

# ***CR 2005/94 - Income tax: share buy-back: Canning Energy Limited***

⚠ This cover sheet is provided for information only. It does not form part of *CR 2005/94 - Income tax: share buy-back: Canning Energy Limited*

⚠ This document has changed over time. This is a consolidated version of the ruling which was published on *1 July 2005*



## Class Ruling

### Income tax: share buy-back: Canning Energy Limited

---

Contents	Para
<b>What this Class Ruling is about</b>	<b>1</b>
<b>Date of effect</b>	<b>9</b>
<b>Withdrawal</b>	<b>10</b>
<b>Arrangement</b>	<b>11</b>
<b>Ruling</b>	<b>29</b>
<b>Explanation</b>	<b>42</b>
<b>Detailed contents list</b>	<b>88</b>

#### **Preamble**

The number, subject heading, **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains Class Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a 'public ruling' and how it is binding on the Commissioner.

#### **What this Class Ruling is about**

---

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax laws' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

#### **Tax law(s)**

2. The tax laws dealt with in this Class Ruling are:

- section 44 of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 45A of the ITAA 1936;
- section 45B of the ITAA 1936;
- section 45C of the ITAA 1936;
- paragraph 128B(3)(ga) of the ITAA 1936;
- Division 16K of Part III of the ITAA 1936;
- Division 1A of Part IIIAA of the ITAA 1936;
- section 177EA of the ITAA 1936;
- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 104-10 of the ITAA 1997;
- section 116-20 of the ITAA 1997;
- section 118-20 of the ITAA 1997;
- section 118-25 of the ITAA 1997;
- section 136-10 of the ITAA 1997;

- section 136-25 of the ITAA 1997;
- section 202-5 of the ITAA 1997;
- section 202-40 of the ITAA 1997;
- section 202-45 of the ITAA 1997;
- section 204-30 of the ITAA 1997;
- section 207-20 of the ITAA 1997; and
- section 207-145 of the ITAA 1997.

## **Class of persons**

3. The class of persons to which this Ruling applies is the shareholders of Canning Energy Limited ('CEL'), a publicly listed company, who disposed of ordinary shares under CEL's off-market share buy-back ('the Buy-Back') which was announced by CEL on 11 April 2005 and described in the Arrangement part of this Ruling. In this Ruling they are referred to as 'participating shareholders'.

4. The class of persons to which this Ruling applies does not include CEL. The Ruling does not deal with how the taxation law applies to CEL in relation to the Buy-Back.

## **Qualifications**

5. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

6. The class of persons defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the arrangement described in paragraphs 11 to 21.

7. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

8. This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to:

Commonwealth Copyright Administration  
Attorney General's Department  
Robert Garran Offices  
National Circuit  
Barton ACT 2600

or posted at: <http://www.ag.gov.au/cca>

## Date of effect

---

9. This Ruling applies to the income year (as defined in the ITAA 1997) for a participating shareholder in which that shareholder disposed of shares under the 2005 CEL Buy-Back as described in the Arrangement part of the Ruling. The arrangement will be completed within the 2006 income year. For participating shareholders that do not have a substituted accounting period, this will be the income year ending 30 June 2006. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20). Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by *Gazette*;
- it is not taken to be withdrawn by an inconsistent later public ruling; or
- the relevant tax laws are not amended.

## Withdrawal

---

10. This Ruling is withdrawn and ceases to have effect after 30 June 2006. However, the Ruling continues to apply after its withdrawal in respect of the tax laws ruled upon, to all persons within the specified class who entered into the specified arrangement during the term of the Ruling, subject to there being no change in the arrangement or in the person's involvement in the arrangement.

## Arrangement

---

11. The arrangement that is the subject of this Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- the application for a Class Ruling dated 7 June 2005;
- correspondence dated 12 August 2005;
- correspondence dated 22 August 2005; and
- the Australian Securities & Investments Commission Form 280 Notification of Share Buy-Back including Notice of General Meeting and Explanatory Memorandum (May 2005) issued by CEL to shareholders.

**Note:** Certain information from CEL has been provided on a commercial-in-confidence basis and will not be disclosed or released under the Freedom of Information legislation.

12. On 11 April 2005 CEL announced its intention to make an off-market share buy-back of its own shares and delist from the Australian Stock Exchange (ASX). CEL announced its intention to spend approximately \$6 million to \$6.5 million to purchase the majority of its fully paid ordinary shares and \$1 million and \$1.2 million to buy back the majority of its partly paid ordinary shares. However, under the terms of the Buy-Back CEL could choose to proceed with the Buy-Back at any time up to the Closing Date.

13. As at 31 December 2004, the share capital of CEL comprised 40,063,816 fully paid ordinary shares and 10,000,000 partly paid ordinary shares.

14. The shareholders in CEL are a mix of individuals, companies, superannuation funds and other institutional investors, some of whom are non-residents.

15. The Buy-Back provided an opportunity for shareholders to sell their shares on terms they might not otherwise achieve by selling their shares on the ASX. The Buy-Back was also intended to give an opportunity to shareholders who did not want to remain shareholders of CEL after the proposed delisting to dispose of their shares prior to the proposed delisting.

16. The Buy-Back offer was made to all eligible ordinary shareholders who were registered on the Record Date for the Buy-Back (19 July 2005). Participation in the Buy-Back was voluntary. Hence, shareholders not wishing to participate were not required to do anything. Implementation of the Buy-Back program was subject to obtaining shareholder approval for both the buy-back and delisting from the Australian Stock Exchange, which CEL sought and obtained at the annual general meeting held on 30 June 2005.

17. The offer period opened on 19 July 2005 and closed on 26 August 2005. Under the Buy-Back process, eligible shareholders were able to make an offer to sell some or all of their ordinary shares to CEL at a price determined by the Directors immediately after the closing date. The Buy-Back price was \$0.245 for each fully paid ordinary share bought back and \$0.165 for each partly paid ordinary share bought back. This price was based on the average price realised on disposal of listed investments owned by Canning Securities Ltd, a 100% owned subsidiary of CEL. The Buy-Back price for each partly paid ordinary share was \$0.08 per share less than the Buy-Back price fully paid ordinary shares to reflect the call-up amount of \$0.08 unpaid on each partly-paid ordinary share.

18. Offers under the Buy-Back were conditional on obtaining an acceptance from shareholders holding at least 50% of the shares in CEL, excluding shares held by Carillion Holdings Pty Limited and its associates.

19. All shares bought back under the Buy-Back were cancelled.

20. Under the Buy-Back, \$0.074 per share was debited to CEL's untainted share capital account and the balance of the Buy-Back price was debited to CEL's retained profits. CEL's share capital account is not 'tainted' within the meaning of section 160ARDM of the ITAA 1936.

21. On 26 August 2005 the Buy-Back was completed and CEL announced that:

- it had successfully completed the Buy-Back of approximately 21.5 million fully paid CEL shares and 7.325 million partly paid shares;
- the total amount of capital repurchased under the Buy-Back was approximately \$6.5 million, representing approximately 57.4% of the publicly held issued capital of CEL; and
- the Buy-Back price paid by CEL for shares bought back under the Buy-Back was set at \$0.245 per share representing a premium to the prevailing Australian Stock Exchange price.

## **Ruling**

---

### **The Dividend Component**

22. Participating shareholders are taken to have been paid a dividend out of the profits of CEL of \$0.171 ('the Dividend Component') for each share bought back under section 159GZZP of the ITAA 1936.

23. The Dividend Component is a frankable distribution pursuant to section 202-40 of the ITAA 1997, and is therefore capable of being franked in accordance with section 202-5 of the ITAA 1997.

### **Assessability of the Dividend Component and tax offset**

24. The Dividend Component and an amount equal to the franking credit on the Dividend Component ('gross-up') is included in the assessable income of resident individuals, superannuation funds and company shareholders who participate in the Buy-Back. Those shareholders will be entitled to a tax offset under subsection 207-20(2) of the ITAA 1997 equal to the amount of the franking credit on the Dividend Component.

25. The difference between the Buy-Back price and the Dividend Component is not a dividend for income tax purposes.

**Non-resident shareholders**

26. As the Dividend Component is fully franked, participating non-resident shareholders are not liable for Australian withholding tax under paragraph 128B(3)(ga) of the ITAA 1936.

**The Capital Component and Sale Consideration**

27. Participating shareholders are taken to have received \$0.074 as consideration in respect of the sale of each of their shares on 26 August 2005 pursuant to section 159GZZZQ of the ITAA 1936 (unless the participating shareholder is a corporate tax entity to which subsections 159GZZZQ(8) and (9) apply).

28. Taxation Determination TD 2004/22 outlines how to determine what would have been the market value of the share at the time of a buy-back if the buy-back did not occur and was never proposed to occur. If the buy-back price for each share bought back under the buy-back was less than what would have been the market value of the share if the buy-back did not occur and was never proposed to occur, in accordance with TD 2004/22, then the market value rule in subsection 159GZZZQ(2) of the ITAA 1936 applies to the buy-back. The effect of this rule is that the difference between the Buy-Back price and the market value determined in accordance with TD 2004/22, being \$0.005, will be included in the Sale Consideration received for the disposal of the share for ordinary income or capital gains tax purposes in addition to the Capital Component of \$0.074 per share.

29. The treatment of the Sale Consideration amount for tax purposes will depend on whether the sale is on capital account (where the shares are held for investment) or on revenue account. In general, the relevant treatment should be as follows:

**(a) Shares held on capital account**

- The Sale Consideration represents the capital proceeds for the CGT event A1 that happens when a share is bought back: see Note 3 to subsection 116-20(1) of the ITAA 1997. The amount by which the Sale Consideration of \$0.079 exceeds the cost base of each share will be a capital gain to the shareholder. If the share's reduced cost base exceeds \$0.079 the difference will be a capital loss: subsection 104-10(4) of the ITAA 1997.

**(b) Shares held on revenue account**

- Where the shares are held as trading stock, the Sale Consideration of \$0.079 is included in assessable income under section 6-5 of the ITAA 1997.

- Where the shares are held as revenue assets the amount by which the Sale Consideration of \$0.079 exceeds the cost of each share will be included in the shareholder's assessable income. Correspondingly, if the cost exceeds \$0.079 the difference will be an allowable deduction.

**Non-resident shareholders**

30. A non-resident shareholder that participates in the Buy-Back will only make a capital gain or capital loss if their shares have the necessary connection with Australia under the tests in section 136-25 of the ITAA 1997. A CEL share will have the necessary connection with Australia if, at any time during the 5 years before 11 April 2005 the shareholder together with their associates owned 10% or more by value of the issued shares in CEL.

**The anti-avoidance provisions**

31. The Commissioner will not make a determination under section 45A or 45B of the ITAA 1936 that section 45C of the ITAA 1936 applies to treat the whole, or any part, of the Capital Component of the Buy-Back Price received by participating shareholders as an unfranked dividend.

32. 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 received in relation to the Dividend Component under the Buy-Back by participating shareholders.

33. The Commissioner will not make a determination under paragraph 204-30(3)(c) of the ITAA 1997 to deny the whole, or any part, of the imputation benefits received in relation to the Dividend Component under the Buy-Back by participating shareholders.

---

**Explanation****The Dividend and Capital Components**

34. The purchase price (or Buy-Back price) received by participating shareholders comprises two components:

- a Dividend Component; and
- a Capital Component.

The amount of each of these components is determined in accordance with sections 159GZZZP and 159GZZZQ of the ITAA 1936, having regard to how the company accounts for the off-market share buy-back.

## **The Dividend Component**

35. Section 159GZZP provides that where the buy-back of a share is an off-market purchase, the difference between the purchase price and the part (if any) of the purchase price which is debited against the share capital account, is taken to be a dividend paid by the company to the seller on the day the buy-back occurs.

36. In this case the purchase price was \$0.245 per share for fully paid shares and \$0.165 per share for partly paid shares. \$0.074 of the purchase price was debited to the untainted share capital account. Thus the Dividend Component is \$0.171 per share for the fully paid ordinary shares and \$0.165 per share for the partly paid shares.

37. The Dividend Component is a frankable distribution but only to the extent that the Buy-Back price does not exceed the market value of the share at the time of the Buy-Back if the Buy-Back did not occur and was never proposed to occur (paragraph 202-45(c) of the ITAA 1997). Taxation Determination TD 2004/22 outlines how to determine what would have been the market value of a share at the time of a buy-back if the buy-back did not occur and was never proposed to occur.

38. In this case, the Buy-Back price did not exceed the market value of CEL shares determined in accordance with TD 2004/22. CEL fully franked the Dividend Component in accordance with section 202-5 of the ITAA 1997.

39. For Australian resident individual and corporate tax entity shareholders, and also for Australian superannuation funds, the amount of the dividend is included in their assessable income under subsection 44(1) of the ITAA 1936. Generally, an amount equal to the amount of the franking credit is included in their assessable income under subsection 207-20(1) of the ITAA 1997 ('gross-up') and they are also entitled to a tax offset under subsection 207-20(2) of the ITAA 1997 reflecting the franking credit attached to the dividend.

40. Subsection 159GZZP(2) provides that the difference between the Buy-Back price and the Dividend Component is not a dividend for income tax purposes.

## **Non-resident shareholders**

41. As the Dividend Component received under the Buy-Back is fully franked, a non-resident shareholder is not liable to Australian withholding tax on the Dividend Component in accordance with paragraph 128B(3)(ga) of the ITAA 1936.

**The Capital Component and Sale Consideration**

42. Participating shareholders are taken to have disposed of those shares accepted under the Buy-Back on 26 August 2005. The disposal may have different taxation implications for shareholders depending on how the shares were held, for instance:

- an investor who held their shares on capital account will be subject to the capital gains tax provisions contained in Part 3-1 and 3-3 of the ITAA 1997; and
- a shareholder who held their shares on revenue account will be subject to the ordinary income provisions, and if the shares are held as trading stock, the specific trading stock provisions of Part 2-25 of the ITAA 1997.

43. It should be noted that shareholders who have both an income tax and a capital gains tax liability will generally have the amount of the capital gain reduced under the anti-overlap provisions contained in section 118-20 of the ITAA 1997. If the shares are held as trading stock the capital gain or loss is disregarded under section 118-25 of the ITAA 1997.

44. For the purposes of computing the amount of the gain or loss (on capital or revenue account) in these cases, the Sale Consideration in respect of the disposal of a share under a buy-back is determined in accordance with section 159GZZZQ of the ITAA 1936.

45. Subsection 159GZZZQ(1) of the ITAA 1936 provides that the shareholder is taken to have received an amount equal to the purchase price (in this case the \$0.245 received for each share bought back) as consideration in respect of the sale of the share bought back. However, this amount is subject to certain adjustments in order to arrive at the Sale Consideration for each share bought back under the Buy-Back.

46. Subsection 159GZZZQ(2) of the ITAA 1936 is one of the adjusting provisions. It provides that if the purchase price is less than the market value of the share at the time of the buy-back if the buy-back did not occur and was never proposed to occur the shareholder is taken to have received an amount equal to the market value as consideration in respect of the sale of the share bought back.

47. For the purposes of determining market value under subsection 159GZZZQ(2) the following methodology has been proposed by CEL and accepted by the Commissioner in accordance with TD 2004/22; the market value of the company's share on the ASX for the last sale of shares prior to the date of the announcement of the Buy-Back (11 April 2005), adjusted for the movement in the ASX Energy Index. Under this methodology, the market value of a share bought back under the Buy-Back was calculated to be \$0.25.

48. The Commissioner has accepted the use of this methodology because of CEL's unique circumstances, particularly the fact that none of CEL's shares were traded during the five (5) day period prior to the date of the announcement of the Buy-Back. The volume weighted average price over the last five days prior to the announcement of the Buy-Back (11 April 2005) cannot be calculated as no trades occurred. However, CEL's share price had been constant at \$0.20 for the period 18 February 2005 to 15 April 2005 and as such the \$0.20 price appropriately reflects CEL's share price during the five (5) day period prior to the date of the announcement of the Buy-Back.

49. However, it should be noted that where the participating shareholder is a corporate tax entity, which is entitled to a tax offset under Division 207 of the ITAA 1997 in respect of the Dividend Component, an adjustment may be made to the Sale Consideration. Under subsection 159GZZZQ(8) of the ITAA 1936, if that shareholder would otherwise incur either a capital loss or a deductible loss (or any increase in such a loss) in respect of the sale of a share bought back under the Buy-Back, the Sale Consideration is increased by an offsettable amount determined under subsection 159GZZZQ(9) of the ITAA 1936. The reduction amount is reduced by so much of the offsettable amount that does not exceed the capital loss or the deductible loss.

### **Non-resident shareholders**

50. Pursuant to section 136-10 of the ITAA 1997, a non-resident will make a capital gain or a capital loss from the sale of shares under the Buy-Back only if the shares have the necessary connection with Australia under the tests in section 136-25. Under Category 5 of the table set out in section 136-25 of the ITAA 1997, a CEL share will have the necessary connection with Australia if, at any time during the five years before 26 August 2005, the shareholder together with their associates owned 10% or more by value of the issued shares in CEL.

### **The anti-avoidance provisions**

#### ***Sections 45A and 45B of the ITAA 1936***

51. It was noted at paragraph 20 of this Ruling that CEL debited \$0.074 of the Buy-Back price to its untainted share capital account. This amount is a distribution of capital to participating shareholders.

52. Sections 45A and 45B of the ITAA 1936 are two anti-avoidance provisions which, if they apply, allow the Commissioner to make a determination that section 45C of the ITAA 1936 applies. The effect of such a determination is that all or part of the distribution of capital to a shareholder under the Buy-Back is treated as an unfranked dividend. Accordingly, the application of these two provisions to the Buy-Back must be considered.

53. Section 45A is an anti-avoidance provision that applies in circumstances where capital benefits are streamed to certain shareholders (the advantaged shareholders) who derive a greater benefit from the receipt of share capital and it is reasonable to assume that the other shareholders (the disadvantaged shareholders) have received or will receive dividends.

54. Although a 'capital benefit' (as defined in paragraph 45A(3)(b)) is provided to participating shareholders under the Buy-Back, the circumstances of the Buy-Back indicate that there is no streaming of capital benefits to some shareholders and dividends to other shareholders. Accordingly, section 45A has no application to the Buy-Back.

55. Section 45B applies where certain capital benefits are provided to shareholders in substitution for dividends. In broad terms, section 45B applies where:

- there is a scheme under which a person is provided with a capital benefit by a company (paragraph 45B(2)(a));
- under the scheme, a taxpayer, who may or may not be the person provided with the capital benefit, obtains a tax benefit (paragraph 45B(2)(b)); and
- having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a purpose (whether or not the dominant purpose but not including an incidental purpose), of enabling a taxpayer to obtain a tax benefit (paragraph 45B(2)(c)).

56. In the case of the Buy-Back, whilst the conditions of paragraphs 45B(2)(a) and 45B(2)(b) have been met, the requisite degree of purpose of enabling the shareholder to obtain a tax benefit – by way of distribution of share capital – was not present.

57. Having regard to the 'relevant circumstances' of the scheme (the Buy-Back), as set out in subsection 45B(8), there was not a 'more than incidental' purpose, by way of capital distribution, of enabling the shareholders to obtain a tax benefit. Further, the Capital Component of the Buy-Back price cannot be said to be attributable to profits, nor does the pattern of distributions that have been made by CEL in the past indicate that the Capital Component was being paid in substitution for a dividend.

**Section 177EA of the ITAA 1936**

58. Section 177EA of the ITAA 1936 is a general anti-avoidance provision that applies to a wide range of schemes to obtain a tax advantage in relation to imputation benefits. In essence, it applies to schemes for the disposition of shares or an interest in shares, where a franked distribution is paid or payable in respect of the shares or an interest in shares. This would include a buy-back with a franked dividend component.

59. Specifically, subsection 177EA(3) provides that section 177EA applies if:

- (a) there is a scheme for a disposition of membership interests, or an interest in membership interests, in a corporate tax entity; and
- (b) either:
  - (i) a frankable distribution has been paid, or is payable or expected to be payable, to a person in respect of the membership interests; or
  - (ii) a frankable distribution has flowed indirectly, or flows indirectly or is expected to flow indirectly, to a person in respect of the interest in membership interests, as the case may be; and
- (c) the distribution was, or is expected to be, a franked distribution or a distribution franked with an exempting credit; and
- (d) except for this section, the person (the 'relevant taxpayer') would receive, or could reasonably be expected to receive, imputation benefits as a result of the distribution; and
- (e) having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a purpose (whether or not the dominant purpose but not including an incidental purpose) of enabling the relevant taxpayer to obtain an imputation benefit.

60. In the present case the conditions of paragraphs 177EA(3)(a) to (d) are satisfied. Accordingly, the issue is whether, having regard to the relevant circumstances of the scheme, it would be concluded that, on the part of CEL, its shareholders or any other relevant party, there is a purpose more than merely an incidental purpose of conferring an imputation benefit under the scheme. Under this arrangement the relevant taxpayer is the participating shareholder and the scheme comprises the circumstances surrounding the Buy-Back.

61. In arriving at a conclusion the Commissioner must have regard to the relevant circumstances of the scheme which include, but are not limited to, the circumstances set out in subsection 177EA(17). The

relevant circumstances listed there encompass a range of circumstances which taken individually or collectively could indicate the requisite purpose. Due to the diverse nature of these circumstances some may not be present at any one time in any one scheme.

62. The Commissioner has come to the view that section 177EA applies to the Buy-Back. In coming to this conclusion the Commissioner had regard to all the relevant circumstances of the arrangement, as outlined in subsection 177EA(17). Among the circumstances of the Buy-Back reflected in those paragraphs are:

- the delivery of franking credits in excess of what would have otherwise been distributed in the ordinary course of dividend declaration;
- the greater attraction of the Buy-Back to resident shareholders who could fully utilise the franking credits than to non-resident shareholders who could not;
- the greater attraction of the Buy-Back to some resident shareholders with a low marginal tax rate than other resident shareholders (for example whereas complying superannuation funds are taxed at 15% and corporations at 30%, individuals can be taxed at a marginal tax rate up to 47%); and
- that participating shareholders were more likely than not to make an economic gain, but a loss for tax purposes, from their participation.

63. Where section 177EA applies the Commissioner has a discretion, pursuant to subsection 177EA(5), to make a determination to debit the company's franking account pursuant to paragraph 177EA(5)(a), or deny the imputation benefit to each shareholder pursuant to paragraph 177EA(5)(b). The Commissioner will exercise his discretion in such a way that he does not make a determination that the imputation benefit obtained by the participating shareholders be denied under paragraph 177EA(5)(b).

### ***Section 204-30 of the ITAA 1997***

64. Section 204-30 of the ITAA 1997 applies where a corporate tax entity streams the payment of dividends, or the payment of dividends and the giving of other benefits, to its members in such a way that:

- (a) an imputation benefit is, or apart from this section would be, received by a member of the entity as a result of the distribution or distributions (paragraph 204-30(1)(a));
- (b) the member would derive a greater benefit from franking credits than another member of the entity (paragraph 204-30(1)(b)); and

- (c) the other member of the entity will receive lesser imputation benefits, or will not receive any imputation benefits, whether or not the other member receives other benefits (paragraph 204-30(1)(c)).

65. Relevantly, if section 204-30 applies the Commissioner is vested with a discretion under subsection 204-30(3) to make a determination in writing either:

- (a) that a specified franking debit arises in the franking account of the entity, for a specified distribution or other benefit to a disadvantaged member (paragraph 204-30(3)(a)); or
- (b) that no imputation benefit is to arise in respect of any streamed distributions made to a favoured member and specified in the determination (paragraph 204-30(3)(c)).

66. For section 204-30 to apply, members to whom distributions are streamed must derive a greater benefit from imputation benefits than the members who do not participate in the Buy-Back. The words 'derives a greater benefit from franking credits' (imputation benefits) are defined in subsection 204-30(8) by reference to the ability of the members to fully utilise imputation benefits.

67. A significant proportion of the CEL shareholding was held by non-residents who do not fully benefit from franking, a feature of the Buy-Back, to the same extent as resident shareholders. Thus, the conditions in subsection 204-30(1) for the provision to apply are met. However, the Commissioner will not make a determination under section 204-30, because it is more appropriate that the debit be made under section 177EA of the ITAA 1936.

## Detailed contents list

68. Below is a detailed contents list for this Class Ruling:

	<b>Paragraph</b>
<b>What this Class Ruling is about</b>	<b>1</b>
Tax law(s)	2
Class of persons	3
Qualifications	5
<b>Date of effect</b>	<b>9</b>
<b>Withdrawal</b>	<b>10</b>
<b>Arrangement</b>	<b>11</b>
<b>Ruling</b>	<b>22</b>
The Dividend Component	22
Assessability of the Dividend Component and tax offset	24

Non-resident shareholders	26
The Capital Component and Sale Consideration	27
Non-resident shareholders	30
The anti-avoidance provisions	31
<b>Explanation</b>	<b>34</b>
The Dividend and Capital Components	34
The Dividend Component	35
Non-resident shareholders	41
The Capital Component and Sale Consideration	42
Non-resident shareholders	50
The anti-avoidance provisions	51
<i>Sections 45A and 45B of the ITAA 1936</i>	51
<i>Section 177EA of the ITAA 1936</i>	58
<i>Section 204-30 of the ITAA 1997</i>	64
<b>Detailed contents list</b>	<b>68</b>

---

**Commissioner of Taxation**

 9 November 2005
 

---

<i>Previous draft:</i>	- TAA 1953 Pt IVAAA
Not previously issued as a draft	- ITAA 1936 44
	- ITAA 1936 44(1)
<i>Related Rulings/Determinations:</i>	- ITAA 1936 45A
CR 2001/1; TR 92/1; TR 92/20;	- ITAA 1936 45A(3)(b)
TR 97/16; TD 2004/22	- ITAA 1936 45B
	- ITAA 1936 45B(2)(a)
<i>Subject references:</i>	- ITAA 1936 45B(2)(b)
- capital benefit	- ITAA 1936 45B(2)(c)
- capital gains tax	- ITAA 1936 45B(8)
- capital proceeds	- ITAA 1936 45C
- capital reduction	- ITAA 1936 128B(3)(ga)
- CGT Event	- ITAA 1936 Pt III Div 16K
- deemed dividends	- ITAA 1936 159GZZZP
- dividend income	- ITAA 1936 159GZZZP(2)
- dividend streaming	- ITAA 1936 159GZZZQ
arrangements	- ITAA 1936 159GZZZQ(1)
- frankable dividends	- ITAA 1936 159GZZZQ(2)
- imputation system	- ITAA 1936 159GZZZQ(8)
- return of capital on shares	- ITAA 1936 159GZZZQ(9)
- share buy backs	- ITAA 1936 Div 1A Pt IIIAA
- share capital	- ITAA 1936 160ARDM
	- ITAA 1936 177EA
	- ITAA 1936 177EA(3)
<i>Legislative references:</i>	- ITAA 1936 177EA(3)(a)
- Copyright Act 1968	- ITAA 1936 177EA(3)(b)

# CR 2005/94

- ITAA 1936 177EA(3)(c)
  - ITAA 1936 177EA(3)(d)
  - ITAA 1936 177EA(3)(e)
  - ITAA 1936 177EA(5)
  - ITAA 1936 177EA(5)(a)
  - ITAA 1936 177EA(5)(b)
  - ITAA 1936 177EA(17)
  - ITAA 1997 6-5
  - ITAA 1997 Pt 2-25
  - ITAA 1997 Pt 3-1
  - ITAA 1997 104-10
  - ITAA 1997 104-10(4)
  - ITAA 1997 116-20
  - ITAA 1997 116-20(1)
  - ITAA 1997 118-20
  - ITAA 1997 118-25
  - ITAA 1997 Pt 3-3
  - ITAA 1997 136-10
  - ITAA 1997 136-25
  - ITAA 1997 202-5
  - ITAA 1997 202-40
  - ITAA 1997 202-45
  - ITAA 1997 202-45(c)
  - ITAA 1997 204-30
  - ITAA 1997 204-30(1)
  - ITAA 1997 204-30(1)(a)
  - ITAA 1997 204-30(1)(b)
  - ITAA 1997 204-30(1)(c)
  - ITAA 1997 204-30(3)
  - ITAA 1997 204-30(3)(a)
  - 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 207-145
- 

## ATO references

NO: 2005/16233  
ISSN: 1445-2014  
ATO law topic: Income Tax ~~ Entity specific matters ~~ share buy-backs