


# ***CR 2019/56 - Legend Corporation Limited - scheme of arrangement and special dividend***

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## Class Ruling

### Legend Corporation Limited – scheme of arrangement and special dividend

#### **❶ Relying on this Ruling**

This publication (excluding appendixes) 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 this Ruling. That is, you will not pay any more tax or 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.

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#### **What this Ruling is about**

1. This Ruling sets out the tax consequences of the special dividend (Special Dividend) paid and the scheme of arrangement (Scheme) implemented by Legend Corporation Limited (Legend) on 30 August 2019.
2. Full details of this Scheme are set out in paragraphs 27 to 41 of this Ruling.
3. All legislative references are to provisions of the *Income Tax Assessment Act 1997* or the *Income Tax Assessment Act 1936* (as detailed in the table in Appendix 2 of this Ruling) unless otherwise indicated.

#### **Who this Ruling applies to**

4. This Ruling applies to you if you were a shareholder of Legend who:
  - is a resident of Australia as defined in subsection 6(1) and is not exempt from Australian income tax
  - acquired your Legend shares on or after 20 September 1985

- held your Legend shares on capital account, that is, your Legend shares were neither held as revenue assets (as defined in section 977-50 nor as trading stock (as defined in subsection 995-1(1))
- disposed of your Legend shares under the Scheme, and
- received the Special Dividend.

5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 27 to 41 of this Ruling.

**Note:** Division 230 will not apply to individuals, unless they have made an election for it to apply.

### **When this Ruling applies**

6. This Ruling applies from 1 July 2019 to 30 June 2020.

## **Ruling**

### **Special Dividend**

7. The Special Dividend is a 'dividend' as defined in subsection 6(1) as it was not debited against Legend's share capital account.

8. The Special Dividend is a frankable distribution<sup>1</sup>, and has been franked by Legend.

### ***Assessability of the Special Dividend***

9. If you received the Special Dividend directly, you will have to include the Special Dividend in your assessable income.<sup>2</sup> Additionally, you will:

- have to include the amount of the franking credits on the Special Dividend in your assessable income, and
- be entitled to a tax offset equal to the amount of the franking credits on the Special Dividend,

in the income year the Special Dividend was paid, subject to you being a 'qualified person' in relation to the Special Dividend.

10. If you received the Special Dividend as a trustee of a trust (not being a complying superannuation entity) or as a partnership and you are not a corporate tax entity, you will include an amount equal to the franking credit attached to the Special Dividend in your assessable income<sup>3</sup>, subject to you being a 'qualified person' in relation to the Special Dividend.

11. The relevant members of a partnership or trust to whom a distribution flows indirectly through the partnership or trust, are entitled to a tax offset equal to their share of the franking credit attached to the distribution included in the assessable income of the partnership or trust.<sup>4</sup>

<sup>1</sup> Section 202-40.

<sup>2</sup> Subparagraph 44(1)(a)(i).

<sup>3</sup> Subsection 207-35(1).

<sup>4</sup> Section 207-45.

**Qualified persons**

12. The payment of the Special Dividend constitutes a 'related payment' for the purposes of former section 160APHN.<sup>5</sup>

13. For the purposes of Division 1A of former Part IIIAA, to be a 'qualified person' in relation to the Special Dividend, you must have held your Legend shares 'at risk' for a continuous period of at least 45 days in the secondary qualification period.<sup>6</sup>

14. That is, you will be a qualified person in relation to the Special Dividend, if during the period from 8 July 2019 to 25 August 2019 (inclusive), you held your Legend shares for a continuous period of at least 45 days (not counting the day on which the Legend share was acquired or the day of the disposal of the Legend share, and not counting the days you had, if any, a 'materially diminished risks of loss or opportunities for gain' in respect of your Legend shares).

**Refundable tax offset**

15. Your entitlement to the franking credit tax offsets under Division 207 in relation to the Special Dividend is subject to the refundable tax offset rules in Division 67, provided you are not excluded by the operation of section 67-25.

16. There are a range of taxpayers specifically excluded from the operation of the refundable tax offset rules under section 67-25. These excluded entities include:

- non-complying superannuation funds or non-complying approved deposit funds<sup>8</sup>
- trustees of a trust who are liable to be assessed under section 98 or 99A<sup>9</sup>
- 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<sup>10</sup>, and
- non-resident entities carrying on business in Australia at or through a permanent establishment.<sup>11</sup>

**Exempting entity**

17. Sections 208-195 and 208-225 will not apply to deny the gross up of your assessable income by the amount of the franking credits attached to the Special Dividend received by you, nor to deny the tax offset to which you are otherwise entitled under Division 207 at the time when the Special Dividend was paid.

<sup>5</sup> Paragraph 207-145(1)(a).

<sup>6</sup> Former section 160APHO.

<sup>7</sup> As defined under former 160APHM.

<sup>8</sup> Subsection 67-25(1A).

<sup>9</sup> Subsection 67-25(1B).

<sup>10</sup> Subsection 67-25(1C) and 67-25(1D).

<sup>11</sup> Subsection 67-25(1DA).

**The anti-avoidance provisions**

18. The Commissioner will not make a determination under paragraph 177EA(5)(b) to deny the whole, or any part, of the imputation benefits received in relation to the Special Dividend.

19. 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.

**CGT consequences*****CGT event A1***

20. CGT event A1 happened on 30 August 2019 (Implementation Date) when you disposed your Legend shares to Greenland BidCo Pty Ltd (BidCo).<sup>12</sup>

***Capital proceeds***

21. You are taken to have received a cash consideration of \$0.365 as the capital proceeds for disposing each of your Legend shares.<sup>13</sup>

22. The capital proceeds include the Special Dividend of \$0.07 per Legend share as the Special Dividend was paid in respect of the CGT event happening.

***Capital gain or capital loss***

23. You will make a capital gain if the capital proceeds from the disposal of a Legend share exceed its cost base.<sup>14</sup> The capital gain is the amount of the excess.

24. You will make a capital loss if the capital proceeds from the disposal of a Legend share are less than its reduced cost base.<sup>15</sup> The capital loss is the amount of the difference.

***CGT anti-overlap provisions***

25. A capital gain made by you from CGT event A1 that happened to your Legend shares is reduced by the amount of the Special Dividend that is included in your assessable income under section 44.<sup>16</sup> This has the effect of reducing the capital gain (but not below zero) by the amount that is assessable under another provision.

26. A capital gain is not reduced by the amount of the franking credit (attached to the Special Dividend) that is included in your assessable income under section 207-20.<sup>17</sup>

**Scheme**

27. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

<sup>12</sup> Section 104-10.

<sup>13</sup> Subsection 116-20(1).

<sup>14</sup> Subsection 104-10(4).

<sup>15</sup> Subsection 104-10(4).

<sup>16</sup> Section 118-20.

<sup>17</sup> Paragraph 118-20(1B)(b).

**Legend**

28. Legend is an Australian public company which was listed on the Australian Securities Exchange. As at 25 June 2019, Legend had 216,723,693 fully paid ordinary shares, 1,250,000 unvested performance rights and 100,000 vested but unexercised performance rights on issue.

29. As at 15 March 2019, approximately 0.6% of Legend's shares on issue were held by non-residents.

30. The share capital account of Legend is untainted for the purposes of Division 197.

**Greenland BidCo Pty Ltd**

31. BidCo is a special purpose company controlled by funds advised by Adamantem Capital Management Pty Ltd.

**Scheme of arrangement**

32. On 24 May 2019, Legend announced that it has entered into a Scheme Implementation Agreement with BidCo to implement the Scheme. Under the Scheme, Bidco acquired all shares in Legend for a cash price of \$0.365 per share (Scheme Consideration). The Scheme Consideration was reduced by a fully franked special dividend of up to \$0.07 per share that Legend declared and paid on the implementation of the Scheme.

33. The Scheme was approved by the Legend shareholders and the Federal Court under section 411 of the *Corporations Act 2001*, and it was implemented on 30 August 2019.

34. The Scheme resulted in BidCo acquiring all shares in Legend from Legend shareholders who held their Legend shares as at 26 August 2019 (Scheme Record Date).

35. On the Implementation Date, each Legend shareholder received a cash consideration of \$0.365 per Legend share comprising of:

- Scheme Consideration of \$0.295, and
- a fully franked Special Dividend of \$0.07.

**Special Dividend**

36. On 8 July 2019, as part of the explanatory booklet for the Scheme, Legend announced that it intended to declare the Special Dividend, subject to the Scheme becoming effective.

37. On 9 August 2019, the board of directors of Legend declared the Special Dividend of \$0.07 per share to be payable to shareholders who held their shares at 21 August 2019 (Special Dividend Record Date).

38. The declaration of the Special Dividend was conditional on the Scheme becoming effective. The Special Dividend was required to be paid by Legend on the Implementation Date.

39. The Special Dividend complied with the requirements of the *Corporations Act 2001*, including section 254T of that Act.

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40. The Special Dividend was funded entirely by an unsecured and interest-free loan from BidCo. The amount of the Special Dividend was entirely debited against Legend's profit reserve account.

41. Legend was not an 'exempting entity' or a 'former exempting entity' under Division 208 at the time when the Special Dividend was paid.

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**Commissioner of Taxation**

18 September 2019

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**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.*

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**Qualified person**

42. Paragraph 207-145(1)(a) which refers to former Division 1A of Part IIIAA 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.

43. A partner in a partnership or a beneficiary of a trust cannot be a qualified person in relation to the dividend unless the partnership or the trustee of the trust is also a qualified person in relation to the dividend.<sup>18</sup>

44. The test of what constitutes a 'qualified person' is provided in former subsection 160APHO(1). Broadly, if you were not under an obligation to make a related payment in relation to the Special Dividend, you will have to satisfy the holding period requirement within the primary qualification period. If you were under an obligation to make a related payment in relation to the Special Dividend, you will have to satisfy the holding period requirement within the secondary qualification period.

**Related payment**

45. In order to determine the relevant qualification period, it is necessary to determine whether, under the Scheme you have made, or is under an obligation to make, or is likely to make, a related payment in respect of the Special Dividend you have received.<sup>19</sup>

46. Former section 160APHN gives examples of, but does not limit, what constitutes the making of a related payment for the purposes of Division 1A of former Part IIIAA.

47. Under the terms of the Scheme, the Scheme Consideration (paid by BidCo) is defined as \$0.365 less the amount of the Special Dividend paid by Legend to the Legend shareholders. It is considered that the payment of the Special Dividend is an integral part of the Scheme. The reduction of the Scheme Consideration payable by Legend has the effect of passing the benefit of the Special Dividend from a Legend shareholder to BidCo. Therefore, you (or a partner in a partnership or a beneficiary of a trust that has an interest

<sup>18</sup> Former section 160APHU.

<sup>19</sup> Former subsection 160APHN(2).



in Legend shares) are taken to have made a related payment in respect of the Special Dividend.

### *Holding period*

48. The holding period rule requires you to hold the Legend shares on which the Special Dividend was paid 'at risk' for a continuous period of at least 45 days during the relevant qualification period.<sup>20</sup> The relevant qualification period is the secondary qualification period, which beginning on the 45<sup>th</sup> day before, and ending on the 45<sup>th</sup> day after, the day on which the share became *ex dividend*.<sup>21</sup>

49. The eligibility for the Special Dividend was determined on the Special Dividend Record Date (21 August 2019), being the last day on which acquisition by a person of a Legend share entitled the person to receive the Special Dividend. Accordingly, the *ex dividend* date of a Legend share is 22 August 2019.

50. However, once you had been identified as a Legend shareholder on the Scheme Record Date (26 August 2019), you would no longer be considered to hold your Legend shares 'at risk' for the purposes of Division 1A of former Part IIIAA because, at that time, you had committed to dispose of your Legend shares in exchange for the Scheme Consideration. This means that as at and from the Scheme Record Date, you no longer held your Legend shares 'at risk'. The days from 26 August 2019 and onward are not counted towards the 45-day holding period.

51. As a recipient of the Special Dividend, you would need to have held your Legend shares at risk for a continuous period of not less than 45 days during the period from 8 July 2019 to 25 August 2019 in order to be a 'qualified person' for the purposes of Division 1A of former Part IIIAA. The dates of acquisition and disposal of your Legend shares are not included in the relevant 45-day period.<sup>22</sup>

52. You will need to determine whether you satisfy this holding period requirement having regard to your personal circumstances (which will require you to take into account any positions you may have entered into that has diminished your risk of loss or opportunity for gain in respect of your Legend shares) and is outside of the scope of this Ruling.

### **The anti-avoidance provisions**

#### **Section 177EA**

53. Section 177EA is a general anti-avoidance provision that applies to a wide range of schemes designed to obtain imputation benefits.

54. Legend is a corporate tax entity. The transfer of the Legend shares under the Scheme is a scheme for the disposition of membership interest. The Special Dividend is a frankable distribution that was paid to shareholders of Legend (relevant taxpayers) as part of this scheme and who could, therefore, reasonably be expected to receive imputation benefits. Therefore, the conditions of paragraphs 177EA(3)(a) to (d) are satisfied. Accordingly, the issue is whether, having regard to the relevant circumstances of the scheme (as provided by subsection 177EA(17)), it would be concluded that, on the part of

<sup>20</sup> Former paragraph 160APHO(2)(a).

<sup>21</sup> Former section 160APHE.

<sup>22</sup> Former paragraph 160APHO(2)(a).

Legend, its shareholders or any other relevant party, there is a purpose, more than merely an incidental purpose, of conferring an imputation benefit under the scheme.<sup>23</sup>

55. Considering the circumstances of the Scheme, it cannot be concluded that Legend or the Legend shareholders entered into or carried out the scheme for the purpose of enabling the Legend shareholders to obtain an imputation benefit. Therefore, the Commissioner considers that the requisite purpose is not present and accordingly the Commissioner will not make a determination under paragraph 177EA(5)(b) to deny the whole, or any part, of the imputation benefit to be received in relation to the Special Dividend.

### **Section 204-30**

56. 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.

57. 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 term 'derive a greater benefit from franking credits' is defined in subsection 204-30(8) by reference to the ability of the members to fully use imputation benefits.

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

59. As the conditions in subsection 204-30(1) have not been met, the Commissioner will not make a determination under paragraph 204-30(3)(c) to deny the whole, or any part, of the imputation benefits received by a Legend shareholder in relation to the Special Dividend.

### **Capital proceeds**

60. CGT event A1 happened when you disposed of a Legend share to BidCo on the Scheme Implementation Date. The capital proceeds received by you 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.<sup>24</sup>

61. 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.

62. In this case, the Commissioner considers that the determination of the Special Dividend did not occur independently of the Scheme for the following reasons.<sup>25</sup>

- the Scheme Consideration would be reduced by any Special Dividend that is declared

<sup>23</sup> Paragraph 177EA(3)(e).

<sup>24</sup> Subsection 116-20(1).

<sup>25</sup> Taxation Ruling TR 2010/4 at paragraph 11

- payment of the Special Dividend was contingent on the Scheme becoming effective, and
- a loan facility between BidCo and Legend was established prior to the declaration of the dividend whereby BidCo would fund the payment of the Special Dividend.

63. In this case, it is considered that the Special Dividend forms part of the capital proceeds which you received in respect of CGT event A1 happening.

## Appendix 2 – Legislative provisions

64. This paragraph sets out the details of the provisions ruled upon or referenced in this Ruling.

<i>Income Tax Assessment Act 1936</i>	section 6
<i>Income Tax Assessment Act 1936</i>	section 44
<i>Income Tax Assessment Act 1936</i>	section 98
<i>Income Tax Assessment Act 1936</i>	section 99A
<i>Income Tax Assessment Act 1936</i>	former section 160APHE
<i>Income Tax Assessment Act 1936</i>	former section 160APHM
<i>Income Tax Assessment Act 1936</i>	former section 160APHN
<i>Income Tax Assessment Act 1936</i>	former section 160APHO
<i>Income Tax Assessment Act 1936</i>	former section 160APHU
<i>Income Tax Assessment Act 1936</i>	section 177EA
<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 118-20
<i>Income Tax Assessment Act 1997</i>	Division 197
<i>Income Tax Assessment Act 1997</i>	section 202-40
<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>	section 207-20
<i>Income Tax Assessment Act 1997</i>	section 207-45
<i>Income Tax Assessment Act 1997</i>	Division 208
<i>Income Tax Assessment Act 1997</i>	section 208-195
<i>Income Tax Assessment Act 1997</i>	section 208-225
<i>Income Tax Assessment Act 1997</i>	Division 230
<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:*

TR 2006/10; TR 2010/4

*Legislative references:*

- ITAA 1936
- ITAA 1936 6(1)
- ITAA 1936 44
- ITAA 1936 44(1)(a)(i)
- ITAA 1936 98
- ITAA 1936 99A
- ITAA 1936 160APHE
- ITAA 1936 160APHM
- ITAA 1936 160APHN
- ITAA 1936 160APHN(2)
- ITAA 1936 160APHO
- ITAA 1936 160APHO(1)
- ITAA 1936 160APHO(2)(a)
- ITAA 1936 160APHU
- ITAA 1936 177EA
- ITAA 1936 177EA(3)(a) to (d)
- ITAA 1936 177EA(3)(e)
- ITAA 1936 177EA(5)(b)
- ITAA 1936 177EA(17)
- ITAA 1997
- 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 67-25(1DA)
- ITAA 1997 104-10
- ITAA 1997 104-10(4)
- ITAA 1997 116-20(1)
- ITAA 1997 118-20
- ITAA 1997 118-20(1B)(b)
- ITAA 1997 Div 197
- ITAA 1997 202-40
- ITAA 1997 204-30
- ITAA 1997 204-30(1)
- ITAA 1997 204-30(3)(c)
- ITAA 1997 204-30(8)
- ITAA 1997 207-20
- ITAA 1997 207-35(1)
- ITAA 1997 207-45
- ITAA 1997 207-145(1)(a)
- ITAA 1997 Div 208
- ITAA 1997 Div 230
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- Corporations Act 2001
- Corporations Act 2001 Pt 5.1
- Corporations Act 2001 411
- Corporations Act 2001 254T

*Other references:*

- Explanatory Memorandum to the New Business Tax System (Imputation) Bill 2002

## ATO references

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Income tax ~~ Capital gains tax ~~ Capital proceeds  
Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section  
177EA  
Income tax ~~ Capital management ~~ Qualified person rule  
Income tax ~~ Capital management ~~ Franking credits / tax offsets

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