CR 2021/69 - Latitude Group Holdings Limited - Latitude Capital Notes

Class Ruling

Latitude Group Holdings Limited – Latitude Capital Notes

Relying on this Ruling

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

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out the income tax consequences for specified entities who subscribed for and acquired Latitude Capital Notes (the Notes) issued by Latitude Group Holdings Limited (Latitude).

2. Full details of this scheme are set out in paragraphs 30 to 65 of this Ruling.

3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:

- acquired your Notes from Latitude by initial application under the Prospectus dated 2 September 2021, as replaced by the Replacement Prospectus dated 10 September 2021
- are a 'resident of Australia' within the meaning of that term in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) during the period in which you hold your Notes, and
- do not hold your Notes as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)) – that is, your Notes are held on capital account.

5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 30 to 65 of this Ruling.

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

When this Ruling applies

6. This Ruling applies from 1 July 2021 to 30 June 2027.

Ruling

Consequences of acquiring Latitude Capital Notes

7. You acquired your Notes on 28 September 2021 (Issue Date) (table item 2 of section 109-10).

8. The first element of the cost base and reduced cost base of each Note is $100, being the money you paid to acquire the Note (subsections 110-25(2) and 110-55(2)).

9. Each Note is not a 'traditional security' (subsection 26BB(1) of the ITAA 1936) or a 'qualifying security' (subsection 159GP(1) of the ITAA 1936). This is because the Note is not a 'security' as defined under subsection 159GP(1) of the ITAA 1936.

Consequences of holding Latitude Capital Notes

Distribution on Latitude Capital Notes and entitlement to tax offset for franking credits

10. As the Notes are a 'non-share equity interest' (as defined in subsection 995-1(1)), a distribution on a Note is a non-share dividend under section 974-120.

11. If you received a distribution on your Notes directly, you must include it in your assessable income (subparagraph 44(1)(a)(ii) of the ITAA 1936). Additionally, in the income year the distribution was paid, subject to you being a 'qualified person' in relation to the distribution (section 207-20), you will:

- have to include the amount of the franking credits on the distribution in your assessable income, and
- be entitled to a tax offset equal to the amount of the franking credits on the distribution (unless the distribution is exempt income or non-assessable non-exempt income in your hands).

12. If you received a distribution on your Notes as a trustee of a trust (not being a complying superannuation entity) or a partnership and you are not a corporate tax entity, you will include an amount equal to the franking credit on the distribution in your assessable income (subsection 207-35(1)), subject to you being a qualified person in relation to the distribution.

13. The relevant members of a partnership or trust to whom a distribution flows indirectly, through the partnership or trust, are entitled to a tax offset equal to their share of the franking credit on the distribution included in the assessable income of the partnership or trust (section 207-45).

14. Your entitlement to the franking credit tax offset under Division 207 in relation to the distributions on your Notes is subject to the refundable tax offset rules in Division 67, provided you are not excluded by the operation of section 67-25.

15. Section 207-145 will not apply to cancel the effect of the gross-up and tax offset in respect of the franking credit on a franked distribution on your Notes if you are a 'qualified person' in relation to the distribution.

Qualified person

16. You will be a qualified person in relation to a distribution on a Note if, during the primary qualification period, you held your Note for a continuous period of at least 90 days (excluding the day of acquisition and, if you disposed of your Note, the day of disposal) during which you did not have 'materially diminished risks of loss or opportunities for gain' (as defined in former section 160APHM of the ITAA 1936) in respect of your Note (former section 160APHO of the ITAA 1936).

17. The conversion of your Notes to Latitude ordinary shares will not affect your risks of loss or opportunities for gain in respect of your Notes. This is because the conversion does not constitute a separate position (former sections 160APHM and 160APHJ of the ITAA 1936).

Integrity rules in relation to franking credits

18. As there is no streaming of distributions, the Commissioner will not make a determination under paragraph 204-30(3)(c) to deny the whole, or any part, of the imputation benefits you received in relation to distributions paid on the Notes.

19. 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 you received in relation to distributions paid on the Notes. This is because the purpose condition in paragraph 177EA(3)(e) of the ITAA 1936 is not satisfied.

Consequences of converting Latitude Capital Notes to Latitude ordinary shares

20. Each Note is a convertible interest (table item 4 of subsection 974-75(1)).

Capital gains tax implications

21. CGT event C2 will happen when your Notes are converted to Latitude ordinary shares (section 104-25). Any capital gain or capital loss you make on the conversion of your Notes will be disregarded (subsection 130-60(3)).

22. The Latitude ordinary shares you acquire on the conversion of your Notes will be taken to have been acquired when the conversion happens on the relevant conversion date (subsection 130-60(2)).

23. The first element of the cost base and reduced cost base of the Latitude ordinary shares you acquire on the conversion of your Notes will be equal to the cost base and reduced cost base of the relevant Note at the time of conversion (table item 2 of subsection 130-60(1)). You should divide the cost base and reduced cost base of the relevant Note by the number of Latitude ordinary shares you acquire on conversion.

Dividend implications

24. You will not be taken to have received a dividend or a non-share dividend which will be assessable income under paragraph 44(1)(a) of the ITAA 1936 as a result of the conversion of your Notes to Latitude ordinary shares.

25. However, you will need to include in your assessable income the distribution on the Notes or the unpaid distribution on the Notes that is applied to acquire Latitude ordinary shares on conversion of the Notes in the income year in which the conversion occurs (subparagraph 44(1)(a)(ii) of the ITAA 1936).

26. Additionally, in the income year in which the conversion occurs, subject to you being a 'qualified person' in relation to the distribution or unpaid distribution that is applied to acquire Latitude ordinary shares on conversion of the Notes (section 207-20), you will:

- have to include the amount of the franking credits on the distribution on the Notes or the unpaid distribution on the Notes (that is applied to acquire Latitude ordinary shares on conversion of the Notes) in your assessable income, and
- be entitled to a tax offset equal to this amount of franking credits (unless the distribution is exempt income or non-assessable non-exempt income in your hands).

Consequences for Latitude ordinary shares received for distributions or unpaid distributions on Latitude Capital Notes

27. For any Latitude ordinary shares you receive in respect of any distribution or unpaid distribution on the Notes on the conversion date:

- you will be taken to have acquired those Latitude ordinary shares when they are issued to you (section 109-10), and
- the first element of the cost base and reduced cost of each of those Latitude ordinary shares is the amount of the distribution or unpaid distribution referrable to that Latitude ordinary share (paragraph 110-25(2)(a)).

Anti-avoidance provisions

28. Section 45 of the ITAA 1936 will not apply to treat the value of Latitude ordinary shares issued to you on the conversion of the Notes as an unfrankable dividend, as there is no streaming of shares and minimally franked dividends.

29. The Commissioner will not make a determination that section 45C of the ITAA 1936 applies to treat the whole, or any part, of a capital benefit provided to you on the conversion or redemption of the Notes as an unfranked dividend paid by Latitude to you under:

- subsection 45A(2) of the ITAA 1936 (as there is no streaming of dividends and capital benefits), or
- paragraph 45B(3)(b) of the ITAA 1936 (as the purpose condition in paragraph 45B(2)(c) of the ITAA 1936 is not satisfied).

Scheme

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

Latitude Group Holdings Limited

31. Latitude is a company incorporated in Australia. Latitude was listed on the Australian Securities Exchange (ASX) on 20 April 2021.

32. Latitude's business involves the provision of loan facilities, vehicle finance and insurance.

33. Latitude is not an authorised deposit-taking institution under the *Banking Act 1959*. The Notes do not need to qualify as Tier 1 or Tier 2 instruments under any of the prudential standards determined by the Australian Prudential Regulation Authority.

34. Latitude is the head company of an income tax consolidated group under Part 3-90.

35. Latitude is a resident of Australia for the purposes of subsection 6(1) of the ITAA 1936.

36. Latitude has one class of shares (ordinary shares) on issue.

Latitude Capital Notes

37. On the Issue Date, Latitude issued 1.5 million Notes under the Prospectus and raised $150 million.

38. The face value of each Note issued is $100.

39. The Notes are fully paid, subordinated, perpetual, unsecured, convertible and redeemable notes issued by Latitude.

40. The holder of a Note will not have voting rights in Latitude, except in limited circumstances.

41. The Notes can be traded on the ASX.

Distributions on Latitude Capital Notes

42. Each holder of a Note is entitled to receive cash distributions in respect of their Note every three months in arrears, commencing in January 2022.

43. The distributions are cumulative. The distribution rate is based on the Bank Bill Swap Rate plus a margin, adjusted for the franking percentage of the distribution.

44. The distributions on the Notes are expected to be franked at the same percentage as the dividends on Latitude ordinary shares.

45. The payment of a distribution on the Notes is at the sole discretion of Latitude.

46. If Latitude determines not to pay all or part of a distribution on the Notes which is scheduled to be paid on a distribution payment date, that distribution (or part of the distribution) becomes an unpaid distribution.

47. Latitude has no liability to pay the unpaid amount of the distribution, and the holders of the Notes have no claim or entitlement in respect of non-payment. Unpaid distributions are cumulative. However, interest will not accrue on any unpaid distribution.

48. If Latitude fails to pay a distribution on the Notes, Latitude must not (unless approved by a special resolution of the holders of the Notes) declare or pay any dividends on Latitude ordinary shares or undertake any share buy-back or reduction of share capital.

Conversion and redemption of Latitude Capital Notes

49. The Notes cannot be converted or redeemed at the option of a holder of the Notes.

50. Latitude may elect to convert or redeem all or some of the Notes following the occurrence of certain defined events. If the Notes are not converted or redeemed on the Optional Exchange Date (27 October 2026), the margin used in calculating the distribution rate will be increased by 3% per annum.

51. A conversion of Notes into Latitude ordinary shares will be implemented by the:

- Notes being terminated for consideration equal to the face value of the Notes, plus the distribution scheduled to be paid on the conversion date and any unpaid distribution as at that date, and
- consideration being applied to subscribe for new ordinary shares to be issued by Latitude.

52. Upon redemption of the Notes, the holders of the Notes will receive the face value of the Notes redeemed, together with the amount of any unpaid distributions up to and including the redemption date.

53. If Latitude fails to convert or redeem the Notes on the occurrence of a relevant event, the Notes will remain on issue until such time as they are converted or redeemed in accordance with the terms of the Notes.

54. On a conversion or redemption of the Notes, Latitude will debit the issue price of the Notes to its non-share capital account.

Reasons for issuing Latitude Capital Notes

55. The Notes were issued to meet Latitude's ongoing funding and capital management requirements. They will allow Latitude to pursue further growth opportunities, improve its financial flexibility and further diversify its sources of funding.

Other matters

56. No holder of the Notes, and no associate (as defined in section 318 of the ITAA 1936) of a holder of the Notes, will have any 'position' (as defined in former section 160APHJ of the ITAA 1936) in respect of their Notes other than owning the Notes.

57. Latitude will have sufficient profits to make a franked distribution on the Notes.

58. There will be no 'related payment' (as defined in former section 160APHN of the ITAA 1936) in respect of any distributions on the Notes.

59. Distributions on the Notes are frankable distributions under section 202-40.

60. Latitude will not differentially frank distributions to different holders of the Notes for any reason or on any basis.

61. Distributions on the Notes will not be sourced, directly or indirectly, from Latitude's share capital account or non-share capital account.

62. Distributions on the Notes will not be sourced, directly or indirectly, from Latitude's unrealised or untaxed profits.

63. Distributions on the Notes will not be debited against Latitude's share capital account or non-share capital account.

64. Franked distributions on the Notes made by Latitude will not give rise to a foreign income tax deduction (as defined in section 832-120) for Latitude.

65. Latitude does not have any foreign branches through which it carries on business.

Commissioner of Taxation
13 October 2021

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TD 2007/29, TR 96/14

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 26BB(1)
- ITAA 1936 44(1)(a)
- ITAA 1936 44(1)(a)(ii)
- ITAA 1936 45
- ITAA 1936 45A(2)
- ITAA 1936 45B(2)(c)
- ITAA 1936 45B(3)(b)
- ITAA 1936 45C
- ITAA 1936 159GP(1)
- ITAA 1936 former 160APHJ
- ITAA 1936 former 160APHM
- ITAA 1936 former 160APHN
- ITAA 1936 177EA(3)(e)
- ITAA 1936 177EA(5)(b)
- ITAA 1936 318
- ITAA 1997 Div 67
- ITAA 1997 67-25
- ITAA 1997 104-25
- ITAA 1997 109-10
- ITAA 1997 110-25(2)
- ITAA 1997 110-25(2)(a)
- ITAA 1997 110-55(2)
- ITAA 1997 130-60(1)
- ITAA 1997 130-60(2)
- ITAA 1997 130-60(3)
- ITAA 1997 202-40
- ITAA 1997 204-30(3)(c)
- ITAA 1997 Div 207
- ITAA 1997 207-20
- ITAA 1997 207-35(1)
- ITAA 1997 207-45
- ITAA 1997 207-145
- ITAA 1997 Pt 3-90
- ITAA 1997 832-120
- ITAA 1997 974-75(1)
- ITAA 1997 974-120
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- TAA 1953

ATO references

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