

CR 2019/83 - Pacific Energy Limited - Scheme of Arrangement and Special Dividend

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Class Ruling

Pacific Energy Limited – Scheme of Arrangement and Special Dividend

📌 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 for shareholders of Pacific Energy Limited (Pacific) who sold their Pacific shares pursuant to the scheme of arrangement which was initially announced on 24 July 2019 (Scheme of Arrangement).
2. Details of this Scheme of Arrangement and the special dividend paid by Pacific on 2 December 2019 (Special Dividend) are set out in paragraphs 28 to 49 of this Ruling.
3. All legislative references are to provisions of the *Income Tax Assessment Act 1997* (ITAA 1997) or the *Income Tax Assessment Act 1936* (ITAA 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 Pacific shareholder as at 7:00pm (AWST) on 25 November 2019 (Scheme Record Date) who participated in the Scheme of Arrangement under which QGIF Swan Bidco Pty Ltd (Bidco) acquired 100% of the ordinary shares in Pacific

- held your Pacific shares on capital account, that is, you did not hold your Pacific shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)), and
 - received the Special Dividend.
5. This Ruling does not apply to you if you:
- acquired your Pacific shares under a Pacific employee share plan on or after 24 July 2019 (including any shares issued under the vesting of the Pacific Energy Limited Performance Rights Plan)
 - are subject to the Investment manager regime in Subdivision 842-I in relation to your Pacific shares, or
 - are subject to the taxation of financial arrangements rules in Division 230 in relation to your Pacific shares.

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).
8. The Special Dividend is a frankable distribution under section 202-40.

Assessability of the Special Dividend, franking credits and tax offsets

Resident shareholders

9. If you are a resident, you include the Special Dividend in your assessable income (paragraph 44(1)(a)).
10. If you satisfy the residency requirements in section 207-75, you include the franking credits attached to the Special Dividend in your assessable income and you are entitled to a tax offset equal to the amount of those credits (section 207-20), provided you are a 'qualified person' (as defined in Division 1A of former Part IIIAA).
11. 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, the franking credits attached to the Special Dividend are included in your assessable income, provided you are a 'qualified person' (subsection 207-35(1)).
12. If you are a partner in a partnership or a beneficiary of a trust and the Special Dividend flows indirectly through the partnership or trust to you, you include your share of the Special Dividend in your assessable income and you are entitled to a tax offset equal to your share of the franking credit attached to the Special Dividend, provided both you and the partnership or trust as is relevant are each a 'qualified person' (section 207-45 and former subsection 160APHU(1)).
13. The tax offset is refundable, subject to the refundable tax offset rules in Division 67.

Non-resident shareholders*Special Dividend attributable to a permanent establishment in Australia*

14. If you are a non-resident and the Special Dividend is attributable to a permanent establishment in Australia, you include the Special Dividend in your assessable income (paragraphs 44(1)(b) and 44(1)(c)) and you are not liable to pay withholding tax in respect of the dividend (subsection 128B(3E)).

15. If you are also a qualified person (as defined in Division 1A of former Part IIIAA), you include the amount of the franking credits attached to the Special Dividend in your assessable income and you are entitled to a tax offset equal to the amount of those credits (section 207-20 and subsection 207-75(2)). The tax offset is not refundable (subsection 67-25(1DA)).

Special Dividend not attributable to a permanent establishment in Australia

16. If you are a non-resident and the Special Dividend is not attributable to a permanent establishment in Australia, the Special Dividend is not included in your assessable income (section 128D) and you are not liable to withholding tax in respect of the dividend (paragraph 128B(3)(ga)).

17. You do not include the amount of the franking credits attached to the Special Dividend in your assessable income and you are not entitled to a tax offset for those franking credits (sections 207-20 and 207-70).

Qualified persons

18. The Special Dividend you received constitutes a 'related payment' for the purposes of paragraph 207-145(1)(a) and former section 160APHN.

19. You will be a qualified person in relation to the Special Dividend if, during the period from 8 October 2019 to 24 November 2019 (inclusive), you held your Pacific shares for a continuous period of at least 45 days during which you did not have 'materially diminished risks of loss or opportunities for gain' (as defined in former section 160APHM) in respect of the shares.

Capital gains tax consequences**Resident shareholders***CGT event A1*

20. CGT event A1 happened to you on 2 December 2019 (Scheme Implementation Date) when you disposed of each of your Pacific shares to Bidco in accordance with the Scheme of Arrangement (section 104-10).

Capital proceeds

21. The cash consideration of \$1.005 you received for each Pacific share (Scheme Consideration) is the capital proceeds from CGT event A1 happening (subsection 116-20(1)).

22. The capital proceeds do not include the Special Dividend of \$0.065.

Capital gain or capital loss

23. You made a capital gain if the capital proceeds from the disposal of your Pacific share exceed its cost base (subsection 104-10(4)). The capital gain is the difference.

24. You made a capital loss if the capital proceeds from the disposal of your Pacific share are less than its reduced cost base (subsection 104-10(4)). The capital loss is the difference.

Discount capital gain

25. If you made a capital gain from the disposal of your Pacific share, you are entitled to treat the capital gain as a 'discount capital gain' provided you acquired, or are taken to have acquired, your Pacific share on or before 2 December 2018 and the other conditions of Division 115 are satisfied (subsection 115-25(1)).

Non-resident shareholders

26. If you were a non-resident just before CGT event A1 happened to your Pacific shares on 2 December 2019, you disregard any capital gain or capital loss you made as a result of CGT event A1 happening as long as your Pacific shares were not taxable Australian property (section 855-10).

Anti-avoidance provisions

27. The Commissioner will not make a determination under paragraph 177EA(5)(b) or paragraph 204-30(3)(c) to deny the whole, or any part, of the imputation benefit you received in relation to the Special Dividend.

Scheme

28. 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.

29. Other information referred to is the Scheme Implementation Deed released on the Australian Securities Exchange (ASX) on 24 July 2019 (as varied on 15 September 2019), and the Scheme Booklet released on the ASX on 2 October 2019.

Relevant entities**Pacific**

30. Pacific is an Australian resident company listed on the ASX since 1987. Pacific is a generation project developer and owner which is headquartered in Perth, Western Australia.

31. Pacific has a single class share capital structure consisting of ordinary shares. As at 29 August 2019, Pacific had 430,092,593 ordinary shares on issue. No Pacific shares were acquired or taken to be acquired on or before 19 September 1985.

32. Pacific's shareholders include both residents and non-residents. At no time have non-resident shareholders owned 95% or more of the shares in Pacific.

QIC Limited

33. QIC Limited (QIC) is an alternative investment manager with approximately \$80 billion in funds under management that specialises in infrastructure, real estate, private capital liquid strategies and multi-asset investments.
34. QIC Private Capital Pty Ltd (QPC), a wholly-owned subsidiary of QIC, provides investment advisory services to managed clients and funds, including QIC Global Infrastructure Fund (QGIF).
35. QGIF is an unlisted, stapled investment vehicle comprising QIC Investments No. 1 Pty Ltd as trustee of QIC Global Infrastructure Fund (Australia) No. 1 Trust and QIC Infrastructure Management No. 2 Pty Ltd as trustee of QIC Global Infrastructure Fund (Australia) No. 2 Trust.
36. QGIF was established by QIC to provide institutional investors with access to a diversified portfolio of global infrastructure assets.
37. Bidco is an Australian proprietary company which was incorporated on 17 July 2019 for the purpose of acquiring all of the Pacific shares. Bidco is wholly owned by QGIF Swan Holdco Pty Ltd (Holdco).
38. As at 2 October 2019, Holdco had 100 ordinary shares on issue. QGIF, through a wholly-owned subsidiary, QGIF Co No. 2A Pty Ltd as trustee for the QGIF Security No. 2 Trust, held 99 ordinary shares in Holdco. QIC Investment No. 3 Pty Ltd as trustee for the Horizon Infra Trust No. 1, a QGIF co-investor, held 1 ordinary share in Holdco.

Scheme of Arrangement

39. On 24 July 2019, Pacific initially announced that it had entered into a Scheme Implementation Deed with Bidco. Bidco proposed to acquire all the issued shares of Pacific by way of a Scheme of Arrangement under Part 5.1 of the *Corporations Act 2001* for a cash consideration of \$0.96 per Pacific share (less the amount of the Special Dividend, if declared and paid).
40. On 15 September 2019, following a competitive offer, Pacific and Bidco entered into a Scheme Implementation Variation Deed for the revised cash consideration of \$1.07 per Pacific share (less the amount of the Special Dividend, if declared and paid) (revised offer). The revised offer was approved by Pacific shareholders under section 411 of the *Corporations Act 2001* at the Scheme Meeting held on 8 November 2019 and by the Supreme Court of Western Australia.
41. Under the Scheme of Arrangement, each person registered as a holder of Pacific shares on the Scheme Record Date as at 7:00pm (AWST) on 25 November 2019 (a scheme shareholder) was entitled to participate in the Scheme of Arrangement.
42. Scheme shareholders agreed to transfer their Pacific shares to Bidco in return for receiving the Scheme Consideration on the Scheme Implementation Date (2 December 2019). The Scheme Consideration per Pacific share was \$1.07, less the amount of the Special Dividend.
43. Pacific shares were removed from official quotation on the ASX on 3 December 2019.

Special Dividend

44. On 15 November 2019, Pacific declared a Special Dividend of \$0.065 per share which was fully franked and payable to Pacific shareholders who held their shares at 21 November 2019 (Special Dividend Record Date).

45. Pacific paid the Special Dividend on 2 December 2019.
46. The Special Dividend was subject to the Scheme of Arrangement becoming effective. The Scheme of Arrangement was not conditional on Bidco or a third-party financing or facilitating payment of the Special Dividend, or Bidco or a third party being obliged to bring about the result that the dividend would be received by Pacific shareholders.
47. The Special Dividend was declared and paid by Pacific in its absolute discretion. Neither Bidco nor any of its associates had any influence or control over the declaration and payment of the Special Dividend.
48. The Special Dividend complied with the requirements of the *Corporations Act 2001*, including section 254T of that Act. The Special Dividend was entirely debited against Pacific's retained earnings and funded from Pacific's existing debt facilities and cash reserves.

Key dates

49. A summary of the key dates for the Scheme of Arrangement is provided below:
- | | |
|--|-----------------------------------|
| Initial Announcement date | 24 July 2019 |
| Scheme Implementation Variation Deed executed | 15 September 2019 |
| First Court Hearing (lodged Scheme Booklet with court) | 2 October 2019 |
| Despatch Scheme Booklet to Pacific shareholders | 8 October 2019 |
| Scheme meeting | 8 November 2019 |
| Second Court hearing | 15 November 2019 |
| Effective Date | 18 November 2019 |
| Special Dividend Record Date | 21 November 2019 |
| Scheme Record Date | 7:00pm (AWST) on 25 November 2019 |
| Scheme Implementation Date | 2 December 2019 |
| Special Dividend Payment Date | 2 December 2019 |
| Pacific delisted from ASX | 3 December 2019 |

Commissioner of Taxation

 11 December 2019

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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Special Dividend

50. The term 'dividend' is defined in subsection 6(1) to include any distribution of money made by a company to any of its shareholders which is not debited against an amount standing to the credit of the company's share capital account.

51. The Special Dividend is a distribution that was not debited against an amount standing to the credit of Pacific's share capital account. Accordingly, the Special Dividend is a 'dividend' for the purposes of subsection 6(1).

Assessability of Special Dividend and withholding tax***Resident shareholders***

52. The assessable income of a resident shareholder includes dividends paid by the company out of profits derived by it from any source (subparagraph 44(1)(a)(i)).

53. If you are a resident shareholder, the Special Dividend you received is included in your assessable income as it was paid out of profits derived by Pacific.

Non-resident shareholders***Special Dividend attributable to a permanent establishment in Australia***

54. If you are a non-resident and the Special Dividend is attributable to a permanent establishment in Australia at or through which you carry on business (and is not paid to you in your capacity as trustee), the Special Dividend you received is included in your assessable income (subparagraph 44(1)(b)(i)) and is not subject to withholding tax (subsection 128B(3E)).

Special Dividend not attributable to a permanent establishment in Australia

55. The assessable income of a non-resident shareholder generally includes dividends to the extent to which they are paid out of profits derived by the company from sources in Australia unless another provision excludes it from the shareholder's assessable income (subparagraph 44(1)(b)(i) and subsection 44(1)).

56. If you are a non-resident and the Special Dividend is not attributable to a permanent establishment in Australia at or through which you carry on business, the Special Dividend is not included in your assessable income (section 128D) and is not subject to withholding tax (paragraph 128B(3)(ga)).

Special Dividend can be franked

57. Dividends paid out of profits by an Australian resident company are generally frankable (and therefore capable of being franked under section 202-5) to the extent they are not considered unfrankable under section 202-45.

58. As none of the circumstances listed in section 202-45 apply to the Special Dividend, the Special Dividend was frankable under section 202-40.

Gross up and tax offset

59. Where you are a qualified person in accordance with paragraph 207-145(1)(a) which refers to Division 1A of former Part IIIAA (other than a partnership or a trustee of a trust (except a partnership or trustee that is a corporate tax entity, or a trustee of a trust that is a complying superannuation entity, when the distribution is made)), you:

- include the franking credit attached to the Special Dividend in your assessable income (subsection 207-20(1)), and
- are 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 dividend is paid. This applies to both:

- resident shareholders, and
- non-resident shareholders that carry on business in Australia at or through a permanent establishment in Australia (where the dividend is attributable to the permanent establishment).

60. The assessable income of a partnership or trustee of a trust (that is not an entity taxed as a corporate tax entity, and if a trustee, that is not a complying superannuation fund) which satisfies the 'qualified person' rule, includes the amount of the franking credit attached to the Special Dividend (subsection 207-35(1)).

61. Where you are not a qualified person in relation to the Special Dividend, you:

- do not include the franking credit attached to the Special Dividend in your assessable income (paragraph 207-145(1)(e)), and
- are not entitled to a tax offset equal to the amount of the franking credit attached to the Special Dividend (paragraph 207-145(1)(f)).

Qualified person

62. An entity must be a 'qualified person' in relation to the Special Dividend in order to be entitled to a tax offset in respect of the franking credit on the dividend (subsection 207-145(1), noting paragraph 207-145(1)(a) refers to former Division 1A of Part IIIAA).

63. The test of what constitutes a 'qualified person' is provided in former subsection 160APHO(1). Broadly, you are a qualified person:

- if you are not under an obligation to make a related payment in relation to the Special Dividend – you satisfy the holding period rule in relation to the primary qualification period, or
- if you are under an obligation to make a related payment in relation to the Special Dividend – you satisfy the holding period rule in relation to the secondary qualification period.

64. A partner in a partnership or the beneficiary of a trust cannot be a qualified person in relation to their share of the Special Dividend unless the partnership or the trustee of the trust is also a qualified person in relation to the dividend (former section 160APHU).

Related payment rule

65. Former section 160APHN sets out examples of what constitutes the making of a related payment. Broadly, a Pacific shareholder is taken to have made or to be under an obligation to make a related payment in respect of the Special Dividend if the shareholder has done, or is under an obligation to do, anything which has the effect of passing the benefit of the Special Dividend to one or more other persons.

66. Under the Scheme Implementation Deed, the scheme consideration payable by Bidco was reduced by the amount of the Special Dividend. The Commissioner considers that the reduction of the scheme consideration, calculated with reference to the amount of the Special Dividend, constitutes the making of a related payment in respect of the Special Dividend for the purposes of former Division 1A of Part IIIAA.

Secondary qualification period

67. The secondary qualification period is the period beginning 45 days before, and ending 45 days after, the day on which a share becomes ex dividend (former section 160APHD).

68. Under former subsection 160APHE(1), a share becomes ex dividend on the day after the last day on which the acquisition by a person of the share entitles them to receive the dividend. The last day on which the acquisition by a person of a Pacific share entitled the person to receive the Special Dividend was the record date for the Special Dividend which was 21 November 2019. It follows that Pacific shares became ex dividend on 22 November 2019. Accordingly, the secondary qualification period is notionally the period beginning 45 days before, and ending 45 days after, 22 November 2019, namely, 8 October 2019 to 6 January 2020 (inclusive).

Holding period rule

69. The holding period rule requires shareholders to hold their ordinary shares at risk for a continuous period of not less than 45 days (not including the day on which the share was acquired, or the day on which the share was disposed of) during the relevant qualification period (former paragraph 160APHO(2)(a)).

70. Any days during which a shareholder has materially diminished risks of loss or opportunities for gain in respect of the shares are excluded, but the exclusion is not taken to break the continuity of the period for which the taxpayer held the shares (former subsection 160APHO(3)).

71. Under former subsection 160APHM(2), you are taken to have materially diminished risks of loss and opportunities for gain on a particular day with respect to your Pacific shares if your net position on that day in relation to the shares has less than 30% of those risks and opportunities.

72. Under the Scheme of Arrangement, you no longer held your Pacific shares at risk on the Scheme Record Date of 25 November 2019 (at which time you became committed to dispose of your Pacific shares to Bidco under the Scheme of Arrangement).

73. Accordingly, if you disposed of your Pacific shares to Bidco under the Scheme of Arrangement, you satisfied the holding period rule if you held those shares at risk for at least 45 continuous days during the period 8 October to 24 November 2019 (inclusive) (and not including the day on which the share was acquired, or the day on which the share was disposed of).

74. The small shareholder exception in former section 160APHT does not apply as the Special Dividend constitutes a related payment as discussed at paragraphs 65 to 66 of this Ruling. Therefore, if you are an individual who has franking credit offsets not exceeding \$5,000 for the year of income ending 30 June 2020, you must also satisfy the holding period requirement in relation to the Special Dividend (former subsection 160APHT(2)).

Refundable tax offset

75. Where you are 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), you are also subject to the refundable tax offset rules in Division 67, unless you are specifically excluded under section 67-25.

76. You are specifically excluded from the operation of the refundable tax offset rules pursuant to section 67-25 if you are a:

- non-complying superannuation fund or non-complying approved deposit fund (subsection 67-25(1A))
- a trustee of a trust who is liable to be assessed under section 98 or 99A (subsection 67-25(1B))
- corporate tax entity, 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)), or
- a non-resident that carries on business in Australia at or through a permanent establishment of the entity in Australia (subsection 67-25(1DA)).

77. Division 63 sets out the rules on how, and in what order, tax offsets are applied against an income tax liability. Where a tax offset that is subject to the refundable tax offset rules in Division 67 exceeds your income tax liability, you are entitled a refund of the difference (table item 40 of section 63-10).

Exempting entity

78. Pacific was not an exempting entity or a former exempting entity at the time when the Special Dividend was paid to you. Therefore, section 208-195 does not apply to deny the gross-up of your assessable income by the amount of the franking credit attached to the Special Dividend you received, nor deny the tax offset to which you are otherwise entitled pursuant to Division 207 at the time when the Special Dividend was paid.

CGT consequences

CGT event A1

79. 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)).

80. The disposal of Pacific shares under a court approved Scheme of Arrangement results in a disposal of shares, but not under a contract. Therefore, CGT event A1 happened on the Scheme Implementation Date of 2 December 2019 when there was a change of ownership in a Pacific share from you to Bidco under the Scheme of Arrangement (subsections 104-10(1) and 104-10(2) and paragraph 104-10(3)(b)).

81. The time when CGT event A1 happens determines the income year in which you make a capital gain or capital loss and whether you are entitled to the CGT discount for any capital gain you made.

Capital proceeds

82. The capital proceeds you receive from a CGT event is the amount of money and the market value of any property you received or are entitled to receive (worked out at the time the event happened) in respect of the event happening (subsection 116-20(1)).

83. 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.¹

84. In this case, the Special Dividend was not paid in respect of the disposal of Pacific shares under the scheme. The Scheme of Arrangement was not conditional on declaration of the dividends, Bidco or a third-party financing or facilitating payment of the dividends, or Bidco or a third party being obliged to bring about the result that the dividends would be paid to exiting shareholders.

85. The Commissioner considers that the Special Dividend was not received in respect of the disposal of Pacific shares under the Scheme of Arrangement. Accordingly, the dividend does not form part of the capital proceeds in respect of CGT event A1 happening.

86. Therefore, the capital proceeds you received from CGT event A1 happening on disposal of each Pacific share is the Scheme Consideration of \$1.005 per share.

Capital gain or capital loss

87. You made a capital gain if the capital proceeds from the disposal of your Pacific share exceed its cost base (subsection 104-10(4)). The capital gain is the difference.

88. You made a capital loss if the capital proceeds from the disposal of your Pacific share are less than its reduced cost base (subsection 104-10(4)). The capital loss is the difference.

89. The cost base and reduced cost base of the Pacific share depends on your individual circumstances.

Discount capital gain

90. If you make a capital gain from the disposal of your Pacific share, you are eligible to treat the capital gain as a 'discount capital gain' provided that:

- you are an individual, complying superannuation entity, or, subject to the rules in Subdivision 115-C, a trust (section 115-10)
- the capital gain was worked out using a cost base that was calculated without reference to indexation (subsection 115-20(1)), and
- you acquired, or were taken to have acquired your Pacific share on or before 2 December 2018 which was at least 12 months prior to CGT event A1 happening (subsection 115-25(1)).

Non-resident shareholders

91. You disregard a capital gain or capital loss from a CGT event if you are a non-resident, or the trustee of a non-resident trust for CGT purposes, just before the CGT event happens and the CGT event happens in relation to a CGT asset that is not 'taxable Australian property' (subsection 855-10(1)).

92. The term 'taxable Australian property' is defined in the table in section 855-15. Where you are a non-resident or a trustee of a non-resident trust for CGT purposes just before CGT event A1 happened to your Pacific shares under the Scheme of Arrangement,

¹ 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.*

you cannot disregard a capital gain or capital loss from CGT event A1 happening (under subsection 855-10(1)) if, relevantly, your Pacific shares:

- were an indirect Australian real property interest (table item 2 in section 855-15)
- were used at any time in carrying on a business through a permanent establishment in Australia (table item 3 in section 855-15), or
- was covered by subsection 104-165(3) (table item 5 in section 855-15).

Anti-avoidance provisions

Section 177EA

93. Section 177EA 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.

94. The conditions of paragraphs 177EA(3)(a) to (d) are satisfied as Pacific is a corporate tax entity, the Scheme of Arrangement is a scheme involving the disposal of Pacific 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.

95. Paragraph 177EA(3)(e), in broad terms, requires that in considering the relevant circumstances of a 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.

96. 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). 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.

97. The relevant circumstances are that the disposition of Pacific shares was made pursuant to a takeover by Bidco by way of a scheme of arrangement under the *Corporations Act 2001*, voted upon by Pacific shareholders entitled to vote.

98. The Scheme of Arrangement under which Pacific was acquired by Bidco is a normal commercial transaction.

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

100. Having regard to the relevant circumstances of the scheme, it cannot be concluded that Pacific or Pacific shareholders entered into or carried out the scheme for the purpose of enabling the shareholders to obtain imputation benefits.

101. As the requisite purpose is not present, the Commissioner will not make a determination under paragraph 177EA(5)(b) to deny the whole, or any part, of the imputation benefit which Pacific shareholders received in relation to the Special Dividend.

Section 204-30

102. 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.

103. 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.

104. Under the Scheme of Arrangement, you received an imputation benefit when the Special Dividend was paid. The Special Dividend was paid equally to all Pacific shareholders and was fully franked regardless of your tax profile. Accordingly, it cannot be said that Pacific selectively directed the flow of franked dividends to those members who obtained the most benefit from the franking credits.

105. 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 benefits received by you in relation to the Special Dividend.

Appendix 2 – Legislative provisions

106. 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>	Division 1A of former Part IIIAA
<i>Income Tax Assessment Act 1936</i>	former section 160APHD
<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 160APHT
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<i>Income Tax Assessment Act 1936</i>	section 128B
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<i>Income Tax Assessment Act 1936</i>	section 177EA
<i>Income Tax Assessment Act 1997</i>	Division 63
<i>Income Tax Assessment Act 1997</i>	section 63-10
<i>Income Tax Assessment Act 1997</i>	Division 67
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<i>Income Tax Assessment Act 1997</i>	section 104-10
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<i>Income Tax Assessment Act 1997</i>	Subdivision 115-C
<i>Income Tax Assessment Act 1997</i>	section 115-25
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<i>Income Tax Assessment Act 1997</i>	section 202-5
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<i>Income Tax Assessment Act 1997</i>	section 207-45
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<i>Income Tax Assessment Act 1997</i>	section 207-145
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<i>Income Tax Assessment Act 1997</i>	section 855-15
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<i>Corporations Act 2001</i>	section 254T

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