



***CR 2001/63 - Income tax: State of Queensland 8%  
Exchanging Instalment Notes - Series 2 exchanging  
on 31 October 2001 for Suncorp-Metway Limited  
ordinary shares***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *1 July 2001*



## Class Ruling

Income tax: State of Queensland 8%  
Exchanging Instalment Notes - Series 2  
exchanging on 31 October 2001 for  
Suncorp-Metway Limited ordinary shares

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### ***Preamble***

*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains **Class Rulings** and **Taxation Rulings** TR 92/1 and TR 97/16 together explain when a **Ruling** is a public ruling and how it is binding on the Commissioner.*

## What this Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the tax laws identified below apply to the defined class of persons who take part in the arrangement to which this Ruling relates.

### **Tax laws**

2. This Ruling relates to the application of the following taxation laws:

- section 26BB of the *Income Tax Assessment Act 1936* ('ITAA 1936');
- section 70B (ITAA 1936);
- section 159GP (ITAA 1936);
- section 104-10 of the *Income Tax Assessment Act 1997* ('ITAA 1997');
- section 104-25 (ITAA 1997);
- section 110-25 (ITAA 1997);
- section 110-55 (ITAA 1997); and
- section 118-20 (ITAA 1997).

**Class of persons**

3. The class of persons to whom this Ruling applies are persons who subscribed for, or purchased State of Queensland 8% Exchanging Instalment Notes - Series 2 (the notes) and held the notes as an investment until the exchange date.
4. The Ruling does not apply to a noteholder who:
  - (a) disposed of their note before the exchange date;
  - (b) held the note as trading stock;
  - (c) acquired the note for the purpose of profit making by sale; or
  - (d) where any gain or loss from the disposal or redemption of the note arises in the ordinary course of carrying on a business.

**Qualifications**

5. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.
6. The class of persons defined in this Ruling may rely on its contents provided the arrangement described below at paragraphs 11 to 17 is carried out in accordance with the details of the arrangement provided in this Ruling.
7. If the arrangement described in this Ruling is materially different from the arrangement that is actually carried out:
  - (a) this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled; and
  - (b) this Ruling may be withdrawn or modified.
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The Manager  
Legislative Services, AusInfo  
GPO Box 1920  
CANBERRA ACT 2601.
9. Information contained in this Ruling may also be made available to some or all of the class of persons defined in the Ruling in

another format. In that respect the Commissioner has prepared for individual taxpayers an information sheet titled:

‘Tax Information for Exchanging Instalment Note Series 2 /Suncorp-Metway Ltd Shares.’ This information sheet is available on the ATO’s website, [www.ato.gov.au](http://www.ato.gov.au).

## **Date of effect**

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10. This Class Ruling applies to the year of income that includes 31 October 2001.

## **Arrangement**

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11. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, are incorporated into and form part of the description of the arrangement:

- *Suncorp-Metway Ltd Exchanging Instalment Notes - Series 2 Deed Poll* dated 7 October 1998 issued by the State of Queensland in favour of the noteholders;
- *Form of EIN Holding Statement* Schedule 1 to the Deed Poll;
- *Form of Transfer of EINs* Schedule 2 to the Deed Poll;
- *Deed of Acknowledgment* Schedule 3 to the Deed Poll;
- *Form of Transmission Notice of Election* Schedule 4 to the Deed Poll;
- *Public offer* document issued 8 October 1998.

12. The State of Queensland offered 142.5 million Exchanging Instalment Notes Series 2 (the notes) under the *Suncorp-Metway Ltd Exchanging Instalment Notes - Series 2 Deed Poll*. The Notes were issued from 12 October to 6 November 1998. At the time of issue, Queensland Treasury Holdings Pty Ltd, a State owned company, was the registered holder of more than 142.5 million Capital Notes issued by Suncorp-Metway Limited which were convertible into ordinary shares. The State intended to utilise the 142.5 million capital notes to meet its obligations under the *Suncorp-Metway Ltd Exchanging Instalment Notes - Series 2 Deed Poll*.

13. The face value (purchase price) of the notes was payable to the State of Queensland by 2 instalment amounts:

- the first instalment of \$4.00 per note was payable on *application*; and
- the final instalment of \$3.10 per note was payable on 6 November 2000.

14. The notes were tradeable on the Australian Stock Exchange or transferable off-market. However the rights and obligations under the notes had to be traded or transferred in combination and not separately.

15. Each note is an interest bearing non-divisible marketable security with two aspects:

- (i) the right to semi-annual interest payments by the State of 8% per annum calculated on the face value of the note, being \$7.10; and
- (ii) the mandatory right for each note held to be exchanged for a Suncorp-Metway Limited ordinary share at the exchange date, 31 October 2001.

16. The State provides an uncertified securities holding statement setting out the number of notes issued to the noteholders. The noteholders have the right to attend the Suncorp-Metway Limited annual general meeting but have no voting or speaking rights. The noteholders have the right to receive all Suncorp-Metway Limited notices and its annual report. However noteholders have no beneficial interest in the Suncorp-Metway Limited capital notes or their underlying shares prior to the exchange date.

17. The notes are not redeemable for cash. At the exchange date, the State will transfer or cause to be transferred one Suncorp-Metway Limited ordinary share for each note held. The State will procure the appropriate resolutions approving the transfer and the entry of the transferee into the Suncorp-Metway Limited share register. On transfer of the shares the State will cancel the relevant notes.

## **Ruling**

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### **Gains or losses on traditional securities**

18. Any gain on the exchange of an exchanging instalment note is to be included in assessable income under section 26BB of the ITAA 1936. Similarly any loss on the exchange of the note will be an allowable deduction under section 70B of the ITAA 1936.

### **Calculating the gain or loss on the traditional security**

19. The gain or loss on each note is the difference between:

- the market value of a Suncorp-Metway Limited share (which will be accepted as the weighted average selling price on the Australian Stock Exchange for 31 October 2001 and has been advised as being \$13.34); and
- the cost of acquiring the note whether upon application or subsequent purchase together with any incidental costs of acquisition or costs on the disposal or redemption of the note.

### **Capital gains tax implications**

20. While there is a CGT event on the disposal or redemption of a note any capital gain is reduced under section 118-20 of the ITAA 1997 by the amount assessed as statutory income under section 26BB of the ITAA 1936. Similarly a capital loss will be reduced by any deductible amount allowed under section 70B of the ITAA 1936.

21. Suncorp-Metway Limited shares are CGT assets acquired by the noteholders on the exchange date, 31 October 2001. The first element of the cost base of a Suncorp-Metway Limited share will, in this case equate to the market value of a Suncorp-Metway Limited share on that date.

## **Explanations**

### **Gains or losses on traditional securities**

22. The traditional security provisions, sections 26BB and 70B of the ITAA 1936, include in assessable income or allowable deductions gains or losses made on the disposal or redemption of certain securities. These provisions may be contrasted with the provisions of Division 16E of the ITAA 1936 which bring to account increases and decreases in the value of certain 'qualifying securities' over the time of the investment. A number of terms used in sections 26BB and 70B of the ITAA 1936 have the same defined meaning as terms used in Division 16E of the ITAA 1936. The Commissioner's views on some interpretative matters in relation to the traditional security provisions are set out Taxation Ruling TR 96/14.

23. The interest bearing exchanging instalment note comes within the definition of a 'traditional security' in subsection 26BB(1) of the ITAA 1936 because it is a 'security' held by a taxpayer that is acquired after May 1989, does not have an 'eligible return' and is not trading stock of the taxpayer. A 'security' takes its meaning from subsection 159GP(1) of the ITAA 1936 and is widely defined to include, amongst other things, notes and contracts under which a

person is liable to pay an amount or amounts, whether or not the liability is secured. Under the arrangement defined in this Ruling the State has a liability to pay, in respect of the note periodic interest amounts on the face value of the note. For further discussion on the Commissioner's view on the meaning of 'securities' see paragraphs 17 to 33 of Taxation Ruling TR96/14.

Note: an 'eligible return' is defined in subsection 159GP(3) of the ITAA 1936 and for the purposes of this ruling is broadly where, at the time of issue of a security, the return on the security (other than periodic interest payments) is likely to exceed the issue price by a calculated amount. Because the return in respect of an exchanging instalment note is contingent on the rise and fall in the price of a Suncorp-Metway Limited share which could not be known at the time of the issue of the note, the note did not have an 'eligible return'.

#### **Calculating the gain or loss on the traditional security**

24. The gain on the disposal or redemption of a traditional security under section 26BB of the ITAA 1936 is calculated as the difference between the cost of the note and the consideration received in respect of the note. The Commissioner's view as stated at paragraphs 99 to 101 of Taxation Ruling TR96/14 is where there is a disposal or redemption of a traditional security and the 'payment' received consists of shares in the issued capital of a company then the value of that consideration is taken to be the market value of those shares. The weighted average selling price of the Suncorp-Metway Limited share on the Australian Stock Exchange on the exchange date will be accepted as the market value of a share. The loss on disposal is calculated in a similar way for the purposes of section 70B of the ITAA 1936.

25. Any incidental costs associated with the acquisition and disposal of the security can be taken into account when calculating the gain or loss.

#### **Capital gains tax implications on exchange**

26. CGT event A1 happens if you dispose of a CGT asset: section 104-10 of the ITAA 1997. CGT event C2 happens if your ownership of an intangible CGT asset ends by being redeemed or cancelled: section 104-25 of the ITAA 1997. A capital gain is made if the capital proceeds on disposal or redemption of the note are more than its cost base. The capital proceeds for the note is the market value of the Suncorp-Metway Ltd share received. The cost base of the note includes the amount(s) paid to acquire it and other amounts that can be included in the cost base under section 110-25 of the ITAA 1997.

27. Section 118-20 of the ITAA 1997 applies to reduce any capital gain made on disposal or redemption of the note by the amount included in assessable income under section 26BB of the ITAA 1936. Subsection 110-55(4) of the ITAA 1997 has a similar effect such that a capital loss is reduced by the amount deductible under section 70B of the ITAA 1936.

28. Suncorp-Metway Limited shares are acquired by noteholders exchanging their notes for shares on the exchange date, 31 October 2001. The first element of the cost base of a Suncorp-Metway Limited share will be the market value of the note for which it was exchanged worked out at the time of acquisition of the share under paragraph 110-25(2)(b) of the ITAA 1997. As the note on the date of exchange entitles a noteholder to receive a Suncorp-Metway Limited share and nothing else the value of the note (the property given) will be equal to the market value of the share.

29. The CGT discount in Division 115 of the ITAA 1997 only applies in respect of a capital gain and not in respect of other gains included under other provisions. Because the capital gain arising from the disposal or redemption of a note will be reduced by the amount assessable as statutory income under section 26BB of the ITAA 1936, noteholders will be unlikely to have any capital gain to which the CGT discount can apply.

### **Weighted average selling price**

30. The Australian Stock Exchange has advised that the weighted average selling price of a Suncorp-Metway Limited share on the exchange date, 31 October 2001 is \$13.34 (rounded).

## **Example**

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31. Sylvia subscribed for Suncorp-Metway Exchanging Instalment Notes - Series 2 and was issued 315 notes in October 1998. Sylvia acquired the notes purely as an investment. She paid \$7.10 per note in two instalments. On 31 October 2001 the notes were exchanged for 315 Suncorp-Metway Ltd shares. The weighted average selling price for a Suncorp-Metway Limited share on 31 October 2001 was \$13.34 and the Commissioner of Taxation accepts that \$13.34 is the value of the consideration received for a note. Sylvia had no other incidental costs of acquisition or disposal.

32. Sylvia will calculate her gain as follows and include that amount under section 26BB of the ITAA 1936 in her 2001-02 tax return:



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Market value of shares received **less** both cost of notes and other relevant costs of disposal or acquisition:

\$4,202.10 (315 shares x \$13.34) **less** \$2,236.50 (315 notes x \$7.10) = \$1,965.60.

33. As the capital gain on disposal of Sylvia's notes was, in her case, also equal to the amount included under section 26BB of the ITAA 1936 no further amount is included by Sylvia as a capital gain.

34. So that Sylvia will be able to calculate any future capital gain or capital loss on the sale of her shares she records that the first element of the cost base of each of her shares is \$13.34. She also records that she acquired the shares on 31 October 2001.

## **Detailed contents list**

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35. Below is a detailed contents list for this Class Ruling:

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**7 November 2001**

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*Previous draft:*

Not previously issued in draft form

*Related Rulings/Determinations:*TR 92/1; TR 96/14; TR 97/16;  
CR 2001/1*Subject references:*

- traditional security
- gain
- loss
- capital gains
- cost base

*Legislative references:*

- TAA 1953 Part IVAAA
- ITAA 1936 Div 16E

- ITAA 1936 26BB
- ITAA 1936 26BB(1)
- ITAA 1936 26BB(2)
- ITAA 1936 70B
- ITAA 1936 159GP
- ITAA 1936 159GP(1)
- ITAA 1936 159GP(3)
- ITAA 1997 104-10
- ITAA 1997 104-25
- ITAA 1997 110-25
- ITAA 1997 110-25(2)(b)
- ITAA 1997 110-55
- ITAA 1997 110-55(4)
- ITAA 1997 Div 115
- ITAA 1997 118-20
- ITAA 1997 118-25

**ATO References**

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