



## Class Ruling

### Income tax: CPI Group Limited Scheme of Arrangement and Proposed Special Dividend

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#### **① This publication provides you with the following level of protection:**

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

## What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

#### **Relevant provision(s)**

2. The relevant provisions dealt with in this ruling are:

- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- subparagraph 44(1)(a)(i) of the ITAA 1936;
- subsection 177EA(5) of the ITAA 1936;
- former section 160APHM of the ITAA 1936;
- former section 160APHN of the ITAA 1936;
- former section 160APHO of the ITAA 1936;
- Division 1A of former Part IIIA of the ITAA 1936;
- Division 67 of the *Income Tax Assessment Act 1997* (ITAA 1997);

- section 67-25 of the ITAA 1997;
- section 104-10 of the ITAA 1997;
- Division 115 of the ITAA 1997;
- section 116-20 of the ITAA 1997;
- section 118-20 of the ITAA 1997;
- section 202-5 of the ITAA 1997;
- section 202-40 of the ITAA 1997;
- subsection 204-30(3) of the ITAA 1997;
- Division 207 of the ITAA 1997;
- section 207-20 of the ITAA 1997;
- section 207-35(1) of the ITAA 1997;
- paragraph 207-145(1)(d) of ITAA 1997;
- Division 208 of the ITAA 1997; and
- section 208-20 of the ITAA 1997.

## Class of entities

3. The class of entities to which this Class Ruling applies is the shareholders in CPI Group Limited (CPI) who:

- receive the Special Dividend; and
- participate in the scheme under which PagePack (AU) Pty Limited (PagePack) would acquire 100% of the shares in CPI;
- are 'residents' of Australia within the meaning of subsection 6(1) of the ITAA 1936; and
- hold their shares on capital account; and
- are not subject to the taxation of financial arrangements rules in Division 230 of the ITAA 1997 in relation to gains and losses on their CPI shares.

(Note: Division 230 will generally not apply to individuals, unless they have made an election for it to apply them.)

## Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 9 to 25 of this Ruling.

6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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## Date of effect

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8. This Ruling applies from 1 July 2010 to 30 June 2011. The Ruling continues to apply after 30 June 2011 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

## Scheme

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9. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of and are to be read with the description:

- Class Ruling application dated 04 February 2011;
- Scheme Implementation Deed dated 17 January 2011;
- Scheme Booklet dated 18 March 2011; and
- correspondence from Deloitte dated 3 March 2011.

**Note:** certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

## **CPI**

10. CPI is an Australian resident public company limited by shares and listed on the Australian Securities Exchange.
11. CPI is the head company of the CPI tax consolidated group, which consolidated with effect from 1 July 2002.
12. CPI had a single class share capital structure comprised of 58,996,376 ordinary shares at the date of the Scheme Implementation Deed. As at 28 February 2011, approximately 0.89% of CPI shares were held by non-resident entities and approximately 99.11% of CPI shares were held by Australian resident entities.

## **PagePack**

13. PagePack is a wholly owned subsidiary of PagePack LP, a New Zealand limited partnership. PagePack LP's general partner is PagePack General Partner Limited, a New Zealand limited liability company. PagePack General Partner Limited which is responsible for the management and control of PagePack LP, is wholly owned by interests associated with Maui Capital Indigo Fund.
14. Maui Capital Indigo Fund also owns a majority of the partnership interests in PagePack LP.

## **The Scheme of Arrangement**

15. On 17 January 2011, CPI and PagePack announced that they had signed a Scheme Implementation Deed under which PagePack proposes to acquire all of the CPI shares by way of a court ordered Scheme of Arrangement pursuant to Part 5.1 of the *Corporations Act 2001*.
16. A court ordered Scheme Meeting of CPI shareholders was held on 18 April 2011 where a resolution was put to CPI shareholders seeking their approval of the Scheme.
17. The Scheme Record Date is 11 May 2011 and the Scheme Implementation Date is 16 May 2011.

## **Scheme Consideration**

18. Under clause 4.2 of the Scheme Implementation Deed, PagePack will pay the Scheme Consideration to Scheme Shareholders for the transfer of their CPI Shares.
19. Under the Scheme Implementation Deed, the Scheme Consideration of \$0.45 will be reduced by the amount of any permitted Special Dividend declared and paid by CPI (see clauses 1.1 and 4.2 of the Scheme Implementation Deed).

20. Pursuant to the Scheme Implementation Deed, CPI is allowed to pay a permitted Special Dividend of up to 20 cents per share ('the Special Dividend').

### **The Proposed Special Dividend**

21. Subject to the CPI board declaring, determining or fixing a date for payment of the Special Dividend, CPI will pay a fully franked Special Dividend of \$0.185 per CPI share.

22. The Special Dividend will be sourced from CPI's current year profits. CPI's current year profits are derived from dividend payments sourced from the trading profits of CPI's wholly owned subsidiaries. CPI will not debit the Special Dividend to its share capital account. In addition, CPI will have a sufficient balance in its franking account to fully frank the proposed Special Dividend.

23. Under clause 4.2 of the Scheme Implementation Deed and clause 2 of the Funding Agreement, PagePack has agreed to loan CPI an amount to be used solely for CPI to fund the Special Dividend. This loan will be an unsecured interest-free loan equal to the aggregate amount of the Special Dividend. The loan will be repayable nine years from the date the loan amount is provided by PagePack to CPI.

24. A condition of the Funding Agreement is that the Scheme becomes Effective. Therefore, if the Scheme does not become Effective the Special Dividend will not be declared or determined by the CPI board.

25. The record date for the Special Dividend will be 6 May 2011 and the payment date will be 10 May 2011.

## **Ruling**

### **The Proposed Special Dividend**

26. The Special Dividend of \$0.185 per CPI share will constitute a dividend as defined in subsection 6(1) of the ITAA 1936.

### **Assessability of the Proposed Special Dividend**

27. A CPI shareholder who receives the fully franked Special Dividend and is a resident of Australia as defined in subsection 6(1) of the ITAA 1936, is required to include the Special Dividend as assessable income under subparagraph 44(1)(a)(i) of the ITAA 1936.

### **Franking of the Proposed Special Dividend**

28. The proposed Special Dividend will be a frankable distribution pursuant to subsection 202-40(1) of the ITAA 1997.

## **Gross up and tax offset**

29. A CPI shareholder who receives the fully franked Special Dividend directly will:

- include the amount of the franking credit attached to the Special Dividend in their assessable income; and
- be entitled to a tax offset equal to the amount of the franking credit,

under section 207-20 of the ITAA 1997, subject to being a qualified person.

30. A CPI shareholder that is a trust (not being a complying superannuation fund) or a partnership will be required to include the amount of the franking credit attached to the Special Dividend in their assessable income under subsection 207-35(1), subject to satisfying the qualified person rule.

## **Refundable tax offset**

31. The franking credit allocated to the Special Dividend will be subject to the refundable tax offset rules in Division 67, provided the participating CPI shareholder is not excluded by the operation of section 67-25.

## **Qualified persons, related payment and qualification period**

32. The payment of the Special Dividend as part of the Scheme of Arrangement will constitute a related payment within the meaning of former section 160APHN of the ITAA 1936.

33. Accordingly, each CPI shareholder will need to hold their CPI shares at risk for a continuous period of at least 45 days in the secondary qualification period in order to be a qualified person in respect of the Special Dividend.

34. Each CPI shareholder will no longer be considered to hold their CPI shares 'at risk' for the purposes of Division 1A of former Part IIIA of the ITAA 1936 (former Division 1A) as from the Scheme Record Date of 11 May 2011. Therefore, a CPI shareholder will be a qualified person in relation to the Special Dividend if, from 23 March 2011 until 10 May 2011 inclusive, the CPI shareholder continued to hold the CPI share and 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 the CPI share for a continuous period of at least 45 days.

## **Exempting entity**

35. CPI will not be an exempting entity under Division 208 at the time of the Special Dividend.

**Capital gains tax (CGT) consequences*****CGT event A1***

36. CGT event A1 happens when a CPI shareholder disposes of each of their CPI shares to PagePack (see subsections 104-10(1) and 104-10(2)) of the ITAA 1997.

37. The time of CGT event A1 will be the Scheme Implementation Date of 16 May 2011 (paragraph 104-10(3)(b) of the ITAA 1997).

38. A CPI shareholder will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a CPI share exceed its cost base. The capital gain is equal to the amount of the excess. A CPI shareholder will make a capital loss if the capital proceeds are less than the CPI share's reduced cost base. The capital loss is equal to the amount of the difference (Subsection 104-10(4) of the ITAA 1997).

***Capital proceeds***

39. The capital proceeds for the disposal of a CPI share will be the money that the shareholder receives or is entitled to receive in respect of the event happening (subsection 116-20(1)) of the ITAA 1997.

40. The capital proceeds for the disposal of each CPI share under the Scheme of Arrangement will be \$0.45. This amount includes the Special Dividend.

***Anti-overlap provisions***

41. Under section 118-20 of the ITAA 1997, any capital gain made by a CPI shareholder when CGT event A1 happens can be reduced (but not below zero) by the amount of the Special Dividend that is included in the CPI shareholder's assessable income under subsection 44(1) of the ITAA 1936. The amount of any capital loss made by a CPI shareholder will not be adjusted under section 118-20 of the ITAA 1997 by the amount of the Special Dividend that is included in the CPI shareholder's assessable income.

**Discount capital gains**

42. A capital gain made by a CPI shareholder when they dispose of a CPI share under the Scheme of Arrangement is a discount capital gain if they acquired the CPI share at least 12 months before the date of disposal (16 May 2011) and the other conditions in Division 115 of the ITAA 1997 are met.

## **The anti-avoidance provisions**

43. The Commissioner will not make a determination under subsection 204-30(3) to deny the whole, or any part, of the imputation benefit received in relation to the Special Dividend.

44. Paragraph 207-145(1)(d) will not apply to the whole, or any part, of the Special Dividend received by CPI shareholders.

45. The Commissioner will not make a determination under paragraph 177EA(5) of the ITAA 1936 to deny the whole, or any part, of the imputation benefit received in relation to the Special Dividend paid in relation to a CPI share.

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**Commissioner of Taxation**

13 April 2011

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## Appendix 1 – Explanation

**❶** *This Appendix 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.*

### The Proposed Special Dividend

46. The term 'dividend' is defined in subsection 6(1) of the ITAA 1936 and includes any distribution made by a company to any of its shareholders.

47. The payment of the Special Dividend is a distribution of money by CPI to its shareholders.

48. However the definition of dividend in paragraph 6(1)(d) of the ITAA 1936 excludes from the definition of 'dividend' any:

moneys paid or credited by a company to a shareholder or any other property distributed by a company to shareholders (not being moneys or other property to which this paragraph, by reason of subsection (4), does not apply or moneys paid or credited, or property distributed for the redemption or cancellation of a redeemable preference share), where the amount of the moneys paid or credited, or the amount of the value of the property, is debited against an amount standing to the credit of the share capital account of the company.

49. The Special Dividend will be sourced entirely from CPI's current year profits and CPI will not debit the Special Dividend to its share capital account. Therefore, the exclusions in paragraph (d) will not apply and the Special Dividend will constitute a 'dividend' for the purposes of subsection 6(1) of the ITAA 1936.

### Assessability of the Proposed Special Dividend

50. Subparagraph 44(1)(a)(i) of the ITAA 1936 includes in the assessable income of an Australian resident shareholder in a company:

dividends (other than non-share dividends) that are paid to the shareholder by the company out of profits derived by it from any source.

51. As the Special Dividend will be paid to CPI shareholders out of profits derived by CPI, each CPI shareholder, who is a resident of Australia as defined in subsection 6(1) of the ITAA 1936, is required to include the Special Dividend as assessable income.

## Franking of the Proposed Special Dividend

52. In accordance with section 202-5 of the ITAA 1997, an entity will be taken to have franked a distribution if the following conditions are satisfied:

- the entity is a franking entity that satisfies the residency requirement when the distribution is made;
- the distribution is a frankable distribution; and
- the entity allocates a franking credit to the distribution.

53. As a public company, CPI will represent a corporate tax entity as defined in section 960-115 of the ITAA 1997 and as such is a franking entity in accordance with paragraph 202-15(a) of the ITAA 1997. As an Australian resident, CPI will also satisfy the residency requirements of section 202-20 of the ITAA 1997.

54. Subsection 202-40(1) of the ITAA 1997 states that a distribution is a frankable distribution to the extent that it is not unfrankable under section 202-45 of the ITAA 1997.

55. In this respect, pursuant to item 1 of the table set out in subsection 960-120(1) of the ITAA 1997, a distribution by a company includes a dividend.

56. Furthermore, none of the circumstances listed in section 202-45 will apply in this case and accordingly, CPI's Special Dividend will not be unfrankable under section 202-45 of the ITAA 1997.

57. Therefore, as the Special Dividend represents a frankable distribution, it will be franked in accordance with section 202-5 of the ITAA 1997 if CPI allocates franking credits to the distribution.

## Gross up and tax offset

58. Subject to satisfying the qualified person rule, where the fully franked Special Dividend is received directly by an CPI shareholder, the CPI shareholder will:

- include the amount of the franking credit attached to the Special Dividend in their assessable income; and
- be entitled to a tax offset equal to the amount of the franking credit<sup>1</sup>.

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<sup>1</sup> See section 207-20 ITAA 1997.

59. Where the fully franked Special Dividend is received by a CPI shareholder (not being an entity taxed as a corporate tax entity) that is a trustee of a trust (not being a complying superannuation fund) or a partnership, subsection 207-35(1) applies, subject to the trustee or partnership being a qualified person. Subsection 207-35(1) provides that:

If:

- a franked distribution is made in an income year to an entity that is a partnership or the trustee of a trust; and
- the entity is not a corporate tax entity when the distribution is made; and
- if the entity is the trustee of a trust – the trust is not a complying superannuation entity or FHSA trust when the distribution is made;

the assessable income of the partnership or trust for that income year includes the amount of the franking credit on the distribution.

60. Therefore, subject to satisfying the qualified person rule, a CPI shareholder that is a trust or a partnership will be required to include the amount of the franking credit attached to the Special Dividend in their assessable income under subsection 207-35(1).

### **Refundable tax offset**

61. Shareholders who are entitled to a tax offset under subsection 207-20(2), in respect of the franking credit received, will also be subject to the refundable tax offset rules in Division 67, unless specifically excluded under section 67-25.

62. Pursuant to section 67-25, there are a range of taxpayers who are specifically excluded from the operation of the refundable tax offset rules. This range of excluded entities includes:

- non-complying superannuation funds or non-complying approved deposit funds (subsection 67-25(1A));
- a trustee of a trust who is liable to be assessed under section 98 or 99A of the ITAA 1936 (subsection 67-25(1B)(b) of the ITAA 1997);
- corporate tax entities, unless the entity is an exempt institution that is eligible for a refund, or a life insurance company that has received distributions on membership interests which were not held by the company on behalf of its shareholders (subsections 67-25(1C) and 67-25(1D)); and
- foreign resident entities carrying on business in Australia at or through a permanent establishment (subsection 67-25(1DA)).

63. Accordingly, a holder of CPI shares will be subject to the refundable tax offset rules unless they are listed specifically as one of the excluded entities under section 67-25. Generally, corporate tax entities (including companies, corporate limited partnerships, corporate unit trusts, and public trading trusts) will be excluded from the operation of the refundable tax offset rules.

## **Qualified Persons, related payment and qualification period**

64. Former Division 1A of the ITAA 1936 contains the measures known as the holding period rule and the related payment rule. In broad terms, former Division 1A provides the statutory tests that must be satisfied for a taxpayer to be a 'qualified person' with respect to a franked distribution they have received and thus be entitled to a tax offset for the franking credit attached to the distribution.

65. The test of what constitutes a 'qualified person' is provided in former subsection 160APHO(1) of the ITAA 1936 as follows:

A taxpayer who has held shares or an interest in shares on which a dividend has been paid is a qualified person in relation to the dividend if:

- (a) (where neither the taxpayer nor an associate of the taxpayer has made, is under an obligation to make, or is likely to make, a related payment in respect of the dividend – the taxpayer has satisfied subsection (2) in relation to the primary qualification period in relation to the dividend; or
- (b) where the taxpayer or an associate of the taxpayer has made, is under an obligation to make, or is likely to make, a related payment in respect of the dividend – the taxpayer has satisfied subsection (2) in relation to the secondary qualification in relation to the dividend.

66. Former subsection 160APHO(2) of the ITAA 1936, sets out the holding period requirement. Broadly, if a taxpayer is not under an obligation to make a related payment in relation to a dividend or distribution, the taxpayer will have to satisfy the holding period requirement within the primary qualification period. If a taxpayer is under an obligation to make a related payment in relation to a dividend or distribution, the taxpayer will have to satisfy the holding period requirement within the secondary qualification period.

## ***Related payment rule***

67. In order to determine the relevant qualification period, it is necessary to determine whether, under the present arrangement, the CPI shareholders are considered to be under an obligation to make a related payment in respect of the Special Dividend.

68. Former section 160APHN of the ITAA 1936 provides non-definitive examples of what constitutes the making of a related payment for the purposes of former Division 1A of the ITAA 1936. Former subsection 160APHN(2) of the ITAA 1936 provides:

The taxpayer or associate is taken, for the purposes of this Division, to have made, to be under an obligation to make, or to be likely to make, a related payment in respect of the dividend or distribution if, under an arrangement, the taxpayer or associate has done, is under an obligation to do, or may reasonably be expected to do, as the case may be, anything having the effect of passing the benefit of the dividend or distribution to one or more other persons.

69. Former subsection 160APHN(3) of the ITAA 1936 states:

Without limiting subsection (2), the doing of any of the following by the taxpayer or an associate of the taxpayer in the circumstances mentioned in subsection (4) may have the effect of passing the benefit of the dividend or distribution to one or more other person:

- (a) causing a payment or payments to be made to, or in accordance with the directions of, the other person or other persons; or
- (b) causing an amount or amounts to be credited to, or applied for the benefit of, the other person or the other persons; or
- (c) causing services to be provided to, or in accordance with the directions of, the other person or other persons; or (d) causing property to be transferred to, or in accordance with directions of, the other person or other persons; or
- (d) allowing any property or money to be used by the other person or other persons or by someone nominated by the other person or other persons; or
- (e) causing an amount or amounts to be set off against, or to be otherwise applied in reduction of, a debt or debts owed by the other person or other persons; or
- (f) agreeing to treat an amount or amounts owed to the other person or other persons by the taxpayer or associate as having been increased.

70. Former subsection 160APHN(4) of the ITAA 1936 states:

The circumstances referred to in subsection (3), are where:

- (a) the amount or the sum of the amounts paid, credited or applied; or
- (b) the value or the sum of the values of the services provided, of the property transferred or of the use of the property or money; or
- (c) the amount or the sum of the amounts of the set-offs, reductions or increases;

as the case may be:

- (d) is, or may reasonably be expected to be, equal to; or
- (e) approximates or may reasonably be expected to approximate; or

- (f) is calculated by reference to;  
the amount of dividend or distribution.

71. In the current circumstances, it is considered that an integral part of the Scheme of Arrangement is the payment of the Special Dividend of \$0.185 per share. The payment of the Special Dividend is conditional upon the Scheme of Arrangement proceeding, tying the payment of the Special Dividend to the disposal of the CPI shares. In addition, the payment of the Special Dividend is a part of the total consideration of \$0.45 per share to be paid to CPI shareholders for the disposal of their CPI shares to PagePack.

72. In these circumstances, in determining whether a CPI shareholder is taken to have made or is likely to make a related payment in respect of the Special Dividend, it is considered that the circumstances surrounding the payment of the Special Dividend would constitute an act that passes the benefit to another for the purposes of former subsection 160APHN(3) of the ITAA 1936. As such, it can be concluded that a CPI shareholder will be taken to have made a related payment in respect of the Special Dividend.

73. As the CPI shareholders will be taken, for the purposes of former Division 1A of the ITAA 1936, to have made a related payment in respect of the Special Dividend, the relevant holding period is the secondary qualification period pursuant to former paragraph 160APHO(1)(b) of the ITAA 1936.

74. The secondary qualification period is defined in former section 160APHD of the ITAA 1936 as follows:

In relation to a taxpayer in relation to shares or an interest in shares, means:

- (a) if the shares are not preference shares – the period beginning on the 45th day before, and ending on the 45th day after, the day on which the shares or interest becomes ex dividend...

75. The concept of 'ex-dividend' is defined by former subsection 160APHE(1) of the ITAA 1936 as follows:

a share in respect of which a dividend is to be paid, or an interest (other than an interest as a beneficiary of a widely held trust) in such a share, becomes ex dividend on the day after the last day on which the acquisition by a person of the share will entitle the person to receive the dividend.

76. The eligibility for the Special Dividend is determined on the Special Dividend Record Date of 6 May 2011. This is the last day on which acquisition by a person of a CPI share entitles the person to receive the Special Dividend as per former section 160APHE of the ITAA 1936. Accordingly, the ex-dividend date for the purposes of former subsection 160APHE(1) is 7 May 2011.

77. The secondary qualification period thus runs from 45 days before the ex-dividend date of 7 May 2011 and ends 45 days after that day. In practical terms, this means that the secondary qualification period runs from 23 March 2011 to 21 June 2011. However, pursuant to former subsection 160APHO(3) of the ITAA 1936, any days on which a taxpayer has materially diminished risks of loss or opportunities for gain in respect of the CPI shares are to be excluded. This would mean that the secondary qualification period would run from 23 March 2011 until the date that CPI shareholders are no longer at risk for the purposes of former Division 1A of the ITAA 1936.

78. The entitlement to participate in the Scheme of Arrangement will be determined on the Scheme Record Date which is 11 May 2011. CPI shareholders who dispose of their shares under the Scheme of Arrangement will no longer be considered to hold their CPI shares 'at risk' for the purposes of former Division 1A of the ITAA 1936 as of 11 May 2011.

79. Accordingly, for a CPI shareholder who disposes of their shares under the Scheme of Arrangement, the secondary qualification period will run from 23 March 2011 to 10 May 2011 (inclusive). A CPI shareholder who receives the Special Dividend will need to hold their shares at risk for a continuous period of not less than 45 days during this period in order to be a 'qualified person' for the purposes of former Division 1A of the ITAA 1936. Further, pursuant to former paragraph 160APHO(2)(a) of the ITAA 1936, neither the date of acquisition nor the date of disposal is included in the relevant 45 day period.

### **Exempting entity**

80. Section 208-20 of the ITAA 1997 states that a corporate tax entity is an exempting entity at a particular time if it is effectively owned by prescribed persons at that time. Subsection 208-25(1) provides in broad terms that an entity is effectively owned by prescribed persons if not less than 95% of accountable membership interests or accountable partial interests (broadly direct and indirect ownership interests) are held by or on behalf of prescribed persons.

81. Section 208-40 provides the definition of a prescribed person in relation to another corporate tax entity. Generally, the definition includes companies, trustees, partnerships or individuals that are a foreign resident or if they were to receive a distribution by the corporate tax entity, the distribution would be exempt income or non-assessable non-exempt income of the company, trust estate, partnership or individual.

82. Based on CPI's shareholder register as at 28 February 2011 and taking into account the circumstances of PagePack proposal, the total percentage of non-resident shareholder ownership in the accountable membership interests of CPI at the time of the payment of the Special Dividend does not amount to CPI being effectively controlled by prescribed persons.

## Capital gains tax (CGT) consequences

### CGT Event A1

83. CGT event A1 in section 104-10 of the ITAA 1997 happens if there is a change in the ownership of a CGT asset from one entity to another. Accordingly, CGT event A1 will happen when CPI shareholders dispose of their CPI shares to PagePack.

84. CGT event A1 happens when a contract to dispose of the asset is entered into, or if there is no contract, when the change of ownership occurs (subsection 104-10(3) of the ITAA 1997).

85. PagePack proposes to acquire all of the CPI shares by way of a court ordered Scheme of Arrangement under Part 5.1 of the *Corporations Act 2001*. A takeover or merger effected by a court approved Scheme of Arrangement does not involve a disposal of shares under a contract (refer to paragraph 9 of Taxation Determination TD 2002/4<sup>2</sup>).

86. CGT event A1 will therefore happen to CPI shareholders when a change of ownership occurs. This is when the CPI shares are transferred to PagePack under the Scheme of Arrangement, which is on the Scheme Implementation Date of 16 May 2011.

87. The time when the CGT event A1 happens determines the income year in which the capital gain or loss is made and whether the CGT discount applies to any capital gain.

## Capital proceeds

88. The capital proceeds for CGT event A1 is the money received or entitled to be received and the market value of any other property received or entitled to be received in respect of the event happening (subsection 116-20(1) of the ITAA 1997).

89. The phrase 'in respect of the event happening' in subsection 116-20(1) of the ITAA 1997 requires that the relationship between the event and the receipt of the money, or entitlement to receive the money, must be more than coincidental. An amount is not 'capital proceeds' of an event merely because it is received in association with the event.

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<sup>2</sup> TD 2002/4: Income tax: capital gains: what is the first element of the cost base and reduced cost base of a share in a company you acquire in exchange for a share in another company in a takeover or merger?

90. A dividend declared by a company that is subject to a takeover can form part of the vendor shareholders' capital proceeds from the disposal of the shares. Taxation Ruling TR 2010/4<sup>3</sup> states in paragraph 9 that:

A dividend declared or paid by the target company to the vendor shareholder will be money or property that the vendor shareholder has received, or is entitled to receive, under the contract or the scheme of arrangement, in respect of the transfer of the shares, if the vendor shareholder has bargained for the receipt of the dividend (whether or not in addition to other consideration) in return for giving up the shares. That is to say, if the dividend forms the whole or part of that sum of money or property in return for which the vendor shareholder is willing, and under the contract has promised or under the scheme of arrangement is bound, to transfer the shares in the target company, it will be capital proceeds in respect of the CGT event A1 happening.

91. The Scheme of Arrangement for the disposal of the CPI shares to PagePack has the following scheme attributes:

- the Scheme Consideration offered of \$0.45 per CPI share is reduced by the amount of the Special Dividend;
- the Special Dividend may only be paid if the Scheme becomes effective; and
- PagePack has agreed to loan to CPI the amount of the Special Dividend, by way of an interest-free loan, solely to enable CPI to pay the Special Dividend.

92. These scheme attributes support a conclusion that the Special Dividend is part of the sum of money in return for which the CPI shareholders will have, by approving the Scheme of Arrangement, demonstrated their willingness to transfer the shares. Further, the Special Dividend is not being declared and paid independently of the Scheme of Arrangement given the fact that PagePack is financing the payment of the dividend (Refer to paragraphs 11 and 25 of TR 2010/4).

93. Accordingly, the Special Dividend will form part of the capital proceeds which a CPI shareholder receives or is entitled to receive in respect of CGT event A1 happening to their CPI shares.

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<sup>3</sup> TR 2010/4: Income tax: capital gains: when a dividend will be included in the capital proceeds from a disposal of shares that happens under a contract or a scheme of arrangement

## Anti-overlap provisions

94. A capital gain made from a CGT event is reduced if the capital gain includes an amount that is included in their assessable income under another provision of the ITAA 1936 or the ITAA 1997 (section 118-20 of the ITAA 1997). This has the effect of reducing (but not below zero) the capital gain by the amount that is assessable under the other provision. A capital loss made from a CGT event will not be increased by the operation of section 118-20 of the ITAA 1997.

95. Where a dividend forms part of the capital proceeds from the sale of shares and is assessable income under subsection 44(1) of the ITAA 1936, section 118-20 of the ITAA 1997 will reduce any capital gain by the amount of the dividend.

96. The Special Dividend will be included in the assessable income of the CPI shareholders under subsection 44(1) of the ITAA 1936. Therefore, section 118-20 of the ITAA 1997 will operate to reduce (but not below zero) any capital gain made by a CPI shareholder from CGT event A1 by the amount of the Special Dividend that is included in the CPI Shareholder's assessable income under subsection 44(1) of the ITAA 1936.

97. However, under paragraph 118-20(1B)(b) of the ITAA 1997, the capital gain made by the CPI shareholder will not be reduced by the amount of the franking credit that is included in their assessable income.

98. The amount of a capital loss made by a CPI shareholder will not be adjusted by the amount of the Special Dividend under section 118-20 of the ITAA 1997.

## Discount capital gains

99. The CGT discount applies to a capital gain made by an individual, a complying superannuation entity, a trust or, in the circumstances set out in paragraph 115-10(d) of the ITAA 1997, a life insurance company and the other requirements of Division 115 of the ITAA 1997 are satisfied.

100. One of those requirements is that the capital gain must result from a CGT event happening to a CGT asset that was acquired by the entity making the capital gain at least 12 months before the CGT event. (subsection 115-25(1) of the ITAA 1997).

101. This means that a capital gain made by a CPI shareholder when they dispose of their CPI share is a discount capital gain if the shareholder acquired the CPI share at least 12 months before the date of disposal under the scheme, being the Scheme Implementation Date of 16 May 2011, and the other requirements in Division 115 of the ITAA 1997 are met.

**The anti-avoidance provisions****Section 204-30**

102. Section 204-30 applies where a corporate tax entity streams the payment of dividends, or the payment of dividends and the giving of other benefits, to its members in such a way that:

- (a) an imputation benefit is, or apart from this section would be, received by a member of the entity as a result of the distribution or distributions (paragraph 204-30(1)(a)); and
- (b) the member would derive a greater benefit from franking credits than another member of the entity (paragraph 204-30(1)(b)); and
- (c) the other member of the entity will receive lesser imputation benefits, or will not receive any imputation benefits, whether or not the other member receives other benefits (paragraph 204-30(1)(c)).

103. Relevantly, if section 204-30 applies, the Commissioner may make a determination in writing :

- (a) that a specified franking debit arises in the franking account of the entity, for a specified distribution or other benefit to a disadvantaged member (paragraph 204-30(3)(a)); or
- (b) that no imputation benefit is to arise in respect of a distribution that is made to a favoured member and specified in the determination (paragraph 204-30(3)(c)).

104. For section 204-30 to apply, members to whom distributions are streamed must derive a greater benefit from franking credits than the members who consequently do not receive franking credits, or do not receive the same amount of franking credits as they would have had streaming not occurred.

105. Pursuant to the payment of the Special Dividend, all CPI shareholders will receive an imputation benefit as a result of the dividend; the resident shareholders in the form of a tax offset (paragraph 204-30(6)(a)) and the non-resident shareholders in the form of an exemption from dividend withholding tax (paragraph 204-30(6)(e)). The resident shareholders will derive a greater benefit from franking credits than the non-resident shareholders (subsection 204-30(8)).

106. However, the Special Dividend will be paid to all CPI Shareholders and will be fully franked with Australian franking credits.

107. Accordingly, it cannot be argued that CPI will direct the flow of distributions in such a manner as to stream the imputation benefits such that one class of members derive a greater benefit from the franking credits attached to the Special Dividend, while the other members receive lesser or no imputation benefits.

108. As the conditions in subsection 204-30(1) for the provision to apply will not be met, the Commissioner will not make a determination under paragraph 204-30(3)(c) to deny the whole, or any part, of the imputation benefit received in relation to the Special Dividend.

## **Section 207-145**

109. Paragraph 207-145(1)(d) applies where a franked distribution is made as part of a dividend stripping operation. Section 207-155 defines a dividend stripping operation as being:

- a) by way of or in the nature of dividend stripping; or
- b) having substantially the effect of a scheme by way of or in the nature of a dividend stripping.

110. Having regard to the purpose of the scheme under which the shareholders will dispose of their CPI shares to PagePack, the scheme will not be a scheme by way of or in the nature of dividend stripping, or a scheme having substantially the effect of a scheme by way of or in the nature of dividend stripping to which subsection 207-145(1) is applicable.

## **Section 177EA**

111. Section 177EA of the ITAA 1936 is a general anti-avoidance provision that applies to a wide range of schemes to obtain a tax advantage in relation to imputation benefits. In essence, it applies to schemes for the disposition of shares or an interest in shares, where a franked distribution is paid or payable in respect of the shares or an interest in shares.

112. Subsection 177EA(3) of the ITAA 1936 provides that section 177EA applies if:

- (a) there is a scheme for a disposition of membership interests, or an interest in membership interests, in a corporate tax entity; and
- (b) either:
  - (i) a frankable distribution has been paid, or is payable or expected to be payable, to a person in respect of the membership interests; or
  - (ii) a frankable distribution has flowed indirectly, or flows indirectly or is expected to flow indirectly, to a person in respect of the interest in membership interests, as the case may be; and
- (c) the distribution was, or is expected to be, a franked distribution or a distribution franked with an exempting credit; and

- (d) except for this section, a person (the 'relevant taxpayer') would receive, or could reasonably be expected to receive, imputation benefits as a result of the distribution; and
- (e) having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a purpose (whether or not the dominant purpose, but not including an incidental purpose) of enabling the relevant taxpayer to obtain an imputation benefit.

113. If section 177EA of the ITAA 1936 applies, the Commissioner may make a determination under subsection 177EA(5) of the ITAA 1936 that either a franking debit arises to the company in respect of each distribution paid to the relevant taxpayer (paragraph 177EA(5)(a) of the ITAA 1936) or, in the alternative, that no franking credit benefit arises in respect of a distribution paid to the relevant taxpayer (paragraph 177EA(5)(b) of the ITAA 1936).

114. CPI is a corporate tax entity. The disposal of the ordinary shares in CPI pursuant to the Scheme of Arrangement is a scheme for the disposition of membership interests. The fully franked Special Dividend is a frankable distribution that will be paid to CPI shareholders as a part of this scheme, which could, therefore, reasonably be expected to receive imputation benefits.

115. In the present case, the conditions of paragraphs 177EA(3)(a) to 177EA(3)(d) of the ITAA 1936 are satisfied. Accordingly, the issue is whether, having regard to the relevant circumstances of the scheme (as provided for in subsection 177EA(17) of the ITAA 1936), it would be concluded that, on the part of CPI, its shareholders or any other relevant party, there is a purpose of more than merely an incidental purpose of conferring an imputation benefit under the scheme.

116. In arriving at a conclusion the Commissioner must have regard to the relevant circumstances of the scheme which include, but are not limited to, the circumstances set out in subsection 177EA(17) of the ITAA 1936. The relevant circumstances listed there encompass a range of circumstances which taken individually or collectively could indicate the requisite purpose. Due to the diverse nature of these circumstances, some may not be present at any one time in any one scheme.

117. The relevant circumstances include the fact that the disposition of the ordinary shares in CPI is to be made pursuant to a takeover by PagePack by way of a Scheme of Arrangement under the Corporations Act 2001 voted upon by CPI's existing shareholders.

118. The Special Dividend will be fully franked and will be paid to the existing shareholders of CPI in proportion to their shareholding, and irrespective of their ability to utilise the relevant franking credits. The Special Dividend will allow CPI shareholders to share in the accumulated profits of CPI.

119. In considering the manner, form and substance of the scheme, it is considered that the scheme is not being entered into by CPI or the CPI shareholders for more than an incidental purpose of enabling participating shareholders to obtain imputation benefits. The goal of providing imputation benefits to CPI shareholders remains incidental, in the sense of being subservient to, to the purpose of transferring their shares to PagePack.

120. Having regard to the relevant circumstances of the scheme, the Commissioner has come to the view that the requisite purpose is not present and accordingly the Commissioner will not make a determination under paragraph 177EA(5)(b) of the ITAA 1936 to deny the whole, or any part, of the imputation benefit to be received in relation to the dividends.

## **Appendix 2 – Detailed contents list**

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Not previously issued as a draft

### *Related Rulings/Determinations:*

TR 2006/10; TR 2010/4

TD 2002/4

### *Subject references:*

- arrangement
- CGT capital proceeds
- CGT event A1 – disposal of a CGT asset
- distributions
- franking credits
- ordinary shares
- qualified person
- related payment rule
- takeovers & mergers

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