



Class Ruling

QMS Media Limited – scheme of arrangement and payment of final dividend

1 Relying on this Ruling

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

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

Table of Contents	Paragraph
What this Ruling is about	1
Who this Ruling applies to	4
When this Ruling applies	6
Ruling	7
Scheme	31
Appendix 1 – Explanation	58
Appendix 2 – Legislative provisions	121

What this Ruling is about

1. This Ruling sets out the tax consequences for shareholders of QMS Media Limited (QMS) who sold their QMS shares pursuant to the scheme of arrangement which was announced on 29 October 2019 (Scheme of Arrangement).
2. Full details of this Scheme of Arrangement and the final dividend of 1.3c per QMS share paid on 20 February 2020 (Final Dividend) are set out in paragraphs 31 to 57 of this Ruling.
3. All legislative references are to provisions of the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* (as detailed in the table in Appendix 2 of this Ruling), unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - were a QMS shareholder at 5.00pm AEDT on 14 February 2020 (Scheme Record Date) and participated in the Scheme of Arrangement under which Shelley BidCo Pty Ltd (BidCo) acquired 100% of the shares in QMS

- received \$1.22 consideration for each and every QMS share you held on the Scheme Record Date
 - are not exempt from Australian income tax
 - are a resident of Australia as defined in subsection 6(1) or a non-resident (other than a non-resident who carried on a business at or through a permanent establishment in Australia)
 - held your QMS shares on capital account, that is, your QMS shares were neither held as revenue assets (as defined in section 977-50 nor as trading stock (as defined in subsection 995-1(1)), and
 - received the Final Dividend.
5. This Ruling does not apply to you if you:
- received consideration of shares in Shelley Topco Pty Ltd (HoldCo) for any of your QMS shares held on the Scheme Record Date, or
 - acquired your QMS shares under a QMS employee share plan on or after 29 October 2019 (including any shares issued under the vesting of the QMS long-term incentive plan), or
 - are subject to the taxation of financial arrangement rules in Division 230 in relation to your QMS shares.

Note: Division 230 will not apply to you unless you have made an election for the Division to apply to you.

When this Ruling applies

6. This Ruling applies from 1 July 2019 to 30 June 2020.

Ruling

Final Dividend

7. The Final Dividend of 1.3c per QMS share is a 'dividend' as defined in subsection 6(1).
8. The Final Dividend is a frankable distribution pursuant to section 202-40.

Assessability of the Final Dividend, franking credits and tax offsets

Residents

9. If you are a resident of Australia as defined in subsection 6(1), you are required to include the Final Dividend in your assessable income (subparagraph 44(1)(a)(i)).
10. If you satisfy the residency requirements in section 207-75, you include the franking credits attached to the Final Dividend in your assessable income and you are entitled to a tax offset equal to the amount of those credits (section 207-20), provided you are a 'qualified person' (as defined in Division 1A of former Part IIIAA).
11. If you received the Final Dividend as a trustee of a trust (not being a complying superannuation entity) or as a partnership and you are not a corporate tax entity, the franking credits attached to the Final Dividend are included in your assessable income, provided you are a qualified person (subsection 207-35(1)).

12. If you are a partner in a partnership or a beneficiary of a trust and the Final Dividend flows indirectly through the partnership or trust to you, you include your share of the Final Dividend in your assessable income and you are entitled to a tax offset equal to your share of the franking credit attached to the Final Dividend, provided both you and the partnership or trust as is relevant are each a qualified person (section 207-45 and former subsection 160APHU(1)).

13. The tax offset is refundable, subject to the refundable tax offset rules in Division 67.

Non-resident shareholders

Final Dividend not attributable to a permanent establishment in Australia

14. If you are a non-resident and the Final Dividend is not attributable to a permanent establishment in Australia, the Final Dividend is not included in your assessable income (section 128D) and you are not liable to withholding tax in respect of the dividend (paragraph 128B(3)(ga)).

15. You do not include the amount of the franking credits attached to the Final Dividend in your assessable income and you are not entitled to a tax offset for those franking credits (sections 207-20 and 207-70).

Qualified persons

16. The Final Dividend you received does not constitute a 'related payment' for the purposes of former section 160APHN.

17. You are a qualified person in relation to the Final Dividend if, during the period from when you acquired your QMS shares to 14 February 2020, you held your QMS shares for a continuous period of at least 45 days during which you did not have 'materially diminished risks of loss or opportunities for gain' (as defined in former section 160APHM) in respect of the shares. The period of 45 days does not include the day on which your QMS share was acquired or the day of the disposal of your QMS share.

Exempting entity

18. QMS was not an 'exempting entity' when the Final Dividend was paid to you, nor was it a 'former exempting entity' at that time (Division 208).

19. Therefore, section 208-195 will not apply to deny the gross up of your assessable income by the amount of the franking credit attached to the Final Dividend you received, or to deny the tax offset to which you are otherwise entitled to under Division 207 at the time when the Final Dividend was paid.

Anti-avoidance provisions

Section 177E

20. The Scheme of Arrangement is not a scheme in the nature of, or a scheme substantially having the effect of, dividend stripping within the meaning of section 177E.

Section 177EA

21. 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 Final Dividend.

Section 204-30

22. 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 Final Dividend.

Paragraph 207-145(1)(d)

23. The Final Dividend was not made as part of a dividend stripping operation as defined in section 207-155. Therefore, paragraph 207-145(1)(d) will not apply to the Final Dividend.

CGT consequences

CGT event A1

24. CGT event A1 happened on 21 February 2020 (Scheme Implementation Date) when you disposed of each of your QMS shares to BidCo in accordance with the Scheme of Arrangement (section 104-10).

Capital proceeds

25. The consideration of \$1.22 per QMS share you received for each QMS share is your capital proceeds from CGT event A1 happening (subsection 116-20(1)).

26. The capital proceeds do not include the Final Dividend of 1.3c per QMS share.

Capital gain or capital loss

27. You made a capital gain if the capital proceeds from the disposal of your QMS share exceeded its cost base (subsection 104-10(4)). The capital gain is the difference.

28. You made a capital loss if the capital proceeds from the disposal of your QMS share were less than its reduced cost base (subsection 104-10(4)). The capital loss is the difference.

Discount capital gain

29. If you made a capital gain from the disposal of a QMS share, you are eligible to treat the capital gain as a 'discount capital gain' provided you acquired, or are taken to have acquired, your QMS share on or before 21 February 2019 and you satisfy the other requirements of Division 115.

Non-resident shareholders

30. If you were a non-resident shareholder just before CGT event A1 happened to your QMS shares on 21 February 2020, you disregard any capital gain or capital loss made as a result of CGT event A1 happening if your shares were not taxable Australian property for the purposes of section 855-10.

Scheme

31. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

Relevant entities**QMS**

32. QMS is an Australian resident public company and was listed on the Australian Securities Exchange (ASX) on 29 June 2015.

33. QMS is a digital media company providing advertising solutions to clients.

34. As at 31 December 2019, QMS had 344,737,836 ordinary shares on issue. QMS had no other classes of shares on issue.

35. QMS had regularly paid fully franked dividends out of net profit to its shareholders.

BidCo

36. BidCo is an unlisted Australian proprietary company incorporated on 21 June 2019 as a special-purpose company controlled by Quadrant Private Equity (Quadrant) to acquire QMS.

HoldCo

37. HoldCo is an unlisted Australian proprietary company incorporated on 21 June 2019 as a special-purpose company controlled by Quadrant.

38. HoldCo indirectly holds all the shares in BidCo and, following the implementation of the Scheme of Arrangement, issued securities in HoldCo to Quadrant.

39. HoldCo was not a 'prescribed person' for the purposes of section 208-40 on 20 February 2020 when the Final Dividend was paid.

Quadrant

40. Quadrant is an Australian-based mid-market private equity firm that invests in management buyouts, management buy-ins and growth capital opportunities in Australia and New Zealand.

41. The acquisition of QMS was undertaken through a number of Quadrant Private Equity Funds (Quadrant Funds).

42. The limited partners in the Quadrant Funds are passive investors and the Quadrant Funds are managed by Quadrant.

Scheme of Arrangement

43. On 29 October 2019, QMS announced that it had entered into a Scheme Implementation Deed with Quadrant under which BidCo would acquire all of the issued shares in QMS.
44. To give effect to the Scheme Implementation Deed, a Scheme of Arrangement was proposed to the QMS shareholders pursuant to Part 5.1 of the *Corporations Act 2001*.
45. Under the terms of the Scheme Implementation Deed, each share in QMS held by a QMS shareholder would be transferred to BidCo resulting in QMS becoming a wholly-owned subsidiary of BidCo.
46. In consideration for each share, BidCo would pay QMS shareholders \$1.22 per share (Scheme Consideration).
47. At a shareholder meeting held on 6 February 2020, QMS shareholders approved the Scheme of Arrangement.
48. The Scheme became effective on 11 February 2020 (Effective Date) after the second hearing by the Federal Court of Australia to approve the Scheme of Arrangement and provide orders pursuant to Part 5.1 of the *Corporations Act 2001*.
49. Entitlements to the Scheme Consideration were determined at 5.00pm AEDT on 14 February 2020, being the Scheme Record Date.
50. Payment of Scheme Consideration to QMS shareholders and the transfer of QMS shares to BidCo occurred on 21 February 2020, being the Scheme Implementation Date.

Final Dividend

51. On 6 February 2020, QMS declared to pay the Final Dividend of 1.3c per QMS share out of retained earnings prior to the Scheme Implementation Date.
52. Entitlements to the Final Dividend were determined on 14 February 2020 (Final Dividend Record Date) meaning the ex dividend date for the Final Dividend was 15 February 2020.
53. Payment of the Final Dividend occurred on 20 February 2020.
54. The Final Dividend was not debited against QMS's share capital account.
55. The Final Dividend was:
- funded out of existing cash reserves of QMS
 - not conditional upon the Scheme of Arrangement becoming effective, and
 - wholly at the discretion of QMS.
56. Neither BidCo nor any of its associates had any influence or control over the declaration and payment of the Final Dividend.

Key dates

57. A summary of the key dates for the Scheme of Arrangement and Final Dividend is provided below:

Activity	Date
Scheme Implementation Deed executed	29 August 2019
Announcement date	29 October 2019
First court hearing (lodged Scheme Booklet with court)	12 December 2019
Despatch of Scheme Booklet to QMS shareholders	19 December 2019
Scheme meeting	10:00am AEDT 6 February 2020
Second court hearing	10 February 2020
Effective Date	11 February 2020
Scheme Record Date	5:00pm AEDT 14 February 2020
Record Date for Final Dividend	7:00pm AEDT 14 February 2020
Payment Date for Final Dividend	20 February 2020
Implementation Date	21 February 2020
QMS delisted from ASX	24 February 2020

Commissioner of Taxation

8 July 2020

Appendix 1 – Explanation

❶ *This Explanation 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.*

Table of Contents	Paragraph
Final Dividend	58
Assessability of Final Dividend	63
<i>Residents</i>	63
<i>Non-residents not carrying on a business at or through a permanent establishment</i>	65
Gross up and tax offset	71
Qualified person, related payment rule and holding period rule	74
<i>Qualified person</i>	74
<i>Related payment rule</i>	78
<i>Holding period rule</i>	82
Refundable tax offset	88
Anti-avoidance provisions	91
<i>Section 177E</i>	91
<i>Section 177EA</i>	94
<i>Section 204-30</i>	98
<i>Paragraph 207-145(1)(d)</i>	102
CGT consequences	105
<i>CGT event A1</i>	105
<i>Capital proceeds</i>	110
<i>Capital gain or capital loss</i>	115
<i>Discount capital gain</i>	118
<i>Non-resident shareholders</i>	119

Final Dividend

58. 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...'. However, paragraph (d) of the definition of dividend excludes a distribution '...debited against an amount standing to the credit of the share capital account of the company...'.

59. The payment of the Final Dividend is a distribution of money which QMS made to its shareholders. QMS did not debit the Final Dividend against its share capital account.

60. Therefore, the exclusion in paragraph (d) does not apply and the Final Dividend constitutes a dividend for the purposes of subsection 6(1).

61. A distribution is a frankable distribution to the extent it is not unfrankable (section 202-40). Section 202-45 sets out the circumstances under which an amount or distribution is taken to be unfrankable.

62. None of the circumstances in section 202-45 apply to the Final Dividend. Therefore, the Final Dividend is a frankable distribution under section 202-40 and in turn is capable of being franked in accordance with section 202-5.

Assessability of the Final Dividend

Residents

63. The assessable income of a resident shareholder includes dividends paid by the company out of profits derived by it from any source (subparagraph 44(1)(a)(i)).

64. As the Final Dividend was paid to shareholders out of profits derived by QMS, shareholders who are residents of Australia, as defined in subsection 6(1), are required to include the Final Dividend in their assessable income under subparagraph 44(1)(a)(i).

Non-residents not carrying on a business at or through a permanent establishment

65. The assessable income of a non-resident shareholder includes dividends paid by the company out of profits derived by it from sources in Australia (subparagraph 44(1)(b)(i)).

66. However, subsection 44(1) does not apply to a dividend to the extent to which it is included in, or excluded from, assessable income by another provision that expressly deals with dividends in the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*.

67. Subsection 128B(1) imposes Australian withholding tax on income which consists of a dividend paid by a resident company to a non-resident on or after 1 January 1968.

68. 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 Final Dividend was fully-franked, it will not be subject to Australian withholding tax when derived by a non-resident shareholder.

69. Section 128D operates to treat the Final Dividend as non-assessable non-exempt income.

70. Accordingly, a non-resident who received the fully-franked Final Dividend (other than those shareholders who received the Final Dividend in carrying on business in Australia at or through a permanent establishment in Australia) is not required to include the Final Dividend as assessable income pursuant to subparagraph 44(1)(b)(i) (section 128D) and is not liable to Australian withholding tax in relation to the Final Dividend (subparagraph 128B(3)(ga)(i)).

Gross up and tax offset

71. Where a shareholder receives a franked distribution directly, satisfies the residency requirement in section 207-75 and is a qualified person in relation to the franked distribution, the assessable income of the shareholder includes the amount of the franking credit (subsection 207-20(1)). The shareholder will also be entitled to a tax offset equal to the franking credit on the distribution (subsection 207-20(2)).

72. A shareholder that is not a qualified person in relation to the Final Dividend:

- does not include the franking credit attached to the dividend in their assessable income (paragraph 207-145(1)(e)), and
- is not entitled to a tax offset equal to the amount of the franking credit attached to the dividend (paragraph 207-145(1)(f)).

73. Subject to satisfying the qualified person statutory tests, the assessable income of a shareholder (not being an entity taxed as a corporate tax entity) that is a partnership or a trustee of a trust (not being a complying superannuation fund), includes the amount of the franking credit attached to the Final Dividend (subsection 207-35(1)).

Qualified person, related payment rule and holding period rule

Qualified person

74. An entity must be a qualified person in relation to a dividend in order to be entitled to a tax offset in respect of the franking credit on a dividend (subsection 207-145(1)).

75. Paragraph 207-145(1)(a), which refers to former Division 1A of Part IIIAA, provides the statutory tests you must satisfy to be a qualified person in relation to a franked distribution you have received.

76. Former section 160APHU provides that a partner in a partnership or the beneficiary of a trust cannot be a qualified person in relation to a dividend unless the partnership or the trustee of the trust is also a qualified person in relation to the dividend.

77. The test of what constitutes a qualified person is set out in former subsection 160APHO(1). Broadly, if you were not under an obligation to make a related payment in relation to the dividend, you will have to satisfy the holding period rule in relation to the primary qualification period. If you were under an obligation to make a related payment in relation to the dividend, you will have to satisfy the holding period requirement within the secondary qualification period.

Related payment rule

78. In order to determine the relevant qualification period, it is necessary to determine whether, under the Scheme of Arrangement, you or an associate have made, were under an obligation to make, or are likely to make, a related payment in respect of the dividend you have received (former subsection 160APHN(2)).

79. Examples of what constitutes the making of a related payment for the purposes of Division 1A of former Part IIIAA are set out in former section 160APHN. Broadly, a related payment is where a scheme shareholder has done, or is obliged to do, anything having the effect of passing the benefit of the dividend to one or more other persons.

80. Under the terms of the Scheme Implementation Deed, the Scheme Consideration was not reduced by the amount of the Final Dividend, and the Final Dividend was not contingent upon the Scheme of Arrangement being implemented.

81. Therefore, it is considered that the payment of the Final Dividend is not an integral part of the Scheme of Arrangement and you (or a partner in a partnership or a beneficiary of a trust that has an interest in QMS shares) are not taken to have made a related payment in respect of the Final Dividend.

Holding period rule

82. If you are an individual who has tax offsets not exceeding \$5,000 in relation to all dividends received for the income year ending 30 June 2020, you do not need to satisfy the holding period rule in relation to the Final Dividend (former subsection 160APHT(1)).

83. For all other shareholders, the holding period rule requires you to hold your ordinary shares at risk for a continuous period of not less than 45 days (not including the day on which the share was acquired, or the day on which the share was disposed of) during the relevant qualification period (former paragraph 160APHO(2)(a)).

84. Any days you had materially-diminished risks of loss or opportunities for gain in respect of the shares are excluded, but the exclusion is not taken to break the continuity of the period for which the taxpayer held the shares (former subsection 160APHO(3)).

85. Under former subsection 160APHM(2), you are taken to have materially-diminished risks of loss and opportunities for gain on a particular day with respect to your QMS shares if your net position on that day in relation to the shares has less than 30% of those risks and opportunities.

86. Under the Scheme of Arrangement, you no longer held your QMS shares at risk on the Scheme Record Date of 14 February 2020 (when you became committed to dispose of your QMS shares to BidCo under the Scheme of Arrangement).

87. Accordingly, if you acquired your QMS shares on or before 30 December 2019 and disposed of them to BidCo under the Scheme of Arrangement, you satisfied the holding period rule if you held those shares at risk for at least 45 continuous days during the period from when you acquired your QMS shares to 14 February 2020.

Refundable tax offset

88. Your entitlement to the tax offsets under Division 207 in relation to the Final Dividend is subject to the refundable tax offset rules in Division 67, provided you are not excluded by the operation of section 67-25.

89. Certain taxpayers are specifically excluded from the operation of the refundable tax offset rules under section 67-25. These excluded entities include:

- 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 (subsection 67-25(1B))
- 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
- non-resident entities carrying on business in Australia at or through a permanent establishment in Australia (subsection 67-25(1DA)).

90. Division 63 sets out the rules on how, and in what order, tax offsets are applied against income tax liability. Where a tax offset that is subject to the refundable tax offset rules in Division 67 exceeds the income tax liability, you are entitled to a refund of the difference (table item 40 of section 63-10).

Anti-avoidance provisions**Section 177E**

91. Section 177E is an anti-avoidance provision which applies to schemes which are or substantially have the effect of dividend stripping.

92. While a dividend is being paid as a part of the Scheme of Arrangement, there is no evidence to support the Scheme of Arrangement being planned in such a manner whereby the predominant purpose can be said to be one of avoiding tax on a distribution.

93. The Scheme of Arrangement is not a scheme in the nature of, or a scheme substantially having the effect of, dividend stripping within the meaning of section 177E.

Section 177EA

94. Section 177EA is a general anti-avoidance provision that operates to prevent franking credit trading. For section 177EA to apply, the conditions of paragraphs 177EA(3)(a) to (e) must be satisfied.

95. QMS is a corporate tax entity. The transfer of the QMS shares under the Scheme of Arrangement is a scheme for the disposition of membership interests. The Final Dividend is a frankable distribution paid to the shareholders of QMS as part of this scheme who could reasonably be expected to receive imputation benefits. Therefore, the conditions of paragraphs 177EA(3)(a) to (d) are satisfied.

96. Accordingly, the issue is whether, having regard to the relevant circumstances of the scheme (as provided by subsection 177EA(17)), it would be concluded that on the part of QMS, QMS shareholders or any other relevant party, there is a more than merely incidental purpose of conferring an imputation benefit under the scheme (paragraph 177EA(3)(e)).

97. Considering the circumstances of the Scheme of Arrangement, it cannot be concluded that QMS or QMS shareholders entered into or carried out the scheme for the purpose of enabling the QMS shareholders to obtain an imputation benefit. Therefore, the Commissioner considers 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 to be received in relation to the Final Dividend.

Section 204-30

98. Section 204-30 applies where a corporate tax entity streams the payment of dividends to its members in such a way that certain shareholders, referred to as favoured members, obtain imputation benefits, and other shareholders, referred to as disadvantaged members, obtain lesser or no imputation benefits, whether or not they receive other benefits. The favoured members are those that derive a greater benefit from imputation benefits than disadvantaged members.

99. For section 204-30 to apply, members to whom distributions are streamed must derive a greater benefit from franking credits than another member entity. The term 'derive a greater benefit from franking credits' is defined in subsection 204-30(8) by reference to the ability of the members to fully use imputation benefits.

100. Under the scheme, you received imputation benefits when the Final Dividend was paid. The Final Dividend was paid equally to all QMS shareholders and was fully franked regardless of the tax profiles of QMS shareholders. Accordingly, it cannot be said that

QMS selectively directed the flow of franked dividends to those members who obtained the most benefit from the franking credits.

101. As the conditions in subsection 204-30(1) were not met, the Commissioner will not make a determination under paragraph 204-30(3)(c) to deny the whole, or any part, of the imputation benefits received by a QMS shareholder in relation to the Final Dividend.

Paragraph 207-145(1)(d)

102. Paragraph 207-145(1)(d) applies if a franked distribution is made as part of a dividend stripping operation. A distribution will be taken to be made as part of a dividend stripping operation if the making of the distribution arose out of, or was made in the course of, a scheme that was by way of, or in the nature of, dividend stripping; or had substantially the effect of a scheme by way of, or in the nature of, dividend stripping (section 207-155).

103. Having regard to the circumstances of the Scheme under which scheme shareholders disposed of their QMS Shares to BidCo, the Commissioner considers that the payment of the Final Dividend to scheme shareholders was not made as part of a dividend stripping operation.

104. Therefore, paragraph 207-145(1)(d) will not apply to the Final Dividend.

CGT consequences

CGT event A1

105. CGT event A1 happens if there is a change in the ownership of a CGT asset (section 104-10). The event 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)).

106. The acquisition of shares in QMS under a court approved scheme of arrangement does not involve a disposal of shares under a contract.¹

107. Therefore, CGT event A1 happened when there was a change of ownership in a QMS share from a shareholder to BidCo under the Scheme Implementation Deed (subsections 104-10(1) and (2)). The change of ownership occurred on the Scheme Implementation Date of 21 February 2020 (paragraph 104-10(3)(b)).

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

109. A shareholder makes a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a QMS share are more than the cost base of the share. A shareholder makes a capital loss if the capital proceeds are less than the reduced cost base of the QMS share (subsection 104-10(4)).

¹ See paragraph 9 of 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

110. The capital proceeds received by you from a CGT event is the money and the market value of any property received or entitled to be received (worked out at the time of the event happening) in respect of the event happening (subsection 116-20(1)).

111. The term 'in respect of the event happening' in subsection 116-20(1) requires the relationship between the event and the receipt of the money, or the entitlement to receive the money, to be more than coincidental. An amount is not capital proceeds received or entitled to be received in respect of a CGT event merely because it is received in association with the CGT event.²

112. In this case, the Final Dividend was not paid in respect of the disposal of QMS shares under the scheme. The Scheme of Arrangement was not conditional on the declaration of the Final Dividend. The Final Dividend was not dependent on BidCo or a third party financing or facilitating payment of the Final Dividend, or BidCo or a third party being obliged to bring about the result that the Final Dividend would be paid to existing shareholders.

113. The Commissioner considers that the Final Dividend was not received in respect of the disposal of QMS shares under the Scheme of Arrangement. Accordingly, the Final Dividend does not form part of the capital proceeds in respect of CGT event A1 happening.

114. Therefore, the capital proceeds that you received from CGT event A1 happening for the disposal of each of your QMS shares is the Scheme Consideration of \$1.22 per share.

Capital gain or capital loss

115. You made a capital gain if the capital proceeds from the disposal of your QMS share exceeded its cost base (subsection 104-10(4)). The capital gain is the difference.

116. You made a capital loss if the capital proceeds from the disposal of your QMS share were less than its reduced cost base (subsection 104-10(4)). The capital loss is the difference.

117. The cost base and reduced cost base of the QMS share depends on your individual circumstances.

Discount capital gain

118. If you make a capital gain from the disposal of your QMS share, you are eligible to treat the capital gain as a 'discount capital gain' provided that:

- you are an individual, complying superannuation entity, or, subject to the rules in Subdivision 115-C, a trust (section 115-10)
- the capital gain was worked out using a cost base that was calculated without reference to indexation (subsection 115-20(1)), and
- you acquired, or were taken to have acquired, your QMS share on or before 21 February 2019 which was at least 12 months prior to CGT event A1 happening (subsection 115-25(1)).

² 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.*

Non-resident shareholders

119. You disregard a capital gain or capital loss you make from a CGT event if you are a non-resident, or the trustee of a non-resident 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' (subsection 855-10(1)).

120. The term taxable Australian property is defined in the table in section 855-15. Where you are a non-resident or a trustee of a non-resident trust for CGT purposes just before CGT event A1 happened to your QMS shares under the Scheme of Arrangement, you cannot disregard a capital gain or capital loss you made from CGT event A1 happening (under subsection 855-10(1)), if, relevantly, your QMS shares were:

- an 'indirect Australian real property interest' which is not covered by table item 5 of section 855-15 (table item 2 of section 855-15)
- used at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- covered by subsection 104-165(3) (table item 5 of section 855-15).

Appendix 2 – Legislative provisions

121. This paragraph sets out the details of the provisions ruled upon or referenced in this Ruling.

<i>Income Tax Assessment Act 1936</i>	subsection 6(1)
<i>Income Tax Assessment Act 1936</i>	subsection 44(1)
<i>Income Tax Assessment Act 1936</i>	subparagraph 44(1)(a)(i)
<i>Income Tax Assessment Act 1936</i>	subparagraph 44(1)(b)(i)
<i>Income Tax Assessment Act 1936</i>	section 98
<i>Income Tax Assessment Act 1936</i>	section 99A
<i>Income Tax Assessment Act 1936</i>	subsection 128B(1)
<i>Income Tax Assessment Act 1936</i>	paragraph 128B(3)(ga)
<i>Income Tax Assessment Act 1936</i>	subparagraph 128B(3)(ga)(i)
<i>Income Tax Assessment Act 1936</i>	section 128D
<i>Income Tax Assessment Act 1936</i>	former Part IIIAA Division 1A
<i>Income Tax Assessment Act 1936</i>	former section 160APHM
<i>Income Tax Assessment Act 1936</i>	former subsection 160APHM(2)
<i>Income Tax Assessment Act 1936</i>	former section 160APHN
<i>Income Tax Assessment Act 1936</i>	former subsection 160APHN(2)
<i>Income Tax Assessment Act 1936</i>	former subsection 160APHO(1)
<i>Income Tax Assessment Act 1936</i>	former paragraph 160APHO(2)(a)
<i>Income Tax Assessment Act 1936</i>	former subsection 160APHO(3)
<i>Income Tax Assessment Act 1936</i>	former subsection 160APHT(1)
<i>Income Tax Assessment Act 1936</i>	former section 160APHU
<i>Income Tax Assessment Act 1936</i>	former subsection 160APHU(1)
<i>Income Tax Assessment Act 1936</i>	section 177E
<i>Income Tax Assessment Act 1936</i>	section 177EA
<i>Income Tax Assessment Act 1936</i>	paragraph 177EA(3)(a)
<i>Income Tax Assessment Act 1936</i>	paragraph 177EA(3)(b)
<i>Income Tax Assessment Act 1936</i>	paragraph 177EA(3)(c)
<i>Income Tax Assessment Act 1936</i>	paragraph 177EA(3)(d)
<i>Income Tax Assessment Act 1936</i>	paragraph 177EA(3)(e)
<i>Income Tax Assessment Act 1936</i>	paragraph 177EA(5)(b)
<i>Income Tax Assessment Act 1936</i>	subsection 177EA(17)
<i>Income Tax Assessment Act 1997</i>	Division 63
<i>Income Tax Assessment Act 1997</i>	section 63-10
<i>Income Tax Assessment Act 1997</i>	Division 67
<i>Income Tax Assessment Act 1997</i>	section 67-25
<i>Income Tax Assessment Act 1997</i>	subsection 67-25(1A)
<i>Income Tax Assessment Act 1997</i>	subsection 67-25(1B)
<i>Income Tax Assessment Act 1997</i>	subsection 67-25(1C)
<i>Income Tax Assessment Act 1997</i>	subsection 67-25(1D)
<i>Income Tax Assessment Act 1997</i>	subsection 67-25(1DA)
<i>Income Tax Assessment Act 1997</i>	section 104-10
<i>Income Tax Assessment Act 1997</i>	subsection 104-10(1)
<i>Income Tax Assessment Act 1997</i>	subsection 104-10(2)
<i>Income Tax Assessment Act 1997</i>	subsection 104-10(3)
<i>Income Tax Assessment Act 1997</i>	paragraph 104-10(3)(b)

<i>Income Tax Assessment Act 1997</i>	subsection 104-10(4)
<i>Income Tax Assessment Act 1997</i>	subsection 104-165(3)
<i>Income Tax Assessment Act 1997</i>	Division 115
<i>Income Tax Assessment Act 1997</i>	section 115-10
<i>Income Tax Assessment Act 1997</i>	subsection 115-20(1)
<i>Income Tax Assessment Act 1997</i>	subsection 115-25(1)
<i>Income Tax Assessment Act 1997</i>	Subdivision 115-C
<i>Income Tax Assessment Act 1997</i>	subsection 116-20(1)
<i>Income Tax Assessment Act 1997</i>	section 202-5
<i>Income Tax Assessment Act 1997</i>	section 202-40
<i>Income Tax Assessment Act 1997</i>	section 202-45
<i>Income Tax Assessment Act 1997</i>	section 204-30
<i>Income Tax Assessment Act 1997</i>	subsection 204-30(1)
<i>Income Tax Assessment Act 1997</i>	paragraph 204-30(3)(c)
<i>Income Tax Assessment Act 1997</i>	subsection 204-30(8)
<i>Income Tax Assessment Act 1997</i>	Division 207
<i>Income Tax Assessment Act 1997</i>	section 207-20
<i>Income Tax Assessment Act 1997</i>	subsection 207-20(1)
<i>Income Tax Assessment Act 1997</i>	subsection 207-20(2)
<i>Income Tax Assessment Act 1997</i>	subsection 207-35(1)
<i>Income Tax Assessment Act 1997</i>	section 207-45
<i>Income Tax Assessment Act 1997</i>	section 207-70
<i>Income Tax Assessment Act 1997</i>	section 207-75
<i>Income Tax Assessment Act 1997</i>	subsection 207-145(1)
<i>Income Tax Assessment Act 1997</i>	paragraph 207-145(1)(a)
<i>Income Tax Assessment Act 1997</i>	paragraph 207-145(1)(d)
<i>Income Tax Assessment Act 1997</i>	paragraph 207-145(1)(e)
<i>Income Tax Assessment Act 1997</i>	paragraph 207-145(1)(f)
<i>Income Tax Assessment Act 1997</i>	section 207-155
<i>Income Tax Assessment Act 1997</i>	Division 208
<i>Income Tax Assessment Act 1997</i>	section 208-40
<i>Income Tax Assessment Act 1997</i>	section 208-195
<i>Income Tax Assessment Act 1997</i>	Division 230
<i>Income Tax Assessment Act 1997</i>	section 855-10
<i>Income Tax Assessment Act 1997</i>	subsection 855-10(1)
<i>Income Tax Assessment Act 1997</i>	section 855-15
<i>Income Tax Assessment Act 1997</i>	section 977-50
<i>Income Tax Assessment Act 1997</i>	subsection 995-1(1)

References

Previous draft:

Not previously issued as a draft

Legislative references:

- Corporations Act 2001
- Corporations Act 2001 Pt 5.1

Related Rulings/Determinations:

TD 2002/4; TR 2010/4

ATO references

NO: 1-L62RJOB

ISSN: 2205-5517

BSL: PGI

ATOlaw topic: Administration ~~ Public advice and guidance
Income tax ~~ Assessable income ~~ Dividend income ~~ Dividend income
Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT event A1 – disposal
of a CGT asset
Income tax ~~ Capital gains tax ~~ Capital proceeds
Income tax ~~ Capital management ~~ Anti avoidance rules ~~
Section 177EA
International issues ~~ Non-resident Australian income ~~ Dividends
Offsets / rebates / credits / benefits ~~ Other offsets / rebates / benefits ~~
Franking tax offset

© **AUSTRALIAN TAXATION OFFICE FOR THE COMMONWEALTH OF AUSTRALIA**

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).