Status: **legally binding**

Class Ruling

AVJennings Limited – scheme of arrangement and special dividend

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 of the special dividend paid by AVJennings Limited (AVJennings) on 6 August 2025 (Special Dividend) and the disposal of all the ordinary shares in AVJennings under a scheme of arrangement implemented on 14 August 2025.

2. Details of this scheme are set out in paragraphs 38 to 69 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:

- were registered as a holder of an ordinary share in AVJennings on the AVJennings share register on
  - 11 August 2025 (Scheme Record Date) and participated in the scheme of arrangement
  - 29 July 2025 (Special Dividend Record Date) and received the Special Dividend on 6 August 2025
- acquired your AVJennings shares on or after 20 September 1985, and
- held your AVJennings shares on capital account – that is, you did not hold your AVJennings shares as 'revenue assets' (as defined in section 977-50) or as 'trading stock' (as defined in subsection 995-1(1)).

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

- are an 'exempt entity' (as defined in subsection 995-1(1))
- acquired your AVJennings shares under an employee share scheme (as defined in subsection 83A-10(2))
- are an entity that is under a legal disability (for example, under the age of 18 on 30 June 2026 or bankrupt)
- are subject to special tax rules, such as insurance companies, or the investment manager regime in Subdivision 842-I
- are a 'resident of Australia' (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)) who holds your AVJennings shares as an asset in a business that is carried on at or through a permanent establishment outside of Australia
- have a functional currency under Subdivision 960-D other than Australian dollars in calculating your Australian income tax position
- are subject to the taxation of financial arrangements rules in Division 230 in relation to your AVJennings shares.

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 2025 to 30 June 2026.

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' as defined in section 202-40.

Special Dividend, franking credit and tax offset included in the assessable income of Australian-resident shareholders

9. If you are a 'resident of Australia' (as defined in subsection 6(1) of the ITAA 1936), you include the Special Dividend in your assessable income for the income year in which you received the Special Dividend (subparagraph 44(1)(a)(i) of the ITAA 1936).

10. If you are an individual or a 'corporate tax entity' (as defined in section 960-115), the franking credit on the Special Dividend is included in your assessable income and you are entitled to a tax offset equal to the amount of that franking credit (sections 207-20, 207-70 and 207-145) if you:

- satisfy the residency requirement in section 207-75, and
- are a 'qualified person' (as defined in Division 1A of former Part IIIAA of the ITAA 1936) in relation to the Special Dividend.

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11. If you are a resident of Australia who received the Special Dividend as a trustee of a trust (the trust not being a complying superannuation entity) or as a partnership, the franking credit on the Special Dividend is included in your assessable income (subsection 207-35(1)) if you are:

- not a corporate tax entity, and
- a qualified person in relation to the Special Dividend.

12. If you are a resident of Australia who is a partner in a partnership or a beneficiary of a trust, you include your share of the net income of the partnership (under Division 5 of Part III of the ITAA 1936) or the net income of the trust (under Division 6 of Part III of the ITAA 1936) in your assessable income if:

- the Special Dividend flows indirectly through the partnership or trust to you, and
- both you and the partnership or trust are each a qualified person in relation to the Special Dividend (former subsection 160APHU(1) of the ITAA 1936).

In addition, you include your share of the franking credit on the Special Dividend in your assessable income (subsections 207-35(3) and (4) and section 207-37) and you are entitled to a tax offset equal to your share of the franking credit on the Special Dividend (section 207-45).

13. 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 (subsection 67-25(1)), unless you are a:

- trustee of a non-complying superannuation fund or non-complying approved deposit fund (subsection 67-25(1A))
- trustee of a trust who is liable to be assessed under sections 98 or 99A of the ITAA 1936 (subsection 67-25(1B)), or
- corporate tax entity (unless you are an exempt institution that is eligible for a refund or a life insurance company that received the Special Dividend on the AVJennings shares that were not held by you on behalf of your shareholders) (subsections 67-25(1C) and 67-25(1D)).

Special Dividend paid to non-resident shareholders

Special Dividend attributable to a permanent establishment in Australia

14. If you are a non-resident and you received the Special Dividend, and the Special Dividend is attributable to a permanent establishment in Australia (and you did not receive the Special Dividend in your capacity as a trustee):

- you include the Special Dividend in your assessable income (paragraph 44(1)(c) of the ITAA 1936)
- you are not liable to pay withholding tax in respect of the Special Dividend (subsection 128B(3E) of the ITAA 1936)
- if you are also a qualified person in relation to the Special Dividend, you include the amount of the franking credit on the Special Dividend in your assessable income and you are entitled to a tax offset equal to the amount of that franking credit (sections 207-20, 207-70, and subsection 207-75(2)), and

- the franking credit tax offset is not refundable (subsection 67-25(1DA)).

Special Dividend not attributable to a permanent establishment in Australia

15. If you are a non-resident and you received the Special Dividend, and the Special Dividend is not attributable to a permanent establishment in Australia:

- the Special Dividend is not included in your assessable income (subsection 44(1) and section 128D of the ITAA 1936) and you are not liable to pay withholding tax in respect of the Special Dividend because it is fully franked (paragraph 128B(3)(ga) of the ITAA 1936), and
- you do not include the amount of the franking credit on the Special Dividend in your assessable income and you are not entitled to a tax offset for that franking credit (sections 207-20 and 207-70).

Qualified person

16. Paragraph 207-145(1)(a) refers to Division 1A of former Part IIIAA of the ITAA 1936, which contains the conditions you must satisfy to be a 'qualified person' in relation to a franked distribution you have received. The main way in which you can be a qualified person is by satisfying the holding period rule in former subsection 160APHO(2) of the ITAA 1936.

17. You will be a qualified person in relation to the Special Dividend by satisfying the holding period rule if, during the period from 15 June 2025 to 10 August 2025 (inclusive), you held each of your AVJennings shares 'at risk' 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 share. This is because:

- The Special Dividend you received constitutes a 'related payment' for the purposes of former section 160APHN of the ITAA 1936 (because the Scheme Consideration paid by PM Nominees C Pty Ltd (Bidder) for acquiring AVJennings shares is reduced by the amount of the Special Dividend, which has the effect of passing the benefit of the Special Dividend from the shareholders of AVJennings to the Bidder). Therefore, the holding period rule must be satisfied during the secondary qualification period for the Special Dividend (former paragraph 160APHO(1)(b) of the ITAA 1936).
- 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 in AVJennings became ex dividend on 30 July 2025, being the day after the Special Dividend Record Date (29 July 2025) which was the last day on which the acquisition by a person of an AVJennings share will entitle them to receive the Special Dividend (former subsection 160APHE(1) of the ITAA 1936).
- Any days on which you had 'materially diminished risks of loss or opportunities for gain' (as defined in former section 160APHM of the ITAA 1936) in respect of the AVJennings shares are excluded in applying the holding period rule (former subsection 160APHO(3) of the ITAA 1936).

- Under the scheme of arrangement, you had materially diminished risks of loss or opportunities for gain on and after 11 August 2025 (the Scheme Record Date, when you became committed to dispose of your AVJennings shares under the scheme of arrangement). Therefore, you cannot satisfy the holding period rule after 10 August 2025.
- In applying the holding period rule, do not count the day on which you acquired your AVJennings shares or the day of disposal.

18. The small shareholder exception in former section 160APHT of the ITAA 1936 does not apply as the Special Dividend constitutes a 'related payment' for the purposes of former section 160APHN of the ITAA 1936 (former subsection 160APHT(2) of the ITAA 1936).

19. This means that if you are an individual with total franking credit tax offsets of less than $5,000 for the 2025–26 income year, you must still satisfy the holding period rule in relation to the Special Dividend.

Exempting entity and former exempting entity

20. When the Special Dividend was paid to you, AVJennings was not an 'exempting entity' (as defined in section 208-20) or a 'former exempting entity' (as defined in section 208-50).

21. Therefore, 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.

Anti-avoidance and integrity provisions

Section 177EA of the ITAA 1936

22. The Commissioner will not make a determination under paragraph 177EA(5)(b) of the ITAA 1936 to deny the whole, or any part, of the imputation benefits you received in relation to the Special Dividend.

Section 204-30

23. The Commissioner will not make a determination under paragraph 204-30(3)(c) to deny the whole, or any part, of the imputation benefits you received in relation to the Special Dividend.

Dividend stripping operation, distribution washing, foreign income tax deductions

24. Paragraphs 207-145(1)(d), (da) and (db) will not apply to the whole, or any part, of the Special Dividend.

Capital gains consequences

CGT event A1 happened on the disposal of shares in AVJennings

25. CGT event A1 happened when you disposed of your AVJennings shares to the Bidder under the scheme of arrangement (section 104-10).

26. The time of CGT event A1 was the Scheme Implementation Date of 14 August 2025 (paragraph 104-10(3)(b)).

Australian-resident shareholders

27. The capital proceeds you received in respect of CGT event A1 happening to each of your AVJennings shares is $0.488 (subsection 116-20(1)).

28. The capital proceeds do not include the Special Dividend of $0.167 as it was not paid in respect of CGT event A1 happening to your shares in AVJennings.

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

30. If you make a capital gain, you can treat the capital gain as a discount capital gain under Subdivision 115-A provided you:

- are an individual, a complying superannuation entity or a trust (section 115-10), and
- acquired, or are taken to have acquired, your AVJennings shares at least 12 months before the Scheme Implementation Date of 14 August 2025 (excluding the day on which you acquired your AVJennings shares and the Scheme Implementation Date) (subsection 115-25(1)).

31. If you acquired your AVJennings shares at or before 11:45 am (AEST) on 21 September 1999, you may choose to index your cost base in accordance with Subdivision 960-M up to this time and date for the purposes of calculating your capital gain (Indexation Method).

32. Expenditure incurred after this time and date, or expenditure incurred in relation to AVJennings shares acquired after this time and date, is not eligible to be calculated by using the Indexation Method.

33. You cannot calculate your capital gain from AVJennings shares as a discount capital gain under Subdivision 115-A if you used the Indexation Method at any time in relation to those shares.

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

Foreign resident shareholders

35. 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 Scheme Implementation Date, any capital gain or capital loss you made as a result of CGT event A1 happening to your AVJennings shares is disregarded under subsection 855-10(1) if your AVJennings shares were not 'taxable Australian property' (as defined in section 855-15).

36. Your AVJennings shares were taxable Australian property if they were either:

- an 'indirect Australian real property interest' (table item 2 of section 855-15 and subsection 855-25(1))
- used by you at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15) (a capital gain or

capital loss you made from CGT event A1 happening to a share that is this type of asset is proportionately reduced under section 855-35 if you used the share in carrying on a business through a permanent establishment in Australia for only part of the period from when you acquired the share to the time of CGT event A1), or

- covered by subsection 104-165(3) (about an individual choosing to disregard capital gains or capital losses on ceasing to be an Australian resident) (table item 5 of section 855-15).

37. Your AVJennings shares were an indirect Australian real property interest if they passed the:

- non-portfolio interest test (section 960-195) – that is, you (and any of your associates as defined in section 318 of the ITAA 1936) held 10% or more of the shares in AVJennings
  - at the time of CGT event A1, or
  - throughout a 12-month period that began no earlier than 24 months before the time of CGT event A1 and ended no later than the time of CGT event A1, and
- principal asset test (section 855-30) at the time of CGT event A1 if the sum of the market values of AVJennings' assets that were 'taxable Australian real property' (as defined in section 855-20) exceeded the sum of the market values of AVJennings' assets that were not taxable Australian real property.

Scheme

38. 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.

AVJennings Limited

39. AVJennings is a company incorporated in Australia.

40. AVJennings operates a business consisting of the development and sale of residential property in Australia and New Zealand.

41. AVJennings' ordinary shares were listed on the Australian Securities Exchange (ASX) and the Singapore Exchange (SGX) through the SGX GlobalQuote platform.

42. AVJennings was the head company of an income tax consolidated group under Part 3-90 before the scheme of arrangement.

43. As of 31 December 2024, AVJennings had:

- 558,270,857 ordinary shares on issue (with no other class of shares on issue)
- $248 million of retained earnings
- a franking account balance of approximately $34.4 million in franking credits.

Status: **legally binding**

44. As of 5 May 2025, AVJennings' 3 largest shareholders beneficially held 65.5% of its ordinary shares, with a company incorporated in Singapore holding 54.02%.

PM Nominees C Pty Ltd

45. The AVID group is a privately held residential developer in Australia. The group consists of Malone Holdings (Bidder Cayman HoldCo), an entity incorporated in the Cayman Islands, its sibling entities (Project Malone Trust and Project Malone BV) and their subsidiaries.

46. On 22 August 2022, PM Nominees C Pty Ltd (Bidder) was incorporated in Australia for the purpose of acquiring property development platforms.

47. PM Nominees B Pty Ltd (Bidder HoldCo) is a company incorporated in Australia that owns all of the shares in the Bidder.

48. PM Nominees A Pty Ltd (Bidder FinCo) is a company incorporated in Australia that owns all of the shares in Bidder HoldCo.

49. Bidder Cayman HoldCo owns all of the shares in Bidder FinCo.

50. The AVID group is owned by a number of international institutional investors and managed by a specialist global real estate investment manager.

Scheme of arrangement

51. On 31 March 2025, AVJennings entered into a Scheme Implementation Deed with the Bidder. Under the Deed, AVJennings agreed to propose that AVJennings and its shareholders enter into a scheme of arrangement under Part 5.1 of the *Corporations Act 2001* (Corporations Act) pursuant to which the Bidder would acquire all of the ordinary shares in AVJennings.

52. At a shareholder meeting held on 11 July 2025, a resolution in favour of the scheme of arrangement was passed by the shareholders of AVJennings as required by subparagraph 411(4)(a)(ii) of the Corporations Act.

53. On 23 July 2025, the scheme of arrangement was approved by the Supreme Court of New South Wales under paragraph 411(4)(b) of the Corporations Act.

54. AVJennings shares were suspended from trading on the ASX at the close of trading on 24 July 2025.

55. On the Scheme Implementation Date (14 August 2025), the Bidder acquired all of the shares in AVJennings.

56. Under the scheme of arrangement, each AVJennings shareholder as at the Scheme Record Date (11 August 2025) received the Scheme Consideration for each share in AVJennings on the Scheme Implementation Date.

57. The Scheme Consideration was $0.655 per AVJennings share, reduced by the amount of the Special Dividend paid by AVJennings.

58. AVJennings was removed from the official list of the ASX and SGX on 15 August 2025.

Status: **legally binding**

Special Dividend

59. Clause 4.6 of the Scheme Implementation Deed stated that AVJennings may (in its absolute discretion) announce, declare and pay a Special Dividend of up to $0.167 per AVJennings share (Special Dividend). The amount of any Special Dividend (if declared and paid prior to implementation) was to be subtracted from the Scheme Consideration.

60. On 21 July 2025, the directors of AVJennings declared the Special Dividend of $0.167 in respect of each share. The Special Dividend was fully franked.

61. AVJennings shareholders who held their shares on the Special Dividend Record Date (29 July 2025) were paid the Special Dividend on the Special Dividend Payment Date (6 August 2025).

62. The Special Dividend was debited against AVJennings' retained earnings account.

63. The Special Dividend was funded by AVJennings' existing cash reserves generated from its business since 1 April 2025 as retained cash in a company bank account, without any support by the Bidder. AVJennings did not draw down on any debt facility to fund the Special Dividend.

64. AVJennings had sufficient franking credits to fully frank the Special Dividend.

65. The scheme of arrangement was not contingent on the payment of the Special Dividend.

66. No third party (including the Bidder or any of the Bidder's related parties) financed or facilitated the payment of the Special Dividend in any way.

67. No third party (including the Bidder or any of the Bidder's related parties) had any influence or control over the declaration and payment of the Special Dividend.

Other matters

68. The following facts are relevant for the purposes of section 207-159:

- Since 1 July 2020, AVJennings has undertaken one capital raising of approximately $30.4 million (with shares issued on 15 November 2023). The net proceeds were entirely used by 30 June 2024, primarily to accelerate built-form housing to meet the anticipated growth in demand for 'AVJennings Turnkey' houses.
- AVJennings has a history of paying interim and final dividends that have been fully franked and are paid from its current period net profit after tax (NPAT).
- AVJennings did not pay a final dividend in the 2022–23 income year, nor did it pay any dividends for the 2023–24 and 2024–25 income years for the following reasons
  - 2022–23 – a conservative approach to capital management and business uncertainty
  - 2023–24 (interim) – same reasons as for 2023
  - 2023–24 (full) – directors' policy to pay dividends from current year NPAT meant no dividend was paid because AVJennings made a loss, and
  - 2024–25 (interim) – the proposed scheme of arrangement was under active contemplation

- If the scheme of arrangement did not proceed, AVJennings could, subject to a final decision of the directors, return to its normal dividend cycle and would be in a position to declare a full year dividend for the 2024–25 income year based on existing financial forecasts.

Key dates

69. The following table is a summary of the key dates for the scheme of arrangement and the Special Dividend:

Table 1: Summary of the key dates for the scheme of arrangement and Special Dividend

Event	Date
Scheme Implementation Deed executed	31 March 2025
First court hearing and release of scheme booklet	8 May 2025
Scheme meeting voting record date	9 July 2025
Scheme meeting and Extraordinary General Meeting	11 July 2025
Special Dividend declared	21 July 2025
Second court hearing	23 July 2025
Effective date	24 July 2025
Special Dividend Record Date	29 July 2025
Special Dividend ex dividend date	30 July 2025
Special Dividend Payment Date	6 August 2025
Scheme Record Date	11 August 2025
Scheme Implementation Date	14 August 2025
Delisting from ASX and termination of quotation on SGX GlobalQuote	15 August 2025

Commissioner of Taxation
22 October 2025

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 44(1)(a)(i)
- ITAA 1936 44(1)(c)
- ITAA 1936 Part III Div 5
- ITAA 1936 Part III Div 6
- ITAA 1936 98
- ITAA 1936 99A
- ITAA 1936 128B(3)(ga)
- ITAA 1936 128B(3E)
- 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(1)(b)
- ITAA 1936 former 160APHO(2)
- 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(5)(b)
- ITAA 1997 67-25(1)
- ITAA 1997 67-25(1A)
- ITAA 1997 67-25(1B)
- ITAA 1997 67-25(1C)
- ITAA 1997 67-25(1D)
- ITAA 1997 67-25(1DA)
- ITAA 1997 83A-10(2)
- ITAA 1997 98
- ITAA 1997 99A
- ITAA 1997 104-10
- ITAA 1997 104-10(3)(b)
- ITAA 1997 104-10(4)
- ITAA 1997 104-165(3)
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-10
- ITAA 1997 115-25(1)
- ITAA 1997 116-20(1)
- ITAA 1997 202-40
- ITAA 1997 204-30
- ITAA 1997 204-30(3)(c)
- ITAA 1997 Div 207
- ITAA 1997 207-20
- ITAA 1997 207-35(1)
- ITAA 1997 207-35(3)
- ITAA 1997 207-35(4)
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- ITAA 1997 207-45
- ITAA 1997 207-70
- ITAA 1997 207-75
- ITAA 1997 207-75(2)
- ITAA 1997 207-145
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- ITAA 1997 207-145(1)(d)
- ITAA 1997 207-145(1)(da)
- ITAA 1997 207-145(1)(db)
- ITAA 1997 207-159
- ITAA 1997 208-20
- ITAA 1997 208-50
- ITAA 1997 208-195
- ITAA 1997 Div 230
- ITAA 1997 Subdiv 842-I
- ITAA 1997 855-10(1)
- ITAA 1997 855-15
- ITAA 1997 855-20
- ITAA 1997 855-30
- ITAA 1997 855-35
- ITAA 1997 Subdiv 960-D
- ITAA 1997 Subdiv 960-M
- ITAA 1997 960-115
- ITAA 1997 960-195
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- Corporations Act 2001 Pt 5.1
- Corporations Act 2001 411(4)(a)(ii)
- Corporations Act 2001 411(4)(b)

ATO references

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