


CR 2011/49 - Income tax: RP Data Limited Scheme of Arrangement and Special Dividend

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Class Ruling

Income tax: RP Data Limited Scheme of Arrangement and Special Dividend

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ⓘ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:

- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- subsection 44(1) of the ITAA 1936;
- paragraph 128B(3)(ga) of the ITAA 1936;
- section 128D of the ITAA 1936;
- former section 160APHM of the ITAA 1936;
- former section 160APHN of the ITAA 1936;
- paragraph 177EA(5)(b) of the ITAA 1936;
- section 67-25 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 104-10 of the ITAA 1997;

- subsection 115-25(1) of the ITAA 1997;
- subsection 116-20(1) of the ITAA 1997;
- section 204-30 of the ITAA 1997;
- section 207-20 of the ITAA 1997; and
- section 855-10 of the ITAA 1997

All subsequent legislative references are to the ITAA 1936 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies are the non-CoreLogic Group shareholders of RP Data Limited (RP Data), referred to as participating RP Data shareholders who:

- (a) held their shares on capital account; and
- (b) are residents of Australia within the meaning of subsection 6(1); and
- (c) participated in the RP Data Scheme of Arrangement (the Scheme) under which the CoreLogic Group acquired all of the shares in RP Data that it did not own at the commencement of the Scheme; and
- (d) under the Scheme received:
 - Scheme Consideration; and
 - a Special Dividend; and
- (e) are not subject to the taxation of financial arrangements rules in Division 230 of the ITAA 1997 in relation to gains and losses on their RP Data shares.

(Note: Division 230 will generally not apply to individuals, unless they have made an election for it to apply them.)

Qualifications

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

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 9 to 26 of this Ruling.

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

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

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Date of effect

8. This Ruling applies from 1 July 2010 to 30 June 2011. The Ruling continues to apply after 30 June 2011 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will 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 this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

9. The following description of the scheme is based on information provided by the applicant. The following documents or relevant parts of them form part of and are to be read with the description:

- the application for a Class Ruling dated 10 February 2011;
- the amended application for Class Ruling dated 1 March 2011;
- the amended application for Class Ruling dated 13 April 2011;
- the amended and restated Scheme Implementation Agreement, together with its schedules, between RP Data Limited and the CoreLogic Group, entered into on 9 March 2011;
- the Scheme Explanatory Memorandum dated 14 March 2011 (Explanatory Memorandum);
- RP Data Limited results for year ended 30 June 2010;
- RP Data Limited results for the half-year ended 31 December 2010.

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

RP Data Limited

10. RP Data Limited (RP Data) is a public company which was listed on the Australian Securities Exchange in 2006. It is incorporated and based in Australia. RP Data provides property information, analytics and risk management services in Australia and New Zealand.

11. The shareholders of RP Data are a mix of individuals, companies, superannuation funds and other institutional investors. As at 19 January 2011 approximately 50% of the shareholders were Australian resident shareholders.

12. As at the time of the release of the Explanatory Memorandum RP Data had the following on issue:

- 149,246,421 Shares;
- 2,791,762 Options;
- 1,375,503 Performance Rights; and
- 12,640,000 Warrants.

CoreLogic Group

13. The CoreLogic Group (CoreLogic) is a group of companies headed by CoreLogic Inc. The CoreLogic Group is headquartered in Santa Ana California and is listed on the New York Stock Exchange.

14. CoreLogic is a leading provider of consumer, financial and property information, analytics and services to financial institutions and other businesses, government and government-sponsored enterprises.

15. At the time of the release of the Explanatory Memorandum, CoreLogic held 40.22% of the issued capital in RP Data.

Scheme of Arrangement

16. On 12 January 2011 CoreLogic and RP Data made an announcement to the market stating that CoreLogic had made a formal cash offer to acquire all of the issued shares in RP Data that it did not currently own by way of a Scheme of Arrangement (the Scheme).

17. On 12 January 2011, RP Data and CoreLogic executed a Scheme Implementation Agreement (SIA) which set out the terms and conditions upon which the Scheme would be implemented. The SIA was amended and restated on 9 March 2011.

18. It was proposed that CoreLogic would pay participating RP Data shareholders \$1.65 cash per RP Data share acquired through the Scheme.

19. On 28 April 2011, the Board of RP Data declared a fully franked Special Dividend of \$0.05 cash per RP Data share. The record date for the Special Dividend was 9 May 2011.

20. On 20 April 2011, RP Data shareholders, apart from CoreLogic, approved the resolution to approve the Scheme. On 28 April 2011, RP Data applied for orders of the Federal Court of Australia under section 411 of the *Corporations Act 2001* to approve the Scheme.

21. The RP Data shareholders who hold RP Data shares as at the Scheme Record Date will be entitled to participate in the Scheme. The Scheme Record Date was 10 May 2011.

22. On the Scheme Implementation Date the RP Data shares held by participating RP Data shareholders were acquired by CoreLogic or a subsidiary of CoreLogic. The Scheme Implementation Date was 13 May 2011. The Scheme was binding on all shareholders of RP Data.

Special Dividend

23. On 12 January 2011, the Board of RP Data announced a proposed Special Dividend distribution to all RP Data shareholders (including CoreLogic) of \$0.05 per RP Data share. It was also proposed that the Special Dividend would be franked to the maximum extent possible.

24. The Special Dividend was declared by the RP Data Board on 28 April 2011. The RP Data shareholders (including CoreLogic) who were registered as holding RP Data shares on the Special Dividend Record Date were entitled to receive a Special Dividend of \$0.05 per RP Data Share. The Record Date for the Special Dividend was also 9 May 2011.

25. The full amount of the Special Dividend was debited against RP Data's retained earnings and no amount of the Special Dividend was debited to RP Data's share capital account. The Special Dividend was paid on 13 May 2011. One of the conditions for the payment of the Special Dividend was that it was only to be paid if the scheme became effective.

26. Pursuant to the SIA the Scheme Consideration of \$1.65 cash per RP Data share was not reduced by the amount of the fully franked Special Dividend of \$0.05 cash per RP Data share.

Ruling

The Special Dividend

27. The Special Dividend of \$0.05 cash per share paid to RP Data shareholders will constitute a 'dividend' as defined in subsection 6(1).

28. RP Data shareholders who receive the franked Special Dividend and are residents of Australia as defined in subsection 6(1) are required to include the Special Dividend as assessable income under subparagraph 44(1)(a)(i).

29. RP Data shareholders who receive the franked Special Dividend and are non-residents (other than those carrying on business in Australia at or through a permanent establishment in Australia) are not required to include the dividend as assessable income under subparagraph 44(1)(b)(i) (section 128D) and will not be liable for Australian withholding tax (paragraph 128B(3)(ga)).

30. RP Data shareholders who receive the franked Special Dividend and are non-residents carrying on business in Australia or through a permanent establishment in Australia, where the Special Dividend is attributable to the permanent establishment, are required to include the Special Dividend as assessable income under subparagraphs 44(1)(b)(i) and 44(1)(c)(i).

Gross up and tax offset

31. RP Data shareholders who receive the franked Special Dividend directly:

- must include the amount of the franking credit attached to the Special Dividend in their assessable income; and
- will be entitled to a tax offset equal to the amount of the franking credit (tax offset);

under section 207-20 of the ITAA 1997, subject to being a qualified person.

Refundable tax offset

32. The tax offsets will be subject to the refundable tax offset rules in Division 67 of the ITAA 1997. Certain trustees and corporate tax entities are not entitled to the refundable tax offset rules because of subsections 67-25(1A) to 67-25(1D) of the ITAA 1997.

Qualified persons

33. The payment of the Special Dividend as part of the Scheme constitutes a related payment within the meaning of former section 160APHN.

34. Accordingly, each RP Data Shareholder needs to hold their shares at risk for a continuous period of at least 45 days in the secondary qualification period in order to be a qualified person in respect of the Special Dividend.

35. Each RP Data Shareholder will no longer be considered to hold their RP Data shares 'at risk' for the purposes of Division 1A of former Part IIIAA (former Division 1A) from the Scheme Record Date of 10 May. Therefore, an RP Data Shareholder will be a qualified person in relation to the Special Dividend if, from 26 March 2011 until 10 May 2011 inclusive, the RP Data Shareholder continued to hold their RP Data shares and did not have 'materially diminished risks of loss or opportunities for gain' (as defined in former section 160APHM) in respect of the RP Data shares for a continuous period of at least 45 days.

Capital gains tax

CGT event A1

36. CGT event A1 will happen when participating RP Data shareholders dispose of their RP Data shares pursuant to the Scheme (subsections 104-10(1) and 104-10(2) of the ITAA 1997).

37. The time of the CGT event will be the Scheme Implementation Date, 13 May 2011 (subsection 104-10(3) of the ITAA 1997).

38. A participating RP Data shareholder will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a RP Data share exceed its cost base. A participating RP Data shareholder will make a capital loss if those proceeds are less than the RP Data share's reduced cost base (subsection 104-10(4) of the ITAA 1997).

Capital proceeds

39. The capital proceeds received by a participating RP Data shareholder is the money received or entitled to be received in respect of the event happening (subsection 116-20(1) of the ITAA 1997).

40. The capital proceeds for a participating RP Data shareholder will consist of the Scheme Consideration of \$1.65 cash per RP Data share.

41. The Special Dividend of \$0.05 per RP Data share received by participating RP Data shareholders will not be capital proceeds from the disposal of each RP Data share to CoreLogic as it is considered, having regard to all the circumstances of the Scheme, that it was not paid in respect of the CGT event happening.

Discount capital gains

42. If the RP Data share to which the CGT event relates was acquired by a participating RP Data shareholder at least 12 months before the Implementation Date, a capital gain made when CGT event A1 happens may qualify as a discount capital gain under subsection 115-25(1) of the ITAA 1997 (provided the other conditions in Subdivision 115-A of the ITAA 1997 are satisfied).

Foreign resident shareholders

43. A foreign resident RP Data shareholder who is paid the Scheme Consideration disregards any capital gain made when CGT event A1 happens if their RP Data share is not 'taxable Australian property' (section 855-10 of the ITAA 1997).

Anti-avoidance provisions

44. 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 benefit received in relation to the Special Dividend paid in relation to a RP Data share.

45. The Commissioner will not make a determination under paragraph 177EA(5)(b) to deny the whole, or any part, of the imputation benefit received in relation to the Special Dividend paid in relation to a RP Data share.

Commissioner of Taxation

25 May 2011

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

The Special Dividend

46. The term 'dividend' is defined in subsection 6(1) as a distribution made by a company to shareholders, whether in money or other property.

47. The payment of the Special Dividend is a distribution of money by RP Data to its shareholders.

48. Paragraph (d) of the definition of 'dividend' in subsection 6(1) excludes from the definition of 'dividend' any:

moneys paid or credited by a company to a shareholder or any other property distributed by a company to shareholders (not being moneys or other property to which this paragraph, by reason of subsection (4), does not apply or moneys paid or credited, or property distributed for the redemption or cancellation of a redeemable preference share), where the amount of the moneys paid or credited, or the amount of the value of the property, is debited against an amount standing to the credit of the share capital account of the company...

49. The payment of the Special Dividend was sourced from existing cash reserves or financing facilities. The payment amounts will be debited against RP Data's retained earnings account and not the share capital account. Therefore, the exclusion in paragraph (d) will not apply. The Special Dividend will constitute a 'dividend' for the purposes of subsection 6(1).

Assessability of Dividends

50. Subparagraph 44(1)(a)(i) includes in the assessable income of an Australian resident shareholder in a company:

dividends (other than non-share dividends) that are paid to the shareholder by the company out of profits derived by it from any source.

51. As the Special Dividend is paid to RP Data shareholders out of profits derived by RP Data, RP Data shareholders who are residents of Australia as defined in subsection 6(1) are required to include the Special Dividend in their assessable income under paragraph 44(1)(a)(i).

52. Subparagraph 44(1)(b)(i) includes in the assessable income of a non-resident shareholder in a company:

dividends (other than non-share dividends) paid to the shareholder by the company to the extent to which they are paid out of profits derived by it from sources in Australia.

53. Subsection 128B(1) imposes Australian withholding tax on income that:
- (a) is derived, on or after 1 January 1968, by a non-resident; and
 - (b) consists of a dividend paid by a company that is a resident.
54. However, subparagraph 128B(3)(ga)(i) excludes from subsection 128B(1) income derived by a non-resident that consists of the franked part of a dividend. As the Special Dividend is franked, it will not be subject to Australian withholding tax when derived by non-resident RP Data shareholders.
55. In addition section 128D states that:
- Income other than income to which section 128B applies by virtue of subsection (2A), (2C) or 9(C) of that section upon which withholding tax is payable, or upon which withholding tax would, but for paragraph 128(3)(ga) or (jb), section 128F, section 128FA or section 128GB, be payable, is not assessable income and is not exempt income of a person.
56. As the payment of the Special Dividend is income that is subject to withholding tax but for paragraph 128B(3)(ga), it will not be assessable income, and will not be exempt income of non-resident RP Data shareholders pursuant to section 128D.
57. Accordingly, RP Data shareholders who receive the franked Special Dividend and are non-residents (other than those carrying on business in Australia at or through a permanent establishment in Australia) are not required to include the dividend as assessable income under subparagraph 44(1)(b)(i) (section 128D) and will not be liable for Australian withholding tax (paragraph 128B(3)(ga)).

Gross up and tax offset

58. Section 207-20 of the ITAA 1997 provides:
- (1) If an entity makes a franked distribution to another entity, the assessable income of the receiving entity, for the income year in which the distribution is made, includes the amount of the franking credit on the distribution. This is in addition to any other amount included in the receiving entity's assessable income in relation to the distribution under any other provision of this Act.
 - (2) The receiving entity is entitled to a tax offset for the income year in which the distribution is made. The tax offset is equal to the franking credit on the distribution.
59. Therefore, subject to satisfying the qualified person rule, where the fully franked Special Dividend is received directly by a RP Data shareholder, the RP Data shareholder will:
- include the amount of the franking credit attached to the Special Dividend in their assessable income; and
 - be entitled to a tax offset equal to the amount of the franking credit.

60. Where the fully franked Special Dividend is received by a RP Data shareholder (not being an entity taxed as a corporate tax entity) that is a trustee of a trust (not being a complying superannuation fund) or a partnership, subsection 207-35(1) of the ITAA 1997 applies, subject to the trustee or partnership being a qualified person. Subsection 207-35(1) provides:

If:

- (a) a franked distribution is made in an income year to an entity that is a partnership or the trustee of a trust; and
- (b) the entity is not a corporate tax entity when the distribution is made; and
- (c) if the entity is the trustee of a trust – the trust is not a complying superannuation entity or FHSA trust when the distribution is made;

the assessable income of the partnership or trust for that income year includes the amount of the franking credit on the distribution.

61. Therefore, subject to satisfying the qualified person rule, a RP Data shareholder that is a trust or a partnership will be required to include the amount of the franking credit attached to the Special Dividend in their assessable income under subsection 207-35(1) of the ITAA 1997.

Refundable tax offset

62. RP Data Shareholders who are entitled to a tax offset under subsection 207-20(2) of the ITAA 1997, in respect of the franking credit received, will also be subject to the refundable tax offset rules in Division 67 of the ITAA 1997, unless specifically excluded under section 67-25 of the ITAA 1997.

63. Pursuant to section 67-25 of the ITAA 1997, there are a range of taxpayers who are specifically excluded from the operation of the refundable tax offset rules. This range of excluded entities includes:

- non-complying superannuation funds or non-complying approved deposit funds (subsection 67-25(1A) of the ITAA 1997);
- a trustee of a trust who is liable to be assessed under section 98 or 99A of the ITAA 1936 (subsection 67-25(1B) of the ITAA 1997);
- corporate tax entities, unless the entity is an exempt institution that is eligible for a refund, or a life insurance company that has received distributions on membership interests which were not held by the company on behalf of its shareholders (subsections 67-25(1C) and 67-25(1D) of the ITAA 1997); and
- foreign resident entities carrying on business in Australia at or through a permanent establishment (subsection 67-25(1DA) of the ITAA 1997).

Qualified persons

64. Former Division 1A contains the measures known as the holding period rule and the related payment rule. In broad terms, former Division 1A provides the statutory tests that must be satisfied for a taxpayer to be a 'qualified person' with respect to a franked distribution they have received and thus be entitled to a tax offset for the franking credit attached to the distribution.

65. The test of what constitutes a 'qualified person' is provided in former subsection 160APHO(1) as follows:

A taxpayer who has held shares or an interest in shares on which a dividend has been paid is a qualified person in relation to the dividend if:

- (a) where neither the taxpayer nor an associate of the taxpayer has made, is under an obligation to make, or is likely to make, a related payment in respect of the dividend – the taxpayer has satisfied subsection (2) in relation to the primary qualification period in relation to the dividend; or
- (b) where the taxpayer or an associate of the taxpayer has made, is under an obligation to make, or is likely to make, a related payment in respect of the dividend – the taxpayer has satisfied subsection (2) in relation to the secondary qualification in relation to the dividend.

66. Former subsection 160APHO(2) sets out the holding period requirement. Broadly, if a taxpayer is not under an obligation to make a related payment in relation to a dividend or distribution, the taxpayer will have to satisfy the holding period requirement within the primary qualification period. If a taxpayer is under an obligation to make a related payment in relation to a dividend or distribution, the taxpayer will have to satisfy the holding period requirement within the secondary qualification period.

Related payment rule

67. In order to determine which is the relevant qualification period, it is necessary to determine whether, under the present arrangement, the RP Data shareholders are considered to be under an obligation to make a related payment.

68. Former section 160APHN provides non-definitive examples of what constitutes the making of a related payment for the purposes of former Division 1A. Former subsection 160APHN(2) provides:

The taxpayer or associate is taken, for the purposes of this Division, to have made, to be under an obligation to make, or to be likely to make, a related payment in respect of the dividend or distribution if, under an arrangement, the taxpayer or associate has done, is under an obligation to do, or may reasonably be expected to do, as the case may be, anything having the effect of passing the benefit of the dividend or distribution to one or more other persons.

69. Former paragraph 160APHN(3)(d) states:

Without limiting subsection (2), the doing of any of the following by the taxpayer or an associate of the taxpayer in the circumstances mentioned in subsection (4) may have the effect of passing the benefit of the dividend or distribution to one or more other person:

- (a) causing a payment or payments to be made to, or in accordance with the directions of, the other person or other persons; or
- (b) causing an amount or amounts to be credited to, or applied for the benefit of, the other person or other persons; or
- (c) causing services to be provided to, or in accordance with the directions of, the other person or other persons; or
- (d) causing property to be transferred to, or in accordance with the directions of, the other person or other persons; or
- (e) allowing any property or money to be used by the other person or other persons or by someone nominated by the other person or other persons; or
- (f) causing an amount or amounts to be set off against, or to be otherwise applied in reduction of, a debt or debts owed by the other person or other persons to the taxpayer or associate; or
- (g) agreeing to treat an amount or amounts owed to the other person or other persons by the taxpayer or associate as having been increased.

70. Former subsection 160APHN(4) states:

The circumstances referred to in subsection (3), are where:

- (a) the amount or the sum of the amounts paid, credited or applied; or
- (b) the value or the sum of the values of the services provided, of the property transferred or of the use of the property or money; or
- (c) the amount or the sum of the amounts of the set-offs, reductions or increases;

as the case may be:

- (d) is, or may reasonably be expected to be, equal to; or
- (e) approximates or may reasonably be expected to approximate; or
- (f) is calculated by reference to;

the amount of dividend or distribution.

Special Dividend

71. In the current circumstances, it is considered that an integral part of the Scheme is the payment of the Special Dividend of \$0.05 per share to the RP Data Shareholders. The payment of the Special Dividend was conditional upon the Scheme proceeding, tying the payment of the Special Dividend to the disposal of the RP Data shares.

72. In these circumstances, in determining whether an RP Data shareholder is taken to have made, or be likely to make a related payment in respect of the Special Dividend, it is considered that an RP Data shareholder will be taken to have made or be likely to make a related payment in respect of the Special Dividend.

73. As the RP Data shareholders are taken, for the purposes of former Division 1A, to have made or be likely to make a related payment in respect of the Special Dividend, the relevant holding period is the secondary qualification period pursuant to former paragraph 160APHO(1)(b).

74. The secondary qualification period is defined in former section 160APHD as follows:

In relation to a taxpayer in relation to shares or an interest in shares, means:

- (a) if the shares are not preference shares – the period beginning on the 45th day before, and ending on the 45th day after, the day on which the shares or interest becomes ex dividend...

75. The concept of 'ex-dividend' is defined by former subsection 160APHE(1) as follows:

a share in respect of which a dividend is to be paid, or an interest (other than an interest as a beneficiary of a widely held trust) in such a share, becomes ex dividend on the day after the last day on which the acquisition by a person of the share will entitle the person to receive the dividend.

76. RP Data determined eligibility for the Special Dividend on the Special Dividend Record Date of 9 May 2011. This was the last day on which acquisition by a person of an RP Data share would entitle the person to receive the Special Dividend as per former section 160APHE. Accordingly, the ex-dividend date for the purposes of former subsection 160APHE(1) is 10 May 2011.

77. The secondary qualification period runs from 45 days before the ex-dividend date of 10 May 2011 and ends 45 days after that day. In practical terms, this means that the secondary qualification period runs from 26 March 2011 to 24 June 2011. However, pursuant to former subsection 160APHO(3), any days on which a taxpayer has materially diminished risks of loss or opportunities for gain in respect of the RP Data shares are to be excluded. This would mean that the secondary qualification period would run from 26 March 2011 until the date that RP Data shareholders are no longer at risk for the purposes of former Division 1A.

78. Entitlement to participate in the RP Data Scheme was determined on the Scheme Record Date on the basis of being an RP Data shareholder who was registered in the share register as the holder of the relevant ordinary share on 10 May 2011. It is considered that once an RP Data shareholder is identified as a participating RP Data shareholder, that the RP Data shareholder would no longer be considered to hold their shares 'at risk' for the purposes of former Division 1A as at that time the RP Data shareholder is committed to disposing of their RP Data share and receiving the Scheme Consideration.

79. The secondary qualification period would thus run from 26 March 2011 until 10 May 2011 (inclusive). However, pursuant to former section 160APHO, the 26 March 2011 could not be taken into account if it was the date of acquisition of an RP Data share. An RP Data shareholder in this situation would have needed to acquire their RP Data share on or before 25 March 2011 to be able to satisfy the holding period requirement. Accordingly, RP Data shareholders who received the Special Dividend would have needed to hold their shares at risk for a continuous period of not less than 45 days during this period in order to be a 'qualified person' for the purposes of former Division 1A.

Capital gains tax

CGT event A1

80. CGT event A1 happens if there is a change in the ownership of an asset from one entity to another (section 104-10 of the ITAA 1997). This event happens when a contract to dispose of the asset is entered into, or if there is no contract, when the change of ownership occurs (subsection 104-10(3) of the ITAA 1997).

81. The Addendum to Taxation Determination TD 2002/4 indicates that a takeover or merger effected by a court approved scheme of arrangement does not involve a disposal of shares under a contract.

82. CGT event A1 will happen when a participating RP Data shareholder disposes of each of their RP Data shares to CoreLogic pursuant to the Scheme. The disposal will occur on the Implementation Date of 13 May 2011 (subsections 104-10(1) and 104-10(2) of the ITAA 1997) when the shares are disposed of by the RP Data shareholder.

83. A participating RP Data shareholder will make a capital gain when CGT event A1 happens if the capital proceeds from the disposal of a RP Data share exceed its cost base. A participating RP Data shareholder will make a capital loss if those capital proceeds are less than the RP Data share's reduced cost base (subsection 104-10(4) of the ITAA 1997).

Capital proceeds

84. The capital proceeds from the Scheme is the money received or entitled to be received in respect of the disposal of the shares in RP Data by participating RP Data shareholders (subsection 116-20(1) of the ITAA 1997).

85. A participating RP Data shareholder is entitled to receive the Scheme Consideration of \$1.65 cash per RP Data share in respect of the disposal of RP Data shares to CoreLogic.

86. The term 'in respect of the event happening' in subsection 116-20(1) of the ITAA 1997 requires that the relationship between the event and the receipt of the money, or entitlement to receive the money, must be more than coincidental. An amount is not 'capital proceeds' of an event merely because it is received in association with the event.

87. Although the declaration and payment of the Special Dividend of \$0.05 cash per RP Data share was contingent on the Scheme proceeding, it is considered that the Special Dividend does not form part of the capital proceeds received or entitled to be received by a participating RP Data shareholder in respect of the disposal of RP Data shares.

88. The declaration of the Special Dividend was at the discretion of the Board of RP Data independent of CoreLogic. Pursuant to the SIA, the Scheme Consideration will not be reduced by the amount of the Special Dividend. Furthermore, the Special Dividend will be funded by using RP Data's existing cash reserves or financing facilities enabling RP Data to utilise remaining franking credits prior to implementation of the Scheme.

Discount capital gains

89. If a participating RP Data Shareholder makes a capital gain from the disposal of their RP Data share, they will be eligible to treat the capital gain as a 'discount capital gain' provided that:

- the participating RP Data Shareholder is an individual, complying superannuation entity or, subject to the rules in Subdivision 115-C of the ITAA 1997, a trust (section 115-10 of the ITAA 1997);
- the capital gain has been worked out using a cost base that has been calculated without reference to indexation (subsection 115-20(1) of the ITAA 1997); and
- the RP Data share was acquired at least 12 months prior to CGT event A1 happening (subsection 115-25(1) of the ITAA 1997).

Foreign resident shareholders

90. Under subsection 855-10(1) of the ITAA 1997, an entity disregards a capital gain or capital loss made from a CGT event if they are a foreign resident or the trustee of a foreign trust for CGT purposes, just before the CGT event happens and the CGT event happens in relation to a CGT asset that is not 'taxable Australian property'.

91. The term 'taxable Australian property' is defined in the table in section 855-15 of the ITAA 1997. The table sets out these five categories of CGT assets:

Item 1	taxable Australian real property;
Item 2	an indirect Australian real property interest not covered by item 5;
Item 3	a CGT asset used at any time in carrying on a business through a permanent establishment in Australia and which is not covered by item 1, 2 or 3;
Item 4	an option or right to acquire a CGT asset covered by item 1, 2 or 3; and
Item 5	a CGT asset that is covered by subsection 104-165(3) of the ITAA 1997 (choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident).

92. A participating RP Data shareholder that is a foreign resident just before CGT event happens cannot disregard under section 855-10 of the ITAA 1997 any capital gain or capital loss made when CGT event A1 happens if their RP Data share is 'taxable Australian property'.

Anti-avoidance provisions**Section 204-30**

93. 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 section 204-30 of the ITAA 1997 would be, received by a member of the entity as a result of the distribution or distributions (paragraph 204-30(1)(a) of the ITAA 1997);
- (b) the member would derive a greater benefit from franking credits than another member of the entity (paragraph 204-30(1)(b) of the ITAA 1997); 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) of the ITAA 1997).

94. If section 204-30 of the ITAA 1997 applies the Commissioner has discretion under subsection 204-30(3) to make a determination in writing:

- (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) of the ITAA 1997); and/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) of the ITAA 1997).

95. For section 204-30 of the ITAA 1997 to apply, members to whom distributions are streamed must derive a greater benefit from imputation benefits than other members. The words 'derives a greater benefit from franking credits' (imputation benefits) are defined in subsection 204-30(8) of the ITAA 1997 by reference to the ability of the members to fully utilise imputation benefits.

96. Under the current proposal for the payment of the franked Special Dividend, all participating RP Data shareholders will receive an imputation benefit. Australian resident shareholders will receive the benefit of a tax offset (paragraph 204-30(6)(a) of the ITAA 1997) or receive a franking credit to their franking account as a result of the distribution.

97. The non-resident shareholders will receive an imputation benefit in the form of an exemption from dividend withholding tax (paragraph 204-30(6)(e) of the ITAA 1997). The resident shareholders will derive a greater benefit from franking credits than the non-resident shareholders. However, as the proposed distributions are to be franked and paid to all the participating shareholders, it cannot be argued that RP Data has directed the flow of distributions in such a manner so as to ensure that imputation benefits are derived by shareholders who derive greater benefit from franking credits, while other shareholders receive lesser or no imputation benefits.

98. Having regard to all of the relevant circumstances it is considered that section 204-30 of the ITAA 1997 does not apply.

Section 177EA

99. Section 177EA 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.

100. 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, a 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.

101. If section 177EA applies, the Commissioner may make a determination under subsection 177EA(5) that either a franking debit arises to the company in respect of each distribution paid to the relevant taxpayer (paragraph 177EA(5)(a)) or, in the alternative, that no franking credit benefit arises in respect of a distribution paid to the relevant taxpayer (paragraph 177EA(5)(b)).

102. RP Data is a corporate tax entity. The disposal of the ordinary shares in RP Data pursuant to the Scheme is a scheme for the disposition of membership interests. The fully franked Special Dividend is a frankable distribution that will be paid to RP Data shareholders as a part of this Scheme who could, therefore, reasonably be expected to receive imputation benefits.

103. In the present case, it is considered that the conditions of paragraphs 177EA(3)(a) to 177EA(3)(d) are satisfied. Accordingly, the issue is whether, having regard to the relevant circumstances of the scheme (as provided for in subsection 177EA(17)), it would be concluded that, on the part of RP Data, its shareholders or any other relevant party, there is a purpose of more than merely an incidental purpose of conferring a franking credit benefit under the scheme.

104. 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.

105. The relevant circumstances are that the disposition of the ordinary shares in RP Data is made pursuant to a takeover by CoreLogic by way of a Scheme of Arrangement under the *Corporations Act 2001* voted upon by RP Data's existing shareholders.

106. The Special Dividend will be franked to maximum extent possible and will be paid to the existing shareholders of RP Data in proportion to their shareholding. The Special Dividend allows RP Data shareholders to share in the accumulated profits of RP Data.

107. In considering the manner, form and substance of the Scheme, it is considered that the Scheme is not being entered into by RP Data or the RP Data shareholders for the purpose of enabling participating shareholders to obtain an imputation benefit. Having regard to the relevant circumstances of the Scheme, the Commissioner has come to the view that the requisite purpose is not present and accordingly the Commissioner will not make a determination under paragraph 177EA(5)(b) to deny the whole, or any part, of the imputation benefit received in relation to the dividends.

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