



## Class Ruling

### Income tax: Coal & Allied Industries Limited Scheme of Arrangement and payment of Interim Dividend and Special Dividend

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#### **❶ 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);
- subsection 44(1) of the ITAA 1936;
- section 128B of the ITAA 1936;
- section 128D of the ITAA 1936;
- section 160APHM of the ITAA 1936;
- section 160APHO of the ITAA 1936;
- Division 1A of former Part IIIA of the ITAA 1936;

- section 177EA 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;
- Subdivision 115-A of the ITAA 1997;
- section 116-20 of the ITAA 1997;
- section 118-20 of the ITAA 1997;
- section 202-40 of the ITAA 1997;
- section 204-30 of the ITAA 1997;
- section 207-20 of the ITAA 1997; and
- section 207-35 of the ITAA 1997.

All subsequent legislative references are to the ITAA 1936 unless otherwise indicated.

## Class of entities

3. The class of entities to which this Ruling applies is Coal & Allied Industries Limited (CNA) shareholders who either:
- (a) received the Special Dividend and participated in the Scheme of Arrangement (the Scheme) under which Hunter Valley Resources Pty Ltd (Hunter Valley Resources) acquired 14.09% of the shares in CNA, and who may also have received the Interim Dividend; or
  - (b) received the Special Dividend and did not participate in the Scheme under which Hunter Valley Resources acquired 14.09% of the shares in CNA, and who may also have received the Interim Dividend; 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 CNA shares.

(Note – Division 230 will generally not apply to individuals, unless they have made an election for it to apply to 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 33 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 2011 to 30 June 2012. The Ruling continues to apply after 30 June 2012 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:

- application for a Class Ruling dated 16 September 2011 from PricewaterhouseCoopers (PwC);
- copy of the Scheme Implementation Agreement (SIA) dated 26 August 2011 received from PwC on 9 September 2011;

- copy of the Scheme Booklet released on 24 October 2011; and
- correspondence and documents received from PwC on 9 September 2011, 19 September 2011, 5 October 2011, and 28 November 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.

## Coal & Allied Industries

10. CNA is a publicly listed company on the Australian Securities Exchange (ASX). It is a coal production company with production facilities based mainly in New South Wales.

11. CNA has a single class share capital structure consisting of ordinary shares. As at the date of publication of the Scheme Booklet, CNA had 86,584,735 ordinary shares on issue.

12. As at 5 August 2011, Australian Coal Holdings Pty Limited (ACH), a wholly owned subsidiary of Rio Tinto Limited (Rio Tinto), held 65,555,831 CNA shares, representing 75.71% of the CNA shares on issue.

13. As at 5 August 2011, Mitsubishi Development Pty Ltd (Mitsubishi Development), a wholly owned subsidiary of Mitsubishi Corporation (incorporated in Japan), held 8,829,288 CNA shares, representing 10.20% of the CNA shares on issue.

## Hunter Valley Resources

14. Hunter Valley Resources is an Australian resident proprietary company established to acquire under the Scheme of Arrangement (the Scheme) under Part 5.1 of the *Corporations Act 2001* (Corporations Act) all of the CNA shares not held by ACH and Mitsubishi Development (or their respective Related Bodies Corporate).

15. Hunter Valley Resources is jointly owned by Rio Tinto Coal NSW Holdings Limited (a Related Body Corporate of ACH) and Mitsubishi Development.

## The Scheme of Arrangement

16. On 26 August 2011, CNA announced to the ASX that it had executed a SIA with Hunter Valley Resources.

17. Under the SIA it was proposed that Hunter Valley Resources would acquire all of the CNA shares not held by ACH and Mitsubishi Development (or their respective Related Bodies Corporate) by way of the Scheme.

18. Implementation of the Scheme was subject to a number of conditions. On 28 November 2011 a General Meeting of CNA was held to put a resolution to eligible CNA shareholders to approve the joint bidding arrangements. The resolution was approved by the required voting majority of eligible CNA shareholders.

19. Immediately following the conclusion of the General Meeting a Scheme Meeting was held to put a resolution to eligible CNA shareholders to approve the Scheme. The resolution was approved by the required voting majority of eligible CNA shareholders.

20. For the purposes of voting at the General Meeting and the Scheme Meeting, 'Eligible Shareholders' were those shareholders who were not 'Excluded Shareholders'. 'Excluded Shareholders' were ACH, Mitsubishi Development, Hunter Valley Resources and any Related Bodies Corporate of those companies which held CNA shares.

21. After both resolutions were passed, CNA applied to the Federal Court on 30 November 2011 for orders under section 411 of the Corporations Act to approve the Scheme.

22. The Scheme Effective Date was 1 December 2011, and the Scheme Record Date was 7.00pm AEDT on 12 December 2011.

23. On the Implementation Date, the CNA shares not held by ACH and Mitsubishi Development (or their respective Related Bodies Corporate) were transferred to Hunter Valley Resources. The Implementation Date was 15 December 2011.

24. When the Scheme was approved and implemented, CNA shareholders who participated in the Scheme received from Hunter Valley Resources \$125.00 cash for each CNA share held at the Scheme Record Date, less the amount of the Special Dividend paid by CNA.

### **The Interim Dividend**

25. On 27 July 2011 an Interim Dividend of \$1.20 per CNA share was declared by the Board of Directors of CNA for the half year ended 30 June 2011. The dividend represented the ordinary dividend payable to all CNA shareholders from profits for the half year ended 30 June 2011. The Interim Dividend Record Date was 12 August 2011 and the ex-dividend date was 13 August 2011.

26. The Interim Dividend was fully franked and was debited against CNA's retained earnings account. The Interim Dividend was paid from CNA's existing cash reserves.

27. The Interim Dividend was paid by CNA on 26 August 2011, and was not conditional upon the Scheme being approved and implemented. The Scheme Consideration of \$125.00 per CNA share was not reduced by the amount of the Interim Dividend.

## **The Special Dividend**

28. On 28 November 2011, the Board of Directors of CNA announced a fully franked Special Dividend of \$8.00 per CNA share. Payment of the Special Dividend was conditional upon the Scheme becoming effective.

29. The SIA set out the total cash payments that CNA shareholders who participated in the Scheme were entitled to receive when the Scheme became effective, including the Special Dividend of up to \$8.00 per CNA share.

30. The amount that Hunter Valley Resources paid by way of Scheme Consideration for each CNA share transferred under the Scheme was reduced by the Special Dividend of \$8.00 from \$125.00 to \$117.00.

31. The Special Dividend Record Date was 7.00pm AEDT on 8 December 2011 and the ex-dividend date was 9 December 2011.

32. The full amount of the Special Dividend was paid from CNA's retained earnings. No amount of the Special Dividend was debited to CNA's share capital account. The Special Dividend was paid on 16 December 2011.

33. Payment of the Special Dividend by CNA was funded from loans to CNA from ACH, Mitsubishi Development and Hunter Valley Resources (or their respective Related Bodies Corporate). The parties to the loans agreed to loan terms on an arms length basis.

## **Ruling**

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### **The Interim Dividend**

34. The Interim Dividend of \$1.20 cash per CNA share paid to CNA shareholders is a 'dividend' as defined in subsection 6(1).

35. CNA shareholders who received the fully franked Interim Dividend and are residents of Australia as defined in subsection 6(1) are required to include the Interim Dividend in assessable income under subparagraph 44(1)(a)(i).

36. CNA shareholders who received the fully franked Interim Dividend and are non-residents (other than those carrying on a business in Australia at or through a permanent establishment in Australia) are not required to include the Interim Dividend in assessable income under subparagraph 44(1)(b)(i) (section 128D) and are not liable for Australian withholding tax in respect of the dividend (paragraph 128B(3)(ga)).

37. CNA shareholders who received the fully franked Interim Dividend and are non-residents carrying on business in Australia at or through a permanent establishment in Australia, where the Interim Dividend is attributable to the permanent establishment, are required to include the Interim Dividend in assessable income under subparagraphs 44(1)(b)(i) and 44(1)(c)(i) and are not liable for Australian withholding tax in respect of the dividend (subsection 128B(3E)).

### **The Special Dividend**

38. The Special Dividend of \$8.00 cash per CNA share paid to CNA shareholders is a 'dividend' as defined in subsection 6(1).

39. CNA shareholders who received the fully franked Special Dividend and are residents of Australia as defined in subsection 6(1) are required to include the Special Dividend in assessable income under subparagraph 44(1)(a)(i).

40. CNA shareholders who received the fully franked Special Dividend and are non-residents (other than those carrying on a business in Australia at or through a permanent establishment in Australia) are not required to include the Special Dividend in assessable income under subparagraph 44(1)(b)(i) (section 128D) and are not liable for Australian withholding tax in respect of the dividend (paragraph 128B(3)(ga)).

41. CNA shareholders who received the fully franked Special Dividend and are non-residents carrying on business in Australia at or through a permanent establishment in Australia, where the Special Dividend is attributable to the permanent establishment, are required to include the Special Dividend in assessable income under subparagraphs 44(1)(b)(i) and 44(1)(c)(i) and are not liable for Australian withholding tax in respect of the dividend (subsection 128B(3E)).

### **Frankability of Interim and Special Dividends**

42. The Interim Dividend and the Special Dividend are frankable distributions pursuant to subsection 202-40(1) of the ITAA 1997.

### **Gross up and tax offset**

43. CNA shareholders who received the fully franked Interim Dividend or the fully franked Special Dividend directly and who satisfy the residency requirement in section 207-75 of the ITAA 1997:

- must include the amount of the franking credit allocated to the dividend in their assessable income; and
- are entitled to a tax offset equal to the amount of the franking credit allocated to the dividend

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

44. A CNA shareholder that is a trust (not being a complying superannuation fund or a corporate tax entity) or a partnership (not being a corporate tax entity) who received the fully franked Interim Dividend or the fully franked Special Dividend are required to include the amount of the franking credit allocated to the dividend in assessable income under subsection 207-35(1) of the ITAA 1997, subject to the trustee or partnership being a qualified person.

## **Refundable tax offset**

45. The franking credit allocated to the Interim Dividend and the Special Dividend is subject to the refundable tax offset rules in Division 67 of the ITAA 1997, provided the CNA shareholder or entity entitled to the tax offset is not excluded by the operation of section 67-25 of the ITAA 1997.

## **Qualified persons**

### ***The Interim Dividend***

46. Having regard to the relevant circumstances of the Scheme, nothing indicates that a CNA shareholder has made, is under an obligation to make, or is likely to make a related payment in respect of the Interim Dividend.

47. Accordingly, provided no individual circumstances outside of the Scheme exist which would result in the related payment rule applying, each CNA shareholder must hold their CNA shares 'at risk' for a continuous period of at least 45 days in the primary qualification period in order to be a qualified person in relation to the Interim Dividend.

48. Each CNA shareholder will satisfy the holding period rule under former section 160APHO and be a qualified person in relation to the Interim Dividend if:

- (a) the CNA shareholder acquired the CNA share or interest in the share on or before 12 August 2011, and
- (b) during the period when the CNA share or interest in the share was held, the CNA shareholder did not have 'materially diminished risks of loss or opportunities for gain' (as defined under former section 160APHM) for a continuous period of at least 45 days (not counting the day on which the share, or interest in the share, was acquired or disposed).

***The Special Dividend***

49. CNA shareholders that did not participate in the Scheme are not considered to have made, be under an obligation to make, or be likely to make a related payment in respect of the Special Dividend and therefore must satisfy the primary qualification period for the purposes of former Division 1A.

50. Provided no individual circumstances outside of the Scheme exist which would result in the related payment rule applying, a CNA shareholder that did not participate in the Scheme and has not previously satisfied the holding period rule during a primary qualification period will satisfy the holding period rule under former section 160APHO and be a qualified person in relation to the Special Dividend if:

- (a) the CNA shareholder acquired the CNA share or interest in the share on or before 8 December 2011; and
- (b) during the period when the CNA share or interest in the share was held, the CNA shareholder did not have 'materially diminished risks of loss or opportunities for gain' (as defined under former section 160APHM) for a continuous period of at least 45 days (not counting the day on which the share, or interest in the share, was acquired or disposed).

51. CNA shareholders that participated in the Scheme are considered to have made, be under an obligation to make, or be likely to make a related payment in respect of the Special Dividend and therefore must satisfy the secondary qualification period for the purposes of former Division 1A.

52. Accordingly, a CNA shareholder that participated in the Scheme must hold their CNA 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 relation to the Special Dividend.

53. CNA shareholders who participated in the Scheme are not considered to have held their CNA shares 'at risk' for the purposes of Division 1A of former Part IIIA (former Division 1A) as from the Scheme Record Date of 12 December 2011.

54. Therefore, a CNA shareholder who participated in the Scheme is capable of being a qualified person in relation to the Special Dividend if during the period 25 October 2011 until 11 December 2011 (inclusive) the CNA shareholder held their CNA share and did not have 'materially diminished risks of loss or opportunities for gain' (as defined under former section 160APHM) in respect of the CNA share for a continuous period (not counting the day on which the share was acquired) of at least 45 days.

## **Capital gains tax**

### ***CGT event A1***

55. CGT event A1 happened when a CNA shareholder who participated in the Scheme disposed of their CNA shares pursuant to the Scheme (subsections 104-10(1) and (2) of the ITAA 1997).

56. The time of the CGT event was the Scheme Implementation Date of 15 December 2011 (subsection 104-10(3) of the ITAA 1997).

57. A CNA shareholder who participated in the Scheme will make a capital gain when CGT event A1 happened if the capital proceeds from the disposal of their CNA share exceed its cost base. A CNA shareholder who participated in the Scheme will make a capital loss if the capital proceeds are less than the reduced cost base of the CNA share (subsection 104-10(4) of the ITAA 1997).

### ***Capital proceeds***

58. The capital proceeds received by a CNA shareholder who participated in the Scheme was the money received or entitled to be received in respect of CGT event A1 happening (subsection 116-20(1) of the ITAA 1997).

59. The capital proceeds for a CNA shareholder who participated in the Scheme was the Scheme Consideration of \$125.00 cash per CNA share. This amount includes the Special Dividend of \$8.00 per share.

60. The Interim Dividend of \$1.20 per CNA share does not form part of capital proceeds for the disposal of the CNA share.

### ***Anti-overlap provisions***

61. A capital gain made by a CNA shareholder who participated in the Scheme when CGT event A1 happened can be reduced (but not below zero) by the amount of the Special Dividend that is included in the CNA shareholder's assessable income under subsection 44(1) (section 118-20 of the ITAA 1997). A capital loss made by a CNA shareholder who participated in the Scheme will not be adjusted (under sections 118-20 of the ITAA 1997) by the amount of the Special Dividend that is included in the CNA shareholder's assessable income.

### ***Discount capital gain***

62. A capital gain made by a CNA shareholder who participated in the Scheme when they disposed of a CNA share under the Scheme is a discount capital gain if they acquired the CNA share at least 12 months before the date of disposal (15 December 2011) and the other conditions in Subdivision 115-A of the ITAA 1997 are met.

***Foreign resident shareholders***

63. A foreign resident CNA shareholder who participated in the Scheme will disregard any capital gain or capital loss made when CGT event A1 happened if their CNA share was not 'taxable Australian property' (section 855-10 of the ITAA 1997).

***Anti-avoidance provisions***

64. The Commissioner will not make a determination under paragraph 204-30(3)(c) of the ITAA 1997 to deny the whole, or any part, of the imputation benefit received in respect of the Interim Dividend or the Special Dividend.

65. The Commissioner will not make a determination under paragraph 177EA(5)(b) to deny the whole, or any part, of the imputation benefit received in relation to the Interim Dividend or the Special Dividend.

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**Commissioner of Taxation**21 December 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 Interim Dividend and the Special Dividend**

66. The term 'dividend' is defined in subsection 6(1) to include any distribution made by a company to any of its shareholders, whether in money or other property.

67. The payment of the Interim Dividend and the Special Dividend were each a distribution of money by CNA to its shareholders.

68. The definition of 'dividend' in paragraph 6(1)(d) 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.

69. The Interim Dividend and the Special Dividend were debited against the retained earnings of CNA and not the share capital account. Therefore, the exclusion in paragraph (d) does not apply and the Interim Dividend and the Special Dividend are each a 'dividend' for the purposes of subsection 6(1).

### **Assessability of the Interim Dividend and the Special Dividend**

70. Subparagraph 44(1)(a)(i) 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.

71. As the Interim Dividend and the Special Dividend were paid to CNA shareholders out of profits derived by CNA, CNA shareholders who are residents of Australia as defined in subsection 6(1) are required to include the Interim Dividend and the Special Dividend in assessable income under subparagraph 44(1)(a)(i).

72. Subparagraph 44(1)(b)(i) includes in the assessable income of a non-resident shareholder in a company:

dividends (other than non-share dividends) paid to the shareholder by the company to the extent to which they are paid out of profits derived by it from sources in Australia.

73. However, subsection 44(1) does not apply to a dividend to the extent to which another provision of the ITAA 1936 that expressly deals with dividends excludes some or all of the dividend from assessable income.

74. Subsection 128B(1) imposes Australian withholding tax on income that:

- (a) is derived, on or after 1 January 1968, by a non-resident; and
- (b) consists of a dividend paid by a company that is a resident.

75. In addition section 128D states that:

Income other than income to which section 128B applies by virtue of subsection (2A), (2C) or 9(C) of that section upon which withholding tax is payable, or upon which withholding tax would, but for paragraph 128(3)(ga) or (jb), section 128F, section 128FA or section 128GB, be payable, is not assessable income and is not exempt income of a person.

76. However, subparagraph 128B(3)(ga)(i) excludes from subsection 128B(1) income derived by a non-resident that consists of the franked part of a dividend. As the Interim Dividend and the Special Dividend were fully franked, they will not be subject to Australian withholding tax when derived by non-resident CNA shareholders.

77. As the payment of the Interim Dividend and the Special Dividend are income that is subject to withholding tax but for paragraph 128B(3)(ga), they will not be assessable income, and will not be exempt income of non-resident CNA shareholders pursuant to section 128D.

78. Accordingly, CNA shareholders who received the fully franked Interim Dividend or the fully franked Special Dividend and are non-residents (other than those carrying on business in Australia at or through a permanent establishment in Australia) are not required to include the dividend in assessable income under subparagraph 44(1)(b)(i) (section 128D) and will not be liable for Australian withholding tax (paragraph 128B(3)(ga)).

79. Subsection 128B(1) is subject to subsection 128B(3E). Subsection 128B(3E) states that section 128B does not apply to dividend income that:

- (a) is paid to a person who is a non-resident carrying on business in Australia at or through a permanent establishment of the person in Australia; and
- (b) is attributable to the permanent establishment; and
- (c) is not paid to the person in the person's capacity as a trustee.

80. Accordingly, non-resident CNA shareholders carrying on business in Australia at or through a permanent establishment in Australia who received the fully franked Interim Dividend or the fully franked Special Dividend (where the dividend was attributable to the permanent establishment) are required to include the dividend in assessable income under subparagraphs 44(1)(b)(i) and 44(1)(c)(i), and will not be liable for Australian withholding tax in respect of the dividend. As a result, the dividend will not be non-assessable non-exempt income pursuant to section 128D.

## **Frankability of the Interim Dividend and the Special Dividend**

81. 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:

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

82. As a public company, CNA is a corporate tax entity as defined in section 960-115 of the ITAA 1997 and is a franking entity as defined in section 202-15 of the ITAA 1997. As an Australian resident, CNA will also satisfy the residency requirement in section 202-20 of the ITAA 1997.

83. 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.

84. 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.

85. None of the circumstances listed in section 202-45 of the ITAA 1997 apply to the Interim Dividend or the Special Dividend. Accordingly, the Interim Dividend and the Special Dividend were not unfrankable under section 202-45 of the ITAA 1997.

86. As the Interim Dividend and the Special Dividend were frankable distributions, they were franked in accordance with section 202-5 of the ITAA 1997 when CNA allocated a franking credit to them. CNA allocated the maximum franking credit to the Interim Dividend of \$1.20 and the Special Dividend of \$8.00. Therefore, the Interim Dividend and the Special Dividend were fully franked.

## **Gross up and tax offset**

87. Section 207-20 of the ITAA 1997 provides:

- (1) If an entity makes a \*franked distribution to another entity, the assessable income of the receiving entity, for the income year in which the distribution is made, includes the amount

of the \*franking credit on the distribution. This is in addition to any other amount included in the receiving entity's assessable income in relation to the distribution under any other provision of this Act.

- (2) The receiving entity is entitled to a \*tax offset for the income year in which the distribution is made. The tax offset is equal to the \*franking credit on the distribution.

88. Therefore, subject to satisfying the qualified person rule, where the fully franked Interim Dividend or the fully franked Special Dividend was received directly by a CNA shareholder and the CNA shareholder satisfies the residency requirement in section 207-75 of the ITAA 1997, the CNA shareholder will:

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

89. Where the fully franked Interim Dividend or the fully franked Special Dividend was received by a CNA 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) of the ITAA 1997 applies, subject to the trustee or partnership being a qualified person. Subsection 207-35(1) of the ITAA 1997 provides:

If:

- (a) a \*franked distribution is made in an income year to an entity that is a partnership or the trustee of a trust; and
- (b) the entity is not a \*corporate tax entity when the distribution is made; and
- (c) 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.

90. Therefore, subject to satisfying the qualified person rule, a CNA shareholder that is a trust or a partnership will be required to include the amount of the franking credit attached to the dividend in assessable income under subsection 207-35(1) of the ITAA 1997.

## **Refundable tax offset**

91. CNA shareholders who are entitled to a tax offset under subsection 207-20(2) of the ITAA 1997 in respect of the franking credit received (or entities entitled to a tax offset under section 207-45 of the ITAA 1997 equal to their share of the franking credit) will also be subject to the refundable tax offset rules in Division 67 of the ITAA 1997, unless specifically excluded under section 67-25 of the ITAA 1997.

92. Pursuant to section 67-25 of the ITAA 1997, there are taxpayers identified who are specifically excluded from the operation of the refundable tax offset rules. The identified entities include:

- (a) non-complying superannuation funds or non-complying approved deposit funds (subsection 67-25(1A) of the ITAA 1997);
- (b) 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);
- (c) 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) of the ITAA 1997); and
- (d) foreign resident entities carrying on business in Australia at or through a permanent establishment (subsection 67-25(1DA) of the ITAA 1997).

93. Accordingly, CNA shareholders (or entities entitled to a tax offset under section 207-45 of the ITAA 1997) will be subject to the refundable tax offset rules unless they are listed specifically as one of the excluded entities under section 67-25 of the ITAA 1997.

## **Qualified persons, related payment rule and holding period rule**

### ***Qualified persons***

94. Pursuant to paragraph 207-145(1)(a) of the ITAA 1997, an entity must be a 'qualified person' in relation to a dividend in order to be entitled to a tax offset for the franking credit allocated to the dividend.

95. Former Division 1A of former Part IIIA contains 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' in relation to a franked distribution they have received and be entitled to a tax offset for the franking credit allocated to the distribution.

96. The test of what constitutes a 'qualified person' is provided in former subsection 160APHO(1) 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 period in relation to the dividend.

97. Former subsection 160APHO(2) 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 rule 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***

98. In order to determine the relevant qualification period, it is necessary to determine whether, under the present arrangement, CNA shareholders are considered to have made, be under an obligation to make, or be likely to make a related payment in respect of the Interim Dividend or the Special Dividend.

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

The taxpayer or associate is taken, for the purposes of this Division, to have made, to be under an obligation to make, or 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.

100. Former subsection 160APHN(3) 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 persons:

- (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 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 the directions of, the other person or other persons; or
- (e) 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
- (f) 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 to the taxpayer or associate; or
- (g) agreeing to treat an amount or amounts owed to the other person or other persons by the taxpayer or associate as having been increased.

101. Former subsection 160APHN(4) 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 the dividend or distribution.

### ***Holding period rule***

102. The holding period rule requires a shareholder to have held their shares in respect of which a dividend has been paid 'at risk' for a continuous period of not less than 45 days during the relevant qualification period.

103. The primary qualification period as provided in former section 160APHD begins from the day after the date of acquisition of the share and ends on the 45<sup>th</sup> day after the day on which the share becomes ex-dividend.

104. The secondary qualification period is defined in former section 160APHD 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 45<sup>th</sup> day before, and ending on the 45<sup>th</sup> day after, the day on which the shares or interest became ex dividend...

105. The concept of 'ex-dividend' is defined by former subsection 160APHE(1) 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.

106. In determining whether a shareholder has satisfied the holding period rule, any days during which there is a materially diminished risk in relation to the share or interest are not counted.

107. For the purposes of satisfying the 'at risk' requirement, former subsection 160APHM(2) provides that a shareholder is taken to have materially diminished risks of loss and opportunities for gain with respect to shares or an interest in shares on a particular day if the 'net position' of the shareholder results in the shareholder having less than 30% of the risks and opportunities relating to the shares or the interest in shares on that day.

108. CNA shareholders who participated in the Scheme did not hold their CNA shares 'at risk' on and after the Record Date for the Scheme of 12 December 2011 because on and after this date these CNA shareholders were committed to disposing their CNA shares and receiving the Scheme Consideration. Therefore, these days cannot be counted for the purposes of satisfying the 'at risk' requirement. Further, pursuant to former subsection 160APHO(2), the date of acquisition and the date of disposal cannot be counted towards the relevant 45 day period.

### ***The Interim Dividend***

109. In the present case it is considered that the payment of the Interim Dividend was not an integral part of the Scheme because having regard to the relevant circumstances of the Scheme it cannot be said that a CNA shareholder, or an associate, did anything that had the effect of passing the benefit of the Interim Dividend to another person. The Interim Dividend was paid regardless of whether the Scheme became effective.

110. As CNA shareholders are not taken for the purposes of former Division 1A to have made a related payment in respect of the Interim Dividend as a result of the Scheme, and provided no individual circumstances exist which would result in the related payment rule applying, the relevant holding period for the Interim Dividend is the primary qualification period pursuant to former paragraph 160APHO(1)(a).

111. Eligibility for the Interim Dividend was determined on the Interim Dividend Record Date of 12 August 2011. This was the last day on which acquisition by a person entitled them to receive the Interim Dividend. The ex-dividend date for the purposes of subsection 160APHE(1) was 13 August 2011. For a share acquired on 12 August 2011, the relevant holding period began on 13 August 2011 and ran for 45 days, ending on 27 September 2011.

112. A CNA shareholder who acquired their CNA share on or before 12 August 2011 was capable of being a qualified person in relation to the Interim Dividend provided they held their CNA shares 'at risk' for at least 45 continuous days on or before 27 September 2011 (not counting the day on which the share was acquired or disposed).

### ***The Special Dividend***

113. An integral part of the Scheme was the payment of the Special Dividend to all CNA shareholders, as provided for in the SIA. The Special Dividend was conditional upon the Scheme becoming effective, linking the payment of the Special Dividend to the disposal of the CNA shares.

114. In these circumstances, a CNA shareholder who did not participate in the Scheme will not be taken for the purposes of former Division 1A to have made or be likely to make a related payment in respect of the Special Dividend. Therefore, the relevant holding period for a CNA shareholder who did not participate in the Scheme is the primary qualification period pursuant to former paragraph 160APHO(1)(a).

115. However, a CNA shareholder who participated in the Scheme will be taken to have made, be under an obligation to make, or be likely to make a related payment in respect of the Special Dividend. Therefore, the relevant holding period for a CNA shareholder who participated in the Scheme is the secondary qualification period pursuant to former paragraph 160APHO(1)(b).

116. CNA determined eligibility for the Special Dividend on the Special Dividend Record Date of 8 December 2011. Accordingly, the ex-dividend date for the purposes of former subsection 160APHE(1) was 9 December 2011.

117. The secondary qualification period ran from 45 days before the ex-dividend date of 9 December 2011 and ended 45 days after that day. This means that the secondary qualification period ran from 25 October 2011 to 23 January 2012. However, pursuant to former subsection 160APHO(3), any days on which a CNA shareholder who participated in the Scheme had materially diminished risks of loss or opportunities for gain in respect of their CNA shares are excluded from counting towards the 45 day holding requirement. CNA shares held by CNA shareholders who participated in the Scheme were not held 'at risk' on and after the Record Date for the Scheme of 12 December 2011.

118. Accordingly, for a CNA shareholder who participated in the Scheme the secondary qualification period ran from 25 October 2011 to 11 December 2011. A CNA shareholder who participated in the Scheme and received the Special Dividend must hold their shares 'at risk' for a continuous period (not counting the day on which the share was acquired) of not less than 45 days during this period in order to be a qualified person for the purposes of former Division 1A.

### **Capital gains tax**

#### **CGT event A1**

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

120. A takeover or merger effected by a court approved scheme of arrangement does not involve a disposal of shares under a contract (paragraph 9 of Taxation Determination TD 2002/4<sup>1</sup>).

121. CGT event A1 happened when a CNA shareholder who participated in the Scheme disposed of each of their CNA shares to Hunter Valley Resources pursuant to the Scheme. The disposal occurred on the Implementation Date of 15 December 2011 (subsections 104-10(1) and (2) of the ITAA 1997) when the shares were disposed of by the CNA shareholder.

122. A CNA shareholder who participated in the Scheme will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a CNA share exceed its cost base. A CNA shareholder who participated in the Scheme will make a capital loss if those capital proceeds are less than the reduced cost base of the CNA share (subsection 104-10(4) of the ITAA 1997).

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<sup>1</sup> *Taxation Determination 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?*

## ***Capital proceeds***

123. The capital proceeds from the Scheme was the money received or entitled to be received by a CNA shareholder who participated in the Scheme in respect of the event happening (paragraph 116-20(1)(a) of the ITAA 1997).

124. The term 'in respect of the event happening' requires that the relationship between the event and the receipt of the money, or entitlement to receive the money, must be more than mere coincidence (paragraph 57 of Taxation Ruling TR 2010/4<sup>2</sup>).

## ***The Interim Dividend***

125. The Interim Dividend of \$1.20 per CNA share was declared before and independently of the Scheme. The Interim Dividend was paid on 26 August 2011 and the payment of the Interim Dividend was consistent with the interim dividends paid in prior years. The Interim Dividend was expected in due course irrespective of the Scheme.

126. Further, the Interim Dividend was paid from CNA's existing cash reserves without any participation or funding from ACH, Mitsubishi Development or Hunter Valley Resources (or their respective Related Bodies Corporate). Accordingly, the Interim Dividend does not form part of the capital proceeds which a CNA shareholder who participated in the Scheme received in respect of CGT event A1 happening.

## ***The Special Dividend***

127. The Special Dividend of \$8.00 per CNA share was announced on 28 November 2011. The Scheme Consideration of \$125.00 per CNA share was reduced by the amount of the Special Dividend.

128. The Special Dividend of \$8.00 per CNA share was paid on 16 December 2011 to CNA shareholders who were registered on the Special Dividend Record Date of 8 December 2011. The Special Dividend was financed from loans from ACH, Mitsubishi Development and Hunter Valley Resources (or their respective Related Bodies Corporate).

129. A dividend declared by a company that is subject to a Scheme of Arrangement can form part of the vendor shareholders' capital proceeds from the disposal of the shares. Paragraph 9 of Taxation Ruling TR 2010/4 states 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 scheme of arrangement, in respect of the transfer of the shares, if the vendor

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<sup>2</sup> Taxation Ruling 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.

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 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.

130. In this case, the payment of the Special Dividend did not occur independently of the Scheme. Evidence of this includes:

- the Scheme Consideration of \$125.00 per CNA share was reduced by the Special Dividend;
- the Special Dividend would not have been paid if the Scheme did not become Effective; and
- the Special Dividend was financed from loans from ACH, Mitsubishi Development and Hunter Valley Resources (or their respective Related Bodies Corporate).

131. Accordingly, the Special Dividend formed part of the capital proceeds that a CNA shareholder who participated in the Scheme received or was entitled to receive in respect of CGT event A1 happening to their CNA shares. The capital proceeds were \$125.00 for each CNA share transferred to Hunter Valley Resources.

### ***Anti-overlap provisions***

132. A capital gain made from a CGT event is reduced if the capital gain includes an amount that is included in assessable income under another provision of the ITAA 1997 or the ITAA 1936 (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.

133. Where a dividend forms part of the capital proceeds from the disposal 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.

134. The Special Dividend will be included in the assessable income of CNA shareholders who participated in the Scheme 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 these CNA shareholders from CGT event A1 by the amount of the Special Dividend that is included in assessable income under subsection 44(1) of the ITAA 1936.

135. However, under paragraph 118-20(1B)(b) of the ITAA 1997, the capital gain will not be reduced by the amount of the franking credit that is included in a CNA shareholder's assessable income.

136. The amount of a capital loss made by a CNA shareholder who participated in the Scheme will not be adjusted under section 118-20 of the ITAA 1997 by the amount of the Special Dividend.

### ***Discount capital gains***

137. 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 Subdivision 115-A of the ITAA 1997 are satisfied.

138. 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).

139. This means that a capital gain made by a CNA shareholder who participated in the Scheme when they disposed of their CNA share is a discount capital gain if the shareholder acquired the CNA share at least 12 months before the date of disposal under the Scheme, being the Scheme Implementation Date of 15 December 2011, and the other requirements in Subdivision 115-A of the ITAA 1997 are met.

### ***Foreign resident shareholders***

140. Under subsection 855-10(1) of the ITAA 1997 an entity disregards a capital gain or capital loss made from a CGT event if they are a foreign resident or the trustee of a foreign trust for CGT purposes just before the CGT event happens and the CGT event happens in relation to a CGT asset that is not 'taxable Australian property'.

141. The term 'taxable Australian property' is defined in the table in section 855-15 of the ITAA 1997. The table sets out these five categories of CGT assets:

|        |                                                                                                                                                                       |
|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Item 1 | taxable Australian real property;                                                                                                                                     |
| Item 2 | an indirect Australian real property interest not covered by item 5;                                                                                                  |
| Item 3 | a CGT asset used at any time in carrying on a business through a permanent establishment in Australia and which is not covered by item 1, 2 or 5;                     |
| Item 4 | an option or right to acquire a CGT asset covered by item 1, 2 or 3; and                                                                                              |
| Item 5 | a CGT asset that is covered by subsection 104-165(3) of the ITAA 1997 (choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident). |

142. A foreign resident, or the trustee of a foreign trust for CGT purposes, just before CGT event A1 happened under the Scheme, cannot disregard under subsection 855-10(1) of the ITAA 1997 a capital gain or capital loss from CGT event A1 happening if:

- their CNA share is an indirect Australian real property interest (item 2 of the table in section 855-15 of the ITAA 1997); or
- their CNA share has been used at any time by the foreign resident, or the trustee of a foreign trust for CGT purposes, in carrying on a business through a permanent establishment in Australia (item 3 of the table in section 855-15 of the ITAA 1997); or
- their CNA share is covered by subsection 104-165(3) of the ITAA 1997 (item 5 of the table in section 855-15 of the ITAA 1997).

### **Anti-avoidance provisions**

#### **Section 204-30**

143. Section 204-30 of the ITAA 1997 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 section 204-30 of the ITAA 1997 would be, received by a member of the entity as a result of the distribution or distributions (paragraph 204-30(1)(a) of the ITAA 1997);
- (b) the member would derive a greater benefit from franking credits than another member of the entity (paragraph 204-30(1)(b) of the ITAA 1997); 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) of the ITAA 1997).

144. If section 204-30 of the ITAA 1997 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) of the ITAA 1997); and/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) of the ITAA 1997).

145. For section 204-30 of the ITAA 1997 to apply, members to whom distributions are streamed must derive a greater benefit from franking credits than other members. The words 'derives a greater benefit from franking credits' are defined in subsection 204-30(8) of the ITAA 1997 by reference to the ability of members to fully utilise franking credits.

146. Under the Scheme for the payment of the Interim Dividend and the Special Dividend, all CNA shareholders received an imputation benefit as a result of the dividends. Subject to being 'qualified persons', Australian resident CNA shareholders received an imputation benefit in the form of a tax offset (paragraph 204-30(6)(a) of the ITAA 1997). Non-resident CNA shareholders received an imputation benefit in the form of an exemption from dividend withholding tax (paragraph 204-30(6)(e) of the ITAA 1997). Resident CNA shareholders would derive a greater benefit from franking credits than non-resident CNA shareholders (subsection 204-30(8) of the ITAA 1997).

147. However, the Interim Dividend and the Special Dividend were paid equally to all CNA shareholders identified at the respective Record Dates and were fully franked. Accordingly, CNA did not direct the flow of distributions in such a way as to stream imputation benefits so that one class of members derived a greater benefit from the franking credit allocated to the dividends, while another class of members received lesser or no imputation benefits.

148. As the conditions in subsection 204-30(1) of the ITAA 1997 are not met in respect of the Interim Dividend and the Special Dividend, the Commissioner will not make a determination under paragraph 204-30(3)(c) of the ITAA 1997 to deny the whole, or any part, of the imputation benefit received in respect of either the Interim Dividend or the Special Dividend.

### **Section 177EA**

149. Section 177EA is a general anti-avoidance provision that applies to a wide range of schemes seeking to obtain a tax advantage in relation to imputation benefits. Subsection 177EA(3) 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 membership interests, as the case may be;

- (c) the distribution was, or is expected to be, a franked distribution or a distribution franked with an exempting credit;
- (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.

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

151. In the present case, CNA is a corporate tax entity. The disposal of the ordinary shares in CNA pursuant to the Scheme is a scheme for the disposition of membership interests. The Special Dividend is a frankable distribution that was paid to CNA shareholders as a part of the Scheme who could, therefore, reasonably be expected to receive imputation benefits.

152. The conditions of paragraphs 177EA(3)(a) to 177EA(3)(d) are satisfied. Accordingly, the issue is whether having regard to the relevant circumstances of the Scheme, it would be concluded that, on the part of CNA or its shareholders, there is a purpose, more than merely an incidental purpose, of conferring an imputation benefit under the Scheme.

153. 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). 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.

154. The relevant circumstances of the Scheme indicate that there is no requisite purpose of conferring an imputation benefit under the Scheme. The Special Dividend was fully franked, which is a continuation of CNA's dividend policy to pay fully franked dividends. CNA has only ordinary shares on issue and the Special Dividend was paid per share held to all CNA shareholders at the Special Dividend Record Date. The amount of the Special Dividend allows CNA shareholders to share in the accumulated profits of CNA.

155. In considering the manner, form and substance of the Scheme, it is considered that the Scheme was not entered into for the purpose of enabling members to obtain an imputation benefit. 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) to deny the whole, or any part, of the imputation benefit received in relation to the dividends.

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

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## References

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### *Previous draft:*

Not previously issued as a draft

### *Related Rulings/Determinations:*

TR 2006/10;

TR 2010/4;TD 2002/4

### *Subject references:*

- arrangement
- CGT asset
- CGT capital proceeds
- CGT cost base
- CGT event A1
- CGT events
- deemed dividends
- distributions
- dividend income
- dividend streaming arrangements
- foreign residents
- frankable dividends
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- holding period rule
- imputation system
- ordinary shares
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- related payment rule
- takeovers
- takeovers & mergers

### *Legislative references:*

- ITAA 1936
- ITAA 1936 6(1)
- ITAA 1936 6(1)(d)
- ITAA 1936 44(1)
- ITAA 1936 44(1)(a)(i)
- ITAA 1936 44(1)(b)(i)
- ITAA 1936 44(1)(c)(i)
- ITAA 1997 128B(1)
- ITAA 1936 128B(3)(ga)
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- ITAA 1936 160APHE(1)
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- ITAA 1936 177EA

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  - ITAA 1936 177EA(3)
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  - ITAA 1936 177EA(3)(c)
  - ITAA 1936 177EA(3)(d)
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  - ITAA 1997 202-15
  - ITAA 1997 202-20
  - ITAA 1997 202-40(1)
  - ITAA 1997 202-45
  - ITAA 1997 204-30
  - ITAA 1997 204-30(1)
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ATOlaw topic: *Income Tax ~ Assessable income ~ dividend, interest and royalty income*  
*Income Tax ~ Capital Gains Tax ~ capital proceeds*  
*Income Tax ~ Capital Gains Tax ~ CGT event A1 - disposal of a CGT asset*  
*Income Tax ~ Capital Gains Tax ~ discount capital gains*  
*Income Tax ~ Capital Gains Tax ~ exemptions other than main residence*  
*Income Tax ~ Entity specific matters ~ franking of dividends - company matters*  
*Income Tax ~ Tax integrity measures ~ dividend streaming and demerger benefits*  
*Income Tax ~ Tax integrity measures ~ qualified persons - franking credits*  
*Income Tax ~ Tax offsets, credits and benefits ~ franking tax offset*  
*Income Tax ~ Withholding Tax ~ dividends, interest and royalties*