


CR 2007/115 - Income tax: scrip for scrip roll-over: acquisition of E*TRADE Australia Limited by ANZ Online Holdings Pty Limited

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Class Ruling

Income tax: scrip for scrip roll-over: acquisition of E*TRADE Australia Limited by ANZ Online Holdings Pty Limited

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1 This publication provides you with the following level of protection:

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

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

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

What this Ruling is about

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

Relevant provision(s)

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

- section 98 of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 99A of the ITAA 1936;
- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 97);
- section 109-10 of the ITAA 1997;
- Subdivision 115-A of the ITAA 1997;
- section 116-20 of the ITAA 1997; and
- Subdivision 124-M of the ITAA 1997.

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

Class of entities

3. The class of entities to which this Ruling applies is the shareholders in E*TRADE Australia Limited (E*TRADE) who:

- hold E*TRADE shares on capital account;
- accept the Offer made by ANZ Online Holdings Pty Limited (ANZ Online) to acquire their E*TRADE shares or whose shares are compulsorily acquired under the compulsory acquisition process set out in Chapter 6A of the *Corporations Act 2001*;
- are 'residents of Australia' within the meaning of that expression in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- are not 'temporary residents' within the meaning of that expression in subsection 995-1(1); and
- are not 'significant stakeholders' in relation to the arrangement within the meaning of that expression in section 124-783.

In this Ruling, a person belonging to this class of entities is referred to as an 'E*TRADE shareholder'.

Qualifications

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

5. 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 13 to 29 of this Ruling.

6. 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.

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Date of effect

8. This Ruling applies from 19 February 2007 to 30 June 2008. However, the Ruling continues to apply after this date to all entities within the specified class who entered into the specified scheme during the term of the Ruling, subject to there being no change in the scheme or in the entities involved in the scheme.

9. The Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:

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

10. If this Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

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

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

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

Scheme

13. The following description of the scheme is based on information provided by the applicant. The following documents form part of, and are to be read with, the description:

- (i) ANZ Media Release dated 19 February 2007: *ANZ announces recommended cash takeover offer for E*TRADE Australia;*
- (ii) ANZ Online Bidder's Statement dated and lodged with the Australian Securities and Investment Commission (ASIC) on 2 March 2007 and posted to E*TRADE shareholders on 14 March 2007 (Bidder's Statement);
- (iii) ANZ Media Release dated 10 April 2007: *ANZ Offer for E*TRADE Australia extended*, which includes a Notice of Variation dated 10 April 2007;
- (iv) ANZ Media Release dated 23 April 2007: *ANZ increases E*TRADE Australia offer to \$4.30 with scrip alternative; declares offer final and unconditional;*
- (v) ANZ Media Release dated 23 April 2007: *ANZ acquires controlling stake in E*TRADE Australia;*
- (vi) ANZ Media Release dated 26 April 2007: *ANZ 2007 Interim Profit \$2,102 million;*
- (vii) ANZ Media Release dated 27 April 2007: *ANZ lodges Supplementary Bidder's Statement for E*TRADE Australia takeover;*
- (viii) ANZ Online Supplementary Bidder's Statement dated and lodged with the ASIC on 27 April 2007 and posted to E*TRADE shareholders on 30 April 2007 (Supplementary Bidder's Statement);
- (ix) ANZ Media Release dated 15 May 2007: *ANZ stake in E*TRADE exceeds 80%;*
- (x) ANZ Media Release dated 16 May 2007: *ANZ stake in E*TRADE exceeds 90%; ANZ will move to compulsorily acquire remaining shares;*
- (xi) ANZ Media Release dated 18 May 2007: *ANZ Adjusted VWAP for E*TRADE calculated as \$29.06;* and
- (xii) Notice of compulsory acquisition following takeover bid dated 22 May 2007.

14. On 19 February 2007, Australia and New Zealand Banking Group Limited (ANZ) announced a recommended offer on behalf of its wholly-owned subsidiary, ANZ Online, to acquire the 65.8% of the issued shares in E*TRADE Australia Limited (E*TRADE) that the ANZ wholly-owned group did not already own.

15. By way of the ANZ Online Bidder's Statement, an offer dated 14 March 2007 (the Offer) was made by ANZ Online to E*TRADE shareholders to acquire their E*TRADE shares for a consideration of \$4.05 cash per E*TRADE share. The Offer could be accepted by an E*TRADE shareholder making a valid acceptance which was received by ANZ Online before the Offer period closed.
16. The Offer period, as outlined in the ANZ Online Bidder's Statement, was due to close on 18 April 2007 (unless further extended in accordance with the *Corporations Act 2001*).
17. On 10 April 2007, by way of a Notice of Variation sent to E*TRADE shareholders, ANZ Online varied the Offer to extend the Offer period until 4 May 2007 (unless further extended).
18. On 23 April 2007, ANZ announced that the Offer would be varied by:
- (i) increasing the cash consideration offered to \$4.30 per E*TRADE share;
 - (ii) offering a scrip alternative of ANZ shares to the equivalent value of \$4.30 per E*TRADE share; and
 - (iii) extending the Offer period until 15 May 2007 (unless further extended).
19. By way of a Notice under section 650F of the *Corporations Act 2001*, that was sent to E*TRADE shareholders on 23 April 2007, the Offer was declared unconditional.
20. On 24 April 2007, ANZ announced that it had acquired a controlling stake in E*TRADE.
21. On 26 April 2007, ANZ announced a proposed interim dividend of \$0.62 per share in respect of the financial year ending 30 September 2007.
22. By way of the Supplementary Bidder's Statement which was posted to E*TRADE shareholders on 30 April 2007, ANZ Online varied the Offer, as had been announced on 23 April 2007, by:
- (i) increasing the cash consideration offered to \$4.30 per E*TRADE share;
 - (ii) providing E*TRADE shareholders with a choice to elect to receive ANZ shares as an alternative form of consideration. The number of ANZ shares that an E*TRADE shareholder would be entitled to was to be determined by multiplying the number of their E*TRADE shares by \$4.30 and then dividing that number by the Adjusted ANZ Volume Weighted Average Price (VWAP) (calculated according to the formula set out in the Supplementary Bidder's Statement); and
 - (iii) extending the Offer period to 15 May 2007 unless further extended.

23. E*TRADE shareholders who had accepted the Offer prior to the Supplementary Bidder's Statement being issued would be entitled to receive the increased cash consideration of \$4.30 per E*TRADE share or make a fresh election to receive the ANZ shares as consideration in accordance with section 650B of the *Corporations Act 2001*.

24. On 18 May 2007, ANZ announced that the ANZ Adjusted VWAP for the E*TRADE Offer was \$29.96. Based on the ANZ Adjusted VWAP and subject to rounding, E*TRADE shareholders who elected to receive scrip consideration under the Offer received 0.1435 ANZ shares for each E*TRADE share.

25. The ANZ shares issued as scrip consideration were issued fully paid and ranked equally with ANZ's existing shares. However, as they were not issued until after the record date for the ANZ interim dividend, they carried no entitlement to the dividend.

26. On 15 May 2007, ANZ announced that it had secured ownership of more than 80% of the E*TRADE shares. On the same day ANZ Online extended the Offer period until 25 May 2007.

27. On 16 May 2007, ANZ announced that it had a relevant interest of 91.75% in E*TRADE.

28. On 27 June 2007, ANZ Online completed the compulsory acquisition of the remaining E*TRADE shares.

29. Under the Offer, the ANZ shares to which some foreign E*TRADE shareholders would otherwise be entitled, were issued to an ASIC-approved nominee for sale in accordance with subsection 619(3) of the *Corporations Act 2001* and the proceeds were distributed to those foreign E*TRADE shareholders net of expenses.

Ruling

Disposal of E*TRADE shares to ANZ Online

30. Under section 104-10, CGT event A1 happens as a result of the disposal of an E*TRADE share from an E*TRADE shareholder to ANZ Online.

Time of the event

31. Where an E*TRADE shareholder accepted the Offer to dispose of their E*TRADE shares to ANZ Online, CGT event A1 happens at the time that the E*TRADE shareholder entered into the contract to dispose of their E*TRADE shares (paragraph 104-10(3)(a)). Under the terms of the Offer, the contract is entered into when ANZ Online received the E*TRADE shareholder's acceptance of the Offer. Any variations to the terms of the Offer made after the Offer was accepted by ANZ Online will not affect the time that the contract was entered into.

32. Where an E*TRADE shareholder did not accept the Offer, CGT event A1 happens at the time that the E*TRADE shares are compulsorily acquired by ANZ Online in accordance with Chapter 6A of the *Corporations Act 2001* (paragraph 104-10(3)(b) of the ITAA 1997).

Capital gain or capital loss

33. An E*TRADE shareholder makes a capital gain from CGT event A1 happening if the capital proceeds from the disposal of an E*TRADE share are more than its cost base. The shareholder makes a capital loss if the capital proceeds are less than the share's reduced cost base (subsection 104-10(4)).

34. The capital proceeds from the disposal of each E*TRADE share is:

- (i) for an E*TRADE shareholder who receives cash consideration (including shareholders whose shares are compulsorily acquired in accordance with the *Corporations Act 2001*) – \$4.30 (paragraph 116-20(1)(a) of the ITAA 1997); and
- (ii) for an E*TRADE shareholder who receives ANZ shares as consideration (including those shareholders whose shares are compulsorily acquired in accordance with the *Corporations Act 2001*, for whom the ANZ shares constitute compensation) – so much of the total market value of the ANZ shares received (worked out as at the time that CGT event A1 happens to the E*Trade shareholder) as is reasonably attributable to the disposal of the E*Trade share (paragraph 116-20(1)(b) of the ITAA 1997).

35. For the purposes of subparagraph 34(ii) of this Ruling, the amount that is reasonably attributable to the disposal of each E*TRADE share is worked out by multiplying the total number of ANZ shares received in respect of the disposal of the E*TRADE shareholder's E*TRADE shares, by the market value of an ANZ share (worked out as at the time of the CGT event), and dividing that figure by the total number of E*TRADE shares exchanged.

Availability of scrip for scrip roll-over

36. E*TRADE shareholders can choose scrip for scrip roll-over for their E*TRADE shares under the Offer if:

- (i) they acquired their E*TRADE shares on or after 20 September 1985 (paragraph 124-780(3)(a));
- (ii) apart from the scrip for scrip roll-over, they would make a capital gain from a CGT event happening in relation to the E*TRADE share (paragraph 124-780(3)(b)); and

- (iii) they could not disregard (except because of a roll-over) any capital gain they might make from a replacement ANZ Share (subsection 124-795(2)).

37. If an E*TRADE shareholder chooses roll-over, the capital gain arising from the disposal of the E*TRADE shares is disregarded (subsection 124-785(1)).

38. If an E*TRADE shareholder chooses roll-over, the first element of the cost base of a replacement ANZ share is worked out by reasonably attributing to it the cost base of any E*TRADE shares for which it was exchanged and for which a roll-over was obtained (subsection 124-785(2)).

Discount capital gain

39. E*TRADE shareholders who received cash for the E*TRADE shares, or who received ANZ shares and do not choose scrip for scrip roll-over, are eligible to treat any resulting capital gain as a 'discount capital gain' provided that:

- the E*TRADE shareholder is an individual, complying superannuation entity or, subject to paragraph 40 of this Ruling, a trust (section 115-10);
- the capital gain has been calculated using a cost base that has been calculated without reference to indexation at any time; and
- the E*TRADE shares had been held for at least 12 months before the disposal or compulsory acquisition.

40. Where the E*TRADE shareholder is a trust, sections 115-220, 115-222 and 115-225 of the ITAA 1997 apply where the trustee is assessed under paragraph 98(3)(b) of the ITAA 1936, subsection 98(4) of the ITAA 1936 or section 99A of the ITAA 1936.

The acquisition of ANZ shares

41. E*TRADE shareholders acquire their ANZ shares under the Offer when they enter into the contract to dispose of their E*TRADE shares, or if there is no contract, when the ANZ shares are issued or allotted (item 2 in table in section 109-10).

42. However, for the purposes of applying the CGT discount to any later disposal of their ANZ shares, E*TRADE shareholders who choose scrip for scrip roll-over are taken to have acquired their ANZ shares when they acquired the corresponding E*TRADE shares (item 2 in the table in subsection 115-30(1)).

Appendix 1 – Explanation

❶ ***This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.***

Disposal of E*TRADE shares to ANZ Online

43. CGT event A1 in section 104-10 happens if there is a change in the ownership of an asset from one entity to another. On the disposal of an E*TRADE share to ANZ Online a change of ownership occurred and therefore CGT event A1 happened.

Time of the event

44. The time at which CGT event A1 happens determines the income year in which any capital gain or capital loss is made and whether the CGT discount applies to any capital gain.

45. The time of CGT event A1 is when a contract to dispose of the asset is entered into, or if there is no contract, when the change of ownership occurs (subsection 104-10(3)).

46. For E*TRADE shareholders who accepted the Offer, CGT event A1 happened on the day the E*TRADE shareholder entered into the contract to dispose of their E*TRADE shares to ANZ Online. Under the terms of the Offer, an E*TRADE shareholder was taken to have entered into the contract to dispose of their E*TRADE shares on the date that ANZ Online received the E*TRADE shareholder's acceptance of the Offer.

47. Unless the contrary is proven, an E*TRADE shareholder is entitled to presume that:

- (i) ANZ Online received the acceptance in the ordinary course of the Post (section 29 of the *Acts Interpretation Act 1901*); and
- (ii) in respect of acceptances posted within Australia, receipt is the fourth working day after the acceptance was posted (section 160 of the *Evidence Act 1995*).

48. In the case of a CHES Holding E*TRADE shareholder, the time of acceptance was the time that the Controlling Participant (usually the broker) complied with the relevant requirements of the ASTC Settlement Rules.

49. E*TRADE shareholders that did not accept the Offer had their E*TRADE shares compulsorily acquired in accordance with Chapter 6A of the *Corporations Act 2001*. Those E*TRADE shareholders disposed of their shares when the compulsory acquisition occurred. CGT event A1 is taken to have happened when the change of ownership of the E*TRADE shares occurred (subsection 104-10(3) of the ITAA 1997).

Capital gain or capital loss

50. An E*TRADE shareholder makes a capital gain from CGT event A1 happening if the capital proceeds in respect of the disposal of an E*TRADE share exceed its cost base. An E*TRADE shareholder makes a capital loss if the capital proceeds in respect of the disposal of an E*TRADE share are less than its reduced cost base (subsection 104-10(4)).

51. E*TRADE shareholders who acquired E*TRADE shares in different parcels (for example on different days, for different prices or with different brokerage fees) will have to apply this Ruling to each parcel separately.

52. Subsection 116-20(1) provides that the capital proceeds from a CGT event are the total of the money and the market value (worked out at the time of the event) of any other property received or entitled to be received in respect of the event happening.

53. The capital proceeds depend on whether an E*TRADE shareholder chose to receive cash or ANZ shares as consideration for the disposal of their E*TRADE shares, or whether the E*TRADE shares were compulsorily acquired. The capital proceeds are:

- (i) for those E*TRADE shareholders who receive cash consideration (including those whose shares were compulsorily acquired) – \$4.30 per E*TRADE share; and
- (ii) for those E*TRADE shareholders who chose to receive ANZ shares as consideration (including those shareholders whose shares were compulsorily acquired in accordance with the *Corporations Act 2001*, for whom the ANZ shares constitute compensation) – the market value of the ANZ shares (discussed below) at the time that CGT event A1 happens to the E*TRADE shareholder in respect of their E*TRADE shares.

Market value of the ANZ shares

54. An E*TRADE shareholder who chose to receive ANZ shares as consideration for the disposal of their E*TRADE shares must therefore determine the market value of the ANZ shares as at the time that the contract for the disposal of the E*TRADE shares was entered into (that is, the date that ANZ Online received the E*TRADE shareholder's acceptance of the Offer), or if there is no contract, when the change of ownership occurs.

Choosing scrip for scrip roll-over

55. Scrip for scrip roll-over enables a shareholder to disregard a capital gain from a share that is disposed of as part of a corporate takeover or merger if the shareholder receives a replacement share in exchange.

56. A capital gain is disregarded completely if the only capital proceeds the shareholder receives consists of one or more replacement share(s). If the shareholder receives some other form of capital proceeds, the capital gain is disregarded only to the extent that the shareholder receives shares. The roll-over also provides that the first element of the cost base and reduced cost base of the replacement share is based on the cost base of the original share at the time of the roll-over.

Availability of scrip for scrip roll-over

57. Subdivision 124-M contains a number of conditions for, and exceptions to, a shareholder being eligible to choose scrip for scrip roll-over. The main conditions and exceptions that are relevant to the circumstances of the takeover of E*TRADE are:

- (i) shares are exchanged for shares in another company;
- (ii) the exchange occurs as part of a single arrangement;
- (iii) conditions for roll-over are satisfied;
- (iv) further conditions are not applicable or are satisfied;
and
- (v) exceptions to obtaining scrip for scrip roll-over are not applicable.

These conditions are explained below.

Shares are exchanged for shares in another company

58. Subparagraph 124-780(1)(a)(i) requires an entity (an E*TRADE shareholder) to exchange a share in a company for a share in another company.

59. This requirement is satisfied for:

- (vi) an E*TRADE shareholder who chose ANZ shares as consideration for the disposal of their E*TRADE shares under the Offer;
- (vii) an E*TRADE shareholder who initially accepted the cash Offer but made a 'fresh election' in accordance with subsection 650B(2) of the *Corporations Act 2001* to receive ANZ shares as consideration for the disposal of their E*TRADE shares.

60. In each of these cases, the E*TRADE shareholder receives ANZ shares in exchange for the disposal of their E*TRADE shares.

The exchange occurs as part of a single arrangement

61. Paragraph 124-780(1)(b) requires that shares in an entity (E*TRADE, the original entity) be exchanged in consequence of a single arrangement. In the context of the scrip for scrip roll-over provisions, the takeover of E*TRADE constitutes a single arrangement. This single arrangement must also satisfy the following conditions.

(a) 80% ownership

62. Paragraph 124-780(2)(a) requires that shares in an entity (E*TRADE, the original entity) be exchanged as a consequence of a single arrangement that results in another entity (ANZ, the acquiring entity) becoming the owner of 80% or more of the voting shares in the original entity (E*TRADE).

63. Subparagraph 124-780(2)(a)(ii) provides that this requirement will be satisfied if one or more companies that are members of a wholly-owned group increase the percentage of voting shares they hold in the original entity to 80% or more.

64. The only issued shares in E*TRADE were ordinary shares. These shares satisfied the definition of 'voting shares' in subsection 995-1(1).

65. In the context of the scrip for scrip roll-over provisions, ANZ and ANZ Online have acquired 80% or more of the ordinary shares in E*TRADE.

66. The compulsory acquisition of shares must be 'in consequence of the arrangement'. This test will be satisfied if the share acquisition has a causal connection with the arrangement. Where, after a takeover offer expires, shares are acquired under powers of compulsory acquisition under the Corporations Law, the requisite causal connection exists: see Explanatory Memorandum to the New Business Tax System (Capital Gains Tax) Bill 1999.

(b) All voting share owners participate

67. Paragraph 124-780(2)(b) requires that the exchange of shares must be in consequence of a single arrangement in which at least all owners of voting shares in the original entity (apart from the acquiring entity or members of the acquiring entity's wholly-owned group) could participate.

68. This requirement is satisfied as the Offer was made to all owners of ordinary shares and, therefore, to all owners of voting shares, in E*TRADE.

(c) Participation is on substantially the same terms

69. Paragraph 124-780(2)(c) requires that the exchange is in consequence of an arrangement in which participation was available on substantially the same terms for all of the owners of interests of a particular type in the original entity (E*TRADE).

70. E*TRADE shareholders, other than foreign shareholders, were invited to participate in the Offer on identical terms.

71. Under the Offer, the ANZ shares to which some foreign E*TRADE shareholders would otherwise be entitled to receive, were issued to an ASIC-approved nominee for sale in accordance with subsection 619(3) of the *Corporations Act 2001* and the proceeds were distributed to those foreign E*TRADE shareholders net of expenses.

72. This does not prevent the Offer from being on substantially the same terms as Note 2 to subsection 124-780(2) states that participation will still be on substantially the same terms if matters referred to in subsections 619(2) and 619(3) of the *Corporations Act 2001* affect the capital proceeds that each participant can receive.

73. It follows that the condition in paragraph 124-780(2)(c) is satisfied.

Conditions for roll-over are satisfied

74. Paragraph 124-780(1)(c) requires that the conditions for roll-over outlined in subsection 124-780(3) must be met. These conditions must be met in relation to each E*TRADE share for which scrip for scrip roll-over is chosen. The conditions in subsection 124-780(3) are as follows.

*(a) The E*TRADE shares are post-CGT shares*

75. Paragraph 124-780(3)(a) requires that the original interest holder (an E*TRADE shareholder) acquired its original interest (E*TRADE shares) on or after 20 September 1985.

76. As all of the issued shares in E*TRADE were acquired after 2 January 1986 when the company was first registered, this requirement is satisfied.

*(b) An E*TRADE shareholder would otherwise make a capital gain*

77. Paragraph 124-780(3)(b) requires that, apart from the roll-over, the original interest holder (an E*TRADE shareholder) would make a capital gain from a CGT event happening in relation to its original interest (the E*TRADE shares).

78. Whether an E*TRADE shareholder would, apart from the roll-over, make a capital gain from the disposal of any of their E*TRADE shares to ANZ Online is a question of fact that is dependent on the specific circumstances of each shareholder. An E*TRADE shareholder makes a capital gain from the disposal of each E*TRADE share when the capital proceeds from the disposal exceed the cost base of the E*TRADE share.

*(c) E*TRADE shareholders receive replacement interests in the ultimate holding company of the acquiring entity*

79. ANZ Online was a member of a wholly-owned group of companies of which ANZ was the ultimate parent company. Paragraph 124-780(3)(c) therefore requires that the replacement interest is in the ultimate holding company of the wholly owned group which includes the acquiring entity (that is, in ANZ).

80. This requirement is satisfied as the replacement shares received by E*TRADE shareholders are shares in ANZ, which is the ultimate holding company of the wholly-owned group of which ANZ Online is a member.

*(d) An E*TRADE shareholder can choose scrip for scrip roll-over*

81. Paragraph 124-780(3)(d) requires that the original interest holder (an E*TRADE shareholder) chooses the roll-over, or if section 124-782 applies to it for the arrangement, the original interest holder and the replacement entity jointly choose to obtain the roll-over.

82. Whether the E*TRADE shareholder chooses to obtain roll-over in relation to the disposal of their E*TRADE shares is a question of fact to be determined in respect of each individual shareholder.

Further conditions are not applicable

83. Subsection 124-780(4) provides that the additional requirements in subsection 124-780(5) must be satisfied if the original interest holder (an E*TRADE shareholder) and the acquiring entity (ANZ Online) did not deal with each other at arm's length and:

- neither the original entity (E*TRADE) nor the replacement entity (ANZ) had at least 300 members just before the arrangement started (paragraph 124-780(4)(a)); or
- the original interest holder (an E*TRADE shareholder), the original entity (E*TRADE) and the acquiring entity (ANZ Online) were all members of the same linked group just before the arrangement started (paragraph 124-780(4)(b)).

84. Paragraph 124-780(4)(a) does not apply because E*TRADE and ANZ had at least 300 members just before the arrangement started. Section 124-810 does not apply to either E*TRADE or ANZ because their ownership was not concentrated in the manner contemplated by that section.

85. Paragraph 124-780(4)(b) does not apply because E*TRADE and ANZ Online were not members of the same linked group (as defined in section 170-260) just before the arrangement started.

Exceptions to obtaining scrip for scrip roll-over are not applicable

86. Section 124-795 describes a number of situations in which scrip for scrip roll-over is not available. The exceptions in section 124-795 are as follows.

*(a) E*TRADE shareholders who are foreign residents*

87. Subsection 124-795(1) provides that roll-over is not available if, just before the disposal, the original interest holder was a foreign resident unless, just after the acquisition of the replacement interest, the replacement interest is taxable Australian property.

88. The class of entities to whom this Ruling applies is limited to E*TRADE shareholders who were residents of Australia at the time of the E*TRADE takeover. As a consequence, the exception in subsection 124-795(1) does not apply to limit this Ruling in this regard.

(b) A capital gain cannot (apart from a roll-over) be otherwise disregarded

89. Paragraph 124-795(2)(a) provides that the roll-over is not available if any capital gain the original interest holder (an E*TRADE shareholder) might make from their replacement interest (an ANZ share) would be disregarded (except because of a roll-over).

90. Whether the capital gain arising from the subsequent disposal of an ANZ share is disregarded because of another provision of the ITAA 1997 or the ITAA 1936 (for example because the shareholder holds their ANZ shares as trading stock) is a question of fact to be determined in respect of each E*TRADE shareholder.

(c) Interest-holder and acquirer are members of wholly-owned group and acquirer is a foreign resident

91. Paragraph 124-795(2)(b) provides that roll-over is not available if the original interest holder (an E*TRADE shareholder) and the acquiring entity (ANZ Online) are members of the same wholly-owned group just before the original interest holder stops owning their original interest (an E*TRADE share), and the acquiring entity is a foreign resident.

92. This exception does not apply as the E*TRADE shareholders and ANZ Online were at no time members of the same wholly-owned group. In addition, ANZ Online is not a foreign resident.

*(d) No roll-over available to the E*TRADE shareholders under either Division 122 or Subdivision 124-G*

93. Subsection 124-795(3) provides that scrip for scrip roll-over is not available if a roll-over can be chosen under Division 122 (about roll-over for the disposal of assets to, or the creation of assets in, a wholly-owned company) or Subdivision 124-G (about exchanging shares in one company for shares in another company).

94. This exception does not apply as neither of the roll-overs in Division 122 and Subdivision 124-G is available to the E*TRADE shareholders in respect of the disposal of their E*TRADE shares under the scheme.

Consequences of choosing roll-over

Capital gain disregarded

95. Scrip for scrip roll-over enables a shareholder to disregard all or part of a capital gain from a share that is disposed of in consequence of an arrangement under which the shareholder receives a replacement share in exchange.

96. As the only capital proceeds received by an E*TRADE shareholder, who elected to receive ANZ shares as consideration for the disposal of their E*TRADE shares, were replacement shares, the capital gain is disregarded completely (subsection 124-785(1)).

Cost base of ANZ shares

If scrip for scrip roll-over is chosen

97. Subsections 124-785(2) and 124-785(4) require that where scrip for scrip roll-over is chosen, the first element of the cost base and the reduced cost base of each share received as a result of an exchange is determined by reasonably attributing to it the cost base of the original interest for which it was exchanged.

98. Therefore, where scrip for scrip roll-over is chosen, the first element of the cost base and the reduced cost base of the replacement ANZ share is determined by attributing a reasonable proportion of the cost base of the E*TRADE shares which were exchanged for each new interest. For the purposes of this test, the first element of the cost base and reduced cost base for each ANZ share can be worked out by dividing the total of the cost bases of the E*TRADE shares exchanged by the number of ANZ shares received.

If scrip for scrip roll-over is not, or cannot, be chosen

99. Subsection 110-25(2) provides that the first element of the cost base of an asset is the total of:

- the money you paid or are required to pay in respect of acquiring it; and
- the market value of any other property given or required to be given in respect of acquiring it.

The market value of the property is worked out at the time of the acquisition.

100. For E*TRADE shareholders who do not choose roll-over, the first element of the cost base and reduced cost base of each ANZ share is that proportion of the market value of the E*TRADE shares they disposed of that relates to the ANZ shares acquired under the scheme.

Discount capital gains

101. Capital gains made from a CGT event that happens after 11.45 (by legal time in the Australian Capital Territory) on 21 September 1999 may be eligible for concessional treatment as a 'discount capital gain'. A discount capital gain remaining after the application of any capital losses and net capital losses from previous income years is reduced by the 'discount percentage' when working out the net capital gain. The discount percentage is:

- if the gain is made by an individual or trust other than a complying superannuation entity – 50%; or
- if the gain is made by a complying superannuation entity – 33 1/3%.

102. E*TRADE shareholders who received cash for their E*TRADE shares, or who received ANZ shares and did not choose roll-over, are eligible to treat any resulting capital gain as a 'discount capital gain' provided that

- the E*TRADE shareholder is an individual, complying superannuation entity or, subject to paragraph 103 of this Ruling, a trust (section 115-10);

- the capital gain has been calculated using a cost base that has been calculated without reference to indexation at any time; and
- the E*TRADE shares had been held for at least 12 months before the disposal or compulsory acquisition.

103. Where the E*TRADE shareholder is a trust, the effect of the CGT discount will be reversed to the extent that the trustee is assessed under paragraph 98(3)(b) of the ITAA 1936 (where a non-resident company beneficiary is presently entitled to trust income), under subsection 98(4) of the ITAA 1936 (where a non-resident trust is presently entitled to trust income) or under section 99A of the ITAA 1936 (about net income of the trust estate taxed at a special rate) (sections 115-220, 115-222 and 115-225 of the ITAA 1997).

The acquisition of ANZ shares

104. An E*TRADE shareholder acquires their ANZ shares under the Offer when the E*TRADE shareholder enters into the contract to dispose of their E*TRADE shares, or if there is no contract, when the ANZ shares are issued or allotted (item 2 in the table in section 109-10).

105. For an E*TRADE shareholder who chooses scrip for scrip roll-over, the acquisition date of their ANZ shares for CGT discount purposes is the date they acquired the original E*TRADE shares that were exchanged for the relevant ANZ shares (item 2 in the table in subsection 115-30(1)).

Appendix 2 – Detailed contents list

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Previous draft:

Not previously issued as a draft

Subject references:

- arrangement
- capital proceeds
- CGT event
- company
- cost base
- interests
- scrip for scrip roll-over
- takeover
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