


CR 2014/97 - Income tax: Wotif.com Holdings Limited Scheme of Arrangement and Payment of Special Dividend

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Class Ruling

Income tax: Wotif.com Holdings Limited Scheme of Arrangement and Payment of 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 provisions 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
 - section 128D of the ITAA 1936
 - section 128B of the ITAA 1936
 - Division 1A of former Part IIIA of the ITAA 1936
 - section 177EA of the ITAA 1936
 - Division 67 of the *Income Tax Assessment Act 1997* (ITAA 1997)
 - section 104-10 of the ITAA 1997
 - Division 115 of the ITAA 1997

- section 116-20 of the ITAA 1997
- section 204-30 of the ITAA 1997
- Division 207 of the ITAA 1997
- section 208-195 of the ITAA 1997, and
- section 855-10 of the ITAA 1997.

All legislative references in this Ruling are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies consists of the holders of ordinary shares in Wotif.com Holdings Limited (Wotif) who:

- (a) participate in the Wotif Scheme of Arrangement (Scheme) under which Expedia Australia Investments Pty Ltd (referred to as Expedia Australia and Bidder) will acquire all of the shares in Wotif, or
- (b) will be entitled to receive the Special Dividend (Special Dividend)
- (c) held their shares in Wotif neither as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)) – that is, broadly, on capital account, and
- (d) are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their Wotif shares.

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

4. In this Ruling, an entity belonging to this class of entities is referred to as a 'Wotif shareholder'.

5. This Class Ruling does not consider the taxation treatment of the holders of any options granted pursuant to the Wotif Executive Share Option Plan or performance rights (ESP Options).

6. This Class Ruling does not consider the Call Option Deeds dated 5 July 2014 which enable Expedia Australia, subject to the receipt of a Superior Offer and other conditions, to acquire the following shares from the following shareholders:

- (a) RAC and JD Brice Superannuation Pty Ltd ACN 130 670 834 as trustee for the Brice Superannuation Fund and Robert Andrew Creeth Brice for 18,574,050 ordinary shares, and
- (b) Graeme Thomas Wood for 23,561,464 ordinary shares.

Qualifications

7. The Commissioner makes this Ruling based on the precise Scheme identified in this Ruling.

8. 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 11 to 35 of this Ruling.

9. 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.

Date of effect

10. This Ruling applies from 1 July 2014 to 30 June 2015. The Ruling continues to apply after this date 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

11. 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:

- Class Ruling Application dated 12 August 2014
- the Scheme Implementation Agreement (SIA) dated 5 July 2014 together with its Schedules and Annexures
- the Wotif Scheme Booklet dated 15 August 2014
- announcements by Wotif and Expedia Australia to the Australian Securities Exchange, and
- other correspondence provided by the Applicant between 12 August 2014 and 19 November 2014.

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

Relevant Entities

Wotif

12. Wotif is an Australian resident public company limited by shares incorporated in the State of Queensland and listed on the Australian Securities Exchange (ASX) in 2006. Wotif operates online travel brands in the Asia Pacific region and a network of travel content and destination websites.

13. Wotif launched in 2000 and listed on the ASX in June 2006. As at 16 July 2014, Wotif had 211,736,244 fully paid ordinary shares on issue, with each share carrying equal rights and 2,818,462 ESP Options.

14. The ESP Options either vested in accordance with the terms and conditions of the SIA on or prior to 5.00 pm on the Scheme Record Date (11 November 2014) or were cancelled in accordance with the terms and conditions of the SIA prior to 8.00 am on the Second Court Date (6 November 2014).

15. The Wotif shareholders include individuals, companies, trusts, partnerships, superannuation funds and institutional investors.

16. Wotif has regularly paid fully franked dividends to its shareholders, for example, on 10 October 2012, 28 March 2013, 10 October 2013 and 26 March 2014. Those shareholders that hold Wotif Shares on the record date for the financial year 2014 full year will be paid a dividend.

17. The sum of the market values of Wotif's assets that are taxable Australian real property does not exceed the sum of the market values of its assets that are not taxable Australian real property.

Expedia Australia

18. Expedia Australia is a company limited by shares and incorporated in the State of Victoria.

19. Expedia Australia is a wholly owned subsidiary of Expedia Inc. (Expedia) a Delaware corporation listed on the NASDAQ Global Stock Market.

20. Neither Expedia Australia nor Expedia hold any shares in Wotif (save as will be acquired under the Scheme outlined below).

The Scheme of Arrangement

21. On 7 July 2014, Wotif announced that it had executed the SIA with Expedia Australia and Expedia. Under the SIA, subject to the satisfaction of conditions precedent, it was proposed that Expedia Australia would acquire all of the ordinary shares in Wotif by way of a scheme of arrangement under Part 5.1 of the *Corporations Act 2001*.

22. The Scheme was approved by a majority of eligible Wotif shareholders at a Scheme Meeting convened by the Court pursuant to section 411(1) of the *Corporations Act 2001* which was held on 9 October 2014.

23. The Second Court Date for the approval of the Scheme was 6 November 2014. The Effective Date of the Scheme was when the Court order was lodged with the Australian Securities and Investment Commission and announced by Wotif to ASX Limited which was 6 November 2014.

24. The Dividend Record Date was 16 October 2014 and the date for the Payment of the Special Dividend was 10 November 2014.

25. The Scheme Record Date was 11 November 2014 which was 5 business days after the Effective Date. The Implementation Date was 14 November 2014 and the transfer of the Wotif shares to Expedia Australia and the despatching of the Scheme Consideration occurred on this date.

26. The directors of Wotif agreed to recommend acceptance of the Expedia Australia offer to the Wotif shareholders, subject to there being no Superior Proposal.

27. Under the Scheme, Wotif shareholders were to receive \$3.06 in cash in consideration from Expedia Australia for every Wotif share they own on the Scheme Record Date (Scheme Consideration).

28. The Board declared dividends conditionally on the Scheme becoming Effective, to be paid by Wotif on the Dividend Payment Date. A Special Dividend of \$0.24 per Wotif share, fully franked, was declared on 28 August 2014.

29. The scheme provided that Wotif shareholders were to receive cash of up to \$3.30 per Wotif share from a combination of the Scheme Consideration and the Special Dividend.

30. There was no adjustment to the Scheme Consideration for the value of the franking credits attached to the Special Dividend.

31. The payment of the Scheme Consideration by Expedia Australia to Wotif shareholders was financed by Expedia Australia. Neither Expedia Australia nor Expedia nor any related entity directly or indirectly funded any part of the Special Dividend.

32. Wotif shareholders who held Wotif Shares:

- (a) on the Dividend Record Date (16 October 2014), were paid the Special Dividend on the Dividend Payment Date (10 November 2014), and
- (b) on the Scheme Record Date (11 November 2014), were paid the Scheme Consideration on the Implementation Date (14 November 2014).

33. After the implementation of the Scheme, Wotif became a wholly owned subsidiary of Expedia Australia and was delisted from the ASX at 7pm on 17 November 2014.

The Special Dividend

34. Under the SIA:
- (a) the Scheme will not become Effective and the obligations of the parties are not binding until each of the conditions (**Conditions Precedent**) in clause 3.1 is either satisfied or waived in accordance with clause 3.2. The declaration and payment of the Special Dividend is not a listed condition.
 - (b) Notwithstanding any other provision of the SIA, Wotif may at its discretion declare and pay the Special Dividend to the Wotif shareholders. The record date for the Wotif Discretionary Special Dividend must occur before the Record Date (clause 4.5).
 - (c) If the Scheme is approved by the Court, Wotif must fund and pay the Special Dividend on or before the Implementation Date (clause 4.1(y)).
35. In relation to the Special Dividend:
- (a) The Special Dividend was funded by Wotif out of its cash reserves.
 - (b) The Special Dividend was paid out of retained earnings. No amount was debited against its share capital account.
 - (c) Neither Expedia Australia nor Expedia (nor any related entity) directly or indirectly funded the Special Dividend (or any part of the Special Dividend).
 - (d) Neither Expedia Australia nor Expedia (nor any related entity) was an existing shareholder of Wotif.
 - (e) Wotif's past distribution pattern and dividend policy was such that a dividend is generally paid twice a year.
 - (f) The Scheme was not conditional on the payment of the Special Dividend. However, as noted above, clause 4.1(y) of the SIA provides that if the Scheme is approved by the Court, Wotif must declare, fund and pay the Special Dividend on or before the Implementation Date (if it elects to declare and pay a Dividend).
 - (g) The amount of the Special Dividend was capped at \$0.24 and calculated by reference to Wotif's projected trading revenue and payment of quarterly tax instalments.
 - (h) Except to the extent of the cap above, neither Expedia Australia nor Expedia (nor any related entity) had any influence or control over the decision to declare or pay a dividend.

- (i) The Dividend Record Date for the Special Dividend is a different record date from the Scheme Record Date for the Scheme Consideration.
- (j) The Special Dividend and Scheme Consideration were paid on different dates.

Ruling

The Special Dividend

36. The Special Dividend is a 'dividend' or 'dividends' as defined in subsection 6(1) of the ITAA 1936.

Assessability of the Special Dividend

37. A Wotif shareholder who receives the fully franked Special Dividend and is a resident of Australia, as defined in subsection 6(1) of the ITAA 1936, is required to include the dividend as assessable income under subparagraph 44(1)(a)(i) of the ITAA 1936.

38. A Wotif shareholder who receives the fully franked Special Dividend and is a non-resident (other than those carrying on business in Australia at or through a permanent establishment in Australia) is not required to include the dividends as assessable income under subparagraph 44(1)(b)(i) of the ITAA 1936 (section 128D of the ITAA 1936) and is not liable for Australian withholding tax in respect of the dividend (paragraph 128B(3)(ga) of the ITAA 1936).

39. A Wotif shareholder who receives the fully franked Special Dividend and is a non-resident carrying on business in Australia at or through a permanent establishment in Australia, where the Special Dividend is attributable to the permanent establishment, is required to include the dividend as assessable income under subparagraph 44(1)(c)(i) of the ITAA 1936 and is not liable for Australian withholding tax in respect of the dividend (subsection 128B(3E) of the ITAA 1936).

Gross-up and tax offset

40. A Wotif shareholder who receives the fully franked Special Dividend directly and satisfies the residency requirements in section 207-75:

- (a) must include the amount of the franking credit in their assessable income, and
- (b) will be entitled to a tax offset equal to the amount of the franking credit,

under section 207-20, subject to being a qualified person in relation to the Special Dividend.

41. A Wotif shareholder (not being a corporate tax entity), who receives the fully franked Special Dividend as a trustee of a trust (not being a compliant superannuation entity or a FHSA trust) or as a partnership, is required to include an amount equal to the franking credit attached to the dividend as assessable income under subsection 207-35(1), subject to the trustee or the partnership being a qualified person.

Qualified person

42. The payment of the Special Dividend will constitute a related payment for the purposes of former section 160APHN of the ITAA 1936.

43. Accordingly, to be a 'qualified person' in relation to the Special Dividend, an entity will need to hold their Wotif shares 'at risk' for a continuous period of at least 45 days in the secondary qualification period (former section 160APHO of the ITAA 1936).

44. In determining whether they hold the shares for at least 45 days in the secondary qualification period, an entity does not count the day of acquisition of the shares or the day (if any) on which the shares were disposed of. An entity must exclude any days on which the entity has materially diminished risks of loss or opportunities for gain in respect of the shares or interest (within the meaning of former sections 160APHM and 160APHJ of the ITAA 1936). A Wotif shareholder will no longer hold the shares at risk on the Scheme Record Date.

45. Therefore, a Wotif shareholder will be a qualified person in relation to the Special Dividend, if in the period from 2 September 2014 until 11 November 2014 inclusive, they continue to hold their Wotif shares and did not have 'materially diminished risks or loss or opportunities for gain' (as defined in former section 160APHM of the ITAA 1936) in respect of their Wotif shares for a continuous period of at least 45 days (not counting the day on which the share was acquired or the day of disposal of the share).

Refundable tax offset

46. The franking credit tax offset that Wotif shareholders are entitled to under Division 207 is subject to the refundable tax offset rules in Division 67. Certain trustees and corporate tax entities are excluded from the refundable tax offset rules because of section 67-25.

47. As Wotif is not an exempting entity or former exempting entity at the time of payment of the Special Dividend, section 208-195 will not apply to deny the gross-up of a Wotif Shareholders' assessable income to exclude the franking credit, nor to deny the tax offset to which a Wotif Shareholder would otherwise have been entitled under Division 207 at the time of the Special Dividend Payment.

Capital gains tax***CGT event A1***

48. CGT event A1 happens when a Wotif shareholder disposes of each of their Wotif shares to Expedia Australia pursuant to the Scheme (subsections 104-10(1) and 104-10(2)).

49. Under paragraph 104-10(3)(b), the time of CGT event A1 is when the change of ownership occurs. CGT event A1 happens when the Wotif Shares are transferred to Expedia Australia on the Implementation Date of 14 November 2014.

Capital gain or capital loss

50. A Wotif shareholder will make a capital gain when CGT event A1 happens if the capital proceeds from the disposal of a Wotif share exceed the cost base of that share (subsection 104-10(4)). The capital gain is the amount of the excess.

51. A Wotif shareholder will make a capital loss if the capital proceeds are less than the reduced cost base of the Wotif share (subsection 104-10(4)). The capital loss is the amount of the difference.

Capital proceeds

52. The capital proceeds from CGT event A1 happening to a Wotif shareholder is the money received or entitled to be received in respect of the event happening (subsection 116-20(1)).

53. Having regard to the circumstances of the Scheme, the capital proceeds from CGT event A1 happening in respect of each Wotif share will not include the Special Dividend amount.

54. The capital proceeds received by a Wotif shareholder who disposes of Wotif shares pursuant to the Scheme will be \$3.06 per share.

Discount capital gain

55. A capital gain made by Wotif shareholders when they dispose of their Wotif share under the Scheme is a discount capital gain if they acquired the share at least 12 months before the date of disposal (that is, the Implementation Date of 14 November 2014) and the other conditions in Division 115 are satisfied.

Foreign resident shareholders

56. A foreign resident Wotif shareholder who participated in the Scheme disregards any capital gain made when CGT event A1 happened if their shares were not 'taxable Australian property' (section 855-10).

The anti-avoidance provisions

57. 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 by Wotif shareholders in relation to the Special Dividend paid in relation to a Wotif share.

58. The Commissioner will not make a determination under paragraph 204-30(3)(c) to deny the whole, or any part, of the imputation benefits received by Wotif shareholders in respect of the Special Dividend paid in relation to a Wotif share.

59. Section 207-145 will not apply to the whole, or any part, of the Special Dividend received by a Wotif shareholder, provided the shareholder is a qualified person.

Commissioner of Taxation

3 December 2014

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

60. The term 'dividend' is defined in subsection 6(1) of the ITAA 1936 and includes any distribution made by a company to any of its shareholders.

61. The payment of the Special Dividend will be a distribution of money by Wotif to its shareholders.

62. However, paragraph (d) of the definition of 'dividend' in subsection 6(1) of the ITAA 1936 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...

63. The Special Dividend will be sourced from Wotif's retained earnings, and current year profits account. The Special Dividend will not be debited against its share capital account. Therefore, the exclusion in paragraph (d) will not apply and the Special Dividend will constitute a 'dividend' for the purposes of subsection 6(1) of the ITAA 1936.

Assessability of the Special Dividend - residents

64. Subparagraph 44(1)(a)(i) of the ITAA 1936 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.

65. As the Special Dividend will be paid, to Wotif shareholders out of profits derived by Wotif, Wotif shareholders who are residents of Australia as defined in subsection 6(1) of the ITAA 1936 are required to include the Special Dividend in their assessable income under subparagraph 44(1)(a)(i) of the ITAA 1936.

Assessability of the Special Dividend – non-residents (not carrying on business at or through a permanent establishment)

66. Subparagraph 44(1)(b)(i) of the ITAA 1936 includes any 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.

67. However, subsection 44(1) of the ITAA 1936 does not apply to a dividend to the extent to which another provision of the ITAA 1936 that expressly deals with dividends excludes some or all of the dividend from assessable income.

68. Subsection 128B(1) of the ITAA 1936 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.

69. However, subparagraph 128B(3)(ga)(i) of the ITAA 1936 excludes from subsection 128B(1) of the ITAA 1936 income derived by a non-resident that consist of the franked part of a dividend. As the Special Dividend will be fully franked, it will not be subject to Australian withholding tax when derived by a non-resident Wotif shareholder.

70. In addition, section 128D of the ITAA 1936 states that:

Income other than income to which section 128B applies by virtue of subsection (2A), (2C) or (9C) of that section upon which withholding tax is payable, or upon which withholding tax would, but for paragraph 128B (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.

71. As the payment of the Special Dividend is income that would be subject to withholding tax but for paragraph 128B(3)(ga) of the ITAA 1936, it will not be assessable income, and will not be exempt income of a non-resident Wotif shareholder pursuant to section 128D of the ITAA 1936.

72. Accordingly, a Wotif shareholder who received the fully franked Special Dividend and is a non-resident (other than those carrying on business in Australia at or through a permanent establishment in Australia) is not required to include the dividend as assessable income under subparagraph 44(1)(b)(i) of the ITAA 1936 (section 128D of the ITAA 1936) and is not liable for Australian withholding tax in relation to the dividend (paragraph 128B(3)(ga) of the ITAA 1936).

Assessability of the Special Dividend - non-residents (carrying on business at or through a permanent establishment)

73. The application of subsection 128B(1) of the ITAA 1936 is subject to subsection 128B(3E) of the ITAA 1936. Subsection 128B(3E) of the ITAA 1936 states that section 128B of the ITAA 1936 does not apply to dividend income that:

- (a) is paid to a person who is a non-resident carrying on business in Australia at or through a permanent establishment of the person in Australia; and
- (b) is attributable to the permanent establishment; and
- (c) is not paid to the person in the person's capacity as a trustee.

74. Subparagraph 44(1)(c)(i) of the ITAA 1936 includes in the assessable income of a non-resident shareholder of a resident company who is carrying on business in Australia at or through a permanent establishment of the shareholder in Australia:

Dividends (other than non-share dividends) that are paid to the shareholder by the company and are attributable to the permanent establishment, to the extent to which they are paid out of profits derived by the company from sources outside Australia.

75. Accordingly, a non-resident Wotif shareholder carrying on business in Australia at or through a permanent establishment who received the fully franked Special Dividend (to the extent to which the Special Dividend is attributable to the permanent establishment) is required to include the dividend in their assessable income under subparagraph 44(1)(c)(i) of the ITAA 1936 and is not liable for Australian withholding tax in relation to the dividend.

Gross-up and tax offset

76. Section 207-20 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 another 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.

77. Therefore, subject to being a qualified person in relation to the Special Dividend, if the fully franked Special Dividend was received directly by a Wotif shareholder and the Wotif shareholder satisfies the residency requirement in section 207-75, the Wotif shareholder:

- is required to include the amount of the franking credit on the Special Dividend in their assessable income, and
- is entitled to a tax offset equal to the amount of the franking credit.

78. If the fully franked Special Dividend was received by a Wotif 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) 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 a 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.

79. Therefore, subject to being a qualified person rule, a Wotif shareholder that is a trustee of a trust or a partnership is required to include the amount of the franking credit on the Special Dividend in the assessable income of that trust or partnership under subsection 207-35(1).

Qualified person

80. Paragraph 207-145(1)(a) provides that in relation to a franked distribution made to an entity, only a 'qualified person' in relation to the distribution for the purposes of Division 1A of former Part IIIAA of the ITAA 1936 is required to include the amount of the franking credit in their assessable income and is entitled to a tax offset in respect of the franking credit attached to the franked distribution.

81. Former section 160APHU of the ITAA 1936 provides that a partner in a partnership or the beneficiary of a trust cannot be a qualified person in relation to a dividend unless the partnership or the trustee of the trust is also a qualified person in relation to the dividend.

82. Division 1A of former Part IIIAA of the ITAA 1936 contains the tests that must be satisfied for an entity to be a 'qualified person' in relation to a franked distribution.

83. The main test of what constitutes a 'qualified person', known as the holding period rule, is in former subsection 160APHO(1) of the ITAA 1936, which states:

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, or 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 period in relation to the dividend.

84. Former subsection 160APHO(2) of the ITAA 1936, referred to in the preceding paragraph, requires the taxpayer to hold the shares for at least 45 days if the shares are not preference shares, or at least 90 days if the shares are preference shares.

85. Former sections 160APHP, 160APHQ, 160APHR and 160APHT of the ITAA 1936 provide other means by which an entity can be a 'qualified person' in relation to a franked distribution.

Related payment rule

86. In order to determine what the relevant qualification period is, it is necessary to determine whether, under the present arrangement, a Wotif shareholder has made, or is under an obligation to make, or is likely to make, a related payment in respect of any of the dividends they receive.

87. Former section 160APHN of the ITAA 1936 gives examples of, but does not limit, what constitutes, for the purposes of Division 1A of former Part IIIA of the ITAA 1936, the making of a related payment by a taxpayer or an associate of a taxpayer in respect of a dividend paid in respect of shares, or in respect of a distribution made in respect of interests in shares, held by the taxpayer.

88. Former subsection 160APHN(2) of the ITAA 1936 states:

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.

89. Former subsection 160APHN(3) of the ITAA 1936 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 persons:

- (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 the 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 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; 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.

90. Former subsection 160APHN(4) of the ITAA 1936 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 the dividend or distribution.

91. Where a shareholder is not taken to pass the benefit of the dividend to another person in the circumstances set out above, the shareholder will need to satisfy the holding period requirement in relation to the primary qualification period in relation to the dividend in order to be a 'qualified person'.

92. However, where a shareholder is taken to pass the benefit of the dividend to another person in the circumstances set out above, the shareholder will need to satisfy the holding period requirement in relation to the secondary qualification period in relation to the dividend in order to be a 'qualified person'.

93. The payment of the Special Dividend of \$0.24 per share is an integral part of the Scheme. The payment of the Special Dividend was conditional on the Scheme becoming effective.

94. In these circumstances, it is considered the payment of the Special Dividend constitutes an act that has the effect of passing the benefit of the Special Dividend to another for the purposes of former Division 1A. Therefore, a Wotif shareholder is taken to have made or be likely to make a related payment in respect of the Special Dividend.

Holding period requirement

95. As the Wotif ordinary shares are not preference shares, a Wotif shareholder is required to hold the shares on which a dividend has been paid for a continuous period of at least 45 days during the relevant qualification period.

96. In determining whether they hold the shares for at least 45 days in the secondary qualification period, an entity does not count the day on which the shareholder acquired the shares or interest in shares. If the shareholder has disposed of the shares or interest in shares, an entity does not count the day on which the disposal occurred. Furthermore, any days on which the shareholder has materially diminished risks of loss or opportunities for gain in respect of the shares or interest in shares (within the meaning of former sections 160APHM and 160APHJ of the ITAA 1936) are to be excluded. The exclusion of those days is not taken to break the continuity of the period for which the shareholder held the shares or interest in shares.

97. Under former subsection 160APHM(2) of the ITAA 1936, a taxpayer is taken to have materially diminished risks of loss or opportunities for gain in respect of shares or an interest in shares if the taxpayer's 'net position' (defined in former subsection 160APHJ(5) of the ITAA 1936) on a particular day in relation to the shares or interest has less than 30% of those risks and opportunities.

98. The requirement to exclude any days on which the shareholder has materially diminished risks of loss or opportunities for gain in respect of shares is often referred to in positive terms as requiring the shareholder to only count the days during the relevant qualification period on which they hold the shares or interest in shares 'at risk'.

99. As the Wotif shareholders are taken, for the purposes of Division 1A of former Part IIIA of the ITAA 1936, to have made, or be under an obligation to make, a related payment in respect of the Special Dividend, the relevant qualification period is the secondary qualification period pursuant to former paragraph 160APHO(1)(b) of the ITAA 1936.

100. The former section 160APHD of the ITAA 1936 defines the 'secondary qualification period' in relation to a taxpayer in relation to shares or an interest in shares as:

- (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 become *ex dividend* ...

101. The former section 160APHE of the ITAA 1936 defines 'ex dividend' as:

- (1) 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, become *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.
- (2) An interest as a beneficiary of a widely held trust in a share in respect of which a dividend is to be paid becomes *ex dividend* on the day after the last day on which the acquisition by a person of the interest will entitle the person to receive a distribution from the trust.

102. Wotif determines the eligibility for the Special Dividend on the Dividend Record Date of 16 October 2014. Accordingly, in respect of the Special Dividend, the day on which the shares or interests in shares become *ex dividend* for the purposes of former subsection 160APHE(1) of the ITAA 1936 is 17 October 2014.

103. The secondary qualification period began 45 days before the ex-dividend date of 17 October 2014 and ended 45 days after that day. This means that the secondary qualification period ran from 2 September 2014 to 4 December 2014. However, pursuant to former subsection 160APHO(3) of the ITAA 1936, any days on which an entity had materially diminished risks of loss or opportunities for gain in respect of their Wotif shares are excluded from counting towards the 45 day holding period requirement. This means that the secondary qualification period runs from 2 September 2014 until the day the Wotif shareholders no longer hold their shares at risk for the purpose of former Division 1A.

104. Entitlement to participate in the Scheme will be determined on the Scheme Record Date of 11 November 2014. It is considered that once a Wotif shareholder is identified as a Wotif shareholder on the Scheme Record Date, that shareholder would no longer be considered to hold their shares 'at risk' for the purposes of former Division 1A as at that time the Wotif shareholder is committed to disposing of their Wotif shares and receiving the Scheme Consideration.

105. Accordingly during the secondary qualification period from 2 September 2014 to 11 November 2014 (inclusive), a Wotif shareholder who receives the Special Dividend must hold their shares 'at risk' for at least 45 days (not counting the day on which the share or interest was acquired or the day, if any, of disposal of the share or interest see former paragraph 160APHO(2)(a)) in order to be a qualified person in relation to the Special Dividend.

106. Section 208-20 of the ITAA 1997 states that a corporate tax entity is an exempting entity at a particular time if it is effectively owned by prescribed persons at that time. Subsection 208-25(1) provides in broad terms that an entity is effectively owned by prescribed persons if not less than 95% of accountable membership interests or accountable partial interests (broadly direct and indirect ownership interests) are held by or on behalf of prescribed persons.

107. Section 208-40 provides the definition of a prescribed person in relation to another corporate tax entity. Generally, the definition includes companies, trustees, partnerships or individuals that are a foreign resident or if they were to receive a distribution from the corporate tax entity, the distribution would be exempt income or non-assessable non-exempt income of the company, trust estate, partnership or individual.

108. Based on Wotif's recent shareholder register the total percentage of non-resident shareholder ownership in the accountable membership interests of Wotif at the time of payment of the Special Dividend does not amount to Wotif being effectively controlled by prescribed persons.

109. Accordingly, Wotif is not an 'exempting entity', nor is it a 'former exempting entity' because it has never ceased to be an 'exempting entity' (section 208-50 of the ITAA 1997).

CGT consequences

CGT event A1

110. CGT event A1 in section 104-10 will happen when an entity disposes of a CGT asset. This will occur when there is a change in the ownership of a CGT asset from one entity to another. The time of CGT event A1 is when the disposing entity enters into the contract for the disposal, or if there is no contract, when the change of ownership occurs (subsection 104-10(3)).

111. A takeover or merger effected by a court approved scheme of arrangement does not involve a disposal of shares under a contract (paragraph 9 of TD 2002/4).¹

112. CGT event A1 will happen when a Wotif shareholder disposes of a Wotif share pursuant to the Scheme (subsections 104-10(1) and 104-10(2)). The disposal will occur on the Implementation Date of 14 November 2014 when the share is disposed of by a Wotif shareholder (paragraph 104-10(3)(b)).

113. The time when CGT event A1 happens determines the income year in which any capital gain or capital loss is made and whether the CGT discount applies to any capital gain.

114. A Wotif shareholder will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a Wotif share are more than the cost base of the share. A Wotif shareholder will make a capital loss if those capital proceeds are less than the reduced cost base of the Wotif share (subsection 104-10(4)).

Capital proceeds

115. The capital proceeds from CGT event A1 received by a Wotif shareholder is the money received, or entitled to be received, in respect of the event happening (subsection 116-20(1)).

116. The term 'in respect of the event happening' in subsection 116-20(1) requires that the relationship between the CGT event and the receipt of the money, or entitlement to receive the money, must be more than coincidental or caused simply by temporal proximity. An amount is not included in the capital proceeds from a CGT event merely because it is received in association with the event.

117. Taxation Ruling TR 2010/4 explains when a dividend declared or paid will constitute capital proceeds under section 116-20. TR 2010/4 states in paragraph 9:

9. A dividend declared or paid by the target company to the vendor shareholder will be money or property that the vendor shareholder has received, or is entitled to receive, under the contract or the scheme of arrangement, in respect of the transfer of the shares, if the vendor shareholder has bargained for the receipt of the dividend (whether or not in addition to other consideration) in return for giving up the shares. That is to say, if the dividend forms the whole or part of that sum of money or property in return for which the vendor shareholder is willing, and under the contract has promised or under the scheme of arrangement is bound, to transfer the shares in the target company, it will be capital proceeds in respect of the CGT event A1 happening.

¹ Taxation Determination TD 2002/4 *Income tax: capital gains: what is the first element of the cost base and reduced cost base of a share in a company you acquire in exchange for a share in another company in a takeover or a merger?*

118. Further, paragraph 11 of TR 2010/4 states:

10. Similarly, a dividend will be capital proceeds of CGT event A1 happening in respect of a disposal of shares under a scheme of arrangement if the vendor shareholders' acceptance of the scheme of arrangement (by the requisite majority vote) is conditional upon one or more of the following circumstances being present:

- the dividend being declared by the target company; or
- the purchaser or a third party financing or facilitating payment of the dividend; or
- the purchaser or a third party being obliged to bring about the result that the dividend will be received by the vendor shareholders.

119. In the present circumstances, at the time when the Wotif shareholders voted on the Scheme, there was no certainty that the Special Dividend would be declared and paid.

120. Although payment of the Special Dividend was conditional upon the Scheme becoming effective, the declaration and payment of the Special Dividend was at the discretion of the Board. Neither Expedia Australia or Expedia (or any related entity) had any influence or control over the decision to pay the Special Dividend, or its quantum (subject to the \$0.24 ceiling in the SIA) nor were they providing any funds to Wotif to finance the payment of the Special Dividend. The payment of the Special Dividend was to be funded entirely by Wotif, with no actual or contingent funding support from Expedia Australia or Expedia.

121. Therefore, it is considered that the Special Dividend is not to be received in respect of the disposal of Wotif shares under the Scheme. Accordingly, the Special Dividend does not form part of the capital proceeds a Wotif shareholder is entitled to receive in respect of CGT event A1 happening. It is considered the payment of the Special Dividend is independent of the Scheme Consideration.

122. Therefore, a Wotif shareholder will receive capital proceeds of \$3.06 per share from Expedia Australia.

Discount capital gain

123. Division 115 provides a CGT discount that reduces the amount of CGT otherwise payable by a taxpayer by the relevant discount percentage in accordance with Subdivision 115-B. Only discount capital gains are eligible for the CGT discount.

124. To be eligible to treat a capital gain as a discount capital gain, the capital gain must:

- (a) be made by an individual, a complying superannuation entity, a trust or (in certain circumstances) a life insurance company (section 115-10)

- (b) result from a CGT event happening after 11.45am legal time in the Australian Capital Territory on 21 September 1999 (section 115-15)
- (c) have been worked out using a cost base that was not subject to indexation (subsection 115-20(1)), and
- (d) result from a CGT event happening to a CGT asset that was acquired by the entity at least 12 months before the CGT event (subsection 115-25(1)).

125. Therefore, if a Wotif shareholder made a capital gain when they disposed of a Wotif share, the capital gain can be treated as a discount capital gain if the shareholder acquired the Wotif share at least 12 months before the date of disposal under the Scheme, being the Scheme Implementation Date of 14 November 2014, subject to the other requirements listed in paragraph 124 of this Ruling being satisfied.

Foreign resident shareholders

126. Under subsection 855-10(1), an entity disregards a capital gain or capital loss 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'.

127. The term 'taxable Australian property' is defined in the table in section 855-15. 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 5;
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) (choosing to disregard a gain or loss on ceasing to be an Australian resident).

128. Accordingly, a Wotif shareholder who is a foreign resident, or the trustee of a foreign trust for CGT purposes, just before CGT event A1 happens under the Scheme, cannot disregard under subsection 855-10(1) a capital gain or capital loss from CGT event A1 happening if:

- (a) their share in Wotif was an indirect Australian real property interest (item 2 of the table in section 855-15); or

- (b) their share in Wotif had been used at any time by the foreign resident, or the trustee of a foreign trust for CGT purposes, in carrying on a business through a permanent establishment in Australia (item 3 of the table in section 855-15); or
- (c) their share in Wotif was covered by subsection 104-165(3) (item 5 of the table in section 855-15).

129. An indirect Australian real property interest under section 855-25 is a membership interest held by an entity in another entity if the interest passes:

- (a) the non-portfolio interest test under section 960-195; and
- (b) the principal asset test in section 855-30.

130. The non-portfolio interest test under section 960-195 is as follows:

An interest held by an entity (the **holding entity**) in another entity (the **test entity**) passes the non-portfolio interest test at a time if the sum of the *direct participation interests held by the holding entity and its associates in the test entity at that time is 10% or more.

131. In respect of the principal asset test, subsection 855-30(2) states:

A *membership interest held by an entity (the **holding entity**) in another entity (the **test entity**) passes the principal asset test if the sum of the *market values of the test entity's assets that are *taxable Australian real property exceeds the sum of the *market values of its assets that are not taxable Australian real property.

132. On the information provided with the Scheme description, none of the Wotif shares disposed of as a part of the Scheme pass the non-portfolio interest test or the principal asset test. Consequently, the Wotif shares held by non-resident shareholders do not constitute indirect Australian real property interest.

133. Where an individual or a company stops being an Australian resident, CGT event I1 happens (subsection 104-160(1)). Subsection 104-165(3) provides that if an individual chooses to disregard making a capital gain or a capital loss from a CGT asset covered by CGT event I1 under subsection 104-165(2), that CGT asset is taken to be taxable Australian property until the earlier of:

- (a) a CGT event happening in relation to the asset, if the CGT event involves the individual ceasing to own the asset, and
- (b) the individual again becoming an Australian resident.

134. Consequently, an individual Wotif shareholder, who stopped being an Australian resident after they acquired the Wotif shares disposed of under the Scheme and has chosen to disregard the capital gain or capital loss from CGT event I1, cannot disregard under subsection 855-10(1) a capital gain or capital loss from the disposal of their Wotif shares under the Scheme.

The anti-avoidance provisions

Section 177EA

135. Section 177EA of the ITAA 1936 is a general anti-avoidance provision that applies to a wide range of schemes designed to obtain 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.

136. Where section 177EA applies, the Commissioner has a discretion pursuant to subsection 177EA(5) of the ITAA 1936 to make a determination to either:

- debit the company's franking account pursuant to paragraph 177EA(5)(a) of the ITAA 1936; or
- deny the imputation benefit on the distribution that flowed directly or indirectly to each shareholder pursuant to paragraph 177EA(5)(b) of the ITAA 1936.

137. Subsection 177EA(3) of the ITAA 1936 provides that section 177EA of the ITAA 1936 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.

138. Under this arrangement, the 'relevant taxpayer' is a Wotif shareholder and the scheme comprises the circumstances surrounding the scheme of arrangement.

139. In the present case the conditions of paragraphs 177EA(3)(a) to 177EA(3)(d) of the ITAA 1936 are satisfied:

- (a) The disposal of the ordinary shares in Wotif (a corporate tax entity) pursuant to the Scheme is a scheme for the disposition of membership interests.
- (b) The Special Dividend is a frankable distribution that has been paid to Wotif shareholders in respect of their Wotif shares.
- (c) The Special Dividend is a franked distribution.
- (d) Wotif shareholders could reasonably be expected to receive imputation benefits as a result of the Special Dividend.

140. Accordingly, the issue is whether, having regard to the relevant circumstances of the scheme, it would be concluded that, on the part of Wotif, its shareholders or any other relevant party who entered into or carried out the scheme or any part of the scheme, there is a purpose (other than an incidental purpose) of enabling Wotif shareholders to obtain an imputation benefit.

141. 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) of the ITAA 1936. 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.

142. The Commissioner has concluded that section 177EA of the ITAA 1936 does not apply to the scheme. Having regard to the relevant circumstances of the scheme, and considering the manner, form and substance of the scheme, the Commissioner has concluded that the scheme was not entered into for the requisite purpose of enabling Wotif shareholders to obtain an imputation benefit.

143. Therefore, 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 benefit received in relation to the Special Dividend.

Section 204-30

144. Section 204-30 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)).

145. Relevantly, if section 204-30 applies, the Commissioner has a discretion under subsection 204-30(3) to make a written determination 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 distribution made to a favoured member and specified in the determination (paragraph 204-30(3)(c)).

146. 'Streaming' is not defined for the purposes of section 204-30. However, the Commissioner has understood it to refer to a company 'selectively directing the flow of franked distributions to those members who can most benefit from the imputation credits' (paragraph 3.28 of the Explanatory Memorandum to the New Business Tax System (Imputation) Bill 2002).

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

148. Under the current arrangement, all Wotif shareholders will receive an imputation benefit when the Special Dividend is paid. The imputation benefit for resident shareholders is in the form of a tax offset (paragraph 204-30(6)(a)), and for non-resident shareholders is in the form of not being liable to pay dividend withholding tax (paragraph 204-30(6)(e)). The resident shareholders derived a greater benefit from franking credits than the non-resident shareholders.

149. However, the Special Dividend will be paid equally to all Wotif shareholders, and will be fully franked. Accordingly, it cannot be said that Wotif selectively directed the flow of franked distributions to those members who could most benefit from the imputation benefits.

150. As the conditions in subsection 204-30(1) are not met, the Commissioner will not make a determination under paragraph 204-30(3)(c) to deny the whole, or any part, of the imputation benefit to be received in relation to the Special Dividend.

Section 207-145

151. Pursuant to subsection 207-145(1), gross-up and tax offset treatment under sections 207-20, 207-35 and 207-45 does not apply if an entity makes a franked distribution to another entity in one or more of the following circumstances:

- (a) the entity is not a qualified person in relation to the distribution for the purposes of former Division 1A (paragraph 207-145(1)(a));
- (b) the Commissioner has made a determination under paragraph 177EA(5)(b) of the ITAA 1936 that no imputation benefit is to arise in respect of the distribution for the entity (paragraph 207-145(1)(b));
- (c) the Commissioner has made a determination under paragraph 204-30(3)(c) that no imputation benefit is to arise in respect of the distribution for the entity (paragraph 207-145(1)(c)); or
- (d) the distribution is made as part of a dividend stripping operation (paragraph 207-145(1)(d)).

152. Explanation of whether a Wotif shareholder is a qualified person for the purpose of the former Division 1A is provided in paragraph 80 to paragraph 85 of this Ruling.

153. The Commissioner has confirmed that no determination will be made under paragraph 177EA(5)(b) of the ITAA 1936 or paragraph 204-30(3)(c) to deny the whole, or any part, of the imputation benefit in relation to the Special Dividend.

154. Paragraph 207-145(1)(d) applies if a franked distribution is made as part of a dividend stripping operation. A distribution will be taken to be made as part of a dividend stripping operation, pursuant to section 207-155, if the making of the distribution arose out of, or was made in the course of, a scheme that:

- (a) was by way of, or in the nature of, dividend stripping; or
- (b) had substantially the effect of a scheme by way of, or in the nature of, dividend stripping.

155. Having regard to the circumstances of the Scheme under which the Wotif shareholders disposed of their Wotif shares to Expedia Australia, it is not considered that the payment of the Special Dividend to the Wotif shareholders was made as part of a dividend stripping operation. Therefore, paragraph 207-145(1)(d) will not apply.

156. Consequently, section 207-145 will not apply to the Special Dividend received by the Wotif shareholders.

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References

Previous draft:

Not previously issued as a draft

*Related Rulings/Determinations:*TR 2006/10; TR 2010/4;
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- arrangement
- CGT asset
- CGT capital proceeds
- CGT cost base
- CGT event A1
- CGT events
- distributions
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- dividend streaming arrangements
- exempting entity
- franking credits
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- holding period rule
- imputation system
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Legislative references:

- ITAA 1936
- ITAA 1936 6(1)
- ITAA 1936 44(1)
- ITAA 1936 44(1)(a)
- ITAA 1936 44(1)(a)(i)
- ITAA 1936 44(1)(b)
- ITAA 1936 44(1)(b)(i)
- ITAA 1936 44(1)(c)
- ITAA 1936 44(1)(c)(i)
- ITAA 1936 128B
- ITAA 1936 128B(1)
- ITAA 1936 128B(3)(ga)
- ITAA 1936 128B(3)(ga)(i)
- ITAA 1936 128B(3E)
- ITAA 1936 128D
- ITAA 1936 Pt IIIAA Div 1A
- ITAA 1936 160APHD
- ITAA 1936 160APHE
- ITAA 1936 160APHE(1)
- ITAA 1936 160APHJ
- ITAA 1936 160APHJ(5)
- ITAA 1936 160APHM
- ITAA 1936 160APHM(2)
- ITAA 1936 160APHN
- ITAA 1936 160APHN(2)
- ITAA 1936 160APHN(3)
- ITAA 1936 160APHN(4)
- ITAA 1936 160APHO
- ITAA 1936 160APHO(1)
- ITAA 1936 160APHO(1)(b)
- ITAA 1936 160APHO(2)
- ITAA 1936 160APHO(2)(a)
- ITAA 1936 160APHO(3)
- ITAA 1936 160APHP
- ITAA 1936 160APHQ
- ITAA 1936 160APHR
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- ITAA 1936 160APHU
- ITAA 1936 177EA
- ITAA 1936 177EA(3)
- ITAA 1936 177EA(3)(a)
- ITAA 1936 177EA(3)(b)
- ITAA 1936 177EA(3)(c)
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- ITAA 1936 177EA(5)
- ITAA 1936 177EA(5)(a)
- ITAA 1936 177EA(5)(b)
- ITAA 1936 177EA(17)
- ITAA 1997
- ITAA 1997 Div 67
- ITAA 1997 67-25
- ITAA 1997 104-10
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(2)
- ITAA 1997 104-10(3)
- ITAA 1997 104-10(3)(b)
- ITAA 1997 104-10(4)
- ITAA 1997 104-160(1)
- ITAA 1997 104-165(2)
- ITAA 1997 104-165(3)
- ITAA 1997 Div 115
- ITAA 1997 Subdiv 115-B
- ITAA 1997 115-10
- ITAA 1997 115-15
- ITAA 1997 115-20(1)
- ITAA 1997 115-25(1)
- ITAA 1997 116-20
- ITAA 1997 116-20(1)
- 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(6)(a)

- ITAA 1997 204-30(6)(e)
 - ITAA 1997 204-30(8)
 - ITAA 1997 Div 207
 - ITAA 1997 207-145
 - ITAA 1997 207-145(1)
 - ITAA 1997 207-145(1)(a)
 - ITAA 1997 207-145(1)(b)
 - ITAA 1997 207-145(1)(c)
 - ITAA 1997 207-145(1)(d)
 - ITAA 1997 207-155
 - ITAA 1997 207-20
 - ITAA 1997 207-35
 - ITAA 1997 207-35(1)
 - ITAA 1997 207-45
 - ITAA 1997 207-75
 - ITAA 1997 208-20
 - ITAA 1997 208-25(1)
 - ITAA 1997 208-40
 - ITAA 1997 208-50
 - ITAA 1997 208-195
 - ITAA 1997 Div 230
 - ITAA 1997 855-10
 - ITAA 1997 855-10(1)
 - ITAA 1997 855-15
 - ITAA 1997 855-25
 - ITAA 1997 855-30(2)
 - ITAA 1997 960-195
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - TAA 1953
 - Corporations Act 2001
 - Corporations Act 2001 Pt 5.1
 - Corporations Act 2001 411(1)
- Other references:*
- Explanatory Memorandum to the New Business Tax System (Imputation) Bill 2002

ATO references

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