Status: **legally binding**

# Class Ruling

# JB Hi-Fi Limited – off-market share buy-back

**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 for shareholders of JB Hi-Fi Limited (JB Hi-Fi) who participated in the JB Hi-Fi off-market share buy-back (Buy-Back) announced on 14 February 2022.

2. Full details of this scheme are set out in paragraphs 39 to 60 of this Ruling.

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

## Who this Ruling applies to

4. This Ruling applies to you if you:

- were registered on the JB Hi-Fi share register on 24 February 2022 (Record Date)
- are an Australian resident or a New Zealand resident, and
- participated in the Buy-Back.

5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 39 to 60 of this Ruling.

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

### When this Ruling applies

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

# Ruling

### Off-market share buy-back

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

### The Dividend Component

8. You are taken to have been paid a dividend of $41.87 (Dividend Component) on 11 April 2022 (Buy-Back Date) for each JB Hi-Fi share you sold in the Buy-Back (section 159GZZZP).

9. The Dividend Component is a frankable distribution pursuant to section 202-40 and is capable of being franked in accordance with section 202-5.

10. The difference between the Buy-Back price of $45.05 (Buy-Back Price) and the Dividend Component of $41.87, being $3.18 (Capital Component), is not taken to be a dividend (subsection 159GZZZP(2)).

### Assessability of the Dividend Component and tax offset

#### *Resident shareholders – direct distributions*

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

- the Dividend Component per JB Hi-Fi share (subsection 44(1)), and
- subject to the 'qualified person' rules (see paragraph 33 of this Ruling), the amount of franking credits attached to the Dividend Component (subsection 207-20(1)).

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

#### *Resident shareholders – indirect distributions*

*Partnerships*

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

- the Dividend Component per JB Hi-Fi share (subsection 44(1) and section 90), and

- subject to the qualified person rules, the amount of franking credits attached to the Dividend Component (subsection 207-35(1) and section 90).

*Trusts*

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

- the Dividend Component of $41.87 per JB Hi-Fi share (subsections 44(1) and 95(1)), and
- subject to the qualified person rules, the amount of franking credits attached to the Dividend Component (subsections 207-35(1) and 95(1)).

*Partners and beneficiaries*

15. If you are a partner of a partnership or a beneficiary of a trust in which the trustee participated in the Buy-Back and a franked distribution flowed indirectly (within the meaning of Subdivision 207-B) to you, subsections 207-35(3) to (6) set out the circumstances in which you are required to gross up your assessable income for your share of the franking credit on the franked distribution.

16. Where the franked distribution flows indirectly through a trust or partnership to you and you are a resident individual, a resident corporate tax entity (at the time the distribution flows indirectly to it) or a trustee mentioned in paragraphs 207-45(c) or (d), you are (subject to the qualified person rules) entitled to a tax offset equal to your share of the franking credit on the franked distribution (section 207-45).

***Refundable tax offset***

17. The franking credit tax offset is subject to the refundable tax offset rules in Division 67 (subsection 67-25(1)). However, certain trustees and corporate tax entities are excluded from the refundable tax offset rules (subsections 67-25(1A) to (1DA)).

***New Zealand-resident shareholders***

18. If you are a New Zealand-resident shareholder who participated in the Buy-Back with shares you held in carrying on a business in Australia at or through a permanent establishment in Australia, your assessable income includes:

- the Dividend Component of $41.87 per JB Hi-Fi share (paragraphs 44(1)(b) and (c)), and
- subject to the qualified person rules, the amount of the franking credits attached to the Dividend Component (subsections 44(1), 207-20(1) and 207-75(2)).

19. You will be entitled to the tax offset equal to the amount of the franking credits attached to the Dividend Component, subject to the qualified person rules (subsection 207-20(2)). However, you are not subject to the refundable tax offset rules (subsection 67-25(1DA)). You are also not liable to pay Australian withholding tax in respect of the Dividend Component (subsection 128B(3E) and paragraph 128B(3)(ga)).

Status: **legally binding**

20. If you are a New Zealand-resident shareholder who participated in the Buy-Back and the Dividend Component is not attributable to JB Hi-Fi shares you held in carrying on a business at or through a permanent establishment in Australia, you:

- do not include the Dividend Component in your assessable income for Australian income tax purposes (section 128D)
- do not include the amount of the franking credits attached to the Dividend Component in your assessable income for Australian income tax purposes
- are not entitled to a tax offset for those franking credits (sections 207-20 and 207-70)
- are not subject to the refundable tax offset rules (subsection 67-25(1)), and
- are not liable to Australian withholding tax in respect of the Dividend Component because it is fully franked (paragraph 128B(3)(ga)).

## Sale consideration

21. You are taken to have received $7.20 (Sale Consideration) for each JB Hi-Fi share you sold in the Buy-Back on 11 April 2022 (section 159GZZZQ), unless you are a corporate tax entity to which subsections 159GZZZQ(8) and (9) apply.

22. The treatment of the Sale Consideration will depend on whether you held your JB Hi-Fi shares on capital account, as trading stock or on revenue account.

### *Shares held on capital account*

23. If you held your JB Hi-Fi shares on capital account, you are taken to have disposed of your JB Hi-Fi shares for capital gains tax (CGT) purposes on 11 April 2022 (CGT event A1 under section 104-10).

24. The Sale Consideration of $7.20 per JB Hi-Fi share (which may be adjusted under subsection 159GZZZQ(8) if you are a corporate tax entity) represents the capital proceeds you received for CGT purposes (subsection 116-20(1)).

25. If you did not hold your JB Hi-Fi shares through a partnership, you made a:

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

26. Where you made a capital gain, you can treat the capital gain as a 'discounted capital gain' if you have held your JB Hi-Fi shares for at least 12 months prior to the Buy-Back Date) and the other conditions of Subdivision 115-A are met.

27. If you held the JB Hi-Fi shares through a partnership, any capital gain or capital loss will be made by the partners individually (subsection 106-5(2)). Each partner in a partnership has a separate cost base and reduced cost base for the partner's interest in each JB Hi-Fi share sold in the Buy-Back by the partnership. The partnership would allocate to you an appropriate share of the Sale Consideration which the partnership received for the sale of JB Hi-Fi shares in the Buy-Back.

Status: **legally binding**

### *Shares held as trading stock*

28. If you held your JB Hi-Fi shares as 'trading stock' (as defined in subsection 995-1(1)) and sold them in the Buy-Back in the ordinary course of your business, the Sale Consideration of $7.20 you received per JB Hi-Fi share (which may be adjusted under subsection 159GZZZQ(8) if you are a corporate tax entity) is included in your assessable income (subsection 70-80(1)).

29. While CGT event A1 also happened when you sold your JB Hi-Fi shares in the Buy-Back, any capital gain or capital loss made as a result of selling the shares you held as trading stock, or if you are a partner in a partnership, the shares that your partnership held as trading stock, will be disregarded (section 118-25).

### *Shares held on revenue account*

30. If you held your JB Hi-Fi shares as revenue assets (as defined in section 977-50), and they were not trading stock, the amount by which the Sale Consideration exceeds the cost of each share is included in your assessable income (section 6-5). Correspondingly, if the cost of each share exceeds the Sale Consideration, the difference is an allowable deduction (section 8-1).

31. CGT event A1 also happened when you sold your JB Hi-Fi shares in the Buy-Back. Where you made a capital gain as a result of selling your JB Hi-Fi shares in the Buy-Back, you reduce the amount of the capital gain by the amount you otherwise include in your assessable income (section 118-20). If you made a capital loss in respect of the JB Hi-Fi shares you held on revenue account but not as trading stock, you reduce the reduced cost base of each JB Hi-Fi share by the amount of the allowable deductions (subsection 110-55(9)).

### *New Zealand-resident shareholders – capital gains tax consequences*

32. If you are a New Zealand resident who participated in the Buy-Back, you will only have CGT consequences if the shares you sold under the Buy-Back are 'taxable Australian property' (section 855-10).

### Qualified persons

33. You will satisfy the qualified person rules in relation to the Dividend Component for the purposes of paragraphs 207-145(1)(a) and 207-150(1)(a) (which refers to Division 1A of former Part IIIAA) if:

- you acquired your JB Hi-Fi shares which you sold in the Buy-Back before 23 February 2022
- during the period you held your JB Hi-Fi shares, you had a sufficient risk of loss or opportunities for gain in respect of the shares (as defined in former section 160APHM) for a continuous period of at least 45 days, and
- you have not taken any positions in relation to your JB Hi-Fi shares apart from participation in the Buy-Back and were not, or will not, be under an obligation to, or be likely to, make a 'related payment' (as defined in former section 160APHN) in relation to the Dividend Component.

Status: **legally binding**

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

35. The 'last-in first-out' rule in former subsection 160APHI(4) has no effect for the purposes of the Buy-Back in respect of JB Hi-Fi shares acquired on or after 23 February 2022, as these shares did not confer an entitlement to participate in the Buy-Back.

### The anti-avoidance provisions

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

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

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

## Scheme

39. 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.

### JB Hi-Fi Limited

40. JB Hi-Fi is an Australian-resident public company listed on the Australian Securities Exchange (ASX).

41. As at 14 February 2022, JB Hi-Fi had 114,883,372 ordinary shares on issue. For the half-year ended 31 December 2021, the financial statements disclosed total share capital of approximately $365.1 million and retained profits of approximately $996.6 million.

42. JB Hi-Fi's ordinary shareholders are a mix of individuals, companies, trusts, partnerships and superannuation funds. Approximately 30% of JB Hi-Fi's shares are held by non-residents.

43. During the 2010–11 to 2012–13 income years, JB Hi-Fi paid 60% of net profit after tax as dividends. In the 2013–14 and all subsequent income years, JB Hi-Fi increased the dividend payout ratio to 65% of net profit after tax. All dividends paid during the 2010–11 to 2020–21 income years have been fully franked. JB Hi-Fi's intention is to continue to pay fully franked interim and final dividends to shareholders in the future.

44. JB Hi-Fi's share capital account (as defined in section 975-300) is not tainted within the meaning of Division 197.

Status: **legally binding**

## Off-market share buy-back

45. On 14 February 2022 (First Announcement Date), JB Hi-Fi announced its intention to undertake an off-market share buy-back of JB Hi-Fi shares up to approximately $250 million.

46. JB Hi-Fi regularly reviews its capital structure and seeks to achieve a balance between reducing the cost of capital, retaining flexibility of future business development and maintaining a strong financial position.

47. The Buy-Back was open to all JB Hi-Fi shareholders that held ordinary shares on 24 February 2022, except for ordinary shares:

- acquired on an ex entitlement basis on or after 23 February 2022
- held by a person who resides outside of Australia and New Zealand (an Excluded Foreign Shareholder)
- held pursuant to an employee or executive share plan which are subject to restrictions, as at the Buy-Back Record Date, prohibiting them from being sold into the Buy-Back as a result of the terms of offer of those shares pursuant to rules of the relevant plan, or
- held by certain employees and executives that were restricted from participating.

48. Participation in the Buy-Back was optional. Therefore, shareholders who did not want to participate were not required to take any action and the number of shares held by each shareholder did not change as a result of the Buy-Back.

49. The JB Hi-Fi Board resolved that the directors and members of senior management involved in determining the final pricing and size of the Buy-Back could not participate in the Buy-Back in respect of shares held legally or beneficially by them.

50. The Buy-Back tender period opened on 7 March 2022 and closed on 8 April 2022.

51. Under the tender process, eligible shareholders could make an offer to sell some or all of their ordinary shares to JB Hi-Fi:

- at the specified Tender Discount of between 8% and 14% (inclusive, at 1% intervals) to the market price – the market price means the volume-weighted average price (VWAP) of JB Hi-Fi ordinary shares on the ASX over the five trading days up to and including the date the tender closed, or
- by offering to sell their shares as a Final Price Tender (where shares are sold at whatever Buy-Back Price is ultimately determined under the tender process).

52. Eligible shareholders who held 100 ordinary shares or less and who wished to participate in the Buy-Back were required to tender all of their shares in one parcel at one of the specified Tender Discounts or as a Final Price Tender.

53. The Buy-Back Price was subject to two overriding limits:

- JB Hi-Fi would not buy back shares at a discount greater than 14% applied to the VWAP (rounded up to the nearest cent) of all trades on the ASX, excluding not ‘at-market’ trades of JB Hi-Fi shares over the five trading days up to and including 8 April 2022, and
- JB Hi-Fi also set a maximum price above which it would not buy back any shares, that maximum price being the deemed market value determined in

accordance with Taxation Determination TD 2004/22 *Income tax: for Off-Market Share Buy-Backs of listed shares, whether the buy-back price is set by tender process or not, what is the market value of the share for the purposes of subsection 159GZZZQ(2) of the Income Tax Assessment Act 1936?*

54. On 11 April 2022, JB Hi-Fi announced that:

- it had successfully bought back $250 million of JB Hi-Fi shares, representing 4.8% of the issued shares of JB Hi-Fi
- all shares were bought back at the Buy-Back Price, set at $45.05 per share, which represented a discount of 14% to the VWAP of $52.3854 of all trades on the ASX, excluding not 'at-market' trades of JB Hi-Fi shares over the five days up to and including 8 April 2022
- tenders at a 14% Tender Discount or as a final price tender were successful
- tenders at a Tender Discount less than 14% were not accepted, and
- due to an oversubscription for the Buy-Back, an 88.5% scale back of successful tenders was required. A priority allocation of 100 shares was bought back from each successful tendering shareholder before the scale back was applied. In addition, shareholders who successfully tendered all their shares, and who would be left with 40 shares or less (small holding tenders) as a result of the scale back had all their shares bought back in full.

55. All shares bought back under the Buy-Back were cancelled.

56. Under the Buy-Back, $3.18 per share bought back was debited to JB Hi-Fi's share capital account and the balance of the Buy-Back Price (the Dividend Component) was debited to JB Hi-Fi's Retained Earnings account.

57. The Dividend Component of the Buy-Back Price was fully franked.

58. JB Hi-Fi has confirmed that JB Hi-Fi shares do not constitute 'indirect Australian real property interests' as defined in section 855-25.

59. On 11 March 2022, JB Hi-Fi paid a fully franked interim ordinary dividend for the 2021–22 income year, totalling approximately $187.3 million, which was debited to JB Hi-Fi's Retained Earnings account.

60. The following table is a summary of the key dates of the Buy-Back:

| **Date** | **Buy-Back** |
|---|---|
| 14 February 2022 | First announcement date |
| 22 February 2022 | Last day to acquire JB Hi-Fi shares to be eligible to participate in the Buy-Back and be entitled to franking credits |
| 23 February 2022 | Ex entitlement date |
| 24 February 2022 | Record date |
| 7 March 2022 | Opening date for the tender period |
| 4–8 April 2022 | The five trading days over which VWAP is calculated |

Status: **legally binding**

| Date | Buy-Back |
|---|---|
| 8 April 2022 | Closing date for the tender period |
| 11 April 2022 | Buy-Back date |
| 20 April 2022 | Buy-Back payment date |

**Commissioner of Taxation**
4 May 2022

Status: **not legally binding**

# Appendix 1 – Explanation

***This Explanation is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.***

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## Off-market share buy-back

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

62. Although JB Hi-Fi's ordinary shares are listed for quotation in the official list of the ASX, the Buy-Back was not made in the ordinary course of trading on the ASX. Therefore, the Buy-Back was an off-market purchase within the meaning of paragraph 159GZZZK(d).

## The Dividend Component

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

64. The Buy-Back Price was $45.05, and $3.18 was debited against the amounts standing to the credit of JB Hi-Fi's share capital account. Therefore, the Dividend Component is taken to be $41.87 per share.

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

66. TD 2004/22 sets out the Commissioner's view as to how to determine what would have been the market value of a JB Hi-Fi share at the time of the Buy-Back if the Buy-Back did not occur and was never proposed to occur. In respect of the Buy-Back, the Buy-Back Price per share did not exceed the market value (determined in accordance with TD 2004/22) of $52.39 per share. As a result, the entire Dividend Component is frankable.

Status: **not legally binding**

## Sale Consideration

67. For the purposes of determining the amount of a gain or loss you made for your JB Hi-Fi shares which you sold in the Buy-Back, the consideration in respect of the disposal of a share that you are taken to have received is determined in accordance with section 159GZZZQ.

68. The effect of section 159GZZZQ is to adjust the Capital Component in order to determine the Sale Consideration for CGT or revenue account treatment.

69. Subsection 159GZZZQ(1) provides that you are taken to have received an amount equal to the purchase price (in this case the Buy-Back price of $45.05 you received for each JB Hi-Fi share you sold) as consideration in respect of the sale of the share bought back. However, this amount is subject to certain adjustments in order to arrive at the Sale Consideration.

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

71. For the purposes of determining the application of subsection 159GZZZQ(2), JB Hi-Fi proposed to use the methodology outlined in TD 2004/22 to calculate the market value of the share (which the Commissioner accepts). The relevant market value of a JB Hi-Fi share is the VWAP of the share on the ASX over the last five trading days before the first announcement of the Buy-Back, adjusted for the percentage change in the S&P/ASX 200 Index from the commencement of trading on 14 February 2022 to the close of trading on 8 April 2022.

72. Under this methodology, the market value of a JB Hi-Fi share bought back was calculated by JB Hi-Fi as $49.07. As a result, you are taken to have instead received consideration of $7.20 for the sale of each JB Hi-Fi share rather than the Buy-Back Price.

73. Pursuant to subsections 159GZZZQ(3) and (4), the deemed consideration of $7.20 is reduced by a 'reduction amount', which is an amount calculated pursuant to subsection 159GZZZQ(4). In the circumstances of the Buy-Back, the reduction amount is equivalent to the Dividend Component, unless you are a corporate tax entity to whom subsection 159GZZZQ(8) applies. As a result, the Sale Consideration for each JB Hi-Fi share you sold under the Buy-Back is $7.20 (being $49.07 less the Dividend Component of $41.87).

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

75. You are taken to have disposed of your JB Hi-Fi shares accepted under the Buy-Back on 11 April 2022 (CGT event A1 under section 104-10).

76. The disposal may have different taxation implications depending on how your JB Hi-Fi shares were held; for instance:

- if you are an investor who held your JB Hi-Fi shares on capital account, you will be subject to the CGT provisions (see paragraphs 23 to 27 of this Ruling), or
- if you are a share trader who held JB Hi-Fi shares on revenue account, you will be subject to the ordinary income provisions and the CGT provisions (see paragraphs 28 to 31 of this Ruling).

Status: **not legally binding**

## New Zealand-resident shareholders – capital gains tax consequences

77. If you are a New Zealand resident, you will only have CGT consequences if the JB Hi-Fi shares you sold under the Buy-Back are taxable Australian property (section 855-10). The term 'taxable Australian property' is defined in the table in section 855-15. Your JB Hi-Fi share was not an 'indirect Australian real property interest' (table item 2 in section 855-15). Therefore, your JB Hi-Fi share will constitute taxable Australian property if:

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

## Qualified persons

78. Paragraph 207-145(1)(a) provides that, in relation to a franked dividend made by an entity, only a qualified person in relation to the distribution for the purposes of Division 1A of former Part IIIAA is required to include the franking credit in its assessable income and is entitled to claim the franking credit as a tax offset. Paragraph 207-150(1)(a) is a similar provision that applies to indirect distributions. Broadly speaking, to be a qualified person in relation to the Dividend Component paid under the Buy-Back, you must satisfy the holding period rule (former section 160APHO).

79. The holding period rule requires a shareholder to hold the shares on which the dividend is paid 'at risk' for a continuous period of at least 45 days during the relevant qualification period. The relevant qualification period for JB Hi-Fi shares is:

- in the absence of a related payment, the primary qualification period, which commences on the day after the shares are acquired and ends on the 45th day after the day on which the shares became ex dividend, or
- if a related payment has been made (see paragraphs 84 to 86 of this Ruling), the secondary qualification period, which commences on the 45th day before, and ends on the 45th day after, the day on which the share became ex dividend.

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

81. Broadly, a related payment arises under former section 160APHN where you are, or an associate of yours is, under an obligation to make, or makes, a payment in respect of the dividend, which effectively passes on the economic benefit of the dividend to another person.

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

83. The Commissioner does not regard the announcement of the Buy-Back, the making of an invitation to shareholders to offer to sell their JB Hi-Fi shares or the making of an offer by a shareholder to JB Hi-Fi in respect of a JB Hi-Fi share as affecting whether JB Hi-Fi shares were held at risk or not.

Status: **not legally binding**

84. There are at least 45 clear days from 23 February 2022 (the ex entitlement date) to 10 April 2022 (the date prior to the date tender offers were accepted). If you acquired shares on or before 22 February 2022, which is the last day that you could acquire shares on the ASX to be eligible to participate in the Buy-Back and to qualify for franking credit entitlements in respect of the Buy-Back consideration, you would have satisfied the holding period rule as long as those shares were held at risk for at least 45 continuous days.

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

86. If you acquired ex entitlement JB Hi-Fi shares and participated in the Buy-Back with cum entitlement shares (which conferred an entitlement to participate in the Buy-Back), you will not be considered, for the purposes of the 45-day rule, to be subject to the last-in first-out rule in former subsection 160APHI(4) and so you will not be considered to have participated in the Buy-Back with the ex entitlement shares. JB Hi-Fi shares commenced trading on an ex entitlement basis on 23 February 2022, and ex entitlement shares do not constitute 'related securities' for the purposes of former subsection 160APHI(2) in relation to any cum entitlement shares. Therefore, the last-in first-out rule will not apply to any additional JB Hi-Fi shares you acquired on or after 23 February 2022 on an ex entitlement basis.

## The anti-avoidance provisions

### *Sections 45A and 45B*

87. If sections 45A or 45B apply then, in turn, section 45C will apply to treat some or all of the return of capital payment as an unfranked dividend.

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

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

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

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

92. Having regard to the relevant circumstances (as set out in subsection 45B(8)) of the Buy-Back, it cannot be concluded that a person would have entered into, or carried out, the Buy-Back for a more than incidental purpose of enabling a participating shareholder to obtain a tax benefit. Therefore, the Commissioner will not make a determination under subsection 45B(3) that section 45C applies to treat all or part of the distribution of share capital as an unfranked dividend paid by JB Hi-Fi.

Status: **not legally binding**

### *Section 177EA*

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

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

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

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

### *Section 204-30*

97. Subsection 204-30(1) empowers the Commissioner to make a determination under paragraph 204-30(3)(c) if an entity streams the payment of dividends to its members in such a way that certain members (referred to as favoured members) obtain imputation benefits, and other members (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.

98. 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.

99. Under the scheme, you received imputation benefits in relation to the Dividend Component of the Sale Consideration.

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

- participating shareholders received an imputation benefit (within the meaning given by subsection 204-30(6)) as a result of receiving the fully franked Dividend Component of the Buy-Back Price
- some participating JB Hi-Fi shareholders would have derived a greater benefit from franking credits than other JB Hi-Fi shareholders (for example, non-resident JB Hi-Fi shareholders – see subsections 204-30(7) and (8)), and
- it is reasonable to conclude that the features of the Buy-Back influenced some non-resident JB Hi-Fi shareholders not to participate in the Buy-Back, and as a result not receive any imputation benefits in respect of the Buy-Back.

Status: **not legally binding**

101. Accordingly, the conditions in subsection 204-30(1) are met and the Commissioner can make a determination under subsection 204-30(3), including a determination under paragraph 204-30(3)(a) to debit JB Hi-Fi's franking account. However, the Commissioner will not make a determination under subsection 204-30(3).

# Appendix 2 – Legislative provisions

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

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|---|---|
| *Income Tax Assessment Act 1936* | subsection 44(1) |
| *Income Tax Assessment Act 1936* | paragraph 44(1)(b) |
| *Income Tax Assessment Act 1936* | paragraph 44(1)(c) |
| *Income Tax Assessment Act 1936* | section 45A |
| *Income Tax Assessment Act 1936* | subsection 45A(2) |
| *Income Tax Assessment Act 1936* | paragraph 45A(3)(b) |
| *Income Tax Assessment Act 1936* | section 45B |
| *Income Tax Assessment Act 1936* | paragraph 45B(2)(a) |
| *Income Tax Assessment Act 1936* | paragraph 45B(2)(b) |
| *Income Tax Assessment Act 1936* | subsection 45B(3) |
| *Income Tax Assessment Act 1936* | subsection 45B(8) |
| *Income Tax Assessment Act 1936* | section 45C |
| *Income Tax Assessment Act 1936* | section 90 |
| *Income Tax Assessment Act 1936* | subsection 95(1) |
| *Income Tax Assessment Act 1936* | paragraph 128B(3)(ga) |
| *Income Tax Assessment Act 1936* | subsection 128B(3E) |
| *Income Tax Assessment Act 1936* | section 128D |
| *Income Tax Assessment Act 1936* | Division 16K |
| *Income Tax Assessment Act 1936* | section 159GZZZK |
| *Income Tax Assessment Act 1936* | paragraph 159GZZZK(c) |
| *Income Tax Assessment Act 1936* | paragraph 159GZZZK(d) |
| *Income Tax Assessment Act 1936* | section 159GZZZP |
| *Income Tax Assessment Act 1936* | subsection 159GZZZP(2) |
| *Income Tax Assessment Act 1936* | section 159GZZZQ |
| *Income Tax Assessment Act 1936* | subsection 159GZZZQ(1) |
| *Income Tax Assessment Act 1936* | subsection 159GZZZQ(2) |
| *Income Tax Assessment Act 1936* | subsection 159GZZZQ(3) |
| *Income Tax Assessment Act 1936* | subsection 159GZZZQ(4) |
| *Income Tax Assessment Act 1936* | subsection 159GZZZQ(8) |
| *Income Tax Assessment Act 1936* | subsection 159GZZZQ(9) |
| *Income Tax Assessment Act 1936* | Division 1A of former Part IIIAA |
| *Income Tax Assessment Act 1936* | former subsection 160APHI(2) |
| *Income Tax Assessment Act 1936* | former subsection 160APHI(4) |

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|---|---|
| *Income Tax Assessment Act 1936* | former section 160APHM |
| *Income Tax Assessment Act 1936* | former subsection 160APHM(2) |
| *Income Tax Assessment Act 1936* | former section 160APHN |
| *Income Tax Assessment Act 1936* | former section 160APHO |
| *Income Tax Assessment Act 1936* | section 177EA |
| *Income Tax Assessment Act 1936* | subsection 177EA(5) |
| *Income Tax Assessment Act 1936* | paragraph 177EA(5)(a) |
| *Income Tax Assessment Act 1936* | paragraph 177EA(5)(b) |
| *Income Tax Assessment Act 1936* | subsection 177EA(17) |
| *Income Tax Assessment Act 1997* | section 6-5 |
| *Income Tax Assessment Act 1997* | section 8-1 |
| *Income Tax Assessment Act 1997* | Division 67 |
| *Income Tax Assessment Act 1997* | subsection 67-25(1) |
| *Income Tax Assessment Act 1997* | subsection 67-25(1A) |
| *Income Tax Assessment Act 1997* | subsection 67-25(1B) |
| *Income Tax Assessment Act 1997* | subsection 67-25(1C) |
| *Income Tax Assessment Act 1997* | subsection 67-25(1D) |
| *Income Tax Assessment Act 1997* | subsection 67-25(1DA) |
| *Income Tax Assessment Act 1997* | subsection 70-80(1) |
| *Income Tax Assessment Act 1997* | section 104-10 |
| *Income Tax Assessment Act 1997* | subsection 104-10(4) |
| *Income Tax Assessment Act 1997* | subsection 104-165(3) |
| *Income Tax Assessment Act 1997* | subsection 106-5(2) |
| *Income Tax Assessment Act 1997* | subsection 110-55(9) |
| *Income Tax Assessment Act 1997* | Subdivision 115-A |
| *Income Tax Assessment Act 1997* | section 116-20(1) |
| *Income Tax Assessment Act 1997* | section 118-20 |
| *Income Tax Assessment Act 1997* | section 118-25 |
| *Income Tax Assessment Act 1997* | Division 197 |
| *Income Tax Assessment Act 1997* | section 202-5 |
| *Income Tax Assessment Act 1997* | section 202-40 |
| *Income Tax Assessment Act 1997* | paragraph 202-45(c) |
| *Income Tax Assessment Act 1997* | section 204-30 |
| *Income Tax Assessment Act 1997* | subsection 204-30(1) |
| *Income Tax Assessment Act 1997* | subsection 204-30(3) |
| *Income Tax Assessment Act 1997* | paragraph 204-30(3)(a) |
| *Income Tax Assessment Act 1997* | paragraph 204-30(3)(c) |

Status: **not legally binding**

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|---|---|
| *Income Tax Assessment Act 1997* | subsection 204-30(6) |
| *Income Tax Assessment Act 1997* | subsection 204-30(7) |
| *Income Tax Assessment Act 1997* | subsection 204-30(8) |
| *Income Tax Assessment Act 1997* | Subdivision 207-B |
| *Income Tax Assessment Act 1997* | section 207-20 |
| *Income Tax Assessment Act 1997* | subsection 207-20(1) |
| *Income Tax Assessment Act 1997* | subsection 207-20(2) |
| *Income Tax Assessment Act 1997* | subsection 207-35(1) |
| *Income Tax Assessment Act 1997* | subsection 207-35(3) |
| *Income Tax Assessment Act 1997* | subsection 207-35(4) |
| *Income Tax Assessment Act 1997* | subsection 207-35(5) |
| *Income Tax Assessment Act 1997* | subsection 207-35(6) |
| *Income Tax Assessment Act 1997* | section 207-45 |
| *Income Tax Assessment Act 1997* | paragraph 207-45(c) |
| *Income Tax Assessment Act 1997* | paragraph 207-45(d) |
| *Income Tax Assessment Act 1997* | section 207-70 |
| *Income Tax Assessment Act 1997* | subsection 207-75(2) |
| *Income Tax Assessment Act 1997* | paragraph 207-145(1)(a) |
| *Income Tax Assessment Act 1997* | paragraph 207-150(1)(a) |
| *Income Tax Assessment Act 1997* | Division 230 |
| *Income Tax Assessment Act 1997* | section 855-10 |
| *Income Tax Assessment Act 1997* | section 855-15 |
| *Income Tax Assessment Act 1997* | section 855-25 |
| *Income Tax Assessment Act 1997* | section 975-300 |
| *Income Tax Assessment Act 1997* | section 977-50 |
| *Income Tax Assessment Act 1997* | subsection 995-1(1) |

Status: **not legally binding**

# References

*Related Rulings/Determinations:*
TD 2004/22

*Legislative references:*
- TAA 1953

ATO references

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