


CR 2019/23 - Income tax: Macquarie Group Limited - Macquarie Group Capital Notes 4

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Class Ruling

Income tax: Macquarie Group Limited – Macquarie Group Capital Notes 4

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Relying on this ruling:

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

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

Further, if we think that the ruling disadvantages you, we may apply the law in a way that is more favourable to you.

Summary – what this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provisions 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 26BB of the ITAA 1936
- section 43B of the 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 70B of the ITAA 1936
- section 159GP of the ITAA 1936
- Division 1A of former Part IIIAA of the ITAA 1936
- section 177EA of the ITAA 1936
- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997)

- section 8-1 of the ITAA 1997
- Division 67 of the ITAA 1997
- section 67-25 of the ITAA 1997
- section 104-10 of the ITAA 1997
- section 104-25 of the ITAA 1997
- section 109-10 of the ITAA 1997
- subsection 110-25(2) of the ITAA 1997
- subsection 110-55(2) of the ITAA 1997
- section 130-60 of the ITAA 1997
- section 204-30 of the ITAA 1997
- Subdivision 207-D of the ITAA 1997
- section 207-20 of the ITAA 1997
- section 207-145 of the ITAA 1997
- section 207-155 of the ITAA 1997
- Division 974 of the ITAA 1997
- subsection 995-1(1) of the ITAA 1997

Class of entities

3. The class of entities to which this Ruling applies is investors (referred to in this Ruling as Holders) who acquired fully paid, unsecured, subordinated, mandatorily convertible notes issued by Macquarie Group Limited (MGL) called Macquarie Group Capital Notes 4 (MCN4), and who:

- (a) are residents of Australia (within the meaning of subsection 6(1) of the ITAA 1936) during the period in which they hold MCN4
- (b) do not hold their MCN4 as revenue assets (as defined in section 977-50 of the ITAA 1997) or as trading stock (as defined in subsection 995-1(1) of the ITAA 1997) – that is, they hold their MCN4 on capital account
- (c) will not make, be under an obligation to make, or be likely to make (nor will an associate of the investor make, be under an obligation to make, or be likely to make) a ‘related payment’ (as defined in former section 160APHN of the ITAA 1936) in respect of any of the distributions of their MCN4
- (d) will hold their MCN4 for a continuous period of at least 90 days (excluding the day they acquired the MCN4 and, if relevant, the day they disposed of their MCN4)

beginning on the day after the day on which they acquired the MCN4

- (e) will not take any 'positions' (as defined in former section 160APHJ of the ITAA 1936) at any time in relation to their MCN4, apart from holding their MCN4
- (f) will not (and their connected entities will not) engage in distribution washing (within the meaning of section 207-157 of the ITAA 1997) in relation to Distributions on the MCN4 (unless the exception in subsection 207-157(4) of the ITAA 1997 applies), and
- (g) are not subject to the taxation of financial arrangements (TOFA) rules in Division 230 of the ITAA 1997 in relation to gains and losses on their MCN4.

(Note: Division 230 of the ITAA 1997 will generally not apply to individuals, unless they have made an election for it to apply to them.)

4. The class of entities to which this Ruling applies does not extend to the Holders of MCN4 who did not acquire their MCN4 by initial application under the Prospectus for the issue of MCN4 as lodged with the Australian Securities and Investments Commission on 5 March 2019 (the Prospectus).

Qualifications

5. This Ruling does not consider the tax implications of the Exchange of the MCN4 on the occurrence of a Non-Viability Event, Acquisition Event, Regulatory Event or Tax Event.

6. This Ruling does not consider how the gross-up and tax offset rules in Division 207 of the ITAA 1997 apply to a Holder that is a partnership or the trustee of a trust, or to indirect distributions to partners in a partnership, or beneficiaries or trustees of a trust.

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

8. 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 11 to 62 of this Ruling.

9. 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

10. This Ruling applies from 1 July 2018 to 30 June 2028. The Ruling continues to apply after 30 June 2028 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 *Public Rulings*).

Scheme

11. The following description of the scheme is based on information provided by the applicant, including:

- the Terms and Conditions of the MCN4 per the Prospectus (Terms)
- the Prospectus, and
- the MCN4 Trust Deed dated 25 February 2019 (Trust Deed).

12. In this Ruling, unless otherwise defined, capitalised terms take their meaning as specified in the Prospectus and Terms.

Background

13. MGL is an Australian resident company with shares listed on the Australian Securities Exchange (ASX). The only shares that MGL has issued are ordinary shares (Ordinary Shares).

14. MGL is regulated by APRA as the non-operating holding company (NOHC) of Macquarie Bank Limited (MBL), which is an authorised deposit taking institution (ADI) under the Banking Act 1959.

15. For Australian income tax purposes, MGL is the head company of the MGL income tax consolidated group (MGL TCG).

16. In the Prospectus, MGL announced its intention to undertake a capital raising by the issue of the MCN4 to raise approximately A\$750 million with the ability to raise more or less (the Offer).

17. MCN4 will qualify for inclusion as Eligible Capital of MGL, for the purposes of APRA's prudential standards governing MGL as an authorised NOHC.

18. The Offer is part of MGL's ongoing capital management strategy, and the net proceeds of the Offer will be used for general corporate purposes.

19. The Prospectus states that persons wishing to acquire the MCN4 may apply under one or more of the following offers:

- (a) an institutional offer to institutional investors
- (b) a broker firm offer made to Australian resident retail and high net worth clients of syndicate brokers or New Zealand resident high net wealth clients of syndicate brokers who are invited to apply under the broker firm offer, and
- (c) a security-holder offer made to eligible security holders.

20. The MCN4 may also be offered (as part of any Offer category) in certain permitted jurisdictions outside Australia where such Offer is made, and accepted, in accordance with the laws of such jurisdictions.

21. The MCN4 were issued on 27 March 2019. The MCN4 are listed on the ASX and trade under the ASX code MQGPD.

Main features of the MCN4

22. MCN4 are fully paid, perpetual, unsecured, subordinated, mandatorily convertible notes issued by MGL.

23. The obligations of MGL under the MCN4 are constituted by, and specified in, the Terms, the Trust Deed and other applicable constituent documents of MGL including its constitution.

24. Each MCN4 is issued fully paid for an issue price of A\$100 (Issue Price).

25. With the prior written consent of APRA (where required), each MCN4 may be Redeemed or Resold by MGL, or Exchanged for fully paid Ordinary Shares, in accordance with the Terms.

26. Exchange is defined as the allotment and issue of Ordinary Shares in respect of the MCN4 in accordance with and subject to the Terms.

27. The MCN4 cannot be Redeemed, Resold or Exchanged at the option of a Holder.

28. MCN4 are perpetual and do not have a fixed maturity date and if MCN4 are not Exchanged, Redeemed or Written-Off, they could remain on issue indefinitely.

Distributions

29. The MCN4 Distributions are discretionary, non-cumulative floating rate payments and are scheduled to pay floating rate cash distributions commencing on 11 June 2019, thereafter quarterly, in arrears until all MCN4 are Exchanged, Redeemed or Written-Off.

30. Subject to the Terms, the Holder will receive on each Distribution Payment Date a cash distribution for the Distribution

Period ending on that Distribution Payment Date calculated as follows:

<TABLE CW="35 65">

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<R>	<C ALIGN="C">A\$100 x Distribution Rate x N
<C	365
ALIGN="C">Distribution	
=	

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</TABLE>

31. The Distribution Payment Date in respect of an MCN4 is:
- (a) each 10 March, 10 June, 10 September and 10 December commencing on 11 June 2019 until (but not including) the date on which that MCN4 has been Redeemed or Exchanged, and
 - (b) the Redemption Date, Resale Date or an Exchange Date, except where the Exchange is on account of a Non-Viability Event.

32. The **Distribution Rate** means the rate (expressed as a percentage) equal to:

(Reference Rate + Margin) x Franking Adjustment Factor

33. The **Reference Rate** means:

- (a) Subject to paragraph (b) below, for a Distribution Period, the rate (expressed as a percentage per annum) designated BBSW in respect of prime bank eligible securities having a tenor closest to the Distribution Period which the ASX (or its successor as administrator of that rate) publishes through information vendors at approximately 10:30am (Sydney time)(or such other time at which such rate is accustomed to be so published) on the Determination Date, or
- (b) If MGL determines that a Reference Rate Disruption Event has occurred, subject to APRA's prior written approval, then MGL:
 - (i) shall use as the Reference Rate such Alternative Reference Rate as it may determine
 - (ii) shall make such adjustments to the Terms as it determines are reasonably necessary to calculate Distributions in accordance with such Alternative Reference Rate, and
 - (iii) in making the terminations under paragraphs (i) and (ii) above:

- shall act in good faith and in a commercially reasonable manner
- may consult with such sources of market practice as it considers appropriate, and
- may otherwise make such determination in its discretion.

For the purpose of the foregoing:

(c) **Determination Date** means:

- (i) subject to paragraph (ii), the first day of the Distribution Period, and
- (ii) where an MCN4 is Resold on a day which is not a scheduled quarterly Distribution Payment Date, the first day of the Distribution Period preceding the Resale Date.

(d) **Reference Rate Disruption Event** means that, in MGL's opinion, the rate described in paragraph (a) above:

- (i) is not published by midday (or such other time that MGL considers appropriate on that day)
- (ii) is published, but is affected by an obvious error
- (iii) has been discontinued or otherwise ceased to be calculated or administered, or
- (iv) is no longer generally accepted in the Australian market as a reference rate appropriate to floating rate debt securities of a tenor and interest period comparable to that of MCN4, and

(e) **Alternative Reference Rate** means a rate other than the rate described in paragraph (a) above that is generally accepted in the Australian market as the successor to the Reference Rate, or if there is no such rate:

- (i) a reference rate that is, in MGL's opinion, appropriate to floating rate debt securities of a tenor and interest period most comparable to that of MCN4, or
- (ii) such other reference rate as MGL considers appropriate having regard to available comparable indices.

34. The **Margin**, as determined under the Bookbuild, is 4.15%.

35. **Franking Adjustment Factor** means:

$$\frac{(1 - T)}{1 - [T \times (1 - F)]}$$

where:

F means the Franking Rate – the franking percentage, as defined under Part 3-6 of the ITAA 1997, for a Distribution as at the relevant Distribution Payment Date (expressed as a decimal) multiplied by the proportion of the relevant Distribution that is frankable.

T means the Tax Rate – the Australian corporate tax rate applicable to the franking account of MGL on the relevant Distribution Payment Date (expressed as a decimal).

36. **N** is the number of days in the Distribution Period.

37. The Franking Adjustment Factor operates such that, the higher the Franking Rate of the distribution, the lower the Distribution Rate (and the lower the cash Distribution).

38. The payment of any Distribution will be made where:

- (a) MGL in its absolute discretion determines that the Distribution is payable to Holders
- (b) the payment of the Distribution would not result in MGL breaching APRA's capital adequacy requirements applicable to it
- (c) the payment of the Distribution would not result in MGL becoming, or being likely to become, insolvent for the purposes of the *Corporations Act 2001*, or
- (d) APRA does not otherwise object to the payment of the Distribution.

39. Distributions are non-cumulative. If all or any part of any distribution is not paid, MGL has no liability to pay the unpaid amount of the Distribution and Holders have no claim or entitlement in respect of any person in respect of such non-payment. Such non-payment does not constitute an event of default.

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

41. A Dividend Restriction applies if MGL fails to pay a Distribution in full within 10 Business Days of the relevant Distribution Payment Date. Subject to certain exceptions, the Dividend Restriction operates to restrict MGL (without the prior approval of a Special Resolution of Holders) from determining, declaring or paying a dividend on Ordinary Shares, or undertaking any Buy-Back or Capital Reduction in relation to Ordinary Shares until the next Distribution Payment Date.

Scheduled Mandatory Exchange

42. MGL must Exchange all of the MCN4 for Ordinary Shares on the Mandatory Exchange Date, which is the earlier of:

- (a) 10 September 2029 (the Scheduled Mandatory Exchange Date), or
- (b) any Distribution Payment Date after the Scheduled Mandatory Exchange Date (a Deferred Mandatory Exchange Date).

on which the Exchange Conditions relevant to those dates are satisfied, unless the MCN4 have been or will be Redeemed or Exchanged before that date.

43. The Exchange Conditions in respect of a Mandatory Exchange Date are satisfied where:

- (a) the Daily volume weighted average sale price (VWAP) of Ordinary Shares sold on the ASX on the 25th Business Day immediately preceding (but not including) the Mandatory Exchange Date (or, if that day is not an ASX Trading Day, the last ASX Trading Day prior to that day) is greater than 56% of the Issue Date VWAP
- (b) the VWAP of Ordinary Shares sold on the ASX during the period of 20 ASX Trading Days immediately preceding (but not including) the Mandatory Exchange Date is such that the number of Ordinary Shares to be issued is less than or equal to the Maximum Exchange Number applicable to the mandatory exchange date
- (c) no Suspension Event applies in respect of the Mandatory Exchange Date, and
- (d) MGL is not Delisted as at the Mandatory Exchange Date.

Non-Viability Event Exchange

44. If a Non-Viability Event occurs, MGL must Exchange such number of the MCN4 as complies with an APRA notice.

Acquisition Event Exchange

45. If an Acquisition Event occurs, MGL must Exchange all of the MCN4, subject to the conditions in the Terms.

Optional Exchange

46. MGL may, in its sole discretion, elect to:

- Exchange all or some of the MCN4 on any Scheduled Optional Exchange Date, and
- Exchange all or some of the MCN4 following the occurrence of a Tax Event or a Regulatory Event.

47. The Scheduled Optional Exchange Dates are the Distribution Payment Dates falling on or about:

- 10 September 2026
- 10 March 2027, and
- 10 September 2027.

48. The Exchange Date will be deferred if certain additional conditions are not satisfied.

Exchange Mechanics (general rules)

49. On an Exchange Date, MGL will allot and issue the Exchange Number of Ordinary Shares to the Holders (or as they may direct) for each MCN4 held by the Holder.

50. The Exchange Number will be calculated by MGL in accordance with the formula set out in the Terms, subject to the Exchange Number being no greater than the Maximum Exchange Number.

51. On Exchange, each Holder's rights (including to payment of Distributions other than the Distribution, if any, payable on the Exchange Date) in relation to each MCN4 that is being Exchanged will be immediately and irrevocably terminated for an amount equal to the Issue Price of that MCN4 and MGL will apply that Issue Price by way of payment for the subscription for the Ordinary Shares. Each Holder is taken to have irrevocably directed that any amount payable is to be applied as provided for in the Terms and no Holder has any right to payment in any other way.

52. If the total number of Ordinary Shares to be allotted to a Holder in respect of their aggregate holding of MCN4 upon Exchange includes a fraction of an Ordinary Share, that fraction of an Ordinary Share will be disregarded.

53. The Ordinary Shares issued or arising from an Exchange will rank equally with all other fully paid Ordinary Shares.

54. When an Exchange of an MCN4 occurs, all other rights conferred or restrictions imposed on that MCN4 under the Terms will no longer have effect (except for rights relating to a Distribution which is payable but has not been paid on or before the Exchange Date) and the MCN4 is cancelled.

Optional Redemption

55. MGL may, in its sole discretion, but with APRA's prior written approval, elect to:

- (a) Redeem all or some of the MCN4 on a Scheduled Optional Exchange Date, or
- (b) Redeem all or some of the MCN4 following the occurrence of a Tax Event or a Regulatory Event.

56. On the Redemption Date:

- (a) each MCN4 being Redeemed will be Redeemed by payment of the Issue Price of that MCN4 (the Redemption Price) to the relevant Holder recorded on the Register, and
- (b) Distributions from (and including) the immediately preceding Distribution Payment Date and up to (but excluding) the Redemption Date will be paid in respect of the MCN4 being Redeemed on such date, to the extent the conditions for the payment of Distributions are met.

57. Upon the Redemption Price being paid (or taken to be paid in accordance with the Terms) and any Distribution payable on the Redemption Date, all other rights conferred, or restrictions imposed, by each MCN4 being Redeemed on that date will no longer have effect and that MCN4 will be cancelled.

Resale

58. On any date on which it may issue a Redemption Notice, in lieu of such Redemption Notice, MGL may, in its sole discretion, but with APRA's prior written approval, issue to each Holder a notice (a Resale Notice) specifying that all or some of each Holder's holding of the MCN4 will be transferred to one or more Nominated Parties (that is, Resold).

59. Each Holder on the Resale Date is taken to irrevocably offer to sell the MCN4 that are the subject of the Resale Notice to the Nominated Party or Nominated Parties on the Resale Date for a purchase price per MCN4 equal to the Issue Price of that MCN4 (the Resale Price).

Sale Agent

60. Under the Terms, each Holder agrees to provide to MGL, (and, where necessary, the Sale Agent) any information necessary or desirable to give effect to an Exchange.

61. If any MCN4 of a Holder are required to be Exchanged and the Holder has notified MGL that it does not wish to receive Ordinary Shares as a result of the Exchange (whether partly or entirely), then

MGL will use reasonable endeavours to appoint a Sale Agent (which is not MGL or any Related Body Corporate of MGL) to sell the Ordinary Shares, and pay to the relevant Holder a cash amount equal to the Attributable Proceeds of the relevant Holder or, where a Foreign Account Tax Compliance Act (FATCA) Withholding is required, the Sale Agent will deal with the Ordinary Shares in accordance with the FATCA rules.

Other Matters

62. The Ruling is made on the basis that:

- (a) Each MCN4 is an 'equity interest' in MGL under Division 974 of the ITAA 1997 and a 'non-share equity interest' in MGL as defined in subsection 995-1(1) of the ITAA 1997.
- (b) Each Ordinary Share obtained by a Holder on the Exchange of the MCN4 will be an 'equity interest' in MGL under Division 974 of the ITAA 1997.
- (c) Each Distribution paid in respect of the MCN4 will be a 'frankable distribution' under section 202-40 of the ITAA 1997.
- (d) MGL is expected to frank each Distribution in respect of the MCN4 in accordance with its franking policy that applies to Ordinary Shares (at such a time as Distributions are made), and at the same franking percentage as the benchmark for the franking period in which the Distribution is made.
- (e) MGL will not differentially frank Distributions to different Holders in respect of the MCN4 according to the tax status of Holders or on any other basis.
- (f) Distributions in respect of the MCN4 will not be debited to any extent to MGL's share capital account (within the meaning of section 975-300 of the ITAA 1997) or non-share capital account (within the meaning of section 164-10 of the ITAA 1997).
- (g) Distributions on the MCN4 will not be sourced, directly or indirectly, from MGL's share capital account or its non-share capital account.
- (h) Immediately before payment of a Distribution on the MCN4, MGL will have sufficient available frankable profits (worked out under section 215-20 of the ITAA 1997) to pay the Distribution.
- (i) The share capital account of MGL will not become tainted (within the meaning of Division 197 of the ITAA 1997) upon the issue of the MCN4 or the issue of Ordinary Shares on Exchange.

- (j) At the time of issuance, the MGL TCG partially franks (at 45%) dividends on Ordinary Shares and distributions on frankable non-share equity interests. MGL's policy in relation to franking dividends on Ordinary Shares is not expected to change as a result of the issuance of the MCN4.
- (k) On Exchange or Redemption of the MCN4, MGL will debit the Issue Price of the MCN4 to its non-share capital account (within the meaning of sections 164-10 and 164-20 of the ITAA 1997).
- (l) All parties to the transaction are dealing with each other on arm's length terms and fair value consideration will be provided by the Holders to acquire MCN4.

Ruling

Capital Gains Tax (CGT) implications on Exchange and Resale

Acquisition time for each MCN4

63. Each Holder will be taken to have acquired their MCN4 on 27 March 2019 under item 2 of the table in section 109-10 of the ITAA 1997.

Cost base and reduced cost base of each MCN4

64. The first element of the cost base and reduced cost base of each MCN4 will be A\$100 (paragraph 110-25(2)(a) and subsection 110-55(2) of the ITAA 1997).

Exchange of MCN4 for Ordinary Shares

65. Each MCN4 is a convertible interest in MGL (as defined in subsection 995-1(1) of the ITAA 1997 and item 4 of the table in subsection 974-75(1) of the ITAA 1997).

66. CGT event C2 will happen for Holders on Exchange of the MCN4 for Ordinary Shares as the Exchange will be the conversion of a convertible interest (paragraph 104-25(1)(f) of the ITAA 1997).

67. Any capital gain or capital loss made by a Holder from CGT event C2 happening on Exchange of the MCN4 will be disregarded (subsection 130-60(3) of the ITAA 1997).

Acquisition time of Ordinary Shares on Exchange

68. Each Ordinary Share acquired by the Holders on Exchange of the MCN4 will be taken to have been acquired when the Exchange

happens on the relevant Exchange Date (subsection 130-60(2) of the ITAA 1997).

Cost base and reduced cost base of Ordinary shares acquired on Exchange

69. The first element of the cost base and the reduced cost base of each Ordinary Share acquired under the Exchange of the MCN4 will be equal to the cost base and reduced cost base of the relevant MCN4 at the time of the Exchange (item 2 of the table in subsection 130-60(1) of the ITAA 1997).

CGT event A1 happens on disposal of Ordinary Shares by a Sale Agent

70. CGT event A1 will happen to a Holder where, on Exchange of the MCN4, a Holder elects for a Sale Agent to (on the behalf of the Holder) dispose of their allocation of Ordinary Shares and remit the proceeds to the Holder (section 104-10 of the ITAA 1997).

71. The time of CGT event A1 will be when the Sale Agent, on behalf of the Holder, enters into the contract for the sale of the Ordinary Shares (paragraph 104-10(3)(a) of the ITAA 1997).

72. A Holder will make a capital gain from CGT event A1 happening if the capital proceeds from the sale of the Ordinary Shares exceed the cost base of the shares. A Holder will make a capital loss if those capital proceeds are less than the reduced cost base of the shares (subsection 104-10(4) of the ITAA 1997).

73. The first element of the cost base and reduced cost base of the Ordinary Shares acquired by the Holder under the Exchange of the MCN4, and sold by the Sale Agent on behalf of the Holder, will be determined by item 2 of the table in subsection 130-60(1) of the ITAA 1997 (see paragraph 69 of this Ruling).

74. The Ordinary Shares acquired by a Holder under the Exchange of the MCN4, and sold by the Sale Agent on behalf of the Holder, will be taken to have been acquired on the date determined by subsection 130-60(2) of the ITAA 1997 (see paragraph 68 of this Ruling).

CGT event A1 happens on Resale of MCN4

75. CGT event A1 (section 104-10 of the ITAA 1997) will happen on the Resale of the MCN4. The Resale of the MCN4 will be for the Issue Price of the MCN4.

76. As the capital proceeds received by Holders will not be more than the cost base of the MCN4, Holders will not make a capital gain as a result of the Resale of their MCN4.

Income tax consequences on Exchange and Resale***Exchange of MCN4 not included in assessable income***

77. As this Ruling only applies to Holders who hold their MCN4 on capital account (see paragraph 3(b) of this Ruling), no amount will be included in the assessable income of a Holder on the Exchange of a MCN4 under section 6-5 of the ITAA 1997.

78. Similarly, a Holder will not incur a deductible loss under section 8-1 of the ITAA 1997 as a consequence of the Exchange.

Acquisition of Ordinary Shares on Exchange not included in assessable income as a dividend

79. The value of the Ordinary Shares will not be included in the assessable income of the Holders under subsection 44(1) of the ITAA 1936.

Resale of MCN4 not included in assessable income

80. As this Ruling only applies to Holders who hold their MCN4 on capital account (see paragraph 3(b) of this Ruling), no amount will be included in the assessable income of a Holder on the Resale of MCN4 under section 6-5 of the ITAA 1997.

81. Similarly, a Holder will not incur a deductible loss on the Resale of MCN4 under section 8-1 of the ITAA 1997.

Income tax consequences of receiving Distributions***Inclusion of Distributions and franking credits in assessable income***

82. Holders must include in their assessable income all Distributions received in respect of their MCN4 (subparagraph 44(1)(a)(ii) of the ITAA 1936).

83. Holders are also required to include the amount of the franking credit attached to a Distribution in their assessable income for the income year in which the Distribution is made (subsection 207-20(1) of the ITAA 1997), unless Subdivision 207-D of the ITAA 1997 applies.

Entitlement to a tax offset for franking credits

84. Holders will be entitled to a tax offset equal to the amount of the franking credit attached to a Distribution (subsection 207-20(2) of the ITAA 1997), unless Subdivision 207-D of the ITAA 1997 applies.

Exception for exempt income or non-assessable non-exempt income

85. If a Distribution is either wholly exempt income or wholly non-assessable non-exempt income in the hands of a Holder, the amount of the franking credit attached to the Distribution is not included in the assessable income of the Holder and the Holder is not entitled to a tax offset under subsection 207-20(2) of the ITAA 1997 in respect of the franking credit attached to the Distribution (Subdivision 207-D of the ITAA 1997), unless any of the exceptions in Subdivision 207-E of the ITAA 1997 apply.

86. If only part of a Distribution is either exempt income or non-assessable non-exempt income in the hands of a Holder, the amount of the franking credit on the Distribution is worked out under the formula in subsection 207-90(2) of the ITAA 1997. This has the effect of reducing the amount of the franking credit attached to the Distribution that is included in the Holder's assessable income and reducing the amount of the tax offset the Holder is entitled to, unless any of the exceptions in Subdivision 207-E of the ITAA 1997 apply.

Refundable tax offset rules

87. Where a Holder is entitled to a tax offset under subsection 207-20(2) of the ITAA 1997 in respect of the franking credit attached to a Distribution, the tax offset will be subject to the refundable tax offset rules in Division 67 of the ITAA 1997, unless the tax offset is specifically excluded under section 67-25 of the ITAA 1997.

Integrity provisions relating to gross-up and tax offset

88. Section 207-145 of the ITAA 1997 will not apply to adjust the Holders' assessable income to exclude the amount of the franking credit on the Distributions, nor will it deny the tax offset to which the Holders would otherwise be entitled.

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

89. 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 by Holders in relation to a Distribution.

Determination under paragraph 204-30(3)(c) of the ITAA 1997

90. 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 by Holders in relation to a Distribution.

Integrity provisions relevant to Exchange or Redemption***Section 45 of the ITAA 1936***

91. Section 45 of the ITAA 1936 will not apply to treat the value of Ordinary Shares issued to Holders on Exchange of the MCN4 as an unfrankable dividend paid by MGL to Holders.

Section 45A of the ITAA 1936

92. The Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies to treat the whole, or any part, of the capital benefit provided to the Holders on the Exchange or Redemption of the MCN4 as an unfranked dividend paid by MGL to the Holders.

Section 45B of the ITAA 1936

93. The Commissioner will not make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to treat the whole, or any part, of the capital benefit provided to the Holders on the Exchange or Redemption of the MCN4 as an unfranked dividend paid by MGL to the Holders.

MCN4 are not traditional securities

94. Each MCN4 is not a 'traditional security' as defined in subsection 26BB(1) of the ITAA 1936.

95. Accordingly, a gain on the disposal or Redemption of the MCN4 will not give rise to assessable income of a Holder under subsection 26BB(2) of the ITAA 1936.

96. Similarly, a loss on the disposal or Redemption of the MCN4 will not give rise to an allowable deduction to the Holder under subsection 70B(2) of the ITAA 1936.

MCN4 are not qualifying securities

97. Each MCN4 is not a 'qualifying security' as defined in subsection 159GP(1) of the ITAA 1936. Therefore, Division 16E of Part III of the ITAA 1936 will not apply to the MCN4.

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.*

CGT implications on Exchange and Resale

Acquisition time for each MCN4

98. Item 2 of the table in section 109-10 of the ITAA 1997 provides that where a company issues or allots equity interests or non-equity shares to you, you acquire the equity interests or non-equity shares when the contract is entered into, or, if there is no contract, when they are issued or allotted.

99. Each MCN4 is an equity interest in MGL pursuant to Division 974 of the ITAA 1997. When an investor's application for a certain number of MCN4 is accepted by MGL, this leads to the formation of a contract for the allotment of the MCN4 to the investor (who will become a Holder).

100. Consequently, for CGT purposes, each Holder will be taken to have acquired their MCN4 on 27 March 2019, being the date on which the contract for the allotment of the MCN4 is entered into.

Cost base and reduced cost base of each MCN4

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

102. The Issue Price of each MCN4 is A\$100. Accordingly, the first element of a Holder's cost base and reduced cost base of each MCN4 is A\$100.

Exchange of MCN4 for Ordinary Shares

103. Under paragraph 104-25(1)(f) of the ITAA 1997, CGT event C2 happens if your ownership of an intangible CGT asset that is a 'convertible interest' ends as a result of the asset being converted.

Convertible interests

104. A 'convertible interest' in a company is defined in subsection 995-1(1) of the ITAA 1997 as an interest of the kind referred to in item 4 of the table in subsection 974-75(1) of the ITAA 1997.

105. Paragraph (b) of item 4 of the table in subsection 974-75(1) of the ITAA 1997 refers to an interest issued by the company that is an

'interest that will, or may, convert into an equity interest in the company or a connected entity of the company'.

106. Section 974-165 of the ITAA 1997 states that an interest (the first interest) is an interest that will or may convert into another interest (the second interest) if one of a number of scenarios occurs. One such scenario is that the first interest must be or may be satisfied by the issue of the second interest (whether to the holder of the first interest or to some other person) (subparagraph 974-165(b)(i) of the ITAA 1997).

107. The MCN4 must be or may be satisfied by the issue of the Ordinary Shares by MGL upon Exchange to the Holders.

108. Accordingly, the MCN4 are convertible interests in MGL.

CGT event C2

109. The Exchange of the MCN4 for Ordinary Shares will be the conversion of a convertible interest. Accordingly, CGT event C2 will happen for Holders as a result of an Exchange (paragraph 104-25(1)(f) of the ITAA 1997).

110. Subdivision 130-C of the ITAA 1997 governs the CGT consequences of the conversion of a convertible interest such as the MCN4.

111. Under subsection 130-60(3) of the ITAA 1997, any capital gain or capital loss made from converting a convertible interest is disregarded. Accordingly, any capital gain or capital loss made by a Holder as a result of CGT event C2 happening on Exchange will be disregarded.

Acquisition time of Ordinary Shares on Exchange

112. Subsection 130-60(2) of the ITAA 1997 states that you are taken to have acquired the shares (acquired by converting a convertible interest) when the conversion of the convertible interest happened.

113. Therefore, each Ordinary Share acquired by the Holders on Exchange of the MCN4 will be taken to have been acquired on the relevant Exchange Date.

Cost base and reduced cost base of Ordinary Shares acquired on Exchange

114. On Exchange of the MCN4, the first element of the cost base and reduced cost base of the Ordinary Shares acquired under the Exchange will be equal to the cost base and reduced cost base of the relevant MCN4 at the time of the Exchange (item 2 of the table in subsection 130-60(1) of the ITAA 1997).

CGT event A1 happens on disposal of Ordinary Shares by a Sale Agent on behalf of a Holder

115. CGT event A1 happens when you dispose of a CGT asset (subsection 104-10(1) of the ITAA 1997). You dispose of a CGT asset if a change of ownership occurs from you to another entity; however, a change of ownership does not occur if you stop being the legal owner of the asset but continue to be the beneficial owner (subsection 104-10(2) of the ITAA 1997).

116. On Exchange of the MCN4, a Holder can elect for a Sale Agent to (on behalf of the Holder) dispose of their allocation of Ordinary Shares and remit the net sale proceeds to the Holder. CGT event A1 will happen when the Sale Agent (on behalf of the Holder) enters into the contract for the sale of those Ordinary Shares (paragraph 104-10(3)(a) of the ITAA 1997).

117. A Holder will make a capital gain from CGT event A1 happening if the capital proceeds from the sale of the Ordinary Shares exceed the cost base of the shares. A Holder will make a capital loss if those capital proceeds are less than the reduced cost base of the shares (subsection 104-10(4) of the ITAA 1997).

118. The first element of the cost base and the reduced cost base of the Ordinary Shares acquired by a Holder under the Exchange of the MCN4, and sold on behalf of the Holder by the Sale Agent, will be determined by item 2 of the table in subsection 130-60(1) of the ITAA 1997 (see paragraph 114 of this Ruling).

119. The Ordinary Shares acquired by a Holder under the Exchange of the MCN4, and sold by the Sale Agent on behalf of the Holder, will be taken to have been acquired on the date determined by subsection 130-60(2) of the ITAA 1997 (see paragraphs 112 to 113 of this Ruling).

CGT event A1 happens on Resale of MCN4

120. The Ruling section provides a detailed explanation of the Commissioner's decision. Therefore, no further explanation is warranted.

Income tax consequences on Exchange and Resale***Exchange of MCN4 not included in assessable income***

121. Section 6-5 of the ITAA 1997 provides that assessable income includes income according to ordinary concepts, known as ordinary income.

122. Subsection 6-10(2) of the ITAA 1997 also includes in assessable income, other amounts that are not ordinary income but are included in assessable income by other provisions of the income tax legislation – these are known as statutory income. Statutory

income includes capital gains (sections 10-5 and 102-5 of the ITAA 1997).

123. As this Ruling only applies to Holders who hold their MCN4 on capital account (see paragraph 3(b) of this Ruling), Holders acquired a CGT asset when they acquired a MCN4 pursuant to item 2 of the table in section 109-10 of the ITAA 1997. Therefore, any capital gain from Exchange of MCN4 would form part of the determination of any net capital gain or net capital loss for the income year. If there is a net capital gain, it is included within the assessable income of the Holder as statutory income under section 6-10 of the ITAA 1997 and not under section 6-5 of the ITAA 1997. However, as ruled on in paragraph 67, any capital gain arising from CGT event C2 on Exchange of MCN4 will be disregarded under section 130-60(3) of the ITAA 1997.

124. Similarly, a Holder will not incur a deductible loss under section 8-1 of the ITAA 1997 as a consequence of an Exchange of MCN4.

Acquisition of Ordinary Shares on Exchange not included in assessable income as a dividend

125. The issue of Ordinary Shares to the Holders of the MCN4 on Exchange is a distribution of property to holders of a non-share equity interest. This means that it is a 'non-share distribution' under section 974-115 of the ITAA 1997. Subsection 974-120(1) of the ITAA 1997 states that, subject to 974-120(2) of the ITAA 1997, all non-share distributions are non-share dividends.

126. Subsection 974-120(2) of the ITAA 1997 provides that a non-share distribution is not a non-share dividend to the extent to which the company debits the distribution against the company's non-share capital account or share capital account.

127. On Exchange of the MCN4, MGL will debit the Issue Price of the MCN4 to its non-share capital account. Accordingly, the issue of Ordinary Shares to the Holders of the MCN4 on Exchange is not a non-share dividend, and will not be included in the assessable income of the Holders under subparagraph 44(1)(a)(ii) of the ITAA 1936.

128. Furthermore, the Ordinary Shares will not be issued to the Holders of the MCN4 as shareholders of MGL. Therefore, the issue of the Ordinary Shares would not satisfy paragraphs (a) or (b) of the definition of 'dividend' in subsection 6(1) of the ITAA 1936. This means that the value of the Ordinary Shares will not be included in the assessable income of the Holders under subparagraph 44(1)(a)(i) of the ITAA 1936.

Resale of MCN4 not included in assessable income

129. The Ruling section provides a detailed explanation of the Commissioner's decision. Therefore, no further explanation is warranted.

Income Tax consequences of receiving Distributions

Inclusion of Distributions and franking credits in assessable income

130. Paragraph 44(1)(a) of the ITAA 1936 provides that the assessable income of a resident shareholder in a company includes:

- (a) dividends that are paid to the shareholder by the company out of profits derived by it from any source, and
- (b) all non-share dividends paid to the shareholder by the company.

131. The effect of paragraph 43B(1)(b) of the ITAA 1936 is that section 44 of the ITAA 1936 applies to equity holders in the same way as it applies to shareholders.

132. The MCN4 are 'non-share equity interests' and the Holders are 'equity holders' as defined in subsection 995-1(1) of the ITAA 1997. Distributions will not be debited to any extent to MGL's share capital account or non-share capital account. Accordingly, the Distributions paid in respect of the MCN4 will be 'non-share dividends' as defined in section 974-120 of the ITAA 1997.

133. The Holders must include the Distributions paid in respect of the MCN4 in their assessable income under subparagraph 44(1)(a)(ii) of the ITAA 1936.

134. Under the Australian imputation system, where an Australian resident company makes a franked distribution to another entity, subsection 207-20(1) of the ITAA 1997 requires that the assessable income of the receiving entity include the amount of the franking credit on the distribution. The inclusion of both the distribution and the attached franking credit in a receiving entity's assessable income is known as 'grossing-up' the distribution.

135. In accordance with subsection 207-20(1) of the ITAA 1997, the Holders must include any franking credit attached to a Distribution in their assessable income for the income year in which the Distribution is made.

Entitlement to a tax offset for franking credits

136. Holders will be entitled to a tax offset equal to the amount of the franking credit attached to a Distribution in accordance with subsection 207-20(2) of the ITAA 1997, unless Subdivision 207- D of the ITAA 1997 applies.

Exception for exempt income or non-assessable non-exempt income

137. Under Subdivision 207-D of the ITAA 1997, if a Distribution is either wholly exempt income or wholly non-assessable non-exempt income in the hands of a Holder, the amount of the franking credit attached to the Distribution is not included in the assessable income of the Holder and the Holder is not entitled to a tax offset in respect of the franking credit attached to the Distribution.

138. Subdivision 207-D of the ITAA 1997 also provides that, if only part of a Distribution is either exempt income or non-assessable non-exempt income in the hands of a Holder, the amount of the franking credit on the Distribution is worked out under the formula in subsection 207-90(2) of the ITAA 1997. This has the effect of reducing the amount of the franking credit attached to the Distribution that is included in the Holder's assessable income and reducing the amount of the tax offset the Holder is entitled to.

139. However, Subdivision 207-E of the ITAA 1997 provides a number of exceptions to the rules in Subdivision 207-D of the ITAA 1997 for certain exempt institutions, trusts and life insurance companies.

Refundable tax offset rules

140. The Holders who are entitled to a tax offset under subsection 207-20(2) of the ITAA 1997 will be subject to the refundable tax offset rules in Division 67 of the ITAA 1997, unless they are a type of entity that is specifically excluded (subsection 67-25(1) of the ITAA 1997). 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 basic income tax liability to nil.

141. Entities excluded under section 67-25 of the ITAA 1997 include corporate tax entities (such as companies, corporate limited partnerships and public trading trusts), unless they satisfy the conditions in subsections 67-25(1C) or 67-25(1D) of the ITAA 1997.

Integrity provisions relating to gross-up and tax offset

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

143. Pursuant to subsection 207-145(1) of the ITAA 1997, this adjustment will occur where a franked distribution is made to an entity in one or more of the following circumstances:

- the entity that receives the franked distribution is not a 'qualified person' in relation to the distribution for the purposes of Division 1A of former Part IIIAA of the ITAA 1936 (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 respect of the distribution for the entity (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 respect of the distribution for the entity (paragraph 207-145(1)(c) of the ITAA 1997)
- the distribution is made as part of a dividend stripping operation (paragraph 207-145(1)(d) of the ITAA 1997), or
- the distribution is one to which section 207-157 (about distribution washing) applies (paragraph 207-145(1)(da) of the ITAA 1997).

144. This Ruling is made on the assumption that the distribution washing provisions do not apply (see paragraph 3(f) of this Ruling). The remaining circumstances are discussed below.

Qualified persons

145. The main test of what constitutes a 'qualified person' in relation to a franked distribution for the purposes of Division 1A of former Part IIIAA of the ITAA 1936 is known as the holding period rule.

146. By virtue of former section 160AOA of the ITAA 1936, the holding period rule applies to non-share equity interests, equity holders and non-share dividends in the same way as it applies to shares, shareholders and dividends respectively.

147. As this Ruling is made on the basis that a Holder or an associate of a Holder has not made, is not under an obligation to make, or is not likely to make, a related payment in respect of any of the Distributions (see paragraph 3(c) of this Ruling), the holding period rule, as partly set out in former subsection 160APHO(1) of the ITAA 1936, provides that:

A taxpayer who has held shares or an interest in shares on which a dividend has been paid is a qualified person in relation to the dividend if:

- (a) ...the taxpayer has satisfied subsection (2) in relation to the primary qualification period in relation to the dividend...

148. Former section 160APHD of the ITAA 1936 defines the 'primary qualification period' in relation to a taxpayer in relation to shares as the period beginning on the day after the day on which the taxpayer acquired the shares, and ending:

- (a) for preference shares – on the 90th day after the day on which the shares became ex dividend, or
- (b) for shares that are not preference shares – on the 45th day after the day on which the shares became ex dividend.

149. The holding period rule, as further enunciated in former subsection 160APHO(2) of the ITAA 1936, requires a person to hold shares 'at risk' for a continuous period (excluding the day of acquisition and the day of disposal of the share) of at least 45 days (if the shares are not preference shares) or at least 90 days (if the shares are preference shares) during either the primary qualification period in relation to the dividend.

150. A Dividend Restriction applies if MGL fails to pay a Distribution in full within 10 Business Days of the relevant Distribution Payment Date. Subject to certain exceptions, the Dividend Restriction restricts MGL (without the prior approval of a Special Resolution of Holders) from paying a dividend on Ordinary Shares, or undertaking any Buy-Back or Capital Reduction in relation to Ordinary Shares until the next Distribution Payment Date. That is, Distributions on the MCN4 are in preference to distributions on Ordinary Shares. Further, each MCN4 ranks for payment, and ranks in a Winding Up of MGL, senior to Ordinary Shares. As such, the MCN4 are less risky than Ordinary Shares in MGL and are 'preference shares' for the purposes of former sections 160APHD and 160APHO of the ITAA 1936.

151. As the MCN4 are treated as 'preference shares', a Holder is required to hold the shares on which a dividend has been paid for a continuous period of at least 90 days during the primary qualification period.

152. In establishing whether a Holder held their MCN4 'at risk' for the required period, any days on which the shareholder had materially diminished risks of loss or opportunities for gain in respect of the shares are to be excluded. The exclusion of those days is not taken to break the continuity of the period for which the shareholder held the shares (former subsection 160APHO(3) of the ITAA 1936).

153. A Holder will be taken to have materially diminished risks of loss or opportunities for gain on a particular day in respect of their MCN4 if their 'net position' (as defined in former subsection 160APHJ(5) of the ITAA 1936) on that day in respect of their MCN4 has less than 30% of those risks and opportunities (former subsection 160APHM(2) of the ITAA 1936).

154. A Holder's 'net position' is worked out based on all 'positions' in respect of their MCN4 and using the financial concept known as 'delta' (former section 160APHJ of the ITAA 1936).

155. Former subsection 160APHJ(4) of the ITAA 1936 provides:

To avoid doubt, shares...are to be treated as a long position (with a delta of +1) in relation to themselves.

156. It is relevant to consider the effect, if any, that the Resale and Exchange mechanisms of the MCN4 may have on a Holder's risks of loss or opportunities for gain in respect of their MCN4.

157. Embedded share options, such as the Resale and Exchange mechanisms, are separate positions in relation to a share if the options are exercisable by or against a party other than the issuer of the shares (paragraph 1 of Taxation Determination TD 2007/29 *Income tax: holding period rule: is an embedded share option a position in relation to the share if it is exercisable by or against a party other than the issuer of the share?*).

158. Under the Resale mechanism, MGL can (subject to certain conditions) require the Holders to sell all or some of their MCN4 to one or more Nominated Parties. Until selected by MGL and approved by APRA, a Nominated Party has no right or ability to call for the MCN4 from the Holders. MGL is not required to exercise the Resale mechanism and no MCN4 can, or will, be Resold at the option of a Holder. As the Resale mechanism is an option that is held by MGL and not by a third party, the Resale mechanism does not constitute a separate 'position' in relation to the MCN4 under former subsection 160APHJ(2) of the ITAA 1936 because, of itself, it will not affect a Holder's risks of loss or opportunities for gain in respect of the MCN4.

159. Similarly, the MCN4 cannot, and will not, be Exchanged at the option of a Holder. Except in the case of Scheduled Mandatory Exchange, Acquisition Event Exchange or Exchange on the occurrence of a Non-Viability Event (whereby, in each case, MGL must Exchange all or some of the MCN4 into Ordinary Shares), it is MGL, as the Issuer, that has the option to Exchange the MCN4 for Ordinary Shares. Consequently, the Exchange mechanism will not represent a separate position in relation to the MCN4 because, of itself, it will not affect a Holder's risks of loss or opportunities for gain in respect of the MCN4.

160. Accordingly, each of the Holders will be a 'qualified person' in relation to a Distribution under former paragraph 160APHO(1)(a) of the ITAA 1936 because:

- the Resale and Exchange mechanisms do not constitute separate positions in respect of the MCN4, and therefore will not, of themselves, affect the 'net position' of a Holder. Consequently, they will not affect a Holder's risks of loss or opportunities for gain in respect of their MCN4
- Holders will not take any position (apart from holding the MCN4) in relation to their MCN4 (see paragraph 3(e) of this Ruling), and
- Holders in receipt of Distributions on the MCN4 will hold their MCN4 for a continuous period of at least 90

days (excluding the day of acquisition and disposal, if applicable) beginning on the day after the day on which they acquired the MCN4 (see paragraph 3(d) of this Ruling).

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

161. Section 177EA of the ITAA 1936 is a general anti-avoidance provision that applies to a wide range of schemes designed to obtain imputation benefits.

162. Under subsection 177EA(3) of the ITAA 1936, section 177EA of the ITAA 1936 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; and
- (b) either:
 - (i) a frankable distribution has been paid, or is payable or expected to be payable, to a person in respect of the membership interests; or
 - (ii) a frankable distribution has flowed indirectly, or flows indirectly or is expected to flow indirectly, to a person in respect of the interest in membership interests, as the case may be; and
- (c) the distribution was, or is expected to be, a franked distribution...; and
- (d) except for section 177EA, the person (the relevant taxpayer) would receive, or could reasonably be expected to receive, imputation benefits as a result of the distribution; and
- (e) having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a purpose (whether or not the dominant purpose but not including an incidental purpose) of enabling the relevant taxpayer to obtain an imputation benefit.

163. Where section 177EA of the ITAA 1936 applies, subsection 177EA(5) of the ITAA 1936 allows the Commissioner to make a determination that:

- if the corporate tax entity is a party to the scheme, a franking debit arises in the entity's franking account in respect of each distribution made to the relevant taxpayer or that flows indirectly to the relevant taxpayer (paragraph 177EA(5)(a) of the ITAA 1936), or
- no imputation benefit is to arise in respect of a distribution or a specified part of a distribution that is made, or that flows indirectly, to the relevant taxpayer (paragraph 177EA(5)(b) of the ITAA 1936).

164. Pursuant to subsection 177EA(12) of the ITAA 1936, section 177EA of the ITAA 1936 applies to:

- a non-share equity interest in the same way as it applies to a membership interest
- an equity holder in the same way as it applies to a member, and
- a non-share dividend in the same way as it applies to a distribution.

165. The MCN4 will be non-share equity interests in MGL paying non-share dividends and MCN4 Holders will be equity holders.

166. The conditions in paragraphs 177EA(3)(a) to (d) of the ITAA 1936 are satisfied because:

- The issue of the MCN4 constitutes a scheme for the disposition of membership interests (paragraph 177EA(3)(a) of the ITAA 1936). Under paragraph 177EA(14)(a) of the ITAA 1936, a scheme for a disposition of membership interests or an interest in membership interests includes a scheme that involves issuing the membership interests.
- Frankable distributions are expected to be payable to the Holders of the MCN4 in respect of their non-share equity interests (paragraph 177EA(3)(b) of the ITAA 1936).
- The Distributions on the MCN4 are expected to be franked (paragraph 177EA(3)(c) of the ITAA 1936). The MGL TCG currently franks distributions on frankable non-share equity interests at 45%. MGL's franking policy is not expected to change as a result of the MCN4 issuance.
- Except for section 177EA of the ITAA 1936, the Holders of the MCN4 could reasonably be expected to receive imputation benefits as a result of the Distributions (paragraph 177EA(3)(d) of the ITAA 1936).

167. Accordingly, the issue is whether, 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 a relevant taxpayer (a Holder) to obtain an imputation benefit (paragraph 177EA(3)(e) of the ITAA 1936).

168. In arriving at a conclusion, the Commissioner must have regard to the relevant circumstances of the scheme which include, but are not limited to, the circumstances set out in subsection 177EA(17) of the ITAA 1936. The relevant circumstances listed there 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 not be present at any one time in any one scheme.

169. Having regard to all the relevant circumstances of the scheme and the qualifications set out in this Ruling, the Commissioner has concluded that the purpose of enabling the Holders to obtain imputation benefits is not more than incidental to the purpose of issuing the MCN4 to raise regulatory capital.

170. Accordingly, 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 that are to be received by the Holders in respect of the Distributions paid on the MCN4.

Determination under paragraph 204-30(3)(c) of the ITAA 1997

171. Subdivision 204-D of the ITAA 1997 enables the Commissioner to make certain determinations where distributions with attached imputation benefits are streamed to a member of a corporate tax entity in preference to another member.

172. The term 'streams' is not defined for the purposes of Subdivision 204-D of the ITAA 1997, however, the Explanatory Memorandum to the New Business Tax System (Imputation) Bill 2002, which introduced Subdivision 204-D into the ITAA 1997, explains that:

3.28 Streaming is selectively directing the flow of franked distributions to those members who can most benefit from imputation credits.

...

3.32 In the simplest case of streaming, the members who can benefit from imputation credits receive a franked distribution, while members who cannot benefit to the same degree (e.g. non-residents) or who receive no benefit (e.g. tax-exempt organisations) simultaneously receive an unfranked distribution (normally adjusted in amount for the lack of franking).

173. Section 204-30 of the ITAA 1997 prescribes the circumstances that must exist before the Commissioner may make such a determination. Section 204-30 of the ITAA 1997 applies where an entity streams distributions (or distributions and the giving of other benefits) to its members, whether in a single franking period or in a number of franking periods, in such a way that:

- (a) 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)
- (b) 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

- (c) the other member (disadvantaged member) of the entity will receive lesser imputation benefits, or will not receive any imputation benefits, whether or not the disadvantaged member receives other benefits (paragraph 204-30(1)(c) of the ITAA 1997).

174. If section 204-30 of the ITAA 1997 applies, the Commissioner has a discretion under subsection 204-30(3) of the ITAA 1997 to make a written determination that no imputation benefit is to arise in respect of a distribution made to a favoured member and specified in the determination (paragraph 204-30(3)(c) of the ITAA 1997).

175. An MCN4 Holder will receive an imputation benefit as a result of a Distribution where, for example, the Holder is entitled to a tax offset under Division 207 of the ITAA 1997 (paragraph 204-30(6)(a) of the ITAA 1997).

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

177. A member of an entity derives a 'greater benefit from franking credits' than another member of the entity if, for example, the other member is a foreign resident (paragraph 204-30(8)(a) of the ITAA 1997) or the other member would not be entitled to a tax offset under Division 207 of the ITAA 1997 (paragraph 204-30(8)(b) of the ITAA 1997). Broadly, an individual or corporate tax entity that receives a franked distribution is not entitled to a tax offset unless they are an Australian resident at the time the distribution is made (Subdivision 207-C of the ITAA 1997). Accordingly, the MCN4 Holders receiving the imputation benefits would derive a greater benefit from franking credits than other members of MGL if those other members are foreign residents.

178. Based on the information provided, the Commissioner has concluded that the requisite element of streaming does not exist in relation to the franked Distributions to be paid by MGL to Holders.

179. Accordingly, 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 that are to be received by the Holders in respect of the Distributions paid on the MCN4.

Dividend stripping operation

180. Section 207-155 of the ITAA 1997 provides that a distribution will be taken to be made as part of a dividend stripping operation if, and only if, the making of the distribution arose out of or was made in the course of, a scheme that was in the nature of dividend stripping or had substantially the same effect of a dividend stripping scheme.

181. Based on the MCN4 Terms and Prospectus, there is no indication that the offering of the MCN4 and the associated payment of franked Distributions to the Holders constitute a dividend stripping arrangement.

Integrity provisions relevant to Exchange or Redemption

182. The effect of subsection 43B(1) of the ITAA 1936 is that sections 45, 45A and 45B of the ITAA 1936 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.

183. As stated previously, the MCN4 are non-share equity interests and each of the Holders is an equity holder as defined in subsection 995-1(1) of the ITAA 1997. In addition, the Distributions paid in respect of the MCN4 will be non-share dividends as defined in section 974-120 of the ITAA 1997.

Section 45 of the ITAA 1936

184. 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 (but not all) shareholders, and
- some or all of the shareholders who do not receive the shares receive or will receive minimally franked dividends.

185. Minimally franked dividends are dividends that are not franked, or franked to less than 10% (subsection 45(3) of the ITAA 1936).

186. If section 45 of the ITAA 1936 applies, the value of the share at the time the shareholder is provided with the share is taken to be an unfrankable dividend that is paid by the company out of its profits to the shareholder (subsection 45(2) of the ITAA 1936).

187. Distributions paid on the MCN4 are expected to be franked at the same percentage that applies to MGL's Ordinary Shares. As MGL's franking policy is not expected to change as a result of the MCN4 issuance, minimally franked dividends will not be received by any MGL shareholders.

188. Further, the issue of Ordinary Shares upon Exchange of the MCN4 merely reflects a change in the type of equity interest the Holders will hold in MGL – it does not reflect the satisfaction of any distribution due to Holders.

189. Based on the information provided and having regard to the circumstances of the scheme, section 45 of the ITAA 1936 will not apply to treat the value of the Ordinary Shares issued to the Holders

on Exchange of the MCN4 as an unfrankable dividend paid by MGL to the Holders.

Section 45A of the ITAA 1936

190. Section 45A of the ITAA 1936 applies where a company streams the provision of capital benefits to certain shareholders who derive a greater benefit from the capital benefits (the advantaged shareholders) than other shareholders, and it is reasonable to assume that the other shareholders (the disadvantaged shareholders) have received or will receive dividends.

191. Where section 45A of the ITAA 1936 applies, the Commissioner may make a determination that section 45C of the ITAA 1936 applies in relation to the whole, or a part, of the capital benefits (subsection 45A(2) of the ITAA 1936). The effect of such a determination is that the capital benefit, or part of the capital benefit, is taken to be an unfranked dividend paid by the company to the shareholder at the time the capital benefit is provided (subsection 45C(1) of the ITAA 1936).

192. The provision of a capital benefit includes the provision to the shareholder of shares in the company (paragraph 45A(3)(a) of the ITAA 1936). The issue of the Ordinary Shares to the Holders on Exchange of the MCN4 will therefore constitute the provision of a capital benefit.

193. However, the issue of the Ordinary Shares on Exchange of the MCN4 is a restatement of a Holder's interest in the capital of MGL. Therefore, in the absence of any other factors, and based on the circumstances of the scheme, the issue of Ordinary Shares on Exchange will not be considered a streaming of capital benefits.

194. The provision of a capital benefit also includes the distribution to the shareholder of share capital or share premium (paragraph 45A(3)(b) of the ITAA 1936). Relevantly, a non-share distribution to an equity holder is taken to be a distribution to the equity holder of share capital to the extent to which it is a non-share capital return (subsection 45A(3A) of the ITAA 1936). A non-share capital return is defined in section 974-125 of the ITAA 1997 as a non-share distribution to the extent to which it is not a non-share dividend. As MGL will debit the Issue Price of the MCN4 to its non-share capital account on Redemption of the MCN4, an Optional Redemption will involve a non-share capital return (sections 974-120 and 974-125 of the ITAA 1997). Accordingly, an Optional Redemption will also involve the provision of capital benefits.

195. Having regard to the relevant circumstances of the scheme, it cannot be said that Holders would derive a greater benefit from capital benefits than other MGL shareholders.

196. 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 treat the whole, or any part, of the capital

benefit provided to the Holders on the Exchange or Redemption of the MCN4 as an unfranked dividend paid by MGL to the Holders.

Section 45B of the ITAA 1936

197. Pursuant to subsection 45B(2) of the ITAA 1936, section 45B of the ITAA 1936 applies if:

- (a) there is a scheme under which a person is provided with...a capital benefit by a company; and
- (b) 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; and
- (c) 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 a taxpayer (the relevant taxpayer) to obtain a tax benefit.

198. Where section 45B of the ITAA 1936 applies, the Commissioner may make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole or a part of the capital benefit. Such a determination would have the effect of treating all or a part of the amount of the capital benefit as an unfranked dividend paid by the company to the shareholder at the time the capital benefit is provided (subsection 45C(1) of the ITAA 1936).

199. Subsection 45B(10) of the ITAA 1936 provides that the term 'scheme' in section 45B of the ITAA 1936 has the same meaning as provided in subsection 995-1(1) of the ITAA 1997. That definition is wide and includes any arrangement, scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

200. The arrangement involving the issue of the MCN4 according to the MCN4 Terms, including the issue of Ordinary Shares to the Holders on Exchange of the MCN4, will constitute a scheme under which the Holders are provided with a capital benefit by MGL (paragraph 45B(5)(a) of the ITAA 1936).

201. Similarly, an Optional Redemption under the MCN4 Terms will also constitute a scheme under which the Holders are provided with a capital benefit by MGL (paragraph 45B(5)(b) of the ITAA 1936 by virtue of subsection 45B(7) of the ITAA 1936).

202. In both situations, paragraph 45B(2)(a) of the ITAA 1936 is satisfied.

203. A relevant taxpayer obtains a tax benefit under the scheme if an amount of tax payable (or any other amount payable under the ITAA 1997 or ITAA 1936) by the relevant taxpayer would, apart from the operation of section 45B of the ITAA 1936, be less than the amount that would have been payable, or would be payable at a later

time than it would have been payable, if the capital benefit had been an assessable dividend (subsection 45B(9) of the ITAA 1936).

204. The relevant taxpayers are the Holders (who, in this case, are also the persons provided with the capital benefit). The issue of the Ordinary Shares to the Holders on Exchange of the MCN4 will not lead to the Holders deriving assessable income or making a capital gain.

205. An Optional Redemption will generally not lead to the Holders deriving assessable income.

206. Therefore, in both situations, the Holders will generally obtain a tax benefit from the scheme and paragraph 45B(2)(b) of the ITAA 1936 is satisfied.

207. Whether section 45B of the ITAA 1936 will apply to an Exchange or Redemption turns on whether paragraph 45B(2)(c) of the ITAA 1936 will be satisfied. This involves a consideration of the relevant circumstances, including, but not limited to, those listed in subsection 45B(8) of the ITAA 1936.

208. Having regard to the relevant circumstances of the scheme, and on the basis of the information surrounding the issue of the MCN4, it could not be concluded that the Exchange or Redemption of the MCN4 will be entered into or carried out for a more than incidental purpose of enabling the Holders to obtain a tax benefit.

209. Accordingly, the Commissioner will not make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to treat the whole, or any part, of the capital benefit provided to the Holders on the Exchange or Redemption of the MCN4 as an unfranked dividend paid by MGL to the Holders.

MCN4 are not traditional securities

210. Subsection 26BB(1) of the ITAA 1936 defines a 'traditional security' to be a 'security' held by the taxpayer that, relevantly:

- is not trading stock of the taxpayer, and
- either does not have an eligible return or has an eligible return that satisfies the conditions in subparagraph 26BB(1)(b)(ii) of the ITAA 1936.

211. The term 'security' is defined in subsection 26BB(1) of the ITAA 1936 by reference to its meaning in Division 16E of the ITAA 1936. Pursuant to subsection 159GP(1) of the ITAA 1936, 'security' means:

- (a) stock, a bond, debenture, certificate of entitlement, bill of exchange, promissory note or other security;
- (b) a deposit with a bank or other financial institution;
- (c) a secured or unsecured loan; or

- (d) any other contract, whether or not in writing, under which a person is liable to pay an amount or amounts, whether or not the liability is secured.

212. The MCN4 are not stock, a bond, debenture, certificate of entitlement, bill of exchange, or promissory note.

213. The term 'or other security' in paragraph 159GP(1)(a) of the ITAA 1936 encompasses instruments that evidence an obligation on the part of the issuer or drawer to pay an amount to the holder or acceptor, whether during the term of the instrument or at its maturity. The types of securities referred to in paragraph (a) will generally be recognised as debt instruments (Taxation Ruling TR 96/14 *Income Tax: traditional securities*).

214. Accordingly, the MCN4 will not meet the definition of 'security' in paragraph 159GP(1)(a) of the ITAA 1936.

215. The MCN4 are not deposits with MGL, nor are they a loan. As such, they will not be securities under paragraphs 159GP(1)(b) or (c) of the ITAA 1936.

216. Paragraph (d) of the definition of 'security' applies to those contracts that have debt like obligations (TR 96/14).

217. The MCN4 Terms do not evidence a liability by MGL to pay an amount or amounts to the Holders of the MCN4 during the term of the instrument or at maturity.

218. The MCN4 are perpetual and the Holders do not have a right to require Exchange, Resale or Redemption.

219. The payment by MGL of Distributions is discretionary and non-cumulative. If a Distribution is not paid, MGL has no liability to pay the Distribution, Holders have no claim in respect of non-payment, and such non-payment does not constitute an event of default.

220. Furthermore, the Terms provide for the Exchange of the MCN4 in return for MGL allotting and issuing the Exchange Number of Ordinary Shares based on the Issue Price of the MCN4 and a formula set out in the Terms. Redemption of the MCN4 is also possible at the option of MGL and requires the prior written approval of APRA. This does not establish a liability on MGL to pay an amount to the Holders.

221. MGL is not expected to become liable to pay an amount in respect of the MCN4 upon winding up as it would be expected that, before winding up commences, the MCN4 would either be Exchanged into Ordinary Shares pursuant to a Non-Viability Event, or the Holders' rights would be terminated (as a result of Write-Off) if MGL is not able to allot and issue Ordinary Shares within the time stated in the Terms.

222. Accordingly, the Terms do not establish any liability to pay for MGL that exhibits the debt like obligation contemplated by paragraph (d) of the definition of 'security'.

223. As the MCN4 are not securities within the meaning of subsection 159GP(1) of the ITAA 1936, they cannot be traditional securities under subsection 26BB(1) of the ITAA 1936.

224. Accordingly, a gain on the disposal or Redemption of the MCN4 will not give rise to assessable income under subsection 26BB(2) of the ITAA 1936 and a loss on the disposal or Redemption of the MCN4 will not give rise to an allowable deduction under subsection 70B(2) of the ITAA 1936.

MCN4 are not qualifying securities

225. Under Division 16E of Part III of the ITAA 1936, the income and deductions from a 'qualifying security' are spread over the term of the security on an accruals basis which reflects the economic gains and losses which have accrued at any point in time (section 159GQ of the ITAA 1936).

226. A 'qualifying security' is defined in subsection 159GP(1) of the ITAA 1936 and must, among other things, be a 'security'. As each MCN4 is not a 'security' under subsection 159GP(1) of the ITAA 1936, each MCN4 is not a 'qualifying security' for the purposes of Division 16E of the ITAA 1936.

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Not previously issued as a draft

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NO: 1-H71XC7P
 ISSN: 2205-5517
 BSL: PGI

ATOlaw topic: Income tax ~~ Assessable income ~~ Other types of income ~~ Traditional securities
 Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT event A1 - disposal of a CGT asset
 Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT events C1 to C3 - end of a CGT asset
 Income tax ~~ Capital gains tax ~~ Cost base and reduced cost base
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