Status: **legally binding**

Class Ruling

Pendal Group Limited – dividend and scheme of arrangement

Relying on this Ruling

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out the income tax consequences of the ordinary dividend paid by Pendal Group Limited (Pendal) on 15 December 2022 and the scheme of arrangement whereby Perpetual Limited (Perpetual) acquired all the ordinary shares on issue in Pendal on 23 January 2023 (Scheme of Arrangement).

2. Details of this scheme are set out in paragraphs 40 to 66 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), unless otherwise indicated.

Who this Ruling applies to

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

- received the dividend from Pendal paid on 15 December 2022
- held your Pendal shares on 16 January 2023 (Scheme Record Date), and
- held your Pendal shares on capital account; that is, your Pendal shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)).

Status: **legally binding**

5. This Ruling does not apply to you if:

- acquired your Pendal shares under an employee share plan, option or rights plan
- are subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 40 to 66 of this Ruling, or
- you are a non-resident, and
  - you (together with your associates) held an interest of 10% or more in Pendal
  - you used your shares in carrying on a business at or through a permanent establishment in Australia, or
  - your Pendal share was covered by subsection 104-165(3) (table item 5 of section 855-15).

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 2022 to 30 June 2023.

Ruling

Dividend

7. The dividend is a 'dividend' as defined in subsection 6(1).

8. The dividend is a frankable distribution pursuant to section 202-40.

Assessability of the dividend, franking credits and tax offsets

Resident shareholders

9. If you are a resident of Australia as defined in subsection 6(1), you include the dividend in your assessable income (subparagraph 44(1)(a)(i)).

10. If you satisfy the residency requirements in section 207-75, you include the franking credits attached to the dividend in your assessable income and you are entitled to a tax offset equal to the amount of those credits (section 207-20), provided you are a 'qualified person' as defined in Division 1A of former Part IIIAA.

11. If you received the dividend as a trustee of a trust (not being a complying superannuation entity) and you are not a corporate tax entity, the franking credits attached to the dividend are included in your assessable income, provided you are a qualified person (subsection 207-35(1)).

12. If you are a beneficiary of a trust and the dividend flows indirectly through the trust to you, you include your share of the dividend in your assessable income and you are entitled to a tax offset equal to your share of the franking credit attached to the dividend, provided both you and the trust are each a qualified person (section 207-45 and former subsection 160APHU(1)).

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

Status: **legally binding**

Non-resident shareholders

14. If you are a non-resident, the dividend is not included in your assessable income (section 128D) and you are not liable to withholding tax in respect of the dividend (paragraph 128B(3)(ga)).

15. The franking credits attached to the dividend are also not included 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

16. The dividend you received constitutes a 'related payment' for the purposes of paragraph 207-145(1)(a) and former section 160APHN, and the secondary qualification period therefore applies.

17. You will be a qualified person in relation to the dividend if, during the period from 19 October 2022 to 15 January 2023 (inclusive), you held your Pendal shares for a continuous period of at least 45 days during which you did not have 'materially diminished risks of loss or opportunities for gain' (as defined in former section 160APHM) in respect of the shares. The period of 45 days does not include the day on which your Pendal shares were acquired or the day of disposal.

18. The small shareholder exception in former section 160APHT does not apply as the dividend is a related payment (former subsection 160APHT(2)). Therefore, a Pendal shareholder who is an individual and who has total franking tax offsets which do not exceed $5,000 for the 2022–23 income year must still satisfy the holding period rule in relation to the dividend.

Exempting entity

19. Pendal was not an 'exempting entity' when the dividend was paid to you, nor was it a 'former exempting entity' at that time (Division 208).

20. 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 dividend you received, or to deny the tax offset to which you are otherwise entitled to under Division 207 at the time when the dividend was paid.

Anti-avoidance provisions

Section 177EA

21. The Commissioner will not make a determination under paragraph 177EA(5)(b) to deny the whole, or any part, of the imputation benefit received in relation to the dividend.

Section 204-30

22. 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 dividend.

Status: **legally binding**

Capital gains tax consequences

CGT event A1

23. CGT event A1 happened on 23 January 2023 (Implementation Date) when you disposed of each of your Pendal shares to Perpetual (section 104-10).

Capital proceeds

24. The capital proceeds you received in respect of CGT event A1 happening to your Pendal shares consists of (subsection 116-20(1)):

- $1.615 cash you received for each Pendal share (paragraph 116-20(1)(a)), and
- $26.611, being the market value (worked out at the time CGT event A1 happened) of each replacement Perpetual share received (paragraph 116-20(1)(b)).

25. The dividend of $0.035 per Pendal share is not included in the capital proceeds.

Capital gain or capital loss

26. You made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your Pendal share were more than its cost base (subsection 104-10(4)). The capital gain is the difference.

27. You made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your Pendal share were less than its reduced cost base (subsection 104-10(4)). The capital loss is the difference.

28. If you were a non-resident shareholder just before CGT event A1 happened to your Pendal shares on 23 January 2023, you disregard any capital gain or capital loss you made from CGT event A1 happening as your Pendal shares were not taxable Australian property for the purposes of section 855-10.

Discount capital gain

29. If you made a capital gain from the disposal of your Pendal share, you are eligible to treat the capital gain as a 'discount capital gain' provided that:

- you are an individual, a 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 Pendal share on or before 22 January 2022, which was at least 12 months prior to CGT event A1 happening (subsection 115-25(1)).

Availability of partial scrip for scrip CGT roll-over

30. Subject to the qualifications in paragraphs 31 and 32 of this Ruling, if you made a capital gain from the disposal of your Pendal shares, you may choose scrip for scrip

roll-over for that part of the capital gain that is referable to the receipt of new Perpetual shares (sections 124-780 and 124-790).

31. You cannot choose scrip for scrip roll-over if you are a non-resident unless the replacement Perpetual shares are 'taxable Australian property' just after they were acquired (subsection 124-795(1)).

32. You cannot choose scrip for scrip roll-over if any capital gain you make from the replacement Perpetual shares would be disregarded, except because of a roll-over (subsection 124-795(2)).

If you choose scrip for scrip roll-over

Capital gain partially disregarded

33. If you choose scrip for scrip roll-over, the capital gain you made from the disposal of your Pendal share is disregarded to the extent that you received replacement Perpetual shares for the disposal of your Pendal shares (eligible proceeds) (subsection 124-785(1)).

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

Cost base and reduced cost base of your replacement Perpetual Limited share

35. If you choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of each replacement Perpetual share received is worked out by reasonably attributing to it the cost base of your original Pendal shares for which it was exchanged (subsections 124-785(2) and 124-785(4)). Any part of the cost base of the Pendal shares you exchanged that relates to the receipt of cash consideration is not included in the cost base of the Perpetual shares (subsection 124-785(3)).

Acquisition date of your replacement Perpetual Limited share

36. For the purpose of determining whether a capital gain made from any later disposal of a Perpetual share is a discount capital gain, if you choose scrip for scrip roll-over, you are taken to have acquired your Perpetual share when you acquired your original Pendal shares that were exchanged for the relevant Perpetual share (table item 2 of subsection 115-30(1)).

If you do not choose or cannot choose scrip for scrip roll-over

37. 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 Pendal shares into account in working out your net capital gain or net capital loss for the income year (sections 102-5 and 102-10).

38. If you do not, or cannot, choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of each replacement Perpetual share received is equal to that part of the market value of the Pendal shares reasonable attributable to the Perpetual share at the time of its acquisition (paragraph 110-25(2)(b) and subsections110-55(2)and 112-30(1)). The market value of the Pendal shares given by you that is attributable to the receipt of cash consideration is not included in the cost base or reduced cost base of the replacement Perpetual share (subsection 112-30(1)).

39. If you do not, or cannot, choose scrip for scrip roll-over, the date of acquisition of the replacement Perpetual share is the date you were issued the share, being the Implementation Date (23 January 2023) (paragraph 104-35(5)(c) and table item 2 of section 109-10).

Scheme

40. 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

Pendal Group Limited

41. Pendal is an Australian-resident company that was listed on the Australian Securities Exchange until the Implementation Date.

42. Pendal is the head company of an income tax consolidated group under Part 3-90, with the principal activity being the provision of investment management services.

43. As at 21 October 2022:

- Pendal had 383,149,490 ordinary shares on issue held by 28,468 shareholders. Pendal had no other classes of shares on issue.
- Pendal's top 20 shareholders beneficially held 64.33% of the total shares. Non-resident shareholders owned 4.24% of the total shares. There is no individual shareholder holding either individually, or together with associates, an interest of 10% or more of the shares in Pendal.

44. As at 13 December 2022, Pendal had a franking account balance of $11,802,809.

Perpetual Limited

45. Perpetual is an Australian-resident company that has been listed on the Australian Securities Exchange since 24 June 1964.

46. Perpetual is the head company of an income tax consolidated group under Part 3-90 and provides portfolio management, financial planning, trustee, responsible entity and compliance services, executor services, accounting and tax services, investment administration and custody services.

47. As at 3 August 2022, Perpetual had 56,713,419 ordinary shares on issue held by 23,689 shareholders.

Scheme of Arrangement

48. On 25 August 2022, Pendal and Perpetual announced that they had entered into an Implementation Deed under which Perpetual agreed to acquire 100% of the issued shares of Pendal by way of a scheme of arrangement under Part 5.1 of the *Corporations Act 2001,* subject to shareholder and court approval.

49. The terms of the Implementation Deed were amended by agreement between Pendal and Perpetual on 16 November 2022.

Status: **legally binding**

50. Under the amended terms of the Implementation Deed, Pendal shareholders were entitled to receive (Scheme Consideration):

- $1.650 cash consideration for each Pendal share less the amount of the dividend, and
- one Perpetual share for every 7 Pendal shares, with any fractional entitlement rounded up to the nearest whole number of Perpetual shares.

51. On 23 December 2022, Pendal shareholders approved the Scheme of Arrangement at the shareholder meeting.

52. On 11 January 2023, 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*.

53. The Scheme of Arrangement became effective on 12 January 2023 (Scheme Effective Date).

54. Each person registered as a holder of Pendal shares on the Scheme Record Date was entitled to participate in the Scheme of Arrangement.

55. The Scheme Consideration was paid to Pendal shareholders and Pendal shares were transferred to Perpetual on the Scheme Implementation Date of 23 January 2023.

Dividend

56. On 4 November 2022, Pendal declared a fully franked dividend of $0.035 per Pendal share to Pendal shareholders who held their shares on 2 December 2022 (Dividend Record Date).

57. The dividend was paid to Pendal shareholders on 15 December 2022.

58. The dividend was:

- debited against Pendal's retained earnings
- financed from Pendal's existing cash reserves
- determined by Pendal in its sole discretion, and
- not debited against its share capital account.

59. The dividend was not subject to the Scheme of Arrangement becoming effective.

Other matters

60. Neither Perpetual nor any of its associates had any influence or control over the declaration and payment of the dividend.

61. Neither Perpetual nor any of its associates facilitated or financed the payment of the dividend.

62. The Scheme of Arrangement was not conditional on the dividend being declared and Perpetual did not have any right to terminate the Implementation Deed if Pendal did not declare or pay the dividend.

63. Pendal did not have a 'significant stakeholder' or 'common stakeholder' in relation to the Scheme of Arrangement as defined in section 124-783.

Status: **legally binding**

64. Neither Perpetual nor any of its wholly-owned subsidiaries issued equity, apart from the Perpetual shares issued to Pendal shareholders in exchange for their Pendal shares, or owed new debt under the Scheme of Arrangement in relation to the issue of those Perpetual shares, to an entity that was not a member of the group.

65. Perpetual did not make a choice so that Pendal shareholders could not obtain roll-over under Subdivision 124-M for the purposes of subsection 124-795(4).

Key dates

66. The following table is a summary of the key dates for the Scheme of Arrangement and the dividend:

Table 1: Summary of key dates

Date	Event
25 August 2022	Implementation Deed executed
2 December 2022	Dividend Record Date
15 December 2022	Dividend Payment Date
23 December 2022	Scheme meeting
11 January 2023	Second Court Date (court-approved scheme)
12 January 2023	Scheme Effective Date
16 January 2023	Scheme Record Date
23 January 2023	Implementation Date

Commissioner of Taxation
22 February 2023

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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Dividend

67. The term 'dividend' is defined in subsection 6(1) to include any distribution made by a company to any of its shareholders, whether in money or other property, but excludes a distribution debited against an amount standing to the credit of the share capital account of the company.

68. The dividend is a dividend as it was a distribution made by Pendal to its shareholders and was not debited against its share capital account.

69. 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.

70. The dividend is a frankable distribution under sections 202-40 as none of the circumstances of section 202-45 apply.

Assessability of the dividend

Residents

71. 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)).

72. As the dividend was paid to shareholders out of profits derived by Pendal, you are required to include the dividend in your assessable income under subparagraph 44(1)(a)(i).

Non-residents

73. The assessable income of a non-resident shareholder includes dividends paid by a company out of profits derived from sources in Australia (subparagraph 44(1)(b)(i)).

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

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

76. Subparagraph 128B(3)(ga)(i) excludes from subsection 128B(1) income derived by a non-resident that consists of the franked part of a dividend. As the dividend was fully franked, it will not be subject to Australian withholding tax.

77. Section 128D operates to treat the dividend as non-assessable non-exempt income.

78. Accordingly, a non-resident Pendal shareholder who received the fully franked dividend and to whom this Ruling applies is not required to include the dividend as assessable income (subparagraph 44(1)(b)(i) and section 128D), and is not liable to Australian withholding tax in relation to the dividend.

Gross-up and tax offset

79. 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)).

80. A shareholder that is not a qualified person in relation to the dividend:

- does not include the franking credit attached to the respective dividend in their assessable income (paragraph 207-145(1)(e)), and

- is not entitled to a tax offset equal to the amount of the franking credit attached to the respective dividend (paragraph 207-145(1)(f)).

81. 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 trustee of a trust (not being a complying superannuation fund) includes the amount of the franking credit attached to the dividend (subsection 207-35(1)).

Qualified person

82. 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)).

83. Paragraph 207-145(1)(a), which refers to Division 1A of former Part IIIAA, 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.

84. Former section 160APHU provides that a partner in a partnership or the beneficiary of a trust cannot be a qualified person in relation to a dividend unless the partnership or the trustee of the trust is also a qualified person in relation to the dividend.

85. The test of what constitutes a qualified person is set out in former subsection 160APHO(1). Broadly, if you were not under an obligation to make a related payment in relation to the dividend, you 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

86. 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)).

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

88. Under the terms of the Implementation Deed, the Scheme Consideration was reduced by the amount of the dividend which Pendal paid to its shareholders. The reduction of the Scheme Consideration, calculated with reference to the amount of the dividend, has the effect of passing the benefit of the dividend from a Pendal shareholder to Perpetual.

89. Therefore, you (or a beneficiary of a trust that has an interest in Pendal shares) are taken to have made a related payment in respect of the dividend you received.

Holding period rule

90. The holding period rule requires that you hold your Pendal shares, on which the dividend was paid, ‘at risk’ for a continuous period of at least 45 days during the relevant qualification period (former paragraph 160APHO(2)(a)).

Status: **not legally binding**

91. With regards to the dividend, the relevant qualification period is the secondary qualification period.

92. 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).

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

94. Eligibility to receive the dividend was determined on the Dividend Record Date (2 December 2022), being the last day on which the acquisition by a person of a Pendal share entitled the person to receive the dividend. It follows that the Pendal shares became ex dividend for the dividend on 3 December 2022.

95. Accordingly, the secondary qualification period for the dividend is notionally the period from 19 October 2022 to 16 January 2023.

96. However, once you had been identified as a Pendal shareholder eligible to receive the Scheme Consideration on the Scheme Record Date (16 January 2023), you would no longer be considered to hold your Pendal shares at risk for the purposes of Division 1A of former Part IIIAA because, at that time, you had committed to dispose of your Pendal shares in exchange for the known Scheme Consideration. This means as at and from the Scheme Record Date, you no longer held your Pendal shares at risk. The days from 16 January 2023 and onward are not counted towards the 45 day holding period.

97. Therefore, if you held your Pendal share without materially diminished risks of loss or opportunities for gain for a continuous period of at least 45 days during the period from 19 October 2022 to 15 January 2023 (inclusive), you will be a qualified person in respect of the dividend. The dates of acquisition and disposal of your Pendal shares are not included in the relevant 45 day period.

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

99. The small shareholder exception in former section 160APHT does not apply as the dividend constitutes a related payment. Therefore, a shareholder who is an individual and who has franking credit offsets not exceeding $5,000 for the income year ended 30 June 2023 must also satisfy the holding period requirement in relation to the dividend (former subsection 160APHT(2)).

Refundable tax offset

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

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

- non-complying superannuation funds or non-complying approved deposit funds (subsection 67-25(1A))

- trustees of a trust who are liable to be assessed under sections 98 or 99A (subsection 67-25(1B))
- corporate tax entities, unless the entity is an exempt institution that is eligible for a refund, or a life insurance company that has received distributions on membership interests which were not held by the company on behalf of its shareholders (subsections 67-25(1C) and (1D)), and
- non-resident entities carrying on business in Australia at or through a permanent establishment (subsection 67-25(1DA)).

102. 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

103. Section 177EA is a general anti-avoidance provision that applies where one of the purposes (other than an incidental purpose) of a particular scheme is to enable a taxpayer to obtain an imputation benefit.

104. Considering the circumstances of the Scheme of Arrangement, it cannot be concluded that Pendal or Pendal shareholders entered into or carried out the scheme for the purpose of enabling Pendal shareholders to obtain an imputation benefit.

105. Therefore, the Commissioner will not make a determination under paragraph 177EA(5)(b) to deny the whole, or any part, of the imputation benefit to be received in relation to the dividend.

Section 204-30

106. Section 204-30 applies where a corporate tax entity streams the payment of dividends to its members in such a way that 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.

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

108. 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 a Pendal shareholder in relation to the dividend.

Capital gains tax consequences

CGT event A1

109. CGT event A1 happens if there is 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)).

110. The acquisition of Pendal shares under a court-approved scheme of arrangement does not involve a disposal of shares under a contract.[1]

111. Therefore, CGT event A1 happened when there was a change in ownership in your Pendal shares to Perpetual under the Implementation Deed (subsections 104-10(1) and (2)). The change of ownership occurred on the Implementation Date (23 January 2023) (paragraph 104-10(3)(b)).

Capital proceeds

112. 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)).

113. 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]

114. The dividend was not paid in respect of the disposal of Pendal shares under the Scheme of Arrangement. The Scheme of Arrangement was not conditional on the declaration of the dividend. The dividend was not dependent on Perpetual or a third party financing or facilitating payment of the dividend, or Perpetual or a third party being obliged to bring about the result that the dividend would be paid to existing shareholders.

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

116. Therefore, the capital proceeds you received from CGT event A1 happening on the disposal of your Pendal shares consists of:

- $1.615 cash ($1.650 less the dividend of $0.035) you received for each Pendal share and
- the scrip consideration, being the market value (worked out at the time CGT event A1 happened) of the replacement Perpetual shares you received.

117. For the purposes of determining the market value of a Perpetual share for the capital proceeds as required by subsection 104-10(3), the Commissioner accepts that the market value of a Perpetual share on the Implementation Date was $26.611.

Capital gain or capital loss

118. You made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your Pendal share are more than its cost base (subsection 104-10(4)). The capital gain is the difference.

[1] See paragraph 9 of Taxation Determination TD 2002/4 *Income tax: capital gains: what is the first element of the cost base and reduced cost base of a share in a company you acquire in exchange for a share in another company in a takeover or merger?*.

[2] Taxation Ruling TR 2010/4 *Income tax: capital gains: when a dividend will be included in the capital proceeds from a disposal of shares that happens under a contract or a scheme of arrangement.*

Status: **not legally binding**

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

120. The cost base and reduced cost based of the Pendal share depends on your individual circumstances.

Discount capital gain

121. If you make a capital gain from the disposal of your Pendal share, you are eligible to treat the capital gain as a discount capital gain provided that:

- you are an individual, a 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 Pendal share on or before 22 January 2022, which was at least 12 months prior to CGT event A1 happening (subsection 115-25(1)).

Foreign-resident shareholders

122. You disregard a capital gain or capital loss you make from a CGT event if you are a foreign resident, or the trustee of a foreign trust for CGT purposes as defined in subsection 995-1(1), 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)).

123. The term taxable Australian property is defined in the table in section 855-15. Where you are a foreign resident or the trustee of a foreign trust for CGT purposes just before CGT event A1 happened to your Pendal 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 Pendal 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).

124. If you are a foreign resident or the trustee of a foreign trust for CGT purposes just before the CGT event happens, you disregard a capital gain or capital loss you make from a CGT event A1 happening as your Pendal share is not taxable Australian property (subsection 855-10(1)).

Availability of partial scrip for scrip roll-over

125. 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.

Status: **not legally binding**

126. 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)
- the 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.

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

Consequences if you choose partial scrip for scrip roll-over

128. If you choose partial scrip for scrip roll-over, the capital gain you made from the disposal of a Pendal share is disregarded to the extent you received replacement Perpetual shares for the disposal of your Pendal 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 Pendal share (ineligible proceeds).

129. 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 Pendal share is, for the purpose of working out the cost base of the replacement Perpetual shares, reduced by that part of the cost base which is reasonably attributable to the cash consideration of $1.615.

130. The method to be used by a Pendal shareholder to calculate that part of the cost base of each Pendal share that is not reasonably attributable to the cash consideration of $1.615 (eligible proceeds cost base) is:

Eligible proceeds cost base =

Cost base of Pendal share × (Market value of Perpetual share ÷ (Market value of Perpetual share + $1.615))

131. The method to be used by a Pendal shareholder to calculate that part of the cost base of each Pendal share that is reasonably attributable to the cash consideration of $1.615 (ineligible proceeds cost base) is:

Ineligible proceeds cost base =

Cost base of Pendal share × ($1.615 ÷ (Market value of Perpetual share + $1.615))

132. 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) = Market value of Perpetual shares − Eligible proceeds cost base

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

Capital gain = $1.615 − Ineligible proceeds cost base

Status: **not legally binding**

Consequences if partial scrip for scrip roll-over is not chosen, or cannot be chosen

134. If you do not, or cannot, choose scrip for scrip roll-over, any capital gain made from the disposal of a Pendal share is not disregarded and any capital gain or capital loss you make from CGT event A1 happening on the disposal of your Pendal shares must be taken into account in working out your net capital gain or net capital loss for the income year (sections 102-5 and 102-10).

135. If you do not, or cannot, choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of each replacement Perpetual share received is equal to the part of the market value of the Pendal shares reasonably attributable to the Perpetual share at the time of its acquisition (paragraph 110-25(2)(b) and subsection 110-55(2)). The market value of a Pendal share given by you that is reasonably attributable to the receipt of cash consideration is not included in the cost base or reduced cost base of a replacement Perpetual share (subsection 112-30(1)).

Appendix 2 – Legislative provisions

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

Income Tax Assessment Act 1936	subsection 6(1)
Income Tax Assessment Act 1936	subsection 44(1)
Income Tax Assessment Act 1936	subparagraph 44(1)(a)(i)
Income Tax Assessment Act 1936	subparagraph 44(1)(b)(i)
Income Tax Assessment Act 1936	section 98
Income Tax Assessment Act 1936	section 99A
Income Tax Assessment Act 1936	subsection 128B(1)
Income Tax Assessment Act 1936	paragraph 128B(3)(ga)
Income Tax Assessment Act 1936	subparagraph 128B(3)(ga)(i)
Income Tax Assessment Act 1936	section 128D
Income Tax Assessment Act 1936	Division 1A of former Part IIIA
Income Tax Assessment Act 1936	former section 160APHD
Income Tax Assessment Act 1936	former subsection 160APHE(1)
Income Tax Assessment Act 1936	former section 160APHM
Income Tax Assessment Act 1936	former section 160APHN
Income Tax Assessment Act 1936	former subsection 160APHN(2)
Income Tax Assessment Act 1936	former subsection 160APHO(1)
Income Tax Assessment Act 1936	former paragraph 160APHO(2)(a)
Income Tax Assessment Act 1936	former section 160APHT
Income Tax Assessment Act 1936	former subsection 160APHT(2)
Income Tax Assessment Act 1936	former section 160APHU
Income Tax Assessment Act 1936	former subsection 160APHU(1)
Income Tax Assessment Act 1936	section 177EA
Income Tax Assessment Act 1936	paragraph 177EA(5)(b)
Income Tax Assessment Act 1997	Division 63
Income Tax Assessment Act 1997	section 63-10
Income Tax Assessment Act 1997	Division 67
Income Tax Assessment Act 1997	section 67-25
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)

Status: **not legally binding**

Income Tax Assessment Act 1997	section 102-5
Income Tax Assessment Act 1997	section 102-10
Income Tax Assessment Act 1997	section 104-10
Income Tax Assessment Act 1997	subsection 104-10(1)
Income Tax Assessment Act 1997	subsection 104-10(3)
Income Tax Assessment Act 1997	paragraph 104-10(3)(b)
Income Tax Assessment Act 1997	subsection 104-10(4)
Income Tax Assessment Act 1997	paragraph 104-35(5)(c)
Income Tax Assessment Act 1997	subsection 104-165(3)
Income Tax Assessment Act 1997	section 109-10
Income Tax Assessment Act 1997	paragraph 110-25(2)(b)
Income Tax Assessment Act 1997	subsection 110-55(2)
Income Tax Assessment Act 1997	subsection 112-30(1)
Income Tax Assessment Act 1997	Subdivision 115-C
Income Tax Assessment Act 1997	section 115-10
Income Tax Assessment Act 1997	subsection 115-20(1)
Income Tax Assessment Act 1997	subsection 115-25(1)
Income Tax Assessment Act 1997	subsection 115-30(1)
Income Tax Assessment Act 1997	subsection 116-20(1)
Income Tax Assessment Act 1997	paragraph 116-20(1)(a)
Income Tax Assessment Act 1997	paragraph 116-20(1)(b)
Income Tax Assessment Act 1997	Subdivision 124-M
Income Tax Assessment Act 1997	section 124-780
Income Tax Assessment Act 1997	paragraph 124-780(1)(a)
Income Tax Assessment Act 1997	subsection 124-780(2)
Income Tax Assessment Act 1997	subsection 124-780(2A)
Income Tax Assessment Act 1997	subsection 124-780(3)
Income Tax Assessment Act 1997	section 124-783
Income Tax Assessment Act 1997	subsection 124-785(1)
Income Tax Assessment Act 1997	subsection 124-785(2)
Income Tax Assessment Act 1997	subsection 124-785(3)
Income Tax Assessment Act 1997	subsection 124-785(4)
Income Tax Assessment Act 1997	section 124-790
Income Tax Assessment Act 1997	subsection 124-790(1)
Income Tax Assessment Act 1997	subsection 124-790(2)
Income Tax Assessment Act 1997	subsection 124-795(1)
Income Tax Assessment Act 1997	subsection 124-795(2)

Status: **not legally binding**

Income Tax Assessment Act 1997	subsection 124-795(4)
Income Tax Assessment Act 1997	section 202-40
Income Tax Assessment Act 1997	section 202-45
Income Tax Assessment Act 1997	section 204-30
Income Tax Assessment Act 1997	subsection 204-30(1)
Income Tax Assessment Act 1997	paragraph 204-30(3)(c)
Income Tax Assessment Act 1997	subsection 204-30(8)
Income Tax Assessment Act 1997	Division 207
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	section 207-45
Income Tax Assessment Act 1997	section 207-70
Income Tax Assessment Act 1997	section 207-75
Income Tax Assessment Act 1997	paragraph 207-145(1)(a)
Income Tax Assessment Act 1997	paragraph 207-145(1)(e)
Income Tax Assessment Act 1997	paragraph 207-145(1)(f)
Income Tax Assessment Act 1997	Division 208
Income Tax Assessment Act 1997	section 208-195
Income Tax Assessment Act 1997	Division 230
Income Tax Assessment Act 1997	section 855-10
Income Tax Assessment Act 1997	subsection 855-10(1)
Income Tax Assessment Act 1997	section 855-15
Income Tax Assessment Act 1997	section 977-50
Income Tax Assessment Act 1997	subsection 995-1(1)
Income Tax Assessment Act 1997	Part 3-90

Status: **not legally binding**

References

Related Rulings/Determinations:
TD 2002/4; TR 2010/4

Legislative references:

- Corporations Act 2001 Pt 5.1

ATO references

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