


CR 2014/10 - Income tax: share consolidation and in specie distribution: Macquarie Group Limited

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Class Ruling

Income tax: share consolidation and in specie distribution: Macquarie Group Limited

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📌 This publication provides you with the following level of protection:

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

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:
- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
 - section 44 of the ITAA 1936;
 - section 45A of the ITAA 1936;
 - section 45B of the ITAA 1936;
 - section 45C of the ITAA 1936;
 - section 128B of the ITAA 1936;
 - section 128D of the ITAA 1936;
 - former section 160APHE of the ITAA 1936;
 - former section 160APHJ of the ITAA 1936;
 - former section 160APHM of the ITAA 1936;

- former section 160APHN of the ITAA 1936;
- former section 160APHO of the ITAA 1936;
- section 177EA of the ITAA 1936;
- section 6-5 of the ITAA 1997;
- Division 67 of *the Income Tax Assessment Act 1997* (ITAA 1997);
- section 104-25 of the ITAA 1997;
- section 104-135 of the ITAA 1997;
- section 109-5 of the ITAA 1997;
- Division 110 of the ITAA 1997
- section 112-20 of the ITAA 1997;
- section 112-25 of the ITAA 1997;
- Subdivision 115-A of the ITAA 1997;
- section 118-20 of the ITAA 1997;
- section 202-40 of the ITAA 1997;
- section 204-30 of the ITAA 1997;
- section 207-20 of the ITAA 1997;
- section 207-35 of the ITAA 1997
- section 207-75 of the ITAA 1997;
- section 802-15 of the ITAA 1997; and
- Division 855 of the ITAA 1997.

All subsequent legislative references are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies are holders of ordinary shares in Macquarie Group Limited (MGL), who:

- are listed on the share register of MGL on the record date of 20 December 2013 (Record Date) for the Distribution; and
- have their Sydney Airport (SYD) Securities either registered in their own name, registered in the name of the 'Nominee' or sold under the 'Sale Facility';
- are either:
 - (a) residents of Australia for the purposes of the Australian income tax legislation, including by virtue of the operation of any double tax agreement between Australia and any other country; or

- (b) not a resident of Australia (i.e. a foreign resident as defined in subsection 995-1(1) or a non-resident as defined in subsection 6(1) of the ITAA 1936) whose MGL shares, or right to receive something of value in respect of MGL shares they owned on the Record Date, are not taxable Australian property as that term is defined in section 855-15;
- hold their MGL shares neither as revenue assets (as defined in section 977-50) nor trading stock (as defined in subsection 995-1(1)) – that is, broadly on capital account for income tax purposes; and
 - are not subject to the taxation of financial arrangements in Division 230 in relation to gains and losses on their MGL shares.

(Note - Division 230 will generally not apply to individuals, unless they have made an election for it to apply to them.)

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 8 to 44 of this Ruling.

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

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

Date of effect

7. This Ruling applies 1 July 2013 to 30 June 2014. The Ruling continues to apply after 30 June 2014 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will 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 this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

8. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them, form part of and are to be read with this description:

- application for Class Ruling dated 8 November 2013;
- all other correspondence from the applicant in relation to this Ruling;
- Notice of General Meeting and Explanatory Memorandum dated 1 November 2013; and
- the unaudited MGL company statement of financial position as at 30 September 2013.

Note: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

Background

MGL Group

9. The MGL Group is a global provider of banking, financial, advisory, investment, and funds management services.

10. The MGL Group's main business focus is making returns by providing a diversified range of services to clients. The MGL Group acts on behalf of institutional, corporate, and retail clients and counterparties around the world.

11. The MGL Group is regulated by the Australian Prudential Regulation Authority.

MGL

12. MGL is an Australian resident company with shares listed on the Australian Securities Exchange (ASX).

13. The only shares that MGL has issued are ordinary shares.

14. MGL is the head entity of the Macquarie tax consolidated group (TCG). Subsequent references to MGL are references to MGL as the head entity of the MGL TCG.

15. Members of the MGL TCG had held a significant number of Sydney Airport stapled securities (SYD Securities).

Scheme steps

16. The scheme comprised the following:

- on 12 December 2013 MGL's Constitution was amended to facilitate the Distribution;

- on 13 January 2014 (Distribution Date), MGL distributed SYD Securities to MGL shareholders on a one for one basis as at the Record Date of 20 December 2013; and
- with effect immediately after Record Date, the consolidation of the share capital of MGL through the conversion of 1 MGL share into 0.9438 MGL shares with any resulting fraction of a share rounded up to the next whole number of shares on a per registered shareholder basis (Consolidation).

Relevant MGL attributes

Dividends

17. MGL has a long history of regularly paying dividends on its ordinary shares in July (final dividend) and December (interim dividend) of each year. MGL's current dividend policy is as follows:

'MGL targets an annual ordinary dividend payout ratio in the range of 60 per cent to 80 per cent of net earnings. Franking is subject to composition of income.'

18. The dividends paid on the ordinary shares in July and December 2013 had a franking percentage of 40% and the remainder of the dividend was declared to be conduit foreign income (CFI).

19. MGL currently expects that regular dividends on the ordinary shares will continue to be paid in accordance with its current dividend policy.

20. MGL paid an interim dividend on the ordinary shares on 12 December 2013 and expects to pay a full year dividend in July 2014 in accordance with its dividend policy.

21. MGL bought back 9,809,049 ordinary shares for \$251 million via on-market buy-back transactions between 21 June 2012 and 26 September 2012.

MGL's retained earnings and contributed equity

22. The unaudited MGL company statement of financial position as at 30 September 2013 disclosed Contributed Equity of \$8,629 million and adjusted Retained Earnings of \$3,930 million. This Retained Earnings amount includes a proforma adjustment for the unrealised accounting profit after tax on the distribution of the SYD Securities. The unrealised accounting profit referable to the SYD Securities to be distributed has been calculated by reference to their fair value as at 30 September 2013.

SYD Securities

23. SYD Securities are stapled securities that are listed on the ASX.

24. Each stapled security consists of a unit in Sydney Airport Trust 1 (SAT1) stapled to a share in Sydney Airport Limited (SAL).

Reasons for the distribution

25. MGL's management decided to exit the investment in SYD by making an in specie distribution to MGL shareholders because:

- an in specie distribution was an equitable way to distribute the value in SYD to MGL shareholders so that they can directly participate in the ownership of SYD. Eligible MGL shareholders are able to decide whether to maintain an ongoing investment in SYD based on their individual circumstances;
- the Distribution facilitated a return of capital. MGL will continue to maintain a strong balance sheet position and a level of shareholders' equity for prudent and efficient capital management;
- the Distribution is expected to increase MGL's return on shareholders' equity; and
- the Consolidation was intended to reflect the expected impact of the Capital Component, based on information current at the time of the Notice of General Meeting, and facilitates comparison of MGL's financial metrics before and after the Distribution.

The Distribution

26. The closing price of SYD Securities on ASX on the last trading day before the Distribution Date (10 January 2014) was \$3.73.

27. On the Distribution Date MGL made an in specie distribution of SYD Securities to MGL shareholders, comprising a special dividend (Dividend Component of \$1.1563 per MGL share on a pre-Consolidation basis) representing 31% of the Distribution amount and a return of capital (Capital Component of \$2.5737 per MGL share on a pre-Consolidation basis) representing 69% of the Distribution amount.

28. The sum of the Dividend Component and the Capital Component equalled the market value of each SYD Security (\$3.73) received by MGL shareholders per MGL share on a pre-Consolidation basis under the Distribution.

29. The Capital Component was delivered through an equal capital reduction in respect of MGL shares pursuant to section 256B of the *Corporations Act 2001*(Cth), (CA).

30. No MGL shares were cancelled in connection with the Distribution.

Accounting for the Distribution

31. The accounting for the Distribution was as follows:
- the Dividend Component was debited to MGL's retained earnings; and
 - the Capital Component was debited to MGL's contributed capital.

Franking and Conduit Foreign Income (CFI)

32. MGL franked the Dividend Component of the Distribution at 40% being the same rate as the regular December 2013 MGL dividend and declared the remaining unfranked part of the Dividend Component to be CFI.
33. That is, the entire Dividend Component was either franked or CFI.

Share Consolidation

34. MGL shares were consolidated with effect immediately after the Record Date on a ratio of 0.9438 MGL shares for every one MGL share.
35. The Consolidation occurred pursuant to section 254H of the CA and involved consolidation of the ordinary shares on issue as at the Record Date.
36. Any partial shares at a shareholder level were rounded up.
37. Further as the Consolidation occurred pursuant to section 254H of the CA:
- a shareholder's original MGL shares were not cancelled or redeemed;
 - there was no change in the total amount allocated to MGL's share capital account; and
 - the proportion of equity owned by each MGL shareholder in the share capital account was maintained.

Sale Facility

38. A Sale Facility was put in place for MGL shareholders that:
- held 500 or fewer MGL shares on the Record Date and elected to participate; or
 - were categorised as ineligible shareholders in relation to the Distribution,

(the Sale Facility).

39. For MGL shareholders that participated in the Sale Facility, their SYD Securities have been distributed to a broker appointed by MGL (Sale Agent) to be sold on their behalf.

40. The amount of money received by each MGL shareholder whose SYD Securities are sold under the Sale Facility would be calculated on an average basis so that all shareholders would receive the same price for each SYD Security sold on their behalf, subject to rounding down to the nearest whole Australian cent (Sale Facility Proceeds).

Nominee Arrangements

41. A Nominee Arrangement was put in place to ensure that legal title to the SYD Securities was only transferred to those persons who agreed to become members of SYD.

42. In summary, the Nominee Arrangements only changed the manner in which title to the SYD Securities passed to MGL shareholders, in that beneficial ownership rather than legal title passed to MGL shareholders who did not complete and return the Holder Election Form or made the online election by the Election Date. In all cases, the market value of the SYD Securities would be the same regardless of whether they were subject to the Nominee Arrangement.

Other relevant matters

43. The profile of existing MGL shareholders based on the beneficial ownership as at 1 April 2013 was approximately Australian residents 66% and Non-Australian residents 34%.

44. This ruling is prepared on the basis that immediately before the Distribution MGL's share capital account was not tainted for Division 197 purposes.

Ruling

Amount of Distribution

45. The amount of the Distribution by MGL was equal to the market value of the SYD Securities distributed in respect of each MGL share. The Commissioner accepts that the closing ASX price on the last trading day before the Distribution Date (10 January 2014) may be used to determine the market value of the SYD Securities at the Distribution Date (\$3.73 per SYD Security received).

Dividend Component included in resident's assessable income

46. The Dividend Component (\$1.1563 per MGL share on a pre-Consolidation basis) of the Distribution, being a dividend as defined in subsection 6(1) of the ITAA 1936, must be included in the assessable income of a resident MGL shareholder (paragraph 44(1)(a) of the ITAA 1936).

Gross up and tax offset

47. The Dividend Component of the Distribution is a frankable distribution under section 202-40.

48. A MGL shareholder who received the Dividend Component directly, satisfies the residency requirement in section 207-75, and is a 'qualified person' in relation to the franked distribution:

- must include in their assessable income the amount of the franking credit attached to the Dividend Component (subsection 207-20(1)) and;
- will be entitled to a tax offset equal to the franking credit received on the Dividend Component (subsection 207-20(2)).

49. A MGL shareholder who:

- received the Dividend Component as a partnership or the trustee of a trust;
- is not a corporate tax entity or a complying superannuation entity; and
- is a 'qualified person' in relation to the franked distribution

must include in the assessable income of the partnership or trust, the amount of the franking credit attached to the Dividend Component (subsection 207-35(1)).

Qualified persons

50. A MGL shareholder will be a 'qualified person' in relation to the Dividend Component of the Distribution for the purposes of Division 1A of former Part IIIA of the ITAA 1936 if pursuant to former section 160APHO of the ITAA1936:

- the MGL shareholder held their MGL shares at risk for a period of at least 45 days (excluding the day the acquisition of the shares, the day (if any) on which the shares were disposed of, and any days on which the shareholder has materially diminished risks of loss or opportunities for gain in respect of the shares within the former sections 160APHM and 160APHJ of the ITAA 1936) during the primary qualification period;

and:

- neither the MGL shareholder, nor an associate of the MGL shareholder, have made, are under an obligation to make, or are likely to make, a related payment (within the meaning of former section 160APHN of the ITAA 1936) in respect of the Dividend Component of the Distribution.

51. The following will not affect whether a MGL share is held 'at risk' for the purposes of Division 1A of former Part IIIA of the ITAA 1936:

- the Distribution;
- the Nominee Arrangements; and
- the availability of a Sale Facility for small parcels of SYD Securities and ineligible shareholders.

Refundable tax offset

52. The franking credit tax offset that a MGL shareholder is entitled to under Division 207 is subject to the refundable tax offset rules in Division 67, unless it is specifically excluded under section 67-25.

Imputation integrity provisions

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

54. 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 in relation to the Dividend Component received by MGL shareholders.

Dividend Component received by non-resident shareholders

55. The non-resident MGL shareholders who belong to the class of entities to whom this Ruling applies will not be subject to dividend withholding tax on the Dividend Component to the extent that it is franked (paragraph 128B(3)(ga) of the ITAA 1936).

56. Those non-resident MGL shareholders will also not be subject to dividend withholding tax on the Dividend Component under section 128B of the ITAA 1936 to the extent that the distribution statement associated with the Dividend Component declares it or a part of it to be CFI pursuant to section 802-15.

57. The Dividend Component is non-assessable non exempt income of the non-resident MGL shareholders who belong to the class of entities to whom this Ruling applies (section 128D of the ITAA 1936 and section 802-15).

Capital Component is not ordinary income or a dividend

58. The Capital Component is not ordinary income under section 6-5.

59. The Capital Component is not a dividend, as defined in subsection 6(1) of the ITAA 1936.

The application of sections 45A, 45B and 45C of the ITAA 1936 to Capital Component

60. The Commissioner will not make a determination under either subsection 45A(2) or subsection 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies to any part of the Capital Component of the Distribution. Accordingly, no part of the Capital Component will be taken to be a dividend for income tax purposes.

CGT consequences***CGT Event G1***

61. CGT event G1 (section 104-135) happened, to the extent of the Capital Component (\$2.5737 per MGL share on a pre-Consolidation basis), when MGL distributed the SYD Securities to a MGL shareholder in respect of a MGL share that they owned at the Record Date and continued to own at the date the Distribution was made.

CGT Event C2

62. CGT event C2 (section 104-25) happened when MGL distributed the SYD Securities to a MGL shareholder in respect of a MGL share that they owned at the Record Date, but which they ceased to own before the date the Distribution was made.

63. Any capital gain made by a resident MGL shareholder as a result of CGT event C2 happening is reduced under section 118-20 by the amount of the Dividend Component of the Distribution that is included in the assessable income of the MGL shareholder under section 44 of the ITAA 1936.

CGT Discount

64. If the MGL share to which the Distribution relates was acquired by a resident MGL shareholder at least 12 months before the Distribution, a capital gain from CGT event G1 or C2 happening may qualify as a discount capital gain under subsection 115-25(1), provided the other conditions in Subdivision 115-A are satisfied.

Foreign resident shareholders

65. A foreign resident MGL shareholder who belonged to the class of entities to whom this Ruling applies and who received the Capital Component, disregards any capital gain made when CGT event G1 happened because their shares in MGL are not 'taxable Australian property' (section 855-10).

66. A foreign resident MGL shareholder who belonged to the class of entities to whom this Ruling applies and who received the Distribution, disregards any capital gain or capital loss made when CGT event C2 happened because the right to the Distribution is not 'taxable Australian property' (section 855-10).

Cost base and reduced cost base of the SYD Securities

67. The first element of the cost base and reduced cost base of the units in SAT1 and the first element of the cost base and reduced cost base of the shares in SAL which comprise a SYD stapled security, are their market value (subsection 112-20(1), section 110-25 and section 110-55).

68. The market value of a SYD stapled security must be apportioned between the units in SAT1 and shares in SAL on a reasonable basis. The Commissioner accepts that it is reasonable to have regard to the net asset values of SAT 1 and SAL at the end of the month during which the Distribution was made.

69. The units in the SAT1 and shares in SAL were acquired by MGL shareholders on the Distribution Date (ie 13 January 2014). This is the time when MGL stopped being the owner of the units in SAT 1 and shares in SAL (item A1 (case 1) of the table in subsection 109-5(2)).

Sale Facility and Nominee Arrangements

70. The above outcomes will equally apply to MGL shareholders whose SYD Securities were sold under the Sale Facility or were subject to the Nominee Arrangements.

Share Consolidation

71. A CGT event did not occur as a result of the consolidation of shares in MGL (section 112-25).

72. Each element of the cost base and reduced cost base of the consolidated MGL shares is the sum of the corresponding element of each original MGL share held before the Consolidation.

73. The MGL shares after the Consolidation will have the same date of acquisition for CGT purposes as the MGL shares held before the Consolidation to which they relate.

Commissioner of Taxation

29 January 2014

Appendix 1 – Explanation

ⓘ *This Appendix 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.*

Dividend Component included in resident's assessable income

74. Section 44(1) of the ITAA 1936 provides that the assessable income of a resident shareholder in a company includes dividends, as defined in subsection 6(1) of the ITAA 1936, that are paid to the shareholder out of profits derived by the company from any source.

75. The definition of 'dividend' in subsection 6(1) of the ITAA 1936 has the effect that any distribution made by the company to any of its shareholders, whether in money or property, is a dividend except where the distribution is debited against an amount standing to the credit of the share capital account of the company (paragraphs (a) and (d) of the definition).

76. The Dividend Component of the in specie distribution made by MGL to its shareholders has been debited against MGL's retained earnings. It is a dividend for the purposes of subsection 6(1) of the ITAA 1936. Accordingly, resident MGL shareholders must include the amount of the Dividend Component in their assessable income.

Gross-up and tax offset

77. The Dividend Component was franked at 40%. Under the Australian imputation system, where a franked distribution is paid by an Australian resident company to a resident shareholder, the assessable income of the resident shareholder must also include the franking credit attached to the dividend under Division 207. The inclusion of both the dividend and the associated franking credit in a shareholder's assessable income is known as 'grossing-up' the dividend.

78. Accordingly, the franking credits attached to the Dividend Component of the Distribution made by MGL to its resident shareholders must be included in their assessable income. MGL shareholders are entitled to receive a tax offset equal to the franking credit which has been included in their assessable income.

79. Division 207 contains different rules for gross-up and tax offset, depending on whether the recipient receives the franked distribution directly or indirectly from the company.

Qualified person

80. Subdivision 207-F can operate to cancel the effect of the gross-up and tax offset rules if a distribution is made to an entity in certain circumstances, including where the entity is not a 'qualified person' in relation to the dividend for the purposes of former Division 1A of Part IIIA of the ITAA 1936.

81. An entity is a 'qualified person' for the purposes of Division 1A of former Part IIIAA of the ITAA 1936 if, generally speaking, they satisfy the holding period rule and the related payments rule (former section 160APHO of the ITAA 1936).

82. The holding period rule applies where neither the taxpayer nor an associate has made, is under an obligation to make, or is likely to make, a related payment in respect of the dividend and requires the shares to have been continuously held 'at risk' for at least 45 days or 90 days (depending on whether the shares are preference shares) during the 'primary qualification period' (former paragraph 160APHO(1)(a) of the ITAA 1936).

83. The related payments rule applies where the taxpayer or an associate has made, is under an obligation to make, or is likely to make, a related payment in respect of the dividend and requires the shares to have been continuously held 'at risk' for at least 45 days or 90 days (depending on whether the shares are preference shares) during the 'secondary qualification period' (former paragraph 160APHO(1)(b) and former section 160APHN of the ITAA 1936).

84. A MGL shareholder who received the Dividend Component of the Distribution will be capable of being a 'qualified person' if:

- they have held their MGL shares at risk for a period of at least 45 days (excluding the day of acquisition of the shares, the day (if any) on which the shares were disposed of, and any days on which the shareholder has materially diminished risks of loss or opportunities for gain in respect of the shares), in the primary qualification period
 - (a) beginning on the day after the day on which the shareholder acquired the MGL shares; and
 - (b) ending on the 45th day after the day on which the shares became *ex dividend* in relation to the entitlement to receive the Dividend Component of the Distribution

(former subsections 160APHO(2) and 160APHO(3) and former sections 160APHM, 160APHJ and 160APHE of the ITAA 1936);

and:

- neither the MGL shareholder, nor an associate of the MGL shareholder, have made, is under an obligation to make, or are likely to make, a related payment in respect of the Dividend Component of the Distribution (former paragraph 160APHO(1)(a) and former section 160APHN of the ITAA 1936).

85. If either or both of the above two requirements are not met by a MGL shareholder, that shareholder will not be a 'qualified person' for the purposes of Division 1A of former Part IIIAA of ITAA 1936. Subdivision 207-F will create the appropriate adjustment to cancel the effect of the gross-up and tax offset rules for such a MGL shareholder in relation to the Dividend Component of the Distribution.

Refundable tax offset

86. The franking credit tax offset that a resident MGL shareholder is entitled to under Division 207 is subject to the refundable tax offset rules in Division 67, unless it is specifically excluded under section 67-25.

87. The refundable tax offset rules in Division 67 ensure that certain taxpayers are entitled to a refund, once their available tax offsets have been utilised to reduce their income tax liability to nil.

88. Entities excluded by Division 67 include corporate tax entities (such as companies, corporate limited partnerships, corporate unit trusts and public trading trusts), unless they satisfy the requisite conditions set out in subsections 67-25(1C) or 67-25(1D).

Imputation benefits streaming

89. Subdivision 204-D broadly enables the Commissioner to make a determination where distributions with attached imputation benefits are streamed to a member of a corporate tax entity in preference to another member.

90. Section 204-30 prescribes the circumstances that are required to exist before the Commissioner may make such a determination. Section 204-30 applies where an entity 'streams' the payment of distributions in such a way that:

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

91. 'Streaming' is not defined for the purposes of Subdivision 204-D. However, the Commissioner has understood it to refer to a company 'selectively directing the flow of franked distributions to those members who can most benefit from the imputation credits' (paragraph 3.28 of the Explanatory Memorandum to the New Business Tax System (Imputation) Bill 2002).

92. The 40% franked Dividend Component was received by all MGL shareholders listed on the share register as at the Record Date, regardless of their tax attributes or their individual tax position.

93. The Commissioner has considered the information provided and concluded that the requisite element of streaming does not exist in relation to the Dividend Component paid by MGL to its shareholders. Accordingly, based on the information provided, the Commissioner will not make a determination under paragraph 204-30(3)(c) to deny imputation benefits to MGL shareholders.

Capital Component is not ordinary income or a dividend

94. Paragraph (d) of the definition of 'dividend' in subsection 6(1) excludes a distribution from the meaning of 'dividend' if the amount of a distribution is debited against an amount standing to the credit of the company's share capital account.

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

96. Subsection 975-300(3) states that an account is not a share capital account if it is tainted.

97. The Capital Component was debited against an amount standing to the credit of MGL's contributed capital account. On the Distribution Date, the share capital account of MGL was not tainted within the meaning of Division 197. Therefore, paragraph (d) of the definition of 'dividend' as defined in subsection 6(1) of the ITAA 1936 will apply and the Capital Component will not constitute a dividend under subsection 6(1) of the ITAA 1936.

98. Further, in the present circumstances there is no characteristic of the Capital Component that would suggest that it would constitute income according to ordinary concepts.

Anti-avoidance provisions

The application of sections 45A, 45B and 45C of the ITAA 1936 to the Capital Component of the Distribution

Section 45A streaming of dividends and capital benefits

99. Section 45A of the ITAA 1936 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.

100. MGL provided ordinary shareholders with a 'capital benefit' (as defined in paragraph 45A(3)(b)) and the capital benefit was provided to all shareholders in direct proportion to their individual shareholding. As all shareholders benefit equally from the receipt there is no 'streaming' of capital benefits to some shareholders and not to others.

101. Accordingly, the Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies to any part of the Capital Component of the Distribution.

Section 45B schemes to provide capital benefits

102. The purpose of Section 45B of the ITAA 1936 is to ensure that the relevant amounts distributed to shareholders are treated as dividends for taxation purposes if certain payments, allocations and distributions are made in substitution for dividends (subsection 45B(1)).

103. Specifically, subsection 45B(2) of the ITAA 1936 provides that the section applies if:

- (a) there is a scheme under which a person is provided with a demerger benefit or a capital benefit by a company (paragraph 45B(2)(a));
- (b) under the scheme a taxpayer, who may or may not be the person provided with the demerger benefit or capital benefit, obtains a tax benefit (paragraph 45B(2)(b)); and
- (c) having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, entered into the scheme or any part of the scheme for a purpose other than an incidental purpose, of enabling the relevant taxpayer to obtain the tax benefit (paragraph 45B(2)(c)).

104. The arrangement involving the in specie distribution to MGL shareholders of the SYD Securities constitutes a scheme for the purposes of section 45B of the ITAA 1936.

105. The phrase 'provided with a capital benefit' is defined in subsection 45B(5) of the ITAA 1936. It states that a person is provided with a capital benefit if:

- (a) an ownership interest in a company is issued to the person;
- (b) there is a distribution to the person of share capital or share premium; or
- (c) the company does something in relation to an ownership interest that has the effect of increasing the value of the ownership interest (which may or may not be the same ownership interest) held by that person.

106. The in specie distribution of the SYD Securities to MGL shareholders resulted in an amount of \$2.5737 per MGL share on a pre-Consolidation basis being debited against the share capital account of MGL. As there is a debit against the share capital account of MGL, the MGL shareholders have been provided with a capital benefit under paragraph 45B(5)(b).

107. For the purposes of paragraph 45B(2)(c) of the ITAA 1936, the Commissioner is required to consider the 'relevant circumstances' set out in subsection 45B(8) to determine whether it could be concluded that entities that entered into or carried out the scheme or any part of the scheme did so for a purpose, other than an incidental purpose, of enabling the relevant taxpayer (MGL shareholders) to obtain a tax benefit.

108. On the basis of the arrangement as described in the application for Class Ruling and additional information supplied, the Commissioner has formed the view that the requisite purpose is not present, such that the capital benefits provided to MGL shareholders have not been provided for a more than incidental purpose of obtaining a tax benefit.

109. Accordingly, the Commissioner will not make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole, or any part, of the capital benefit provided to MGL shareholders under the scheme.

Section 177EA of the ITAA 1936

110. Section 177EA of the ITAA 1936 is a general anti-avoidance provision that applies where one of the purposes (other than an incidental purpose) of the scheme is to obtain an imputation benefit. In these circumstances, subsection 177EA(5) of the ITAA 1936 enables the Commissioner to make a determination with the effect of either:

- imposing franking debits or exempting debits on the distributing entity's franking account; or
- denying the imputation benefit on the distribution that flowed directly or indirectly to the relevant taxpayer.

111. Having regard to the features of the present scheme, the Commissioner will not make a determination under paragraph 177EA(5)(b) of the ITAA 1936 that would deny the imputation benefits attached to the partially franked Dividend Component of the Distribution to MGL shareholders.

CGT consequences

CGT event G1

112. CGT event G1 (section 104-135) happens when:

- a company makes a payment to a shareholder in respect of a share they own in a company;

- some or all of the payment is not a dividend (as defined in subsection 995-1(1)) or an amount that is taken to be a dividend under section 47 of the ITAA 1936; and
- the payment is not included in the shareholder's assessable income.

113. The Capital Component is not a dividend. Accordingly, CGT event G1 happened when MGL made the Distribution to a MGL shareholder in respect of a MGL share that they owned at the Record Date and continue to own at the date the Distribution was made.

114. If the Capital Component is not more than the cost base of the MGL share at the date the Distribution is made, the cost base and reduced cost base of the share will be reduced (but not below nil) by the amount of the Capital Component (subsection 104-135(4)).

115. A MGL shareholder makes a capital gain if the Capital Component is more than the cost base of the MGL share (subsection 104-135(3)). The amount of the capital gain is equal to that excess.

116. If a MGL shareholder makes a capital gain from CGT event G1 happening, the cost base and reduced cost base of the MGL share are reduced to nil. A MGL shareholder cannot make a capital loss from CGT event G1 happening (subsection 104-135(3)).

117. If the MGL share to which the Capital Component was acquired by a resident MGL shareholder at least 12 months before the Distribution, a capital gain from CGT event G1 happening may qualify as a discount capital gain under subsection 115-25(1) provided the other conditions in Subdivision 115-A are satisfied.

CGT event C2

118. The right to receive the Distribution is one of the rights inherent in a MGL share at the Record Date. If, after the Record Date but before the date the Distribution is made, a MGL shareholder ceases to own some, or all, of their shares in MGL, the right to receive the Distribution in respect of each of the shares disposed of will be retained by the shareholder and is considered to be a separate CGT asset.

119. CGT event C2 (section 104-25) happens when the Distribution is made. The right to receive the Distribution (being an intangible CGT asset) will end by the right being discharged or satisfied when the Distribution is made. The Distribution is made by an in specie distribution at a ratio of one unit in SAT1 and one share in SAL (forming one SYD Security) for every MGL ordinary share held as at the Record Date (ie on a pre-Consolidation basis).

120. A MGL shareholder will make a capital gain if the capital proceeds from the ending of the right are more than its cost base. The capital gain is equal to the amount of the excess. A MGL shareholder will make a capital loss if the capital proceeds from the ending of the right are less than the reduced cost base of the right. The capital loss is equal to the amount of the difference (subsection 104-25(3)).

121. However, any capital gain made by a resident MGL shareholder as a result of CGT event C2 happening is reduced under the anti-overlap rule in section 118-20 by the amount of the Dividend Component of the Distribution. The Dividend Component is included in the assessable income of a resident MGL shareholder under section 44 of the ITAA 1936.

122. In working out the capital gain or capital loss made when CGT event C2 happens, the capital proceeds will be the amount (market value) of the Distribution (\$3.73 per MGL share on a pre-Consolidation basis) (subsection 116-20(1)).

123. The cost base and reduced cost base of a MGL shareholder's right to receive the Distribution is worked out under Division 110 (modified by Division 112). The cost base and reduced cost base of the right does not include the cost base and reduced cost base of the share previously owned by the MGL shareholder that has been applied in working out a capital gain or capital loss made when a CGT event happened to the share - for example, when the MGL shareholder disposed of the share after the Record Date.

124. Therefore, if the full cost base and reduced cost base of a MGL share has been previously applied in working out a capital gain or capital loss made when a CGT event happened to that share, the right to receive the Distribution is likely to have a nil cost base.

125. As the right to receive the Distribution was inherent in the MGL share during the time it was owned, the right is considered to have been acquired at the time when the share was acquired (section 109-5).

126. Accordingly, if the MGL share was acquired by the resident MGL shareholder at least 12 months before the Distribution was made, a capital gain from the CGT event C2 happening on the ending of the corresponding right may qualify as a discount capital gain under subsection 115-25(1), provided the other conditions in Subdivision 115-A are satisfied.

Foreign resident shareholders

127. Under subsection 855-10(1), an entity disregards a capital gain or capital loss from a CGT event if they are a foreign resident or the trustee of foreign trust for CGT purposes, just before the CGT event happens and the CGT event happens in relation to a CGT asset that is not 'taxable Australian property'.

128. The term 'taxable Australian property' is defined in the table in section 855-15. The table sets out these five categories of CGT assets:

Item 1	taxable Australian real property;
Item 2	an indirect Australian real property interest not covered by item 5;
Item 3	a CGT asset used at any time in carrying on a business through a permanent establishment in Australia and which is not covered by item 1, 2 or 5;
Item 4	an option or right to acquire a CGT asset covered by item 1, 2 or 3 and
Item 5	A CGT asset that is covered by subsection 104-165(3) (choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident).

129. As the foreign residents to whom this Ruling applies are foreign residents whose shares in MGL, or right to receive the Distribution, are not taxable Australian property, they will:

- Disregard any capital gain made when CGT event G1 happens; or
- Disregard any capital gain or capital loss made when CGT event C2 happens.

Share consolidation

130. No shares in MGL were cancelled as a result of the consolidation of MGL shares and there will be no change to MGL's share capital. There will be no change to the proportionate interests held by each shareholder.

131. Therefore, no CGT event occurred as a result of the share consolidation.

Appendix 2 – Detailed contents list

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Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10; CR 2014/14

Subject references:

- capital benefit
- capital gains
- distributions in specie
- franking credits
- holding period rule
- imputation system
- imputation credits
- qualified person
- return of capital on shares

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