TD 93/166 - Income tax: in what circumstances must dividends paid in respect of different classes of shares be franked at the same rate to avoid being considered as underfranked?

This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2006*

Taxation Determination **TD 93/166**

Taxation Determination

Income tax: in what circumstances must dividends paid in respect of different classes of shares be franked at the same rate to avoid being considered as underfranked?

1. Where dividends paid in respect of different classes of shares have the same reckoning day, they are considered to be same day dividends in terms of subsection 160AQE(2) of the *Income Tax Assessment Act 1936*. In this circumstance, these dividends should be franked at least to the required franking amount as calculated in subsection 160AQE(2) in order to avoid being underfranked. This would equate to the same franking rate for each class of share. If one of the dividends is overfranked then the other dividend must be overfranked to the same rate to avoid being underfranked (subsection 160AQE(4)) - (Example 1 below).

2. Also, if on the reckoning day of the current dividend, there is an obligation to pay committed future dividends on a different class of share before the end of the franking period, then the committed future dividend should be franked at least to the required franking amount as calculated in subsection 160AQE(2) in order to avoid being underfranked. This would equate to the same franking rate for each class of share. However, if the current dividend is overfranked then the committed future dividend must be overfranked at least to the same extent to avoid being underfranked (subsection 160AQE (3)) - (Example 2 below).

3. If different reckoning days apply, subject to paragraph 2 above, there is no requirement for a company to frank dividends on different classes of shares at the same rate - (Example 3 below).

4. Note that in some situations, different classes of shares (as described in the company's Articles of Association) may not constitute different classes of shares for imputation purposes (subsection 160APE(2)).

Example 1

On 1 January 1993 ABC Pty Ltd resolves to pay dividends to Class A shareholders of $20,000 and on 1 April 1993 the company resolves to pay dividends to Class B shareholders of $10,000. At the 1 January 1993 the company has a franking surplus of $15,000.

The dividends on both the Class A shares and the Class B shares are to be paid on 30 April 1993. They therefore have the same reckoning day and constitute same day dividends (SDD) in terms of subsection 160AQE(2). The provisional required franking amount under subsection 160AQE(2) would be $10,000 for the Class A dividends (i.e. a franking rate of 50%) and $5,000 for the Class B dividends (i.e. a franking rate of 50%).

If the company overfranks the dividends for one class of of shares then subsection 160AQE(4) requires that the dividends for the second class must be overfranked to the same extent. If, for example, the dividends for Class B shares were overfranked to $7,500 (i.e. a franking rate of 75%) then the dividends for Class A shares must be overfranked to $15,000 (i.e. a franking rate of 75%) to avoid being underfranked.

Example 2
If the facts are the same as in Example 1 except that the dividends on the Class B shares are now to be paid on 31 May 1993, then at the time that the dividends on the Class A shares are paid, the dividends on the Class B shares are considered to be committed future dividends(CFD). The dividends on the Class B shares are CFD because on the reckoning day of the dividends on the Class A shares (i.e. 30 April 1993) there is an obligation to pay dividends on the Class B shares (i.e. the resolution of 1 April 1993).

The provisional required franking amount in terms of subsection 160AQE(2) remains the same as in Example 1 for each dividend. Also if the company overfranked the dividends for the Class A shares, which are paid first, then the dividends for the Class B shares must be overfranked at least to the same extent in order to avoid being underfranked (subsection 160AQE(3)). If, for example, the dividends on the Class A shares were overfranked to $15,000 (i.e. a franking rate of 75%), then the dividends on the Class B shares must be overfranked to $7,500 (i.e. a franking rate of 75%) to avoid being underfranked and may be overfranked in excess of this amount up to $10,000 (i.e. a franking rate up to 100%).

Example3
If the facts are the same as in Example 1 except that the dividends for Class A shares are now to be paid on 28 February 1993 and the dividends for the Class B shares are now to be paid on 31 May 1993, then in these circumstances the provisional required franking amount under subsection 160AQE(2) would be $15,000 for the dividends on the Class A shares (i.e. a franking rate of 75%). There is no requirement to frank the dividends on the Class B shares to the same extent as the dividends on the Class A shares because the resolution to pay the dividends on the Class B shares (i.e. 1 April 1993) is after the reckoning day for the dividends on the Class A shares (i.e. 28 February 1993).

The dividends on the Class B shares may be overfranked to $10,000 (i.e. a franking rate of 100%) without any requirement to overfrank the dividends on the Class A shares or conversely the dividends on the Class A shares may be overfranked to $20,000 (i.e. a franking rate of 100%) with no requirement to overfrank the dividends on the Class B shares.

Commissioner of Taxation
19/8/93

FOI INDEX DETAIL: Reference No. I 1215965 Previously issued as Draft TD 93/D135
Related Determinations:
Related Rulings:
Subject Ref: imputation system; shares; franked dividend
Legislative Ref: ITAA 160APA; ITAA 160APE(2); ITAA 160AQE
Case Ref:
ATO Ref: NEW TD39

ISSN 1038 - 8982