



Status: **legally binding**

Class Ruling

PRT Company Limited – distribution of special dividend and return of capital following sale of assets

❶ 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 for holders of ordinary shares of PRT Company Limited (Prime), formerly known as Prime Media Group Limited before 5 January 2022, who received a special dividend and a return of capital (collectively, the Distribution) on 4 February 2022 (Payment Date).
2. Full details of this scheme are set out in paragraphs 37 to 54 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 registered on the Prime share register on 28 January 2022 for determining your entitlement to participate in the Distribution (Record Date)
 - held your Prime shares on capital account on the Record Date; that is, you did not hold your Prime shares on revenue account (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1))
 - received the fully franked special dividend of \$0.26 per Prime share on the Payment Date (Special Dividend)

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- received the return of capital of \$0.10 per Prime share on the Payment Date (Return of Capital)
- would not be deemed to have acquired your Prime shares prior to 20 September 1985, and
- would not be subject to tax under Subdivision 83A-C in respect of your Prime shares.

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 37 to 54 of this Ruling.

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

Special Dividend

7. The Special Dividend 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 and is capable of being franked in accordance with section 202-5.

Assessability of the Special Dividend, franking credits and tax offsets

Residents

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' in relation to the Special Dividend as defined in former Division 1A of Part IIIA of the ITAA 1936.

11. If you receive 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 in relation to the Special Dividend (section 207-45 and former subsection 160APHU(1) of the ITAA 1936).

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13. If you are an Australian-resident corporate tax entity, a credit of the franking credit attached to the Special Dividend will arise in your franking account on the Payment Date (table item 3 in subsection 205-15(1)).

14. This tax offset is refundable, subject to the refundable tax offset rules in Division 67.

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

15. 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 Special Dividend (subsection 128B(3E) of the ITAA 1936).

16. If you are also a qualified person in relation to the Special Dividend, 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)).

17. This tax offset is not refundable (subsection 67-25(1DA)).

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

18. 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 Special Dividend (paragraph 128B(3)(ga) of the ITAA 1936).

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

Qualified persons

20. The Special Dividend you received does not constitute a 'related payment' for the purposes of paragraph 207-145(1)(a) and former section 160APHN of the ITAA 1936 and the primary qualification period therefore applies.

21. You will be a qualified person in relation to the Special Dividend if, during the period from the day after you acquired your Prime shares to 15 March 2022 (inclusive), you held your Prime 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.

Exempting entity

22. Prime was not an 'exempting entity', nor was it a 'former exempting entity', at the Payment Date (sections 208-20 and 208-50).

23. Therefore, section 208-195 will not apply to deny the gross up of your assessable income by the amount of the franking credits attached to the Special Dividend you received, nor to deny the tax offset to which you may otherwise be entitled, under Division 207.

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Return of Capital***Return of Capital is not a dividend***

24. As the Return of Capital was debited against Prime's untainted share capital account, no part of the Return of Capital paid to you by Prime on the Payment Date is a dividend as defined in subsection 6(1) of the ITAA 1936.

25. No part of the Return of Capital is included in your assessable income as a dividend under section 44 of the ITAA 1936.

Capital gains tax consequences***CGT event G1***

26. CGT event G1 happened on the Payment Date when Prime paid you the Return of Capital in respect of each Prime share you owned at the Record Date and continued to own at the Payment Date (section 104-135).

27. You made a capital gain when CGT event G1 happened if the amount of the Return of Capital you received was more than the share's cost base (subsection 104-135(3)). If you make a capital gain, the share's cost base and reduced cost base is reduced to nil.

28. If the Return of Capital you received was equal to or less than the cost base of the share, the cost base and reduced cost base of the share is reduced by the amount of the Return of Capital you received for that share (but not below nil) (subsection 104-135(4)).

CGT event C2

29. CGT event C2 happened on the Payment Date when Prime paid you the Return of Capital in respect of Prime shares you owned on the Record Date but ceased to own before the Payment Date (section 104-25).

30. If the cost base or reduced cost base of the Prime share previously owned by you has been fully applied in working out a capital gain or capital loss on the share, the right to receive the Return of Capital will have a nil cost base. As a result, you will, in those circumstances, make a capital gain equal to the capital proceeds, being \$0.10 per Prime share.

Discount capital gain

31. You can treat a capital gain made when CGT event G1 or CGT event C2 happened to your Prime share as a discount capital gain under Subdivision 115-A if you acquired your Prime share at least 12 months before the Payment Date provided the other conditions in Subdivision 115-A are satisfied (subsection 115-25(1)).

Foreign shareholders are able to disregard capital gains tax

32. Your Prime share was not an 'indirect Australian real property interest' for the purposes of section 855-15.

33. Therefore, if you were a foreign resident or the trustee of a foreign-resident trust for capital gains tax purposes, you may disregard any capital gain made from CGT event G1

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or any capital gain or capital loss made from CGT event C2 in respect of your Prime share under subsection 855-10(1), provided that:

- you did not use the Prime share at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- the Prime share was not covered by subsection 104-165(3) about individuals who defer capital gains upon ceasing to be Australian residents (table item 5 of section 855-15).

Anti-avoidance provisions

Sections 45A, 45B and 45C of the ITAA 1936 do not apply to the Return of Capital

34. The Commissioner will not make a determination under either subsection 45A(2) of the ITAA 1936 or paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to any part of the Return of Capital you received on the Payment Date.

Section 177EA of the ITAA 1936 does not apply to the Special Dividend

35. 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 by you in relation to the Special Dividend.

Section 204-30 does not apply to the Special Dividend

36. 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 by you in relation to the Special Dividend.

Scheme

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

Background

38. Prime is an Australian-resident public company incorporated on 16 March 1970 and has been listed on the Australian Securities Exchange since 30 August 1984.

39. Prime is the head company of a tax consolidated group. Prime Television (Holdings) Pty Limited (PTH) and Seven Affiliate Sales Pty Limited (SAS) were wholly-owned subsidiaries of Prime.

40. Prime was a free-to-air television broadcaster.

Asset Sale

41. On 30 October 2021 Prime entered into a Share Sale Agreement with Seven Network (Operations) Limited, a wholly-owned subsidiary of Seven West Media Limited, for the sale of all of Prime's shares in PTH and SAS (the Asset Sale).

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42. On 31 December 2021, the Asset Sale was completed. Under the Asset Sale, Prime received cash consideration of \$131.88 million (adjusted in accordance with the terms of the Asset Sale), which was available for distribution to Prime shareholders.

43. On 5 January 2022, following the completion of the Asset Sale, Prime changed its company name from Prime Media Group Limited to PRT Company Limited.

Special Dividend and Return of Capital

44. On 23 December 2021, Prime convened an extraordinary general meeting for Prime shareholders to consider the resolution to approve the Asset Sale and the Distribution. An explanatory memorandum was distributed to shareholders prior to this meeting.

45. At the extraordinary general meeting on 23 December 2021, Prime shareholders approved the Distribution on the Payment Date as follows:

- a fully franked special dividend of \$0.26 per Prime share (that is, the Special Dividend), and
- a return of capital of \$0.10 per Prime share (that is, the Return of Capital).

46. The Special Dividend was paid from Prime's stand-alone profits and retained earnings of Prime and was not paid out of share capital and was not debited to a share capital account. All Prime shareholders who held Prime shares on the Record Date were entitled to receive the Special Dividend.

47. The Return of Capital was paid from Prime's share capital account and funded from cash reserves by Prime. There was no change in either the number of Prime shares held by each Prime shareholder or the proportionate interest of each Prime shareholder in Prime as a result of the Return of Capital. All Prime shareholders who held Prime shares on the Record Date were entitled to receive the Return of Capital.

Other matters

48. Prime only had a single class of shares on issue, being ordinary shares. On the Record Date, Prime had 366,330,303 ordinary shares on issue.

49. Prime's special purpose financial report for the period ended 31 December 2021 disclosed:

- profit reserves of \$96 million
- issued capital of \$310.3 million, and
- accumulated losses of \$273.5 million.

50. On the Payment Date, Prime's 'share capital account', as defined in section 975-300, was not tainted (within the meaning of Division 197), and was comprised wholly of money received by Prime in consideration for the issue of shares.

51. As at the Payment Date, approximately 9.1% of the issued share capital of Prime was estimated by Prime to be held by non-residents.

52. Prior to the Payment Date, Prime has never been an 'exempting entity', as defined in section 208-20.

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53. At the Payment Date, the sum of the market value of Prime's assets that were 'taxable Australian real property', as defined in section 855-20, did not exceed the sum of the market values of its other assets that were not 'taxable Australian real property'.

54. In the 2017–18 to 2019–20 financial years, Prime had suspended dividend payments to apply surplus funds to reducing interest bearing debts. But for the Asset Sale, Prime would otherwise have expected to pay future dividends based on a dividend policy that provides for the paying of dividends of up to 50% of statutory net profits after tax, subject to Prime's regional advertising markets, business operations and financial performance not being materially impacted by the COVID-19 pandemic.

Commissioner of Taxation

15 June 2022

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Appendix – Explanation

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

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Special Dividend

55. 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.

56. The payment of the Special Dividend is a distribution of money which Prime made to its shareholders. Prime did not debit the Special Dividend against its share capital account. The Special Dividend was paid from Prime's stand-alone profits and retained earnings.

57. Accordingly, the exclusion in paragraph (d) of the definition of 'dividend' does not apply and the Special Dividend constitutes a 'dividend' paid to the shareholders of Prime for the purposes of subsection 6(1) of the ITAA 1936.

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

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

60. The assessable income of a resident shareholder includes dividends paid by a company out of profits derived by it from any source (subparagraph 44(1)(a)(i) of the ITAA 1936).

61. As the Special Dividend was paid to shareholders out of profits derived by Prime, a resident shareholder is required to include the Special Dividend 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

62. A non-resident shareholder carrying on a business in Australia at or through a permanent establishment is required to include the Special Dividend in their assessable income to the extent to which the dividend was attributable to the permanent establishment (whether the dividend was paid out of profits derived by Prime from sources in or outside Australia) (subparagraphs 44(1)(b)(i) and (c)(i) of the ITAA 1936).

63. Subsection 128B(1) of the ITAA 1936 imposes withholding tax on income which consists of a dividend paid by a resident company to a non-resident on or after 1 January 1968.

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

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65. Therefore, a non-resident carrying on a business in Australia at or through a permanent establishment who received the Special Dividend (other than in their capacity as trustee) will not be liable for withholding tax in relation to the dividend.

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

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

67. However, subsection 44(1) of the ITAA 1936 does not apply to a dividend to the extent to which another provision of the ITAA 1936 or the ITAA 1997 expressly deals with that dividend.

68. Subparagraph 128B(3)(ga)(i) of the ITAA 1936 excludes, from a non-resident's liability to withholding tax under subsection 128B(1) of the ITAA 1936, 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 withholding tax when derived by a non-resident shareholder not carrying on a business at or through a permanent establishment of the shareholder in Australia.

69. As the Special Dividend would have been subject to withholding tax but for paragraph 128B(3)(ga) of the ITAA 1936, section 128D of the ITAA 1936 operates to treat the Special Dividend as non-assessable non-exempt income.

70. Accordingly, a non-resident who received the 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 to which subsection 128B(3E) of the ITAA 1936 applies) is not required to include the Special Dividend as assessable income due to the operation of section 128D of the ITAA 1936.

Gross-up and tax offset

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

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

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

73. Subject to satisfying the qualified person 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 entity) includes the amount of the franking credit attached to the Special Dividend (subsection 207-35(1)).

74. Where the Special Dividend is received by an Australian-resident corporate tax entity, a credit of the franking credit on the dividend will arise in the shareholder's franking account on the day the dividend is made under table item 3 in subsection 205-15(1).

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Qualified persons

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

76. 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.

77. 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.

78. 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 payments rule

79. In order to determine the relevant qualification period, it is necessary to determine whether you or an associate have made, were under an obligation to make, or are likely to make, a related payment in respect of the Special Dividend you have received (former subsection 160APHN(2) of the ITAA 1936).

80. Examples of what constitutes the making of a related payment for the purposes of former Division 1A of Part IIIAA of the ITAA 1936 are set out in former section 160APHN of the ITAA 1936. Broadly, a related payment is where a shareholder has done, or is obliged to do, anything having the effect of passing the benefit of the dividend to one or more other persons.

81. There are no circumstances to indicate that you (or a partner in a partnership or a beneficiary of a trust that has an interest in Prime shares) were under any obligation to make a related payment in relation to the Special Dividend. Therefore, you need to satisfy the primary qualification period in relation to the Special Dividend.

Primary qualification period

82. The primary qualification period is the period beginning on the day after the date of acquisition of the share and ends 45 days after the day on which a share becomes ex dividend (former section 160APHD of the ITAA 1936).

83. 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.

84. The last day on which a person could have acquired a Prime share and be entitled to receive the Special Dividend was the Record Date, being 28 January 2022. It follows that Prime shares became ex dividend on 29 January 2022.

85. This means the primary qualification period will end on 15 March 2022, being 45 days after the Prime shares became ex dividend.

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Holding period rule

86. If you are an individual who has franking credit offsets not exceeding \$5,000 for the income year ending 30 June 2022, you do not need to satisfy the holding period rule in relation to the Special Dividend (former subsection 160APHT(1) of the ITAA 1936).

87. For all other shareholders, the holding period rule requires you to hold your Prime shares, on which the Special Dividend was paid, 'at risk' for a continuous period of at least 45 days during the relevant qualification period (in this case the primary qualification period) in order to be a qualified person in respect of the Special Dividend (former paragraph 160APHO(2)(a) of the ITAA 1936).

88. 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 this 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).

89. Under former subsection 160APHM(2) of the ITAA 1936, you are taken to have materially diminished risks of loss and opportunities for gain on a particular day with respect to your Prime shares if your net position on that day in relation to the shares has less than 30% of those risks and opportunities.

90. Therefore, you will be a qualified person in relation to the Special Dividend if, during the period from the day after you acquired your Prime shares to 15 March 2022 (inclusive), you held your Prime 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.

91. 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 160APHM of the ITAA 1936, in respect of your Prime shares and is outside of the scope of this Ruling.

Refundable tax offset

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

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

- non-complying superannuation funds or non-complying approved deposit funds (subsection 67-25(1A))
- trustees of a trust who are liable to be assessed under sections 98 or 99A 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)).

94. Division 63 sets out the rules on how, and in what order, tax offsets are applied against income tax liability. Where a tax offset that is subject to the refundable tax offset

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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).

Exempting entity

95. Division 207 does not apply to a distribution by an exempting entity (section 208-195).

96. Prime was not an exempting entity at the Payment Date as less than 95% of the accountable membership interests or accountable partial interests held in Prime were held by foreign residents at that date (section 208-20 and subsection 208-25(1)). Nor was Prime a former exempting entity at the Payment Date as Prime had never been an exempting entity before the Payment Date (section 208-50).

97. Accordingly, section 208-195 will not apply to deny the gross up of your assessable income by the amount of the franking credits attached to the Special Dividend received by you, nor to deny the tax offset to which you may otherwise be entitled, pursuant to Division 207.

Return of Capital

Return of Capital is not a dividend

98. Subsection 44(1) of the ITAA 1936 includes in a shareholder's assessable income any dividends paid to the shareholder out of profits derived by the company from any source if the shareholder is a resident of Australia.

99. The term 'dividend' is defined in subsection 6(1) of the ITAA 1936 and includes any distribution made by a company to any of its shareholders. However, paragraph (d) of the definition of 'dividend' excludes a distribution from the meaning of dividend if the amount of the distribution is debited against an amount standing to the credit of the company's share capital account.

100. The term 'share capital account' is defined in section 975-300 as an account which the company keeps of its share capital, or any other account created on or after 1 July 1998 where the first amount credited to the account was an amount of share capital.

101. Subsection 975-300(3) provides that if a company's share capital account is 'tainted' (as defined in Division 197), that account is taken not to be a share capital account for certain purposes of the income tax legislation (including the definition of 'dividend').

102. Prime has confirmed that its share capital account is comprised wholly of money received by Prime in consideration for the issue of shares and is not tainted within the meaning of Division 197.

103. The Return of Capital was recorded as a debit to Prime's untainted share capital account. As such, paragraph (d) of the definition of 'dividend' in subsection 6(1) of the ITAA 1936 applies and the Return of Capital is not a dividend.

104. As the Return of Capital is not a dividend as defined in subsection 6(1) of the ITAA 1936, no part of the Return of Capital is included in your assessable income as a Prime shareholder under subsection 44(1) of the ITAA 1936.

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Capital gains tax consequences

CGT event G1

105. Under subsection 104-135(1), CGT event G1 happens if:

- a company makes a payment to a shareholder in respect of a share they own in the company (except for CGT event A1 or C2 happening in relation to the share)
- some or all of the payment (the non-assessable part) is not a dividend, or an amount that is taken to be a dividend under section 47 of the ITAA 1936, and
- the payment is not included in the shareholder's assessable income.

106. As the Return of Capital was debited to the amount standing to the credit of Prime's share capital account, it is not a dividend under subsection 6(1) of the ITAA 1936 or an amount taken to be a dividend under section 47 of the ITAA 1936 and is not included in your assessable income. Therefore, CGT event G1 happened to your Prime shares when Prime paid you the Return of Capital in respect of each Prime share you owned on the Record Date and continued to own at the Payment Date (section 104-135).

107. You made a capital gain when CGT event G1 happened if the Return of Capital you received per Prime share was more than the cost base of the share. The capital gain is equal to the difference, and you reduce both the cost base and reduced cost base of your Prime share to nil (subsection 104-135(3)).

108. You cannot make a capital loss when CGT event G1 happens (note 1 to subsection 104-135(3)).

109. However, if the Return of Capital you received per Prime share was not more than the cost base of your Prime share, you reduce both the cost base and reduced cost base of your share (but not below nil) by the amount of the Return of Capital (subsection 104-135(4)).

110. The time of the event is when Prime makes the payment (subsection 104-135(2)), being the Payment Date.

CGT event C2

111. If, after the Record Date but before the Payment Date, you ceased to own a Prime share in respect of which the Return of Capital was payable, the right to receive the Return of Capital in respect of that share is retained by you and is a separate CGT asset from the Prime share.

112. CGT event C2 happened when the Return of Capital was made, being the Payment Date (subsection 104-25(2)). The right to receive the Return of Capital, being an intangible asset, ended by the right being discharged or satisfied when the Return of Capital was made (section 104-25).

113. You will make a capital gain under CGT event C2 if the capital proceeds from the ending of the right are more than the cost base of the right. The capital gain is equal to the amount of the excess. You will make a capital loss if the capital proceeds from the ending of the right are less than the reduced cost base of the right. The capital loss is equal to the amount of the difference (subsection 104-25(3)).

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114. In working out the capital gain or capital loss when CGT event C2 happens, the capital proceeds are equal to the amount of the Return of Capital, which is \$0.10 per Prime share (subsection 116-20(1)).

115. The cost base of your right to receive each Return of Capital is worked out under Division 110 (modified by Division 112). The cost base of the right does not include the cost base or reduced cost base of the share previously owned by you to the extent that it was applied in working out a capital gain or capital loss made when a CGT event happened to the share, for example, when you disposed of the share after the Record Date and before the Payment Date. Therefore, if the cost base or reduced cost base of the share previously owned by you has been fully applied in working out a capital gain or capital loss on the share, the right to receive the Return of Capital will have a nil cost base. As a result, you will, in those circumstances, make a capital gain equal to the capital proceeds, being \$0.10 per Prime share owned at the Record Date.

Discount capital gain

116. You can treat a capital gain made when CGT event G1 or CGT event C2 happened to your Prime share as a discount capital gain under Subdivision 115-A if you acquired your Prime share at least 12 months before the Payment Date provided the other conditions in Subdivision 115-A are satisfied (subsection 115-25(1)).

117. For the purposes of CGT event C2, you are considered to have acquired the right at the time when you acquired your Prime share.

Foreign shareholders are able to disregard capital gains tax

118. Under subsection 855-10(1), an entity disregards a capital gain or capital loss made from a CGT event if:

- just before the CGT event happened, the entity is a foreign resident, or the trustee of a foreign-resident trust for CGT purposes, and
- the CGT event happens in relation to a CGT asset that is not taxable Australian property.

119. The term 'taxable Australian property' is defined in section 855-15 to include an 'indirect Australian real property interest'. Under subsection 855-25(1), a membership interest held by an entity in another entity at a time, is an indirect Australian real property interest at the time if the interest passes:

- the 'non-portfolio interest test', and
- the 'principal asset test'.

120. Section 855-30 provides that the principal asset test is passed if the sum of the market value of the entity's assets that are taxable Australian real property exceeds the sum of the market value of its assets that are not taxable Australian real property.

121. The sum of the market values of Prime's assets that were taxable Australian real property did not exceed the sum of the market values of its other assets that were not taxable Australian real property. Therefore, the Prime shares were not an indirect Australian real property interest.

122. If you were a foreign resident or the trustee of a foreign-resident trust for CGT purposes, you may disregard a capital gain made under CGT event G1 or a capital gain or

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capital loss made under CGT event C2 in relation to your Prime share under subsection 855-10(1), provided that your Prime share:

- had not been used at any time by you in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- was not covered by subsection 104-165(3) (table item 5 of section 855-15, about individuals choosing to disregard capital gains upon ceasing to be Australian residents).

Anti-avoidance provisions

Application of sections 45A, 45B and 45C of the ITAA 1936 to the Return of Capital

123. Sections 45A and 45B of the ITAA 1936 are two anti-avoidance provisions which, if they apply, allow the Commissioner to make a determination that section 45C of the ITAA 1936 applies. The effect of such a determination, if it is made, is that all or part of the Return of Capital received by you will be treated as an unfranked dividend paid by Prime out of its profits and assessable under section 44 of the ITAA 1936.

Section 45A of the ITAA 1936

124. Section 45A of the ITAA 1936 generally applies where:

- a company streams capital benefits to some shareholders (the advantaged shareholders) who would derive a greater benefit from the receipt of capital, and
- it is reasonable to assume that other shareholders (the disadvantaged shareholders) have received, or are likely to receive, dividends.

125. Paragraph 45A(3)(b) of the ITAA 1936 provides that capital benefits include the distribution of share capital.

126. A capital benefit was provided to you when you received the Return of Capital on the Payment Date. However, all Prime shareholders who held Prime shares on the Record Date were eligible to receive the Return of Capital in direct proportion to their individual shareholding in Prime. Therefore, the circumstances of the Return of Capital indicate that there was no streaming of capital benefits to some Prime shareholders and dividends to other Prime shareholders.

127. Accordingly, the Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole, or a part, of the Return of Capital paid to you.

Section 45B of the ITAA 1936

128. Section 45B of the ITAA 1936 applies to treat amounts as dividends where certain capital payments are made to shareholders in substitution for dividends. In broad terms, section 45B of the ITAA 1936 applies where:

- there is a scheme under which a person is provided with a capital benefit by a company
- under the scheme, a taxpayer (relevant taxpayer), who may or may not be the person provided with the capital benefit, obtains a tax benefit, and

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- having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a purpose (whether or not the dominant purpose but not including an incidental purpose), of enabling a relevant taxpayer to obtain a tax benefit.

129. As you received a distribution of share capital (which is a capital benefit as defined in subsection 45B(5) of the ITAA 1936) and given the breadth of the definition of 'scheme' in subsection 45B(2) of the ITAA 1936, the Return of Capital you received satisfies the first two conditions.

130. Having regard to the relevant circumstances surrounding the Return of Capital, it cannot be concluded that the scheme was entered into or carried out for a more than incidental purpose of enabling you to obtain a tax benefit.

131. Accordingly, the Commissioner will not make a determination under subsection 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole, or a part, of the Return of Capital you received.

Application of section 177EA of the ITAA 1936 to the Special Dividend

132. Section 177EA of the ITAA 1936 is a general anti-avoidance provision that operates to prevent franking credit trading. For section 177EA of the ITAA 1936 to apply, the conditions of paragraphs 177EA(3)(a) to (e) of the ITAA 1936 must be satisfied.

133. Prime is a corporate tax entity. The Special Dividend is a frankable distribution paid to the shareholders of Prime 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.

134. 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 Prime, you or any other relevant party entered into or carried out the scheme for a more than incidental purpose of conferring upon you an imputation benefit (paragraph 177EA(3)(e) of the ITAA 1936).

135. Considering the relevant circumstances of the Special Dividend, it cannot be concluded that Prime or you entered into or carried out the scheme for more than an incidental purpose of enabling you to obtain an imputation benefit.

136. 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 by you in relation to the Special Dividend.

Application of section 204-30 to the Special Dividend

137. Section 204-30 applies where a corporate tax entity streams the payment of dividends to its members in such a way that certain shareholders (the favoured members) obtain imputation benefits, and other shareholders (the 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.

138. For section 204-30 to apply, members to whom distributions are streamed must derive a greater benefit from franking credits than another member. The term 'derive a

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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.

139. Under the scheme, you received imputation benefits when the Special Dividend was paid. However, the Special Dividend was paid equally to all shareholders of Prime and was fully franked regardless of the tax profiles of those shareholders. Accordingly, it cannot be said that Prime selectively directed the flow of franked dividends to those members who would obtain the greater benefit from the franking credits.

140. 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 in relation to the Special Dividend.

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