



Status: **legally binding**

Class Ruling

QANTM Intellectual Property Limited – scheme of arrangement and special dividend

❶ Relying on this Ruling

This publication 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 the special dividend paid by QANTM Intellectual Property Limited (QANTM) on 16 August 2024 (Special Dividend) and the scheme of arrangement whereby Fox BidCo Pty Ltd (BidCo) acquired all the ordinary shares in QANTM on 19 August 2024 (Implementation Date).
2. Details of this scheme are set out in paragraphs 43 to 65 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - held your QANTM shares on
 - 6 August 2024 (Special Dividend Record Date) and received the Special Dividend of \$0.071 per share, and
 - 8 August 2024 (Scheme Record Date), and participated in the scheme of arrangement under which BidCo acquired all the shares in QANTM
 - held your QANTM shares on capital account – that is, your QANTM shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)), and

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- were either a
 - ‘resident’ of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936), or
 - ‘non-resident’ of Australia as defined in subsection 6(1) of the ITAA 1936 who does not carry on a business at or through a permanent establishment in Australia.

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

- acquired your QANTM shares pursuant to an employee share scheme to which Subdivision 83A-C applies and your deferred taxing point occurred on the Implementation Date
- are subject to the investment manager regime in Subdivision 842-I in relation to your QANTM shares
- are a ‘temporary resident’ of Australia within the meaning of subsection 995-1(1), or
- are subject to the taxation of financial arrangement rules in Division 230 in relation to the scheme outlined in paragraphs 43 to 65 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 2024 to 30 June 2025.

Ruling

Special Dividend

7. The Special Dividend is a ‘dividend’ as defined in subsection 6(1) of the ITAA 1936.
8. The Special Dividend is a frankable distribution under section 202-40.
9. The Special Dividend is not a distribution to which subsection 207-159(1) applies because there was no issue of equity interests by QANTM, Adamantem Capital Management Pty Ltd (Adamantem) or BidCo to existing or new shareholders to fund the Special Dividend.

Assessability of the Special Dividend, franking credits and tax offsets

Resident shareholders

10. If you are a resident of Australia, you include the Special Dividend in your assessable income (subparagraph 44(1)(a)(i) of the ITAA 1936).
11. If you satisfy the residency requirements in section 207-75, you include the franking credits attached to the Special Dividend in your assessable income, and you are entitled to a tax offset equal to the amount of those credits (section 207-20), provided you are a ‘qualified person’ (as defined in Division 1A of former Part IIIAA of the ITAA 1936).
12. If you received the Special Dividend as a trustee of a trust (not being a complying superannuation entity) or as a partnership and you are not a corporate tax entity, the

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franking credits on the Special Dividend are included in your assessable income, provided you are a qualified person (subsection 207-35(1)).

13. If you are a beneficiary of a trust or a partner in a partnership, and the Special Dividend flows indirectly through the trust or partnership 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 credits on the Special Dividend, provided both you and the trust or partnership (as relevant) are each a qualified person (section 207-45 and former subsection 160APHU(1) of the ITAA 1936).

14. Your entitlement to the franking credit tax offset 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.

Qualified persons

15. You will be a qualified person in relation to the Special Dividend if, during the period from 23 June 2024 to 7 August 2024 (inclusive), you held your QANTM shares 'at risk' for a continuous period of at least 45 days¹ 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 ('holding period rule'). This is because:

- The Special Dividend you received constitutes a 'related payment' for the purposes of former section 160APHN of the ITAA 1936 and therefore the secondary qualification period applies.
- The secondary qualification period is the period beginning 45 days before, and ending 45 days after, the day on which a share became ex dividend (former section 160APHD of the ITAA 1936).
- The shares became ex dividend on 7 August 2024, being one day after the Special Dividend Record Date which was the last day on which acquisition by a person of a QANTM share would entitle them to receive the Special Dividend (former subsection 160APHE(1) of the ITAA 1936).
- Any days you had a materially diminished risk of loss or opportunity for gain in respect of the shares are excluded (former subsection 160APHO(3) of the ITAA 1936). Under the scheme of arrangement, you no longer held your QANTM shares at risk on the Scheme Record Date, being 8 August 2024 (when you became committed to dispose of your QANTM shares under the scheme of arrangement).

16. You will need to determine whether you satisfy the holding period rule having regard to your circumstances. This will require taking into account any positions entered into that result in you having 'materially diminished risks of loss or opportunities for gain' (as defined under former section 160APHM of the ITAA 1936) in respect of your QANTM shares.

17. The small shareholder exception in former section 160APHT of the ITAA 1936 does not apply as the dividend is a related payment for the purposes of paragraph 207-145(1)(a) and former section 160APHN of the ITAA 1936 (former subsection 160APHT(2) of the ITAA 1936).

¹ This does not include the day on which your QANTM shares were acquired or the day of disposal.

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18. This means if you are an individual with total franking tax offsets less than \$5,000 for the 2024–25 income year you must still satisfy the holding period rule in relation to the Special Dividend.

Non-resident shareholders

19. If you are a non-resident, 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).

20. 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).

Exempting entity and former exempting entity

21. QANTM was not an exempting entity (section 208-20), or a former exempting entity (section 208-50), at the time when the Special Dividend was paid to you.

22. Section 208-195 will not apply to deny the inclusion in your assessable income of the amount of the franking credit on the Special Dividend you received or deny the franking credit tax offset to which you are otherwise entitled under Division 207 at the time when the Special Dividend was paid to you.

Section 204-30

23. The Commissioner will not make a determination under paragraph 204-30(3)(c) to deny the whole, or any part, of the imputation benefit received in relation to the Special Dividend as there was no streaming of distributions.

Section 177EA of the ITAA 1936

24. 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 benefits you received in relation to the Special Dividend. This is because it cannot be concluded that QANTM or the shareholders of QANTM entered into or carried out the scheme for a more than incidental purpose of enabling the shareholders of QANTM to obtain an imputation benefit, and accordingly the purpose requirement in paragraph 177EA(3)(e) of the ITAA 1936 is not satisfied.

Capital gains tax consequences

CGT event A1

25. CGT event A1 happened on 19 August 2024 (Implementation Date) when you disposed of each of your QANTM shares to BidCo (section 104-10).

Capital proceeds

26. The capital proceeds for the QANTM shares for which you received consideration of 100% cash (Cash Consideration) is \$1.746 per share (paragraph 116-20(1)(a)).

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27. The capital proceeds for the QANTM shares for which you received consideration of 50% cash and 50% shares in HoldCo (Mixed Consideration) comprises of \$0.8375 plus the market value of 0.9085 Class B Shares in Fox HoldCo Limited (HoldCo) (subject to rounding), for each QANTM share you received at the time of CGT event A1 (paragraph 116-20(1)(b)).

28. The Special Dividend of \$0.071 per QANTM share is not included in the capital proceeds.

Capital gain or capital loss

29. You made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your QANTM share exceed its cost base (subsection 104-10(4)). The capital gain is the difference.

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

31. If you were a foreign resident, or the trustee of a foreign trust for CGT purposes (as defined in subsection 995-1(1)) just before the Implementation Date, you disregard any capital gain or capital loss you made as a result of CGT event A1 happening if your QANTM shares were not taxable Australian property (section 855-10).

Discount capital gain

32. If you made a capital gain from the disposal of your QANTM share, you are entitled to treat the capital gain as a 'discount capital gain' provided you acquired, or are taken to have acquired, your QANTM share on or before 18 August 2023 and the conditions in Division 115 are satisfied (subsection 115-25(1)).

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

33. Unless specified otherwise in paragraphs 34 and 35 of this Ruling, you may choose scrip for scrip roll-over for the capital gain resulting from disposing of your QANTM shares in exchange for HoldCo shares (paragraph 124-780(3)(d)).

34. If you are a foreign resident, you cannot choose scrip for scrip roll-over unless the replacement HoldCo shares qualify as 'taxable Australian property' immediately after acquisition (subsection 124-795(1)).

35. Scrip for scrip roll-over is not available if any capital gain from the replacement HoldCo shares would be disregarded, except due to a roll-over (subsection 124-795(2)).

Consequences if you choose scrip for scrip roll-over for your QANTM Intellectual Property Limited shares

36. Where scrip for scrip roll-over is available to you (see paragraphs 33 to 35 of this Ruling) and you choose to apply it, the capital gain you made from CGT event A1 happening in respect of the disposal of your QANTM shares is disregarded to the extent that you received replacement HoldCo shares (subsection 124-785(1)).

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37. Any part of the capital gain you made to the extent you received a cash component is not disregarded because it is 'ineligible proceeds' for which roll-over is not available (subsection 124-790(1)).

38. The first element of the cost base and reduced cost base of each replacement HoldCo share is worked out by reasonably attributing to it the cost base and reduced cost base (respectively) of your original QANTM share for which it was exchanged (subsections 124-785(2) and (4)).

39. For the purposes of determining eligibility to make a 'discount capital gain' on a subsequent disposal of HoldCo shares, the HoldCo shares acquired in exchange for your QANTM share are taken to have been acquired on the date you acquired, for CGT purposes, the corresponding QANTM share (table item 2(a) of subsection 115-30(1)).

Consequences if you do not choose, or cannot choose, scrip for scrip roll-over

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

41. If you do not, or cannot, choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of a replacement HoldCo share that you received is worked out by reasonably attributing the market value of the QANTM share you gave in respect of acquiring the HoldCo share (paragraph 110-25(2)(b) and subsection 110-55(2)).

42. If you do not, or cannot, choose scrip for scrip roll-over, you are taken to have acquired your HoldCo share on the Implementation Date (paragraph 104-35(5)(c) and table item 2 of section 109-10).

Scheme

43. 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.

44. Other information referenced is taken from the Scheme Implementation Deed (SID) released on the Australian Securities Exchange (ASX) on 10 May 2024 and the Scheme Booklet released on the ASX on 25 June 2024.

Background

QANTM Intellectual Property Limited

45. QANTM is a company that was incorporated in Australia on 17 May 2016 and is the owner of a group of intellectual property service businesses operating in Australia, New Zealand, Singapore, Malaysia, Hong Kong, the United Kingdom, Belgium, the Netherlands and Luxembourg.

46. QANTM was listed on the ASX (ASX code QIP) on 31 August 2016 until the business day immediately following the Scheme Implementation Date.

47. As of 6 August 2024, QANTM had 143,528,254 ordinary shares on issue and no other classes of shares or rights on issue.

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Fox BidCo Pty Ltd

48. BidCo is a special purpose Australian-resident company that was incorporated for the purpose of acquiring all of the QANTM shares on issue.
49. BidCo is a subsidiary of HoldCo, an Australian-resident company.
50. HoldCo is the ultimate holding company (as defined in subsection 124-780(7)) of a wholly owned group (HoldCo wholly owned Group) (as defined in section 975-500), of which BidCo is also a member.
51. Immediately after the Scheme Implementation Date, HoldCo had Class A, Class B, and Class B1 shares on issue.

Scheme of arrangement

52. On 10 May 2024, QANTM and BidCo entered into a SID under which BidCo agreed to acquire all the ordinary shares in QANTM by way of a scheme of arrangement under Part 5.1 of the *Corporations Act 2001* (Corporations Act), subject to shareholder and court approval.
53. Under the terms of the SID, eligible QANTM shareholders could elect to receive 100% cash (Cash Consideration), or 50% cash and 50% shares in HoldCo (Mixed Consideration), subject to scaleback arrangements. However, the Cash Consideration and the cash component of the Mixed Consideration were reduced by the cash amount of the Special Dividend (the net amount being the Scheme Consideration).
54. QANTM shareholders would receive only Cash Consideration if:
- they were Ineligible Foreign Shareholders (as defined in the SID)
 - they became shareholders after the date that the election could be made, or
 - the election they made was invalid.
55. The Cash Consideration amount was \$1.746 (being \$1.817 less the amount of the Special Dividend of \$0.071) in respect of each QANTM share held on 8 August 2024 (Scheme Record Date).
56. The Mixed Consideration comprised \$0.8375 (being \$0.9085 less the amount of the Special Dividend of \$0.071), plus 0.9085 Class B Shares in HoldCo (subject to rounding), for each QANTM share held on the Scheme Record Date.

Shareholder meeting and implementation

57. On 31 July 2024, the requisite majority of QANTM's shareholders approved the scheme of arrangement.
58. On 2 August 2024, the Supreme Court of New South Wales approved the scheme of arrangement and provided orders under Part 5.1 of the Corporations Act.
59. The transfer of QANTM shares to BidCo under the scheme of arrangement occurred on 19 August 2024 with QANTM then becoming a wholly owned subsidiary of BidCo.
60. The shares in QANTM were then delisted from the ASX at the close of trading on 20 August 2024.

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Special Dividend

61. On 16 August 2024, QANTM paid a fully franked Special Dividend of \$0.071 per share to shareholders who held QANTM shares on the Special Dividend Record Date.

62. The Special Dividend was:

- sourced from realised profits
- funded from QANTM's existing working capital debt facility
- not funded, directly or indirectly, by BidCo, any Adamantem entities or their associates, and
- compliant with the requirements of the Corporations Act including section 254T of that Act.

63. No proceeds from an equity issue by BidCo, any Adamantem entities or their associates have been or will be applied towards the repayment of any portion of the debt incurred to pay the Special Dividend.

64. Neither BidCo, any Adamantem entities or their associates had any influence or control over the determination and payment of the Special Dividend. The decision to pay the Special Dividend was entirely at the discretion of the QANTM Board.

Other matters

65. This Ruling is made on the basis that:

- HoldCo did not make a choice under subsection 124-795(4) that HoldCo shareholders could not obtain roll-over under Subdivision 124-M.
- No member of the HoldCo wholly owned Group issued equity (other than the replacement interest) or owes new debt under the arrangement
 - to an entity that is not a member of the HoldCo wholly owned Group, and
 - in relation to the issuing of the replacement interest.
- There was no 'significant stakeholder' or 'common stakeholder' in HoldCo within the meaning of those terms in section 124-783.
- All parties that participated in the scheme of arrangement dealt at arm's length for the purposes of subsection 124-780(4).

Commissioner of Taxation

5 February 2025

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References

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1936 44(1)(a)(i)
 - ITAA 1936 128B(3)(ga)
 - ITAA 1936 128D
 - ITAA 1936 former Pt IIIAA Div 1A
 - ITAA 1936 former 160APHD
 - ITAA 1936 former 160APHE(1)
 - ITAA 1936 former 160APHM
 - ITAA 1936 former 160APHN
 - ITAA 1936 former 160APHO(3)
 - ITAA 1936 former 160APHT
 - ITAA 1936 former 160APHT(2)
 - ITAA 1936 former 160APHU(1)
 - ITAA 1936 177EA
 - ITAA 1936 177EA(3)(e)
 - ITAA 1936 177EA(5)(b)
 - ITAA 1997 Div 67
 - ITAA 1997 67-25
 - ITAA 1997 Subdiv 83A-C
 - ITAA 1997 102-5
 - ITAA 1997 102-10
 - ITAA 1997 104-10
 - ITAA 1997 104-10(4)
 - ITAA 1997 104-35(5)(c)
 - ITAA 1997 109-10
 - ITAA 1997 110-25(2)(b)
 - ITAA 1997 110-55(2)
 - ITAA 1997 Div 115
 - ITAA 1997 115-25(1)
 - ITAA 1997 115-30(1)
 - ITAA 1997 116-20(1)(a)
 - ITAA 1997 116-20(1)(b)
 - ITAA 1997 Subdiv 124M
 - ITAA 1997 124-780(3)(d)
 - ITAA 1997 124-780(4)
 - ITAA 1997 124-780(7)
 - ITAA 1997 124-783
 - ITAA 1997 124-785(1)
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 - ITAA 1997 124-785(4)
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 - ITAA 1997 208-195
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 - ITAA 1997 Subdiv 842-I
 - ITAA 1997 855-10
 - ITAA 1997 975-500
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 - ITAA 1997 995-1(1)
 - Corporations Act 2001 Pt 5.1
 - Corporations Act 2001 254T
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ATO references

NO: 1-13XMA8II
 ISSN: 2205-5517
 BSL: PG
 ATOlaw topic: Capital gains tax ~~ CGT events ~~ A1 – disposal of a CGT asset
 Capital gains tax ~~ Rollovers ~~ Scrip for scrip
 Income tax ~~ Assessable income ~~ Dividend income
 Income tax ~~ Capital management ~~ Scheme of arrangement

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