


CR 2024/16 - KeyInvest Limited - KeyInvest Limited Capital Notes

 This cover sheet is provided for information only. It does not form part of *CR 2024/16 - KeyInvest Limited - KeyInvest Limited Capital Notes*



Status: **legally binding**

Class Ruling

KeyInvest Limited – KeyInvest Limited Capital Notes

📌 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.

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	33
Appendix – Explanation	66

What this Ruling is about

1. This Ruling sets out the income tax consequences for entities who subscribed for and acquired KeyInvest Limited Capital Notes (KeyInvest Capital Notes) issued by KeyInvest Limited (KeyInvest).
2. Details of this scheme are set out in paragraphs 33 to 65 of this Ruling.
3. In this Ruling, unless otherwise defined, capitalised terms have the meaning specified in the Terms of KeyInvest Capital Notes (the Terms), which are contained in Annexure A of the Capital Note Deed Poll dated 1 June 2023.
4. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

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

Who this Ruling applies to

5. This Ruling applies to you if you are an investor who:
 - acquired your KeyInvest Capital Notes under a Subscription Agreement as described under the Information Memorandum for the issue of KeyInvest Capital Notes dated 1 June 2023 (the Information Memorandum)

Status: legally binding

- 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 KeyInvest Capital Notes
- holds your KeyInvest Capital Notes 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 KeyInvest Capital Notes.

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' (as defined in subsection 6(1) of the ITAA 1936) who holds their KeyInvest Capital Notes through a permanent establishment (as defined in subsection 6(1) of the ITAA 1936) in Australia
- the tax implications of Conversion or Write-off of KeyInvest Capital Notes on the occurrence of a Non-Viability Trigger Event
- the tax implications of Redemption (other than for the application of sections 26BB, 45A, 45B and 70B of the ITAA 1936, and section 104-25) of the KeyInvest Capital Notes, and
- how the gross-up and tax offset rules in Division 207 apply to partnership or trustee investors (other than a partnership or trustee that is a corporate tax entity, or a trustee of a trust that is a complying superannuation entity) or to indirect distributions to partners in a partnership or beneficiaries or trustees of a trust.

When this Ruling applies

7. This Ruling applies from 1 July 2022 to 30 June 2028.

Ruling**Consequences of acquiring KeyInvest Limited Capital Notes****Acquisition date**

8. You acquired your KeyInvest Capital Notes on 9 June 2023 under table item 2 of section 109-10.

Cost base and reduced cost base of KeyInvest Limited Capital Notes

9. The first element of the cost base and reduced cost base of each KeyInvest Capital Note is \$1,000, being the money you paid to acquire your KeyInvest Capital Note (subsections 110-25(2) and 110-55(2)).

Status: **legally binding**

Consequences of holding KeyInvest Limited Capital Notes***Distributions on KeyInvest Limited Capital Notes and entitlement to tax offset for franking credits***

10. A Distribution on a KeyInvest Capital Note 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 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 (section 207-20).

12. 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).

13. 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).

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 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 KeyInvest Capital Notes for a continuous period of at least 90 days 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 KeyInvest Capital Notes.

18. 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.

19. In respect of paragraphs 207-145(1)(b) and (c), refer to paragraphs 14 and 15 of this Ruling.

Status: **legally binding**

20. 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.

21. In respect of paragraph 207-145(1)(da), the distribution washing provision does not apply (refer to subparagraph 65(s) of this Ruling).

22. In respect of paragraph 207-145(1)(db), the KeyInvest Capital Notes are equity interests which form part of KeyInvest's Additional Tier 1 Capital (refer to subsection 207-158(2) and subparagraph 65(c) of this Ruling).

Consequences of disposing of KeyInvest Limited Capital Notes

KeyInvest Limited Capital Notes are not traditional securities

23. A KeyInvest Capital Note is not a 'traditional security' as defined in subsection 26BB(1) of the ITAA 1936.

24. Section 26BB of the ITAA 1936 will not apply to include any gain on the disposal or Redemption of your KeyInvest Capital Notes in your assessable income.

25. Section 70B of the ITAA 1936 will not apply to allow you any loss on the disposal or Redemption of a KeyInvest Capital Note as a deduction.

Redemption of KeyInvest Limited Capital Notes

26. CGT event C2 happens when a KeyInvest Capital Note is Redeemed for its Face Value (section 104-25).

27. The capital proceeds received by holders of KeyInvest Capital Notes (KeyInvest Capital Notes Holders) on Redemption of the KeyInvest Capital Notes will be replaced with the market value of the KeyInvest Capital Notes 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 KeyInvest Capital Notes (subparagraph 116-30(2)(b)(ii)).

28. You will make a capital gain (or capital loss) on Redemption of your KeyInvest Capital Notes if the capital proceeds you receive are greater than the cost base (or less than the reduced cost base) of your KeyInvest Capital Notes.

29. As you hold your KeyInvest Capital Notes on capital account, no amount will be included in your assessable income on Redemption under section 6-5.

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

Other integrity provisions

Section 45A of the ITAA 1936

31. 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 Redemption of the KeyInvest Capital Notes as an unfranked dividend.

Status: **legally binding**

Section 45B of the ITAA 1936

32. 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 Redemption of the KeyInvest Capital Notes as an unfranked dividend.

Scheme

33. 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

34. KeyInvest is a public company incorporated in Australia, limited by guarantee and shares, and is a mutual entity under the *Corporations Act 2001*, and a friendly society under the *Life Insurance Act 1995*.

35. KeyInvest's principal activities are the provision of financial services and products to its members and the management of commercial properties.

36. KeyInvest is subject to prudential supervision by the Australian Prudential Regulation Authority (APRA), which includes a requirement to maintain mandatory levels of Tier 1 Capital.

37. KeyInvest had no shares, Mutual Capital Instruments (MCIs) or other instruments constituting Common Equity Tier 1 Capital at the Issue Date of KeyInvest Capital Notes.

38. KeyInvest is prohibited under its constitution to pay dividends to its members.

Issue of KeyInvest Limited Capital Notes

39. Under the Information Memorandum, KeyInvest advised its intention to undertake a capital raising by the issue of KeyInvest Capital Notes for a Face Value of \$1,000 each to raise up to \$11 million (the Offer). The Offer was made by KeyInvest to invited professional and sophisticated investors in accordance with Parts 6D.2 or 7.9 of the *Corporations Act 2001*.

40. The Information Memorandum states that no action has been taken in Australia or any other jurisdiction that would permit a public offering of KeyInvest Capital Notes.

41. The Issue Date for the KeyInvest Capital Notes was 9 June 2023.

42. The KeyInvest Capital Notes were issued by KeyInvest in Australia. The KeyInvest Capital Notes were not issued at or through an offshore permanent establishment or subsidiary of KeyInvest.

43. The Offer raised Additional Tier 1 capital, as part of KeyInvest's capital management policy within the regulatory capital requirements prescribed by APRA, to invest in Keystone Capital Limited, a funds manager specialising in mortgage investments.

Main features of KeyInvest Limited Capital Notes

44. The KeyInvest Capital Notes are fully paid, convertible, subordinated, perpetual, unsecured debt obligations issued by KeyInvest.

Status: **legally binding**

45. A KeyInvest Capital Note Holder does not have voting rights at any general shareholder meeting of KeyInvest in respect of the KeyInvest Capital Notes held.

Face value

46. The Face Value of each KeyInvest Capital Note is \$1,000. KeyInvest Capital Notes were fully paid on the Issue Date.

Distributions

47. KeyInvest will pay quarterly floating-rate cash Distributions in respect of each KeyInvest Capital Note on a Distribution Payment Date in accordance with the Terms. The Distributions will be paid from KeyInvest's retained earnings and no amounts will be sourced, either directly or indirectly, from a share capital account.

48. The Distribution payable is calculated on the Face Value of each KeyInvest Capital Note using a Distribution Rate, which is equal to the BBSW Rate plus a Margin adjusted by the Franking Adjustment Factor¹, and based on the number of days in the Distribution Period.

49. The Distributions are expected to be franked. If the Distribution is not fully franked, then the Distribution will be a higher amount than otherwise, to reflect the applicable Franking Adjustment Factor.

50. The payment of a Distribution is subject to the absolute discretion of KeyInvest and will only be paid if a Payment Condition does not exist on the Distribution Payment Date. Broadly, a Payment Condition exists where KeyInvest is prevented from paying the Distribution by prudential regulatory requirements, insolvency or APRA objecting to the payment.

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

52. No interest accrues on any unpaid Distributions and KeyInvest Capital Note Holders have no claim or entitlement in respect of interest on any unpaid Distributions.

53. Subject to certain exceptions, if for any reason a Distribution has not been paid in full on a Distribution Payment Date, KeyInvest must not, without approval of a Special Resolution, until and including the next Distribution Payment Date declare, determine to pay, or pay a dividend, distribution or return of capital on any:

- MCIs (assuming that MCIs are on issue at that time)
- ordinary shares in KeyInvest (assuming that ordinary shares are on issue at that time), or
- other instrument constituting Common Equity Tier 1 Capital of KeyInvest,

unless the Distribution is paid in full within 5 Business Days of the relevant Distribution Payment Date.

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

Status: **legally binding**

Redemption

54. KeyInvest may Redeem:

- all (but not some) KeyInvest Capital Notes if a Tax Event or Regulatory Event occurs if the event was not expected at the Issue Date, or
- all or some of the KeyInvest Capital Notes on 30 June 2028 or on a Distribution Payment Date occurring after that date (each an Optional Redemption Date).

55. A Redemption may occur even if KeyInvest does not pay a Distribution for the final Distribution Period.

56. KeyInvest may only Redeem the KeyInvest Capital Notes if either KeyInvest replaces the KeyInvest Capital Notes with a suitable capital instrument or KeyInvest obtains confirmation from APRA that APRA is satisfied, having regard to the capital position of KeyInvest, it does not have to replace the KeyInvest Capital Notes. APRA must also provide written approval for the Redemption.

57. On the Redemption Date KeyInvest will pay the KeyInvest Capital Note Holder a cash amount equal to the Face Value (\$1,000) of each KeyInvest Capital Note (Redemption Price) and upon payment by KeyInvest, all other rights conferred, or restrictions imposed, by the KeyInvest Capital Note will no longer have effect.

Conversion or Write-off on Non-Viability Trigger Event

58. A Non-Viability Trigger Event occurs where APRA has notified KeyInvest that it considers that conversion to MCIs or Write-off of Relevant Securities is necessary because, without it, APRA considers that KeyInvest would become non-viable; or that without a public sector injection of capital, or equivalent support, KeyInvest would become non-viable.

59. Conversion of the KeyInvest Capital Notes involves:

- Each KeyInvest Capital Note that is being Converted will Convert into a specified number of MCIs based on a formula (Conversion Number) such that the aggregate nominal value of the MCIs received by a KeyInvest Note Holder will not exceed, at the Non-Viability Conversion Date, the aggregate Face Value of the Capital Notes Converted.
- Each KeyInvest Capital Note Holder's rights (including to payment of Distributions) in relation to each KeyInvest Capital Note that is being Converted is immediately and irrevocably terminated for an amount equal to the Face Value of that KeyInvest Capital Note and KeyInvest applies the Face Value of each Note by way of payment for the subscription of the Conversion Number of MCIs to be issued on Conversion.

60. Upon Conversion, a KeyInvest Capital Notes Holder will be given all rights attaching to the Conversion Number of MCIs issued in respect of such Holder's aggregate holding of KeyInvest Capital Notes, but these rights do not take effect until the time at which such Conversion occurs on the Non-Viability Conversion Date. On the Non-Viability Conversion Date all other rights conferred or restrictions imposed on each KeyInvest Capital Note under the Terms no longer have effect.

61. Each MCI issued upon Conversion ranks equally with all other MCIs and other securities which constitute Common Equity Tier 1 Capital of KeyInvest.

Status: legally binding

62. If the KeyInvest Capital Notes are not Converted within 5 Business Days after the Non-Viability Conversion Date for any reason, they will be Written-Off with effect on the Non-Viability Conversion Date.

63. A Conversion or Write-off following a Non-Viability Trigger Event on or after 1 July 2023 will occur immediately.

64. A KeyInvest Capital Note Holder does not have a right to request Conversion or Redemption of the KeyInvest Capital Notes.

Other matters

65. This Ruling is made on the basis that:

- (a) During the term of the scheme, KeyInvest is a resident of Australia under the income taxation laws of Australia and of no other jurisdiction.
- (b) The majority of the KeyInvest Capital Note Holders who acquire the KeyInvest Capital Notes under the Offer are expected to be residents of Australia for tax purposes, although some may be non-residents.
- (c) The KeyInvest Capital Notes form part of KeyInvest's Additional Tier 1 Capital for the purposes of the prudential standards determined by APRA under section 230A of the *Life Insurance Act 1995*.
- (d) Each KeyInvest Capital Note is an 'equity interest' in KeyInvest pursuant to Division 974 and is a 'non-share equity interest' in KeyInvest as the term is defined in subsection 995-1(1).
- (e) The Distributions are frankable distributions under section 202-40.
- (f) KeyInvest will frank Distributions in respect of the KeyInvest Capital Notes at the same franking percentage for the franking period in which the Distribution is made.
- (g) Distributions on the KeyInvest Capital Notes are not sourced, directly or indirectly, from KeyInvest's share or non-share capital account.
- (h) Distributions paid on the KeyInvest Capital Notes will not be debited to KeyInvest's share or non-share capital account.
- (i) Immediately before the payment of a Distribution on the KeyInvest Capital Notes, KeyInvest has available frankable profits (worked out under section 215-20) at least equal to the Distribution.
- (j) KeyInvest expects to frank all frankable distributions (to the extent that franking credits are available in its franking account).
- (k) KeyInvest does not differentially frank Distributions to different KeyInvest Capital Note Holders according to their tax status or on any other basis.
- (l) On Conversion or Redemption of the KeyInvest Capital Notes, KeyInvest debits the Face Value of the KeyInvest Capital Notes to its non-share capital account.
- (m) MCIs issued to the KeyInvest Capital Notes Holders on Conversion of the KeyInvest Capital Notes are 'equity interests' in KeyInvest under Division 974 and constitute Tier 1 capital.
- (n) The accounts of the KeyInvest group are prepared in accordance with the applicable accounting standards.

Status: **legally binding**

- (o) All parties to the scheme are dealing with each other at arm's length.
- (p) You will not take any 'positions' (as defined in former section 160APHJ of the ITAA 1936) at any time in relation to your KeyInvest Capital Notes apart from holding your KeyInvest Capital Notes.
- (q) 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.
- (r) You will hold your KeyInvest Capital Notes 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.
- (s) 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

6 March 2024

 Status: not legally binding

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.*

Table of Contents	Paragraph
Determination under paragraph 204-30(3)(c)	66
Determination under paragraph 177EA(5)(b) of the ITAA 1936	68
Gross-up and tax offset cancelled in certain circumstances	71
Section 45A of the ITAA 1936	75
Section 45B of the ITAA 1936	78

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

66. 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.

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

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

68. Section 177EA of the ITAA 1936 is a general anti-avoidance provision that applies where the purpose (other than an incidental purpose) of entering into or carrying out a particular scheme is to enable a taxpayer to obtain an imputation benefit.

69. 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 KeyInvest Capital Note Holder to obtain an imputation benefit (refer paragraph 177EA(3)(e) of the ITAA 1936).

70. Having regard to the circumstances described in the Scheme, the Commissioner considers that the relevant circumstances of the scheme do not, on balance, lead to a conclusion that the purpose of enabling KeyInvest Capital Note Holders to obtain imputation benefits is more than incidental to KeyInvest's primary purpose of raising Additional Tier 1 capital within regulatory capital requirements to invest in Keystone Capital Limited.

Gross-up and tax offset cancelled in certain circumstances

71. 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

Status: **not legally binding**

- are not entitled to a tax offset equal to the amount of the franking credit attached to the dividend (paragraph 207-145(1)(f)).

72. As this Ruling is made on the basis that you (or an associate) 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 KeyInvest Capital Notes and ends on the 90th day after the day KeyInvest Capital Notes becomes ex-distribution.

73. You need to have held your KeyInvest Capital Notes '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).

74. 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 KeyInvest Capital Notes if your net position on that day does not retain 30% or more of the risks and opportunities associated with holding KeyInvest Capital Notes.

Section 45A of the ITAA 1936

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

76. The Redemption of KeyInvest Capital Notes will constitute the provision of a capital benefit to KeyInvest Capital Note Holders (paragraph 45A(3)(b) of the ITAA 1936 as affected by subsection 45A(3A) of the ITAA 1936).

77. However, the Redemption of KeyInvest Capital Notes will not constitute the streaming of capital benefits because under a Redemption, KeyInvest will not selectively direct the flow of capital benefits to KeyInvest Capital Note Holders who could most benefit from the receipt of capital. Accordingly, as this requirement does not apply to the Redemption of KeyInvest Capital Notes, the Commissioner will not make a determination to treat the whole, or a part, of the capital benefit received by you as an unfranked dividend.

Section 45B of the ITAA 1936

78. 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.

79. The Redemption of KeyInvest Capital Notes will constitute a scheme under which Holders are provided with a capital benefit by KeyInvest (paragraphs 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.

Status: **not legally binding**

80. At least some KeyInvest Capital Note Holders will obtain a tax benefit as defined in subsection 45B(9) of the ITAA 1936 as a result of a Redemption. As a result, paragraph 45B(2)(b) of the ITAA 1936 will be satisfied.

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

82. Having regard to the circumstances described in the Scheme, it would not be concluded that the Redemption of KeyInvest Capital Notes will be entered into for a more than incidental purpose of enabling KeyInvest Capital Note 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 you on Redemption.

 Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 26BB
- ITAA 1936 26BB(1)
- ITAA 1936 44(1)(a)(ii)
- ITAA 1936 45A
- ITAA 1936 45A(2)
- ITAA 1936 45A(3)(b)
- ITAA 1936 45A(3A)
- ITAA 1936 45B
- ITAA 1936 45B(2)(a)
- ITAA 1936 45B(2)(b)
- ITAA 1936 45B(2)(c)
- ITAA 1936 45B(3)(b)
- 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 former 160APHD
- ITAA 1936 former 160APHJ
- ITAA 1936 former 160APHM
- ITAA 1936 former 160APHM(2)
- ITAA 1936 former 160APHN
- ITAA 1936 former 160APHO(3)
- ITAA 1936 177EA
- ITAA 1936 177EA(3)(a)
- ITAA 1936 177EA(3)(b)
- ITAA 1936 177EA(3)(c)
- ITAA 1936 177EA(3)(d)
- ITAA 1936 177EA(3)(e)
- ITAA 1936 177EA(5)(b)
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 Div 67
- ITAA 1997 67-25
- ITAA 1997 67-25(1C)
- ITAA 1997 67-25(1D)
- ITAA 1997 104-25
- ITAA 1997 109-10
- ITAA 1997 110-25(2)
- ITAA 1997 110-55(2)
- ITAA 1997 116-30(2)(b)(ii)
- ITAA 1997 202-40
- ITAA 1997 204-30(1)
- ITAA 1997 204-30(3)(c)
- ITAA 1997 Div 207
- ITAA 1997 Subdiv 207-D
- ITAA 1997 Subdiv 207-E
- ITAA 1997 207-20
- ITAA 1997 207-145(1)(a)
- ITAA 1997 207-145(1)(b)
- ITAA 1997 207-145(1)(c)
- ITAA 1997 207-145(1)(d)
- ITAA 1997 207-145(1)(da)
- ITAA 1997 207-145(1)(db)
- ITAA 1997 207-145(1)(e)
- ITAA 1997 207-145(1)(f)
- ITAA 1997 207-157
- ITAA 1997 207-157(4)
- ITAA 1997 207-158(2)
- ITAA 1997 215-20
- ITAA 1997 Div 230
- ITAA 1997 Div 974
- ITAA 1997 974-120
- ITAA 1997 995-1(1)
- Corporations Act 2001 Pt 6D.2
- Corporations Act 2001 Pt 7.9
- Life Insurance Act 1995 230A

ATO references

NO: 1-YVV09CQ
 ISSN: 2205-5517
 BSL: PG
 ATOLaw topic: Income tax ~~ Capital management ~~ Hybrid capital raisings
 Income tax ~~ Capital management ~~ Dividend streaming

© AUSTRALIAN TAXATION OFFICE FOR THE COMMONWEALTH OF AUSTRALIA

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).