

**RULINGS > PRODUCT**

# **ANZ Bank New Zealand Limited**

Issued: 17 October 2022

**BR Prd 22/12**

The Arrangement is that Australia and New Zealand Banking Group Limited (ANZBGL) shareholders will exchange their ANZBGL ordinary shares for shares in a non-operating holding company, as part of a reorganisation of ANZBGL and its subsidiaries, and the related amendments to the ANZBGL employee share schemes. This Ruling applies to New Zealand tax resident employees of ANZBGL and its subsidiaries as at the date of the reorganisation who are participants in the ANZBGL employee share schemes.

**START DATE – END DATE**

01/10/2022 – 30/09/2024

**(THIS TITLE PAGE DOES NOT FORM PART OF THE RULING.)**

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## Product Ruling – BR Prd 22/12

This is a product ruling made under s 91F of the Tax Administration Act 1994.

### Name of person who applied for the Ruling

This Ruling has been applied for by ANZ Bank New Zealand Limited (ANZ).

### Taxation Laws

All legislative references are to the Income Tax Act 2007 (Act) unless otherwise stated.

This Ruling applies in respect of ss CE 1(1)(d) and CW 26B.

### The Arrangement to which this Ruling applies

The Arrangement is that Australia and New Zealand Banking Group Limited (ANZBGL) shareholders will exchange their ANZBGL ordinary shares for shares in a non-operating holding company (NewANZ), as part of a reorganisation of ANZBGL and its subsidiaries (NOHC Reorganisation), and the related amendments to the ANZBGL employee share schemes.

Further details of the Arrangement are set out in the paragraphs below.

### Persons to who the Ruling applies

- 1) This Ruling applies to New Zealand tax resident employees (Employees) of ANZBGL and its subsidiaries (ANZ Group) as at the date of the NOHC Reorganisation who are participants in an employee share scheme of the ANZ Group (being the Exempt Share Scheme, the ESAP or the ESOP – as defined below at [4]).

### Relevant documents

- 2) The following documents are relevant to the Arrangement:
  - a) the employee share acquisition plan rules (as amended by a board resolution on 25 October 2010 and by human resources committee resolutions on 16 September 2010, 30 July 2013 and 31 May 2017, and applying to any shares granted under the plan on or after 31 May 2017) (ESAP Rules);

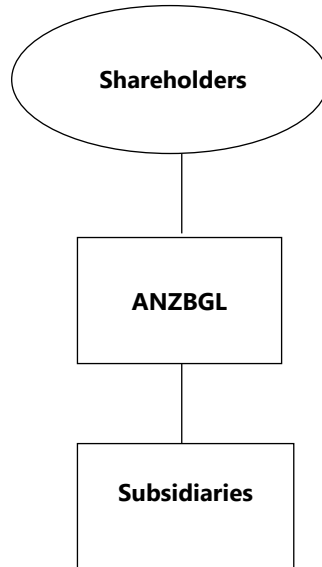
- b) the schedule: New Zealand specific rules – ANZ employee share acquisition plan (amended on 25 September 2013) (ESAP Schedule);
  - c) a deed of trust made on 2 June 1998 (as amended on 29 September 2003, 16 December 2005 and 26 October 2011) between ANZBGL (Bank) and ANZEST Pty Limited (Trustee) (contained in a deed of amendment made on 26 October 2011, Schedule 1) (Trust Deed);
  - d) the ANZ share option plan rules (as amended by board resolutions on 23 October 2002, 8 November 2007 and 26 October 2010 and by human resources committee resolutions on 16 September 2010, 22 October 2012 and 31 May 2017, and applying to any options granted on or after 31 May 2017) (ESOP Rules); and
  - e) proposed amendments to ESAP Rules and ESOP Rules provided to Inland Revenue on 30 June 2022, and Trust Deed provided to Inland Revenue on 10 October 2022.
- 3) The final executed documentation will not be materially different from the draft documentation provided to Inland Revenue, as set out in para 2)e) above.

### **Current ANZ Group employee share schemes**

- 4) ANZBGL has entered into three employee share schemes through which employees of the ANZ Group are eligible to receive ANZBGL shares or options on such terms as the ANZBGL board decides are appropriate to the circumstances of the employee. The employee share schemes are:
- a) the Exempt Share Scheme (a general employee scheme offered to employees that received the Commissioner's approval under (now repealed) s DC 12 in respect of shares in ANZBGL (provided under the ESAP Rules, the ESAP Schedule and the Trust Deed);
  - b) the ESAP (an incentive scheme offered to selected employees) in respect of shares in ANZBGL (provided under the ESAP Rules and the Trust Deed); and
  - c) the ESOP (a share option plan) in respect of options in ANZBGL shares through which selected employees of the ANZ Group are eligible to acquire ANZBGL options on such terms as the ANZBGL board decides are appropriate to the circumstances of the employee (provided under the ESOP Rules).
- 5) In respect of the ESAP and ESOP, ANZBGL advises no income has previously arisen to the Employees under s CE 1(1)(d).

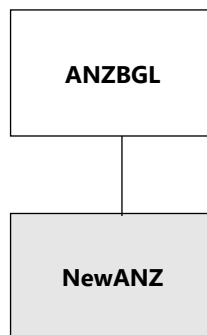
## ANZ Group

- 6) The following diagram summarises the current structure of the ANZ Group.

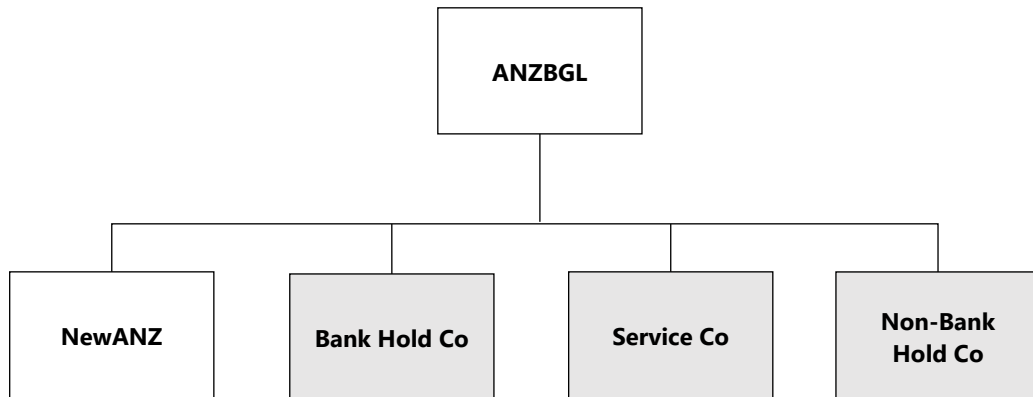


## NOHC Reorganisation

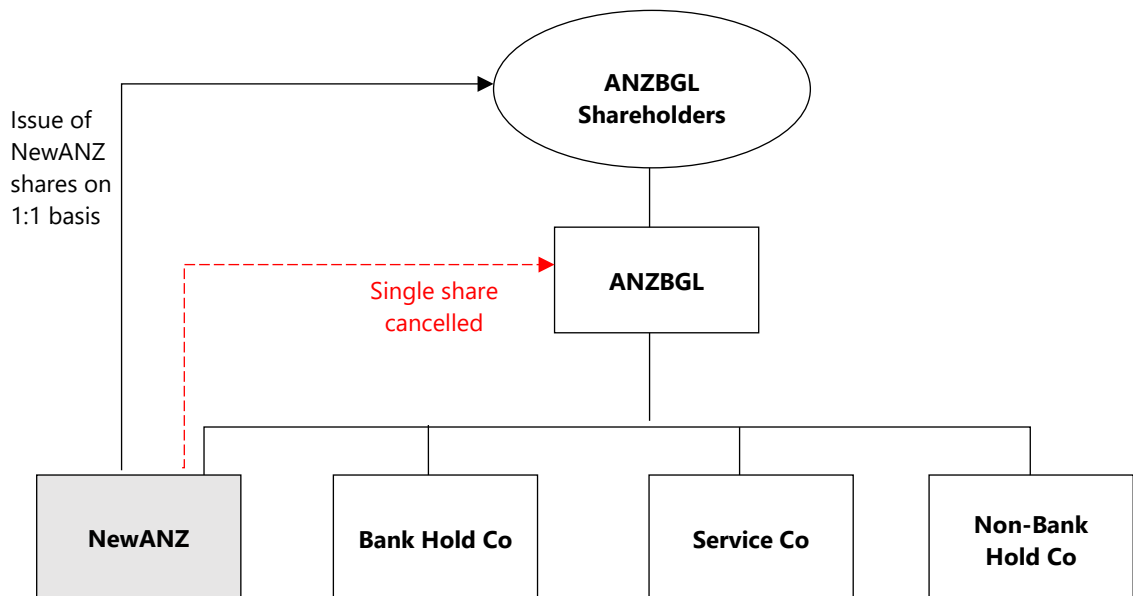
- 7) The NOHC Reorganisation consists of seven steps as the following diagrams summarise:
- a) Step 1: NewANZ, a non-operating holding company, is incorporated as a wholly-owned subsidiary of ANZBGL with nominal share capital.



- b) Step 2: ANZBGL incorporates (with nominal share capital) three wholly-owned subsidiaries: Bank Hold Co (prospective holding company for ANZBGL), Non-Bank Hold Co and Service Co.

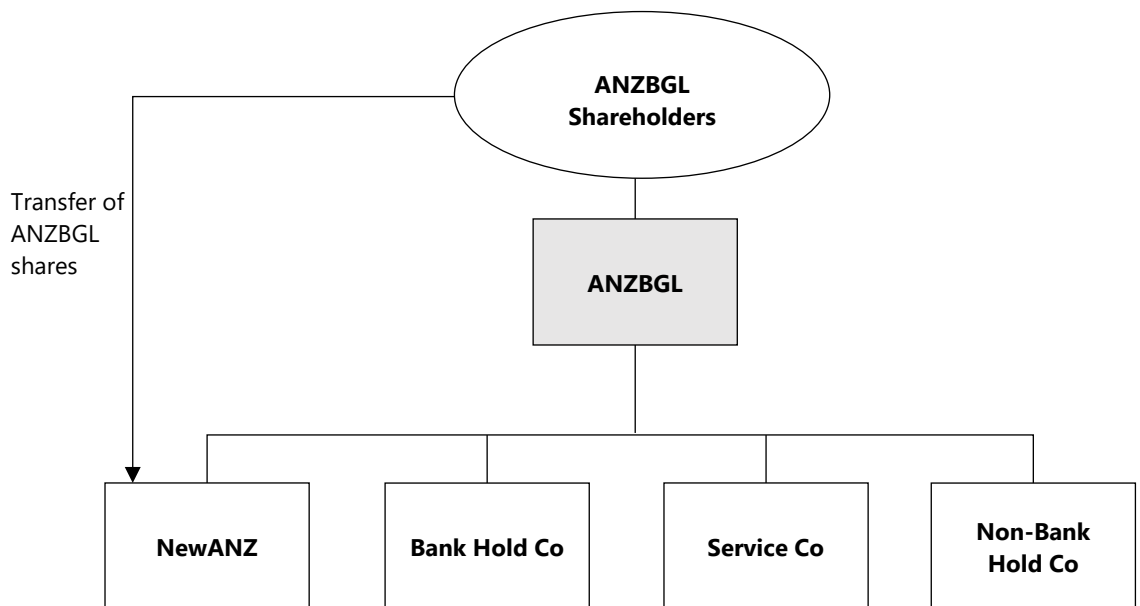


- c) Step 3: NewANZ issues shares (on a one-for-one basis) to eligible ANZBGL shareholders in exchange for the transfer described in step 4 under a court-approved scheme of arrangement (Scheme of Arrangement).

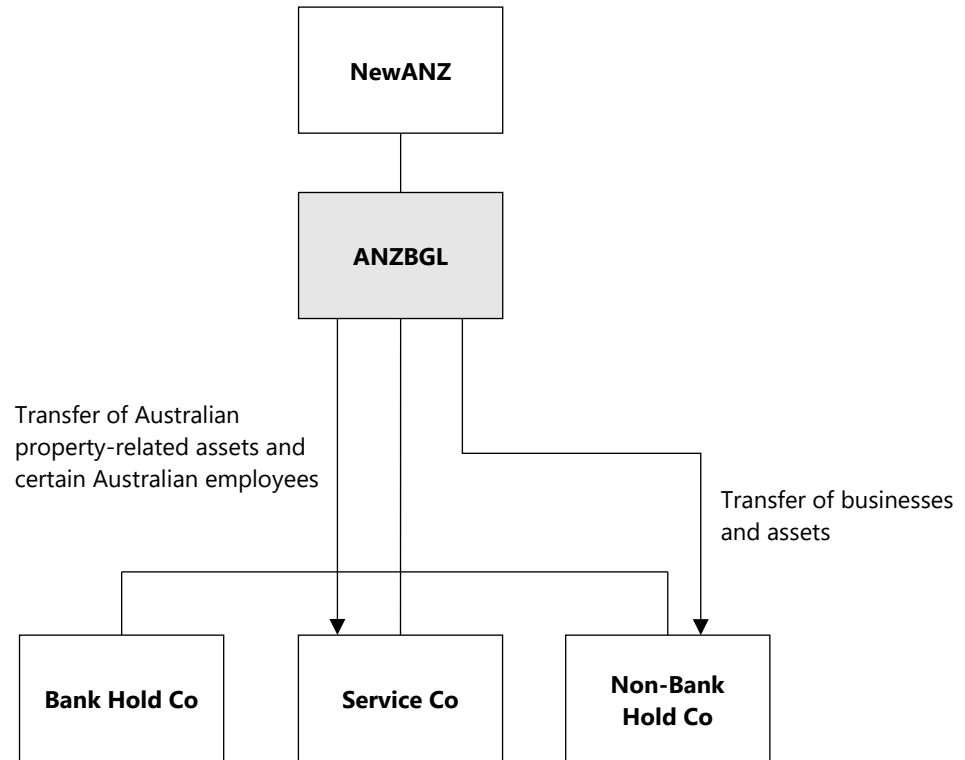


- d) Ineligible foreign shareholders will not participate in steps 3 and 4 as described here. Instead:
- i) their ANZBGL shares will be transferred to a foreign sale facility agent immediately before step 4;

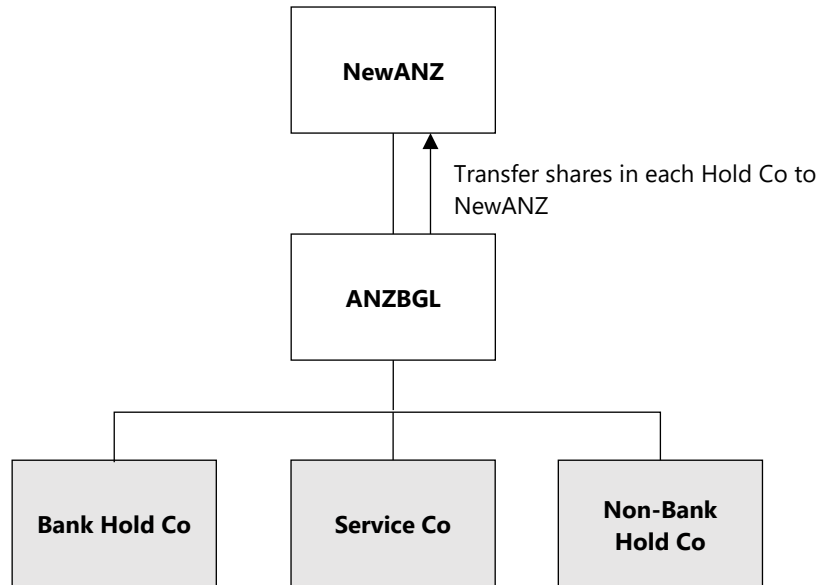
- ii) the facility will be issued with NewANZ shares (on a one-for-one basis) as part of step 3;
  - iii) the facility will transfer the ANZBGL shares to NewANZ as part of step 4; and
  - iv) the facility will sell the NewANZ shares and remit the net proceeds to ineligible foreign shareholders.
- e) At the same time as NewANZ issues the shares, NewANZ buys back and cancels the original nominal share capital held by ANZBGL (the single share depicted in the diagram above).
- f) Step 4: On the same day, and in consideration for the share issue in step 3, ANZBGL shareholders transfer their ordinary shares in ANZBGL to NewANZ. The value of the NewANZ shares will be equal to the value of the ANZBGL shares, as they will carry the same rights.



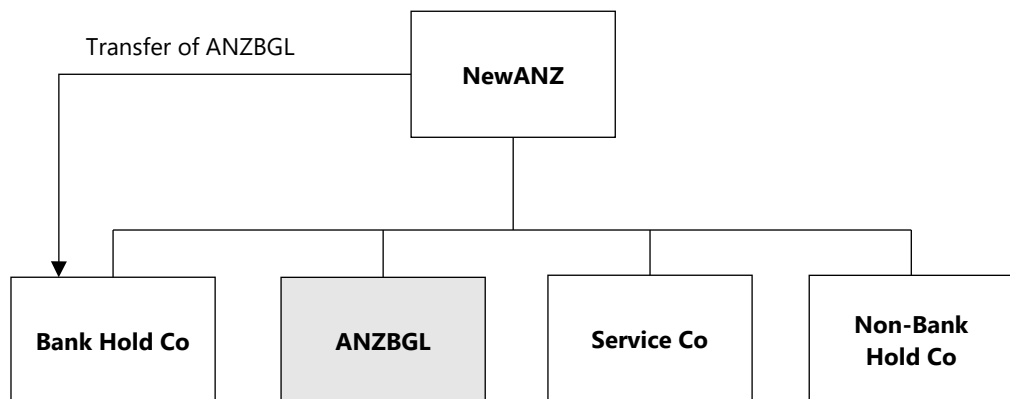
- g) Step 5: ANZBGL transfers non-banking businesses and assets to Non-Bank Hold Co, and relevant assets and employees to Service Co.



- h) Step 6: ANZBGL transfers its shares in Bank Hold Co, Non-Bank Hold Co and Service Co to NewANZ.

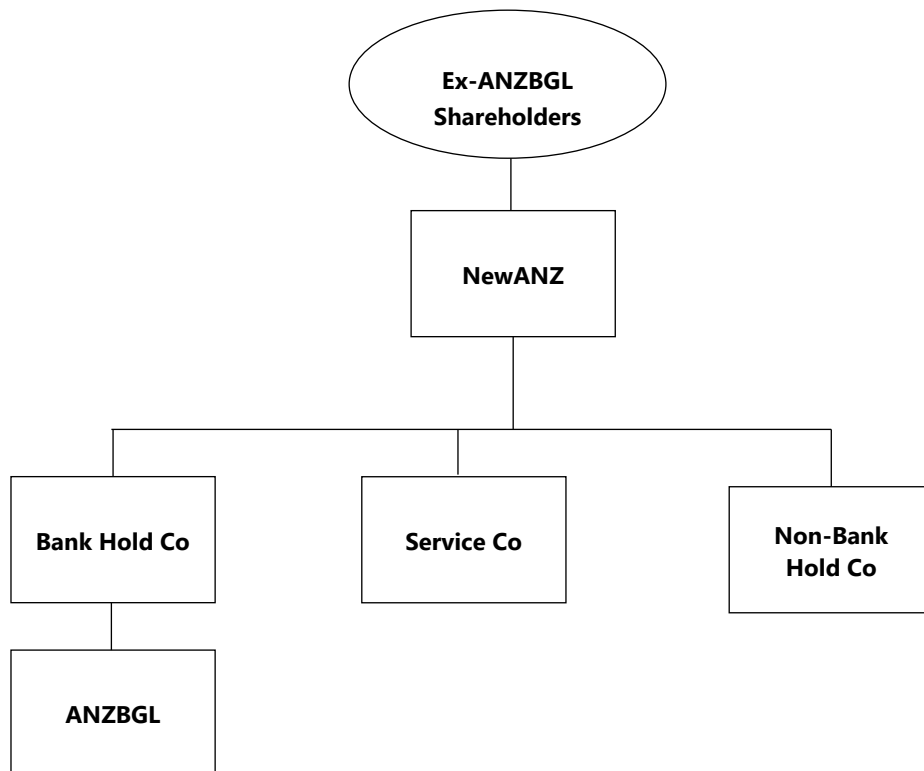


- i) Step 7: NewANZ transfers shares in ANZBGL to Bank Hold Co.





- 8) The following diagram summarises the post-reorganisation position.



### **Effect of NOHC Reorganisation on employee share schemes**

- 9) Consistent with the Scheme of Arrangement, an Employee who holds a share or option or a right to receive a share or option in ANZBGL under or from the Exempt Share Scheme, ESAP or ESOP shall receive a share or option or right to receive a share or option in NewANZ under the Exempt Share Scheme, ESAP or ESOP on a one-for-one basis (as applicable) such that they continue to hold an equivalent interest in the parent company of the ANZ Group (NewANZ).

### **Exempt Share Scheme**

- 10) In respect of the Exempt Share Scheme:
- a) The shares were sold to the Employees for 1 cent each (but held by the Trustee until the end of the period of restriction). ANZBGL made no loans to Employees to subscribe for the shares.

- b) The period of restriction (preventing the Employees from dealing in the shares allocated to them) in relation to the last allocation of shares to occur under the Exempt Share Scheme ceases to apply on 2 December 2022 (Final Vesting Date).
- c) On or after the Final Vesting Date:
  - i) the Employees have full beneficial ownership of the shares;
  - ii) the Trustee holds the shares as a bare trustee for the Employees;
  - iii) Employees have the option under clause 6.1 of the ESAP Schedule to have the Trustee transfer or purchase the shares. If an Employee chooses neither option, the Trustee continues to hold the shares until the relevant Employee subsequently elects an option. Those rights Employees have in relation to such shares are subject to general trading restrictions (eg, securities law restrictions preventing insiders from selling shares during designated periods).
- d) Shares the Trustee legally transfers to an Employee under the Exempt Share Scheme before the Implementation Date will be subject to the Scheme of Arrangement. Shareholders will exchange their ANZBGL shares for NewANZ shares on a one-for-one basis.
- e) For shares the Trustee legally holds for Employees on the Implementation Date (pending an election to be made by an Employee), the ANZBGL board will exercise its discretion to treat those shares the Trustee holds in the same way as other ANZBGL shares in the NOHC Reorganisation. That is, the shares the Trustee holds will be subject to the Scheme of Arrangement, and the Trustee will exchange its ANZBGL shares with NewANZ shares on a one-for-one basis.
- f) Up to and at the time of the Final Vesting Date, the Exempt Share Scheme will meet the criteria under which it obtained the Commissioner's approval under the now repealed s DC 12.

## ESAP

- 11) In respect of the ESAP:
  - a) The ANZBGL board will exercise its discretion to treat any shares the Trustee holds in the same way as other ANZBGL shares in the NOHC Reorganisation. That is, the shares the Trustee holds will be subject to the Scheme of Arrangement, and the Trustee will exchange its ANZBGL shares with NewANZ shares on a one-for-one basis.

- b) The ESAP Rules will be amended to:
    - i) include an express provision on the treatment of restricted shares if an NOHC Reorganisation occurs; and
    - ii) expand the definition of 'ANZ' in the ESAP Rules to include NewANZ (with effect from the Implementation Date) to allow the shares provided to Employees under the ESAP to be shares in NewANZ.
  - c) NewANZ will assume all material responsibilities for the management of the ESAP.
- 12) The proposed amendments to the ESAP Rules provided to Inland Revenue on 30 June 2022 include the following (amendments in red):

2.1 **Definitions**

In these Rules:

**ANZ** means Australia and New Zealand Banking Group Limited ABN 11 005 357 522 and, with effect from the Implementation Date, includes **[ANZ NOHC]**:

**[ANZ NOHC]** means **[Insert name and ACN]**:

**Implementation Date** means the implementation date under a scheme of arrangement whereby **[ANZ NOHC]** (a non-operating holding company) becomes the ultimate holding company of Australia and New Zealand Banking Group Limited ABN 11 005 357 522 (expected to be on or around 1 January 2023):

**Share** means a fully paid share in the capital of ANZ

12.4 **Acquiring Company**

If **[ANZ NOHC]** (Acquiring Company) obtains control of ANZ as a result of a scheme of arrangement between ANZ and its shareholders:

Shares acquired under the Plan will be affected in the same way as other Shares; and

~~(f)~~(b) ANZ and the Acquiring Company may agree that the resulting shares in the Acquiring Company will continue to be governed under the Plan and on the same terms as the Shares (as reasonably assessed by ANZ and **[ANZ NOHC]**).

**ESOP**

- 13) In respect of the ESOP:
- a) The options or rights to options will not be subject to the Scheme of Arrangement in the way described above.
  - b) Instead, the ANZBGL board will exercise its discretion to amend the ESOP Rules to effectively replace ANZBGL options or rights to options with NewANZ options or rights to options, on the same terms and conditions ('a rollover'). Legally, the ANZBGL board will, under the (to be) amended ESOP Rules, cancel all existing options or rights to options in ANZBGL and grant new options or rights to options in NewANZ.
  - c) The ESOP Rules will be amended to include:
    - i) NewANZ in the expanded definition of 'ANZ' (with effect from the Implementation Date); and
    - ii) a 'replacement grant' provision that allows NewANZ to issue new options or rights to options in NewANZ.
- 14) The proposed amendments to the ESOP Rules provided to Inland Revenue on 30 June 2022 include the following (amendments in red):

**5.9 Acquisition of shares in Acquiring Company**

If a company (**Acquiring Company**) obtains control of ANZ as a result of:

- (a) a takeover bid;
  - (b) a scheme of arrangement between ANZ and its shareholders,
- and both ANZ and the Acquiring Company agree, ANZ may:

(c) on the exercise of options, instead of providing Shares, provide shares of the Acquiring Company or its parent to the same value (as reasonably assessed by ANZ) as the Shares in ANZ that would have been issued; **or**

~~(c)~~(d) if the Acquiring Company is **[ANZ NOHC]**, replace the Options with options over shares in the Acquiring Company to the same value and on the same terms (as reasonably assessed by ANZ) as the Options, and such options will continue to be governed under the Plan.

## Trust Deed

- 15) The Trust Deed, which is a document relevant to all three employee share schemes, will be subject to a range of amendments, including that the employee share schemes will operate in relation to NewANZ shares.
- 16) The proposed amendments to the Trust Deed provided to Inland Revenue on 10 October 2022 include the following amendments in red:

2        **ANZ Group Holdings Limited**  
          ACN 659 510 791  
          of 833 Collins Street, Melbourne  
          **(ANZ)**

...

~~D-E~~        ANZ will become the ultimate holding company and a non-operating company of the Bank from the 'implementation date' under a scheme of arrangement (expected to be on or around 1 January 2023). ANZ will be a listed entity and all Bank shares will be exchanged for ANZ shares. Accordingly, with effect from the implementation date and conditional on implementation occurring, the Plans will operate in relation to ANZ shares and the definitions of **Bank, Board, Plans and Shares** in this deed of trust will include ANZ, the Board of ANZ, plans or share acquisition arrangements authorised by the Board of ANZ from time to time (including the ANZ Employee Share Option Plan and the ANZ Employee Share Acquisition Plan), and shares in ANZ (respectively).

...

- 13        General
- (a) Upon and with effect on and from the implementation date of the scheme referred to in recital (E) to this deed, and conditional on implementation of the scheme of arrangement occurring:
- (1)        the Plans will operate in relation to ANZ shares instead of shares in the Bank; and
  - (2)        each reference in this deed of trust to the Bank, Board, Plans and Shares will be taken instead to include be a reference to ANZ, the Board of ANZ, plans or employee share schemes of ANZ from time to time (including the ANZ Employee Share Option Plan and the ANZ Employee Share Acquisition Plan) and shares in ANZ (respectively).

## How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- (a) The Arrangement will not prevent income arising to Employees under the Exempt Share Scheme from being exempt income under s CW 26B.
- (b) The Arrangement will not give rise to income under s CE 1(1)(d) to the Employees who hold shares or rights to shares under the ESAP.
- (c) The Arrangement will not give rise to income under s CE 1(1)(d) to the Employees who hold options or rights to options under the ESOP.

## The period or income year for which this Ruling applies

This Ruling will apply for the period beginning on 1 October 2022 and ending on 30 September 2024.

This Ruling is signed by me on the 17th day of October 2022.

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**Howard Davis**  
Group Leader, Tax Counsel Office

## About this document

Product Rulings are issued by the Tax Counsel Office and Customer and Compliance Services. Product Rulings set out the Commissioner's view on how tax laws apply to a particular "product" – which is an arrangement that a specified taxpayer is likely to enter into with a number of people on identical terms. Taxpayers who enter into the arrangement described in a Product Ruling may apply the ruling but are not obliged to do so. Product Rulings are binding on the Commissioner. This means that if you are entitled to apply a Product Ruling and you have calculated your tax liability in accordance with the ruling, the Commissioner must accept that assessment. A Product Ruling applies only to the taxation laws and arrangement set out in the ruling, and only for the period specified in the ruling. It is important to note that a general similarity to an arrangement covered by a Product Ruling will not necessarily lead to the same tax result.