


CR 2021/40 - Amaysim Australia Limited - major distribution (special dividend and return of capital)

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Class Ruling

Amaysim Australia Limited – major distribution (special dividend and return of capital)

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 income tax consequences for minority shareholders of Amaysim Australia Limited (AAL) who received the Major Distribution, being a special dividend of 26 cents per share and a return of capital payment of 24 cents per ordinary share on 27 April 2021 (Payment Date).
2. Full details of this special dividend and return of capital are set out in paragraphs 32 to 55 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 registered on the AAL share register on 31 March 2021 (Record Date)
 - held less than 50% of the ordinary shares in AAL on the Record Date
 - held your AAL shares on capital account on the Record Date; that is, you did not hold your AAL shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1))
 - received the special dividend of 26 cents per AAL share on the Payment Date

- received the return of capital of 24 cents per AAL share on the Payment Date, and
- are not subject to the investment manager regime in Subdivision 842-I in relation to your shares.

5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 32 to 55 of this Ruling.

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

When this Ruling applies

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

Ruling

Special dividend

7. The special dividend of 26 cents per AAL 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 IIIA 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-residents carrying on a business at or through a permanent establishment

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 (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 (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)).

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

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 does not constitute a 'related payment' for the purposes of paragraph 207-145(1)(a) and former section 160APHN of the ITAA 1936 and the primary qualification period therefore applies.

19. You will be a qualified person in relation to the special dividend if, during the period from the day after you acquired your AAL shares to 15 May 2021 (inclusive), you held your AAL 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.

Return of capital

Return of capital is not a dividend

20. No part of the return of capital paid to you by AAL on the Payment Date is a dividend as defined in subsection 6(1) of the ITAA 1936.

21. No part of the return of capital payment is included in your assessable income as a dividend under section 44 of the ITAA 1936.

Anti-avoidance provisions

Sections 45A, 45B and 45C of the ITAA 1936 do not apply

22. The Commissioner will not make a determination under either subsection 45A(2) of the ITAA 1936 or paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to any part of the return of capital you received on the Payment Date.

Section 177EA of the ITAA 1936 does not apply to you

23. 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 by you (as a shareholder covered under paragraph 4 of this Ruling) in relation to the special dividend.

Section 204-30 does not apply

24. 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 by you (as a shareholder covered under paragraph 4 of this Ruling) in relation to the special dividend.

25. CGT event G1 (section 104-135) happened to your AAL shares on the Payment Date when AAL paid you the return of capital of 24 cents per share in respect of the AAL shares you owned at the Record Date and continued to own at the Payment Date.

Capital gains tax consequences**CGT event G1**

26. CGT event G1 happened on the Payment Date when AAL paid you the return of capital of 24 cents per share in respect of each AAL share you owned at the Record Date and continued to own at the Payment Date (section 104-135).

27. You made a capital gain when CGT event G1 happened if the amount of the return of capital of 24 cents per AAL share you received was more than the share's cost base (subsection 104-135(3)).

28. If the return of capital of 24 cents per AAL share you received was equal to or less than the cost base of the share, the cost base and reduced cost base of the share is reduced by the amount of the return of capital you received for that share (subsection 104-153(4)).

CGT event C2

29. CGT event C2 (section 104-25) happened when AAL paid you the return of capital payment of 24 cents per share in respect of AAL shares you owned on the Record Date and ceased to own before the Payment Date.

Discount capital gain

30. You can treat a capital gain made when CGT event G1 or CGT event C2 happened to your AAL share as a discount capital gain under Subdivision 115-A if you acquired the AAL share at least 12 months before the Payment Date (subsection 115-25(1)) and the other conditions in Subdivision 115-A are satisfied.

Foreign resident shareholders are able to disregard capital gains tax

31. If you were a foreign resident or the trustee of a foreign resident trust for capital gains tax purposes, you disregard any capital gain made from CGT event G1 or any capital gain or capital loss made from CGT event C2 under subsection 855-10(1) as an AAL share is not an indirect Australian real property interest (table item 2 of section 855-15), provided that:

- you did not use the AAL share at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- the AAL share was not covered by subsection 104-165(3) about individuals who defer capital gains upon ceasing to be Australian residents (table item 5 of section 855-15).

Scheme

32. 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

33. AAL is an Australian-resident company. AAL was incorporated on 12 May 2010 and listed on the Australian Securities Exchange (ASX) on 15 July 2015.

34. AAL was a mobile phone and energy service provider.

Sale of mobile and energy businesses

35. On 29 August 2020, AAL entered into a Share Sale Agreement with an energy company for the sale of its energy business (the Energy Sale).

36. On 30 September 2020, the Energy Sale was completed. AAL received cash consideration of \$115 million for the Energy Sale. Following the repayment of \$53.05 million of debt, transaction costs and completion adjustments, the net cash proceeds recognised by AAL were approximately \$50 million.

37. On 2 November 2020, AAL announced it had entered into a Share Sale Agreement with a telecommunications company for the sale of its mobile business for cash consideration of \$250 million, subject to other net asset adjustments (the Mobile Sale).

38. The Mobile Sale was completed on 1 February 2021.

Special dividend and return of capital payment

39. On 2 December 2020, AAL provided its shareholders with a Notice of Extraordinary General Meeting and Explanatory Memorandum in which AAL proposed to distribute the proceeds of the Mobile Sale to shareholders, delist from the ASX and wind-up operations.

40. Following completion of the Mobile Sale, there were cash proceeds of approximately \$197.7 million to \$215.4 million available for distribution to shareholders from the transaction proceeds, as well as excess cash remaining in the business.

41. AAL proposed to make distributions to shareholders in three tranches as follows:

- a distribution of \$147.6 million or 50 cents per share to be paid on the Payment Date, comprised of a fully franked special dividend of \$76.7 million or 26 cents per share and a return of capital of \$70.8 million or 24 cents per share (together, the Major Distribution which is the subject of this Ruling)
- a distribution as a return of capital of approximately \$29.5 million or 10 cents per share to be paid in or around May 2021 (Minor Distribution), and
- a distribution as a return of capital of approximately \$20.7 million to \$38.4 million or 7 to 13 cents per share to be paid in or around October 2021 (Final Distribution) – it is likely that this would occur as part of the liquidation process of AAL.

42. The Major Distribution was intended to return all existing profits, as well as a portion of capital, back to shareholders. The Minor Distribution and Final Distribution will be made separately to return capital value to the shareholders while ensuring the company still has sufficient liquidity to facilitate the delisting and winding-up process.

43. Shareholder approval to undertake the three distributions and wind-up AAL was sought and granted at an Extraordinary General Meeting on 21 January 2021.

Concurrent off-market takeover offer

44. On 15 December 2020, WAM Capital (WAM) entered into a bid implementation agreement with AAL in relation to WAM's off-market takeover offer to acquire all of the shares in AAL (WAM Offer). The WAM Offer opened on 2 February 2021.

45. The AAL shares were bought off-market from existing shareholders who accepted the WAM Offer for either WAM scrip consideration, cash consideration or a combination of both. No additional shares were issued by AAL.

46. The WAM Offer closed on 30 March 2021. As at 31 March 2021, WAM held approximately 79.8% of the shares in AAL.

47. Shareholders who did not accept the WAM Offer and remained a shareholder in AAL received the Major Distribution and will receive the Minor Distribution and Final Distribution as outlined in the Notice of Extraordinary General Meeting and Explanatory Memorandum dated 2 December 2020.

Other matters

48. On the Record Date, AAL had 307,375,144 ordinary shares on issue.

49. AAL's financial report for the period ended 31 December 2020 disclosed:

- a net profit of \$6.5 million
- issued capital of \$167.1 million
- accumulated losses of \$63.9 million, and
- total equity of \$122.6 million.

50. As at 28 February 2021, AAL had a retained earnings balance of \$79.6 million and a franking account balance of \$11.6 million.

51. On the Payment Date, AAL's share capital account (as defined in section 975-300) was not tainted (within the meaning of Division 197).

52. As at 18 February 2021, approximately less than 1% of AAL shareholders were non-residents.

53. As at 1 March 2021, AAL did not hold any Australian fixed assets.

54. The sum of the market values of AAL's assets that are Taxable Australian Real Property does not exceed the sum of the market values of its other assets.

55. AAL delisted from the ASX on 6 April 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

56. 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.

57. The payment of the special dividend is a distribution of money which AAL made to its shareholders. AAL did not debit the special dividend against its share capital account.

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

59. 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.

60. 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

61. The assessable income of a resident shareholder includes dividends paid by a company out of profits derived by it from any source (subparagraph 44(1)(a)(i) of the ITAA 1936).

62. As the special dividend was paid to shareholders out of profits derived by AAL, 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

63. 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.

64. 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.

65. 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.

66. 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 dividend in their assessable income to the extent to which the dividend 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

67. 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.

68. 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 of the ITAA 1936 or the ITAA 1997 that expressly deals with dividends.

69. 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.

70. 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.

71. Section 128D of the ITAA 1936 operates to treat the special dividend as non-assessable non-exempt income.

72. 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

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 entity) includes the amount of the franking credit attached to the special dividend (subsection 207-35(1)).

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 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.

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 you or an associate have made, were under an obligation to make or are likely to make a related payment in respect of the special 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 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. You (or a partner in a partnership or a beneficiary of a trust that has an interest in AAL shares) were not under an obligation to make a related payment in relation to the special dividend and need to satisfy the primary qualification period in relation to the special dividend.

Primary qualification period

83. The primary qualification period is the period beginning on the day after the date of acquisition of the share and ends 45 days after the day on which a share becomes ex dividend (former section 160APHD of the ITAA 1936).

84. Under former subsection 160APHE(1) of the ITAA 1936, a share become 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 special dividend, eligibility to receive the special dividend was determined on the Record Date (31 March 2021), being the last day on which the acquisition by a person of an AAL share entitled the person to receive the special dividend.

85. The last day on which a person could have acquired an AAL share and be entitled to receive the special dividend was the Record Date. It follows that AAL shares became ex dividend on 1 April 2021.

Holding period rule

86. If you are an individual who has franking credit offsets not exceeding \$5,000 for the income year ending 30 June 2021, you do not need to satisfy the holding period rule in relation to the special dividend (former subsection 160APHT(1) of the ITAA 1936).

87. For all other shareholders, the holding period rule requires you to hold your AAL 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).

88. 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).

89. Under former subsection 160APHM(2) of the ITAA 1936, you are taken to have materially diminished risks of loss and opportunities for gain on a particular day with respect to your AAL shares if your net position on that day in relation to the shares has less than 30% of those risks and opportunities.

90. The primary qualification period begins on the day after the day on which the shareholder acquired the shares and ends 45 days after the ex dividend date (1 April 2021). This means that the primary qualification period ended on 15 May 2021.

91. You will be a qualified person in relation to the special dividend if, during the period from the day after you acquired your AAL shares to 15 May 2021 (inclusive), you held your AAL 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.

92. 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 160APHM of the ITAA 1936) in respect of your AAL shares and is outside of the scope of this Ruling).

Refundable tax offset

93. 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.

94. 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 67-25(1D)), and
- non-resident entities carrying on business in Australia at or through a permanent establishment (subsection 67-25(1DA)).

95. 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).

Return of capital

96. Subsection 44(1) of the ITAA 1936 includes in a shareholder's assessable income any dividends paid to the shareholder out of profits derived by the company from any source if the shareholder is a resident of Australia.

97. The term 'dividend' is defined in subsection 6(1) of the ITAA 1936 and includes any distribution made by a company to any of its shareholders. However, paragraph (d) of the definition of dividend excludes a distribution from the meaning of dividend if the amount of the distribution is debited against an amount standing to the credit of the company's share capital account.

98. The term 'share capital account' is defined in section 975-300 as an account which the company keeps of its share capital, or any other account created on or after 1 July 1998 where the first amount credited to the account was an amount of share capital.

99. Subsection 975-300(3) provides that an account is generally taken not to be a share capital account if it is tainted. AAL has confirmed that its share capital account is not tainted within the meaning of Division 197.

100. The return of capital was recorded as a debit to AAL's untainted share capital account. As such, paragraph (d) of the definition of dividend in subsection 6(1) of the ITAA 1936 applies and the return of capital is not a dividend.

101. As the return of capital is not a dividend as defined in subsection 6(1) of the ITAA 1936, no part of the return of capital is included in your assessable income as an AAL shareholder under subsection 44(1) of the ITAA 1936.

Anti-avoidance provisions***Sections 45A, 45B and 45C of the ITAA 1936 do not apply to you***

102. Sections 45A and 45B of the ITAA 1936 are two anti-avoidance provisions which, if they apply, allow the Commissioner to make a determination that section 45C of the ITAA 1936 applies. The effect of such a determination is that all or part of the return of capital received by you is treated as an unfranked dividend paid by AAL out of profits.

Section 45A – streaming of dividends and capital benefits

103. Section 45A of the ITAA 1936 generally applies where:

- a company streams capital benefits to some shareholders who would derive a greater benefit from the receipt of capital than other shareholders (disadvantaged shareholders), and
- it is reasonable to assume that the disadvantaged shareholders have received, or are likely to receive, dividends.

104. Paragraph 45A(3)(b) of the ITAA 1936 provides that capital benefits include the distribution of share capital.

105. A capital benefit was provided to you. However, the circumstances of the return of capital indicate that there was no streaming of capital benefits to some AAL shareholders and dividends to other AAL shareholders.

106. Accordingly, the Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole, or a part, of the return of capital paid to you.

Section 45B – scheme to provide capital benefits

107. Section 45B of the ITAA 1936 applies where certain capital payments are made to shareholders in substitution for dividends. In broad terms, section 45B of the ITAA 1936 applies where:

- there is a scheme under which a person is provided with a capital benefit by a company
- under the scheme, a taxpayer (relevant taxpayer), who may or may not be the person provided with the capital benefit, obtains a tax benefit, and
- having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a purpose (whether or not the dominant purpose but not including an incidental purpose), of enabling a relevant taxpayer to obtain a tax benefit.

108. The return of capital satisfies the first two conditions referred to in paragraph 107 of this Ruling. However, having regard to the relevant circumstances of the scheme, it cannot be concluded that the scheme was entered into or carried out for a more than incidental purpose of enabling you to obtain a tax benefit.

109. Accordingly, the Commissioner will not make a determination under subsection 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole, or a part, of the return of capital you received.

Section 177EA of the ITAA 1936 does not apply to you

110. 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.

111. AAL is a corporate tax entity. The special dividend is a frankable distribution paid to the shareholders of AAL 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.

112. 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 AAL, you 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).

113. Considering the circumstances of the special dividend, it cannot be concluded that AAL or you entered into or carried out the scheme for the purpose of enabling you 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 by you in relation to the special dividend.

Section 204-30 does not apply to you

114. 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.

115. 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.

116. Under the scheme, you received imputation benefits when the special dividend was paid. The special dividend was paid equally to all shareholders of AAL and was fully franked regardless of the tax profiles of those shareholders. Accordingly, it cannot be said that AAL selectively directed the flow of franked dividends to those members who obtained the most benefit from the franking credits.

117. As the conditions in subsection 204-30(1) were not met, the Commissioner will not make a determination under paragraph 204-30(3)(c) to deny the whole, or any part, of the imputation benefits received by you in relation to the special dividend.

Capital gains tax consequences

CGT event G1

118. CGT event G1 happens if:

- a company makes a payment to a shareholder in respect of a share they own in the company
- some or all of the payment (the non-assessable part) is not a dividend, or an amount that is taken to be a dividend under section 47 of the ITAA 1936, and
- the payment is not included in the shareholder's assessable income (section 104-135).

119. CGT event G1 happened to your AAL shares when AAL paid you the return of capital in respect of each AAL share you owned on the Record Date and continued to own at the Payment Date (section 104-135).

120. You made a capital gain when CGT event G1 happened if the return of capital of 24 cents you received per AAL share was more than the cost base of the share. The capital gain is equal to the difference, and you reduce both the cost base and reduced cost base of your AAL share to nil (subsection 104-135(3)). You cannot make a capital loss when CGT event G1 happens (Note 1 to subsection 104-135(3)).

121. If the return of capital of 24 cents you received per AAL share was not more than the cost base of your AAL share, you reduce both the cost base and reduced cost base of your share (but not below nil) by the amount of the return of capital (subsection 104-135(4)).

CGT event C2

122. If, after the Record Date but before the Payment Date, you ceased to own an AAL share in respect of which the return of capital was payable, the right to receive the return of capital in respect of that share is retained by you and is a separate CGT asset from the AAL share.

123. CGT event C2 happened when the return of capital was made. The right to receive the return of capital, being an intangible asset, ended by the right being discharged or satisfied when the return of capital was made (section 104-25).

124. You will make a capital gain under CGT event C2 if the capital proceeds from the ending of the right are more than the cost base of the right. The capital gain is equal to the amount of the excess. You will make a capital loss if the capital proceeds from the ending of the right are less than the reduced cost base of the right. The capital loss is equal to the amount of the difference (subsection 104-25(3)).

125. In working out the capital gain or capital loss when CGT event C2 happens, the capital proceeds are equal to the amount of the return of capital (24 cents per share) (subsection 116-20(1)).

126. The cost base of your right to receive each return of capital is worked out under Division 110 (modified by Division 112). The cost base of the right does not include the cost base or reduced cost base of the share previously owned by you to the extent that it was applied in working out a capital gain or capital loss made when a CGT event happened to the share, for example, when you disposed of the share after the Record Date and before the Payment Date. Therefore, if the cost base or reduced cost base of the share previously owned by you has been fully applied in working out a capital gain or capital loss on the share, the right to receive the return of capital will have a nil cost base. As a result, you will, in those circumstances, make a capital gain equal to the capital proceeds, being 24 cents per AAL share owned at the Record Date.

127. For the purposes of Subdivision 109-A, you are considered to have acquired the right at the time when you acquired your AAL share. Therefore, you can treat a capital gain made when CGT event C2 happened to your AAL share if you acquired your AAL share at least 12 months before the Payment Date (subsection 115-25(1)) provided the other conditions in Subdivision 115-A are satisfied.

Foreign resident shareholders able to disregard capital gains tax

128. Under subsection 855-10(1), an entity disregards a capital gain or capital loss made from a CGT event if:

- just before the CGT event happened, the entity is a foreign resident, or the trustee of a foreign trust for CGT purposes, and
- the CGT event happens in relation to a CGT asset that is not taxable Australian property.

129. If you were a foreign resident or the trustee of a foreign resident trust for CGT purposes, you disregard a capital gain made if CGT event G1 happened to your AAL share or a capital gain or capital loss made if CGT event C2 happened to your AAL share under subsection 855-10(1) as an AAL share is not an indirect Australian real property interest, provided also that your AAL share:

- had not been used at any time by you in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- was not covered by subsection 104-165(3) (table item 5 of section 855-15, about individuals choosing to disregard capital gains upon ceasing to be Australian residents).

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