

Taxation

AUSTRALIAN TAXATION OPINION

The following independent report has been prepared by Greenwoods & Freehills Pty Limited for Man Series 6 OM-IP 220 and outlines the taxation consequences for Australian resident Shareholders. Man Investments Australia is not licensed to provide personal or taxation advice.

Greenwoods & Freehills

13 August 2010

The Directors
Man Series 6 OM-IP 220 Limited
Bermuda House
Tutakimoa Road
Rarotonga
COOK ISLANDS

Dear Sirs

Man Series 6 OM-IP 220 Limited

This report has been prepared for inclusion in an Explanatory Memorandum concerning the renaming of redeemable shares (the 'Shares') in Man Series 6 OM-IP 220 Limited (the 'Company') dated 13 August 2010.

The report outlines the Australian income tax consequences arising from the ability of Australian resident Shareholders to elect for their Shares to be renamed as continuing redeemable shares ('Continuing Redeemable Shares'). The report is general in nature, and only applies to those Shareholders for whom the Shares and Continuing Redeemable Shares are held as capital assets, and is not applicable in circumstances where these interests are held as trading stock or revenue assets.

The report is based upon the provisions of the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* (collectively, 'the Act') and Australian Taxation Office ('ATO') rulings and determinations applicable as at the date of this report. Terms defined in the Explanatory Memorandum and not defined in this report have the meaning given to them in the Explanatory Memorandum.

The representatives of Greenwoods & Freehills Pty Limited involved in preparing this report are not licensed to provide financial product advice in relation to dealing in securities. Shareholders should consider seeking advice from a suitably qualified Australian Financial Services License holder before making any decision. Shareholders should also note that taxation is only one of the matters that need to be considered when making a decision in respect of the renaming of Shares as Continuing Redeemable Shares and should satisfy themselves of possible consequences by consulting their own professional tax advisers.

1 Background

We have based our report on the following facts:

- (a) The Company was incorporated in the Cook Islands on 11 January 2001.
- (b) Shareholders were invited to subscribe for Shares, which are due to be redeemed by the Company on 31 December 2010. As an alternative to a redemption of these interests, Shareholders may elect to have their Shares renamed as Continuing Redeemable Shares.
- (c) The terms of the Continuing Redeemable Shares are identical to those of the Shares, with the exception that the maturity date of these interests will be 30 June 2020 ('New Maturity Date'). Shareholders choosing to rename their Shares as Continuing Redeemable Shares will be able to dispose of these shares prior to the New Maturity Date for an amount equal to 98% of the Net Asset Value on or before 31 December 2011, and for 100% of the Net Asset Value after this date.
- (d) Westpac will give the New Westpac Guarantee in favour of holders of Continuing Redeemable Shares, which will consist of the New Capital Guarantee and the New Rising Guarantee. For further information in relation to the New Westpac Guarantee, please refer to pages 10-11 of the Explanatory Memorandum.

2 Shareholders electing not to rename

The consequences of each of the scenarios below are dependent on the circumstances of the Shareholder. Each scenario is based on the assumption that a Shareholder holds Shares as capital assets such that gains or losses on the sale of the Shares are subject to the capital gains tax ('CGT') provisions of the Act and initially subscribed at A\$1.00 per Share.

2.1 Sale of Shares prior to the Maturity Date

Where a Shareholder sells Shares prior to the Maturity Date a capital gain will arise when the proceeds received for the sale of Shares exceeds the cost base of the Shares. The cost base of the Shares is equal to the amount paid for the acquisition of the Shares plus any other incidental costs of acquisition or sale that are not deductible to the Shareholder.

Where the Shares have been held for at least 12 months, individuals, trusts and complying superannuation entities should be entitled to discount any capital gain (after the application of capital losses) arising from the sale of the Shares. Individuals are entitled to a CGT discount of 50%, and complying superannuation entities are entitled to a CGT discount of 33.33%. Companies are not entitled to a CGT discount.

A capital loss will arise when the proceeds received for the sale of Shares are less than the reduced cost base of the Shares. Capital losses can only be offset against capital gains (before any available CGT discount) derived by a Shareholder in the same income year or subsequent income years.

2.2 Redemption of Shares prior to the Maturity Date

Where a Shareholder redeems Shares prior to the Maturity Date, any amount received per Share exceeding A\$1.00 should be an unfranked dividend. Subject to the operation of the foreign investment fund ('FIF') rules (see 5 below), this unfranked dividend should be included in the assessable income of the Shareholder. No capital gain or capital loss should arise in these circumstances. If the redemption proceeds are less than the reduced cost base of the Shares, the shortfall should be a capital loss to the Shareholder.

2.3 Redemption of Shares on the Maturity Date

There are a number of scenarios which may arise upon redemption of the Shares:

- (1) Net Asset Value per Share equal to A\$1.00

If the Shares are redeemed on the Maturity Date for A\$1.00 each, a Shareholder should not be assessable on any part of the proceeds received. A capital gain would arise if any payment is made by Westpac to a Shareholder under the Current Westpac Guarantee.

(2) Net Asset Value per Share less than A\$1.00

If the redemption proceeds paid by the Company are less than A\$1.00 per Share, a capital loss will arise. Again, a capital gain would arise if any payment is made by Westpac under the Current Westpac Guarantee. The capital loss on the Shares should be able to offset, in part, the capital gain arising from any payment made under the Current Westpac Guarantee.

(3) Net Asset Value per Share greater than A\$1.00

To the extent the redemption proceeds paid by the Company exceed A\$1.00 per Share, the excess will be treated as an unfranked dividend for tax purposes. Subject to the operation of the FIF rules (see 5 below), this unfranked dividend should be included in the assessable income of the Shareholder for the year of income during which the redemption proceeds are received. No capital gain or loss should arise.

A capital gain would again arise if any payment is made by Westpac to a Shareholder under the Current Westpac Guarantee.

3 Shareholders electing to rename

3.1 Renaming of Shares as Continuing Redeemable Shares

No taxation consequences should arise for a Shareholder who elects to have their Shares renamed as Continuing Redeemable Shares.

First, no CGT consequences will generally arise where the variation in the rights attaching to a share does not result in a cancellation or redemption of that share under Australian corporate law (see Taxation Ruling 94/30). The articles of association of the Company contained a renaming provision allowing the renaming of Shares at the time of issue of the Shares, such that the possibility of a renaming can be viewed as an incidental right forming part of the Shares themselves. Accordingly, no CGT consequences should arise for a Shareholder making an election to rename their Shares as Continuing Redeemable Shares.

Secondly, the value shifting provisions should not apply to crystallise a taxable gain or cause an adjustment to the cost base of either the Shares or Continuing Redeemable Shares as the Shares which are not renamed will be redeemed for an amount that is equal to their market value.

3.2 Sale or redemption of Continuing Redeemable Shares

The taxation consequences for the sale or redemption of the Continuing Redeemable Shares are broadly the same as those described above for the sale or redemption of the Shares. Please refer to the discussion contained in section 2 above.

4 Division 16E

In broad terms, Division 16E taxes each year, on a daily accruals basis, the difference between the issue price of “qualifying securities” and the amount to be received on their maturity.

To be a “qualifying security” a Continuing Redeemable Share or the New Westpac Guarantee must first be a “security” which is, relevantly, defined to mean:

- stock, a bond, debenture, certificate of entitlement, bill of exchange, promissory note or other security; or
- any other contract, whether or not in writing, under which a person is liable to pay an amount or amounts, whether or not the liability is secured.

In our view, neither the Continuing Redeemable Shares, nor the New Westpac Guarantee will constitute a “security” such that a Shareholder will not be deemed to have derived any assessable income under Division 16E.

First, Division 16E generally applies to “securities which are recognised as debt instruments” (see Taxation Ruling 96/14). The Continuing Redeemable Shares should be regarded as equity rather than debt instruments on the basis that they carry voting rights and an entitlement to dividends calculated by reference to the profits of the Company. In addition, the ATO expressed a view at a meeting of the Finance & Investment Subcommittee that Division 16E should not apply to a redeemable preference share on the basis that it does not constitute a “security”. Accordingly, in our view, the Continuing Redeemable Shares should not constitute a “security”.

Secondly, Westpac only becomes liable to pay an amount under the New Westpac Guarantee if the Net Asset Value per Continuing Redeemable Share on the New Maturity Date is less than the sum of the New Capital Guarantee and the New Rising Guarantee payable per Continuing Redeemable Share. In our view, at the time of issue it cannot be said that this is reasonably likely having regard to the Security Deposit (which is designed to fund the payment of the guaranteed amounts). Accordingly, in our view, the New Westpac Guarantee should not constitute a “security” or “qualifying security”.

5 FIF Rules

5.1 Continuing to hold Continuing Redeemable Shares

The FIF provisions have been repealed with effect for the 2010-11 and later years of income. This means that Shareholders that hold Continuing Redeemable Shares should not be subject to any attribution under the FIF rules for the 2010-11 and later income years.

As part of the repeal of the FIF provisions, a specific narrowly defined anti-avoidance provision directed at certain “roll-up” funds will be introduced (an exposure draft of the proposed roll-up fund provisions was released for comment on 28 April 2010). Although it appears unlikely that the “roll-up” fund provisions will apply to a Shareholder’s interest in the Company (based on the exposure draft), Shareholders should monitor these provisions as they are finalised (as their precise scope remains uncertain).

5.2 Sale or redemption of Shares

As reflected in the initial prospectus, a Shareholder’s interest in the Company will have constituted an interest in a FIF such that unless an exemption applied (for instance, the exemption for individuals holding less than A\$50,000 of FIF interests) the Shareholder will have been required to calculate its attributable FIF income from the Company on an annual basis and include this amount within its assessable income.

Notwithstanding the repeal of the FIF provisions (see 5.1 above), if a Shareholder sells or redeems its Shares and has previously included attributable FIF income from the Company within its assessable income then:

- any assessable dividend that the Shareholder receives on redemption (see 2.3(3) above) should not be assessable to the extent of the previously attributed FIF income; and
- the disposal proceeds received by the Shareholder on sale of the Shares should be reduced by the amount of the previously attributed FIF income.

6 Taxation of Financial Arrangements

The *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009* (TOFA Act) contains new rules which represent a new code for the taxation of receipts and payments in relation to qualifying “financial arrangements”. The new rules contemplate a number of different methods for bringing to account gains and losses in relation to financial arrangements (including four elective methods). The TOFA Act will apply on a mandatory basis for income years commencing on or after 1 July 2010 (with an optional earlier start date). The new regime will only apply to financial arrangements acquired on or after those dates, although taxpayers may be able to elect to include transactions undertaken before those dates.

In broad terms, as a Continuing Redeemable Share (or benefit that an investor has in relation to their shares under the New Westpac Guarantee) should not be a “qualifying security” for the purposes of Division 16E, TOFA should not apply on a mandatory basis for the following taxpayers in respect of their investment in Shares:

- individuals;
- superannuation funds and “managed investment schemes” if the value of their assets is less than \$100 million; or
- other taxpayers whose aggregated turnover (having regard to the turnover of connected entities or affiliates) is less than \$100 million, the value of their assets is less than \$300 million, and the value of their financial assets is less than \$100 million.

Taxpayers who are not automatically subject to TOFA can elect to be subject to TOFA on a voluntary basis.

Shareholders who are subject to TOFA should obtain their own tax advice as the precise implications under TOFA (if any) will depend on their facts and circumstances and in particular what elections they may have made.

7 Part IVA

Part IVA of the Act contains the general anti-avoidance provisions which, in general terms, may apply where a taxpayer obtains a “tax benefit” as a consequence of entering into a scheme and the dominant purpose of one or more parties to the scheme (or a part of the scheme) was to secure a tax benefit. A tax benefit would be, for example, the making of a “discounted capital gain” on a sale of Shares in substitution for an amount of income which might reasonably have been expected to be included in the taxpayer’s assessable income had the Shares been redeemed.

Whilst we do not consider that an election to rename Shares as Continuing Redeemable Shares is likely to attract the application of Part IVA, the application of Part IVA generally to a Shareholder holding Shares or Continuing Redeemable Shares will depend upon the particular circumstances of the Shareholder. Accordingly, Shareholders should seek professional advice in relation to the application of Part IVA to their particular circumstances.

8 Disclaimer and consent

Greenwoods & Freehills Pty Limited has been involved only in the preparation of this report as it appears in the Explanatory Memorandum. Greenwoods & Freehills Pty Limited has given (and has not withdrawn) its consent to the issue of the Explanatory Memorandum with this report included in the form and context in which it is shown.

Yours faithfully

GREENWOODS & FREEHILLS PTY LIMITED