

# ***CR 2020/41 - TPG Telecom Limited - scheme of arrangement, special dividend and scrip dividend***

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## Class Ruling

### TPG Telecom Limited – scheme of arrangement, special dividend and scrip dividend

#### **ⓘ Relying on this Ruling**

This publication 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.

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<b>Table of Contents</b>	<b>Paragraph</b>
What this Ruling is about	1
Who this Ruling applies to	4
When this Ruling applies	6
<b>Ruling</b>	7
<b>Scheme</b>	46

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

1. This Ruling sets out the income tax consequences for shareholders of TPG Telecom Limited (TPG) who received the special dividend (Special Dividend) and the scrip dividend (Scrip Dividend) on 13 July 2020, and/or participated in the scheme of arrangement (Scheme) implemented on 13 July 2020 (the Implementation Date).
2. Full details of this scheme are set out in paragraphs 46 to 63 of this Ruling.
3. All legislative references are to provisions of the *Income Tax Assessment Act 1997* unless otherwise indicated.

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

4. This Ruling applies to you if you:
  - were a TPG shareholder who received the Special Dividend and the Scrip Dividend, and/or participated in the Scheme
  - did not acquire your TPG shares pursuant to an employee share scheme
  - are not exempt from Australian income tax
  - acquired your TPG shares on or after 20 September 1985, and
  - held your TPG shares on capital account, that is, your TPG shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)).

5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 46 to 63 of this Ruling.

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

### **When this Ruling applies**

6. This Ruling applies from 1 July 2020 to 30 June 2021.

## **Ruling**

### **The Special Dividend and the Scrip Dividend are assessable income**

7. The Special Dividend of 51.6c per TPG share and the Scrip Dividend of 67.99c for each Tuas Limited share received (together referred to as the 'Dividends') both satisfy the definition of 'dividend' in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936).

8. Demerger relief<sup>1</sup> is not available for the Scrip Dividend (consisting of the transfer of Tuas Limited shares by TPG to you), as the Scrip Dividend does not qualify as a 'demerger' under subsection 125-70(1).

9. If you are a resident of Australia<sup>2</sup>, you are required to include the Dividends in your assessable income under subparagraph 44(1)(a)(i) of the ITAA 1936.

10. If you are a non-resident of Australia (other than those carrying on business in Australia at or through a permanent establishment in Australia to which the dividend was attributable), you are not required to include the Dividends in your assessable income under subparagraph 44(1)(b)(i) of the ITAA 1936. This is because the Dividends, being fully franked, will not be liable for dividend withholding tax.<sup>3</sup> As a result, the Dividends will be treated as your non-assessable non-exempt income.<sup>4</sup>

11. If you are a non-resident who received the Dividends and carrying on business in Australia at or through a permanent establishment in Australia, and where the Dividends are attributable to the permanent establishment, you are required to include the Dividends in your assessable income under both subparagraphs 44(1)(b)(i) and 44(1)(c)(i) of the ITAA 1936. As a result, the Dividends will not be liable for dividend withholding tax.<sup>5</sup>

### **Franking credits on the Dividends**

### **Gross-up and tax offset**

12. Each of the Dividends is a 'frankable distribution'.<sup>6</sup>

<sup>1</sup> Being demerger roll-over under Division 125 and demerger dividend treatment under subsections 44(3) and (4) of the ITAA 1936.

<sup>2</sup> As defined in subsection 6(1) of the ITAA 1936.

<sup>3</sup> Paragraph 128B(3)(ga) of the ITAA 1936.

<sup>4</sup> Section 128D of the ITAA 1936.

<sup>5</sup> Subsection 128B(3E) of the ITAA 1936.

<sup>6</sup> Section 202-40.

13. If you received the Dividends directly and satisfied the residency requirements in section 207-75, you:

- must include the amount of the franking credit on the Dividends in your assessable income, and
- will be entitled to a tax offset equal to the franking credit on the Dividends, under section 207-20,

in the income year the Dividends were paid, subject to you being a 'qualified person' in relation to the Dividends.

14. If you received the Dividends as a trustee of a trust (not being a complying superannuation entity) or as a partnership and you are not a corporate tax entity, you are required to include the amount of the franking credit on the Dividends in your assessable income<sup>7</sup>, subject to you being a qualified person in relation to the Dividends.

15. The relevant members of a partnership or trust to whom a distribution flows indirectly through the partnership or trust are entitled to a tax offset equal to their share of the franking credit on the Dividends included in the assessable income of the partnership or trust.<sup>8</sup>

### **Qualified persons**

16. Each of the Dividends is a 'related payment' for the purposes of former section 160APHN of the ITAA 1936.

17. For the purposes of paragraph 207-145(1)(a), which refers to Division 1A of former Part IIIAA of the ITAA 1936, you will satisfy the holding period rule under former section 160APHO of the ITAA 1936, and thus be a qualified person in relation to the Dividends if, during the period when you held the shares, you had sufficient risks of loss or opportunities for gain in respect of each of your TPG shares<sup>9</sup> for a continuous period of at least 45 days in the 'secondary qualification period'.

18. In determining whether you hold the shares for at least 45 days in the secondary qualification period, you do not count the day of acquisition of the TPG shares, or the day (if any) on which the TPG shares were disposed of. You must exclude any days on which you have materially diminished risks of loss or opportunities for gain in respect of your TPG shares<sup>10</sup>, but this is not taken to break the continuity of your holding period.

19. You will have materially diminished risks of loss or opportunities for gain in respect of your TPG shares from the Scheme Record Date of 7 July 2020.

20. Therefore, you will be a qualified person in relation to the Dividends if, in the secondary qualification period from 18 May 2020 to 6 July 2020 (inclusive), you held your TPG shares and did not have materially diminished risks of loss or opportunities for gain in respect of your TPG shares for a continuous period of at least 45 days (not counting the day on which the share was acquired or the day, if any, on which the share was disposed of).

<sup>7</sup> Subsection 207-35(1).

<sup>8</sup> Section 207-45.

<sup>9</sup> As defined in former section 160APHM of the ITAA 1936.

<sup>10</sup> Within the meaning of former sections 160APHM and 160APHJ of the ITAA 1936.

***Refundable tax offset***

21. The franking credit tax offset to which you are entitled under Division 207 is subject to the refundable tax offset rules in Division 67, provided you are not excluded by the operation of section 67-25.

***Exempting entity***

22. TPG was not an 'exempting entity'<sup>11</sup> or a 'former exempting entity'<sup>12</sup> when the Dividends were paid.

23. Section 208-195 will not apply to deny the gross-up of your assessable income by the amount of the franking credits on the Dividends received by you, nor to deny the franking credit tax offset on the Dividends to which you are otherwise entitled under Division 207.

***Anti-avoidance provisions***

24. 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 you received in relation to the Dividends.

25. The Commissioner will not make a determination under paragraph 204-30(3)(c) to deny the whole, or any part, of the imputation benefit you received in relation to the Dividends.

26. The Dividends were not made as part of a dividend stripping operation for the purposes of paragraph 207-145(1)(d).

***Cost base and reduced cost base of Tuas Limited shares***

27. You acquired the shares in Tuas Limited under the Scrip Dividend when they were transferred by TPG to you on the Implementation Date.<sup>13</sup>

28. Your first element of the cost base and reduced cost base of each share in Tuas Limited will be its market value at the time of acquisition (that is, the Implementation Date).<sup>14</sup> This is 67.99c for each share in Tuas Limited.

***CGT event A1 happened on the sale of TPG shares***

29. CGT event A1 happened when you disposed of each of your TPG shares under the Scheme.<sup>15</sup>

30. The time of CGT event A1 is on the Implementation Date.<sup>16</sup>

<sup>11</sup> Section 208-20.

<sup>12</sup> Section 208-50.

<sup>13</sup> Event number A1 (case 1) of the table in subsection 109-5(2).

<sup>14</sup> Subsection 112-20(1).

<sup>15</sup> Section 104-10.

<sup>16</sup> Paragraph 104-10(3)(b).

31. The capital proceeds from CGT event A1 happening to a TPG share is the market value of the share in Vodafone Hutchison Australia Pty Limited (VHA) you received in respect of the disposal of that TPG share.<sup>17</sup> The market value of a share in VHA (being \$8.2603) was worked out as at the time of CGT event A1, which is on the Implementation Date.

32. The capital proceeds from CGT event A1 happening in respect of each TPG share do not include the Dividends.

33. You made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a TPG share exceeded the cost base of that share.<sup>18</sup>

34. You made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of a TPG share were less than the reduced cost base of that share.<sup>19</sup>

### **Availability of scrip for scrip roll-over if a capital gain is made from the disposal of TPG shares**

35. Subject to the qualification in paragraph 36, if you made a capital gain from the disposal of your TPG shares, you may choose to obtain scrip for scrip roll-over for the capital gain.<sup>20</sup>

36. Scrip for scrip roll-over cannot be chosen if any capital gain you might make from your replacement shares in VHA would be disregarded, except because of a roll-over.<sup>21</sup>

### ***Consequences if scrip for scrip roll-over is chosen in relation to TPG shares***

37. If you choose scrip for scrip roll-over, the capital gain from the disposal of your TPG shares is disregarded.<sup>22</sup>

38. For the purposes of determining the eligibility to make a discount capital gain, the shares in VHA acquired in exchange for TPG shares are taken to have been acquired on the date you acquired, for CGT purposes, the corresponding TPG shares.<sup>23</sup>

### ***Consequences if scrip for scrip roll-over is not chosen, or cannot be chosen, in relation to TPG shares***

39. If you do not choose or cannot choose scrip for scrip roll-over, you take into account any capital gain or capital loss from CGT event A1 happening on the disposal of your TPG shares in working out your net capital gain or net capital loss for the income year in which CGT event A1 happens.<sup>24</sup>

40. If you make a capital gain where roll-over is not chosen, or cannot be chosen, you can treat the capital gain as a 'discount capital gain' provided that the conditions of Subdivision 115-A are met. In particular, the TPG shares that were disposed of must have been acquired by you at least 12 months before the Implementation Date.

<sup>17</sup> Subsection 116-20(1).

<sup>18</sup> Subsection 104-10(4).

<sup>19</sup> Subsection 104-10(4).

<sup>20</sup> Sections 124-780 and 124-785.

<sup>21</sup> Paragraph 124-795(2)(a).

<sup>22</sup> Subsection 124-785(1).

<sup>23</sup> Table item 2 of subsection 115-30(1).

<sup>24</sup> Sections 102-5 and 102-10.

41. You acquired the shares in VHA when they were issued by VHA on the Implementation Date.<sup>25</sup>

### **Cost base and reduced cost base of shares in VHA received in relation to the disposal of TPG shares**

42. The method for calculating the cost base and reduced cost base of the shares in VHA acquired by you in exchange for your TPG shares depends on whether scrip for scrip roll-over is chosen.

#### ***Scrip for scrip roll-over is chosen***

43. Where scrip for scrip roll-over is chosen, the first element of the cost base and reduced cost base of a replacement share in VHA that is received is equal to the cost base and reduced cost base (respectively) of the TPG share for which it was exchanged and for which the roll-over was obtained.<sup>26</sup>

#### ***Scrip for scrip roll-over is not chosen, or cannot be chosen***

44. Where scrip for scrip roll-over is not chosen, or cannot be chosen, the first element of the cost base and reduced cost base of a replacement share in VHA that is received is equal to the market value of the TPG share given in respect of acquiring the share in VHA.<sup>27</sup> The market value of TPG shares is worked out as at the time of the acquisition, which is on the Implementation Date.

### **Foreign resident TPG shareholders**

45. As shares in TPG are not 'taxable Australian property' under table items 1, 2 or 4 of section 855-15, if you are a foreign resident or the trustee of a foreign trust for CGT purposes just before the Implementation Date, you will only make a capital gain or capital loss from the disposal of your TPG shares if they are a CGT asset that:

- you have used at any time in carrying on a business through a permanent establishment in Australia<sup>28</sup>, or
- is covered by subsection 104-165(3) (choosing to disregard a gain or loss on ceasing to be an Australian resident).<sup>29</sup>

### **Scheme**

46. 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.

<sup>25</sup> Table item 2 of section 109-10.

<sup>26</sup> Subsections 124-785(2) and (4).

<sup>27</sup> Subsections 110-25(2) and 110-55(2).

<sup>28</sup> Table item 3 of section 855-15.

<sup>29</sup> Table item 5 of section 855-15.

## TPG

47. TPG was an Australian resident company that was listed on the Australian Securities Exchange. As at 31 December 2019, approximately 8.41% of the shares in TPG were held by non-residents.

48. One of the wholly-owned subsidiaries of TPG was Tuas Limited.

## Scheme of arrangement

49. VHA is an Australian resident company.

50. On 30 August 2018, TPG announced that it had entered into a Scheme Implementation Deed with VHA to implement the Scheme. Under the Scheme, VHA would acquire 100% of the shares in TPG in exchange for issuing one new VHA share per TPG share. The 1-day volume-weighted average price of one new VHA share received by TPG shareholders on the Implementation Date was \$8.2603.

51. The Scheme was approved by TPG's shareholders and the Supreme Court of New South Wales under section 411 of the *Corporations Act 2001*, and it was implemented on the Implementation Date.

52. The Scheme resulted in VHA acquiring all the shares in TPG from TPG shareholders who held their TPG shares as at the Scheme Record Date. Immediately after the Implementation Date, TPG shareholders owned approximately 49.9% of the shares in the merged group.

53. VHA did not hold any TPG shares prior to the Implementation Date.

## Dividends

54. On the Implementation Date, TPG paid the Dividends to its shareholders who held their TPG shares on 1 July 2020.

55. The Special Dividend was a fully franked cash dividend of 51.6c per share paid entirely from TPG's existing cash reserves and borrowings.

56. The Scrip Dividend involved a fully franked in specie distribution of one Tuas Limited share for every two TPG shares, with any fractional entitlements rounded up to the nearest whole Tuas Limited share. The Scrip Dividend was 67.99c for each Tuas Limited share received.

57. The Dividends were debited against TPG's retained profits.

58. VHA did not fund or facilitate the payment of the Dividends. Furthermore, VHA was not obliged to bring about the result that the Dividends would be received by TPG shareholders.

## Other matters

59. All of TPG's shareholders were offered the opportunity to participate in the Scheme, and the Scheme was available to all TPG shareholders on the same terms.

60. TPG did not have a 'significant stakeholder' or a 'common stakeholder' in relation to the Scheme within the meaning of those expressions in section 124-783.

61. Paragraph 124-780(3)(f) is satisfied in respect of the sale of TPG shares to VHA.

62. VHA did not make the choice that TPG shareholders could not obtain Subdivision 124-M roll-over for CGT event A1 happening in relation to the exchange of TPG shares for the purposes of subsection 124-795(4).

63. Shares in TPG are not 'taxable Australian property' under table items 1, 2 or 4 of section 855-15.

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**Commissioner of Taxation**

29 July 2020

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## References

*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2006/10

*Legislative references:*

- ITAA 1936 6(1)
- ITAA 1936 former Pt IIIAA Div 1A
- ITAA 1936 44(1)(a)(i)
- ITAA 1936 44(1)(b)(i)
- ITAA 1936 44(1)(c)(i)
- ITAA 1936 44(3)
- ITAA 1936 128B(3)(ga)
- ITAA 1936 128B(3E)
- ITAA 1936 128D
- ITAA 1936 former 160APHJ
- ITAA 1936 former 160APHM
- ITAA 1936 former 160APHO
- ITAA 1936 former 160APHN
- ITAA 1936 177EA(5)(b)
- ITAA 1997 Div 67
- ITAA 1997 67-25
- ITAA 1997 102-5
- ITAA 1997 102-10
- ITAA 1997 104-10
- ITAA 1997 104-10(4)
- ITAA 1997 104-10(3)(b)
- ITAA 1997 104-165(3)
- ITAA 1997 109-5(2)
- ITAA 1997 109-10
- ITAA 1997 110-25(2)
- ITAA 1997 110-55(2)
- ITAA 1997 112-20(1)
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-30(1)
- ITAA 1997 116-20(1)
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-780
- ITAA 1997 124-780(3)(f)
- ITAA 1997 124-783
- ITAA 1997 124-785
- ITAA 1997 124-785(1)
- ITAA 1997 124-785(2)
- ITAA 1997 124-785(4)
- ITAA 1997 124-795(2)(a)
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- ITAA 1997 125-70(1)
- ITAA 1997 202-40
- ITAA 1997 204-30(3)(c)
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- ITAA 1997 207-20
- ITAA 1997 207-35(1)
- ITAA 1997 207-45
- ITAA 1997 207-75
- ITAA 1997 207-145(1)(a)
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- ITAA 1997 208-20
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- ITAA 1997 995-1(1)
- TAA 1953
- Corporations Act 2001 441

ATO references

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ATOlaw topic: Income tax ~~ Assessable income ~~ Dividend income ~~ Dividend paid to non resident

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 gains tax ~~ Cost base and reduced cost base

Income tax ~~ Capital gains tax ~~ Discount capital gains

Income tax ~~ Capital gains tax ~~ Rollovers ~~ Scrip for scrip – Subdivision 124-M

Income tax ~~ Capital management ~~ 45 day rule

Income tax ~~ Capital management ~~ Assessability of distribution

Income tax ~~ Capital management ~~ Dividend streaming

Income tax ~~ Capital management ~~ Frankability of distribution

Income tax ~~ Capital management ~~ Franking credits / tax offsets

Income tax ~~ Capital management ~~ Qualified person rule

Income tax ~~ Capital management ~~ Anti avoidance rules ~~  
Section 177EA  
International issues ~~ Capital gains tax ~~ Residency ~~ Taxable Australian  
real property – Division 855  
International issues ~~ Non-resident Australian income ~~ Dividends  
Tax integrity measures ~~ Part IVA ~~ Application of section 177EA  
Tax integrity measures ~~ Part IVA ~~ Dividend stripping

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