Class Ruling

Bingo Industries Limited – scheme of arrangement and special dividend

Relying on this Ruling

This publication (excluding appendix) 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 (Special Dividend) paid on 28 July 2021 and the Scheme of Arrangement implemented by Bingo Industries Limited (Bingo) on 5 August 2021.

2. Full details of this Scheme of Arrangement and the Special Dividend are set out in paragraphs 47 to 75 of this Ruling.

3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997), unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you were a Bingo shareholder who held:

- Bingo shares on capital account, that is, your Bingo 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
- Bingo shares on
  - 19 July 2021 (Special Dividend Record Date) and received the Special Dividend, and

- 22 July 2021 (Scheme Record Date) and participated in the Scheme of Arrangement under which Recycle and Resource Operations Pty Limited (RollCo) acquired all of the Bingo shares.

5. This Ruling does not apply to you if you:

- are exempt from Australian income tax
- acquired your Bingo shares under a Bingo employee share or option plan, or
- are subject to the taxation of financial arrangement rules in Division 230 in relation to your Bingo 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 11.7 cents per share is a 'dividend' as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936).

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) of the ITAA 1936 you are required to include the Special Dividend in your assessable income (subparagraph 44(1)(a)(i) of the ITAA 1936).

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 of the ITAA 1936).

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) of the ITAA 1936).

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) of the ITAA 1936) and you are not liable to pay withholding tax in respect of the dividend (subsection 128B(3E) of the ITAA 1936).

15. If you are also a qualified person (as defined in Division 1A of former Part IIIAA of the ITAA 1936), 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 of the ITAA 1936) and you are not liable to withholding tax in respect of the dividend (paragraph 128B(3)(ga) of the ITAA 1936).

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).

Related payment and qualified persons

18. The Special Dividend you received constitutes a 'related payment' for the purposes of paragraph 207-145(1)(a) and former section 160APHN of the ITAA 1936 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 5 June 2021 to 21 July 2021 (inclusive), you held your Bingo 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 of the ITAA 1936) in respect of the shares. The period of 45 days does not include the day on which your Bingo shares were acquired.

Exempting entity

20. Bingo 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.

Anti-avoidance provisions

Section 177EA

22. The Commissioner will not make a determination under paragraph 177EA(5)(b) of the ITAA 1936 to deny the whole, or any part of, the imputation benefit 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.

Section 207-145

24. Section 207-145 will not apply to the whole or any part of the Special Dividend. The Commissioner does not consider that the Special Dividend was made as part of a dividend stripping operation (under section 207-155) or a distribution washing arrangement (under section 207-157). Accordingly, section 207-145 will not apply to adjust your assessable income to exclude the amount of the franking credits on the Special Dividend, nor will it deny the tax offsets to which you would otherwise be entitled.

Capital gains tax consequences

CGT event A1

25. CGT event A1 happened on 5 August 2021 (Scheme Implementation Date) when you disposed of each of your Bingo shares to RollCo in accordance with the Scheme of Arrangement (section 104-10).

Capital proceeds

Bingo Industries Limited shareholders that elected cash consideration

26. If you elected to receive cash consideration, the capital proceeds received from CGT event A1 for each share you held in Bingo was the cash payment of $3.333 per Bingo share (paragraph 116-20(1)(a)).

27. The Special Dividend of 11.7 cents per Bingo share is not included in the capital proceeds.

Bingo Industries Limited shareholders that elected mixed consideration

28. If you elected to receive mixed consideration, the capital proceeds received from CGT event A1 for the disposal of a Bingo share was the:

- cash consideration received, being $1.203 per Bingo share (paragraph 116-20(1)(a)), and
- scrip consideration received being the market value (worked out at the time of CGT event A1) of the replacement Recycle and Resource Holdings Class B, Preference and Class C shares received per Bingo share (paragraph 116-20(1)(b)).

29. The Special Dividend of 11.7 cents per Bingo share is not included in the capital proceeds.

Capital gain or capital loss

30. You made a capital gain if the capital proceeds from the disposal of your Bingo share exceed its cost base (subsection 104-10(4)). The capital gain is the amount of the excess.

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

32. If you are a non-resident shareholder just before CGT event A1 happened to your Bingo shares on 5 August 2021, you disregard any capital gain or capital loss made as a result of CGT event A1 happening, as your Bingo shares were not taxable Australian property for the purposes of section 855-10.

Discount capital gain

33. If you made a capital gain from the disposal of your Bingo share, you are eligible to treat the capital gain as a 'discount capital gain' provided you acquired, or are taken to have acquired, your Bingo share on or before 4 August 2020 and you satisfy the positive conditions of Division 115 and do not satisfy the negative conditions of Division 115.

Availability of partial scrip for scrip roll-over if a capital gain is made

34. Subject to the qualifications in paragraphs 35 and 36 of this Ruling, if you received beneficial ownership in replacement Recycle and Resource Holdings Class B, Preference and Class C shares and made a capital gain from the disposal of your Bingo shares, you may choose partial scrip for scrip roll-over under subsection 124-790(1) for that part of the capital gain that is referrable to the receipt of the replacement Recycle and Resource Holdings Class B, Preference and Class C shares component of the mixed consideration (sections 124-780 and 124-790).

35. You cannot choose scrip for scrip roll-over if you are a non-resident unless the replacement Recycle and Resource Holdings Class B, Preference and Class C shares are 'taxable Australian property' just after they were acquired (subsection 124-795(1)).

36. Scrip for scrip roll-over cannot be chosen if any capital gain you make from the replacement Recycle and Resource Holdings Class B, Preference and Class C shares would be disregarded, except because of a roll-over (subsection 124-795(2)).

If scrip for scrip roll-over is chosen

Capital gain partially disregarded

37. If you choose scrip for scrip roll-over, the capital gain you made from the disposal of your Bingo share is disregarded to the extent that you received replacement Recycle and Resource Holdings Class B, Preference and Class C shares for the disposal of your Bingo share (eligible proceeds) (subsection 124-785(1)).

38. The capital gain made from the disposal of a Bingo share is not disregarded to the extent that you received cash for the disposal of your Bingo shares (ineligible proceeds) (subsection 124-790(1)).

Cost base and reduced cost base of replacement Recycle and Resource Holdings Class B, Preference and Class C shares

39. As the Recycle and Resource Holdings Class B, Preference and Class C shares are three distinct CGT assets, the respective cost bases and reduced cost bases of the Class B, Preference and Class C shares need to be worked out separately. The first element of the cost base and reduced cost base of each CGT asset is that part of the expenditure that is reasonably attributable to the acquisition of the asset (subsection 112-30(1)).

40. A reasonable method of apportionment of the first element of the cost base and reduced cost base of the respective Recycle and Resource Holdings Class B, Preference and Class C shares is made by reference to the midpoint of the lowest and highest value of each of those shares as determined by the Independent Expert's Report included as Appendix 1 to the Scheme Booklet, expressed as a percentage of the total scrip consideration value as follows:

- Class B: 42.77%
- Preference: 42.11%, and
- Class C: 15.12%.

41. The first element of the cost base and reduced cost base of each replacement Recycle and Resource Holdings Class B, Preference and Class C share received is calculated by reasonably attributing to it the cost base of your original Bingo share for which it was exchanged (subsection 124-785(2) and (4)). Any part of the cost base of the Bingo share exchanged by you that relates to the receipt of cash consideration is not included (subsection 124-785(3).

Acquisition date of a replacement Recycle and Resource Holdings Class B, Preference and Class C shares

42. For the purpose of determining whether a capital gain made from any later disposal of a Recycle and Resource Holdings Class B, Preference or Class C share is a discount capital gain, if you choose scrip for scrip roll-over, you are taken to have acquired your Recycle and Resource Holdings Class B, Preference and Class C shares when you acquired your original Bingo share that was exchanged for the relevant Recycle and Resource Holdings Class B, Preference and Class C shares (table item 2 of subsection 115-30(1)).

If scrip for scrip roll-over is not chosen or cannot be chosen

Capital gain or capital loss not disregarded

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

Cost base and reduced cost base of replacement Recycle and Resource Holdings Class B, Preference and Class C shares

44. Where scrip for scrip roll-over is not chosen or cannot be chosen, the first element of the cost base and reduced cost base of each Recycle and Resource Holdings Class B, Preference and Class C share received is equal to that part of the market value of the

Bingo share reasonably attributable to the Recycle and Resource Holdings Class B, Preference and Class C shares at the time of their acquisition (paragraph 110-25(2)(b), and subsections 110-55(2) and 112-30(1)). The market value of a Bingo share given by you that is attributable to the receipt of cash consideration is not included in the cost base or reduced cost base of a new Recycle and Resource Holdings Class B, Preference or Class C share (subsection 112-30(1)).

45. The amount reasonably attributable to the Recycle and Resource Holdings Class B, Preference and Class C shares is determined by reference to the midpoint of the lowest and highest value of each of those shares expressed as a percentage of the total scrip consideration value as follows:

- Class B: 42.77%
- Preference: 42.11%, and
- Class C: 15.12%.

Acquisition date of a replacement Recycle and Resource Holdings Class B, Preference and Class C shares

46. Where scrip for scrip roll-over is not chosen or cannot be chosen, you are deemed to have acquired the Recycle and Resource Holdings Class B, Preference and Class C shares when those shares were issued to you on 5 August 2021, being the Scheme Implementation Date (paragraph 104-35(5)(c) and table item 2 of section 109-10).

Scheme

47. 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

Bingo Industries Limited

48. Bingo is an Australian-resident company that was incorporated on 3 March 2017 and listed on the Australian Securities Exchange (ASX) on 5 May 2017.

49. Bingo is an Australian resident for tax purposes.

50. Bingo is a recycling and waste management company that provides end-to-end solutions across the resource management supply chain including collection, processing and recovery, disposal and waste equipment manufacturing.

51. As at 27 April 2021, Bingo had 654,961,392 ordinary shares on issue. Bingo had no other classes of shares on issue.

52. As at 30 June 2020, Bingo had retained earnings of $115,437,000.

Recycle and Resource Operations Pty Limited and Recycle and Resource Holdings Limited

53. Recycle and Resource Operations Pty Limited (RollCo) is an unlisted Australian proprietary company incorporated on 12 April 2021 as a special-purpose company to acquire and hold the interest in Bingo.

54. RollCo is indirectly wholly-owned by Recycle and Resource Holdings Limited (Recycle and Resource Holdings).

55. Recycle and Resource Holdings is an unlisted Australian proprietary company incorporated on 9 April 2021 as a special-purpose company to participate in the Scheme of Arrangement.

56. Recycle and Resource Holdings indirectly holds all of the shares in RollCo and, following the implementation of the Scheme of Arrangement, issued Class B shares, Preference shares and Class C shares to Bingo shareholders that elected to receive a mix of cash and scrip consideration in exchange for their Bingo shares.

Scheme of Arrangement

57. On 27 April 2021, Bingo announced that it had entered into a Scheme Implementation Deed with RollCo for the acquisition of 100% of the share capital in Bingo pursuant to a Scheme of Arrangement.

58. Under the terms of the Scheme Implementation Deed, in consideration for each share, Bingo shareholders would have the option to receive Scheme Consideration of either:

- $3.45 cash consideration per Bingo share (cash consideration) held on the Scheme Record Date less any Special Dividend declared and paid to Bingo shareholders on or before the Scheme Implementation Date, or
- a mixed cash and unlisted scrip alternative (mixed consideration) with a notional value of $3.30 per Bingo share, comprised of
  - $1.32 in cash consideration per Bingo share held on the Scheme Record Date less any Special Dividend declared and paid to Bingo shareholders on or before the Scheme Implementation Date, and
  - the remainder in unlisted scrip in Recycle and Resource Holdings Limited. The unlisted scrip was comprised of 1 Class B Share, 1 Preference Share and 1 Class C Share. These shares would have an aggregate issue price of $1.98 per Bingo share.

59. An Independent Expert's Report, included in Annexure 1 of the Scheme Booklet, noted the lowest and highest value for each of the Recycle and Resource Holdings Class B, Preference and Class C shares making up the scrip consideration portion of the mixed consideration.

60. The mid-point value for each of the replacement Recycle and Resource Holdings shares, expressed in dollars and as a percentage of the scrip consideration value, were as follows:

	Midpoint in dollars	**As a percentage of total**
Class B	90.5 cents	42.77%
Preference	89.1 cents	42.11%
Class C	32 cents	15.12%
TOTAL	$2.116	100%

61. If the Scheme of Arrangement was implemented, Bingo shareholders would receive the cash consideration unless they made a valid election to receive the mixed consideration.

62. Bingo shareholders who were ineligible foreign shareholders (a Bingo shareholder whose address was outside Australia or New Zealand) could not elect to receive the mixed consideration.

63. At a shareholder meeting held on 13 July 2021, Bingo shareholders approved the Scheme of Arrangement.

64. On 15 July 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 2001* (Effective Date). Bingo shares were suspended from trading on the ASX from close of trading on 15 July 2021. Bingo was removed from the official list of the ASX with effect from close of trading on 6 August 2021.

65. Entitlement to the Scheme Consideration was determined on 22 July 2021 (Scheme Record Date).

66. Payment of the Scheme Consideration to Bingo shareholders and the transfer of Bingo shares to Recycle and Resource Holdings occurred on 5 August 2021 (Scheme Implementation Date).

Special Dividend

67. On 13 July 2021, Bingo declared to pay a Special Dividend of 11.7 cents per Bingo share prior to the implementation of the Scheme of Arrangement.

68. Entitlement to the Special Dividend was determined on 19 July 2021 (Special Dividend Record Date).

69. Payment of the Special Dividend occurred on 28 July 2021.

70. The Special Dividend was fully franked.

71. The Special Dividend was not debited against Bingo's share capital account.

72. The Special Dividend was:

- sourced entirely from Bingo's retained earnings and current year profits
- funded by Bingo's existing cash reserves and borrowing using existing debt facilities, and
- not conditional upon the Scheme of Arrangement and, once declared, would be paid to eligible Bingo shareholders irrespective of the whether the Scheme was implemented.

Other matters

73. As at 21 May 2021, Bingo had a franking account credit balance of $66,592,160. Bingo did not debit the franking account on or before the day the Special Dividend was paid.

74. On the Scheme Implementation Date, the sum of the market values of Bingo'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.

Page status: **legally binding**

Key dates

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

Date	Event
27 April 2021	Scheme Implementation Agreement executed
27 April 2021	Announcement Date
9 June 2021	First Court hearing (lodged Scheme Booklet with court)
2 July 2021	Election Deadline
13 July 2021	Scheme meeting
15 July 2021	Final Court hearing (court approved scheme)
15 July 2021	Last day of trading in Bingo shares
19 July 2021	Record Date for Special Dividend
22 July 2021	Scheme Record Date
28 July 2021	Payment Date for Special Dividend
5 August 2021	Scheme Implementation Date

Commissioner of Taxation
9 February 2022

Appendix – 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.

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Special Dividend

76. The term 'dividend' is defined in subsection 6(1) of the ITAA 1936 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.

77. The payment of the Special Dividend was a distribution of money which Bingo made to its shareholders. Bingo did not debit the Special Dividend against its share capital account.

78. Therefore, the exclusion in paragraph (d) does not apply and the Special Dividend constitutes a 'dividend' for the purposes of subsection 6(1) of the ITAA 1936.

79. 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.

80. None of the circumstances in section 202-45 apply to the Special Dividend. Therefore, Special 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 Special Dividend

Residents

81. 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) of the ITAA 1936).

82. As the Special Dividend was paid to shareholders out of profits derived by Bingo, shareholders who are residents of Australia, as defined in subsection 6(1) of the ITAA 1936, are required to include the Special Dividend they received in their assessable income under subparagraph 44(1)(a)(i) of the ITAA 1936.

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

83. A non-resident's liability to withholding tax on dividend income received in subsection 128B(1) of the ITAA 1936 is subject to subsection 128B(3E) of the ITAA 1936. Subsection 128B(3E) of the ITAA 1936 states that section 128B of the ITAA 1936 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; and
- is attributable to the permanent establishment; and
- is not paid to the person in the person's capacity as trustee.

84. Subparagraph 44(1)(b)(i) of the ITAA 1936 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 in the assessable income of a non-resident shareholder of a company.

85. Subparagraph 44(1)(c)(i) of the ITAA 1936 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.

86. Accordingly a non-resident carrying on a business in Australia at or through a permanent establishment who received the Special Dividend (otherwise than in the capacity as trustee) is required to include the applicable dividend in their 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) of the ITAA 1936 and they will not be liable for Australian withholding tax in relation to the dividend.

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

87. Subparagraph 44(1)(b)(i) of the ITAA 1936 includes in the assessable income of a non-resident shareholder in a company, dividends paid out of profits derived by a company from sources in Australia.

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

89. Subsection 128B(1) of the ITAA 1936 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.

90. Subparagraph 128B(3)(ga)(i) of the ITAA 1936 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.

91. Section 128D of the ITAA 1936 operates to treat the Special Dividend as non-assessable non-exempt income.

92. Accordingly, a non-resident 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 pursuant to subparagraph 44(1)(b)(i) of the ITAA 1936 (section 128D of the ITAA 1936) and is not liable to Australian withholding tax in relation to the Special Dividend received (subparagraph 128B(3)(ga)(i) of the ITAA 1936).

Gross-up and tax offset

93. 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)).

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

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

95. 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

96. 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)).

97. Paragraph 207-145(1)(a), which refers to former Division 1A of Part IIIAA of the ITAA 1936, 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.

98. Former section 160APHU of the ITAA 1936 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.

99. The test of what constitutes a qualified person is set out in former subsection 160APHO(1) of the ITAA 1936. 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

100. 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) of the ITAA 1936).

101. Examples of what constitutes the making of a related payment for the purposes of Division 1A of former Part IIIAA of the ITAA 1936 are set out in former section 160APHN of the ITAA 1936. 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.

102. Under the terms of the Scheme Implementation Deed, the Scheme Consideration was reduced by the amount of the Special Dividend paid by Bingo to its shareholders. The reduction of the Scheme Consideration, calculated with reference to the amount of the Special Dividend, has the effect of passing the benefit of the Special Dividend from a Bingo shareholder to RollCo.

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

Secondary qualification period

104. 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 of the ITAA 1936).

105. Under former subsection 160APHE(1) of the ITAA 1936, 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. In respect of the Special Dividend, eligibility to receive the Special Dividend was determined on the Special Dividend Record Date (19 July 2021), being the last day on which the acquisition by a person of a Bingo share

entitled the person to receive the Special Dividend. Accordingly, the day on which Bingo shares became ex dividend for the Special Dividend was 20 July 2021.

106. The secondary qualification period in relation to the Special Dividend is the period beginning 45 days before, and ending 45 days after, 20 July 2021, namely 5 June 2021 to 3 September 2021 (inclusive).

Holding period rule

107. The holding period rule requires you to hold your Bingo 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) of the ITAA 1936). The relevant qualification period is the secondary qualification period.

108. However, any days on which a 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) of the ITAA 1936). The day of acquisition and the day of disposal of the relevant shares are also excluded.

109. You ceased to hold your Bingo shares 'at risk' on the Scheme Record Date (22 July 2021) because on that day you became committed to dispose of your Bingo shares in exchange for the Scheme Consideration. Accordingly, as you received the Special Dividend because you held shares in Bingo, you will be a qualified person in relation to the Special Dividend, if during the period 5 June 2021 to 21 July 2021 (inclusive), you held your Bingo shares for a continuous period of at least 45 days (not counting the day on which you acquired the Bingo share or the day on which you disposed of the Bingo 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 of the ITAA 1936) in respect of the shares.

110. 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 of the ITAA 1936) in respect of your Bingo shares. This is outside of the scope of this Ruling).

111. The small shareholder exception in former section 160APHT of the ITAA 1936 does not apply as the Special Dividend constitutes a related payment as discussed in paragraphs 100 to 103 of this Ruling. Therefore, a shareholder who is an individual and who has franking credit offsets not exceeding $5,000 for the year of income ended 30 June 2022 must also satisfy the holding period requirement in relation to Special Dividend (former subsection 160APHT(2) of the ITAA 1936).

Refundable tax offset

112. 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.

113. 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 of the ITAA 1936 (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)).

114. 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).

Anti-avoidance provisions

Section 177EA

115. Section 177EA of the ITAA 1936 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.

116. Bingo is a corporate tax entity. The transfer of the Bingo shares under the Scheme of Arrangement is a scheme for the disposition of membership interests. The Special Dividend is a frankable distribution paid to the shareholders of Bingo as part of this scheme who could reasonably be expected to receive imputation benefits. Therefore, the conditions of paragraphs 177EA(3)(a) to (d) of the ITAA 1936 are satisfied.

117. Accordingly, the issue is whether, having regard to the relevant circumstances of the scheme (as provided by subsection 177EA(17) of the ITAA 1936), it would be concluded that, on the part of Bingo, Bingo 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) of the ITAA 1936).

118. Considering the circumstances of the Scheme of Arrangement, it cannot be concluded that Bingo or Bingo shareholders entered into or carried out the scheme for the purpose of enabling the Bingo 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) of the ITAA 1936 to deny the whole, or any part, of the imputation benefit to be received in relation to the Special Dividend.

Section 204-30

119. 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.

120. 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.

121. Under the scheme, you received imputation benefits when the Special Dividend was paid to you. The Special Dividend was paid equally to all Bingo shareholders and were fully franked regardless of the tax profiles of Bingo's shareholders. Accordingly, it cannot be said that Bingo selectively directed the flow of franked dividends to those members who obtained the most benefit from the franking credits.

122. 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 you as a Bingo shareholder in relation to Special Dividend you received.

Capital gains tax consequences

CGT event A1

123. 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)).

124. The acquisition of shares in Bingo under a court approved scheme of arrangement does not involve a disposal of shares under a contract.[1]

125. Therefore, CGT event A1 happened when there was a change of ownership in a Bingo share from a shareholder to RollCo under the SID (subsections 104-10(1) and (2)). The change of ownership occurred on the Scheme Implementation Date of 5 August 2021 (paragraph 104-10(3)(b)).

126. 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

127. 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)).

128. 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]

[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.*

129. In this case, the Special Dividend was not paid in respect of the disposal of Bingo shares under the scheme. The Scheme of Arrangement was not conditional on the declaration of the Special Dividend. The Special Dividend was not dependent on RollCo, Recycle and Resource Holdings or a third-party financing or facilitating payment of the Special Dividend, or RollCo, Recycle and Resource Holdings or a third party being obliged to bring about the result that the Special Dividend would be paid to existing shareholders.

130. The Commissioner considers that the Special Dividend was not received in respect of the disposal of Bingo 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.

131. Therefore, the capital proceeds that you received from CGT event A1 happening for the disposal of each of your Bingo shares is the Scheme Consideration consisting of either the cash consideration or the mixed consideration as follows:

- If you elected to receive the cash consideration, $3.45 per Bingo share reduced by the amount of the Special Dividend of 11.7 cents per share, or
- If you elected to receive the mixed consideration
  - cash consideration of $1.32 per Bingo share reduced by the amount of the Special Dividend of 11.7 cents per share, plus
  - the market value (worked out at the time of CGT Event A1) of the Class B share, Preference Share and Class C share in Recycle and Resource Holdings received per Bingo share.

Capital gain or capital loss

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

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

134. The cost base and reduced cost base of the Bingo share depends on your individual circumstances.

Discount capital gain

135. If you make a capital gain from the disposal of your Bingo 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 Bingo share on or before 4 August 2020, which was at least 12 months prior to CGT event A1 happening (subsection 115-25(1)).

Non-resident shareholders

136. 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)).

137. 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 Bingo 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 Bingo 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).

138. An 'indirect Australian real property interest' under section 855-25 is an interest held by an entity in another entity that passes the:

- non-portfolio interest test under section 960-195, at that time or throughout a 12-month period that began no earlier than 24 months before that time and ended no later than that time, and
- principal asset test in section 855-30.

139. Subsection 855-30(2) provides that a membership interest held by the holding entity in the test entity passes the principal asset test if the sum of the market values of the test entity's assets that are taxable Australian real property (TARP) assets exceeds the sum of the market values of its assets that are non-TARP assets.

140. The sum of the market values of Bingo's TARP assets did not exceed the sum of the market value of its non-TARP assets. Therefore, the principal asset test is not satisfied.

141. Any shareholder that satisfied the non-portfolio interest test in section 960-195 at either time specified in subparagraphs 855-25(1)(a)(i) and 855-25(1)(ii) does not have an indirect Australian real property interest because the principal asset test is not satisfied. Therefore, any capital gain or capital loss made by shareholders that satisfy the non-portfolio interest test when CGT event A1 happened can be disregarded.

Availability of partial scrip for scrip roll-over under Subdivision 124-M if a capital gain is made

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

143. Subdivision 124-M contains a number of conditions for, and exceptions to, a shareholder being eligible to choose scrip for scrip roll-over. The main requirements that are relevant to the scheme that is the subject of this Ruling are:

- an entity exchanges shares in a company for shares in another company (paragraph 124-780(1)(a))

- the exchange is in consequence of a single arrangement that satisfies subsection 124-780(2) or (2A)
- conditions for the roll-over in subsection 124-780(3) are satisfied
- further conditions, if applicable, are satisfied, and
- exceptions to obtaining scrip for scrip roll-over are not applicable.

144. The scheme that is the subject of this Ruling satisfies the requirements for partial roll-over under Subdivision 124-M.

If scrip for scrip roll-over is chosen

Capital gain partially disregarded

145. If you choose scrip for scrip roll-over, the capital gain you made from the disposal of a Bingo share is disregarded to the extent you received replacement Recycle and Resource Holdings Class B, Preference and Class C shares for the disposal of your Bingo share (eligible proceeds) (subsection 124-785(1)). The capital gain is not disregarded to the extent that you received cash consideration for the disposal of your Bingo share (ineligible proceeds).

146. Subsection 124-790(2) provides that the cost base (or reduced cost base) of the ineligible proceeds is that part of the cost base of the original interest as is reasonably attributable to the ineligible proceeds. The cost base of each Bingo share is, for the purposes of working out the cost base of the replacement Recycle and Resource Holdings Class B, Preference and Class C shares, reduced by that part of the cost base which is reasonably attributable to the cash consideration of $1.32.

147. The method to be used by a Bingo shareholder to calculate that part of the cost base of each Bingo share that is not reasonably attributable to the cash consideration of $1.32 (eligible part cost base) is:

$$\text{Eligible proceeds cost base} = \text{Cost base of Bingo Share} \times \frac{\text{Market value of Class B share, Preference Share and Class C share}}{\text{Market value of Class B share, Preference Share and Class C share} + \$1.32}$$

148. The method to be used by a Bingo shareholder to calculate that part of the cost base of each Bingo share that is reasonably attributable to the cash consideration of $1.32 (ineligible proceeds cost base) is:

$$\text{Ineligible proceeds cost base} = \text{Cost base of Bingo Share} \times \frac{\$1.32}{\text{Market value of Class B share, Preference Share and Class C share} + \$1.32}$$

149. In working out the amount of the capital gain that is subject to scrip for scrip roll-over, the following method may be applied:

Capital gain (roll-over) = Eligible proceeds – Eligible proceeds cost base

150. In working out the amount of the capital gain that is not subject to scrip for scrip roll-over, the following method may be applied:

Capital gain = Ineligible proceeds – Ineligible proceeds cost base

Cost base and reduced cost base of replacement Recycle and Resource Holdings Class B, Preference and Class C shares

151. The first element of the cost base and reduced cost base of each replacement Recycle and Resource Holdings Class B, Preference and Class C share received is calculated by reasonably attributing to it 61.15% of the cost base of your original Bingo share for which it was exchanged (the percentage of the mixed consideration that was eligible proceeds) (subsections 124-785(2) and (4)).

152. You can calculate the first element of the cost base and reduced cost base of the Recycle and Resource Holdings Class B, Preference and Class C shares as follows:

First element of cost base or reduced cost base of each Recycle and Resource Holdings **Class B Share**	=	61.15% of cost base of Bingo shares	x	42.77% (value of scrip consideration attributed to Class B share)
		Number of Class B shares issued as part of the scrip consideration.		
First element of cost base or reduced cost base of each Recycle and Resource Holdings **Preference Share**	=	61.15% of cost base of Bingo shares	x	42.11% (value of scrip consideration attributed to Preference share)
		Number of Preference shares issued as part of the scrip consideration.		
First element of cost base or reduced cost base of each Recycle and Resource Holdings **Class C Share**	=	61.15% of cost base of Bingo shares	x	15.12% (value of scrip consideration attributed to Class C share)
		Number of Class C shares issued as part of the scrip consideration.		

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