


CR 2018/50 - Income tax: Insurance Australia Group Limited - Distribution and Share Consolidation

 This cover sheet is provided for information only. It does not form part of *CR 2018/50 - Income tax: Insurance Australia Group Limited - Distribution and Share Consolidation*



Class Ruling

Income tax: Insurance Australia Group Limited – Distribution and Share Consolidation

Contents	Para
LEGALLY BINDING SECTION:	
Summary – what this Ruling is about	1
Date of effect	6
Scheme	7
Ruling	25
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
<i>Explanation</i>	46
Appendix 2:	
<i>Detailed contents list</i>	118

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.

Summary – what this Ruling is about

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

Relevant provisions

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 90 of the ITAA 1936
 - section 95 of the ITAA 1936
 - section 128B of the ITAA 1936

- section 128D of the ITAA 1936
- section 177EA of the ITAA 1936
- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 67-25 of the ITAA 1997
- section 104-25 of the ITAA 1997
- section 104-135 of the ITAA 1997
- section 112-25 of the ITAA 1997
- Division 115 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
- Division 207 of the ITAA 1997
- Subdivision 855-A 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 the ordinary shareholders of Insurance Australia Group Limited (IAG) who:

- are listed on the share register of IAG on the Record Date 1 November 2018
- hold their IAG shares on capital account. That is, the IAG shares are neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)), and
- are not subject to the taxation of financial arrangement (TOFA) rules in Division 230 in relation to gains and losses on their IAG shares.

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

In this Ruling, a person belonging to this class of entities is referred to as an IAG Shareholder.

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 24 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 2018 to 30 June 2019. The Ruling continues to apply after 30 June 2019 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 *Public Rulings*).

Scheme

7. The following description of the scheme is based on information 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. IAG is a public company listed on the Australian Securities Exchange (ASX) and a resident of Australia for the purposes of subsection 6(1) of the ITAA 1936. IAG is the parent company of a general insurance group with controlled operations in Australia and New Zealand.

9. IAG's use of reinsurance capital has increased over the years, primarily through 'quota share arrangements' with reinsurance partners.

10. The quota share arrangements transfer the risks from underwriting, catastrophe and asset exposure to the quota share reinsurers and have therefore allowed IAG to release regulatory capital otherwise required to be held by IAG pursuant to Prudential Standard GPS 110 Capital Adequacy.

11. On 15 August 2018, IAG announced its intention to make a distribution of 25 cents per share (Distribution) on 26 November 2018 to the holders of IAG ordinary shares listed on its share register as at 1 November 2018 (Record Date).

12. The Distribution of 25 cents per share comprised of:
 - 19.5 cents return of share capital (Capital Component)
 - 5.5 cents dividend (Dividend Component).
13. IAG accounted for the Distribution as follows:
 - \$462 million was debited to the share capital account of IAG
 - \$130 million was debited to retained earnings of IAG.
14. The Dividend Component was fully franked.
15. The Distribution was approved by IAG's shareholders at its Annual General Meeting on 26 October 2018.
16. As at 30 June 2018:
 - IAG's paid up share capital was \$7,082 million, and
 - IAG had approximately 2,367 million ordinary shares on issue.
17. Following the Record Date of the Distribution, IAG undertook a Share Consolidation through a conversion of every one IAG Share into 0.9760 of IAG Shares.
18. The Share Consolidation resulted in a reduction in the number of shares on issue from 2,367,524,344 to 2,311,046,583 representing a 2.3855% reduction in the number of shares on issue. Any shareholders who held a fractional number of shares following the Share Consolidation had their holding rounded up to the next whole number.
19. The Share Consolidation applied to all ordinary shares and occurred after the Record Date of the Distribution.
20. The Share Consolidation was undertaken in accordance with section 254H of the *Corporations Act 2001* such that:
 - an IAG's shareholder's original shares were not cancelled or redeemed
 - there was no change in the total amount allocated to IAG's share capital account, and
 - the proportion of equity owned by each IAG shareholder in the share capital account was maintained.

Other Matters

21. IAG's share capital account was not tainted within the meaning of Division 197.
22. IAG has historically declared and paid dividends to its shareholders in accordance with its dividend policy and will continue to do so.

23. The Dividend Component will not be sourced directly or indirectly from IAG's share capital account.

24. None of the shares in IAG were held as 'pre-CGT' assets as all shareholders acquired their shares in IAG 'post-CGT' as a result of the demutualisation and listing of IAG in August 2000.

Ruling

Distribution

The Capital Component

25. The Capital Component of the Distribution to IAG Shareholders will not be a dividend as defined in subsection 6(1) of the ITAA 1936 and does not otherwise result in ordinary income under section 6-5 for IAG Shareholders.

The Dividend Component

26. The Dividend Component of the Distribution is a dividend as defined in subsection 6(1) of the ITAA 1936.

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

Assessability of the Dividend Component and tax offset

Direct distributions

28. The Dividend Component of 5.5c per share and, subject to being a qualified person, the amount of the franking credit on the Dividend Component is included in the assessable income of an IAG Shareholder who is a resident individual, superannuation fund or company under subsection 44(1) of the ITAA 1936 and subsection 207-20(1). IAG Shareholders will be entitled to a tax offset under subsection 207-20(2) equal to the amount of the franking credit on the Dividend Component, subject to being a 'qualified person'.

Indirect distributions

Partnerships

29. The Dividend Component of 5.5c per share and, subject to being a qualified person, the amount of the franking credit on the Dividend Component is included in the assessable income of an IAG Shareholder who is a partnership for the purposes of calculating the net income of the partnership pursuant to section 90 of the ITAA 1936.

Trusts

30. The Dividend Component of 5.5c per share and, subject to being a qualified person, the amount of the franking credit on the Dividend Component is included in the assessable income of a trustee for the purposes of working out the net income of the trust under subsection 95(1) of the ITAA 1936.

Partners and beneficiaries

31. Subsections 207-35(3) to (6) set out the circumstances in which a partner or beneficiary to whom a franked distribution flows indirectly, is required to gross up their assessable income for their share of the franking credit on the franked distribution. Where the franked distribution flows indirectly (within the meaning of Subdivision 207-B) through a trust or partnership, to a resident that is an individual, a corporate tax entity (at the time the Distribution flows indirectly to it) or a trustee mentioned in paragraphs 207-45(c) or (d), the entity will, subject to the qualified person rule, be entitled to a tax offset equal to the entity's share of the franking credit on the franked distribution (section 207-45).

Qualified persons

32. An IAG Shareholder will be a qualified person in relation to the Dividend Component, if they continue to hold their IAG shares and did not have 'materially diminished risks of loss or opportunities for gain (as defined under former section 160APHM of the ITAA 1936) in respect of their IAG shares for a continuous period of at least 45 days during the relevant qualification period.

Refundable tax offset

33. The tax offsets are subject to the refundable tax offset rules in Division 67. Certain trustees and corporate tax entities are not entitled to the refundable tax offset rules in accordance with subsections 67-25(1A) to (1DA).

Non-resident shareholders

34. IAG Shareholders who received the Dividend Component and are non-residents (other than those carrying on business in Australia at or through a permanent establishment in Australia to which the Dividend Component was attributable) are not required to include the Dividend Component as assessable income under subparagraph 44(1)(b)(i) of the ITAA 1936. This is because the Dividend Component will not be liable for Australian withholding tax (paragraph 128B(3)(ga) of the ITAA 1936) and, as a result, the Dividend Component will be treated as non-assessable, non-exempt

income in the hands of such IAG Shareholders (section 128D of the ITAA 1936).

35. IAG Shareholders who received the Dividend Component and are carrying on business in Australia at or through a permanent establishment in Australia, where the Dividend Component is attributable to the permanent establishment, are required to include the Dividend Component as assessable income under both subparagraph 44(1)(b)(i) and subparagraph (44)(1)(c)(i) of the ITAA 1936 and are not liable to Australian withholding tax in respect of the dividend (subsection 128B(3E) of the ITAA 1936).

The anti-avoidance provisions

36. The Commissioner will not make a determination under section 45A of the ITAA 1936 that section 45C of the ITAA 1936 applies to the Capital Component of the Distribution.

37. The Commissioner will not make a determination under section 45B of the ITAA 1936 that section 45C of the ITAA 1936 applies to the Capital Component of the Distribution.

38. The Commissioner will not make a determination under section 177EA of the ITAA 1936 to deny the imputation benefits received in relation to the Dividend Component of the Distribution.

39. The Commissioner will not make a determination under section 204-30 to deny the imputation benefits received in relation to the Dividend Component of the Distribution.

Capital gains tax (CGT) consequences

40. CGT event G1 happened to an IAG Shareholder when the Distribution was made in respect of an IAG share they owned at the Record Date and continued to own at the date the Distribution was made (section 104-135).

41. CGT event C2 happened to an IAG Shareholder when the Distribution was made in respect of an IAG share they owned at Record Date but ceased to own before the date the Distribution was made (section 104-25). Any capital gain made by a resident IAG 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 IAG Shareholder.

42. Depending on the IAG Shareholder's circumstances, either CGT event G1 or CGT event C2 may apply. A capital gain made under CGT event G1 or CGT event C2 will be eligible to be treated as a discount capital gain under Division 115 provided that the IAG Shareholder acquired the relevant IAG share at least 12 months before the date the Distribution was made, and provided other requirements in Division 115 are satisfied.

Foreign resident shareholders

43. The capital gain or loss resulting from CGT event G1 or CGT event C2 will be disregarded under subsection 855-10(1) if the IAG Shareholder is a foreign resident or the trustee of a foreign trust unless their IAG Share is 'taxable Australian property'.

Share consolidation

44. No CGT event will occur as a result of the consolidation of the IAG Shares (under section 112-25).

45. Each element of the cost base and reduced cost base of the converted IAG shares, at the time of the consolidation, is the sum of the corresponding elements of each original IAG share (subsection 112-25(4)). The converted IAG shares will have the same date of acquisition as the original IAG shares to which they relate.

Commissioner of Taxation

28 November 2018

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.*

Distribution

46. The Distribution received by the IAG Shareholders comprises of two components:

- a Capital Component, and
- a Dividend Component.

The Capital Component is not ordinary income or a dividend

47. The term 'dividend' is defined in subsection 6(1) and includes a distribution made by a company to any of its shareholders. However, paragraph (d) of the definition of 'dividend' excludes a distribution that is debited against an amount standing to the credit of the share capital account of the company.

48. IAG's share capital account (as defined in section 975-300) was not tainted (within the meaning of Division 197).

49. As the Capital Component was recorded as being wholly debited to IAG's share capital account, the Capital Component is not a dividend as defined in subsection 6(1). Further, the Capital Component does not have the quality of income in the hands of IAG Shareholders and is therefore not ordinary income under section 6-5.

Assessability of the Dividend Component

Resident shareholders

50. 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 shareholders out of profits derived by the company from any source.

51. The Dividend Component of the Distribution is debited against IAG's retained earnings account. As such, the Dividend Component is a dividend as defined in subsection 6(1) of the ITAA 1936 and will be assessable to resident IAG Shareholders under subsection 44(1) of the ITAA 1936.

Frankable distribution

52. As the Dividend Component of the Distribution has not been sourced directly or indirectly from IAG's share capital account, the dividend is a frankable distribution under section 202-40.

53. The Dividend Component was fully franked.

54. Under the Australian imputation system, where a frankable 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, provided the resident shareholder is a 'qualified person'.

Direct distribution

55. For IAG Shareholders who are Australian residents (other than a partnership or a trust) and who directly received the Dividend Component:

- the Dividend Component is included in the assessable income of each IAG Shareholder under subsection 44(1) of the ITAA 1936, and
- subject to the qualified person rule, the amount of the franking credit on the Dividend Component is included in the assessable income of each IAG Shareholder under subsection 207-20(1).

56. Subject to the qualified person rule, these IAG Shareholders are entitled to a tax offset under subsection 207-20(2) equal to the amount of the franking credit on the Dividend Component.

Indirect distributions

Partnerships

57. Pursuant to subsection 44(1) of the ITAA 1936, the Dividend Component is included in the assessable income of a partnership for the purposes of working out the net income of the partnership under section 90.

58. Subject to the qualified person rule, pursuant to subsection 207-35(1), the amount of the franking credit on the Dividend Component is included in the assessable income of a partnership for the purposes of working out the net income of the partnership under section 90.

Trusts

59. Pursuant to subsection 44(1) of the ITAA 1936, the Dividend Component is included in the assessable income of a trustee for the purposes of working out the net income of the trust under subsection 95(1).

60. Subject to the qualified person rule, pursuant to subsection 207-35(1), the amount of the franking credit on the Dividend Component is included in the assessable income of a trustee for the purposes of working out the net income of the trust under subsection 95(1).

Partners and beneficiaries

61. Subsections 207-35(3) to (6) set out the circumstances in which a partner or beneficiary to whom a franked distribution flows indirectly is required to gross up their assessable income for their share of the franking credit on the franked distribution.

62. Where the franked distribution flows indirectly (within the meaning of Subdivision 207-B) through a trust or partnership, to a resident that is an individual, a corporate tax entity (at the time the Distribution flows indirectly to it) or a trustee mentioned in paragraphs 207-45(c), or (d), the entity will, subject to the qualified person rule, be entitled to a tax offset equal to the entity's share of the franking credit on the franked distribution (section 207-45).

Qualified persons

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

64. 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.

65. The holding period rule requires a shareholder to hold the shares on which the dividend is paid 'at risk' for a continuous period of at least 45 days during the relevant qualification period.

66. In the absence of a related payment, the relevant qualification period is the primary qualification period, which commences on the day after the shares are acquired and ends on the 45th day after the day on which they became ex-dividend. In determining whether a shareholder has satisfied the holding period rule, any days during which there is a materially diminished risk of loss or opportunity for gain in respect of the relevant shares are not counted. The day of acquisition and the day of disposal of the relevant shares are also not counted. Where there is a related payment, the relevant qualification period is the secondary qualification period.

67. Under former subsection 160APHM(2), a shareholder is taken to have materially diminished the risks of loss and opportunities for gain with respect to shares if the 'net position' in respect of the risks of loss and opportunity for gain of the shareholder results in the shareholder having less than 30% of the risks and opportunities relating to the shares.

Refundable tax offset

68. The tax offset that an IAG 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.

69. 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.

70. 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).

Non-resident shareholders (not carrying on business at or through a permanent establishment)

71. Subparagraph 44(1)(b)(i) of the ITAA 1936 includes in the assessable income of a non-resident shareholder of a company:

...dividends (other than non-share dividends) paid to the shareholder by the company to the extent to which they are paid out of profits derived by it from sources in Australia.

72. Subsection 128B(1) of the ITAA 1936 imposes Australian withholding tax on income that:

- (a) is derived, on or after 1 January 1968, by a non-resident; and
- (b) consists of a dividend paid by a company that is a resident.

73. However, subparagraph 128B(3)(ga)(i) of the ITAA 1936 excludes from subsection 128B(1) of the ITAA 1936 income derived by a non-resident that consists of the franked part of a dividend. As the Dividend Component of the Distribution was fully franked, it will not be subject to Australian withholding tax when derived by the non-resident IAG Shareholders.

74. As the Dividend Component constituted income that was subject to withholding tax but for paragraph 128B(3)(ga) of the ITAA 1936, the Dividend Component will not be assessable income or exempt income of the non-resident IAG Shareholders pursuant to section 128D of the ITAA 1936.

75. Accordingly, IAG Shareholders who receive the fully franked Dividend Component and are non-residents (other than those carrying on business in Australia at or through a permanent establishment in Australia to which the dividend is attributable) are not required to include the Dividend Component as assessable income under subparagraph 44(1)(b)(i) of the ITAA 1936 (section 128D of the ITAA 1936) and will not be liable for Australian withholding tax (paragraph 128B(3)(ga) of the ITAA 1936).

Non-resident shareholders (carrying on business at or through a permanent establishment)

76. A non-resident's liability to withholding tax on dividend income received under subsection 128B(1) of the ITAA 1936 is subject to

subsection 128B(3E). Subsection 128B(3E) states that section 128B does not apply to dividend income that:

- (a) is paid to a person who is a non-resident carrying on business in Australia at or through a permanent establishment of the person in Australia; and
- (b) is attributable to the permanent establishment; and
- (c) is not paid to the person in the person's capacity as trustee.

77. Subparagraph 44(1)(b)(i) of the ITAA 1936 includes dividends in the assessable income of a non-resident shareholder of a company:

...to the extent to which they are paid out of profits derived by it from sources in Australia.

78. Subparagraph 44(1)(c)(i) of the ITAA 1936 includes dividends in the assessable income of a non-resident shareholder of a resident company, where the non-resident shareholder is carrying on business in Australia at or through a permanent establishment of the shareholder in Australia and those dividends:

...are attributable to the permanent establishment, to the extent to which they are paid out of profits derived by the company from sources outside Australia.

79. Accordingly, any non-resident IAG shareholder carrying on a business at or through a permanent establishment in Australia, who received the Dividend Component (otherwise than in their capacity as trustee) are required to include the Dividend Component in their assessable income, to the extent the Dividend Component was attributable to the permanent establishment, pursuant to subparagraph 44(1)(b)(i) and subparagraph 44(1)(c)(i) of the ITAA 1936 and will not be liable for Australian withholding tax in relation to the Dividend Component.

The anti-avoidance provisions

Section 45A of the ITAA 1936

80. Section 45A of the ITAA 1936 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 share capital and it is reasonable to assume that the other shareholders (the disadvantaged shareholders) have received or will receive dividends.

81. The 'provision of a capital benefit to a shareholder in a company', as defined in subsection 45A(3) of the ITAA 1936, includes the distribution to the shareholder of share capital (45A(3)(b) of the ITAA 1936).

82. The Capital Component of the Distribution by IAG to its shareholders constituted the provision of a capital benefit. However, as IAG made a pro-rata return of capital to all shareholders that held shares on the Record Date, there was no streaming of capital

benefits to some shareholders and not to others because the capital benefits were received by both advantaged shareholders and disadvantaged shareholders contrary to paragraph 45A(1)(a) of the ITAA 1936.

83. Therefore, section 45A of the ITAA 1936 does not apply to the Capital Component of the Distribution. Accordingly, the Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole, or a part, of the Capital Component of the Distribution.

Section 45B of the ITAA 1936

84. Section 45B of the ITAA 1936 applies if:

- there is a scheme under which a person is provided with a capital benefit by a company (paragraph 45B(2)(a) of the ITAA 1936)
- under the scheme a taxpayer (the relevant taxpayer), who may or may not be the person provided with the capital benefit, obtains a tax benefit (paragraph 45B(2)(b) of the ITAA 1936)
- 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, other than an incidental purpose, of enabling the relevant taxpayer to obtain a tax benefit (paragraph 45B(2)(c) of the ITAA 1936).

Scheme and tax benefit

85. The Commissioner is satisfied that at least some IAG Shareholders obtained a tax benefit within the meaning of subsection 45B(9) of the ITAA 1936 as a result of receiving the Capital Component of the Distribution.

Relevant circumstances

86. Subsection 45B(8) of the ITAA 1936 lists the relevant circumstances of the scheme which the Commissioner must have regard to when determining whether or not the requisite purpose exists.

87. Having regard to the relevant circumstances of the scheme to return capital to IAG Shareholders, it cannot be concluded that the scheme was entered into or carried out for a more than incidental purpose of enabling IAG Shareholders to obtain a tax benefit.

88. Accordingly, the Commissioner will not make a determination under subsection 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the Capital Component of the Distribution.

Section 177EA of the ITAA 1936

89. Section 177EA of the ITAA 1936 is a general anti-avoidance provision that applies to a wide range of schemes seeking to obtain a tax advantage in relation to imputation benefits. It applies to schemes for the disposition of shares or an interest in shares, where a franked distribution is paid or payable in respect of the shares or an interest in shares.

90. If section 177EA of the ITAA 1936 applies, the Commissioner may make a determination under subsection 177EA(5) of the ITAA 1936 that either a franking debit arises in respect of each distribution made to the relevant taxpayer (paragraph 177EA(5)(a)) of the ITAA 1936 or, in the alternative, that no imputation benefit arises in respect of a distribution paid to the relevant taxpayer (paragraph 177EA(5)(b)) of the ITAA 1936.

91. Having regard to the relevant circumstances of the scheme, the Commissioner has formed the view that the scheme is not entered into for the purpose of enabling IAG Shareholders to obtain imputation benefits.

92. 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 benefit received in relation to the Dividend Component of the Distribution.

Section 204-30

93. Subsection 204-30(1) 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 section 204-30 would be, received by a member of the entity as a result of the distribution or distributions
- (b) the member would derive a greater benefit from franking credits than another member of the entity, 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.

94. If subsection 204-30(1) applies, the Commissioner has the discretion under subsection 204-30(3) to make a determination in writing:

- (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
- (b), and
- (c) that no imputation benefit is to arise in respect of any streamed distributions made to a favoured member and specified in the determination.

95. For subsection 204-30(1) to apply, members to whom distributions are streamed must derive a greater benefit from imputation benefits than other members. The words 'derives a greater benefit from franking credits' (imputation benefits) are defined in subsection 204-30(8) by reference to the ability of the members to fully utilise imputation benefits.

96. IAG Shareholders received an imputation benefit when the Dividend Component was paid. The Dividend Component was paid equally to all IAG Shareholders and was fully franked regardless of their tax profiles. Accordingly, it cannot be said that IAG selectively directed the flow of franked distributions to those members who obtained the most benefit from the franking credits.

Capital Gains Tax

CGT event G1

97. CGT event G1 happened when IAG made the Distribution (of the Capital Component) to an IAG Shareholder in respect of an IAG share that they owned at the Record Date and continue to own at the date the Distribution was made.

98. The Capital Component (the non-assessable part of the Distribution), to which CGT event G1 applies is 19.5 cents per share.

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

100. An IAG Shareholder makes a capital gain if the Capital Component is more than the cost base of the IAG share (subsection 104-135(3)). The amount of the capital gain is equal to the excess.

101. If an IAG Shareholder makes a capital gain from CGT event G1 happening, the cost base and reduced cost base of the IAG share is reduced to nil. An IAG Shareholder cannot make a capital loss from CGT event G1 happening (104-135(3)).

102. If the IAG share was acquired by a resident IAG 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 that other conditions in Subdivision 115-A are satisfied.

CGT event C2

103. The right to receive the Distribution is one of the rights inherent in an IAG share at the Record Date. If, after the Record Date but before the date the Distribution is made, an IAG Shareholder ceases to own some, or all, of their shares in IAG, 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.

104. CGT event C2 happened when the Distribution is made. The right to receive the Distribution will end by the right being discharged or satisfied when the Distribution is made.

105. An IAG Shareholder makes 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.

106. An IAG 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)).

107. The capital proceeds will be equal to the amount of the Distribution (that is, 25 cents per share).

108. The cost base of the IAG Shareholder's right to receive the Distribution is worked out under Division 110 (modified by Division 112). The cost base of the right does not include the cost base or reduced cost base of the IAG share previously owned by an IAG shareholder that has been applied in working out a capital gain or capital loss made when a CGT event happened to the IAG share, for example, when the shareholder disposed of the share after the Record Date. Therefore, the right to receive the Distribution will likely have a nil cost base. As a result, an IAG Shareholder will likely make a capital gain equal to the capital proceeds, being 25 cents per IAG share it owned at the Record Date.

109. Any capital gain made by a resident IAG 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. The Dividend Component is included in the assessable income of a resident IAG Shareholder under section 44 of the ITAA 1936.

110. If the IAG share was acquired by the resident IAG Shareholder at least 12 months before the Distribution was made, a capital gain from 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.

Non-resident shareholders

111. 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 a 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'.

112. The term 'taxable Australian property' is defined in the table in section 855-15. The table sets out 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 gain or loss on ceasing to be an Australian resident).

113. An IAG Shareholder who is a foreign resident and whose shares in IAG, or right to receive the Distribution, are not taxable Australian property 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

114. A CGT event will not happen if a company converts its shares into a larger or smaller number of shares (the converted shares) in accordance with section 254H of the *Corporations Act 2001* in that:

- the original shares are not cancelled or redeemed in terms of the *Corporations Act 2001*
- there is no change in the total amount allocated to the share capital account of the company, and
- the proportion of equity owned by each shareholder in the share capital account is maintained.

115. While there is a change in the form of the original shares, there is no change in their beneficial ownership.

116. As no shares in IAG were cancelled as a result of the consolidation of IAG shares, there will be no change to IAG's share capital. There will be no change to the proportionate interests held by each shareholder.

117. Therefore, no CGT event occurred as a result of the Share Consolidation.

Appendix 2 – Detailed contents list

118. The following is a detailed contents list for this Ruling:

	Paragraph
Summary – what this Ruling is about	1
Relevant provisions	2
Class of entities	3
Qualifications	4
Date of effect	6
Scheme	7
Other matters	21
Ruling	25
Distribution	25
<i>The Capital Component</i>	25
<i>The Dividend Component</i>	26
<i>Assessability of the Dividend Component and tax offset</i>	28
<i>Direct distributions</i>	28
<i>Indirect distributions</i>	29
<u>Partnerships</u>	29
<u>Trusts</u>	30
<u>Partners and beneficiaries</u>	31
<i>Qualified persons</i>	32
<i>Refundable tax offset</i>	33
<i>Non-resident shareholders</i>	34
The anti-avoidance provisions	36
Capital gains tax (CGT) consequences	40
Foreign resident shareholders	43
Share consolidation	44
Appendix 1 – Explanation	46
Distribution	46
<i>The Capital Component is not ordinary income or a dividend</i>	47
<i>Assessability of the Dividend Component</i>	50
<i>Resident shareholders</i>	50
<i>Frankable distribution</i>	52
<i>Direct distribution</i>	55

<i>Indirect distributions</i>	57
<u>Partnerships</u>	57
<u>Trusts</u>	59
<u>Partners and beneficiaries</u>	61
Qualified persons	63
Refundable tax offset	68
Non-resident shareholders (not carrying on business at or through a permanent establishment)	71
Non-resident shareholders (carrying on business at or through a permanent establishment)	76
The anti-avoidance provisions	80
<i>Section 45A of the ITAA 1936</i>	80
<i>Section 45B of the ITAA 1936</i>	84
<i>Scheme and tax benefit</i>	85
<i>Relevant circumstances</i>	86
<i>Section 177EA of the ITAA 1936</i>	89
<i>Section 204-30</i>	93
Capital Gains Tax	97
<i>CGT event G1</i>	97
<i>CGT event C2</i>	103
Non-resident shareholders	111
Share consolidation	114
Appendix 2 – Detailed contents list	118

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Legislative references:

- ITAA 1936
- ITAA 1936 6(1)
- ITAA 1936 44
- ITAA 1936 44(1)
- ITAA 1936 44(1)(b)(i)
- ITAA 1936 44(1)(c)(i)
- ITAA 1936 45A
- ITAA 1936 45A(1)(a)
- ITAA 1936 45A(2)
- ITAA 1936 45A(3)
- ITAA 1936 45A(3)(b)
- ITAA 1936 45B
- ITAA 1936 45B(2)(a)
- ITAA 1936 45B(2)(b)
- ITAA 1936 45B(2)(c)
- ITAA 1936 45B(3)
- ITAA 1936 45B(8)
- ITAA 1936 45B(9)
- ITAA 1936 45C
- ITAA 1936 90
- ITAA 1936 95
- ITAA 1936 95(1)
- ITAA 1936 128B
- ITAA 1936 128B(1)
- ITAA 1936 128B(3)(ga)
- ITAA 1936 128B(3)(ga)(i)
- ITAA 1936 128B(3E)
- ITAA 1936 128D
- ITAA 1936 160APHM
- ITAA 1936 160APHM(2)
- ITAA 1936 160APHO
- ITAA 1936 177EA
- ITAA 1936 177EA(5)
- ITAA 1936 177EA(5)(a)
- ITAA 1936 177EA(5)(b)
- ITAA 1997
- ITAA 1997 6-5
- ITAA 1997 Div 67
- ITAA 1997 67-25
- ITAA 1997 67-25(1A)
- ITAA 1997 67-25(1B)
- ITAA 1997 67-25(1C)
- ITAA 1997 67-25(1D)
- ITAA 1997 67-25(1DA)
- ITAA 1997 104-25
- ITAA 1997 104-25(3)
- ITAA 1997 104-135
- ITAA 1997 104-135(3)
- ITAA 1997 104-135(4)
- ITAA 1997 Div 110
- ITAA 1997 Div 112
- ITAA 1997 112-25
- ITAA 1997 112-25(4)
- ITAA 1997 Div 115
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-25(1)
- ITAA 1997 118-20
- ITAA 1997 Div 197
- ITAA 1997 202-40
- ITAA 1997 204-30
- ITAA 1997 204-30(1)
- ITAA 1997 204-30(3)
- ITAA 1997 204-30(8)
- ITAA 1997 Div 207
- ITAA 1997 207-20(1)
- ITAA 1997 207-20(2)
- ITAA 1997 Subdiv 207-B
- ITAA 1997 207-35(1)
- ITAA 1997 207-35(3)
- ITAA 1997 207-35(4)
- ITAA 1997 207-35(5)
- ITAA 1997 207-35(6)
- ITAA 1997 207-45
- ITAA 1997 207-45(c)
- ITAA 1997 207-45(d)
- ITAA 1997 Div 230
- ITAA 1997 Subdiv 855-A
- ITAA 1997 855-10(1)
- ITAA 1997 855-15
- ITAA 1997 975-300
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- Corporations Act 2001
- Corporations Act 2001 254H
- TAA 1953

ATO references

NO: 1-GK71Z60

ISSN: 2205-5517

ATOlaw topic: Income tax ~~ Assessable income ~~ Dividend income ~~
Dividend income

Income tax ~~ Assessable income ~~ Dividend income ~~
Dividend paid to non resident
Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT
events C1 to C3 - end of a CGT asset
Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT
events G1 to G3 - shares
Income tax ~~ Capital management ~~ 45 day rule
Income tax ~~ Capital management ~~ Anti avoidance
rules ~~ Section 45A
Income tax ~~ Capital management ~~ Anti avoidance
rules ~~ Section 45B
Income tax ~~ Capital management ~~ Anti avoidance
rules ~~ Section 45C
Income tax ~~ Capital management ~~ Anti avoidance
rules ~~ Section 177EA
Income tax ~~ Capital management ~~ Anti avoidance
rules ~~ Other
Income tax ~~ Capital management ~~ Frankability of
distribution
Income tax ~~ Capital management ~~ Qualified person
rule
Income tax ~~ Capital management ~~ Returning capital
~~ Share capital return
BSL: PGI

**© AUSTRALIAN TAXATION OFFICE FOR THE
COMMONWEALTH OF AUSTRALIA**

You are free to copy, adapt, modify, transmit and distribute
this material as you wish (but not in any way that suggests
the ATO or the Commonwealth endorses you or any of
your services or products).