

CR 2016/20 - Income tax: Commonwealth Bank of Australia - CommBank PERLS VIII Capital Notes

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Class Ruling

Income tax: Commonwealth Bank of Australia – CommBank PERLS VIII Capital 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:

- subsection 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 70B of the ITAA 1936
- section 177EA of the ITAA 1936

- Division 1A of former Part IIIAA of the ITAA 1936
- Division 67 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- Division 104 of the ITAA 1997
- section 109-10 of the ITAA 1997
- subsection 110-25(2) of the ITAA 1997
- subsection 110-55(2) of the ITAA 1997
- section 130-60 of the ITAA 1997
- section 204-30 of the ITAA 1997
- section 207-20 of the ITAA 1997
- section 207-145 of the ITAA 1997
- section 974-75 of the ITAA 1997
- section 974-120 of the ITAA 1997, and
- subsection 995-1(1) of the ITAA 1997.

Class of entities

3. The class of entities to which this Ruling applies are investors (referred to as Holders) who acquired CommBank PERLS VIII Capital Notes (called PERLS VIII) issued by the Commonwealth Bank of Australia (CBA) and who:

- are residents of Australia (within the meaning of subsection 6(1) of the ITAA 1936) during the period in which they hold PERLS VIII
- hold their PERLS VIII 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 financial arrangements under the scheme.

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

4. The class of entities to which this Ruling applies does not extend to Holders of PERLS VIII who acquired their PERLS VIII otherwise than by initial application under the Prospectus and PERLS III Reinvestment Offer Information CommBank PERLS VIII Capital Notes, dated 24 February 2016 (the Prospectus).

5. This Ruling does not deal with how the taxation law applies to Holders who hold their PERLS VIII as trading stock or revenue assets.

6. This Ruling does not consider the tax implications of an Early Exchange or Resale of PERLS VIII.
7. This Ruling does not consider how the taxation law applies to a Purchaser who acquires PERLS VIII under a Resale Notice.
8. This Ruling does not consider how the gross-up and tax offset rules in Division 207 of the ITAA 1997 apply to partnership or trustee Holders, or to indirect distributions to partners in a partnership or beneficiaries or trustees of a trust.
9. This Ruling does not deal with how the taxation law applies to CBA in relation to the issue of PERLS VIII.

Qualifications

10. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.
11. 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 14 to 60 of this Ruling.
12. 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

13. This Ruling applies from 1 March 2016 to 30 June 2024. The Ruling continues to apply after 30 June 2024 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10 *Public Rulings*).

Scheme

14. The description of the scheme is set out below and is based upon information provided by the Applicant.

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

15. In this Ruling, unless otherwise defined, capitalised terms take their meaning as specified in the Terms of CommBank PERLS VIII Capital Notes (the Terms) attached as Appendix A to the Prospectus.

Background

16. CBA, together with its subsidiaries (collectively, the Group), is a provider of integrated financial services including retail banking, premium banking, business banking, institutional banking, funds management, superannuation, insurance and investment and share broking products and services.

17. These operations are predominantly conducted in Australia.

18. CBA has branches in London, New Zealand, New York, Singapore, Tokyo, China, India, Vietnam and Hong Kong, as well as subsidiaries in a number of jurisdictions.

19. CBA is an authorised deposit-taking institution and is regulated by the Australian Prudential Regulation Authority (APRA) and other regulatory bodies.

20. In the Prospectus, CBA announced its intention to undertake a capital raising by the issue of PERLS VIII, to raise A\$1.25 billion with the ability to raise more or less.

21. The PERLS VIII offer raised Tier 1 capital (as confirmed by APRA) to satisfy CBA's regulatory capital requirements and maintain the diversity of its sources and types of funding.

22. The funds raised from the issue of the PERLS VIII will be used for CBA's general business purposes and as part of CBA's ongoing capital management strategy in meeting its regulatory capital requirements.

Description of the Transaction

23. PERLS VIII are Australian Dollar (A\$) denominated perpetual, subordinated, unsecured notes issued by CBA, acting through its New Zealand branch.

24. The Offer was made to the public at large and was not restricted to a particular category of investors.

25. PERLS VIII are listed on the Australian Securities Exchange (ASX) and trade under code CBAPE. If an Exchange occurs, PERLS VIII will be terminated and Exchanged for Ordinary Shares in CBA.

26. Section 7 of the Prospectus invited applications for PERLS VIII securities, along with application monies to be submitted for consideration and acceptance by CBA.

27. CBA reserved the right to scale back an allocation of PERLS VIII securities to an amount lower than the amount specified in the application.

Main Features of PERLS VIII

28. The issue price (Face Value) of each PERLS VIII is A\$100. PERLS VIII are fully paid up to A\$100 of Face Value.
29. PERLS VIII generally do not have voting rights, except in the limited circumstances described in clause 2.7 of the Terms.
30. Holders of PERLS VIII do not have a right to require redemption of PERLS VIII.

Distributions

31. PERLS VIII will accrue quarterly interest (Distributions) equal to the 90 day Bank Bill Swap Rate (BBSW) plus a margin, grossed-down by the corporate tax rate. The margin was set through a bookbuild process.
32. Distributions are expected to be fully franked. However, the amount of a Distribution paid on the PERLS VIII will be grossed-up to the extent that the franking percentage of the interest is less than 100%.
33. The payment of a Distribution is subject to the discretion of CBA and the payment not breaching certain APRA conditions.
34. An APRA condition would exist if the payment of a Distribution would result in a breach of CBA's capital requirements under APRA's prudential standards, the payment would result in CBA becoming insolvent, or if APRA otherwise objects to the payment of the Distribution.
35. To the extent that all or part of a Distribution is not paid on a scheduled Distribution Payment Date, Holders of PERLS VIII will have no claim or entitlement in respect of the non-payment of the Distribution. A Distribution that is not paid on a Distribution Payment Date for any reason does not accrue interest for the period during which it remains unpaid.
36. Where a Distribution is not paid in full on a Distribution Payment Date, CBA is restricted from declaring or determining a dividend, returning any capital or undertaking any buy-backs or repurchases in relation to Ordinary Shares without a Special Resolution (broadly, a resolution passed by at least 75% of Holders).

Mandatory Exchange

37. In the event that a Mandatory Exchange occurs, all PERLS VIII will be Exchanged into Ordinary Shares on the date that is the earlier of (each a Mandatory Exchange Date):
- 15 October 2023 (Scheduled Mandatory Exchange Date) subject to the satisfaction of the Mandatory Exchange Conditions, and

- the first Distribution Payment Date after the Scheduled Mandatory Exchange Date on which the Mandatory Exchange Conditions are satisfied (per clause 3.1 of the Terms).
38. Upon Exchange (per clause 7.1 of the Terms):
- each Holder's rights (including in relation to payment of Distributions) in relation to each PERLS VIII that is being Exchanged will be immediately and irrevocably terminated for an amount equal to the Face Value and CBA will apply the Face Value of each PERLS VIII by way of payment for the subscription for the Ordinary Shares to be issued on Exchange, and
 - each Holder will be allotted a number (the Exchange Number) of Ordinary Shares for each PERLS VIII held by the Holder.
39. The Exchange Number is calculated according to the following formula, but subject to being no greater than the Maximum Exchange Number:
40. Exchange Number for each PERLS VIII = Face Value / 0.99 x VWAP.
41. The VWAP is the average of the daily volume weighted average prices of Ordinary Shares traded on the ASX during the VWAP Period, which will generally be the period of 20 Business Days on which trading in Ordinary Shares took place immediately preceding (but not including) the date on which the Exchange is to occur in accordance with the Terms.
42. The Maximum Exchange Number (per clause 7.1(a) of the Terms) is calculated as the Face Value divided by the Relevant Percentage multiplied by the Issue Date VWAP.
43. The Mandatory Exchange Conditions are satisfied where, broadly:
- the VWAP of Ordinary Shares on the 25th Business Day prior to the Mandatory Exchange Date is greater than 56.00% of the Issue Date VWAP
 - the VWAP of Ordinary Shares in the period of 20 Business Days prior to the Mandatory Exchange Date is greater than 50.51% of the Issue Date VWAP, and
 - Ordinary Shares have not been delisted as at the Mandatory Exchange Date (per clause 3.2(a) of the Terms)
44. If the Mandatory Exchange Conditions are not satisfied on the relevant Mandatory Exchange Date, CBA will not proceed with the Exchange.

Early Redemption

45. Clause 5 of the Terms deals with early Redemption (Early Redemption) in certain situations. In each case, Early Redemption is subject to APRA approval and approval is at the discretion of APRA and may or may not be given.

46. Early Redemption involves CBA redeeming all or some PERLS VIII on the Call Date for a payment equal to their Face Value.

47. The Redemption amount payable to Holders is limited to the Face Value of PERLS VIII and a Redemption Date will also be a Distribution Payment Date under the Terms.

48. The circumstances in which Early Redemption may occur are set out in clause 5 of the Terms and include:

- Early Redemption at the option of CBA on the Call Date, being 15 October 2021 (per clause 5.1 of the Terms)
- Early Redemption for certain tax-related reasons (per clauses 5.2 and 5.3 of the Terms), or
- Early Redemption for regulatory reasons (per clause 5.4 of the Terms).

49. Other than an Early Redemption under clause 5.1 of the Terms, Early Redemption may only be undertaken in relation to all (but not some) of PERLS VIII on that date.

Early Exchange

50. The circumstances in which Early Exchange may occur are set out in clause 4 of the Terms and are limited to the happening of a:

- Capital Trigger Event
- Non-Viability Trigger Event, or
- Change of Control Event.

51. A Capital Trigger Event or Non-Viability Trigger Event is triggered by certain circumstances affecting the capital adequacy or viability of CBA (see clauses 4.1 and 4.2 of the Terms). Upon the occurrence of a Capital Trigger Event or a Non-Viability Trigger Event, PERLS VIII will be exchanged for Ordinary Shares (per clauses 4.1(b), 4.2(b) and 4.5 of the Terms) and the Mandatory Exchange Conditions do not apply. This Exchange occurs automatically, without the need for any further act or step by CBA and CBA is required to recognise Holders as having been issued relevant Ordinary Shares for all purposes.

52. If the Exchange is not effective and CBA has not issued Ordinary Shares within five Business Days, then the rights of Holders under the relevant PERLS VIII will be terminated (per clause 4.6 of the Terms).

53. A Change of Control event is triggered by certain takeover bids and schemes of arrangement relating to Ordinary Shares in CBA (per clause 4.7(a) of the Terms). Upon the occurrence of a Change of Control Event, PERLS VIII will be exchanged for Ordinary Shares (per clause 4.7(b) of the Terms).

Resale on the Call Date

54. CBA may elect that Holders resell some or all of their PERLS VIII to a nominated purchaser (Purchaser) on the Call Date under clause 6 of the Terms. Once CBA has negotiated with the Purchaser, it will initiate the Resale by issuing a Resale Notice. The Purchaser will acquire PERLS VIII for their Face Value.

55. The Purchaser will be a nominated third party and cannot be an entity that is related to CBA.

56. If CBA issues a Resale Notice (per clause 6(b) of the Terms):

- each Holder is taken irrevocably to offer to sell PERLS VIII on the Call Date to the Purchaser for a cash amount equal to Face Value (and to have appointed CBA as its agent and attorney to do and execute all things and documents which CBA considers may be necessary or desirable in connection with that offer and any resulting sale)
- subject to payment by the Purchaser of the Face Value to the Holders, all right, title and interest in the PERLS VIII will be transferred to the Purchaser on the Call Date, and
- if the Purchaser does not pay the Face Value to the relevant Holders on the Call Date, the relevant number of PERLS VIII will not be transferred to the Purchaser and a Holder has no claim on CBA as a result of that non-payment.

57. CBA will determine shortly before the Call Date whether it will exercise its ability to appoint a Purchaser in accordance with the Terms. Such a Purchaser (or Purchasers) is expected to be an investment bank (or banks).

58. The terms of any agreement between CBA and a Purchaser have not been determined. The terms of any such agreement will be negotiated approaching the Call Date if CBA wishes to use the Resale mechanism.

59. CBA did not enter into discussions with any third party in relation to undertaking the role of Purchaser under the Resale mechanism prior to the issue of PERLS VIII.

Other matters and assumptions

60. This Ruling is made on the basis that:
- (a) The Terms represent a complete and accurate description of the terms of PERLS VIII.
 - (b) During the term of the Transaction, CBA will be a resident of Australia under the income tax laws of Australia and will not be a resident of any other jurisdiction.
 - (c) PERLS VIII are equity interests in CBA pursuant to Division 974 of the ITAA 1997.
 - (d) Distributions on PERLS VIII will be frankable distributions pursuant to section 202-40 of the ITAA 1997 and are not unfrankable under section 202-45 of the ITAA 1997.
 - (e) CBA will frank the Distributions on PERLS VIII at the same franking percentage as the benchmark for the franking period in which the payments are made.
 - (f) The share capital of CBA will not become tainted by an issue of PERLS VIII or the Ordinary Shares of CBA on Exchange of PERLS VIII within the meaning of Subdivision 197-A of the ITAA 1997.
 - (g) The Ordinary Shares issued in the event of an Exchange of PERLS VIII will be equity interests in CBA pursuant to Division 974 of the ITAA 1997.
 - (h) For the purposes of determining whether a Holder is a 'qualified person' for the purposes of Division 1A of former Part IIIAA of the ITAA 1936, a Holder has taken no positions (apart from the holding of PERLS VIII) in relation to their PERLS VIII.
 - (i) The Holders, or their associates, will not make any related payments (within the meaning of former section 160APHN of the ITAA 1936) in relation to Distributions on PERLS VIII.
 - (j) Holders in receipt of Distributions on PERLS VIII will have held their PERLS VIII for a period of at least 90 days (excluding the day of disposal), within the applicable qualification period.
 - (k) Distributions will not be sourced directly or indirectly from CBA's share capital account or non-share capital account, or be debited against CBA's share capital account or non-share capital account.
 - (l) Immediately before the payment of a franked Distribution on PERLS VIII CBA will have available frankable profits for the purposes of section 215-20 of the ITAA 1997.

- (m) CBA will not differentially frank Distributions to different Holders in respect of PERLS VIII according to the tax status of Holders or on any other basis.
- (n) CBA expects that future tax payments will generate sufficient franking credits for CBA to continue its current policy of full franking.
- (o) CBA expects to fully frank all frankable distributions for the foreseeable future, i.e. as regards dividends on Ordinary Shares and other equity interests giving rise to frankable distributions (including PERLS VIII).
- (p) The dividend payout ratios and the franking credits arising in relation to the Ordinary Shares and other preference share capital of CBA are not expected to change as a result of the issue of PERLS VIII.
- (q) The Holders (or their connected entities) will not engage in distribution washing (within the meaning of section 207-157 of the ITAA 1997) in relation to Distributions on PERLS VIII (unless entitled to the exception under subsection 207-157(4) of the ITAA 1997).
- (r) The allotment of Ordinary Shares is not expected to affect CBA's dividend franking policy (which applies to its Ordinary Shares, preference shares and non-share equity interests).
- (s) If there is an Early Redemption of PERLS VIII, the Redemption Amount payable to a Holder will be debited in full to CBA's non-share capital account.
- (t) All parties to the Transaction are dealing with each other on arm's length terms and fair value consideration will be provided by the Holders to acquire PERLS VIII.
- (u) Holders will be the legal and beneficial owners of PERLS VIII.

Ruling

CGT implications upon acquisition of PERLS VIII

Acquisition time

61. Each Holder who acquired PERLS VIII upon subscription will be taken to have acquired each PERLS VIII on 30 March 2016 under Item 2 of the table in section 109-10 of the ITAA 1997.

Cost base and reduced cost base

62. The first element of the cost base and reduced cost base of each PERLS VIII is A\$100, being the money paid by the Holder to acquire PERLS VIII from CBA (in accordance with subsections 110-25(2) and 110-55(2) of the ITAA 1997).

Inclusion of Distributions and franking credits in assessable income

63. Distributions paid in respect of each PERLS VIII are non-share dividends under section 974-120 of the ITAA 1997 and are included in the Holders' assessable income (subparagraph 44(1)(a)(ii) of the ITAA 1936).

64. Holders are also required to include an amount equal to the franking credit attached to the Distribution in their assessable income under subsection 207-20(1) of the ITAA 1997.

Entitlement to a tax offset for franking credits

65. Holders will be entitled to a tax offset equal to the amount of the franking credit attached to the Distribution paid by CBA to the respective Holder in respect of PERLS VIII pursuant to subsection 207-20(2) of the ITAA 1997 unless the Distribution is exempt income or non-assessable non-exempt income in the hands of the Holder and none of the exceptions in Subdivision 207-E of the ITAA 1997 apply.

Exempt income or non-assessable non-exempt income

66. If the Distribution (or part of it) is either exempt income or non-assessable non-exempt income in the hands of the relevant Holder, then the amount of any franking credit on Distribution is not included in the assessable income of the Holder and the Holder is not entitled to a tax offset under Division 207 of the ITAA 1997 (Subdivision 207-D of the ITAA 1997) unless any of the exceptions in Subdivision 207-E of the ITAA 1997 apply.

Refundable tax offset rules

67. Holders who are entitled to a tax offset under subsection 207-20(2) of the ITAA 1997 in respect of the franking credits received in relation to PERLS VIII will be subject to the refundable tax offset rules in Division 67 of the ITAA 1997, unless they are specifically excluded under section 67-25 of the ITAA 1997.

Gross-up and tax offset denied in certain circumstances

Qualified persons

68. Section 207-145 of the ITAA 1997 will not apply to the whole, or any part, of the Distributions paid to Holders provided that a Holder is a 'qualified person' in relation to Distributions paid on PERLS VIII.

69. For the purposes of Division 1A of former Part IIIAA of the ITAA 1936, a Holder will be considered to be a 'qualified person' in relation to Distributions paid on PERLS VIII provided that, pursuant to former section 160APHO of the ITAA 1936:

- the Holder holds PERLS VIII at risk for a continuous period of at least 90 days (excluding the day of acquisition and the day of disposal, and any days on which the Holder has materially diminished risks of loss or opportunities for gain in respect of the PERLS VIII within the meaning of former sections 160APHM and 160APHJ of the ITAA 1936), and
- neither the Holder, nor an associate of the Holder, has made or is under an obligation to make a related payment (within the meaning of former section 160APHN of the ITAA 1936) in respect of Distributions.

70. The provisions in the Terms for the Resale of PERLS VIII on the Call Date and the Exchange of PERLS VIII will not of themselves result in a materially diminished risk of loss or opportunity for gain in respect of PERLS VIII.

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

71. The Commissioner will not make a determination under paragraph 177EA(5)(b) of the ITAA 1936 to deny the whole, or any part, of the imputation benefits received by Holders in relation to Distributions paid in respect of PERLS VIII.

Streaming of imputation benefits

72. 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 a Holder in relation to Distributions paid in respect of PERLS VIII.

Dividend stripping operation

73. Distributions on PERLS VIII will not be made as part of a dividend stripping operation for the purposes of paragraph 207-145(1)(d) and section 207-155 of the ITAA 1997.

Section 45 of the ITAA 1936

74. Section 45 of the ITAA 1936 will not apply to treat the Ordinary Shares issued on Exchange as an unfranked dividend paid by CBA to the Holders.

Section 45A of the ITAA 1936

75. The Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies to treat the whole or part of a capital benefit that arises upon an Exchange of PERLS VIII or an Early Redemption as an unfranked dividend in the hands of the Holders.

Section 45B of the ITAA 1936

76. The Commissioner will not make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to treat the whole or part of a capital benefit that arises upon an Exchange of PERLS VIII or an Early Redemption as an unfranked dividend in the hands of Holders.

PERLS VIII not traditional securities

77. Section 26BB of the ITAA 1936 will not apply to include any amount in the assessable income of a Holder upon disposal of PERLS VIII.

78. Section 70B of the ITAA 1936 will not apply to allow a deduction to a Holder upon disposal of PERLS VIII.

Ordinary Shares received upon Exchange not a dividend

79. The Exchange of PERLS VIII for Ordinary Shares in CBA will not result in Holders being taken to have received a dividend or a non-share dividend.

80. However, a Distribution paid on an Exchange date will be considered a non-share dividend and subject to the tax consequence outlined at paragraphs 63 to 73 of this Ruling.

CGT Implications upon Exchange of PERLS VIII for Ordinary Shares

81. Each PERLS VIII is a convertible interest.

82. CGT event C2 will happen for Holders on Exchange of PERLS VIII into Ordinary Shares in CBA (section 104-25 of the ITAA 1997).

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

Acquisition time of Ordinary Shares received upon Exchange

84. Ordinary Shares acquired on Exchange of PERLS VIII will be taken to have been acquired when the conversion happens on the relevant Exchange Date (subsection 130-60(2) of the ITAA 1997).

Cost base and reduced cost base of Ordinary Shares received upon Exchange

85. On Exchange, Subdivision 130-C of the ITAA 1997 will apply so that the first element of the cost base and reduced cost base of the Ordinary Shares acquired upon Exchange will be the cost base of PERLS VIII at the time of Exchange (Item 2 of the table in subsection 130-60(1) of the ITAA 1997).

Commissioner of Taxation

30 March 2016

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.*

CGT implications upon acquisition of PERLS VIII

Acquisition time

86. Item 2 of the table in section 109-10 of the ITAA 1997 provides that in the circumstances where a company issues or allots equity interests or non-equity shares in the company to you, you will acquire the CGT asset when the contract is entered into, or, if there is not a contract, when the interests are issued or allotted.

87. Each PERLS VIII is an equity interest in CBA pursuant to Division 974 of the ITAA 1997.

88. Based upon the terms of the Prospectus, no contract is entered into prior to allotment of the PERLS VIII securities by CBA.

89. Consequently, for CGT purposes, each Holder who acquires PERLS VIII upon subscription will be taken to have acquired each PERLS VIII on 30 March 2016 in accordance with Item 2 of the table in section 109-10 of the ITAA 1997.

Cost base and reduced cost base

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

91. The Face Value of each PERLS VIII is A\$100, which is paid by the Holder to CBA upon subscription for each PERLS VIII.

92. Accordingly, for CGT purposes, the first element of the cost base and reduced cost base in each PERLS VIII for each Holder who acquires PERLS VIII upon subscription will be A\$100.

Inclusion of Distributions and franking credits in assessable income

93. Subsection 44(1) of the ITAA 1936 provides that the assessable income of an Australian resident shareholder in a company includes all dividends and non-share dividends paid to the shareholder by the company.

94. Subsection 43B(1) of the ITAA 1936 provides that the legislation governing the taxation of Dividends applies to non-share equity interests, holders and dividends in the same way as it applies to shares, shareholders and dividends.

95. PERLS VIII are equity interests under Division 974 of the ITAA 1997 and Holders are equity holders.

96. Distributions on PERLS VIII received by Holders are frankable non-share dividends in accordance with sections 974-120 and 202-30 of the ITAA 1997.

97. Accordingly, Holders must include in their assessable income Distributions paid in respect of PERLS VIII under subparagraph 44(1)(a)(ii) of the ITAA 1936.

98. In accordance with subsection 207-20(1) of the ITAA 1997, any franking credit attached to a Distribution must also be included in the Holder's assessable income for the income year in which the Distribution is made.

Entitlement to a tax offset for franking credits

99. Holders are entitled to a tax offset equal to the franking credit on a Distribution in accordance with subsection 207-20(2) of the ITAA 1997, unless the Distribution is exempt income or non-assessable non-exempt income in the hands of the Holder.

Exempt income or non-assessable non-exempt income

100. Subdivision 207-D of the ITAA 1997 provides that if a Distribution (or part of it) is either exempt income or non-assessable non-exempt income in the hands of the relevant Holder, then the amount of any franking credit on Distribution is not included in the assessable income of the Holder and the Holder is not entitled to a tax offset under Division 207 of the ITAA 1997.

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

Refundable tax offset rules

102. Division 67 of the ITAA 1997 contains the refundable tax offset rules, and, in particular, sets out which tax offsets can be refunded if they exceed basic income tax liability.

103. Subsection 67-25(1) of the ITAA 1997 provides that tax offsets available under Division 207 of the ITAA 1997 are subject to the refundable tax offset rules, unless otherwise excluded.

104. Holders who are entitled to a tax offset under subsection 207-20(2) of the ITAA 1997, in respect of the franking credit received, will also be subject to the refundable tax offset rules in Division 67 of the ITAA 1997, unless they are specifically excluded under section 67-25 of the ITAA 1997.

105. Entities excluded under 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 as set out in subsections 67-25(1C) or 67-25(1D) of the ITAA 1997.

Gross-up and tax offset denied in certain circumstances

106. Subdivision 207-F of the ITAA 1997 provides appropriate adjustments to cancel the benefits of tax offsets in circumstances where there has been manipulation of the imputation system in a manner that is not permitted under the income tax law.

107. The circumstances that must exist before this adjustment can occur are listed in section 207-145 of the ITAA 1997. These include:

- the entity that receives the franking credit is not a 'qualified person' in relation to the distribution (paragraph 207-145(1)(a) of the ITAA 1997)
- the Commissioner has made a determination under paragraph 177EA(5)(b) of the ITAA 1936 that no imputation benefit is to arise in respect of the dividend (paragraph 207-145(1)(b) of the ITAA 1997)
- the Commissioner has made a determination under paragraph 204-30(3)(c) of the ITAA 1997 that no imputation benefit is to arise in respect of the distribution for the entity (paragraph 207-145(1)(c) of the ITAA 1997)
- the distribution is made as part of a dividend stripping operation (paragraph 207-145(1)(d) of the ITAA 1997), and
- the distribution is one to which section 207-157 of the ITAA 1997 (which is about distribution washing) applies (paragraph 207-145(1)(da) of the ITAA 1997).

108. This Ruling is made on the assumption that the distribution washing provisions in section 207-157 of the ITAA 1997 do not apply. The remaining circumstances are discussed below.

Qualified persons

109. A person is a qualified person for the purposes of Division 1A of former Part IIIA of the ITAA 1936 if they satisfy:

- the holding period rule, and
- the related payments rule.

110. The holding period rule requires a person to hold shares (including non-share equity interests by virtue of former section 160AOA of the ITAA 1936) at risk for a continuous period (excluding the day of acquisition and the day of disposal, if they are disposed of) of 45 days (or 90 days for preference shares) in order to qualify for a franking benefit.

111. The related payments rule applies where a person (or an associate of that person) is under an obligation to make, or is likely to make, a payment in relation to the dividend (including non-share dividend by virtue of former section 160AOA of the ITAA 1936). Related payments are outlined in former section 160APHN of the ITAA 1936. Where a related payment is made, under an obligation to be made or is likely to be made the person must hold the relevant interest at risk for more than 45 days (or 90 days for preference shares) during the relevant qualification period in order to qualify for a franking benefit.

112. PERLS VIII are non-share equity interests that carry floating rate non-cumulative non-share dividend entitlements. Should a PERLS VIII Distribution not be paid as scheduled, CBA is not entitled to pay dividends on Ordinary Shares (that is, the Distribution is in preference to ordinary shares) unless a Special Resolution is passed (broadly, a resolution passed by at least 75% of Holders). PERLS VIII securities are therefore less risky than Ordinary Shares in CBA and will be considered 'preference shares'.

113. As such, for the purposes of Division 1A of former Part IIIAA of the ITAA 1936, a Holder will be considered to be a 'qualified person' in relation to Distributions paid on PERLS VIII pursuant to former section 160APHO of the ITAA 1936 if:

- the Holder holds their PERLS VIII at risk for at least 90 days (excluding the day of acquisition and the day of disposal, if they are disposed), and
- neither the Holder, nor an associate of the Holder, has made, is under an obligation to make, or is likely to make a related payment in relation to Distributions on their PERLS VIII securities.

114. A qualified person will generally have to hold their PERLS VIII 'at risk' for a period of 90 days in order to access the imputation benefits attached to a distribution.

115. Former subsection 160APHO(3) of the ITAA 1936 states:

In calculating the number of days for which the taxpayer continuously held the shares or interest, any days on which the taxpayer has materially diminished risks of loss or opportunities for gain in respect of the shares or interest are to be excluded, but the exclusion of those days is not taken to break the continuity of the period for which the taxpayer held the shares or interest.

116. In establishing whether an interest is held 'at risk' it is necessary to take into account all positions held in respect of the security in order to identify a 'net position'. This net position will identify whether there has been a material diminution of the risks of loss or opportunities for gain in relation to the security.

117. A position in relation to a share is anything that has a 'delta' in relation to that share (former subsection 160APHJ(2) of the ITAA 1936). Although 'delta' is not defined in the legislation, paragraph 4.56 of the Explanatory Memorandum to the Taxation Laws Amendment Bill (No. 2) 1999 states that it:

...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 price relationship.

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

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

119. It is assumed for the purposes of this Ruling that Holders have taken no positions in relation to their PERLS VIII. Further, the Resale and Exchange mechanisms applicable to PERLS VIII are not of themselves considered to affect a Holder's risks of loss or opportunities for gain in respect of PERLS VIII.

120. In considering the Resale facility and the Exchange processes contained in the PERLS VIII Terms, it is not necessary to disaggregate the rights and obligations attaching to the PERLS VIII securities into a number of separate positions held by CBA (see paragraph 13 of Taxation Determination TD 2007/29 *Income tax: holding period rule: is an embedded share option a position in relation to the share if it is exercisable by or against a party other than the issuer of the share?*).

121. Embedded share options, such as these, are positions in relation to a share if exercisable by or against a party other than the issuer of the share (see paragraph 1 of TD 2007/29).

122. Under the Resale mechanism, CBA can elect to require some or all Holders to sell their PERLS VIII to the Purchaser. However, the purchaser has no right or ability to trigger Resale of PERLS VIII until selected by CBA; and CBA is not required to exercise the Resale mechanism. As CBA, being the issuer of the PERLS VIII securities, is the only party entitled to make the election to exercise the Resale option, that mechanism will not be considered to be a separate position in relation to PERLS VIII for the purposes of Division 1A of former Part IIIAA of the ITAA 1936.

123. Similarly, although the Exchange mechanism will affect the exchange of PERLS VIII for Ordinary Shares, it will not represent a separate position in relation to PERLS VIII, since Holders do not have the right to elect Exchange or Early Exchange; nor does CBA have an obligation to Exchange.

124. As the Resale and Exchange mechanisms do not constitute separate positions from the PERLS VIII, they will not impact upon the net position of Holders and, consequently, will not affect a Holder's risks of loss or opportunities for gain in respect of PERLS VIII, for the purposes of the definition of 'qualified person' in Division 1A of former Part IIIAA of the ITAA 1936.

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

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

126. Subsection 177EA(3) of the ITAA 1936 provides the conditions under which the section will apply:

- (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.

127. Paragraph 177EA(12)(a) of the ITAA 1936 extends the operation of section 177EA of the ITAA 1936 to non-share equity interests.

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

- (a) The initial issue of PERLS VIII by CBA and the issue of Ordinary Shares upon Exchange of the PERLS VIII securities will constitute a scheme for the disposition of membership interests (paragraph 177EA(3)(a) of the ITAA 1936).
- (b) A frankable distribution is expected to be payable to a person in respect of the PERLS VIII membership interest (paragraph 177EA(3)(b) of the ITAA 1936).
- (c) CBA will frank the Distributions on PERLS VIII at the same franking percentage as the benchmark for the franking period in which the payments are made (paragraph 177EA(3)(c) of the ITAA 1936).
- (d) It is reasonable to expect from the above that, but for the operation of this section, Holders of PERLS VIII securities will receive imputation benefits, being a tax offset under Division 207 of the ITAA 1997 as a result of the Distributions made (paragraph 177EA(3)(d) of the ITAA 1936).

129. Consequently, paragraph 177EA(3)(e) of the ITAA 1936 provides that the relevant circumstances of the scheme must be considered to establish whether any person who entered into or carried out the scheme or any part of the scheme did so for a more than incidental purpose of enabling a relevant taxpayer to obtain an imputation benefit.

130. The relevant circumstances of a scheme for consideration are included in subsection 177EA(17) of the ITAA 1936. This is a non-exhaustive list of relevant circumstances and the weight accorded to any of the circumstances will vary according to the extent to which that circumstance is probative of a purpose of the kind referred to in paragraph 177EA(3)(e) of the ITAA 1936.

131. The present circumstances have many similarities to, but are not identical to, the circumstances considered in *Mills v. Commissioner of Taxation* [2012] HCA 51; 2012 ATC 20-360; (2012) 83 ATR 514. There the High Court considered whether the circumstances of the issue of certain securities (PERLS V), which were comprised of a stapled, subordinated, unsecured note issued by the New Zealand branch and a preference share issued by CBA, were such that the Commissioner could make a determination under paragraph 177EA(5)(b). The Court held that holders of stapled securities obtained franking credits for a purpose that was incidental to the Bank's purpose of raising Tier 1 capital.

132. The relevant circumstances listed 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 or may not be present at any one time in relation to a particular scheme.

133. The Commissioner considers that a number of the relevant circumstances of the present arrangement go some way towards indicating a non-incidental purpose of enabling a relevant taxpayer to obtain an imputation benefit. In particular, the calculation of the Distribution by reference to the corporate tax rate and the Adjustment to calculation of Distributions if not fully franked, are relevant to paragraph 177EA(17)(f) of the ITAA 1936 and are thus of significance for the ascertainment of the relevant purpose.

134. However, based on the information provided and the qualifications set out in this Ruling, the Commissioner's consideration of all of the relevant circumstances of the scheme would not, on balance, lead to a conclusion that the purpose of enabling Holders to obtain imputation benefits is more than incidental to CBA's purpose of raising Tier 1 capital.

135. Accordingly, the Commissioner will not make a determination under paragraph 177EA(5)(b) of the ITAA 1936 that would deny the imputation benefits to the Holders.

Streaming of imputation benefits

136. Subsection 204-30(1) of the ITAA 1997 empowers the Commissioner to make a determination under paragraph 204-30(3)(c) of the ITAA 1997 in cases where distribution streaming is identified.

137. The term 'streaming' is not defined in the ITAA 1997.

138. At paragraphs 3.28 and 3.29 of the Explanatory Memorandum to the New Business Tax System (Imputation) Bill 2002, which introduced Subdivision 204-D to the ITAA 1997, it is explained that:

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

3.29 The law uses an essentially objective test for streaming, although purpose may be relevant where future conduct is a relevant consideration. It will normally be apparent on the face of an arrangement that a strategy for streaming is being implemented. The distinguishing of members on the basis of their ability to use franking benefits is a key element of streaming.

139. As such, 'streaming' involves the distribution of franking credits in a way which provides an enhanced benefit to a certain category of members based upon their respective tax attributes.

140. All Holders of PERLS VIII will receive franked Distributions regardless of their tax attributes or their individual tax positions.

141. Further, the dividend payout ratios and the franking credits arising in relation to the Ordinary Shares and other preference share capital of CBA are not expected to change as a result of the issue of PERLS VIII.

142. As such, no member of CBA will derive a greater benefit from the franking credits than another member of CBA, by virtue of the Distributions on PERLS VIII. Therefore, section 204-30 of the ITAA 1997 will not apply to the Distributions on PERLS VIII.

Dividend stripping operation

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

144. The term 'dividend stripping' has no precise legal meaning; however it has been the subject of judicial discussion, including recently by the Full Federal Court in *Lawrence v. Commissioner of Taxation* [2009] FCAFC 29; 2009 ATC 20-096 (*Lawrence*) and the High Court in *FC of T v. Consolidated Press Holdings and Ors; CPH Property Pty Ltd v. FC of T* (2001) 207 CLR 235; [2001] HCA 32; 2001 ATC 4343; (2001) 47 ATR 229 (*Consolidated Press*).

145. In *Consolidated Press*, the High Court outlined the 'common characteristics' of earlier dividend stripping cases. Those characteristics, subsequently adopted in *Lawrence*, include:

- a target company with substantial undistributed profits creating a potential tax liability, either for the company or its shareholders
- the sale or allotment of shares in the target company to another party
- the payment of a dividend to the purchaser or allottee of the shares out of the target company's profits
- the purchaser or allottee escaping Australian income tax on the dividend so declared
- the vendor shareholders receiving a capital sum for the shares in an amount the same as or very close to the dividends paid to the purchasers (there being no capital gains tax at the relevant times), and
- the scheme being carefully planned, with all the parties acting in concert, for the predominant if not the sole purpose of the vendor shareholders, in particular, avoiding tax on a distribution of dividends by the target company.

146. The above characteristics are not present in the PERLS VIII Transaction and, as such, Distributions on PERLS VIII will not be made as part of a dividend stripping operation.

Section 45 of the ITAA 1936

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

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

148. Minimally franked dividends are dividends that are franked to less than 10% (per subsection 45(3) of the ITAA 1997).

149. Based on the information provided and having regard to the relevant circumstances of the scheme, section 45 of the ITAA 1936 will not apply to treat the Ordinary Shares provided to Holders as an unfranked dividend in their hands.

150. The dividend payout ratios and the franking credits arising in relation to the Ordinary Shares and other preference share capital of CBA are not expected to change as a result of the issue of PERLS VIII.

151. Further, CBA expects to fully frank all frankable distributions for the foreseeable future, i.e. as regards dividends on Ordinary Shares and other equity interests giving rise to frankable distributions (including PERLS VIII) and CBA expects that future tax payments will generate sufficient franking credits for CBA to continue its current policy of full franking.

152. The issue of Ordinary Shares to Holders in the event of an Exchange reflects a change in the type of equity interests held by Holders in CBA. It is not a satisfaction of any distribution entitlements of Holders.

Section 45A of the ITAA 1936

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

154. The Commissioner may make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies. The effect of such a determination is that the capital benefit is taken to be an unfranked dividend.

155. Paragraph 45A(3)(a) of the ITAA 1936 provides that the provision to the shareholder of shares in the company will constitute a capital benefit. As such, the provision of shares upon Exchange will constitute a capital benefit for the purposes of the section.

156. However, the Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 in the present case.

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

158. Holders have preferential access to frankable distributions (in the sense described in paragraph 36 of this Ruling) and are only entitled to receive capital benefits on exchange or redemption of their PERLS VIII. Further, there is nothing to suggest that Holders will derive a greater benefit from capital benefits than other shareholders in CBA.

159. In the absence of any other factors, and based on the circumstances of the scheme, the issue of the CBA Ordinary Shares on the Exchange of PERLS VIII will not be considered to be streaming the provision of capital benefits.

160. An Early Redemption will involve the provision of a capital benefit within the meaning of subsection 45A(3) as it will constitute a non-share capital return (subsection 45A(3A) of the ITAA 1936). The amount paid to Holders on Early Redemption is limited to the amount of the Face Value of PERLS VIII and any Distribution entitlements on PERLS VIII will be paid separately as Distributions given that a Redemption Date will also be a Distribution Payment Date under the Terms.

161. Accordingly, it cannot be said that Holders would derive a greater benefit from these capital benefits than other CBA shareholders. Therefore, an Early Redemption or the issue of Ordinary Shares on Exchange will not trigger the application of section 45A of the ITAA 1936.

Section 45B of the ITAA 1936

162. Section 45B of the ITAA 1936 applies where certain capital benefits are provided to shareholders in substitution for dividends and the conditions in subsection 45B(2) of the ITAA 1936 are met.

163. Where section 45B of the ITAA 1936 applies to a scheme or transaction, subsection 45C(3) of the ITAA 1936 permits the Commissioner to make a determination that a franking debit arises for the company.

164. The issue of Ordinary Shares to Holders on Exchange will constitute a scheme under which the Holders are provided with a capital benefit by CBA (paragraph 45B(5)(a) of the ITAA 1936).

165. A Mandatory Exchange of PERLS VIII will involve the provision of Ordinary Shares in CBA in exchange for PERLS VIII securities. These will meet the requirements of paragraph 45B(5)(a) of the ITAA 1936 to be considered a capital benefit.

166. However, section 45B of the ITAA 1936 will not apply to the PERLS VIII Transaction and the Commissioner will not make a determination under subsection 45C(3) of the ITAA 1936 in the present case.

167. The application of section 45B of the ITAA 1936 will turn on the application of paragraph 45B(2)(c) of the ITAA 1936 and a consideration of the relevant circumstances in subsection 45B(8) of the ITAA 1936 to establish whether a more than incidental purpose of entering the scheme was to enable a relevant taxpayer to obtain a tax benefit.

168. Based upon an examination of the relevant circumstances in subsection 45B(8) of the ITAA 1936, it will not be concluded that the PERLS VIII scheme was entered into for a purpose of enabling relevant taxpayers to obtain a tax benefit.

PERLS VIII not traditional securities

169. Section 26BB of the ITAA 1936 defines a 'traditional security' to be 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 of the ITAA 1936
- is not trading stock of the taxpayer, and
- either does not have an eligible return or has an eligible return that satisfies the conditions in subparagraph 26BB(1)(b)(ii) of the ITAA 1936.

170. The term 'security' is defined in subsection 26BB(1) of the ITAA 1936 by reference to Division 16E of the ITAA 1936, which at subsection 159GP(1) of the ITAA 1936 defines 'security' as:

- (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.

171. Taxation Ruling TR 96/14 *Income tax: traditional securities* provides further detail in relation to a number of interpretive matters relating to traditional securities.

172. PERLS VIII are not a deposit with CBA, nor are they a loan. As such, they will not be a 'security' under the definitions in paragraphs 159GP(1)(b) or 159GP(1)(c) of the ITAA 1936.

173. PERLS VIII will not meet the definition in paragraph 159GP(1)(a) of the ITAA 1936 as they are not a stock, bond, debenture certificate, bill of exchange or promissory note. Subsection 6(1) of the ITAA 1936 defines a 'debenture' to include 'notes'. However, the PERLS VIII are not considered to be notes, as they are not an acknowledgement of a debt and promise to pay a sum at some future time: see paragraphs 23-24 of Taxation Determination TD 2009/14. For this reason, the PERLS VIII will also not fall into the category of 'other security', in paragraph 159GP(1)(a) or the ITAA 1936 (see paragraph 29 of TR 96/14).

174. This conclusion is also determinative in establishing that PERLS VIII will not meet the requirements in paragraph 159GP(1)(d) of the ITAA 1936 (see paragraph 30 of TR 96/14).

175. As such, PERLS VIII will not meet the definition of security under subsection 159GP(1) of the ITAA 1936 and will, therefore, not be traditional securities for the purposes of section 26BB of the ITAA 1936.

Ordinary Shares received upon Exchange not a dividend

176. The Exchange of PERLS VIII for Ordinary Shares in CBA will not result in Holders being taken to have received a dividend or a non-share dividend.

177. Holders are not shareholders of CBA in respect of their PERLS VIII holdings and as such will not receive a 'dividend' as defined in subsection 6(1) of the ITAA 1936.

178. All non-share distributions are non-share dividends unless they are debited against the distributing company's non-share capital account or its share capital account (section 974-120 of the ITAA 1997).

179. The distribution of Ordinary Shares in CBA upon Exchange of PERLS VIII will not qualify as a non-share dividend as the Face Value of the PERLS VIII will be debited against CBA's non-share capital account.

180. However, a Distribution paid on an Exchange Date will be considered a non-share dividend and subject to the tax consequence outlined at paragraphs 63 to 76 of this Ruling.

CGT implications upon Exchange of PERLS VIII for Ordinary Shares

181. Subsection 995-1(1) of the ITAA 1997 defines a 'convertible interest' in a company to mean an interest of the kind referred to in Item 4 of the table in subsection 974-75(1) of the ITAA 1997.

182. Item 4 of the table in subsection 974-75(1) of the ITAA 1997 concerns an interest issued by a company that:

- (a) gives its holder (or a connected entity of the holder) a right to be issued with an equity interest in the company or a connected entity of the company, or
- (b) is an interest that will, or may, convert into an equity interest in the company or a connected entity of the company.

183. PERLS VIII will or may convert into Ordinary Shares in CBA through the exchange mechanism referred to in paragraph 38 of this Ruling (paragraph 974-165(b) of the ITAA 1997).

184. Therefore, each PERLS VIII will meet the definition in paragraph (b) in Item 4 of the table in subsection 974-75(1) of the ITAA 1997 and will, therefore, meet the definition of a convertible interest as defined in subsection 995-1(1) of the ITAA 1997.

Acquisition time of Ordinary Shares received upon Exchange

185. Convertible interests are subject to Subdivision 130-C of the ITAA 1997.

186. Subsection 130-60(2) of the ITAA 1997 states:

You are taken to have acquired the shares or units when the conversion of the convertible interest happened.

187. As such, on Exchange, each PERLS VIII Holder will be taken to have acquired each Ordinary Share that they receive on the relevant Exchange Date.

Cost base and reduced cost base of Ordinary Shares received upon Exchange

188. CGT event C2 will happen to Holders on Exchange of PERLS VIII. CGT event C2 happens if an entity's ownership of a convertible interest ends by the interest being converted (paragraph 104-25(1)(f) of the ITAA 1997).

189. Convertible interests are subject to Subdivision 130-C of the ITAA 1997.

190. Item 2 of the table in subsection 130-60(1) of the ITAA 1997 operates such that each Holder of PERLS VIII will be taken to have a first element of the cost base and reduced cost base in the Ordinary Share acquired upon Exchange equal to the Holder's cost base and reduced cost base of PERLS VIII at the time of the Exchange.

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 96/14; TR 2006/10;

TD 2007/29; TD 2009/14

Legislative references:

- ITAA 1936 177EA(3)(a)
- ITAA 1936 177EA(3)(b)
- ITAA 1936 177EA(3)(c)
- ITAA 1936 177EA(3)(d)
- ITAA 1936 177EA(3)(e)
- ITAA 1936 177EA(5)(b)
- ITAA 1936 177EA(12)(a)
- ITAA 1936 177EA(17)
- ITAA 1936 177EA(17)(f)
- ITAA 1997
- ITAA 1997 Div 67
- ITAA 1997 67-25
- ITAA 1997 67-25(1)
- ITAA 1997 67-25(1C)
- ITAA 1997 67-25(1D)
- ITAA 1997 Div 104
- ITAA 1997 104-25
- ITAA 1997 104-25(1)(f)
- ITAA 1997 109-10
- ITAA 1997 110-25(2)
- ITAA 1997 110-25(2)(a)
- ITAA 1997 110-55(2)
- ITAA 1997 Subdiv 130-C
- ITAA 1997 130-60
- ITAA 1997 130-60(1)
- ITAA 1997 130-60(2)
- ITAA 1997 130-60(3)
- ITAA 1997 Subdiv 197-A
- ITAA 1997 202-30
- ITAA 1997 202-40
- ITAA 1997 202-45
- ITAA 1997 Subdiv 204-D
- ITAA 1997 204-30
- ITAA 1997 204-30(1)
- ITAA 1997 204-30(3)(c)
- ITAA 1997 Div 207
- ITAA 1997 Subdiv 207-D
- ITAA 1997 Subdiv 207-E
- ITAA 1997 Subdiv 207-F
- ITAA 1997 207-20
- ITAA 1997 207-20(1)
- ITAA 1997 207-20(2)
- ITAA 1997 207-145
- ITAA 1997 207-145(1)(a)
- ITAA 1997 207-145(1)(b)
- ITAA 1997 207-145(1)(c)
- ITAA 1997 207-145(1)(d)
- ITAA 1997 207-145(1)(da)
- ITAA 1997 207-155
- ITAA 1997 207-157
- ITAA 1936
- ITAA 1936 6(1)
- ITAA 1936 Pt IIIAA Div 1A
- ITAA 1936 26BB
- ITAA 1936 26BB(1)
- ITAA 1936 26BB(1)(b)(ii)
- ITAA 1936 26C
- ITAA 1936 43B(1)
- ITAA 1936 44(1)
- ITAA 1936 44(1)(a)(ii)
- ITAA 1936 45
- ITAA 1936 45(3)
- ITAA 1936 45A
- ITAA 1936 45A(2)
- ITAA 1936 45A(3)
- ITAA 1936 45A(3)(a)
- ITAA 1936 45A(3A)
- ITAA 1936 45B
- ITAA 1936 45B(2)
- ITAA 1936 45B(2)(c)
- ITAA 1936 45B(3)(b)
- ITAA 1936 45B(5)(a)
- ITAA 1936 45B(8)
- ITAA 1936 45C
- ITAA 1936 45C(3)
- ITAA 1936 70B
- ITAA 1936 Div 16E
- ITAA 1936 159GP(1)
- ITAA 1936 159GP(1)(a)
- ITAA 1936 159GP(1)(b)
- ITAA 1936 159GP(1)(c)
- ITAA 1936 160AOA
- ITAA 1936 160APHJ
- ITAA 1936 160APHJ(2)
- ITAA 1936 160APHJ(4)
- ITAA 1936 160APHM
- ITAA 1936 160APHN
- ITAA 1936 160APHO
- ITAA 1936 160APHO(3)
- ITAA 1936 177EA
- ITAA 1936 177EA(3)

- ITAA 1997 207-157(4)
 - ITAA 1997 215-20
 - ITAA 1997 Div 230
 - ITAA 1997 Div 974
 - ITAA 1997 974-75
 - ITAA 1997 974-75(1)
 - ITAA 1997 974-120
 - ITAA 1997 974-165
 - ITAA 1997 995-1(1)
 - TAA 1953
- Lawrence v. Commissioner of Taxation [2009] FCAFC 29; 2009 ATC 20-096
 - FC of T v. Consolidated Press Holdings and Ors; CPH Property Pty Ltd v. FC of T (2001) 207 CLR 235; [2001] HCA 32; 2001 ATC 4343; (2001) 47 ATR 229

Case references:

- Mills v. Commissioner of Taxation [2012] HCA 51; 2012 ATC 20-360; (2012) 83 ATR 514

Other references:

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

ATO references

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