CR 2022/75 - Uniti Group Limited - scheme of arrangement and special dividend

Status: **legally binding**

Class Ruling

Uniti Group Limited – scheme of arrangement and special dividend

Relying on this Ruling

This publication 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. This Ruling sets out the income tax consequences for the holders of ordinary shares in Uniti Group Limited (Uniti) in relation to the payment of a special dividend by Uniti (Permitted Dividend) and the disposal of the ordinary shares in Uniti to MBC BidCo Pty Ltd (MBC) on 4 August 2022 (Implementation Date).

2. Details of this scheme are set out in paragraphs 39 to 55 of this Ruling.

3. All legislative references are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Note: By issuing this Ruling, the ATO is not endorsing this scheme. Potential users must form their own view about the scheme.

Who this Ruling applies to

4. This Ruling applies to you if you:

- received the Permitted Dividend from Uniti
- were a holder of an ordinary share in Uniti on 28 July 2022 (Scheme Record Date)
- are not exempt from Australian income tax
- held your Uniti shares on capital account – that is, your Uniti shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)), and
- did not acquire your Uniti shares under an employee share scheme.

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 39 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 2022 to 30 June 2023.

Ruling

Permitted Dividend paid by Uniti Group Limited

7. The Permitted Dividend is a 'dividend' as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936).

8. The Permitted Dividend is a frankable distribution under section 202-40.

Assessability of the Permitted Dividend, franking credits and tax offset

Resident shareholders

9. If you are a resident of Australia as defined in subsection 6(1) of the ITAA 1936, you include the Permitted Dividend in your assessable income (subparagraph 44(1)(a)(i) of the ITAA 1936).

10. If you satisfy the residency requirement in section 207-75, you include the franking credits on the Permitted Dividend in your assessable income, and you are entitled to a tax offset equal to the amount of those franking credits (section 207-20), provided you are a 'qualified person' (as defined in Division 1A of former Part IIIAA of the ITAA 1936).

11. If you received the Permitted 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 on the Permitted 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 Permitted Dividend flows indirectly through the partnership or trust to you, you include your share of the Permitted Dividend in your assessable income and you are entitled to a tax offset equal to your share of the franking credits on the Permitted Dividend, provided both you and the partnership or trust (as relevant) are each a qualified person (section 207-45 and former subsection 160APHU(1) of the ITAA 1936).

13. The franking credit tax offset is subject to the refundable tax offset rules in Division 67, provided you are not excluded by the operation of section 67-25.

Non-resident shareholders

Permitted Dividend attributable to a permanent establishment in Australia

14. If you are a non-resident and the Permitted Dividend is attributable to a permanent establishment in Australia, you include the Permitted Dividend in your assessable income

(paragraph 44(1)(c) of the ITAA 1936) and you are not liable to pay withholding tax in respect of the Permitted 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 on the Permitted Dividend in your assessable income and you are entitled to a tax offset equal to the amount of those franking credits (section 207-20 and subsection 207-75(2)).

16. The franking credit tax offset is not refundable (subsection 67-25(1DA)).

Permitted Dividend not attributable to a permanent establishment in Australia

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

18. You do not include the amount of the franking credits on the Permitted 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 person

19. Paragraph 207-145(1)(a) refers to Division 1A of former Part IIIAA of the ITAA 1936, which contains the conditions you must satisfy to be a 'qualified person' in relation to a franked distribution you have received. The main way in which you can be a qualified person is by satisfying the holding period rule.

20. The Permitted Dividend constitutes a 'related payment' for the purposes of former section 160APHN of the ITAA 1936. As the consideration paid by MBC for acquiring the Uniti shares was reduced by the amount of the Permitted Dividend, this reduction has the effect of passing the benefit of the Permitted Dividend from the shareholders of Uniti to MBC (former subsection 160APHN(2), former paragraph 160APHN(3)(f) and former paragraphs 160APHN(4)(c) and (d) of the ITAA 1936).

21. Therefore, you are taken to have made a related payment in respect of the Permitted Dividend.

22. You will satisfy the holding period rule in relation to the Permitted Dividend only if you held your Uniti shares for a continuous period of at least 45 days during the secondary qualification period for the Permitted Dividend (former paragraphs 160APHO(1)(b) and (2)(a) of the ITAA 1936).

23. The secondary qualification period begins on the 45th day before, and ends on the 45th day after, the day on which the shares became ex dividend (former section 160APHD of the ITAA 1936).

24. Former subsection 160APHE(1) of the ITAA 1936 states that a share in respect of which a dividend is to be paid becomes ex dividend on the day after the last day on which the acquisition by a person of the share will entitle the person to receive the dividend.

25. In relation to the Permitted Dividend, during the secondary qualification period from 11 June 2022 to 27 July 2022 (inclusive), you must have held each of your Uniti shares for a continuous period of at least 45 days (not counting the day on which you acquired the Uniti share or the day on which you disposed of the Uniti share, and not counting the days, if any, on which you had 'materially diminished risks of loss or

opportunities for gain' (as defined in former section 160APHM of the ITAA 1936) in respect of the Uniti share).

26. You had materially diminished risks of loss or opportunities for gain on and after the Scheme Record Date (28 July 2022), when you became committed to disposing of your shares in Uniti in exchange for the scheme consideration. Therefore, the secondary qualification period ended on 27 July 2022.

27. The small shareholder exception in former section 160APHT of the ITAA 1936 does not apply as the Permitted Dividend is a related payment (former subsection 160APHT(2) of the ITAA 1936). Therefore, a Uniti shareholder who is an individual and who has total franking credit tax offsets which do not exceed $5,000 for the year of income ended 30 June 2023 must still satisfy the holding period rule in relation to the Permitted Dividend.

Exempting entity and former exempting entity

28. Uniti was not an exempting entity (section 208-20), or a former exempting entity (section 208-50), at the time when it paid the Permitted Dividend to you.

29. Therefore, section 208-195 will not apply to deny the inclusion in your assessable income of the amount of the franking credit on the Permitted Dividend you received, nor to deny the franking credit tax offset to which you are otherwise entitled, under Division 207.

Integrity rules in relation to franking credits

30. The Commissioner will not make a determination to deny the whole, or any part, of the imputation benefits you received in relation to the Permitted Dividend under:

- paragraph 177EA(5)(b) of the ITAA 1936 because the purpose condition in paragraph 177EA(3)(e) of the ITAA 1936 is not satisfied, and
- paragraph 204-30(3)(c) because there is no streaming of distributions.

Capital gains tax consequences

CGT event A1 happened on the disposal of each Uniti Group Limited share

31. CGT event A1 happened on the Implementation Date (4 August 2022) when you disposed of each of your Uniti shares to MBC (section 104-10).

Resident shareholders

32. The capital proceeds you received in respect of CGT event A1 happening to your Uniti shares is the money you received, being $5 for each Uniti share (subsection 116-20(1)). This amount includes the Permitted Dividend of 10.5c per Uniti share.

33. You made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a Uniti share exceeded the cost base of that Uniti share (subsection 104-10(4)).

34. If you made a capital gain from CGT event A1 happening, you can treat it as a discount capital gain provided that the conditions of Subdivision 115-A are met.

35. You made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of a Uniti share were less than the reduced cost base of that Uniti share (subsection 104-10(4)).

36. Any capital gain made when CGT event A1 happened to each of your Uniti shares is reduced by the amount of the Permitted Dividend that is included in your assessable income under section 44 of the ITAA 1936 (subsection 118-20(1)).

37. Where the amount of the Permitted Dividend exceeds the capital gain, you cannot make a capital loss from CGT event A1 happening (subsection 118-20(2)).

Foreign resident shareholders

38. If you were a foreign resident, or the trustee of a foreign trust for CGT purposes as defined in subsection 995-1(1), on the Implementation Date, you disregard a capital gain or capital loss you made from CGT event A1 happening to your Uniti shares, pursuant to section 855-10, unless:

- you have used your Uniti shares at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- you are an individual and your Uniti shares were covered by subsection 104-165(3) (choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident) (table item 5 of section 855-15).

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.

Uniti Group Limited

40. Uniti is a company incorporated in Australia, which was listed on the Australian Securities Exchange.

41. Uniti is the head company of an income tax consolidated group under Part 3-90.

42. As at the Implementation Date, Uniti had 686,731,193 ordinary shares on issue.

MBC BidCo Pty Ltd

43. MBC is a company incorporated in Australia and is indirectly wholly-owned by MBC TopCo Pty Ltd (TopCo).

44. TopCo is owned by a consortium of Australian and foreign institutional investors.

Acquisition of Uniti Group Limited shares by MBC BidCo Pty Ltd

45. On 13 April 2022, Uniti entered into a Scheme Implementation Deed with MBC. Under the Deed, Uniti agreed to propose to the shareholders of Uniti that Uniti and its shareholders enter into a scheme of arrangement under Part 5.1 of the *Corporations Act 2001* pursuant to which MBC would acquire all of the ordinary shares in Uniti for $5 per

share. This amount would be reduced by a permitted dividend of up to 11c per share which Uniti declared and paid on or before the Implementation Date.

46. On 15 July 2022, a resolution in favour of the scheme of arrangement was passed by the shareholders of Uniti as required by subparagraph 411(4)(a)(ii) of the *Corporations Act 2001*.

47. The scheme of arrangement was approved by the Federal Court of Australia under paragraph 411(4)(b) of the *Corporations Act 2001* on 21 July 2022.

48. On the Implementation Date (4 August 2022), MBC acquired all of the shares in Uniti. Shareholders of Uniti received $4.895 for each Uniti share they disposed of to MBC.

49. Uniti was removed from the official list of the Australian Securities Exchange on 5 August 2022.

Permitted Dividend

50. On 29 June 2022, the directors of Uniti declared the Permitted Dividend to be paid to shareholders who held their Uniti shares on 25 July 2022 (the Permitted Dividend Record Date).

51. The Permitted Dividend consisted of a fully franked amount of 10.5c in respect of each Uniti share.

52. The Permitted Dividend was paid by Uniti on 4 August 2022.

53. The Permitted Dividend was funded by a loan from MBC. The entire amount of the Permitted Dividend was debited to Uniti's retained earnings account.

Other information

54. All shares in Uniti were issued after 19 September 1985.

55. On the Implementation Date, the sum of the market values of the assets of Uniti that were 'taxable Australian real property' (as defined in section 855-20) did not exceed the sum of the market values of the assets of Uniti that were not taxable Australian real property.

Commissioner of Taxation
17 August 2022

Status: **not legally binding**

References

Related Rulings/Determinations:

TR 2006/10, TD 2010/4

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 44
- ITAA 1936 44(1)(a)(i)
- ITAA 1936 44(1)(c)
- ITAA 1936 128B(3E)
- ITAA 1936 128(3)(ga)
- ITAA 1936 128D
- ITAA 1936 former Pt IIIAA Div 1A
- ITAA 1936 former 160APHD
- ITAA 1936 former 160APHE(1)
- ITAA 1936 former 160APHM
- ITAA 1936 former 160APHN
- ITAA 1936 former 160APHN(2)
- ITAA 1936 former 160APHN(3)(f)
- ITAA 1936 former 160APHN(4)(c)
- ITAA 1936 former 160APHN(4)(d)
- ITAA 1936 former 160APHO(1)(b)
- ITAA 1936 former 160APHO(2)(a)
- ITAA 1936 former 160APHT
- ITAA 1936 former 160APHT(2)
- ITAA 1936 former 160APHU(1)
- ITAA 1936 177EA(5)(b)
- ITAA 1936 177EA(3)(e)
- ITAA 1997 Div 67
- ITAA 1997 67-25
- ITAA 1997 67-25(1DA)
- ITAA 1997 104-10
- ITAA 1997 104-10(4)
- ITAA 1997 104-165(3)
- ITAA 1997 Subdiv 115-A
- ITAA 1997 116-20(1)
- ITAA 1997 118-20(1)
- ITAA 1997 118-20(2)
- ITAA 1997 202-40
- ITAA 1997 204-30(3)(c)
- ITAA 1997 Div 207
- ITAA 1997 207-20
- ITAA 1997 207-35(1)
- ITAA 1997 207-45
- ITAA 1997 207-70
- ITAA 1997 207-75
- ITAA 1997 207-75(2)
- ITAA 1997 207-145(1)(a)
- ITAA 1997 208-20
- ITAA 1997 208-50
- ITAA 1997 208-195
- ITAA 1997 Div 230
- ITAA 1997 Pt 3-90
- ITAA 1997 855-10
- ITAA 1997 855-15
- ITAA 1997 855-20
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- Corporations Act 2001 Pt 5.1
- Corporations Act 2001 411(4)(a)(ii)
- Corporations Act 2001 411(4)(b)

ATO references

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