CR 2020/31 - Income tax: AMP Limited - AMP Capital Notes 2

Class Ruling

Income tax: AMP Limited – AMP Capital Notes 2

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.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

Table of Contents **Paragraph**

What this Ruling is about

1. This Ruling sets out the way in which the relevant income tax provisions apply to specified entities who subscribe for and acquire AMP Capital Notes 2 (AMP CN2) issued by AMP Limited (AMP).

2. The scheme is set out in paragraphs 37 to 79 of this Ruling.

3. In this Ruling, unless otherwise defined, capitalised terms have the meanings specified in the Terms of AMP CN2 (the Terms) contained in Appendix A of the Prospectus for the issue of AMP CN2, dated 4 December 2019 (the Prospectus).

4. All legislative references are to provisions of 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 your AMP CN2 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 AMP CN2

- holds your AMP CN2 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 AMP CN2.

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 AMP CN2 through a permanent establishment (as defined in subsection 6(1) of the ITAA 1936) in Australia
- the tax implications of Optional Exchange of AMP CN2 before the Mandatory Conversion Date
- the tax implications of Redemption (other than for the application of sections 45A, 45B, 26BB and 70B of the ITAA 1936) of AMP CN2
- how the income tax laws apply to a Nominated Purchaser who acquires their AMP CN2 under the Resale mechanism
- 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 2019 to 30 June 2028.

Ruling

Consequences of acquiring AMP Capital Notes 2

Acquisition date

8. You acquired your AMP CN2 on 23 December 2019 under table item 2 of section 109-10.

Cost base and reduced cost base of each AMP Capital Notes 2

9. The first element of the cost base and reduced cost base of each AMP CN2 is $100, being the money you paid to acquire your AMP CN2 (subsections 110-25(2) and 110-55(2)).

Consequences of holding AMP Capital Notes 2

Distributions on AMP Capital Notes 2 and entitlement to tax offset for franking credits

10. A Distribution on an AMP CN2 is a non-share dividend under section 974-120. Therefore, you include Distributions 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, corporate unit trusts 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 – qualified person

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 AMP CN2 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 AMP CN2.

18. The Resale and Conversion mechanism of AMP CN2 will not affect your risks of loss or opportunities for gain in respect of your AMP CN2. This is because neither the Resale facility nor the Conversion mechanism constitutes a separate position (former sections 160APHM and 160APHJ of the ITAA 1936).

Gross-up and tax offset cancelled - the other circumstances

19. Paragraphs 207-145(1)(b) to (da) 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), based on the facts of the scheme, 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 (refer to subparagraph 79(20) of this Ruling).

23. In respect of paragraph 207-145(1)(db), the proceeds from the issuance of the AMP CN2 will not be used to fund any entity in the group that has a foreign branch. Therefore, as Distributions will not give rise to a foreign income tax deduction, section 207-158 will not apply to deny any franking benefits in relation to Distributions you receive on your AMP CN2.

Qualifying securities

24. An AMP CN2 is not a 'qualifying security' as defined in subsection 159GP of the ITAA 1936. Therefore, Division 16E of Part III of the ITAA 1936 does not apply to an AMP CN2.

Consequences of disposing AMP Capital Notes 2

AMP Capital Notes 2 not traditional securities

25. An AMP CN2 is not a 'traditional security' as defined in subsection 26BB(1) of the ITAA 1936.

26. Section 26BB of the ITAA 1936 will not apply to include any gain on the disposal or Redemption of an AMP CN2 in your assessable income.

27. Section 70B of the ITAA 1936 will not apply to allow any loss on the disposal or Redemption of an AMP CN2 as a deduction to you.

Conversion of AMP Capital Notes 2 for AMP Shares

28. Each AMP CN2 is a convertible interest.

29. CGT event C2 happens on Conversion (section 104-25).

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

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

32. The first element of the cost base and reduced cost base of AMP Shares acquired on Conversion will be equal to the cost base and reduced cost base of the relevant AMP CN2 at the time of Conversion (table item 2 of subsection 130-60(1)).

33. On the Conversion of AMP CN2 for AMP Shares you will not be taken to have received a dividend or a non-share dividend.

Other integrity provisions

Section 45 of the ITAA 1936

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

Section 45A of the ITAA 1936

35. 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

36. 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.

Scheme

37. If the scheme is not carried out as described, this Ruling cannot be relied upon.

Background

38. AMP is the ultimate parent company of the AMP group of companies (AMP Group).

39. AMP is an Australian resident company for income tax purposes and is listed on the Australian Securities Exchange (ASX).

40. The AMP Group is a large financial services group operating in Australia and New Zealand. It provides financial advice, superannuation products and services, banking products, insurance products and investment management services to retail and wholesale clients.

41. AMP is the head company of the AMP tax consolidated group under Part 3-90. The entities listed in the following dot points are Australian Prudential Regulation Authority (APRA) regulated entities and subsidiary members of the AMP tax consolidated group.

- AMP Bank Limited (AMP Bank)
- AMP Life Limited (AMP Life), and
- The National Mutual Life Association of Australasia Limited (NMLA).

42. AMP Bank is an ‘authorised deposit-taking institution’ regulated by APRA under the *Banking Act 1959*.

43. AMP is not an authorised ‘non-operating holding company’ (NOHC) of AMP Bank under section 11AA(2) of the *Banking Act 1959*.

44. AMP Life and NMLA are life insurance companies regulated by APRA under section 17 of the *Life Insurance Act 1995*.

45. AMP is a registered NOHC of AMP Life and NMLA under section 28A of the *Life Insurance Act 1995*.

46. The AMP tax consolidated group has permanent establishments in New Zealand and Taiwan which arose as a result of the operations of AMP Life. No other member of the AMP tax consolidated group has a permanent establishment in a foreign country.

47. Under the Prospectus, AMP offered to undertake a capital raising by the issue of AMP CN2 for a Face Value of $100 each to raise $250 million (the Offer).

48. The issue date for the AMP CN2 was 23 December 2019.

49. The AMP CN2 were listed on the ASX following completion of the Offer and trade under the ASX code AMPPB.

50. The AMP CN2 are issued by AMP in Australia. The AMP CN2 will not be issued at or through an offshore permanent establishment or subsidiary of AMP.

51. The Offer has been made as part of AMP's ongoing capital management strategy within the regulatory capital requirements prescribed by APRA. The issue of the AMP CN2 is a new capital raising. The proceeds from the issue of the AMP CN2 are to be used by AMP to fund Additional Tier 1 capital of AMP Bank and not for any other entity in the AMP tax consolidated group.

Main features of AMP Capital Notes 2

52. The AMP CN2 are perpetual, convertible, subordinated debt obligations in the form of unsecured notes issued by AMP in Australia.

53. A Holder of AMP CN2 does not have voting rights at any meeting of AMP shareholders.

Face Value

54. The denomination and Face Value of each AMP CN2 is $100. AMP CN2 was issued fully paid on 23 December 2019.

Distributions

55. AMP is scheduled to pay quarterly interest on each AMP CN2 in arrears on each Distribution Date in accordance with the Terms (a Distribution).

56. A Distribution is calculated on the Face Value of each AMP CN2 using a Distribution Rate which is equal to the BBSW Rate plus a Margin adjusted for franking and based on the number of days held. The Margin is determined under the Bookbuild.

57. The Franking Rate for a Distribution may vary over time depending on AMP's available Franking Credits. If a Distribution is not fully franked, then the cash amount of the Distribution will be a higher amount to compensate for the reduction in Franking Credits.

58. The payment of a Distribution is subject to the absolute discretion of AMP Directors and no distribution conditions existing on the relevant Distribution Date.

59. Distributions are non-cumulative and if all or any part of a Distribution is not paid, AMP has no liability to pay the unpaid amount of the Distribution, Holders have no claim or entitlement in respect of such non-payment, and such non-payment does not constitute an event of default.

60. No interest accrues on any unpaid Distributions and the Holders have no claim or entitlement in respect of interest on any unpaid Distributions.

61. Subject to certain exclusions, if a Distribution is not paid in full on the relevant Distribution Date, AMP will be restricted from declaring or determining a Dividend, undertaking any buy-backs or capital reductions until the next Distribution Date unless the Distribution is paid in full within 20 Business Days of a Distribution Date.

Conversion

62. The Conversion mechanism of the AMP CN2 involves:

- each Holder being issued a number of AMP Shares for each AMP CN2 that is being Converted on the Conversion Date equal to the Conversion Number
- the immediate and irrevocable termination in full of each Holder's rights in relation to each AMP CN2 that is being Converted for an amount equal to the Face Value and AMP applying the Face Value by way of payment for the subscription of the Conversion Number of AMP Shares to be issued on Conversion.

63. Each AMP Share issued upon Conversion ranks equally with all other fully paid AMP Shares.

Mandatory Conversion

64. AMP must Convert all of the AMP CN2 into AMP Shares at the Mandatory Conversion Date.

65. The Mandatory Conversion Date is the first to occur of the following dates, on which the Mandatory Conversion Conditions are satisfied:

- 16 December 2027, or
- the first Distribution Date after the Mandatory Conversion Conditions are satisfied.

66. Mandatory Conversion is subject to Shareholder Approval which must be obtained by the Mandatory Conversion Date.

Conversion or Write-Off on a Non-Viability Event

67. A Non-Viability Event occurs upon the occurrence of certain conditions affecting the capital adequacy or viability of AMP.

68. If a Non-Viability Event occurs, AMP must immediately convert into AMP Shares or Write Off:

- all Relevant Perpetual Subordinated Instruments (which includes the AMP CN2), or
- such amount of Perpetual Subordinated Instruments which is required to enable AMP to be viable without further conversion or write-off as determined by APRA.

Conversion on Acquisition Event

69. An Acquisition Event occurs if, amongst other things, more than 50% of the AMP Shares are acquired by a person as a result of a takeover bid or scheme of arrangement.

70. If an Acquisition Event occurs, AMP must convert all of the AMP CN2 on the Acquisition Conversion Date.

71. Conversion on an Acquisition Event is subject to Shareholder Approval.

Optional Exchange

72. Subject to APRA's prior written approval, AMP may elect to Exchange all or some AMP CN2 on:

- the Optional Exchange Date by Conversion, Redemption, Resale or a combination
- an Exchange Date by Conversion, Redemption, Resale or a combination following the occurrence of a Tax Event or a Regulatory Event, or
- an Exchange Date by Conversion following the occurrence of a Potential Acquisition Event.

73. Conversion on Optional Exchange is subject to Shareholder Approval.

Redemption

74. Any Redemption on Optional Exchange will result in the AMP CN2 being Redeemed by payment on the Exchange Date of the Face Value (Redemption Price) to the relevant Holder.

75. Upon payment of the Redemption Price, all other rights conferred, or restrictions imposed, by the AMP CN2 will no longer have effect.

Resale

76. If AMP elects to Resell AMP CN2 on Optional Exchange, AMP must appoint one or more Nominated Purchasers for the Resale on such terms as may be agreed between AMP and the Nominated Purchaser(s).

77. Each Holder on the Exchange Date is taken to irrevocably offer to sell the AMP CN2 subject to a Resale to the Nominated Purchaser(s) on the Exchange Date for the Resale Price. The Resale Price, for an AMP CN2, means a cash amount equal to its Face Value.

78. The effect of a Resale is that, subject to payment by the Nominated Purchaser of the Resale Price to the Holders, all right, title and interest in such AMP CN2 (excluding the right to any Distribution payable on that date) will be transferred to the Nominated Purchaser free from Encumbrances.

Other matters

79. The Ruling is made on the basis that:

(1) During the term of the scheme, AMP is a resident of Australia under the income taxation laws of Australia and of no other jurisdiction.

(2) The majority of the Holders who acquire the AMP CN2 under the Offer are expected to be residents of Australia for tax purposes, although some may be non-residents.

(3) The AMP CN2 are equity interests in AMP under Division 974 and are non-share equity interests as defined in subsection 995-1(1).

(4) The Distributions are frankable distributions under section 202-40.

(5) In accordance with Division 203, AMP will frank Distributions in respect of the AMP CN2 at the same franking percentage as the AMP benchmark for the franking period in which the frankable distribution is made.

(6) Distributions on the AMP CN2 are not sourced, directly or indirectly, from AMP's share capital account or its non-share capital account.

(7) Distributions paid on the AMP CN2 will not be debited to AMP's share capital account or its non-share capital account.

(8) Immediately before the payment of a Distribution on the AMP CN2, AMP has available frankable profits (worked out under section 215-20) at least equal to the Distribution.

(9) AMP expects to frank its frankable distributions or declare them to be conduit foreign income to the extent that they are unfranked.

(10) AMP does not differentially frank Distributions to different Holders according to their tax status or on any other basis.

(11) The dividend payout ratios and AMP's policies in relation to the franking of its distributions on ordinary share capital and preference share capital of AMP (to the extent such dividends/distributions are frankable) are not expected to change as a result of the issue of the AMP CN2, other than to comply with the dividend/distribution restrictions in the Terms.

(12) The share capital account of AMP does not become tainted (within the meaning of Division 197) by the issue of the AMP CN2 or the allotment of AMP Shares on Conversion of the AMP CN2.

(13) On Conversion or Redemption of the AMP CN2, AMP debits the Face Value of the AMP CN2 to its non-share capital account.

(14) AMP Shares issued to the Holders on Conversion of the AMP CN2 are equity interests under Division 974.

(15) The proceeds from the issuance of the AMP CN2 will not be used to fund any entity in the group other than AMP Bank. As AMP Bank does not have any foreign branches, all or part of a Distribution will not give rise to a foreign income tax deduction.

(16) All parties to the scheme are dealing with each other at arm's length.

(17) You will not take any 'positions' (as defined in former section 160APHJ of the ITAA 1936) at any time in relation to your AMP CN2 apart from holding your AMP CN2.

(18) 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.

(19) You will hold your AMP CN2 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.

(20) 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)).

(21) The accounts of the AMP Group are prepared in accordance with the applicable accounting standards.

Commissioner of Taxation
17 June 2020

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

80. 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.

81. Based on the scheme, there is no evidence of streaming. Distributions will be received by all Holders by reason of their proportionate holding of AMP CN2 and not by reference to their tax profiles or individual tax positions. There is nothing in the Terms that allows AMP to treat Holders differently in respect of their entitlement to a franked Distribution.

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

82. 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.

83. 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.

84. 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 AMP'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.

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

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

- do not include the franking credit attached to the dividend 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 dividend (paragraph 207-145(1)(f)).

86. 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 AMP CN2 and ends on the 90th day after the day AMP CN2 become ex-distribution.

87. You need to have held AMP CN2 '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).

88. 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 AMP CN2 if your net position on that day does not retain 30% or more of the risks and opportunities associated with holding AMP CN2.

89. Embedded options such as the Resale and Conversion mechanisms do not represent separate positions in relation to AMP CN2 (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 AMP CN2 if AMP issues a Resale Notice. As AMP 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 your AMP CN2. Similarly, under the Conversion mechanism you do not have the right to elect Conversion of your AMP CN2 and neither does AMP have an obligation to Conversion.

90. Therefore, the Resale and Conversion mechanisms will not, of themselves, affect your risks of loss or opportunities for gain in respect of your AMP CN2.

91. However, if you do enter into any risk management strategies in respect of your AMP CN2 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.

Section 45 of the ITAA 1936

92. 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.

93. AMP's distribution/dividend payout ratios in relation to its AMP Shares and other equity interests are not expected to change as a result of issuing AMP CN2 other than to comply with the dividend/distribution restrictions in the Terms. Distributions on the AMP CN2 are expected to be franked at the same benchmark franking percentage as the dividends on AMP shares. Further, AMP expects to continue franking its frankable distributions or declare them to be conduit foreign income to the extent that they are unfranked.

94. Under the Terms, AMP is unable to issue AMP Shares to all or some Holders in satisfaction of their Distribution entitlement under AMP CN2. The issue of AMP Shares on Conversion merely reflects a change in the type of equity interests held by Holders in AMP.

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 issue of AMP shares on Conversion as an unfranked dividend in the hands of Holders.

Section 45A of the ITAA 1936

96. 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.

97. Both the issue of AMP Shares on Conversion and the Redemption of AMP CN2 will constitute the provision of a capital benefit to Holders (paragraph 45A(3)(a) of the ITAA 1936 for an Conversion, 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 AMP Shares on Conversion and the Redemption of AMP CN2 will not constitute the streaming of capital benefits because under a Conversion or Redemption, AMP 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 AMP CN2, 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

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 AMP Shares to Holders on Conversion and the Redemption of AMP CN2 will each constitute a scheme under which Holders are provided with a capital benefit by AMP (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 Conversion or Redemption. As a result, paragraph 45B(2)(b) of the ITAA 1936 will be satisfied.

102. Therefore, whether section 45B of the ITAA 1936 will apply to an Conversion or Redemption depends 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.

103. Having regard to the relevant circumstances, it could not be concluded that the Conversion or Redemption of AMP CN2 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.

AMP Shares received on Conversion not a dividend or a non-share dividend

104. You are not a shareholder of AMP in respect of your AMP CN2 holding. Accordingly, you will not receive a 'dividend' as defined in subsection 6(1) of the ITAA 1936.

105. The application of the Face Value to subscribe for AMP Shares on Conversion of AMP CN2 is a crediting of that amount to you and, therefore, a non-share distribution under section 974-115.

106. 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).

107. The allocation and issue of AMP Shares to you on Conversion of AMP CN2 will not be a non-share dividend as defined in section 974-120, as the Face Value of AMP CN2 will be debited against AMP's non-share capital account.

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10; TD 2007/29

Legislative references:

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- ITAA 1936 6(1)
- ITAA 1936 26BB
- ITAA 1936 26BB(1)
- ITAA 1936 44
- ITAA 1936 44(1)
- ITAA 1936 44(1)(a)(ii)
- ITAA 1936 45
- ITAA 1936 45A
- ITAA 1936 45A(2)
- ITAA 1936 45A(3)
- ITAA 1936 45A(3)(a)
- ITAA 1936 45A(3)(b)
- ITAA 1936 45A(3A)
- ITAA 1936 45B
- ITAA 1936 45B(2)
- ITAA 1936 45B(2)(a)
- ITAA 1936 45B(2)(b)
- ITAA 1936 45B(2)(c)
- ITAA 1936 45B(3)(b)
- ITAA 1936 45B(5)(a)
- ITAA 1936 45B(5)(b)
- ITAA 1936 45B(7)
- ITAA 1936 45B(8)
- ITAA 1936 45B(9)
- ITAA 1936 45C
- ITAA 1936 70B
- ITAA 1936 Div 16E
- ITAA 1936 159GP(1)
- ITAA 1936 159GP(1)(a)
- ITAA 1936 159GP(1)(b)
- ITAA 1936 159GP(1)(ba)
- ITAA 1936 159GP(1)(c)
- ITAA 1936 159GP(1)(d)
- ITAA 1936 former 160APHD
- ITAA 1936 former 160APHJ
- ITAA 1936 former 160APHM
- ITAA 1936 former 160APHM(2)
- ITAA 1936 former 160APHN
- ITAA 1936 former 160APHO
- ITAA 1936 former 160APHO(3)
- ITAA 1936 177EA
- ITAA 1936 177EA(3)
- ITAA 1936 177EA(3)(a)
- ITAA 1936 177EA(3)(b)
- ITAA 1936 177EA(3)(c)
- ITAA 1936 177EA(3)(d)
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- ITAA 1936 177EA(5)(b)
- ITAA 1997
- ITAA 1997 Div 67
- ITAA 1997 67-25
- ITAA 1997 67-25(1c)
- ITAA 1997 67-25(1d)
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- ITAA 1997 104-25(1)(f)
- ITAA 1997 109-10
- ITAA 1997 110-25(2)
- ITAA 1997 110-55(2)
- ITAA 1997 Subdiv 130-C
- ITAA 1997 130-60
- ITAA 1997 130-60(1)
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- ITAA 1997 130-60(3)
- ITAA 1997 204-30
- ITAA 1997 204-30(1)
- ITAA 1997 204-30(3)(c)
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