


CR 2022/106 - Bank of Queensland Limited - BOQ Capital Notes 3

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Page status: **legally binding**

Class Ruling

Bank of Queensland Limited – BOQ Capital Notes 3

📌 Relying on this Ruling

This publication (excluding appendix) 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 this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out how the relevant income tax provisions apply to specified entities who subscribed for and acquired BOQ Capital Notes 3 (Capital Notes 3) issued by Bank of Queensland Limited (BOQ).
2. Details of this scheme are set out in paragraphs 45 to 79 of this Ruling.
3. In this Ruling, unless otherwise defined, capitalised terms have the meanings specified in the Terms of the Capital Notes 3 (the Terms) which are contained in Appendix A of the BOQ Capital Notes 3 Prospectus dated 1 November 2022 (the Prospectus).
4. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Who this Ruling applies to

5. This Ruling applies to you if you:
 - acquired your Capital Notes 3 by initial application under the Prospectus
 - are a resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)) during the period you hold your Capital Notes 3

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- hold your Capital Notes 3 on capital account; that is, you do not hold your Capital Notes 3 as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1))
- do not hold your Capital Notes 3 through a permanent establishment (as defined in subsection 6(1) of the ITAA 1936) outside Australia, and
- are not subject to the taxation of financial arrangement rules in Division 230 in relation to gains and losses on your Capital Notes 3.

Note: Division 230 will not apply to individuals, unless they have made an election for it to apply.

What this Ruling does not consider

6. This Ruling does not deal with:
- the tax implications for a Nominated Purchaser who acquires Capital Notes 3 under an Optional Resale Notice
 - the tax implications if BOQ were to implement the substitution of a non-operating holding company (an Approved NOHC) as the issuer of Ordinary Shares, and
 - how the gross-up and tax offset rules in Division 207 apply to partnership or trustee investors (other than a partnership or trustee that is a corporate tax entity, or a trustee of a trust that is a complying superannuation entity), or indirect distributions to partners in a partnership or beneficiaries or trustees of a trust.

When this Ruling applies

7. This Ruling applies from 1 July 2022 to 30 June 2032.

Ruling

Consequences of acquiring BOQ Capital Notes 3

Acquisition time

8. You acquired your Capital Notes 3 on 14 November 2022 (Issue Date) under table item 2 of section 109-10.

Cost base and reduced cost base

9. The first element of the cost base and reduced cost base of each Capital Notes 3 is \$100, being the money you paid to acquire each of your Capital Notes 3 (subsections 110-25(2) and 110-55(2)).

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Consequences of holding your BOQ Capital Notes 3***Distributions and entitlement to a tax offset for franking credits***

10. A Distribution on your Capital Notes 3 is a non-share dividend under section 974-120 and is included in your assessable income (subparagraph 44(1)(a)(ii) of the ITAA 1936).
11. In the income year in which the Distribution is made, you also:
- include the amount of the franking credit attached to a Distribution in your assessable income (subsection 207-20(1)), and
 - are entitled to a tax offset equal to the franking credit (subsection 207-20(2)).
12. To the extent that a Distribution (or a part of it) is either exempt income or non-assessable non-exempt income in your hands (and none of the exceptions in Subdivision 207-E apply), the amount of any franking credit on that part of the Distribution is not included in your assessable income and you are not entitled to a tax offset under Division 207 for those franking credits (Subdivision 207-D).
13. The franking credit tax offset that you are entitled to under Division 207 is subject to the refundable tax offset rules in Division 67, provided you are not excluded by the operation of section 67-25. Entities excluded by section 67-25 include corporate tax entities (such as companies, corporate limited partnerships, and public trading trusts), unless they satisfy the requisite conditions in subsections 67-25(1C) or (1D).

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

14. The Commissioner will not make a determination under paragraph 177EA(5)(b) of the ITAA 1936 to deny any imputation benefits you receive in respect of a Distribution or a specified part of a Distribution.

Determination under paragraph 204-30(3)(c)

15. The Commissioner will not make a determination under paragraph 204-30(3)(c) to deny any imputation benefits you receive in respect of a Distribution.

Gross-up and tax offset cancelled in certain circumstances

16. Paragraph 207-145(1)(a) will not apply to cancel the effect of the gross-up and tax offset in respect of a franked Distribution if you are a qualified person in respect of that Distribution.
17. You will be a qualified person in relation to a Distribution if, during the primary qualification period, you held your Capital Notes 3 for a continuous period of at least 90 days during which you did not have 'materially diminished risks of loss or opportunities for gain' (as defined in former section 160APHM of the ITAA 1936) in respect of your Capital Notes 3.
18. The Resale and Conversion features of Capital Notes 3 will not affect your risks of loss or opportunities for gain in respect of your Capital Notes 3 as neither the Resale nor the Conversion mechanism constitutes a separate position (former sections 160APHM and 160APHJ of the ITAA 1936).

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19. Paragraphs 207-145(1)(b) to (db) will not apply to cancel the effect of the gross-up and tax offset rules in respect of a franked Distribution.
20. In respect of paragraphs 207-145(1)(b) and (c), refer to paragraphs 14 and 15 of this Ruling.
21. In respect of paragraph 207-145(1)(d), based on the facts of the scheme, there is no evidence that the Distributions will be made as part of a dividend stripping operation.
22. In respect of paragraph 207-145(1)(da), this Ruling is made on the basis that the distribution washing provision does not apply (refer to paragraph 79(r) of this Ruling).
23. In respect of paragraph 207-145(1)(db), this Ruling is made on the basis the Capital Notes 3 are equity interests which form part of BOQ's Additional Tier 1 Capital under the Australian Prudential Regulation Authority (APRA) prudential standards (refer to paragraphs 79(b) and (c) of this Ruling).

Consequences of disposing of your BOQ Capital Notes 3

BOQ Capital Notes 3 are not traditional securities

24. Your Capital Notes 3 are not traditional securities as defined in section 26BB of the ITAA 1936.
25. Section 26BB of the ITAA 1936 will not apply to include any gain on the disposal of your Capital Notes 3 in your assessable income.
26. Section 70B of the ITAA 1936 will not apply to allow any loss on the disposal of your Capital Notes 3 as a deduction to you.

Conversion of BOQ Capital Notes 3 for BOQ Ordinary Shares

27. Each Capital Notes 3 is a convertible interest (as defined in subsection 995-1(1) and table item 4 of subsection 974-75(1)).
28. CGT event C2 happens on Conversion of each of your Capital Notes 3 for BOQ Ordinary Shares (section 104-25).
29. A capital gain or capital loss you make from CGT event C2 happening on Conversion of your Capital Notes 3 will be disregarded (subsection 130-60(3)).
30. BOQ Ordinary Shares you acquire on Conversion will be taken to have been acquired when the Conversion happened on the relevant Conversion Date (subsection 130-60(2)).
31. The first element of the cost base and reduced cost base of BOQ Ordinary Shares you acquired on Conversion will be equal to the cost base and reduced cost base of your relevant Capital Notes 3 at the time of Conversion (table item 2 of subsection 130-60(1)).
32. As you hold your Capital Notes 3 on capital account, no amount will be included in your assessable income on Conversion of your Capital Notes 3 under section 6-5. Similarly, you will not incur a loss under section 8-1 as a consequence of the Conversion of your Capital Notes 3.
33. On the Conversion of your Capital Notes 3 for BOQ Ordinary Shares, you will not be taken to have received a dividend or non-share dividend.

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Resale of BOQ Capital Notes 3

34. CGT event A1 happens on the Resale of your Capital Notes 3 (section 104-10). The Resale of your Capital Notes 3 to the Nominated Purchaser will be for a cash amount equal to the Issue Price of the Capital Notes 3.

35. As the capital proceeds you receive will not be more than the cost base of your Capital Notes 3, you will not make a capital gain as a result of the Resale of your Capital Notes 3.

36. As you hold your Capital Notes 3 on capital account, no amount will be included in your assessable income on the Resale of your Capital Notes 3 under section 6-5. Similarly, you will not incur a deductible loss under section 8-1 as a consequence of the Resale of your Capital Notes 3.

Redemption of BOQ Capital Notes 3

37. CGT event C2 in section 104-25 will happen on the Redemption of your Capital Notes 3, where the Redemption is constituted by the redemption of all or some of your Capital Notes 3 for their Face Value.

38. The capital proceeds you receive on Redemption of your Capital Notes 3 will be replaced by the market value of the Capital Notes 3 on the Redemption Date, worked out as if the Redemption had not occurred and was never proposed to occur, if the capital proceeds (being the Face Value) are more or less than the market value of the Capital Notes 3 (subparagraph 116-30(2)(b)(ii)). Accordingly, where the market value of the Capital Notes 3 at the time of Redemption is more or less than the cost base, you will make a capital gain or capital loss.

39. As you hold your Capital Notes 3 on capital account, no amount will be included in your assessable income on the Redemption of your Capital Notes 3 under section 6-5. Similarly, you will not incur a deductible loss under section 8-1 as a consequence of the Redemption of your Capital Notes 3.

Write-Off of BOQ Capital Notes 3

40. CGT event C2 in section 104-25 will happen on the Write-Off of your Capital Notes 3 following a failure to Convert on account of a Loss Absorption Event.

41. The capital proceeds you receive on CGT event C2 happening on the Write-Off of your Capital Notes 3 will be nil.

Other integrity provisions**Section 45 of the ITAA 1936**

42. Section 45 of the ITAA 1936 will not apply to treat the value of BOQ Ordinary Shares issued to you on Conversion of your Capital Notes 3 as an unfrankable dividend.

Section 45A of the ITAA 1936

43. 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 a part, of the capital benefit provided to you on Conversion or Redemption of your Capital Notes 3 as an unfranked dividend.

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Section 45B of the ITAA 1936

44. 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 a part, of the capital benefit provided to you on Conversion or Redemption of your Capital Notes 3 as an unfranked dividend.

Scheme

45. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

Background

46. BOQ is listed on the Australian Securities Exchange (ASX).

47. BOQ provides retail, business and specialist banking solutions, vendor finance products, premium funding products and insurance products to customers in Australia and, to a lesser extent, New Zealand. BOQ's main operations include, as a retail bank, taking deposits from customers, providing loan facilities to borrowers and the provision of equipment finance and insurance.

48. BOQ is an authorised deposit-taking institution for the purposes of the *Banking Act 1959* and is subject to regulatory compliance requirements as administered by APRA, including maintenance of mandatory levels of Tier 1 Capital.

49. For Australian income tax purposes, BOQ is the head company of the BOQ income tax consolidated group.

50. Under the Prospectus, BOQ announced its intention to undertake capital raising by the issue of Capital Notes 3 for an issue price of \$100 each to raise \$400 million (subject to market conditions and capital needs at the time of issue) (the Offer).

51. The Capital Notes 3 were issued on 14 November 2022.

52. The Capital Notes 3 were issued by BOQ in Australia. The Capital Notes 3 were not issued at or through an offshore permanent establishment or subsidiary of BOQ.

53. The Offer was made as part of BOQ's ongoing capital management strategy within the regulatory capital requirements prescribed by APRA. The issue of Capital Notes 3 is a new capital raising and the proceeds from the issue will be used by BOQ in its Australian operations for BOQ's general corporate funding purposes.

Main features of BOQ Capital Notes 3

54. Capital Notes 3 are Australian Dollar-denominated, fully-paid, unsecured, subordinated, non-cumulative, mandatorily convertible notes issued by BOQ.

55. Capital Notes 3 are listed on the ASX and trade under the code BOQPG.

Issue price

56. The Issue Price of each Capital Notes 3 is \$100. Capital Notes 3 were fully paid on the Issue Date.

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Distributions

57. BOQ will pay in arrears quarterly cash floating-rate Distributions in respect of each Capital Notes 3 on a Distribution Payment Date (each a Distribution Payment Date) in accordance with the Terms.
58. The Distribution payable is calculated on the Issue Price of each Capital Notes 3 using a Distribution Rate, which is equal to the BBSW Rate plus a Margin adjusted by the corporate tax rate and based on the number of days in the relevant Distribution Period. The Margin was determined under the Bookbuild at 3.40% per annum.
59. Distributions are expected to be fully franked (to the extent that franking credits are available) at the same rate as the dividends on BOQ Ordinary Shares and other equity interests giving rise to frankable distributions.
60. The payment of a Distribution is subject to the absolute discretion of BOQ and a Payment Condition not existing, including that payment will not breach certain APRA conditions or make BOQ insolvent.
61. Distributions are non-cumulative. To the extent that all or part of a Distribution is not paid on a scheduled Distribution Payment Date, Holders will have no claim or entitlement in respect of the non-payment of the Distribution. A Distribution that is not paid on a Distribution Payment Date for any reason does not accrue interest for the period during which it remains unpaid.
62. Subject to certain exceptions, if any Distribution is not paid in full within 3 Business Days of the relevant Distribution Payment Date, this will restrict BOQ from determining, declaring or paying any Ordinary Share Dividend, or undertaking any Buy-Backs or Capital Reductions in relation to any BOQ Ordinary Shares.

Mandatory Conversion on Mandatory Conversion Date

63. Unless the Capital Notes 3 have been or will be Redeemed or Converted beforehand, Capital Notes 3 will be Converted for BOQ Ordinary Shares on the date that is the earlier of (each a Mandatory Conversion Date):
- 16 June 2031 (Scheduled Mandatory Conversion Date) subject to the satisfaction of the relevant Mandatory Conversion Conditions, or
 - the first Distribution Payment Date after the Scheduled Mandatory Conversion Date on which the relevant Mandatory Conversion Conditions are satisfied.

Mandatory Conversion on Loss Absorption Event – Write-Off

64. In certain circumstances, some or all of the Capital Notes 3 must be Converted for BOQ Ordinary Shares before a Mandatory Conversion Date if a Loss Absorption Event occurs.
65. Where Conversion of any Capital Notes 3 is required on account of a Loss Absorption Event and Conversion fails to take effect within 5 Business Days after the Loss Absorption Event Conversion Date for any reason, Conversion will not occur and the relevant Capital Notes 3 will be Written Off with effect on and from the Loss Absorption Event Conversion Date.
66. The Mandatory Conversion Conditions do not apply to Conversion as a result of a Loss Absorption Event.

Status: **legally binding**

Mandatory Conversion on Acquisition Event

67. All of the Capital Notes 3 must be Converted for BOQ Ordinary Shares before a Mandatory Conversion Date if an Acquisition Event occurs.

Optional Conversion

68. Some or all of the Capital Notes 3 may be Converted for BOQ Ordinary Shares before a Mandatory Conversion Date if BOQ elects to do so on any scheduled Optional Conversion Date or following the occurrence of a Tax Event, a Regulatory Event or a Potential Acquisition Event.

69. BOQ must elect to Convert all (and not some of) the Capital Notes 3 on an Optional Conversion Date following the occurrence of a Potential Acquisition Event.

Conversion mechanics

70. Upon Conversion:

- each Holder's rights in relation to each Capital Notes 3 that is being Converted will be immediately and irrevocably terminated for an amount equal to the Face Value and BOQ will apply the Face Value by way of payment for subscription for the Conversion Number of BOQ Ordinary Shares
- BOQ will issue the Conversion Number of BOQ Ordinary Shares to a Holder for each Capital Notes 3 held by the Holder that is being converted; where the total number of BOQ Ordinary shares to be issued includes a fraction of a share, that fraction will be disregarded.

Disposal of BOQ Ordinary Shares by a nominee on Conversion

71. In certain circumstances, including by the request of a Holder, the BOQ Ordinary Shares may be issued to a nominee instead of the Holder. The nominee will, subject to the Terms, arrange for the sale of those shares and pay the relevant Holder a cash amount equal to the net proceeds of the sale.

Optional Redemption

72. BOQ may elect to Redeem all or some of the Capital Notes 3:

- on a Redemption Date following the occurrence of a Tax Event or Regulatory Event, or
- on 15 December 2028, 15 March 2029 and 15 June 2029.

73. Each Capital Notes 3 will be Redeemed by payment of the Face Value to the relevant Holder. Distributions for the period from (and including) the last Distribution Payment Date to (but excluding) the Redemption Date will be paid subject to the conditions for payment of a Distribution being met.

74. Each date on which a Redemption of Capital Notes 3 occurs in accordance with the Terms is a Distribution Payment Date.

Status: **legally binding**

Optional Resale

75. BOQ may elect that all or some of the Capital Notes 3 will be transferred to one or more Nominated Purchasers (Resale).
76. The Nominated Purchaser or Nominated Purchasers will be one or more third parties appointed by BOQ and cannot be BOQ itself or a Related Entity.
77. Under a Resale, each Holder on the Resale Date is taken to irrevocably offer to sell the Capital Notes 3 that are subject to the Resale Notice to the Nominated Purchaser or Nominated Purchasers on the Resale Date for a purchase price equal to the Issue Price of that Capital Notes 3. Each Capital Notes 3 which is to be Resold will be transferred to the Nominated Purchaser or Nominated Purchasers free from any encumbrance.
78. Each date on which a Resale of Capital Notes 3 occurs in accordance with the Terms is a Distribution Payment Date.

Other matters

79. This Ruling is made on the basis that:
- (a) During the term of the scheme, BOQ is a resident of Australia under the income tax laws of Australia and of no other jurisdiction.
 - (b) The Capital Notes 3 are equity interests in BOQ under Division 974 and are non-share equity interests in BOQ as defined in subsection 995-1(1).
 - (c) The Capital Notes 3 form part of BOQ's Additional Tier 1 Capital for the purposes of the prudential standards determined by APRA and in force under section 11AF of the *Banking Act 1959*.
 - (d) Any BOQ Ordinary Shares issued on Conversion will be equity interests in BOQ as defined in Subdivision 974-C.
 - (e) The Distributions are frankable distributions under section 202-40 and will not be unfrankable under section 202-45.
 - (f) BOQ expects to frank each Distribution in accordance with the franking policy that applies to ordinary shares in BOQ (at such time as Distributions are made), and in a manner that satisfies the benchmark rule in Division 203 for the franking period in which a Distribution is made. The dividend payout ratios and BOQ's policies in relation to the franking of its distributions on ordinary share capital, any preference share capital, and other non-share equity interests of BOQ (to the extent such dividends/distributions are frankable) are not expected to change as a result of the issue of the Capital Notes 3.
 - (g) BOQ will not differentially frank Distributions to different Holders according to their tax status or on any other basis.
 - (h) Immediately before payment of a Distribution on the Capital Notes 3, BOQ will have available frankable profits (worked out under section 215-20) at least equal to the Distribution.
 - (i) Distributions on the Capital Notes 3 will not be sourced directly or indirectly from BOQ's non-share capital account or share capital account.
 - (j) Distributions on the Capital Notes 3 will not be debited to any extent against BOQ's non-share capital account or share capital account.

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- (k) The share capital account of BOQ will not become tainted (within the meaning of Division 197) by the issue of the Capital Notes 3 or the issue of BOQ Ordinary Shares on Conversion of the Capital Notes 3.
- (l) On Conversion or Redemption, BOQ will debit the Issue Price of the Capital Notes 3 to its non-share capital account (within the meaning of section 164-10).
- (m) The financial statements of the BOQ group will be prepared in accordance with the applicable accounting standards.
- (n) BOQ does not currently have on issue any non-share equity interests that constitute Tier-1 Capital issued at or through a permanent establishment which pays distributions that are unfrankable pursuant to section 215-10.
- (o) You (or an associate) will not make, be under an obligation to make, or be likely to make, a 'related payment' (as defined under former section 160APHN of the ITAA 1936) in relation to a Distribution.
- (p) You will hold your Capital Notes 3 for a continuous period of at least 90 days (excluding the day of acquisition and disposal (if relevant)), during the 'primary qualification period' (as defined in former section 160APHD of the ITAA 1936) in relation to a Distribution.
- (q) You will not take any 'positions' as defined in former section 160APHJ of the ITAA 1936) at any time in relation to your Capital Notes 3 apart from holding your Capital Notes 3.
- (r) You (or your connected entities) will not engage in distribution washing (as outlined in section 207-157) in relation to a Distribution (unless entitled to the exception under subsection 207-157(4)).
- (s) Following a failure to Convert the Capital Notes 3 to BOQ Ordinary Shares after a Loss Absorption Event, you will not receive capital proceeds in respect of a Write Off happening and the market value of the Capital Note 3 will be nil following the failure to Convert the Capital Notes 3.
- (t) All parties to the transaction are dealing with each other on arm's length terms and fair value consideration was provided by you to acquire the Capital Notes 3.

Commissioner of Taxation

23 November 2022

Appendix – Explanation

❶ *This Explanation 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.*

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

80. Section 177EA of the ITAA 1936 is a general anti-avoidance provision that applies where one of the purposes (other than an incidental purpose) of a scheme is to enable a taxpayer to obtain an imputation benefit.

81. The conditions in paragraphs 177EA(3)(a) to (d) of the ITAA 1936 will be satisfied, therefore the relevant circumstances of the scheme must be considered to establish whether any person who entered into or carried out the scheme, or any part of the scheme, did so for a more than an incidental purpose of enabling a Holder to obtain an imputation benefit (paragraph 177EA(3)(e) of the ITAA 1936).

82. The Commissioner considers that the relevant circumstances of the scheme do not, on balance, lead to a conclusion that the purpose of enabling Holders to obtain imputation benefits is more than incidental to BOQ’s primary purpose of raising Additional Tier 1 Capital for the purposes of APRA’s prudential standards that will be used for general corporate and funding purposes of BOQ.

Determination under paragraph 204-30(3)(c)

83. Subsection 204-30(1) empowers the Commissioner to make a determination under paragraph 204-30(3)(c) if an entity streams distributions in a certain way.

84. Based on the scheme, there is no evidence of streaming. Distributions will be received by all Holders by reason of their proportionate holding of Capital Notes 3 and not by reference to their tax profiles or individual tax positions. There is nothing in the Terms that allows BOQ to treat Holders differently in respect of their entitlement to a franked Distribution.

Status: **not legally binding**

Gross up and tax offset cancelled in certain circumstances: qualified persons

85. If a Holder is not a qualified person in relation to a Distribution, they:
- do not include the franking credit attached to the dividend in their assessable income (paragraph 207-145(1)(e)), and
 - are not entitled to a tax offset equal to the amount of the franking credit attached to the dividend (paragraph 207-145(1)(f)).
86. Where a Holder (or an associate of that Holder) has not made a related payment in respect of a Distribution, the relevant qualification period is the 'primary qualification period' (as defined in former section 160APHD of the ITAA 1936). The primary qualification period begins on the day after a Holder acquires their Capital Notes 3 and ends on the 90th day after the day Capital Notes 3 becomes ex-distribution.
87. A Holder needs to have held their Capital Notes 3 'at risk' for a continuous period of 90 days (excluding the days of acquisition and disposal, if relevant) during the primary qualification period. Any days a Holder had materially diminished risks of loss or opportunities for gain in respect of their holding are also excluded (former subsection 160APHO(3) of the ITAA 1936).
88. Under former subsection 160APHM(2) of the ITAA 1936, a Holder is taken to have materially diminished the risks of loss and opportunities for gain on a particular day with respect to their Capital Notes 3 if their net position on that day does not retain 30% or more of the risks and opportunities associated with holding Capital Notes 3.
89. Embedded options such as the Resale and Conversion mechanisms do not represent separate positions in relation to the Capital Notes 3 (see also 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?*). Under the Resale mechanism, Holders will only be taken to have made an offer to sell their Capital Notes 3 if BOQ issues a Resale Notice. As BOQ is the only party entitled to make an election to exercise the Resale option, it is not a separate position that Holders have taken in relation to their Capital Notes 3. Similarly, under the Conversion mechanism Holders do not have the right to elect Conversion of their Capital Notes 3.
90. Therefore, the Resale and Conversion mechanisms will not, of themselves, affect Holders' risks of loss or opportunities for gain in respect of their Capital Notes 3.

BOQ Ordinary Shares received on Conversion not a dividend or a non-share dividend

91. The Conversion of Capital Notes 3 for BOQ Ordinary Shares will not result in Holders being taken to have received a dividend or a non-share dividend.
92. Holders are not shareholders of BOQ in respect of their Capital Notes 3 holdings. Accordingly, the Holders will not receive a dividend as defined in subsection 6(1) of the ITAA 1936.
93. The application of the Issue Price to subscribe for BOQ Ordinary Shares on Conversion of the Capital Notes 3 is a crediting of that amount to the Holder and, therefore, a non-share distribution under section 974-115. All non-share distributions are non-share dividends unless they are debited against the distributing company's share capital account (section 974-120). The issue of BOQ Ordinary Shares to Holders on Conversion of Capital Notes 3 will not be a non-share dividend as defined in

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section 974-120, as the Issue Price of the Capital Notes 3 will be debited against BOQ's non-share capital account.

94. Therefore, the issue of BOQ Ordinary Shares to a Holder will not be a dividend as defined in subsection 6(1) of the ITAA 1936 and it will not be a non-share dividend as defined in subsection 974-120.

95. Accordingly, the BOQ Ordinary Shares received on Conversion will not be included in Holders' assessable income under paragraph 44(1)(a) of the ITAA 1936.

Write-Off of BOQ Capital Notes 3

96. CGT event C2 happens if a taxpayer's intangible CGT asset ends by the asset being redeemed, cancelled, released, discharged or satisfied (paragraph 104-25(1)(a) and (b)). When the Capital Notes 3 are Written Off, CGT event C2 happens because they are immediately and irrevocably terminated at that time.

97. The capital proceeds from the CGT event is the total of the money and the market value of any property the Holder received or is entitled to receive (section 116-20). There are no capital proceeds when the Capital Notes 3 are Written Off as the Holders do not receive any money or other property.

98. Where a Holder receives no capital proceeds from the CGT event, they are taken to have received the market value of the CGT asset that is the subject of the event (subsection 116-30(1)). Where CGT event C2 occurs, the market value is to be worked out as if the event had not occurred and was never proposed to occur (subsection 116-30(3A)). However, where the Capital Notes 3 are Written Off because of a failure to Convert the Capital Notes 3 to BOQ Ordinary Shares after a Loss Absorption Event, the market value of the Capital Notes 3 will be nil following the failure to convert.

99. Therefore, CGT event C2 happens for the Holders if their Capital Notes 3 are Written Off following a failure to Convert the Capital Notes 3 to BOQ Ordinary Shares after a Loss Absorption Event, and the Holders are taken to have received nil capital proceeds in relation to the event happening.

Section 45 of the ITAA 1936

100. Section 45 of the ITAA 1936 applies where a company streams the provision of shares and the payment of minimally franked dividends to its shareholders in such a way that:

- the shares are received by some shareholders but not all shareholders, and
- some or all of the shareholders who do not receive the shares receive or will receive minimally franked dividends.

101. BOQ expects to pay fully franked dividends to all its shareholders and fully franked distributions to all holders of non-share equity interests consistently (to the extent that franking credits are available in its franking account). Further BOQ has a history of fully franking its frankable distributions, which is also not expected to change.

102. The Terms do not provide for the issue of shares to all or some Holders in satisfaction of their Distribution entitlement. The issue of BOQ Ordinary Shares on Conversion merely reflects a change in the type of equity interests held by Holders.

Status: **not legally binding**

103. 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 issue of BOQ Ordinary Shares on Conversion as an unfranked dividend in the hands of the Holders.

Section 45A of the ITAA 1936

104. Section 45A of the ITAA 1936 applies where a company streams capital benefits and the payment of dividends to shareholders in such a way that capital benefits are received by shareholders who would derive a greater benefit from receiving the capital benefits (the advantaged shareholders), and it is reasonable to assume that other shareholders (the disadvantaged shareholders) have received, or will receive, dividends.

105. Both the issue of BOQ Ordinary Shares on Conversion and the Redemption of Capital Notes 3 will constitute the provision of a capital benefit to Holders (paragraph 45A(3)(a) of the ITAA 1936 for a Conversion, and paragraph 45A(3)(b) of the ITAA 1936 as affected by subsection 45A(3A) of the ITAA 1936 for a Redemption).

106. However, the issue of BOQ Ordinary Shares on Conversion and the Redemption of Capital Notes 3 will not constitute the streaming of capital benefits because under a Conversion or Redemption BOQ will not selectively direct the flow of capital benefits to Holders who are advantaged shareholders. Accordingly, as this requirement does not apply to the Conversion or Redemption of Capital Notes 3, the Commissioner will not make a determination to treat the whole, or a part, of the capital benefit received by Holders as an unfranked dividend.

Section 45B of the ITAA 1936

107. Section 45B of the ITAA 1936 applies where certain capital benefits are provided to shareholders in substitution for dividends. Where the conditions in subsection 45B(2) of the ITAA 1936 are met, 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 that it will be treated as an unfranked dividend.

108. The issue of BOQ Ordinary Shares to Holders on Conversion and the Redemption of Capital Notes 3 (a Redemption being a non-share capital return) will each constitute a scheme under which Holders are provided with a capital benefit by BOQ (paragraphs 45B(5)(a) and (b), and subsection 45B(7) of the ITAA 1936). As a result, paragraph 45B(2)(a) of the ITAA 1936 will be satisfied.

109. At least some Holders will obtain a tax benefit as defined in subsection 45B(9) of the ITAA 1936 as a result of a Conversion or Redemption. As a result, paragraph 45B(2)(b) of the ITAA 1936 will be satisfied.

110. Therefore, whether section 45B of the ITAA 1936 will apply to a Conversion or Redemption turns on whether paragraph 45B(2)(c) of the ITAA 1936 will be satisfied. This involves considering the relevant circumstances, including but not limited to those listed in subsection 45B(8) of the ITAA 1936, of the Conversion and Redemption schemes to establish whether one of the persons who will enter into or carry out the schemes will do so for a more than incidental purpose of enabling a relevant taxpayer (the Holder) to obtain a tax benefit.

Status: **not legally binding**

111. Having regard to the relevant circumstances, it could not be concluded that the Conversion or Redemption of Capital Notes 3 will be entered into for a more than incidental purpose of enabling Holders to obtain a tax benefit. Accordingly, paragraph 45B(2)(c) of the ITAA 1936 would not be satisfied and 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 the whole, or a part, of the capital benefit provided to Holders on Conversion or Redemption.

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