CR 2005/32 - Income tax: capital gains: Subordinated Adjustable Income Non-refundable Tier 1 Securities: St. George Bank Limited

Class Ruling

Income tax: capital gains: Subordinated Adjustable Income Non-refundable Tier 1 Securities: St. George Bank Limited

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Preamble

The number, subject heading, ***What this Class Ruling is about*** *(including* ***Tax laws****,* ***Class of persons*** *and* ***Qualifications*** *sections),* ***Date of effect****,* ***Withdrawal****,* ***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 law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. The tax laws dealt with in this Ruling are:

- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 6BA of the ITAA 1936;
- section 45 of the ITAA 1936;
- section 45A of the ITAA 1936;
- section 45B of the ITAA 1936;
- section 45C of the ITAA 1936;
- subsection 159GP(1) of the ITAA 1936;
- section 177EA of the ITAA 1936;
- subsection 303(1) of the ITAA 1936;
- Subdivision 104-C of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 104-155 of the ITAA 1997;
- section 108-5 of the ITAA 1997;

- section 109-10 of the ITAA 1997;
- section 110-25 of the ITAA 1997;
- section 110-55 of the ITAA 1997;
- section 130-20 of the ITAA 1997;
- Subdivision 130-C of the ITAA 1997; and
- section 204-30 of the ITAA 1997.

Class of persons

3. The class of persons to which this Ruling applies is the Australian resident investors (referred to as 'Holders') who were allotted non-cumulative, redeemable and convertible preference shares by St. George Bank Limited (SGBL) called Subordinated Adjustable Income Non-refundable Tier 1 Securities (SAINTS).

4. The class of persons to which this Ruling applies does not include investors in the SAINTS who acquired them otherwise than by subscription. The Ruling does not deal with how the taxation law applies to SGBL in relation to the issue of the SAINTS.

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 actually carried out is carried out in accordance with the arrangement described at paragraphs 11 to 30.

7. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling, then:

- 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
- this Ruling may be withdrawn or modified

Date of effect

9. This Ruling applies from 13 August 2004. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraph 21 and 22 of Taxation Ruling TR 92/20). Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by *Gazette*;
- it is not taken to be withdrawn by an inconsistent later public ruling; or
- the relevant tax laws are not amended.

Withdrawal

10. This Ruling is withdrawn and ceases to have effect after 30 June 2007. However, the Ruling continues to apply after its withdrawal in respect of the tax laws ruled upon, to all persons within the specified class who entered into the specified arrangement during the term of the Ruling, subject to there being no change in the arrangement or in the person's involvement in the arrangement.

Arrangement

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

- The application for a Class Ruling dated 4 June 2004 and appendices from Greenwoods & Freehills (Greenwoods);
- Letters from Greenwoods dated 17 June 2004 (and appendices), 13 July 2004 and 5 January 2005; and
- SGBL Prospectus dated 2 July 2004.

Note: certain information which relates to the affairs of SGBL that is not in the public domain has been taken into account in determining the Commissioner's opinion set out in this Ruling (including the application of certain anti-avoidance provisions). This information has been provided on a commercial-in-confidence basis and will not be disclosed or released under the Freedom of Information legislation.

12. On 13 August 2004 SGBL allotted 3.5 million SAINTS to Australian resident institutional and retail investors and institutional investors in the UK, Hong Kong, Singapore and New Zealand. The SAINTS were issued pursuant to a Prospectus lodged with the Australian Securities and Investments Commission on 2 July 2004. The terms of issue of the SAINTS are contained in Appendix A of the Prospectus (the Terms). The SAINTS were issued as fully paid at $100 for each SAINTS. The issue raised $350 million.

13. The Prospectus states that the SAINTS issue forms part of SGBL's ongoing capital management program, and the proceeds from the issue are intended to be used to enhance SGBL's overall capital position and to fund the ongoing growth of SGBL's business. The Australian Prudential Regulation Authority (APRA) has approved the classification of the SAINTS as Tier 1 capital.

14. The SAINTS are listed on the Australian Stock Exchange.

15. The SAINTS are perpetual securities and have no maturity. Holders of the SAINTS are entitled to receive a non-cumulative floating rate Dividend payable quarterly in arrears.

16. The dividend is calculated as follows:

$$\text{Dividend Rate} \times \text{Issue Price} \times \frac{\text{(days in period)}}{365}$$

The Dividend Rate is calculated at the percentage per annum over the days in each quarter as follows:

$$\text{Dividend Rate} = \text{(90 Day Bank Bill Swap Rate + Margin)} \times \text{(1 – current company tax rate)}$$

In the period up to 20 November 2014, the margin is 1.35%. In the period after 20 November 2014, the margin will be 2.35%.

17. The payment of dividends is subject to the following conditions:

(a) the directors, at their discretion, declaring the dividend to be payable;

(b) SGBL having profits available for distribution;

(c) SGBL complying with APRA's capital adequacy guidelines in relation to the dividend;

(d) the amount of the dividend not exceeding the after tax profits of SGBL for the immediately preceding financial year less the current year dividends paid up to the record date; and

(e) APRA not objecting to the payment of the dividend.

18. SGBL intends to fully frank dividends paid on SAINTS. If the Dividend is not fully franked, the Dividend will be increased to compensate for the unfranked component.

19. If SGBL does not pay a dividend in full within 20 business days after a dividend payment date, then, without the approval of the Holders, SGBL must not declare or pay a dividend or make any distribution on certain share capital, or redeem, reduce, cancel or buy-back certain share capital until a stated number of subsequent dividends on the SAINTS are paid in full or an optional dividend on the SAINTS has been paid or until all SAINTS have been converted, redeemed, cancelled or bought back.

20. The Holders have no right to require SGBL to repay any of the money paid to subscribe for the SAINTS.

21. Subject to APRA approval where required, SGBL may exchange the SAINTS at its own discretion, by serving an issuer exchange notice to the Holders during the period between 3 months and 30 business days before the tenth anniversary of issue, or at any time following the occurrence of certain events.

22. SGBL may elect to exchange the SAINTS in one or a combination of the following ways:

(a) the variation of rights and status of the SAINTS and the allotment of additional ordinary SGBL ordinary shares. This process is defined as a ‘conversion’ of the SAINTS by Clause 3.3 of the Terms;

(b) the redemption of the SAINTS for cash equal to the issue price;

(c) the cancellation of the SAINTS for cash equal to the issue price; or

(d) a buy-back of the SAINTS for cash equal to the issue price.

23. If SGBL elects to exchange SAINTS by converting each SAINTS into SGBL ordinary shares, the rights and status attaching to SAINTS will be varied such that each SAINTS will have all of the rights attaching to one fully paid ordinary SGBL share, will rank equally with all other ordinary shares then on issue, and all other rights and restrictions conferred on SAINTS will no longer have any effect.

24. Upon conversion, each Holder of the SAINTS will be allotted an additional number of SGBL ordinary shares determined in accordance with a formula set out in Clause 3.4 of the Terms.

25. Clause 3.3 of the Terms states that conversion does not constitute a cancellation, buy-back or redemption of a SAINTS or an issue, allotment or creation of a new share (other than any additional ordinary shares allotted under Clause 3.4 of the SGBL Prospectus).

26. The total market value of SGBL ordinary shares held by a Holder after conversion of the SAINTS and allotment of additional SGBL ordinary shares will be equivalent to the Issue Price of the SAINTS, plus a premium which may vary according to circumstances but will be at least 2.5% of the Issue Price of the SAINTS.

27. Unless and until the SAINTS are converted into ordinary shares in SGBL, the Holders do not generally have voting rights except in certain limited circumstances affecting the rights of the Holders.

28. SGBL advised that it intends to continue to fully frank all frankable distributions made by it.

29. This Ruling is made on the basis that:

(i) throughout the period to which this Ruling applies, the SAINTS are characterised as equity interests in SGBL under Division 974 of the ITAA 1997;

(ii) throughout the period to which this Ruling applies, the dividends paid on the SAINTS will be frankable distributions as defined in section 202-40 of the ITAA 1997;

(iii) upon exchange of the SAINTS by conversion into SGBL ordinary shares, the additional SGBL ordinary shares issued to Holders will be characterised as equity interests under Division 974 of the ITAA 1997;

(iv) SGBL share capital will not become tainted by an issue of the SAINTS or the additional SGBL ordinary shares issued to Holders upon exchange of the SAINTS by conversion into SGBL ordinary shares;

(v) the terms and conditions under which the SAINTS were originally issued will not be altered in any material way during the period to which the Ruling applies; and

(vi) throughout the period to which this Ruling applies the material supplied to the Commissioner, and taken into account in determining the application of the tax laws discussed in this Ruling, remains an accurate description of all of the activities of SGBL that are a material or relevant consideration in respect of any of those tax laws.

30. This Ruling does not consider the taxation implications of the exchange of SAINTS by redemption, cancellation or buy-back.

Ruling

A SAINTS is not a 'security'

31. A SAINTS or an additional SGBL ordinary share issued upon conversion of the SAINTS will not be a security as defined in subsection 303(1) of the ITAA 1936 or subsection 159GP(1) of the ITAA 1936.

Acquisition time of the SAINTS

32. For capital gains tax purposes, pursuant to section 109-10 of the ITAA 1997, each Holder acquired the SAINTS on 13 August 2004, the date of allotment.

Cost base and reduced cost base

33. For capital gains tax purposes, pursuant to sections 110-25 and 110-55 of the ITAA 1997, the cost base and reduced cost base of each SAINTS is $100 per SAINTS.

Exchange of SAINTS by conversion into SGBL ordinary shares

34. The conversion of each SAINTS will not give rise to a CGT event for capital gains tax purposes as the variation of rights attaching to the SAINTS does not involve a disposal of a CGT asset (CGT event A1), or the cancellation, surrender or similar ending of a CGT asset (CGT event C2).

Allotment of additional SGBL ordinary shares not a dividend

35. The allotment of additional SGBL ordinary shares on conversion of the SAINTS will not be assessable as dividend income in the hands of the Holders.

Cost base of the additional ordinary shares

36. Either section 6BA of the ITAA 1936 or Subdivision 130-A of the ITAA 1997 will apply to apportion the cost or the cost base of the SAINTS over the ordinary share into which each SAINTS convert and the additional SGBL ordinary shares issued by SGBL on conversion.

CGT Event H2 does not apply to the Holders on conversion

37. The conversion of SAINTS into ordinary shares pursuant to the arrangement will not give rise to a CGT Event H2 for Holders pursuant to section 104-155 of the ITAA 1997.

The anti-avoidance provisions

Section 204-30 of the ITAA 1997

38. The Commissioner will not make a determination under paragraph 204-30(3)(c) of the ITAA 1997 that denies imputation benefits to a Holder in respect of a franked distribution paid on the SAINTS by SGBL.

Section 177EA of the ITAA 1936

39. The Commissioner will not make a determination under paragraph 177EA(5)(b) of the ITAA 1936 that denies imputation benefits to a Holder in respect of a franked distribution paid on the SAINTS by SGBL.

Section 45 of the ITAA 1936

40. Section 45 will not apply to treat the additional ordinary shares issued by SGBL on conversion of the SAINTS as an unfranked dividend that is paid by SGBL.

Section 45A of the ITAA 1936

41. The Commissioner will not make a determination under subsection 45A(2) that the additional ordinary shares issued by SGBL on conversion of the SAINTS constitute an unfranked dividend assessable to the Holders.

Section 45B of the ITAA 1936

42. The Commissioner will not make a determination under subsection 45B(3) that the additional ordinary shares issued by SGBL on conversion of the SAINTS constitute an unfranked dividend assessable to the Holders.

Explanation

A SAINTS is not a 'security'

43. The expression 'security' is defined for income tax purposes in subsections 159GP(1) and 303(1) of the ITAA 1936 in almost identical terms. In both cases the definition is potentially very broad, referring to a number of types of instruments that are securities for income tax purposes. Having regard to the terms of the SAINTS as issued, a SAINTS is not of a type of any of the instruments listed within the two definitions. Accordingly, a SAINTS, or an additional SGBL ordinary share issued upon conversion of the SAINTS will not be a security for income tax purposes under either subsection 159GP(1) or subsection 303(1) of the ITAA 1936.

Acquisition time of SAINTS

44. For capital gains tax purposes, Item 2 of section 109-10 of the ITAA 1997 provides that where a company issues or allots equity interests in the company, the acquisition time of the equity interest is when the contract is entered into or, if none, when the equity interests are issued or allotted.

45. The SAINTS offer opened at 9.00am on 12 July 2004, and closed on 5.00pm on 6 August 2004. SGBL could withdraw the offer at any time prior to 13 August 2004, the allotment date. SGBL could reject applications, and scale back applications. The contract is accordingly entered into on the allotment date of 13 August 2004.

46. The acquisition time of the SAINTS for the purposes of Item 2 of section 109-10 of the ITAA 1997, is the allotment date of 13 August 2004.

47. Subsection 130-60(2) does not apply to alter this acquisition date.

SAINTS cost base and reduced cost base

48. For capital gains tax purposes, paragraph 110-25(2)(a) and subsection 110-55(2) of the ITAA 1997 provide that the first element of the cost base and reduced cost base of a CGT asset is the money paid or required to be paid in respect of acquiring it.

49. Accordingly, the cost base and reduced cost base of each SAINTS is $100.

Exchange of SAINTS by conversion into SGBL ordinary shares

50. SGBL may exchange SAINTS by converting them into SGBL ordinary shares. Conversion involves a variation of rights attaching to the SAINTS, and the allotment by SGBL of additional SGBL ordinary shares to the Holders.

51. The variation of rights attaching to SAINTS will not constitute a disposal, or an ending of ownership, of an asset or part of an asset for the purposes of the capital gains tax provisions. Shares are comprised of a bundle of rights; however those rights are not separate pieces of property capable of being divided out and held separately. Because rights attaching to a share are not separate from the share itself, the rights are not assets as defined by section 108-5 of the ITAA 1997 (refer to Taxation Ruling TR 94/30).

52. Pursuant to section 104-25, CGT event C2 happens if the ownership of a share ends by the share:

- being redeemed or cancelled (paragraph 104-25(a)); or
- if the share is a convertible interest – being converted (paragraph 104-25(f)).

53. As the conversion of each SAINTS into one ordinary SGBL share involves the variation of rights of the SAINTS, it does not constitute a cancellation or redemption, and there is no CGT event under paragraph 104-25(a) of the ITAA 1997. As the Holder's ownership of a SAINTS does not end by the variation of rights attaching to the share, paragraph 104-25(f) of the ITAA 1997 also does not apply.

54. Because CGT event C2 does not happen on the conversion of the SAINTS to ordinary shares, Subdivision 130-C does not apply. (Subdivision 130-C only applies if there is an acquisition of an asset by conversion of a convertible interest).

Allotment of additional SGBL ordinary shares not a dividend

55. The definition of a 'dividend' contained in subsection 6(1) of the ITAA 1936 includes any distribution made by a company to any of its shareholders, whether in money or other property, and any amount credited by a company to any of its shareholders as shareholders.

56. Although the additional ordinary SGBL shares issued upon conversion will be property in the hands of the Holder whose SAINTS are converted, the allotment of shares by SGBL is not a disposition of property in the ordinary meaning of that expression (refer *Ord Forrest Pty Ltd v. FC of T* 74 ATC 4034) and therefore not a distribution of property. Further, no amount is credited to the Holders on conversion, and no amount is paid from profits. Accordingly, the allotment of additional ordinary SGBL shares on conversion of the SAINTS is not a dividend as defined in subsection 6(1) of the ITAA 1936.

Cost and cost base of SGL ordinary shares on conversion

57. Either section 6BA of the ITAA 1936 or Subdivision 130-A of the ITAA 1997 will apply to apportion the cost or the cost base of the SAINTS over the ordinary share into which each SAINTS convert and the additional SGBL ordinary shares issued by SGBL on conversion.

58. Section 6BA applies if a shareholder holds shares in a company and the company issues other shares (the bonus shares) in respect of the original shares.

59. Pursuant to subsection 6BA(3), as the additional SGBL ordinary shares were issued for no consideration and are not a dividend, the issue price of the SAINTS will be apportioned over the shares into which the SAINTS convert and any additional SGBL shares allotted on conversion.

60. Subdivision 130-A of the ITAA 1997 applies in a similar manner in respect of shares that are CGT assets. It provides special rules relating to the time of acquisition and the cost base of bonus equities for capital gains tax purposes. Section 130-20 sets out what happens if an entity owns shares in a company and the company issues other shares in relation to the original shares.

61. Pursuant to Item 1 of the table in subsection 130-20(3), upon conversion of the SAINTS the cost base of the SAINTS is to be apportioned over both the ordinary share into which each SAINTS converts and the additional SGBL ordinary shares issued by SGBL on conversion. The bonus shares are deemed to be acquired at the time when the SAINTS were acquired.

CGT Event H2 does not apply to the Holders on conversion

62. Subsection 104-155(1) of the ITAA 1997 provides that CGT Event H2 happens if an act, transaction or event occurs in relation to a CGT asset that you own and the act, transaction or event does not result in an adjustment being made to the asset's cost base or reduced cost base.

63. Paragraph 104-155(5)(c) provides that CGT Event H2 does not happen if a company issues or allots equity interests in the company.

64. CGT Event H2 will not happen upon conversion of the SAINTS into SGBL ordinary shares because the cost base of the SAINTS is adjusted pursuant to Item 1 of the table in subsection 130-20(3), and SGBL issues additional SGBL ordinary shares to the SAINTS Holders.

The anti-avoidance provisions

Section 204-30 of the ITAA 1997

65. Subdivision 204-D of the ITAA 1997 relates to the Commissioner's power to make a determination in circumstances where distributions are streamed to members of a corporate entity.

66. Streaming is not defined, however is generally understood to refer to a company selectively directing the flow of franked dividends to those shareholders who can most benefit from franking. A frankable distribution is a necessary prerequisite for the operation of section 204-30.

67. Section 204-30 applies in respect of a company which streams distributions and the giving of other benefits in such a way that some shareholders receive imputation benefits and other shareholders receive lesser imputation benefits whether or not they receive any other benefits.

68. If section 204-30 of the ITAA 1997 applies, then the Commissioner may make a determination pursuant to paragraph 204-30(3)(c) of the ITAA 1997, that no imputation benefit is to arise in respect of the distribution to those members who derive a greater benefit.

69. For section 204-30 of the ITAA 1997 to apply, members to whom distributions are streamed must derive a greater benefit from imputation benefits than other members. The words 'derives a greater benefit from franking credits' (imputation benefits) are defined in subsection 204-30(8) of the ITAA 1997 by reference to the ability of the members to fully utilise imputation benefits.

70. In the present case, under the terms of the SAINTS, the Holders will receive franked distributions paid on the SAINTS irrespective of their individual tax position or their tax profiles. The SAINTS rank equally among themselves in all respects and the terms of issue do not allow SGBL to discriminate between the Holders in terms of distributions. SGBL advise that SGBL has and will continue to pay fully franked dividends (to the extent of the franking credits in its franking account) to all its shareholders including the Holders of the SAINTS. The SAINTS Prospectus also reveals that SGBL expects the Dividend to be fully franked.

71. Therefore there is no evidence that the requisite element of streaming exists in relation to the franked distributions to be paid by SGBL on the SAINTS.

72. Based on the information provided and having regard to the circumstances of the Arrangement, section 204-30 of the ITAA 1997 has no application to the Holders.

Section 177EA of the ITAA 1936

73. Section 177EA of the ITAA 1936 is a general anti avoidance provision that applies to schemes seeking to obtain a tax advantage in relation to imputation benefits.

74. The operative provision of section 177EA is subsection 177EA(3). This provision applies if:

- (a) there is a scheme for a disposition of membership interests, or an interest in membership interests, in a corporate tax entity; and
- (b) either:
  - (i) a frankable distribution has been paid, or is payable or expected to be payable, to a person in respect of the membership interests; or
  - (ii) a frankable distribution has flowed indirectly, or flows indirectly or is expected to flow indirectly, to a person in respect of the interest in membership interests, as the case may be; and
- (c) the distribution was, or is expected to be, a franked distribution or a distribution franked with an exempting credit; and
- (d) except for section 177EA, the person (the ***relevant taxpayer***) would receive, or could reasonably be expected to receive, imputation benefits as a result of the distribution; and

(e) having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a purpose (whether or not the dominant purpose but not including an incidental purpose) of enabling the relevant taxpayer to obtain an imputation benefit.

75. It is the payment of a frankable dividend, or frankable distribution which is the essential trigger or pivot on which section 177EA turns. Without it, there is nothing to bring section 177EA into play.

76. Pursuant to paragraph 177EA(14)(a), the meaning of 'scheme for a disposition of membership interests or an interest in membership interests' includes a scheme that involves the issuing of membership interests.

77. The issue of SAINTS and the allotment of additional SGBL ordinary shares upon conversion of the SAINTS would constitute a scheme for a disposition of membership interests, and paragraph 177EA(3)(a) is satisfied.

78. The issue of SAINTS will result in the payment of a frankable distribution and the distribution is expected to be franked. Accordingly, subparagraph 177EA(3)(b)(i) and paragraph 177EA(3)(c) are satisfied.

79. Paragraph 177EA(3)(d) is met as SAINTS Holders would receive, or be reasonably expected to receive, imputation benefits as a result of the distribution.

80. Accordingly, the issue is whether, having regard to the relevant circumstances of the scheme, it would be concluded that, on the part of SGBL, the Holders or any other relevant party, there is a purpose more than merely an incidental purpose of conferring an imputation benefit under the scheme. Circumstances which are relevant in determining whether any person has the requisite purpose include, but are not limited to, the factors listed in subsection 177EA(17).

81. Where section 177EA of the ITAA 1936 applies the Commissioner may make a determination pursuant to paragraph 177EA(5)(b) to deny the imputation benefit to each member.

82. The issue of the SAINTS is a capital raising transaction which SGBL advises is undertaken to restore SGBL Tier 1 capital. There is nothing in the terms of the issue which would suggest a tax avoidance purpose, and the arrangement does not result in SGBL avoiding wastage of franking credits.

83. On the basis of the information provided, and having regard to the assumptions and qualifications set out in this Ruling, it would not be reasonable to conclude that in entering into the scheme, the Holder or SGBL demonstrate the objective purpose of securing imputation benefits for the Holders or SGBL. To the extent that any imputation benefits are secured, those benefits are considered to be incidental to the objective purpose of raising Tier-1 capital.

Section 45 of the ITAA 1936

84. Sections 45, 45A and 45B are anti-avoidance provisions which, if they apply, either deem the value of shares or other capital benefits received by a shareholder to be an unfranked dividend paid by the company, out of profits of that company, to the shareholder or allow the Commissioner to make a determination to that effect.

85. Section 45 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 and minimally franked dividends are received by other shareholders. Minimally franked dividends are dividends which are franked to less than 10%.

86. SGBL has consistently paid fully franked dividends and intends to continue paying fully franked dividends to all its shareholders into the foreseeable future. Based on the information provided and having regard to the circumstances of the Arrangement, section 45 will not apply to the issue of a SAINTS or the conversion of a SAINTS to SGBL ordinary shares.

Section 45A of the ITAA 1936

87. Section 45A applies in circumstances where capital benefits are streamed to certain shareholders who derive a greater benefit from the receipt of capital (the advantaged shareholders) and it is reasonable to assume that the other shareholders have received or will receive dividends (the disadvantaged shareholders).

88. The allotment of additional ordinary shares to Holders upon conversion of SAINTS is the provision of capital benefits pursuant to paragraph 45A(3)(a) of the ITAA 1997.

89. The allotment of additional ordinary shares is in effect a restatement of the Holders interest in the capital of SGBL. Without more, the conversion of the SAINTS does not constitute the streaming of capital benefits.

90. Accordingly, it cannot be said that Holders derive a greater benefit from capital benefits than other SGBL shareholders and the issue or conversion of SAINTS does not trigger the application of section 45A.

Section 45B of the ITAA 1936

91. Section 45B applies where certain capital benefits are provided to shareholders in substitution for dividends. The allotment of additional ordinary shares to Holders upon conversion of SAINTS is the provision of capital benefits pursuant to paragraph 45B(5)(c) of the ITAA 1997.

92. For the provision to apply paragraph 45B(2)(c) requires that, having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, entered into the scheme or carried out the scheme or any part of the scheme for a purpose, other than an incidental purpose, of enabling a taxpayer to obtain a tax benefit. The relevant circumstances of the scheme are listed in subsection 45B(8).

93. Having regard to the relevant circumstances surrounding the issue of the SAINTS it cannot be concluded that SGBL, the Holders or any other person entered into or carried out the issue of the SAINTS for the purpose of enabling the Holders to obtain a tax benefit. The Terms do not disclose that the additional ordinary shares allotted upon conversion of the SAINTS will be issued in substitution for any dividend payment on the SAINTS. Further, the allotment of additional ordinary shares cannot be said to be attributable to the profits of the company.

94. Accordingly, the allotment of additional ordinary shares on conversion of the SAINTS will not trigger the application of section 45B.

Detailed contents list

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

Commissioner of Taxation
11 May 2005

Previous draft:
Not previously issued as a draft

Related Rulings/Determinations:
CR 2001/1; TR 92/1; TR 92/20;
TR 94/30; TR 97/16

Subject references:
- capital gains
- conversion of securities
- preference shares

Legislative references:
- ITAA 1936 6(1)
- ITAA 1936 6BA
- ITAA 1936 6BA(3)
- ITAA 1936 45
- ITAA 1936 45A
- ITAA 1936 45A(2)
- ITAA 1936 45A(3)(a)
- ITAA 1936 45B
- ITAA 1936 45B(2)(c)
- ITAA 1936 45B(3)
- ITAA 1936 45B(5)(c)
- ITAA 1936 45B(8)
- ITAA 1936 45C
- ITAA 1936 159GP(1)
- ITAA 1936 177EA
- ITAA 1936 177EA(3)
- ITAA 1936 177EA(3)(a)
- ITAA 1936 177EA(3)(b)(i)
- ITAA 1936 177EA(3)(c)
- ITAA 1936 177EA(3)(d)
- ITAA 1936 177EA(5)(b)
- ITAA 1936 177EA(14)(a)

- ITAA 1936 177EA(17)
- ITAA 1936 303(1)
- ITAA 1997 Subdiv 104-C
- ITAA 1997 104-25
- ITAA 1997 104-25(a)
- ITAA 1997 104-25(f)
- ITAA 1997 104-155
- ITAA 1997 104-155(1)
- ITAA 1997 104-155(5)(c)
- ITAA 1997 108-5
- ITAA 1997 109-10
- ITAA 1997 110-25
- ITAA 1997 110-25(2)(a)
- ITAA 1997 110-55
- ITAA 1997 110-55(2)
- ITAA 1997 Subdiv 130-A
- ITAA 1997 130-20
- ITAA 1997 130-20(3)
- ITAA 1997 Subdiv 130-C
- ITAA 1997 130-60(2)
- ITAA 1997 202-40
- ITAA 1997 Subdiv 204-D
- ITAA 1997 204-30
- ITAA 1997 204-30(3)(c)
- ITAA 1997 204-30(8)
- ITAA 1997 Div 974
- Copyright Act 1968

Case references:

- Ord Forrest Pty Ltd v. FC of T 74 ATC 4034

ATO references:

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