


# ***CR 2019/51 - DuluxGroup Limited - Scheme of Arrangement and payment of interim and special dividends***

 This cover sheet is provided for information only. It does not form part of *CR 2019/51 - DuluxGroup Limited - Scheme of Arrangement and payment of interim and special dividends*



## Class Ruling

### DuluxGroup Limited – Scheme of Arrangement and payment of interim and special dividends

#### **❶ Relying on this Ruling**

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

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or pay any penalties or interest in respect of the matters covered by this Ruling.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

<b>Table of Contents</b>	<b>Paragraph</b>
What this Ruling is about	1
Who this Ruling applies to	4
When this Ruling applies	7
<b>Ruling</b>	<b>8</b>
<b>Scheme</b>	<b>27</b>
<b>Appendix 1 – Explanation</b>	<b>46</b>
<b>Appendix 2 – Legislative provisions</b>	<b>100</b>

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

1. This Ruling sets out the tax consequences for a shareholder of DuluxGroup Limited (Dulux) who sold their shares under the Scheme of Arrangement which was announced on 17 April 2019.
2. Details of the Scheme of Arrangement are set out in paragraphs 7 to 45 of this Ruling.
3. All legislative references are to provisions of the *Income Tax Assessment Act 1997* or the *Income Tax Assessment Act 1936* (as detailed in the table in Appendix 2 of this Ruling) unless otherwise indicated.

#### **Who this Ruling applies to**

4. This Ruling applies to you if you:
  - were a Dulux shareholder on the scheme Record Date of 14 August 2019 who participated in the Scheme of Arrangement under which Nippon Paint Holdings Co., Ltd. (Nippon) acquired 100% of the ordinary shares in Dulux

- held your Dulux shares on capital account, that is, you did not hold your Dulux shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)), and
  - received the interim dividend and the special dividend (together, the dividends) paid on 28 June 2019.
5. This Ruling does not apply to you if:
- your Dulux shares were acquired under the demerger by Orica Limited (Orica) of Dulux in 2010 and you were taken to have acquired your Dulux shares before 20 September 1985
  - you are subject to the Investment manager regime in Subdivision 842-I in relation to your Dulux shares, or
  - you are subject to the taxation of financial arrangements rules in Division 230.
- Note:** Division 230 will not apply to you if you are an individual unless you made an election for the Division to apply.
6. This Ruling also does not apply to you in respect of any Dulux shares you obtained as a Dulux employee, executive or participant under the *DuluxGroup Long Term Equity Incentive Plan* or similar Share Incentive Plan as a result of the exercise of share rights on or after 17 April 2019.

**When this Ruling applies**

7. This Ruling applies to the income years ending 30 June 2019 and 30 June 2020.

**Ruling****Interim dividend and special dividend**

8. The interim dividend and special dividend you received are 'dividends' as defined in subsection 6(1).
9. The dividends you received are frankable distributions under section 202-40.

**Assessability of dividends and franking credits, withholding tax and tax offsets****Resident shareholders**

10. If you are an Australian resident Dulux shareholder, the dividends you received in respect of each of your Dulux shares are included in your assessable income (paragraph 44(1)(a)).
11. The franking credits attached to the dividends are included in your assessable income and you are entitled to a tax offset equal to the amount of those credits (section 207-20), provided you are a qualified person (as defined in Division 1A of former Part IIIAA).
12. The tax offset is refundable, subject to the refundable tax offset rules in Division 67.

**Non-resident shareholders***Dividends attributable to a permanent establishment in Australia*

13. If you are a non-resident Dulux shareholder and the dividends are attributable to a permanent establishment in Australia, the dividends are included in your assessable income (paragraphs 44(1)(b) and 44(1)(c)) and you are not liable to pay Australian withholding tax in respect of the dividends (subsection 128B(3E)).

14. If you are also a qualified person (as defined in Division 1A of former Part IIIAA), the amount of the franking credits attached to the dividends are included in your assessable income and you are entitled to a tax offset equal to the amount of those credits (section 207-20 and subsection 207-75(2)). The tax offset is not refundable (subsection 67-25(1DA)).

*Dividends not attributable to a permanent establishment in Australia*

15. If you are a non-resident Dulux shareholder and the dividends are not attributable to a permanent establishment in Australia, the dividends are not included in your assessable income (section 128D) and you are not liable to Australian withholding tax in respect of them (paragraph 128B(3)(ga)).

16. You do not include the amount of the franking credits attached to the dividends in your assessable income, and you are not entitled to a tax offset for those franking credits (sections 207-20 and 207-70).

**Qualified persons**

17. The dividends you received each constitute a 'related payment' for the purposes of paragraph 207-145(1)(a) and former section 160APHN.

18. You will be a qualified person in relation to the dividends, if from 11 May 2019 to 9 August 2019 (inclusive), you held your Dulux shares for a continuous period of at least 45 days where you did not have 'materially diminished risks of loss or opportunities for gain' (as defined in former section 160APHM) in respect of the shares.

**Capital gains tax (CGT) consequences****Resident shareholders***CGT event A1*

19. CGT event A1 happened to you on 21 August 2019 (scheme implementation date) when you disposed of each of your Dulux shares to Nippon in accordance with the Scheme of Arrangement (section 104-10).

*Capital proceeds*

20. The Scheme Consideration of \$9.37 you received for each Dulux share is the capital proceeds from CGT event A1 happening (subsection 116-20(1)).

21. The capital proceeds do not include the interim dividend of \$0.15 or the special dividend of \$0.28.

***Capital gain or capital loss***

22. You made a capital gain if the capital proceeds from the disposal of your Dulux share exceed its cost base (subsection 104-10(4)). The capital gain is the difference.

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

***Discount capital gain***

24. If you made a capital gain from the disposal of your Dulux share, you are entitled to treat the capital gain as a 'discount capital gain' provided you acquired your Dulux share on or before 21 August 2018 and the other conditions of Division 115 are satisfied (subsection 115-25(1)).

***Non-resident shareholders***

25. If you were a non-resident Dulux shareholder just before CGT event A1 happened to your Dulux shares on 21 August 2019, you may disregard any capital gain or capital loss you made as a result of CGT event A1 happening, if your shares were not taxable Australian property (section 855-10).

***Anti-avoidance provisions***

26. The Commissioner will not make a determination under paragraph 177EA(5)(b) or paragraph 204-30(3)(c) to deny the whole, or any part, of the imputation benefit received in relation to the interim dividend or the special dividend.

**Scheme**

27. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

28. Other information referred to is the Scheme Implementation Deed released on the Australian Securities Exchange (ASX) on 17 April 2019, and the Scheme Booklet released on the ASX on 17 June 2019.

***Relevant entities******Dulux***

29. Dulux is an Australian resident company which was listed on the ASX on 12 July 2010 following its demerger from Orica.

30. Dulux has a single class share capital structure consisting of ordinary shares. As at 14 June 2019, Dulux had 389,250,252 ordinary shares on issue.

31. Dulux's shareholders include both residents and non-residents. At no time since demerging from Orica in July 2010 have non-resident shareholders owned 95% or more of the shares in Dulux. As at 14 June 2019, no non-resident (either alone or together with associates) beneficially held more than 10% of the shares in Dulux.

32. Dulux has paid both a fully franked interim dividend and a fully franked final dividend each year since demerging from Orica.

33. The sum of the market values of Dulux's assets that are taxable Australian real property does not exceed the sum of the market values of its assets that are not taxable Australian real property.

### ***Nippon***

34. Nippon was established in 1881 and is listed on the Tokyo Stock Exchange. Nippon operates in 26 countries. Prior to its acquisition of Dulux, Nippon had no operations in Australia.

### **Scheme of Arrangement**

35. On 17 April 2019, Dulux announced that it had entered into the Scheme Implementation Deed with Nippon, under which Nippon proposed to acquire all the issued shares of Dulux by way of a Scheme of Arrangement under Part 5.1 of the *Corporations Act 2001*.

36. Under the Scheme of Arrangement, each person registered as a holder of Dulux shares as at the scheme Record Date of 7.00pm on 14 August 2019 (a scheme shareholder) was entitled to participate in the Scheme of Arrangement.

37. Scheme shareholders agreed to transfer their Dulux shares to Nippon in return for receiving the Scheme Consideration on the Implementation Date (21 August 2019). The Scheme Consideration per Dulux share was \$9.80, less the amount of the dividends.

38. Dulux shares were removed from official quotation on the ASX on 22 August 2019.

### ***Interim dividend and Special dividend***

39. On 15 May 2019, Dulux declared a fully franked Interim dividend in respect of the six months ended 31 March 2019 of \$0.15 per ordinary Dulux share and a fully franked special dividend of \$0.28 per Dulux share. These dividends totalled approximately \$167.4 million.

40. The Record Date, Ex-dividend Date and Payment Date for both dividends were 24 June, 25 June and 28 June 2019 respectively.

41. The dividends complied with the requirements of the *Corporations Act 2001*, including section 254T of that Act. The dividends were paid out of profits derived by Dulux from sources in Australia. The dividends were debited entirely against Dulux's retained earnings account, and were funded from a mix of new and existing facilities from unrelated banks.

42. The dividends were not conditional upon approval of the Scheme of Arrangement and the Scheme of Arrangement was not conditional on the declaration of the dividends. The Scheme of Arrangement was not conditional on Nippon or a third party financing or facilitating payment of the dividends, or Nippon or a third party being obliged to bring about the result that the dividends would be received by Dulux shareholders.

43. Both dividends were declared and paid by Dulux in its absolute discretion. Neither Nippon nor any of its associates had any influence or control over the declaration and payment of the dividends.

44. Under the Scheme Implementation Deed:

- the Record Date for the dividends was required to be on or before the scheme Record Date
- the interim dividend was capped at \$0.15 per Dulux share, and

- the Scheme Consideration was reduced by the amount of the dividends declared and paid to Dulux shareholders on or before the Implementation Date.

**Key dates**

45. A summary of the key dates for the Scheme of Arrangement is provided below:

Announcement date	17 April 2019
Scheme Implementation Deed executed	17 April 2019
First Court hearing (lodge Scheme Booklet with court)	17 June 2019
Despatch Scheme Booklet to Dulux shareholders	19 June 2019
Record Date for interim dividend and special dividend	7:00pm on 24 June 2019
Payment Date for interim dividend and special dividend	28 June 2019
Scheme meeting	31 July 2019
Second Court hearing	6 August 2019
Effective Date	6 August 2019
Scheme Record Date	7:00pm on 14 August 2019
Implementation Date	21 August 2019
Dulux delisted from ASX	22 August 2019

---

**Commissioner of Taxation**4 September 2019

---

## Appendix 1 – Explanation

**❶** *This Explanation 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.*

<b>Table of Contents</b>	<b>Paragraph</b>
Interim dividend and special dividend	46
Assessability of dividends and withholding tax	48
<i>Resident shareholders</i>	48
<i>Non-resident shareholders</i>	50
Dividends can be franked	53
Gross up and tax offset	55
<i>Qualified person</i>	58
<i>Related payment rule</i>	61
<i>Secondary qualification period</i>	63
<i>Holding period rule</i>	65
Refundable tax offset	71
Capital gains tax (CGT) consequences	75
<i>CGT event A1</i>	75
<i>Capital proceeds</i>	78
<i>Capital gain or capital loss</i>	83
<i>Discount capital gain</i>	84
<i>Non-resident shareholders</i>	85
Anti-avoidance provisions	87
<i>Section 177EA</i>	87
<i>Section 204-30</i>	96

### Interim dividend and special dividend

46. The term 'dividend' is defined in subsection 6(1) to include any distribution of money made by a company to any of its shareholders which is not debited against an amount standing to the credit of the company's share capital account.

47. The interim dividend and the special dividend paid by Dulux are distributions that were not debited against an amount standing to the credit of its share capital account. Accordingly, the interim dividend and the special dividend are each a 'dividend' for the purposes of subsection 6(1).



**Assessability of dividends and withholding tax*****Resident shareholders***

48. The assessable income of a resident shareholder includes dividends paid by the company out of profits derived by it from any source (subparagraph 44(1)(a)(i)).

49. If you are a resident shareholder, the dividends you received are included in your assessable income as they were paid out of profits derived by Dulux.

***Non-resident shareholders******Dividends not attributable to a permanent establishment in Australia***

50. The assessable income of a non-resident shareholder generally includes dividends to the extent to which they are paid out of profits derived by the company from sources in Australia unless another provision excludes it from the shareholder's assessable income (subparagraph 44(1)(b)(i) and subsection 44(1)).

51. If you are a non-resident Dulux shareholder and the dividends are not attributable to a permanent establishment in Australia at or through which you carry on business, the dividends you received are not included in your assessable income (section 128D) and are not subject to withholding tax (paragraph 128B(3)(ga)).

***Dividends attributable to a permanent establishment in Australia***

52. If you are a non-resident Dulux shareholder and the dividends are attributable to a permanent establishment in Australia at or through which you carry on business (and are not paid to you in your capacity as trustee), the dividends you received are included in your assessable income (subparagraph 44(1)(b)(i)) and are not subject to withholding tax (subsection 128B(3E)).

**Dividends can be franked**

53. Dividends paid out of profits by an Australian resident company are generally frankable (and therefore can be franked) to the extent they are not unfrankable under section 202-45.

54. As none of the circumstances listed in section 202-45 apply to the dividends, the dividends were frankable.

**Gross up and tax offset**

55. Where you are a qualified person in accordance with paragraph 207-145(1)(a) which refers to Division 1A of former Part IIIAA [other than a partnership or a trustee of a trust (except a partnership or trustee that is a corporate tax entity, or a trustee of a trust that is a complying superannuation entity, when the distribution is made)], you:

- include the franking credit attached to the dividends in your assessable income (subsection 207-20(1)), and
- are entitled to a tax offset equal to the amount of the franking credit attached to the dividends (subsection 207-20(2)),

in the income year the dividends are paid. This applies to both:

- resident shareholders, and

- non-resident shareholders carrying on business in Australia at or through a permanent establishment in Australia (where the dividends are attributable to the permanent establishment).

56. The assessable income of a partnership or trustee of a trust (that is not an entity taxed as a corporate tax entity, and if a trustee, that is not a complying superannuation fund) which satisfies the 'qualified person' rule, includes the amount of the franking credit attached to the dividends (subsection 207-35(1)).

57. Where you are not a qualified person in relation to the dividends, you:

- do not include the franking credit attached to the dividends in your assessable income (paragraph 207-145(1)(e)), and
- are not entitled to a tax offset equal to the amount of the franking credit attached to the dividends (paragraph 207-145(1)(f)).

### ***Qualified person***

58. An entity must be a 'qualified person' in relation to a dividend in order to be entitled to a tax offset in respect of the franking credit on a dividend (subsection 207-145(1), noting paragraph 207-145(1)(a) refers to former Division 1A of Part IIIAA).

59. The test of what constitutes a 'qualified person' is provided in former subsection 160APHO(1). Broadly, you are a qualified person:

- if you are not under an obligation to make a related payment in relation to a dividend or distribution – you satisfy the holding period rule in relation to the primary qualification period, or
- if you are under an obligation to make a related payment in relation to a dividend or distribution – you satisfy the holding period rule in relation to the secondary qualification period.

60. A partner in a partnership or the beneficiary of a trust cannot be a qualified person in relation to their share of a dividend unless the partnership or the trustee of the trust is also a qualified person in relation to the dividend (former section 160APHU).

### ***Related payment rule***

61. Former section 160APHN sets out examples of what constitutes the making of a related payment. Broadly, a Dulux shareholder will be taken to have made or to be under an obligation to make a related payment in respect of the interim dividend or the special dividend if they have done, or are under an obligation to do, anything which has the effect of passing the benefit of the interim dividend or the special dividend to one or more other persons.

62. Under the scheme implementation deed, the scheme consideration paid by Nippon was reduced by the amount of the dividends. The Commissioner considers that the reduction of the scheme consideration, calculated with reference to the amount of the dividends, constitutes the making of a related payment in respect of the dividends for the purposes of former Division 1A of Part IIIAA.

***Secondary qualification period***

63. The secondary qualification period in this case is the period beginning 45 days before, and ending 45 days after, the day on which a share becomes ex dividend (former section 160APHD).

64. Under former subsection 160APHE(1), a share becomes ex dividend on the day after the last day on which the acquisition by a person of the share entitles them to receive the dividend. The last day on which acquisition by a person of a Dulux share entitled the person to receive the interim dividend and special dividend was the record date for the dividends which was 24 June 2019. It follows that Dulux shares became ex dividend on 25 June 2019. Accordingly, the secondary qualification period is the period beginning 45 days before, and ending 45 days after, 25 June 2019, namely, 11 May 2019 to 9 August 2019 (inclusive).

***Holding period rule***

65. The holding period rule requires shareholders to hold their ordinary shares at-risk for a continuous period of not less than 45 days (not including the day on which the share was acquired, or the day on which the share was disposed of) during the relevant qualification period (former paragraph 160APHO(2)(a)).

66. Any days during which a shareholder has materially diminished risks of loss or opportunities for gain in respect of the shares are excluded, but the exclusion is not taken to break the continuity of the period for which the taxpayer held the shares (former subsection 160APHO(3)).

67. Under former subsection 160APHM(2), you are taken to have materially diminished risks of loss and opportunities for gain on a particular day with respect to your Dulux shares if your net position on that day in relation to the shares has less than 30% of those risks and opportunities.

68. In the Commissioner's view, none of the events on any of the key dates set out in paragraph 45 before the end of the secondary qualification period on 9 August 2019 affect whether you held your Dulux shares at risk or not.

69. There are at least 45 clear days between the Record Date of 24 June 2019 for the dividends and the scheme Record Date which was 14 August 2019 (at which time you became committed to dispose of your Dulux shares to Nippon under the Scheme of Arrangement). If you acquired your Dulux shares on or before 24 June 2019 and disposed of them to Nippon under the Scheme of Arrangement, you satisfied the holding period rule if you held those shares at risk for at least 45 continuous days.

70. The small shareholder exception in former section 160APHT does not apply as the interim dividend and the special dividend each constitute a related payment as discussed at paragraphs 61 to 62 of this Ruling. Therefore, if you are an individual who has franking credit offsets not exceeding \$5,000 for the year of income ending 30 June 2020, you must also satisfy the holding period requirement in relation to the dividends (former section 160APHT(2)).

***Refundable tax offset***

71. Where you are entitled to a tax offset pursuant to subsection 207-20(2) in respect of the franking credit received (or entities entitled to a tax offset under section 207-45 equal to their share of the franking credit), you are also entitled to the refundable tax offset rules in Division 67, unless you are specifically excluded under section 67-25.

72. You are specifically excluded from the operation of the refundable tax offset rules pursuant to section 67-25 if you are a:

- non-complying superannuation fund or non-complying approved deposit fund (subsection 67-25(1A))
- a trustee of a trust who is liable to be assessed under section 98 or 99A (subsection 67-25(1B))
- corporate tax entity, unless the entity is an exempt institution that is eligible for a refund, or a life insurance company that has received distributions on membership interests which were not held by the company on behalf of its shareholders (subsections 67-25(1C) and 67-25(1D)), and
- a non-resident that carries on business in Australia at or through a permanent establishment of the entity in Australia (subsection 67-25(1DA)).

73. Division 63 sets out the rules on how, and in what order, tax offsets are applied against an income tax liability. Where a tax offset that is subject to the refundable tax offset rules in Division 67 exceeds your income tax liability, you are entitled a refund of the difference (item 40 of section 63-10).

### **Exempting entity**

74. Dulux was not an exempting entity or a former exempting entity at the time the dividends were paid to you. Section 208-195 therefore does not apply to deny the gross-up of your assessable income by the amount of the franking credit attached to the dividends you received, or to deny the tax offset you are otherwise entitled pursuant to Division 207 at the time when the dividends were paid.

### **Capital gains tax (CGT) consequences**

#### ***CGT event A1***

75. CGT event A1 happens if there is a change in the ownership of a CGT asset (section 104-10). The event happens when a contract to dispose of the asset is entered into or, if there is no contract, when the change of ownership occurs (subsection 104-10(3)).

76. The disposal of Dulux shares under a court approved scheme of arrangement results in a disposal of shares, but not under a contract. Therefore, CGT event A1 happened on the Implementation Date of 21 August 2019 when there was a change of ownership in a Dulux share from you to Nippon under the Scheme of Arrangement (subsections 104-10(1) and 104-10(2) and paragraph 104-10(3)(b)).

77. The time when CGT event A1 happens determines the income year in which you make a capital gain or capital loss and whether you are entitled to the CGT discount for any capital gain you made.

### ***Capital proceeds***

78. The capital proceeds you receive from a CGT event is the amount of money and the market value of any property you received or are entitled to receive (worked out at the time the event happened) in respect of the event happening (subsection 116-20(1)).

79. The term 'in respect of the event happening' in subsection 116-20(1) requires the relationship between the event and the receipt of the money, or the entitlement to receive

the money, to be more than coincidental. An amount is not capital proceeds received or entitled to be received in respect of a CGT event merely because it is received in association with the CGT event.<sup>1</sup>

80. In this case, the dividends were not paid in respect of the disposal of Dulux shares under the scheme. The dividends were paid before shareholder approval was obtained for the Scheme of Arrangement. The Scheme of Arrangement was not conditional on declaration of the dividends, Nippon or a third party financing or facilitating payment of the dividends, or Nippon or a third party being obliged to bring about the result that the dividends would be paid to exiting shareholders.

81. The Commissioner considers that the dividends were not received in respect of the disposal of Dulux shares under the Scheme of Arrangement. Accordingly, the dividends do not form part of the capital proceeds in respect of CGT event A1 happening.

82. Therefore, the capital proceeds you received from CGT event A1 happening on disposal of each Dulux share is the Scheme Consideration of \$9.37 per share.

### ***Capital gain or capital loss***

83. You make:

- a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your Dulux share exceeds the cost base of the share, or
- a capital loss if the capital proceeds are less than the reduced cost base of the Dulux share (subsection 104-10(4)).

The cost base and reduced cost base of the Dulux share depends on your individual circumstances.

### ***Discount capital gain***

84. If you make a capital gain from the disposal of your Dulux share, you are eligible to treat the capital gain as a 'discount capital gain' provided that:

- you are an individual, complying superannuation entity, or, subject to the rules in Subdivision 115-C, a trust (section 115-10)
- the capital gain was worked out using a cost base that was calculated without reference to indexation (subsection 115-20(1)), and
- you acquired your Dulux share on or before 21 August 2018 which was at least 12 months prior to CGT event A1 happening (subsection 115-25(1)).

### ***Non-resident shareholders***

85. You disregard a capital gain or capital loss from a CGT event if you are a non-resident, or the trustee of a non-resident 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' (subsection 855-10(1)).

86. The term 'taxable Australian property' is defined in the table in section 855-15. Where you are a non-resident or a trustee of a non-resident trust for CGT purposes just

<sup>1</sup> Taxation Ruling TR 2010/4 *Income tax: capital gains: when a dividend will be included in the capital proceeds from a disposal of shares that happens under a contract or a scheme of arrangement.*

before CGT event A1 happened to your Dulux shares under the Scheme of Arrangement, you cannot disregard a capital gain or capital loss from CGT event A1 happening (under subsection 855-10(1)) if, relevantly, your Dulux shares:

- were used at any time in carrying on a business through a permanent establishment in Australia (item 3 of the table in section 855-15), or
- was covered by subsection 104-165(3) (item 5 of the table in section 855-15).

## **Anti-avoidance provisions**

### **Section 177EA**

87. Section 177EA is a general anti-avoidance provision that operates to prevent franking credit trading. For section 177EA to apply, the conditions of paragraphs 177EA(3)(a) to (e) must be satisfied.

88. The conditions of paragraphs 177EA(3)(a) to (d) are satisfied as Dulux is a corporate tax entity, the Scheme of Arrangement is a scheme involving the disposal of Dulux shares in which there is a franked distribution and franking credits were received by scheme shareholders (the relevant taxpayers) that participated in the Scheme of Arrangement and who could, therefore, reasonably be expected to receive imputation benefits.

89. Paragraph 177EA(3)(e), in broad terms, requires that in considering the relevant circumstances of a 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 taxpayer to obtain an imputation benefit.

90. In arriving at a conclusion, the Commissioner must have regard to the relevant circumstances of the scheme which include, but are not limited to, the circumstances set out in subsection 177EA(17). The relevant circumstances listed in the subsection encompass a range of diverse matters which, taken individually or in conjunction with other matters, listed or not, could indicate the requisite purpose, that is, that the delivery of the imputation benefit is more than an incidental purpose of the Scheme of Arrangement.

91. The relevant circumstances are that the disposition of Dulux shares was made pursuant to a takeover by Nippon by way of a scheme of arrangement under the *Corporations Act 2001*, voted upon by Dulux shareholders entitled to vote.

92. The Scheme of Arrangement under which Dulux was acquired by Nippon is a normal commercial transaction.

93. Dulux shareholders have different tax and residency profiles. The fully franked dividends were paid to all existing shareholders of Dulux in proportion to the number of shares that each shareholder held on the Record Date and irrespective of their ability to use the relevant franking credits. The dividends allowed Dulux shareholders to share in the accumulated profits of Dulux.

94. Having regard to the relevant circumstances of the scheme, it cannot be concluded that Dulux or Dulux shareholders entered into or carried out the scheme for the purpose of enabling the shareholders to obtain imputation benefits.

95. As the requisite purpose is not present, the Commissioner will not make a determination under paragraph 177EA(5)(b) to deny the whole, or any part, of the imputation benefit which Dulux shareholders received in relation to the dividends.

## **Section 204-30**

96. Section 204-30 applies where a corporate tax entity streams the payment of dividends to its members in such a way that certain shareholders, referred to as favoured members, obtain imputation benefits, and other shareholders, referred to as disadvantaged members, obtain lesser or no imputation benefits, whether or not they receive other benefits. The favoured members are those that derive a greater benefit from imputation benefits than disadvantaged members.

97. For section 204-30 to apply, members to whom distributions are streamed must derive a greater benefit from franking credits than another member entity. The words 'derive a greater benefit from franking credits' are defined in subsection 204-30(8) by reference to the ability of the members to fully use imputation benefits.

98. Under the Scheme of Arrangement, you received an imputation benefit when the dividends were paid. These dividends were paid equally to all Dulux shareholders, and were fully franked regardless of your tax profile. Accordingly, it cannot be said that Dulux selectively directed the flow of franked dividends to those members who obtained the most benefit from the franking credits.

99. As the conditions in subsection 204-30(1) were not met, 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 you in relation to the dividends.

**Appendix 2 – Legislative provisions**

100. This paragraph sets out the details of the provisions ruled upon in this Ruling.

<i>Income Tax Assessment Act 1936</i>	section 6
<i>Income Tax Assessment Act 1936</i>	section 44
<i>Income Tax Assessment Act 1936</i>	section 98
<i>Income Tax Assessment Act 1936</i>	section 99A
<i>Income Tax Assessment Act 1936</i>	section 128B
<i>Income Tax Assessment Act 1936</i>	section 128D
<i>Income Tax Assessment Act 1936</i>	section 177EA
<i>Income Tax Assessment Act 1997</i>	Division 63
<i>Income Tax Assessment Act 1997</i>	section 63-10
<i>Income Tax Assessment Act 1997</i>	Division 67
<i>Income Tax Assessment Act 1997</i>	section 67-25
<i>Income Tax Assessment Act 1997</i>	section 104-10
<i>Income Tax Assessment Act 1997</i>	Division 115
<i>Income Tax Assessment Act 1997</i>	Subdivision 115-A
<i>Income Tax Assessment Act 1997</i>	section 115-10
<i>Income Tax Assessment Act 1997</i>	Subdivision 115-C
<i>Income Tax Assessment Act 1997</i>	section 115-25
<i>Income Tax Assessment Act 1997</i>	section 116-20
<i>Income Tax Assessment Act 1997</i>	section 202-40
<i>Income Tax Assessment Act 1997</i>	section 202-45
<i>Income Tax Assessment Act 1997</i>	section 204-30
<i>Income Tax Assessment Act 1997</i>	Division 207
<i>Income Tax Assessment Act 1997</i>	section 207-20
<i>Income Tax Assessment Act 1997</i>	section 207-35
<i>Income Tax Assessment Act 1997</i>	section 207-45
<i>Income Tax Assessment Act 1997</i>	section 207-70
<i>Income Tax Assessment Act 1997</i>	section 207-75
<i>Income Tax Assessment Act 1997</i>	section 207-145
<i>Income Tax Assessment Act 1997</i>	section 208-195
<i>Income Tax Assessment Act 1997</i>	Division 230
<i>Income Tax Assessment Act 1997</i>	Division 855
<i>Income Tax Assessment Act 1997</i>	section 855-10
<i>Income Tax Assessment Act 1997</i>	section 855-15
<i>Income Tax Assessment Act 1997</i>	section 977-50
<i>Income Tax Assessment Act 1997</i>	section 995-1



**References***Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2006/10; TR 2010/4

*Legislative references:*

- ITAA 1936
- ITAA 1936 6(1)
- ITAA 1936 44(1)
- ITAA 1936 44(1)(a)
- ITAA 1936 44(1)(a)(i)
- ITAA 1936 44(1)(b)
- ITAA 1936 44(1)(b)(i)
- ITAA 1936 44(1)(c)
- ITAA 1936 98
- ITAA 1936 99A
- ITAA 1936 128B(3)(ga)
- ITAA 1936 128B(3E)
- ITAA 1936 128D
- ITAA 1936 Div 1A former Pt IIIAA
- ITAA 1936 former 160APHD
- ITAA 1936 former 160APHE(1)
- ITAA 1936 former 160APHM
- ITAA 1936 former 160APHM(2)
- ITAA 1936 former 160APHN
- ITAA 1936 former 160APHO(1)
- ITAA 1936 former 160APHO(2)(a)
- ITAA 1936 former 160APHO(3)
- ITAA 1936 former 160APHT
- ITAA 1936 former 160APHT(2)
- ITAA 1936 former 160APHU
- ITAA 1936 177EA
- 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)(b)
- ITAA 1936 177EA(17)
- ITAA 1997
- ITAA 1997 Div 63
- ITAA 1997 63-10
- 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 104-10
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(2)
- ITAA 1997 104-10(3)
- ITAA 1997 104-10(3)(b)
- ITAA 1997 104-10(4)
- ITAA 1997 104-165(3)
- ITAA 1997 Div 115
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-10
- ITAA 1997 Subdiv 115-C
- ITAA 1997 115-25(1)
- ITAA 1997 116-20(1)
- ITAA 1997 202-40
- ITAA 1997 202-45
- ITAA 1997 204-30
- ITAA 1997 204-30(1)
- ITAA 1997 204-30(3)
- ITAA 1997 204-30(3)(c)
- ITAA 1997 204-30(8)
- ITAA 1997 Div 207
- ITAA 1997 207-20
- ITAA 1997 207-20(1)
- ITAA 1997 207-20(2)
- ITAA 1997 207-35(1)
- ITAA 1997 207-45
- ITAA 1997 207-70
- ITAA 1997 207-75(2)
- ITAA 1997 207-145(1)
- ITAA 1997 207-145(1)(a)
- ITAA 1997 207-145(1)(e)
- ITAA 1997 207-145(1)(f)
- ITAA 1997 208-195
- ITAA 1997 Div 230
- ITAA 1997 Div 855
- ITAA 1997 855-10
- ITAA 1997 855-10(1)
- ITAA 1997 855-15
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- TAA 1953
- Corporations Act 2001
- Corporations Act 2001 Pt 5.1
- Corporations Act 2001 254T

## ATO references

NO: 1-IWLJZWF

ISSN: 2205-5517

BSL PGI

ATOlaw topic: Administration ~~ Public advice and guidance  
Income tax ~~ Assessable income ~~ Dividend income ~~ Dividend income  
Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT event A1 – Disposal of a CGT asset  
Income tax ~~ Capital gains tax ~~ Capital proceeds  
Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 177EA  
International issues ~~ Non-resident Australian income ~~ Dividends  
Offsets / rebates / credits / benefits ~~ Other offsets / rebates / benefits ~~ Franking tax offset

---

© 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).