



CR 2021/35 - Coca-Cola Amatil Limited - scheme of arrangement and dividend

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Class Ruling

Coca-Cola Amatil Limited – scheme of arrangement and 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 Coca-Cola Amatil Limited (Amatil) who received a dividend in respect of the half-year ended 31 December 2020 (Dividend) prior to the disposal of their Amatil shares pursuant to the scheme of arrangement which was initially announced on 26 October 2020 (Scheme of Arrangement).
2. Full details of the Dividend and Scheme of Arrangement are set out in paragraphs 21 to 43 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 entity other than a subsidiary of The Coca-Cola Company that held shares in Amatil (Independent Amatil Shareholder) on 3 May 2021 (Scheme Record Date) and participated in the Scheme of Arrangement under which CCEP Australia Pty Ltd (CCEP Sub) acquired all of the issued shares held by Independent Amatil Shareholders
 - held your Amatil shares on capital account, that is, your Amatil 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, and
 - received the Dividend.
5. This Ruling does not apply to you if you are:
- subject to the taxation of financial arrangement rules in Division 230 in relation to your Amatil shares
 - subject to the Investment Manager Regime under Subdivision 842-I in relation to your Amatil Shares
 - a non-resident with a permanent establishment in Australia.

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

When this Ruling applies

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

Ruling

Assessability of the Dividend, franking credits and tax offsets

Resident shareholders

7. The Dividend of 18 cents per share is a 'dividend' as defined in subsection 6(1) of the ITAA 1936.
8. The Dividend is a frankable distribution pursuant to section 202-40.
9. If you are a resident of Australia as defined in subsection 6(1) of the ITAA 1936 you are required to include the 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 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 IIIA of the ITAA 1936).
11. If you received the 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 Dividend are included in your assessable income (subsection 207-35(1)), provided you are a qualified person.
12. If you are a partner in a partnership or a beneficiary of a trust and the Dividend flows indirectly through the partnership or trust to you, you include your share of the Dividend in your assessable income and you are entitled to a tax offset equal to your share of the franking credit attached to the 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 satisfaction of the refundable tax offset rules in Division 67.

Non-resident shareholders

14. If you are a non-resident and the Dividend is not attributable to a permanent establishment in Australia, the 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 dividend (paragraph 128B(3)(ga) of the ITAA 1936).

15. You do not include the amount of the franking credits attached to the 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

16. The Dividend you received constitutes a 'related payment' for the purposes of former section 160APHN.

17. You will be a qualified person in relation to the Dividend if, during the period from 6 March 2021 to 2 May 2021 (inclusive), you held your Amatil 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.

Exempting entity

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

19. 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 Dividend you received, nor to deny the tax offset to which you are otherwise entitled to under Division 207 at the time when the Dividend was paid.

Section 177EA

20. 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 Dividend.

Scheme

21. 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.

Coca-Cola Amatil Limited

22. Amatil is a public company registered on 16 September 1927 and has been listed on the Australian Securities Exchange (ASX) since 1 January 1970.

23. Amatil is an Australian resident for tax purposes.

24. As at 17 June 2020, Amatil had 723,999,699 of ordinary shares and 4,006,525 long-term incentive share rights on issue. All incentive share rights were either lapsed or vested or converted to ordinary Amatil shares before or at the Scheme Record Date.

25. The Coca-Cola Company, indirectly through one or more subsidiaries, held ordinary Amatil shares representing approximately 30.8% of the Amatil shares on issue and the other 69.2% of the Amatil shares on issue are held by Independent Amatil Shareholders.

26. Amatil's principal activities are producing, marketing and distributing a range of Coca-Cola products. It operates in Australia, New Zealand, Fiji, Samoa, Papua New Guinea and Indonesia.

CCEP Australia Pty Ltd

27. CCEP Sub is a company registered on 30 October 2020 in Australia.

28. CCEP Sub is a special-purpose vehicle created for the purpose of the Scheme of Arrangement. Its ultimate holding company is Coca-Cola European Partners PLC (CCEP).

29. CCEP is a British public company incorporated in, and tax resident solely of, the United Kingdom.

30. CCEP is listed on the Euronext B.V., the New York Stock Exchange, the Madrid Stock Exchange and the London Stock Exchange. Its principal activities are marketing, producing and distributing Coca-Cola products, and it currently operates solely in developed markets in Western Europe.

Scheme of Arrangement

31. On 4 November 2020, Amatil announced that it had entered into a Scheme Implementation Deed with CCEP Sub under which CCEP Sub would acquire all of the issued shares in Amatil held by Independent Amatil Shareholders.

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

33. Under the terms of the Scheme Implementation Deed, each share in Amatil held by an Independent Amatil Shareholder would be transferred to CCEP Sub.

34. In consideration for each share, CCEP Sub would pay Independent Amatil Shareholders \$13.50 per share less the Dividend (Scheme Consideration). The Scheme Consideration was increased from the original offer price of \$12.75 to \$13.50 in accordance with the Amendment Deed to the Scheme Implementation Deed entered into by Amatil, CCEP and CCEP Sub on 15 February 2021.

35. At a shareholder meeting held on 16 April 2021, Independent Amatil Shareholders approved the Scheme of Arrangement.

36. On 20 April 2021, the Supreme Court of New South Wales approved the Scheme of Arrangement and provided orders pursuant to Part 5.1 of the *Corporations Act 2001*.

37. Entitlements to the Scheme Consideration were determined on 3 May 2021.

38. Payment of Scheme Consideration to Independent Amatil Shareholders and the transfer of Amatil shares to CCEP Sub occurred on 10 May 2021 (Scheme Implementation Date).

Dividend

39. On 18 February 2021, Amatil declared to pay a fully franked dividend of 18 cents per Amatil share out of retained earnings and current year profits prior to the Scheme Implementation Date.

40. Entitlements to the Dividend were determined on 19 April 2021 (Dividend Record Date).

41. Payment of the Dividend occurred on 30 April 2021. Amatil's franking account balance was not in deficit as a result of paying the fully franked dividend.

42. The Dividend was:

- sourced entirely from Amatil's retained earnings and current year profits
- funded out of existing cash reserves and bank facilities
- not debited against Amatil's share capital account
- not conditional on the Scheme and, once declared, paid to eligible Amatil shareholders irrespective of whether the Scheme proceeded.

Key dates

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

Announcement date	26 October 2020
Scheme Implementation Deed executed	4 November 2020
Amendment Deed to Scheme Implementation Deed executed	15 February 2021
Dividend Declaration Date	18 February 2021
First Court hearing (lodged Scheme Booklet with Court)	12 March 2021
Despatch of Scheme Booklet to Amatil shareholders	15 March 2021
Scheme meeting	16 April 2021
Dividend Record Date	19 April 2021
Final Court hearing (court approved scheme)	20 April 2021
Effective Date	21 April 2021
Payment Date for Dividend	30 April 2021
Scheme Record Date	3 May 2021
Scheme Implementation Date	10 May 2021
Amatil delisted from ASX	11 June 2021

Commissioner of Taxation

19 May 2021

Appendix – Explanation

① *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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Dividend

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

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

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

47. 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.

48. None of the circumstances in section 202-45 apply to the Dividend. Therefore, the 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 Dividend***Resident shareholders***

49. 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).

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

Non-resident shareholders

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

52. 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.

53. 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.

54. 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 Dividend was fully franked, it will not be subject to Australian withholding tax when derived by a non-resident shareholder.

55. Section 128D of the ITAA 1936 operates to treat the Dividend as non-assessable non-exempt income. Accordingly, a non-resident who received the fully franked Dividend (other than those shareholders who received the Dividend in carrying on business in Australia at or through a permanent establishment in Australia) is not required to include the 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 Dividend (subparagraph 128B(3)(ga)(i) of the ITAA 1936).

Gross-up and tax offset

56. Section 207-20 provides:

- 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.
- 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.

57. 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)).

58. A shareholder that is not a qualified person in relation to the 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)).

59. 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 Dividend (subsection 207-35(1)).

Qualified person rules

60. 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)).

61. Paragraph 207-145(1)(a), which refers to Division 1A of former Part IIIAA of the ITAA 1936, provides the statutory tests a shareholder must satisfy to be a qualified person in relation to a franked distribution they have received in order to be entitled to a tax offset for the franking credit on the distribution.

62. 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.

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

Related payment rule

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

65. 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.

66. Under the terms of the Scheme Implementation Deed, the Scheme Consideration was reduced by the amount of the Dividend paid by Amatil to its shareholders. The reduction of the Scheme Consideration, calculated with reference to the amount of the Dividend, has the effect of passing the benefit of the Dividend from an Amatil shareholder to CCEP Sub.

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

Holding period rule

68. The holding period rule requires a shareholder to have held their Amatil shares, on which the 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.

69. 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).

70. 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. In respect of the Dividend, eligibility to receive the Dividend was determined on the Dividend Record Date, being the last day on which the acquisition by a person of an Amatil share entitled the person to receive the Dividend. It follows that Amatil shares became ex dividend on 20 April 2021. This means that the secondary qualification period for the Dividend began on 6 March 2021.

71. A shareholder ceased to hold their Amatil shares 'at risk' on the Scheme Record Date because on that day they became committed to dispose of their Amatil shares to CCEP Sub under the Scheme of Arrangement in exchange for the Scheme Consideration.

72. Accordingly, a shareholder will only be a qualified person in relation to the Dividend if, during the period from 6 March 2021 to 2 May 2021 (inclusive), they held their shares for a continuous period of at least 45 days (not counting the day on which they acquired the Amatil share or the day on which they disposed of the Amatil share, and not counting the days on which you had 'materially diminished risks of loss or opportunities for gain').

73. A shareholder will need to determine whether they satisfy the holding period rule having regard to their circumstances. This will require taking into account any positions entered into that have materially diminished risks of loss or opportunities for gain (as defined under former 160APHM of the ITAA 1936) in respect of Amatil shares and this is outside of the scope of this Ruling).

74. The small shareholder exception in former section 160APHT of the ITAA 1936 does not apply as the Dividend constitutes a related payment as discussed in paragraphs 64 to 67 of this Ruling. Therefore, a shareholder who is an individual and who has franking credit offsets not exceeding \$5,000 for the year of income ended 30 June 2021 must also satisfy the holding period requirement in relation to the Dividend (former subsection 160APHT(2) of the ITAA 1936).

Section 177EA of the ITAA 1936

75. Section 177EA of the ITAA 1936 is a general anti-avoidance provision that operates to safeguard the imputation system. 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.

76. Amatil is a corporate tax entity. The transfer of the Amatil shares under the Scheme of Arrangement is a scheme for the disposition of membership interests. The Dividend is a frankable distribution paid in respect of the shares disposed and the Amatil shareholders could reasonably be expected to receive imputation benefits. Therefore, the conditions of paragraphs 177EA(3)(a) to (d) of the ITAA 1936 are satisfied.

77. 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 Amatil, Amatil shareholders or any other relevant party, there is a more than incidental purpose of conferring an imputation benefit under the scheme (paragraph 177EA(3)(e) of the ITAA 1936).

78. Considering the circumstances of the Scheme of Arrangement, it would not be concluded that Amatil, Amatil Shareholders or any other relevant party entered into or

carried out the scheme for the purpose of enabling the Amatil 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 Dividend.

References*Previous draft:*

Not previously issued as a draft

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 44(1)
- ITAA 1936 44(1)(a)(i)
- ITAA 1936 44(1)(b)(i)
- ITAA 1936 former Part IIIA 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 160APHT
- ITAA 1936 former 160APHT(2)
- ITAA 1936 former 160APHU
- ITAA 1936 former 160APHU(1)
- ITAA 1936 128B(1)
- ITAA 1936 128B(3)(ga)
- ITAA 1936 128B(3)(ga)(i)
- ITAA 1936 128D
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- ITAA 1936 177EA(3)(e)
- ITAA 1936 177EA(5)(b)
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- ITAA 1997 Div 67
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- ITAA 1997 202-40
- ITAA 1997 202-45
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- 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
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- ITAA 1997 207-145(1)(f)
- ITAA 1997 Div 208
- ITAA 1997 208-195
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ATO references

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