CR 2008/56 - Income tax: Westpac Banking Corporation: Westpac Stapled Preferred Securities

Class Ruling

Income tax: Westpac Banking Corporation: Westpac Stapled Preferred Securities

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This publication provides you with the following level of protection:

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

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:

- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- subsection 44(1) 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;
- section 177EA of the ITAA 1936;
- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- Division 67 of the ITAA 1997;

- Division 104 of the ITAA 1997;
- section 109-5 of the ITAA 1997;
- subsection 110-25(2) of the ITAA 1997;
- subsection 110-55(2) of the ITAA 1997;
- Subdivision 130-A of the ITAA 1997;
- section 204-30 of the ITAA 1997;
- section 207-20 of the ITAA 1997; and
- section 207-145 of the ITAA 1997.

Class of entities

3. The class of entities to which this Ruling applies are the Australian resident individuals, companies and complying superannuation entities who acquire Westpac Stapled Preferred Securities (Westpac SPS) offered by Westpac Banking Corporation (Westpac) from the Initial Purchaser (IP), and who hold the Westpac SPS on capital account.

4. The class of entities to which this Ruling applies are referred to as 'Holders'.

5. The class of entities to which this Ruling applies does not include investors who acquire the Westpac SPS other than by way of submitting the Application Form attached to the Westpac Stapled Preferred Securities Prospectus dated 26 June 2008 (the Prospectus) for the offer of the Westpac SPS (that is, this Ruling only applies to investors who have acquired the Westpac SPS from the IP under the Prospectus).

Qualifications

6. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 14 to 41 of this Ruling.

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

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

Date of effect

9. This Ruling applies from 10 September 2008 to 30 June 2014. However, the Ruling continues to apply after 30 June 2014 to all entities within the specified class who entered into the specified scheme as described in paragraphs 14 to 41 of this Ruling.

10. 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. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

11. If this Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the TAA).

12. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

13. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

14. The following description of the scheme that is the subject of this Ruling is based on the following documents provided by Allens Arthur Robinson (the Applicant). These documents, or the relevant parts of them, as the case may be, form part of and are to be read in conjunction with this description.

15. The relevant documents, or parts of documents, to be read in conjunction with this description are:

- the application for a Class Ruling dated 27 May 2008 lodged by the Applicant on behalf of Westpac;
- the Prospectus (replacing the Westpac Stapled Preferred Securities Prospectus lodged with ASIC on 18 June 2008);
- the Note Deed Poll dated 18 June 2008;
- the Note Terms dated 18 June 2008;
- the Subscription Agreement dated 18 June 2008;
- the Preference Share Terms dated 18 June 2008; and
- correspondence dated 6 August 2007 to 20 August 2008, from the Applicant providing further particulars.

Note: certain information which relates to the affairs of Westpac 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.

16. In this Ruling, unless otherwise defined, capitalised terms take their meaning as per the Prospectus.

17. Westpac is an authorised deposit-taking institution (ADI) and is required to comply with the capital requirements of the Australian Prudential Regulation Authority (APRA), which includes the maintenance of mandatory levels of Tier 1 Capital.

18. The Westpac SPS have been approved by APRA as Non-innovative Residual Tier 1 Capital and will assist Westpac in meeting its Tier 1 Capital requirement.

19. The Holders will acquire the Westpac SPS from the IP. A Westpac SPS will be an instrument consisting of a bundle of rights which have the features of a Note and a Preference Share. The Holders will acquire Westpac SPS from the IP for a price of $100 each on 30 July 2008. Pursuant to the terms of the Offer in the Prospectus, the Holders will acquire Westpac SPS subject to the Note Deed Poll, the Note Terms and the Preference Share Terms. In doing so, the Holders will be taken to be bound by, and subject to the terms of the offer made by the IP to assign the Note to Westpac on the occurrence of a defined Assignment Event. When an Assignment Event occurs, the Westpac SPS will be Unstapled (that is, the Notes will be detached and transferred to Westpac) without any further action being required by the Holder. Each Note and Preference Share comprising a Westpac SPS will be listed on the Australian Securities Exchange (ASX) as a stapled security before the Note is detached. Upon becoming Unstapled, the Westpac SPS consisting solely of Preference Shares will remain listed on the ASX subject to their continuing compliance with ASX Listing Rule requirements.

Main features of the Westpac SPS

Distributions in respect of the Westpac SPS

20. Interest and Dividends payable in respect of the Westpac SPS are expected to be fully franked. To the extent that the Interest or Dividend is not franked to 100% under Part 3-6 of the ITAA 1997, the Holders will generally receive a Gross-Up Amount, in addition to the Interest or Dividend payable.

21. Generally, Interest and Dividends are scheduled to be paid quarterly in arrears on the Interest Payment Dates or Dividend Payment Dates and on any Redemption Date or Conversion Date. They are non-cumulative.

22. Interest and Dividends and Gross-Up Amounts (including any Optional Dividend) will not be paid to Holders on an Interest Payment Date (or a Dividend Payment Date) if the relevant conditions in the terms of the Westpac SPS are not satisfied.

23. If the Interest or Dividend is not paid in full because the relevant conditions in the terms of the Westpac SPS are not satisfied, Holders have no claim in respect of the unpaid portion of that Interest or Dividend, notwithstanding the ability for an Optional Dividend to be paid. However, if the unpaid amount is unpaid Interest, an Assignment Event may occur.

24. No interest accrues on any unpaid Interest, Dividend or Gross-Up Amount, and the Holders will have no claim or entitlement in respect of interest on any unpaid Interest, Dividend or Gross-Up Amount.

25. Following the occurrence of an Assignment Event and consequential Unstapling of the Notes and Preference Shares and transfer of the Notes to Westpac, Westpac may choose to pay an Optional Dividend (subject to APRA approval) equal to the aggregate amount of any unpaid Interest or Dividends and any Gross-Up Amounts (as applicable) which were scheduled to be paid in the 12 months before the date of the Optional Dividend.

26. Subject to certain exceptions, non-payment of Interest or a Dividend will restrict Westpac from paying certain distributions in respect of other specific instruments issued by Westpac. The Holders will not have a right to require redemption of the Notes for cash prior to the winding up of Westpac.

27. Dividends on the Preference Shares will become payable after an Assignment Event (other than mandatory Conversion, early Conversion or Redemption) has occurred as each Westpac SPS will then consist solely of a Preference Share.

An Assignment Event – the Westpac SPS is Unstapled

28. Immediately after an Assignment Event, the following will occur in relation to all Westpac SPS to which the Assignment Event applies:

(a) Westpac will accept the Holders' offer to assign the relevant Note to it;

(b) the relevant Note will become Unstapled from the Preference Share to which it is Stapled;

(c) the Note and the Holders' right, title and interest in the Note are assigned to Westpac on that date; and

(d) all amounts payable in respect of the Note after the occurrence of an Assignment Event will be payable to Westpac.

29. An Assignment Event is defined in the Note Terms. An Assignment Event means the earliest of any of the following dates or events to occur after the issue of Preference Shares comprising part of the Westpac SPS:

(a) the date Westpac selects in its absolute discretion as the Assignment Event Date by announcement to the ASX in which announcement such date is specified;

(b) the appointment by APRA of a statutory manager to Westpac pursuant to subsection 13A(1) of the *Banking Act 1959*;

(c) the Conversion Date on which Preference Shares comprising part of the relevant Westpac SPS Convert, immediately prior to the Conversion taking effect;

(d) the Redemption Date on which Preference Shares comprising part of the relevant Westpac SPS are Redeemed, immediately prior to the Redemption taking effect;

(e) the 21st Business Day after an Interest Payment Date, where Westpac has not paid in full Interest and Gross-Up Amount on the Notes within 20 Business Days of that Interest Payment Date; or

(f) the occurrence of an Event of Default.

Mandatory Conversion

30. On the Mandatory Conversion Date, Westpac must, unless the Westpac SPS are otherwise Redeemed or Transferred on that date, Convert all Preference Shares on issue at that date into Westpac Ordinary Shares. The variation of the status of, and the rights attaching to, a Preference Share and any allotment of additional Westpac Ordinary Shares, is together termed 'Conversion' in the Preference Share Terms.

31. Each Holder may also be allotted an additional number of fully paid Westpac Ordinary Shares for each Preference Share Converted. The number of additional Westpac Ordinary Shares is calculated using a formula which incorporates a Conversion Discount of 1%.

32. The Mandatory Conversion Date will be the earlier of 26 September 2013 and the first Dividend Payment Date thereafter, in either case, where both of the Conversion Conditions are satisfied. If the Conversion Conditions are not satisfied (and if the Westpac SPS are not otherwise Redeemed or Transferred on that date), then Conversion will occur on the next Dividend Payment Date on which the Conversion Conditions are satisfied. The Holders have no right to seek or initiate Conversion or Redemption of the Westpac SPS.

Early Conversion or Redemption

33. Westpac may serve an Early Conversion/Redemption Notice in respect of some or all of the Westpac SPS, following the occurrence of a Tax Event or Regulatory Event, or, in respect of all (but not some) Westpac SPS, if an Acquisition Event occurs.

34. Westpac may Convert the Preference Shares into Westpac Ordinary Shares subject to the satisfaction of the Conversion Conditions, or may Redeem the Preference Shares on the relevant Redemption Date.

35. If an Acquisition Event occurs and Westpac has not issued an Early Conversion/Redemption Notice within 10 Business Days after the Acquisition Event, Westpac must broadly, provided the Conversion Conditions are satisfied, Convert all the Preference Shares on issue into Westpac Ordinary Shares.

Transfer

36. Westpac may issue a Transfer Notice to the Holders specifying that all Westpac SPS (or, following the occurrence of an Assignment Event where Preference Shares remain outstanding, the Preference Shares) will be acquired by a party nominated by Westpac on the Mandatory Conversion Date for cash for the amount of the Face Value per Westpac SPS ($100). This Transfer Notice must be issued no less than 30 Business Days, and no more than 50 Business Days, prior to a Relevant Date for mandatory Conversion.

37. Following the occurrence of a Tax Event, Regulatory Event or Acquisition Event, Westpac may elect to issue an Early Transfer Notice no later than 30 Business Days prior to the potential Conversion Date or Redemption Date relevant to that event, which specifies that all Westpac SPS (or following the occurrence of an Assignment Event where the Preference Shares remain outstanding, all Preference Shares then outstanding) will be acquired by a Nominated Party. If an Early Transfer Notice is issued by Westpac, the same provisions will apply as if a Transfer Notice had been issued in respect of a potential Mandatory Conversion Date.

The offer

38. The offer to apply to subscribe for the Westpac SPS will be limited to:

- Eligible Securityholders – that is, registered holders of Westpac Ordinary Shares or Westpac Trust Preferred Securities at 7.00pm on 11 June 2008 who are shown on the register to have an address in Australia;
- Institutional Investors invited by the Joint Lead Managers; and
- Broker Firm Applicants – that is, Australian resident retail clients of a Syndicate Broker who apply for a broker firm Allocation from a Syndicate Broker.

39. There will be no general public offer of the Westpac SPS. However, Westpac reserves the right to accept applications from persons other than Eligible Securityholders, Institutional Investors and Broker Firm Applicants at its discretion.

40. Westpac will not take any action to register or qualify Westpac SPS, or otherwise permit a public offer of Westpac SPS, in any jurisdiction outside Australia where such an offer is made under the laws in that jurisdiction.

Other

41. This Ruling is made on the basis that:

(a) the documents listed in paragraph 15 of this Ruling provide a complete and accurate description of the scheme;

(b) the scheme is implemented according to the terms of the documents listed in paragraph 15 of this Ruling;

(c) during the term of the scheme, Westpac will be a resident of Australia under the income tax laws of Australia and of no other jurisdiction;

(d) each Westpac SPS is an 'equity interest' in Westpac under Division 974 of the ITAA 1997;

(e) Westpac Ordinary Shares are 'equity interests' under Division 974 of the ITAA 1997;

(f) Interest and any Gross-Up Amounts payable in respect of the Westpac SPS, and Dividends and any Gross-Up Amounts payable in respect of the Westpac SPS following any Assignment Event (other than mandatory Conversion, early Conversion or Redemption), will not be debited to Westpac's share capital account, or its non-share capital account;

(g) no Interest amounts (nor any Gross-Up Amounts) and no Dividends (nor any Gross-Up Amounts) will be sourced, directly or indirectly, from Westpac's share capital account;

(h) Westpac expects to have sufficient 'available frankable profits', as defined in section 215-20 of the ITAA 1997, immediately before the payment of any Interest or any Gross-Up Amount or Dividend or any Gross-Up Amount in respect of the Westpac SPS;

(i) there will be no different treatment afforded to potential investors according to their status as residents or non-residents in the issue of the Westpac SPS, or any other relevant characteristics of potential investors, for example their tax profile, other than as described under the heading 'The offer' in paragraphs 38 to 40 of this Ruling;

(j) Westpac will not differentially frank distributions to different Holders in respect of the Westpac SPS according to the tax status of the Holders or on any other basis;

(k) Westpac will not differentially frank distributions on any other frankable interest in Westpac according to the tax status of the Holders of those instruments or on any other basis;

(l) Westpac intends to continue with its policy of franking (to the extent that franking credits are available in its franking account) all frankable distributions. This includes Interest and Dividends payable in respect of the Westpac SPS;

(m) the Westpac SPS rank equally amongst themselves in all respects;

(n) Westpac will not substitute for itself any member of the Westpac Group or any branch of Westpac in respect of the Westpac SPS;

(o) Westpac will be the Assignee should an Assignment Event (as defined in the Note Terms) occur;

(p) a Capital Disqualification Event (as defined in the Note Terms) will not occur;

(q) Interest, Dividends and any Gross-Up Amounts payable in respect of the Westpac SPS are frankable distributions pursuant to section 202-40 of the ITAA 1997 and are not unfrankable under section 202-45 of the ITAA 1997;

(r) where Westpac franks a frankable distribution payable in respect of the Westpac SPS in accordance with section 202-5 of the ITAA 1997, the distribution will be a franked distribution;

(s) the relevant Holder and their associates will not have any positions (within the meaning of former section 160APHJ of the ITAA 1936) in relation to the Westpac SPS apart from holding the Westpac SPS themselves;

(t) the relevant Holder or their associates will not make any related payments (within the meaning of former section 160APHN of the ITAA 1936) in relation to Interest and Dividends payable in respect of the Westpac SPS;

(u) the relevant Holder will not dispose of their Westpac SPS before a period of at least 90 days (excluding the day of acquisition and the day of disposal) beginning the day after the acquisition of the Westpac SPS; and

(v) any additional Westpac Ordinary Shares issued by Westpac on Conversion of the Preference Shares, which form part of the Westpac SPS, to Westpac Ordinary Shares will not involve an amount being credited to the Holders as shareholders and no amount will be paid from profits.

Ruling

Acquisition time of the Westpac SPS

42. Each Holder will acquire the Westpac SPS on the date the contract to acquire the Westpac SPS from the IP was entered into (section 109-5 of the ITAA 1997).

Cost base and reduced cost base

43. The first element of the cost base and reduced cost base for each Westpac SPS will be $100, being the amount to be paid by the Holders to acquire each Westpac SPS from the IP (subsections 110-25(2) and 110-55(2) of the ITAA 1997).

Inclusion of Interest and Dividends in assessable income

44. Interest and Dividends payable in respect of each Westpac SPS are non-share dividends and dividends respectively. Holders must include in their assessable income all non-share dividends and dividends received in respect of the Westpac SPS (paragraph 44(1)(a) of the ITAA 1936). The Holders must also include in their assessable income an amount equal to the franking credits attached to the non-share dividends and dividends respectively (subsection 207-20(1) of the ITAA 1997).

Entitlement to a tax offset

45. Holders will be entitled to a tax offset equal to the franking credit received on the non-share dividends and dividends paid in respect of the Westpac SPS (subsection 207-20(2) of the ITAA 1997).

Franking credit subject to the refundable tax offset rules

46. Holders who are entitled to a tax offset under subsection 207-20(2) of the ITAA 1997, in respect of the franking credits received in relation to the Westpac SPS, will be subject to the refundable tax offset rules in Division 67 of the ITAA 1997, unless specifically excluded under section 67-25 of the ITAA 1997.

Imputation integrity provisions

47. The Commissioner will not make a determination under paragraph 204-30(3)(c) of the ITAA 1997 to deny the whole, or any part, of the imputation benefits received in relation to the non-share dividends and dividends received by the Holders in respect of the Westpac SPS.

48. 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 received in relation to the non-share dividends and dividends received by the Holders in respect of the Westpac SPS.

Gross-up and tax offset denied in certain circumstances

49. Section 207-145 of the ITAA 1997 will not apply to the whole, or any part, of the non-share dividends or dividends received by the Holders. Accordingly, section 207-145 will not adjust the gross-up of the Holders' assessable income to exclude the franking credits, nor will it deny the tax offset to which the Holders would have otherwise been entitled.

Disposal of a Westpac SPS – Capital Gains Tax (CGT) consequences

50. On a disposal of a Westpac SPS each Holder will realise:

- a capital gain under subsection 104-10(4) of the ITAA 1997 to the extent that the capital proceeds from the disposal exceed the cost base of the Westpac SPS; and
- a capital loss under subsection 104-10(4) of the ITAA 1997 to the extent that the capital proceeds from the disposal are less than the reduced cost base of the Westpac SPS.

Assignment Event – CGT implications

51. CGT event H2, in section 104-155 of the ITAA 1997, will happen when an Assignment Event occurs. However, no Holder will make a capital gain or capital loss, as there are no capital proceeds because of the event, and no incidental costs are incurred in respect of the event. No other CGT event will happen when an Assignment Event occurs.

Conversion of a Westpac SPS, involving the allotment of any additional Westpac Ordinary Shares – CGT implications

52. No CGT event in Division 104 of the ITAA 1997 will happen to the Holders because of the Conversion of a Westpac SPS involving the allotment of additional Westpac Ordinary Shares to the Holders.

Allotment of additional Westpac Ordinary Shares – assessable income

53. The value of any additional Westpac Ordinary Shares received by the Holders on Conversion of the Westpac SPS will not be a 'dividend' as defined in subsection 6(1) of the ITAA 1936, and the value of any additional Westpac Ordinary Shares will not be included in the Holders' assessable income under subsection 44(1) of the ITAA 1936. In addition, the value of the additional Westpac Ordinary Shares will not be assessable to the Holders as ordinary income under subsection 6-5(1) of the ITAA 1997.

Section 45

54. Section 45 of the ITAA 1936 will not apply to treat any additional Westpac Ordinary Shares issued on Conversion of the Westpac SPS as an unfranked dividend paid by Westpac.

Section 45A

55. The Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the capital benefit arising on Conversion of the Westpac SPS. Accordingly, the whole or part of the capital benefit arising on Conversion of the Westpac SPS will not be treated as an unfranked dividend in the hands of the Holders.

Section 45B

56. The Commissioner will not make a determination under subsection 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the capital benefit arising on Conversion of the Westpac SPS. Accordingly, the whole or part of the capital benefit arising on Conversion of the Westpac SPS will not be treated as an unfranked dividend in the hands of the Holders.

Cost base of the Westpac Ordinary Shares

57. Subdivision 130-A of the ITAA 1997 will apply to apportion the first element of the cost base and reduced cost base of each Westpac SPS over the Converted Westpac SPS (that becomes a Westpac Ordinary Share) and any additional Westpac Ordinary Shares issued by Westpac.

Date of acquisition of the Westpac Ordinary Shares

58. The Westpac Ordinary Shares will be taken to have been acquired by the Holders when the Holders acquired the Westpac SPS (section 109-5 of the ITAA 1997). The date of acquisition of the Westpac Ordinary Shares that arise from a Conversion of the Westpac SPS does not change as a result of the Conversion.

59. Any additional Westpac Ordinary Shares that are allotted to the Holders as part of the Conversion of the Westpac SPS will be taken to have been acquired by the Holders at the time the Westpac SPS were originally acquired by the Holders (item 1 in the table in subsection 130-20(3) of the ITAA 1997).

Commissioner of Taxation
10 September 2008

Appendix 1 – Explanation

This Appendix 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.

Acquisition time of the Westpac SPS

60. Where an entity disposes of a CGT asset to you (except where you compulsorily acquire it), you acquire the CGT asset at the time when the disposal contract is entered into or, if no contract is entered into, when the entity stops being the asset's owner (item 1 of the table in subsection 109-5(2) of the ITAA 1997).

61. Each Westpac SPS is a single CGT asset, arising from a single contract between Westpac and the Holder. By acquiring the Westpac SPS from the IP on the terms offered by Westpac in its Prospectus for the issue of the Westpac SPS, each Holder will agree to be bound by the Constitution of Westpac, the Note Deed Poll, the Note Terms, the Preference Share Terms and the terms and conditions of the Offer as set out in the Prospectus.

62. Each Westpac SPS will be acquired by the Holders from the IP on 30 July 2008.

63. Each Westpac SPS will be a single CGT asset consisting of a bundle of rights. The Assignment Event will not result in the acquisition of any new CGT asset. Rather each Westpac SPS will take on the features of a simple Preference Share. Accordingly, each Preference Share will not be a new CGT asset acquired by the Holders upon the assignment of the Note, and the acquisition date of the Preference Share will be the acquisition date of the Westpac SPS, being 30 July 2008.

Cost base and reduced cost base

64. The first element of the cost base and reduced cost base of a CGT asset includes the money paid, or required to be paid, in respect of acquiring that CGT asset (paragraph 110-25(2)(a) and subsection 110-55(2) of the ITAA 1997).

65. The Holders will acquire each Westpac SPS from the IP for $100. Accordingly, the first element of the cost base and reduced cost base of each Westpac SPS will be $100.

66. The occurrence of an Assignment Event will not modify the cost base and reduced cost base of each Westpac SPS. Accordingly, the first element of the cost base and reduced cost base of each Westpac SPS will be $100.

Inclusion of Interest and Dividends in assessable income

67. Paragraph 44(1)(a) of the ITAA 1936 includes in the assessable income of a resident shareholder in a company all dividends and non-share dividends that are paid to the shareholder by the company.

68. Interest and Dividends payable in respect of the Westpac SPS are non-share dividends and dividends respectively. Accordingly, the Holders will include in their assessable income Interest and Dividends payable in respect of the Westpac SPS under paragraph 44(1)(a) of the ITAA 1936.

69. Furthermore, as this Ruling is made on the basis that:

- the non-share dividends and dividends payable in respect of the Westpac SPS are frankable distributions pursuant to section 202-40 of the ITAA 1997 and are not unfrankable under section 202-45 of the ITAA 1997; and
- where Westpac franks a frankable distribution payable in respect of the Westpac SPS in accordance with section 202-5 of the ITAA 1997, the distribution will be a franked distribution,

it therefore follows that the franking credits to be attached respectively to the non-share dividends and dividends must also be included in the Holders' assessable income under subsection 207-20(1) of the ITAA 1997.

Entitlement to a tax offset

70. In accordance with subsection 207-20(2) of the ITAA 1997, the Holders will be entitled to receive a tax offset equal to the value of the franking credit which will be included in their assessable income in respect of the non-share dividends and dividends they receive.

Franking credit subject to the refundable tax offset rules

71. Holders who are entitled to a tax offset under subsection 207-20(2) of the ITAA 1997, in respect of the franking credit received, will also be subject to the refundable tax offset rules in Division 67 of the ITAA 1997, unless specifically excluded under section 67-25 of the ITAA 1997. Certain trustees and corporate tax entities are not subject to the refundable tax offset rules because of subsections 67-25(1A) to 67-25(1D) of the ITAA 1997.

72. The refundable tax offset rules ensure that certain taxpayers are entitled to a refund once their available tax offsets have been utilised to reduce any income tax liability to nil.

Imputation integrity provisions

Streaming of imputation benefits

73. Subdivision 204-D of the ITAA 1997 broadly enables the Commissioner to make a determination where distributions with attached imputation benefits are streamed to members of a corporate tax entity.

74. Section 204-30 of the ITAA 1997 prescribes the circumstances that are required to exist before the Commissioner may make such a determination. Section 204-30 applies where an entity 'streams' the payment of distributions in such a way that:

- an 'imputation benefit' is, or apart from section 204-30 would be, received by a member of the entity as a result of the distribution or distributions (paragraph 204-30(1)(a) of the ITAA 1997);
- the member (favoured member) would derive a greater benefit from franking credits than another member of the entity (paragraph 204-30(1)(b) of the ITAA 1997); and
- the other member (disadvantaged member) of the entity will receive lesser imputation benefits, or will not receive any imputation benefits, whether or not the other member receives other benefits (paragraph 204-30(1)(c) of the ITAA 1997).

75. The existence of these conditions enables the Commissioner, under paragraph 204-30(3)(c) of the ITAA 1997, to make a determination that no imputation benefit is to arise in respect of the distributions made to those favoured members.

76. 'Streaming' is not defined for the purposes of Subdivision 204-D of the ITAA 1997. However, it is understood to refer to a company selectively directing the flow of franked distributions to those members who can most benefit from the imputation credits (refer to paragraph 3.28 of the Explanatory Memorandum to the New Business Tax System (Imputation) Bill 2002).

77. Westpac have indicated in the Prospectus that the Interest payable and Dividend payable in respect of the Westpac SPS to the Holders are expected to be fully franked. Although the Westpac SPS rank ahead of Ordinary Shares in respect of the payment of Interest/Dividends, Westpac have advised that they have paid, and will continue to pay, fully franked dividends (to the extent of available franking credits in their franking account) to all of its shareholders and equity holders, including holders of Ordinary Shares. There will be no change in Westpac's dividend franking policy or dividend payout ratios on its share capital as a result of the issue of the Westpac SPS.

78. As such, there is no evidence that the requisite element of streaming exists in relation to the franked distributions to be paid by Westpac to the Holders. Accordingly, based on the information provided, the Commissioner will not make a determination under paragraph 204-30(3)(c) of the ITAA 1997 to deny imputation benefits to Holders.

General anti-avoidance rule – imputation

79. 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 the scheme is to obtain an imputation benefit. Where these circumstances arise, subsection 177EA(5) of the ITAA 1936 enables the Commissioner to make a determination with the effect of either:

- imposing franking debits or exempting debits on the distributing entity's franking account generally; or
- denying the imputation benefit on the distribution that flowed directly or indirectly to the relevant taxpayer.

80. Pursuant to subsection 177EA(3) of the ITAA 1936, and in conjunction with subsection 177EA(12) of the ITAA 1936 (which extends the application of section 177EA of the ITAA 1936 to non-share equity interests, equity holders and non-share dividends), section 177EA applies if the following conditions are satisfied:

(a) there is a scheme for a disposition of membership interests, or an interest in membership interests, in a corporate tax entity;

(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;

(d) except for this section, 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.

81. Membership interests include both equity interests and non-share equity interests.

82. It is considered that the conditions in paragraphs 177EA(3)(a) to (d) of the ITAA 1936 are satisfied because:

(a) the issue of Westpac SPS constitutes a scheme for the disposition of membership interests (paragraph 177EA(3)(a) of the ITAA 1936). Pursuant to paragraph 177EA(14)(a) of the ITAA 1936, a 'scheme for a disposition of membership interest or an interest in membership interest' includes a scheme that involves the issuing of the membership interests. The issuance of Westpac SPS on the terms set out in the Prospectus is a scheme that involves the issuing of membership interests because the Holders of the Westpac SPS are equity holders of Westpac;

(b) frankable distributions are expected to be paid to the Holders of the Westpac SPS (paragraph 177EA(3)(b) of the ITAA 1936). This Ruling is made on the basis that the distributions payable in respect of the Westpac SPS will be frankable distributions under section 202-40 of the ITAA 1997 and not be unfrankable distributions under section 202-45 of the ITAA 1997;

(c) franked distributions are expected to be paid to the Holders of the Westpac SPS (paragraph 177EA(3)(c) of the ITAA 1936). It is expected that the franked distribution payable in respect of the Westpac SPS will be made on a quarterly basis. Furthermore, Westpac has advised that it will continue its policy of fully franking all frankable distributions made by it, to the extent of the franking credits available in its franking account; and

(d) it is reasonable to expect that an imputation benefit will be received by the relevant taxpayers as a result of distributions made to the Holders given that Westpac expects to frank the distributions on the Westpac SPS (paragraph 177EA(3)(d) of ITAA 1936).

83. Accordingly, the issue is whether, having regard to the relevant circumstances of the scheme, it would be concluded that it was entered into or carried out for the purpose (which is not merely an incidental purpose) of enabling the relevant taxpayer to obtain an imputation benefit under the scheme.

84. 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) of the ITAA 1936. The relevant circumstances listed encompass a range of circumstances which, taken individually or collectively, could indicate the requisite purpose. Due to the diverse nature of these circumstances, some may or may not be present at any one time in any one scheme.

85. The issue of the Westpac SPS is a capital raising transaction which Westpac advised will be undertaken to assist it to comply with the capital requirements of APRA. There is nothing in the terms of the Westpac SPS which would suggest that it will be entered into for the purpose (which is not merely an incidental purpose) of enabling the relevant taxpayer to obtain an imputation benefit under the scheme.

86. Based on the information provided, and having regard to the factors listed in subsection 177EA(17) of the ITAA 1936, the qualifications set out in this Ruling and the relevant circumstances of the scheme, it would not be reasonable to conclude that in entering into the scheme, Westpac and/or the Holders of the Westpac SPS will demonstrate the objective purpose of securing imputation benefits for the Holders of the Westpac SPS. To the extent that any imputation benefits will be secured, those benefits are considered to be incidental to the more significant objective purposes of the raising of Tier 1 Capital by Westpac to meet its capital adequacy requirements.

87. Accordingly, the Commissioner will not make a determination under paragraph 177EA(5)(b) of the ITAA 1936 that would deny the imputation benefits to the Holders of the Westpac SPS.

Gross-up and tax offset denied in certain circumstances

88. Subdivision 207-F of the ITAA 1997 creates the appropriate adjustment to cancel the effect of the gross-up and tax offset rules where the entity concerned has manipulated the imputation system in a manner that is not permitted under the income tax law.

89. Section 207-145 of the ITAA 1997 provides the circumstances that must exist before this adjustment can occur. Pursuant to subsection 207-145(1) of the ITAA 1997 a ‘manipulation of the imputation system’ may occur where:

- the entity is not a ‘qualified person’ in relation to the distribution (paragraph 207-145(1)(a) of the ITAA 1997);

- the Commissioner has made a determination under paragraph 177EA(5)(b) of the ITAA 1936 that no imputation benefit is to arise in relation to the dividend (paragraph 207-145(1)(b) of the ITAA 1997);
- the Commissioner has made a determination under paragraph 204-30(3)(c) of the ITAA 1997 that no imputation benefit is to arise in relation to the distribution (paragraph 207-145(1)(c) of the ITAA 1997); or
- the dividend is made as part of a dividend stripping operation (paragraph 207-145(1)(d) of the ITAA 1997).

90. A person is a 'qualified person' for the purposes of former Division 1A of Part IIIAA of the ITAA 1936 if, generally speaking, they satisfy the holding period rule and the related payments rule (see former section 160APHO of the ITAA 1936).

91. By virtue of the former section 160AOA of the ITAA 1936, the holding period rule and the related payments rule apply to non-share equity interests, equity holders and non-share dividends in the same way as they apply to shares, shareholders and dividends respectively.

92. The holding period rule applies where no related payment has, or will be made, in respect of the non-share dividend or dividend, and requires the non-share equity interest or share to have been continuously held at risk throughout the primary qualification period (former paragraph 160APHO(1)(a) of the ITAA 1936).

93. The related payments rule applies where the taxpayer or an associate has made or will make a related payment in respect of the non-share dividend or dividend and requires the non-share equity interest or share to have been continuously held at risk throughout the secondary qualification period (former subsection 160APHO(1) of the ITAA 1936 and former section 160APHN of the ITAA 1936).

94. The Holders are 'qualified persons', as:

- the Holders in receipt of non-share dividends and dividends in respect of the Westpac SPS will have held their Westpac SPS at risk for a period of at least 90 days (excluding the day of acquisition and the day of disposal), in the period beginning on the day after the day on which the Holders acquired the Westpac SPS and ending on the 90th day after the day on which the Westpac SPS became ex dividend (former subsections 160APHO(2) and 160APHO(3) of the ITAA 1936 and former sections 160APHM and 160APHJ of the ITAA 1936); and
- neither the Holders, nor associates of the Holders, will be under an obligation to make, or are likely to make a related payment in relation to the non-share dividends or dividends (former paragraph 160APHO(1)(a) of the ITAA 1936 and former section 160APHN of the ITAA 1936).

95. However, if either or both of the above 2 considerations are not met the Holders will not be a 'qualified person' for the purposes of former Division 1A of Part IIIAA of the ITAA 1936. Subdivision 207-F of the ITAA 1997 will create the appropriate adjustment to cancel the effect of the gross-up and tax offset rules for the Holders.

96. The Commissioner has confirmed that he will not make a determination under paragraph 177EA(5)(b) of the ITAA 1936 or paragraph 204-30(3)(c) of the ITAA 1997 to deny the imputation benefits attached to non-share dividends or dividends paid to the Holders in respect of the Westpac SPS.

97. A distribution will be taken to be made as part of a dividend stripping operation, pursuant to section 207-155 of the ITAA 1997, where the distribution arose out of, or was made in the course of, a scheme or substantially similar arrangement that was in the nature of dividend stripping.

98. The Prospectus provides no indication that the offering of Westpac SPS and the associated payment of franked distributions to the Holders in any way constitute a dividend stripping arrangement. As such, the dividend stripping provision will have no application to the Holders.

99. Therefore, section 207-145 of the ITAA 1997 will not apply to deny imputation benefits to Holders as none of the circumstances outlined in paragraph 89 of this Ruling are present.

Characterisation of Westpac SPS for CGT purposes

100. Each Westpac SPS will be a single CGT asset, arising from a single contract, the terms of which are to be found in the Constitution of Westpac, the Note Deed Poll, the Note Terms, the Preference Share Terms and the terms and conditions of the Offer as set out in the Prospectus.

Disposal of a Westpac SPS – CGT consequences

101. CGT event A1 happens if you dispose of a CGT asset (subsection 104-10(1) of the ITAA 1997). Under subsection 104-10(2) of the ITAA 1997, you dispose of a CGT asset if a change of ownership occurs from you to another entity, whether because of some act or event or by operation of law.

102. CGT event A1 will happen if a Westpac SPS is disposed of on market, or pursuant to a Transfer Notice, as there will be a change of ownership of the Westpac SPS.

103. A capital gain will be made under subsection 104-10(4) of the ITAA 1997 on the disposal of the Westpac SPS if the capital proceeds from the disposal are more than the cost base of the Westpac SPS. A capital loss will be made under subsection 104-10(4) of the ITAA 1997 on the disposal of the Westpac SPS if the capital proceeds from the disposal are less than the reduced cost base of the Westpac SPS.

Assignment Event – CGT implications

104. Each Westpac SPS will be a single CGT asset, arising from a single contract between Westpac and the Holder. The assignment of the Note on the occurrence of an Assignment Event will not affect the continued existence of this CGT asset, although each Westpac SPS will then take on the features of a simple Preference Share.

105. 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.

106. CGT event H2 will happen when an Assignment Event occurs. This is an act, transaction or event in relation to the Westpac SPS that does not result in an adjustment being made to the cost base or reduced cost base of the Westpac SPS.

107. A capital gain is made if the capital proceeds from CGT event H2 are more than the incidental costs incurred in relation to the event. A capital loss is made if the capital proceeds are less than the incidental costs (subsection 104-155(3) of the ITAA 1997).

108. Subsection 116-20(2) of the ITAA 1997 provides that the capital proceeds from CGT event H2 happening is the money or other consideration received, or entitled to be received, because of the act, transaction or event.

109. Holders will make no capital gain or capital loss from the happening of CGT event H2 as there are no capital proceeds because of the event and no incidental costs are incurred by the Holders that relate to the event. No other CGT event will happen when an Assignment Event occurs.

Conversion of a Westpac SPS, involving the allotment of any additional Westpac Ordinary Shares – CGT implications

110. Pursuant to the terms of the Westpac SPS, upon a Conversion, the Westpac SPS will Convert into Westpac Ordinary Shares through a variation of the rights attaching to each Westpac SPS. Holders of the Westpac SPS may also receive an allotment of additional Westpac Ordinary Shares.

111. The Westpac SPS will Convert into Westpac Ordinary Shares on 26 September 2013, subject to the satisfaction of the mandatory Conversion conditions. If the mandatory Conversion conditions are not satisfied on that date, the Mandatory Conversion Date moves to the next Dividend Payment Date on which the conditions are satisfied.

112. The Westpac SPS may Convert into Westpac Ordinary Shares before the Mandatory Conversion Date at Westpac's discretion where certain defined events have occurred.

113. CGT events A1, C2, G1 or H2 will not happen to the Holders on the Conversion of the Westpac SPS involving the allotment of additional Westpac Ordinary Shares to the Holders.

114. The Conversion of the Westpac SPS does not constitute a disposal of an asset or part of an asset as required for CGT event A1 to happen.

115. Each Westpac SPS will be comprised of a bundle of rights. However, those rights will not be separate pieces of property capable of being divided out and held separately (refer to Taxation Ruling TR 94/30).

116. Under section 104-25 of the ITAA 1997, CGT event C2 happens if, among other things, the ownership of an intangible CGT asset (each Westpac SPS) ends:

- by being redeemed or cancelled (paragraph 104-25(1)(a) of the ITAA 1997); or
- if each Westpac SPS is a convertible interest – by being converted (paragraph 104-25(1)(f) of the ITAA 1997).

117. The mere variation of rights attaching to each Westpac SPS will not be a 'redemption' or 'cancellation' of the Westpac SPS for the purposes of paragraph 104-25(1)(a) of the ITAA 1997, and will not involve the conversion of the Westpac SPS for the purposes of paragraph 104-25(1)(f) of the ITAA 1997.

118. Furthermore, the relinquishment by the Holders of some of the rights attaching to each Westpac SPS will not be a CGT event that happens to part of the CGT asset comprised by each Westpac SPS under section 112-30 of the ITAA 1997 (see paragraph 40 of TR 94/30).

119. Under section 104-135 of the ITAA 1997, CGT event G1 happens if a company makes a payment (which can include giving property) to an entity in respect of a share they own in the company (each Westpac SPS), and some or all of the payment is not a dividend. The variation of rights attaching to each Westpac SPS, so that they become Westpac Ordinary Shares, will not amount to Westpac making a payment. Therefore, CGT event G1 will not happen.

120. Although CGT event C2 or G1 does not happen as a result of the variation of the rights attaching to each Westpac SPS, the receipt of money or other consideration in respect of such a variation may attract the operation of CGT event H2 (see paragraphs 10 and 46 to 48 of TR 94/30).

121. 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.

122. The Conversion of each Westpac SPS to a Westpac Ordinary Share involving the allotment of additional Westpac Ordinary Shares will result in an adjustment to the cost base and reduced cost base of the Westpac SPS under Subdivision 130-A of the ITAA 1997 (refer to paragraphs 146 to 148 of this Ruling).

123. Accordingly, the act, transaction or event that occurs in relation to each Westpac SPS will result in an adjustment to the cost base or reduced cost base of each Westpac SPS. Therefore, CGT event H2 will not happen because of the Conversion of the Westpac SPS involving the allotment of additional Westpac Ordinary Shares.

124. No other CGT event in Division 104 of the ITAA 1997 will happen because of the Conversion of the Westpac SPS involving the allotment of additional Westpac Ordinary Shares.

Allotment of additional Westpac Ordinary Shares – assessable income

125. Subsection 6(1) of the ITAA 1936 defines a 'dividend' to include 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.

126. Although any additional Westpac Ordinary Shares issued on Conversion of each Westpac SPS (which, after an Assignment Event takes on the features of a simple Preference Share) will constitute 'property' in the hands of the Holders, the allotment is not a disposition of property in the ordinary meaning of that expression (refer *Ord Forrest Pty Ltd v. Federal Commissioner of Taxation* (1974) 130 CLR 124; 74 ATC 4034; (1974) 4 ATR 230). As there is no disposition, there cannot be a distribution of property by Westpac.

127. Furthermore, no amount is credited to the Holders, nor is an amount paid out of profits.

128. Accordingly, the allotment of additional Westpac Ordinary Shares does not constitute a 'dividend' within the meaning of subsection 6(1) of the ITAA 1936.

129. The issue of any additional Westpac Ordinary Shares on Conversion of each Westpac SPS will be an issue of shares for which consideration is not payable and results in a re-expression of the Holders' interest in the share capital of Westpac. Accordingly, the value of any additional Westpac Ordinary Shares issued on the conversion of each Westpac SPS to Ordinary Shares would not be assessable as ordinary income under subsection 6-5(1) of the ITAA 1997 (*Commissioner of Taxation v. McNeil* (2007) 229 CLR 656; 2007 ATC 4223; (2007) 64 ATR 431).

Sections 45, 45A and 45B

130. Sections 45, 45A and 45B of the ITAA 1936 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.

Section 45

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

132. Westpac has for some time fully franked the dividends it has paid and expects to continue paying fully franked dividends to all its shareholders. 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 any allotment of additional Westpac Ordinary Shares as an unfranked dividend in the hands of the Holders.

Section 45A

133. Section 45A of the ITAA 1936 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).

134. The 'provision of capital benefit' is defined in subsection 45A(3) of the ITAA 1936 to include the provision by a company of shares in the company to its shareholder and anything that is done in relation to a share that has the effect of increasing the value of a share (which may or may not be the same share) held by the shareholder.

135. The allotment of any additional Westpac Ordinary Shares to Holders and any increase in the value of each Westpac SPS, which has the features of a simple Preference Share immediately before Conversion, on a Conversion of the Westpac SPS are 'provision of capital benefits' pursuant to paragraphs 45A(3)(a) and (c) of the ITAA 1936.

136. The allotment of any additional Westpac Ordinary Shares is in effect a restatement of the Holders' interest in the capital of Westpac. Without more, it will not constitute the streaming of capital benefits.

137. Any increase in the value of the Westpac SPS on a Conversion of the Westpac SPS will not on its own constitute the streaming of capital benefits.

138. Accordingly, it cannot be said that Holders derive a greater benefit from the capital benefits arising from the Conversion of the Westpac SPS than other Westpac shareholders. Therefore, the allotment of any additional Westpac Ordinary Shares or any increase in the value of the Westpac SPS on Conversion of the Westpac SPS would not trigger the application of section 45A of the ITAA 1936.

139. Therefore, the Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies to deem the whole or part of the capital benefit arising from a Conversion of the Westpac SPS as an unfranked dividend in the hands of the Holders.

Section 45B

140. Section 45B of the ITAA 1936 applies where certain capital benefits are provided to shareholders in substitution for dividends.

141. The phrase 'provided with a capital benefit' is defined in subsection 45B(5) of the ITAA 1936. Relevantly, it includes the provision of ownership interests in a company to a person and anything that is done in relation to an ownership interest that has the effect of increasing the value of an ownership interest (which may or may not be the same interest) held by the person.

142. The allotment of any additional Westpac Ordinary Shares to Holders and any increase in the value of each Westpac SPS, which immediately before Conversion has the features of a simple Preference Share, on a Conversion of the Westpac SPS are therefore capital benefits provided by Westpac to the Holders.

143. For the provision to apply, among other things, paragraph 45B(2)(c) of the ITAA 1936 requires that, 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, other than an incidental purpose, of enabling a taxpayer to obtain a tax benefit. A non-exhaustive list of relevant circumstances of the scheme is provided in subsection 45B(8) of the ITAA 1936.

144. Having regard to the relevant circumstances surrounding the issue of the Westpac SPS, it cannot be concluded that Westpac, the Holders or any other person who will enter into or carry out the issue of the Westpac SPS will do so for the purpose of enabling the Holders to obtain a tax benefit. The terms of the arrangement do not disclose that the additional Westpac Ordinary Shares which may be allotted and any increase in the value of the Westpac SPS on Conversion of the Westpac SPS will be provided in substitution for any dividend payment in respect of the Westpac SPS. Further, the allotment of any additional Westpac Ordinary Shares cannot be said to be attributable to the profits of the company.

145. Accordingly, the Commissioner will not make a determination under subsection 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies to deem the whole or part of the capital benefit arising from a Conversion of the Westpac SPS as unfranked dividends in the hands of the Holders.

Cost base of the Westpac Ordinary Shares

146. Subdivision 130-A of the ITAA 1997 provides special rules relating to the time of acquisition and the cost base of bonus equities for CGT purposes.

147. Subdivision 130-A of the ITAA 1997 will apply to apportion the first element of the cost base and reduced cost base of each Westpac SPS over the Converted Westpac SPS (that becomes a Westpac Ordinary Share) and any additional Westpac Ordinary Shares issued by Westpac.

148. As the value of any additional Westpac Ordinary Shares is not a dividend nor taken to be a dividend, the first element of the cost base and reduced cost base of each Westpac SPS will be apportioned in a reasonable way over both the Westpac Ordinary Share and any additional Westpac Ordinary Shares issued to the Holders by Westpac (item 1 of the table in subsection 130-20(3) of the ITAA 1997).

Date of acquisition of the Westpac Ordinary Shares

149. The Westpac Ordinary Shares will be taken to have been acquired by the Holders when each Holder acquired the Westpac SPS, being 30 July 2008 (section 109-5 of the ITAA 1997).

150. Any additional Westpac Ordinary Shares that are allotted to the Holders as part of the Conversion of the Westpac SPS are taken to have been acquired by the Holders at the time the Westpac SPS are originally acquired by the Holders, being 30 July 2008 (item 1 in the table in subsection 130-20(3) of the ITAA 1997).

Appendix 2 – Detailed contents list

151. The following is a detailed contents list for this Ruling:

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 94/30

Subject references:

- acquisition dates
- capital gains tax
- CGT cost base
- dividend imputation
- franking rebates
- preference shares

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 44(1)
- ITAA 1936 44(1)(a)
- ITAA 1936 45
- ITAA 1936 45A
- ITAA 1936 45A(2)
- ITAA 1936 45A(3)
- ITAA 1936 45A(3)(a)
- ITAA 1936 45A(3)(c)
- ITAA 1936 45B
- ITAA 1936 45B(2)(c)
- ITAA 1936 45B(3)
- ITAA 1936 45B(5)
- ITAA 1936 45B(8)
- ITAA 1936 45C
- ITAA 1936 Pt IIIAA Div 1A
- ITAA 1936 160AOA
- ITAA 1936 160APHJ
- ITAA 1936 160APHM
- ITAA 1936 160APHN
- ITAA 1936 160APHO
- ITAA 1936 160APHO(1)
- ITAA 1936 160APHO(1)(a)
- ITAA 1936 160APHO(2)
- ITAA 1936 160APHO(3)
- ITAA 1936 177EA
- ITAA 1936 177EA(3)
- ITAA 1936 177EA(3)(a)
- ITAA 1936 177EA(3)(b)
- ITAA 1936 177EA(3)(c)
- ITAA 1936 177EA(3)(d)
- ITAA 1936 177EA(5)
- ITAA 1936 177EA(5)(b)
- ITAA 1936 177EA(12)
- ITAA 1936 177EA(14)(a)
- ITAA 1936 177EA(17)
- ITAA 1997 6-5(1)
- ITAA 1997 Div 67
- ITAA 1997 67-25
- ITAA 1997 67-25(1A)
- ITAA 1997 67-25(1B)
- ITAA 1997 67-25(1C)
- ITAA 1997 67-25(1D)
- ITAA 1997 Div 104
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(2)
- ITAA 1997 104-10(4)
- ITAA 1997 104-25
- ITAA 1997 104-25(1)(a)
- ITAA 1997 104-25(1)(f)
- ITAA 1997 104-135
- ITAA 1997 104-155
- ITAA 1997 104-155(1)
- ITAA 1997 104-155(3)
- ITAA 1997 109-5
- ITAA 1997 109-5(2)
- ITAA 1997 110-25(2)
- ITAA 1997 110-25(2)(a)
- ITAA 1997 110-55(2)
- ITAA 1997 112-30
- ITAA 1997 116-20(2)
- ITAA 1997 Subdiv 130-A
- ITAA 1997 130-20(3)
- ITAA 1997 Pt 3-6
- ITAA 1997 202-5
- ITAA 1997 202-40
- ITAA 1997 202-45
- ITAA 1997 Subdiv 204-D
- ITAA 1997 204-30
- ITAA 1997 204-30(1)(a)
- ITAA 1997 204-30(1)(b)
- ITAA 1997 204-30(1)(c)
- ITAA 1997 204-30(3)(c)
- ITAA 1997 207-20
- ITAA 1997 207-20(1)
- ITAA 1997 207-20(2)
- ITAA 1997 Subdiv 207-F
- ITAA 1997 207-145
- ITAA 1997 207-145(1)
- ITAA 1997 207-145(1)(a)
- ITAA 1997 207-145(1)(b)
- ITAA 1997 207-145(1)(c)
- ITAA 1997 207-145(1)(d)
- ITAA 1997 207-155
- ITAA 1997 215-20
- ITAA 1997 Div 974
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Banking Act 1959 13A(1)
- Copyright Act 1968

Case references:

- Ord Forrest Pty Ltd v. Federal Commissioner of Taxation (1974) 130 CLR 124; 74 ATC 4034; (1974) 4 ATR 230
- Commissioner of Taxation v. McNeil (2007) 229 CLR 656; 2007 ATC 4223; (2007) 64 ATR 431

Other references:

- Explanatory Memorandum to the New Business Tax System (Imputation) Bill 2002

ATO references

NO: 2008/13779
ISSN: 1445-2014
ATOlaw topic: Income Tax ~~ Assessable income ~~ dividend, interest and royalty income
Income Tax ~~ Capital Gains Tax ~~ cost base and reduced cost base
Income Tax ~~ Capital Gains Tax ~~ CGT event A1 – disposal of a CGT asset
Income Tax ~~ Capital Gains Tax ~~ CGT events H1 and H2 – special capital receipts
Income Tax ~~ Entity specific matters ~~ franking of dividends – company matters
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