


CR 2021/79 - Woolworths Group Limited - off-market share buy-back

 This cover sheet is provided for information only. It does not form part of *CR 2021/79 - Woolworths Group Limited - off-market share buy-back*



Page status: **legally binding**

Class Ruling

Woolworths Group Limited – off-market share buy-back

📌 Relying on this Ruling

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

| Table of Contents | Paragraph |
|--|------------------|
| What this Ruling is about | 1 |
| Who this Ruling applies to | 4 |
| When this Ruling applies | 6 |
| Ruling | 7 |
| Scheme | 39 |
| Appendix 1 – Explanation | 63 |
| Appendix 2 – Legislative provisions | 99 |

What this Ruling is about

1. This Ruling sets out the income tax consequences for shareholders of Woolworths Group Limited (Woolworths) who participated in the Woolworths off-market share buy-back (the Buy-Back) which was announced on 26 August 2021.
2. Full details of the Buy-Back are set out in paragraphs 39 to 62 of this Ruling.
3. All legislative references in this Ruling are to provisions of the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* (as detailed in the table in Appendix 2 to this Ruling).

Who this Ruling applies to

4. This Ruling applies to you if you:
 - were registered on the Woolworths share register on 3 September 2021 (Record Date)
 - are an Australian resident or a New Zealand resident, and
 - participated in the Buy-Back.

Page status: **legally binding**

5. This Ruling does not apply to you if you are subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 39 to 62 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 2021 to 30 June 2022.

Ruling

Off-market share buy-back

7. The Buy-Back is an off-market purchase for the purposes of section 159GZZZK.

The Dividend Component

8. You are taken to have been paid a dividend of \$30.15 (Dividend Component) on 18 October 2021 (Buy-Back Date) for each Woolworths share you sold in the Buy-Back (section 159GZZZP).

9. The Dividend Component is a frankable distribution under section 202-40 and is capable of being franked in accordance with section 202-5.

10. The difference between the buy-back price of \$34.46 per Woolworths share (Buy-Back Price) and the Dividend Component (Capital Component) is not taken to be a dividend (subsection 159GZZZP(2)).

Assessability of the Dividend Component and tax offset

Resident shareholders – direct distributions

11. If you are an Australian-resident individual, corporate tax entity or the trustee of a complying superannuation fund who participated in the Buy-Back, your assessable income for the income year in which the Buy-Back occurred includes:

- the Dividend Component of \$30.15 per Woolworths share, and
- subject to the 'qualified person' rules, the amount of the franking credits attached to the Dividend Component (subsections 44(1) and 207-20(1)).

12. You will be entitled to a tax offset equal to the amount of the franking credits attached to the Dividend Component, subject to the qualified person rules (subsection 207-20(2)).

Page status: **legally binding**

Resident shareholders – indirect distributions***Partnerships***

13. If you are a partnership, your assessable income in the income year in which the Buy-Back occurred for the purposes of calculating the net income of the partnership includes:

- the Dividend Component of \$30.15 per Woolworths share (subsection 44(1) and section 90), and
- subject to the qualified person rules, the amount of franking credits attached to the Dividend Component (subsection 207-35(1) and section 90).

Trusts

14. If you are the trustee of a trust, your assessable income in the income year in which the Buy-Back occurred for the purposes of calculating the net income of the trust includes:

- the Dividend Component of \$30.15 per Woolworths share (subsections 44(1) and 95(1)), and
- subject to the qualified person rules, the amount of franking credits attached to the Dividend Component (subsections 207-35(1) and 95(1)).

Partners and beneficiaries

15. If you are a partner of a partnership or a beneficiary of a trust in which the trustee participated in the Buy-Back and a franked distribution flowed indirectly (within the meaning of Subdivision 207-B) to you, subsections 207-35(3) to (6) set out the circumstances in which you are required to gross up your assessable income for your share of the franking credit on the franked distribution.

16. Where the franked distribution flows indirectly through a trust or partnership to you and you are a resident individual, a resident corporate tax entity (at the time the distribution flows indirectly to it) or a trustee referred to in paragraphs 207-45(c) or (d), you will (subject to being a qualified person) be entitled to a tax offset equal to the entity's share of the franking credit on the franked distribution (section 207-45).

Refundable tax offset

17. The franking credit tax offset you are entitled to is subject to the refundable tax offset rules in Division 67. Certain trustees and corporate tax entities are excluded from the refundable tax offset rules by subsections 67-25(1A) to (1DA).

New Zealand-resident shareholders

18. If you are a New Zealand-resident shareholder who participated in the Buy-Back with shares you held in carrying on a business in Australia at or through a permanent establishment in Australia, your assessable income includes:

- the Dividend Component of \$30.15 per Woolworths share (paragraphs 44(1)(b) and (c)), and

Page status: **legally binding**

- subject to the qualified person rules, the amount of the franking credits attached to the Dividend Component (subsections 44(1), 207-20(1) and 207-75(2)).

19. You will be entitled to a tax offset equal to the amount of the franking credits attached to the Dividend Component, subject to the qualified person rules (subsection 207-20(2)). However, you are not subject to the refundable tax offset rules (subsection 67-25(1DA)). You are also not liable to pay Australian withholding tax in respect of the Dividend Component (subsection 128B(3E) and paragraph 128B(3)(ga)).

20. If you are a New Zealand-resident shareholder who participated in the Buy-Back and the Dividend Component is not attributable to Woolworths shares you held in carrying on a business at or through a permanent establishment in Australia, you:

- do not include the Dividend Component in your assessable income for Australian income tax purposes (section 128D)
- do not include the amount of the franking credits attached to the Dividend Component in your assessable income for Australian income tax purposes
- are not entitled to a tax offset for those franking credits (sections 207-20 and 207-70)
- are not subject to the refundable tax offset rules (subsection 67-25(1)), and
- are not liable to Australian withholding tax on the Dividend Component as it is fully franked (paragraph 128B(3)(ga)).

Sale consideration

21. You are taken to have received \$9.71 (Sale Consideration) for each Woolworths share you sold in the Buy-Back on the Buy-Back Date (section 159GZZZQ), unless you are a corporate tax entity to which subsections 159GZZZQ(8) and (9) apply.

22. The treatment of the Sale Consideration will depend on whether you held your Woolworths shares on capital account or on revenue account.

Shares held on capital account

23. If you held your Woolworths shares on capital account, you are taken to have disposed of your Woolworths shares for capital gains tax (CGT) purposes on the Buy-Back Date (CGT event A1 under section 104-10).

24. The Sale Consideration (which may be adjusted under subsection 159GZZZQ(8) if you are a corporate tax entity) represents the capital proceeds for CGT purposes (subsection 116-20(1)).

25. If you did not hold your Woolworths shares through a partnership, you made a:

- capital gain on each Woolworths share where the Sale Consideration was more than the share's cost base (subsection 104-10(4)) – the amount of the capital gain is the difference, or
- capital loss where the Sale Consideration was less than the share's reduced cost base (subsection 104-10(4)) – the amount of the capital loss is the difference.

Page status: **legally binding**

26. Where you made a capital gain, you can treat the capital gain as a 'discounted capital gain' if you acquired your Woolworths shares at least 12 months before the Buy-Back Date, and the other conditions of Subdivision 115-A are met.

27. If you held the Woolworths shares through a partnership, you have a separate cost base and reduced cost base for your interest in each Woolworths share sold in the Buy-Back by the partnership (subsection 106-5(2)). The partnership would allocate to each partner an appropriate share of the Sale Consideration which the partnership received for the sale of Woolworths shares in the Buy-Back.

Shares held as trading stock or on revenue account

28. If you held the Woolworths shares as 'trading stock' (as defined in subsection 995-1(1)) and sold them in the Buy-Back in the ordinary course of your business:

- you include the Sale Consideration in your assessable income (subsection 70-80(1)), and
- you disregard any capital gain or capital loss you made (section 118-25).

29. If you held the Woolworths shares as revenue assets (as defined in section 977-50), but not as trading stock, the amount by which:

- the Sale Consideration exceeds the cost of each Woolworths share is included in your assessable income (section 6-5), or
- the cost of each Woolworths share exceeds the Sale Consideration is an allowable deduction (section 8-1).

30. If you also made a capital gain in respect of the Woolworths shares you held on revenue account but not as trading stock, the capital gain on each Woolworths share is reduced by the amount that is otherwise included in your assessable income (section 118-20). If you made a capital loss in respect of the Woolworths shares you held on revenue account but not as trading stock, you reduce the reduced cost base of each Woolworths share by the amount of the allowable deduction (subsection 110-55(9)).

New Zealand-resident shareholders – capital gains tax consequences

31. If you are a New Zealand-resident shareholder who participated in the Buy-Back, you will only have CGT consequences if the Woolworths shares you sold under the Buy-Back were 'taxable Australian property' (section 855-10).

Qualified persons

32. You will satisfy the qualified person rules in relation to the Dividend Component (for the purposes of paragraph 207-145(1)(a) which refers to Division 1A of former Part IIIA) if:

- you acquired the Woolworths shares which you sold in the Buy-Back before 2 September 2021, and
- during the period when you held your Woolworths shares, you had sufficient risks of loss or opportunities for gain in respect of the Woolworths shares (as defined in former section 160APHM), having regard to any positions you

Page status: **legally binding**

have taken in relation to the Woolworths shares, for a continuous period of at least 45 days.

33. However, if you were, are, will be or are likely to be under an obligation to make a 'related payment' (as defined in former section 160APHN) in relation to the Dividend Component, the 45 continuous days must be during the period 3 September 2021 to 17 October 2021 inclusive.

34. The announcement of the Buy-Back, the making of an invitation to you to offer to sell your Woolworths shares, the making of an offer by you to Woolworths to sell your Woolworths shares or your participation in the Buy-Back do not affect whether the Woolworths shares bought back under the Buy-Back were held 'at risk' for the purposes of Division 1A of former Part IIIAA.

35. The last-in first-out rule in former subsection 160APHI(4) has no effect for the purposes of the Buy-Back in respect of any additional Woolworths shares you acquired on or after 2 September 2021 as they did not confer an entitlement to participate in the Buy-Back.

The anti-avoidance provisions

36. The Commissioner will not make a determination under subsections 45A(2) or 45B(3) that section 45C applies to the whole, or any part, of the Capital Component you received from participating in the Buy-Back.

37. The Commissioner will not make a determination under paragraph 177EA(5)(b) to deny the whole, or any part, of the imputation benefits you received in relation to the Dividend Component from participating in the Buy-Back.

38. The Commissioner will not make a determination under paragraph 204-30(3)(c) to deny the whole, or any part, of the imputation benefits you received in relation to the Dividend Component from participating in the Buy-Back.

Scheme

39. 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.

Woolworths Group Limited

40. Woolworths is an Australian-resident public company listed on the Australian Securities Exchange (ASX).

41. As at 27 June 2021, Woolworths had 1,267,652,417 fully-paid ordinary shares on issue to a mixture of resident and non-resident shareholders.

42. Woolworths' 2021 Annual Report showed that on 27 June 2021, it had:

- share capital of \$5.466 billion
- retained earnings of \$3.115 billion
- demerger reserve of negative \$6.966 billion
- other reserves of negative \$23 million, and
- total equity of \$1.739 billion.

Page status: **legally binding**

43. On 28 June 2021, Woolworths recorded a gain on demerger which increased its equity by \$6.387 billion and its retained earnings by \$6.430 billion.

44. Woolworths' share capital account (as defined in section 975-300) is not tainted within the meaning of Division 197.

Off-market share buy-back

45. On 26 August 2021, Woolworths first announced its intention to undertake the Buy-Back through a tender process, using excess cash generated from the repayment of debt facilities and surplus cash from its business operations, to fund the Buy-Back.

46. Participation in the Buy-Back was open to all eligible Australian and New Zealand-resident shareholders who were registered on the Woolworths share register on the Record Date.

47. Participation in the Buy-Back was not open to the following Woolworths shareholders:

- an 'Excluded Foreign Person', being a person who resides in a jurisdiction other than Australia or New Zealand
- a person who held only Restricted Employee Shares, being shares issued under a Woolworths Employee Share Plan
- a person who held only American Depository Receipts, or
- shareholders who acquired their shares on an ex entitlement basis on or after 2 September 2021.

48. Participation in the Buy-Back was voluntary. Any Woolworths shareholder who did not wish to participate or was not eligible to participate was not required to do anything. Non-participating Woolworths shareholders did not receive any property, dividends or distributions as compensation for not participating in the Buy-Back.

49. The tender period opened on 13 September 2021 (Opening Date) and closed on 15 October 2021 (Closing Date).

50. Under the tender process, eligible shareholders could make an offer to sell some or all of their Woolworths shares to Woolworths at specified discount percentages (Tender Discounts) to the volume-weighted average price (VWAP) of Woolworths shares sold on the ASX over the last five trading days up to and including the Closing Date. The Tender Discounts ranged from 10% to 14% inclusive, in 1% increments. Eligible shareholders also had the option of offering to sell their shares at a 'final price offer', which was the price that was ultimately determined by Woolworths under the tender process to be the price at which shares were bought back following the tender process. In conjunction with the tender discount or final price offer, shareholders could also nominate a minimum price below which they were not prepared to sell their Woolworths shares.

51. Eligible shareholders who held less than 180 Woolworths shares and wished to participate in the Buy-Back were required to tender all their shares at one of the specified tender discounts or as a final price offer.

52. In the event that the number of shares tendered which satisfied the Buy-Back criteria exceeded the number of shares Woolworths had determined to buy-back, Woolworths was entitled to scale back all accepted tenders (other than for those holding a small parcel of shares).

Page status: **legally binding**

53. All shares bought back received the same Buy-Back Price per share. None of the shares tendered above the Buy-Back Price would be bought back.

54. The Buy-Back Price was subject to two overriding limits:

- Woolworths would not buy back shares at a discount greater than 14% applied to the VWAP of Woolworths shares sold on the ASX over the last five trading days up to and including the Closing Date, and
- the Buy-Back Price would not exceed the market value of a Woolworths share determined in accordance with *Taxation Determination TD 2004/22 Income tax: for Off-Market Share Buy-Backs of listed shares, whether the buy-back price is set by tender process or not, what is the market value of the share for the purposes of subsection 159GZZZQ(2) of the Income Tax Assessment Act 1936?*

55. The following table is a summary of the key dates of the Buy-Back:

| Date | Details |
|-------------------|------------------------------------|
| 26 August 2021 | First announcement date |
| 2 September 2021 | Ex entitlement Date |
| 3 September 2021 | Record Date |
| 13 September 2021 | Opening Date for the tender period |
| 15 October 2021 | Closing Date for the tender period |
| 18 October 2021 | Buy-Back Date |

56. On 18 October 2021, Woolworths announced that:

- it had successfully completed the Buy-Back of 58,038,305 Woolworths shares
- the amount of the Buy-Back Price of Woolworths shares purchased under the Buy-Back was \$1,999,999,990.30
- the Buy-Back Price was \$34.46 per Woolworths share
- a scale-back mechanism was applied, and
- only Woolworths shares tendered at a discount of 14% or at the final price offer were purchased in the Buy-Back.

57. Under the Buy-Back, Woolworths debited \$4.31 per share to its share capital account and the balance of the Buy-Back Price (the Dividend Component) was debited to its retained earnings.

58. The Dividend Component of the Buy-Back Price was fully franked.

59. All Woolworths shares bought back under the Buy-Back were cancelled.

Other matters

60. The market value of the assets of Woolworths that are taxable Australian real property is less than the market value of Woolworths' other assets for the purposes of section 855-30.

Page status: **legally binding**

61. On 8 October 2021, Woolworths paid a fully franked final ordinary dividend for the year ended 30 June 2021 totalling approximately \$697 million, which was debited to Woolworths' retained earnings.

62. After the completion of the Buy-Back, Woolworths had a positive total equity amount.

Commissioner of Taxation

24 November 2021

Appendix 1 – 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.*

| Table of Contents | Paragraph |
|--|------------------|
| Off-market share buy-back | 63 |
| The Dividend Component | 65 |
| Calculation of Sale Consideration | 69 |
| New Zealand-resident shareholders – capital gains tax consequences | 77 |
| Qualified persons | 78 |
| The anti-avoidance provisions | 87 |
| <i>Sections 45A and 45B</i> | 87 |
| <i>Section 177EA</i> | 92 |
| <i>Section 204-30</i> | 96 |

Off-market share buy-back

63. For the purposes of Division 16K, where a company buys a share in itself from a shareholder, the purchase is a ‘buy-back’ (paragraph 159GZZZK(a)). Division 16K categorises a buy-back as either an ‘on-market purchase’ or an ‘off-market purchase’. A buy-back is an on-market purchase if the share bought back is listed for quotation in the official list of a stock exchange in Australia or elsewhere, and the buy-back is made in the ordinary course of trading on that stock exchange (paragraph 159GZZZK(c)). A buy-back that is not an on-market purchase is an off-market purchase (paragraph 159GZZZK(d)).

64. Although Woolworths’ ordinary shares are listed on the ASX, the Buy-Back was not made in the ordinary course of trading on the ASX. As a result, for the purposes of Division 16K, the Buy-Back is an off-market purchase within the meaning given by paragraph 159GZZZK(d).

The Dividend Component

65. The difference between the Buy-Back Price and the part of the Buy-Back Price which was debited against amounts standing to the credit of Woolworths’ share capital account is taken to be a dividend paid by Woolworths to you.

66. The Buy-Back Price was \$34.46, and \$4.31 per share was debited against the amounts standing to the credit of Woolworths’ share capital account. As a result, the Dividend Component is \$30.15 per Woolworths share.

67. Where the buy-back price of a share sold in an off-market share buy-back exceeds the market value worked out as if the buy-back was not announced and did not happen, the Dividend Component is unfrankable to the extent of the excess (paragraph 202-45(c)).

Page status: **not legally binding**

68. In respect of the Buy-Back, the Buy-Back Price for each Woolworths share bought back under the Buy-Back was less than the market value of a Woolworths share for the purposes of paragraph 202-45(c), as determined in accordance with TD 2004/22. Therefore, the entire Dividend Component is frankable.

Calculation of Sale Consideration

69. For the purposes of determining the amount of a capital gain or capital loss you made on the disposal of your Woolworths shares in the Buy-Back, the consideration you are taken to have received in respect of the disposal is worked out in accordance with section 159GZZZQ.

70. The effect of section 159GZZZQ is to adjust the Capital Component in order to determine the Sale Consideration for CGT or revenue account treatment.

71. Subsection 159GZZZQ(1) provides that you are taken to have received an amount equal to the purchase price (in this case the Buy-Back Price of \$34.46 you received for each Woolworths share sold) as consideration in respect of the sale of the share bought back. However, this amount is subject to certain adjustments in order to arrive at the Sale Consideration.

72. Subsection 159GZZZQ(2) is one of the adjusting provisions. It provides that if the Buy-Back Price was less than what would have been the market value of the Woolworths share (calculated as if the Buy-Back did not occur and was never proposed to occur), then the consideration is increased to the market value. Therefore, you are taken to have received a consideration of \$39.86 (Deemed Consideration) for the sale of each Woolworths share.

73. Pursuant to subsections 159GZZZQ(3) and (4), the Deemed Consideration is reduced by a 'Reduction Amount' which is equivalent to the Dividend Component. As a result, the Sale Consideration for each Woolworths share disposed under the Buy-Back is \$9.71 (being \$39.86 less the Dividend Component).

74. If you are a corporate tax entity, and you made a loss, the Sale Consideration is subject to further adjustments pursuant to subsections 159GZZZQ(8) and (9).

75. You are taken to have disposed of your Woolworths shares accepted under the Buy-Back on 18 October 2021 (CGT event A1 under section 104-10).

76. The disposal may have different taxation implications depending on how your Woolworths shares were held; for instance:

- if you are an investor who held your Woolworths shares on capital account, you will be subject to the CGT provisions (see paragraphs 23 to 27 of this Ruling), or
- if you are a share trader who held your Woolworths shares on revenue account, you will be subject to the ordinary income provisions and the CGT provisions (see paragraphs 28 to 30 of this Ruling).

New Zealand-resident shareholders – capital gains tax consequences

77. If you are a New Zealand-resident shareholder, you only have CGT consequences if the Woolworths shares you sold under the Buy-Back are taxable Australian property (section 855-10). The term 'taxable Australian property' is defined in the table in section 855-15. Your Woolworths share was not an 'indirect Australian real property

Page status: **not legally binding**

interest' (table item 2 in section 855-15). Therefore, your Woolworths share will constitute taxable Australian property if:

- you used your share in carrying on a business through a permanent establishment in Australia (table item 3 in section 855-15), or
- your share is a CGT asset that is covered by subsection 104-165(3), which is about you choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident (table item 5 in section 855-15).

Qualified persons

78. Paragraph 207-145(1)(a) provides that, in relation to a franked distribution made by an entity, only a qualified person in relation to the distribution for the purposes of Division 1A of former Part IIIAA is required to include the franking credit in its assessable income and is entitled to claim the franking credit as a tax offset. Paragraph 207-150(1)(a) is a similar provision that applies to indirect distributions. Broadly speaking, to be a qualified person in relation to the Dividend Component, you must satisfy the 'holding period rule' (former section 160APHO).

79. The holding period rule requires a shareholder to hold the shares on which the dividend is paid 'at risk' for a continuous period of at least 45 days during the relevant qualification period. The relevant qualification period for Woolworths shares is:

- in the absence of a related payment, the primary qualification period, which commences on the day after the shares are acquired and ends on the 45th day after the day on which the shares became ex dividend, or
- if a related payment has been made (see paragraphs 84 to 86 below), the secondary qualification period, which commences on the 45th day before, and ends on the 45th day after, the day on which the share became ex dividend.

80. In determining whether you have satisfied the holding period rule, any days during which you have materially diminished risks of loss or opportunities for gain in respect of the relevant shares are not counted. The day of acquisition and the day of disposal of the relevant shares are also not counted.

81. Broadly, a related payment arises under former section 160APHN where you are or were under an obligation to make, or will make, a payment in respect of the dividend, which effectively passes on the economic benefit of the dividend to another person. The rule also applies if an associate of yours is or was under an obligation to, or will, make the payment in respect of the dividend.

82. Under former subsection 160APHM(2), in respect of shares or an interest in shares if your 'net position' in respect of the risks and opportunities reduces your exposure to those risks and opportunities to less than 30%, you are taken to have materially diminished risks of loss or opportunities for gain.

83. The Commissioner does not regard the announcement of the Buy-Back, the making of an invitation to shareholders to offer to sell their Woolworths shares, the making of an offer by a shareholder to Woolworths in respect of a Woolworths share or a shareholder's participation in the Buy-Back as affecting whether Woolworths shares were held at risk or not.

84. There are at least 45 clear days from 2 September 2021 (the Ex entitlement date) to 17 October 2021 (the date before the date tender offers were accepted). If you acquired Woolworths shares before 2 September 2021 that were purchased under the Buy-Back,

Page status: **not legally binding**

you will satisfy the holding period rule as long as you held those shares 'at risk' for at least 45 continuous days.

85. Generally, under the holding period rule a shareholder will be deemed to have disposed of their most recently acquired shares first (former subsection 160APHI(4)). The 45-day rule operates on a 'last-in first-out' basis, so that shareholders will be deemed to have disposed of their most recently acquired shares first for the purposes of applying the 45-day rule.

86. If you acquired ex entitlement Woolworths shares and participated in the Buy-Back with cum entitlement shares (which conferred an entitlement to participate in the Buy-Back), you will not be considered for the purposes of the holding period rule to be subject to the last-in first-out rule in former subsection 160APHI(4), and so will not be considered to have participated in the Buy-Back with the ex entitlement shares. Woolworths shares commenced trading on an ex entitlement basis on 2 September 2021 and ex entitlement shares do not constitute 'related securities' for the purposes of former subsection 160APHI(2) in relation to any cum entitlement shares. Therefore, the last-in first-out rule will not apply to any additional Woolworths shares you acquired on or after 2 September 2021 on an ex entitlement basis.

The anti-avoidance provisions

Sections 45A and 45B

87. Section 45A applies where capital benefits are streamed to certain shareholders (the advantaged shareholders) who derive a greater benefit from the capital benefits than other shareholders, and it is reasonable to assume that the other shareholders (the disadvantaged shareholders) have received or will receive dividends.

88. Although a capital benefit (as defined in paragraph 45A(3)(b)) was provided to you under the Buy-Back, the circumstances of the Buy-Back indicate that there was no streaming of capital benefits to some shareholders and dividends to other shareholders. Therefore, section 45A does not apply to the Buy-Back.

89. Section 45B applies where certain capital payments are paid to shareholders in substitution for dividends.

90. While the conditions of paragraphs 45B(2)(a) and (b) were met in respect of the Buy-Back, the requisite purpose of enabling a person to obtain a tax benefit, by way of capital distribution, was not present.

91. Having regard to the relevant circumstances (as set out in subsection 45B(8)) of the Buy-Back, it cannot be concluded that a person entered into, or carried out, the Buy-Back for a more than incidental purpose of enabling a participating shareholder to obtain a tax benefit. Therefore, section 45B does not apply to the Buy-Back.

Section 177EA

92. Section 177EA is a general anti-avoidance provision that applies to a wide range of schemes designed to obtain imputation benefits.

93. It is the Commissioner's view that section 177EA applies to the Buy-Back, having regard to all the relevant circumstances of the scheme as outlined in subsection 177EA(17). Among the circumstances of the Buy-Back reflected in subsection 177EA(17) is the greater attraction of the Buy-Back to resident shareholders

Page status: **not legally binding**

(because of the franking credits on the Dividend Component) than to non-resident shareholders.

94. Where section 177EA applies, the Commissioner has a discretion pursuant to subsection 177EA(5) to make a determination to debit Woolworths' franking account pursuant to paragraph 177EA(5)(a) or deny the imputation benefit to each participating shareholder pursuant to paragraph 177EA(5)(b).

95. The Commissioner will exercise their discretion in such a way that they will not make a determination that the imputation benefits you obtained by participating in the Buy-Back will be denied under paragraph 177EA(5)(b).

Section 204-30

96. Section 204-30 allows the Commissioner to make a determination under paragraph 204-30(3)(c) where a corporate tax entity streams the payment of dividends to its members in such a way that certain shareholders obtain imputation benefits, and other shareholders obtain lesser or no imputation benefits, whether or not they receive other benefits.

97. If section 204-30 applies, the Commissioner may make a determination under subsection 204-30(3) to debit Woolworths' franking account pursuant to paragraph 204-30(3)(a), and/or to deny the imputation benefit to each Woolworths shareholder who participated in the Buy-Back pursuant to paragraph 204-30(3)(c).

98. Having regard to the circumstances of the Buy-Back, the conditions in subsection 204-30(1) are met and the Commissioner can make a determination under subsection 204-30(3). However, the Commissioner will not make a determination under subsection 204-30(3).

Page status: **not legally binding****Appendix 2 – Legislative provisions**

99. This paragraph sets out the details of the provisions ruled upon or referenced in this Ruling.

| | |
|---------------------------------------|----------------------------------|
| <i>Income Tax Assessment Act 1936</i> | subsection 44(1) |
| <i>Income Tax Assessment Act 1936</i> | paragraph 44(1)(b) |
| <i>Income Tax Assessment Act 1936</i> | paragraph 44(1)(c) |
| <i>Income Tax Assessment Act 1936</i> | section 45A |
| <i>Income Tax Assessment Act 1936</i> | subsection 45A(2) |
| <i>Income Tax Assessment Act 1936</i> | paragraph 45A(3)(b) |
| <i>Income Tax Assessment Act 1936</i> | section 45B |
| <i>Income Tax Assessment Act 1936</i> | paragraph 45B(2)(a) |
| <i>Income Tax Assessment Act 1936</i> | paragraph 45B(2)(b) |
| <i>Income Tax Assessment Act 1936</i> | subsection 45B(3) |
| <i>Income Tax Assessment Act 1936</i> | subsection 45B(8) |
| <i>Income Tax Assessment Act 1936</i> | section 45C |
| <i>Income Tax Assessment Act 1936</i> | section 90 |
| <i>Income Tax Assessment Act 1936</i> | subsection 95(1) |
| <i>Income Tax Assessment Act 1936</i> | paragraph 128B(3)(ga) |
| <i>Income Tax Assessment Act 1936</i> | subsection 128B(3E) |
| <i>Income Tax Assessment Act 1936</i> | section 128D |
| <i>Income Tax Assessment Act 1936</i> | Division 16K |
| <i>Income Tax Assessment Act 1936</i> | section 159GZZZK |
| <i>Income Tax Assessment Act 1936</i> | paragraph 159GZZZK(a) |
| <i>Income Tax Assessment Act 1936</i> | paragraph 159GZZZK(c) |
| <i>Income Tax Assessment Act 1936</i> | paragraph 159GZZZK(d) |
| <i>Income Tax Assessment Act 1936</i> | section 159GZZZP |
| <i>Income Tax Assessment Act 1936</i> | subsection 159GZZZP(2) |
| <i>Income Tax Assessment Act 1936</i> | section 159GZZZQ |
| <i>Income Tax Assessment Act 1936</i> | subsection 159GZZZQ(1) |
| <i>Income Tax Assessment Act 1936</i> | subsection 159GZZZQ(2) |
| <i>Income Tax Assessment Act 1936</i> | subsection 159GZZZQ(3) |
| <i>Income Tax Assessment Act 1936</i> | subsection 159GZZZQ(4) |
| <i>Income Tax Assessment Act 1936</i> | subsection 159GZZZQ(8) |
| <i>Income Tax Assessment Act 1936</i> | subsection 159GZZZQ(9) |
| <i>Income Tax Assessment Act 1936</i> | Division 1A of former Part IIIAA |
| <i>Income Tax Assessment Act 1936</i> | former subsection 160APHI(2) |

Page status: **not legally binding**

| | |
|---------------------------------------|------------------------------|
| <i>Income Tax Assessment Act 1936</i> | former subsection 160APHI(4) |
| <i>Income Tax Assessment Act 1936</i> | former section 160APHM |
| <i>Income Tax Assessment Act 1936</i> | former subsection 160APHM(2) |
| <i>Income Tax Assessment Act 1936</i> | former section 160APHN |
| <i>Income Tax Assessment Act 1936</i> | former section 160APHO |
| <i>Income Tax Assessment Act 1936</i> | section 177EA |
| <i>Income Tax Assessment Act 1936</i> | subsection 177EA(5) |
| <i>Income Tax Assessment Act 1936</i> | paragraph 177EA(5)(a) |
| <i>Income Tax Assessment Act 1936</i> | paragraph 177EA(5)(b) |
| <i>Income Tax Assessment Act 1936</i> | subsection 177EA(17) |
| <i>Income Tax Assessment Act 1997</i> | section 6-5 |
| <i>Income Tax Assessment Act 1997</i> | section 8-1 |
| <i>Income Tax Assessment Act 1997</i> | Division 67 |
| <i>Income Tax Assessment Act 1997</i> | subsection 67-25(1) |
| <i>Income Tax Assessment Act 1997</i> | subsection 67-25(1A) |
| <i>Income Tax Assessment Act 1997</i> | subsection 67-25(1B) |
| <i>Income Tax Assessment Act 1997</i> | subsection 67-25(1C) |
| <i>Income Tax Assessment Act 1997</i> | subsection 67-25(1D) |
| <i>Income Tax Assessment Act 1997</i> | subsection 67-25(1DA) |
| <i>Income Tax Assessment Act 1997</i> | subsection 70-80(1) |
| <i>Income Tax Assessment Act 1997</i> | section 104-10 |
| <i>Income Tax Assessment Act 1997</i> | subsection 104-10(4) |
| <i>Income Tax Assessment Act 1997</i> | subsection 104-165(3) |
| <i>Income Tax Assessment Act 1997</i> | subsection 106-5(2) |
| <i>Income Tax Assessment Act 1997</i> | subsection 110-55(9) |
| <i>Income Tax Assessment Act 1997</i> | subsection 116-20(1) |
| <i>Income Tax Assessment Act 1997</i> | Subdivision 115-A |
| <i>Income Tax Assessment Act 1997</i> | section 118-20 |
| <i>Income Tax Assessment Act 1997</i> | section 118-25 |
| <i>Income Tax Assessment Act 1997</i> | Division 197 |
| <i>Income Tax Assessment Act 1997</i> | section 202-5 |
| <i>Income Tax Assessment Act 1997</i> | section 202-40 |
| <i>Income Tax Assessment Act 1997</i> | paragraph 202-45(c) |
| <i>Income Tax Assessment Act 1997</i> | section 204-30 |
| <i>Income Tax Assessment Act 1997</i> | subsection 204-30(1) |
| <i>Income Tax Assessment Act 1997</i> | subsection 204-30(3) |
| <i>Income Tax Assessment Act 1997</i> | paragraph 204-30(3)(a) |

Page status: **not legally binding**

| | |
|---------------------------------------|-------------------------|
| <i>Income Tax Assessment Act 1997</i> | paragraph 204-30(3)(c) |
| <i>Income Tax Assessment Act 1997</i> | Subdivision 207-B |
| <i>Income Tax Assessment Act 1997</i> | section 207-20 |
| <i>Income Tax Assessment Act 1997</i> | subsection 207-20(1) |
| <i>Income Tax Assessment Act 1997</i> | subsection 207-20(2) |
| <i>Income Tax Assessment Act 1997</i> | subsection 207-35(1) |
| <i>Income Tax Assessment Act 1997</i> | subsection 207-35(3) |
| <i>Income Tax Assessment Act 1997</i> | subsection 207-35(4) |
| <i>Income Tax Assessment Act 1997</i> | subsection 207-35(5) |
| <i>Income Tax Assessment Act 1997</i> | subsection 207-35(6) |
| <i>Income Tax Assessment Act 1997</i> | section 207-45 |
| <i>Income Tax Assessment Act 1997</i> | paragraph 207-45(c) |
| <i>Income Tax Assessment Act 1997</i> | paragraph 207-45(d) |
| <i>Income Tax Assessment Act 1997</i> | section 207-70 |
| <i>Income Tax Assessment Act 1997</i> | subsection 207-75(2) |
| <i>Income Tax Assessment Act 1997</i> | paragraph 207-145(1)(a) |
| <i>Income Tax Assessment Act 1997</i> | paragraph 207-150(1)(a) |
| <i>Income Tax Assessment Act 1997</i> | Division 230 |
| <i>Income Tax Assessment Act 1997</i> | section 855-10 |
| <i>Income Tax Assessment Act 1997</i> | section 855-15 |
| <i>Income Tax Assessment Act 1997</i> | section 855-30 |
| <i>Income Tax Assessment Act 1997</i> | section 975-300 |
| <i>Income Tax Assessment Act 1997</i> | section 977-50 |
| <i>Income Tax Assessment Act 1997</i> | subsection 995-1(1) |

Page status: **not legally binding**

References

Previous draft:

Not previously issued as a draft

Legislative references:

- TAA 1953

Related Rulings/Determinations:

TD 2004/22

ATO references

NO: 1-QKT0S4V

ISSN: 2205-5517

BSL: PGI

ATOlaw topic: Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT event A1 – disposal of a CGT asset

Income tax ~~ Capital management ~~ 45 day rule

Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45A

Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45B

Income tax ~~ Capital management ~~ Anti avoidance rules ~~
Section 177EA

Income tax ~~ Capital management ~~ Qualified person rule

Income tax ~~ Capital management ~~ Return of capital ~~ Share buy back

© AUSTRALIAN TAXATION OFFICE FOR THE COMMONWEALTH OF AUSTRALIA

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).