and the Redemption of MCN7 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).

98. However, the issue of MGL Ordinary Shares on Exchange and the Redemption of MCN7 will not constitute the streaming of capital benefits because under an Exchange or Redemption, MGL will not selectively direct the flow of capital benefits to Holders who could most benefit from capital. Accordingly, as this requirement does not apply to the Exchange or Redemption of MCN7, 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 *Income Tax Assessment Act 1936*

99. 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.

100. The issue of MGL Ordinary Shares to Holders on Exchange and the Redemption of MCN7 (a Redemption being a non-share capital return) will each constitute a scheme under which Holders are provided with a capital benefit by MGL (paragraphs 45B(5)(a), 45B(5)(b) and subsection 45B(7) of the ITAA 1936). As a result, paragraph 45B(2)(a) of the ITAA 1936 will be satisfied.

101. 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. As a result, paragraph 45B(2)(b) of the ITAA 1936 will be satisfied.

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102. 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.

103. Having regard to the relevant circumstances, it could not be concluded that the Exchange or Redemption of MCN7 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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