


CR 2003/16 - Income tax: Australia and New Zealand Banking Group Limited - Employee Share Plan

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Class Ruling

Income tax: Australia and New Zealand Banking Group Limited – Employee Share Plan

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Preamble

*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Arrangement** and **Ruling** parts of this document are a ‘public ruling’ in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains **Class Rulings** and **Taxation Rulings** TR 92/1 and TR 97/16 together explain when a **Ruling** is a public ruling and how it is binding on the Commissioner.*

What this Class Ruling is about

1. This Ruling sets out the Commissioner’s opinion on the way in which the ‘tax law(s)’ identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

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

- 139B of the Income Tax Assessment Act 1936 (ITAA 1936);
- 139BA of the ITAA 1936;
- 139CA of the ITAA 1936;
- 139CC of the ITAA 1936;
- 139CD of the ITAA 1936;
- 139CE of the ITAA 1936;
- 139E of the ITAA 1936;
- 139FA of the ITAA 1936;
- 139FB of the ITAA 1936;
- 139G of the ITAA 1936;
- 130-80 of the ITAA 1997; and

- 130-83 of the ITAA 1997.

Class of persons

3. The class of persons to which this Ruling applies are all Australian resident employees of Australia and New Zealand Banking Group Limited and their subsidiaries (the 'Bank') who participated in the exemption scheme of the ANZ Employee Share Acquisition Plan (the Plan).

Qualifications

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

5. The class of persons defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the arrangement described below at paragraphs 9 and 10 in this Ruling.

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

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- (b) this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling applies from the 2002/2003 year of income. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the

date of issue of the Ruling (see paragraphs 21 to 22 of Taxation Ruling TR 92/20). Furthermore, the Ruling only applies to the extent that:

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

Arrangement

9. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents.

- Class Ruling application dated 22 August 2002;
- Deed of Trust between Australia and New Zealand Banking Group Ltd and ANZEST Pty Ltd;
- ANZ Employee Share Acquisition Plan Rules.

These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description.

10. The following is a brief description of how the Plan works:

- (a) A special purpose trustee company – ANZEST Pty Ltd (ANZEST) has been established to act as trustee in the implementation and administration of the Plan;
- (b) Australian employees of the Bank are invited to acquire \$1,000 worth of ordinary shares in the Bank without payment (the exemption scheme). The scheme is a broadly based scheme available to all Australian employees that meet a minimum 12 months service requirement;
- (c) Each employee is invited to participate on the same terms;
- (d) New shares are allotted to ANZEST, to be held by it on behalf of employees in accordance with the Plan rules. The shares are issued by the Bank for nil consideration and ANZEST is not required to subscribe any money for allotment of shares. The shares are registered in the name of ANZEST;
- (e) The employees interest in the shares held by ANZEST under the scheme is subject to a prohibition on disposal for a period ending on the earlier of 3 years from the

- date of acquisition, or when the employee ceases employment with the Bank or subsidiary;
- (f) There are no rules or other conditions that could result in forfeiture of shares acquired under the scheme;
 - (g) Only employees will be invited to acquire shares under the scheme. Shares are not issued to relatives or associates of employees;
 - (h) The conditions for the acquisition of shares by ANZEST for an employee will be set out in the Plan Rules. The Plan Rules govern the respective relationships between the Bank, the employee and the ANZEST;
 - (i) No employee holds a legal or beneficial interest in more than 5% of the shares in the Bank, and no employee is in a position to vote or control the voting of more than 5% of the shares in the Bank; and
 - (j) Employees are entitled to dividends and other entitlements on their shares and, through ANZEST, to vote their shares.

Ruling

Where the employee makes an election

11. Where a participating employee acquires shares under the Plan and makes an election under section 139E, the discount on the shares will be included in assessable income in the year of income in which the shares are acquired pursuant to subsection 139B(2).

12. The discount will be calculated in accordance with subsection 139CC(2). The discount is the market value of the share at the time it is acquired. As the exemption conditions in section 139CE have been satisfied in relation to the shares acquired by the employees the discount so calculated is subject to reduction pursuant to section 139BA. Only the amount of discount greater than \$1,000 will be included in assessable income.

Where the employee does not make an election

13. Where a participating employee acquires shares under the Plan and does not make an election under section 139E, the amount of discount on the shares will be included in assessable income pursuant to subsection 139B(3) in the year of income in which subsection 139CA(2) determines the cessation time occurs.

14. Where the participating employee disposes of the shares in an arm's length transaction within 30 days of the cessation time, the discount assessable at the cessation time under subsection 139B(3) will be calculated in accordance with subsection 139CC(3). It will be the consideration received on the disposal.

15. A capital gain or capital loss made as a consequence of such a disposal will be disregarded pursuant to subsection 130-83(2).

16. Shares that are not disposed of by the employee in an arm's length transaction within 30 days of the cessation time, will have the discount calculated in accordance with subsection 139CC(4). The discount will be the market value of the share at the cessation time worked out under section 139FA.

17. The first element of the cost base of the shares upon a capital gains tax event occurring will be their market value at the cessation time pursuant to subsection 130-83(3).

Explanations

18. Employees will acquire shares under an 'employee share scheme' for the purposes of Division 13A upon issue of shares to ANZEST under the exemption scheme.

19. An employee acquires a beneficial interest in the shares allocated to them but held in trust on their behalf under paragraph 139(G)(e).

20. The shares acquired under the exemption scheme will be 'qualifying shares' for the purposes of section 139CD(1).

Where the employee makes an election

21. An employee can elect under section 139E that subsection 139B(2) applies for a year of income. The election will apply to each qualifying share acquired by the employee in the year of income. Subsection 139B(2) provides that the discount is included in the taxpayer's assessable income in the year of acquisition of the share, that is, in the year when ANZEST is allocated the share for the benefit of the employee.

22. The discount is calculated in accordance with subsection 139CC(2). As the employee does not provide any consideration for the acquisition of the share the discount is the market value of the share, determined by section 139FA, when it was acquired by the employee. The market value of an ordinary share under section 139FA is:

- if there was at least one transaction on the Australian Stock Exchange in those shares in the week up to and including the date of acquisition – the weighted average of the prices at which those shares were traded on the Australian Stock Exchange during that week; or
- if there were no such transactions in the week up to and including the date of acquisition – the last price at which an offer was made on the Australian Stock Exchange in that period to buy such a share, or if no offer was made, the value of the share determined as if section 139FB applied to the share.

23. Section 139CE contains three exemption conditions:

- The first exemption condition is that the scheme did not contain any conditions which could result in employees forfeiting ownership of the shares that were acquired under the Plan, subsection 139CE(2);
- The second exemption condition is that the scheme is operated so that no employee would be permitted to dispose of shares acquired under the Plan until three years after the acquisition or until the employee ceases to be an employee of the employer – whichever event occurs first, subsection 139CE(3); or
- The third exemption condition is that the employee share scheme and any financial assistance scheme in respect of the acquisition of shares under the employee share scheme is operated on a non discriminatory basis, subsection 139CE(4).

The scheme as outlined satisfies the exemption conditions in section 139CE. Therefore subsection 139BA(2) will apply so that only the discount greater than \$1,000 will be included in the employee's assessable income.

24. The first element of the cost base of the shares for the purposes of the capital gains tax provisions will be determined in accordance with subsection 130-80(2). No advice is provided on the operation of this provision as it is currently subject to a retrospective legislative amendment contained in *Taxation Laws Amendment Bill (No. 8) of 2002*.

Where the employee does not make an election

25. Where a participating employee has not made an election under section 139E, as the shares are qualifying shares, the discount in relation to the shares will be included in assessable income pursuant to

subsection 139B(3), in the year in which cessation time occurs. As the shares acquired under the plan will have restrictions on their disposal, ie. an employee will be prohibited from disposing of the shares for the first 3 years after acquisition, subsection 139CA(2) will determine when cessation time occurs.

26. Under the plan, cessation time will be the earliest of:

- The later of the time when:
 - (i) any restriction preventing the taxpayer from disposing of the share; and
 - (ii) any condition that could result in the taxpayer forfeiting the share

cease to have effect. As set out in the Plan Rules this will be the earlier of three years after an employee acquires a beneficial interest in the share; and

- The time when the employment with the Bank in respect of which the share was acquired ceases.

27. Subsection 139CC(3) calculates the discount to be included in assessable income where the shares are disposed of by the employee in an arm's length transaction within 30 days of the cessation time. As no consideration has been given by the employee for the shares, the entire proceeds received by the employee on disposal will represent the discount to be included in assessable income.

28. As the share is a qualifying share and no election was made under section 139E for the year of income that the share was acquired, a capital gain or loss made on the disposal will be disregarded in accordance with subsection 130-83(2).

29. Shares that are not disposed of by the employee in an arm's length transaction within 30 days of cessation time will have the discount to be included in assessable income calculated in accordance with subsection 139CC(4). As no consideration has been given by the employee for the shares, the discount is the market value of the shares at cessation time.

30. As the shares in the Bank are listed on an approved stock exchange the market value of the shares for the purposes of paragraph 139CC(4)(a) will be determined in accordance with section 139FA, see paragraph 22.

31. The cost base of the shares for the purposes of the capital gains tax provisions will be determined in accordance with subsection 130-83(3), the first element being the market value of the shares worked out under section 139FA at cessation time.

Detailed contents list

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

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Commissioner of Taxation

12 March 2003

Previous draft:

Not previously released in draft form.

Related Rulings/Determinations:

TR 92/1; TR 92/20; TR 97/6;

CR 2001/1

Subject references:

- Employee Share Schemes

Legislative references:

- ITAA 1936 139B
- ITAA 1936 139B(2)
- ITAA 1936 139B(3)
- ITAA 1936 139BA
- ITAA 1936 139BA(2)
- ITAA 1936 139CA
- ITAA 1936 139CA(2)
- ITAA 1936 139CC
- ITAA 1936 139CC(2)
- ITAA 1936 139CC(3)
- ITAA 1936 139CC(4)
- ITAA 1936 139CC(4)(a)
- ITAA 1936 139CD
- ITAA 1936 139CD(1)
- ITAA 1936 139CE
- ITAA 1936 139CE(2)
- ITAA 1936 139CE(3)
- ITAA 1936 139CE(4)
- ITAA 1936 139E
- ITAA 1936 139E(1)
- ITAA 1936 139FA
- ITAA 1936 139FB
- ITAA 1936 139G
- ITAA 1936 139G(e)
- ITAA 1997 130-80
- ITAA 1997 130-80(2)
- ITAA 1997 130-83
- ITAA 1997 130-83(2)
- ITAA 1997 130-83(3)

- Taxation Laws Amendment Bill (no.8)of 2002
 - TAA 1953 Part IVAAA
 - Copyright Act 1968
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ATO References

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