

CR 2021/38 - Saracen Mineral Holdings Limited - scheme of arrangement and special dividend



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Class Ruling

Saracen Mineral Holdings Limited – scheme of arrangement and special dividend

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 penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out the tax consequences for shareholders of Saracen Mineral Holdings Limited (Saracen) who sold their Saracen shares pursuant to the scheme of arrangement which was announced on 6 October 2020 (Scheme of Arrangement).
2. Full details of this Scheme of Arrangement and the special dividend paid by Saracen on 11 February 2021 (Special Dividend) are set out in paragraphs 40 to 63 of this Ruling.
3. All legislative references in this Ruling are to provisions of the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* (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 Saracen shareholder as at 7:00pm (AEDT) on 5 February 2021 (Scheme Record Date) who participated in the Scheme of Arrangement under which Northern Star Resources Ltd (Northern Star) acquired 100% of the ordinary shares in Saracen

- held your Saracen shares on capital account, that is, you did not hold your Saracen shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)), and
 - received the Special Dividend of 3.8 cents per Saracen share.
5. This Ruling does not apply to you if you:
- acquired your Saracen shares under a Saracen employee share plan on or after 6 October 2020
 - are subject to the investment manager regime in Subdivision 842-I in relation to your Saracen shares, or
 - are subject to the taxation of financial arrangements rules in Division 230 in relation to your Saracen shares.

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

Special Dividend

7. The Special Dividend is a 'dividend' as defined in subsection 6(1).
8. The Special Dividend is a frankable distribution under section 202-40.

Assessability of the Special Dividend, franking credits and tax offsets

Resident shareholders

9. If you are a resident of Australia as defined in subsection 6(1), you include the Special Dividend in your assessable income (paragraph 44(1)(a)).
10. If you satisfy the residency requirements in section 207-75, you include the franking credits attached to the Special Dividend 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).
11. If you received the Special Dividend as a trustee of a trust (not being a complying superannuation entity) or as a partnership and you are not a corporate tax entity, the franking credits attached to the Special Dividend are included in your assessable income, provided you are a qualified person (subsection 207-35(1)).
12. If you are a partner in a partnership or a beneficiary of a trust and the Special Dividend flows indirectly through the partnership or trust to you, you include your share of the Special Dividend in your assessable income and you are entitled to a tax offset equal to your share of the franking credit attached to the Special Dividend, provided both you and the partnership or trust, as is relevant, are each a qualified person (section 207-45 and former subsection 160APHU(1)).
13. The tax offset is refundable, subject to the refundable tax offset rules in Division 67.

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

14. If you are a non-resident and the Special Dividend is attributable to a permanent establishment in Australia, you include the Special Dividend in your assessable income (paragraphs 44(1)(b) and (c)) and you are not liable to pay withholding tax in respect of the Special Dividend (subsection 128B(3E)).

15. If you are also a qualified person (as defined in Division 1A of former Part IIIAA), you include the amount of the franking credits attached to the Special Dividend 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)).

Special Dividend not attributable to a permanent establishment in Australia

16. If you are a non-resident and the Special Dividend is not attributable to a permanent establishment in Australia, the Special Dividend is not included in your assessable income (section 128D) and you are not liable to withholding tax in respect of the Special Dividend (paragraph 128B(3)(ga)).

17. You do not include the amount of the franking credits attached to the Special Dividend 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

18. The Special Dividend you received does not constitute a 'related payment' for the purposes of former section 160APHN.

19. You will be a qualified person in relation to the Special Dividend if, during the period from when you acquired your Saracen shares to 4 February 2021 (inclusive), you held your Saracen shares for a continuous period of at least 45 days during which you did not have 'materially diminished risks of loss or opportunities for gain' (as defined in former section 160APHM) in respect of the shares.

Exempting entity

20. Saracen was not an exempting entity when the Special Dividend was paid to you, nor was it a former exempting entity at that time (Division 208).

21. Section 208-195 will not apply to exclude the application of Division 207.

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

22. CGT event A1 happened to you on 12 February 2021 (Scheme Implementation Date) when you disposed of each of your Saracen shares to Northern Star in accordance with the Scheme of Arrangement (section 104-10).

Capital proceeds

23. The capital proceeds from CGT event A1 happening to a Saracen share is the market value of 0.3763 shares in Northern Star you received in respect of the disposal of that Saracen share (subsection 116-20(1)). The market value of a share in Northern Star was worked out as at the time of CGT event A1, which was on the Scheme Implementation Date.

24. The capital proceeds do not include the Special Dividend.

Capital gain or capital loss

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

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

Discount capital gain

27. If you made a capital gain from the disposal of your Saracen share, you are entitled to treat the capital gain as a 'discount capital gain' provided you acquired, or are taken to have acquired, your Saracen share on or before 12 February 2020 and the other conditions of Division 115 are satisfied (subsection 115-25(1)).

Availability of scrip for scrip roll-over if a capital gain is made

28. Subject to paragraph 29 of this Ruling, if you made a capital gain from the disposal of your Saracen share, you may choose scrip for scrip roll-over (section 124-780).

29. Scrip for scrip roll-over cannot be chosen if any capital gain you might subsequently make from the replacement Northern Star shares would be disregarded on a subsequent CGT event, except because of a roll-over (paragraph 124-795(2)(a)).

Consequences if scrip for scrip roll-over is chosen***Capital gain is disregarded***

30. If you choose scrip for scrip roll-over, the capital gain you made upon the exchange of a Saracen share for replacement Northern Star shares is disregarded (subsection 124-785(1)).

Acquisition date of Northern Star Resources Ltd shares

31. If you choose scrip for scrip roll-over, the acquisition date of the Northern Star shares for the purpose of determining eligibility to make a discount capital gain is taken to be the date you acquired your original Saracen shares that were exchanged for the Northern Star shares (table item 2 of subsection 115-30(1)).

Cost base and reduced cost base of Northern Star Resources Ltd shares received

32. If you choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of a replacement Northern Star share is worked out by reasonably attributing the cost base and reduced cost base (respectively) of your original Saracen shares which

were exchanged and for which the roll-over was obtained (subsections 124-785(2) and 124-785(4)).

33. You calculate the first element of the cost base or reduced cost base of each replacement Northern Star share by dividing the aggregate cost bases or reduced cost bases of your Saracen shares by the number of replacement Northern Star shares you received.

Consequences if you do not, or cannot, choose scrip for scrip roll-over

Capital gain is not disregarded

34. If you do not, or cannot, choose scrip for scrip roll-over, you must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of your Saracen shares (sections 102-5 and 102-10).

35. If you made a capital gain where you do not, or cannot, choose scrip for scrip roll-over, you can treat the capital gain as a 'discount capital gain' provided that the conditions of Subdivision 115-A are met. Saracen shares must have been acquired, or taken to have been acquired, by you at least 12 months before the Scheme Implementation Date (section 115-25).

Acquisition date of Northern Star Resources Ltd shares

36. Northern Star shares were acquired by you on the Scheme Implementation Date if you do not, or cannot, choose scrip for scrip roll-over (table item 2 of section 109-10).

Cost base and reduced cost base of Northern Star Resources Ltd shares received

37. If you do not, or cannot, choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of each replacement Northern Star share received is equal to the market value of the part of the Saracen shares given in respect of acquiring each Northern Star share (subsections 110-25(2) and 110-55(2)). The market value of the Saracen shares is worked out as at the time of the acquisition of Northern Star shares on the Implementation Date.

Non-resident shareholders

38. If you were a non-resident just before CGT event A1 happened to your Saracen shares on 12 February 2021, you disregard any capital gain or capital loss you made as a result of CGT event A1 happening as long as your Saracen shares were not taxable Australian property (section 855-10).

Anti-avoidance provisions

39. The Commissioner will not make a determination under paragraphs 177EA(5)(b) or 204-30(3)(c) to deny the whole, or any part, of the imputation benefit you received in relation to the Special Dividend.

Scheme

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

41. Other information referred to is the Scheme Implementation Deed released on the Australian Securities Exchange (ASX) on 6 October 2020, and the Scheme Booklet released on the ASX on 10 December 2020.

Relevant entities***Saracen Mineral Holdings Limited***

42. Saracen is an Australian-resident company incorporated in 1987 and listed on the ASX since 1989. Saracen is a gold producer and is headquartered in Perth, Western Australia.

43. Saracen has a single-class share-capital structure consisting of ordinary shares. As at 30 November 2020, Saracen had 1,107,636,918 ordinary shares on issue.

44. Saracen shareholders included both residents and non-residents. At no time since incorporation did non-resident Saracen shareholders own 95% or more of the shares in Saracen.

45. Saracen has not previously paid dividends.

Northern Star Resources Ltd

46. Northern Star is an Australian-incorporated ASX-listed company. It is a gold producer and is headquartered in Subiaco, Western Australia.

47. Northern Star has previously paid fully franked dividends.

Scheme of Arrangement

48. On 6 October 2020, Saracen announced it had entered into a Scheme Implementation Deed with Northern Star. Northern Star proposed to acquire all the issued shares of Saracen by way of a scheme of arrangement under Part 5.1 of the *Corporations Act 2001* by issuing 0.3763 fully-paid Northern Star ordinary shares for each Saracen share.

49. Under the Scheme of Arrangement, each person registered as a holder of Saracen shares on the Scheme Record Date (a scheme shareholder) was entitled to participate in the Scheme of Arrangement.

50. Scheme shareholders agreed to transfer their Saracen shares to Northern Star in return for receiving the Scheme Consideration on the Scheme Implementation Date. The Scheme Consideration per Saracen share was 0.3763 fully-paid Northern Star ordinary shares.

51. Saracen shares were removed from official quotation on the ASX on 15 February 2021 and Saracen was renamed as Northern Star (Saracen) Pty Ltd.

Special Dividend

52. On 1 February 2021, Saracen declared a Special Dividend of 3.8 cents per share which was fully franked and payable to Saracen shareholders who held their shares at 7:00pm (AEDT) 3 February 2021 (Special Dividend Record Date).

53. Saracen paid the Special Dividend on 11 February 2021.

54. The Special Dividend was subject to the Scheme of Arrangement becoming effective. The Scheme of Arrangement was not conditional on Northern Star or a third-party financing or facilitating payment of the Special Dividend, or Northern Star or a third party being obliged to bring about the result that the Special Dividend would be received by Saracen shareholders.

55. The Special Dividend was declared and paid by Saracen in its absolute discretion. Neither Saracen nor any of its associates had any influence or control over the declaration and payment of the Special Dividend.

56. The Special Dividend complied with the requirements of the *Corporations Act 2001*, including section 254T of that Act. The Special Dividend was entirely debited against Saracen's retained earnings and not against an amount standing to the credit of Saracen's share capital account. It was funded from Saracen's existing cash reserves.

Other matters

57. All Saracen shareholders were offered the opportunity to participate in the Scheme of Arrangement, and the Scheme of Arrangement was available to all Saracen shareholders on the same terms.

58. All dealings between Saracen shareholders and Northern Star were at arm's length.

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

60. Paragraph 124-780(3)(f) is satisfied in respect of the sale of Saracen shares to Northern Star.

61. Northern Star will not make the choice that Saracen shareholders could not obtain Subdivision 124-M roll-over for CGT event A1 happening in relation to the exchange of Saracen shares for the purposes of subsection 124-795(4).

62. The aggregate market value of Saracen's taxable Australian property assets exceed the aggregate market value of Saracen's non-taxable Australian property assets.

Key dates

63. The following is a summary of the key dates for the Scheme of Arrangement:

Announcement date	6 October 2020
Scheme Implementation Deed executed	6 October 2020
First Court Hearing (lodged Scheme Booklet with court)	10 December 2020
Scheme meeting	15 January 2021
Second Court hearing	2 February 2021
Effective Date	3 February 2021
Special Dividend Record Date	7.00pm (AEDT) 3 February 2021
Scheme Record Date	7:00pm (AEDT) 5 February 2021
Special Dividend Payment Date	11 February 2021
Scheme Implementation Date	12 February 2021
Saracen shares delisted from ASX	15 February 2021

Commissioner of Taxation26 May 2021

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.*

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Special Dividend

64. 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.

65. The Special Dividend is a distribution that was not debited against an amount standing to the credit of Saracen's share capital account. Accordingly, the Special Dividend is a dividend for the purposes of subsection 6(1).

Assessability of Special Dividend and withholding tax

Resident shareholders

66. 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)).

67. If you are a resident shareholder, the Special Dividend you received is included in your assessable income as it was paid out of profits derived by Saracen.

Non-resident shareholders

Special Dividend attributable to a permanent establishment in Australia

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

Special Dividend not attributable to a permanent establishment in Australia

69. 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)).

70. However, if you are a non-resident and the Special Dividend is not attributable to a permanent establishment in Australia at or through which you carry on business, the Special Dividend is not included in your assessable income (section 128D) and is not subject to withholding tax (paragraph 128B(3)(ga)).

Special Dividend can be franked

71. A distribution is a frankable distribution to the extent it is not unfrankable (section 202-40). Section 202-45 sets out the circumstances under which an amount or distribution is taken to be unfrankable.

72. The Special Dividend is a frankable distribution as none of the circumstances listed in section 202-45 apply to the Special Dividend.

Gross-up and tax offset

73. If you are a qualified person in relation to the Special Dividend, your assessable income includes the amount of the franking credit (subsection 207-20(1)) and you will be entitled to a tax offset equal to the franking credit on the distribution (subsection 207-20(2)). This applies to both resident shareholders and non-resident shareholders that carry on business in Australia at or through a permanent establishment in Australia (where the dividend is attributable to the permanent establishment).

74. 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 Special Dividend (subsection 207-35(1)).

75. Where you are not a qualified person in relation to the Special Dividend, you do not include the franking credit attached to the Special Dividend in your assessable income (paragraph 207-145(1)(e)) and you are not entitled to a tax offset equal to the amount of the franking credit attached to the Special Dividend (paragraph 207-145(1)(f)).

Qualified person

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

77. The test of what constitutes a qualified person is provided in former subsection 160APHO(1). Broadly, if you were not under an obligation to make a related payment in relation to the dividend, you will have to satisfy the holding period rule in relation to the primary qualification period. If you were under an obligation to make a related payment in relation to the dividend, you will have to satisfy the holding period requirement within the secondary qualification period.

78. A partner in a partnership or the beneficiary of a trust cannot be a qualified person in relation to their share of the 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

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

80. As the Scheme Consideration was not affected by the Special Dividend, the Commissioner considers that scheme shareholders were not under an obligation to make a related payment in relation to the Special Dividend.

Primary qualification period

81. The primary qualification period is the period beginning on the day after the day on which the shareholder acquired the shares and ending 45 days after the day on which a share became ex dividend (former section 160APHD).

82. 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 the acquisition by a person of a Saracen share entitled the person to receive the Special Dividend was the record date for the Special Dividend of 3 February 2021. It follows that Saracen shares became ex dividend on 4 February 2021.

Holding period rule

83. If you are an individual who has franking credit offsets not exceeding \$5,000 for the income year ending 30 June 2021, you do not need to satisfy the holding period rule in relation to the Special Dividend (former subsection 160APHT(1)).

84. For all other shareholders, the holding period rule requires you to hold your 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)).

85. Any days you had a materially diminished risks of loss or opportunities for gain in respect of the shares are excluded (former subsection 160APHO(3)).

86. 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 Saracen shares if your net position on that day in relation to the shares has less than 30% of those risks and opportunities.

87. Under the Scheme of Arrangement, you no longer held your Saracen shares at risk on the Scheme Record Date (when you became committed to dispose of your Saracen shares to Northern Star under the Scheme of Arrangement).

88. Accordingly, if you acquired your Saracen shares on or before 21 December 2020 and disposed of them to Northern Star under the Scheme of Arrangement, you satisfied the holding period rule if you held those shares at risk for at least 45 continuous days during the period from when you acquired your Saracen shares to 4 February 2021.

Refundable tax offset

89. Your entitlement to the tax offsets under Division 207 in relation to the Special Dividend is subject to the refundable tax offset rules in Division 67, provided you are not excluded by the operation of section 67-25.

90. 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))
- trustee of a trust who is liable to be assessed under sections 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 (1D)), or
- non-resident that carries on business in Australia at or through a permanent establishment of the entity in Australia (subsection 67-25(1DA)).

91. 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 (table item 40 of section 63-10).

Exempting entity

92. Saracen was not an exempting entity or a former exempting entity at the time when the Special Dividend was paid to you. Therefore, section 208-195 does not apply to deny the gross-up of your assessable income by the amount of the franking credit attached to the Special Dividend you received, nor deny the tax offset to which you are otherwise entitled pursuant to Division 207 at the time when the Special Dividend was paid.

Capital gains tax consequences**CGT event A1**

93. 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)).

94. The disposal of Saracen 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 Scheme Implementation Date when there was a change of ownership in a Saracen share from you to Northern Star under the Scheme of Arrangement (subsections 104-10(1) and (2) and paragraph 104-10(3)(b)).

95. 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

96. 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)).

97. 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.¹

98. The Scheme of Arrangement was not conditional on declaration of the Special Dividend, Northern Star or a third party financing or facilitating payment of the Special Dividend, or Northern Star or a third party being obliged to bring about the result that the Special Dividend would be paid to exiting shareholders.

99. The Commissioner considers that the Special Dividend was not received in respect of the disposal of Saracen shares under the Scheme of Arrangement, having regard to all of the relevant circumstances. Accordingly, the Special Dividend does not form part of the capital proceeds in respect of CGT event A1 happening.

100. Therefore, the capital proceeds you received from CGT event A1 happening on disposal of each Saracen share is the Scheme Consideration of 0.3763 shares in Northern Star you received.

¹ 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.*

Capital gain or capital loss

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

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

103. The cost base and reduced cost base of each Saracen share depends on your individual circumstances.

Discount capital gain

104. If you make a capital gain from the disposal of your Saracen 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, or were taken to have acquired, your Saracen share on or before 12 February 2020 which was at least 12 months prior to CGT event A1 happening (subsection 115-25(1)).

Non-resident shareholders

105. 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)).

106. 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 before CGT event A1 happened to your Saracen 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 Saracen shares were:

- an indirect Australian real property interest (table item 2 of section 855-15)
- used at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- covered by subsection 104-165(3) (table item 5 of section 855-15).

107. Section 855-25 provides that a membership interest (that is, shares) held by an entity (that is, foreign-resident Saracen shareholder) in another entity (that is, Saracen) is an indirect Australian real property interest if the interest passes the:

- non-portfolio test (section 960-195), and
- principal asset test (section 855-30).

108. The non-portfolio test requires that a foreign-resident shareholder, and their associates, together hold 10% or more of the issued shares in an entity at the time the shares are disposed or for at least 12 months during the 24 months prior to disposal of the shares.

109. The principal asset test requires that the sum of the market values of the entity's (that is, Saracen) assets that are taxable Australian real property exceeds the sum of the market values of the entity's assets that are not taxable Australian real property.

110. The aggregate market value of Saracen's taxable Australian property assets exceed the aggregate market value of Saracen's non-taxable Australian property assets.

111. Accordingly, if you are a non-resident, or the trustee of a non-resident trust for CGT purposes that holds, together with your associates, a 10% or more interest in Saracen Shares (at the time of disposal or for at least 12 months during the 24 months prior to disposal of their Saracen Shares) you will not disregard a capital gain or capital loss from a CGT event happening to your Saracen shares with respect to the scheme.

Availability of scrip for scrip roll-over if capital gain is made

112. The tax consequences that arise concerning the scheme that is the subject of this Ruling are outlined in paragraphs 7 to 39 of this Ruling.

113. One consequence identified in this Ruling is the availability of scrip for scrip roll-over under Subdivision 124-M. The roll-over enables a shareholder to disregard a capital gain from a share that is disposed of if the shareholder receives a replacement share in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement share.

114. Subdivision 124-M contains a number of conditions for, and exceptions to, a shareholder being eligible to choose scrip for scrip roll-over. The main requirements that are relevant to the scheme that is subject to this Ruling are:

- an entity exchanges shares in a company for shares in another company
- the exchange is in consequence of a single arrangement that satisfies subsections 124-780(2) or (2A)
- conditions for the roll-over are satisfied
- further conditions, if applicable, are satisfied, and
- exceptions to obtaining scrip for scrip roll-over are not applicable.

115. The scheme that is the subject of this Ruling satisfies the requirements for roll-over under Subdivision 124-M.

Anti-avoidance provisions

Section 177EA

116. Section 177EA is a general anti-avoidance provision that applies where one of the purposes (other than an incidental purpose) of a particular scheme is to enable a taxpayer to obtain an imputation benefit.

117. Saracen shareholders have different tax and residency profiles. The fully franked Special Dividend was paid to all existing shareholders of Saracen 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 Special Dividend allowed Saracen shareholders to share in the accumulated profits of Saracen.

118. It is considered that the conditions for applying section 177EA are not satisfied in relation to the payment of the Special Dividend. Therefore, the Commissioner will not

make a determination under paragraph 177EA(5)(b) to deny the whole, or part, of the imputation benefits received in relation to the Special Dividend.

Section 204-30

119. 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.

120. 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.

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

122. 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 Special Dividend.

Appendix 2 – Legislative provisions

123. This paragraph sets out the details of the provisions ruled upon or referenced in this Ruling.

<i>Income Tax Assessment Act 1936</i>	subsection 6(1)
<i>Income Tax Assessment Act 1936</i>	subsection 44(1)
<i>Income Tax Assessment Act 1936</i>	paragraph 44(1)(a)
<i>Income Tax Assessment Act 1936</i>	subparagraph 44(1)(a)(i)
<i>Income Tax Assessment Act 1936</i>	paragraph 44(1)(b)
<i>Income Tax Assessment Act 1936</i>	subparagraph 44(1)(b)(i)
<i>Income Tax Assessment Act 1936</i>	paragraph 44(1)(c)
<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>	paragraph 128B(3)(ga)
<i>Income Tax Assessment Act 1936</i>	subsection 128B(3E)
<i>Income Tax Assessment Act 1936</i>	section 128D
<i>Income Tax Assessment Act 1936</i>	Division 1A of former Part IIIAA
<i>Income Tax Assessment Act 1936</i>	former section 160APHD
<i>Income Tax Assessment Act 1936</i>	former subsection 160APHE(1)
<i>Income Tax Assessment Act 1936</i>	former section 160APHM
<i>Income Tax Assessment Act 1936</i>	former subsection 160APHM(2)
<i>Income Tax Assessment Act 1936</i>	former section 160APHN
<i>Income Tax Assessment Act 1936</i>	former subsection 160APHO(1)
<i>Income Tax Assessment Act 1936</i>	former paragraph 160APHO(2)(a)
<i>Income Tax Assessment Act 1936</i>	former subsection 160APHO(3)
<i>Income Tax Assessment Act 1936</i>	former subsection 160APHT(1)
<i>Income Tax Assessment Act 1936</i>	former section 160APHU
<i>Income Tax Assessment Act 1936</i>	former subsection 160APHU(1)
<i>Income Tax Assessment Act 1936</i>	section 177EA
<i>Income Tax Assessment Act 1936</i>	paragraph 177EA(5)(b)
<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>	subsection 67-25(1A)
<i>Income Tax Assessment Act 1997</i>	subsection 67-25(1B)
<i>Income Tax Assessment Act 1997</i>	subsection 67-25(1C)
<i>Income Tax Assessment Act 1997</i>	subsection 67-25(1D)
<i>Income Tax Assessment Act 1997</i>	subsection 67-25(1DA)
<i>Income Tax Assessment Act 1997</i>	section 102-5
<i>Income Tax Assessment Act 1997</i>	section 102-10
<i>Income Tax Assessment Act 1997</i>	section 104-10

<i>Income Tax Assessment Act 1997</i>	subsection 104-10(1)
<i>Income Tax Assessment Act 1997</i>	subsection 104-10(2)
<i>Income Tax Assessment Act 1997</i>	subsection 104-10(3)
<i>Income Tax Assessment Act 1997</i>	paragraph 104-10(3)(b)
<i>Income Tax Assessment Act 1997</i>	subsection 104-10(4)
<i>Income Tax Assessment Act 1997</i>	subsection 104-165(3)
<i>Income Tax Assessment Act 1997</i>	section 109-10
<i>Income Tax Assessment Act 1997</i>	subsection 110-25(2)
<i>Income Tax Assessment Act 1997</i>	subsection 110-55(2)
<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>	subsection 115-20(1)
<i>Income Tax Assessment Act 1997</i>	subsection 115-25
<i>Income Tax Assessment Act 1997</i>	subsection 115-25(1)
<i>Income Tax Assessment Act 1997</i>	subsection 115-30(1)
<i>Income Tax Assessment Act 1997</i>	Subdivision 115-C
<i>Income Tax Assessment Act 1997</i>	subsection 116-20(1)
<i>Income Tax Assessment Act 1997</i>	Subdivision 124-M
<i>Income Tax Assessment Act 1997</i>	section 124-780
<i>Income Tax Assessment Act 1997</i>	subsection 124-780(2)
<i>Income Tax Assessment Act 1997</i>	subsection 124-780(2A)
<i>Income Tax Assessment Act 1997</i>	paragraph 124-780(3)(f)
<i>Income Tax Assessment Act 1997</i>	section 124-783
<i>Income Tax Assessment Act 1997</i>	subsection 124-785(1)
<i>Income Tax Assessment Act 1997</i>	subsection 124-785(2)
<i>Income Tax Assessment Act 1997</i>	subsection 124-785(4)
<i>Income Tax Assessment Act 1997</i>	paragraph 124-795(2)(a)
<i>Income Tax Assessment Act 1997</i>	subsection 124-795(4)
<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>	subsection 204-30(1)
<i>Income Tax Assessment Act 1997</i>	paragraph 204-30(3)(c)
<i>Income Tax Assessment Act 1997</i>	subsection 204-30(8)
<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>	subsection 207-20(1)
<i>Income Tax Assessment Act 1997</i>	subsection 207-20(2)
<i>Income Tax Assessment Act 1997</i>	subsection 207-35(1)
<i>Income Tax Assessment Act 1997</i>	section 207-45
<i>Income Tax Assessment Act 1997</i>	section 207-70

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<i>Income Tax Assessment Act 1997</i>	section 207-75
<i>Income Tax Assessment Act 1997</i>	subsection 207-75(2)
<i>Income Tax Assessment Act 1997</i>	subsection 207-145(1)
<i>Income Tax Assessment Act 1997</i>	paragraph 207-145(1)(a)
<i>Income Tax Assessment Act 1997</i>	paragraph 207-145(1)(e)
<i>Income Tax Assessment Act 1997</i>	paragraph 207-145(1)(f)
<i>Income Tax Assessment Act 1997</i>	Division 208
<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>	Subdivision 842-I
<i>Income Tax Assessment Act 1997</i>	section 855-10
<i>Income Tax Assessment Act 1997</i>	subsection 855-10(1)
<i>Income Tax Assessment Act 1997</i>	section 855-15
<i>Income Tax Assessment Act 1997</i>	section 855-25
<i>Income Tax Assessment Act 1997</i>	section 855-30
<i>Income Tax Assessment Act 1997</i>	section 960-195
<i>Income Tax Assessment Act 1997</i>	section 977-50
<i>Income Tax Assessment Act 1997</i>	subsection 995-1(1)

References*Previous draft:*

Not previously issued as a draft

Legislative references:

- TAA 1953
- Corporations Act 2001 Pt 5.1
- Corporations Act 2001 254T

Related Rulings/Determinations:

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ATO references

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