Section 7: Taxation consequences for investors

If you are considering applying for ANZ StEPS, it is important for you to understand the taxation consequences of investing in ANZ StEPS. You should read this Section before deciding whether to invest and discuss the taxation consequences with your tax adviser, accountant or other professional adviser.

Section 7: Taxation consequences for investors

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14 August 2003

Dear Directors

ANZ Stapled Exchangeable Preferred Securities (ANZ StEPS) – taxation consequences for investors

We have been asked to provide an overview of the likely Australian taxation consequences that may arise for certain Holders who are residents of Australia for Australian tax purposes, for inclusion in this Prospectus dated 14 August 2003.

7.1 Introduction

The purpose of this letter is to provide a guide as to the potential Australian taxation consequences to a Holder from acquiring, holding and selling ANZ StEPS.

The content of this letter:

- relates only to residents of Australia for taxation purposes who hold ANZ StEPS on capital account;
- does not apply to Holders who are not residents of Australia;
- does not apply to Holders who hold ANZ StEPS on revenue account (for example, Holders who are professional share traders, banks or insurance companies); and
- is based on the tax law of Australia as it stands as at the date of this letter.

Australia is in the process of major tax reform, and it is important that potential investors monitor developments, as changes to the tax legislation or administration of the law (or both) may have a material impact on the comments provided in this letter. Potential investors are advised to obtain advice on these tax reforms at the time they invest in ANZ StEPS.

Taxation is a complex area of law and taxation consequences for a Holder may differ from those detailed in this letter, depending on the Holder's particular circumstances. Accordingly, potential investors should not rely on this letter as a substitute for professional advice. All potential investors who are considering investing in ANZ StEPS should obtain their own independent professional advice, in light of their particular circumstances, before deciding whether to apply for ANZ StEPS.

This letter should be read with the remainder of this Prospectus. Capitalised terms in this letter have the same meaning as ascribed to them in this Prospectus, unless indicated otherwise.

In summary, this letter sets out the likely Australian taxation consequences of:

- Distributions;
- sale of ANZ StEPS;
- an Assignment Event;
- Exchange;
- sale of Preference Shares after an Assignment Event;
- stamp duty implications for Holders; and
- GST implications for Holders.

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Any legislative references below are to the Income Tax Assessment Act 1997 (Australia) or the Income Tax Assessment Act 1936 (Australia), as appropriate.

7.2 Distributions

7.2.1 Distributions paid as Interest on Notes

Distributions received by Holders will normally be Interest on Notes from ANZ (NZ). A Holder will be required to include in their assessable income the amount of any Distribution paid as Interest on Notes. Holders will be required to either include this amount in their tax return as income on a cash basis (when received) or accruals basis (when payable), depending on their particular circumstances. Generally speaking, Holders who are individuals would be expected to include this amount in their tax return on a cash basis.

The Distribution received on Notes will not be franked with Australian imputation credits. This is because they will be paid by a New Zealand resident entity.

New Zealand withholding tax

Interest paid on Notes will be paid by a New Zealand company, and as a result any Distribution paid on Notes is likely to be characterised as foreign source income for Australian taxation purposes. ANZ (NZ) has taken actions to register Notes as a 'Registered Security' under New Zealand taxation law (specifically the Approved Issuer Levy provisions in Part VIB of the Stamp and Cheque Duties Act 1971 (New Zealand)) and as a result of this registration and a levy paid by ANZ (NZ), there will be no New Zealand non-resident withholding tax deducted from Distributions paid on Notes.

A foreign tax credit will not be available to Holders in Australia for the Approved Issuer Levy, as they are not personally liable to pay this levy.

All potential investors should obtain their own independent professional advice as to how the foreign loss or foreign tax credit provisions might apply in their particular circumstances.

7.2.2 Distributions after an Assignment Event

If an Assignment Event occurs, any Distributions received by Holders will be Dividends on Preference Shares. A Holder will be required to include in their assessable income the amount of any Dividend paid on Preference Shares.

Dividends may be franked, partly franked or unfranked by ANZ. Further, to the extent that Dividends are franked, Holders will be required to include in their assessable income the franking credit attached to that Dividend. This is subject to the comments in this letter regarding 'qualified persons'. A Holder may then be entitled to a tax offset equal to the franking credit attached to Dividends. If a Holder is any one of an individual resident in Australia, a certain type of superannuation fund, a complying approved deposit fund, a pooled superannuation trust, or a life insurance company, then the Holder may be entitled to a refund of any excess franking credits.

Qualified person

A Holder must be a 'qualified person' in relation to a Dividend before they will be entitled to the benefit of the tax offsets that flow from receiving a franked Dividend. In broad terms, a Holder will be a 'qualified person' in respect of their Preference Shares if they have held their Preference Shares at risk for at least 90 days. A Holder may also be a 'qualified person' if they have previously made an election to have a franking rebate ceiling applied to them. Given the complexity of these rules, Holders are strongly recommended to seek their own tax advice if they are uncertain as to how the 'qualified person' rules might apply to their particular circumstances.

7.2.3 TFN withholding tax

We understand that Holders will be provided with the opportunity to disclose their TFN to ANZ. Although disclosure of their TFN is not compulsory at law, Holders should be aware that, unless they are exempt from the TFN provisions, failure to disclose their TFN may result in tax being deducted from their Distributions at the top marginal tax rate (plus Medicare Levy).

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7.3 Sale of ANZ StEPS

Even though Notes and Preference Shares will be 'stapled', they will be separate 'CGT assets'. Consequently, Holders will derive distinct capital gains or losses if they sell ANZ StEPS. A sale of ANZ StEPS while the two securities remain 'stapled' will give rise to the following taxation consequences.

7.3.1 Income or capital
Notes will be 'traditional securities' which section 26BB and 70B generally treat as taxable on revenue account (that is, when they are sold any gain is assessable income and any loss is an allowable deduction). To avoid double taxation, the CGT provisions should not give rise to a taxable capital gain or loss on sale to the extent that an amount is assessed under the traditional securities provisions. Accordingly, it is likely that only Preference Shares will be effectively taxed under the CGT regime.

7.3.2 Tax cost
The purchase price (plus incidental costs including brokerage) of ANZ StEPS will be allocated to Notes and Preference Shares respectively for the purposes of allocating a 'tax cost' to each asset. Based on the valuation work we have conducted, the purchase price (plus brokerage) of ANZ StEPS would be allocated as a tax cost of acquiring Notes and a negligible or nil amount would be allocated as the tax cost of acquiring Preference Shares while the two securities remain 'stapled'. Effectively, the tax cost of Notes in the hands of a Holder will be the Issue Price if they are issued ANZ StEPS through this Offer.

7.3.3 Allocation of sale proceeds
If a Holder sells ANZ StEPS prior to an Assignment Event, the sale proceeds should be allocated in a similar manner. Consequently, the excess of any sale proceeds over the tax cost of Notes will constitute assessable income under the traditional securities provisions. If the proceeds of a sale are less than that tax cost, the Holder should incur a deductible loss. Such a loss should not be subject to the foreign loss quarantining rules.

Any equivalent gain or loss, in relation to Notes, under CGT provisions should generally be disregarded to the extent that it does not exceed the gain or loss under the traditional securities provisions described in this letter.

For the reasons set out in this letter with regard to tax cost allocation, it is expected that, prior to an Assignment Event, any capital gain or loss on disposal of a Preference Share will be immaterial.

If Preference Shares are sold after an Assignment Event, an excess or shortfall of capital proceeds over the tax cost would result in a capital gain or loss. If a Holder is an individual and has held ANZ StEPS for at least 12 months prior to sale, the Holder may only be required to include one-half of their capital gain (after reduction by any available capital losses) in their assessable income. If the Holder is a complying superannuation fund and has held ANZ StEPS for at least 12 months, only two-thirds of their capital gain is included in assessable income. Any capital losses will only be available to reduce capital gains (that is, not to reduce ordinary income).

7.4 Assignment Event

After an Assignment Event, the Holder will dispose of all right, title and interest in Notes to ANZ Capital Funding Pty Ltd for no consideration. This should give a Holder a deductible loss (under the traditional securities provisions) equal to the amount of the purchase price for ANZ StEPS allocated to the Note. Such a loss should not be subject to the foreign loss quarantining rules.

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7.5 Exchange

In broad terms, Exchange is a process through which a Holder receives a number of Ordinary Shares or $100.00 for each ANZ StEPS Exchanged. Exchange may involve (at ANZ's discretion):

- Conversion of the Preference Share into Ordinary Shares – the taxation consequences are discussed in Section 7.5.1;
- a sale, arranged by ANZ, of the ANZ StEPS to a third party for $100.00 each – the taxation consequences are discussed in Section 7.5.2; or
- Repurchase involving (at ANZ's discretion) – redemption, buy-back, cancellation or sale (to a subsidiary of ANZ) of the Preference Share component of ANZ StEPS for $100.00 each, the taxation consequences of Repurchase are discussed in Section 7.5.3.

7.5.1 Conversion

Conversion of a Preference Share constitutes a variation of the status of, and rights attaching to, the Preference Share so that it becomes one Ordinary Share. Accordingly, Conversion should not result in a CGT event happening to the Holder.

If Conversion occurs, in addition to the Ordinary Share that the Preference Share Converts into, each Holder is allotted an additional number of Ordinary Shares. For CGT purposes, in determining the tax cost of the Holder's Ordinary Shares held after Conversion, the tax cost attributable to the original Preference Share will be spread across both the single Ordinary Share into which it is Converted and these additional Ordinary Shares received on Conversion.

Conversion also gives rise to an Assignment Event (see Section 7.4), and should give rise to a deductible loss under the traditional securities provisions.

7.5.2 Third party sale

If ANZ chooses to Exchange by arranging for a third party to acquire ANZ StEPS from the Holder, the taxation implications will broadly be similar to a sale of ANZ StEPS (see Section 7.3).

7.5.3 Repurchase

Redeem, buy-back or cancel

If ANZ chooses to Exchange by redeeming, buying back or cancelling Preference Shares, a CGT event will happen to the Holder. In this circumstance a Holder will receive the $100.00 for each Preference Share. It is likely that a capital gain would arise under the CGT provisions. The CGT gain would be broadly equal to the $100.00 per Preference Share consideration paid by ANZ. A CGT discount may be available to certain Holders (see Section 7.3). Repurchase will also give rise to an Assignment Event which should give rise to a deductible loss under the traditional securities provisions (see Section 7.4).

In some circumstances, part of the consideration paid by ANZ for Repurchase may constitute an assessable dividend to Holders – but, even so, the deductible loss under the traditional securities provisions should still be available.

Transfer to an ANZ subsidiary

If ANZ chooses to Exchange by transferring the Preference Share component of ANZ StEPS to an ANZ subsidiary, a CGT event will happen to the Holder. It is likely that a capital gain would arise under the CGT provisions broadly equal to the $100.00 per Preference Share consideration paid by ANZ. A CGT discount may be available to certain Holders (see Section 7.3). The transfer will give rise to an Assignment Event which should give rise to a deductible loss under the traditional securities provisions (see Section 7.4).

Holders should seek their own advice in the event of a Repurchase.

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7.6 Sale of Preference Shares after an Assignment Event

If a Holder acquires ANZ StEPS before an Assignment Event and sells them after an Assignment Event when they are holding only the Preference Share component of ANZ StEPS, the sale proceeds would be referable entirely to Preference Shares. A capital gain would arise for the Holder equal to the excess of the sale proceeds received over the tax cost attributable to Preference Shares. However, the Assignment Event should have given rise to a deductible loss under the traditional securities provisions (see Section 7.4).

After an Assignment Event, Notes will be assigned to ANZ Capital Funding Pty Ltd and only Preference Shares will be able to be acquired or sold. The acquisition price and the sale proceeds will be attributable entirely to Preference Shares. Any resulting gain or loss will be taxed accordingly under the CGT provisions.

7.7 Stamp duty implications for Holders

We understand that ANZ and ANZ (NZ) will apply to ASX for official quotation of ANZ StEPS. While ANZ StEPS are quoted on ASX, stamp duty will not be payable on a transfer of ANZ StEPS.

7.8 GST implications for Holders

The acquisition of ANZ StEPS will not be subject to Australian GST. The disposal of the ANZ StEPS by a Holder who is registered for GST purposes is likely to be a 'financial acquisition supply' and therefore input taxed. Conversion should not constitute a taxable supply and no GST will be payable on this event.

* * *

It should be noted that although PricewaterhouseCoopers Securities Limited has given its consent to the inclusion of this letter in this Prospectus, we give no assurance or guarantee in respect of the successful operation or performance of the ANZ StEPS and that consent should not be taken as an endorsement or recommendation.

Yours faithfully

Peter Collins
Authorised Representative
PricewaterhouseCoopers Securities Limited