Changes in 2001 to the tax laws for Hybrid securities occurred at the same time as proposed accounting, regulatory and ratings agency changes for those types of securities. The tax law changes appear to have had their intended effect on the targeted Hybrid securities, Income Securities, but it also appears that the design of Hybrid securities following those changes owes more to the accounting, regulatory and other changes that were occurring that to the changes in the tax laws.
Introduction

A new set of tax rules (The Debt /equity rules1) was inserted into the tax laws to address some unintended favourable tax outcomes of Hybrid securities, with effect from July 2001. At around the same time a number of accounting, regulatory and rating agency changes concerning Hybrid securities were either mooted or in train. That context presented an ideal opportunity to investigate the importance, or otherwise, that those taxation rules had on Hybrid security issues and the way that they were designed subsequently, when compared with the effect that those other changes had on Hybrid securities.

The Debt/equity rules were introduced with the purpose of implementing “a general approach recommended by the Ralph Review of Business Taxation for determining whether an interest is debt or equity”2. In addition, the legislation was intended to “… reduce uncertainty by providing a mechanism for classifying debt-equity hybrids as either debt or equity”3.

Just prior to their introduction a large amount of Hybrid securities, which are securities that have both equity and debt characteristics, had been issued into the capital markets. The predominant form of those was as Income Securities, which were perpetual debt instruments where the return was dependant on profitability of the issuer. At that time, Income Securities were treated as equity for accounting and regulatory purposes, but as debt for taxation purposes where the periodic return was claimed as a deduction. The Debt/equity rules were intended primarily to address these types of securities and those types of outcomes.

Transition rules were also included in the Debt/equity rules that allowed the issuers of securities on issue at the date of introduction three years from commencement before the rules applied to them. The effect of which was to delay application of the rules for those issuers. Overall then, these rules introduced clear characterisations of debt and equity, targeted a specific type of Hybrid security (Income Securities) and allowed three years before they applied to securities already on issue, thereby being ideal for researching any effect that they may have had on Hybrid issuers who had Income Securities to come within the equity definition in the Debt/equity rules, while others redeemed them and some issuers left them unchanged.

What was observed was that the issuance of Income Securities virtually disappeared prior to the new rules applying. Initially this was a surprising result in that it occurred before the rules took effect. However, this change was attributed to the market being aware of the introduction of the rules through public consultation before introduction.

A significant amount of hybrids were issued into overseas markets after the rules commenced and it is reasonable to suspect that cross border tax arbitrage may have played a part in that. Although, the increase in that type of issuance could also be explained by other reasons, such as by Australian issuers accessing the deeper offshore capital markets.

Overall then, the Debt/equity rules seemed to have their intended effect of preventing further issues of Income Securities taking advantage of tax and accounting/regulatory mismatch, but, more importantly, those rules appear to have provided a more certain tax basis for new forms of Hybrid which appear not to be designed on favourable tax outcomes. To that extent, the tax rule changes were second order in Hybrid issuance subsequent to implementation, with other changes, such as accounting and regulatory in particular, having a far greater effect.

What Are Hybrid Securities?

Hybrid securities have been described as “market-based instruments with debt and equity characteristics”.6

In financial market terms equity characteristics are a permanent contribution of funds, no obligation to repay principal or dividends/coupons and loss absorption. Whereas debt characteristics are a term commitment of funds containing an obligation to repay principal and coupons, and having a priority right to recovery on insolvency7.

So, a Hybrid instrument is a security that has both these types of characteristics.

A very useful source, in terms of characterising Hybrids securities, are Ratings Agencies by reason of their role of rating credit and, by default, equity. Again, by reason of that role,
they are primarily interested in the capacity of an instrument to support payment of creditors, depositors or insureds of the issuer, so they view Hybrid securities in terms of the capacity of the instrument to generate what they call “equity credit” which, broadly, they characterise in terms of three aspects being;

An obligation to make on going payments,
Maturity, and
Priority (Referred to as “loss absorption” or the capacity of the funds contributed to be used to meet losses on superior debt, depositors and insureds).\(^8\)

The Debt/equity rules, on the other hand, focus on only one aspect in characterising an instrument as debt and that is the obligation to make payments to the investor at least equal to the amount of the investment. Indeed, the explanatory material to this legislation explained that the rules revolve around one organising principle, which was the likelihood or expectation of an investor receiving back as much as they outlaid.\(^9\) Essentially, the Debt/equity rules ignore characteristics such as priority and maturity. In fact, one application of the Debt/equity rules is that an instrument can be a debt instrument even if there is no maturity if the net present value (NPV) of the payments equals or exceeds the amount contributed to the issuer.\(^10\)

In terms of characterising equity, the Debt/equity rules focus on membership, discretionary payments of periodic returns, returns related to economic performance and rights to an interest that will give any of those effects.\(^11\)

**Methodology**

The Debt/equity rules operate by characterising a particular instrument as either debt or equity, with a tiebreak rule biasing debt where an instrument comes within both classifications.\(^12\)

The rules are not limited to securities issued in any particular market. For example, the rules apply to debt and equity instruments issued between members of the same corporate group or between a financial institution and a corporate group, as well as securities listed on security markets such as the ASX.

Nevertheless, it is clear from the public announcements by Government on introduction of the Debt/equity rules that they were mainly directed at listed securities\(^13\), which is not surprising due to the relative size of these types of issuance compared with intra group arrangements. Moreover, public data is more readily available about listed securities, the tax and accounting/regulatory mismatch that these rules were intended to address was mostly occurring in this market and observing the effect of the three year transition rules was more easily done in this market. This investigation, therefore, only focused on hybrid instruments listed on the ASX.

Data showing the amount of Hybrids issued, broken down by type of instrument and type of issuer (financial or non-financial institution) over the period under review was provided by the Reserve Bank of Australia. That data also differentiated between issues of Hybrids into the domestic capital markets and the international capital markets. The data set is in Appendix A.

Data of Hybrids that were on issue at the date of introduction was also obtained from the RBA and that data was supple-

mented with publicly available company announcements and, in some cases, direct discussions with the issuers to identify what changes, if any, had occurred to these. A list of Issuers, categorised by financial or non-financial, is in Appendix B.

Also, discussions were held with market participants, such as investment banks, lawyers and accountants for the issuers, about their explanation for changes observed in the types of securities being issued into the market after the rules were introduced.

**Isolating The Debt/Equity Rules Effect On The Hybrid’s Market**

One of the challenges of the research was isolating the effect of those tax rules in the context of the other dynamics impacting on the issue of Hybrid securities during the period.

Indeed, it eventuated that a significant amount of the observed changes in Hybrid issuance was caused by those other changes, rather than the introduction of the Debt/equity rules.

The other dynamics impacting on hybrid issuance were:

**Changes in Prudential Regulation of Issuers**

The Australian Prudential Regulatory Authority (APRA) is the prudential regulator for financial institutions who are significant players, both as issuers and investors, in the Hybrid securities market. It regulates, amongst other things, the capital adequacy and liquidity of financial institutions, both of which can dictate the form that Hybrids securities take.

One of the attractions of Hybrids securities to financial institution issuers was their ability to be counted as one of the three types (tiers) of capital used as a prudential regulatory tool to determine capital adequacy. If an instrument comes within one of these three tiers then the amount of capital that the financial institution needs to support its commercial activities, such as borrowing or insurance, is reduced, consequently reducing its funding costs and increasing profitability.

APRA released three Guidance Notes dealing with Hybrid securities being included as tiered capital for financial institutions during the period under review\(^14\).

**Accounting Treatment Changes**

The treatment of these types of securities for accounting purposes affected the ability of the issuer to achieve favourable balance sheet outcomes such as acceptable debt/equity ratios, for example. Also, APRA requires that certain instruments be treated as equity for accounting purposes, rather than debt, to achieve the tiered status mentioned above\(^15\). So, in that regard, the accounting treatment of the instrument also affects the regulatory treatment\(^16\).

The accounting treatment of financial instruments, including Hybrid securities, changed over the period under investigation through the introduction of proposed new international accounting standards.\(^17\)

**Ratings Agencies**

The characterisation, in terms of “equity credit”, of
the instrument by ratings agency determines a number of things including its attraction to investors and, in addition, can impact on the cost of capital, capital adequacy and other metrics of the issuer. All of which means that ratings agencies have a large say in how the Hybrid securities are structured. So their view about the character of Hybrid securities, as between debt and equity, impacted on the amount and type of securities issued over the period under investigation as they issued various publications about the process and methodology in determining ratings for Hybrids. 19

The Market Cycle

Hybrid instruments are usually marketed to investors as a fixed interest investment with a conversion option to either gain exposure to the issuer’s profits or as a more liquid exit mechanism. So, to the extent that the market views hybrids as fixed interest investments, they are an alternate investment or asset class to equities.

As a fixed interest investment or asset class, their attraction to investors and, consequently, the amount and type issued, can depend on the stage that the equity market is at in the general market cycle. In other words, Hybrid securities are likely to be more attractive to investors when equity markets are flat or retreating, than if equity markets are booming.

In that case, it was important to understand the stage at which the financial markets were in when observing changes in issuance and design of Hybrid securities.

Imputation Credit Refundability

Until July 2000 imputation credits in excess of tax payable were lost. That is, a taxpayer was only entitled to a credit for imputation credits up to the amount of their tax liability in a particular year. From July 2000 certain classes of taxpayers were entitled to a cash refund of the excess of imputation credits over tax payable in a year.

At first glance, refundability of imputation credits 20 seems to be unrelated to the changes in hybrid issuance but what in fact seems to have happened is that refundability of imputation credits to individuals, superannuation funds and trusts impacted on hybrid issuance. This is discussed in greater detail later on but refundability of imputation credits to those classes of investors has facilitated the market being better able to price their value in issues and, in addition, made franked dividends on hybrid instruments more attractive.

All of those effects can be pictorially displayed on a timeline as below. 21

Another complicating factor in this investigation was the lack of homogeneity in Hybrids.

If one considers the standard debt equity continuum 22 opposite, five different instruments are classified as Hybrids, and even within each of these types there are hybrids with different interest, redemption and conversion rights attaching.

Taxation of Debt and Equity

Literature about taxation of debt and equity generally focuses on whether the two types of financing should be taxed differently and, if there is to be a difference, what that difference should be. Most of the taxation commentary has argued that, for a number of reasons, not the least of which is that debt and equity fulfil the same economic function, that there should be no difference in the way that they are taxed. 24

Warren 25, in the context of deductions for interest expenses on debt, for example, applies three different policy criteria 26 in order to discern a valid basis for the difference between the taxation of debt and of equity and concludes that there is none.

Similarly, Rumble and Wood 27 argued at the time of introduction of the Debt/equity rules that there should be a “linear” taxation of financial instruments that have the same economic effect and, consequently, that there should be no difference in the way that debt and equity instruments are taxed.

Finance theory is even more direct in its observations about the lack of difference between debt and equity 28 “The Modigliani-Miller Theorem .... states that if the capital structure decision has no effect on the total cash flow that a firm can distribute to its debt and equity holders, the decision will have no effect -in the absence of transaction costs- on the total value of the firms debt and equity.”

Nevertheless, the history of taxation of debt and of equity in Australia is that they have been treated differently for taxation purposes. Broadly, returns on debt instruments are de-
ductible to the issuer and assessable to the investor, whereas income returns on equity are not deductible to the issuer and are assessable and capable of transferring a credit for tax paid by the issuer to the investor.

One of the stated reasons for introduction of the Debt/equity rules was to protect the integrity of this dichotomy.

Put pragmatically, the difference in taxation between the two forms of financing does exist presently and it is highly unlikely that it will change in the near future. Warren accepted this position in respect of the corporate interest deduction and non-deductibility of dividends in the United States some time ago.

Prior to introduction of the Debt/equity rules there was only very limited law with respect to the distinction for taxation purposes between debt and equity.

Case law, essentially dealing with the deductibility of periodic payments when related to profit of the issuer of the instrument (either through direct participation or calculated by reference to profitability), was also limited and highly fact dependant.

The leading case, Boulder Perseverance, involved a company’s “profit sharing notes” and the dispute being the company’s entitlement to a deduction in respect of interest paid on that instrument. Broadly, the case was decided on the source from which the interest payments were made, having regard to the terms of the instrument.

Statutory provisions dealing with characterising debt and equity had largely been confined to remedial legislation. First, there were provisions dealing with the entitlement of an issuer of convertible notes to a deduction for interest. Secondly, there were provisions preventing rebates being available on, effectively, debt instruments.

Finally, there had only been minimal guidance issued by the ATO on the issue, being IT 2411, which allowed deductions for interest paid on perpetual notes. Subsequently withdrawn in February 2001 and replaced with draft Taxation Ruling 2001/D1, providing for the reverse tax outcome of course.

Results

Effect On Hybrids Overall

Exhibit 1 graphs the total issuance of hybrids by amount on a year by year basis over the period and Exhibit 2 shows the total Hybrid issuance by type of issuer, financial institution and non-financial corporate, and by type of hybrid.

Exhibit 1
What that data shows is that the issuance of Hybrid securities over the period can be divided into three distinct phases;

The first phase is the period up to and including 1999, during which there was a significant amount of Hybrid securities issued,

The second phase is during 2000 when the amount of Hybrid securities issued decreased, relative to earlier years, quite significantly, and

Finally the period from and including 2001 when Hybrid securities issuance increased significantly but importantly, in a different form to that which had been issued in the first period.

Increase to 1999
As the period up to 1999 was prior to introduction of the Debt/equity rules, necessarily the Debt/equity rules cannot have had any direct effect.

At that time it was thought that periodic returns on Hybrids structured as perpetual debt were deductible. Also at that time, such Hybrids were treated for regulatory and accounting purposes as equity. In fact, it was this mismatch between tax treatment and accounting treatment that was the target of the Debt/equity rules. So it is reasonable to conclude that the large amount of hybrid issuance at that time was a result of issuers seeking to obtain the tax and accounting/regulatory mismatch that was then perceived to be available.

Another explanation for the large amount of Hybrids issued at that time was that financial institutions had the most to benefit from this mismatch because of their regulatory compliance environment as Hybrid securities were included in their tiered capital for capital adequacy purposes. Also, these issuers had a strong demand for capital such as NAB Ltd, which needed capital to manage offshore losses and AMP Ltd that needed funding for acquisitions.

Reduction in Hybrid Issuance in 2000
The reduction in the amount of Hybrids issued in 2000, compared with the amount issued in 1999, is remarkable because it occurred before the Debt/equity rules became effective.

Nevertheless, it is reasonable to assume that the decrease in issue of Hybrids in 2000 was as a result of the expected introduction of the Debt/equity rules. This occurred because the consultation between the Revenue and the finance community about taxation of Hybrids during the Ralph Review would have made it obvious to the market that the tax rules were about to change and, most likely, adversely, creating uncertainty. This resulted in “hesitation” by issuers to issue more Hybrids until the rules had settled. As one investment banker graphically put it, the consultations during the Ralph review created “market indigestion”.

To that extent, the significant reduction in Hybrid issuance can be directly attributed to the imminent introduction of the Debt/equity rules, although not necessarily the rules themselves as their final form would not have been known at that time.

Increase in Hybrid Issuance from 2001
It is reasonable to attribute the increase in issuance of Hybrids on and from 2001, at least in part, to implementation of the Debt/equity rules.

This observation is made after discussions with market practitioners who observed that introduction of the Debt/equity rules created certainty about the tax outcome for such instruments, for both issuers and investors.

It is appreciated that not everyone accepts that the Debt/equity rules resulted in certainty. Some professionals responsible for documenting and structuring Hybrid issues had some concerns about the form that the Debt/equity rules took. Specifically, the type of language used in the Debt/equity rules being essentially economic rather than legal. “Laconic” was
one adjective that was applied to them. As well, there was concern about certainty of the rules because of reservation to the Revenue of discretions to treat instruments as having exactly the opposite effect for tax purposes that the rules on their face would otherwise have had.

Another factor in interpreting this phase was that there was not the same demand by financial institutions for capital in that year as had been the case in the previous year. So, issuer demand for capital does not explain the increase in that year.

However, as noted, Hybrids are marketed to investors as fixed interest investments and, as such, are more attractive to investors when equity markets are down. Perhaps part of the explanation for the increase in issuance in that year was the fact that equity markets had retreated in that year, making Hybrids more attractive to investors and, consequently, to issuers.

Notwithstanding that, it seems reasonable to conclude that part of the increase in issuance during this phase can be indirectly attributed to the Debt/equity rules introduction by reason of that they provided a firm taxation platform for hybrid issuance.

**What happened to Income Securities?**

The amount of Income Securities issued immediately before introduction of the Debt/equity rules and, certainly during 2000, decreased to virtually zero. This should be compared with the large amount issued in 1999 of $7.45bn, where Income Securities were 94% of total Hybrids issued. In 2000 Income Securities, as a percentage of Total hybrids issued, amounted to only 1.05%.

This effect could be attributed to a number of factors including the changed regulatory regime where APRA no longer allowed perpetual debt style Hybrids, such as Income Securities, to be counted in capital adequacy.

However, perhaps the most telling observation is that Hybrid issuance increased after introduction of the Debt/equity rules but Income Securities, as a form of Hybrid did not.

In other words, the Debt/equity rules, in so far as they were intended to prevent the tax and accounting/regulatory mismatch from Income Securities, caused them to effectively disappear as a financing instrument. In that regard, the rules have been successful.

**What happened to Hybrids on issue at the date of Introduction?**

Income Securities that were on issue at the date of introduction of the Debt/equity rules have either been redeemed through corporate activity, such as mergers and acquisitions, had their terms changed to cumulative periodic payments or have remained unchanged.

The change to cumulative periodic payments recognises that they will be treated for tax as equity, with no deduction being available for periodic payments.

Therefore, there was not a single market response by issuers who had Income Securities on issue at the date of introduction, to the end of transition. Instead, each issue seems to have been dealt with on its own terms in light of the issuer’s own circumstances.

The best that can be said is that, at least in respect of the Income Securities whose terms changed, the Debt/equity rules precipitated that change as it is reasonable to assume that but for those rules those changes would not have been made.

**Was the Overseas Experience of Tax Arbitrage Mirrored in Australia?**

The third aspect being tested was whether a “bright line” test for taxing debt and equity would produce the same tax arbitrage outcome that had occurred in overseas tax jurisdictions when they had introduced such rules. Tax arbitrage had occurred because rigidity of the rules had allowed issuers to structure tax outcomes contrary to their intention.

Had that occurred in Australia after introduction of the Debt/equity rules?

Most likely it had not. What had occurred was that the major type of Hybrid now being issued, certainly by financial institutions, are Reset Convertible Preference Share (RCPS) which are designed to be taxed as equity and within the policy intent of the Debt /equity rules.

In other words, it appears that the market has abandoned the tax and accounting/regulatory arbitrage that was being achieved with Hybrids structured as perpetual debt, which had tax deductible periodic returns. The new form Hybrids issued after introduction of the Debt/equity rules do not seek to achieve that outcome.

In fact, the design of these new Hybrid types is within the framework and policy settings of the Debt/equity rules for a number of reasons, most not related to taxation but to issuer and investor preference.

Specifically;

Since imputation credits have became refundable for certain classes of investors (Trusts, individuals and superannuation funds) their value can be better priced into the value of instruments. Clearly, pricing was very difficult where the value of imputation credits to investors depended on the investor having tax cover to reclaim them.

The reset terms for interest and conversion of the new style Hybrids provide better risk protection to both investors and issuers. Investors are protected against rate movements and issuers are able to redeem on reset dates. This should be compared with the rigid terms of Income Securities were interest was fixed by reference to a benchmark rate and the securities were irredeemable and, finally, conversion terms at maturity of new style Hybrids provided liquidity to investors by offering a facility to convert to ordinary equity or be redeemed for cash, which is a far more attractive exit mechanisms for investors than on-market sale of Income Securities.

Overall then, the Debt/equity rules seems to have provided a solid tax foundation on which these commercial innovations could be placed without experiencing the overseas experience of tax arbitrage.
Predictions of International Tax Arbitrage

As noted, some commentators predicted that incorporating formalised tests for debt and equity in the tax law would result in international tax arbitrage.

Examples of such tax arbitrage are where the periodic return on a particular instrument is tax deductible to the issuer in Australia but the counterparty investor in the foreign jurisdiction can treat it as a return on equity giving rise to a credit to the investor for tax paid by the Australian Issuer.

Identifying that kind of international tax arbitrage from aggregate market figures is challenging, as the data used in this research is not generally suitable to draw inferences of that kind of tax behaviour. Yet experience would suggest that, to the extent that cross border issues could produce this tax advantage, it would be pursued.

Exhibit 3 shows total offshore issuance year-on-year and Exhibit 4 then disgregates that data between financial and non-financial issuers.

Certainly the amount of Hybrids issued offshore by domestic issuers increased significantly in 2003 and the first part of 2004 but that could be explicable by a number of reasons other than by a change in the tax law;

First the depth of overseas capital markets is far greater than in Australia,

Secondly, for competitive neutrality reasons Australian registered banks (ADI’s) are entitled to a tax preference (“carve out”) for funding their offshore branches. Those banks may have issued hybrids into foreign capital markets for funding offshore branch activity, which may explain the increase in respect of financial issuers displayed in Exhibit 4, or, indeed,

The predictions may have been realised.

But should it matter to the Australian revenue anyway? Provided that the instrument receives the correct tax outcome in Australia it should not matter how it is taxed in the investor’s domestic jurisdiction.

Conclusions

The Debt /equity rules enacted clear rules about what is equity and what is debt for tax purposes, addressed a particular type of Hybrid securities (Income Securities) that had been treated as debt for tax but equity for accounting /regulatory purposes, and they included a three year transition period for Hybrids existing when they took effect. Therefore, they provided an ideal opportunity to study any effect these rules had on the Hybrid security market and the effect of these rules against the effect of other changes then effecting Hybrid securities.

What was surprising from the data was that Income Securities stopped being issued before the rules became effective. However, that was explicable from the public discussions that occurred prior to introduction that put the market on notice of changes that would be adverse to Income Securities.

Overseas tax jurisdictions that had implemented similar rules defining debt and equity for tax had experienced the markets using rigidities in those rules to design Hybrids that gave tax

Exhibit 3

TOTAL OFFSHORE ISSUANCE

![Graph showing total offshore issuance from 1998 to 2004]
outcomes that were contrary to the intent of the rules.

The observed experience in Australia is, indeed, the opposite. The new forms of Hybrid that have been designed since introduction of the Debt/equity rules are not dependent on favourable tax outcomes that are contrary to legislative intent. In fact, the new forms of Hybrids are designed around investor and issuer preferences in respect of accounting, regulatory and exit mechanisms. The only tax input related to their design is a better ability to price imputation credits now that they are refundable.

Overall then, these rules have achieved their intention of stopping the tax and accounting/ regulatory mismatch which had been targeted by Income Securities but, importantly, they have provided a solid tax foundation on which the market has been able to innovate new forms of Hybrids not dependant on favourable tax outcomes but driven in the main by accounting, regulatory and market preference.

To that extent, these rules seem to have achieved one of the classic tax policy measures of a good tax system, which is that tax rules should be efficient in terms of not distorting markets.

Exhibit 4

OFFSHORE ISSUANCE BY TYPE

Gordon Mackenzie is a Senior Lecturer at the Australian School of Taxation (ATAX), University of NSW. He has over 25 years experience as a taxation practitioner, and is currently Deputy Chair of the IFSA Tax Committee and past President of the Australian Taxpayers Association. Gordon has prepared submissions to numerous Governments and tax authorities on critical issues in corporate finance and taxation.
Appendix A

Data

Hybrid Insurance by Australian Companies ($b)

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<thead>
<tr>
<th>Year</th>
<th>Converting Preference Share</th>
<th>Convertible Note</th>
<th>Reset Convertible Note</th>
<th>Income Security</th>
<th>Reset Convertible Preference Shares</th>
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Total Hybrid Issuance by Type of Issuer ($b)

**Financial Institutions**

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<th>Reset Convertible Note</th>
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<th>Reset Convertible Preference Shares</th>
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### Appendix B

#### Hybrids On-Issue at 1 July 2001

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<th>Issuer</th>
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<tr>
<td>Bonlac Foods</td>
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<tr>
<td>Adelaide Bank</td>
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<tr>
<td>Suncorp-Metway</td>
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<tr>
<td>National Australia Bank</td>
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<tr>
<td>Cranswick Estate</td>
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<tr>
<td>Publishing &amp; Broadcasting</td>
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<tr>
<td>Macquarie Bank</td>
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<td>Colonial Ltd</td>
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<td>AMP</td>
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<td>Woolworths</td>
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<td>Harbour Capital</td>
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<td>CBD Retail Infrastructure</td>
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</table>
Footnotes

1 Income Tax Assessment Act 1997, Division 974 inserted by Act 163 of 2001 s 3 and Schd. 1 item 34
2 Treasurer’s Press Release No 006 February 2001
3 Ibid
4 The International Financial Reporting Standards (IFRS)
5 A bright line test is where particular definitional rules are articulated in legislation. This should be compared with, say, US tax law in this area, which uses a “facts and circumstances” basis for differentiation.
7 Client Presentation by Goldman Sachs Ltd Sydney
8 “Equity Credit: What is it and how to get it?” Criteria Topics www.standardandpoors.com
9 Explanatory Memorandum to New Business Tax System (Debt and Equity) Act 2001
10 ITAA1997, Subdivision 974-B
11 ITAA1997, Subdivision 974-C
12 ITAA 1997, s 974-10
14 PS C1 September 1999, APRA Guidance Note AGN 111-2 Tier 2 Capital September 2000 and AGN 111.1 Tier 1 Capital July 2003
15 APRA Guidance Note AGN 111-2
16 Note that the above Australian Accounting Standards Board. The effect of the changes in accounting treatment is to likely prove very significant and is under discussion between APRA and industry at the date of writing. However, that change is outside the period under review.
17 In pa
19 Ibid
20 ITAA 1997 ss7-25, commencing for dividends paid after 1 July 2000
22 See note above
24 Ibid
25 The three policy criteria were the Haig-Simons model of income, accounting income and Seligman’s concept of product income
28 Non-income returns, including periodic returns, which are those debited to capital account of the issuer, may also be assessable as a capital gain under GCT event G/ITA1997
29 Explanatory Memorandum to the New Business Tax System (Debt and Equity) Act 2001
30 See note 24
31 Emu Bay Railway (1944) CLR 596, Midland Railway Co of WA Ltd (1952) 85 CLR 306
32 C of T (WA) v. Boulder Perseverance Ltd (1937) 58 CLR 223
33 ITAA1936, s 82L-82T
34 ITAA1936, s 46D
35 2004 data only up to August; excludes more recent issues such as Alinta Ltd and Great Southern Plantations Ltd
36 Chart courtesy of Reserve Bank of Australia, Sydney
37 Chart courtesy of Reserve Bank of Australia, Sydney
38 Subsequently proven to be optimistic—see Macquarie Finance Limited v Commissioner of Taxation 2004 FCA 1170 where the interest expense on a perpetual debt type instrument was denied deductibility because it was considered to be an affair of capital. Now on appeal.
39 UBS Warburg Ltd, Sydney
41 Ian Stanley, “Debt Interests”, The Tax Specialist Vol 5 No3 Feb 2002
42 ITAA 1997, s974-65
43 AMP’s Ltd and Woolworth’s Ltd became cumulative, Cranwick Estate Ltd and Colonial’s Ltd redeemed, Macquarie Bank’s Ltd remained unchanged
45 For dividends paid after 1 July 2000
46 ITAA 1997, Sub-Div 820-D