Class Ruling

Australia and New Zealand Banking Group Limited – ANZ Capital Notes 6

Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out the way in which the relevant tax provisions apply to specified entities who subscribed for and acquired Australia and New Zealand Banking Group Limited Capital Notes 6 (ANZ Capital Notes 6) issued by Australia and New Zealand Banking Group Limited (ANZ).

2. The scheme is set out in paragraphs 55 to 101 of this Ruling.

3. In this Ruling, unless otherwise defined, capitalised terms have the meaning specified in the Terms of ANZ Capital Notes 6 (the Terms). The Terms are contained in Appendix A of the Prospectus for the issue of ANZ Capital Notes 6, dated 9 June 2021 (the Prospectus).

4. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* unless otherwise indicated.

Who this Ruling applies to

5. This Ruling applies to you if you are an investor (also referred to as a Holder) who:

- acquired your ANZ Capital Notes 6 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 ANZ Capital Notes 6
- holds your ANZ Capital Notes 6 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 ANZ Capital Notes 6.

  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 ANZ Capital Notes 6 through a permanent establishment (as defined in subsection 6(1) of the ITAA 1936) in Australia
- the tax implications of Conversion of ANZ Capital Notes 6 before the Mandatory Conversion Date on the occurrence of a Common Equity Trigger Event or a Non-Viability Trigger Event
- the tax implications for Eligible ANZ Capital Notes 1 Holders who apply to have some or all of the ANZ Capital Notes 1 registered to them resold to the ANZ Capital Notes 1 Nominated Purchaser and their Resale Proceeds reinvested in ANZ Capital Notes 6 under the Reinvestment Offer
- how taxation law applies to a Purchaser who acquires their ANZ Capital Notes 6 under the Resale facility, and
- how taxation law applies to Holders who hold their ANZ Capital Notes 6 as trading stock (as defined in subsection 995-1(1)) or as revenue assets (as defined in section 977-50).

When this Ruling applies

7. This Ruling applies from 1 July 2021 to 30 June 2031.

Ruling

Consequences of acquiring ANZ Capital Notes 6

Acquisition date

8. You acquired your ANZ Capital Notes 6 on 8 July 2021 under table item 2 of section 109-10.

Cost base and reduced cost base of each ANZ Capital Note 6

9. The first element of the cost base and reduced cost base of each ANZ Capital Note 6 is $100, being the money you paid to acquire your ANZ Capital Notes 6 (subsections 110-25(2) and 110-55(2)).

Consequences of holding ANZ Capital Notes 6

Distributions on ANZ Capital Notes 6 and entitlement to a tax offset for franking credits

10. A Distribution on ANZ Capital Notes 6 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. If you are a qualified person in relation to the Distribution in the income year in which the Distribution is made (section 207-20), you also:

- include the amount of 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 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, corporate unit trusts and public trading trusts), unless they satisfy the requisite conditions in subsections 67-25(1C) or (1D)
- the trustees of non-complying superannuation funds or non-complying approved deposit funds (subsection 67-25(1A)), and
- the trustees of trusts who are liable to be assessed under sections 98 or 99A of the ITAA 1936 (subsection 67-25(1B)).

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 the ANZ Capital Notes 6 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 ANZ Capital Notes 6.

18. The Resale facility and Conversion mechanism of ANZ Capital Notes 6 will not affect your risks of loss or opportunities for gain in respect of your ANZ Capital Notes 6. This is because neither the Resale facility nor the Conversion mechanism constitutes a separate position (former sections 160APHM and 160APHJ of the ITAA 1936).

19. Paragraphs 207-145(1)(b) to (db) will not apply to cancel the effect of the gross-up and tax offset rules in respect of a franked Distribution.

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

21. In respect of paragraph 207-145(1)(d), 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 101(r) of this Ruling).

23. In respect of paragraph 207-145(1)(db), the ANZ Capital Notes 6 are equity interests which form part of ANZ's Additional Tier 1 Capital (refer to subsection 207-158(2) and subparagraph 101(c) of this Ruling).

Consequences of disposing of ANZ Capital Notes 6

ANZ Capital Notes 6 not traditional securities

24. Your ANZ Capital Notes 6 are not 'traditional securities' as defined in subsection 26BB(1) of the ITAA 1936.

25. Section 26BB of the ITAA 1936 will not apply to include any gain on the disposal or redemption of an ANZ Capital Note 6 in your assessable income.

26. Section 70B of the ITAA 1936 will not apply to allow any loss on the disposal or redemption of an ANZ Capital Note 6 as a deduction to you.

Conversion of ANZ Capital Notes 6 for Ordinary Shares

27. Each ANZ Capital Note 6 is a convertible interest.

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

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

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

31. The first element of the cost base and reduced cost base of Ordinary Shares acquired on Conversion will be equal to the cost base and reduced cost base of the relevant ANZ Capital Notes 6 at the time of Conversion (table item 2 of subsection 130-60(1)).

32. As you hold your ANZ Capital Notes 6 on capital account, no amount will be included in your assessable income on the Conversion of an ANZ Capital Note 6 under section 6-5.

33. You will not incur a deductible loss under section 8-1 as a consequence of Conversion.

34. On the Conversion of ANZ Capital Notes 6 for Ordinary Shares in ANZ, you will not be taken to have received a dividend or a non-share dividend.

Amendment of the Terms to substitute an Approved NOHC

35. CGT event H2 happens if the Terms are amended to effect the substitution of an Approved NOHC as the issuer of Ordinary Shares to you on Conversion (section 104-155).

36. However, you do not make a capital gain or a capital loss from CGT event H2 happening as there are no capital proceeds or incidental costs incurred because of the amendment of the Terms.

Conversion of each ANZ Capital Note 6 and the issue of Ordinary Shares in an Approved NOHC – capital gains tax implications

37. Where an Approved NOHC becomes the ultimate holding company of ANZ, the Conversion of ANZ Capital Notes 6 and the issue of Approved NOHC Ordinary Shares to you results in CGT event C2 happening as it is the conversion of a convertible interest (section 104-25).

38. As the Approved NOHC Ordinary Shares are equity interests within the meaning of Division 974, any capital gain or capital loss that you make from CGT event C2 happening when the ANZ Capital Notes 6 are Converted to Ordinary Shares in an Approved NOHC is disregarded (section 130-60(3)).

39. The first element of the cost base and the reduced cost base of each Approved NOHC Ordinary Share issued to you is calculated as the cost base of your ANZ Capital Notes 6 at the time of Conversion divided by the number of Approved NOHC Ordinary Shares you receive (table item 2 of subsection 130-60(1)).

40. You are taken to have acquired your Approved NOHC Ordinary Shares at the time of Conversion (subsection 130-60(2)).

Redemption of ANZ Capital Notes 6

41. CGT event C2 happens when an ANZ Capital Note 6 is Redeemed because the ANZ Capital Note 6 is terminated at that time (section 104-25).

42. The capital proceeds received by Holders on Redemption of the ANZ Capital Notes 6 will be replaced with the market value of the ANZ Capital Notes 6 on the date of Redemption, worked out as if the Redemption had not occurred and was never proposed to occur, if the capital proceeds are more or less than the market value of the ANZ Capital Notes 6 (subparagraph 116-30(2)(b)(ii)).

43. You will make a capital gain (or capital loss) on Redemption of your ANZ Capital Notes 6 if the capital proceeds you receive are greater than (or less than) the cost base of your ANZ Capital Notes 6.

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

45. You will not incur a deductible loss under section 8-1 as a consequence of the Redemption.

ANZ Capital Notes 6 that are Written Off

46. CGT event C2 happens when an ANZ Capital Note 6 is Written Off because the ANZ Capital Note 6 is terminated at that time (section 104-25).

47. For the purposes of determining whether you make a capital gain or a capital loss from CGT event C2 happening in respect of your ANZ Capital Notes 6, you are taken to have nil capital proceeds from CGT event C2 happening. This is because you receive no capital proceeds in respect of a Write Off happening, and your ANZ Capital Notes 6 have a market value of nil at that time.

Resale of ANZ Capital Notes 6

48. CGT event A1 in section 104-10 happens on the Resale of an ANZ Capital Note 6. The Resale of an ANZ Capital Note 6 to the Purchaser will be for the Face Value of the ANZ Capital Note 6.

49. As the capital proceeds you receive will not be more than the cost base of the ANZ Capital Notes 6, you will not make a capital gain as a result of the Resale.

50. As you hold your ANZ Capital Notes 6 on capital account, no amount will be included in your assessable income on the Resale under section 6-5.

51. You will not incur a deductible loss under section 8-1 as a consequence of the Resale.

Other integrity provisions

Section 45 of the ITAA 1936

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

Subsection 45A(2) of the ITAA 1936

53. 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

54. 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

55. 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

56. ANZ is an Australian-resident company for tax purposes and is listed on the Australian Securities Exchange (ASX).

57. ANZ is an authorised deposit-taking institution for the purposes of the *Banking Act 1959* and is regulated by the Australian Prudential Regulation Authority (APRA).

58. ANZ is required by APRA to maintain mandatory levels of Tier 1 Capital.

59. Under the Prospectus, ANZ announced its intention to undertake a capital raising by the issue of ANZ Capital Notes 6 for an issue price of $100 each to raise $1.2 billion, with the ability to raise more or less (the Offer).

60. The classes of Applicants who could apply for ANZ Capital Notes 6 and the corresponding process for lodging applications were set out in the Prospectus. The classes of Applicants were:

- ANZ Securityholder Applicant – a holder of Ordinary Shares, ANZ Capital Notes 1, ANZ Capital Notes 2, ANZ Capital Notes 3, ANZ Capital Notes 4 or ANZ Capital Notes 5 with a registered address in Australia at 7.00pm AEST on 27 May 2021, applying through the ANZ Securityholder Offer.
- An applicant under the Reinvestment Offer under which Eligible ANZ Capital Notes 1 Holders can apply to have some or all of the ANZ Capital Notes 1 registered to them at 7.00pm AEST on 27 May 2021 resold to the ANZ Capital Notes 1 Nominated Purchaser and their Resale Proceeds reinvested into ANZ Capital Notes 6.
- Broker Firm Applicant – a retail client of a Syndicate Broker invited to participate through the Broker Firm Offer.
- Institutional Investor – an investor who was invited by ANZ Securities to bid for ANZ Capital Notes 6 in the Bookbuild and who is not a Broker Firm Applicant or ANZ Securityholder Applicant and who is applying through the Institutional Offer.

61. ANZ Capital Notes 6 were issued on 8 July 2021.

62. ANZ Capital Notes 6 are listed on the ASX and trade under the code ANZPI.

63. ANZ Capital Notes 6 were issued by ANZ in Australia. No action was taken to register or qualify ANZ Capital Notes 6 or the Offer, or to otherwise permit a public offering of ANZ Capital Notes 6, outside Australia. However, ANZ Capital Notes 6 were able to be offered in a jurisdiction outside Australia under the Institutional Offer or Broker Firm Offer where such offer was made in accordance with the laws of that jurisdiction.

64. The Offer has been made as part of ANZ's ongoing capital management strategy within the regulatory capital requirements prescribed by APRA. The issue of ANZ Capital Notes 6 is a new capital raising. The proceeds from the issue of ANZ Capital Notes 6 are expected to replace funding previously provided by ANZ Capital Notes issued in August 2013 (ANZ Capital Notes 1), maintain ANZ's Additional Tier 1 Capital ratio and be used for general corporate purposes.

Main features of ANZ Capital Notes 6

65. ANZ Capital Notes 6 are fully-paid, non-cumulative, convertible, transferable, redeemable, subordinated, perpetual unsecured notes issued by ANZ.

66. A Holder does not have voting rights under the ANZ Capital Notes 6, but can participate in Special Resolutions in the specific circumstances provided in the Terms.

Issue Price

67. The Issue Price and Face Value of each ANZ Capital Note 6 is $100. ANZ Capital Notes 6 were issued fully paid on the Issue Date, being 8 July 2021.

Distributions

68. ANZ will pay cash Distributions in respect of each ANZ Capital Note 6 on a Distribution Payment Date in accordance with the Terms.

69. The Distribution payable is calculated on the Face Value of each ANZ Capital Note 6 using a Distribution Rate which is equal to the Bank Bill Swap Rate plus a Margin of 3% adjusted by the corporate tax rate and based on the number of days in the Distribution Period divided by 365. The Margin was determined under the Bookbuild.

70. Distributions are expected to be franked at the same rate as dividends on Ordinary Shares. However, if any Distribution is not franked or only partially franked, the Distribution will be grossed-up to the extent that the franking percentage of the Distribution is less than 100%, as determined by the formula in clause 3.2 of the Terms.

71. Each Distribution is subject to:

- ANZ's absolute discretion
- payment of the Distribution not resulting in a breach of ANZ's capital requirements under APRA's prudential standards as they are applied to ANZ or the ANZ Group (as the case may be) at the time of payment
- payment of the Distribution not resulting in ANZ becoming, or being likely to become, insolvent for the purposes of the *Corporations Act 2001*, and
- APRA not otherwise objecting to the payment of the Distribution.

72. A Distribution is only payable to those persons registered as a Holder on the Record Date for that Distribution.

73. As Distributions are non-cumulative, Holders will have no recourse in the event of non-payment arising because ANZ has determined not to pay a Distribution, a Payment Condition exists at the relevant Distribution Payment Date, or because of any applicable law. Non-payment of all, or part, of a Distribution does not constitute an event of default by ANZ and the Holders have no claim in respect of non-payment.

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

75. The Distribution Payment Dates are each 20 March, 20 June, 20 September and 20 December, commencing on 20 September 2021 until (but not including) the date on which Redemption or Conversion occurs (which are referred to specifically as Scheduled Distribution Payment Dates). Subject to the Terms, a Distribution Payment Date will also occur on each date on which a Conversion, Redemption or Resale occurs.

76. If a Distribution is not paid in full on a Distribution Payment Date (the Relevant Distribution Payment Date), ANZ must not (unless the Distribution is paid in full within three Business Days of the Relevant Distribution Payment Date), without approval of a Special Resolution of Holders, until and including the next Distribution Payment Date:

- resolve to pay or pay a dividend on any Ordinary Shares, or
- undertake any Buy-Back or Capital Reduction in respect of any Ordinary Shares.

Conversion

77. 'Conversion' means, in relation to an ANZ Capital Note 6, the allotment and issue of Ordinary Shares and the termination of the Holder's rights in relation to that Note, in each case in accordance with clause 6 of the Terms.

78. On Conversion:

- each Holder's rights (including to payment of Face Value and Distributions other than certain Distributions payable on the Exchange Date) in relation to each ANZ Capital Note 6 that is being Converted will be immediately and irrevocably terminated for an amount equal to the Face Value of each ANZ Capital Note 6 and ANZ will apply that amount by way of payment for subscription for the Ordinary Shares to be allotted and issued on Conversion, and
- each Holder of ANZ Capital Notes 6 will be allotted and issued a number (the Conversion Number) of Ordinary shares in respect of each ANZ Capital Note 6 held by the Holder on the date of Conversion.

79. The Conversion Number (or Ordinary Shares for each ANZ Capital Note 6) is calculated according to the formula set out in clause 6.1 of the Terms and is always subject to the Conversion Number not being greater than the Maximum Conversion Number.

80. Each Ordinary Share issued upon Conversion ranks equally with all other fully-paid Ordinary Shares.

Mandatory Conversion

81. Subject to the occurrence of a Trigger Event, ANZ must Convert all ANZ Capital Notes 6 on issue into Ordinary Shares on the Mandatory Conversion Date.

82. The Mandatory Conversion Date is the first to occur of 20 September 2030 (which is the Scheduled Mandatory Conversion Date) and the first Distribution Payment Date after 20 September 2030 (which is a Subsequent Mandatory Conversion Date) (each a Relevant Date) on which the Mandatory Conversion Conditions are satisfied.

83. The Mandatory Conversion Conditions for each Relevant Date are:

- the average of the daily volume weighted average (sale) prices (VWAP) of Ordinary Shares sold on the ASX on the 25th Business Day immediately preceding (but not including) the Relevant Date on which trading in Ordinary Shares took place (the First Test Date) is greater than 56% of the Issue Date VWAP (First Mandatory Conversion Condition)
- the VWAP during the period of 20 Business Days on which trading in Ordinary Shares took place immediately preceding (but not including) the Relevant Date (the Second Test Date) is greater than 50.51% of the Issue Date VWAP (Second Mandatory Conversion Condition), and
- no Delisting Event applies in respect of the Relevant Date, such that
  - the Ordinary Shares remain listed and admitted to trading on the ASX on the Relevant Date
  - trading of Ordinary Shares on the ASX has not been suspended for at least five consecutive Business Days prior to the Relevant Date, or

– ANZ is not prevented by applicable law, court order, government authority action or other reason from Converting the ANZ Capital Notes 6 (an Inability Event) (Third Mandatory Conversion Condition).

Mandatory Conversion on a Change of Control Event

84. ANZ must Convert all (but not some only) ANZ Capital Notes 6 on the occurrence of a Change of Control Event. Conversion will not occur on a Change of Control Conversion Date if either the Second Mandatory Conversion Condition (as if it referred to 20.21% of the Issue Date VWAP) is not satisfied on, or a Delisting Event applies to, that date.

Trigger Event Conversion

85. Conversion of the ANZ Capital Notes 6 may occur at a time before the Scheduled Mandatory Conversion Date on the occurrence of a:

- Common Equity Capital Trigger Event, or
- Non-Viability Trigger Event.

86. A Common Equity Capital Trigger Event occurs when ANZ determines, or APRA has notified ANZ in writing that it believes, that ANZ's or the ANZ Group's (as applicable) Common Equity Capital Ratio is equal to, or less than, 5.125%.

87. A Non-Viability Trigger Event means the earlier of:

- the issuance of a notice in writing by APRA to ANZ that conversion or write-off of the Relevant Securities (including ANZ Capital Notes 6) is necessary because, without it, APRA considers that ANZ would become non-viable, or
- a determination by APRA, notified to ANZ in writing, that without a public sector injection of capital, or equivalent support, APRA considers that ANZ would become non-viable.

88. A Conversion following a Trigger Event will occur immediately and is not subject to any conditions. The number of Ordinary Shares that Holders receive on a Conversion will not be greater than the Maximum Conversion Number. If the ANZ Capital Notes 6 cannot be Converted within five Business Days after the relevant Trigger Event Conversion Date for any reason (including due to the occurrence of an Inability Event) they will be Written Off, which means all rights in relation to those Notes will be terminated, and those Holders will not have their capital repaid or have any right to any Distributions.

Optional Exchange

89. ANZ may elect to Exchange at their discretion (Holders of ANZ Capital Notes 6 do not have a right to request an Exchange):

- all, or some, ANZ Capital Notes 6 on an Exchange Date following the occurrence of a Tax Event or a Regulatory Event, or
- all, or some, ANZ Capital Notes 6 on an Optional Exchange Date being 20 March 2028, 20 June 2028 or 20 September 2028.

90. If ANZ elects to Exchange ANZ Capital Notes 6, it must, subject to APRA's prior written approval, elect which of the following (or which combination of the following) it intends to do in respect of ANZ Capital Notes 6 (the Exchange Method):

- Convert the ANZ Capital Notes 6 into Ordinary Shares in accordance with clause 6 of the Terms
- Redeem ANZ Capital Notes 6 in accordance with clause 7 of the Terms, or
- Resell ANZ Capital Notes 6 in accordance with clause 8 of the Terms.

91. ANZ may not elect Conversion as the Exchange Method if the VWAP on the Non-Conversion Test Date is less than or equal to 22.5% of the Issue Date VWAP (the First Optional Conversion Restriction) or a Delisting Event applies in respect of the Non-Conversion Test Date (the Second Optional Conversion Restriction).The Non-Conversion Test Date is two Business days prior to the date of the election where the Ordinary Shares were trading on such date, otherwise, one Business day prior to the last day they were last trading.

Optional Redemption

92. ANZ may elect to Redeem ANZ Capital Notes 6 in accordance with clause 7 of the Terms, so long as:

- prior written approval is provided by APRA, and
  - the ANZ Capital Notes 6 are replaced concurrently or beforehand with Tier 1 Capital of the same or better quality under conditions that are sustainable for ANZ's income capacity, or
  - APRA is satisfied that ANZ's and the ANZ Group's capital position is well above its minimum capital requirements.

93. ANZ Capital Notes 6 will be Redeemed by payment to the Holder on the Exchange Date of the Face Value.

94. On the Exchange Date the only right the Holders of ANZ Capital Notes 6 will have in respect of ANZ Capital Notes 6 will be to obtain the Face Value payable in accordance with the Terms and, upon the payment of the Face Value, all other rights conferred or restrictions imposed by ANZ Capital Notes 6 will no longer have effect.

Optional Resale

95. ANZ may (subject to APRA giving its prior written approval) elect to Resell all ANZ Capital Notes 6 in accordance with clause 8 of the Terms.

96. ANZ may appoint one or more Purchasers for the Resale on such terms as may be agreed between ANZ and the Purchaser, but ANZ may not appoint itself or any Related Entity as a Purchaser.

97. If ANZ specifies Resale as the Exchange Method, each Holder is taken irrevocably to offer to sell the relevant number of ANZ Capital Notes 6 to the Purchaser on the Exchange Date for a cash amount equal to the Face Value. Subject to payment by the Purchaser of the Face Value to the Holders, all rights, title and interest in such ANZ Capital Notes 6 will be transferred to the Purchaser on the Exchange Date.

Substitution of Approved NOHC as issuer of Ordinary Shares

98. Clause 11.1 of the Terms provides for Approved NOHC Events and the Approved NOHC assuming ANZ's obligations to deliver Ordinary Shares by issuing Approved NOHC Ordinary Shares under all circumstances when ANZ would have otherwise been obliged to deliver Ordinary Shares on a Conversion, subject to the same terms and conditions set out in the Terms.

99. A 'NOHC Event' means an event which is initiated by the Directors acting as a board and would otherwise be a Change of Control Event but the result of which would be that an ultimate holding company of ANZ would be a NOHC.

100. If an Approved NOHC Event occurs, ANZ may give notice to the Holders of ANZ Capital Notes 6 specifying the amendments to the Terms to effect the substitution of the Approved NOHC in the place of ANZ as the issuer of Ordinary Shares on a Conversion.

Other matters

101. This Ruling is made on the basis that:

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

(b) ANZ Capital Notes 6 are equity interests in ANZ for the purposes of Division 974 and are non-share equity interests as defined in subsection 995-1(1).

(c) ANZ Capital Notes 6 form part of ANZ's Additional Tier 1 Capital for the purposes of prudential standards determined by APRA and in force under section 11AF of the *Banking Act 1959*.

(d) Ordinary Shares issued on Conversion will be equity interests in ANZ for the purposes of Division 974.

(e) ANZ is a 'franking entity' under section 202-15.

(f) Distributions paid on ANZ Capital Notes 6 are frankable pursuant to section 202-40.

(g) ANZ will frank the Distributions paid in respect of all ANZ Capital Notes 6 at the same franking percentage as the ANZ benchmark for the franking period in which the Distribution payments are made.

(h) Distributions on the ANZ Capital Notes 6 are not sourced, directly or indirectly, from ANZ's share capital account or its non-share capital account, nor debited against ANZ's share capital account or its non-share capital account.

(i) ANZ's share capital account will not be tainted by the issue of ANZ Capital Notes 6 or Ordinary Shares in ANZ on Conversion according to Subdivision 197-A.

(j) Immediately before the payment of a franked Distribution on the ANZ Capital Notes 6, ANZ has available frankable profits (worked out under section 215-20) at least equal to the proposed Distribution.

(k) ANZ does not and will not differentially frank Distributions to different Holders according to their tax status or on any other basis.

(l) On Conversion or Redemption of the ANZ Capital Notes 6, ANZ debits the Face Value of the ANZ Capital Notes 6 to its non-share capital account.

(m) The accounts of the ANZ group will be prepared in accordance with the applicable accounting standards.

(n) All parties to the scheme will deal with each other on arm's length terms.

(o) You will not take any 'positions' (as defined in former section 160APHJ of the ITAA 1936) at any time in relation to your ANZ Capital Notes 6 apart from holding ANZ Capital Notes 6.

(p) 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.

(q) You will hold ANZ Capital Notes 6 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 under former 160APHD of the ITAA 1936) in relation to a Distribution.

(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)).

Commissioner of Taxation
21 July 2021

Appendix 1 – Explanation

This Explanation is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.

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

102. 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.

103. Based on the scheme, there is no evidence of ANZ streaming as Distributions will be received by all Holders in proportion to and by reason of their holding of ANZ Capital Notes 6 and not by reference to their tax profile or individual tax positions. There is nothing in the Terms that allows ANZ to treat Holders differently in respect of their entitlement to a franked Distribution.

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

104. 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.

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

106. The Commissioner considers that the relevant circumstances of the scheme do not, on balance, lead to a conclusion that the purpose of enabling the Holders to obtain imputation benefits is more than incidental to ANZ's primary purpose of raising Additional Tier 1 Capital for regulatory capital requirements.

Gross-up and tax offset cancelled in certain circumstances

107. 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)).

108. 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 ANZ Capital Notes 6 and ends on the 90th day after the day ANZ Capital Notes 6 become ex-distribution.

109. You generally need to have held ANZ Capital Notes 6 '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). 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 ANZ Capital Notes 6 if your net position on that day does not retain 30% or more of the risks and opportunities associated with holding ANZ Capital Notes 6.

110. Embedded options such as the Resale and Conversion mechanisms do not represent separate positions in relation to ANZ Capital Notes 6 (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 ANZ Capital Notes 6 if ANZ issues a Resale Notice. As ANZ 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 ANZ Capital Notes 6. Similarly, under the Conversion mechanism you do not have the right to elect Conversion of your ANZ Capital Notes 6 and neither does ANZ have an obligation to Convert. Therefore, the Resale and Conversion mechanisms will not, of themselves, affect your risks of loss or opportunities for gain in respect of your ANZ Capital Notes 6.

111. However, if you do enter into any risk management strategies in respect of your ANZ Capital Notes 6 that have the effect of reducing your risks of loss and opportunities for gain below 30% (for example, by the use of limited recourse loans, options or other derivatives), then you will not be considered a qualified person in respect of a Distribution.

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

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

113. The application of the Face Value to subscribe for Ordinary Shares on Conversion of ANZ Capital Notes 6 is a crediting of that amount to you and, therefore, a non-share distribution under section 974-115.

114. 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).

115. The allocation and issue of Ordinary Shares to you on Conversion of ANZ Capital Notes 6 will not be a non-share dividend as defined in section 974-120, as the Face Value of the ANZ Capital Notes 6 will be debited against ANZ's non-share capital account.

Market value of ANZ Capital Notes 6 on Redemption

116. The capital proceeds received by Holders on Redemption will be replaced with the market value of the ANZ Capital Notes 6 on the date of Redemption, worked out as if the Redemption had not occurred and was never proposed to occur, if the capital proceeds are more or less than the market value (subparagraph 116-30(2)(b)(ii)).

117. If ANZ elects to Redeem ANZ Capital Notes 6 on an Exchange Date before the Mandatory Conversion Date, the market value of the ANZ Capital Notes 6 which are Redeemed will need to be determined in accordance with Practical Compliance Guideline PCG 2021/1 *Application of market value substitution rules when there is a buy-back or redemption of hybrid securities – methodologies for determining market value for investors holding their securities on capital account*.

118. Simply put, if ANZ elects to Redeem all ANZ Capital Notes 6 before the Mandatory Conversion Date, all on the same date, then the market value of the redeemed ANZ Capital Notes 6 is equal to the Face Value. If ANZ elects to Redeem some, but not all, ANZ Capital Notes 6 before the Mandatory Conversion Date, then the market value of the redeemed ANZ Capital Notes 6 will need to be calculated in accordance with the methodology set out in PCG 2021/1.

Section 45 of the ITAA 1936

119. 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.

120. ANZ's distribution and dividend payout ratios in relation to its Ordinary Shares and other equity interests are not expected to change as a result of issuing ANZ Capital Notes 6. The extent to which ANZ's distributions/dividends will be franked (including Distributions on ANZ Capital Notes 6) will depend on a number of factors, including the Group's capital management plan and the level of profits generated by the Group that will be subject to tax in Australia.

121. Under the Terms, ANZ is unable to issue Ordinary Shares to all or some Holders in satisfaction of their Distribution entitlement under ANZ Capital Notes 6. The issue of Ordinary Shares on Conversion merely reflects a change in the type of equity interests held by Holders.

122. 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 Ordinary Shares to you on Conversion as an unfrankable dividend.

Section 45A of the ITAA 1936

123. Section 45A of the ITAA 1936 applies where a company streams capital benefits and the payment of dividends to shareholders who derive a greater benefit from receiving

the capital benefits (the advantaged shareholders), and it is reasonable to assume that the other shareholders have received, or will receive, dividends (the disadvantaged shareholders).

124. Both the issue of Ordinary Shares on Conversion and the Redemption of ANZ Capital Notes 6 will constitute the provision of a capital benefit to Holders (paragraph 45A(3)(a) of the ITAA 1936 for a Conversion, and paragraph 45A(3)(b) of the ITAA 1936 as affected by subsection 45A(3A) of the ITAA 1936 for a Redemption).

125. However, the issue of Ordinary Shares on Conversion and the Redemption of ANZ Capital Notes 6 will not constitute the streaming of capital benefits because under a Conversion or Redemption, ANZ 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 ANZ Capital Notes 6, 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

126. 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.

127. The issue of Ordinary Shares to Holders on Conversion and the Redemption of ANZ Capital Notes 6 will each constitute a scheme under which the Holders are provided with a capital benefit by ANZ (paragraphs 45B(5)(a) and (b) and subsection 45B(7) of the ITAA 1936). As a result, paragraph 45B(2)(a) of the ITAA 1936 will be satisfied.

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

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

130. Having regard to the relevant circumstances it could not be concluded that the Conversion or Redemption of ANZ Capital Notes 6 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.

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