



Status: **legally binding**

Class Ruling

Bendigo and Adelaide Bank Limited – Capital Notes 2

Relying on this Ruling

This publication (excluding appendix) 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 how the relevant tax provisions apply to specified entities who subscribed for and acquired Capital Notes 2 issued by Bendigo and Adelaide Bank Limited (BEN).
2. Details of this scheme are set out in paragraphs 42 to 74 of this Ruling.
3. In this Ruling, unless otherwise defined, capitalised terms have the meaning specified in the Glossary contained in Appendix B of the Capital Notes 2 Prospectus and CPS4 Reinvestment Offer Information dated 5 March 2024 (the Prospectus) or the Capital Notes 2 Terms (the Terms), which are contained in Appendix A of the Prospectus.
4. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, 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.

Who this Ruling applies to

5. This Ruling applies to you if you are an investor (also referred to as a Holder) who:
 - acquired your Capital Notes 2 by initial application under the Prospectus

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- is a resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)) during the period in which you hold your Capital Notes 2
- holds your Capital Notes 2 on capital account, and
- is not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on your Capital Notes 2.

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 deal with:

- the tax implications in relation to a non-resident who holds their Capital Notes 2 through a 'permanent establishment' (as defined in subsection 6(1) of the ITAA 1936) in Australia
- how the taxation law applies to Holders who hold their Capital Notes 2 as trading stock (as defined in subsection 995-1(1)) or as revenue assets (as defined in section 977-50)
- how the taxation law applies to a Nominated Purchaser who acquires their Capital Notes 2 under the Resale facility
- how the gross-up and tax offset rules in Division 207 apply to a 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, or
- the tax implications of the CPS4 Reinvestment Offer.

When this Ruling applies

7. This Ruling applies from 1 July 2023 to 30 June 2034.

Ruling

Consequences of acquiring Capital Notes 2

Acquisition time

8. You acquired your Capital Notes 2 on 25 March 2024, being the date the Capital Notes 2 were issued (table item 2 of section 109-10).

Cost base and reduced cost base

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

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Consequences of holding your Capital Notes 2***Inclusion of distributions and franking credits in assessable income and entitlement to a tax offset***

10. A Distribution on your Capital Note 2 is a non-share dividend under section 974-120 and is included in your assessable income (subparagraph 44(1)(a)(ii) of the ITAA 1936).

11. If a Distribution is franked, your assessable income includes the amount of the franking credit on the Distribution (subsection 207-20(1)) and you are entitled to a tax offset equal to the amount of the franking credit (subsection 207-20(2)), provided you are a qualified person (refer to paragraphs 16 to 17 of this Ruling).

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

13. A tax offset you are entitled to under Division 207 is subject to the refundable tax offset rules in Division 67, provided that 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).

Paragraph 177EA(5)(b) of the ITAA 1936

14. 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 receive in relation to a Distribution.

Paragraph 204-30(3)(c)

15. 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.

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 Capital Note 2 for a continuous period of at least 90 days (excluding the day of acquisition and, if you have disposed of your Capital Notes 2, 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 Capital Note 2.

18. The Resale and Exchange features of the Capital Notes 2 will not affect your risks of loss or opportunities for gain in respect of your Capital Notes 2 as neither the Resale nor the Exchange mechanism constitutes a separate position (former sections 160APHM and 160APHJ of the ITAA 1936).

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.

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Consequences of disposing of your Capital Notes 2***Capital Notes 2 are not traditional securities***

20. Your Capital Notes 2 are not traditional securities as defined in section 26BB of the ITAA 1936.
21. Section 26BB of the ITAA 1936 will not apply to include any gain on the disposal or redemption of your Capital Notes 2 in your assessable income.
22. Section 70B of the ITAA 1936 will not apply to allow any loss on the disposal or redemption of your Capital Notes 2 as a deduction to you.

Exchange of Capital Notes 2 for Bendigo and Adelaide Bank ordinary shares

23. Each Capital Note 2 is a convertible interest as defined in subsection 995-1(1) and table item 4 of subsection 974-75(1).
24. CGT event C2 happens on Exchange of each of your Capital Notes 2 for BEN Ordinary Shares (section 104-25). Exchange is constituted by the Capital Notes 2 being converted into BEN Ordinary Shares.
25. A capital gain or capital loss you make from CGT event C2 happening on Exchange will be disregarded (subsection 130-60(3)).
26. BEN Ordinary Shares you acquire on Exchange of the Capital Notes 2 will be taken to have been acquired when the Exchange happens on the relevant Exchange Date (subsection 130-60(2)).
27. The first element of the cost base and reduced cost base of each BEN Ordinary Share you acquire on Exchange will be a pro rata portion of the cost base and reduced cost base of your relevant Capital Note 2 at the time of Exchange (table item 2 of subsection 130-60(1)).
28. As you hold your Capital Notes 2 on capital account, no amount will be included in your assessable income on Exchange of a Capital Note 2 under section 6-5. Similarly, you will not incur a deductible loss under section 8-1 as a consequence of the Exchange of a Capital Note 2.
29. The Exchange of a Capital Note 2 for BEN Ordinary Shares will not constitute your receipt of a dividend or a non-share dividend.

Resale of Capital Notes 2

30. CGT event A1 happens on the Resale of a Capital Note 2 (section 104-10). The Resale Price of a Capital Note 2 will be its Face Value (\$100, unless reduced).
31. If the Resale Price does not exceed the cost base of the Capital Note 2, you will not make a capital gain as a result of the Resale.
32. If the Resale Price is reduced below \$100, you will make a capital loss as a result of the Resale.
33. As you hold your Capital Notes 2 on capital account, no amount will be included in your assessable income under section 6-5, and you will not incur a deductible loss under section 8-1 as a consequence of a Resale.

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Redemption of Capital Notes 2

34. CGT event C2 happens on the Redemption of the Capital Notes 2, where the Redemption is constituted by the redemption of all or some of the Capital Notes 2 for their Face Value (section 104-25).
35. The capital proceeds you receive on Redemption of the Capital Notes 2 will be replaced by the market value of the Capital Notes 2 on the Redemption Date, worked out as if the Redemption had not occurred and was never proposed to occur, if the capital proceeds, being the Face Value, are more or less than the market value of the Capital Note 2 (subparagraph 116-30(2)(b)(ii)).
36. You will make a capital gain if the capital proceeds you receive on Redemption of a Capital Note 2 exceed the cost base of the Capital Note 2 (subsection 104-10(4)).
37. You will make a capital loss if the capital proceeds you receive on Redemption of a Capital Note 2 are less than the reduced cost base of the Capital Note 2 (subsection 104-10(4)).
38. As you hold Capital Notes 2 on capital account, no amount will be included in your assessable income under section 6-5 and you will not incur a deductible loss under section 8-1 as a consequence of the Redemption.

Other integrity provisions

Section 45 of the ITAA 1936

39. Section 45 of the ITAA 1936 will not apply to treat the value of BEN Ordinary Shares issued to you on Exchange as an unfrankable dividend.

Section 45A of the ITAA 1936

40. 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 a part, of the capital benefit provided to you on Exchange or Redemption as an unfranked dividend.

Section 45B of the ITAA 1936

41. 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 a part, of the capital benefit provided to you on Exchange or Redemption as an unfranked dividend.

Scheme

42. 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.

Background

43. BEN is listed on the Australian Securities Exchange.
44. BEN is regulated by the Australian Prudential Regulation Authority (APRA). BEN is an authorised deposit-taking institution for the purposes of the *Banking Act 1959*.

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45. For Australian income tax purposes, BEN is the head company of the BEN income tax consolidated group.
46. BEN carries on business in Australia.
47. Under the Prospectus, BEN offered to undertake capital raising by the issue of Capital Notes 2 for an Issue Price of \$100 each to raise \$300 million, with the ability to raise more or less (the Offer).
48. The Offer was made to any investor who qualified under the Target Market Determination created by BEN and was an eligible client of a Syndicate Broker, and to Institutional Investors.
49. The Offer included a Reinvestment Offer and a New Money Offer. The Reinvestment Offer was made to eligible clients of Syndicate Brokers, and to Institutional Investors, who were Eligible CPS4 Holders wishing to reinvest some or all of their CPS4 in the Capital Notes 2. The New Money Offer was made to eligible clients of Syndicate Brokers, and to Institutional Investors, wishing to make a new investment in the Capital Notes 2.
50. The Capital Notes 2 were issued on 25 March 2024.
51. The Capital Notes 2 were issued by BEN in Australia. The Capital Notes 2 were not issued at or through an offshore permanent establishment or subsidiary of BEN.
52. The Offer was made as part of BEN's ongoing capital management strategy within the regulatory capital requirements prescribed by APRA. The issue of the Capital Notes 2 was a new capital raising and the proceeds from the issue were to be used for general corporate funding and capital management purposes.

Main features of the Capital Notes 2

53. The Capital Notes 2 are Australian Dollar denominated fully paid, non-cumulative, convertible, perpetual, subordinated, unsecured notes issued by BEN.
54. The Capital Notes 2 are listed on the Australian Securities Exchange and trade under the code BENPI.

Issue price

55. The Issue Price of each Capital Note 2 was \$100. The Capital Notes 2 were fully paid on the Issue Date, being 25 March 2024.

Distributions

56. BEN will pay in arrears, quarterly cash, floating rate Distributions in respect of each Capital Note 2 on a Distribution Payment Date (each a Distribution Payment Date) in accordance with the Terms.
57. The Distribution payable is calculated on the Face Value of each Capital Note 2 using a Distribution Rate, which is the Market Rate (broadly being the 3-month Bank Bill Swap Reference Rate) plus a Margin adjusted by the corporate tax rate and based on the number of days in the relevant Distribution Period. The Margin was determined under the Bookbuild.
58. Distributions are expected to be fully franked. The franking percentage of the Distributions may vary over time in line with the franking percentage that applies to the

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dividends on ordinary shares in BEN (BEN Ordinary Shares). If Distributions are not fully franked, the Distribution payable will be increased to compensate for the reduction in franking credits.

59. The payment of a Distribution is subject to the absolute discretion of BEN and can also only be paid if certain Distribution Payment Conditions are met, including that payment will not breach certain APRA conditions or make BEN insolvent.

60. Distributions are non-cumulative. To the extent that all or part of a Distribution is not paid on a scheduled Distribution Payment Date, Holders 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.

61. Subject to certain exceptions, if any Distribution is not paid in full on the relevant Distribution Payment Date or within 5 Business Days, this will restrict BEN from determining, declaring or paying any BEN Ordinary Share dividend, or undertaking any buy-backs or capital reductions in relation to any BEN Ordinary Shares.

Mandatory exchange

62. The Capital Notes 2 will be Exchanged for BEN Ordinary Shares on the date that is the earlier of (each a Mandatory Exchange Date):

- 13 September 2033 (Scheduled Mandatory Exchange Date) subject to the satisfaction of the relevant Mandatory Exchange Conditions, or
- the first Distribution Payment Date after the Scheduled Mandatory Exchange Date on which the relevant Mandatory Exchange Conditions are satisfied

unless the Capital Notes 2 have been or will be Redeemed or Exchanged before that date.

Early exchange

63. Some or all of the Capital Notes 2 (or if BEN so determines, such percentage of the Face Value of each Capital Note 2) must be Exchanged for BEN Ordinary Shares before a Mandatory Exchange Date if a Capital Trigger Event or Non-Viability Trigger Event occurs.

64. Where Exchange of any Capital Notes 2 is required on account of a Capital Trigger Event or Non-Viability Trigger Event and Exchange fails to take effect within 5 Business Days after the date of the occurrence of the Capital Trigger Event or Non-Viability Trigger Event for any reason, then Exchange will not occur and the relevant Capital Notes 2 will be Written Off with effect on and from the date of the occurrence of the Capital Trigger Event or Non-Viability Trigger Event.

Optional exchange

65. Some or all of the Capital Notes 2 may be Exchanged for BEN Ordinary Shares before a Mandatory Exchange Date if BEN elects to do so on the Call Dates (being 13 December 2030, 13 March 2031, 13 June 2031 and 13 September 2031), or on an Optional Exchange Date following the occurrence of a Franking Event, a Tax Event or a Regulatory Event.

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Change of control event exchange

66. All of the Capital Notes 2 must be Exchanged for BEN Ordinary Shares before a Mandatory Exchange Date if a Change of Control Event occurs.

Exchange mechanics

67. Upon Exchange:

- BEN will allot and issue the Exchange Number of BEN Ordinary Shares to the Holders for each Capital Note 2 held by the Holder.
- Each Holder's rights in relation to each Capital Note 2 that is being Exchanged will be terminated for an amount equal to the Face Value (or relevant percentage of the Face Value). BEN will apply the Face Value (or relevant percentage of the Face Value) of each Capital Note 2 by way of payment for the subscription for the Ordinary Shares to be allotted and issued.

Early redemption

68. BEN may elect to Redeem all or some of the Capital Notes 2:

- on a Call Date, or
- following the occurrence of a Franking Event, Tax Event or Regulatory Event.

69. BEN may only Redeem all or some of the Capital Notes 2 if APRA has given its prior written approval to the Redemption and either:

- BEN replaces the Capital Notes 2 with a capital instrument which is the same or better quality (for the purposes of APRA's prudential standards) than the Capital Notes 2 and the replacement of the Capital Notes 2 is done under conditions that are sustainable for the income capacity of BEN, or
- BEN obtains confirmation from APRA that APRA is satisfied, having regard to the capital position of the BEN Level 1 Group and BEN Level 2 Group, that BEN does not have to replace the Capital Notes 2.

70. Each Capital Note 2 will be Redeemed by payment of the Face Value to the relevant Holder. Distributions for the period since the last Distribution Payment Date to (but excluding) the Redemption Date will be paid subject to the conditions for payment of a Distribution being met.

Resale

71. BEN may elect that all or some of the Holder's holding of the Capital Notes 2 will be transferred to one or more Nominated Purchasers:

- on a Call Date, or
- following the occurrence of a Franking Event, Tax Event or Regulatory Event (Resale).

72. The Nominated Purchaser or Nominated Purchasers will be one or more third parties selected by BEN and cannot be BEN itself or a Related Body Corporate.

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73. Under a Resale, each Holder is taken to irrevocably offer to sell the Capital Notes 2 that are subject to the Resale Notice to the Nominated Purchasers on the Resale Date for a purchase price equal to the Face Value of that Capital Note 2. Each Capital Note 2 which is to be Resold will be transferred to the Nominated Purchaser free from any Encumbrances.

Other matters

74. This Ruling is made on the basis that:
- (a) During the term of the scheme, BEN is a resident of Australia under the income tax laws of Australia and of no other jurisdiction.
 - (b) The Capital Notes 2 are equity interests in BEN under Division 974 and are non-share equity interests in BEN as defined in subsection 995-1(1).
 - (c) The Capital Notes 2 form part of BEN's Additional Tier 1 Capital for the purposes of the prudential standards determined by APRA and in force under section 11AF of the *Banking Act 1959*.
 - (d) The Distributions are frankable distributions under section 202-40.
 - (e) BEN expects to frank each Distribution in accordance with the franking policy that applies to BEN Ordinary Shares (at such time as the Distributions are made), and in a manner that satisfies the benchmark rule in Division 203 for the franking period in which a Distribution is made. The policy of BEN in relation to the franking of dividends on BEN Ordinary Shares and distributions on other equity interests of BEN is not expected to change as a result of the issuance of the Capital Notes 2.
 - (f) BEN will not differentially frank Distributions to different Holders according to their tax status or on any other basis.
 - (g) Immediately before payment of a Distribution on the Capital Notes 2, BEN will have available frankable profits (worked out under section 215-20) at least equal to the Distribution.
 - (h) Distributions on the Capital Notes 2 will not be sourced directly or indirectly from BEN's share capital account or non-share capital account.
 - (i) Distributions on the Capital Notes 2 will not be debited to any extent against BEN's non-share capital account or share capital account.
 - (j) On the issue of the Capital Notes 2 or the issue of BEN Ordinary Shares on Exchange, BEN's share capital account will not become tainted (within the meaning of Division 197).
 - (k) On Exchange or Redemption, BEN will debit the Face Value of the Capital Notes 2 to its non-share capital account (within the meaning of section 164-10).
 - (l) Any BEN Ordinary Shares issued on Exchange will be equity interests in BEN as defined in Subdivision 974-C.
 - (m) BEN does not currently have on issue any non-share equity interests that constitute Tier-1 Capital issued at or through a permanent establishment which pays distributions that are unfrankable pursuant to section 215-10.

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- (n) You (or an associate) will not make, be under an obligation to make, or be likely to make, a 'related payment' (as defined under former section 160APHN of the ITAA 1936) in relation to a Distribution.
- (o) You will hold your Capital Notes 2 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 of the ITAA 1936) in relation to a Distribution.
- (p) You will not take any 'positions' (as defined in former section 160APHJ of the ITAA 1936) at any time in relation to your Capital Notes 2 apart from holding your Capital Notes 2.
- (q) 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)).
- (r) All parties to the transaction are dealing with each other on arm's length terms and fair value consideration was provided by Holders to acquire Capital Notes 2.

Commissioner of Taxation

17 April 2024

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Appendix – Explanation

❶ *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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Section 177EA of the ITAA 1936

75. 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 a particular scheme is to enable a taxpayer to obtain an imputation benefit.

76. The conditions in paragraphs 177EA(3)(a) to (d) of the ITAA 1936 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 incidental purpose of enabling a Holder to obtain an imputation benefit (paragraph 177EA(3)(e) of the ITAA 1936).

77. The Commissioner considers that the relevant circumstances of the scheme do not, on balance, lead to a conclusion that the purpose of enabling Holders to obtain imputation benefits is more than incidental to BEN's primary purpose of raising Additional Tier 1 Capital for general corporate funding and capital management purposes.

Section 204-30

78. Subsection 204-30(1) empowers the Commissioner to make a determination under paragraph 204-30(3)(c) if an entity streams distributions in such a way that imputation benefits are received by a member who would derive a greater benefit from franking credits than another member of the entity who will receive lesser or no imputation benefits.

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79. Based on the scheme, there is no evidence of streaming as Distributions will be received by all Holders by reason of their proportionate holding of Capital Notes 2 and not by reference to their tax profiles or individual tax positions. There is nothing in the Terms that allows BEN to treat Holders differently in respect of their entitlement to a franked Distribution.

Gross up and tax offset cancelled in certain circumstances

80. Subdivision 207-F may cancel the effect of the gross-up and tax offset rules where the entity concerned has manipulated the imputation system in a manner that is not permitted under the income tax law.

81. Under subsection 207-145(1), this adjustment will occur where a franked distribution is made to an entity in one or more of the following circumstances:

- The entity is not a 'qualified person' in relation to the distribution for the purposes of Division 1A of former Part IIIA of the ITAA 1936 (paragraph 207-145(1)(a)).
- 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 distribution for the entity (paragraph 207-145(1)(b)).
- The Commissioner has made a determination under paragraph 204-30(3)(c) that no imputation benefit is to arise in respect of the distribution for the entity (paragraph 207-145(1)(c)).
- The distribution is made as part of a dividend stripping operation (paragraph 207-145(1)(d)).
- The distribution is one to which section 207-157 (which is about distribution washing) applies (paragraph 207-145(1)(da)).
- The distribution is one to which section 207-158 (which is about distributions entitled to a foreign income tax deduction) applies (paragraph 207-145(1)(db)).

82. Paragraphs 207-145(1)(a) to (db) will not apply to franked Distributions paid to Holders as explained in paragraphs 83 to 92 of this Ruling.

Qualified person – paragraph 207-145(1)(a)

83. Paragraph 207-145(1)(a) will not apply to cancel the effect of the gross-up and tax offset rules for a franked Distribution provided you are a qualified person.

84. As this Ruling is made on the basis that you have not made a related payment in respect of a Distribution, the relevant qualification period for working out if you are a qualified person is the primary qualification period (as defined in former section 160APHD of the ITAA 1936). The primary qualification period begins on the day after you acquire your Capital Note 2 and ends on the 90th day after the day the Capital Note 2 becomes ex-distribution.

85. You generally need to have held a Capital Note 2 'at risk' for a continuous period of 90 days (excluding the days of acquisition and disposal, if relevant) during the primary qualification period in order to be a qualified person. 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) of the ITAA 1936).

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86. Under former subsection 160APHM(2) of the ITAA 1936, you are taken to have materially diminished the risks of loss and opportunities for gain on a particular day with respect to your Capital Note 2 if your net position on that day does not retain 30% or more of the risks and opportunities associated with holding the Capital Note 2.

87. Embedded options such as the Resale and Exchange mechanisms do not represent separate positions in relation to the Capital Notes 2 (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 the Resale mechanism, you will only be taken to have made an offer to sell your Capital Notes 2 if BEN issues a Resale Notice. As BEN 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 Capital Notes 2. Similarly, under the Exchange mechanism you do not have the right to elect Exchange of your Capital Notes 2.

88. Therefore, the Resale and Exchange mechanisms will not, of themselves, affect your risks of loss or opportunities for gain in respect of your Capital Notes 2.

Paragraphs 207-145(1)(b) and (c)

89. Paragraphs 207-145(1)(b) and (c) will not apply to cancel the effect of the gross-up and tax offset rules in respect of a franked Distribution as the Commissioner will not make determinations under paragraph 177EA(5)(b) of the ITAA 1936 or paragraph 204-30(3)(c) (refer to paragraphs 14 and 15 of this Ruling).

Paragraph 207-145(1)(d)

90. Paragraph 207-145(1)(d) will not apply to cancel the effect of the gross-up and tax offset rules in respect of a franked Distribution as there is no evidence that the Distributions will be made as part of a dividend stripping operation.

Paragraph 207-145(1)(da)

91. Paragraph 207-145(1)(da) will not apply to cancel the effect of the gross-up and tax offset rules in respect of a franked Distribution as this Ruling is made on the basis that the distribution washing provision does not apply (refer to subparagraph 74(q) of this Ruling).

Paragraph 207-145(1)(db)

92. Paragraph 207-145(1)(db) will not apply to cancel the effect of the gross-up and tax offset rules in respect of a franked Distribution as the Capital Notes 2 are equity interests which form part of BEN's Additional Tier 1 Capital under APRA prudential standards (refer to subparagraph 74(c) of this Ruling).

Bendigo and Adelaide Bank ordinary shares received on exchange not a dividend or a non-share dividend

93. The Exchange of Capital Notes 2 for BEN Ordinary Shares will not result in Holders being taken to have received a dividend or a non-share dividend.

94. You are not a shareholder of BEN in respect of your Capital Note 2 holdings. Accordingly, you will not receive a dividend as defined in subsection 6(1) of the ITAA 1936.

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95. The application of the Face Value to subscribe for BEN Ordinary Shares on Exchange of the Capital Notes 2 is a crediting of that amount to you and, therefore, a non-share distribution under section 974-115. All non-share distributions are non-share dividends unless they are debited against the distributing company's non-share capital account or share capital account (section 974-120).

96. The issue of BEN Ordinary Shares to you on Exchange of the Capital Notes 2 will not be a non-share dividend as defined in section 974-120, as the Face Value of the Capital Notes 2 will be debited against BEN's non-share capital account.

Market value of Bendigo and Adelaide Bank Capital Notes 2 on redemption

97. The capital proceeds received by you on Redemption will be replaced with the market value of the Capital Notes 2 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)).

98. If BEN elects to Redeem the Capital Notes 2 on a Redemption Date before the Mandatory Exchange Date, the market value of the Capital Notes 2 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 market value for investors holding their securities on capital account*.

Section 45 of the ITAA 1936

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

100. BEN expects to pay fully franked dividends to all its shareholders and fully franked distributions to all holders of non-share equity interests consistently.

101. The Terms do not provide for the issue of shares to all or some Holders in satisfaction of their Distribution entitlement. The issue of BEN Ordinary Shares on Exchange merely reflects a change in the type of equity interests held by Holders in BEN.

102. Based on the information provided and having regard to the circumstances of the scheme, section 45 of the ITAA 1936 will not apply to treat the value of BEN Ordinary Shares issued to you on Exchange as an unfrankable dividend.

Section 45A of the ITAA 1936

103. Section 45A of the ITAA 1936 applies where a company streams capital benefits and the payment of dividends to shareholders in such a way that capital benefits are received by shareholders who would derive a greater benefit from receiving the capital benefits (the advantaged shareholders), and it is reasonable to assume that other shareholders (the disadvantaged shareholders) have received, or will receive, dividends.

104. Both the issue of BEN Ordinary Shares on Exchange and the Redemption of Capital Notes 2 will constitute the provision of a capital benefit to Holders

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(paragraph 45A(3)(a) of the ITAA 1936 for an Exchange, and paragraph 45A(3)(b) of the ITAA 1936 as affected by subsection 45A(3A) of the ITAA 1936 for a Redemption).

105. However, the issue of BEN Ordinary Shares on Exchange and the Redemption of Capital Notes 2 will not constitute the streaming of capital benefits because under an Exchange or Redemption, BEN will not selectively direct the flow of capital benefits to Holders who are advantaged shareholders. Accordingly, as this requirement does not apply to the Exchange or Redemption of Capital Notes 2, the Commissioner will not make a determination to treat the whole, or a part, of the capital benefit received by Holders as an unfranked dividend.

Section 45B of the ITAA 1936

106. Section 45B of the ITAA 1936 applies where, having regard to the relevant circumstances of the scheme as set out in subsection 45B(8), a company provided certain capital benefits to its shareholders for a more than incidental purpose of enabling the taxpayer to obtain a tax benefit.

107. The issue of BEN Ordinary Shares to Holders on Exchange and the Redemption of Capital Notes 2 (a Redemption being a non-share capital return) will each constitute a scheme under which Holders are provided with a capital benefit by BEN (paragraphs 45B(5)(a), 45B(5)(b) and subsection 45B(7) of the ITAA 1936). As a result, paragraph 45B(2)(a) of the ITAA 1936 will be satisfied.

108. At least some Holders will obtain a tax benefit as defined in subsection 45B(9) of the ITAA 1936 as a result of an Exchange or Redemption. As a result, paragraph 45B(2)(b) of the ITAA 1936 will be satisfied.

109. Therefore, whether section 45B of the ITAA 1936 will apply to an Exchange or Redemption turns on whether paragraph 45B(2)(c) of the ITAA 1936 will be satisfied. This involves considering the relevant circumstances, including but not limited to those listed in subsection 45B(8) of the ITAA 1936, of the Exchange 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 Holder) to obtain a tax benefit.

110. Having regard to the relevant circumstances, it could not be concluded that the Exchange or Redemption of Capital Notes 2 will be entered into for a more than incidental purpose of enabling Holders to obtain a tax benefit. Accordingly, paragraph 45B(2)(c) of the ITAA 1936 would not be satisfied and 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 the whole, or a part, of the capital benefit provided to Holders on Exchange or Redemption.

Status: **not legally binding**

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