


CR 2024/42 - Suncorp Group Limited - Suncorp Capital Notes 5

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Status: **legally binding**

Class Ruling

Suncorp Group Limited – Suncorp Capital Notes 5

📌 Relying on this Ruling

This publication (excluding appendixes) 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 entities who subscribed for and acquired Suncorp Capital Notes 5 issued by Suncorp Group Limited (Suncorp).
2. Details of this scheme are set out in paragraphs 43 to 77 of this Ruling.
3. In this Ruling, unless otherwise indicated, capitalised terms take on the same meaning as in the Suncorp Group Limited Capital Notes 5 Replacement Prospectus dated 24 April 2024 (the Prospectus), the Capital Notes 5 Terms (as included in Appendix A of the Prospectus) (the Terms) and the Suncorp Capital Notes 5 Trust Deed dated 16 April 2024 (the Trust Deed).
4. All legislative references in this Ruling are to provisions of the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* (as detailed in the table in the Appendix 2 of this Ruling), unless otherwise indicated.

Note: By issuing this Ruling, the ATO is not endorsing this product. Potential investors must form their own view about the product.

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Who this Ruling applies to

5. This Ruling applies to you if you are an investor who:
- acquired Suncorp Capital Notes 5 by initial application under the Prospectus
 - is a 'resident of Australia' within the meaning of that term in subsection 6(1) during the period in which you hold Suncorp Capital Notes 5
 - holds your Suncorp Capital Notes 5 on capital account, and
 - is not subject to the taxation of financial arrangements (TOFA) rules in Division 230 in relation to gains or losses made on your Suncorp Capital Notes 5.

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

What this Ruling does not consider

6. This Ruling does not consider:
- the tax implications in relation to a non-resident (as defined in subsection 6(1)) who holds their Suncorp Capital Notes 5 through a permanent establishment (as defined in subsection 6(1)) in Australia
 - the tax implications of Conversion of Suncorp Capital Notes 5 before the Mandatory Conversion Date on the occurrence of an Acquisition Event or a Non-Viability Trigger Event
 - the tax implications of Redemption (other than for the application of sections 26BB, 45A, 45B and 70B)
 - how the taxation law applies to a Nominated Purchaser who acquires their Suncorp Capital Notes 5 under Resale
 - the tax implications of the purchase in the open market or otherwise of Suncorp Capital Notes 5 by Suncorp or any Related Entity of Suncorp
 - the tax implications for holders of Suncorp Capital Notes 2 reinvesting under the Reinvestment Offer, or of receiving distributions on Suncorp Capital Notes 2, and
 - how the gross-up and tax offset rules in Division 207 apply to partnership or trustee investors (other than a partnership or trustee that is a corporate tax entity, or a trustee of a trust that is a complying superannuation entity) or to indirect distributions to partners in a partnership or beneficiaries or trustees of a trust.

When this Ruling applies

7. This Ruling applies from 1 July 2023 to 30 June 2033.

Status: **legally binding**

Ruling

Consequences of acquiring Suncorp Capital Notes 5

Acquisition date

8. You acquired your Suncorp Capital Notes 5 on 14 May 2024 under table item 2 of section 109-10.

Cost base and reduced cost base of each Suncorp Capital Note 5

9. The first element of the cost base and reduced cost base of each Suncorp Capital Note 5 is \$100, being the money you paid to acquire your Suncorp Capital Note 5 (subsections 110-25(2) and 110-55(2)).

Consequences of holding Suncorp Capital Notes 5

Distributions on Suncorp Capital Notes 5 and entitlement to tax offset for franking credits

10. A Distribution on a Suncorp Capital Note 5 is a non-share 'dividend' under section 974-120 and is included in your assessable income (subparagraph 44(1)(a)(ii)).

11. In the income year in which the Distribution is made (section 207-20) you also:

- include the amount of the franking credit attached to a Distribution in your assessable income, and
- are entitled to a tax offset equal to the franking credit.

12. The franking credit tax offset that you are entitled to under Division 207 is subject to the refundable tax offset rules in Division 67, provided you are not excluded by the operation of section 67-25. Entities excluded by section 67-25 include corporate tax entities (such as companies, corporate limited partnerships and public trading trusts), unless they satisfy the requisite conditions in subsections 67-25(1C) or (1D).

13. To the extent that a Distribution (or a part of it) is either exempt income or non-assessable non-exempt income in your hands (and none of the exceptions in Subdivision 207-E apply), the amount of any franking credit on the Distribution that is exempt income or non-assessable non-exempt income is not included in your assessable income and you are not entitled to a tax offset under Division 207 (Subdivision 207-D).

Determination under paragraph 204-30(3)(c)

14. 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 receive in relation to a Distribution.

Determination under paragraph 177EA(5)(b)

15. The Commissioner will not make a determination under paragraph 177EA(5)(b) to deny the whole, or any part, of the imputation benefits you receive in relation to a Distribution.

Status: **legally binding**

Gross-up and tax offset cancelled in certain circumstances

16. Paragraph 207-145(1)(a) will not apply to cancel the effect of the gross-up and tax offset in respect of a franked Distribution if you are a qualified person in respect of that Distribution.

17. You will be a qualified person in relation to a Distribution if, during the primary qualification period, you held your Suncorp Capital Notes 5 for a continuous period of at least 90 days during which you did not have 'materially diminished risks of loss or opportunities for gain' (as defined in former section 160APHM) in respect of your Suncorp Capital Notes 5.

18. A Resale does not affect your risks of loss or opportunities for gain in respect of the Suncorp Capital Notes 5. This is because the Resale does not constitute a separate position (former sections 160APHM and 160APHJ).

19. Paragraphs 207-145(1)(b) to (db) will not apply to cancel the effect of the gross-up and tax offset rules in respect of a franked Distribution.

20. In respect of paragraphs 207-145(1)(b) and (c), refer to paragraphs 14 and 15 of this Ruling.

21. In respect of paragraph 207-145(1)(d), there is no evidence that the Distributions will be made as part of a dividend stripping operation.

22. In respect of paragraph 207-145(1)(da), the distribution washing provision does not apply (refer to subparagraph 77(t) of this Ruling).

23. In respect of paragraph 207-145(1)(db), the Distributions do not give rise to a 'foreign income tax deduction' (as defined in section 832-120) for Suncorp (refer to subsection 207-158(1) and subparagraph 77(v) of this Ruling).

Consequences of disposing of Suncorp Capital Notes 5***Suncorp Capital Notes 5 are not traditional securities or qualifying securities***

24. A Suncorp Capital Note 5 is not a 'traditional security' as defined in subsection 26BB(1).

25. Section 26BB will not apply to include any gain on the disposal or Redemption of a Suncorp Capital Note 5 in your assessable income.

26. Section 70B will not apply to allow you any loss on the disposal or Redemption of a Suncorp Capital Note 5 as a deduction.

27. The Suncorp Capital Notes 5 are not 'qualifying securities' within the meaning of subsection 159GP(1).

Conversion of Suncorp Capital Notes 5 for Ordinary Shares

28. Each Suncorp Capital Note 5 is a convertible interest (being an interest of the kind referred to in table item 4 of subsection 974-75(1)).

29. CGT event C2 happens on Conversion (section 104-25).

30. A capital gain or capital loss you make from CGT event C2 happening on Conversion will be disregarded (subsection 130-60(3)).

31. Ordinary Shares acquired on Conversion will be taken to have been acquired when the Conversion happens on the relevant date of Conversion (subsection 130-60(2)).

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32. The first element of the cost base and reduced cost base of Ordinary Shares acquired on Conversion will be equal to the cost base and reduced cost base of the relevant Suncorp Capital Notes 5 at the time of Conversion (table item 2 of subsection 130-60(1)).

Ordinary Shares received on Conversion not a dividend or a non-share dividend

33. No amount will be included in your assessable income on the Conversion of a Suncorp Capital Note 5 under paragraph 44(1)(a).

Redemption of Suncorp Capital Notes 5

34. The capital proceeds you received on Redemption of the Suncorp Capital Notes 5 on a date of Redemption will be replaced with the market value of the Suncorp Capital Notes 5 on that date, worked out as if the Redemption had not occurred and was never proposed to occur, if the capital proceeds are more or less than the market value of the Suncorp Capital Notes 5 (subparagraph 116-30(2)(b)(ii)).

35. You will make a capital gain (or capital loss) on Redemption of your Suncorp Capital Notes 5 if the capital proceeds you receive are greater than (or less than) the cost base of your Suncorp Capital Notes 5.

Resale of Suncorp Capital Notes 5

36. CGT event A1 in section 104-10 happens on the Resale of a Suncorp Capital Note 5. The Resale of a Suncorp Capital Note 5 to one or more Nominated Purchaser(s) will be for the Issue Price of the Suncorp Capital Note 5.

37. As the capital proceeds you receive will not be more than the cost base of a Suncorp Capital Note 5, you will not make a capital gain as a result of the Resale.

38. As you hold your Suncorp Capital Notes 5 on capital account, no amount will be included in your assessable income on the Resale under section 6-5.

39. You will not incur a deductible loss under section 8-1 as a consequence of the Resale.

Other integrity provisions

Section 45

40. Section 45 will not apply to treat the Ordinary Shares issued on Conversion as an unfrankable dividend paid by Suncorp.

Section 45A

41. The Commissioner will not make a determination under subsection 45A(2) that section 45C applies to treat the whole, or part of, a capital benefit that arises for you on Conversion or Redemption of the Suncorp Capital Notes 5 as an unfranked dividend.

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Section 45B

42. The Commissioner will not make a determination under paragraph 45B(3)(b) that section 45C applies to treat the whole, or part of, a capital benefit that arises for you on Conversion or Redemption of the Suncorp Capital Notes 5 as an unfranked dividend.

Scheme

43. 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.

Suncorp Group Limited

44. Suncorp is a company incorporated in Australia that is listed on the Australian Securities Exchange (ASX).

45. Suncorp is also authorised as a non-operating holding company (NOHC) of the Suncorp Group under section 18 of the *Insurance Act 1973*. Suncorp is regulated by the Australian Prudential Regulation Authority (APRA) and subject to prudential supervision by APRA which includes a requirement to maintain mandatory levels of Tier 1 capital.

46. Suncorp Group provides insurance and banking products and services across Australia and New Zealand.

47. Wholly owned NOHCs have been established for each of the APRA-regulated banking and insurance businesses of Suncorp Group. Suncorp-Metway Limited operates a regulated banking business and AAI Limited operates a regulated insurance business. Suncorp also holds capital in respect of centralised corporate service entities.

Suncorp Capital Notes 5 offer

48. Under the Prospectus, Suncorp announced its intention to undertake a capital raising by the issue of Suncorp Capital Notes 5 for an issue price of \$100 each to raise \$360 million (with the ability to raise more or less) (the Offer).

49. Investors could apply for the Suncorp Capital Notes 5 under the Reinvestment Offer or the New Money Offer. The Reinvestment Offer was made to eligible clients of Syndicate Brokers and Institutional Investors who were Eligible Capital Notes 2 Holders wishing to reinvest some or all of their Suncorp Capital Notes 2 in Suncorp Capital Notes 5. The New Money Offer was made to eligible clients of Syndicate Brokers and Institutional Investors wishing to make new investments in Suncorp Capital Notes 5. Applications under both the Reinvestment Offer and New Money Offer were only accepted from investors who satisfied the eligibility requirements in accordance with the Target Market Determination.

50. No action was taken to register or qualify Suncorp Capital Notes 5 or the Offer or to otherwise permit a public offering of Suncorp Capital Notes 5 outside Australia.

51. Suncorp Capital Notes 5 were issued on 14 May 2024 (Issue Date).

52. The Suncorp Capital Notes 5 are listed on the ASX under ASX code SUNPJ.

53. The Suncorp Capital Notes 5 were issued by Suncorp in Australia. The Suncorp Capital Notes 5 were not issued at or through an offshore permanent establishment or subsidiary of Suncorp.

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54. Suncorp Capital Notes 5 are being issued as part of Suncorp's ongoing funding and capital management strategy. The proceeds from the issue of Suncorp Capital Notes 5 are intended to be used by Suncorp to fund the subscription of similar instruments, qualifying as Additional Tier 1 capital for APRA prudential capital requirements, issued by one or more Regulated Entities within the Suncorp Group, replacing funding that was provided by Suncorp Capital Notes 2 through the Reinvestment Offer, and for general corporate and funding purposes.

55. APRA has advised that Suncorp Capital Notes 5 are eligible for inclusion as Eligible Additional Tier 1 Capital under Suncorp's NOHC authorisation.

Main features of Suncorp Capital Notes 5

56. Suncorp Capital Notes 5 are perpetual, convertible, subordinated and unsecured notes issued by Suncorp.

57. A holder of a Suncorp Capital Note 5 (Suncorp Capital Note 5 Holder) does not have voting rights except in the limited circumstances described in the Terms and Trust Deed.

Issue price

58. The Issue Price of each Suncorp Capital Note 5 is \$100. Suncorp Capital Notes 5 were fully paid on the Issue Date.

Distributions

59. Suncorp will pay quarterly floating rate cash Distribution payments in arrears on a Distribution Payment Date in accordance with the Terms, as long as Suncorp Capital Notes 5 remain on issue.

60. The Distribution payable is calculated on the Issue Price of each Suncorp Capital Note 5 using a Distribution Rate, which is equal to the Bank Bill Rate plus a Margin, adjusted by the corporate tax rate and based on the number of days in the Distribution Period. The Margin was determined in accordance with the Bookbuild.

61. Distributions are expected to be franked at the same rate as dividends on Ordinary Shares. However, if any Distribution is not franked or only partially franked, the Distribution will be grossed-up to the extent that the franking percentage of the Distribution is less than 100%, as determined by the formula in clause 3.2 of the Terms.

62. A Distribution is only payable to those persons registered as Suncorp Capital Note 5 Holders on the Record Date for that Distribution.

63. The payment of a Distribution is subject to the absolute discretion of Suncorp and will only be paid if a Payment Condition does not exist on the Distribution Payment Date. Broadly, a Payment Condition exists where paying the Distribution would result in Suncorp not complying with APRA's prudential capital requirements or Suncorp becoming or being likely to become insolvent, or APRA otherwise objects to the payment.

64. Distributions are non-cumulative and if all or any part of a Distribution is not paid, Suncorp Capital Note 5 Holders have no claim or entitlement in respect of such non-payment, and such non-payment does not constitute an event of default.

65. No interest accrues on any unpaid Distributions and Suncorp Capital Note 5 Holders have no claim or entitlement in respect of interest on any unpaid Distributions.

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66. Subject to certain exceptions, if a Distribution is not paid in full on the Distribution Payment Date, Suncorp is restricted from declaring, paying or determining to pay an Ordinary Share Dividend, undertaking any Buy-Back or Capital Reduction (unless Suncorp Capital Note 5 Holders approve by Special Resolution) until the next Distribution Payment Date. If the amount of any unpaid Distribution is paid in full within 3 Business Days of the Distribution Payment Date, this restriction will no longer apply.

Conversion

67. Conversion of the Suncorp Capital Notes 5 involves:

- Each Suncorp Capital Note 5 Holder being allotted and issued a number of Ordinary Shares for each Suncorp Capital Note 5 that is being Converted equal to the Conversion Number.
- Each Suncorp Capital Note 5 Holder's rights (including to payment of Redemption Price and Distributions, other than the Distribution, if any, payable on a date on which Conversion is required to occur that is not a Trigger Event Date) in relation to each Suncorp Capital Note 5 that is being Converted is immediately and irrevocably terminated for an amount equal to the Issue Price and Suncorp applies the Issue Price by way of payment for the subscription of the Conversion Number of Ordinary Shares to be issued on Conversion.

Mandatory Conversion

68. Suncorp must Convert all (but not some) Suncorp Capital Notes 5 on issue into Ordinary Shares on the Mandatory Conversion Date.

69. The Mandatory Conversion Date is the first to occur of the following dates on which the Mandatory Conversion Conditions are satisfied:

- 17 December 2032 (the Scheduled Mandatory Conversion Date), and
- a Distribution Payment Date after the Scheduled Mandatory Conversion Date.

Mandatory Conversion on a Non-Viability Trigger Event

70. Suncorp must Convert some or all Suncorp Capital Notes 5 on issue into Ordinary Shares on the occurrence of a Non-Viability Trigger Event.

71. A Non-Viability Trigger Event occurs when Suncorp is provided with a written determination from APRA that:

- Conversion or Write-off of Relevant Securities (including Suncorp Capital Notes 5) is necessary because, without it, APRA considers that Suncorp would become non-viable, or
- without public sector injection of capital, or equivalent support, Suncorp would become non-viable.

72. A Conversion following a Non-Viability Trigger Event will occur immediately and is not subject to any conditions. The number of Ordinary Shares that Suncorp Capital Note 5 Holders receive on a Conversion will not be greater than the Maximum Conversion Number. If the Suncorp Capital Notes 5 are not Converted within 5 Business Days after

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the relevant Trigger Event Date for any reason they will be Written-Off, which means all rights in relation to those Notes will be terminated, and those Suncorp Capital Note 5 Holders will not have their capital repaid or receive compensation.

Mandatory Conversion on an Acquisition Event

73. If an Acquisition Event occurs, Suncorp must convert all (but not some only) Suncorp Capital Notes 5 on the Acquisition Conversion Date.

74. An Acquisition Event occurs where, broadly, more than 50% of Suncorp's Ordinary Shares will be acquired under a takeover bid or a court-approved scheme of arrangement.

Optional Exchange

75. On an Optional Exchange Date (being 17 June 2030, 17 September 2030 or 17 December 2030), Suncorp may choose to:

- Convert all or some of the Suncorp Capital Notes 5 into Ordinary Shares
- Redeem all or some of the Suncorp Capital Notes 5 by paying a Suncorp Capital Note 5 Holder a cash amount equal to the Issue Price (\$100) of each Suncorp Capital Note 5 and upon payment by Suncorp, all other rights conferred, or restrictions imposed, by the Suncorp Capital Note 5 will no longer have effect, or
- Resell all or some of the Suncorp Capital Notes 5 to one or more Nominated Purchasers for the Resale Price of \$100 per Suncorp Capital Note 5.

76. Suncorp must obtain APRA's written approval and specify which of the methods or combination of methods mentioned in paragraph 75 of this Ruling it will use to exchange Suncorp Capital Notes 5.

Other matters

77. This Ruling is made on the following basis:

- (a) During the term of the scheme Suncorp is a resident of Australia under the income tax laws of Australia and of no other jurisdiction.
- (b) The majority of the Suncorp Capital Note 5 Holders who acquire the Suncorp Capital Notes 5 under the Offer are expected to be residents of Australia for tax purposes, although some may be non-residents.
- (c) Suncorp Capital Notes 5 are 'equity interests' pursuant to Division 974 and are 'non-share equity interests' as the term is defined in subsection 995-1(1).
- (d) The Distributions are frankable distributions under section 202-40.
- (e) In accordance with Division 203, Suncorp will frank Distributions in respect of Suncorp Capital Notes 5 at the same franking percentage as the Suncorp benchmark for the franking period in which the frankable distribution is made.
- (f) Distributions on Suncorp Capital Notes 5 are not sourced, directly or indirectly, from Suncorp's share capital account or its non-share capital account.

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- (g) Distributions paid on the Suncorp Capital Notes 5 will not be debited to Suncorp's share capital account or its non-share capital account.
- (h) Immediately before the payment of a Distribution the Suncorp Capital Notes 5, Suncorp has available frankable profits (worked out under section 215-20) at least equal to the Distribution.
- (i) Suncorp expects to continue with its policy of franking all frankable distributions (to the extent that franking credits are available in its franking account).
- (j) Suncorp does not differentially frank Distributions to different Suncorp Capital Note 5 Holders according to their tax status or on any other basis.
- (k) The dividend payout ratios and Suncorp's policies in relation to the franking of its distributions on its Ordinary Shares or other equity instruments of Suncorp (to the extent such dividends or distributions are frankable) are not expected to change as a result of the issue of the Suncorp Capital Notes 5, other than to comply with the dividend distribution restrictions in the Terms.
- (l) The share capital account of Suncorp does not become tainted (within the meaning of Division 197) by the issue of the Suncorp Capital Notes 5 or the allotment of Ordinary Shares on Conversion of the Suncorp Capital Notes 5.
- (m) On Conversion or Redemption of the Suncorp Capital Notes 5, Suncorp debits the Issue Price of the Suncorp Capital Notes 5 to its non-share capital account.
- (n) Ordinary Shares issued to the Suncorp Capital Note 5 Holders on Conversion of the Suncorp Capital Notes 5 are 'equity interests' under Division 974.
- (o) The accounts of the Suncorp Group are prepared in accordance with the applicable accounting standards.
- (p) All parties to the scheme are dealing with each other at arm's length.
- (q) You (or an associate) will not take any 'positions' (as defined in former section 160APHJ) at any time in relation to your Suncorp Capital Notes 5 apart from holding your Suncorp Capital Notes 5.
- (r) You (or an associate) will not make, be under an obligation to make, or be likely to make, a 'related payment' (as defined in former section 160APHN) in relation to a Distribution.
- (s) You will hold your Suncorp Capital Notes 5 for a continuous period of at least 90 days (excluding the day of acquisition and disposal (if relevant)), during the 'primary qualification period' (as defined in former section 160APHD) in relation to a Distribution.
- (t) You (or your connected entities) will not engage in distribution washing (as outlined in section 207-157) in relation to a Distribution (unless entitled to the exception under subsection 207-157(4)).

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- (u) Suncorp does not have any foreign branches through which it carries on its businesses.
- (v) Distributions on Suncorp Capital Notes 5 do not give rise to any 'foreign income tax deduction', as the term is defined in section 832-120 for Suncorp.

Commissioner of Taxation

10 July 2024

 Status: **not legally binding**

Appendix 1 – Explanation

ⓘ *This Explanation 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.*

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Determination under paragraph 204-30(3)(c)

78. Subsection 204-30(1) empowers the Commissioner to make a determination under paragraph 204-30(3)(c) if an entity streams distributions in a certain way.

79. Based on the scheme, there is no evidence of streaming. Distributions will be received by all Suncorp Capital Note 5 Holders by reason of their proportionate holding of Suncorp Capital Notes 5 and not by reference to their tax profiles or individual tax positions. There is nothing in the Terms that allows Suncorp to treat the Suncorp Capital Note 5 Holders differently in respect of their entitlement to a franked Distribution.

Determination under paragraph 177EA(5)(b)

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

81. The conditions in paragraphs 177EA(3)(a) to (d) are satisfied, therefore, 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 an incidental purpose of enabling a Suncorp Capital Note 5 Holder to obtain an imputation benefit (paragraph 177EA(3)(e)).

82. The Commissioner considers that the relevant circumstances of the scheme do not, on balance, lead to a conclusion that the purpose of enabling Suncorp Capital Note 5 Holders to obtain imputation benefits is more than incidental to Suncorp's primary purpose of raising funds to subscribe for Additional Tier 1 capital to be issued by one or more Regulated Entities within the Suncorp Group, replacing funding that was provided by Suncorp Capital Notes 2 through the Reinvestment Offer, and for general corporate and funding purposes.

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Gross-up and tax offset cancelled in certain circumstances

83. If you are not a qualified person in relation to a Distribution, you:
- do not include the franking credit attached to the Distribution in your assessable income (paragraph 207-145(1)(e)), and
 - are not entitled to a tax offset equal to the amount of the franking credit attached to the Distribution (paragraph 207-145(1)(f)).
84. As this Ruling is made on the basis that you (or an associate) have not made a related payment in respect of a Distribution, the relevant qualification period is the primary qualification period (as defined in former section 160APHD). The primary qualification period begins on the day after you acquire your Suncorp Capital Notes 5 and ends on the 90th day after the day Suncorp Capital Notes 5 becomes ex-distribution.
85. You need to have held your Suncorp Capital Notes 5 'at risk' for a continuous period of 90 days (excluding the days of acquisition and disposal, if relevant) during the primary qualification period. Any days you had materially diminished risks of loss or opportunities for gain in respect of your holding are also excluded (former subsection 160APHO(3)).
86. Under former subsection 160APHM(2), you are taken to have materially diminished the risks of loss and opportunities for gain on a particular day with respect to your Suncorp Capital Notes 5 if your net position on that day does not retain 30% or more of the risks and opportunities associated with holding Suncorp Capital Notes 5.
87. Embedded options such as Resale and Conversion do not represent separate positions in relation to Suncorp Capital Notes 5 (see also 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?*). Under a Resale, you will only be taken to have made an offer to sell Suncorp Capital Notes 5 if Suncorp issues a Resale Notice. As Suncorp is the only party entitled to make an election to exercise the Resale option, it is not a separate position that you have taken in relation to your Suncorp Capital Notes 5. Similarly, under Conversion you do not have the right to elect Conversion of your Suncorp Capital Notes 5 and neither does Suncorp have an obligation to Convert.
88. Therefore, Resale and Conversion will not, of themselves, affect your risks of loss or opportunities for gain in respect of your Suncorp Capital Notes 5.
89. However, if you do enter into any risk management strategies in respect of your Suncorp Capital Notes 5 that have the effect of reducing your risks of loss and opportunities for gain below 30% (for example, by the use of limited recourse loans, options or other derivatives), then you will not be considered a qualified person in respect of a Distribution.

Ordinary Shares received on Conversion not a dividend or a non-share dividend

90. The issue of Ordinary Shares to Suncorp Capital Note 5 Holders on Conversion is a distribution of property made to holders of non-share equity interests and a non-share distribution under subparagraph 974-115(b)(ii). A non-share distribution is a non-share dividend under subsection 974-120(1), subject to the application of subsection 974-120(2).
91. Subsection 974-120(2) 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 share capital account or non-share capital account.

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92. On Conversion, Suncorp will debit the Issue Price of each Suncorp Capital Note 5 to its non-share capital account. Accordingly, the issue of Ordinary Shares on Conversion will not be a non-share dividend and will not be included in your assessable income under subparagraph 44(1)(a)(ii).

93. Furthermore, the Ordinary Shares will not be issued to the Suncorp Capital Note 5 Holders as shareholders of Suncorp. Accordingly, the issue of the Ordinary Shares will not satisfy paragraphs (a) or (b) of the definition of dividend in subsection 6(1). This means that it will not be included in your assessable income under subparagraph 44(1)(a)(i).

Market value of Suncorp Capital Notes 5 on Redemption

94. The capital proceeds received by Suncorp Capital Note 5 Holders on Redemption will be replaced with the market value of the Suncorp Capital Notes 5 on the date of Redemption, worked out as if the Redemption had not occurred and was never proposed to occur if the capital proceeds are more or less than the market value (subparagraph 116-30(2)(b)(ii)).

95. If Suncorp elects to Redeem Suncorp Capital Notes 5 before the Mandatory Conversion Date, the market value of the Suncorp Capital Notes 5 which are Redeemed may be determined in accordance with Practical Compliance Guideline PCG 2021/1 *Application of market value substitution rules when there is a buy-back or redemption of hybrid securities – methodologies for determining value for investors holding their securities on capital account*.

Section 45

96. 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 shareholders but not all shareholders, and
- some or all of the shareholders who do not receive the shares receive or will receive minimally franked dividends.

97. Suncorp's payout ratios in relation to its Ordinary Shares and other equity interests are not expected to change as a result of issuing Suncorp Capital Notes 5. The extent to which Suncorp's distributions or dividends will be franked (including Distributions on Suncorp Capital Notes 5) will depend on a number of factors, including the Suncorp Group's capital management activities and the level of profits generated by the group that will be subject to tax in Australia.

98. Under the Terms, Suncorp is unable to issue Ordinary Shares to all or some Suncorp Capital Note 5 Holders in satisfaction of their Distribution entitlement under Suncorp Capital Notes 5. The issue of Ordinary Shares on Conversion merely reflects a change in the type of equity interests held by Suncorp Capital Note 5 Holders in Suncorp.

99. Based on the information provided and having regard to the circumstances of the scheme, section 45 will not apply to treat the value of Ordinary Shares issued to you on Conversion as an unfrankable dividend.

Status: **not legally binding**

Section 45A

100. 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), and it is reasonable to assume that other shareholders (the disadvantaged shareholders) have received, or will receive, dividends.

101. Both the issue of Ordinary Shares on Conversion and the Redemption of Suncorp Capital Notes 5 will constitute the provision of a capital benefit to Suncorp Capital Note 5 Holders (paragraph 45A(3)(a) for a Conversion, and paragraph 45A(3)(b) as affected by subsection 45A(3A) for a Redemption).

102. However, the issue of Ordinary Shares on Conversion and the Redemption of Suncorp Capital Notes 5 will not constitute the streaming of capital benefits because under a Conversion or Redemption, Suncorp will not selectively direct the flow of capital benefits to Suncorp Capital Note 5 Holders who could most benefit from the receipt of capital. Accordingly, as this requirement does not apply to the Conversion or Redemption of Suncorp Capital Notes 5, the Commissioner will not make a determination to treat the whole or a part of the capital benefit received by you as an unfranked dividend.

Section 45B

103. Section 45B applies where certain capital benefits are provided to shareholders in substitution for dividends. Where the conditions are met, the Commissioner may make a determination under paragraph 45B(3)(b) that section 45C applies to the whole, or a part, of the capital benefit such that it will be treated as an unfranked dividend.

104. The issue of Ordinary Shares to Suncorp Capital Note 5 Holders on Conversion and the Redemption of Suncorp Capital Notes 5 will each constitute a scheme under which Suncorp Capital Note 5 Holders are provided with a capital benefit by Suncorp (paragraphs 45B(5)(a) and (b) and subsection 45B(7)). As a result, paragraph 45B(2)(a) will be satisfied.

105. At least some Suncorp Capital Note 5 Holders will obtain a tax benefit as defined in subsection 45B(9) as a result of a Conversion or Redemption. As a result, paragraph 45B(2)(b) will be satisfied.

106. Therefore, whether section 45B will apply to a Conversion or Redemption turns on whether paragraph 45B(2)(c) will be satisfied. This involves considering the relevant circumstances, including but not limited to those listed in subsection 45B(8), of the Conversion and Redemption schemes to establish whether one of the persons who will enter into or carry out the schemes will do so for a more than incidental purpose of enabling a relevant taxpayer (the Suncorp Capital Note 5 Holder) to obtain a tax benefit.

107. Having regard to the relevant circumstances, it could not be concluded that the Conversion or Redemption of Suncorp Capital Notes 5 will be entered into for a more than incidental purpose of enabling Suncorp Capital Note 5 Holders to obtain a tax benefit. Accordingly, paragraph 45B(2)(c) would not be satisfied and the Commissioner will not make a determination under paragraph 45B(3)(b) that section 45C applies to the whole or a part of the capital benefit provided to you on Conversion or Redemption.

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Appendix 2 – Legislative provisions

108. This paragraph sets out the details of the provisions of the Income Tax Assessments Acts ruled upon or referenced in this Ruling.

Table 1: Provisions of the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997 ruled upon or referenced in this Ruling

<i>Income Tax Assessment Act 1936</i>	subsection 6(1)
<i>Income Tax Assessment Act 1936</i>	section 26BB
<i>Income Tax Assessment Act 1936</i>	subsection 26BB(1)
<i>Income Tax Assessment Act 1936</i>	paragraph 44(1)(a)
<i>Income Tax Assessment Act 1936</i>	subparagraph 44(1)(a)(i)
<i>Income Tax Assessment Act 1936</i>	subparagraph 44(1)(a)(ii)
<i>Income Tax Assessment Act 1936</i>	section 45
<i>Income Tax Assessment Act 1936</i>	section 45A
<i>Income Tax Assessment Act 1936</i>	section 45A(2)
<i>Income Tax Assessment Act 1936</i>	paragraph 45A(3)(a)
<i>Income Tax Assessment Act 1936</i>	paragraph 45A(3)(b)
<i>Income Tax Assessment Act 1936</i>	subsection 45A(3A)
<i>Income Tax Assessment Act 1936</i>	section 45B
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(2)(a)
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(2)(b)
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(2)(c)
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(3)(b)
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(5)(a)
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(5)(b)
<i>Income Tax Assessment Act 1936</i>	subsection 45B(7)
<i>Income Tax Assessment Act 1936</i>	subsection 45B(8)
<i>Income Tax Assessment Act 1936</i>	subsection 45B(9)
<i>Income Tax Assessment Act 1936</i>	section 45C
<i>Income Tax Assessment Act 1936</i>	section 70B
<i>Income Tax Assessment Act 1936</i>	subsection 159GP(1)
<i>Income Tax Assessment Act 1936</i>	former section 160APHD
<i>Income Tax Assessment Act 1936</i>	former section 160APHJ
<i>Income Tax Assessment Act 1936</i>	former section 160APHM
<i>Income Tax Assessment Act 1936</i>	former subsection 160APHM(2)
<i>Income Tax Assessment Act 1936</i>	former section 160APHN
<i>Income Tax Assessment Act 1936</i>	former subsection 160APHO(3)
<i>Income Tax Assessment Act 1936</i>	section 177EA
<i>Income Tax Assessment Act 1936</i>	paragraph 177EA(3)(a)
<i>Income Tax Assessment Act 1936</i>	paragraph 177EA(3)(b)
<i>Income Tax Assessment Act 1936</i>	paragraph 177EA(3)(c)
<i>Income Tax Assessment Act 1936</i>	paragraph 177EA(3)(d)
<i>Income Tax Assessment Act 1936</i>	paragraph 177EA(3)(e)
<i>Income Tax Assessment Act 1936</i>	paragraph 177EA(5)(b)
<i>Income Tax Assessment Act 1997</i>	section 6-5
<i>Income Tax Assessment Act 1997</i>	section 8-1

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<i>Income Tax Assessment Act 1997</i>	Division 67
<i>Income Tax Assessment Act 1997</i>	section 67-25
<i>Income Tax Assessment Act 1997</i>	section 67-25(1C)
<i>Income Tax Assessment Act 1997</i>	section 67-25(1D)
<i>Income Tax Assessment Act 1997</i>	section 104-10
<i>Income Tax Assessment Act 1997</i>	section 104-25
<i>Income Tax Assessment Act 1997</i>	section 109-10
<i>Income Tax Assessment Act 1997</i>	subsection 110-25(2)
<i>Income Tax Assessment Act 1997</i>	subsection 110-55(2)
<i>Income Tax Assessment Act 1997</i>	subparagraph 116-30(2)(b)(ii)
<i>Income Tax Assessment Act 1997</i>	subsection 130-60(1)
<i>Income Tax Assessment Act 1997</i>	subsection 130-60(2)
<i>Income Tax Assessment Act 1997</i>	subsection 130-60(3)
<i>Income Tax Assessment Act 1997</i>	Division 197
<i>Income Tax Assessment Act 1997</i>	section 202-40
<i>Income Tax Assessment Act 1997</i>	Division 203
<i>Income Tax Assessment Act 1997</i>	subsection 204-30(1)
<i>Income Tax Assessment Act 1997</i>	paragraph 204-30(3)(c)
<i>Income Tax Assessment Act 1997</i>	Division 207
<i>Income Tax Assessment Act 1997</i>	Subdivision 207-D
<i>Income Tax Assessment Act 1997</i>	Subdivision 207-E
<i>Income Tax Assessment Act 1997</i>	section 207-20
<i>Income Tax Assessment Act 1997</i>	paragraph 207-145(1)(a)
<i>Income Tax Assessment Act 1997</i>	paragraph 207-145(1)(b)
<i>Income Tax Assessment Act 1997</i>	paragraph 207-145(1)(c)
<i>Income Tax Assessment Act 1997</i>	paragraph 207-145(1)(d)
<i>Income Tax Assessment Act 1997</i>	paragraph 207-145(1)(da)
<i>Income Tax Assessment Act 1997</i>	paragraph 207-145(1)(db)
<i>Income Tax Assessment Act 1997</i>	paragraph 207-145(1)(e)
<i>Income Tax Assessment Act 1997</i>	paragraph 207-145(1)(f)
<i>Income Tax Assessment Act 1997</i>	section 207-157
<i>Income Tax Assessment Act 1997</i>	subsection 207-157(4)
<i>Income Tax Assessment Act 1997</i>	subsection 207-158(1)
<i>Income Tax Assessment Act 1997</i>	section 215-20
<i>Income Tax Assessment Act 1997</i>	Division 230
<i>Income Tax Assessment Act 1997</i>	section 832-120
<i>Income Tax Assessment Act 1997</i>	Division 974
<i>Income Tax Assessment Act 1997</i>	subsection 974-75(1)
<i>Income Tax Assessment Act 1997</i>	subparagraph 974-115(b)(ii)
<i>Income Tax Assessment Act 1997</i>	section 974-120
<i>Income Tax Assessment Act 1997</i>	subsection 974-120(1)
<i>Income Tax Assessment Act 1997</i>	subsection 974-120(2)
<i>Income Tax Assessment Act 1997</i>	subsection 995-1(1)

Status: **not legally binding**

References

Related Rulings/Determinations:

TD 2007/29

Other References:

- PCG 2021/1

Legislative references:

- Insurance Act 1973 18

ATO references

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