


CR 2016/13 - Income tax: return of capital by way of in specie distribution of shares in CYBG PLC by National Australia Bank Limited

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Class Ruling

Income tax: return of capital by way of in specie distribution of shares in CYBG PLC by National Australia Bank Limited

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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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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)
- section 45A of the ITAA 1936
- section 45B of the ITAA 1936
- section 45C of the ITAA 1936
- section 26-55 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 30-15 of the ITAA 1997
- section 104-10 of the ITAA 1997
- section 104-25 of the ITAA 1997
- section 104-135 of the ITAA 1997

- section 106-50 of the ITAA 1997
- section 109-5 of the ITAA 1997, and
- section 855-10 of the ITAA 1997.

All subsequent legislative references in this Ruling are to the ITAA 1997, unless otherwise stated.

Class of entities

3. The class of entities to which this Ruling applies are the holders of ordinary shares in National Australia Bank Limited (NAB) who:

- were registered as ordinary shareholders on the NAB Register on 5 February 2016 (Scheme Record Date) for determining entitlements to receive the return of capital
- are not temporary residents of Australia (as defined in subsection 995-1(1))
- do not hold shares in NAB as revenue assets (as defined in section 977-50) or trading stock (as defined in subsection 995-1(1)), and
- are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their NAB Shares.

(Note: Division 230 will generally not apply to individuals, unless they have made an election for it to apply to them)

In this Ruling, an entity belonging to this class of entities is referred to as a 'NAB Shareholder'.

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

5. This Ruling does not consider the taxation treatment of shares in CYBG PLC acquired under the institutional offer (Institutional Offer) carried out contemporaneously with the Demerger Scheme.

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 9 to 48 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

8. This Ruling applies from 1 July 2015 to 30 June 2016. The Ruling continues to apply after 30 June 2016 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

9. The following description of the scheme is based on information provided by the applicant and on the following documents:

- the Class Ruling application dated 18 December 2015
- the Scheme Booklet for the Demerger of CYBG PLC from National Australia Bank Limited dated 7 December 2015, and
- correspondence received in relation to the Class Ruling application.

Note: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

Background

10. NAB is an Australian resident company and is listed on the Australian Securities Exchange (ASX). NAB and its subsidiaries undertake financial services predominantly in Australia, New Zealand, the United Kingdom and the United States of America.

11. NAB wholly owns a number of Australian incorporated subsidiary companies and is the head company of a consolidated group for taxation purposes (the NAB Group).

12. The NAB Group wholly owned CYB Investments Limited (CYBI) (formerly National Australia Group Europe Limited) a company incorporated in England and Wales.

13. CYBI was the holding company for the NAB Group's investment in Clydesdale Bank PLC (Clydesdale), a company incorporated in Scotland that provides banking and financial services in the United Kingdom.

14. Prior to the commencement of the Demerger Scheme, the NAB Group wholly owned the shares in CYBG PLC (CYBG) a company recently incorporated in England and Wales with nominal capital.

Overview

15. The NAB Group has exited its investment in Clydesdale by:
- transferring the shares it held in CYBI to CYBG as consideration for the issue of CYBG ordinary shares or CYBG Clearing House Electronic Subregister System Depository Interests (CDIs) to, or for the benefit of, NAB Shareholders (approximately 75% of the issued shares) and the NAB Group (approximately 25% of the issued shares), and
 - selling the CYBG Shares the NAB Group acquired via an Institutional Offer to qualified institutional investors.

Note: the Demerger Scheme was not conditional on the Institutional Offer proceeding.

Preliminary steps

16. NAB separated CYBI's business from NAB's other businesses and restructured CYBI so that it will operate its business separately from other NAB controlled entities (other than by virtue of certain transitional services arrangements and certain other necessary dependencies).

The Demerger Scheme

17. The Demerger Scheme was carried out through a Scheme of Arrangement approved by NAB Shareholders and the Supreme Court of Victoria.

18. NAB sought approval of the Supreme Court of Victoria to convene the Scheme Meeting of NAB Shareholders to vote on the Demerger Scheme. A General Meeting of NAB Shareholders and NAB Tier 1 Securityholders was held immediately after the Scheme Meeting to vote on the NAB Capital Reduction Resolution associated with the Demerger Scheme.

19. The Scheme Booklet for the Demerger of CYBG PLC from National Australia Bank Limited dated 7 December 2015 (including the Notice of Scheme Meeting and the Notice of General Meeting) was issued to each NAB Shareholder and each NAB Tier 1 Securityholder eligible to vote on the Demerger Resolutions. The Scheme Meeting and the General Meeting were held on 27 January 2016. The following resolutions were passed:

- a resolution to approve the scheme of arrangement proposed between NAB and the holders of its ordinary shares as contained in and more particularly described in the Scheme Booklet (with or without modifications or conditions approved by the Supreme Court of Victoria), and

- an ordinary resolution to approve the reduction of NAB's share capital by the Capital Reduction Aggregate Amount (see below), with the reduction to be effected and satisfied by applying the Capital Reduction Aggregate Amount equally against each NAB Share.

20. After approval of the Demerger Scheme by NAB Shareholders and the approval of associated capital reduction by NAB Shareholders and NAB Tier 1 Securityholders, NAB sought approval of the Supreme Court of Victoria for the Demerger Scheme. After the Supreme Court of Victoria approved the Demerger Scheme it became effective on 2 February 2016.

21. NAB undertook the following steps to effect the Demerger Scheme:

- NAB reduced its share capital by the Capital Reduction Aggregate Amount (see below)
- NAB transferred the CYBI Shares to CYBG as provided for under the Sale and Purchase Agreement between NAB and CYBG
- CYBG issued shares in CYBG as consideration for the transfer of the CYBI Shares
- each NAB Shareholder registered on the NAB Register on the Scheme Record Date was entitled to the Capital Reduction Portion, being the Capital Reduction Aggregate Amount divided by the number of NAB Shares on issue on the Scheme Record Date, multiplied by the number of NAB Shares held by that NAB Shareholder on the Scheme Record Date
- in satisfaction of the Capital Reduction Portion each NAB Shareholder registered on the NAB Register on the Scheme Record Date was entitled to:
 - (a) if the NAB Shareholder was a CDI Receiving Shareholder (as defined below), one CYBG Share for every four NAB Shares held by the CDI Receiving Shareholder at the Scheme Record Date, the CYBG Share having being provided to CHESSE Depository Nominees Pty Ltd (CDN) who then issued one CYBG CDI to the CDI Receiving Shareholder for every CYBG Share CDN received in respect of the CDI Receiving Shareholder
 - (b) If the NAB Shareholder was a Share Receiving Shareholder (as defined below), one CYBG Share being provided to the Share Receiving Shareholder for every four NAB Shares held by the Share Receiving Shareholder at the Scheme Record Date, or

(c) If the NAB Shareholder was a Selling Shareholder (as defined below), one CYBG Security (as defined below) being provided to the Sale Agent for every four NAB Shares held by the Selling Shareholder at the Scheme Record Date

- if the number of CYBG Shares or CYBG CDIs (collectively CYBG Securities) to which a NAB Shareholder was entitled to acquire under the Demerger Scheme was not a whole number, the number was rounded down to the nearest whole number of CYBG Securities
- the CYBG Shares provided to, or for the benefit of, the NAB Shareholders under the Demerger Scheme were issued to NAB by CYBG on 8 February 2016 (the Demerger Date). NAB immediately transferred the legal title to those shares to the NAB Shareholder, CDN or the Sale Agent (as applicable)
- NAB debited the Capital Reduction Aggregate Amount against NAB's share capital account.

22. The last day of trading of NAB Shares with an entitlement to participate in the Demerger Scheme was 2 February 2016.

23. Approximately 75% of the shares in CYBG were transferred to NAB Shareholders, CDN or the Sale Agent pursuant to the Demerger Scheme.

Classification of NAB Shareholders for Demerger Scheme purposes

24. NAB Shareholders were classified as Eligible AUSNZ Shareholders, Eligible Overseas Shareholders or Ineligible Shareholders under the Demerger Scheme.

25. Eligible AUSNZ Shareholders and Eligible Overseas Shareholders (collectively, Eligible Shareholders) were those NAB Shareholders with a registered address on the NAB Register in Australia, New Zealand, the United Kingdom, the United States of America (other than California), Singapore, Hong Kong, Japan, Ireland or Canada on the Scheme Record Date. NAB Shareholders with other registered addresses were Ineligible Shareholders.

26. Unless they were eligible to participate in, and elected to participate in, the Sale Facility (as described below), Eligible Shareholders were treated as either a CDI Receiving Shareholder or a Share Receiving Shareholder. An Eligible Shareholder with an address in Australia or New Zealand who had not made an election to either receive CYBG Shares or participate in the Sale Facility was a CDI Receiving Shareholder. An Eligible Shareholder with an address outside Australia and New Zealand who had not made an election to either receive CYBG CDIs or participate in the Sale Facility was a Share Receiving Shareholder.

27. Ineligible Shareholders and Eligible Shareholders who were eligible to participate in, and elected to participate in, the Sale Facility, were classified as Selling Shareholders.
28. Eligible Shareholders who were able to elect to participate in the Sale Facility were those Eligible Shareholders who held a small shareholding in NAB (2000 NAB Shares or less).
29. CYBG Shares or CDIs of Selling Shareholders that they would otherwise have been entitled to under the Demerger Scheme were transferred to the Sale Agent to be sold through the Sale Facility.
30. Selling Shareholders were also offered the opportunity by NAB to gift proceeds from the Sale Facility to the Trustee of ShareGift Australia (ShareGift).
31. NAB has advised that ShareGift is endorsed as a Deductible Gift Recipient.
32. The proceeds from the Sale Facility, if not gifted to ShareGift, will be remitted to the Selling Shareholders free of any brokerage costs or stamp duty.
33. On the Demerger Date, NAB transferred to CDN those CYBG Shares to which the CDI Receiving Shareholders were entitled under the Demerger. CDN in turn issued CYBG CDIs to each CDI Receiving Shareholder (during the course of 9 February 2016).
34. Each CYBG CDI represents a beneficial interest in one CYBG Share and has rights attached that are economically equivalent to the rights attaching to a CYBG Share. CDN has legal ownership of each CYBG Share, which it holds as trustee for the beneficial owner (the relevant CDI Receiving Shareholder).
35. NAB concurrently sold approximately 25% of the shares in CYBG by way of the Institutional Offer.
36. NAB has advised that the rationale for the Institutional Offer is, among other things, to broaden the investor base for CYBG upon listing, to support the development of an active and liquid market in CYBG Shares on the London Stock Exchange (LSE) and to generate capital for NAB. NAB has advised that the Institutional Offer is expected to increase the liquidity of CYBG Shares after listing on the LSE.
37. The market value of the CYBG Shares and CDIs of \$4.01 was determined after the implementation of the Demerger Scheme and the listing of CYBG Shares on the LSE and the listing of CYBG CDIs on the ASX, based upon the five day Volume Weighted Average Price of CYBG Securities traded in the ordinary course of trading (VWAP).
38. Broadly, the daily VWAP of the CYBG Securities on each day of trading on each of the ASX and LSE over the five trading days following the Effective Date (2 February 2016) for the Demerger Scheme was also used to determine the aggregate amount of \$4.01 of capital that was reduced under the capital reduction associated with the Demerger Scheme (Capital Reduction Aggregate Amount).

39. CYBG Shares commenced conditional trading on the LSE on 3 February 2016 (unconditional trading commenced on 8 February 2016) and CYBG CDIs commenced trading on the ASX on 4 February 2016.

40. CYBG has established an Australian branch share register in respect of its shares.

41. NAB disclosed an accounting loss in respect of the implementation of the Demerger Scheme.

42. The NAB share capital account is not tainted within the meaning of section 197-50.

43. NAB Shareholders are not eligible to choose rollover relief under Division 125 with respect to the Demerger Scheme.

CDI trading mechanism

44. The ASX Clearing House Electronic Subregister System (CHES) facilitates the transfer of legal title and settlement of transactions on the ASX. However, CHES cannot be used directly for the transfer of securities of companies domiciled in various foreign countries, such as the United Kingdom, whose laws have the effect that CHES cannot be used for transferring or holding legal title to securities.

45. To overcome this difficulty, a special depositary receipt in the form of CDIs has been developed as a method of transferring and holding these foreign securities in CHES, thereby allowing the underlying foreign securities to be listed and traded on the ASX, with each CDI representing an equivalent underlying foreign security.

46. The establishment of the CYBG CDIs therefore enabled Australian investors to hold and electronically transfer their interests in CYBG Shares through the CHES platform, which they would not be able to do if they held their CYBG Shares directly.

47. CDIs are units of beneficial ownership in underlying securities, which are legally held by an Australian depositary entity – in CYBG's case, by CDN, which is a wholly owned subsidiary of ASX Limited.

48. Each CYBG CDI is allocated to a holder which grants the CYBG CDI holder the beneficial interest in the underlying CYBG Share. NAB has advised that a CYBG CDI holder is absolutely entitled to the CYBG Share as against CDN.

Ruling

Return of capital is not a dividend

49. The return of capital (Capital Reduction Portion) that will be provided to each NAB Shareholder, through an in specie distribution of CYBG Securities, or proceeds from the Sale Facility will not be a dividend, as defined in subsection 6(1) of the ITAA 1936.

The application of sections 45A, 45B and 45C

50. The Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 in respect of the return of capital.

51. The Commissioner will not make a determination under subsection 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the return of capital to NAB Shareholders.

Capital gains tax (CGT) consequences

CGT event G1

52. CGT event G1 (section 104-135) will happen in relation to the Capital Reduction Portion at the time when NAB makes the in specie distribution to, or for the benefit of, a NAB Shareholder in respect of a NAB ordinary share they own at the Scheme Record Date and continue to own at the Demerger Date.

CGT event C2

53. CGT event C2 (section 104-25) will happen at the time when NAB makes the in specie distribution to a NAB Shareholder in respect of a NAB ordinary share they own at the Scheme Record Date, but cease to own before the Demerger Date.

CGT Event A1

54. CGT event A1 (section 104-10) will happen to electing Small Shareholders on the sale of their CYBG Securities by the Sale Agent.

Foreign resident Shareholders

55. A NAB Shareholder disregards a capital gain or capital loss from a CGT event under subsection 855-10(1) if they are a foreign resident, or the trustee of a foreign trust, just before the NAB Demerger happens in relation to a NAB Share that is not 'taxable Australian property'.

Cost base and reduced cost base of CYBG Securities

56. The first element of the cost base and reduced cost base of each CYBG Security received is equal to the market value of the CYBG Security, worked out as at the time of their acquisition (the Demerger Date) (subsections 110-25(2) and 110-55(2)).

Acquisition date of CYBG Securities

57. The CYBG Shareholders acquired their CYBG Shares on the date the CYBG Shares were distributed to them (Event Number A1 in the table in section 109-5), being the Demerger Date (8 February 2016).

CDI holder treated as owner of CYBG Share

58. The holder of a CYBG CDI is treated as the owner of the underlying CYBG Share held by CDN (section 106-50). As such, the CGT consequences outlined for CYBG Shareholders will apply equally to CDI holders.

Donations to ShareGift

59. A NAB Shareholder who gifts their proceeds from the Sale Facility to ShareGift may deduct the amount of the contribution under section 30-15.

60. The quantum of the deduction for amounts gifted to ShareGift will be limited to the amount calculated under section 26-55.

Commissioner of Taxation

9 March 2016

Appendix 1 – Explanation

❶ *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.*

Return of capital is not a dividend

61. The term 'dividend' is defined in subsection 6(1) of the ITAA 1936 and includes a distribution made by a company to any of its shareholders. However, paragraph (d) of the definition of 'dividend' excludes a distribution that is debited against an amount standing to the credit of the share capital account of the company.

62. 'Share capital account' is defined in section 975-300 as an account which the company keeps of its share capital, or any other account created on or after 1 July 1998 where the first amount credited to the account was an amount of share capital.

63. Subsection 975-300(3) states that an account is not a share capital account, except for certain purposes, if it is tainted.

64. The return of capital (Capital Reduction Portion) will be recorded as being wholly debited to NAB's share capital account. As NAB's share capital account is not tainted within the meaning of section 197-50, paragraph (d) of the definition of 'dividend' in subsection 6(1) of the ITAA 1936 applies. Accordingly, the in specie distribution of CYBG Securities, or the proceeds from the Sale Facility, will not be a dividend as defined in subsection 6(1).

Section 45A

65. Section 45A of the ITAA 1936 is an anti-avoidance provision that applies 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 (the disadvantaged shareholders) have received or will receive dividends.

66. Where the Commissioner makes a written determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole or part of the capital benefits, the capital benefits will be treated as unfranked dividends paid out of the company's profits.

67. Although NAB provides its shareholders with a 'capital benefit' as defined in paragraph 45A(3)(b) of the ITAA 1936 in the form of CYBG Securities, the capital benefit was provided to all NAB Shareholders in the same proportion as their shareholdings in NAB. Consequently, there are no advantaged or disadvantaged shareholders as contemplated by subsection 45A(1) of the ITAA 1936.

68. Accordingly, 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 whole, or a part, of the return of capital.

Section 45B

69. Section 45B of the ITAA 1936 is an anti-avoidance provision which, if it applies, allows the Commissioner to make a determination that section 45C of the ITAA 1936 applies to treat all or part of the return of capital amount received by the NAB Shareholders as an unfranked dividend paid by the company out of profits.

Section 45B – scheme to provide capital benefits

70. Section 45B of the ITAA 1936 applies where certain capital payments are made to shareholders in substitution for dividends. Specifically, the provision applies where:

- there is a scheme under which a person is 'provided with a capital benefit' by a company (paragraph 45B(2)(a) of the ITAA 1936), and
- under the scheme a taxpayer (the relevant taxpayer) who may or may not be the person provided with the capital benefit, obtains a tax benefit (paragraph 45B(2)(b) of the ITAA 1936), and
- having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into the scheme or carried out the scheme or any part of the scheme did so for a purpose, other than an incidental purpose, of enabling the relevant taxpayer to obtain a tax benefit (paragraph 45B(2)(c) of the ITAA 1936).

71. The arrangement involving the return of capital to NAB Shareholders will constitute a scheme for the purposes of section 45B of the ITAA 1936.

72. The return of capital will be recorded as a debit to NAB's untainted share capital account and NAB Shareholders will receive a distribution of share capital via the in specie distribution. Therefore, NAB Shareholders will be provided with a capital benefit (paragraph 45B(5)(b) of the ITAA 1936).

73. The meaning of 'obtaining a tax benefit' is defined in subsection 45B(9) of the ITAA 1936 to include the situation where the amount of tax payable from the treatment of a return of capital under the CGT provisions would, apart from the operation of 45B of the ITAA 1936, be less than the amount that would be payable if the distribution had instead been an assessable dividend.

74. As a return of capital will generally result in a lesser amount of tax payable for NAB Shareholders than the receipt of an assessable dividend, NAB Shareholders will obtain a tax benefit.

75. Paragraph 45B(2)(c) of the ITAA 1936 sets out an objective purpose test for the Commissioner to consider having regard to the 'relevant circumstances' of the scheme as set out in subsection 45B(8) of the ITAA 1936.

76. On the basis of the information provided in respect of the Demerger Scheme which includes the in specie distribution of CYBG Securities, it cannot be concluded that NAB entered into or carried out the scheme for a more than incidental purpose of enabling NAB Shareholders to obtain a tax benefit.

77. 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 the whole, or a part, of the payment for the return of capital.

CGT consequences

CGT event G1

78. CGT event G1 (section 104-135) happens when a company makes a payment to a shareholder in respect of a share they own and some or all of the payment (the non-assessable part) is not a dividend or an amount that is taken to be a dividend under section 47 of the ITAA 1936.

79. Accordingly, CGT event G1 will happen when NAB makes the in specie distribution of the Capital Reduction Portion as a return of capital to a NAB Shareholder in respect of a NAB Share that they own at the Scheme Record Date and continue to own at the Demerger Date.

80. A NAB Shareholder will make a capital gain if the return of capital amount is more than the cost base of the shareholder's NAB Share. The amount of the capital gain is equal to that excess (subsection 104-135(3)).

81. If an Australian resident shareholder makes a capital gain from CGT event G1 happening, the cost base and reduced cost base of the NAB Share is reduced to nil. An Australian resident shareholder cannot make a capital loss from CGT event G1 happening (subsection 104-135(3)).

82. If the return of capital amount is equal to or less than the cost base of the NAB Share at the Demerger Date, the cost base and reduced cost base of the ordinary share will be reduced by the return of capital amount (subsection 104-135(4)).

83. A capital gain made when CGT event G1 happens will be eligible to be treated as a discount capital gain under Division 115 provided that the NAB Share was acquired at least 12 months before the payment of the return of capital amount (subsection 115-25(1)) and the other conditions of that Division are satisfied.

CGT event C2

84. The right to receive the return of capital is one of the rights inherent in the NAB Share at the Scheme Record Date (5 February 2016). If, after the Scheme Record Date but before the Demerger Date (8 February 2016), a NAB Shareholder ceases to own a NAB Share in respect of which there is a right to a return of capital, that right to receive the return of capital in respect of that share is retained by the former shareholder and is considered to be a separate CGT asset.

85. CGT event C2 will happen when the return of capital (in the form of an in specie distribution) is provided to the former shareholder (section 104-25). The right to receive the payment ends by the right being discharged or satisfied when the in specie distribution is made.

86. A former NAB Shareholder will make a capital gain if the capital proceeds from the ending of the right are more than the cost base of the right. The capital gain is equal to the amount of the excess. A former NAB Shareholder will make a capital loss if the capital proceeds from the ending of the right are less than its reduced cost base. The capital loss is equal to the amount of the difference (subsection 104-25(3)).

87. In working out the capital gain or capital loss made when CGT event C2 happens, the capital proceeds will be the amount of the return of capital paid by NAB (subsection 116-20(1)).

88. The cost base of the NAB Shareholder's right to receive the return of capital is worked out under Division 110 (modified by Division 112). The cost base of the right does not include the cost base or reduced cost base of the share previously owned by a NAB Shareholder that has been applied in working out a capital gain or capital loss made when a CGT event happens to the share, for example, when the NAB Shareholder disposed of it after the Scheme Record Date.

89. Therefore, if the full cost base or reduced cost base of the NAB Share was applied in working out a capital gain or capital loss made when a CGT event happens to that share, the right to receive the return of capital will generally have a nil cost base. As a result, the former NAB Shareholder will generally make a capital gain equal to the amount of the return of capital.

90. As the right to receive the return of capital was inherent in the NAB Share during the time it was owned, the right is considered to have been acquired at the time when the corresponding NAB Share was acquired (section 109-5).

91. Accordingly, if the NAB Share was acquired at least 12 months before the payment of the return of capital, a capital gain made from the ending of the corresponding right will satisfy the requirements of section 115-25. Such a capital gain may be eligible to be treated as a discount capital gain under Division 115, provided the other conditions of that Division are satisfied.

Foreign Resident NAB Shareholders

92. Under subsection 855-10(1), an entity disregards a capital gain or capital loss from a CGT event if they are a foreign resident, or the trustee of a foreign trust for CGT purposes, just before the CGT event happens, and the CGT event happens in relation to a CGT asset that is not 'taxable Australian property'.

93. The term 'taxable Australian property' is defined in the table in section 855-15. The table sets out these five categories of CGT assets:

Item 1	taxable Australian real property;
Item 2	an indirect Australian real property interest not covered by item 5;
Item 3	a CGT asset used at any time in carrying on a business through a permanent establishment in Australia and which is not covered by item 1, 2 or 5;
Item 4	an option or right to acquire a CGT asset covered by item 1, 2 or 3, and
Item 5	a CGT asset that is covered by subsection 104-165(3) of the ITAA 1997 (choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident).

94. A foreign resident NAB Shareholder who receives CYBG Securities may disregard any capital gain made when CGT event G1 happens if their NAB Shares did not constitute 'taxable Australian property'.

95. A foreign resident NAB Ineligible Shareholder who receives Sale Facility proceeds under the Demerger Scheme may disregard any capital gain made when CGT event G1 happens if the NAB Shares were not 'taxable Australian property'.

96. A foreign resident NAB Shareholder who receives CYBG Securities may disregard any capital gain or capital loss made when CGT event C2 happens if their right to the return of capital was not 'taxable Australian property'.

97. A foreign resident NAB Small Shareholder who receives proceeds under the Sale Facility may disregard any capital gain or capital loss made when CGT event A1 happens if the CYBG Securities were not 'taxable Australian property'.

Cost base and reduced cost base of CYBG Securities

98. The first element of the cost base and reduced cost base of each CYBG Security received is equal to the market value of the CYBG Security, worked out as at the time of their acquisition (the Demerger Date) (subsections 110-25(2) and 110-55(2)).

99. The value of the capital reduction under the Demerger Scheme was determined having regard to the movements of the price of CYBG Shares and CDIs over a five day trading period following the Effective Date of the Demerger Scheme. The VWAP of CYBG Shares and CDIs was used to determine the Capital Reduction Aggregate Amount.

100. The market value of CYBG Securities was determined by reference to the VWAP of CYBG Securities. The Commissioner accepts that the VWAP of a CYBG Security was \$4.01.

Acquisition date of CYBG Securities

101. The CYBG Shareholders acquired their CYBG Shares on the date the CYBG Shares were distributed to them (item 1 of the table in section 109-5), being the Demerger Date (8 February 2016).

CDI holder treated as owner of CYBG Share

102. Under section 106-50, a CGT asset of a trust to which a beneficiary is absolutely entitled as against the trustee (disregarding any legal disability) is treated for CGT purposes as being the beneficiary's asset (rather than an asset of the trust). Furthermore, any act done in relation to the asset by the trustee is taken to be done by the absolutely entitled beneficiary (rather than the trustee).

103. NAB has advised that each CYBG CDI grants a CYBG CDI holder the beneficial interest in the underlying CYBG Share. CDN holds each CYBG Share on a separate trust for the holder of the particular CDI. NAB has also advised that a CYBG CDI holder is absolutely entitled to the underlying CYBG Share as against CDN.

104. Accordingly, the holder of a CYBG CDI is treated as the owner of the underlying CYBG Share held by CDN (section 106-50). As such, the CGT consequences outlined for CYBG Shareholders will apply equally to CDI holders.

Sale of Shares by the Sale Agent

105. CGT event A1 (section 104-10) will happen to electing Small Shareholders on the sale of their CYBG Securities by the Sale Agent.

106. Under section 104-10 of the ITAA 1997, CGT event A1 happens if there is a change of ownership of a CGT asset. The Sale Agent will dispose of CYBG Securities on behalf of electing Small Shareholders under the Sale Facility. This disposal will be CGT event A1.

107. The time of CGT event A1 is the time of entering into the contract for disposal.

108. A capital gain arises if the capital proceeds from the disposal are more than the cost base of the asset. Conversely, a capital loss is made if the capital proceeds from the disposal are less than the reduced cost base of the asset. An electing Small Shareholder should make a capital gain (or capital loss) if the cash proceeds received from disposal of the CYBG Securities is more than (or less than) the cost base (or reduced cost base) of those CYBG Securities (as detailed above).

109. As the disposal under the Sale Facility will occur shortly after the CYBG Securities are issued, the CGT discount will not apply to any capital gain of a Small Shareholder.

Donations to ShareGift

110. NAB has advised that ShareGift is registered as a Deductible Gift Recipient. Accordingly, a NAB Shareholder who gifted their proceeds from the Sale Facility is entitled to a deduction under section 30-15.

111. The amount of the deduction is generally equal to the amount that NAB has advised the NAB Shareholder that NAB has contributed to ShareGift on behalf of the NAB Shareholder.

112. The quantum of the deduction for amounts gifted by NAB Shareholders to ShareGift is limited to the amount calculated under section 26-55. That amount is worked out by subtracting from the NAB Shareholder's assessable income all their deductions except tax losses and the amount that can be deducted for making farm management deposits.

Appendix 2 – Detailed contents list

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References

<i>Previous draft:</i>	- ITAA 1997 104-25
Not previously issued as a draft	- ITAA 1997 104-25(3)
	- ITAA 1997 104-135
<i>Related Rulings/Determinations:</i>	- ITAA 1997 104-135(3)
TR 2006/10	- ITAA 1997 104-135(4)
	- ITAA 1997 104-165(3)
<i>Legislative references:</i>	- ITAA 1997 106-50
- ITAA 1936	- ITAA 1997 109-5
- ITAA 1936 6(1)	- ITAA 1997 Div 110
- ITAA 1936 45A	- ITAA 1997 110-25(2)
- ITAA 1936 45A(1)	- ITAA 1997 110-55(2)
- ITAA 1936 45A(2)	- ITAA 1997 Div 112
- ITAA 1936 45A(3)(b)	- ITAA 1997 Div 115
- ITAA 1936 45B	- ITAA 1997 115-25
- ITAA 1936 45B(2)(a)	- ITAA 1997 115-25(1)
- ITAA 1936 45B(2)(b)	- ITAA 1997 116-20(1)
- ITAA 1936 45B(2)(c)	- ITAA 1997 Div 125
- ITAA 1936 45B(3)	- ITAA 1997 197-50
- ITAA 1936 45B(5)(b)	- ITAA 1997 Div 230
- ITAA 1936 45B(8)	- ITAA 1997 855-10
- ITAA 1936 45B(9)	- ITAA 1997 855-10(1)
- ITAA 1936 45C	- ITAA 1997 855-15
- ITAA 1936 47	- ITAA 1997 977-50
- ITAA 1997	- ITAA 1997 975-300
- ITAA 1997 26-55	- ITAA 1997 975-300(3)
- ITAA 1997 30-15	- ITAA 1997 995-1(1)
- ITAA 1997 104-10	- TAA 1953

ATO references

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