



Status: **legally binding**

Class Ruling

Judo Capital Holdings Limited – Judo Capital Notes

📌 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.

Table of Contents	Paragraph
What this Ruling is about	1
Who this Ruling applies to	5
What this Ruling does not consider	6
When this Ruling applies	7
Ruling	8
Scheme	47
Appendix – Explanation	80

What this Ruling is about

1. This Ruling sets out the income tax consequences for entities who subscribed for and acquired Judo Capital Notes (the Capital Notes) issued by Judo Capital Holdings Limited (Judo).
2. Details of this scheme are set out in paragraphs 47 to 79 of this Ruling.
3. In this Ruling, unless otherwise defined, capitalised terms have the meanings specified in the Terms of the Capital Notes (the Terms) which are contained in Appendix A of the Judo Capital Notes Prospectus, dated 31 October 2023 (the Prospectus).
4. All legislative references in this Ruling are to provisions of the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Who this Ruling applies to

5. This Ruling applies to you if you:
 - acquired your Capital Notes by initial application under the Prospectus
 - are a resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)) during the period you hold your Capital Notes

Status: **legally binding**

- hold your Capital Notes on capital account, that is, you do not hold your Capital Notes as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)), and
- are not subject to the taxation of financial arrangement rules in Division 230 in relation to gains and losses on your Capital Notes.

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 for any Nominated Purchaser who acquires a Capital Note under an Optional Resale Notice
 - the tax implications if Judo were to implement a NOHC Event¹, 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 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 17 November 2031.

Ruling

Consequences of acquiring Judo Capital Notes

Acquisition time

8. You acquired your Capital Notes on 16 November 2023 (Issue Date) under 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 is \$100, being the money you paid to acquire each of your Capital Notes (subsections 110-25(2) and 110-55(2)).

Consequences of holding your Judo Capital Notes

Distributions and entitlement to a tax offset for franking credits

10. A Distribution on your Capital Note 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).

¹ NOHC stands for 'non-operating holding company'.

Status: **legally binding**

11. In the income year in which the Distribution is made, you also:
- include the amount of the franking credit attached to a Distribution in your assessable income (subsection 207-20(1)), and
 - are entitled to a tax offset equal to the franking credit (subsection 207-20(2)).
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 that part of the Distribution is not included in your assessable income and you are not entitled to a tax offset under Division 207 for those franking credits (Subdivision 207-D).

Determination under 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 any imputation benefits you receive in respect of a Distribution or a specified part of a Distribution.

Determination under 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 respect of 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' (as defined in former section 160APHD of the ITAA 1936), you held your Capital Notes 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 of the ITAA 1936) in respect of your Capital Notes.
18. The Resale and Conversion features of the Capital Notes will not affect your risks of loss or opportunities for gain in respect of your Capital Notes as neither the Resale nor the Conversion 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.
20. In respect of paragraphs 207-145(1)(b) and (c), refer to paragraphs 14 and 15 of this Ruling.

Status: **legally binding**

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

22. In respect of paragraph 207-145(1)(da), this Ruling is made on the basis that the distribution washing provision does not apply (refer to paragraph 79(q) of this Ruling).

23. In respect of paragraph 207-145(1)(db), the Capital Notes are equity interests which form part of Judo's Additional Tier 1 Capital under the prudential standards determined by the Australian Prudential Regulation Authority (APRA) (refer to paragraph 79(c) of this Ruling).

Consequences of disposing of your Judo Capital Notes

Judo Capital Notes are not traditional nor qualifying securities

24. Your Capital Note is not a 'traditional security' as defined in subsection 26BB(1) of the ITAA 1936.

25. Section 26BB of the ITAA 1936 will not apply to include any gain on the disposal or Redemption of your Capital Notes in your assessable income.

26. Section 70B of the ITAA 1936 will not apply to allow any loss on the disposal or Redemption of your Capital Notes as a deduction.

27. Your Capital Note is not a 'qualifying security' as defined in subsection 159GP(1) of the ITAA 1936. Therefore, Division 16E of the ITAA 1936 will not apply.

Conversion of Judo Capital Notes for Judo Ordinary Shares

28. Each Capital Note is a convertible interest (as defined in subsection 995-1(1) and table item 4 of subsection 974-75(1)).

29. CGT event C2 happens on Conversion of each of your Capital Notes for Ordinary Shares in Judo (Judo Ordinary Shares) (section 104-25).

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

31. The Judo Ordinary Shares that you acquire on Conversion will be taken to have been acquired when the Conversion happened on the relevant Conversion Date (subsection 130-60(2)).

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

33. As you hold your Capital Notes on capital account, no amount will be included in your assessable income on Conversion of your Capital Notes under section 6-5. Similarly, you will not incur a deductible loss under section 8-1 as a consequence of the Conversion of your Capital Notes.

34. On the Conversion of your Capital Notes for Judo Ordinary Shares, you will not be taken to have received a dividend or non-share dividend.

Status: **legally binding**

Resale of Judo Capital Notes

35. CGT event A1 happens on the Resale of your Capital Notes (section 104-10). The Resale of each of your Capital Notes to a Nominated Purchaser will be for a cash amount equal to the Face Value of each Capital Note.

36. As the capital proceeds you receive for each of the relevant Capital Notes subject to Resale will not be more than the cost base of each of your Capital Notes, you will not make a capital gain as a result of the Resale of your Capital Notes.

37. As you hold your Capital Notes on capital account, no amount will be included in your assessable income on the Resale of your Capital Notes under section 6-5. Similarly, you will not incur a deductible loss under section 8-1 as a consequence of the Resale of your Capital Notes.

Redemption of Judo Capital Notes

38. CGT event C2 will happen on the Redemption of your Capital Notes, where the Redemption is constituted by the redemption of all or some of your Capital Notes for their Face Value (section 104-25).

39. The capital proceeds you receive on Redemption of your Capital Notes (being the Face Value) will be replaced by the market value of the Capital Notes on the Redemption 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 Capital Notes (subparagraph 116-30(2)(b)(ii)).

40. Accordingly, where the market value of a Capital Note at the time of Redemption is more than the cost base of the Capital Note that is redeemed, you will make a capital gain. Where the market value of a Capital Note at the time of Redemption is less than the reduced cost base of the Capital Note that is redeemed, you will make a capital loss (subsection 104-25(3)).

41. As you hold your Capital Notes on capital account, no amount will be included in your assessable income on the Redemption of your Capital Notes under section 6-5. Similarly, you will not incur a deductible loss under section 8-1 as a consequence of the Redemption of your Capital Notes.

Judo Capital Notes that are written off

42. CGT event C2 will happen on the Write-Off of your Capital Notes because the Capital Note is terminated at that time (section 104-25).

43. For the purpose of determining whether you make a capital gain or capital loss from CGT event C2 happening on Write-Off of your Capital Note, you are taken to have nil capital proceeds from CGT event C2 happening. This is because you receive no capital proceeds in respect of a Write-Off happening, and your Capital Notes have a market value of nil at that time.

Other integrity provisions**Section 45 of the ITAA 1936**

44. Section 45 of the ITAA 1936 will not apply to treat the value of Judo Ordinary Shares issued to you on Conversion of your Capital Notes as an unfrankable dividend paid to you by Judo.

Status: **legally binding**

Section 45A of the ITAA 1936

45. 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 Conversion or Redemption of your Capital Notes as an unfranked dividend.

Section 45B of the ITAA 1936

46. 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 Conversion or Redemption of your Capital Notes as an unfranked dividend.

Scheme

47. 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

48. Judo is a company listed on the Australian Securities Exchange (ASX). The only shares Judo has issued are ordinary shares.

49. Judo is the non-operating holding company (NOHC) of Judo Bank Pty Ltd (Judo Bank) and is an 'authorised NOHC' for the purposes of the *Banking Act 1959*.

50. For Australian income tax purposes, Judo is the head company of an income tax consolidated group under Part 3-90 that includes Judo Bank.

51. Judo Bank is an authorised deposit-taking institution for the purposes of the *Banking Act 1959*.

52. Both Judo and Judo Bank are subject to regulatory compliance requirements by APRA.

53. Under the Prospectus, Judo announced its intention to undertake capital raising by the issue of the Capital Notes for an issue price of \$100 each to raise a total of approximately \$75 million (subject to market conditions and investors' expectations) (the Offer).

54. The classes of Applicants who could apply for the Capital Notes and the corresponding process for lodging applications were set out in the Prospectus. The classes of Applicants were certain wholesale and retail investors, being:

- Institutional Investors applying through an Institutional Offer; and
- Australian-resident clients of Syndicate Brokers applying through a Broker Firm Offer.

55. The Capital Notes were issued on 16 November 2023.

56. The Capital Notes are listed on the ASX under the ASX code JDOPA.

57. The Capital Notes were issued by Judo in Australia. The Capital Notes were not issued at or through an offshore permanent establishment or subsidiary of Judo.

58. The Offer was made as part of Judo's ongoing capital management strategy. The issue of the Capital Notes was a new capital raising and the proceeds were used to

Status: **legally binding**

subscribe for notes issued by Judo Bank. The Capital Notes were issued to raise Additional Tier 1 Capital and to support business growth and diversification of funding sources.

Main features of Judo Capital Notes

59. The Capital Notes are mandatorily convertible, subordinated, unsecured, non-cumulative, perpetual debt securities that may be Written-Off, Redeemed, Converted or Resold by the Issuer.

60. A holder of a Capital Note (Holder) does not have voting rights in Judo. Holders can participate in certain Ordinary and Special Resolutions in the Trust in specific circumstances provided in the Terms and Trust Deed.

61. A Holder has no right to request a Conversion, Redemption or Resale of a Capital Note or to determine whether (or in what combination) a Capital Note is Converted, Redeemed or Resold.

Issue price

62. The Issue Price of each Judo Capital Note was \$100. The Capital Notes were fully paid on the Issue Date.

Distributions

63. Judo may pay quarterly Distributions to the Holder on each Distribution Payment Date during the Distribution Period, in accordance with the Terms of the Capital Notes.

64. The Distribution payable is calculated on the Face Value of each Capital Note using a Distribution Rate, which is equal to the BBSW rate² 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 at 6.50% per annum.

65. If a Distribution is not fully franked, the Distribution will be grossed-up to the extent that the franking percentage is not 100%. Distributions for some initial Distribution Periods may be unfranked or partially franked.

66. The payment of a Distribution is subject to the absolute discretion of Judo and a Payment Condition not existing, including that payment will not breach certain APRA conditions or make Judo insolvent.

67. Distributions are non-cumulative. To the extent that all or part of a Distribution is not paid on a scheduled Distribution Payment Date for any reason, Judo has no liability to pay the unpaid amount of the Distribution and Holders will have no claim or entitlement in respect of the non-payment of the Distribution. Interest does not accrue on any unpaid Distributions.

68. Subject to certain exceptions, if any Distribution is not paid in full within 3 Business Days of the relevant Distribution Payment Date, Judo will be restricted from determining, declaring or paying Ordinary Share Dividends, or undertaking any Buy-Back or Capital Reduction.

² In this Ruling, BBSW Rate takes the definition provided in Clause 5.4 of the Terms (which is not replicated here).

Status: **legally binding**

Mandatory conversion on mandatory conversion date

69. All of the Capital Notes must be converted for Judo Ordinary Shares on the date on which the Mandatory Conversion Conditions are satisfied, that is, the earlier of (each Mandatory Conversion Date):

- 17 November 2031 (Scheduled Mandatory Conversion Date), or
- the first Distribution Payment Date after the Scheduled Mandatory Conversion Date and each subsequent Distribution Payment Date thereafter,

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

Mandatory conversion on loss absorption event or write-off

70. Where a Loss Absorption Event occurs, some or all of the Capital Notes must be Converted for Judo Ordinary Shares or Written-Off.

71. Where Conversion fails to take effect within 5 Business Days after the Loss Absorption Event for any reason, then Conversion will not occur and the relevant Capital Notes will be immediately and irrevocably Written-Off with effect on and from the date of the Loss Absorption Event.

Mandatory conversion on acquisition event

72. All of the Capital Notes must be Converted for Judo Ordinary Shares before a Mandatory Conversion Date if an Acquisition Event occurs.

Optional conversion

73. Some or all of the Capital Notes may be Converted for Judo Ordinary Shares before a Mandatory Conversion Date if Judo elects to do so, subject to APRA's written approval:

- on an Optional Conversion Date following the occurrence of a Tax Event or Regulatory Event, or
- on or around 16 February 2029, 16 May 2029, 16 August 2029 and 16 November 2029 (being the Scheduled Optional Conversion Dates).

Conversion mechanics

74. Upon Conversion:

- Each Holder's rights in relation to each Capital Note that is being Converted will be immediately and irrevocably terminated for an amount equal to the Face Value and Judo will apply the Face Value by way of payment for subscription for the Conversion Number of Judo Ordinary Shares.
- Judo will issue the Conversion Number of Judo Ordinary Shares to the Holder for each Capital Note that is being converted on the Conversion Date. Where the total number of Judo Ordinary shares to be issued includes a fraction of a share, that fraction will be disregarded.

Status: **legally binding**

Optional redemption

75. Judo may elect to Redeem, with the prior written approval of APRA, all or some of the Capital Notes:

- on an Optional Redemption Date following the occurrence of a Tax Event or a Regulatory Event, or
- on or around 16 February 2029, 16 May 2029, 16 August 2029 and 16 November 2029 (being the Scheduled Optional Redemption Dates).

Each Capital Note will be Redeemed by payment of the Face Value to the relevant Holder (together with any Distribution determined to be payable on that Redemption Date).

Optional resale

76. Judo may elect that all or some of the Capital Notes will be transferred to one or more Nominated Purchasers (Resale), with the prior written approval of APRA:

- on a Resale Date following the occurrence of a Tax Event or a Regulatory Event; or
- on around 16 February 2029, 16 May 2029, 16 August 2029 and 16 November 2029 (being the Scheduled Optional Resale Dates).

77. A Nominated Purchaser will be one or more third parties appointed by Judo and cannot be Judo itself or a Related Entity.

78. Under a Resale, each Holder on the Resale Date is taken to irrevocably offer to sell a Capital Note that is subject to the Optional Resale Notice to a Nominated Purchaser on the Resale Date for a cash purchase price equal to the Face Value of each Capital Note. Each of the Capital Notes which is to be Resold will be transferred to the Nominated Purchaser or Nominated Purchasers.

Other matters

79. This Ruling is made on the basis that:

- (a) During the term of the scheme, Judo and Judo Bank are residents of Australia under the income tax laws of Australia and of no other jurisdiction.
- (b) The Capital Notes are equity interests in Judo under Division 974 and are non-share equity interests in Judo as defined in subsection 995-1(1).
- (c) The Capital Notes form part of Judo'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) Any Judo Ordinary Shares issued on Conversion will be equity interests in Judo as defined in Subdivision 974-C.
- (e) To the extent a Distribution is franked, the Distribution is a frankable distribution under section 202-40 and will not be unfrankable under section 202-45.
- (f) To the extent that a Distribution is franked, Judo expects to frank the Distribution in a manner that satisfies the benchmark rule in Division 203 for the franking period in which a Distribution is made.

Status: **legally binding**

- (g) The dividend payout ratios and Judo's policies in relation to the franking of its distributions on Ordinary Shares are not expected to change as a result of the issue of the Capital Notes.
- (h) Judo will not differentially frank Distributions to different Holders according to their tax status or on any other basis.
- (i) Distributions on the Capital Notes will not be sourced directly or indirectly from Judo's non-share capital account or share capital account, nor debited to any extent against Judo's non-share capital account or share capital account.
- (j) The share capital account of Judo will not become tainted (within the meaning of Division 197) by the issue of the Capital Notes or the issue of Judo Ordinary Shares on Conversion of the Capital Notes.
- (k) On Conversion or Redemption, Judo will debit the Issue Price of the Capital Notes to its non-share capital account (within the meaning of section 164-10).
- (l) The financial statements of the Judo group will be prepared in accordance with the applicable accounting standards.
- (m) Judo 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 under section 215-10.
- (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 for a continuous period of at least 90 days (excluding the day of acquisition and disposal (if relevant)), during the primary qualification period 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 apart from holding your Capital Notes.
- (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) You will not receive capital proceeds in respect of a Write-Off of a Capital Note and the market value of a Capital Note at that time will be nil.
- (s) Initial allocation of the Capital Notes was made in accordance with the Offer and did not consider the tax profile of the prospective Holders.
- (t) All parties to the transaction are dealing with each other on arm's length terms and fair value consideration was provided by you to acquire the Capital Notes.

Commissioner of Taxation
29 November 2023

 Status: **not legally binding**

Appendix – 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.*

Table of Contents	Paragraph
Determination under paragraph 177EA(5)(b) of the ITAA 1936	80
Determination under paragraph 204-30(3)(c)	83
Gross up and tax offset cancelled in certain circumstances – qualified persons	85
Judo ordinary shares received on conversion not a dividend or a non-share dividend	89
Section 45 of the ITAA 1936	93
Section 45A of the ITAA 1936	95
Section 45B of the ITAA 1936	98

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

80. 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 scheme is to enable a taxpayer to obtain an imputation benefit.

81. The conditions in paragraphs 177EA(3)(a) to (d) of the ITAA 1936 will be 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 Holder to obtain an imputation benefit (paragraph 177EA(3)(e) of the ITAA 1936).

82. 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 Judo's primary purpose of raising Additional Tier 1 Capital for the purposes of APRA's prudential standards that will be used for general corporate and funding purposes of Judo.

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

83. 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.

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

Status: **not legally binding**

Gross up and tax offset cancelled in certain circumstances – qualified persons

85. 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 dividend (paragraph 207-145(1)(f)).

86. As this Ruling is made on the basis that you (or your associate) will not make a related payment in respect of a Distribution, the relevant qualification period is the primary qualification period. The primary qualification period begins on the day after you acquire your Capital Notes and ends on the 90th day after the day Capital Notes becomes ex-distribution.

87. You need to have held your Capital Notes '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) of the ITAA 1936). 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 Notes if your net position on that day does not retain 30% or more of the risks and opportunities associated with holding the Capital Notes.

88. Embedded options such as the Resale and Conversion mechanisms do not represent separate positions in relation to the Capital Notes (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 if Judo issues a Resale Notice. As Judo 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. Similarly, under the Conversion mechanism, you do not have the right to elect Conversion of your Capital Notes. Therefore, the Resale and Conversion mechanisms will not, of themselves, affect your risks of loss or opportunities for gain in respect of your Capital Notes and therefore will not constitute separate positions (former sections 160APHM and 160APHJ of the ITAA 1936).

Judo ordinary shares received on conversion not a dividend or a non-share dividend

89. Holders are not shareholders of Judo in respect of their Capital Note holdings. Accordingly, you will not be taken to have received a dividend, as defined in subsection 6(1) of the ITAA 1936, on conversion of your Capital Notes.

90. The application of the Face Value to subscribe for Judo Ordinary Shares on Conversion of the Capital Notes 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). The issue of Judo Ordinary Shares to you on Conversion of your Capital Notes will not be a non-share dividend, as defined in section 974-120, as the Face Value of the Capital Notes will be debited against Judo's non-share capital account.

91. Therefore, the issue of Judo Ordinary Shares to you will not be a dividend, as defined in subsection 6(1) of the ITAA 1936, and it will not be a non-share dividend, as defined in subsection 974-120.

Status: **not legally binding**

92. Accordingly, the Judo Ordinary Shares received on Conversion will not be included in your assessable income under paragraph 44(1)(a) of the ITAA 1936.

Section 45 of the ITAA 1936

93. 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.

94. 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 issue of Judo Ordinary Shares on Conversion as an unfranked dividend in the hands of the Holders.

Section 45A of the ITAA 1936

95. 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.

96. Both the issue of Judo Ordinary Shares on Conversion and the Redemption of the Capital Notes will constitute the provision of a capital benefit to Holders (paragraph 45A(3)(a) of the ITAA 1936 for a Conversion, and paragraph 45A(3)(b) of the ITAA 1936 as affected by subsection 45A(3A) of the ITAA 1936 for a Redemption).

97. However, the issue of Judo Ordinary Shares on Conversion and the Redemption of the Capital Notes will not constitute the streaming of capital benefits because under a Conversion or Redemption Judo will not selectively direct the flow of capital benefits to Holders who are advantaged shareholders. Accordingly, as this requirement does not apply to the Conversion or Redemption of the Capital Notes, 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

98. Section 45B of the ITAA 1936 applies where certain capital benefits are provided to shareholders in substitution for dividends. Where the conditions in subsection 45B(2) of the ITAA 1936 are met, the Commissioner may 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 such that it will be treated as an unfranked dividend.

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

Status: **not legally binding**

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

101. Therefore, whether section 45B of the ITAA 1936 will apply to a Conversion 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 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 Holder) to obtain a tax benefit.

102. Having regard to the relevant circumstances, it could not be concluded that the Conversion or Redemption of the Capital Notes will be entered into for a more than an 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 Conversion or Redemption.

Status: **not legally binding**

References

Related Rulings/Determinations:

TD 2007/29

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1936 26BB
 - ITAA 1936 26BB(1)
 - ITAA 1936 44(1)(a)
 - ITAA 1936 44(1)(a)(ii)
 - ITAA 1936 45
 - ITAA 1936 45A
 - ITAA 1936 45A(2)
 - ITAA 1936 45A(3)(a)
 - ITAA 1936 45A(3)(b)
 - ITAA 1936 45A(3A)
 - ITAA 1936 45B
 - ITAA 1936 45B(2)
 - ITAA 1936 45B(2)(a)
 - ITAA 1936 45B(2)(b)
 - ITAA 1936 45B(2)(c)
 - ITAA 1936 45B(3)(b)
 - ITAA 1936 45B(5)(a)
 - ITAA 1936 45B(5)(b)
 - ITAA 1936 45B(7)
 - ITAA 1936 45B(8)
 - ITAA 1936 45B(9)
 - ITAA 1936 45C
 - ITAA 1936 70B
 - ITAA 1936 Div 16E
 - ITAA 1936 159GP(1)
 - ITAA 1936 former 160APHD
 - ITAA 1936 former 160APHJ
 - ITAA 1936 former 160APHM
 - ITAA 1936 former 160APHM(2)
 - ITAA 1936 former 160APHN
 - ITAA 1936 former 160APHO(3)
 - ITAA 1936 177EA
 - ITAA 1936 177EA(3)(a)
 - ITAA 1936 177EA(3)(b)
 - ITAA 1936 177EA(3)(c)
 - ITAA 1936 177EA(3)(d)
 - ITAA 1936 177EA(3)(e)
 - ITAA 1936 177EA(5)(b)
 - ITAA 1997 6-5
 - ITAA 1997 8-1
 - ITAA 1997 Div 67
 - ITAA 1997 67-25
 - ITAA 1997 67-25(1C)
 - ITAA 1997 67-25(1D)
 - ITAA 1997 104-10
 - ITAA 1997 104-25
 - ITAA 1997 104-25(3)
 - ITAA 1997 109-10
 - ITAA 1997 110-25(2)
 - ITAA 1997 110-55(2)
 - ITAA 1997 116-30(2)(b)(ii)
 - ITAA 1997 130-60(1)
 - ITAA 1997 130-60(2)
 - ITAA 1997 130-60(3)
 - ITAA 1997 164-10
 - ITAA 1997 Div 197
 - ITAA 1997 202-40
 - ITAA 1997 202-45
 - ITAA 1997 Div 203
 - ITAA 1997 204-30(1)
 - ITAA 1997 204-30(3)(c)
 - ITAA 1997 Div 207
 - ITAA 1997 Subdiv 207-D
 - ITAA 1997 Subdiv 207-E
 - ITAA 1997 207-20(1)
 - ITAA 1997 207-20(2)
 - ITAA 1997 207-145(1)(a)
 - ITAA 1997 207-145(1)(b)
 - ITAA 1997 207-145(1)(c)
 - ITAA 1997 207-145(1)(d)
 - ITAA 1997 207-145(1)(da)
 - ITAA 1997 207-145(1)(db)
 - ITAA 1997 207-145(1)(e)
 - ITAA 1997 207-145(1)(f)
 - ITAA 1997 207-157
 - ITAA 1997 207-157(4)
 - ITAA 1997 215-10
 - ITAA 1997 Div 230
 - ITAA 1997 Pt 3-90
 - ITAA 1997 Div 974
 - ITAA 1997 Subdiv 974-C
 - ITAA 1997 974-75(1)
 - ITAA 1997 974-115
 - ITAA 1997 974-120
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - Banking Act 1959 11AF
-

ATO references

NO: 1-W2MNLRC
ISSN: 2205-5517

CR 2023/66

Status: **not legally binding**

BSL: PG

ATOlaw topic: Income tax ~~ Capital management ~~ Hybrid capital raisings

© AUSTRALIAN TAXATION OFFICE FOR THE COMMONWEALTH OF AUSTRALIA

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).