CR 2021/39 - WPP AUNZ Ltd - scheme of arrangement, FY 2020 Total Dividend and Special Dividend

Class Ruling

WPP AUNZ Ltd – scheme of arrangement, FY 2020 Total Dividend and Special Dividend

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 pay any penalties or interest in respect of the matters covered by this Ruling.

Table of Contents **Paragraph**

What this Ruling is about

1. This Ruling sets out the income tax consequences of the ordinary and special dividends (FY 2020 Total Dividend) paid on 7 April, the Special Dividend paid on 7 May 2021 and the Scheme of Arrangement implemented by WPP AUNZ Ltd (WPP AUNZ) on 18 May 2021.

2. Full details of this Scheme of Arrangement, the FY 2020 Total Dividend and the Special Dividend are set out in paragraphs 47 to 80 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 a WPP AUNZ shareholder who:

- held your WPP AUNZ shares on capital account, that is, your WPP AUNZ shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)), and
- held WPP AUNZ shares on:
  - 31 March 2021 (FY 2020 Total Dividend Record Date) and received the FY 2020 Total Dividend, and/or
  - 30 April 2021 (Special Dividend Record Date) and received the Special Dividend, and 11 May 2021 (Scheme Record Date) and

participated in the Scheme of Arrangement under which Cavendish Square Holding B.V. (Cavendish) acquired all of the WPP AUNZ shares that it did not already own.

5. This Ruling does not apply to you if you:

- are exempt from Australian income tax
- acquired your WPP AUNZ shares under a WPP AUNZ employee share, option or rights plan
- are subject to the investment manager regime in Subdivision 842-I in relation to your WPP AUNZ shares
- are taken to have acquired your WPP AUNZ shares before 20 September 1985, or
- are subject to the taxation of financial arrangement rules in Division 230 in relation to your WPP AUNZ shares.

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

FY 2020 Total Dividend

7. The FY 2020 Total Dividend of 4.4 cents per share is a 'dividend' as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936).

8. The FY 2020 Total Dividend is a frankable distribution pursuant to section 202-40.

Assessability of the FY 2020 Total 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 FY 2020 Total 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 FY 2020 Total 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 FY 2020 Total 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 FY 2020 Total 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 FY 2020 Total Dividend flows indirectly through the partnership or trust to you, you include your share of the FY 2020 Total Dividend in your assessable income and you are entitled to a tax offset equal to your share of the franking credit attached to the FY 2020 Total 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

FY 2020 Total Dividend attributable to a permanent establishment in Australia

14. If you are a non-resident and the FY 2020 Total Dividend is attributable to a permanent establishment in Australia, you include the FY 2020 Total Dividend in your assessable income (paragraphs 44(1)(b) and (c) of the ITAA 1936) and you are not liable to pay withholding tax in respect of the dividend (subsection 128B(3E) of the ITAA 1936).

15. If you are also a qualified person (as defined in Division 1A of former Part IIIAA of the ITAA 1936), you include the amount of the franking credits attached to the FY 2020 Total 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)).

FY 2020 Total Dividend not attributable to a permanent establishment in Australia

16. If you are a non-resident and the FY 2020 Total Dividend is not attributable to a permanent establishment in Australia, the FY 2020 Total 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).

17. You do not include the amount of the franking credits attached to the FY 2020 Total 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 FY 2020 Total Dividend you received constitutes a ‘related payment’ for the purposes of paragraph 207-145(1)(a) and former section 160APHN of the ITAA 1936 and the secondary qualification period therefore applies.

19. You will be a qualified person in relation to the FY 2020 Total Dividend if, during the period from 15 February 2021 to 10 May 2021 (inclusive), you held your WPP AUNZ 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. The period of 45 days does not include the day on which your WPP AUNZ shares were acquired.

Exempting entity

20. WPP AUNZ was not an ‘exempting entity’ when the FY 2020 Total 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 FY 2020 Total Dividend you received, nor to deny the tax offset to which you are otherwise entitled to under Division 207 at the time when the FY 2020 Total Dividend was paid.

Special Dividend

22. The Special Dividend of 15.6 cents per share is a 'dividend' as defined in subsection 6(1) of the ITAA 1936.

23. The Special Dividend is a frankable distribution pursuant to section 202-40.

Assessability of the Special Dividend, franking credits and tax offsets

Residents

24. 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).

25. 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).

26. 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)).

27. 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).

28. 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

29. 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 (c) of the ITAA 1936) and you are not liable to pay withholding tax in respect of the dividend (subsection 128B(3E) of the ITAA 1936).

30. If you are also a qualified person (as defined in Division 1A of former Part IIIAA of the ITAA 1936), 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

31. 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 dividend (paragraph 128B(3)(ga) of the ITAA 1936).

32. 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

33. 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 and the secondary qualification period therefore applies.

34. You will be a qualified person in relation to the Special Dividend if, during the period from 17 March 2021 to 10 May 2021 (inclusive), you held your WPP AUNZ 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. The period of 45 days does not include the day on which your WPP AUNZ shares were acquired.

Exempting entity

35. WPP AUNZ 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).

36. 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 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

37. 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 FY 2020 Total Dividend or Special Dividend.

Section 204-30

38. 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 FY 2020 Total Dividend or Special Dividend.

Section 207-145

39. Section 207-145 will not apply to the whole or any part of the FY 2020 Total Dividend or the Special Dividend. The Commissioner does not consider that the FY 2020 Total Dividend or the Special Dividend were made as part of a dividend stripping operation (under section 207-155) or a distribution washing arrangement (under section 207-157). Accordingly, section 207-145 will not apply to adjust your assessable income to exclude the amount of the franking credits on the FY 2020 Total Dividend or the Special Dividend, nor will it deny the tax offsets to which you would otherwise be entitled.

CGT consequences

CGT event A1

40. CGT event A1 happened on 18 May 2021 (Scheme Implementation Date) when you disposed of each of your WPP AUNZ shares to Cavendish in accordance with the Scheme of Arrangement (section 104-10).

Capital proceeds

41. The Scheme Consideration of 50 cents you received for each WPP AUNZ share is your capital proceeds from CGT event A1 happening (subsection 116-20(1)).

42. The capital proceeds do not include the FY 2020 Total Dividend of 4.4 cents or the Special Dividend of 15.6 cents.

Capital gain or capital loss

43. You made a capital gain if the capital proceeds from the disposal of your WPP AUNZ share exceed its cost base (subsection 104-10(4)). The capital gain is the amount of the excess.

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

Discount capital gain

45. If you made a capital gain from the disposal of a WPP AUNZ share, you are eligible to treat the capital gain as a 'discount capital gain' provided you acquired, or are taken to have acquired, your WPP AUNZ share on or before 17 May 2020 and you satisfy the other requirements of Division 115.

Non-resident shareholders

46. If you are a non-resident shareholder just before CGT event A1 happened to your WPP AUNZ shares on 18 May 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

47. 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

WPP AUNZ Ltd

48. WPP AUNZ is a public company listed on the Australian Securities Exchange (ASX) since 14 January 1994.

49. WPP AUNZ is an Australian resident for tax purposes.

50. WPP AUNZ provides advertising, marketing and communications services and has 60 brands operating primarily in Australia, New Zealand and South East Asia.

51. As at 31 December 2020, WPP AUNZ had the following shares and performance rights on issue:

- 852,151,870 fully-paid ordinary shares
- 14,336,085 performance rights, and
- 4,560,109 performance options.

52. Most performance rights and all performance options vested (depending upon their term, in full or on a pro rata basis) on or before the Scheme Implementation Date and holders paid a cash amount of 70 cents per vested right or option at the time of vesting. Any remaining performance rights which were unvested on the Scheme Implementation Date remained in place and holders paid a cash amount of 70 cents per vested right at the time of vesting.

53. As at 30 September 2020, Australian residents held approximately 20% of the issued shares in WPP AUNZ.

WPP plc and Cavendish Square Holding B.V.

54. WPP plc is a United Kingdom-based advertising and public relations firm. WPP plc has a primary listing on the London Stock Exchange and a secondary listing on the New York Stock Exchange.

55. Cavendish is a company limited by shares incorporated in The Netherlands. Cavendish is an indirect wholly-owned subsidiary of WPP plc.

56. Prior to the Scheme of Arrangement, WPP plc (indirectly through Cavendish) was the majority shareholder of WPP AUNZ with a 61.5% shareholding interest.

Scheme of Arrangement

57. On 29 December 2020, WPP AUNZ announced that it had entered into a Scheme Implementation Deed with WPP plc and Cavendish under which Cavendish would acquire all of the issued shares in WPP AUNZ.

58. To give effect to the Scheme Implementation Deed, which was amended and restated on 10 March 2021, a Scheme of Arrangement was proposed to WPP AUNZ shareholders pursuant to Part 5.1 of the *Corporations Act 2001*.

59. Under the terms of the Scheme Implementation Deed, each share in WPP AUNZ held by a WPP AUNZ shareholder would be transferred to Cavendish resulting in WPP AUNZ becoming a wholly-owned subsidiary of Cavendish (and, indirectly, WPP plc).

60. In consideration for each share, Cavendish would pay WPP AUNZ shareholders 70 cents per share less the aggregate per share cash amount of the FY 2020 Total Dividend and Special Dividend (Scheme Consideration).

61. At a shareholder meeting held on 21 April 2021, WPP AUNZ shareholders approved the Scheme of Arrangement.

62. On 23 April 2021 (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*. WPP AUNZ shares were suspended from trading on the ASX from close of trading on 26 April 2021.

63. Entitlement to the Scheme Consideration was determined on the Scheme Record Date.

64. Payment of the Scheme Consideration to WPP AUNZ shareholders and the transfer of WPP AUNZ shares to Cavendish occurred on the Scheme Implementation Date.

FY 2020 Total Dividend

65. On 25 February 2021, WPP AUNZ declared to pay a fully franked dividend of 4.4 cents per WPP AUNZ share based on full year results for the 31 December 2020 financial year. The fully franked dividend consisted of two separate dividends made up of:

- an ordinary dividend of 2.9 cents per WPP AUNZ share, and
- a special dividend of 1.5 cents per WPP AUNZ share (being the reinstatement of a special dividend cancelled in March 2020).

Together, they are referred to as the FY 2020 Total Dividend.

66. The FY 2020 Total Dividend had a record date of 31 March 2021 and was paid on 7 April 2021. The total amount of the FY 2020 Total Dividend was approximately $37 million.

67. The FY 2020 Total Dividend was not debited against WPP AUNZ's share capital account.

68. The FY 2020 Total Dividend was sourced entirely from WPP AUNZ's current year profits and retained earnings account, with the underlying profits sourced from certain wholly-owned subsidiaries being members of the WPP AUNZ income tax consolidated group.

Special Dividend

69. On 26 April 2021, WPP AUNZ declared to pay a Special Dividend of 15.6 cents per WPP AUNZ share prior to the implementation of the Scheme of Arrangement.

70. Entitlement to the Special Dividend was determined on the Special Dividend Record Date.

71. Payment of the Special Dividend occurred on 7 May 2021.

72. The Special Dividend was fully franked.

73. The Special Dividend was not debited against WPP AUNZ's share capital account.

74. The Special Dividend was:

- sourced entirely from WPP AUNZ's current year profits and retained earnings account, with the underlying profits for the Special Dividend sourced from certain wholly-owned subsidiaries being members of the WPP AUNZ income tax consolidated group
- wholly contingent upon the Scheme of Arrangement being approved, and
- wholly at the discretion of WPP AUNZ.

Other matters

75. Neither WPP plc nor Cavendish, nor any of their associates, had any influence or control over the declaration and payment of the FY 2020 Total Dividend or the Special Dividend.

76. Neither WPP plc nor Cavendish facilitated or financed the payment of the FY 2020 Total Dividend or the Special Dividend.

77. The Scheme of Arrangement was not conditional on the FY 2020 Total Dividend or the Special Dividend being declared and neither WPP plc nor Cavendish had any right to terminate the Scheme Implementation Deed if WPP AUNZ did not declare and pay the FY 2020 Total Dividend or the Special Dividend.

78. As at 31 December 2020, WPP AUNZ had a franking account balance of $93.7 million. After payment of the FY 2020 Total Dividend and the Special Dividend, WPP AUNZ had a franking account balance of approximately $25.2 million.

79. On the Scheme Implementation Date, the sum of the market values of WPP AUNZ's assets that were taxable Australian real property did not exceed the sum of the market values of its other assets for the purposes of section 855-30.

Key dates

80. The following is a summary of the key dates for the Scheme of Arrangement, the FY 2020 Total Dividend and the Special Dividend:

Scheme Implementation Deed executed	25 December 2020
Announcement date	29 December 2020
Amendment and Restatement of the Scheme Implementation Deed executed	10 March 2021
First Court hearing (lodged Scheme Booklet with Court)	16 March 2021
Despatch of Scheme Booklet to WPP AUNZ shareholders	22 March 2021
Record Date for FY2020 Total Dividend	31 March 2021
Payment Date for FY2020 Total Dividend	7 April 2021
Scheme meeting	21 April 2021
Final Court hearing (court approved scheme)	23 April 2021
Last day of trading in WPP AUNZ Shares	26 April 2021
Record Date for Special Dividend	30 April 2021
Payment Date for Special Dividend	7 May 2021
Scheme Record Date	11 May 2021
Scheme Implementation Date	18 May 2021

Commissioner of Taxation
2 June 2021

Appendix – Explanation

This Explanation is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.

Table of Contents **Paragraph**

FY 2020 Total Dividend and Special Dividend

81. 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.

82. The payment of the FY 2020 Total Dividend and the Special Dividend were distributions of money which WPP AUNZ made to its shareholders. WPP AUNZ did not debit the FY 2020 Total Dividend or the Special Dividend against its share capital account.

83. Therefore, the exclusion in paragraph (d) of the dividend definition in subsection 6(1) of the ITAA 1936 does not apply and the FY 2020 Total Dividend and the

Special Dividend each constitute a 'dividend' for the purposes of subsection 6(1) of the ITAA 1936.

84. 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.

85. None of the circumstances in section 202-45 apply to the FY 2020 Total Dividend or the Special Dividend. Therefore, the FY 2020 Total Dividend and the Special Dividend are frankable distributions under section 202-40 and in turn are capable of being franked in accordance with section 202-5.

Assessability of the FY 2020 Total Dividend and the Special Dividend

Residents

86. 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).

87. As the FY 2020 Total Dividend and the Special Dividend were paid to shareholders out of profits derived by WPP AUNZ, shareholders who are residents of Australia, as defined in subsection 6(1) of the ITAA 1936, are required to include the FY 2020 Total Dividend and/or the Special Dividend they received 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

88. 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.

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

90. Subparagraph 44(1)(c)(i) of the ITAA 1936 includes dividends in the assessable income of a non-resident shareholder of a resident 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.

91. Accordingly a non-resident carrying on a business in Australia at or through a permanent establishment who received the FY 2020 Total Dividend and/or the Special Dividend (otherwise than in the their capacity as trustee) is required to include the applicable dividend in their assessable income, to the extent to which the dividend received was attributable to the permanent establishment, pursuant to subparagraphs 44(1)(b)(i) and 44(1)(c)(i) of the ITAA 1936 and they will not be liable for Australian withholding tax in relation to the dividend.

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

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

93. 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 in the ITAA 1936 or the ITAA 1997 that expressly deals with dividends.

94. 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.

95. 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 FY 2020 Total Dividend and Special Dividend were fully franked, they will not be subject to Australian withholding tax when derived by a non-resident shareholder.

96. Section 128D of the ITAA 1936 operates to treat the FY 2020 Total Dividend and the Special Dividend as non-assessable non-exempt income.

97. Accordingly, a non-resident who received the fully franked FY 2020 Total Dividend and/or the Special Dividend (other than those shareholders who received the FY 2020 Total Dividend and/or the Special Dividend in carrying on business in Australia at or through a permanent establishment in Australia) is not required to include the FY 2020 Total Dividend or the Special Dividend received 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 FY 2020 Total Dividend or the Special Dividend received (subparagraph 128B(3)(ga)(i) of the ITAA 1936).

Gross-up and tax offset

98. 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)).

99. A shareholder that is not a qualified person in relation to the FY 2020 Total Dividend and/or the Special Dividend:

- does not include the franking credit attached to the applicable 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 applicable dividend (paragraph 207-145(1)(f)).

100. 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 FY 2020 Total Dividend and/or the Special Dividend (subsection 207-35(1)).

Qualified person, related payment rule and holding period rule

Qualified person

101. 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)).

102. Paragraph 207-145(1)(a), which refers to former Division 1A of 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.

103. 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.

104. 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

105. 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).

106. 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.

107. Under the terms of the Scheme Implementation Deed, the Scheme Consideration was reduced by the amount of the FY 2020 Total Dividend and the Special Dividend paid by WPP AUNZ to its shareholders. The reduction of the Scheme Consideration, calculated with reference to the amount of the FY 2020 Total Dividend and the Special Dividend, has the effect of passing the benefit of the FY 2020 Total Dividend and the Special Dividend from a WPP AUNZ shareholder to Cavendish.

108. Therefore, you (or a partner in a partnership or a beneficiary of a trust that has an interest in WPP AUNZ shares) are taken to have made a related payment in respect of the FY 2020 Total Dividend and/or the Special Dividend you received.

Holding period rule

109. The holding period rule requires you to hold your WPP AUNZ shares, on which the FY 2020 Total Dividend and 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.

110. 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).

111. In respect of the FY 2020 Total Dividend, eligibility to receive the FY 2020 Total Dividend was determined on the FY 2020 Total Dividend Record Date (31 March 2021), being the last day on which the acquisition by a person of a WPP AUNZ share entitled the person to receive the FY 2020 Total Dividend. Accordingly, the day on which WPP AUNZ shares became ex- dividend for the FY 2020 Total Dividend was 1 April 2021. This means that the secondary qualification period for the FY 2020 Total Dividend began on 15 February 2021.

112. In respect of the Special Dividend, eligibility to receive the Special Dividend was determined on the Special Dividend Record Date (30 April), being the last day on which the acquisition by a person of a WPP AUNZ share entitled the person to receive the Special Dividend. Accordingly, the day on which WPP AUNZ shares became ex dividend for the Special Dividend was 1 May 2021. This means that the secondary qualification period for the Special Dividend began on 17 March 2021.

113. *Prima facie*, the secondary qualification period in relation to the FY 2020 Total Dividend is the period beginning 45 days before and ending 45 days after 1 April 2021, namely 15 February 2021 to 16 May 2021 (inclusive), and the secondary qualification period in relation to the Special Dividend is the period beginning 45 days before and ending 45 days after 1 May 2021, namely 17 March 2021 to 15 June 2021 (inclusive).

114. However, any days on 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) of the ITAA 1936).

115. You ceased to hold your WPP AUNZ shares at risk on the Scheme Record Date (11 May 2021) because on that day you became committed to dispose of your WPP AUNZ shares in exchange for the Scheme Consideration.

116. Accordingly, if you received the FY 2020 Total Dividend and/or the Special Dividend because you held shares in WPP AUNZ, you will be a qualified person in relation to the:

- FY 2020 Total Dividend if, during the period from 15 February 2021 to 10 May 2021 (inclusive), or
- Special Dividend, if during the period 17 March 2021 to 10 May (inclusive),

you held your WPP AUNZ shares for a continuous period of at least 45 days (not counting the day on which you acquired the WPP AUNZ share or the day on which you disposed of the WPP AUNZ share, and not counting the days on which you had 'materially diminished risks of loss or opportunities for gain' (as defined in former section 160APHM of the ITAA 1936) in respect of the shares.

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

118. The small shareholder exception in former section 160APHT of the ITAA 1936 does not apply as the FY 2020 Total Dividend and the Special Dividend constitute a related payment as discussed in paragraphs 105 to 108 of this Ruling. Therefore, a shareholder who is an individual and who has franking credit offsets not exceeding $5,000 for the

income year ended 30 June 2021 must also satisfy the holding period requirement in relation to the FY 2020 Total Dividend and the Special Dividend (former subsection 160APHT(2) of the ITAA 1936).

Refundable tax offset

119. Your entitlement to the franking credit tax offsets under Division 207 in relation to the FY 2020 Total Dividend and 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.

120. 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)), and
- non-resident entities carrying on business in Australia at or through a permanent establishment (subsection 67-25(1DA)).

121. 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 (item 40 of section 63-10).

The anti-avoidance provisions

Section 177EA of the ITAA 1936

122. Section 177EA of the ITAA 1936 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.

123. WPP AUNZ is a corporate tax entity. The transfer of the WPP AUNZ shares under the Scheme of Arrangement is a scheme for the disposition of membership interests. The FY 2020 Total Dividend and the Special Dividend are frankable distributions paid to the shareholders of WPP AUNZ 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.

124. 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 WPP AUNZ, WPP AUNZ 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).

125. Considering the circumstances of the Scheme of Arrangement, it cannot be concluded that WPP AUNZ or WPP AUNZ shareholders entered into or carried out the scheme for the purpose of enabling the WPP AUNZ 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 either the FY2020 Total Dividend or the Special Dividend.

Section 204-30

126. 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.

127. 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.

128. Under the scheme, you received imputation benefits when the FY2020 Total Dividend and/or the Special Dividend was paid to you. The FY2020 Total Dividend and the Special Dividend were paid equally to all WPP AUNZ shareholders and were fully franked regardless of the tax profiles of WPP AUNZ's shareholders. Accordingly, it cannot be said that WPP AUNZ selectively directed the flow of franked dividends to those members who obtained the most benefit from the franking credits.

129. 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 as a WPP AUNZ shareholder in relation to the FY2020 Total Dividend and/or the Special Dividend you received.

CGT consequences

CGT event A1

130. 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)).

131. The acquisition of shares in WPP AUNZ under a court approved scheme of arrangement does not involve a disposal of shares under a contract.[1]

132. Therefore, CGT event A1 happened when there was a change of ownership in a WPP AUNZ share from a shareholder to Cavendish under the Scheme Implementation Deed (subsections 104-10(1) and (2)). The change of ownership occurred on the Scheme Implementation Date (paragraph 104-10(3)(b)).

133. 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.

134. A shareholder makes a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a WPP AUNZ share are more than the cost base of the

[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?*

share. A shareholder makes a capital loss if the capital proceeds are less than the reduced cost base of the WPP AUNZ share (subsection 104-10(4)).

Capital proceeds

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

136. 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]

137. In this case, the FY 2020 Total Dividend and the Special Dividend were not paid in respect of the disposal of WPP AUNZ shares under the scheme. The Scheme of Arrangement was not conditional on the declaration of the FY 2020 Total Dividend or the Special Dividend. The FY 2020 Total Dividend and the Special Dividend were not dependent on WPP plc, Cavendish or a third party financing or facilitating payment of the FY 2020 Total Dividend or the Special Dividend, or WPP plc, Cavendish or a third party being obliged to bring about the result that the FY 2020 Total Dividend or the Special Dividend would be paid to existing shareholders.

138. The Commissioner considers that the FY 2020 Total Dividend and the Special Dividend were not received in respect of the disposal of WPP AUNZ shares under the Scheme of Arrangement. Accordingly, the FY 2020 Total Dividend and the Special Dividend do not form part of the capital proceeds in respect of CGT event A1 happening.

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

Capital gain or capital loss

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

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

142. The cost base and reduced cost base of the WPP AUNZ share depends on your individual circumstances.

Discount capital gain

143. If you make a capital gain from the disposal of your WPP AUNZ 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)

[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.*

- 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 WPP AUNZ share on or before 17 May 2020, which was at least 12 months prior to CGT event A1 happening (subsection 115-25(1)).

Non-resident shareholders

144. You can 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 happens and the CGT event happens in relation to a CGT asset that is not 'taxable Australian property' (subsection 855-10(1)).

145. 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 WPP AUNZ 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 WPP AUNZ 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 III Div 1A
- ITAA 1936 former Pt IIIAA Div 1A
- ITAA 1936 former 160APHD
- 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
- 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 207-155
- ITAA 1997 207-157
- ITAA 1997 Div 208
- ITAA 1997 208-195
- ITAA 1997 Div 230
- ITAA 1997 Subdiv 842-I
- ITAA 1997 855-10
- ITAA 1997 855-10(1)
- ITAA 1997 855-15
- ITAA 1997 855-30
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- TAA 1953
- Corporations Act 2001 Pt 5.1

ATO references

NO:	1-OXEHVY1
ISSN:	2205-5517
BSL	PGI

ATOlaw topic:	Income tax ~~ Assessable income ~~ Dividend income ~~ Dividend income Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT event A1 – disposal of a CGT asset Income tax ~~ Capital gains tax ~~ Capital proceeds Income tax ~~ Capital management ~~ Anti avoidance rules ~~Section 177EA Income tax ~~ Capital management ~~ Franking credits / tax offsets Income tax ~~ Capital management ~~ Qualified person rule