


CR 2022/11 - Huon Aquaculture Group Limited - scheme of arrangement and special dividend

 This cover sheet is provided for information only. It does not form part of *CR 2022/11 - Huon Aquaculture Group Limited - scheme of arrangement and special dividend*



Status: **legally binding**

Class Ruling

Huon Aquaculture Group Limited – scheme of arrangement and special dividend

📌 Relying on this Ruling

This publication (excluding appendix) 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.

Table of Contents	Paragraph
What this Ruling is about	1
Who this Ruling applies to	4
When this Ruling applies	6
Ruling	7
Scheme	25
Appendix – Explanation	49

What this Ruling is about

1. This Ruling sets out the income tax consequences of the Scheme of Arrangement implemented between JBS Aquaculture Pty Ltd (JBS) and Huon Aquaculture Group Limited (Huon) on 17 November 2021 and the Special Dividend paid by Huon on 9 November 2021 as a result of the scheme being approved.
2. Full details of this scheme are set out in paragraphs 25 to 46 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997), unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - were a Huon shareholder on 2 November 2021 (Record Date for Special Dividend) and 10 November 2021 (Scheme Record Date) who participated in the Scheme of Arrangement under which JBS acquired 100% of the shares in Huon
 - are not exempt from Australian income tax
 - are a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) or a non-resident (other than a

Status: **legally binding**

non-resident who carried on a business at or through a permanent establishment in Australia)

- held your Huon shares on capital account, that is, the shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1))
- disposed of your Huon shares under the Scheme of Arrangement between JBS and Huon pursuant to Part 5.1 of the *Corporations Act 2001* (Corporations Act), and
- received the Special Dividend.

5. This Ruling does not apply to you if you:

- are subject to the investment manager regime in Subdivision 842-I in respect to your Huon shares
- acquired your JBS shares pursuant to an employee share plan
- are subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on your Huon shares, or
- disposed of your Huon shares under the Share Sale Agreement.

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 to the income year beginning 1 July 2021 and ending 30 June 2022.

Ruling

Special Dividend

7. The Special Dividend of \$0.125 per share is a dividend as defined in subsection 6(1) of the ITAA 1936.

8. The Special Dividend is a frankable distribution pursuant to section 202-40.

Assessability of the Special Dividend, franking credits and tax offsets

Residents

9. If you are a resident of Australia as defined in subsection 6(1) of the ITAA 1936, you are required to include the Special Dividend in your assessable income (subparagraph 44(1)(a)(i) of the ITAA 1936).

10. If you satisfy the residency requirements in section 207-75, you include the franking credit 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 IIIA of the ITAA 1936).

11. The tax offset is refundable, subject to the refundable tax offset rules in Division 67.

Status: **legally binding**

Non-resident shareholders

12. If you are a non-resident and the Special Dividend is not attributable to a permanent establishment in Australia, it is not included in your assessable income (section 128D of the ITAA 1936) and you are not liable to withholding tax in respect of the dividend (paragraph 128B(3)(ga) of the ITAA 1936).

13. 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

14. The Special Dividend you received as part of the Scheme of Arrangement constitutes a 'related payment' for the purposes of former section 160APHN of the ITAA 1936.

15. You will be a qualified person in relation to the Special Dividend if, during the period from 19 September 2021 to 9 November 2021 (inclusive) you held your Huon shares 'at risk' 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 of the ITAA 1936) in respect of the shares.

Exempting entity

16. Huon 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). Therefore section 208-195 will 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 to deny the tax offset to which you are otherwise entitled to under Division 207 at the time when the Special Dividend was paid.

Section 177EA of the ITAA 1936

17. The Commissioner will not make a determination under paragraph 177EA(5)(b) of the ITAA 1936 to deny the whole, or any part, of the imputation benefit received by participants of the Scheme of Arrangement in relation to the Special Dividend.

Section 204-30

18. The Commissioner will not make a determination under paragraph 204-30(3)(c) to deny the whole, or any part, of the imputation benefit received in relation to the Special Dividend received by participants in the Scheme of Arrangement.

Capital gains tax consequences**CGT event A1**

19. CGT event A1 happened on 17 November 2021 (Scheme Implementation Date) when you disposed of each of your Huon shares to JBS in accordance with the Scheme of Arrangement (section 104-10).

Status: **legally binding**

Capital proceeds

20. The Scheme Consideration of \$3.725 you received for each Huon share is your capital proceeds from CGT event A1 happening (subsection 116-20(1)).
21. The capital proceeds do not include the Special Dividend.

Capital gain or capital loss

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

Non-resident shareholders

24. If you are a non-resident shareholder just before CGT event A1 happened to your Huon shares on 17 November 2021, you disregard any capital gain or capital loss made as a result of CGT event A1 happening if your shares were not taxable Australian property for the purposes of section 855-10.

Scheme

25. 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.

Background

Huon Aquaculture Group Limited

26. Huon is a public company that was listed on the Australian Securities Exchange from 3 November 2014 to 19 November 2021.
27. Huon is an Australian resident for tax purposes.
28. Huon is a vertically-integrated salmon production business with operations that span all aspects of the supply chain.
29. As at 29 October 2021, Huon had approximately 110,660,435 ordinary shares (Huon Shares) and 116,415 performance rights on issue. Each ordinary share carried the same rights in relation to voting power, dividends and capital distributions.

JBS Aquaculture Pty Ltd

30. JBS is an Australian proprietary company incorporated on 2 September 2021. It is a subsidiary of Industry Park Pty. Ltd., which is a subsidiary of JBS S.A., a company incorporated in Brazil and listed on the Sao Paulo Stock Exchange.
31. JBS is an Australian resident for tax purposes.
32. JBS S.A. and its subsidiaries (the JBS Group) are processors of fresh beef, chicken, pork and value-added food products with a presence in several countries.

Status: **legally binding**

33. Prior to the transactions described in this Ruling, neither JBS S.A. nor its subsidiaries held any shares in Huon.

Transactions

34. On 6 August 2021:

- Huon and JBS entered into a Scheme Implementation Agreement (SIA) whereby JBS would acquire the Huon shares held by Huon shareholders via a Scheme of Arrangement (other than the Huon shares held by the largest shareholder, Surveyors Investments Pty Ltd (Surveyors)), and
- a Share Sale Agreement (SSA) was entered into for the purpose of agreeing to the transfer of all shares in Surveyors (Surveyors Shares) to JBS.

Scheme of Arrangement

35. To give effect to the SIA, a Scheme of Arrangement was proposed to Huon shareholders pursuant to Part 5.1 of the Corporations Act at a shareholder meeting on 29 October 2021.

36. Under the terms of the Scheme of Arrangement, each share in Huon held by a Huon Shareholder (other than the Huon Shares held by Surveyors) was to be transferred to JBS.

37. In consideration for each share, JBS agreed to pay Huon shareholders (other than Surveyors) \$3.85 per share subject to a reduction for any Special Dividend paid prior to the Scheme Implementation Date (Scheme Consideration).

Share Sale Agreement

38. Under the terms of the SSA, in consideration for each of the Surveyor's Shares, JBS agreed to pay a price equal to \$3.85 per Huon Share held by Surveyors, subject to a reduction for any Special Dividend paid prior to the Scheme Implementation Date.

39. As the acquisition would lead to JBS acquiring a relevant interest in 40.53% of the issued shares in Huon, Huon Shareholder approval was sought pursuant to subsection 611(7) of the Corporations Act at a shareholder meeting on 29 October 2021.

Shareholder meeting and implementation

40. At the shareholder meeting on 29 October 2021, Huon shareholders approved the Scheme of Arrangement and the SSA.

41. On 3 November 2021 (Effective Date), the Federal Court of Australia approved the Scheme of Arrangement and provided orders pursuant to Part 5.1 of the Corporations Act.

42. Entitlement to the Scheme Consideration for Huon shareholders (other than Surveyors) occurred on the Scheme Record Date (10 November 2021).

43. The transfer of Huon Shares (except for the Huon Shares held by Surveyors) to JBS under the Scheme of Arrangement, and the transfer of all of the Surveyors Shares to JBS under the SSA, occurred on the Scheme Implementation Date of 17 November 2021.

Status: **legally binding**

44. This resulted in Huon becoming a wholly-owned subsidiary of JBS.

Special Dividend

45. On 9 November 2021, the Huon board paid a fully franked special dividend of \$0.125 cents per Huon Share. Entitlements to the Special Dividend was determined on 2 November 2021 (Special Dividend Record Date). The payment of the Special Dividend reduced the Scheme Consideration to \$3.725 per Huon Share. The amount paid for the Surveyors Shares was also reduced to \$3.725 per Huon Share held by Surveyors.

46. The Special Dividend was:

- sourced from a current year accounting profit in Huon resulting from a dividend paid from its wholly-owned subsidiary Huon Aquaculture Company Pty Ltd in October 2021;
- not funded, directly or indirectly, by JBS or any of its associates; and
- fully franked.

47. Neither JBS nor any of its associates had any influence or control over the declaration and payment of the Special Dividend. The decision to pay the Special Dividend was entirely at the discretion of the Huon Board.

Key dates

48. The following is a summary of the key dates for the Scheme of Arrangement and the Special Dividend:

Date	Event
6 August 2021	Scheme Implementation Agreement executed
6 August 2021	Announcement date
22 September 2021	First Court hearing (lodged Scheme Booklet with Court)
28 September 2021	Dispatch of Scheme booklet to Huon shareholders
29 October 2021	Scheme meeting
2 November 2021	Record Date for Special Dividend
3 November 2021	Second Court Date
9 November 2021	Special Dividend Payment Date
10 November 2021	Scheme Record Date
17 November 2021	Scheme Implementation Date

Commissioner of Taxation

16 February 2022

 Status: **not legally binding**

Appendix – 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.*

Table of Contents	Paragraph
Special Dividend	49
Assessability of the Special Dividend, franking credits and tax offsets	52
<i>Residents</i>	52
<i>Non-residents</i>	54
Gross-up and tax offset	60
<i>Qualified person rules</i>	64
<i>Related payment rule</i>	68
<i>Holding period rule</i>	72
Refundable tax offset	79
Anti-avoidance provisions	82
<i>Section 177EA of the ITAA 1936</i>	82
<i>Section 204-30</i>	85
Capital gains tax consequences	89
<i>CGT event A1</i>	89
<i>Capital proceeds</i>	94
<i>Capital gain or capital loss</i>	99
<i>Non-resident shareholders</i>	102

Special Dividend

49. The term ‘dividend’ is defined in subsection 6(1) of the ITAA 1936 to include any distribution made by a company to any of its shareholders, whether in money or other property. However, paragraph (d) of the definition of dividend in subsection 6(1) of the ITAA 1936 excludes a distribution debited against an amount standing to the credit of the share capital account of the company.

50. The payment of the Special Dividend is a distribution of money which Huon made to its shareholders. It is sourced entirely from Huon’s expected current year profits and Huon did not debit the Special Dividend against its share capital account.

51. Therefore, the exclusion in paragraph (d) of the definition of dividend in subsection 6(1) of the ITAA 1936 does not apply and the Special Dividend constitutes a dividend for the purposes of subsection 6(1) of the ITAA 1936.

Status: **not legally binding**

Assessability of the Special Dividend, franking credits and tax offsets

Residents

52. 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) of the ITAA 1936).

53. As the Special Dividend was paid to shareholders out of profits derived by Huon, shareholders who are residents of Australia as defined in subsection 6(1) of the ITAA 1936 are required to include the Special Dividend in their assessable income under subparagraph 44(1)(a)(i) of the ITAA 1936.

Non-residents

54. Subparagraph 44(1)(b)(i) of the ITAA 1936 includes in the assessable income of a non-resident shareholder in a company, dividends paid to it out of profits derived by the company from sources in Australia.

55. However, subsection 44(1) of the ITAA 1936 does not apply to a dividend to the extent to which it is included in, or excluded from, assessable income by another provision that expressly deals with dividends in the ITAA 1936 or the ITAA 1997.

56. Subsection 128B(1) of the ITAA 1936 imposes Australian withholding tax on income which consists of a dividend paid by a resident company to a non-resident on or after 1 January 1968.

57. Subparagraph 128B(3)(ga)(i) of the ITAA 1936 excludes from subsection 128B(1) of the ITAA 1936 income derived by a non-resident that consists of the franked part of a dividend. As the Special Dividend was fully franked, it will not be subject to Australian withholding tax when derived by a non-resident shareholder.

58. Section 128D of the ITAA 1936 operates to treat the Special Dividend as non-assessable non-exempt income.

59. Accordingly, a non-resident who received the fully franked Special Dividend (other than those shareholders who received the Special Dividend in carrying on business in Australia at or through a permanent establishment in Australia) is not required to include it as assessable income pursuant to subparagraph 44(1)(b)(i) of the ITAA 1936 (section 128D of the ITAA 1936), and is not liable to Australian withholding tax in relation to the Special Dividend (subparagraph 128B(3)(ga)(i) of the ITAA 1936).

Gross up and tax offset

60. Section 207-20 provides:

- If an entity makes a franked distribution to another entity, the assessable income of the receiving entity, for the income year in which the distribution is made, includes the amount of the franking credit on the distribution. This is in addition to any other amount included in the receiving entity's assessable income in relation to the distribution under any other provision of this Act.
- The receiving entity is entitled to a tax offset for the income year in which the distribution is made. The tax offset is equal to the franking credit on the distribution.

61. Where a shareholder who participated in the Scheme of Arrangement receives a franked distribution directly, satisfies the residency requirement in section 207-75 and is a 'qualified person' in relation to the franked distribution, the assessable income of the

Status: **not legally binding**

shareholder includes the amount of the franking credit (subsection 207-20(1)). The shareholder will also be entitled to a tax offset equal to the franking credit on the distribution (subsection 207-20(2)).

62. A shareholder that is not a 'qualified person' in relation to the Special Dividend:

- does not include the franking credit attached to the relevant dividend in their assessable income (paragraph 207-145(1)(e)), and
- is not entitled to a tax offset equal to the amount of the franking credit attached to the relevant dividend (paragraph 207-145(1)(f)).

63. Subject to satisfying the 'qualified person' rule, the assessable income of a shareholder (not being an entity taxed as a corporate tax entity) that is a partnership or a trustee of a trust (not being a complying superannuation fund) includes the amount of the franking credit attached to the Special Dividend (subsection 207-35(1)).

Qualified person rules

64. 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)).

65. Paragraph 207-145(1)(a), which refers to Division 1A of former Part IIIAA of the ITAA 1936, provides the statutory tests you must satisfy to be a 'qualified person' in relation to a franked distribution you have received in order for you to be entitled to a tax offset for the franking credit on the distribution.

66. Former section 160APHU of the ITAA 1936 provides that a partner in a partnership or the beneficiary of a trust cannot be a 'qualified person' in relation to a dividend unless the partnership or the trustee of the trust is also a 'qualified person' in relation to the dividend.

67. The test of what constitutes a 'qualified person' is set out in former subsection 160APHO(1) of the ITAA 1936. 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.

Related payment rule

68. In order to determine the relevant qualification period, it is necessary to determine whether, under the Scheme of Arrangement, a shareholder or their associate have made, were under an obligation to make, or are likely to make, a 'related payment' in respect of the Special Dividend received (former subsection 160APHN(2) of the ITAA 1936).

69. Examples of what constitutes the making of a related payment for the purposes of Division 1A of former Part IIIAA of the ITAA 1936 are set out in former section 160APHN of the ITAA 1936. Broadly, a related payment is where a scheme shareholder has done, or is obliged to do, anything having the effect of passing the benefit of the dividend to one or more other persons.

70. Under the terms of the Scheme Implementation Deed, the Scheme Consideration was reduced by the amount of the Special Dividend paid by Huon to its shareholders. The reduction of the Scheme Consideration, calculated with reference to the amount of the

Status: **not legally binding**

Special Dividend, has the effect of passing the benefit of the Special Dividend from a Huon shareholder to JBS.

71. Therefore, a Huon shareholder (or a partner in a partnership or a beneficiary of a trust that has an interest in Huon shares) is taken to have made a related payment in respect of the Special Dividend.

Holding period rule

72. The holding period rule requires a shareholder to have held their Huon shares, on which the Special Dividend was paid, 'at risk' for a continuous period of at least 45 days during the relevant qualification period (former paragraph 160APHO(2)(a) of the ITAA 1936). The relevant qualification period is the secondary qualification period.

73. The secondary qualification period is the period beginning 45 days before, and ending 45 days after, the day on which a share becomes ex dividend (former section 160APHD of the ITAA 1936).

74. Under former subsection 160APHE(1) of the ITAA 1936, 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. In respect of the Special Dividend, eligibility to receive the Special Dividend was determined on the Dividend Record Date, being the last day on which the acquisition by a person of a Huon share entitled the person to receive the Special Dividend. It follows that Huon shares became ex dividend on 3 November 2021. This means that the secondary qualification period for the Special Dividend began on 19 September 2021.

75. A shareholder ceased to hold their Huon shares 'at risk' on the Scheme Record Date because on that day they became committed to dispose of their Huon shares to JBS under the Scheme of Arrangement in exchange for the Scheme Consideration.

76. Accordingly, a shareholder will only be a qualified person in relation to the Special Dividend if, during the period from 19 September 2021 to 9 November 2021 (inclusive), they held their shares for a continuous period of at least 45 days (not counting the day on which they acquired the Huon share or the day on which they disposed of the Huon share, and not counting the days on which they had 'materially diminished risks of loss or opportunities for gain').

77. A shareholder will need to determine whether they satisfy the holding period rule having regard to their circumstances. This will require taking into account any positions entered into that have materially diminished risks of loss or opportunities for gain (as defined under former section 160APHM of the ITAA 1936) in respect of Huon shares and this is outside of the scope of this Ruling.

78. The small shareholder exception in former section 160APHT of the ITAA 1936 does not apply as the Special Dividend constitutes a related payment as discussed in paragraphs 68 to 71 of this Ruling. Therefore, a shareholder who is an individual and who has franking credit offsets not exceeding \$5,000 for the year of income ended 30 June 2022 must also satisfy the holding period requirement in relation to the Special Dividend (former subsection 160APHT(2) of the ITAA 1936).

Status: **not legally binding**

Refundable tax offset

79. Your entitlement to the franking credit 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.

80. Certain taxpayers are specifically excluded from the operation of the refundable tax offset rules under section 67-25. These excluded entities include:

- non-complying superannuation funds or non-complying approved deposit funds (subsection 67-25(1A));
- trustees of a trust who are liable to be assessed under sections 98 or 99A of the ITAA 1936 (subsection 67-25(1B)); and
- corporate tax entities, 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)).

81. Division 63 sets out the rules on how, and in what order, tax offsets are applied against 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 to a refund of the difference (table item 40 of section 63-10).

Anti-avoidance provisions

Section 177EA of the ITAA 1936

82. Section 177EA of the ITAA 1936 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.

83. Considering the circumstances of the Scheme of Arrangement, it cannot be concluded that Huon shareholders entered into or carried out the scheme for the purpose of enabling Huon shareholders to obtain an imputation benefit.

84. Therefore, the Commissioner considers that the requisite purpose is not present and accordingly the Commissioner will not make a determination under paragraph 177EA(5)(b) of the ITAA 1936 to deny the whole, or any part, of the imputation benefit to be received in relation to the Special Dividend.

Section 204-30

85. 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.

86. 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 term 'derive a greater benefit from franking credits' is defined in subsection 204-30(8) by reference to the ability of the members to fully use imputation benefits.

Status: **not legally binding**

87. Under the scheme, you received imputation benefits when the Special Dividend was paid. The Special Dividend was paid equally to all Huon shareholders and was fully franked regardless of the tax profiles of Huon's shareholders. Accordingly, it cannot be said that Huon selectively directed the flow of franked dividends to those members who obtained the most benefit from the franking credits.

88. 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 a Huon shareholder in relation to the Special Dividend.

Capital gains tax consequences

CGT event A1

89. 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)).

90. The acquisition of shares in Huon under a court approved Scheme of Arrangement does not involve a disposal of shares under a contract.

91. Therefore, CGT event A1 happened when there was a change of ownership in a Huon share from a shareholder to JBS under the SIA (subsections 104-10(1) and (2)). The change of ownership occurred on the Scheme Implementation Date of 17 November 2021 (paragraph 104-10(3)(b)).

92. The time when CGT event A1 happens determines the income year in which a capital gain or capital loss is made and whether the CGT discount applies to any capital gain.

93. A shareholder makes a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a Huon share are more than the cost base of the share. A shareholder makes a capital loss if the capital proceeds are less than the reduced cost base of the Huon share (subsection 104-10(4)).

Capital proceeds

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

95. 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.

96. In this case, the Special Dividend was not paid in respect of the disposal of Huon shares under the scheme. The Scheme of Arrangement was not conditional on the declaration of the Special Dividend and was declared at the sole discretion of the Huon board. The Special Dividend was not dependent on JBS or a third party financing or facilitating payment of the Special Dividend or a third party being obliged to bring about the result that the Special Dividend would be paid to existing shareholders.

Status: **not legally binding**

97. The Commissioner considers that the Special Dividend was not received in respect of the disposal of Huon shares under the Scheme of Arrangement. Accordingly, the Special Dividend does not form part of the capital proceeds in respect of CGT event A1 happening.

98. Therefore, the capital proceeds that you received from CGT event A1 happening for the disposal of each of your Huon shares is the Scheme Consideration of \$3.725 per share.

Capital gain or capital loss

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

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

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

Non-resident shareholders

102. You disregard a capital gain or capital loss you make 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)).

103. 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 Huon shares under the Scheme of Arrangement, you cannot disregard a capital gain or capital loss you made from CGT event A1 happening (under subsection 855-10(1)) if, relevantly, your Huon shares were:

- an indirect Australian real property interest which is not covered by table item 5 of section 855-15 (table item 2 of section 855-15);
- used at any time in carrying on business through a permanent establishment in Australia (table item 3 of section 855-15); or
- covered by subsection 104-165(3), which is about choosing to disregard a gain or loss on ceasing to be an Australian resident (table item 5 of section 855-15).

Status: **not legally binding**

References

Previous draft:

Not previous issued as a draft

Related Rulings/Determinations:

TR 2006/10

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 44(1)
- ITAA 1936 44(1)(a)(i)
- ITAA 1936 44(1)(b)(i)
- ITAA 1936 98
- ITAA 1936 99
- ITAA 1936 128B(1)
- ITAA 1936 128B(3)(ga)
- ITAA 1936 128B(3)(ga)(i)
- ITAA 1936 128D
- ITAA 1936 Pt IIIAA Div 1A
- ITAA 1936 160APHD
- ITAA 1936 160APHE(1)
- ITAA 1936 160APHM
- ITAA 1936 160APHN
- ITAA 1936 160APHN(2)
- ITAA 1936 160APHO(1)
- ITAA 1936 160APHO(2)(a)
- ITAA 1936 160APHT
- ITAA 1936 160APHT(2)
- ITAA 1936 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 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 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 116-20(1)
- ITAA 1997 204-30
- ITAA 1997 204-30(1)
- 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 207-70
- ITAA 1997 207-75
- 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 Div 208
- ITAA 1997 208-195
- ITAA 1997 Div 230
- ITAA 1997 Subdiv 842-I
- 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 Pt 5.1
- Corporations Act 2001 611(7)

Status: **not legally binding**

ATO references

NO: 1-RRN4EXQ

ISSN: 2205-5517

BSL: PGI

ATOlaw topic: Income tax ~~ Assessable income ~~ Scheme of arrangement
Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT event A1 - disposal of a
CGT asset
Income tax ~~ Capital gains tax ~~ Capital proceeds

© 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).