


CR 2019/43 - IMB Ltd - off-market share buy-back

 This cover sheet is provided for information only. It does not form part of *CR 2019/43 - IMB Ltd - off-market share buy-back*



Class Ruling

IMB Ltd – off-market share buy-back

❶ Relying on this Ruling

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

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in the Ruling. That is, you will not pay any more tax or pay any penalties or interest in respect of the matters covered by this Ruling.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

Table of contents	Paragraph
What this Ruling is about	1
Who this Ruling applies to	3
When this Ruling applies	6
Ruling	7
Scheme	27
Appendix 1 – Explanation	65
Appendix 2 – Legislative provisions	108

What this Ruling is about

1. This Ruling sets out the tax consequences of IMB Ltd's off-market share buy-back (the buy-back) announced on 2 May 2019.
2. Full details of the buy-back, and relevant background, are set out in paragraphs 27 to 64 of this Ruling.

Who this Ruling applies to

3. This Ruling applies to you if you held ordinary shares in IMB Ltd (IMB) and you sold some or all of the shares (IMB shares) under the buy-back.
4. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 of the *Income Tax Assessment Act 1997* in relation to the scheme outlined in paragraphs 27 to 64 of this Ruling.

Note: Division 230 will not apply to you if you are an individual, unless you made an election for the Division to apply.

5. Legislative references in this Ruling are to provisions of the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* (as detailed in the table in Appendix 2 of this Ruling) unless otherwise indicated.

When this Ruling applies

6. This Ruling applies from 1 July 2018 to 30 June 2019.

Ruling

Off-market purchase

7. The buy-back is an off-market purchase as defined by paragraph 159GZZZK(d).

The Dividend Component and franking credit

8. You are taken to have received a dividend of \$3.26 (the Dividend Component) for each IMB share that you sold under the buy-back (section 159GZZZP).
9. The Dividend Component is a frankable distribution and is therefore capable of being franked (section 202-40 and section 202-5 respectively).
10. The difference between the buy-back price of \$4.44 and the Dividend Component of \$3.26 is the Capital Component of \$1.18. The Capital Component is not a dividend for income tax purposes.

Resident shareholders

11. If you are a resident, for each IMB share you sold in the buy-back, you include in your assessable income for the income year ended 30 June 2019:
- the Dividend Component of \$3.26 (subsection 44(1)), and
 - a franking credit of \$1.39 (subsection 207-20(1) or if you are partnership or trust, subsection 207-35(1)) provided you are a qualified person (refer to paragraph 23 of this Ruling) in relation to the distribution for the purposes of Division 1A of former Part IIIA.
12. You are entitled to a tax offset equal to the amount of the franking credit on the Dividend Component (subsection 207-20(2)) as long as you are a qualified person.
13. The tax offset is subject to the refundable tax offset rules in Division 67 provided you are not excluded by subsections 67-25(1A) to 67-25(1DA).

Non-resident shareholders

14. If you are a non-resident, you will not be liable for Australian withholding tax on the Dividend Component (paragraph 128B(3)(ga)).

Consideration received for shares sold

15. For each IMB share you sold under the buy-back, you are taken to have received \$1.90 (Sale Consideration) on 24 June 2019 (section 159GZZZQ). You may be taken to have received a different amount of Sale Consideration if you are a corporate tax entity to which subsections 159GZZZQ(8) and 159GZZZQ(9) apply.

Capital gains tax

16. You are taken to have sold your IMB shares for CGT purposes on 24 June 2019 (section 104-10, CGT event A1).

17. The Sale Consideration of \$1.90 represents the capital proceeds per IMB share for CGT purposes (Note 3 following subsection 116-20(1)). You may be taken to have received a different amount of Sale Consideration if you are a corporate tax entity to which subsections 159GZZZQ(8) and 159GZZZQ(9) apply.

18. If you are not a partnership, you will make:

- a capital gain on each IMB share where the Sale Consideration is more than the share's cost base. The capital gain is the difference.
- a capital loss on each IMB share where the Sale Consideration is less than the share's reduced cost base. The capital loss is the difference (subsection 104-10(4)).

Shares held as trading stock

19. If you held your IMB shares as trading stock (as defined in subsection 995-1(1)) at the time of the buy-back on 24 June 2019:

- you include the Sale Consideration in your assessable income (section 6-5), unless you are a corporate tax entity to which subsections 159GZZZQ(8) and 159GZZZQ(9) apply, and
- you disregard any capital gain or capital loss you make (section 118-25).

Shares held as revenue assets

20. If you held your IMB shares as revenue assets (as defined in section 977-50), but not as trading stock, the amount by which:

- the Sale Consideration exceeds the cost of each IMB share is included in your assessable income (section 6-5).
- the cost of each IMB share exceeds the Sale Consideration is an allowable deduction (section 8-1).

21. If you made a capital gain in respect of the IMB shares you held on revenue account but not as trading stock, the capital gain is reduced by the amount that you included in your assessable income (section 118-20). If you made a capital loss, you reduce the reduced cost base by the amount of the allowable deduction (subsection 110-55(9)).

Non-resident shareholders: CGT consequences

22. If you were a non-resident shareholder when you sold your IMB shares under the buy-back, you disregard any capital gain or capital loss you made where the IMB shares were not taxable Australian property (section 855-10).

Qualified persons

23. You will be a qualified person in relation to the Dividend Component if:
- you acquired the IMB shares on or before 7 May 2019
 - during the period when you held the IMB shares, you had sufficient risks of loss or opportunities for gain in respect of the shares (as defined in former section 160APHM) for a continuous period of 45 days. Neither the announcement of the buy-back, the making of an invitation to you to offer to sell IMB shares nor the making of an offer by you to IMB in respect of a share affects whether you held the IMB shares at risk for the purposes of Division 1A of former Part IIIAA (paragraph 207-145(1)(a) which refers to Division 1A of former Part IIIAA), and
 - you have not made nor are required to make a related payment for the purposes of subsection 160APHN of Division 1A of former Part IIIAA.
24. The last-in first-out rule in former subsection 160APHI(4) has no effect for the buy-back in respect of any additional IMB shares you acquired after 7 May 2019 which did not confer an entitlement to participate in the buy-back.

The anti-avoidance provisions

25. The Commissioner will not make a determination under subsections 45A(2) or 45B(3) that section 45C applies to the whole, or any part, of the Capital Component you received.
26. The Commissioner will not make a determination under paragraph 204-30(3)(c) or paragraph 177EA(5)(b) to deny the whole, or any part, of the imputation benefits you received in relation to the Dividend Component.

Scheme

27. The following description of the scheme is based on information provided by the applicant. If the scheme including the background and the buy-back carried out is not as described, this Ruling cannot be relied upon.
28. Other information referred to is the *IMB Bank Off-Market Buyback Booklet* (Booklet) which was mailed to IMB shareholders on 14 May 2019.

Background**Corporate structure**

29. IMB is a resident unlisted public company limited by shares and guarantee.
30. IMB is a mutual authorised deposit-taking institution.
31. IMB is regulated by the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investment Commission (ASIC).
32. IMB trades under the business name 'IMB Bank' following approval from APRA to change from a building society to a mutual bank. The change to a mutual bank had no impact on IMB's ownership model, capital structure, balance sheet and capital management program.

33. IMB's assets are largely Australian cash and loan receivables.
34. IMB announced a change to its dividend guidelines on 28 September 2016. However IMB's capital management program remains the same including the buy-back.

IMB members

35. The members of IMB are comprised of:
- members by way of guarantee (guarantee members), and
 - guarantee members who also hold ordinary shares in IMB.

A person or an entity cannot become a member of IMB through shareholding alone.

36. A person may become a member of IMB by completing and lodging an application with IMB. Following approval, the person becomes a member of IMB when their name is entered in the Register of Members.

37. As at 31 August 2018, IMB had approximately:
- 193,000 guarantee members, and
 - 3,168 shareholders, of which 3,100 were eligible to vote (as they each held at least 100 ordinary shares in IMB).

38. The shareholders are a mix of resident individuals, companies, nominee companies, trusts and superannuation funds, and a small number of non-residents.

39. A shareholder is permitted to hold a maximum of 5% of IMB shares. Any excess is forfeited to IMB and the shareholder is appropriately compensated.

40. All IMB shares were acquired after 20 September 1985.

41. IMB disclosed in its 2018 Annual Report that, as at 30 June 2018, it had 25,966,082 fully paid ordinary shares on issue, and its:

- share capital was \$ 30,514,000
- retained earnings were \$265,752,000
- reserves were \$ 47,421,000.

History of distributions

42. IMB limits its annual distributions on shares to less than 50% of its annual net profit after tax in accordance with ASIC Regulatory Guide 147.

43. Since ending its dividend reinvestment plan in August 2004, IMB has paid dividends totalling \$119,339,128 up to 21 September 2018. All dividends were fully franked.

44. IMB has completed five off-market share buy-backs. The first was in 2012 and subsequent buy-backs occurred in 2013, 2015, 2016 and 2017.

Share trading

45. IMB operates a trading facility for its shares under an Australian Market Licence (IMB Ltd) 2005 and an Australian Clearing and Settlement Facility Licence (IMB Ltd) 2005 in accordance with the *Corporations Act 2001*. IMB manually matches buyers and sellers at mutually acceptable prices.

46. In holding these licences, IMB is subject to disclosure obligations, including a requirement to disclose price-sensitive information. IMB publishes weekly trading volumes and prices for IMB shares on its website.

47. Approximately 5.15% of all IMB shares were traded during the 12 months to 30 April 2019.

The buy-back

48. IMB announced on 2 May 2019 (the announcement date) that it would undertake a buy-back of up to a maximum of \$9 million of IMB shares through a tender process.

49. IMB received approval from APRA to undertake the buy-back subject to meeting certain conditions.

50. On 1 May 2019, ASIC granted IMB relief to treat the buy-back as an equal access share buy-back in accordance with Division 2 of Part 2J.1 of the *Corporations Act 2001*.

51. The following are the important dates of the buy-back:

Announcement date	Thursday 2 May 2019
Record date	Tuesday 7 May 2019
Ex-entitlement date	Wednesday 8 May 2019
Opening date	Tuesday 14 May 2019
Closing date	Friday 14 June 2019
Buy-back date	Monday 24 June 2019
Payment date	Tuesday 25 June 2019

52. The tender period for the buy-back commenced on 14 May 2019 (the opening date) and closed on 14 June 2019 (the closing date). During the tender period, eligible shareholders were each invited to lodge, withdraw or amend a tender.

53. All eligible shareholders (except those with Excluded Foreign Shareholding as defined in the Booklet) whose names were on IMB's share register as at close of business 7 May 2019 (the record date) could tender their IMB shares. IMB shares acquired after 7 May 2019, (that is, acquired on or after 8 May 2019 (the ex-entitlement date)) did not confer an entitlement to participate in the buy-back.

54. Participation in the buy-back was voluntary and eligible shareholders who did not wish to participate were not required to take any action and did not receive any property, dividends or distributions as compensation.

55. Shareholders were invited to submit offers to sell some or all of their IMB shares at a tender discount at one of the specified discounts within the range of 0% to 14% inclusive (the tender discount range) at intervals of 2%, or as a final price tender. The tender discount was applied to the market value of an IMB share (which was worked out as set out in IMB's second undertaking in paragraph 60 of this Ruling).

56. If a shareholder owned more than 250 IMB shares, the shareholder was entitled to tender the shares at different tender discounts and/or as a final price tender, provided at least 100 IMB shares were tendered at each selected tender discount or a final price tender.

57. Shareholders that held 250 IMB shares or less who wished to participate in the buy-back were required to tender all of their IMB shares at a single tender discount or as a final price tender.

58. For each IMB share that IMB purchased under the buy-back, IMB debited \$1.18 of the buy-back price to its share capital account and the balance of the buy-back price to its retained earnings. The Dividend Component was fully franked.

59. IMB was entitled to use a scale-back mechanism in circumstances such as where more IMB shares were tendered than IMB planned to purchase in the buy-back. The scale-back would not apply to:

- parcels of 250 or less IMB shares which were to be purchased in full under the buy-back, and
- eligible shareholders who would hold less than 100 IMB shares after they tendered all their shares.

60. IMB made the following undertakings in respect of the buy-back:

- IMB would not purchase IMB shares under the buy-back at a discount greater than 14% to the volume weighted average price (VWAP) of the shares over the five trading days up to and including the closing date of 14 June 2019.
- The buy-back price per IMB share would not exceed the market value of an IMB share worked out in accordance with Taxation Determination TD 2004/22. The formula used in determining the market value in TD 2004/22 was modified for the buy-back using a VWAP based on the ten days on which shares were traded prior to 2 May 2019 rather than on five days (refer to paragraphs 76 and 77 of this Ruling).

61. On 24 June 2019 (the buy-back date), IMB announced that:

- it had successfully completed the purchase of approximately 1.86 million IMB shares under the buy-back, representing approximately 7.2% of the issued capital of IMB
- the buy-back price was \$4.44 per IMB share
- the total purchase price of IMB shares purchased under the buy-back was approximately \$8.24 million, and
- a scale-back mechanism was not applied. Only shares tendered at a discount of 14%, or as a final price tender were purchased in the buy-back.

62. IMB cancelled all of the IMB shares it purchased under the buy-back.

63. IMB's share capital account (as defined in section 975-300) was not tainted for the purposes of section 197-50.

64. The market value of IMB's assets that are taxable Australian real property do not exceed the sum of the market value of IMB's other assets for the purposes of section 855-30.

Appendix 1 – Explanation

ⓘ *This Explanation 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.*

Table of contents	Paragraph
Off-market purchase	65
Dividend and Capital Components	66
Dividend Component and franking credit	68
<i>Resident shareholders</i>	68
<i>Indirect distributions – partners and beneficiaries</i>	70
<i>Non-resident shareholders</i>	72
Calculation of Sale Consideration	73
Capital gains tax and other outcomes	83
<i>Non-resident shareholders – CGT consequences</i>	84
Qualified persons	86
The anti-avoidance provisions	94
<i>Sections 45A and 45B</i>	94
<i>Section 177EA</i>	99
<i>Section 204-30</i>	106

Off-market purchase

65. As IMB shares are not listed on a stock exchange, the buy-back is an off-market purchase (paragraph 159GZZZK(d)).

Dividend and Capital Components

66. The buy-back price comprises two components:

- a Capital Component, being the amount debited against amounts standing to the credit of the share capital account (section 159GZZZQ), and
- a Dividend Component, being the difference between the buy-back Price and the Capital Component (section 159GZZZP).

67. As the buy-back price did not exceed the market value of an IMB share (calculated as if the buy-back did not occur and was never proposed to occur), the Dividend Component was both frankable and able to be franked (paragraph 202-45(c) and sections 202-5 and 202-40).

Dividend Component and franking credit***Resident shareholders***

68. Paragraph 11 of this Ruling sets out how the Dividend Component and franking credit amounts are included in your assessable income if you are an Australian resident.

69. Paragraph 12 of this Ruling sets out that you are entitled to a tax offset equal to the amount of the franking credit on the Dividend Component as long as you are a qualified person (subsection 207-20(2)).

Indirect distributions – partners and beneficiaries

70. Subsections 207-35(3) to (6) set out the circumstances in which a resident partner or resident 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.

71. Where the franked distribution flows indirectly (within the meaning of Subdivision 207-B) through a resident trust or resident 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, as long as the entity is a qualified person, be entitled to a tax offset equal to the entity's share of the franking credit on the franked distribution (section 207-45).

Non-resident shareholders

72. As the Dividend Component is fully franked and the Commissioner will not make a determination in respect of the Dividend Component under either paragraph 204-30(3)(c) or paragraph 177EA(5)(b), non-resident shareholders are not liable for Australian withholding tax on the Dividend Component.

Calculation of Sale Consideration

73. For the purposes of determining the amount of a gain or loss you made on IMB shares you held on capital account or revenue account (whether or not you held the shares as trading stock), the consideration you are taken to have received in respect of the disposal of your IMB share (the Sale Consideration) is determined in accordance with section 159GZZZQ. The effect of section 159GZZZQ is to adjust the Capital Component in order to determine the Sale Consideration for CGT or revenue account treatment.

74. Subsection 159GZZZQ(1) provides that you are taken to have received an amount equal to the purchase price (in this case the buy-back price of \$4.44 as consideration in respect of the sale of your shares to IMB).

75. Subsection 159GZZZQ(2) is one of the adjusting provisions. The subsection provides that if the buy-back price was less than what would have been the market value of the IMB share (calculated as if the buy-back did not occur and was never proposed to occur), then the consideration is increased to the market value.

76. IMB is an unlisted public company. Accordingly, for the purposes of determining the application of subsection 159GZZZQ(2), the following methodology was proposed by IMB and accepted by the Commissioner:

The relevant market value of an IMB Share (referred as the Deemed Market Value in the Booklet) is the VWAP of an IMB Share over the last ten trading days period on which IMB Shares traded prior to the Announcement Date of 2 May 2019 adjusted for movements in

the S&P/ASX 200 Index from that date (Opening S&P/ASX 200 Index) to the close of the Tender Period on 14 June 2019 (Closing S&P/ASX 200 Index).

77. The ten trading days period in paragraph 76 of this Ruling excludes days where no IMB shares were bought or sold.

78. Under this method, the market value of an IMB share was calculated as \$5.16. As a result, you are taken to have instead received consideration of \$5.16 for each IMB share.

79. Pursuant to subsection 159GZZZQ(3), the consideration of \$5.16 is reduced by a reduction amount. The reduction amount is worked out pursuant to subsection 159GZZZQ(4). In the circumstances of the buy-back, the reduction amount is equal to the Dividend Component of \$3.26. As a result, the Sale Consideration under the buy-back is \$1.90 (being \$5.16 less \$3.26). You may be taken to have received a different amount of Sale Consideration if you are a corporate tax entity to which subsections 159GZZZQ(8) and (9) apply (see paragraphs 80 to 82 of this Ruling).

80. If you are a corporate tax entity entitled to a tax offset under Division 207 in respect of the Dividend Component, a further adjustment is made to the Sale Consideration.

81. Under subsection 159GZZZQ(8), if you are a corporate tax entity and you would make either a capital loss or a deductible loss (or would increase such a loss) in respect of the sale of an IMB share under the buy-back, the reduction amount (that is, the Dividend Component) is itself reduced by so much of the offsettable amount determined under subsection 159GZZZQ(9) that does not exceed the capital loss or the deductible loss.

82. The effect for a corporate tax entity is that a capital loss or a deductible loss is reduced to the extent of the Dividend Component.

Capital gains tax and other outcomes

83. Paragraphs 16 to 21 of this Ruling explain the capital gains tax outcomes and the outcomes if you held your shares as trading stock, or on revenue account but not as trading stock.

Non-resident shareholders – CGT consequences

84. If you were a non-resident when you sold your IMB shares under the buy-back, you disregard any capital gain or capital loss you made where the IMB shares were not taxable Australian property (section 855-10).

85. The IMB shares are taxable Australian property under the tests in section 855-10 if:

- you used the shares in carrying on a business through a permanent establishment in Australia (table item 3 in section 855-15), or
- the shares are CGT assets covered by subsection 104-165(3) for an individual who previously chose to disregard a gain or loss when he or she ceased to be an Australian resident (table item 5 in section 855-15).

Qualified persons

86. Broadly, to be a qualified person in relation to the Dividend Component, you must satisfy both the related payments rule and the holding period rule (paragraph 207-145(1)(a) which refers to Division 1A of former Part IIIA).

87. Generally you (or your associate) will not satisfy the related payments rule if you make, or you are under an obligation to make, a payment in respect of the dividend which effectively passes the benefit of the dividend to another person.

88. The holding period rule requires you to hold the IMB shares, or your interest in the IMB shares, on which the dividend is paid, at risk for a continuous period of at least 45 days. You do not count the days during which there are materially diminished risks in relation to the shares. You also do not count the day you acquire and the day you dispose of the relevant IMB shares.

89. Under former subsection 160APHM(2), you are taken to have materially diminished risks of loss and opportunities for gain with respect to the IMB shares or interests in the IMB shares if your net position results in you having less than 30% of the risks and opportunities relating to the shares or interest in shares.

90. As set out in paragraph 23 of this Ruling, the Commissioner considers that the announcement of the buy-back, the making of an invitation to you to offer to sell IMB shares and the making of an offer by you to IMB in respect of a share do not affect whether you held the IMB shares or an interest in the IMB shares at risk or not.

91. There are at least 45 clear days between the ex-entitlement date of 8 May 2019 and the buy-back date of 24 June 2019. If you acquired IMB shares on or before the record date of 7 May 2019 and the shares you tendered were purchased by IMB under the buy-back on 24 June 2019, you satisfied the holding period rule as long as you held those shares at risk for at least 45 continuous days.

92. IMB shares acquired after the record date of 7 May 2019 did not confer entitlement to participate in the buy-back. That is, you were entitled to tender in the buy-back only those IMB shares acquired on or before 7 May 2019.

93. Generally, under the holding period rule you are deemed to have first disposed of your most recently acquired IMB shares (former subsection 160APHI(4)). The 45-day rule operates on a last-in-first-out basis. The last-in first-out rule in former subsection 160APHI(4) has no effect for the purposes of the buy-back if you acquired additional IMB shares after the record date of 7 May 2019 as these additional shares did not confer an entitlement to participate in the buy-back.

The anti-avoidance provisions

Sections 45A and 45B

94. If section 45A or section 45B applies, then in turn, section 45C will apply to treat some or all of the return of capital payment as an unfranked dividend.

95. Section 45A generally applies when a company streams capital benefits to some shareholders (such as the distribution of share capital by way of the return of capital payment) and it is reasonable to assume that the other shareholders have received, or will receive, dividends.

96. Although you were provided a capital benefit (as defined in paragraph 45A(3)(b)), the circumstances of the buy-back indicate that there was no streaming of capital benefits to shareholders of IMB who sold their shares in the buy-back.

97. Section 45B generally applies where certain capital benefits are, having regard to the relevant circumstances of the scheme set out in subsection 45B(8), considered to have been provided to shareholders by a company for a more than incidental purpose of enabling a taxpayer to obtain a tax benefit.

98. Having regard to the following relevant circumstances of the buy-back, the Commissioner considers section 45B does not apply because the buy-back was not entered into or carried out for a more than incidental purpose of enabling shareholders to obtain a tax benefit:

- the Capital Component cannot be said to be attributable to the profits of IMB
- the pattern of IMB's distributions
- IMB adopted the average capital per share method and therefore the buy-back price included the Dividend Component, and
- the profile of IMB's shareholders.

Section 177EA

99. Section 177EA is a general anti-avoidance provision that operates to prevent franking credit trading.

100. The conditions of paragraphs 177EA(3)(a) to (d) are satisfied as the buy-back is a scheme involving the disposal of IMB shares in which there is a franked distribution and franking credits were received by eligible shareholders (which includes you) who participated in the buy-back.

101. Section 177EA does not apply unless the conditions of paragraph 177EA(3)(e) are also satisfied. Paragraph 177EA(3)(e) requires that having regard to the relevant circumstances of the buy-back, any person who entered into or carried out the buy-back did so for a more than an incidental purpose of conferring an imputation benefit under the scheme to you and other shareholders who sold their shares under the buy-back .

102. The relevant circumstances to be considered are set out in subsection 177EA(17) which encompass a range of circumstances (including the first undertaking made by IMB and set out in paragraph 60 of this Ruling) which, taken individually or collectively, could indicate the requisite purpose.

103. The Commissioner has come to the view that section 177EA applies to the buy-back. Among the relevant circumstances of the buy-back, there is a greater attraction of the buy-back to resident shareholders who could fully use the franking credits rather than to non-resident shareholders (paragraph 177EA(17)(b)).

104. Where section 177EA applies the Commissioner has a discretion to make a determination to debit IMB's franking account or to deny imputation benefits to you and other shareholders who sold their shares under the buy-back (subsection 177EA(5)).

105. The Commissioner will exercise his discretion in such a way that he will not make a determination pursuant to paragraph 177EA(5)(b) that denies the imputation benefits that you and other shareholders obtained under the buy-back.

Section 204-30

106. Section 204-30 applies where a corporate tax entity streams the payment of dividends to its members in such a way that certain shareholders obtain imputation benefits, and other shareholders obtain lesser or no imputation benefits, whether or not they receive other benefits.

107. Where section 204-30 applies the Commissioner has a discretion to make a determination to debit IMB's franking account or deny you the imputation benefit (subsection 204-30(3)).

108. While the conditions for section 204-30 to apply are present in the buy-back to the extent any non-resident shareholders do not participate, the Commissioner will not make a determination to deny imputation benefits that you and other shareholders obtained under the buy-back.

Appendix 2 – Legislative provisions

109. This paragraph sets out details of the provisions ruled upon in this Ruling.

<i>Income Tax Assessment Act 1936</i>	section 44
<i>Income Tax Assessment Act 1936</i>	section 45A
<i>Income Tax Assessment Act 1936</i>	section 45B
<i>Income Tax Assessment Act 1936</i>	section 45C
<i>Income Tax Assessment Act 1936</i>	section 128B
<i>Income Tax Assessment Act 1936</i>	section 159GZZZK
<i>Income Tax Assessment Act 1936</i>	section 159GZZZP
<i>Income Tax Assessment Act 1936</i>	section 159GZZZQ
<i>Income Tax Assessment Act 1936</i>	section 177EA
<i>Income Tax Assessment Act 1997</i>	section 6-5
<i>Income Tax Assessment Act 1997</i>	section 8-1
<i>Income Tax Assessment Act 1997</i>	Division 67
<i>Income Tax Assessment Act 1997</i>	section 67-25
<i>Income Tax Assessment Act 1997</i>	section 104-10
<i>Income Tax Assessment Act 1997</i>	section 104-165
<i>Income Tax Assessment Act 1997</i>	section 110-55
<i>Income Tax Assessment Act 1997</i>	section 116-20
<i>Income Tax Assessment Act 1997</i>	section 118-20
<i>Income Tax Assessment Act 1997</i>	section 118-25
<i>Income Tax Assessment Act 1997</i>	section 197-50
<i>Income Tax Assessment Act 1997</i>	section 202-5
<i>Income Tax Assessment Act 1997</i>	section 202-40
<i>Income Tax Assessment Act 1997</i>	section 202-45
<i>Income Tax Assessment Act 1997</i>	section 204-30
<i>Income Tax Assessment Act 1997</i>	Division 207
<i>Income Tax Assessment Act 1997</i>	Subdivision 207-B
<i>Income Tax Assessment Act 1997</i>	section 207-20
<i>Income Tax Assessment Act 1997</i>	section 207-35
<i>Income Tax Assessment Act 1997</i>	section 207-45
<i>Income Tax Assessment Act 1997</i>	section 207-145
<i>Income Tax Assessment Act 1997</i>	Division 230
<i>Income Tax Assessment Act 1997</i>	section 855-10
<i>Income Tax Assessment Act 1997</i>	section 855-15
<i>Income Tax Assessment Act 1997</i>	section 855-30
<i>Income Tax Assessment Act 1997</i>	section 975-300
<i>Income Tax Assessment Act 1997</i>	section 977-50
<i>Income Tax Assessment Act 1997</i>	section 995-1

References*Previous draft:*

Not previously issued as a draft

Related Rulings/Determinations:

TD 2004/22; TR 2006/10

Legislative references:

- ITAA 1936
- ITAA 1936 44(1)
- ITAA 1936 45A
- ITAA 1936 45A(2)
- ITAA 1936 45A(3)(b)
- ITAA 1936 45B
- ITAA 1936 45B(3)
- ITAA 1936 45B(8)
- ITAA 1936 45C
- ITAA 1936 128B(3)(ga)
- ITAA 1936 159GZZZK(d)
- ITAA 1936 159GZZZP
- ITAA 1936 159GZZZQ
- ITAA 1936 159GZZZQ(1)
- ITAA 1936 159GZZZQ(2)
- ITAA 1936 159GZZZQ(3)
- ITAA 1936 159GZZZQ(4)
- ITAA 1936 159GZZZQ(8)
- ITAA 1936 159GZZZQ(9)
- ITAA 1936 former Pt IIIAA Div 1A
- ITAA 1936 former 160APHI(4)
- ITAA 1936 former 160APHM
- ITAA 1936 former 160APHM(2)
- ITAA 1936 former 160APHN
- 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)
- ITAA 1936 177EA(5)(b)
- ITAA 1936 177EA(17)
- ITAA 1936 177EA(17)(b)
- ITAA 1997
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 Div 67
- ITAA 1997 67-25(1A)
- ITAA 1997 67-25(1B)
- ITAA 1997 67-25(1C)
- ITAA 1997 67-25(1D)
- ITAA 1997 67-25(1DA)
- ITAA 1997 104-10
- ITAA 1997 104-10(4)
- ITAA 1997 104-165(3)
- ITAA 1997 110-55(9)
- ITAA 1997 116-20(1)
- ITAA 1997 118-20
- ITAA 1997 118-25
- ITAA 1997 197-50
- ITAA 1997 202-5
- ITAA 1997 202-40
- ITAA 1997 202-45(c)
- ITAA 1997 204-30
- ITAA 1997 204-30(3)
- ITAA 1997 204-30(3)(c)
- ITAA 1997 Div 207
- ITAA 1997 Subdiv 207-B
- 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(1)(a)
- ITAA 1997 Div 230
- ITAA 1997 855-10
- ITAA 1997 855-15
- ITAA 1997 855-30
- ITAA 1997 975-300
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- TAA 1953
- Corporations Act 2001 Div 2

Other references:

PS LA 2007/9

ATO references

NO: 1-GWZMKON

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
Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45A
Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45B

Income tax ~~ Capital management ~~ Dividend streaming
Income tax ~~ Capital management ~~ Franking credits / tax offsets
Income tax ~~ Capital management ~~ Qualified person rule
Income tax ~~ Capital management ~~ Return of capital ~~ Share buy back

© AUSTRALIAN TAXATION OFFICE FOR THE COMMONWEALTH OF AUSTRALIA

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).