# *CR 2015/54 - Income tax: Keybridge Capital Ltd: return of capital and issue of Convertible Redeemable Promissory Notes*

# Class Ruling

## Income tax: Keybridge Capital Ltd: return of capital and issue of Convertible Redeemable Promissory Notes

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

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

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

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

## What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant 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:

- section 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)
- section 26BB 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
- Division 67 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 104-25 of the ITAA 1997
- section 104-135 of the ITAA 1997
- section 108-5 of the ITAA 1997
- section 109-5 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 116-20 of the ITAA 1997
- section 130-60 of the ITAA 1997
- section 202-40 of the ITAA 1997
- section 204-30 of the ITAA 1997
- section 207-20 of the ITAA 1997
- Subdivision 207-D of the ITAA 1997
- Subdivision 207-F of the ITAA 1997
- section 960-120 of the ITAA 1997, and
- Subdivision 974-B of the ITAA 1997.

All legislative references in this Ruling are to the ITAA 1936 unless otherwise indicated.

**Class of entities**

3. The class of entities to which this Ruling applies are holders of ordinary shares (Ordinary Shares) in Keybridge Capital Limited (Keybridge) who:

- were listed on the share register of Keybridge as at the Record Date (24 June 2015) for the return of capital
- were issued convertible redeemable promissory notes (CRPN) in satisfaction of their return of capital
- are residents of Australia (as defined in subsection 6(1) of the ITAA 1936) during the period they hold the CRPN and Ordinary Shares

- do not hold their Ordinary Shares and CRPN as revenue assets (as defined in section 977-50 of the ITAA 1997) nor as trading stock (as defined in subsection 995-1(1) of the ITAA 1997) – that is, they hold their Ordinary Shares and CRPN broadly on capital account, and
- 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 CRPN and Ordinary Shares.

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

In this Ruling the class of entities is referred to as the 'Holders'.

4. The class of entities to which this Ruling applies does not extend to holders of CRPN who acquired their CRPN otherwise than by way of participating in the return of capital.

**Qualifications**

5. This Ruling does not consider the tax implications of an Early Conversion or Early Redemption of the CRPN pursuant to clause 8.1 of the CRPN Terms.

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 52 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 30 June 2015 (the date of the return of capital) to 30 June 2020 (the end of the income year in which the Maturity Date of the CRPN falls). The Ruling continues to apply after 30 June 2020 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

# Scheme

11. The following description of the scheme is based on information provided by the applicant (KPMG). The following documents (Transaction Documents), or relevant parts of them, form part of and are to be read with this description:

- application for Class Ruling from KPMG dated 22 April 2015
- Notice of Keybridge's Annual General Meeting (AGM) dated 29 October 2014
- Minutes of Keybridge's Annual General Meeting (AGM) held on 28 November 2014
- Prospectus lodged with Australian Securities & Investments Commission (ASIC) on 18 June 2015 for the issue of the CRPN by Keybridge (PDS)
- Keybridge CRPN Terms at Annexure A of the PDS (CRPN Terms), and
- Letter from Keybridge's lawyer dated 17 February 2015 describing the return of capital.

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

12. In this Ruling, unless otherwise indicated, capitalised terms take on the same meaning as in the CRPN Terms.

### Background

13. Keybridge is an Australian resident company. The Ordinary Shares are listed on the Australian Securities Exchange (ASX).

14. The majority of the Ordinary Shares are held by shareholders who are residents of Australia for income tax purposes.

15. Immediately prior to the return of capital, Keybridge's share capital consisted of 178,470,517 fully paid ordinary shares.

**Return of capital**

16. In the Notice of AGM dated 29 October 2014, Keybridge announced its intention to undertake a return of capital to its shareholders of approximately A$5,000,000. The return of capital was to be satisfied by the Keybridge shareholders being issued with up to 5,000,000 CRPN on a pro rata basis. The return of capital was to be an equal reduction of share capital under subsection 256B(2) of the *Corporations Act 2001*.

17. The Explanatory Note to Resolution 8 of Keybridge's Notice of AGM to shareholders dated 29 October 2014 stated:

> The distribution will facilitate a return of capital and the Company will otherwise continue to maintain a strong balance sheet position and a level of shareholder's equity for prudent and efficient capital management. In addition, the creation of the Notes will create advantages in respect of future capital management. The Company intends to expand its underlying investment portfolio in accordance with its established investment strategy in order to seek to generate further growth over time. To do this requires additional capital, and the Directors consider that issuing the Notes achieves that requirement on terms which give the Company a considerable degree of flexibility (especially given the Company's discretion as to whether to redeem or convert the Notes).

18. At the AGM on 28 November 2014, Keybridge shareholders voted to approve an ordinary resolution under section 256C of the *Corporations Act 2001* to reduce the share capital of Keybridge by the amount necessary to issue up to 5,000,000 CRPN.

19. The steps to effect the return of capital were as follows:

- Keybridge reduced its share capital by $0.03 in respect of each Ordinary Share (total distribution A$4,956,936. An amount of A$4,956,939 was debited to the share capital account of Keybridge), and
- the entire capital reduction was compulsorily applied to acquire the CRPN on behalf of Keybridge shareholders who were listed on the share register of Keybridge as at the Record Date (24 June 2015), with each Keybridge shareholder receiving one CRPN (with an issue price of $1) for every 36 Ordinary Shares held as at the Record Date (subject to the rounding down of fractional entitlements to CRPN – see paragraph 21 of this Ruling).

20. The number of Ordinary Shares and the rights attaching to them were not altered by the capital reduction.

21. For the Keybridge shareholders that had a fractional entitlement to a CRPN, Keybridge's directors rounded down their

entitlement to the nearest whole number. The ASX has agreed that this is appropriate and that it does not prevent the return of capital being regarded as a pro rata issue of the CRPN to Keybridge shareholders.

22. The return of capital and issue of CRPN happened on 30 June 2015.

23. In respect of the shareholders with a registered address outside of Australia or New Zealand, Keybridge will appoint a nominee to arrange for the sale of the CRPN that would otherwise have been issued to those shareholders. The nominee will remit the net sale proceeds of the relevant number of the CRPN to each affected shareholder.

### CRPN

24. The CRPN are redeemable, unsecured, convertible promissory notes issued by Keybridge.

25. Each CRPN is issued fully paid for an issue price of $1 (Face Value).

26. Keybridge has applied for the CRPN to be quoted on the ASX.

27. A Holder will not have voting rights under the CRPN, except in the limited circumstances described in the CRPN Terms (refer to clause 4.3(b) of the CRPN Terms).

#### *Interest*

28. Subject to the CRPN Terms, each CRPN bears interest on its Face Value at the Interest Rate from (and including) the Issue Date 30 June 2015 to (but excluding) the Maturity Date or any Early Redemption Date or any Early Conversion Date.

29. The Interest Rate is 7% per annum. Interest will be calculated on the basis of a 365 day year and the number of days elapsed. All calculations of interest will be rounded to four decimal places.

30. Interest is due and payable by Keybridge in respect of the CRPN in arrears on each Interest Payment Date for the relevant Interest Period, unless the Suspension Condition is satisfied in respect of an Interest Payment Date (other than the Maturity Date or an Early Redemption Date or Early Conversion Date) in which case Keybridge's obligation to pay interest will be suspended in accordance with clause 5.3 of the CRPN Terms.

31. The Interest Payment Dates are each 20 March, 20 June, 20 September and 20 December, commencing on 20 September 2015 and ending on the earlier of:

- the Maturity Date
- the Early Redemption Date, and

- the Early Conversion Date.

32. The Suspension Condition is satisfied if Keybridge's Directors determine that Keybridge would not be entitled to pay a dividend on its Ordinary Shares in the same amount as the proposed payment of interest.

33. Interest on a CRPN that is not due and payable on any Interest Payment Date (other than the Maturity Date or any Early Redemption Date or any Early Conversion Date) is automatically suspended and will fall due for payment on the earlier of:

- the next Interest Payment Date on which the Suspension Condition is not satisfied
- the date that any principal in respect of the CRPN is due and payable in accordance with the CRPN Terms
- the Early Conversion Date, and
- the Maturity Date.

34. Interest is cumulative. Interest accrues on any interest that is due and payable but unpaid on a daily basis and compounds on a quarterly basis from (and including) the relevant Interest Payment Date to (but excluding) the actual date of payment at a rate equal to the Interest Rate. This interest is due and payable on the next Interest Payment Date after the non-payment of the relevant interest.

35. While any CRPN are outstanding, Keybridge must not announce the payment of, or make any distribution to, its ordinary shareholders or to holders of preference shares, or buy-back any ordinary shares off-market or preference shares or such other security of indebtedness (in each case other than a Permitted Distribution), if on such a day:

- any amount in respect of interest on any CRPN is due and payable but unpaid
- any amount in respect of interest on any CRPN is suspended in accordance with the CRPN Terms
- any amount in respect of any principal on any CRPN is due and payable but unpaid
- an Event of Default is subsisting, or
- the Keybridge Leverage Ratio exceeds the level specified in clause 4.4(a) of the CRPN Terms.

36. Keybridge may pay all or any Outstanding Interest on all, but not some, of the CRPN to the Holders at any time, provided that the Suspension Condition is not then in effect and subject to Keybridge notifying the Holders at least 5 Business Days prior to such payment of the date of payment and the amount of such interest to be paid in respect of each CRPN.

37. Any payment of interest by Keybridge must be applied:

- first, in payment of any interest accrued on any Suspended Interest which has not been paid or otherwise satisfied in full at that time
- secondly, in payment of any Suspended Interest, and
- lastly, in payment of any Outstanding Interest.

38. For the purposes of this Ruling, both the interest (as described in paragraph 30) and the interest on unpaid interest (as described in paragraph 34) will be referred to as 'Interest'.

39. Interest on the CRPN is expected to be franked to 100%. Should any Interest due and payable to any Holder not be franked to 100%, Keybridge's payment to such Holder shall be increased in accordance with clause 5.9 of the CRPN Terms.

### ***Conversion on the Maturity Date***

*Requested by Holders*

40. Each Holder may, by serving written notice on Keybridge by no later than the date being the date 2 months prior to the Maturity Date, request the Conversion of its CRPN (Holder Conversion Request). A Holder Conversion Request is irrevocable.

41. In the event that Keybridge receives a Holder Conversion Request from a Holder, then Keybridge may (but is not obliged to) elect to convert the CRPN of such Holder into Ordinary Shares at the Maturity Date on the terms and subject to the conditions in clause 6 of the CRPN Terms.

*At Keybridge's option*

42. In the event that any CRPN remain outstanding at the Maturity Date, then Keybridge may (but is not obliged to) elect to convert all outstanding CRPN into Ordinary Shares at the Maturity Date on the terms and conditions in each case set out in clause 6 of the CRPN Terms.

43. Keybridge may elect to convert some CRPN at the Maturity Date and to redeem others.

*On conversion*

44. In the event that Keybridge elects to convert the CRPN of the Holder into Ordinary Shares (whether or not following a Holder Conversion Request), then it must:

- pay such Holder any Outstanding Interest
- redeem each of the CRPN for an amount equal to the Repayment Amount (an amount equal to its Face Value), and
- apply the whole such amount by subscribing, on or behalf of the Holder, for the number of Ordinary Shares calculated under the CRPN Terms (refer to clause 6.4 of the CRPN Terms).

45. The number of Ordinary Shares to which a Holder is entitled upon Conversion of its CRPN is determined by the following formula:

**Number of Ordinary Shares = ARA/Conversion Price**

Where:

**ARA** is the aggregate of the Repayment Amount of the CRPN being converted by the Holder, and

**Conversion Price** is:

(i) In the case of a Conversion resulting from receipt by Keybridge of a Holder Conversion Request or a Tax Event or a Change of Law Event or an Event of Default, a 2.5% discount to the VWAP of Ordinary Shares traded during the Conversion VWAP Period, or

(ii) In the case of a Conversion resulting from an election by Keybridge pursuant to clause 6.2(b) of the CRPN Terms, a 5% discount to the VWAP of Ordinary Shares traded during the Conversion VWAP Period. The Conversion Price is subject to adjustments to the VWAP and Other Adjustments (refer to clauses 6.5 to 6.7 of the CRPN Terms).

***Mandatory Redemption on the Maturity Date if no conversion***

46. In the event that Keybridge does not elect to convert the CRPN of a Holder into Ordinary Shares, or does not receive a Holder Conversion Request from a Holder, then Keybridge must at Maturity Date redeem all of the CRPN of such Holder by paying such Holder any Outstanding Interest on such CRPN and the Repayment Amount as at the Maturity Date.

### *Early Conversion or Early Redemption*

47. Keybridge may, on any date after the Issue Date, redeem all or part (pro rata across Holders) of the CRPN at the greater of:

(i) the Early Redemption Amount; and

(ii) the VWAP Adjusted Redemption Amount

by giving not less than 28 days' notice to the Holders (which notice may be conditional). The 'VWAP Adjusted Redemption Amount' means, in respect of any CRPN that is redeemed pursuant to clause 8.1(a) of the CRPN Terms, a 1% premium to the 'Redemption VWAP' of CRPN traded during the 15 days prior to the redemption notice being given under clause 8.1(a). Keybridge must also pay Holders any Outstanding Interest on the CRPN being redeemed.

48. Keybridge may (at its election and in its absolute discretion) redeem or convert the CRPN at any time after the occurrence of a Tax Event or Change of Law Event (as defined in the CRPN Terms). In the event that Keybridge elects to redeem the CRPN, such Redemption shall be for the greater of:

(i) the Repayment Amount, and

(ii) the VWAP Adjusted Redemption Amount.

The 'VWAP Adjusted Redemption Amount' means, in respect of any CRPN which is redeemed following a Tax Event, a 1% premium to the Redemption VWAP of CRPN traded during the 15 days prior to the date of the Tax Event. Where CRPN are redeemed following a Change of Law Event, the 'VWAP Adjusted Redemption Amount' instead means, in respect of any CRPN, a 1% premium to the Redemption VWAP of CRPN traded during the 15 days prior to the date of the Change of Law Event. Keybridge must also pay Holders any Outstanding Interest on the CRPN being redeemed.

49. Keybridge may at any time redeem the CRPN if the aggregate value of the CRPN on issue is less than $500,000.

50. If an Event of Default occurs and is not remedied, Keybridge may redeem or convert the CRPN of Holders who serve written notice (in Keybridge's absolute discretion, and notwithstanding the preference of the Holder).

### *On Redemption*

51. All CRPN redeemed by Keybridge will be cancelled and may not be reissued.

### Other matters

52. This Ruling is made on the basis that:

(a) The Transaction Documents represent a complete and accurate description of the scheme, are intended by the parties to have their legal effect, and will be implemented according to their terms.

(b) All parties to the scheme are dealing with each other on an arm's length basis.

(c) There have been no transfers to Keybridge's share capital account (within the meaning given in section 975-300 of the ITAA 1997) prior to the return of capital that would have caused the share capital account to become tainted (within the meaning of Division 197 of the ITAA 1997).

(d) Keybridge's share capital account has not become tainted by the issue of the CRPN and will not become tainted by the issue of the Ordinary Shares of Keybridge on Conversion of the CRPN (within the meaning of Division 197 of the ITAA 1997).

(e) The Ordinary Shares issued in the event of a Conversion of CRPN will be an 'equity interest' in Keybridge under Division 974 of the ITAA 1997.

(f) For the purposes of determining whether a Holder is a 'qualified person' in relation to the Interest under Division 1A of former Part IIIAA of the ITAA 1936, neither a Holder nor an associate of a Holder will have taken any 'position' (within the meaning of former section 160APHJ of the ITAA 1936) in relation to their CRPN, apart from holding the CRPN.

(g) A Holder, or an associate of a Holder, will not make, is not under an obligation to make, or is not likely to make, a related payment (within the meaning of former section 160APHN of the ITAA 1936) in respect of any payment of Interest.

(h) The Holders in receipt of Interest on the CRPN will hold their CRPN for a period of at least 90 days (excluding the day of acquisition and disposal), within the period beginning on the day after the Holder acquired the CRPN and ending on the 90$^{th}$ day after the day on which the CRPN become *ex-dividend* (within the meaning of former subsection 160APHE(1) as extended by former subsection 160AOA(1) of the ITAA 1936).

(i) Payments of Interest on the CRPN will not be sourced, directly or indirectly, from Keybridge'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).

(j) Immediately before paying an amount of Interest on the CRPN, Keybridge will have available frankable profits (worked out under section 215-20 of the ITAA 1997) equalling at least the amount of the Interest.

(k) Interest on the CRPN will be franked in a manner that satisfies the benchmark rule in Division 203 of the ITAA 1997 for the franking period in which a frankable distribution is made.

(l) Keybridge will not differentially frank payments of Interest to different Holders in respect of the CRPN according to the tax status of Holders or on any other basis.

(m) Keybridge's policy in relation to the franking of its frankable distributions is not expected to change as a result of the issue of the CRPN.

(n) On Conversion or Redemption of the CRPN, Keybridge will debit the Face Value of the CRPN to its non-share capital account (within the meaning of section 164-10 of the ITAA 1997).

(o) Ordinary Shares issued upon Conversion will rank in all respects equally with the existing Ordinary Shares of Keybridge and will be eligible for dividends declared or determined by Keybridge on its Ordinary Shares after (but not before) the date of Conversion.

# Ruling

**Part A: Return of capital**

***Return of capital not a dividend***

53. The return of capital to Keybridge shareholders will not be a dividend as defined in subsection 6(1) and therefore, will not be included in the assessable income of Keybridge shareholders under subsection 44(1).

### *Application of sections 45A and 45B*

54. The Commissioner will not make a determination under subsection 45A(2) or paragraph 45B(3)(b) that section 45C applies in relation to the return of capital.

### *CGT consequences*

55. CGT event G1 (section 104-135 of the ITAA 1997) happened when Keybridge made the payment of the return of capital (satisfied by the issue of the CRPN) to a Keybridge shareholder in respect of an Ordinary Share that they owned at the Record Date and continued to own at the payment date.

56. CGT event C2 (section 104-25 of the ITAA 1997) happened when Keybridge made the payment of the return of capital (satisfied by the issue of the CRPN) to a Keybridge shareholder in respect of an Ordinary Share that they owned at the Record Date, but did not own at the payment date.

### *Two CGT assets after the return of capital*

57. After the return of capital, a Keybridge shareholder holds two CGT assets – the original Ordinary Share (with an adjusted cost base as a result of CGT event G1) and the CRPN (section 108-5 of the ITAA 1997).

## Part B: Treatment of the CRPN

### *The CRPN are an equity interest*

58. The CRPN are an 'equity interest' in Keybridge under Division 974 of the ITAA 1997, and a non-share equity interest in Keybridge as defined in subsection 995-1(1) of the ITAA 1997.

### *The CRPN are a convertible interest*

59. The CRPN are a convertible interest in Keybridge (as defined in subsection 995-1(1) and item 4 of the table in subsection 974-75(1) of the ITAA 1997).

### *The CRPN are a traditional security*

60. The CRPN are a 'traditional security' as defined in subsection 26BB(1).

### *CGT acquisition time of the CRPN*

61. Under item 2 of the table in section 109-10 of the ITAA 1997, a Holder will acquire their CRPN (being an equity interest) on 30 June 2015, being the date when the CRPN are issued.

### *CGT cost base and reduced cost base of the CRPN*

62. Under subsections 110-25(2) and 110-55(2) of the ITAA 1997, the first element of the cost base and reduced cost base of each CRPN is its Face Value of $1.

### Inclusion of Interest and franking credits in assessable income

63. The payments of Interest in respect of each CRPN are a ‘non-share dividend’ under section 974-120 of the ITAA 1997 and must be included in the Holder’s assessable income (subparagraph 44(1)(a)(ii) of the ITAA 1936).

64. The payments of Interest are a ‘frankable distribution’ under subsection 202-40(2) of the ITAA 1997.

65. Under subsection 207-20(1) of the ITAA 1997, the Holders must also include the amount of the franking credit on the payments of Interest in their assessable income, unless Subdivision 207-D of the ITAA 1997 applies.

### Entitlement to a franking credit tax offset

66. The Holders will be entitled to a tax offset equal to the franking credit on the Interest under subsection 207-20(2) of the ITAA 1997, unless Subdivision 207-D of the ITAA 1997 applies.

67. The Holders who are entitled to a franking credit 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. Certain trustees and corporate tax entities are excluded from the refundable tax offset rules under section 67-25 of the ITAA 1997.

### *Imputation benefits – streaming*

68. 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 the Holders in respect of Interest paid on the CRPN.

### *Section 177EA*

69. The Commissioner will not make a determination under paragraph 177EA(5)(b) to deny the whole, or any part of the imputation benefits received by the Holders in respect of the Interest paid on the CRPN.

### *Gross-up and tax offset*

70. Section 207-145 of the ITAA 1997 will not apply to the Interest paid to the Holders in respect of the CRPN. Accordingly, section 207-145 of the ITAA 1997 will not adjust the Holders' assessable income to exclude the amount of the franking credit on the Interest, nor will it deny the tax offset to which the Holders would otherwise be entitled.

## Part C: Conversion of the CRPN

### *CGT consequences on Conversion of CRPN*

71. CGT event C2 (section 104-25 of the ITAA 1997) will happen for the Holders on Conversion of the CRPN to Ordinary Shares. The CRPN are a 'convertible interest' in Keybridge (as defined in subsection 995-1(1) and item 4 of the table in subsection 974-75(1) of the ITAA 1997), and the Conversion will be the conversion of a convertible interest.

72. Subdivision 130-C of the ITAA 1997 governs the CGT consequences of the conversion of a convertible interest. Any capital gain or capital loss made by the Holders from CGT event C2 happening on Conversion of the CRPN will be disregarded (subsection 130-60(3) of the ITAA 1997).

### *CGT cost base and reduced cost base of Keybridge Ordinary Shares acquired on Conversion*

73. On Conversion of the CRPN (being convertible interests), the first element of the cost base and reduced cost base of each Ordinary Share acquired under the Conversion of the CRPN will be the cost base and reduced cost base of each CRPN at the time of Conversion divided by the number of Ordinary Shares received for each CRPN (item 1 of the table in subsection 130-60(1) of the ITAA 1997).

### *CGT acquisition time of Keybridge Ordinary Shares acquired on Conversion*

74. The Ordinary Shares in Keybridge acquired by the Holders on Conversion of the CRPN (being convertible interests) will be taken to have been acquired when the Conversion happens on the relevant Conversion Date (subsection 130-60(2) of the ITAA 1997).

### *Acquisition of Keybridge Ordinary Shares on Conversion not a dividend*

75. The Conversion of the CRPN will not result in the Holders being taken to have received a dividend (as defined in subsection 6(1) of the ITAA 1936) or a non-share dividend (as defined in section 974-120 of the ITAA 1997). Therefore, the value of the Keybridge Ordinary Shares will not be included in the assessable income of the Holders under subsection 44(1) of the ITAA 1936.

### *Traditional security consequences under sections 26BB and 70B*

76. Section 26BB will not apply to include any amount in the assessable income of the Holders upon Conversion of their CRPN.

77. Section 70B will not apply to allow a deduction to the Holders upon Conversion of their CRPN.

## Part D: Redemption of the CRPN

### *Redemption of CRPN – CGT consequences*

78. CGT event C2 (section 104-25 of the ITAA 1997) will happen for the Holders on Redemption of the CRPN. The CRPN Terms require Keybridge to redeem a CRPN by paying its holder the Repayment Amount (being an amount equal to the CRPN's Face Value).

79. The Holders will not make a capital gain or capital loss from CGT event C2 happening on Redemption of the CRPN.

### *Redemption of CRPN not a dividend*

80. The Redemption of the CRPN will not result in the Holders being taken to have received a dividend (as defined in subsection 6(1) of the ITAA 1936) or a non-share dividend (as defined in section 974-120 of the ITAA 1997). Therefore, the Repayment Amount will not be included in the assessable income of the Holders under subsection 44(1) of the ITAA 1936.

### *Traditional security consequences under sections 26BB and 70B*

81. Section 26BB will not apply to include any amount in the assessable income of the Holders upon Redemption of their CRPN.

82. Section 70B will not apply to allow a deduction to the Holders upon Redemption of their CRPN.

### Part E: Application of sections 45, 45A and 45B on Conversion or Redemption of the CRPN

#### *Section 45*

83. If Keybridge franks all of the dividends it pays on Ordinary Shares to at least 10%, section 45 will not apply to treat the value of the Keybridge Ordinary Shares issued to the Holders on Conversion of the CRPN as an unfrankable dividend paid by Keybridge to the Holders.

#### *Section 45A*

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

#### *Section 45B*

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

**Commissioner of Taxation**
22 July 2015

# 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.***

### Part A: Return of capital

#### *Return of capital not a dividend*

86. Subsection 44(1) includes in a shareholder's assessable income any dividends (as defined in subsection 6(1)) that are paid to the shareholder by the company out of profits derived by the company from any source (if the shareholder is a resident of Australia) and from an Australian source (if the shareholder is a non-resident).

87. The definition of 'dividend' in subsection 6(1) includes any distribution made by a company to any of its shareholders (whether in money or other property), and any amount credited by a company to any of its shareholders as shareholders. However, paragraph (d) of the definition of 'dividend' in subsection 6(1) excludes from the definition of a 'dividend' moneys paid or credited by a company to a shareholder or any other property distributed by a company to shareholders, where the amount of the moneys paid or credited, or the amount of the value of the property, is debited against an amount standing to the credit of the share capital account of the company.

88. The term 'share capital account' is defined in section 975-300 of the ITAA 1997 as an account which the company keeps of its share capital, or any other account created on or after 1 July 1998 where the first amount credited to the account was an amount of share capital. Subsection 975-300(3) of the ITAA 1997 states that an account is not a share capital account if it is tainted (within the meaning of Division 197 of the ITAA 1997).

89. Keybridge has recorded the return of capital as a debit to its share capital account. There were no transfers to Keybridge's share capital account prior to the return of capital that would have caused it to become tainted within the meaning of Division 197 of the ITAA 1997.

90. Accordingly, paragraph (d) of the definition of 'dividend' in subsection 6(1) applies, and the return of capital is not a dividend as defined in subsection 6(1). Therefore, it will not be included in the assessable income of Keybridge shareholders under subsection 44(1).

#### *Application of sections 45A and 45B*

91. Sections 45A and 45B are two anti-avoidance provisions which, if applicable, allow the Commissioner to make a determination under section 45C that all or part of a return of capital to be received by shareholders is to be treated as an unfranked dividend.

*Section 45A – streaming of dividends and capital benefits*

92. Section 45A applies in circumstances 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 have received or will receive dividends (the disadvantaged shareholders).

93. If these conditions are satisfied, the Commissioner may make a determination under subsection 45A(2) that section 45C applies in relation to the whole, or a part, of the capital benefits. The effect of such a determination is that the affected capital benefit is treated as an unfranked dividend.

94. The payment of the return of capital to the Keybridge shareholders, being a debit to the share capital account of Keybridge, will constitute the provision of a capital benefit, as defined in paragraph 45A(3)(b). The capital benefit has been provided to all Keybridge shareholders in direct proportion to their shareholding on the Record Date. As a result, the circumstances of the scheme do not indicate that there is a streaming of capital benefits to advantaged shareholders and of dividends to disadvantaged shareholders.

95. Accordingly, section 45A does not apply to the return of capital. The Commissioner will not make a determination under subsection 45A(2) that section 45C applies in relation to the whole, or a part, of the capital benefit provided to the Keybridge shareholders under the return of capital.

*Section 45B – schemes to provide capital benefits in substitution for dividends*

96. Section 45B applies where under a scheme, a person is provided with a capital benefit in substitution for dividends and, having regard to the relevant circumstances of the scheme, there was a more than incidental purpose of enabling the relevant taxpayer to obtain a tax benefit.

97. If these conditions are satisfied, the Commissioner may make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole, or a part, of the capital benefit. The effect of such a determination is that the affected capital benefit is taken to be an unfranked dividend.

98. Specifically, section 45B applies where:

(a) there is a scheme under which a person is provided with a capital benefit by a company (paragraph 45B(2)(a))

(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 (paragraph 45B(2)(b)), 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 (other than an incidental purpose) of enabling a taxpayer to obtain a tax benefit (paragraph 45B(2)(c)).

99. The return of capital to Keybridge shareholders will constitute a ‘scheme’ for the purposes of section 45B. The return of capital to the Keybridge shareholders, being a debit to the share capital account of Keybridge, will constitute a person being ‘provided with a capital benefit’ as defined in paragraph 45B(5)(b). Paragraph 45B(2)(a) is satisfied.

100. Under subsection 45B(9), a relevant taxpayer ‘obtains a tax benefit’ if:

(a) an amount of tax payable, or

(b) any other amount payable under the ITAA 1936 or the ITAA 1997,

by the relevant taxpayer would, apart from the operation of section 45B,

(c) be less than the amount that would have been payable, or

(d) be payable at a later time than it would have been payable,

if the capital benefit had been an assessable dividend.

101. The relevant taxpayers are the Keybridge shareholders (who are persons provided with the capital benefit). Ordinarily, a return of capital would be subject to the CGT provisions of the income tax law. Unless the amount of the payment exceeds the cost base of the shares, there will only be a cost base reduction under CGT event G1 (section 104-135 of the ITAA 1997). It is only to the extent (if any) that the payment exceeds the cost base of the shares that a shareholder will make a capital gain.

102. By contrast, an assessable dividend would be included in the assessable income of a resident shareholder, or in the case of a non-resident shareholder would be subject to dividend withholding tax under subsection 128B(1).

103. Therefore, a Keybridge shareholder will generally obtain a tax benefit from the scheme consisting of the return of capital. Paragraph 45B(2)(b) is satisfied.

104. For the purposes of paragraph 45B(2)(c), it must be objectively concluded, having regard to the relevant circumstances of the scheme, that one or more of the persons that entered into or carried out the scheme or any part of the scheme did so for a purpose (other than an incidental purpose) of enabling the relevant taxpayers (the Keybridge shareholders) to obtain a tax benefit. A non-exhaustive list of the relevant circumstances of a scheme are listed in subsection 45B(8) of the ITAA 1936.

105. Having regard to the 'relevant circumstances' of the scheme in subsection 45B(8), it cannot be concluded that Keybridge or the shareholders 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 the relevant taxpayer to obtain a tax benefit.

106. Accordingly, the Commissioner will not make a determination under paragraph 45B(3)(b) that section 45C applies in relation to the whole, or a part, of the capital benefit provided to the Keybridge shareholders under the return of capital.

### *CGT consequences*

*CGT event G1*

107. CGT event G1 happened when Keybridge made the payment of the return of capital (satisfied by the issue of the CRPN) to a Keybridge shareholder in respect of an Ordinary share they owned at the Record Date of 24 June 2015 and continued to own at the payment date of 30 June 2015 (section 104-135 of the ITAA 1997).

108. If the return of capital is equal to or less than the cost base of an Ordinary Share at the payment date, the cost base and reduced cost base will be reduced by the amount of the return of capital (subsection 104-135(4) of the ITAA 1997).

109. A Keybridge shareholder will make a capital gain if the return of capital is more than the cost base of an Ordinary Share. The amount of the capital gain is equal to the excess (subsection 104-135(3) of the ITAA 1997).

110. If Keybridge makes a capital gain when CGT event G1 happens, the cost base and reduced cost base of the Ordinary Share is reduced to nil. A Keybridge shareholder cannot make a capital loss when CGT event G1 happens (subsection 104-135(3) of the ITAA 1997).

111. A capital gain made when CGT event G1 happens will be eligible to be treated as a discount capital gain under Subdivision 115-A of the ITAA 1997 provided that the Ordinary Share was acquired by a Holder at least 12 months before the payment of the return of capital (subsection 115-25(1) of the ITAA 1997) and the other conditions of Subdivision 115-A are satisfied.

*CGT event C2*

112. The right to receive the return of capital is inherent in an Ordinary Share at the Record Date. If, after the Record Date but before the payment date, a Keybridge shareholder ceases to own an Ordinary Share in respect of which the return of capital was payable, the right to receive the return of capital in respect of that share is retained by the shareholder and is considered to be a separate CGT asset.

113. CGT event C2 happened when the return of capital was paid by the issue of the CRPN on 30 June 2015. The right to receive the return of capital (being an intangible CGT asset) ended by the right being discharged or satisfied when the payment was made (section 104-25 of the ITAA 1997).

114. A Keybridge shareholder will make a capital gain if the capital proceeds from the ending of the right are more than its cost base. The capital gain is equal to the amount of the excess. A Keybridge shareholder will make a capital loss if the capital proceeds from the ending of the right are less than its reduced cost base. The capital loss is equal to the amount of the difference (subsection 104-25(3) of the ITAA 1997).

115. In working out the capital gain or capital loss made when CGT event C2 happened, the capital proceeds will be the amount of the return of capital (subsection 116-20(1) of the ITAA 1997).

116. The cost base of a Keybridge shareholder's right to receive the return of capital is worked out under Division 110 of the ITAA 1997 (modified by Division 112 of the ITAA 1997). The cost base of the right does not include the cost base or reduced cost base of the Ordinary Share previously owned by a Keybridge shareholder that has been applied in working out a capital gain or capital loss made when a CGT event happened to the Ordinary Share – for example, when the Keybridge shareholder disposed of the Ordinary Share after the Record Date.

117. Therefore, if the full cost base or reduced cost base of an Ordinary Share has been previously applied in working out a capital gain or capital loss made when a CGT event happened to that share, the right to receive the return of capital is likely to have a nil cost base. As a result, a Keybridge shareholder will generally make a capital gain equal to the amount of the return of capital.

118. As the right to receive the payment of the return of capital was inherent in the Ordinary Share during the time it was owned, the right is considered to have been acquired at the time when the corresponding Ordinary Share was acquired (section 109-5 of the ITAA 1997).

119. Accordingly, if the Ordinary Share was acquired at least 12 months before the payment of the return of capital, a capital gain made from CGT event C2 happening on the ending of the corresponding right will satisfy section 115-25 of the ITAA 1997. Such a capital gain will be eligible to be treated as a discount capital gain if the other conditions of Subdivision 115-A are satisfied.

## Part B: Treatment of the CRPN

### *The CRPN are an equity interest*

120. Subsection 995-1(1) of the ITAA 1997 provides that an equity interest in an entity has the meaning given by, in the case of a company, Subdivision 974-C of the ITAA 1997.

121. The CRPN are an equity interest in Keybridge pursuant to paragraph (b) of item 4 of the table in subsection 974-75(1).

122. The scheme comprising the issue of the CRPN will be a financing arrangement under section 974-130 of the ITAA 1997. Accordingly, subsection 974-75(2) of the ITAA 1997 will not prevent the scheme from giving rise to an equity interest in Keybridge.

123. If the CRPN is also a debt interest, then the tie-breaker rule in subsection 974-5(4) of the ITAA 1997 states that it will be treated as a debt interest and not an equity interest.

124. Subsection 995-1(1) of the ITAA 1997 provides that a debt interest in an entity has the meaning given in Subdivision 974-B of the ITAA 1997.

125. Under subsection 974-15(1) of the ITAA 1997, a scheme gives rise to a debt interest in an entity if the scheme, when it comes into existence, satisfies the debt test in subsection 974-20(1) in relation to the entity.

126. The CRPN fail the debt test in subsection 974-20(1) of the ITAA 1997, therefore the CRPN will not give rise to a debt interest in Keybridge under subsection 974-15(1) of the ITAA 1997.

127. The scheme constituted by the issue of the CRPN satisfies the equity test in subsection 974-75(1) of the ITAA 1997, and fails the debt test in subsection 974-20(1) of the ITAA 1997.

128. Subsection 995-1(1) of the ITAA 1997 defines a non-share equity interest in a company as an equity interest in the company that is not solely a share.

129. Therefore, the CRPN are an equity interest in Keybridge under subsection 974-70(1) of the ITAA 1997 and a non-share equity interest in Keybridge as defined under subsection 995-1(1) of the ITAA 1997.

### *The CRPN are a convertible interest*

130. Subsection 995-1(1) of the ITAA 1997 defines a convertible interest in a company as an interest of the kind referred to in item 4 of the table in subsection 974-75(1) of the ITAA 1997. As stated in paragraph 121, the CRPN satisfy paragraph (b) of item 4 of the table in subsection 974-75(1) of the ITAA 1997. Accordingly, the CRPN are a 'convertible interest' in Keybridge.

### *The CRPN are a traditional security*

131. A 'traditional security' is defined in subsection 26BB(1) as a security held by a taxpayer that was acquired by the taxpayer after 10 May 1989, is not a prescribed security within the meaning of section 26C, is not trading stock of the taxpayer, and either does not have an eligible return, or has an eligible return that satisfies the conditions listed in subparagraph (b)(ii) of the definition of 'traditional security' in subsection 26BB(1).

132. The term 'security' is defined in subsection 26BB(1) by reference to its meaning in Division 16E of Part III. Pursuant to subsection 159GP(1), '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.

133. The CRPN are a security under subsection 159GP(1).

134. Because the CRPN either do not have an eligible return (where redemption occurs) or have an eligible return that satisfies the conditions listed in subparagraph (b)(ii) of the definition of 'traditional security' in subsection 26BB(1) (where conversion occurs), and assuming they are not trading stock, the CRPN are a traditional security.

### CGT acquisition time of the CRPN

135. The CRPN are an equity interest. Under item 2 of the table in section 109-10 of the ITAA 1997, where a company issues or allots equity interests in the company, the CGT asset constituted by the equity interests is acquired when the contract is entered into or, if there is no contract, when the equity interests are issued or allotted. Each Holder acquired the CRPN which were issued to satisfy their right to receive the return of capital at the time when the CRPN were issued to them (i.e. 30 June 2015).

### CGT cost base and reduced cost base of the CRPN

136. 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, and the market value of any other property given, or required to be given, in respect of acquiring the CGT asset (subsections 110-25(2) and 110-55(2) of the ITAA 1997).

137. Therefore, the first element of the cost base and reduced cost base of each CRPN is its Face Value of $1 (being the amount of the return of capital paid on behalf of the Keybridge shareholders to subscribe for each of the CRPN).

### Inclusion of Interest and franking credits in assessable income

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

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

139. The CRPN are a 'non-share equity interest' as defined in subsection 995-1(1) of the ITAA 1997. Paragraph 43B(1)(a) of the ITAA 1936 provides that Subdivision D of Division 2 of Part III of the ITAA 1936 (which governs dividends) applies to a non-share equity interest in the same way as it applies to a share. Each of the Holders are an 'equity holder' as defined in subsection 995-1(1) of the ITAA 1997. Paragraph 43B(1)(b) of the ITAA 1936 provides that Subdivision D of Division 2 of Part III of the ITAA 1936 applies to an equity holder in the same way as it applies to a shareholder.

140. The Interest paid in respect of the CRPN will be a 'non-share dividend' as defined in section 974-120 of the ITAA 1997. This is because the Holders hold a non-share equity interest in Keybridge, and Keybridge will distribute money to the Holders as the holder of that non-share equity interest (meaning that the Interest will be a 'non-share distribution' as defined in section 974-115 of the ITAA 1997), and none of the Interest will be debited to the non-share capital account or the share capital account of Keybridge (satisfying subsection 974-120(2) of the ITAA 1997). Accordingly, the Holders must include the Interest paid in respect of the CRPN in their assessable income under subparagraph 44(1)(a)(ii) of the ITAA 1936.

141. Subsection 202-40(2) of the ITAA 1997 provides that a non-share dividend is a 'frankable distribution' to the extent that it is not unfrankable under section 202-45 of the ITAA 1997. Section 202-45 of the ITAA 1997 sets out the circumstances under which a distribution is unfrankable. None of those circumstances apply to the Interest paid in respect of the CRPN.

142. Accordingly, the Interest paid in respect of the CRPN will constitute a 'frankable distribution' under subsection 202-40(2) of the ITAA 1997.

143. Keybridge expects that the Interest paid in respect of the CRPN will be franked.

144. If 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 must 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.

145. Accordingly, the Holders must include in their assessable income the amount of the franking credit on the Interest that is received by the Holders.

### Entitlement to a franking credit tax offset

146. Under subsection 207-20(2) of the ITAA 1997, the Holders are entitled to a tax offset equal to the franking credit on the Interest.

147. The Holders who are entitled to a franking credit 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 specifically excluded under section 67-25 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 income tax liability to nil.

148. Accordingly, the Holders will be subject to the refundable tax offset rules unless they are a type of entity that is specifically excluded under section 67-25 of the ITAA 1997.

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

#### *Imputation benefits – streaming*

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

151. Section 204-30 of the ITAA 1997 prescribes the circumstances that are required to exist before the Commissioner may make such a determination. Section 204-30 of the ITAA 1997 applies where a corporate tax entity 'streams' one or more distributions, or one or more distributions and the giving of other benefits, to its members in such a way that:

- an 'imputation benefit' is, or apart from section 204-30 of the ITAA 1997 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);
- 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
- 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).

152. 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 either:

(a) that a specified franking debit arises in the franking account of the entity, for a specified distribution or other benefit to a disadvantaged member (paragraph 204-30(3)(a) of the ITAA 1997);

(b) that a specified exempting debit arises in the exempting account of the entity, for a specified distribution or other benefit to a disadvantaged member (paragraph 204-30(3)(b) of the ITAA 1997); or

(c) that no imputation benefit is to arise in respect of a distribution that is made to a favoured member and specified in the determination (paragraph 204-30(3)(c) of the ITAA 1997).

153. The term 'streaming' is not defined for the purposes of Subdivision 204-D of the ITAA 1997. However, the Commissioner understands it to refer to a company 'selectively directing the flow of franked distributions to those members who can most benefit from the imputation credits' (paragraph 3.28 of the Explanatory Memorandum to the New Business Tax System (Imputation) Bill 2002).

154. For section 204-30 of the ITAA 1997 to apply, members to whom distributions are streamed must derive a greater benefit from franking credits than another member of the entity. Subsections 204-30(8), 204-30(9) and 204-30(10) of the ITAA 1997 specify some of the cases in which a member of an entity derives a greater benefit from franking credits than another member of the entity.

155. Subsection 204-5(2) of the ITAA 1997 states that Division 204 of the ITAA 1997 applies to non-share dividends (such as Interest in respect of the CRPN) in the same way as it applies to distributions.

156. There will be no streaming of franked distributions in respect of the CRPN, because all of the Holders of the CRPN will receive the same amount of Interest which will be franked to the same extent. The Holders will receive franked Interest regardless of their tax attributes or their individual tax position. Keybridge's policy in relation to the franking of its frankable distributions is not expected to change as a result of the issue of the CRPN.

157. The Ordinary Shares to be allotted on the Conversion of the CRPN will not attract the application of section 204-30 of the ITAA 1997 because the issue of the Ordinary Shares will not constitute a 'distribution' (as defined in section 960-120 of the ITAA 1997), and the allotment of the Ordinary Shares will not affect Keybridge's dividend franking policy.

158. For these reasons, the Commissioner has concluded that the requisite element of streaming does not exist in relation to the franked Interest to be paid by Keybridge to the Holders. 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 Interest paid on the CRPN .

### *Section 177EA*

159. Section 177EA is a general anti-avoidance provision that applies to a wide range of schemes designed to obtain imputation benefits. In essence, it applies to schemes for the disposition of membership interests, or an interest in membership interests, in a corporate tax entity where a franked distribution is paid or payable in respect of the membership interests or the interest in membership interests.

160. Where section 177EA applies, the Commissioner has a discretion pursuant to subsection 177EA(5) to make a determination to either:

- debit the company's franking account pursuant to paragraph 177EA(5)(a); or
- deny the imputation benefit on the distribution that flowed directly or indirectly to each shareholder pursuant to paragraph 177EA(5)(b).

161. Subsection 177EA(3) provides that section 177EA applies if:

(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 or a distribution franked with an exempting credit; and

(d) except for this section, 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.

162. Subsection 177EA(12) provides that section 177EA:

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

163. In the present case the conditions in paragraphs 177EA(3)(a) to 177EA(3)(d) are satisfied.

164. Accordingly, the issue is whether, having regard to the relevant circumstances of the scheme, it would be concluded that a 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 (each of the Holders) to obtain an imputation benefit.

165. 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). 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.

166. Based on the information provided and the qualifications set out in this Ruling, and having regard to all of the relevant circumstances of the scheme, the Commissioner has concluded that the requisite purpose in paragraph 177EA(3)(e) is not present in this case.

167. Accordingly the Commissioner will not make a determination under paragraph 177EA(5)(b) to deny the whole, or any part, of the imputation benefits that are to be received by the Holders in respect of the Interest paid on the CRPN.

### *Gross-up and tax offset*

168. Subdivision 207-F of the ITAA 1997 creates the appropriate adjustment to cancel the effect of the gross-up and tax offset rules where the entity concerned has manipulated the imputation system in a manner that is not permitted under the income tax law. Section 207-145 of the ITAA 1997 is relevant to the Holders that are the subject of this Ruling.

169. Subsection 207-145(1) of the ITAA 1997 states:

> If a *franked distribution is made to an entity in one or more of the following circumstances:
>
> (a) the entity is not a qualified person in relation to the distribution for the purposes of Division 1A of former Part IIIAA of the *Income Tax Assessment Act 1936*;
>
> (b) the Commissioner has made a determination under paragraph 177EA(5)(b) of that Act that no imputation benefit (within the meaning of that section) is to arise in respect of the distribution for the entity;
>
> (c) the Commissioner has made a determination under paragraph 204-30(3)(c) of this Act that no imputation benefit is to arise in respect of the distribution for the entity;
>
> (d) the distribution is made as part of a *dividend stripping operation;
>
> then, for the purposes of this Act:
>
> (e) the amount of the *franking credit on the distribution is not included in the assessable income of the entity under section 207-20 or 207-35; and
>
> (f) the entity is not entitled to a *tax offset under this Subdivision because of the distribution; and
>
> (g) if the distribution *flows indirectly through the entity to another entity – subsection 207-35(3) and section 207-45 do not apply to that other entity.

170. 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. This test is in former subsection 160APHO(1), which states:

> 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) where neither the taxpayer nor an associate of the taxpayer has made, or is under an obligation to make, or is likely to make, a related payment in respect of the dividend – the taxpayer has satisfied subsection (2) in relation to the primary qualification period in relation to the dividend, or
>
> (b) where the taxpayer or an associate of the taxpayer has made, is under an obligation to make, or is likely to make, a related payment in respect of the dividend – the taxpayer has satisfied subsection (2) in relation to the secondary qualification period in relation to the dividend.

171. By virtue of former section 160AOA, the holding period rule applies to a non-share equity interest, an equity holder and a non-share dividend in the same way as it applies to a share, a shareholder and a dividend (respectively).

172. Former subsection 160APHO(2), referred to above, requires the taxpayer to hold the shares or interest in shares for at least 45 days if the shares are not preference shares, or at least 90 days if the shares are preference shares.

173. As the CRPN are treated as 'preference shares' (as defined in the former section 160APHD), a Holder is required to hold the CRPN on which Interest has been paid for a continuous period of at least 90 days during the relevant qualification period.

174. In determining whether they hold the shares for at least 90 days during the relevant qualification period, the shareholder does not count the day on which they acquired the shares. If the shareholder has disposed of the shares, they do not count the day on which the disposal occurred.

175. Furthermore, any days on which the shareholder has materially diminished risks of loss or opportunities for gain in respect of the shares (within the meaning of former sections 160APHM and 160APHJ) 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.

176. Under former subsection 160APHM(2), a taxpayer is taken to have materially diminished risks of loss or opportunities for gain in respect of shares if the taxpayer's net position' (defined in former subsection 160APHJ(5)) on a particular day in relation to the shares has less than 30% of those risks and opportunities. Every 'position' (defined in former subsection 160APHJ(2)) in relation to the shares is taken into account in calculating the 'net position' in relation to the shares.

177. In accordance with former subsection 160APHJ(2), a 'position' in relation to a share is anything that has a 'delta' in relation to that share. Although 'delta' is not a defined term, paragraph 4.56 of the Explanatory Memorandum to the Taxation Laws Amendment Bill (No. 2) 1999 states that:

> Delta is a well-recognised financial concept that measures the relative change in the price of an option or other derivative for a given small change in the price of an underlying asset. An option with a positive delta indicates that its price is expected to rise and fall with the underlying asset, while a negative delta indicates an inverse relationship.

178. The requirement to exclude any days on which the shareholder has materially diminished risks of loss or opportunities for gain in respect of shares is often referred to in positive terms as requiring the shareholder to only count the days during the relevant qualification period on which they hold the shares 'at risk'.

179. 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 (within the meaning of former section 160APHN) in respect of any payment of Interest.

180. On the basis that the Holders have not made, nor are under an obligation to make, nor are likely to make, a related payment in respect of any payment of Interest, the relevant qualification period is the primary qualification period pursuant to former paragraph 160APHO(1)(a).

181. The former section 160APHD defines the 'primary qualification period' in relation to a taxpayer in relation to shares as:

> ... (b) if the shares are preference shares – the period beginning on the day after the day on which the taxpayer acquired the shares, and ending on the 90th day after the day on which the shares became *ex dividend*.

182. The former subsection 160APHE(1) defines '*ex dividend*' as:

> A share in respect of which a dividend is to be paid… becomes *ex dividend* on the day after the last day on which the acquisition by a person of the share will entitle the person to receive the dividend.

183. Each of the Holders will be capable of being a 'qualified person' under the former paragraph 160APHO(1)(a), because this Ruling is made on the basis that:

- neither a Holder nor an associate of a Holder has taken any position (apart from holding the CRPN) in relation to their CRPN; and
- the Holders in receipt of Interest paid on the CRPN will hold their CRPN for a period of at least 90 days (excluding the day of acquisition and disposal) beginning on the day after the acquisition of the CRPN.

184. The Commissioner has confirmed that no determination will be made under paragraph 204-30(3)(c) of the ITAA 1997 or paragraph 177EA(5)(b) of the ITAA 1936 to deny the imputation benefits attached to Interest paid by Keybridge to the Holders in respect of their CRPN.

185. Finally, section 207-145 of the ITAA 1997 applies where a distribution is made as part of a dividend stripping operation. A distribution will be taken to be made as part of a dividend stripping operation, pursuant to section 207-155 of the ITAA 1997, if the making of the distribution arose out of, or was made in the course of, a scheme that:

- was by way of, or in the nature of, dividend stripping; or
- had substantially the effect of a scheme by way of, or in the nature of, dividend stripping.

186. The Transaction Documents provide no indication that the issuance of the CRPN and the associated payment of franked Interest to the Holders constitute a dividend stripping arrangement.

187. Therefore, section 207-145 of the ITAA 1997 will not apply to the Interest paid to the Holders in respect of the CRPN. Accordingly, section 207-145 of the ITAA 1997 will not adjust the Holders' assessable income to exclude the amount of the franking credit on the Interest, nor will it deny the tax offset to which the Holders would otherwise be entitled.

### Part C: Conversion of the CRPN

#### *CGT consequences on Conversion of CRPN*

188. Under paragraph 104-25(1)(f) of the ITAA 1997, CGT event C2 happens if an entity's ownership of an intangible CGT asset ends by the asset, if it is a 'convertible interest' (as defined in subsection 995-1(1) of the ITAA 1997) being converted.

189. 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.

190. 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.

191. 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 various scenarios happens. One such scenario is that the first interest must be or may be redeemed, repaid or satisfied by the application in or towards paying-up (in whole or in part) the balance unpaid on the second interest (whether the second interest is to be issued to the holder of the first interest or to some other person) (subparagraph 974-165(b)(iii) of the ITAA 1997).

192. The CRPN will be an interest issued by Keybridge. The Ordinary Shares are an equity interest in Keybridge. The CRPN must be or may be satisfied by the issue of the Ordinary Shares by Keybridge to the Holders. The mechanics of Conversion in clause 6 of the CRPN Terms satisfy item 4 of the table in subsection 974-75(1) and subparagraph 974-165(b)(iii) of the ITAA 1997.

193. Accordingly, the CRPN are a 'convertible interest' in Keybridge (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).

194. The Conversion of the CRPN into Keybridge Ordinary Shares will be the conversion of a convertible interest.

195. Therefore, CGT event C2 (section 104-25 of the ITAA 1997) will happen for the Holders on Conversion of the CRPN into Ordinary Shares.

196. Subdivision 130-C of the ITAA 1997 governs the CGT consequences of the conversion of a convertible interest, as set out in paragraphs 71 to 73 of this Ruling. Any capital gain or capital loss made by the Holders from CGT event C2 happening on the Conversion of the CRPN will be disregarded (subsection 130-60(3) of the ITAA 1997).

### *CGT acquisition time of Ordinary Shares acquired on Conversion*

197. The Ordinary Shares acquired by the Holders on Conversion of the Notes will be taken to have been acquired when the Conversion happens on the relevant Conversion Date (subsection 130-60(2) of the ITAA 1997).

### *CGT cost base and reduced cost base of Ordinary Shares acquired on Conversion*

198. On Conversion of the CRPN, Subdivision 130-C of the ITAA 1997 will apply so that the first element of the cost base and reduced cost base of each Ordinary Share acquired from Conversion of a CRPN will be a pro-rata portion of the cost base.

### *Acquisition of Keybridge Ordinary Shares on Conversion not a dividend*

199. Subparagraph 44(1)(a)(ii) states that the assessable income of a shareholder in a company includes all non-share dividends paid to the shareholder by the company.

200. The issue of Ordinary Shares to the Holders of the CRPN on Conversion 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 subsection 974-120(2) of the ITAA 1997, all non-share distributions are a non-share dividend.

201. 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 the company’s share capital account.

202. On Conversion, Keybridge will debit the Face Value of the CRPN to its non-share capital account. Accordingly, the issue of Ordinary Shares to the Holders of the CRPN on Conversion 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.

203. Furthermore, the Ordinary Shares will not be issued to the Holders of the CRPN as shareholders of Keybridge. Therefore, it would not satisfy paragraphs (a) or (b) of the definition of ‘dividend’ in subsection 6(1). This means that it will not be included in the assessable income of the Holders under subparagraph 44(1)(a)(i).

### *Sections 26BB and 70B*

204. The CRPN are a traditional security as defined in subsection 26BB(1).

205. Under subsection 26BB(2), where a taxpayer disposes of a traditional security or a traditional security of a taxpayer is redeemed, the amount of any gain on the disposal or redemption shall be included in the assessable income of the taxpayer of the year of income in which the disposal or redemption takes place.

206. However, under subsection 26BB(4), subsection 26BB(2) does not apply to a gain on the disposal or redemption of a traditional security if the disposal or redemption occurs because the traditional security is converted into ordinary shares in a company that is the issuer of the traditional security, and the traditional security was issued on the basis that it will or may convert into ordinary shares in the issuer of the traditional security. Accordingly, as Conversion of the CRPN involves their redemption for an amount equal to the Repayment Amount and the application of the amount by subscribing (on behalf of the relevant Holder) for Ordinary Shares, section 26BB will not apply to include any amount in the assessable income of the Holders upon Conversion of their CRPN.

207. Under subsection 70B(2), where a taxpayer disposes of a traditional security or a traditional security of a taxpayer is redeemed, the amount of any loss on the disposal or redemption is allowable as a deduction from the assessable income of the taxpayer of the year of income in which the disposal or redemption takes place.

208. However, under subsection 70B(2B), a deduction is not allowable under subsection 70B(2) for a loss on the disposal or redemption of a traditional security if the disposal or redemption occurs because the traditional security is converted into ordinary shares in a company that is the issuer of the traditional security, and the traditional security was issued on the basis that it will or may convert into ordinary shares in the issuer of the traditional security. Accordingly, for the same reason as under section 26BB, section 70B will not apply to allow a deduction to the Holders upon Conversion of their CRPN.

## Part D: Redemption of the CRPN

### *Redemption of CRPN – CGT consequences*

209. Under paragraph 104-25(1)(a) of the ITAA 1997, CGT event C2 happens if an entity’s ownership of an intangible CGT asset ends by the asset being redeemed. Therefore, CGT event C2 will happen to the Holders on Redemption of the CRPN.

210. Under subsection 104-25(3), the Holders will make a capital gain if the capital proceeds from the ending are more than the asset’s cost base, and will make a capital loss if those capital proceeds are less than the asset’s reduced cost base.

211. For the reasons given above, the first element of the Holders' cost base and reduced cost base of each CRPN is its Face Value of $1 (being equal to the amount of the return of capital compulsorily applied on behalf of all of the Holders to apply for each CRPN).

212. The CRPN Terms provide for Keybridge to redeem a CRPN by paying its holder the Repayment Amount (being an amount equal to the Face Value of $1).

213. Accordingly, the Holders (who acquired their CRPN by way of participating in the return of capital and being issued with CRPN in satisfaction of their right to receive the return of capital) will not make a capital gain or capital loss from CGT event C2 happening if their CRPN are redeemed and Keybridge pays them the Repayment Amount.

### *Redemption of CRPN not a dividend*

214. Subparagraph 44(1)(a)(ii) states that the assessable income of a shareholder in a company includes all non-share dividends paid to the shareholder of a company.

215. The Redemption of the CRPN consists of Keybridge distributing money (the Repayment Amount) to the 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 subsection 974-120(2) of the ITAA 1997, all non-share distributions are a non-share dividend.

216. 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 the company's share capital account.

217. On Redemption, Keybridge will debit the Face Value of the CRPN to its non-share capital account. Accordingly, the Redemption of the CRPN 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.

### *Sections 26BB and 70B*

218. The CRPN are a traditional security as defined in subsection 26BB(1).

219. Under subsection 26BB(2), where a taxpayer disposes of a traditional security or a traditional security of a taxpayer is redeemed, the amount of any gain on the disposal or redemption shall be included in the assessable income of the taxpayer of the year of income in which the disposal or redemption takes place.

220. Under subsection 70B(2), where a taxpayer disposes of a traditional security or a traditional security of a taxpayer is redeemed, the amount of any loss on the disposal or redemption is allowable as a deduction from the assessable income of the taxpayer of the year of income in which the disposal or redemption takes place.

221. Where Keybridge redeems a CRPN by paying the Holder the Repayment Amount (being an amount equal to the Face Value of $1), and as the Holders acquired their CRPN by way of participating in the return of capital and being issued with CRPN in satisfaction of their right to receive the return of capital, the Holder will not make a gain or loss from the Redemption.

222. Accordingly, section 26BB will not apply to include any amount in the assessable income of the Holders upon Redemption of their CRPN and section 70B will not apply to allow a deduction to the Holders upon Redemption of their CRPN.

### Part E: Application of sections 45, 45A and 45B on Conversion or Redemption of the CRPN

#### *Section 45*

223. Section 45 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. Minimally franked dividends are dividends which are not franked or are franked to less than 10%.

224. The CRPN are a ‘non-share equity interest’ as defined in subsection 995-1(1) of the ITAA 1997. Paragraph 43B(1)(a) of the ITAA 1936 provides that Subdivision D of Division 2 of Part III of the ITAA 1936 (which includes section 45) applies to a non-share equity interest in the same way as it applies to a share. Each of the Holders are an ‘equity holder’ as defined in subsection 995-1(1) of the ITAA 1997. Paragraph 43B(1)(b) of the ITAA 1936 provides that Subdivision D of Division 2 of Part III of the ITAA 1936 applies to an equity holder in the same way as it applies to a shareholder.

225. If Keybridge franks all of the dividends it pays on its Ordinary Shares to at least 10%, it will mean that minimally franked dividends will not be received by any Keybridge shareholders. Accordingly, section 45 will not apply to treat the value of the Ordinary Shares issued to the Holders on Conversion of the CRPN as an unfrankable dividend paid by Keybridge to the Holders.

### *Section 45A*

226. The provision to a shareholder of shares in the company (such as the issue of Ordinary Shares to those Keybridge shareholders who are also Holders on Conversion of the CRPN) will constitute the provision of a capital benefit under paragraph 45A(3)(a).

227. It is reasonable to assume that at least some of the Holders at the time of Conversion will also be Keybridge shareholders. Any dividends paid on the Ordinary Shares would be received by all shareholders, including those who are also Holders and receive shares on Conversion of the CRPN. The requirements of section 45A will not be satisfied on Conversion of the CRPN.

228. The Redemption of the CRPN will involve the provision of a capital benefit within the meaning of paragraph 45A(3)(b) (by virtue of subsection 45A(3A)) as it will constitute a non-share capital return (as defined in subsection 6(1) of the ITAA 1936 and section 974-125 of the ITAA 1997). The amount paid to Holders on Redemption is limited to the amount of the Face Value of the CRPN and any Outstanding Interest entitlements in respect of the CRPN will be separately paid.

229. It is reasonable to assume that at least some of the Holders at the time of Redemption will also be Keybridge shareholders. While the Redemption of the CRPN involves the distribution of share capital (in the form of cash) to the Holders, any dividends paid on the Ordinary Shares would be received by all shareholders, including those who are also Holders and receive cash on Redemption of the CRPN. The requirements of section 45A will not be satisfied on Redemption of the CRPN.

230. Therefore, the Commissioner will not make a determination under subsection 45A(2) that section 45C applies in relation to the whole, or a part, of the capital benefit provided to the Holders on Conversion of the CRPN or on Redemption of the CRPN.

### *Section 45B*

231. The Conversion of the CRPN will be a ‘scheme’ for the purposes of section 45B.

232. The provision of ownership interests in a company to a person (such as the issue of Ordinary Shares to those Keybridge shareholders who are also Holders on Conversion of the CRPN) will constitute the person being provided with a capital benefit by a company under paragraph 45B(5)(a).

233. A relevant taxpayer 'obtains a tax benefit' in the circumstances prescribed in subsection 45B(9) of the ITAA 1936. The issue of Ordinary Shares on Conversion of the CRPN will cause CGT event C2 (section 104-25 of the ITAA 1997) to happen. However, Subdivision 130-C of the ITAA 1997 (specifically subsection 130-60(3)) should apply to disregard any capital gain (or capital loss) an entity makes on Conversion. This will ensure that no amount of tax will be payable. By contrast, if the capital benefit had been an assessable dividend, Holders would have to include it in their assessable income under section 44 of the ITAA 1936. Thus, under the scheme, each of the Holders obtains a tax benefit on Conversion of the CRPN.

234. Having regard to the 'relevant circumstances' of the scheme constituted by the Conversion of the CRPN in subsection 45B(8), it cannot be objectively concluded that Keybridge or the Holders who entered into or carried out the scheme (or any part of it) did so for a more than an incidental purpose of enabling the Holders to obtain a tax benefit for the purposes of paragraph 45B(2)(c). The requirements of section 45B will not be satisfied on Conversion of the CRPN.

235. The Redemption of the CRPN will be a 'scheme' for the purposes of section 45B.

236. Redemption will involve being provided with a capital benefit within the meaning of paragraph 45B(5)(b) of the ITAA 1936 (by virtue of subsection 45B(7) of the ITAA 1936) as it will constitute a non-share capital return (as defined in subsection 6(1) of the ITAA 1936 and section 974-125 of the ITAA 1997). The amount paid to Holders on Redemption is limited to the amount of the Face Value of the CRPN and any Outstanding Interest entitlements in respect of the CRPN will be separately paid.

237. A relevant taxpayer 'obtains a tax benefit' in the circumstances prescribed in subsection 45B(9) of the ITAA 1936. The Redemption of the CRPN will cause CGT event C2 (section 104-25 of the ITAA 1997) to happen. This would result in each of the Holders making a capital gain or capital loss, which would be factored into the calculation of a net capital gain for the income year (which is included in assessable income under section 102-5 of the ITAA 1997) or a net capital loss for the income year (under section 102-10 of the ITAA 1997). There is no certainty that any Holder will have a net capital gain in the income year of Redemption, as it depends on whether they made capital losses in that income year or they had net capital losses from earlier income years. It is also possible that Redemption will result in neither a capital gain nor a capital loss for the Holders, as their cost base is $1 per CRPN (see paragraph 62) and they incurred no brokerage costs on acquisition, and on Redemption they will receive $1 per CRPN and incur no brokerage costs.

238. By contrast, if the capital benefit had been an assessable dividend, the Holders would have to include it in their assessable income under section 44 of the ITAA 1936. Thus, under the scheme, each of the Holders obtains a tax benefit on Redemption of the CRPN.

239. Having regard to the 'relevant circumstances' of the scheme constituted by the Redemption of the CRPN in subsection 45B(8), it cannot be objectively concluded that Keybridge or the Holders who entered into or carried out the scheme (or any part of it) did so for a more than an incidental purpose of enabling the Holders to obtain a tax benefit for the purposes of paragraph 45B(2)(c). The requirements of section 45B will not be satisfied on Redemption of the CRPN.

240. Accordingly, the Commissioner will not make a determination under paragraph 45B(3)(b) that section 45C applies in relation to the whole, or a part, of the capital benefit provided to the Holders on Conversion of the CRPN or on Redemption of the CRPN.

# Appendix 2 – Detailed contents list

241. The following is a detailed contents list for this Ruling:

## References

*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2006/10

*Subject references:*

- acquisition dates
- anti-avoidance measures
- capital gains tax
- CGT cost base
- convertible interests
- dividend imputation
- franking tax offset
- imputation benefits
- ordinary income
- qualified persons
- streaming of imputation benefit
- securities
- traditional securities

*Legislative references:*

- ITAA 1936
- ITAA 1936 6(1)
- ITAA 1936 26BB
- ITAA 1936 44(1)
- ITAA 1936 45
- ITAA 1936 45A
- ITAA 1936 45B
- ITAA 1936 45C
- ITAA 1936 70B
- ITAA 1936 159GP
- ITAA 1936 Pt IIIAA Div 1A
- ITAA 1936 177EA
- ITAA 1997
- ITAA 1997 Div 67
- ITAA 1997 104-25
- ITAA 1997 104-135
- ITAA 1997 108-5
- ITAA 1997 109-5
- ITAA 1997 109-10
- ITAA 1997 110-25(2)
- ITAA 1997 110-55(2)
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-25
- ITAA 1997 116-120(1)
- ITAA 1997 130-60
- ITAA 1997 202-40
- ITAA 1997 Subdiv 204-D
- ITAA 1997 204-30
- ITAA 1997 Subdiv 207-F
- ITAA 1997 207-20
- ITAA 1997 Subdiv 207-D
- ITAA 1997 207-145
- ITAA 1997 960-120
- ITAA 1997 Subdiv 974-B
- ITAA 1997 974-15(1)
- ITAA 1997 974-20(1)
- ITAA 1997 Subdiv 974-C
- ITAA 1997 974-70(1)
- ITAA 1997 974-75(1)
- ITAA 1997 974-120
- ITAA 1997 974-130
- ITAA 1997 974-135
- ITAA 1997 974-165
- ITAA 1997 995-1(1)
- TAA 1953

*Other references:*

- Explanatory Memorandum to the New Business Tax System (Imputation) Bill 2002
- Explanatory Memorandum to the Taxation Laws Amendment Bill (No. 2) 1999

ATO references

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