



Status: **legally binding**

Class Ruling

rhipe Limited – scheme of arrangement and special dividend

❶ 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.

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What this Ruling is about

1. This Ruling sets out the income tax consequences of the special dividend paid by rhipe Limited (rhipe) on 25 October 2021 (Special Dividend) and the scheme of arrangement whereby Crayon Software Experts Australia Pty Limited (Crayon Australia) acquired all the ordinary shares in rhipe on 3 November 2021 (Scheme of Arrangement).
2. Full details of the scheme are set out in paragraphs 31 to 55 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1936* (ITAA 1936) or the *Income Tax Assessment Act 1997* (ITAA 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 rhipe shareholder who:
 - held your rhipe shares
 - at 7:00pm (AEST) on 18 October 2021 (Special Dividend Record Date) and received the Special Dividend of 13 cents

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- on 27 October 2021 (Scheme Record Date) and participated in the Scheme of Arrangement, and
 - held your rhipe shares on capital account; that is, your rhipe shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)).
5. This Ruling does not apply to you if you:
- acquired your rhipe shares under a rhipe employee share, option or rights plan
 - are subject to the investment manager regime in Subdivision 842-I in relation to your rhipe shares, or
 - are subject to the taxation of financial arrangement rules in Division 230 in relation to your rhipe 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 2021 to 30 June 2022.

Ruling

Special Dividend

7. The Special Dividend of 13 cents is a 'dividend' as defined in subsection 6(1).
8. The Special Dividend is a frankable distribution pursuant to section 202-40.

Assessability of the Special Dividend, franking credits and tax offsets

Resident shareholders

9. If you are a resident of Australia as defined in subsection 6(1), you are required to include the Special 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 Special 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 Special 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 Special 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 Special Dividend flows indirectly through the partnership or trust to you, you include your share of the Special Dividend in your assessable income and you are entitled to a tax offset equal to your share of the franking credit attached to the Special 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)).

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

Non-resident shareholders

Special Dividend attributable to a permanent establishment in Australia

14. If you are a non-resident and the Special Dividend is attributable to a permanent establishment in Australia, you include the Special Dividend in your assessable income (paragraphs 44(1)(b) and (c)) and you are not liable to pay withholding tax in respect of the dividend (subsection 128B(3E)).

15. If you are also a qualified person (as defined in Division 1A of former Part IIIAA), you include the amount of the franking credits attached to the Special Dividend in your assessable income and you are entitled to a tax offset equal to the amount of those credits (section 207-20 and subsection 207-75(2)). The tax offset is not refundable (subsection 67-25(1DA)).

Special Dividend not attributable to a permanent establishment in Australia

16. If you are a non-resident and the Special Dividend is not attributable to a permanent establishment in Australia, the Special 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)).

17. You do not include the amount of the franking credits attached to the Special 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

18. The Special Dividend you received constitutes a related payment for the purpose of paragraph 207-145(1)(a) and former section 160APHN, and the secondary qualification period therefore applies.

19. You will be a qualified person in relation to the Special Dividend if, during the period from 4 September 2021 to 26 October 2021 (inclusive), you held your rhipe 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 rhipe shares were acquired.

Exempting entity

20. rhipe was not an exempting entity when the Special Dividend was paid to you, nor was it a former exempting entity at that time (Division 208).

21. 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 Special Dividend you received, nor to deny the tax offset to which you are otherwise entitled to under Division 207 at the time when the Special Dividend was paid.

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Anti-avoidance provisions**Section 177EA of the ITAA 1936**

22. 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 Special Dividend.

Section 204-30

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

Capital gains tax consequences**CGT event A1**

24. CGT event A1 happened to you on 3 November 2021 (Scheme Implementation Date) when you disposed of each of your rhipe shares to Crayon Australia in accordance with the Scheme of Arrangement (section 104-10).

Capital proceeds

25. The capital proceeds from CGT event A1 happening to your rhipe share is the cash consideration of \$2.37 you received in respect of the disposal of each rhipe share (subsection 116-20(1)).

26. The capital proceeds do not include the Special Dividend of 13 cents.

Capital gain or capital loss

27. You made a capital gain if the capital proceeds from the disposal of your rhipe share exceed 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 rhipe share are 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 rhipe share, you are eligible to treat the capital gain as a 'discount capital gain' provided you acquired, or are taken to have acquired, your rhipe share on or before 2 November 2020 and you satisfy the other requirements of Division 115.

Non-resident shareholders

30. If you are a non-resident shareholder, or the trustee of a foreign trust for CGT purposes (as defined in subsection 995-1(1)), just before the Scheme Implementation Date, you disregard any capital gain or capital loss made as a result of CGT event A1 happening, unless your rhipe shares were taxable Australian property for the purposes of section 855-10.

Status: **legally binding**

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.

Background

rhipe Limited

32. rhipe is an Australian cloud and software solutions company providing licensing of software subscriptions and cloud-related services to information technology service provider resellers across Australia, New Zealand and Asia.

33. rhipe was a public company listed on the Australian Securities Exchange until it was delisted on 4 November 2021 as a result of the Scheme of Arrangement.

34. As at the date of the Scheme Booklet (7 September 2021), rhipe had the following shares and performance rights on issue:

- 161,075,376 fully-paid ordinary shares
- 1,262,472 vested performance rights on issue granted pursuant to the 2019 rhipe Long Term Incentive Plan which vested in the ordinary course and not in connection with the Scheme of Arrangement, and
- 2,549,200 unvested performance rights on issue granted pursuant to the 2020 and 2021 rhipe Long Term Incentive Plan.

35. rhipe shareholders included both resident and non-residents. Non-resident shareholders did not own 95% or more of the shares in rhipe at any time prior to or at the Scheme Record Date.

36. There were no outstanding performance rights on the Scheme Record Date.

Crayon Group Holding ASA

37. Crayon Group Holding ASA (Crayon ASA) is a company based in Oslo, Norway that offers software asset management, cloud and volume licensing, training and associated consulting services.

Crayon Software Experts Australia Pty Limited

38. Crayon Australia is an Australian-resident company and an indirectly wholly-owned subsidiary of Crayon ASA.

Scheme of Arrangement

39. rhipe and Crayon ASA entered into a Scheme Implementation Deed (SID) wherein Crayon ASA, through its wholly-owned subsidiary Crayon Australia, proposed to acquire all the issued shares in rhipe by way of a Scheme of Arrangement under Part 5.1 of the *Corporations Act 2001* (Corporations Act).

40. Under the Scheme of Arrangement, Crayon Australia would pay rhipe shareholders \$2.50 cash for each rhipe share, less the amount of the Special Dividend (Scheme Consideration).

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41. At a shareholder meeting held on 11 October 2021, rhipe shareholders approved the Scheme of Arrangement.
42. On 13 October 2021, the Supreme Court of New South Wales approved the Scheme of Arrangement and provided orders pursuant to Part 5.1 of the Corporations Act.
43. rhipe shares were suspended from trading on the Australian Securities Exchange from close of trading on 14 October 2021 (Scheme Effective Date).
44. Entitlement to the Scheme Consideration was determined on the Scheme Record Date.
45. Payment of the Scheme Consideration to rhipe shareholders and the transfer of the rhipe shares to Crayon Australia occurred on the Scheme Implementation Date.

Special Dividend

46. On 11 October 2021, rhipe declared to pay a fully franked Special Dividend of 13 cents per rhipe share to rhipe shareholders who held their shares on the Special Dividend Record Date.
47. Payment of the Special Dividend occurred on 25 October 2021 (Special Dividend Payment Date).
48. The Special Dividend was not debited against rhipe's share capital account.
49. The Special Dividend was:
- compliant with the requirements of the Corporations Act, including section 254T of that Act
 - paid out of rhipe's current year profits and debited against its retained earnings account
 - financed from existing cash resources and, following the payment of the Special Dividend, rhipe's net cash position was not less than \$31 million, as required by clause 4.5 of the SID
 - determined by rhipe in its sole discretion, and
 - subject to the Scheme of Arrangement becoming effective.

Other matters

50. Neither Crayon Australia, nor any of its associates, had any influence or control over the declaration and payment of the Special Dividend.
51. Neither Crayon Australia, nor any of its associates, facilitated or financed the payment of the Special Dividend.
52. The Scheme of Arrangement was not conditional on the Special Dividend being declared and neither rhipe nor Crayon Australia had any right to terminate the SID if rhipe did not declare and pay the Special Dividend.
53. On the Scheme Implementation Date, the sum of the market values of rhipe's assets that were taxable Australian real property did not exceed the sum of the market values of its other assets for the purposes of section 855-30.

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54. Immediately prior to the payment of the Special Dividend, rhipe had a franking account balance of \$9,294,642. After payment of the Special Dividend, rhipe had a franking account balance of approximately \$248,000.

Key dates

55. The following is a summary of the key dates for the Scheme of Arrangement and the Special Dividend:

Scheme Implementation Deed executed	6 July 2021
Announcement date	6 July 2021
First court date	7 September 2021
Date of Scheme Booklet (despatch to rhipe shareholders)	7 September 2021
Scheme meeting record date	9 October 2021
Scheme meeting	11 October 2021
Secord court date	13 October 2021
Scheme Effective Date	14 October 2021
Special Dividend Record Date	7:00pm (AEST) on 18 October 2021
Special Dividend Payment Date	25 October 2021
Scheme Record Date	7:00pm (AEST) on 27 October 2021
Scheme Implementation Date	3 November 2021

Commissioner of Taxation

19 January 2022

Status: **not legally binding**

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.*

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Special Dividend

56. 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, but excludes a distribution debited against an amount standing to the credit of the share capital account of the company.

57. The Special Dividend was a distribution made by rhipe to its shareholders and was not debited against its share capital account. Accordingly, the Special Dividend is a 'dividend' for the purposes of subsection 6(1).

Status: **not legally binding**

58. 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.

59. The Special Dividend is a frankable distribution under section 202-40 as none of the circumstances in section 202-45 apply. In turn, the Special Dividend is capable of being franked in accordance with section 202-5.

Assessability of the Special Dividend

Residents

60. 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)).

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

Non-residents carrying on a business at or through a permanent establishment

62. A non-resident's liability to withholding tax on dividend income received in subsection 128B(1) is subject to subsection 128B(3E), which states that section 128B does not apply to dividend income that:

- 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
- is attributable to the permanent establishment, and
- is not paid to the person in the person's capacity as trustee.

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

64. Subparagraph 44(1)(c)(i) includes dividends in the assessable income of a non-resident shareholder of a resident company where the non-resident shareholder is carrying on business in Australia at or through a permanent establishment of the shareholder in Australia and those dividends are attributable to the permanent establishment.

65. Accordingly, if you are a non-resident shareholder carrying on a business in Australia at or through a permanent establishment in Australia who received the Special Dividend (otherwise than in the capacity as a trustee), you include the dividend in your assessable income to the extent to which the dividend received was attributable to the permanent establishment, pursuant to subparagraphs 44(1)(b)(i) and 44(1)(c)(i) and you are not liable for Australian withholding tax in relation to the dividend.

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

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

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67. 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 ITAA 1936 or the ITAA 1997.

68. 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.

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

70. Section 128D operates to treat the Special Dividend as non-assessable non-exempt income.

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

Gross-up and tax offset

72. 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)).

73. A shareholder that is not a qualified person in relation to the Special Dividend:

- does not include the franking credit attached to the respective 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 respective dividend (paragraph 207-145(1)(f)).

74. Subject to satisfying the qualified person rule, 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 Special Dividend (subsection 207-35(1)).

Qualified person, related-payment rule and holding-period rule

Qualified person

75. 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 the dividend (subsection 207-145(1)).

76. Paragraph 207-145(1)(a), which refers to Division 1A of former Part IIIA, provides the statutory tests you must satisfy to be a qualified person in relation to a franked distribution you have received in order for you to be entitled to a tax offset for the franking credit on the distribution.

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77. 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.

78. 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 are required 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 are required to satisfy the holding-period rule in relation to the secondary qualification period.

Related-payment rule

79. 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 Special Dividend you have received (former subsection 160APHN(2)).

80. 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.

81. Under the terms of the SID, the Scheme Consideration was reduced by the amount of the Special Dividend which rhipe paid to its shareholders. The reduction of the Scheme Consideration, calculated with reference to the Special Dividend, has the effect of passing the benefit of the Special Dividend from a rhipe shareholder to Crayon Australia.

82. Therefore, you (or a partner in a partnership or a beneficiary of a trust that has an interest in rhipe shares) are taken to have made a related payment in respect of the Special Dividend.

Holding-period rule

83. The holding-period rule requires you to hold your rhipe shares, on which the Special Dividend was paid, 'at risk' for a continuous period of at least 45 days during the relevant qualification period (former paragraph 160APHO(2)(a)). The relevant qualification period is the secondary qualification period.

84. The secondary qualification period is the period beginning 45 days before, and ending 45 days after, the day on which a share becomes ex dividend (former section 160APHD).

85. Under former subsection 160APHE(1), a share becomes ex dividend on the day after the last day on which the acquisition by a person of the share entitles them to receive the dividend.

86. The last day on which a person who held a rhipe share was entitled to receive the Special Dividend was the Special Dividend Record Date. It follows that the rhipe shares became ex dividend (for the purposes of former subsection 160APHE(1)) for the Special Dividend on 19 October 2021. Accordingly, the secondary qualification period is notionally the period beginning 45 days before, and ending 45 days after 19 October 2021, namely 4 September 2021 to 3 December 2021 (inclusive).

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87. Any days on which a rhipe shareholder has 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)).

88. Under the Scheme of Arrangement, you ceased to hold your rhipe shares at risk on the Scheme Record Date because on that day you became committed to dispose of your rhipe shares in exchange for the Scheme Consideration.

89. Accordingly, you will be a qualified person in relation to the Special Dividend, if during the period 4 September 2021 to 26 October 2021 (inclusive), you held your rhipe shares for a continuous period of at least 45 days (not counting the day on which you acquired the rhipe share and not counting the days on which you had 'materially diminished risks of loss or opportunities for gain' (as defined in former section 160APHM) in respect of the shares).

90. You will need to determine whether you satisfy the holding-period rule having regard to your personal circumstances, which will require you to take into account any positions you may have entered into that has 'materially diminished risks of loss or opportunities for gain' (as defined under former section 160APHM) in respect of your rhipe shares. This is outside the scope of this Ruling.

91. The small shareholder exception in former section 160APHT does not apply as the Special Dividend constitutes a related payment as discussed in paragraphs 80 to 83 of this Ruling. Therefore, a shareholder who is an individual and who has franking credit offsets not exceeding \$5,000 for the income year ended 30 June 2022 must also satisfy the holding period requirement in relation to the Special Dividend (former subsection 160APHT(2)).

Refundable tax offset

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

93. 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))
- trustees of a trust who are liable to be assessed under sections 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 (1D)), and
- non-resident entities carrying on business in Australia at or through a permanent establishment (subsection 67-25(1DA)).

94. 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 your income tax liability, you are entitled to a refund of the difference (table item 40 of section 63-10).

Status: **not legally binding**

The anti-avoidance provisions

Section 177EA

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

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

97. Accordingly, the issue is whether, having regard to the relevant circumstances of the scheme (as set out in subsection 177EA(17)), it would be concluded that, on the part of rhipec, rhipec 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)).

98. Considering the circumstances of the Scheme of Arrangement, it cannot be concluded that rhipec, rhipec shareholders or any other relevant party entered into or carried out the scheme for a purpose greater than an incidental purpose of enabling the rhipec 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 received in relation to the Special Dividend.

Section 204-30

99. 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 greater 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.

100. 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 words 'derive a greater benefit from franking credits' are defined in subsection 204-30(8) by reference to certain constraints on the ability of another member entity to use imputation benefits fully.

101. Under the scheme, you received imputation benefits when the Special Dividend was paid to you. The Special Dividend was paid equally to all rhipec shareholders and was fully franked regardless of the tax profile of each shareholder. Accordingly, it cannot be said that rhipec selectively directed the flow of franked dividends to those shareholders who would obtain the most benefit from the franking credits.

102. As the conditions in subsection 204-30(1) are 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 you as a rhipec shareholder in relation to the Special Dividend.

Status: **not legally binding**

Capital gains tax consequences

CGT event A1

103. 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)).

104. The acquisition of your rhipie shares under a court approved scheme of arrangement does not involve a disposal of shares under a contract.¹

105. Therefore, CGT event A1 happened when there was a change of ownership in your rhipie shares to Crayon Australia under the SID (subsections 104-10(1) and (2)). The change of ownership occurred on the Scheme Implementation Date (paragraph 104-10(3)(b)).

106. 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.

Capital proceeds

107. The capital proceeds you received 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)).

108. 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

109. The Special Dividend was not paid in respect of the disposal of rhipie shares under the Scheme of Arrangement. The Scheme of Arrangement was not conditional on the declaration the Special Dividend. The Special Dividend was not dependent on Crayon Australia or a third party financing or facilitating payment of the Special Dividend, or Crayon Australia or a third party being obliged to bring about the result that the Special Dividend be paid to existing shareholders.

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

111. Therefore, the capital proceeds that you received from CGT event A1 happening for the disposal of each of your rhipie shares is the Scheme Consideration of \$2.37 per share.

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?*

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.*

Status: **not legally binding**

Capital gain or capital loss

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

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

114. The cost base and reduced cost base of the rhipie share depends on your individual circumstances.

Discount capital gain

115. If you make a capital gain from the disposal of your rhipie 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 rhipie share on or before 2 November 2020, which was at least 12 months prior to CGT event A1 happening (subsection 115-25(1)).

Non-resident shareholders

116. You can disregard a capital gain or capital loss you make from a CGT event if you are a non-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' (subsection 855-10(1)).

117. 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 foreign trust for CGT purposes just before CGT event A1 happened to your rhipie 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 rhipie shares were:

- 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).

Status: **not legally binding****Appendix 2 – Legislative provisions**

118. 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>	paragraph 44(1)(b)
<i>Income Tax Assessment Act 1936</i>	subparagraph 44(1)(b)(i)
<i>Income Tax Assessment Act 1936</i>	paragraph 44(1)(c)
<i>Income Tax Assessment Act 1936</i>	subparagraph 44(1)(c)(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>	section 128B
<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>	subsection 128B(3E)
<i>Income Tax Assessment Act 1936</i>	section 128D
<i>Income Tax Assessment Act 1936</i>	Division 1A of former Part IIIA
<i>Income Tax Assessment Act 1936</i>	former section 160APHD
<i>Income Tax Assessment Act 1936</i>	former subsection 160APHE(1)
<i>Income Tax Assessment Act 1936</i>	former section 160APHM
<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 section 160APHT
<i>Income Tax Assessment Act 1936</i>	former subsection 160APHT(2)
<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 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)

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<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)

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<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 207-75(2)
<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)(e)
<i>Income Tax Assessment Act 1997</i>	paragraph 207-145(1)(f)
<i>Income Tax Assessment Act 1997</i>	Division 208
<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>	Subdivision 842-I
<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 855-30
<i>Income Tax Assessment Act 1997</i>	section 977-50
<i>Income Tax Assessment Act 1997</i>	subsection 995-1(1)

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References

Previous draft:

Not previously issued as a draft

Legislative references:

- TAA 1953
- Corporations Act 2001 Pt 5.1
- Corporations Act 2001 254T

Related Rulings/Determinations:

TD 2002/4; TR 2010/4

ATO references

NO: 1-RXPNLW3

ISSN: 2205-5517

BSL: PGI

ATOlaw topic: 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
Income tax ~~ Capital management ~~ Franking credits / tax offsets
Income tax ~~ Capital management ~~ Qualified person rule

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