



# ***CR 2005/40 - Income tax: off-market share buy-back: BlueScope Steel Limited***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *1 July 2004*



## Class Ruling

### Income tax: off-market share buy-back: BlueScope Steel Limited

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#### **Preamble**

*The number, subject heading, **What this Class Ruling is about** (including **Tax laws**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains Class Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a 'public ruling' and how it is binding on the Commissioner.*

#### **What this Class Ruling is about**

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax laws' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

#### **Tax law(s)**

2. The tax laws dealt with in this Ruling are:

- section 45A of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 45B of the ITAA 1936;
- section 45C of the ITAA 1936;
- paragraph 128B(3)(ga) of the ITAA 1936;
- section 159GZZZP of the ITAA 1936;
- section 159GZZZQ of the ITAA 1936;
- subsection 160APHI(4) of the ITAA 1936;
- subsection 160APHM(2) of the ITAA 1936;
- section 160APHO of the ITAA 1936;
- subsection 177EA(5) of the ITAA 1936;
- section 202-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 202-40 of the ITAA 1997;
- paragraph 202-45(c) of the ITAA 1997;

- paragraph 204-30(3)(c) of the ITAA 1997; and
- paragraph 207-145(1)(a) of the ITAA 1997.

## Class of persons

3. The class of persons to whom this Ruling applies is the shareholders holding ordinary shares of BlueScope Steel Limited (BlueScope) who disposed of shares under the BlueScope off-market share buy-back (the Buy-Back) announced on 21 February 2005 and completed on 12 April 2005, and described in the arrangement part of this Ruling. In this Ruling they are referred to as 'participating shareholders'.

4. The class of persons to which this Ruling applies does not include BlueScope. The Ruling does not deal with how the taxation law applies to BlueScope in relation to the Buy-Back.

## Qualifications

5. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

6. The class of persons defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the arrangement described in paragraphs 11 to 26.

7. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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## Date of effect

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9. This Ruling applies to the income year (as defined in the ITAA 1997) for a participating shareholder in which that shareholder receives the return of capital. The Arrangement will be completed within that income year. For participating shareholders that do not have a substituted accounting period, this will be the income year ending 30 June 2005. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20). Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by *Gazette*;
- it is not taken to be withdrawn by an inconsistent later public ruling; or
- the relevant tax laws are not amended.

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## Withdrawal

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10. This Ruling is withdrawn and ceases to have effect after 30 June 2005. However, the Ruling continues to apply after its withdrawal in respect of the tax laws ruled upon, to all persons within the specified class who entered into the specified arrangement during the term of the Ruling, subject to there being no change in the arrangement or in the person's involvement in the arrangement.

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## Arrangement

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11. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- The application for a Class Ruling dated 2 October 2004;
- Correspondence from BlueScope dated 19 October 2004;
- Correspondence from BlueScope dated 23 December 2004;
- Correspondence from BlueScope dated 4 February 2005; and
- Correspondence from BlueScope dated 13 April 2005.

**Note:** Certain information from BlueScope has been provided on a commercial-in-confidence basis and will not be disclosed or released under the Freedom of Information Legislation.

12. On 21 February 2005, BlueScope announced its intention to participate in an off-market share buy-back. BlueScope announced it would spend approximately \$200 million on the Buy-Back being equivalent to approximately 3.5% of the shares on issue as at 30 June 2004.

13. As at 30 June 2004 BlueScope's share capital comprised of 732,320,847 issued shares amounting to \$1,915 million. Its retained profits amounted to \$1,303 million.

14. The shareholders in BlueScope are a mix of resident and non-resident individuals, companies and superannuation funds.

15. Approximately 12% of the shareholders are resident in the USA and Canada.

16. The Buy-Back formed part of BlueScope's continuing capital management strategy and was considered by BlueScope to be an appropriate mechanism to return equity to shareholders.

17. The Buy-Back was conducted through a tender process during a specified tender period and was open to all shareholders, other than US and Canadian shareholders, who were registered as shareholders on the Record Date (4 March 2005). Participation in the Buy-Back was voluntary.

18. The tender period opened on 21 March 2005 and closed on 8 April 2005. Under the tender process, shareholders were invited to submit offers to sell their shares at specified discount percentages to the volume weighted average price (VWAP) on the ASX for the last five days of the tender period. The maximum discount percentage was not to exceed 14%. BlueScope anticipated that the Australian Securities and Investments Commission (ASIC) would require a minimum discount of approximately 5% in order to demonstrate that the exclusion of US and Canadian shareholders would not disadvantage them, relative to an on-market sale of their shares.

19. BlueScope advised that the reasons for adopting a range of discount percentages rather than a range of buy-back prices, was the high level of volatility in the market price of BlueScope shares. To ensure that shareholders were protected against an exceptional fall in the market price of their shares during the tender period, they were given the choice of nominating a minimum price condition. This choice enabled their tender to be automatically rejected from the Buy-Back if their tender discount percentage resulted in a buy-back price which was lower than their nominated minimum dollar amount.

20. Alternatively, shareholders were permitted to submit a final price tender which meant that they undertook to accept whatever price was struck by BlueScope.
21. BlueScope could choose to buy-back either a higher or lower number of shares, or none at all.
22. Where excessive tenders were received at the discount percentage which BlueScope was prepared to accept, normal scale-back provisions applied.
23. Under the Buy-Back, \$3.07 per share was debited to BlueScope's untainted share capital account and the balance of the Buy-Back price was debited to BlueScope's retained profits account.
24. The amount debited to the share capital account reflected the average of the possible cost bases applicable to BlueScope shareholders following the demerger of BlueScope from BHP Billiton.
25. BlueScope fully franked that part of the Buy-Back price which was debited to its retained profits account.
26. On 12 April 2005, BlueScope announced:
- that it had completed the off-market share buy-back of 25,856,197 shares;
  - the total amount of capital repurchased under the Buy-Back was \$200,385,526.75, representing 3.5% of the issued capital of BlueScope; and
  - the final price for the Buy-Back was set at \$7.75 per share, representing a discount of 9% to the VWAP of BlueScope shares over the 5 days up to and including the closing date of the Buy-Back.

## **Ruling**

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### **The Dividend Component**

27. Participating shareholders will be taken to have been paid a dividend of \$4.68 (the Dividend Component) for each share bought back under section 159GZZZP of the ITAA 1936.
28. The Dividend Component is a frankable distribution pursuant to section 202-40 of the ITAA 1997.
29. The Dividend Component is therefore capable of being franked in accordance with section 202-5 of the ITAA 1997.
30. As the Dividend Component is fully franked, participating non-resident shareholders are not liable for Australian withholding tax under paragraph 128B(3)(ga) of the ITAA 1936.

## The Capital Component

31. Participating shareholders are taken to have received \$4.79 (the Capital Component) as consideration in respect of the sale of each of their shares on 12 April 2005 pursuant to section 159GZZZQ of the ITAA 1936.

32. Taxation Determination TD 2004/22 outlines how to determine what would have been the market value of the share at the time of the Buy-Back if the Buy-Back did not occur and was never proposed to occur.

33. If the Buy-Back price for each share bought back under the Buy-Back was less than what would have been the market value of the share if the Buy-Back did not occur and was never proposed to occur, in accordance with TD 2004/22, then the market value rule in subsection 159GZZZQ(2) of the ITAA 1936 applies to the Buy-Back. The effect of this rule is that the difference between the Buy-Back price and the market value determined in accordance with TD 2004/22 will be included in the consideration received for the disposal of the share for ordinary income or capital gains tax purposes in addition to the capital amount of \$3.07 per share.

34. The treatment of the consideration amount for tax purposes will depend on whether the sale is on capital account (where the shares are held for investment) or on revenue account. In general, the relevant treatment should be as follows:

(a) Shares held on capital account

- The Sale Consideration represents the capital proceeds for capital gains tax purposes pursuant to section 116-20 of the ITAA 1997. A participating shareholder will make a capital gain on the sale of the share if the capital proceeds of \$4.79 exceed the cost base of the share. The capital gain is the amount of the excess. Similarly, a shareholder will make a capital loss if the capital proceeds are less than the reduced cost base of the share.
- The shares are taken to have been disposed of for capital gains tax purposes on 12 April 2005.

(b) Shares held on revenue account

- Where the shares are held as trading stock, the consideration of \$4.79 is included in assessable income under section 6-5 of the ITAA 1997.
- Where the shares are held as revenue assets the amount by which the consideration of \$4.79 exceeds the cost of each share will be included in the shareholder's assessable income. Correspondingly, if the cost exceeds \$4.79, the difference will be an allowable deduction.

35. For the purposes of Division 1A of Part IIIAA of the ITAA 1936 participating shareholders will be considered to satisfy the holding period rule under section 160APHO of the ITAA 1936 and therefore be qualified persons provided the related payments rule is also met in relation to the Dividend Component received under the Buy-Back if:

- the shares sold under the Buy-Back were acquired on or before 25 February 2005; and
- during the period when the shares or interest in the shares were held the shareholders did not have 'materially diminished risks of loss or opportunities for gain' in respect of the shares or interest in the shares (as defined in section 160APHM of the ITAA 1936) for a continuous period of at least 45 days.

### **Anti-avoidance provisions**

36. The Commissioner will not make a determination under subsection 45A(2) or subsection 45B(3) of the ITAA 1936.

37. Subsection 45C(1) of the ITAA 1936 will not apply to any part of the distribution of share capital received under the Buy-Back by participating shareholders.

38. 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 received in relation to the Dividend Component under the Buy-Back by participating shareholders.

39. The Commissioner will not make a determination under paragraph 204-30(3)(c) of the ITAA 1997 to deny the whole, or any part, of the imputation benefits received in relation to the Dividend Component under the Buy-Back by participating shareholders.

## **Explanation**

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### **The Dividend and Capital Components**

40. The purchase price to be received by participating shareholders comprises of two components:

- a Dividend Component; and
- a Capital Component.

The amount of each of these components is determined in accordance with sections 159GZZZP and 159GZZZQ of the ITAA 1936, having regard to how BlueScope accounts for the Buy-Back.



## **The Dividend Component**

### ***Section 159GZZP of the ITAA 1936***

41. Section 159GZZP provides that where the buy-back of a share is an off-market purchase, the difference between the purchase price and the part (if any) of the purchase price in respect of the buy-back of the share which is debited against amounts standing to the credit of the company's share capital account is taken to be a dividend paid by the company to the seller on the day the buy-back occurs.

42. In this case, the purchase price was \$7.75 per share and \$3.07 of this was debited to the share capital account. Therefore, the dividend amount is \$4.68 per share.

### ***Section 202-40 of the ITAA 1997***

43. The Dividend Component of \$4.68 per share is frankable under section 202-40 of the ITAA 1997 but only to the extent that the Buy-Back price does not exceed the market value of the share at the time of the Buy-Back if the Buy-Back did not occur and was never proposed to occur (paragraph 202-45(c) of the ITAA 1997).

44. TD 2004/22 outlines how to determine what would have been the market value of the share at the time of the Buy-Back if the buy-back did not occur and was never proposed to occur.

45. In this case, the Buy-Back price did not exceed the market value determined in accordance with TD 2004/22.

46. For Australian resident individual and corporate tax entity shareholders, and also for Australian complying superannuation funds, the dividend amount is included in their assessable income under subsection 44(1) of the ITAA 1936. Generally, an amount equal to the amount of the franking credit is included in their assessable income under subsection 207-20(1) of the ITAA 1997 and they are also entitled to a tax offset under subsection 207-20(2) of the ITAA 1997 reflecting the franking credit attached to the dividend.

47. Paragraph 207-145(1)(a) of the ITAA 1997 provides that in relation to a franked dividend made by an entity only 'a qualified person in relation to the distribution for the purposes of Division 1A of Part IIIAA of the ITAA 1936' is entitled to a franking credit or tax offset. Broadly speaking, to be a 'qualified person' in relation to the dividend paid under the Buy-Back, the participating shareholder must satisfy both the holding period rule (or certain alternative rules) and the related payments rule. These two rules are discussed later in this Class Ruling.

### ***Paragraph 128B(3)(ga) of the ITAA 1936***

48. As the Dividend Component of the consideration received under the Buy-Back is fully franked, a non-resident shareholder is not liable to Australian withholding tax on the Dividend Component (paragraph 128B(3)(ga)).

**The Capital Component**

49. Participating shareholders are taken to have disposed of those shares accepted under the Buy-Back on 12 April 2005. The disposal may have different income tax implications for shareholders depending on how the shares were held. For instance:

- an investor who held their shares on capital account is only subject to the provisions dealing with capital gains and losses; but
- a trader who held their shares on revenue account is subject to the ordinary income provisions.

50. It should be noted that where both the ordinary income tax provisions and the capital gains provisions apply, the amount of the capital gain will be reduced under the anti-overlap provisions in section 118-20 of the ITAA 1997. If the shares were held as trading stock the capital gain or loss is disregarded under section 118-25 of the ITAA 1997.

***Section 159GZZZQ of the ITAA 1936***

51. For the purposes of computing the amount of the gain or loss (on capital or revenue account) in these cases, the consideration in respect of the disposal of a share under a buy-back is determined in accordance with section 159GZZZQ of the ITAA 1936.

52. Subsection 159GZZZQ(1) of the ITAA 1936 provides that the shareholder is taken to have received an amount equal to the purchase price (in this case the \$7.75 received for each share bought back) as consideration in respect of the sale of each share bought back. However, this amount is subject to the following adjustments in order to arrive at the sale consideration.

53. Subsection 159GZZZQ(2) of the ITAA 1936 is one of the adjusting provisions. It provides that if the purchase price is less than the market value of the share at the time of the buy-back if the buy-back did not occur and was never proposed to occur, the shareholder is taken to have received an amount equal to the market value as consideration in respect of the sale of each share bought back.

54. TD 2004/22 outlines how to determine what would have been the market value of the share at the time of the Buy-Back if the Buy-Back did not occur and was never proposed to occur.

55. The effect of subsection 159GZZZQ(2) is that the difference between the Buy-Back price and the market value determined in accordance with TD 2004/22 will be included in the consideration received for the disposal of the share for ordinary income or capital gains tax purposes in addition to the capital amount of \$3.07 per share.

56. For the purposes of determining the application of subsection 159GZZZQ(2), the market value of each BlueScope share is the volume weighted average price over the five trading days before 21 February 2005 (\$9.72), adjusted on an ex-dividend basis, and further adjusted for the movement in the S&P/ASX 200 from commencement of trading on that date (4168.8), to the close of trading on 8 April 2005 (4165.6).

57. Under this methodology, the market value of a share bought back under the Buy-Back was calculated to be \$9.47. As a result, participating shareholders are taken to have received \$9.47 for the sale of each share bought back under the Buy-Back.

58. Furthermore, pursuant to subsection 159GZZZQ(3) of the ITAA 1936, the deemed consideration of \$9.47 is reduced by a 'Reduction Amount'. The Reduction Amount is an amount calculated under subsection 159GZZZQ(4) of the ITAA 1936. In this case, the Reduction Amount is equivalent to the Dividend Component of \$4.68. Therefore, the sale consideration for each share disposed of under the Buy-Back is \$4.79 (\$9.47 less \$4.68).

### **Qualified persons**

59. Paragraph 207-145(1)(a) of the ITAA 1997 provides that in relation to a franked dividend made by an entity, only 'a qualified person in relation to the distribution for the purposes of Division 1A of Part IIIAA of the ITAA 1936' is entitled to a franking credit or tax offset.

60. To be a 'qualified person' in relation to the Dividend Component paid under the Buy-Back, the participating shareholder must satisfy both the holding period rule and the related payments rule.

61. Broadly, a shareholder will not satisfy the related payments rule if the shareholder, or associate of the shareholder, is under an obligation to make, or makes, a payment in respect of the dividend which effectively passes the benefit of the dividend to another person.

62. The holding period rule requires shareholders to hold the shares, or the interest in the shares, on which the dividend is paid at risk for a continuous period of at least 45 days. In determining whether a shareholder has satisfied the holding period rule, any days during which there is 'a materially diminished risk of loss and opportunities for gain' with respect to the shares are not counted. Paragraph 160APHO(2)(a) of the ITAA 1936 provides that the day of acquisition and the day of disposal of the relevant shares are also not counted.

63. Under subsection 160APHM(2) of the ITAA 1936 a taxpayer is taken to have materially diminished the risks of loss and opportunities for gain with respect to shares or interests in shares if the 'net position' of the shareholder results in the shareholder having less than 30% of the risks and opportunities relating to the shares or interests in shares.

64. In this case the Commissioner does not regard the announcement of the Buy-Back offer as affecting whether the shares or an interest in shares was held at risk or not.

65. The tender period ended on 8 April 2005. Results of the tender offer were announced on 12 April 2005. There were 45 clear days between 25 February 2005 and 12 April 2005. Therefore, a shareholder who acquired shares on or before 25 February 2005 satisfied the holding period rule as long as those shares were held at risk for at least 45 continuous days. A shareholder who acquired shares after 25 February 2005 that were subsequently bought back under the Buy-Back is not a qualified person in relation to the dividend paid under the Buy-Back for the purposes of Division 1A of Part IIIA of the ITAA 1936.

66. Generally, under the holding period rule a shareholder will be deemed to have disposed of his or her most recently acquired shares first for the purposes of applying the 45 day rule (subsection 160APHI(4) of the ITAA 1936). The 45 day rule operates on a last-in-first-out basis, so that shareholders will be deemed to have disposed of their most recently acquired shares first for the purposes of applying the 45 day rule. Accordingly, shareholders who acquired any additional BlueScope shares after 25 February 2005 which conferred an entitlement to participate in the Buy-Back, may not qualify for the franking credits attached to the dividends paid on some or all of their shares sold in the Buy-Back.

### **Anti-avoidance provisions**

#### ***Sections 45A and 45B of the ITAA 1936***

67. Sections 45A and 45B of the ITAA 1936 are 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 is that all or part of the distribution of capital received by the shareholder under the Buy-Back is treated as an unfranked and non-rebatable dividend.

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

69. Although a 'capital benefit' (as defined in paragraph 45A(3)(b) of the ITAA 1936) is provided to participating shareholders under the Buy-Back, the circumstances of the Buy-Back indicate that there is no streaming of capital benefits to some shareholders in lieu of the payment of dividends to other shareholders. Accordingly, section 45A has no application to the Buy-Back.

70. Section 45B applies where certain capital payments are paid to shareholders in substitution for dividends. In broad terms, section 45B applies where:

- there is a scheme under which a person is provided with a capital benefit by a company (paragraph 45B(2)(a));
- under that scheme, a taxpayer, who may or may not be the person provided with the capital benefit, obtains a tax benefit (paragraph 45B(2)(b)); and
- 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 taxpayer to obtain a tax benefit (paragraph 45B(2)(c)).

71. In the case of the Buy-Back, whilst the conditions of paragraphs 45B(2)(a) and 45B(2)(b) have been met, the requisite purpose of enabling the shareholder to obtain a tax benefit – by way of capital distribution – is not present having regard to the ‘relevant circumstances’ of the scheme as set out in subsection 45B(8) of the ITAA 1936.

72. Furthermore, the Capital Component cannot be said to be attributable to the profits of BlueScope, nor does the pattern of distributions that have been made by BlueScope in the past indicate that the Capital Component is to be paid in substitution for a dividend. Accordingly section 45B has no application to the Buy-Back.

73. As sections 45A and 45B will not apply to the Buy-Back, the Commissioner will not make a determination that section 45C will apply to any part of the Capital Component received under the Buy-Back by participating shareholders.

### ***Subsection 177EA(5) of the ITAA 1936***

74. Section 177EA is a general anti-avoidance provision that applies to a wide range of schemes to obtain a tax advantage in relation to imputation benefits. It is directed at schemes for the disposition of shares or an interest in shares where a franked distribution is paid or is payable in respect of the shares or the interest in shares. This would include a buy-back with a franked dividend component.

75. Specifically, subsection 177EA(3) provides that section 177EA applies if:

- (a) there is a scheme for a disposition of membership interests, or an interest in membership interests, in a corporate tax entity;

- (b) either:
  - (i) a frankable distribution has been paid, or is payable or expected to be payable, to a person in respect of the membership interests; or
  - (ii) a frankable distribution has flowed indirectly, or flows indirectly or is expected to flow indirectly, to a person in respect of the interest in membership interests, as the case may be;
- (c) the distribution was, or is expected to be, a franked distribution or a distribution franked with an exempting credit;
- (d) except for this section, a person (the 'relevant taxpayer') would receive, or could reasonably be expected to receive, imputation benefits as a result of the distribution; and
- (e) 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 the relevant taxpayer to obtain an imputation benefit.

76. In the present case, the conditions of paragraphs 177EA(3)(a) to (d) of the ITAA 1936 are satisfied. Accordingly, the issue is whether, having regard to the relevant circumstances of the scheme, it would be concluded that on the part of BlueScope, its shareholders or any other relevant party, there is a purpose more than merely an incidental purpose of conferring an imputation benefit under the scheme. Under this arrangement the relevant taxpayer is the participating shareholder and the scheme comprises the circumstances surrounding the Buy-Back.

77. In arriving at a conclusion the Commissioner must have regard to the relevant circumstances of the scheme which include, but are not limited to, the circumstances set out in subsection 177EA(17) of the ITAA 1936. The relevant circumstances taken individually or collectively could indicate the requisite purpose. Due to the diverse nature of these circumstances some may not be present at any one time in any one scheme.

78. The Commissioner has come to the view that section 177EA of the ITAA 1936 applies to the Buy-Back. In coming to this conclusion the Commissioner had regard to all the relevant circumstances of the arrangement, as outlined in subsection 177EA(17). Among the circumstances of the Buy-Back reflected in those paragraphs are:

- the greater attraction of the Buy-Back to resident shareholders who can fully utilise the franking credits than to non-resident shareholders who can not;
- the delivery of franking credits in excess of what would have otherwise been distributed in the ordinary course of dividend declaration;

- that participating shareholders are more likely to make an economic gain than a loss for tax purposes, from their participation; and
- the greater attraction of the Buy-Back to some resident shareholders with a low marginal tax rate than other resident shareholders (for example, whereas superannuation funds are taxed at 15% and corporations at 30% , individuals can be taxed at a marginal tax rate of up to 47%).

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

80. Given the large and diverse shareholding of BlueScope, the Commissioner has exercised his discretion in such a way that he does not make a determination under paragraph 177EA(5)(b) of the ITAA 1936 to deny the whole or any part of the imputation benefits received in relation to the Dividend Component by participating shareholders.

### ***Subsection 204-30(3) of the ITAA 1997***

81. Section 204-30 of the ITAA 1936 applies where a corporate tax entity streams the payment of dividends, or the payment of dividends and the giving of other benefits, to its members in such a way that:

- (a) an imputation benefit is, or apart from this section would be, received by a member of the entity as a result of the distribution or distributions (paragraph 204-30(1)(a)); and
- (b) the member would derive a greater benefit from franking credits than another member of the entity (paragraph 204-30(1)(b)); and
- (c) the other member of the entity will receive lesser imputation benefits, or will not receive any imputation benefits, whether or not the other member receives other benefits (paragraph 204-30(1)(c)).

82. If subsection 204-30(1) applies, the Commissioner is vested with a discretion under subsection 204-30(3) to make a determination in writing either:

- (a) that a specified franking debit arises in the franking account of the entity, for a specified distribution or other benefit to a disadvantaged member (paragraph 204-30(3)(a)); or
- (b) that no imputation benefit is to arise in respect of any streamed distributions made to a favoured member and specified in the determination (paragraph 204-30(3)(c)).

83. For subsection 204-30(1) to apply, members to whom distributions are streamed must derive a greater benefit from imputation benefits than the members who do not participate in the Buy-Back. The words 'derives a greater benefit from franking credits' are defined in subsection 204-30(8) by reference to the ability of the members to fully utilise imputation benefits.

84. A significant portion of BlueScope shares are held by non-residents who do not fully benefit from franking, a feature of the Buy-Back, to the same extent as resident shareholders. Furthermore, approximately 12% of these shareholders are USA and Canadian residents and were not permitted to participate in the Buy-Back. Therefore the conditions in subsection 204-30(1) for the provision to apply are met. However, the Commissioner will exercise his discretion under subsection 204-30(3) and will not make a determination under subsection 204-30.

## Detailed contents list

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**Commissioner of Taxation**

25 May 2005

<i>Previous draft:</i>	- ITAA 1936 160APHM
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	- ITAA 1936 160APHO
<i>Related Rulings/Determinations:</i>	- ITAA 1936 160APHO(2)(a)
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<i>Subject references:</i>	- ITAA 1936 177EA(3)(b)
- share buy-backs	- ITAA 1936 177EA(3)(c)
	- ITAA 1936 177EA(3)(d)
<i>Legislative references:</i>	- ITAA 1936 177EA(5)
- TAA 1953 Pt IVA	- ITAA 1936 177EA(5)(a)
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ATOlaw topic: Income Tax ~~ Entity specific matters ~~ share buy-backs