


CR 2016/11 - Income tax: UXC Limited - Scheme of Arrangement and payment of interim dividend

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Class Ruling

Income tax: UXC Limited – Scheme of Arrangement and payment of interim 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)(i) of the ITAA 1936
- section 128D of the ITAA 1936
- former section 160APHM of the ITAA 1936
- former section 160APHN of the ITAA 1936
- Division 1A of former Part IIIAA 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
- Subdivision 115-A of the ITAA 1997
- subsection 116-20(1) of the ITAA 1997
- paragraph 204-30(3)(c) of the ITAA 1997
- section 207-20 of the ITAA 1997
- section 204-35 of the ITAA 1997
- section 207-145 of the ITAA 1997
- Subdivision 207-C of the ITAA 1997
- subsection 855-10(1) of the ITAA 1997, and
- section 855-15 of the ITAA 1997.

All subsequent legislative references in this Ruling are to provisions of the ITAA 1997 unless specified otherwise.

Class of entities

3. The class of entities to which this Ruling applies are shareholders of UXC Limited (UXC) other than Computer Sciences Corporation (CSC) that:

- (a) held their shares on capital account, that is, the shares are neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1))
- (b) participated in the Scheme of Arrangement (the Scheme) under which CSC acquired 100% of the shares in UXC
- (c) received the Interim Dividend and the Scheme Consideration, and
- (d) are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their UXC Shares.

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

Qualifications

4. The Commissioner makes this Ruling based on the precise Scheme 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 8 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.

Date of effect

7. This Ruling applies from 1 July 2015 to 30 June 2016. The Ruling continues to apply after 30 June 2016 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

8. 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 received 8 December 2015
- The Scheme Implementation Deed (SID), together with its schedule and annexure, dated 25 November 2015
- The Scheme of Arrangement Booklet, and
- Correspondence and documents received from UXC on 8 December 2015.

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

Relevant Entities

UXC Limited

9. UXC is an Australian resident company that is listed on the Australian Securities Exchange.

10. UXC is the largest Australian-owned information, communication technology (ICT) company, providing ICT solutions in consulting, business applications and infrastructure.
11. On 25 November 2015, UXC had:
 - 335,605,113 fully paid ordinary shares, and
 - 8,848,544 Performance Rights on issue.
12. The shareholders of UXC are a mix of individuals, companies, superannuation funds and other institutional investors, some of which are non-residents. As at 31 October 2015, 3.04% of the issued shares of UXC were held by non-residents.

Computer Sciences Corporation

13. CSC is a United States corporation listed on the New York Stock Exchange that provides information technology services and solutions.
14. CSC Australia Pty Limited (CSC Australia) which is an Australian resident company that is a wholly owned subsidiary of CSC has operated CSC's Australian operations since 1970. CSC Australia will acquire 100% of the ordinary shares in UXC under the Scheme of Arrangement (SOA).

The Scheme of Arrangement

15. On 25 November 2015, UXC announced in the ASX that it had entered into a Scheme Implementation Deed (SID) with CSC.
16. Under the SID which sets out a number of condition precedents, it was proposed that CSC Australia will acquire 100% of the ordinary shares in UXC under the SOA pursuant to Part 5.1 of the *Corporations Act 2001*.
17. A condition precedent is the approval of UXC Shareholders to the SOA. Shareholders approved the SOA at the scheme meeting held on 8 February 2016. Court approval for the SOA was provided on 11 February 2016.
18. Under the SOA, shareholders who held UXC Shares on the Scheme Record Date of 19 February 2016 disposed of their UXC Shares to CSC on the Scheme Implementation Date of 26 February 2016.
19. UXC Shareholders received \$1.22 per share in cash consideration (the Scheme Consideration).

Interim Dividend

20. The Board of Directors of UXC proposed to declare a fully franked, Interim Dividend of \$0.02 to UXC Shareholders for each share held on the Interim Dividend Record Date of 12 February 2016.

21. The Interim Dividend was conditional upon UXC Shareholders approving the SOA. Neither CSC (nor a related entity):

- had any influence or control over the decision to pay the Interim Dividend, nor
- provided funds to enable UXC to pay the Interim Dividend.

22. The Interim Dividend was sourced entirely from UXC's current year earnings account and was not debited against UXC's share capital account.

23. The Interim Dividend was paid to UXC Shareholders on the Interim Dividend Payment Date of 18 February 2016.

24. The Scheme Consideration was not reduced by the amount of the Interim Dividend.

Other matters

25. The UXC board exercised a discretion associated with the Performance Rights that determined all outstanding Performance Rights vest on 12 February 2016, the Effective Date for the SOA, which was conditional on the scheme becoming effective. Following the determination, UXC had a total of 344,763,616 fully paid ordinary shares on issue when the scheme became effective.

26. The total number of shares on 12 February 2016 being the Effective Date for the SOA incorporates adjustments for:

- A small number of Performance Rights lapsing in the period since 25 November 2015, and
- The provision of UXC Shares as deferred consideration under the terms of the acquisitions of Keystone Management Solutions and Saltbush Group.

Ruling

Interim Dividend

27. The Interim Dividend of \$0.02 paid to UXC Shareholders constituted a 'dividend' as defined in subsection 6(1) of the ITAA 1936.

Assessability and withholding tax of the Interim Dividend

28. A resident UXC Shareholder who received the fully franked Interim Dividend is required to include the dividend as assessable income under subparagraph 44(1)(a)(i) of the ITAA 1936.

29. A non-resident UXC Shareholder who received the fully franked Interim Dividend (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 to Australian withholding tax in respect of the dividend (paragraph 128B(3)(ga) of the ITAA 1936).

30. A non-resident UXC Shareholder who received the fully franked Interim Dividend and is carrying on business in Australia at or through a permanent establishment in Australia, where the Interim 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 to Australian withholding tax in respect of the dividend (subsection 128B(3E) of the ITAA 1936).

Gross-up and tax offset

Tax Offset

31. A resident UXC Shareholder, and a non-resident UXC Shareholder that is carrying on business in Australia at or through a permanent establishment in Australia, who received the fully franked Interim Dividend:

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

under section 207-20 and subsection 207-75(2), subject to being a qualified person in relation to the Interim Dividend.

32. A UXC Shareholder (not being a corporate tax entity), who received the fully franked Interim Dividend as a trustee of a trust (not being a compliant superannuation entity nor 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

33. Having regard to the relevant circumstances of the Scheme, UXC Shareholders are considered to have made a 'related payment' in respect of the Interim Dividend for the purposes of paragraph 207-145(1)(a) and former section 160APHN of the ITAA 1936.

34. Therefore, a UXC Shareholder will be a qualified person in relation to the Interim Dividend if, from 30 December 2015 until 18 February 2016 inclusive, they continued to hold their UXC Shares and did not have 'materially diminished risks of loss or opportunities for gain' (as defined under former section 160APHM of the ITAA 1936) in respect of their UXC Shares for a continuous period of at least 45 days.

Refundable tax offset

35. The franking credit tax offset that UXC 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 pursuant to section 67-25.

Capital gains tax (CGT)

CGT event A1

36. CGT event A1 happened when a UXC Shareholder disposed of their UXC Shares to CSC Australia under the SOA being the Scheme Implementation Date of 26 February 2016 (section 104-10).

Capital gain or capital loss

37. A UXC Shareholder will make a capital gain if the capital proceeds from the disposal of UXC Shares exceed the cost base of the shares (subsection 104-10(4)). The capital gain is the amount of the excess.

38. A UXC Shareholder will make a capital loss if the capital proceeds are less than the reduced cost base of the UXC Shares (subsection 104-10(4)). The capital loss is the amount of the difference.

Capital proceeds

39. The capital proceeds for CGT event A1 happening to a UXC Shareholder is the money received or entitled to be received in respect of the event happening (paragraph 116-20(1)(a)).

40. The capital proceeds received by a UXC Shareholder who disposed of UXC Shares pursuant to the SOA was \$1.22 per share.

Discount capital gain

41. A capital gain made by a UXC Shareholder when the UXC Shares were disposed of under the SOA is a discount capital gain if the shareholder acquired the shares at least 12 months before 26 February 2016, being the Scheme Implementation Date, and the other conditions in Division 115 are satisfied.

Foreign resident shareholders

42. A non-resident UXC Shareholder who participated in the SOA disregards any capital gain or capital loss made when CGT event A1 happened if the UXC Shares were not 'taxable Australian property' (section 855-10).

The anti-avoidance provisions

43. Section 177EA of the ITAA 1936 will not apply in respect of the Interim Dividend.

44. Section 204-30 will not apply in respect of the Interim Dividend.

45. Section 207-145 will not apply to the whole, or any part, of the Interim Dividend received by a UXC Shareholder, provided the shareholder is a 'qualified person'. UXC Shareholders will not be qualified persons in respect of the Interim Dividend to the extent their UXC Shares were acquired on or after 30 December 2015 (including where shares were obtained through the vesting of Performance Rights on 12 February 2016).

Commissioner of Taxation

2 March 2016

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 Interim Dividend

46. 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.

47. The payment of the Interim Dividend will be a distribution of money by UXC to its shareholders.

48. However, paragraph (d) of the definition of 'dividend' in subsection 6(1) of the ITAA 1936 excludes any:

... moneys paid or credited by a company to a shareholder ... where the amount of the moneys paid or credited, ... is debited against an amount standing to the credit of the share capital account of the company...

49. The Interim Dividend will not be debited against its share capital account. Therefore, the exclusion in paragraph (d) will not apply and the Interim Dividend paid to UXC Shareholders will constitute a 'dividend' for the purposes of subsection 6(1) of the ITAA 1936.

Assessability of the Interim Dividend – residents

50. 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.

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

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

52. Subparagraph 44(1)(b)(i) of the ITAA 1936 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. 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 and the ITAA 1997 that expressly deals with dividends excludes some or all of the dividend from assessable income.

54. Subparagraph 128B(3)(ga)(i) of the ITAA 1936 excludes the franked part of a dividend received by a non-resident from liability to withholding tax which would otherwise arise pursuant to subsection 128B(1). As the Interim Dividend was fully franked, it will not be subject to Australian withholding tax when derived by a non-resident UXC Shareholder.

55. Section 128D of the ITAA 1936 operates to treat the Interim Dividend as non-assessable non-exempt income.

56. Accordingly, non-resident UXC Shareholders who received the fully franked Interim Dividend (other than shareholders who received the Interim Dividend in carrying on business in Australia at or through a permanent establishment in Australia) are not required to include the dividend as assessable income pursuant to subparagraph 44(1)(b)(i) of the ITAA 1936 (section 128D of the ITAA 1936) and are not liable to Australian withholding tax in relation to the dividend (subparagraph 128B(3)(ga)(i) of the ITAA 1936).

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

57. A non-resident's liability to withholding tax on dividend income received in subsection 128B(1) of the ITAA 1936 is subject to subsection 128B(3E). Subsection 128B(3E) states that section 128B 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.

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

... 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.

59. Accordingly, a non-resident UXC Shareholder that carries on business in Australia at or through a permanent establishment who received the fully franked Interim Dividend is required to include the dividend in their assessable income, to the extent to which the Interim Dividend is attributable to the permanent establishment, pursuant to subparagraph 44(1)(c)(i) of the ITAA 1936 and is not liable to Australian withholding tax in relation to the dividend.

Gross-up and tax offset

60. 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.

61. Therefore, subject to satisfying the qualified person rule, where the fully franked Interim Dividend is received directly by a UXC Shareholder and the UXC Shareholder satisfies the residency requirement in section 207-75, the UXC Shareholder:

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

62. If the fully franked Interim Dividend was received by a UXC 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.

63. Where a UXC Shareholder that is a partnership or a trustee of a trust is a qualified person, the UXC Shareholder is required to include the amount of the franking credit attached to the Interim Dividend in the assessable income of the trust or partnership under subsection 207-35(1).

Qualified persons, related payment and holding period rule***Qualified person***

64. Paragraph 207-145(1)(a) provides that where a franked distribution is 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
- entitled to a tax offset in respect of the franking credit attached to the franked distribution.

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

66. The main test of what constitutes a 'qualified person' for the purposes of Division 1A of former Part IIIAA of the ITAA 1936 which is known as the holding period rule, is set out in former subsection 160APHO(1) of the ITAA 1936, 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.

67. Former subsection 160APHO(2) of the ITAA 1936 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.

68. Former subsection 160APHO(2) of the ITAA 1936 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 is required to satisfy the holding period rule 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 is required to satisfy the holding period requirement within the secondary qualification period.

Related payment rule

69. In order to work out the relevant qualification period, it is necessary to determine whether a UXC Shareholder has made, or is under an obligation to make, or is likely to make, a related payment in respect of any of the Interim Dividend received.

70. Former section 160APHN of the ITAA 1936 sets out for the purposes of Division 1A of former Part IIIAA of the ITAA 1936 non-definitive examples of what constitutes the making of a related payment.

71. Former subsection 160APHN(2) of the ITAA 1936 provides that a:

... 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.

72. 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.

73. 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.

74. The Commissioner considers that the Interim Dividend of \$0.02 per share is an integral part of the Scheme. The Interim Dividend is a permitted distribution provided for in the SID. The declaration and payment of the Interim Dividend was conditional on UXC Shareholders approving the SOA. Therefore, UXC Shareholders were doing something, were under an obligation to do something, or were likely to do something which had the effect of passing the benefit of the Interim Dividend that caused the UXC Shares ('property') to be transferred to CSC Australia ('another person') for the purposes of former subsection 160APHN(3) of the ITAA 1936.

75. Therefore, a UXC Shareholder is taken to have made or to have been likely to make a related payment in respect of the Interim Dividend.

Holding period requirement

76. The holding period rule requires shareholders to hold their ordinary shares at-risk for a continuous period of not less than 45 days during the relevant qualification period.

77. As a UXC Shareholder is considered to have made or be likely to make a related payment in respect of the Interim Dividend, a UXC Shareholder is also required to satisfy the holding period requirement within the secondary qualification period pursuant to former paragraph 160APHO(1)(b) of the ITAA 1936.

78. The secondary qualification period is defined in former section 160APHD of the ITAA 1936 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...

79. The concept of 'ex-dividend' is defined by former subsection 160APHE(1) of the ITAA 1936 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.

80. The eligibility for the Interim Dividend was determined on the Interim Dividend Record Date of 12 February 2016. This was the last day on which acquisition by a person of a UXC Share entitled the person to receive the Interim Dividend as per former section 160APHE of the ITAA 1936. Accordingly, the ex-dividend date for the purposes of former subsection 160APHE(1) was 13 February 2016.

81. The secondary qualification period runs from 45 days before the ex-dividend date of 13 February 2016 and ends 45 days after that day. In particular terms, this means that the secondary qualification period runs from 30 December 2015 to 29 March 2016. However, pursuant to former subsection 160APHO(3) of the ITAA 1936, any days during the relevant qualification period in respect of which a UXC Shareholder's exposure to the relevant risks and opportunities associated with the ownership of the shares were materially diminished, are excluded from counting towards the 45 days holding period requirement. As of 19 February 2016, the Record Date for Scheme Implementation, the UXC Shareholders had ceased to hold their shares at-risk, as they were committed to dispose of their shares in exchange for the Scheme Consideration. Therefore, for practical purposes a UXC Shareholder must have held the shares at-risk for a continuous period of 45 days during the period 30 December 2015 and 18 February 2016 (inclusive) in order to be considered qualified persons and gain entitlement to the franking credits attached to the Interim Dividend. Also excluded when determining the 45 days are the date of acquisition and the date of disposal of the shares.

82. The Performance Rights vested on the Effective Date, 12 February 2016, where the resulting UXC Shares were issued on the Interim Dividend Record Date, which was on the same day. Accordingly, UXC Shareholders were not qualified persons in relation to the Interim Dividend to the extent their UXC Shares were obtained through the vesting of Performance Rights on 12 February 2016. Such shareholders will not satisfy the holding period rule.

Refundable tax offset

83. UXC Shareholders who are entitled to a tax offset under subsection 207-20(2) in respect of the franking credit received (or entities entitled to a tax offset under section 207-45 equal to their share of the franking credit) will also be subject to the refundable tax offset rules in Division 67, unless specifically excluded under section 67-25.

84. Pursuant to section 67-25, certain taxpayers are specifically excluded from the operation of the refundable tax offset rules. The identified entities include:

- non-complying superannuation funds or non-complying approved deposit funds (subsection 67-25(1A))
- a trustee of a trust who is liable to be assessed under section 98 or 99A of the ITAA 1936 (paragraph 67-25(1B)(b))
- 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)), and
- foreign resident entities carrying on business in Australia at or through a permanent establishment (subsection 67-25(1DA)).

85. UXC Shareholders (or entities entitled to a tax offset under section 207-45) were entitled to the refundable tax offset unless specifically excluded pursuant to section 67-25.

Exempting entity

86. UXC was not an 'exempting entity' when the Interim Dividend was paid, nor was it a 'former exempting entity' at that time as less than 95% of accountable membership interests or accountable partial interests (broadly direct and indirect ownership interests) held in UXC were held by foreign residents (Division 208).

87. Section 208-195 will therefore not apply to deny the gross-up of the assessable income of a UXC Shareholder by the amount of the franking credit attached to the Interim Dividend received by that shareholder, nor to deny the tax offset to which the UXC Shareholder is otherwise entitled pursuant to Division 207 at the time when the Interim Dividend was paid.

CGT consequences

CGT event A1

88. CGT event A1 happens when an entity disposes of a CGT asset. This occurs 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 a contract for the disposal, or if there is no contract, when the change of ownership occurs (subsections 104-10(1) and (3)).

89. The disposal of shares pursuant to the SOA is not under a contract.

90. CGT event A1 happened when UXC Shareholders disposed of their UXC Shares pursuant to the SOA (subsections 104-10(1) and 104-10(2)). The disposal happened on 26 February 2016, the Scheme Implementation Date (paragraph 104-10(3)(b)).

91. The time when CGT event A1 happened determines the year of income in which a UXC Shareholder made a capital gain or a capital loss, and may affect whether the shareholder is entitled to the CGT discount for any capital gain made.

92. A UXC Shareholder made a capital gain when CGT event A1 happened if the capital proceeds from the disposal of their UXC Shares were more than the cost base of the shares. A UXC Shareholder made a capital loss if the capital proceeds were less than the reduced cost base of the UXC Shares (subsection 104-10(4)).

Capital proceeds

93. The capital proceeds received by a UXC Shareholder upon CGT event A1 happening to their UXC Shares under the SOA is the money the shareholder received, or was entitled to receive, '... in respect of the event happening' (subsection 116-20(1)).

94. 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 money, or entitlement to receive 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.

95. Prior to when UXC Shareholders voted on the SOA, there was no certainty that the Interim Dividend would be declared and paid. The declaration and payment of the Interim Dividend was conditional upon the SOA becoming effective and was nevertheless at the discretion of the UXC Board. Neither CSC (nor a related entity) had any influence or control over the decision to pay the Interim Dividend, nor did CSC (nor a related entity) provide funds to enable UXC to pay the Interim Dividend. The Scheme Consideration of \$1.22 payable by CSC per UXC Share to UXC Shareholders was neither increased by, or decreased by, or otherwise subject to, payment or otherwise of the Interim Dividend.

96. Therefore, the Commissioner considers that the Interim Dividend was not received in respect of the disposal of UXC Shares under the SOA. Accordingly, the Interim Dividend does not form part of the capital proceeds which a UXC Shareholder received or was entitled to receive in respect of CGT event A1 happening. The payment of the Interim Dividend was independent of the Scheme Consideration.

97. Accordingly, a UXC Shareholder will receive capital proceeds of \$1.22 per UXC Share pursuant to the SOA.

Discount capital gain

98. 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.

99. 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)).

100. Where a UXC Shareholder made a capital gain when they disposed of UXC Shares, the capital gain may be treated as a discount capital gain if the UXC Shares were acquired at least 12 months before 26 February 2016 when the shares were disposed of under the SOA, being the Scheme Implementation Date, subject to the other requirements listed in paragraph 99 of this Explanation being satisfied.

Foreign resident shareholders

101. Under subsection 855-10(1), an entity disregards a capital gain or capital loss from a CGT event if the entity is a non-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'.

102. The term 'taxable Australian property' is defined in the table in section 855-15. The table sets out these five categories as follows:

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).

103. A UXC Share is not 'taxable Australian real property'.

104. However, a foreign resident or the trustee of a foreign trust for CGT purposes cannot disregard, under subsection 855-10(1), a capital gain from CGT event A1 if just before the CGT event happens:

- their UXC Shares were an 'indirect Australian real property interest' not covered by item 5 (item 2 of the table in section 855-15 of the ITAA 1997)
- their UXC Shares had been used at any time by the foreign resident in carrying on a business through a permanent establishment in Australia (item 3 of the table in section 855-15 of the ITAA 1997), or
- their UXC Shares were covered by subsection 104-165(3) of the ITAA 1997 (item 5 of the table in section 855-15 of the ITAA 1997).

The anti-avoidance provisions

Section 177EA

105. Section 177EA of the ITAA 1936 is a general anti-avoidance rule that is intended to prevent abuse of the imputation system through schemes which circumvent the basic rules for the franking of dividends.

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

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

107. In broad terms, there needs to be a scheme in which, having regard to the relevant circumstances of the scheme, it would be concluded that a person, or one of the persons, who entered into or carried out 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. Under this arrangement, a UXC Shareholder is the 'relevant taxpayer' and the scheme comprises the circumstances surrounding the SOA.

108. 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 shares in UXC (a corporate tax entity) pursuant to the SOA is a scheme for the disposition of membership interests

- (b) The Interim Dividend is a frankable distribution that was paid to UXC Scheme Shareholders in respect of their UXC Shares
- (c) The Interim Dividend is a franked distribution, and
- (d) UXC Shareholders could reasonably be expected to receive imputation benefits as a result of the Interim Dividend.

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

110. The relevant circumstances of the Scheme indicate that there was no requisite purpose of conferring an imputation benefit under the Scheme. It includes the fact that the disposition of the shares in UXC occurred pursuant to the proposed SOA under the *Corporations Act 2001* to be voted upon by UXC Shareholders.

111. The Interim Dividend was fully franked, which was a continuation of UXC's dividend policy. UXC had only ordinary shares on issue and the Interim Dividend was paid per share held by all UXC Shareholders at the Interim Dividend Record Date. The Interim Dividend was debited to the current year earnings account of UXC and paid to shareholders of UXC that were the true economic owners of the company, allowing the shareholders to share in the accumulated profits of UXC.

112. In considering the manner, form and substance of the Scheme, it is considered that the Scheme was not entered into for the purpose, other than a merely incidental purpose of enabling the relevant taxpayer to obtain an imputation benefit. Having regard to the relevant circumstances of the Scheme, the Commissioner has formed the view that the requisite purpose is not present and accordingly 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 Interim Dividend.

Section 204-30

113. Section 204-30 applies where a corporate tax entity 'streams' the payment of distributions to its members in such a way that an imputation benefit is or would be received by a member of the entity that derives a greater benefit from franking credits, while other members receive lesser or no imputation benefits regardless of whether or not they receive other benefits (paragraphs 204-30(1)(a), (b) and (c)).

114. Relevantly, if section 204-30 applies, the Commissioner has a discretion under subsection 204-30(3) to make a written determination:

...

- (c) 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)].

115. 'Streaming' is not defined for the purposes of section 204-30. However, the Commissioner considers that it refers 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).

116. 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.

117. The Interim Dividend will be paid equally to all UXC Shareholders, and will be fully franked. Accordingly, it cannot be said that UXC selectively directed the flow of franked distributions to those members who could most benefit from the imputation benefits.

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

Section 207-145

119. 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 Division 1A of former Part IIIA of the *Income Tax Assessment Act 1936* [paragraph 207-145(1)(a)]
- (b) the Commissioner has made a determination under paragraph 177EA(5)(b) of that Act that no imputation benefit (within the meaning of that section) 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) of this Act that no *imputation benefit is to arise in respect of the distribution for the entity [paragraph 207-145(1)(c)]
- (d) the distribution is made as part of a *dividend stripping operation [paragraph 207-145(1)(d)].

120. Explanation of whether a UXC Shareholder is a qualified person for the purpose of the former Division 1A is provided in paragraphs 64 to 82 of this Ruling.

121. The Commissioner will not make a determination 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 Interim Dividend.

122. 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.

123. Having regard to the circumstances of the SOA under which UXC Shareholders disposed of their UXC Shares to CSC, the Commissioner considers that the payment of the Interim Dividend to UXC Shareholders was not made as part of a dividend stripping operation. Therefore, paragraph 207-145(1)(d) will not apply.

124. Consequently, section 207-145 will not apply to the Interim Dividend received by the UXC Shareholders.

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Income tax ~~ Capital gains tax ~~ Capital proceeds

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