


# ***CR 2022/4 - 1300 Smiles Limited - scheme of arrangement and special dividend***

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## Class Ruling

# 1300 Smiles Limited – scheme of arrangement and special dividend

### **📌 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.

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### **What this Ruling is about**

1. This Ruling sets out the income tax consequences for shareholders of 1300 Smiles Limited (1300 Smiles) who sold their 1300 Smiles shares pursuant to the scheme of arrangement which was announced on 24 August 2021 (Scheme of Arrangement).
2. Full details of this Scheme of Arrangement and the special dividend paid by 1300 Smiles on 26 November 2021 (Special Dividend) are set out in paragraphs 30 to 50 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 of this Ruling), unless otherwise indicated.

### **Who this Ruling applies to**

4. This Ruling applies to you if you:
  - were an entity other than a Founder Entity Scheme Participant as defined in the Scheme Implementation Agreement dated 23 August 2021
  - were a 1300 Smiles shareholder as at 7:00pm (AEDT) on 24 November 2021 (Scheme Record Date) who participated in the

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Scheme of Arrangement under which Adams Aus Bidco Pty Limited (Bidco) acquired 84% of the ordinary shares in 1300 Smiles

- held your 1300 Smiles shares on capital account; that is, you did not hold your 1300 Smiles 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 \$1.00 per 1300 Smiles share, and
  - disposed of your 1300 Smiles shares under the Scheme.
5. This Ruling does not apply to you if you:
- are subject to the investment manager regime in Subdivision 842-I in relation to your 1300 Smiles shares, or
  - are subject to the taxation of financial arrangements rules in Division 230 in relation to your 1300 Smiles shares.

**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**

### **Special Dividend**

7. The Special Dividend is a 'dividend' as defined in subsection 6(1).
8. The Special Dividend is a frankable distribution under section 202-40.

### **Assessability of the Special Dividend, franking credits and tax offsets**

#### ***Resident shareholders***

9. If you are a resident of Australia as defined in subsection 6(1), you include the Special Dividend in your assessable income (paragraph 44(1)(a)).
10. If you satisfy the residency requirements in section 207-75, you include the franking credits attached to the Special Dividend in your assessable income and you are entitled to a tax offset equal to the amount of those credits (section 207-20), provided you are a 'qualified person' (as defined in Division 1A of former Part IIIAA).
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)).

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13. The tax offset is refundable, subject to the refundable tax offset rules in Division 67.

### ***Non-resident shareholders***

#### *Special Dividend attributable to a permanent establishment in Australia*

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

15. If you are also a qualified person (as defined in Division 1A of former Part IIIAA), you include the amount of the franking credits attached to the Special Dividend in your assessable income and you are entitled to a tax offset equal to the amount of those credits (section 207-20 and subsection 207-75(2)). The tax offset is not refundable (subsection 67-25(1DA)).

#### *Special Dividend not attributable to a permanent establishment in Australia*

16. If you are a non-resident and the Special Dividend is not attributable to a permanent establishment in Australia, the Special Dividend is not included in your assessable income (section 128D) and you are not liable to withholding tax in respect of the Special Dividend (paragraph 128B(3)(ga)).

17. You do not include the amount of the franking credits attached to the Special Dividend in your assessable income and you are not entitled to a tax offset for those franking credits (sections 207-20 and 207-70).

### ***Qualified persons***

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

19. You will be a qualified person in relation to the Special Dividend if, during the period from 6 October 2021 to 23 November 2021 (inclusive), you held your 1300 Smiles shares for a continuous period of at least 45 days during which you did not have 'materially diminished risks of loss or opportunities for gain' (as defined in former section 160APHM) in respect of the shares.

### ***Exempting entity***

20. 1300 Smiles was not an exempting entity when the Special Dividend was paid to you, nor was it a former exempting entity at that time (Division 208).

21. Section 208-195 will not apply to exclude the application of Division 207.

### **Capital gains tax consequences**

#### ***Resident shareholders***

##### *CGT event A1*

22. CGT event A1 happened to you on 1 December 2021 (Scheme Implementation Date) when you disposed of each of your 1300 Smile shares to Bidco in accordance with the Scheme of Arrangement (section 104-10).

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#### *Capital proceeds*

23. The capital proceeds from CGT event A1 happening to a 1300 Smiles share is the \$7.00 you received in respect of the disposal of that 1300 Smiles share (subsection 116-20(1)).
24. The capital proceeds do not include the Special Dividend.

#### *Capital gain or capital loss*

25. You made a capital gain if the capital proceeds from the disposal of your 1300 Smiles share exceed its cost base (subsection 104-10(4)). The capital gain is the difference.
26. You made a capital loss if the capital proceeds from the disposal of your 1300 Smiles share are less than its reduced cost base (subsection 104-10(4)). The capital loss is the difference.

#### *Discount capital gain*

27. If you made a capital gain from the disposal of your 1300 Smiles share, you are entitled to treat the capital gain as a 'discount capital gain' provided you acquired, or are taken to have acquired, your 1300 Smiles share on or before 1 December 2020 and the other conditions of Division 115 are satisfied (subsection 115-25(1)).

#### *Non-resident shareholders*

28. If you were a non-resident just before CGT event A1 happened to your 1300 Smiles shares on 1 December 2021, you disregard any capital gain or capital loss you made as a result of CGT event A1 happening as long as your 1300 Smiles shares were not taxable Australian property (section 855-10).

#### *Anti-avoidance provisions*

29. The Commissioner will not make a determination under paragraphs 177EA(5)(b) or 204-30(3)(c) to deny the whole, or any part, of the imputation benefit you received in relation to the Special Dividend.

## **Scheme**

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30. The following description of the scheme is based on information provided by 1300 Smiles. If the scheme is not carried out as described, this Ruling cannot be relied upon.
31. Other information referred to is the Scheme Implementation Agreement released on the Australian Securities Exchange (ASX) on 24 August 2021, and the Scheme Booklet released on the ASX on 13 October 2021.
32. In this Ruling, unless otherwise defined, capitalised terms take their meaning as specified in the Scheme Implementation Agreement.

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### **Relevant entities**

#### ***1300 Smiles Limited***

33. 1300 Smiles is an Australian-resident company incorporated in 2005 and listed on the ASX since 2000. 1300 Smiles is a dental services provider and is headquartered in Townsville, Queensland.

34. 1300 Smiles has a single-class share capital structure consisting of ordinary shares. As at 12 October 2021, 1300 Smiles had 23,678,384 ordinary shares on issue.

35. 1300 Smiles shareholders included both residents and non-residents. At no time since incorporation did non-resident 1300 Smiles shareholders own 95% or more of the shares in 1300 Smiles.

36. Bidco is a wholly-owned subsidiary of Adams Group Aus Holdings Pty Limited (Holdco).

37. Holdco is owned by BGH Capital Fund 1 and the Ontario Teachers' Pension Plan Board.

### **Scheme of Arrangement**

38. On 24 August 2021, 1300 Smiles announced it had entered into a Scheme Implementation Deed with Bidco, who proposed to acquire up to 84% of the issued shares of 1300 Smiles (by way of a scheme of arrangement under Part 5.1 of the *Corporations Act 2001*) by:

- purchasing 100% of the shares held by Non-Founder Scheme Participants for \$8.00, less any special dividend, for each 1300 Smiles share, and
- purchasing 73.773% of the shares held by Founder Entity Scheme Participants for up to \$6.33, less any special dividend, for each 1300 Smiles share.

39. Under the Scheme of Arrangement, each person registered as a holder of 1300 Smiles shares on the Scheme Record Date was entitled to participate in the Scheme of Arrangement.

40. Non-Founder Scheme Participants agreed to transfer their 1300 Smiles shares to Bidco in return for receiving the Non-Founder Scheme Consideration on the Scheme Implementation Date. The Non-Founder Scheme Consideration per 1300 Smiles share was \$8.00 less any special dividend.

41. The Founder Entities exercised an election under the Scheme of Arrangement to retain 26.227% of their 1300 Smiles shares.

42. As a condition of the Scheme of Arrangement, the Founder Entities entered into a Retention and Co-Investment Deed with Holdco. Under this Deed, Holdco was granted an option to call for the Founder Entities' retained shares within 24 months after the Scheme Implementation Date.

43. If Holdco exercises the call option, the Founder Entities will be issued Class M shares in Holdco in consideration for all of their retained 1300 Smiles shares. The Founder Entities Class M shares will amount to approximately 7% interest in Holdco.

44. 1300 Smiles shares were removed from official quotation on the ASX on 2 December 2021.

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### **Special Dividend**

45. On 12 November 2021, 1300 Smiles declared a Special Dividend of \$1.00 per share which was fully franked and payable to 1300 Smiles shareholders who held their shares at 7:00pm (AEDT) 19 November 2021 (Special Dividend Record Date).
46. 1300 Smiles paid the Special Dividend on 26 November 2021.
47. The Special Dividend was subject to the Scheme of Arrangement becoming effective. The Scheme of Arrangement was not conditional on Bidco or a third party financing or facilitating payment of the Special Dividend, or Bidco or a third party being obliged to bring about the result that the Special Dividend would be received by 1300 Smiles shareholders.
48. The Special Dividend was declared and paid by 1300 Smiles in its absolute discretion. Neither Bidco nor any of its associates had any influence or control over the declaration and payment of the Special Dividend.
49. The Special Dividend complied with the requirements of the *Corporations Act 2001*, including section 254T of that Act.
50. The Special Dividend was entirely debited against 1300 Smiles' retained earnings and not against an amount standing to the credit of 1300 Smiles' share capital account. It was funded from 1300 Smiles' existing cash reserves and debt facility.

### **Key dates**

51. The following table is a summary of the key dates for the Scheme of Arrangement:

Date	Event
23 August 2021	Scheme Implementation Agreement executed
24 August 2021	Announcement Date
12 October 2021	First Court hearing (lodged Scheme Booklet with court)
14 October 2021	Dispatch Scheme booklet to 1300 Smiles' shareholders
12 November 2021	Scheme meetings
17 November 2021	Second Court hearing
17 November 2021	Effective Date
7.00pm (AEDT) 19 November 2021	Special Dividend Record Date
7:00pm (AEDT) 24 November 2021	Scheme Record Date
26 November 2021	Special Dividend Payment Date
1 December 2021	Scheme Implementation Date
2 December 2021	1300 Smiles shares delisted from ASX

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**Commissioner of Taxation**

27 January 2022

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**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.*

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**Special Dividend**

52. The term ‘dividend’ is defined in subsection 6(1) to include any distribution of money made by a company to any of its shareholders which is not debited against an amount standing to the credit of the company’s share capital account.

53. The Special Dividend is a distribution that was not debited against an amount standing to the credit of 1300 Smiles’ share capital account. Accordingly, the Special Dividend is a dividend for the purposes of subsection 6(1).



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### **Assessability of Special Dividend and withholding tax**

#### ***Resident shareholders***

54. 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)).

55. If you are a resident shareholder, the Special Dividend you received is included in your assessable income as it was paid out of profits derived by 1300 Smiles.

#### ***Non-resident shareholders***

##### ***Special Dividend attributable to a permanent establishment in Australia***

56. If you are a non-resident and the Special Dividend is attributable to a permanent establishment in Australia at or through which you carry on business (and is not paid to you in your capacity as trustee), the Special Dividend you received is included in your assessable income (subparagraph 44(1)(c)(i)) and is not subject to withholding tax (subsection 128B(3E)).

##### ***Special Dividend not attributable to a permanent establishment in Australia***

57. The assessable income of a non-resident shareholder generally includes dividends to the extent to which they are paid out of profits derived by the company from sources in Australia unless another provision excludes it from the shareholder's assessable income (subparagraph 44(1)(b)(i) and subsection 44(1)).

58. However, if you are a non-resident and the Special Dividend is not attributable to a permanent establishment in Australia at or through which you carry on business, the Special Dividend is not included in your assessable income (section 128D) and is not subject to withholding tax (paragraph 128B(3)(ga)).

### **Special Dividend can be franked**

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. The Special Dividend is a frankable distribution as none of the circumstances listed in section 202-45 apply to the Special Dividend.

### **Gross-up and tax offset**

61. If you are a qualified person in relation to the Special Dividend, your assessable income includes the amount of the franking credit (subsection 207-20(1)) and you will be entitled to a tax offset equal to the franking credit on the distribution (subsection 207-20(2)). This applies to both resident shareholders and non-resident shareholders that carry on business in Australia at or through a permanent establishment in Australia (where the dividend is attributable to the permanent establishment).

62. The assessable income of a partnership or trustee of a trust (that is not an entity taxed as a corporate tax entity and, if a trustee, that is not a complying superannuation fund) which satisfies the qualified person rule includes the amount of the franking credit attached to the Special Dividend (subsection 207-35(1)).

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63. Where you are not a qualified person in relation to the Special Dividend, you do not include the franking credit attached to the Special Dividend in your assessable income (paragraph 207-145(1)(e)) and you are not entitled to a tax offset equal to the amount of the franking credit attached to the Special Dividend (paragraph 207-145(1)(f)).

### ***Qualified person***

64. An entity must be a qualified person in relation to the dividend in order to be entitled to a tax offset in respect of the franking credit on the dividend (subsection 207-145(1), noting paragraph 207-145(1)(a) refers to former Division 1A of Part IIIAA).

65. The test of what constitutes a qualified person is provided in former subsection 160APHO(1). 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.

66. A partner in a partnership or the beneficiary of a trust cannot be a qualified person in relation to their share of the dividend unless the partnership or the trustee of the trust is also a qualified person in relation to the dividend (former section 160APHU).

### ***Related payment rule***

67. Former section 160APHN sets out examples of what constitutes the making of a related payment. Broadly, a shareholder is taken to have made or to be under an obligation to make a related payment in respect of the dividend if the shareholder has done, or is under an obligation to do, anything which has the effect of passing the benefit of the dividend to one or more other persons.

68. Under the terms of the Scheme Implementation Deed, the Scheme Consideration was reduced by the amount of the Special Dividend paid by 1300 Smiles to its shareholders. As the reduction of the Scheme Consideration is calculated with reference to the amount of the Special Dividend, it has the effect of passing the benefit of the Special Dividend from a 1300 Smiles shareholder to Bidco.

69. Therefore, a shareholder (or a partner in a partnership or a beneficiary of a trust that has an interest in 1300 Smiles shares) is taken to have made a related payment in respect of the Special Dividend.

### ***Secondary qualification period***

70. The holding period rule requires a shareholder to have held their 1300 Smiles shares, on which the Dividend was paid, 'at risk' for a continuous period of at least 45 days during the relevant qualification period (former paragraph 160APHO(2)(a)). The relevant qualification period is the secondary qualification period.

71. The secondary qualification period is the period beginning 45 days before, and ending 45 days after, the day on which a share became ex dividend (former section 160APHD).

72. Under former subsection 160APHE(1), a share becomes ex dividend on the day after the last day on which the acquisition by a person of the share entitles them to receive the dividend. The last day on which the acquisition by a person of a 1300 Smiles share

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entitled the person to receive the Special Dividend was the record date for the Special Dividend of 19 November 2021. It follows that 1300 Smiles shares became ex dividend on 20 November 2021.

#### *Holding period rule*

73. The holding period rule requires you to hold your ordinary shares at risk for a continuous period of not less than 45 days (not including the day on which the share was acquired, or the day on which the share was disposed of) during the relevant qualification period (former paragraph 160APHO(2)(a)).

74. Any days you had a materially diminished risk of loss or opportunities for gain in respect of the shares are excluded (former subsection 160APHO(3)).

75. Under former subsection 160APHM(2), you are taken to have materially diminished risks of loss and opportunities for gain on a particular day with respect to your 1300 Smiles shares if your net position on that day in relation to the shares has less than 30% of those risks and opportunities.

76. Under the Scheme of Arrangement, you no longer held your 1300 Smiles shares at risk on the Scheme Record Date (when you became committed to dispose of your 1300 Smiles shares to Bidco under the Scheme of Arrangement).

77. Accordingly, you will only be a qualified person in relation to the Special Dividend if, during the period from 6 October 2021 to 23 November 2021 (inclusive), you held your shares for a continuous period of at least 45 days (not counting the day on which you acquired your 1300 Smiles share or the day on which you disposed of your 1300 Smiles share, and not counting the days on which you had 'materially diminished risks of loss or opportunities for gain').

78. You will need to determine whether you satisfy the holding period rule having regard to your circumstances. This will require taking into account any positions entered into that have 'materially diminished risks of loss or opportunities for gain' (as defined under former 160APHM) in respect of your 1300 Smiles shares and this is outside of the scope of this Ruling.

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

#### **Refundable tax offset**

80. Your entitlement to the 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.

81. You are specifically excluded from the operation of the refundable tax offset rules pursuant to section 67-25 if you are a:

- non-complying superannuation fund or non-complying approved deposit fund (subsection 67-25(1A))
- trustee of a trust who is liable to be assessed under sections 98 or 99A (subsection 67-25(1B))

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- corporate tax entity, unless the entity is an exempt institution that is eligible for a refund, or a life insurance company that has received distributions on membership interests which were not held by the company on behalf of its shareholders (subsections 67-25(1C) and (1D)), or
- non-resident that carries on business in Australia at or through a permanent establishment of the entity in Australia (subsection 67-25(1DA)).

82. Division 63 sets out the rules on how, and in what order, tax offsets are applied against an 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 a refund of the difference (table item 40 of section 63-10).

### **Exempting entity**

83. Section 208-195 provides that Division 207 of the ITAA 1997 does not apply to a distribution by an exempting entity unless it is expressly stated to apply under Subdivision 208-G.

84. 1300 Smiles would be an exempting entity when it paid the Special Dividend if, at that time, it was effectively owned by prescribed persons (section 208-20).

85. Paragraph 208-25(1)(a) broadly provides that an entity is effectively owned by prescribed persons if not less than 95% of accountable membership interests or accountable partial interests (broadly direct and indirect ownership interests) are held by, or on behalf of, prescribed persons.

86. A company or individual will be a prescribed person if they are a foreign resident (section 208-40).

87. Paragraph 208-25(1)(b) provides that 1300 Smiles would be effectively owned by prescribed persons at a particular time if it is reasonable to conclude that, at that time, the risks involved in, and opportunities resulting from, the membership interests in 1300 Smiles not held by prescribed persons were nevertheless substantially borne by, or accrued to, prescribed persons.

88. As the risks and opportunities associated with those membership interests will be retained by Australian residents, 1300 Smiles was not effectively owned by prescribed persons at the time the Special Dividend was paid.

89. Accordingly, 1300 Smiles was not an exempting entity or a former exempting entity at the time when the Special Dividend was paid to you.

90. Therefore, section 208-195 does 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 deny the tax offset to which you are otherwise entitled pursuant to Division 207 at the time when the Special Dividend was paid.

### **Capital gains tax consequences**

#### **CGT event A1**

91. 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)).

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92. The disposal of 1300 Smiles shares under a court approved Scheme of Arrangement results in a disposal of shares, but not under a contract. Therefore, CGT event A1 happened on the Scheme Implementation Date when there was a change of ownership in a 1300 Smiles share from you to Bidco under the Scheme of Arrangement (subsections 104-10(1) and (2) and paragraph 104-10(3)(b)).

93. The time when CGT event A1 happens determines the income year in which you make a capital gain or capital loss and whether you are entitled to the CGT discount for any capital gain you made.

### **Capital proceeds**

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

95. 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.<sup>1</sup>

96. The Scheme of Arrangement was not conditional on declaration of the Special Dividend, Bidco or a third party financing or facilitating payment of the Special Dividend, or Bidco or a third party being obliged to bring about the result that the Special Dividend would be paid to Non-Founder Shareholders.

97. The Commissioner considers that the Special Dividend was not received in respect of the disposal of 1300 Smiles shares under the Scheme of Arrangement, having regard to all of the relevant circumstances. Accordingly, the Special Dividend does not form part of the capital proceeds in respect of CGT event A1 happening.

98. Therefore, the capital proceeds you received from CGT event A1 happening on disposal of each 1300 Smiles share is \$7.00.

### **Capital gain or capital loss**

99. You made a capital gain if the capital proceeds from the disposal of your 1300 Smiles share exceed its cost base (subsection 104-10(4)). The capital gain is the difference.

100. You made a capital loss if the capital proceeds from the disposal of your 1300 Smiles share are less than its reduced cost base (subsection 104-10(4)). The capital loss is the difference.

101. The cost base and reduced cost base of each 1300 Smiles share depends on your individual circumstances.

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<sup>1</sup> 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.*

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### **Discount capital gain**

102. If you make a capital gain from the disposal of your 1300 Smiles share, you are eligible to treat the capital gain as a discount capital gain provided that:

- you are an individual, a complying superannuation entity or (subject to the rules in Subdivision 115-C) a trust (section 115-10)
- the capital gain was worked out using a cost base that was calculated without reference to indexation (subsection 115-20(1)), and
- you acquired, or were taken to have acquired, your 1300 Smiles share on or before 1 December 2020, which was at least 12 months prior to CGT event A1 happening (subsection 115-25(1)).

### **Anti-avoidance provisions**

#### **Section 177EA**

103. Section 177EA is a general anti-avoidance provision that applies where one of the purposes (other than an incidental purpose) of a particular scheme is to enable a taxpayer to obtain an imputation benefit.

104. 1300 Smiles shareholders have different tax and residency profiles. The fully franked Special Dividend was paid to all existing shareholders of 1300 Smiles in proportion to the number of shares that each shareholder held on the Record Date and irrespective of their ability to use the relevant franking credits. The Special Dividend allowed 1300 Smiles shareholders to share in the accumulated profits of 1300 Smiles.

105. It is considered that the conditions for applying section 177EA are not satisfied in relation to the payment of the Special Dividend. Therefore, the Commissioner will not make a determination under paragraph 177EA(5)(b) to deny the whole, or part, of the imputation benefits received in relation to the Special Dividend.

#### **Section 204-30**

106. 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.

107. 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 words 'derive a greater benefit from franking credits' are defined in subsection 204-30(8) by reference to the ability of the members to fully use imputation benefits.

108. Under the Scheme of Arrangement, you received an imputation benefit when the Special Dividend was paid. The Special Dividend was paid equally to all 1300 Smiles shareholders and was fully franked regardless of your tax profile. Accordingly, it cannot be said that 1300 Smiles selectively directed the flow of franked dividends to those members who obtained the most benefit from the franking credits.

109. 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.

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

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

<i>Income Tax Assessment Act 1936</i>	subsection 6(1)
<i>Income Tax Assessment Act 1936</i>	subsection 44(1)
<i>Income Tax Assessment Act 1936</i>	paragraph 44(1)(a)
<i>Income Tax Assessment Act 1936</i>	subparagraph 44(1)(a)(i)
<i>Income Tax Assessment Act 1936</i>	paragraph 44(1)(b)
<i>Income Tax Assessment Act 1936</i>	subparagraph 44(1)(b)(i)
<i>Income Tax Assessment Act 1936</i>	paragraph 44(1)(c)
<i>Income Tax Assessment Act 1936</i>	subparagraph 44(1)(c)(i)
<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 1A of former Part IIIA
<i>Income Tax Assessment Act 1936</i>	former section 160APHD
<i>Income Tax Assessment Act 1936</i>	former subsection 160APHE(1)
<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 subsection 160APHO(1)
<i>Income Tax Assessment Act 1936</i>	former paragraph 160APHO(2)(a)
<i>Income Tax Assessment Act 1936</i>	former subsection 160APHO(3)
<i>Income Tax Assessment Act 1936</i>	former section 160APHT
<i>Income Tax Assessment Act 1936</i>	former subsection 160APHT(2)
<i>Income Tax Assessment Act 1936</i>	former section 160APHU
<i>Income Tax Assessment Act 1936</i>	former subsection 160APHU(1)
<i>Income Tax Assessment Act 1936</i>	section 177EA
<i>Income Tax Assessment Act 1936</i>	paragraph 177EA(5)(b)
<i>Income Tax Assessment Act 1997</i>	Division 63
<i>Income Tax Assessment Act 1997</i>	section 63-10
<i>Income Tax Assessment Act 1997</i>	Division 67
<i>Income Tax Assessment Act 1997</i>	section 67-25
<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)

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<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>	section 104-10
<i>Income Tax Assessment Act 1997</i>	subsection 104-10(1)
<i>Income Tax Assessment Act 1997</i>	subsection 104-10(2)
<i>Income Tax Assessment Act 1997</i>	subsection 104-10(3)
<i>Income Tax Assessment Act 1997</i>	paragraph 104-10(3)(b)
<i>Income Tax Assessment Act 1997</i>	subsection 104-10(4)
<i>Income Tax Assessment Act 1997</i>	Division 115
<i>Income Tax Assessment Act 1997</i>	section 115-10
<i>Income Tax Assessment Act 1997</i>	subsection 115-20(1)
<i>Income Tax Assessment Act 1997</i>	subsection 115-25(1)
<i>Income Tax Assessment Act 1997</i>	Subdivision 115-C
<i>Income Tax Assessment Act 1997</i>	subsection 116-20(1)
<i>Income Tax Assessment Act 1997</i>	section 202-40
<i>Income Tax Assessment Act 1997</i>	section 202-45
<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>	paragraph 204-30(3)(c)
<i>Income Tax Assessment Act 1997</i>	subsection 204-30(8)
<i>Income Tax Assessment Act 1997</i>	Division 207
<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>	section 207-45
<i>Income Tax Assessment Act 1997</i>	section 207-70
<i>Income Tax Assessment Act 1997</i>	section 207-75
<i>Income Tax Assessment Act 1997</i>	subsection 207-75(2)
<i>Income Tax Assessment Act 1997</i>	subsection 207-145(1)
<i>Income Tax Assessment Act 1997</i>	paragraph 207-145(1)(a)
<i>Income Tax Assessment Act 1997</i>	paragraph 207-145(1)(e)
<i>Income Tax Assessment Act 1997</i>	paragraph 207-145(1)(f)
<i>Income Tax Assessment Act 1997</i>	Division 208
<i>Income Tax Assessment Act 1997</i>	section 208-20
<i>Income Tax Assessment Act 1997</i>	paragraph 208-25(1)(a)
<i>Income Tax Assessment Act 1997</i>	paragraph 208-25(1)(b)



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<i>Income Tax Assessment Act 1997</i>	section 208-40
<i>Income Tax Assessment Act 1997</i>	subsection 208-45(1)
<i>Income Tax Assessment Act 1997</i>	subsection 208-45(2)
<i>Income Tax Assessment Act 1997</i>	Subdivision 208-G
<i>Income Tax Assessment Act 1997</i>	section 208-195
<i>Income Tax Assessment Act 1997</i>	Division 230
<i>Income Tax Assessment Act 1997</i>	Subdivision 842-I
<i>Income Tax Assessment Act 1997</i>	section 855-10
<i>Income Tax Assessment Act 1997</i>	subsection 855-10(1)
<i>Income Tax Assessment Act 1997</i>	section 855-15
<i>Income Tax Assessment Act 1997</i>	section 855-25
<i>Income Tax Assessment Act 1997</i>	section 855-30
<i>Income Tax Assessment Act 1997</i>	section 960-195
<i>Income Tax Assessment Act 1997</i>	section 977-50
<i>Income Tax Assessment Act 1997</i>	subsection 995-1(1)

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2010/4

*Legislative references:*

- TAA 1953
  - Corporations Act 2001 Pt 5.1
  - Corporations Act 2001 254T
- 

ATO references

NO: 1-RQZ5H8A  
 ISSN: 2205-5517  
 BSL: PGI  
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