


CR 2025/29 - Midway Limited - scheme of arrangement and special dividend

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Class Ruling

Midway Limited – scheme of arrangement and special dividend

❶ 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 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 income tax consequences for the special dividend paid by Midway Limited (Midway) on 18 February 2025 (Special Dividend) and the scheme of arrangement whereby RCM BidCo Pty Ltd (RCM BidCo) acquired all the ordinary shares in Midway on 18 February 2025 (Implementation Date).
2. Details of this scheme are set out in paragraphs 32 to 51 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - held your Midway shares on
 - 7 February 2025 (Special Dividend Record Date) and received the Special Dividend of \$0.3835 per share, and
 - 11 February 2025 (Scheme Record Date) and participated in the scheme of arrangement under which RCM BidCo acquired all the shares in Midway
 - held your Midway shares on capital account – that is, your Midway shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)), and

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- were either a
 - ‘resident’ of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936), or
 - ‘non-resident’ of Australia as defined in subsection 6(1) of the ITAA 1936 who does not carry on a business at or through a permanent establishment in Australia.

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

- are an entity that is under a legal disability, or may be subject to special tax rules, such as insurance companies, partnerships, organisations exempt from Australian income tax, or are subject to the investment manager regime in Subdivision 842-I in relation to your Midway shares
- acquired your Midway shares pursuant to an employee share or incentive scheme (as defined in section 83A-10)
- are a foreign resident who has chosen under subsection 104-165(3) to treat their Midway shares as ‘taxable Australian property’ on ceasing to be an Australian resident
- are taken to have acquired your Midway shares before 20 September 1985, or
- are subject to the taxation of financial arrangement rules in Division 230 in relation to the scheme outlined in paragraphs 32 to 51 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 2024 to 30 June 2025.

Ruling

Special Dividend

7. The Special Dividend is a ‘dividend’ as defined in subsection 6(1) of the ITAA 1936.
8. The Special Dividend is a frankable distribution under section 202-40.
9. The Special Dividend is not a distribution to which subsection 207-159(1) applies.

Assessability of the Special Dividend, franking credits and tax offsets

Resident shareholders

10. If you are a resident of Australia, you include the Special Dividend in your assessable income (subparagraph 44(1)(a)(i) of the ITAA 1936).
11. 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 IIIA of the ITAA 1936).

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12. 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 on the Special Dividend are included in your assessable income, provided you are a qualified person (subsection 207-35(1)).

13. If you are a beneficiary of a trust or a partner in a partnership, and the Special Dividend flows indirectly through the trust or partnership 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 credits on the Special Dividend, provided both you and the trust or partnership (as relevant) are each a qualified person (section 207-45 and former subsection 160APHU(1) of the ITAA 1936).

14. Your entitlement to the franking credit tax offset 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.

Non-resident shareholders

Special Dividend not attributable to a permanent establishment in Australia

15. 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 of the ITAA 1936), and you are not liable to withholding tax in respect of the Special Dividend to the extent that it is franked (subparagraph 128B(3)(ga)(i) of the ITAA 1936).

16. 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

17. You will be a qualified person in relation to the Special Dividend if, during the secondary qualification period (25 December 2024 to 25 March 2025), you held your Midway shares 'at risk' for a continuous period of at least 45 days¹ 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 (holding period rule). This is because:

- The Special Dividend you received constitutes a 'related payment' for the purposes of former section 160APHN of the ITAA 1936. This is because the consideration paid by RCM BidCo for acquiring the Midway ordinary shares was reduced by the amount of the Special Dividend. This reduction has the effect of passing the benefit of the Special Dividend from the shareholders of Midway to RCM BidCo (former subsection 160APHN(2), former paragraphs 160APHN(3)(f), 160APHN(4)(c) and (d) of the ITAA 1936).
- The secondary qualification period is the period beginning 45 days before, and ending 45 days after, the day on which a share became ex dividend (former section 160APHD of the ITAA 1936).
- The shares became ex dividend on 8 February 2025, being one day after the Special Dividend Record Date which was the last day on which

¹ This does not include the day on which your Midway shares were acquired or the day of disposal.

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acquisition by a person of a Midway share would entitle them to receive the Special Dividend (former subsection 160APHE(1) of the ITAA 1936).

- Any days you had a materially diminished risk of loss or opportunity for gain in respect of the shares are excluded (former subsection 160APHO(3) of the ITAA 1936). Under the scheme of arrangement, you no longer held your Midway shares at risk on the Scheme Record Date (when you became committed to dispose of your Midway shares under the scheme of arrangement).

18. You will need to determine whether you satisfy the holding period rule having regard to your circumstances. This will require taking into account any positions entered into that result in you having 'materially diminished risks of loss or opportunities for gain' (as defined under former section 160APHM of the ITAA 1936) in respect of your Midway shares.

19. The small shareholder exception in former section 160APHT of the ITAA 1936 does not apply as the dividend is a related payment for the purposes of paragraph 207-145(1)(a) and former section 160APHN of the ITAA 1936 (former subsection 160APHT(2) of the ITAA 1936).

20. This means if you are an individual with total franking tax offsets less than \$5,000 for the 2024–25 income year you must still satisfy the holding period rule in relation to the Special Dividend.

Exempting entity and former exempting entity

21. Midway was not an exempting entity (section 208-20), or a former exempting entity (section 208-50), at the time when the Special Dividend was paid to you.

22. Section 208-195 will not apply to deny the inclusion in your assessable income of the amount of the franking credit on the Special Dividend you received or deny the franking credit tax offset to which you are otherwise entitled under Division 207 at the time when the Special Dividend was paid to you.

Section 204-30

23. 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 as there was no streaming of distributions.

Section 177EA of the ITAA 1936

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 benefits you received in relation to the Special Dividend. This is because it cannot be concluded that Midway or the shareholders of Midway entered into or carried out the scheme for a more than incidental purpose of enabling the shareholders of Midway to obtain an imputation benefit, and accordingly the purpose requirement in paragraph 177EA(3)(e) of the ITAA 1936 is not satisfied.

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Capital gains tax consequences

CGT event A1

25. CGT event A1 happened on 18 February 2025 (Implementation Date) when you disposed of each of your Midway shares to RCM BidCo (section 104-10).

Capital proceeds

26. The capital proceeds you received for each Midway share is \$0.8065 per share (paragraph 116-20(1)(a)).

27. The Special Dividend of \$0.3835 for each Midway share is not included in the capital proceeds.

Capital gain or capital loss

28. You made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your Midway share exceed its cost base (subsection 104-10(4)). The capital gain is the difference.

29. You made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your Midway share is less than its reduced cost base (subsection 104-10(4)). The capital loss is the difference.

30. If you were a foreign resident, or the trustee of a foreign trust for CGT purposes (as defined in subsection 995-1(1)) just before the Implementation Date, you disregard any capital gain or capital loss you made as a result of CGT event A1 happening if your Midway shares were not taxable Australian property (section 855-10).

Discount capital gain

31. If you made a capital gain from the disposal of your Midway share, you are entitled to treat the capital gain as a 'discount capital gain' provided you acquired, or are taken to have acquired, your Midway share on or before 17 February 2024 and the conditions in Division 115 are satisfied (subsection 115-25(1)).

Scheme

32. 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.

33. Other information referenced is taken from the Scheme Implementation Deed (SID) released on the Australian Securities Exchange (ASX) on 14 November 2024 and the Scheme Booklet released on the ASX on 19 December 2024.

Background

Midway Limited

34. Midway was founded in 1980 and is one of Australia's largest woodfibre processors and exporters.

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35. Midway was listed on the ASX (ASX code MWY) in December 2016 until the business day immediately following the Implementation Date.

36. As at the Implementation Date, Midway had 87,336,222 ordinary shares on issue and no other classes of shares or rights on issue.

RCM BidCo Pty Ltd

37. RCM BidCo is a newly Australian-resident company that was incorporated for the purpose of acquiring all of the Midway shares on issue.

38. RCM BidCo is a subsidiary of RCM RollCo Ltd (RCM RollCo), an Australian-resident company that was incorporated as a holding company for RCM BidCo.

Scheme of arrangement

39. On 14 November 2024, Midway and RCM BidCo entered into a SID under which RCM BidCo agreed to acquire all the ordinary shares in Midway by way of a scheme of arrangement under Part 5.1 of the *Corporations Act 2001* (Corporations Act), subject to shareholder and court approval.

40. Under the terms of the SID, Midway shareholders would receive \$1.19 cash for each Midway share inclusive of an expected partially franked dividend of \$0.38 per Midway share. Eligible shareholders could instead elect to receive a combination of cash and shares in RCM RollCo, or 100% of shares in RCM RollCo which was subject to threshold conditions being satisfied.

41. On 30 January 2025, the requisite majority of Midway's shareholders approved the scheme of arrangement.

42. On 4 February 2025, the Federal Court of Australia approved the scheme of arrangement and provided orders under Part 5.1 of the Corporations Act.

43. The consideration Midway shareholders received was \$0.8065 (being \$1.19 less the amount of the Special Dividend of \$0.3835) in respect of each Midway share held on the Scheme Record Date.

44. As the threshold conditions for the issuance of share consideration were not satisfied due to there not being enough Midway shareholders that elected to receive share consideration, the consideration was wholly provided by way of cash.

45. The transfer of Midway shares to RCM BidCo under the scheme of arrangement occurred on 18 February 2025 with Midway then becoming a wholly owned subsidiary of RCM BidCo.

46. The shares in Midway were then delisted from the ASX at the close of trading on 19 February 2025.

Special Dividend

47. On 18 February 2025, Midway paid a partially franked Special Dividend of \$0.3835 per share to shareholders who held their Midway shares on the Special Dividend Record Date.

48. The Special Dividend was:

- franked at 78.4615%

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- paid from Midway's profits and retained earnings on a stand-alone basis
- not funded, directly or indirectly from equity issued by any company, and
- compliant with the requirements of the Corporations Act, including section 254T of that Act.

49. RCM BidCo did not have any influence or control over the determination and payment of the Special Dividend. The decision to pay the Special Dividend was entirely at the discretion of the Midway Board.

Other matters

50. There was no issue of equity interests by Midway or RCM BidCo to existing or new shareholders to fund the Special Dividend.

51. On the Implementation Date, the sum of the market values of Midway's assets that were taxable Australian real property (as defined in section 855-20) did not exceed the sum of the market values of its assets that were not taxable Australian real property for the purposes of section 855-30.

Commissioner of Taxation

14 May 2025

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1936 44(1)(a)(i)
 - ITAA 1936 128B(3)(ga)(i)
 - ITAA 1936 128D
 - ITAA 1936 former Pt IIIAA Div 1A
 - ITAA 1936 former 160APHD
 - ITAA 1936 former 160APHE(1)
 - ITAA 1936 former 160APHM
 - ITAA 1936 former 160APHN
 - ITAA 1936 former 160APHN(2)
 - ITAA 1936 former 160APHN(3)(f)
 - ITAA 1936 former 160APHN(4)(c)
 - ITAA 1936 former 160APHN(4)(d)
 - ITAA 1936 former 160APHO(3)
 - ITAA 1936 former 160APHT
 - ITAA 1936 former 160APHT(2)
 - ITAA 1936 former 160APHU(1)
 - ITAA 1936 177EA
 - ITAA 1936 177EA(3)(e)
 - ITAA 1936 177EA(5)(b)
 - ITAA 1997 Div 67
 - ITAA 1997 67-25
 - ITAA 1997 83A-10
 - ITAA 1997 104-10
 - ITAA 1997 104-10(4)
 - ITAA 1997 104-165(3)
 - ITAA 1997 Div 115
 - ITAA 1997 115-25(1)
 - ITAA 1997 116-20(1)(a)
 - ITAA 1997 202-40
 - ITAA 1997 204-30
 - ITAA 1997 204-30(3)(c)
 - ITAA 1997 Div 207
 - ITAA 1997 207-20
 - ITAA 1997 207-35(1)
 - ITAA 1997 207-45
 - ITAA 1997 207-70
 - ITAA 1997 207-75
 - ITAA 1997 207-145(1)(a)
 - ITAA 1997 207-159(1)
 - ITAA 1997 208-20
 - ITAA 1997 208-50
 - ITAA 1997 208-195
 - ITAA 1997 Div 230
 - ITAA 1997 Subdiv 842-I
 - ITAA 1997 855-10
 - ITAA 1997 855-20
 - ITAA 1997 855-30
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - Corporations Act 2001 Pt 5.1
 - Corporations Act 2001 254T
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ATO references

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