

CR 2021/28 - RXP Services Limited - scheme of arrangement and special dividend



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Class Ruling

RXP Services Limited – scheme of arrangement and special dividend

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 this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out the tax consequences for shareholders of RXP Services Limited (RXP) who sold their RXP shares pursuant to the scheme of arrangement which was initially announced on 11 November 2020 (Scheme of Arrangement).
2. Full details of this Scheme of Arrangement and the Special Dividend paid by RXP are set out in paragraphs 31 to 54 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - were an RXP shareholder on 19 March 2021 who participated in the Scheme of Arrangement under which Capgemini Australia Pty Ltd (Capgemini) acquired 100% of the shares in RXP
 - held ordinary shares in RXP on capital account, that is, your RXP shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1))
 - are not exempt from Australian income tax
 - acquired your RXP shares on or after 20 September 1985, and

- received the Special Dividend.
5. This Ruling does not apply to you if you:
- acquired RXP shares pursuant to an employee share, option or rights plan, or
 - are subject to the taxation of financial arrangement rules in Division 230 in relation to your RXP shares.

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

When this Ruling applies

6. This Ruling applies from 1 July 2020 to 30 June 2021.

Ruling

Special Dividend

7. The Special Dividend of five cents per share is a 'dividend' as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936).
8. The Special Dividend is a frankable distribution pursuant to section 202-40.

Assessability of the Special Dividend, franking credits and tax offsets

Residents

9. If you are a resident of Australia as defined in subsection 6(1) of the ITAA 1936, you are required to include the Special Dividend in your assessable income (subparagraph 44(1)(a)(i) of the ITAA 1936).
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 of the ITAA 1936).
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) of the ITAA 1936).
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) of the ITAA 1936) and you are not liable to pay withholding tax in respect of the Special Dividend (subsection 128B(3E) of the ITAA 1936).

15. If you are also a qualified person, 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 of the ITAA 1936) and you are not liable to withholding tax in respect of the Special Dividend (paragraph 128B(3)(ga) of the ITAA 1936).

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 of the ITAA 1936.

19. You will be a qualified person in relation to the Special Dividend if, during the period from 26 January 2021 to 18 March 2021 (inclusive), you held your RXP 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 of the ITAA 1936) in respect of the shares.

Exempting Entity

20. RXP was not an 'exempting entity' when the Special Dividend was paid to you, nor was it a 'former exempting entity' at that time (Division 208).

21. Therefore, section 208-195 will 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 will it apply to deny the tax offset to which you are otherwise entitled to under Division 207 at the time when the Special Dividend was paid.

Anti-avoidance provisions**Section 177EA of the ITAA 1936**

22. The Commissioner will not make a determination under paragraph 177EA(5)(b) of the ITAA 1936 to deny the whole, or any part of the imputation benefit received in relation to the Special Dividend.

Section 204-30

23. 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.

Capital gains tax consequences**CGT event A1**

24. CGT event A1 happened on 26 March 2021 when you disposed of each of your RXP shares to Capgemini in accordance with the Scheme of Arrangement (section 104-10).

Capital proceeds

25. The Scheme Consideration you received of 50 cents for each RXP share are your capital proceeds from CGT event A1 happening (subsection 116-20(1)).

26. The capital proceeds do not include the Special Dividend of five cents.

Capital gain or capital loss

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

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

Discount capital gain

29. If you made a capital gain from the disposal of an RXP share, you are eligible to treat the capital gain as a 'discount capital gain' provided you acquired, or are taken to have acquired, your RXP share on or before 26 March 2020 and you satisfy the other requirements of Division 115.

Non-resident shareholders

30. If you were a non-resident shareholder just before CGT event A1 happened to your RXP shares on 26 March 2021, you disregard any capital gain or capital loss made as a result of CGT event A1 happening if your shares were not taxable Australian property for the purposes of section 855-10.

Scheme

31. 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.

Background***RXP Services Limited***

32. RXP is an Australian-resident company which was listed on the Australian Securities Exchange (ASX). As at 26 March 2021 (the Scheme Implementation Date), the RXP Board resolved to apply for delisting of RXP from the ASX.

33. RXP Group is a digital services business in Australia which specialises in providing clients with digital expertise and support across current and emerging channels.

34. As at 1 December 2020, RXP had 173,119,378 fully-paid ordinary shares and 453,806 performance rights on issue. In respect of the performance rights, the scheme constituted a trigger event. As such, as at 19 March 2021 (the Scheme Record Date), there were 173,573,184 fully-paid ordinary shares on issue.

35. The sum of the market values of RXP's assets that are taxable Australian real property does not exceed the sum of the market values of its other assets.

Capgemini Australia Pty Ltd

36. The Capgemini Group is a global leader in consulting, digital transformation, technology and engineering services, headquartered in Paris, France, and listed on the Euronext Paris stock exchange.

37. Capgemini is part of the Capgemini Group and is an Australian resident for tax purposes.

Scheme of Arrangement

38. On 11 November 2020, RXP announced that it had entered into a Scheme Implementation Deed with Capgemini under which Capgemini would acquire all of the issued shares in RXP.

39. To give effect to the Scheme Implementation Deed, a Scheme of Arrangement was proposed to the RXP shareholders pursuant to Part 5.1 of the *Corporations Act 2001*.

40. Under the terms of the Scheme Implementation Deed, each share in RXP held by an RXP shareholder would be transferred to Capgemini, resulting in RXP becoming a wholly-owned subsidiary of Capgemini.

41. In consideration for each share, Capgemini would pay RXP shareholders 55 cents per share less the Special Dividend (Scheme Consideration).

42. At a shareholder meeting held on 2 March 2021, RXP shareholders approved the Scheme of Arrangement.

43. On 4 March 2021 (the Effective Date), the Federal Court of Australia approved the Scheme of Arrangement and provided orders pursuant to Part 5.1 of the *Corporations Act 2001*.

44. Entitlements to the Scheme Consideration were determined on the Scheme Record Date.

45. Payment of the Scheme Consideration to RXP shareholders and the transfer of RXP shares to Capgemini occurred on the Scheme Implementation Date.

Special Dividend

46. On 10 March 2021, RXP declared to pay a fully franked dividend of five cents per RXP share (Special Dividend) out of accumulated profits prior to the Scheme Implementation Date.
47. Entitlements to the Special Dividend were determined on 11 March 2021 (Special Dividend Record Date), meaning the ex dividend date for the Special Dividend was 12 March 2021 (Ex Special Dividend Date).
48. Payment of the Special Dividend occurred on 18 March 2021.
49. The Special Dividend was not debited against RXP's share capital account.
50. The Special Dividend was:
- funded out of accumulated profits
 - debited from RXP's Dividend Distribution Reserve account and profits of the period 1 July 2020 to 31 December 2020
 - wholly contingent upon the Scheme of Arrangement becoming effective, and
 - wholly at the discretion of RXP.
51. Neither Capgemini nor any of its associates had any influence or control over the declaration and payment of the Special Dividend. Capgemini did not facilitate or fund the payment of the Special Dividend in any way.
52. The Special Dividend complied with the requirements of the *Corporations Act 2001*, including section 254T of that Act, as well as other general law requirements applicable to the payment of dividends.
53. At the Special Dividend Payment Date, RXP was not an 'exempting entity' or a 'former exempting entity' under Division 208.

Key dates

54. The following is a summary of the key dates for the Scheme of Arrangement and Special Dividend:

Scheme Implementation Deed executed	10 November 2020
Announcement date	11 November 2020
First Court hearing (lodged Scheme Booklet with Court)	29 January 2021
Scheme meeting	2 March 2021
Final Court hearing (court approved scheme)	4 March 2021
Effective Date	5 March 2021
Record Date for Special Dividend	11 March 2021
Payment Date for Special Dividend	18 March 2021
Scheme Record Date	19 March 2021
Scheme Implementation Date	26 March 2021

Appendix – Explanation

❶ *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

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

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

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

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

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

Assessability of the Special Dividend

Residents

60. 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) of the ITAA 1936).

61. As the Special Dividend was paid to shareholders out of profits derived by RXP, shareholders who are residents of Australia (as defined in subsection 6(1) of the ITAA 1936) are required to include the Special Dividend in their assessable income under subparagraph 44(1)(a)(i) of the ITAA 1936.

Non-residents carrying on a business at or through a permanent establishment

62. A non-resident's liability to withholding tax on dividend income received in subsection 128B(1) of the ITAA 1936 is subject to subsection 128B(3E) of the ITAA 1936. Subsection 128B(3E) of the ITAA 1936 states that section 128B of the ITAA 1936 does not apply to dividend income that:

- (a) is paid to a person who is a non-resident carrying on business in Australia at or through a permanent establishment of the person in Australia; and
- (b) is attributable to the permanent establishment; and
- (c) is not paid to the person in the person's capacity as trustee.

63. Subparagraph 44(1)(b)(i) of the ITAA 1936 includes, in the assessable income of a non-resident shareholder of a company, dividends paid to it out of profits derived by a company from sources in Australia.

64. Subparagraph 44(1)(c)(i) of the ITAA 1936 includes, in the assessable income of a non-resident shareholder of a resident company, dividends paid to a non-resident shareholder of the company where the non-resident shareholder is carrying on business in Australia at or through a permanent establishment of the shareholder in Australia and those dividends are attributable to the permanent establishment.

65. Accordingly, a non-resident carrying on a business in Australia at or through a permanent establishment who received the Special Dividend (otherwise than in their capacity as trustee) is required to include the Special Dividend in their assessable income, to the extent to which the Special Dividend was attributable to the permanent establishment pursuant to subparagraphs 44(1)(b)(i) and (c)(i) of the ITAA 1936, and they will not be liable for Australian withholding tax in relation to the Special Dividend.

Non-residents not carrying on a business at or through a permanent establishment

66. Subparagraph 44(1)(b)(i) of the ITAA 1936 includes dividends paid out of profits derived by a company from sources in Australia in the assessable income of a non-resident shareholder in a company.

67. However, subsection 44(1) of the ITAA 1936 does not apply to a dividend to the extent to which it is included in, or excluded from, assessable income by another provision that expressly deals with dividends in the ITAA 1936 or the ITAA 1997.

68. Subsection 128B(1) of the ITAA 1936 imposes Australian withholding tax on income which consists of a dividend paid by a resident company to a non-resident on or after 1 January 1968.

69. Subparagraph 128B(3)(ga)(i) of the ITAA 1936 excludes from subsection 128B(1) income derived by a non-resident that consists of the franked part of a dividend. As the Special Dividend was fully franked, it will not be subject to Australian withholding tax when derived by a non-resident shareholder.

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

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

Gross-up and tax offset

72. Section 207-20 provides:

- (1) If an entity makes a franked distribution to another entity, the assessable income of the receiving entity, for the income year in which the distribution is made, includes the amount of the franking credit on the distribution. This is in addition to any other amount included in the receiving entity's assessable income in relation to the distribution under any other provision of this Act.
- (2) The receiving entity is entitled to a tax offset for the income year in which the distribution is made. The tax offset is equal to the franking credit on the distribution.

73. Where a shareholder receives a franked distribution directly, satisfies the residency requirement in section 207-75 and is a qualified person in relation to the franked distribution, the assessable income of the shareholder includes the amount of the franking credit (subsection 207-20(1)). The shareholder will also be entitled to a tax offset equal to the franking credit on the distribution (subsection 207-20(2)).

74. A shareholder that is not a qualified person in relation to the Special Dividend:

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

75. Subject to satisfying the qualified person rule, the assessable income of a shareholder (not being an entity taxed as a corporate tax entity) that is a partnership or a trustee of a trust (not being a complying superannuation fund) includes the amount of the franking credit attached to the Special Dividend (subsection 207-35(1)).

Qualified person, related payment rule and holding period rule

Qualified person

76. An entity must be a qualified person in relation to a dividend in order to be entitled to a tax offset in respect of the franking credit on a dividend (subsection 207-145(1)).

77. Paragraph 207-145(1)(a), which refers to Division 1A of former Part IIIAA of the ITAA 1936, provides the statutory tests you must satisfy to be a qualified person in relation

to a franked distribution you have received in order for you to be entitled to a tax offset for the franking credit on the distribution.

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

79. The test of what constitutes a qualified person is set out in former subsection 160APHO(1) of the ITAA 1936. Broadly, if you were not under an obligation to make a related payment in relation to the dividend, you will have to satisfy the holding period rule in relation to the primary qualification period. If you were under an obligation to make a related payment in relation to the dividend, you will have to satisfy the holding period requirement within the secondary qualification period.

Related payment rule

80. In order to determine the relevant qualification period, it is necessary to determine whether, under the Scheme of Arrangement, you or an associate have made, were under an obligation to make, or are likely to make, a related payment in respect of the dividend you have received (former subsection 160APHN(2) of the ITAA 1936).

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

82. Under the terms of the Scheme Implementation Deed, the Scheme Consideration was reduced by the amount of the Special Dividend paid by RXP to its shareholders. The reduction of the Scheme Consideration, calculated with reference to the amount of the Special Dividend, has the effect of passing the benefit of the Special Dividend from an RXP shareholder to Capgemini.

83. Therefore, you (or a partner in a partnership or a beneficiary of a trust that has an interest in RXP shares) are taken to have made a related payment in respect of the Special Dividend.

Holding period rule

84. The holding period rule requires that you hold your RXP shares, on which the Special Dividend was paid, 'at risk' for a continuous period of at least 45 days during the relevant qualification period (former paragraph 160APHO(2)(a) of the ITAA 1936). The relevant qualification period is the secondary qualification period.

85. 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 of the ITAA 1936).

86. Under former subsection 160APHE(1) of the ITAA 1936, 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 a person could have acquired an RXP share and be entitled to receive the Special Dividend was the record date for the dividends, which was 11 March 2021. It follows that RXP shares became ex dividend on 12 March 2021. Accordingly, the secondary qualification period is notionally the period beginning 45 days before, and ending 45 days after, 12 March 2021, namely 26 January 2021 to 26 April 2021 (inclusive).

87. Any days on which an RXP 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) of the ITAA 1936).

88. You will need to determine whether you satisfy the holding period rule having regard to your personal circumstances. This is outside of the scope of this Ruling but will require you to take into account any positions you entered into that resulted in 'materially diminished risks of loss or opportunities for gain' (as defined under former section 160APHM of the ITAA 1936) in respect of your RXP shares.

89. Under this Scheme of Arrangement, you no longer held your RXP shares at risk on the Scheme Record Date on 19 March 2021 because on that day you became committed to dispose of your RXP shares to Capgemini.

90. Accordingly, if you disposed of your RXP shares to Capgemini under this 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 26 January 2021 to 18 March 2021 (inclusive), not including the day on which the RXP shares were acquired, or the day on which the RXP shares were disposed of.

91. The small shareholder exception in former section 160APHT of the ITAA 1936 does not apply as the Special Dividend constitutes a related payment as discussed in paragraphs 80 to 83 of this Ruling. Therefore, an RXP shareholder who is an individual and who has franking credit offsets not exceeding \$5,000 for the income year ended 30 June 2021 must, nevertheless, satisfy the holding period requirement in relation to the Special Dividend (former subsection 160APHT(2) of the ITAA 1936).

Refundable tax offset

92. 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.

93. Certain taxpayers are 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 (subsection 67-25(1A))
- trustees of a trust who are liable to be assessed under sections 98 or 99A of the ITAA 1936 (subsection 67-25(1B))
- corporate tax entities, unless the entity is an exempt institution that is eligible for a refund, or a life insurance company that has received distributions on membership interests which were not held by the company on behalf of its shareholders (subsections 67-25(1C) and (1D)), or
- non-resident entities carrying on business in Australia at or through a permanent establishment (subsection 67-25(1DA)).

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

The anti-avoidance provisions***Section 177EA of the ITAA 1936***

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

96. RXP is a corporate tax entity. The transfer of the RXP shares under the Scheme of Arrangement is a scheme for the disposition of membership interests. The Special Dividend is a frankable distribution paid to the shareholders of RXP as part of this scheme who could reasonably be expected to receive imputation benefits. Therefore, the conditions of paragraphs 177EA(3)(a) to (d) of the ITAA 1936 are satisfied.

97. Accordingly, the issue is whether, having regard to the relevant circumstances of the scheme (as provided by subsection 177EA(17) of the ITAA 1936), it would be concluded that (on the part of RXP, RXP shareholders or any other relevant party) there is a more than merely incidental purpose of conferring an imputation benefit under the scheme (paragraph 177EA(3)(e) of the ITAA 1936).

98. Considering the circumstances of the Scheme of Arrangement, it cannot be concluded that RXP or RXP shareholders entered into or carried out the scheme for the purpose of enabling the RXP 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) of the ITAA 1936 to deny the whole, or any part, of the imputation benefit to be received in relation to the Special Dividend.

Section 204-30

99. 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.

100. 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.

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

102. 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 an RXP shareholder in relation to the Special Dividend.

Capital gains tax consequences**CGT event A1**

103. 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)).

104. The acquisition of shares in RXP under a court approved scheme of arrangement does not involve a disposal of shares under a contract.¹

105. Therefore, CGT event A1 happened when there was a change of ownership in an RXP share from a shareholder to Capgemini under the Scheme Implementation Deed (subsections 104-10(1) and (2)). The change of ownership occurred on the Scheme Implementation Date of 26 March 2021 (paragraph 104-10(3)(b)).

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

107. An RXP shareholder makes a capital gain from CGT event A1 happening if the capital proceeds from the disposal of an RXP share are more than the cost base of the share. An RXP shareholder makes a capital loss if the capital proceeds are less than the reduced cost base of the RXP share (subsection 104-10(4)).

Capital proceeds

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

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

110. In this case, the Special Dividend was not paid in respect of the disposal of RXP shares under the Scheme. The Scheme of Arrangement was not conditional on the declaration of the Special Dividend. The Special Dividend was not dependent on Capgemini or a third party financing or facilitating payment of the Special Dividend, or Capgemini or a third party being obliged to bring about the result that the Special Dividend would be paid to existing shareholders.

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

112. Therefore, the capital proceeds that you received from CGT event A1 happening for the disposal of each of your RXP shares is the Scheme Consideration of 50 cents per share.

¹ See paragraph 9 of Taxation Determination TD 2002/4 *Income tax: capital gains: what is the first element of the cost base and reduced cost base of a share in a company you acquire in exchange for a share in another company in a takeover or merger?*

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

Capital gain or capital loss

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

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

115. The cost base and reduced cost base of the RXP share depends on your individual circumstances.

Discount capital gain

116. If you make a capital gain from the disposal of your RXP 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 RXP share on or before 26 March 2020 which was at least 12 months prior to CGT event A1 happening (subsection 115-25(1)).

Non-resident shareholders

117. You disregard a capital gain or capital loss you make 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 happened and the CGT event happens in relation to a CGT asset that is not taxable Australian property (subsection 855-10(1)).

118. 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 RXP shares under the Scheme of Arrangement, you cannot disregard a capital gain or capital loss you made from CGT event A1 happening (under subsection 855-10(1)) if, relevantly, your RXP shares were:

- used at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- covered by subsection 104-165(3) (table item 5 of section 855-15).

References*Previous draft:*

Not previously issued as a draft

Related Rulings/Determinations:

TD 2002/4; TR 2010/4

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 44(1)
- ITAA 1936 44(1)(a)(i)
- ITAA 1936 44(1)(b)
- ITAA 1936 44(1)(b)(i)
- ITAA 1936 44(1)(c)
- ITAA 1936 44(1)(c)(i)
- ITAA 1936 98
- ITAA 1936 99A
- ITAA 1936 128B
- ITAA 1936 128B(1)
- ITAA 1936 128B(3)(ga)
- ITAA 1936 128B(3)(ga)(i)
- ITAA 1936 128B(3E)
- ITAA 1936 128D
- ITAA 1936 former Pt IIIAA Div 1A
- ITAA 1936 former 160APHD
- ITAA 1936 former 160APHE(1)
- ITAA 1936 former 160APHM
- ITAA 1936 former 160APHN
- ITAA 1936 former 160APHN(2)
- ITAA 1936 former 160APHO(1)
- ITAA 1936 former 160APHO(2)(a)
- ITAA 1936 former 160APHO(3)
- ITAA 1936 former 160APHT
- ITAA 1936 former 160APHT(2)
- ITAA 1936 former 160APHU
- ITAA 1936 former 160APHU(1)
- ITAA 1936 177EA
- ITAA 1936 177EA(3)(a)
- ITAA 1936 177EA(3)(b)
- ITAA 1936 177EA(3)(c)
- ITAA 1936 177EA(3)(d)
- ITAA 1936 177EA(3)(e)
- ITAA 1936 177EA(5)(b)
- ITAA 1936 177EA(17)
- ITAA 1997 Div 63
- ITAA 1997 63-10
- ITAA 1997 Div 67
- ITAA 1997 67-25
- ITAA 1997 67-25(1A)
- ITAA 1997 67-25(1B)
- ITAA 1997 67-25(1C)
- ITAA 1997 67-25(1D)
- ITAA 1997 67 25(1DA)
- ITAA 1997 104-10
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(2)
- ITAA 1997 104-10(3)
- ITAA 1997 104-10(3)(b)
- ITAA 1997 104-10(4)
- ITAA 1997 104-165(3)
- ITAA 1997 Div 115
- ITAA 1997 115-10
- ITAA 1997 115-20(1)
- ITAA 1997 115-25(1)
- ITAA 1997 Subdiv 115-C
- ITAA 1997 116-20(1)
- ITAA 1997 202-5
- ITAA 1997 202-40
- ITAA 1997 202-45
- ITAA 1997 204-30
- ITAA 1997 204-30(1)
- ITAA 1997 204-30(3)(c)
- ITAA 1997 204-30(8)
- ITAA 1997 Div 207
- ITAA 1997 207-20
- ITAA 1997 207-20(1)
- ITAA 1997 207-20(2)
- ITAA 1997 207-35(1)
- ITAA 1997 207-45
- ITAA 1997 207-70
- ITAA 1997 207-75
- ITAA 1997 207-75(2)
- ITAA 1997 207-145(1)
- ITAA 1997 207-145(1)(a)
- ITAA 1997 207-145(1)(e)
- ITAA 1997 207-145(1)(f)
- ITAA 1997 Div 208
- ITAA 1997 208-195
- ITAA 1997 Div 230
- ITAA 1997 855-10
- ITAA 1997 855-10(1)
- ITAA 1997 855-15
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- TAA 1953
- Corporations Act 2001 Pt 5.1
- Corporations Act 2001 254T

ATO references

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