CR 2018/27 - Income tax: Mantra Group Limited - Scheme of Arrangement and payment of Special Dividend

Class Ruling

Income tax: Mantra Group Limited – Scheme of Arrangement and payment of Special Dividend

Contents Para

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.

Summary – 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 provisions

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 177EA(5)(b) of the ITAA 1936
- Division 67 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 104-10 of the ITAA 1997
- subsection 104-10(4) of the ITAA 1997
- Division 115 of the ITAA 1997
- subsection 116-20(1) of the ITAA 1997

- section 202-40 of the ITAA 1997
- paragraph 204-30(3)(c) of the ITAA 1997
- section 207-20 of the ITAA 1997
- paragraph 207-145(1)(a) of the ITAA 1997.

All subsequent 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 is the shareholders of Mantra Group Limited (Mantra) who:

- participated in the scheme of arrangement (as described in paragraphs 10 to 26 of this Ruling) under which AAPC Limited (AAPC) acquired 100% of the shares in Mantra (the Scheme of Arrangement)
- were 'residents of Australia' as defined in subsection 6(1) of the ITAA 1936
- held their shares in Mantra on capital account, that is, the shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)), and
- are not subject to the taxation of financial arrangement rules in Division 230 in relation to gains and losses on their Mantra 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 Scheme Shareholder.

Qualifications

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

6. This Ruling does not consider the taxation consequences in relation to Mantra shares issued under the Mantra Group Limited Long Term Incentive Plan.

7. 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 10 to 26 of this Ruling.

8. 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

9. This Ruling applies from 1 July 2017 to 30 June 2018. The Ruling continues to apply after 30 June 2018 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

10. 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:

- Scheme Implementation Agreement dated 12 October 2017, and
- Mantra Group Limited Scheme booklet dated 5 April 2018 (Scheme Booklet).

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

Mantra Group Limited

11. Mantra is a widely held public company limited by shares and has been listed on the Australian Securities Exchange (ASX) since June 2014.

12. Mantra is a ‘resident of Australia’ as defined in subsection 6(1) of the ITAA 1936.

13. On 23 May 2018 (Effective Date), Mantra had 298,534,977 ordinary shares on issue.

AAPC Limited

14. AAPC Limited (AAPC) is incorporated in Australia and is a wholly owned subsidiary of Accor S.A. (Accor). Accor is a French company listed on the Euronext Paris stock exchange

15. Prior to the Implementation Date of 31 May 2018 neither Accor nor AAPC held any Mantra shares directly or indirectly.

Scheme of Arrangement

16. On 12 October 2017, Mantra entered into a binding Scheme Implementation Agreement (SIA) with Accor under which AAPC would acquire all of the issued shares in Mantra by way of a court ordered Scheme of Arrangement pursuant to Part 5.1 of the *Corporations Act 2001* (Corporations Act).

17. Under the terms of the Scheme of Arrangement, the Scheme Consideration payable by AAPC was $3.96 per Mantra share held at 7:00pm AEST 23 May 2018 (Scheme Record Date) *less* the amount of any Special Dividend paid by Mantra which did not exceed $0.235.

18. The requisite majority of Mantra shareholders approved the Scheme of Arrangement at the meeting held on 18 May 2018.

19. The Scheme of Arrangement was approved by the Federal Court of Australia at the hearing held on 23 May 2018. The Scheme of Arrangement became effective on 23 May 2018 when Mantra lodged the court order with ASIC. Mantra shares were suspended from trading at the close of trading on 23 May 2018.

20. On the Scheme Record Date of 7:00pm AEST on 23 May 2018, a Scheme Shareholder was entitled to participate in the Scheme of Arrangement.

21. On 31 May 2018 (Implementation Date), the Scheme Shareholders disposed of each share they held in Mantra to AAPC.

22. Scheme Shareholders received a total cash payment of $3.96 for each share comprising:

- the Scheme Consideration of $3.80 which was paid on 31 May 2018 (Implementation Date), and
- a Special Dividend of $0.16 which was paid on 30 May 2018.

Special Dividend

23. On 23 May 2018, the Board of Directors of Mantra declared a fully franked Special Dividend of $0.16 per Mantra share held at 7:00pm (AEST) on 25 May 2018 (Special Dividend Record Date). The ex-dividend date was 26 May 2018. The Special Dividend was paid on 30 May 2018.

24. The payment of the Special Dividend was subject to the Scheme of Arrangement becoming effective and was payable at the discretion of the Mantra Board.

25. The Special Dividend was funded from Mantra's existing cash reserves and banking facilities. The Special Dividend was debited against Mantra's Retained Earnings account. Accor (nor any wholly owned subsidiary such as AAPC) did not finance nor otherwise facilitate the payment of the Special Dividend, nor did Accor have a right to influence the decision made by Mantra to pay the Special Dividend

26. The Special Dividend complied with the requirements of the Corporations Act, including section 254T of that Act.

Ruling

Special Dividend

27. The Special Dividend paid to Scheme Shareholders is a 'dividend' as defined in subsection 6(1) of the ITAA 1936.

28. The Special Dividend is a frankable distribution pursuant to section 202-40.

Assessability of the Special Dividend and tax offset

29. A Scheme Shareholder includes the Special Dividend in their assessable income (subsection 44(1) of the ITAA 1936).

30. A Scheme Shareholder:

- includes the amount of the franking credit attached to the Special Dividend in their assessable income, and
- is entitled to a tax offset equal to the franking credit

in the income year it is paid (section 207-20), subject to the Scheme Shareholder being a 'qualified person' in relation to the Special Dividend.

Qualified persons

31. The payment of the Special Dividend constitutes a 'related payment' for the purposes of former section 160APHN of the ITAA 1936 (paragraph 207-145(1)(a)).

32. A Scheme Shareholder will be a qualified person in relation to the Special Dividend, if from 11 April 2018 to 27 May 2018 (inclusive), they continued to hold their Mantra 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 Mantra shares for a continuous period of at least 45 days.

Refundable tax offset

33. The franking credit tax offset that a Scheme Shareholder is entitled to under Division 207 is subject to the refundable tax offset rules in Division 67, provided the Scheme Shareholder is not excluded by the operation of section 67-25.

Capital Gains Tax (CGT) consequences

CGT event A1

34. CGT event A1 happened on 31 May 2018 (Scheme Implementation Date) when each Scheme Shareholder disposed of each of their Mantra shares to AAPC in accordance with the Scheme of Arrangement (section 104-10).

Capital proceeds

35. The Scheme Consideration of $3.80 received for each Mantra share is the capital proceeds from CGT event A1 happening to the share (subsection 116-20(1)).

36. The Special Dividend of $0.16 is not included in the capital proceeds.

Capital gain or capital loss

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

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

Discount capital gain

39. If a Scheme Shareholder makes a capital gain from the disposal of a Mantra share they will be eligible to treat the capital gain as a ‘discount capital gain’ provided they satisfy the requirements of Division 115.

The anti-avoidance provisions

40. 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.

41. The Commissioner will not make a determination under paragraph 204-30(3)(c) to deny the whole, or any part, of the imputation benefit received in relation to the Special Dividend.

Commissioner of Taxation
13 June 2018

Appendix 1 – Explanation

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.

Special Dividend

42. The term 'dividend' is defined in subsection 6(1) of the ITAA 1936 to include any distribution made by a company to any of its shareholders, whether in money or other property. However, paragraph (d) of the definition of 'dividend' excludes a distribution debited against an amount standing to the credit of the share capital account of the company.

43. The payment of the Special Dividend is a distribution of money which Mantra made to its shareholders. Mantra did not debit the Special Dividend against its share capital account.

44. Therefore, the exclusion in paragraph (d) does not apply and the Special Dividend constitutes a 'dividend' for the purposes of subsection 6(1) of the ITAA 1936.

45. A distribution is a frankable distribution to the extent it is not unfrankable (section 202-40). Section 202-45 sets out the circumstances under which an amount or distribution is taken to be unfrankable.

46. None of the circumstances in section 202-45 apply to the Special Dividend. Therefore, the Special Dividend is a frankable distribution under section 202-40 and in turn is capable of being franked in accordance with section 202-5.

Assessability of the Special Dividend and tax offset

Direct distributions

47. The assessable income of a resident shareholder (other than a partnership or a trust) in a company includes dividends that are paid to the shareholder by the company out of profits derived by it from any source (paragraph 44(1)(a) of the ITAA 1936).

48. As the Special Dividend is paid to Scheme Shareholders out of profits derived by Mantra, a Scheme Shareholder (other than a partnership or a trust) includes the Special Dividend in their assessable income (subsection 44(1) of the ITAA 1936).

49. A Scheme Shareholder (other than a partnership or a trust) that is a qualified person in accordance with paragraph 207-145(1)(a) which refers to Division 1A of former Part IIIAA of the ITAA 1936:

- also includes the franking credit attached to the Special Dividend in their assessable income (subsection 207-20(1)), and

- is entitled to a tax offset equal to the amount of the franking credit attached to the Special Dividend (subsection 207-20(2))

in the income year the Special Dividend is paid.

50. A Scheme Shareholder that is a not a qualified person in relation to the Special Dividend:

- does not include the franking credit attached to the dividend in their assessable income (paragraph 207-145(1)(e)), and
- is not entitled to a tax offset equal to the amount of the franking credit attached to the dividend (paragraph 207-145(1)(f)).

Partnerships

51. The Special Dividend is included in the assessable income of a partnership for the purposes of working out the net income of the partnership (subsection 44(1) and section 90, both of the ITAA 1936).

52. Subject to the 'qualified person' rule, the amount of the franking credit attached to the Special Dividend is also included in the assessable income of a partnership for the purposes of working out the net income of the partnership (section 90 of the ITAA 1936 and subsection 207-35(1)).

Trusts

53. The Special Dividend is included in the assessable income of a trustee for the purposes of working out the net income of the trust (subsection 44(1) and subsection 95(1), both of the ITAA 1936).

54. Subject to the 'qualified person' rule, the amount of the franking credit attached to the Special Dividend is also included in the assessable income of a trustee for the purposes of working out the net income of the trust (subsection 95(1) of the ITAA 1936 and subsection 207-35(1)).

Indirect distributions

Partners and Beneficiaries

55. Subsections 207-35(3) to (6) set out the circumstances in which a partner or beneficiary to whom a franked distribution flows indirectly is required to gross up their assessable income for their share of the franking credit on the franked distribution.

56. Where the franked distribution flows indirectly (within the meaning of Subdivision 207-B) through a trust or partnership to a resident that is an individual, a corporate tax entity (at the time the distribution flows indirectly to it) or a trustee mentioned in paragraphs 207-45(c), (ca) or (d), the resident entity will, subject to the qualified person rule, be entitled to a tax offset equal to its share of the franking credit attached to the franked distribution (section 207-45).

Qualified persons, related payment and holding period rule

Qualified person

57. The impact of the qualified person rules as to inclusion of franking credits in assessable income and entitlement to tax offsets or otherwise are described in paragraphs 49 and 50 of this Ruling.

58. 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.

59. Paragraph 207-145(1)(a) which refers to former Division 1A of Part IIIAA of the ITAA 1936 provides the statutory tests that must be satisfied for a taxpayer to be a 'qualified person' in relation to a franked distribution they have received and thus be entitled to a tax offset for the franking credit on the distribution.

60. The test of what constitutes a 'qualified person' is set out in former subsection 160APHO(1) of the ITAA 1936. Broadly, if the Scheme Shareholders were not under an obligation to make a related payment in relation to the Special Dividend, they are required to satisfy the holding period requirement within the primary qualification period. If the Scheme Shareholders were under an obligation to make a related payment in relation to the Special Dividend, they are required to satisfy the holding period requirement within the secondary qualification period.

Related payment rule

61. In order to determine the relevant qualification period, it is necessary to determine whether, under the Scheme of Arrangement, a Scheme Shareholder has made, was under an obligation to make, or is likely to make, a 'related payment' in respect of the Special Dividend they receive (former subsection 160APHN(2) of the ITAA 1936).

62. Examples of what constitutes the making of a related payment for the purposes of Division 1A of former Part IIIAA of the ITAA 1936 are set out in former section 160APHN of the ITAA 1936. Broadly, a related payment is where a Scheme Shareholder has done, or is obliged to do, anything having the effect of passing the benefit of the Special Dividend to one or more other persons.

63. Former subsection 160APHN(3) of the ITAA 1936 lists examples of what may have the effect of passing the benefit of the Special Dividend to one or more other persons, for example, 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 (former paragraph 160APHN(3)(f) of the ITAA 1936).

64. Former subsection 160APHN(4) of the ITAA 1936 lists the circumstances of making a related payment referred to in former paragraph 160APHN(3)(f) of the ITAA 1936 being broadly that the amount of the benefit passed on reflects the amount of the Special Dividend.

65. Under the terms of the SIA, the Scheme Consideration is reduced by the amount of the Special Dividend paid by Mantra to Scheme Shareholders.

66. In the circumstances of the Scheme, it is considered that the payment of the Special Dividend is an integral part of the Scheme. Under the terms of the SIA, the Scheme Consideration is reduced by the amount of the Special Dividend paid by Mantra to the Scheme Shareholders. Therefore, the requirements of former paragraphs 160APHN(3)(f) and 160APHN(4)(c) of the ITAA 1936 are satisfied.

67. The reduction of the cash consideration has the effect of passing the benefit of the Special Dividend from a Scheme Shareholder to AAPC. Therefore, a Scheme Shareholder, or a partner in a partnership or a beneficiary of a trust that has an interest in Mantra shares, is taken to have made a related payment in respect of the Special Dividend.

Holding period requirement

68. 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 (former paragraph 160APHO(2)(a) of the ITAA 1936).

69. As the Scheme Shareholders are taken, for the purposes of Division 1A of former Part IIIAA of the ITAA 1936, to have made 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.

70. Former section 160APHD of the ITAA 1936 defines the 'secondary qualification period' 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 became *ex dividend*...

71. 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.

72. The eligibility for the Special Dividend was determined on the Special Dividend Record Date of 25 May 2018, being the last day on which acquisition by a person of a Mantra share entitled the person to receive the Special Dividend as per former section 160APHE of the ITAA 1936. Accordingly, the ex-dividend date of a Mantra share for the purposes of former subsection 160APHE(1) of the ITAA 1936 is 26 May 2018.

73. The secondary qualification period runs from 45 days before and ends on 45 days after the ex-dividend date of 26 May 2018. In practical terms, this means that the secondary qualification period runs from 11 April 2018 to 10 July 2018. However, pursuant to former subsection 160APHO(3) of the ITAA 1936, any days on which a taxpayer has materially diminished risks of loss or opportunities for gain in respect of the Mantra share is to be excluded. This means that the secondary qualification period runs from 11 April 2018 until the date that the Scheme Shareholders are no longer holding their shares at risk for the purposes of former Division 1A of Part III of the ITAA 1936.

74. Entitlement to participate in the Scheme of Arrangement was determined on the Scheme Record Date (28 May 2018). Scheme Shareholders who disposed of their shares under the SIA are no longer considered to have held their Mantra shares at risk for the purposes of former Division 1A of Part IIIAA of the ITAA 1936 as of 28 May 2018.

75. Accordingly, for a Scheme Shareholder who disposed of their shares under the SIA, the secondary qualification period will run for a period of 11 April 2018 to 27 May 2018 (being the day prior to the Scheme Record Date). A Scheme Shareholder who received the Special Dividend will need to have held its shares at risk for a continuous period of not less than 45 days during this period in order to be a qualified person for the purposes of former Division 1A of Part IIIAA of the ITAA 1936. Further, pursuant to former paragraph 160APHO(2)(a) of the ITAA 1936, neither the date of acquisition nor the date of disposal is included in the relevant 45 day period.

76. The small shareholder exception in former section 160APHT of the ITAA 1936 does not apply as the Special Dividend constitutes a related payment as discussed at paragraphs 61-67 of this Ruling. Therefore, a Scheme Shareholder who is an individual and who has franking credit offsets not exceeding $5,000 for the year of income ended 30 June 2018 must also satisfy the holding period requirement in relation to the Special Dividend (former section 160APHT(2) of the ITAA 1936).

Refundable tax offset

77. A Scheme Shareholder who is entitled to a tax offset pursuant to 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) is also subject to the refundable tax offset rules in Division 67, unless specifically excluded under section 67-25.

78. 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 (subsection 67-25(1B)), and
- 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)).

79. Division 63 sets out the rules on how, and in what order, tax offsets are applied against income tax liability. Where a tax offset that is subject to the refundable tax offset rules in Division 67 exceeds the income tax liability, the Scheme Shareholder can get a refund of the remaining amount (item 40 of section 63-10).

CGT consequences

CGT Event A1

80. CGT event A1 happens if there is a change in the ownership of a CGT asset (section 104-10). The event happens when a contract to dispose of the asset is entered into or, if there is no contract, when the change of ownership occurs (subsection 104-10(3)).

81. The acquisition of shares in Mantra under a court approved scheme of arrangement does not involve a disposal of shares under a contract[1].

82. Therefore, CGT event A1 happened when there was a change of ownership in a Mantra share from a Scheme Shareholder to Accor in accordance with the SIA (subsections 104-10(1) and 104-10(2)). The change of ownership occurred on the Scheme Implementation Date of 31 May 2018 (paragraph 104-10(3)(b)).

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

84. A Scheme Shareholder makes a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a Mantra share are more than the cost base of the share. A Scheme Shareholder makes a capital loss if the capital proceeds are less than the reduced cost base of the Mantra share (subsection 104-10(4)).

Capital proceeds

85. The capital proceeds received by a Scheme Shareholder from a CGT event is the money and the market value of any property received or entitled to be received (worked out at the time of the event happening) in respect of the event happening (subsection 116-20(1)).

86. The term 'in respect of the event happening' in subsection 116-20(1) requires the relationship between the event and the receipt of the money, or the entitlement to receive the money, to be more than coincidental. An amount is not capital proceeds received or entitled to be received in respect of a CGT event merely because it is received in association with the CGT event.[2]

87. In this case, the Special Dividend was not paid in respect of the disposal of Mantra shares under the Scheme of Arrangement. The determination to pay the Special Dividend was at the discretion of the Mantra Board. AAPC had no control over Mantra's decision to pay the Special Dividend. AAPC had no control over the quantum of the Special Dividend (except for the $0.235 ceiling in the SIA).

88. The payment of the Special Dividend was funded entirely by Mantra's cash reserves and/or existing debt facilities with no actual or contingent funding support from AAPC.

---

[1] See paragraph 9 of the 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 merger?*

[2] Taxation Ruling TR 2010/4: *Income tax*: *capital gains*: *when a dividend will be included in the capital proceeds from a disposal of shares that happens under a contract or a scheme of arrangement.*

89. The Commissioner considers that the Special Dividend was not received in respect of the disposal of Mantra shares under the SIA. Accordingly, the Special Dividend does not form part of the capital proceeds in respect of CGT event A1 happening.

90. Therefore, the capital proceeds that a Scheme Shareholder received for the disposal of a Mantra share under the Scheme of Arrangement is $3.80.

Discount capital gain

91. If a Scheme Shareholder made a capital gain from the disposal of their Mantra share, the Scheme Shareholder may be eligible to treat the capital gain as a discount capital gain provided that all the relevant requirements of Division 115 are met.

92. One of those requirements is that the entity which made the capital gain as a result of a CGT event happening to its CGT asset must have acquired that asset at least 12 months before the CGT event (subsection 115-25(1)).

93. This means that a capital gain made by a Scheme Shareholder is a discount capital gain if they acquired the Mantra share at least 12 months before the date of disposal under the Scheme, being 12 months before the Scheme Implementation Date of 31 May 2018, and the other requirements in Division 115 are satisfied.

The anti-avoidance provisions

Section 177EA

94. Section 177EA of the ITAA 1936 is a general anti-avoidance provision that operates to prevent franking credit trading. For section 177EA to apply, the conditions of paragraphs 177EA(3)(a) to (e) must be satisfied.

95. The conditions of paragraphs 177EA(3)(a) to (d) of the ITAA 1936 are satisfied as Mantra is a corporate tax entity, the Scheme of Arrangement is a scheme involving the disposal of Mantra shares in which there is a franked distribution and franking credits were received by Scheme Shareholders (the relevant taxpayers) that participated in the Scheme of Arrangement and who could, therefore, reasonably be expected to receive imputation benefits.

96. Paragraph 177EA(3)(e) of the ITAA 1936, in broad terms, requires that in considering 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 taxpayer to obtain an imputation benefit.

97. 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 in the subsection encompass a range of diverse matters which, taken individually or in conjunction with other matters, listed or not, could indicate the requisite purpose, that is, that the delivery of the imputation benefit is more than an incidental purpose of the Scheme of Arrangement.

98. The relevant circumstances are that the disposition of the ordinary shares in Mantra was made pursuant to a takeover by AAPC by way of a Scheme of Arrangement under the Corporations Act voted upon by Mantra shareholders entitled to vote.

99. The Scheme of Arrangement is a normal commercial transaction under which Mantra was acquired by AAPC.

100. Shareholders in Mantra have different tax and residency profiles. The fully franked Special Dividend was paid to all existing shareholders of Mantra in proportion to the number of shares that each shareholder held on the Special Dividend Record Date and irrespective of their ability to use the relevant franking credits. The Special Dividend allowed Mantra shareholders to share in the accumulated profits of Mantra.

101. Having regard to the relevant circumstances of the scheme, it cannot be concluded that Mantra or the Scheme Shareholders entered into or carried out the scheme for the purpose of enabling the Scheme Shareholders to obtain an imputation benefit.

102. As the requisite purpose is not present, 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 which Scheme Shareholders received in relation to the Special Dividend.

Section 204-30

103. Section 204-30 applies where a corporate tax entity streams the payment of dividends to its members in such a way that certain shareholders, referred to as favoured members, obtain imputation benefits, and other shareholders, referred to as disadvantaged members, obtain lesser or no imputation benefits, whether or not they receive other benefits. The favoured members are those that derive a greater benefit from imputation benefits than disadvantaged members.

104. For section 204-30 to apply, members to whom distributions are streamed must derive a greater benefit from franking credits than another member 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 use imputation benefits.

105. Under the Scheme of Arrangement, Scheme Shareholders received an imputation benefit when the Special Dividend was paid. The Special Dividend was paid equally to all Scheme Shareholders, and was fully franked regardless of their tax profiles. Accordingly, it cannot be said that Mantra selectively directed the flow of franked dividends to those members who obtained the most benefit from the franking credits.

106. As the conditions in subsection 204-30(1) were 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 received by a Scheme Shareholder in relation to the Special Dividend.

Appendix 2 – Detailed contents list

107. The following is a detailed contents list for this Ruling:

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10; TD 2002/4;
TR 2010/4

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 90
- ITAA 1936 95(1)
- ITAA 1936 98
- ITAA 1936 99A
- ITAA 1936 Div 1A Pt III
- ITAA 1936 Div 1A Pt IIIAA
- ITAA 1936 160APHD
- ITAA 1936 160APHE
- ITAA 1936 160APHE(1)
- ITAA 1936 160APHN
- ITAA 1936 160APHN(2)
- ITAA 1936 160APHN(3)
- ITAA 1936 160APHN(3)(f)
- ITAA 1936 160APHN(4)
- ITAA 1936 160APHN(4)(c)
- ITAA 1936 160APHO(1)
- ITAA 1936 160APHO(1)(b)
- ITAA 1936 160APHO(2)
- ITAA 1936 160APHO(2)(a)
- ITAA 1936 160APHO(3)
- ITAA 1936 160APHT
- ITAA 1936 160APHT(2)
- ITAA 1936 160APHU
- ITAA 1936 177EA
- ITAA 1936 177EA(3)(a)
- ITAA 1936 177EA(3)(b)
- ITAA 1936 177EA(3)(c)
- ITAA 1936 177EA(3)(d)
- ITAA 1936 177EA(3)(e)
- ITAA 1936 177EA(5)(b)
- ITAA 1936 177EA(17)
- ITAA 1997
- ITAA 1997 Div 63
- ITAA 1997 63-10
- ITAA 1997 Div 67
- ITAA 1997 67-25
- ITAA 1997 67-25(1A)
- ITAA 1997 67-25(1B)
- ITAA 1997 67-25(1C)
- ITAA 1997 67-25(1D)
- 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 Div 115
- ITAA 1997 115-25(1)
- ITAA 1997 116-20(1)
- ITAA 1997 202-5
- ITAA 1997 202-40
- ITAA 1997 202-45
- ITAA 1997 204-30
- ITAA 1997 204-30(1)
- ITAA 1997 204-30(3)(c)
- ITAA 1997 204-30(8)
- ITAA 1997 Div 207
- ITAA 1997 Subdiv 207-B
- ITAA 1997 207-20
- ITAA 1997 207-20(1)
- ITAA 1997 207-20(2)
- ITAA 1997 207-35(1)
- ITAA 1997 207-35(3)
- ITAA 1997 207-35(4)
- ITAA 1997 207-35(5)
- ITAA 1997 207-35(6)
- ITAA 1997 207-45
- ITAA 1997 207-45(c)
- ITAA 1997 207-45(ca)
- ITAA 1997 207-45(d)
- ITAA 1997 207-145
- ITAA 1997 207-145(1)(a)
- ITAA 1997 207-145(1)(e)
- ITAA 1997 207-145(1)(f)
- ITAA 1997 Div 230
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- TAA 1953
- Corporations Act 2001
- Corporations Act 2001 254T
- Corporations Act 2001 Pt 5.1

ATO references

NO:	1-DUSYT3V
ISSN:	2205-5517
BSL:	PGI
ATOlaw topic:	Income tax ~~ Assessable income ~~ Dividend income ~~

Dividend income
Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT event A1 - disposal of a CGT asset
Offsets / rebates / credits / benefits ~~ Other offsets / rebates / benefits ~~ Dividend streaming and demerger benefits
Offsets / rebates / credits / benefits ~~ Other offsets / rebates / benefits ~~ Franking tax offset