


CR 2014/68 - Income tax: Avant Mutual Group Limited - Retirement Reward Dividend

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Class Ruling

Income tax: Avant Mutual Group Limited – Retirement Reward Dividend

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① 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:
- subparagraph 44(1)(a)(ii) of the *Income Tax Assessment Act 1936* (ITAA 1936)
 - paragraph 177EA(5)(b) of the ITAA 1936
 - paragraph 204-30(3)(c) of the *Income Tax Assessment Act 1997* (ITAA 1997)
 - subsection 207-20(1) of the ITAA 1997, and
 - subsection 207-20(2) of the ITAA 1997.

All legislative references in this Ruling are to the ITAA 1997 unless otherwise stated.

Class of entities

3. The class of entities to which this Ruling applies is members of Avant Mutual Group Limited (AMGL) who:

- are individuals (as defined in subsection 995-1(1));
- are Voting Members of AMGL as defined in Clause 3.2 of AMGL's Constitution at the Record Date;
- permanently retired from paid medical practice or are permanently disabled and unable to continue practicing medicine during the 12 months ending on the Record Date;
- submit a Notification Form by the Retirement Notification Date with a statutory declaration of permanent retirement or disability;
- receive a Retirement Reward Dividend; and
- are residents of Australia (as defined in subsection 6(1) of the ITAA 1936) at the time of receiving the Retirement Reward Dividend.

In this Ruling this class of entities is referred to as Eligible Members.

Qualifications

4. 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 7 to 20 of this Ruling.

5. 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

6. This Ruling applies from 1 July 2015 to 30 June 2018. The Ruling continues to apply after 30 June 2018 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

7. The following documents, or relevant parts of them, form part of and are to be read with the description:

- application for Class Ruling dated 15 July 2014, and
- further particulars provided by the applicant.

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

8. AMGL, a company limited by guarantee, is the head company of the AMGL income tax consolidated group formed on 1 July 2007.

9. AMGL is a mutual not-for-profit organisation, owned by and operated for the benefit of its members. Currently AMGL has Voting Members and Student Members.

10. Clause 12.1 of AMGL's Constitution permits the Directors of AMGL to declare or determine that a dividend is payable to Voting Members. A Voting Member's entitlement to dividends will be based upon their financial contributions to AMGL's successes.

11. Any dividends will be sourced from the non-mutual (taxable) surplus of the entities in the AMGL income tax consolidated group.

12. It is possible that some Voting Members will be non-residents for Australian tax purposes. AMGL does not maintain information regarding the tax residency of its members.

Retirement Reward Dividend

13. On 7 August 2014 AMGL announced that it proposes to pay a Retirement Reward Dividend to Voting Members in accordance with the Avant Retirement Reward Plan. The Retirement Reward Dividend is designed to reward Voting Members who contributed to AMGL's financial success over time and is deferred until the retirement of a Voting Member from medical practice.

14. A Voting Member at the Record Date will be considered eligible to receive a Retirement Reward Dividend, if the member:

- permanently retired from medical practice or was permanently disabled and unable to continue practicing medicine during the 12 months ending on the Record Date, and
- submits a Notification Form by the Retirement Notification Date with a statutory declaration of permanent retirement or disability.

In this Ruling such a Voting Member is hereinafter referred to as a Retiring Voting Member.

15. With respect to the initial year of operation of the Avant Retirement Reward Plan, a Retiring Voting Member must have held a Practitioner Policy in their name with a member of the AMGL Group in the 12 months prior to 30 June 2015 and only ceased to hold this policy due to permanently retiring from practice during that 12 month period or due to permanent disability of the Retiring Voting Member during that 12 month period.

16. 'Permanently retiring' means that you are no longer paid to practice in any capacity as a medical practitioner and have no intention to be paid to practice in the future. 'Permanent disability' means that you are no longer able to practice medicine in any capacity in the foreseeable future.

17. An equivalent payment of the Retirement Reward Dividend may also be paid to the estate of a Retiring Voting Member who dies during the 12 months ending on the Record Date.

18. The declaration of the Retirement Reward Dividend is at the sole discretion of the AMGL Board.

19. The Record Date will be 30 June each year or such other date determined by the AMGL Board. The Record Date for the first Retirement Reward Dividend is expected to be 30 June 2015 and the payment date for the first Retirement Reward Dividend is expected to be in October 2015.

Other matters

20. The Ruling is made on the basis that:

- (a) AMGL intends to fully frank the Retirement Reward Dividend it pays to Retiring Voting Members.
- (b) The Retirement Reward Dividend will be paid in accordance with AMGL's Constitution and will not breach section 254T or Part 2J.1 of the *Corporations Act 2001* (the Corporations Act).
- (c) Section 254SA of the Corporations Act does not apply to prevent AMGL from distributing the Retirement Reward Dividend to its Retiring Voting Members.
- (d) AMGL does not have a share capital account, as the term is defined in subsection 995-1(1) by reference to the meaning given by section 975-300.
- (e) During the term of the scheme, AMGL will be a resident of Australia under the income tax laws of Australia.
- (f) The membership interests in AMGL are 'equity interests' for the purposes of Division 974.

- (g) Retirement Reward Dividends paid in respect of the membership interests in AMGL are frankable distributions under section 202-40 and are not unfrankable under section 202-45.
- (h) AMGL will frank the Retirement Reward Dividend paid in respect of the membership interests in AMGL in accordance with its franking policy (at such a time as distributions are made) and satisfy the benchmark franking rule.
- (i) AMGL will not differentially frank Retirement Reward Dividends to different Retiring Voting Members according to the tax status of Retiring Voting Members or on any other basis.
- (j) Retirement Reward Dividends in respect of AMGL membership interests will not be debited to AMGL's 'non-share capital account' (as defined in subsection 995-1(1) by reference to the meaning given by section 164-10).
- (k) Immediately before payment of a Retirement Reward Dividend, AMGL will have sufficient available profits worked out under section 215-20 to pay the Retirement Reward Dividend.

Ruling

Inclusion of dividend in assessable income

21. A Retirement Reward Dividend paid to Eligible Members is a 'non-share dividend' as defined by subsection 995-1(1) by reference to the meaning given by section 974-120. Eligible Members must include the non-share dividend in their assessable income (subparagraph 44(1)(a)(ii) of the ITAA 1936).

Inclusion of franking credits in assessable income

22. Eligible Members must include in their assessable income an amount equal to the franking credits attached to the Retirement Reward Dividend (subsection 207-20(1)).

Entitlement to a tax offset equal to the amount of the franking credit attached to the dividend

23. Eligible Members are entitled to a tax offset equal to the amount of the franking credit attached to the Retirement Reward Dividend (subsection 207-20(2)).

Imputation benefits - streaming of imputation benefits

Section 204-30

24. The Commissioner will not make a determination under paragraph 204-30(3)(c) to deny the whole, or any part, of the imputation benefits received by Eligible Members in relation to the Retirement Reward Dividend paid by AMGL.

Section 177EA of the ITAA 1936

25. 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 by Eligible Members in relation to the Retirement Reward Dividend paid by AMGL.

Commissioner of Taxation

27 August 2014

Appendix 1 – Explanation

❶ *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.*

Inclusion of dividend in assessable income

26. Subsection 44(1) of the ITAA 1936 provides that the assessable income of a resident shareholder in a company includes all dividends and non-share dividends paid to the shareholder by the company.

27. The membership interests in AMGL are equity interests under Division 974 and therefore members are equity holders. Paragraph 43B(1)(b) of the ITAA 1936 provides that Subdivision D of Division 2 of Part III of the ITAA 1936 (which governs dividends) applies to an equity holder in the same way as it applies to a shareholder.

28. The Retirement Reward Dividend paid to Retiring Voting Members is a non-share dividend as defined by subsection 995-1(1) by reference to the meaning given in section 974-120. Accordingly, Eligible Members must include the Retirement Reward Dividend paid by AMGL in their assessable income under subparagraph 44(1)(a)(ii) of the ITAA 1936.

Inclusion of franking credits in assessable income

29. The Retirement Reward Dividend paid to Retiring Voting Members is expected to be franked. If a company makes a franked distribution to another entity, subsection 207-20(1) requires that the assessable income of the receiving entity include the amount of the franking credit on the distribution in addition to the amount of the franked distribution.

30. In accordance with subsection 207-20(1), any franking credit attached to a Retirement Reward Dividend must also be included in the Eligible Member's assessable income for the income year in which the dividend is paid.

Entitlement to a tax offset equal to the amount of the franking credit attached to the dividend

31. Subsection 207-20(2) provides that the receiving entity is entitled to a tax offset equal to the franking credit on the distribution.

32. Eligible Members who are entitled to a tax offset under subsection 207-20(2), in respect of the franking credit received, will also be subject to the refundable tax offset rules in Division 67, unless they are specifically excluded under section 67-25.

33. The refundable tax offset rules ensure that certain taxpayers are entitled to a refund once their available tax offsets have been utilised to reduce any income tax liability to nil.

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

Imputation benefits - streaming of imputation benefits

Section 204-30

35. Subdivision 204-D 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.

36. 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, or will not receive any imputation benefits, whether or not the other member receives other benefits (paragraph 204-30(1)(c)).

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

38. AMGL has indicated that all Retiring Voting Members will receive franked Retirement Reward Dividends regardless of their tax attributes or their individual tax position.

39. Based on the information provided, the Commissioner has concluded that the requisite element of streaming does not exist in relation to the franked Retirement Reward Dividend paid by AMGL to Retiring Voting Members.

40. Accordingly, the Commissioner will not make a determination under paragraph 204-30(3)(c) to deny the whole, or any part, of the imputation benefits received by Eligible Members in relation to a Retirement Reward Dividend paid by AMGL.

Section 177EA of the ITAA 1936

41. 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.

42. Pursuant to subsection 177EA(3) of the ITAA 1936, the provision applies if the following conditions are satisfied:

- (a) there is a scheme for a disposition of membership interests, or an interest in membership interests, in a corporate tax entity; and
- (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; and
- (c) the distribution was, or is expected to be, a franked distribution or a distribution franked with an exempting credit; and
- (d) except for this section, the 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.

43. Subsection 177EA(12) of the ITAA 1936 extends the operation of section 177EA to non-share equity interests. Subsection 177EA(12) provides that section 177EA:

- applies to a non-share equity interest in the same way as it applies to a membership interest;
- applies to an equity holder in the same way as it applies to a member; and
- applies to a non-share dividend in the same way as it applies to a distribution.

44. The Commissioner considers that the conditions in paragraphs 177EA(3)(a) to 177EA(3)(d) of the ITAA 1936 are satisfied because:

- (a) the issue of the membership interest in AMGL is a scheme for the disposition of a membership interest (paragraph 177EA(3)(a) of the ITAA 1936). Pursuant to paragraph 177EA(14)(a) of the ITAA 1936, a 'scheme for a disposition of membership interests or an interest in membership interests' includes a scheme that involves the issuing of membership interests. Pursuant to paragraph 177EA(12)(a) of the ITAA 1936, section 177EA applies to a non-share equity interest in the same way as it applies to a membership interest. Therefore, as the AMGL membership interests are non-share equity interests, paragraph 177EA(3)(a) of the ITAA 1936 is satisfied;
- (b) a frankable distribution is expected to be payable to the Retiring Voting Members (paragraph 177EA(3)(b) of the ITAA 1936). The Commissioner accepts that the Retirement Reward Dividend payable on the membership interests will be a frankable distribution to the extent that the distribution on the AMGL membership interests do not fall within the list of relevant factors in section 202-45;
- (c) a franked distribution is expected to be paid to the Retiring Voting Members (paragraph 177EA(3)(c) of the ITAA 1936); and
- (d) it is reasonable to expect that an imputation benefit will be received by the relevant taxpayers as a result of the distribution to be made to Retiring Voting Members, given that AMGL expects to frank the distribution on the membership interests (paragraph 177EA(3)(d) of ITAA 1936).

45. Accordingly, the issue is whether having regard to the relevant circumstances of the scheme, it would be concluded that a person, or one of the persons, who entered into or carried out the scheme, did so for a purpose (whether or not the dominant purpose but not including an incidental purpose) of enabling the relevant taxpayer (Retiring Voting Member and recipient of the distribution) to obtain an imputation benefit (paragraph 177EA(3)(e) of the ITAA 1936).

46. Circumstances which are relevant in determining whether any person has the requisite purpose include, but are not limited to, the factors listed in subsection 177EA(17) of the ITAA 1936.

47. The relevant circumstances listed encompass a range of circumstances which taken individually or collectively could indicate the requisite purpose. Due to the diverse nature of these circumstances, some may or may not be present at any one time in relation to a particular scheme.

48. Based on the information provided and the qualifications set out in this Ruling, the Commissioner's consideration of all of the relevant circumstances of the scheme would not, on balance, lead to a conclusion that the purpose of enabling Retiring Voting Members to obtain imputation benefits is a more than incidental purpose.

49. Accordingly, 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 by Eligible Members in relation to the Retirement Reward Dividend paid by AMGL in respect of membership interests.

Appendix 2 – Detailed contents list

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References*Previous draft:*

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- anti-avoidance measures
- dividend imputation
- franking tax offset
- imputation benefits
- streaming of imputation benefit

Legislative references:

- ITAA 1936 43B(1)(b)
- ITAA 1936 44(1)
- ITAA 1936 44(1)(a)(ii)
- ITAA 1936 Pt III Div 2 Subdiv D
- ITAA 1936 177EA
- ITAA 1936 177EA(3)
- ITAA 1936 177EA(3)(a)
- ITAA 1936 177EA(3)(b)
- ITAA 1936 177EA(3)(c)
- ITAA 1936 177EA(3)(d)
- ITAA 1936 177EA(3)(e)
- ITAA 1936 177EA(5)
- ITAA 1936 177EA(5)(b)
- ITAA 1936 177EA(12)
- ITAA 1936 177EA(12)(a)
- ITAA 1936 177EA(14)(a)
- ITAA 1936 177EA(17)

- ITAA 1997 Div 67
- ITAA 1997 67-25
- ITAA 1997 67-25(1C)
- ITAA 1997 67-25(1D)
- ITAA 1997 164-10
- ITAA 1997 202-40
- ITAA 1997 202-45
- ITAA 1997 Subdiv 204-D
- ITAA 1997 204-30
- ITAA 1997 204-30(1)(a)
- ITAA 1997 204-30(1)(b)
- ITAA 1997 204-30(1)(c)
- ITAA 1997 204-30(3)(c)
- ITAA 1997 207-20(1)
- ITAA 1997 207-20(2)
- ITAA 1997 215-20
- ITAA 1997 Div 974
- ITAA 1997 974-120
- ITAA 1997 975-300
- ITAA 1997 995-1(1)
- Taxation Administration Act 1953
- Corporations Act 2001 254SA
- Corporations Act 2001 254T
- Corporations Act 2001 Part 2J.1

Other references:

- Explanatory Memorandum to the New Business Tax System (Imputation) Bill 2002

ATO references

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