TR 2012/5EC - Compendium

Ruling Compendium – TR 2012/5

This is a compendium of responses to the issues raised by external parties to draft Taxation Ruling TR 2011/D8 – Income tax: section 254T of the *Corporations Act 2001* and the assessment and franking of dividends paid from 28 June 2010.

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft Ruling.

Summary of issues raised and responses

Issue No.	Issue raised*	ATO Response/Action taken†
1	Further clarification required on how to determine 'current year profits'.	Some additional guidance has been provided, but this is a factual and accounting question that turns on the particular circumstances, and the Commissioner is confined to ruling on the application of the taxation laws.
2	Clarification required as to whether profits must be recognised in the financial statements before a dividend can be paid out of those profits.	Additional guidance has been provided in relation to when, for the purposes of administering the taxation laws, the Commissioner would consider that profits are available for distribution; but these are factual questions that depend on the particular circumstances of each case, including a company's constitution, accounts, directors minutes, and the application of the *Corporations Act 2001* (Corporations Act), on which the Commissioner cannot rule.
3	The examples provided in the Ruling are too simplistic and highlight the need for the ATO to seek further practical input from corporates.	The examples have been made more detailed having regard to further external consultation. The detail level of detail in the examples has to be balanced with the point that the examples need to be simplistic in one regard to ensure that the principles of the Ruling are clearly illustrated.

* Unless otherwise noted, references are to examples and paragraphs in TR 2011/D8)
† Unless otherwise noted, references are to examples and paragraphs in TR 2012/5)

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4	In the case of a corporate group with a holding company and a large number of subsidiaries, it would be implausible for each entity in a corporate group to meet the strict definition of 'accounts' at paragraph 2 of the Ruling. It should be sufficient for a company to base its decision to pay a dividend on, for example, robust management accounts for the period to which the dividend relates.	Some additional guidance has been provided in relation to company groups and consolidated accounts, but this is a factual question.
5	Clarification required on whether dividends and unrealised gains/losses arising in respect of assets that are classified as at fair value through the profit or loss would be taken into account in working out 'current trading profits' in paragraph 3 of the Ruling.	The inclusion of dividends from other companies in trading profits has been clarified. Further information in respect of unrealised gains/losses of a permanent character has been provided.
6	In the case of a corporate group with a holding company and a large number of subsidiaries, there is a practical timing issue. The holding company will not have a profit when the dividend is determined but will when the dividend is paid. In order to comply with the Ruling, dividends will be brought up through the group to the holding company but this must happen after the relevant period.	*Industrial Equity Ltd & Ors v. Blackburn & Ors (1977) 137 CLR 567* held that dividends from group entities cannot be relied upon when the parent entity declares a dividend. Accordingly, at the time of declaration, the parent entity would need to have sufficient profits (which include inter-corporate dividends) from which to declare a dividend.
7	Clarification required on the 'categorisation' of a distribution paid to an Australian shareholder from a jurisdiction with a different concept of 'dividend'.	Outside the scope of the Ruling. The overseas jurisdiction is not governed by section 254T of the Corporations Act.

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8	The submission includes what appears to be a general comment about whether the changes were intended to make it easier for a company to pay a dividend – the Explanatory Memorandum to the *Corporations Amendment (Corporate Reporting Reform) Act 2010* (CACCRA) indicates this was the intention of the changed; the Ruling and the Legal Opinion do not appear to think so.	The Ruling and opinion are addressing whether distributions which constitute a dividend for taxation law purposes are frankable. The scope is not to address the policy intention of the changes. That is a matter for Treasury. It should also be noted that the Explanatory Memorandum to the *CACCRA* is not a substitute for the Corporations Act and the Ruling is an interpretation of the law.
9	Clarification of the tax considerations that a company needs to consider which declaring or determining a dividend and the consequential ability of the company to frank those dividends.	Further clarification provided in the Ruling.
10	Clarification of the meaning of 'current year trading profits'. For example, International Financial Reporting Standards (IFRS) requires that unrealised gains/losses be included in determination of profit, but the Ruling does not say whether these unrealised losses should be included in 'current year trading profit' for tax purposes.	The definition of 'profits' in the Ruling has been extended to further clarify what constitutes a profit (not exhaustive) for taxation law purposes. The element of 'current year' has also been changed to profit for the period rather than 'current year' to make clear that profits for the year are finalised post year end.
11	Review the definition of a dividend to align tax legislation with the Corporations Act changes and with the changes in the accounting standards with respect to fair value accounting.	This is out of scope of the Ruling, and is a policy issue for the government.
12	Expand the examples in Appendix 2, Alternative Views, which are, at present, rather simplistic. For example, they should include considerations regarding instances where companies declare/determine interim dividends based on the interim financial results.	The examples in the Ruling section have been expanded to clarify these issues. See Example 2 of the Ruling which has been expanded in this regard.

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13	Consider the impact of the individual company's constitutional election whether to declare or to determine dividends, as this changes the financial reporting period in which a company would disclose its dividend.	The taxation treatment of dividends is assessed at the time of payment rather than declaration. However, where a company's constitutional election provides that entities may declare dividends, section 254V(2) applies so that the company incurs a debt at declaration. This should not affect the frankability of dividends for taxation law purposes. See also *DFC of T v Bluebottle UK Ltd & ORS* 2006 ATC 4803; (2006) 64 ATR 621 See footnote 20 of the Ruling for further clarification.
14	A statement is needed on the impact of paragraph 12 of AASB 110 on the tax treatment of dividends.	See footnote 19 of the Ruling for further clarification on paragraph 12 of AASB 110. This should also not affect the tax treatment of dividends.
15	Guidance is needed as to how other categories of reserve would be treated from a tax perspective. One example is given in paragraph 47 of the Ruling in relation to an Asset Revaluation Reserve: are there many others and do they have the same tax treatment?	Further guidance has been provided in the Examples and the definition of profit in the Ruling.
16	Include an example of the operation of paragraph 5 of the Ruling. In particular, there should be an example to address the circumstance where the dividend is, for tax purposes, a return of capital versus an assessed unfrankable dividend.	Paragraph 5 of the Ruling has now been amended to provide further clarity in respect of the application of the capital gains tax provisions. The Ruling however is not intended to rule on the capital gains tax provisions contained in Part 3-1 of the *Income Tax Assessment Act 1997*. As paragraph 5 states, the characterisation of the distribution (either as a distribution of capital or an assessed, unfranked dividend) will depend on the facts and circumstances of each particular case.
17	The ATO should introduce a 'transitional no prejudice' rule governing the payments of the dividends in the period from the introduction of the amendments to section 254T on 28 June 2010 up to any further revisions thereto.	The Taxation Ruling applies from 28 June 2010 to protect taxpayers who have paid a dividend from profits for a period even where the entity is in an accumulated loss position. The Commissioner has advised the NTLG sub-group that each case between 28 June 2010 and the publication of the draft Ruling on 16 December 2011 will be addressed on the specific facts and circumstances.

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18	A dividend under section 254T should be a frankable dividend for tax purposes as this has significant practical benefits.	The Commissioner is bound to rule on and apply the taxation laws, as they stand. This is a policy question for the government.
19	Clarify the reference to the *Ford's Principles of Corporations Law* commentary in paragraph 40 of the Ruling and its footnote. The ATO does not adopt this view, therefore why is it footnoted?	Additional clarification of this issue has been provided in the Ruling at paragraphs 45 to 50 and the examples in the Ruling.
20	The ATO should address the observations made in the submission about paragraphs 3, 27, 28, 40, and footnotes 26 and 28 of the Ruling. The observations made express concern about financial statements being determinative.	The assessability and franking of dividends requires an application of the taxation provisions to the particular facts and circumstances in each case, including a company's accounts and constitution, other company records such as directors' minutes and financial records, and the application of the Corporations Act. Financial statements are not determinative, although they may carry considerable evidentiary weight depending on the circumstances, particularly when they have been approved by the directors in accordance with the Corporations Act, and the fact in question is not evidenced in any other document. Generally speaking, accounts and financial records record transactions, rather than constituting transactions in themselves.
21	Further amplification required of Example 1 to compare an interim dividend paid from profits recorded in an interim set of financial statements and a final dividend paid from profits in respect of a full year set of financial statements.	Example 1 has been amplified to deal with these issues.

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22	The Ruling should consider (and confirm) that where an interim dividend is paid from half year profits and those half year profits are disclosed in interim financial statements as being netted against accumulated losses then, in the absence of any other actions taken by the directors or losses incurred in the second 6 months, the balance of those half year profits is still an available current year profit for declaration as a final dividend.	The Ruling and examples have been expanded to address these issues (see Example 1 at paragraphs 9 to 14, and paragraphs 48 to 50.
23	Further amplification of Example 1 surrounding the differences in the outcomes (if any) between determining versus declaring a dividend would assist a reader's understanding of the ATO's opinion on when a dividend can or cannot be paid out of current year profits.	See response to Issue 22 of this Compendium. Generally nothing will turn on whether a dividend is determined or declared. The issue is whether profits are available for appropriation for payment of a dividend. See also footnotes 18 and 19 of the Ruling.
24	If the ATO confirms that, prima facie, netting in the interim financial statements is not determinative of there being an appropriation of current profits against accumulated losses then presumably a similar conclusion can be reached in relation to final financial statements.	These issues have been further clarified in the Ruling in Example 1 and paragraphs 48 to 50.
25	The financial statements are but one factor for consideration and not determinative. What would be more relevant is consideration of the directors' intention as evidenced in the directors' resolution in respect of dividends and approving the financial report.	See response to Issue 20 of this Compendium.

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26	If the ATO does not agree with the above submissions in respect of dividends determined/declared after year end, could the ATO please consider the following scenarios: • Current year profit for the year is transferred into a separate reserve, say, 'profit appropriation reserve', rather than netted against accumulated losses. • Accumulated losses are moved to a separate loss reserve and thus current year profits are once again not netted against such losses. After year end the dividend is paid from the profit appropriation reserve or retained profits. If neither of these suggestions are acceptable to the ATO then further consultation of this matter would be appreciated as soon as possible.	Transfer of current year profits to a reserve was set out in example 1 in the draft Ruling, and has been further expanded. Moving accumulated losses to a reserve account with an initial debit entry and balance is considered problematic in view of the decision by Emmett J in *Consolidated Media Holdings Ltd v. FCT* [2011] FCA 367; 2011 ATC 20-259 (*CMH*). .The Commissioner acknowledges that the Full Federal Court relied on different reasoning to that of the Federal Court in *CMH* however note that the Full Federal Court did not overrule the reasoning relied upon in the first instance. The matter is currently the subject of an application for special leave to appeal to the High Court.
27	Provide an example about paragraph 4 in the Ruling section of the final Ruling, possibly a portion of Example 3, which involves the payment of a dividend out of unrealised capital profits.	This matter has been further clarified in the definition of profits and to some extent in Example 2 of the Ruling. The Ruling also further clarifies the Commissioner's view in respect of unrealised capital profit in paragraph 4, paragraph 43 which cites *QBE Insurance Group Ltd v. ASC, NRMA Insurance Ltd v. ASC (1992) 38 FCR 270; (1992) 110 ALR 301,*(*QBE Insurance*) paragraph 57 and paragraph 74.
28	If in agreement with the observation that paragraph 177EA(17)(ga) is but one circumstance to consider and in the absence of other factors, the dividends contemplated under paragraph 4 and Example 3 should not trigger the operation of section 177EA, then make such a statement in the Ruling.	This is out of the scope of the Ruling, and the application of anti-avoidance provisions depends on a consideration of all the facts and circumstances of a particular case.

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29	Reconsider paragraphs 4 and 42, having regard to the fact that the analysis in the Legal Opinion appears to offer a wider interpretation than paragraph 4 of the Ruling in relation to paying dividends out of an unrealised capital profit, in particular asset revaluation reserves. If the ATO is not inclined to modify its views then further clarification of the 'net assets exceeds share capital' proviso is required.	After further consideration the Commissioner's conclusion is that the frankability of a distribution paid out of an unrealised capital profit will depend on the facts and circumstances of the case (see response to Issue no. 27 of this Compendium) as well as the net asset position of the entity paying a distribution. The Commissioner has relied on the decision in *QBE Insurance.* Further clarification provided in respect of the definition of net assets and profit (see also footnote 4 of the Ruling).
30	Reconsider the 'permanent character' proviso in paragraph 4 of the Ruling. If the ATO is not inclined to modify its views then further clarification of this proviso is needed in the final Ruling (that is, what is and what is not a permanent increase).	This proviso is stated in the *QBE Insurance* decision. It is a factual question. Further clarification is provided in the Ruling at paragraphs 4 and 54.
31	Provide further consideration in the Ruling of the consequences of paying dividends out of other reserves.	These are factual questions that cannot be dealt with in the Ruling. However, the Commissioner has taken the view that reserves contained in other comprehensive income do not generally constitute 'profit' for taxation law purposes.
32	Provide some commentary (or definition) of what is/is not included in current 'trading' profits.	This has been clarified. Trading profits include profits from trading activities and dividends from other companies, but not capital profits.
33	Given the distinction made between dividends paid out of current trading profits (paragraph 3 of the Ruling) and dividends paid out of an unrealised capital profit (paragraph 4 of the Ruling), greater definitional clarity is required given current year profit (in the Profit and loss statement) is likely to disclose unrealised profits and other comprehensive income can include realised gains/losses (for example on hedge instruments).	The Ruling has clarified that trading profits do not include other comprehensive income or unrealised capital profits. These are ultimately factual questions that cannot be dealt with exhaustively. The Ruling confirms the circumstances in which trading profits will be available for payment of a frankable dividend. The Ruling also provides greater clarity on the treatment of distributions paid from unrealised capital profits (see response to Issue no. 27 of this Compendium).

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34	Clarify whether an impairment expense forms part of an entity's trading profit, and whether an entity's net assets are to be calculated by reference to any impairments.	These are factual questions relating to accounting on which the Commissioner cannot rule.
35	The Ruling should discuss realised and unrealised capital profits.	See response to Issue no.s 27, 29 and 33 of this Compendium.
36	To assist the reader's understanding of what is 'out of profits' verses an 'amount other than profits' (plus the 'net asset exceeds share capital' proviso in paragraph 4), the Ruling could consider discussing a number of other reserves that commonly exist in equity under current accounting standards.	These are accounting matters that may change from time to time, and are not amenable to discussion in a Taxation Ruling. The Commissioner has however amended the Ruling to provide further clarity on these issues. For example, see response to Issue no. 29 of this Compendium.
37	Given that for financial statement disclosure purposes certain share capital (as per the Corporations Act) might be shown as a financial liability (for example certain preference shares) or as a reduction in share capital (for example Treasury shares), the reader's understanding of the 'net assets exceed share capital' proviso would be improved through a clearer understanding of what makes up 'net assets' and what comprises 'share capital'.	Again, these are accounting matters which cannot be dealt with exhaustively in a Taxation Ruling. The Examples in the Ruling are intended to provide some clarity on the practical situations.
38	Provide further guidance on when a share based payment (SBP) reserve represents a profit.	The Ruling is not intended to deal with each and every matter exhaustively as it is intended to provide guidance and certainty on situations where a dividend would be frankable in light of the changes to section 254T of the Corporations Act.
39	Confirm that a lapsed option premium reserve is, prima facie, a profit from which a dividend can be paid.	See response to Issue no. 38 of this Compendium.

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40	The balance of an option premium reserve in respect of exercised options can be [but does not have to be] transferred to the share capital account without tainting that account (refer to section 197-25 of the *Income Tax Assessment Act 1997* (ITAA 1997)). Confirm that, if such option premium reserves are not so transferred, they represent a potential profit fund.	This is outside the scope of the Ruling which does not deal with share capital tainting. However, in the context of a tainted share capital account, the Ruling addresses this issue in so far as it is relevant to section 202-45(e) of the ITAA 1997 and the frankability of distributions made from a tainted account.
41	Provide an example for paragraph 5 in the Ruling section of the Ruling.	See response to Issue no.16 of this Compendium.
42	Outline what capital gains tax (CGT) events might affect taxpayers where a distribution is considered to be an unauthorised reduction and return of share capital that will be taxed as a CGT event.	This is out of scope of the Ruling. See also response to Issue no.16 of this Compendium.
43	In paragraph 6 of the Ruling, why is an assumption of making historical distributions relevant and what is the purpose of the 'preceding entries' assumption? If these assumptions are relevant then the final Ruling should clarify their significance.	The reference to historical distributions has been removed. The reference to preceding accounting entries is intended to render the examples realistic and has been reworded for the sake of clarity.
44	If the ATO still considers dividends from trading profits to have their own special rules, it would be useful to have a definition of trading profits in the Ruling.	This has been further clarified in the definition of profits. The reference to trading profits is taken from the decision in *QBE Insurance*, as opposed to capital profits.
45	Clarify whether subsection 202-45(e) of the ITAA 1997 is the only 'structural integrity rule' where section 44(1A) of the *Income Tax Assessment Act 1936* (ITAA 1936) is not applicable, or whether there are others.	Should include a comment to the effect that other integrity rules apply to dividend payments per the Explanatory Memorandum to the CACCRA.

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46	Where financial statements are prepared in accordance with current accounting standards, reconsideration is required of the Ruling's comments concerning accounting rules now governing the Statement of comprehensive income and the comments concerning other comprehensive income (OCI). Apart from where OCI items might initially be recorded on a Balance Sheet (that is, OCI items might be booked directly in equity), the nature of the (income and expense) items making up net OCI disclosures are identical to the nature of the (income and expense) items appearing in the Profit and loss statement. It is simply that these amounts are required or permitted to be recognised outside of the Profit and loss statement.	This is slightly misleading. The International Accounting Standards (IAS) have separated these components because the nature of the items are different. However, the Ruling relies on *FCT v. Sun Alliance Investments Pty Ltd (in liq)* (2005) 225 CLR 488, [2005] HCA 70, 60 ATR 560; 2005 ATC 4955 and *QBE Insurance* in determining what items are profit and loss and given OCI includes income and expenses that are not of a permanent nature, they do not constitute 'profits' for taxation law purposes.

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47	Clarify the following: • That, consistent with the definition of accounts in the Ruling, profits recorded in interim/half yearly financial statements fall outside Example 2 in paragraph 46. • Whether or not disclosure of profits in general ledger accounts (but without any formal financial statement preparation process) is in or outside the ambit of paragraph 46? For example, what is the position for companies in an accounting consolidated group that do not prepare a separate set of financial statements? • Given year end profit calculations are not finalised and approved until after period end, is this relevant in considering when current year profits might have been 'offset' against accumulated losses. That is, notwithstanding financial statements might disclose a 'netting' as at a year end balance date, any potential offsetting issue would not arise until well after year end (that is, typically weeks/months after year end). • When dividends are flowing up through an interposed holding company(ies) is the prima facie test time for when profits must exist immediately before the dividend payment (not the dividend determination date)?	These issues have been clarified in the Ruling as follows: • The Examples have been expanded to provide further detail on interim accounts and widen the scope of the evidentiary burden. • Further clarity on the type of information that the Commissioner would look to in determining the source of the distribution (noting that it is a factual question. See also paragraph 55 for further information on consolidated accounts. See response to Issue no. 4 of tis Compendium. • Further information is provided in the Examples on the timing issues and when profits are available for distribution where they have been 'netted' off at year end. • See the definition of profit which now includes inter-corporate dividends however it is the time of payment which is relevant for tax purposes.
48	Paragraph 49 could go further and explain what are the tax outcomes if, for example, the company determines to pay a dividend of say $100 rather than $80.	Further analysis provided in respect of the Examples in the Ruling.

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49	Once the appeal on the *Consolidated Media Holdings Limited v Commissioner of Taxation* [2011] FCA 367; 2011 ATC 20-259 (*Consolidated Media*) is decided, the ATO should issue an urgent decision impact statement to assess, inter alia, any ramifications of the decision on the Ruling (and those expressed in TR 2012/1 governing retail premiums).	At the time of finalising the Ruling *CMH* was subject of an application for special leave to appeal to the High Court of Australia. A Decision Impact Statement (DIS) would generally deal with these issues. However, the decision in *CMH* and the comments of Emmett J relied upon are not central to the Ruling.
50	Footnote 3 should presumably read 'do not satisfy' instead of 'do no satisfy'.	Correction made.
51	Consider inserting a definition of 'net assets' or 'the company's net assets' into paragraph 2 of the Ruling as further clarification to, inter alia, paragraph 4 of the Ruling (where such a proviso still remains relevant after reconsideration by the ATO). In addition to the points made earlier, presumably the concept of net assets is taken to mean the booked value of assets less booked value of liabilities (as opposed to using unbooked market values), but clarification would be appreciated in the definition section of the final Ruling.	Definition of net assets included in the Ruling.
52	Clarify the meaning of the phrase the phrase 'not otherwise made unavailable for distribution' in paragraph 7 of the Ruling and possibly provide an example.	This is a question of fact having regard to the company's financial records, financial statements, company records such as directors' minutes, constitution, and accounting. The Commissioner has provided examples of when it would be concluded that profits are available.
53	Paragraph 58 of the Ruling considers whether dividends can be paid out of an amount 'other than profits' and notes the tax outcomes depend on, inter alia, 'the nature of the unrealised profit'. This wording may need to be modified given the premise is that the dividend is being paid out of 'an amount other than profits'.	This paragraph has been reworded to provide further clarity. However, ultimately this is a question of fact having regard to the company's circumstances – see response to Issue no. 52 of this Compendium.

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54	Consider the decision in Condell v. FCT [2007] FCAFC 44; (2007) 66 ATR 100; 2007 ATC 4404 (*Condel's Case)*, the associated comments in the Legal Opinion and the views in TR 2003/8 when there is a distribution of an asset (in specie). The Ruling should discuss whether such an in specie distribution can constitute a frankable dividend in respect of the unbooked, unrealised gain in respect of the asset.	TR 2003/8 and *Condell's Case* deal with in specie distributions. The position in regard to such distributions will depend on the facts and circumstances of each individual case (for example International Financial Reporting Interpretations Committee (IFRIC) provides specific guidance on the accounting related to distributions and Division 125 of the ITAA 1997 is the specific provision dealing with demerger dividends). The Commissioner's view in TR 2003/8 is not altered by the Ruling.
55	Commentary in the Ruling, the Legal Opinion (see pp 34 – 37) and TR 2012/1 raises questions of when an amount is excluded from the dividend definition in section 6(1)(d) of the *Income Tax Assessment Act 1936* because there is a debiting of the share capital account and yet there is an absence of any 'accounting debits and credits'. This commentary has implications for the operation of the dividend exclusion in section 6(1) and its interaction with section 202-45(e) (as well as having implications for other provisions such as section 6(4)) that is worthy of separate analysis and clarification. It is submitted this may well be a priority technical issue.	This is out of the scope of the Ruling
56	The Ruling and other commentary noted above raise some questions concerning the current guidance on share capital tainting whether the ATO's published views on share capital tainting have changed and whether certain ATO share capital tainting guidance needs to be amended.	This is out of the scope of the Ruling

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57	Take a 'stock-take' of the analysis in ATO ID 2009/76(W); ATO ID 2009/94; ATO ID 2009/136; commentary in the Ruling, Legal Opinion and TR 2012/1; the share capital tainting Fact Sheet analysis, and previous issues discussed such as the short form versus long form accounting for dividend reinvestment plans in ATO ID 2001/63(W) and TD 2009/4 to consolidate the administrative guidance surrounding the share capital tainting provisions. The final outcome in *CMH* will also be relevant.	This is out of the scope of the Ruling
58	The ATO should undertake separate research on the ramifications of the Ruling / Legal Opinion conclusions for franking returns on non-equity shares.	This is out of the scope of the Ruling
59	The Ruling provides in paragraph 2 that the definition of 'Company' means a company incorporated under the Corporations Act that is limited by shares. Hence the Ruling's scope is limited to dividends paid from such companies. It is submitted consideration needs to be given to what, if any, are the ramifications of the Ruling's commentary for distributions paid from foreign companies? Again, undertaking separate research appears appropriate – the views of the NTLG might be sought on the priority of this research.	This is out of the scope of the Ruling
60	Further reform is required of: • the Corporations Act; • the interaction of the Corporations Act and the payment of dividends for tax law purposes; • the franking of dividends.	These are policy questions for Treasury and the government.

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61	Introduce a Corporations Act 'transitional no prejudice' rule governing the payment of dividends in the period from the introduction of the amendments to section 254T up to any future revisions thereto.	Particular cases can be dealt with by the private ruling system. See response to Issue no. 17 of this Compendium.
62	An income tax transitional no prejudice rule is appropriate in respect of the franking of dividends that might now be characterised as returns of capital or unfranked dividends under the principles outlined in the Ruling.	Particular cases can be dealt with by the private ruling system. See response to Issue no.s 17 and 61 of this Compendium.
63	Legislative changes are required regarding section 254T to achieve intended policy outcomes and the submission would encourage tripartite discussions take place to consider the preferred legislative framework. Tripartite discussions are also required in relation to a number of other Corporations Act matters.	These are policy questions for Treasury and the government. The Commissioner is however happy to assist in any tripartite discussions in respect of the amendments.
64	In relation to paragraphs 3 and 4 of the Ruling, it is less than ideal to have a legislative regime where there is one set of franking rules where a distribution is paid out of trading profits and another set of franking rules where a distribution is paid out of an account other than trading profits. If these paragraphs remain in the final Ruling then legislative amendments appear necessary.	These issues have been clarified. The distinction between trading and capital profits arises from case law of long standing. See response to Issue no.s 27, 29, 33 and 35 of this Compendium.
65	There would be significant practical benefits if a dividend for the Corporations Act was a frankable dividend for tax purposes.	These are policy questions for Treasury and the government.

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66	Provisions like section 177EA(17)(ga) of the ITAA 1936, subdivision 202-C of the ITAA 1997 and other dividend integrity measures should be reviewed as part of the tripartite discussion to consider their scope in the context of clarifying the Corporations Act and the ITAA 1936 and ITAA 1997.	These are policy questions for Treasury and the government.
67	The deductibility of funding costs in respect of cash dividends sourced from reserves that do not represent realised profits should be reviewed as part of the tripartite discussions.	These are policy questions for Treasury and the government.