Class Ruling

Templeton Global Growth Fund Ltd. – off-market share buy-back and scrip for scrip roll-over

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.

Table of Contents	**Paragraph**

What this Ruling is about

1. This Ruling sets out the tax consequences for shareholders of Templeton Global Growth Fund Ltd. (TGG) who participated in either the off-market share buy-back (Buy-Back) or the Scrip for Scrip Arrangement, which were both announced on 29 June 2021.

2. Full details of the Buy-Back and Scrip for Scrip Arrangement are set out in paragraphs 57 to 74 of this Ruling.

3. All legislative references in this Ruling are to provisions of the *Income Tax Assessment Act 1997* or the *Income Tax Assessment Act 1936* (as detailed in the table in Appendix 2 of this Ruling).

Who this Ruling applies to

4. This Ruling applies to you if you:

- were registered on the share register of TGG on 22 October 2021 and
  - participated in the Buy-Back, or
  - participated in the Scrip for Scrip Arrangement, and

- hold your TGG Shares on capital account (that is, your TGG 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
- for the TGG Shareholders participating in the Scrip for Scrip Arrangement
  - are not 'significant stakeholders' or 'common stakeholders' within the meaning of those expressions in Subdivision 124-M.

5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the schemes outlined in paragraphs 57 to 74 of this Ruling.

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

When this Ruling applies

6. This Ruling applies from 1 July 2021 to 30 June 2022.

Ruling

Off-market share buy-back

7. The Buy-Back is an off-market purchase for the purposes of section 159GZZZK.

The Dividend Component

8. You are taken to have been paid a dividend of 29.8 cents (Dividend Component) on 29 October 2021 for each TGG Share you sold in the Buy-Back (section 159GZZZP).

9. Of the Dividend Component, 21.5 cents is a frankable distribution pursuant to section 202-40 and is capable of being franked in accordance with section 202-5. The remaining 8.3 cents of the Dividend Component is an unfrankable distribution pursuant to paragraph 202-45(c) and is not capable of being franked in accordance with section 202-5.

10. The whole Dividend Component of 29.8 cents has been attributed to a listed investment company (LIC) capital gain made by TGG and has been applied against TGG's LIC capital gain account. If you are an individual, a complying superannuation entity, a trust or a partnership or a life insurance company where the dividend is in respect of shares that are complying superannuation assets, you can claim a deduction under subsection 115-280(1) for your share of the attributable part of the LIC capital gain attributed to the Dividend Component of the Buy-Back, in accordance with the methodology in subsections 115-280(2) and (3), where the other conditions of Subdivision 115-D are met.

11. The difference between the Buy-Back price of $1.579 (Buy-Back Price) and the Dividend Component of 29.8 cents is the Capital Component of $1.281 per share. The Capital Component is not a dividend for income tax purposes (subsection 159GZZZP(2)).

Assessability of the Dividend Component

Direct distributions

12. If you are a resident individual, a resident corporate shareholder or the trustee of a resident complying superannuation fund who participated in the Buy-Back, then your assessable income for the income year in which the Buy-Back occurred includes:

- the Dividend Component of 29.8 cents per TGG Share, and
- subject to the 'qualified person' rules (see paragraph 28 of this Ruling), the amount of the franking credits attached to the Dividend Component (subsections 44(1) and 207-20(1)).

13. You will be entitled to a tax offset equal to the amount of the franking credits attached to the Dividend Component, subject to the qualified person rules (subsection 207-20(2)).

Indirect distributions

Partnerships

14. If you are a partnership, your assessable income in the income year in which the Buy-Back occurred for the purposes of calculating the net income of the partnership includes:

- the Dividend Component of 29.8 cents per TGG Share, and
- subject to the qualified person rules, the amount of the franking credits attached to the Dividend Component.

Trusts

15. If you are a trustee of a trust, your assessable income in the income year in which the Buy-Back occurred for the purposes of calculating the net income of the trust includes:

- the Dividend Component of 29.8 cents per TGG Share, and
- subject to the qualified person rules, the amount of the franking credits attached to the Dividend Component.

Partners and beneficiaries

16. Subsections 207-35(3) to (6) set out the circumstances in which a partner or beneficiary to whom a franked distribution flows indirectly is required to gross up their assessable income for their share of the franking credit on the franked distribution. Where the franked distribution 'flows indirectly' (within the meaning of Subdivision 207-B) through a trust or partnership to a resident that is an individual, a corporate tax entity (at the time the distribution flows indirectly to it) or a trustee mentioned in paragraph 207-45(c) or (d), the partner or trustee will, subject to the qualified person rules, be entitled to a tax offset equal to the entity's share of the franking credit on the franked distribution.

Refundable tax offset

17. The franking credit tax offset you are entitled to is subject to the refundable tax offset rules in Division 67. Certain trustees and corporate tax entities are not entitled to the refundable tax offset rules in accordance with subsections 67-25(1A) to 67-25(1D).

Non-resident shareholders

18. You will be subject to Australian withholding tax on the unfranked portion of the Dividend Component. The withholding tax rate will depend on your country of residence and whether the country has a tax treaty with Australia. Any withholding tax withheld from the unfranked part of the Dividend Component will be a final tax.

Sale consideration

19. You are taken to have received $1.281 (Sale Consideration) for each TGG Share you sold in the Buy-Back on 29 October 2021 (section 159GZZZQ), unless you are a corporate tax entity to which subsections 159GZZZQ(8) and (9) apply.

Capital gains tax implications

20. You are taken to have sold your TGG Shares for capital gains tax (CGT) purposes on 29 October 2021 (CGT event A1 under section 104-10).

21. The Sale Consideration of $1.281 per share represents the capital proceeds you received for each TGG Share you sold in the Buy-Back (section 116-20).

22. If you did not hold your TGG Shares through a partnership, you made:

- a capital gain on each TGG Share if the Sale Consideration was more than the share’s cost base (subsection 104-10(4)); the amount of the capital gain is the difference, or
- a capital loss on each TGG Share if the Sale Consideration was less than the share’s reduced cost base (subsection 104-10(4)); the amount of the capital loss is the difference.

23. Where you made a capital gain, you can treat the capital gain as a ‘discounted capital gain’ if you held your TGG Share since 29 October 2020 and the other conditions of Subdivision 115-A are met.

24. If you held the TGG Shares through a partnership, you have a separate cost base and reduced cost for your interest in each TGG Share sold in the Buy-Back by the partnership (subsection 106-5(2)). The partnership would allocate to you an appropriate share of the Sale Consideration which the partnership received for the sale of TGG Shares in the Buy-Back.

Foreign-resident shareholders – capital gains tax consequences

25. If you are a foreign-resident shareholder who participated in the Buy-Back, you will only have CGT consequences if the shares you sold under the Buy-Back are ‘taxable Australian property’ (section 855-10).

26. Your TGG Share will constitute taxable Australian property if the share:

- was used by you in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- is a CGT asset that is covered by subsection 104-165(3), which is about you choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident (table item 5 of section 855-15).

27. Your TGG Shares are not 'indirect Australian real property interests' as the underlying value of TGG is not principally derived from Australian real property and TGG Shares satisfy the 'principal asset test' in section 855-30.

Qualified persons

28. You will satisfy the qualified person rules in relation to the Dividend Component for the purposes of paragraph 207-145(1)(a) (which refers to Division 1A of former Part IIIAA) if:

- you acquired the TGG Shares which you sold in the Buy-Back on or before 13 September 2021, and
- during the period you held the TGG Shares, you had sufficient risks of loss or opportunities for gain in respect of the shares (as defined in former section 160APHM) for a continuous period of at least 45 days, and
- you have not taken any positions in relation to the TGG Shares apart from participation in the Buy-Back and were not, or will not, be under an obligation to, or be likely to, make a 'related payment' (as defined in former section 160APHN) in relation to the Dividend Component. The consideration payable to shareholders under the Scrip for Scrip Arrangement is not considered a related payment for the purposes of former section 160APHN.

29. The announcement of the Buy-Back, the making of an invitation to shareholders to offer to sell their TGG Shares or the making of an offer by a shareholder to sell their TGG Shares to TGG do not affect whether the shares bought back under the Buy-Back are held 'at risk' for the purposes of Division 1A of former Part IIIA.

30. The 'last-in first-out' rule in former subsection 160APHI(4) has no effect for the purposes of the Buy-Back in respect of TGG Shares you acquired on or after 7 October 2021 (ex-entitlement date), as the TGG Shares did not confer an entitlement to participate in the Buy-Back.

The anti-avoidance provisions

31. The Commissioner will not make a determination under either subsection 45A(2) or 45B(3) that section 45C applies to the whole, or any part, of the Capital Component of the Buy-Back Price you received from participating in the Buy-Back.

32. The Commissioner will not make a determination under paragraph 177EA(5)(b) to deny the whole, or any part, of the imputation benefits you received in relation to the Dividend Component of the Buy-Back Price from participating in the Buy-Back.

33. The Commissioner will not make a determination under paragraph 204-30(3)(c) to deny the whole, or any part, of the imputation benefits you received in relation to the Dividend Component of the Buy-Back Price from participating in the Buy-Back.

Scrip for Scrip Arrangement

CGT event A1 happened on the disposal of Templeton Global Growth Fund Ltd. Shares

34. CGT event A1 happened when you disposed your TGG Shares to Wilson Asset Management Global Limited (WAM Global) (section 104-10).

35. The time of CGT event A1 is the Implementation Date of 29 October 2021 (paragraph 104-10(3)(b)).

36. You will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your TGG Share exceeded the cost base of that share (subsection 104-10(4)).

37. You will make a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your TGG Share were less than the reduced cost base of that share (subsection 104-10(4)).

38. The capital proceeds from CGT event A1 happening to each TGG Share are equal to the sum of the market value of the New WAM Global Share and the New WAM Global Bonus Option received under the Scrip for Scrip Arrangement (subsection 116-20(1)). The market value of the New WAM Global Share and New WAM Global Bonus Option is worked out as at the time of CGT event A1, which is on the Implementation Date. The market value is the closing price of the New WAM Global Share and New WAM Global Bonus Option on the Implementation Date.

Availability of scrip for scrip roll-over if a capital gain is made from the disposal of Templeton Global Growth Fund Ltd. Shares

39. Subject to the qualification in paragraph 40 of this Ruling, if you made a capital gain from the disposal of your TGG Shares, you may choose to obtain scrip for scrip roll-over for that part of the capital gain that is attributable to the receipt of shares in WAM Global (sections 124-780, 124-785 and 124-790).

40. Scrip for scrip roll-over cannot be chosen if any capital gain you might subsequently make from the replacement shares in WAM Global would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

Only partial roll-over available

41. Roll-over is not available for that part of the capital gain that is attributable to the receipt of the WAM Global Bonus Option. The WAM Global Bonus Options received constitute ‘ineligible proceeds’ (subsection 124-790(1)).

42. You will make a capital gain from the disposal of your TGG Shares if the market value of the New WAM Global Bonus Options (the capital proceeds) you received exceed the cost base of the ‘ineligible part’ of your TGG Shares.

43. You will make a capital loss from the disposal of your TGG Shares if the capital proceeds you received are less than the reduced cost base of the ineligible part of your TGG Shares.

44. The cost base of the ineligible part of a TGG Share is that part of the cost base of your original TGG Share as is reasonably attributable to the New WAM Global Bonus Option received (subsection 124-790(2)).

Consequences if scrip for scrip roll-over is chosen in relation to Templeton Global Growth Fund Ltd. Shares

45. If you choose to obtain scrip for scrip roll-over, that part of the capital gain that is attributable to the exchanging of your TGG Shares for replacement New WAM Global Shares is disregarded (subsections 124-785(1)).

46. For the purposes of determining your eligibility to make a discount capital gain on a subsequent CGT event happening to your New WAM Global Shares, the acquisition date of each New WAM Global Share is the date you acquired the corresponding TGG Share (table item 2 of subsection 115-30(1)).

47. If you choose to obtain scrip for scrip roll-over, the first element of the cost base and reduced cost base of a replacement New WAM Global Share you received is worked out by reasonably attributing to it the cost base and reduced cost base (respectively) of the TGG Shares for which it was exchanged and for which the roll-over was obtained (subsections 124-785(2) and (4)).

48. In working out the first element of the cost base and reduced cost base of a replacement New WAM Global Share, you must first reduce the cost base of your original TGG Share (just before you stop owning it) by the amount that is attributable to the receipt of the New WAM Global Bonus Option (the ineligible part) (subsection 124-785(3)).

Consequences if scrip for scrip roll-over is not chosen, or cannot be chosen, in relation to Templeton Global Growth Fund Ltd. Shares

49. If you do not choose, or cannot choose, scrip for scrip roll-over, you must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of your TGG Shares in working out your net capital gain or net capital loss for the income year in which CGT event A1 happens (sections 102-5 and 102-10).

50. If you make a capital gain where roll-over is not chosen, or cannot be chosen, you can treat the capital gain as a discount capital gain provided that the conditions of Subdivision 115-A are met. In particular, the TGG Shares that were disposed of must have been acquired by you at least 12 months before the Implementation Date.

51. If you do not choose, or cannot choose, scrip for scrip roll-over, the first element of the cost base and reduced cost base of a replacement New WAM Global Share that is received is equal to the market value of the TGG Share given in respect of acquiring the New WAM Global Share (subsections 110-25(2) and 110-55(2)), reduced by the proportion of the market value of the TGG Share that is reasonably attributable to the New WAM Global Bonus Option you received (subsection 112-30(1)).

52. The first element of the cost base of the New WAM Global Option received is equal to the proportion of the market value of the TGG Share given in respect of acquiring the New WAM Global Option, determined on the Implementation Date.

53. The market value of TGG Shares is to be worked out as at the time when you acquired the New WAM Global Shares, which is on the Implementation Date (table item 2 of section 109-10). The market value of TGG Shares is the closing price of TGG Shares on the Implementation Date.

Foreign-resident shareholders of Templeton Global Growth Fund Ltd.

54. If you are a foreign-resident shareholder who participated in the Scrip for Scrip Arrangement, you will only have CGT consequences if your TGG Shares are 'taxable Australian property' (section 855-10).

55. Your TGG Share will constitute taxable Australian property if the share:

- was used by you in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- is a CGT asset that is covered by subsection 104-165(3), which is about you choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident (table item 5 of section 855-15).

56. Your TGG Shares are not indirect Australian real property interests as the underlying value of TGG is not principally derived from Australian real property and TGG Shares satisfy the principal asset test in section 855-30.

Scheme

57. The following description of the schemes (including both the Scrip for Scrip Arrangement and the Buy-Back) is based on information provided by the applicant. If the schemes are not carried out as described, this Ruling cannot be relied upon.

Templeton Global Growth Fund Ltd.

58. TGG is an Australian-resident public company listed on the Australian Securities Exchange (ASX). TGG is a listed investment company as defined in section 115-290.

59. At 30 June 2021, TGG had 198,097,061 ordinary shares on issue. Its shareholder equity consisted of $253,734,588 share capital, $48,364,104 reserves and $5,765,160 retained earnings.

60. TGG's ordinary shareholders are a mix of individuals, companies, trusts, partnerships and superannuation funds, some of which are non-residents.

61. On 29 June 2021, TGG announced that it had entered into a Scheme Implementation Agreement with WAM Global under which:

- WAM Global agreed to acquire all the shares in TGG that it did not already own by way of a scheme of arrangement (Scrip for Scrip Arrangement), and
- TGG also agreed to undertake an off-market share buy-back (Buy-Back).

62. WAM Global is a public company listed on the ASX. Subsequent to the Scrip for Scrip Arrangement, TGG would become a wholly-owned subsidiary of WAM Global.

Off-market share buy-back

63. Under the Buy-Back, TGG intended to buy back all the TGG ordinary shares from the shareholders who chose to participate in the Buy-Back, using the proceeds of the sale of underlying investments and normal cash flow it generated from other ordinary business activities.

64. The Buy-Back offer period opened on 26 August 2021 (Opening Date) and closed on 6 October 2021 (Closing Date).

65. All shareholders who elected to be part of the Buy-Back and were registered on TGG's share register on 22 October 2021 were entitled to participate in the Buy-Back.

66. On 29 October 2021, TGG announced that it had successfully bought back 36,378,799 of its shares for a total consideration of $57,442,124.

67. TGG paid a Buy-Back Price of $1.579 for each TGG Share it purchased in the Buy-Back comprising the:

- Capital Component of $1.281 which was debited to TGG's share capital account, and
- Dividend Component of 29.8 cents which was debited to TGG's retained profits and asset reserve accounts.

68. All TGG Shares bought back under the Buy-Back were cancelled.

69. The share capital account of TGG (as defined in section 975-300) was not tainted for the purposes of section 197-50.

70. The underlying value of TGG is not principally derived from Australian real property and the TGG Shares bought back under the Buy-Back satisfy the principal asset test in section 855-30.

Scrip for Scrip Arrangement

71. TGG Shareholders who did not elect to participate in the Buy-Back (Scrip for Scrip Accepting TGG Shareholders) were automatically deemed to have chosen to participate in the Scrip for Scrip Arrangement.

72. TGG Shares held by the Scrip for Scrip Accepting TGG Shareholders on 22 October 2021 were transferred to WAM Global and each Scrip for Scrip Accepting TGG Shareholder received the following consideration (Scrip for Scrip Consideration):

- for each TGG Share, that number of WAM Global shares (New WAM Global Shares) determined by dividing the TGG pre-deferred tax net tangible assets (NTA) (TGG NTA for Scrip for Scrip Consideration) by the WAM Global pre-deferred tax NTA, plus
- one WAM Global bonus option (New WAM Global Bonus Option) for every New WAM Global Share received by a Scrip for Scrip Accepting TGG Shareholder
- any fractional entitlement to a part of a New WAM Global Share or New WAM Global Bonus Option would be rounded up (that is, 0.5 or more) or down to the nearest whole number of New WAM Global Shares or New WAM Global Bonus Options, as applicable.

73. The WAM Global Bonus Option means a listed bonus option over one unissued WAM Global Share, has an expiry date of 12 September 2022 and is exercisable at a price of $2.54 per WAM Global Bonus Option.

74. The TGG NTA for Scrip for Scrip Consideration is calculated on the basis that the Buy-Back Price has already been paid.

Commissioner of Taxation
17 November 2021

Appendix 1 – Explanation

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**

Off-market share buy-back

75. For the purposes of Division 16K, where a company buys a share in itself from a shareholder, it is either an 'on-market purchase' (paragraph 159GZZZK(c)) or an 'off-market purchase' (paragraph 159GZZZK(d)).

76. Although TGG's ordinary shares were listed on the ASX, the Buy-Back was not undertaken in the ordinary course of trading on the ASX. Therefore, the Buy-Back was an off-market purchase.

The Dividend Component

77. The difference between the Buy-Back Price and the part of the Buy-Back Price which was debited against amounts standing to the credit of TGG's share capital account is taken to be a dividend paid by TGG to you.

78. The Buy-Back Price was $1.579, and $1.281 was debited against the amounts standing to the credit of TGG's share capital account. Therefore, the Dividend Component is taken to be 29.8 cents per share.

79. The Dividend Component is a frankable distribution, but only to the extent that the Buy-Back Price does not exceed the market value of a TGG Share at the time of the Buy-Back if the buy-back did not occur and was never proposed to occur (paragraph 202-45(c)).

80. Taxation Determination TD 2004/22 *Income tax: for Off-Market Share Buy-Backs of listed shares, whether the buy-back price is set by tender process or not, what is the market value of the share for the purposes of subsection 159GZZZQ(2) of the Income Tax Assessment Act 1936?* sets out the Commissioner's view as to how to determine what would have been the market value of a TGG Share at the time of the Buy-Back if the buy-back did not occur and was never proposed to occur. In respect of the Buy-Back, the Buy-Back Price of $1.579 per share exceeded the market value (determined in accordance with TD 2004/22) of $1.496 per share. As a result, 8.3 cents of the Dividend Component is unfrankable.

Calculation of Sale Consideration

81. For the purposes of determining the amount of a gain or loss you made for the TGG Shares you sold in the Buy-Back, the consideration in respect of the disposal of a share that you are taken to have received is determined in accordance with section 159GZZZQ.

82. Subsection 159GZZZQ(1) provides that you are taken to have received an amount equal to the purchase price (in this case the Buy-Back Price you received for each TGG Share you sold) as consideration in respect of the sale of the share bought back. However, this amount is subject to certain adjustments in order to arrive at the Sale Consideration.

83. Subsection 159GZZZQ(2) is one of the adjusting provisions. It provides that if the purchase price is less than the market value of the share at the time of the buy-back (calculated as if the buy-back did not occur and was never proposed to occur), you are taken to have received an amount equal to the market value of the share as consideration in respect of the sale of the share bought back.

84. For the purposes of determining the application of subsection 159GZZZQ(2), TGG has proposed to use the methodology outlined in TD 2004/22 to calculate the market value of the share (which the Commissioner accepts); the relevant market value of a TGG Share is the volume-weighted average price of the share on the ASX over the last five trading days before the first announcement of the Buy-Back, adjusted for the percentage change in the S&P/ASX 200 Index from the commencement of trading on 29 June 2021 to the close of trading on 6 October 2021 (Buy-Back Election Date).

85. Under this methodology, the market value of a TGG Share bought back was calculated by TGG as $1.496. As the Buy-Back Price is not less than the market value of TGG Shares bought back, subsection 159GZZZQ(2) will not apply.

86. Pursuant to subsection 159GZZZQ(3), the consideration of $1.579 is reduced by a 'reduction amount'. The reduction amount is an amount calculated pursuant to subsection 159GZZZQ(4). In the circumstances of the Buy-Back, the reduction amount is equivalent to the Dividend Component, unless you are a corporate tax entity to whom subsection 159GZZZQ(8) applies. As a result, the Sale Consideration for each TGG Share you sold under the Buy-Back is $1.281 (being $1.579 (Buy-Back Price) less the Dividend Component of 29.8 cents).

87. If you are a company and you made a loss, the Sale Consideration is subject to further adjustments pursuant to subsections 159GZZZQ(8) and (9).

Qualified persons

88. Paragraph 207-145(1)(a) provides that in relation to a franked dividend made by an entity, only a qualified person in relation to the distribution for the purposes of Division 1A of former Part IIIAA is required to include the franking credit in its assessable income and is entitled to claim the franking credit as a tax offset. Broadly speaking, to be a qualified person in relation to the Dividend Component paid under the Buy Back, you must satisfy both the ‘holding period rule’ (former section 160APHO) and the ‘related payments rule’ (former section 160APHN).

89. There are two versions of the holding period rule. The version that applies depends on whether or not there is a related payment. Broadly, there will be a related payment if you, or an associate of yours, is under an obligation to make, or makes, a payment in respect of the dividend, which effectively passes on the economic benefit of the dividend to another person.

90. The holding period rule requires you to hold the shares on which the dividend is paid for a continuous period of at least 45 days during the relevant qualification period. In the absence of a related payment, the relevant qualification period is the primary qualification period, which commences on the day after the shares are acquired and ends on the 45th day after the day on which the shares became ex dividend.

91. In determining whether you have satisfied the holding period rule, any days during which you have materially diminished risks of loss or opportunity for gain in respect of the relevant shares are not counted. The day of acquisition and the day of disposal of the relevant shares are also not counted.

92. Under former subsection 160APHM(2), a shareholder is taken to have materially diminished the risks of loss and opportunities for gain with respect to shares if the ‘net position’ in respect of the risks of loss and opportunity for gain of the shareholder results in the shareholder having less than 30% of the risks and opportunities relating to the shares.

93. The Commissioner does not regard the announcement of the Buy-Back, the making of an invitation to you to offer to sell your TGG Shares or the making of an offer by you to TGG in respect of your TGG Share as affecting whether TGG Shares were held at risk or not.

94. There are 45 clear days from 13 September 2021 to 28 October 2021 (the date prior to the date that the Buy-Back offers were accepted). If you acquired your TGG Shares on or before 13 September 2021, you would have satisfied the holding period rule as long as those shares were held ‘at risk’ for at least 45 continuous days.

95. Generally, under the holding period rule a shareholder will be deemed to have disposed of their most recently acquired shares first (former subsection 160APHI(4)). The 45-day rule operates on a last-in first-out basis, so that shareholders will be deemed to have disposed of their most recently acquired shares first for the purposes of applying the 45-day rule.

The anti-avoidance provisions

Section 45A

96. Section 45A applies in circumstances where capital benefits are streamed to certain shareholders (the advantaged shareholders) who derive a greater benefit from the receipt of share capital and it is reasonable to assume that the other shareholders (the disadvantaged shareholders) have received or will receive dividends.

97. Although a capital benefit (as defined in paragraph 45A(3)(b)) was provided to you under the Buy-Back, the circumstances of the Buy-Back indicate that there was no streaming of capital benefits to some shareholders and dividends to other shareholders. Therefore, section 45A does not apply to the Buy-Back.

Section 45B

98. Section 45B applies where certain capital payments are paid to shareholders in substitution for dividends.

99. While the conditions of paragraphs 45B(2)(a) and (b) were met in respect of the Buy-Back, the requisite purpose of enabling a person to obtain a tax benefit, by way of capital distribution, was not present.

100. Having regard to the 'relevant circumstances' (as set out in subsection 45B(8)) of the Buy-Back, it cannot be concluded that a person would have entered into, or carried out, the Buy-Back for a more than incidental purpose of enabling a participating shareholder to obtain a tax benefit. Therefore, section 45B does not apply to the Buy-Back.

Section 177EA

101. Section 177EA is a general anti-avoidance provision that applies to a wide range of schemes designed to obtain imputation benefits. In essence, it applies to schemes for the disposition of shares or an interest in shares, where a franked distribution is paid or payable in respect of the shares or an interest in shares. This would include a buy-back with a franked dividend component.

102. The Commissioner has come to the view that section 177EA applies to the Buy-Back, having regard to all the relevant circumstances of the scheme as outlined in subsection 177EA(17). Among the circumstances of the Buy-Back reflected in subsection 177EA(17) is the greater attraction of the Buy-Back to resident shareholders (because of the franking credits on the Dividend Component of the Buy-Back Price) than to non-resident shareholders.

103. Where section 177EA applies, the Commissioner has a discretion pursuant to subsection 177EA(5) to make a determination to debit TGG's franking account pursuant to paragraph 177EA(5)(a) or deny the imputation benefit to each participating shareholder pursuant to paragraph 177EA(5)(b).

104. The Commissioner will exercise their discretion in such a way that they will not make a determination that the whole, or any part, of the imputation benefits you obtained by participating in the Buy-Back will be denied under paragraph 177EA(5)(b).

Section 204-30

105. Subsection 204-30(1) empowers the Commissioner to make a determination under paragraph 204-30(3)(c) if an entity streams distributions in a certain way.

106. The requirements of subsection 204-30(1) are satisfied in respect of the Buy-Back because:

- participating shareholders received an imputation benefit (within the meaning given by subsection 204-30(6)) as a result of receiving the fully franked Dividend Component of the Buy-Back Price

- some participating shareholders would have derived a greater benefit from franking credits than other TGG Shareholders (for example, non-resident TGG Shareholders – see subsections 204-30(7) and (8)), and
- it is reasonable to conclude that the features of the Buy-Back influenced some non-resident TGG Shareholders not to participate in the Buy-Back and, as a result, not receive any imputation benefits in respect of the Buy-Back.

107. Accordingly, the conditions in subsection 204-30(1) are met and the Commissioner can make a determination under subsection 204-30(3), including a determination under paragraph 204-30(3)(a) to debit TGG's franking account.

108. As the Commissioner intends to exercise their discretion under section 177EA, the Commissioner will not make a determination under subsection 204-30(3), including a determination under paragraph 204-30(3)(a).

Scrip for Scrip Arrangement

Partial roll-over

109. The tax consequences that arise concerning the scheme that is the subject of this Ruling are outlined in the Ruling part of this document.

110. The main tax consequence is the availability of a partial scrip for scrip roll-over under Subdivision 124-M in relation to the disposal of TGG Shares under the Scrip for Scrip Arrangement.

111. The roll-over under Subdivision 124-M enables a shareholder in a company to disregard a capital gain from a share that is disposed of if the shareholder receives a replacement share in another company in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement share.

112. Subdivision 124-M contains a number of conditions for, and exceptions to, a shareholder in a company being eligible to choose scrip for scrip roll-over. The main requirements that are relevant to the Scrip for Scrip Arrangement are:

- shares are exchanged for shares in another company
- the exchange is in consequence of a single arrangement
- conditions for the roll-over are satisfied
- further conditions, if applicable, are satisfied; and
- exceptions to obtaining scrip for scrip roll-over are not applicable.

113. The disposal of TGG Shares satisfies the main requirements for the roll-over under Subdivision 124-M. As outlined in the Ruling section, a partial roll-over is available to TGG Shareholders who dispose of their TGG Shares under the Scrip for Scrip Arrangement.

114. You make a capital gain in relation to the disposal of your TGG Share if the market value of the New WAM Global Bonus Option is greater than the cost base of the 'ineligible part' of your TGG Share. The capital gain is calculated as:

> Capital gain = Market Value of the New WAM Global Bonus Option − cost base of the ineligible part of your TGG share

115. You make a capital loss from the disposal of your TGG Shares if the market value of the New WAM Global Bonus Option (the capital proceeds) you received is less than the

reduced cost base of the 'ineligible part' of your TGG Share. The capital loss is calculated as:

> Capital loss = Reduced cost base of the ineligible part of your TGG Share − Market Value of the New WAM Global Bonus Option

Cost base of ineligible part of Templeton Global Growth Fund Ltd. Share

116. The cost base of the ineligible part of your TGG Share is that part of the cost base as is reasonably attributable to the New WAM Global Bonus Option you acquire under the Scrip for Scrip Arrangement. As per the example following subsection 124-790(2), the cost base of the ineligible part is calculated as:

> Cost base = [Market Value of New WAM Global Bonus Option × cost base of TGG Share] ÷ [Market Value of New WAM Global Share + Market Value of New WAM Global Bonus Option]

Consequences if scrip for scrip roll-over is chosen in relation to Templeton Global Growth Fund Ltd. Shares

117. In working out the first element of the cost base and reduced cost base of a replacement New WAM Global Share, you must first reduce the cost base of your original TGG Share (just before you stop owning it) by the amount that is attributable to the receipt of the New WAM Global Bonus Option (the ineligible part) (subsection 124-785(3)).

118. The cost base of the replacement New WAM Global Share is calculated (as per paragraph 116 of this Ruling):

> Cost base = Cost base of your TGG Share − cost base of the ineligible part of your TGG Share

Consequences if scrip for scrip roll-over is not chosen, or cannot be chosen, in relation to Templeton Global Growth Fund Ltd. Shares

119. If you do not choose, or cannot choose, scrip for scrip roll-over, you must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of your TGG Shares in working out your net capital gain or net capital loss for the income year in which CGT event A1 happens (sections 102-5 and 102-10).

120. You make a capital gain from the disposal of your TGG Share if the combined market value of your New WAM Global Share and New WAM Global Bonus Option (the capital proceeds) you received exceed the cost base of your TGG Share. The capital gain is calculated as:

> Capital gain = [Market Value of the New WAM Global Share + Market Value of New WAM Global Bonus Option] − cost base of TGG Share

121. You make a capital loss from the disposal of your TGG Share if the combined market value of your New WAM Global Share and New WAM Global Bonus Option (the capital proceeds) you received is less than the reduced cost base of your TGG Share. The capital loss is calculated as:

> Capital loss = Reduced cost base of your TGG Share − [Market Value of New WAM Global Share + Market Value of New WAM Global Bonus Option]

Appendix 2 – Legislative provisions

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

Income Tax Assessment Act 1936	subsection 44(1)
Income Tax Assessment Act 1936	section 45A
Income Tax Assessment Act 1936	subsection 45A(2)
Income Tax Assessment Act 1936	paragraph 45A(3)(b)
Income Tax Assessment Act 1936	section 45B
Income Tax Assessment Act 1936	paragraph 45B(2)(a)
Income Tax Assessment Act 1936	paragraph 45B(2)(b)
Income Tax Assessment Act 1936	subsection 45B(3)
Income Tax Assessment Act 1936	subsection 45B(8)
Income Tax Assessment Act 1936	section 45C
Income Tax Assessment Act 1936	paragraph 128B(3)(ga)
Income Tax Assessment Act 1936	Division 16K
Income Tax Assessment Act 1936	section 159GZZZK
Income Tax Assessment Act 1936	paragraph 159GZZZK(c)
Income Tax Assessment Act 1936	paragraph 159GZZZK(d)
Income Tax Assessment Act 1936	section 159GZZZP
Income Tax Assessment Act 1936	subsection 159GZZZP(2)
Income Tax Assessment Act 1936	section 159GZZZQ
Income Tax Assessment Act 1936	subsection 159GZZZQ(1)
Income Tax Assessment Act 1936	subsection 159GZZZQ(2)
Income Tax Assessment Act 1936	subsection 159GZZZQ(3)
Income Tax Assessment Act 1936	subsection 159GZZZQ(4)
Income Tax Assessment Act 1936	subsection 159GZZZQ(8)
Income Tax Assessment Act 1936	subsection 159GZZZQ(9)
Income Tax Assessment Act 1936	former Part IIIAA Division 1A
Income Tax Assessment Act 1936	former section 160APHI(4)
Income Tax Assessment Act 1936	former section 160APHM
Income Tax Assessment Act 1936	former section 160APHM(2)
Income Tax Assessment Act 1936	former section 160APHN
Income Tax Assessment Act 1936	former section 160APHO
Income Tax Assessment Act 1936	section 177EA
Income Tax Assessment Act 1936	section 177EA(5)
Income Tax Assessment Act 1936	paragraph 177EA(5)(a)
Income Tax Assessment Act 1936	paragraph 177EA(5)(b)
Income Tax Assessment Act 1936	subsection 177EA(17)
Income Tax Assessment Act 1997	Division 67
Income Tax Assessment Act 1997	subsection 67-25(1A)

Income Tax Assessment Act 1997	subsection 67-25(1D)
Income Tax Assessment Act 1997	section 102-5
Income Tax Assessment Act 1997	section 102-10
Income Tax Assessment Act 1997	section 104-10
Income Tax Assessment Act 1997	subsection 104-10(3)(b)
Income Tax Assessment Act 1997	subsection 104-10(4)
Income Tax Assessment Act 1997	subsection 104-165(3)
Income Tax Assessment Act 1997	subsection 106-5(2)
Income Tax Assessment Act 1997	section 109-10
Income Tax Assessment Act 1997	subsection 110-25(2)
Income Tax Assessment Act 1997	subsection 110-55(2)
Income Tax Assessment Act 1997	subsection 112-30(1)
Income Tax Assessment Act 1997	Subdivision 115-A
Income Tax Assessment Act 1997	Subdivision 115-D
Income Tax Assessment Act 1997	subsection 115-280(1)
Income Tax Assessment Act 1997	subsection 115-280(2)
Income Tax Assessment Act 1997	subsection 115-280(3)
Income Tax Assessment Act 1997	section 115-290
Income Tax Assessment Act 1997	section 116-20
Income Tax Assessment Act 1997	subsection 116-20(1)
Income Tax Assessment Act 1997	Subdivision 124-M
Income Tax Assessment Act 1997	section 124-780
Income Tax Assessment Act 1997	section 124-785
Income Tax Assessment Act 1997	subsection 124-785(1)
Income Tax Assessment Act 1997	subsection 124-785(2)
Income Tax Assessment Act 1997	subsection 124-785(3)
Income Tax Assessment Act 1997	subsection 124-785(4)
Income Tax Assessment Act 1997	section 124-790
Income Tax Assessment Act 1997	subsection 124-790(1)
Income Tax Assessment Act 1997	subsection 124-790(2)
Income Tax Assessment Act 1997	paragraph 124-795(2)(a)
Income Tax Assessment Act 1997	section 197-50
Income Tax Assessment Act 1997	Section 202-5
Income Tax Assessment Act 1997	section 202-40
Income Tax Assessment Act 1997	paragraph 202-45(c)
Income Tax Assessment Act 1997	section 204-30
Income Tax Assessment Act 1997	subsection 204-30(1)
Income Tax Assessment Act 1997	subsection 204-30(3)
Income Tax Assessment Act 1997	paragraph 204-30(3)(a)
Income Tax Assessment Act 1997	paragraph 204-30(3)(c)
Income Tax Assessment Act 1997	subsection 204-30(6)

Income Tax Assessment Act 1997	subsection 204-30(7)
Income Tax Assessment Act 1997	subsection 204-30(8)
Income Tax Assessment Act 1997	Subdivision 207-B
Income Tax Assessment Act 1997	subsection 207-20(1)
Income Tax Assessment Act 1997	subsection 207-20(2)
Income Tax Assessment Act 1997	subsection 207-35(3)
Income Tax Assessment Act 1997	subsection 207-35(4)
Income Tax Assessment Act 1997	subsection 207-35(5)
Income Tax Assessment Act 1997	subsection 207-35(6)
Income Tax Assessment Act 1997	paragraph 207-45(c)
Income Tax Assessment Act 1997	paragraph 207-45(d)
Income Tax Assessment Act 1997	paragraph 207-145(1)(a)
Income Tax Assessment Act 1997	Division 230
Income Tax Assessment Act 1997	section 855-10
Income Tax Assessment Act 1997	section 855-15
Income Tax Assessment Act 1997	section 855-30
Income Tax Assessment Act 1997	section 975-300
Income Tax Assessment Act 1997	section 977-50
Income Tax Assessment Act 1997	subsection 995-1(1)

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References

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Related Rulings/Determinations:
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Legislative references:
- TAA 1953

Other references:
- PS LA 2007/9

ATO references

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