

CR 2019/74 - AIRR Holdings Limited - Scheme of Arrangement and Special Dividend



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Class Ruling

AIRR Holdings Limited – Scheme of Arrangement and Special Dividend

❶ Relying on this Ruling

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

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

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

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What this Ruling is about

1. This Ruling sets out the income tax consequences of the dividends paid by AIRR Holdings Limited (AIRR) and the Scheme of Arrangement implemented between AIRR and Elders Limited (Elders).
2. Full details of the scheme to which this Ruling relates are set out in paragraphs 40 to 71 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you were an AIRR shareholder on 6 November 2019 (Scheme Record Date) who participated in the Scheme of Arrangement under which Elders acquired 100% of the shares in AIRR and you:

- are a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) and are not exempt from income tax
- acquired your AIRR shares on or after 20 September 1985

- held your AIRR shares on capital account that is, your AIRR shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1))
- received the Final Dividend, Special Dividend and Scheme Consideration.

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 40 to 71 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 to the income year ended 30 June 2020.

Ruling

Final Dividend

7. The Final Dividend paid to AIRR shareholders is a 'dividend' as defined in subsection 6(1) of the ITAA 1936.
8. The Final Dividend is a frankable distribution.
9. The Commissioner does not consider the Final Dividend to be included in the capital proceeds from the disposal of AIRR shares.

Special Dividend

10. The Special Dividend paid to AIRR shareholders is a 'dividend' as defined in subsection 6(1) of the ITAA 1936.
11. The Special Dividend is a frankable distribution.
12. The Commissioner considers the Special Dividend to be included in the capital proceeds from the disposal of AIRR shares.

Assessability of the Final Dividend and the Special Dividend

13. The Final Dividend and Special Dividend will be included in your assessable income.¹
14. Additionally, you will:
- have to include the amount of the franking credits on the Final Dividend and the Special Dividend in your assessable income, and
 - be entitled to a tax offset equal to the amount of the franking credits on the Final Dividend and the Special Dividend

in the income year the Final Dividend and the Special Dividend were paid, subject to you being a 'qualified person' in relation to the Final Dividend and the Special Dividend.

¹ Subsection 44(1) of the ITAA 1936.

15. If you received the Final Dividend and 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, you will include an amount equal to the franking credit attached to the Final Dividend and the Special Dividend in your assessable income², subject to you being a 'qualified person' in relation to the Final Dividend and the Special Dividend.

16. The relevant members of a partnership or trust to whom a distribution flows indirectly through the partnership or trust, are entitled to a tax offset equal to their share of the franking credit attached to the distribution included in the assessable income of the partnership or trust.³

Qualified persons

Final Dividend

17. The payment of the Final Dividend constitutes a 'related payment' for the purposes of former section 160APHN of the ITAA 1936.

18. Accordingly, for the purposes of Division 1A of former Part IIIAA of the ITAA 1936, to be a 'qualified person' in relation to the Final Dividend, each AIRR shareholder must have held their AIRR shares at risk for a continuous period of at least 45 days during the secondary qualification period.⁴

19. That is, you are capable of being a qualified person in relation to the Final Dividend if, during the period from 31 July 2019 to 29 October 2019 (inclusive), you held your AIRR shares at risk for a continuous period of at least 45 days (not counting the day on which the AIRR share was acquired or the day of the disposal of the AIRR share).

Special Dividend

20. The payment of the Special Dividend constitutes a 'related payment' for the purposes of former section 160APHN of the ITAA 1936.

21. Accordingly, for the purposes of Division 1A of former Part IIIAA of the ITAA 1936, to be a 'qualified person' in relation to the Special Dividend, each AIRR shareholder must have held their AIRR shares at risk for a continuous period of at least 45 days during the secondary qualification period.⁵

22. That is, you are capable of being a qualified person in relation to the Special Dividend, if during the period from 18 September 2019 to 5 November 2019 (inclusive), you held your AIRR shares at risk for a continuous period of at least 45 days (not counting the day on which the AIRR share was acquired or the day of the disposal of the AIRR share).

23. The Scheme of Arrangement will cause the AIRR shares to be no longer held at risk as of 6 November 2019, the Scheme Record Date.

² Subsection 207-35(1).

³ Section 207-45.

⁴ Former section 160APHO of the ITAA 1936.

⁵ Former section 160APHO of the ITAA 1936.

Refundable tax offset

24. Your entitlement to the franking credit tax offsets under Division 207 in relation to the Special Dividend is subject to the refundable tax offset rules in Division 67, provided you are not excluded by the operation of section 67-25.

25. There are a range of taxpayers specifically excluded from the operation of the refundable tax offset rules under section 67-25.

The anti-avoidance provisions

26. The Scheme of Arrangement is not a scheme in the nature of, or a scheme substantially having the effect of, dividend stripping within the meaning of section 177E of the ITAA 1936.

27. The Commissioner will not make a determination under paragraph 177EA(5)(b) of the ITAA 1936 to deny the whole, or any part, of the imputation benefit received in relation to the Special Dividend.

28. The Commissioner will not make a determination under paragraph 204-30(3)(c) to deny the whole, or any part, of the imputation benefit received in relation to the Special Dividend.

CGT consequences***CGT event A1***

29. CGT event A1 happened to you when you disposed of your AIRR shares to Elders pursuant to the Scheme of Arrangement on 13 November 2019 (Scheme Implementation Date).⁶

Capital proceeds

30. The capital proceeds will be the Scheme Consideration received, being the Cash Consideration and the market value of any new Elders shares received (the Scrip Consideration), and the Special Dividend.

Capital gain or capital loss

31. You will make a capital gain if the capital proceeds from the disposal of an AIRR share exceed its cost base. The capital gain is the amount of the excess.

32. You will make a capital loss if the capital proceeds from the disposal of an AIRR share are less than its reduced cost base. The capital loss is the amount of the difference.

CGT anti-overlap provisions

33. A capital gain made by you from CGT event A1 when you disposed of your AIRR shares is reduced by the amount of the Special Dividend that is included in your assessable income. This has the effect of reducing the capital gain (but not below zero) by the amount that is assessable under another provision.⁷

⁶ Section 104-10.

⁷ Section 118-20.

34. A capital gain is not reduced by the amount of the franking credit (attached to the Special Dividend) that is included in your assessable income under section 207-20.⁸

Availability of scrip for scrip rollover if a capital gain is made

35. If you made a capital gain on the disposal of your AIRR share and received Scrip Consideration, whether wholly or partly, as Scheme Consideration, you may choose scrip for scrip rollover for the part of the capital gain that is referable to the new Elders shares.⁹

Ineligible proceeds

36. Where you received both Cash Consideration and Scrip Consideration, only the part of the capital gain referable to the Scrip Consideration will be eligible to be disregarded under scrip for scrip rollover.¹⁰

Rollover chosen

37. If you choose scrip for scrip rollover, the capital gain made from the disposal of your AIRR share is disregarded to the extent that you received replacement Elders shares in respect of your disposal of AIRR shares.¹¹

38. You will be taken to have acquired your Elders shares on the date you originally acquired your AIRR shares.¹²

39. The first element of the cost base and reduced cost base of each Elders share received is equal to that part of the cost base that is reasonably attributable to the Elders shares received.¹³

Scheme

40. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

Background

41. AIRR is an unlisted public company registered on 25 February 2008.

42. AIRR is an Australian resident for tax purposes.

43. AIRR carries on a business of supplying rural products and related services to agricultural retailers in Australia.

44. As at 30 June 2018, AIRR has 14.5 million ordinary shares on issue.

45. AIRR does not directly or indirectly own any real property.

46. Elders is a public company listed on the Australian Securities Exchange registered on 9 June 1955.

⁸ Paragraph 118-20(1B)(b).

⁹ Section 124-780.

¹⁰ Subsection 124-790(1).

¹¹ Subsection 124-785(1).

¹² Section 115-30.

¹³ Subsections 124-785(2) to (4).

47. Elders is an Australian resident for tax purposes.

48. Elders is an agribusiness company that provides products such as livestock, farm supplies and grain as well as financial services to the farming community in Australia and New Zealand.

The transaction

49. On 15 July 2019, AIRR entered into a Scheme Implementation Deed with Elders in relation to a proposed takeover of AIRR by Elders.

50. The takeover was implemented by a Scheme of Arrangement entered into by AIRR and each of its shareholders under Part 5.1 of the *Corporations Act 2001*.

51. Under the Scheme of Arrangement, each share in AIRR held by an AIRR shareholder was transferred to Elders resulting in AIRR becoming a wholly owned subsidiary of Elders.

52. In consideration for each share (Scheme Consideration), Elders paid AIRR shareholders a combination of cash (Cash Component) and shares in Elders (Scrip Component).

53. AIRR shareholders were able to make elections to receive the Scheme Consideration wholly in shares or wholly in cash, in accordance with the election requirements in the Scheme Explanatory Booklet.

54. The elections were subject to thresholds or 'caps' on the maximum aggregate amount of Cash Consideration or Scrip Consideration that can be paid as Scheme Consideration. Elders has prescribed aggregate amounts of cash to be paid and shares to be paid under the Scheme of Arrangement.

55. An AIRR shareholder who did not make an election received the Default Consideration. The Default Consideration per share was:

- the Cash Component: the Adjusted Cash Amount of \$2.575 (calculated as \$5.425 less the sum of the Final Dividend (\$0.25) and Special Dividend (\$2.60) paid under the Scheme), and
- the Scrip Component: being 0.8997 Elders share
(calculated as $[\$10.85 \div 2] \div 6.03$)

56. In the event the Share Consideration cap was exceeded, the excess was paid in cash. A 'scaleback' calculation and adjustment was undertaken to ensure the cash and scrip mixture required by Elders was achieved. For those shareholders who elected to receive all shares, a pro-rata payment of cash was made in place of shares, to the extent the aggregate elections exceeded the Share Consideration cap.

57. In the event the Cash Consideration cap was exceeded, the excess was issued in shares. A 'scaleback' calculation and subsequent adjustment was undertaken to ensure the cash and scrip mixture required by Elders is achieved. For those shareholders who elected to receive all cash, a pro-rata issuance of shares was made in place of cash to the extent the aggregate elections exceeded the Share Consideration cap.

58. As noted in paragraph 55 of this Ruling, the Scheme Consideration was reduced to the extent of the Final Dividend and the Special Dividend paid by AIRR to its shareholders prior to the takeover.

59. At a shareholder meeting on 25 October 2019, AIRR shareholders approved the Scheme of Arrangement.

60. On 29 October 2019, the Federal Court of Australia approved the Scheme of Arrangement and provided orders pursuant to Part 5.1 of the Corporations Act 2001 (Effective Date).
61. Entitlements to the Scheme Consideration were determined on 6 November 2019 (Scheme Record Date).
62. Payment of Scheme Consideration to AIRR shareholders and the transfer of AIRR shares to Elders occurred on 13 November 2019 (Scheme Implementation Date).

Dividends

63. On 20 August 2019, AIRR declared to pay a fully franked dividend of \$0.25 per share out of accumulated profits prior to the takeover (Final Dividend).
64. Entitlement to the final dividend was determined on 13 September 2019 (Final Dividend Record Date) meaning the ex-dividend date for the Final Dividend was 14 September 2019 (Ex-Final Dividend Date).
65. Payment of the Final Dividend occurred on 27 September 2019.
66. AIRR paid a further fully franked dividend of \$2.60 prior to the takeover (Special Dividend) out of accumulated profits.
67. The Special Dividend was funded by an interest-free loan provided by Elders under the Scheme Implementation Deed.
68. The payment of the Special Dividend was wholly contingent upon implementation of the scheme.
69. Entitlements to the Special Dividend were determined on 1 November 2019 (Special Dividend Record Date) meaning the ex-dividend date for the Special Dividend was 2 November 2019 (Ex-Special Dividend Date).
70. Payment of the Special Dividend occurred on 13 November 2019.
71. Neither the Final Dividend nor the Special Dividend were debited to AIRR's share capital account.

Appendix – Explanation

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

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Qualified persons

72. Paragraph 207-145(1)(a) which refers to former Division 1A of Part IIIAA of the ITAA 1936 provides the statutory tests that must be satisfied for a taxpayer to be a 'qualified person' in relation to a franked distribution they have received and thus be entitled to a tax offset for the franking credit on the distribution.

73. Former section 160APHU of the ITAA 1936 provides that a partner in a partnership or the beneficiary of a trust cannot be a qualified person in relation to a dividend unless the partnership or the trustee of the trust is also a qualified person in relation to the dividend.

74. The test of what constitutes a 'qualified person' is set out in former subsection 160APHO(1) of the ITAA 1936. Broadly, if the AIRR shareholders were not under an obligation to make a related payment in relation to the dividend, they are required to satisfy the holding period requirement within the primary qualification period. If the AIRR shareholders were under an obligation to make a related payment in relation to the dividend, they are required to satisfy the holding period requirement within the secondary qualification period.

Related payments

75. In order to determine the relevant qualification period, it is necessary to determine whether, under the Scheme of Arrangement, an AIRR shareholder has made, was under

an obligation to make, or is likely to make, a 'related payment' in respect of the dividend they receive (former subsection 160APHN(2) of the ITAA 1936).

76. Examples of what constitutes the making of a related payment for the purposes of Division 1A of former Part IIIAA are set out in former section 160APHN of the ITAA 1936. Broadly, a related payment is where a scheme shareholder has done, or is obliged to do, anything having the effect of passing the benefit of the dividend to one or more other persons.

77. Under the terms of the Scheme of Arrangement, the Scheme Consideration (paid by Elders) is reduced by the amount of both the Final Dividend and the Special Dividend paid by AIRR to AIRR shareholders. The reduction of the Scheme Consideration payable by Elders has the effect of passing the benefit of the Final Dividend and the Special Dividend from an AIRR shareholder to Elders. Therefore, you (or a partner in a partnership or a beneficiary of a trust that has an interest in AIRR shares) are taken to have made a related payment in respect of both the Final Dividend and the Special Dividend.

Holding period

78. The holding period rule requires you to hold the AIRR shares, on which the Final Dividend and the Special Dividend were paid, 'at risk' for a continuous period of at least 45 days during the relevant qualification period.¹⁴ The relevant qualification period is the secondary qualification period, beginning on the 45th day before, and ending on the 45th day after, the day on which the share became ex-dividend.¹⁵

Final Dividend

79. The eligibility for the Final Dividend was determined on the Final Dividend Record Date (13 September 2019), being the last day on which acquisition by a person of an AIRR share entitled the person to receive the Final Dividend. Accordingly, the ex-dividend date of an AIRR share is 14 September 2019.

80. As a recipient of the Final Dividend, you would need to have held your AIRR shares at risk for a continuous period of at least 45 days during the period from 31 July 2019 to 29 October 2019 in order to be a 'qualified person' for the purposes of Division 1A of former Part IIIAA. The dates of acquisition and disposal of your AIRR shares are not included in the relevant 45 day period.¹⁶

81. You will need to determine whether you satisfy this holding period requirement having regard to your personal circumstances (which will require you to take into account any positions you may have entered into that has 'materially diminished risks of loss or opportunities for gain'¹⁷ in respect of your AIRR shares) and is outside of the scope of this Ruling.

Special Dividend

82. The eligibility for the Special Dividend was determined on the Special Dividend Record Date (1 November 2019), being the last day on which acquisition by a person of an

¹⁴ Former paragraph 160APHO(2)(a) of the ITAA 1936.

¹⁵ Former section 160APHE of the ITAA 1936.

¹⁶ Former paragraph 160APHO(2)(a) of the ITAA 1936.

¹⁷ As defined under former 160APHM of the ITAA 1936.

AIRR share entitled the person to receive the Special Dividend. Accordingly, the ex-dividend date of an AIRR share is 2 November 2019.

83. However, once you had been identified as a AIRR shareholder eligible to receive the Scheme Consideration, on the Scheme Record Date (6 November 2019), you would no longer be considered to hold your AIRR shares 'at risk' for the purposes of Division 1A of former Part IIIAA of the ITAA 1936 because, at that time, you had committed to dispose of your AIRR shares in exchange for the known Scheme Consideration. This means that as at and from the Scheme Record Date, you no longer held your AIRR shares 'at risk'. The days from 6 November 2019 and onward are not counted towards the 45 day holding period.

84. As a recipient of the Special Dividend, you would need to have held your AIRR shares at risk for a continuous period of at least 45 days during the period from 18 September 2019 to 5 November 2019 in order to be a 'qualified person' for the purposes of Division 1A of former Part IIIAA of the ITAA 1936. The dates of acquisition and disposal of your AIRR shares are not included in the relevant 45-day period.¹⁸

85. You will need to determine whether you satisfy this holding period requirement having regard to your personal circumstances (which will require you to take into account any positions you may have entered into that has 'materially diminished risks of loss or opportunities for gain'¹⁹ in respect of your AIRR shares) and is outside of the scope of this Ruling.

Refundable tax offset

86. Your entitlement to the franking credit tax offsets under Division 207 in relation to the Final Dividend and the Special Dividend, is subject to the refundable tax offset rules in Division 67, provided you are not excluded by the operation of section 67-25.

87. Certain taxpayers are specifically excluded from the operation of the refundable tax offset rules under section 67-25. These excluded entities include:

- non-complying superannuation funds or non-complying approved deposit funds
- trustees of a trust who are liable to be assessed under sections 98 or 99A of the ITAA 1936
- corporate tax entities, unless the entity is an exempt institution that is eligible for a refund, or a life insurance company that has received distributions on membership interests which were not held by the company on behalf of its shareholders, and
- non-resident entities carrying on business in Australia at or through a permanent establishment.

88. Division 63 sets out the rules on how, and in what order, tax offsets are applied against income tax liability. Where a tax offset that is subject to the refundable tax offset rules in Division 67 exceeds the income tax liability, the scheme shareholder can get a refund of the remaining amount (item 40 of section 63-10).

¹⁸ Former paragraph 160APHO(2)(a) of the ITAA 1936.

¹⁹ As defined under former 160APHM of the ITAA 1936.

The anti-avoidance provisions***Section 177E of the ITAA 1936***

89. Section 177E of the ITAA 1936 is an anti-avoidance provision which applies to schemes which are or substantially have the effect of dividend stripping.

90. Whilst two dividends are being paid as a part of the Scheme of Arrangement, there is no evidence to support the scheme being planned in such a manner whereby the predominant purpose can be said to be one of avoiding tax on a distribution.

91. The Scheme of Arrangement is not a scheme in the nature of, or a scheme substantially having the effect of, dividend stripping within the meaning of section 177E of the ITAA 1936.

Section 177EA of the ITAA 1936

92. Section 177EA of the ITAA 1936 is a general anti-avoidance provision that applies to a wide range of schemes designed to obtain imputation benefits.

93. AIRR is a corporate tax entity. The transfer of the AIRR shares under the Scheme of Arrangement is a scheme for the disposition of membership interests. The Final Dividend and the Special Dividend are frankable distributions paid to shareholders of AIRR as part of this scheme and who could reasonably be expected to receive imputation benefits. Therefore, the conditions of paragraphs 177EA(3)(a) to (d) of the ITAA 1936 are satisfied.

94. Accordingly, the issue is whether, having regard to the relevant circumstances of the scheme (as provided by subsection 177EA(17) of the ITAA 1936), it would be concluded that, on the part of AIRR, AIRR shareholders or any other relevant party, there is a more than merely incidental purpose of conferring an imputation benefit under the scheme.²⁰

95. Considering the circumstances of the Scheme of Arrangement, it cannot be concluded that AIRR or AIRR shareholders entered into or carried out the scheme for the purpose of enabling the AIRR shareholders to obtain an imputation benefit. Therefore, the Commissioner considers that the requisite purpose is not present and accordingly the Commissioner will not make a determination under paragraph 177EA(5)(b) of the ITAA 1936 to deny the whole, or any part, of the imputation benefit to be received in relation to the Final Dividend or the Special Dividend.

Section 204-30

96. 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.

97. For section 204-30 to apply, members to whom distributions are streamed must derive a greater benefit from franking credits than another member entity. The term 'derive a greater benefit from franking credits' is defined in subsection 204-30(8) by reference to the ability of the members to fully use imputation benefits.

²⁰ Paragraph 177EA(3)(e) of the ITAA 1936.

98. Under the scheme, AIRR shareholders received imputation benefits when the Final Dividend and the Special Dividend was paid. Both dividends were paid equally to all AIRR shareholders, and were fully franked regardless of their tax profiles. Accordingly, it cannot be said that AIRR selectively directed the flow of franked dividends to those members who obtained the most benefit from the franking credits.

99. As the conditions in subsection 204-30(1) have not been 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 an AIRR shareholder in relation to the Final Dividend or the Special Dividend.

CGT consequences

Capital proceeds

100. The capital proceeds received by you from a CGT event is the money and the market value of any property received or entitled to be received (worked out at the time of the event happening) in respect of the event happening.²¹

101. 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.

102. The Commissioner considers the Special Dividend was received in respect of the Scheme of Arrangement involving the disposal of AIRR shares for the following reasons:²²

- payment of the Special Dividend was contingent on the scheme becoming effective
- the Special Dividend was wholly funded by an interest-free loan provided by Elders, and
- the reduction of the Scheme Consideration by the amount of the Special Dividend.

103. Therefore, the Special Dividend (\$2.60 per share) will be included in the capital proceeds.

CGT anti-overlap provisions

104. A capital gain made by you from CGT event A1 that happened to your AIRR shares is reduced by the amount of the Special Dividend that is included in your assessable income under section 44 of the ITAA 1936. This has the effect of reducing the capital gain (but not below zero) by the amount that is assessable under another provision.

105. A capital gain is not reduced by the amount of the franking credit (attached to the Special Dividend) that is included in your assessable income under section 207-20.

Availability of scrip for scrip rollover if a capital gain is made

106. Scrip for scrip rollover under Subdivision 124-M enables a shareholder to disregard a capital gain from a share that is disposed of if the shareholder receives a replacement

²¹ Subsection 116-20(1).

²² Paragraph 11 of 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.*

share in exchange. It also provides special rules for calculating the cost base of the replacement share.

107. Subdivision 124-M contains a number of conditions for, and exceptions to, a shareholder being eligible to choose scrip for scrip rollover. Relevantly:

- an entity exchanges shares in a company for shares in another company²³
- the exchange is in consequence of a single arrangement that satisfies subsection 124-780(2A)
- conditions for the rollover in subsection 124-780(3) are satisfied
- further conditions, if applicable, are satisfied, and
- exceptions to obtaining scrip for scrip rollover are not applicable.

108. Consequently, if you made a capital gain on the disposal of your AIRR shares and received Scrip Consideration, whether wholly or partly, as part of the Scheme Consideration, you may choose scrip for scrip rollover for the part of the capital gain that is referable to the new Elders shares.

109. As the default consideration consists of both Cash Consideration and Scrip Consideration, absent an election to receive the Scheme Consideration wholly as Scrip Consideration, the AIRR shareholder will have received ineligible proceeds. Similarly, where such an election has been made but there have been 'scaleback' calculations, the AIRR shareholder will have received ineligible proceeds.

110. Where an election has been made to receive the consideration wholly in shares and there have been no 'scaleback' calculations, the entirety of the consideration will be scrip and eligible for the rollover.

Rollover chosen

111. Where the scrip for scrip rollover has been chosen, the cost base of the Elders share that is reasonably attributable to the ineligible proceeds (Cash Consideration) will need to be calculated in order to determine the first element of the cost base or reduced cost base for each replacement Elders share received (Scrip Consideration).

112. The Commissioner accepts the following methodology for determining the cost base of an Elders share reasonably attributable to the ineligible proceeds:

$$\begin{array}{rcl} \text{Cost base of the AIRR} & & \text{cash received} \\ \text{share exchanged} & \times & \hline & & \text{market value of Elders shares received at} \\ & & \text{Scheme Implementation Date + cash received} \end{array}$$

113. The 'market value of Elders shares received at Scheme Implementation Date' will be determined at the time the Elders shares are received.

114. The Commissioner accepts the following methodology for determining the cost base of the Elders share received:

$$\begin{array}{rcl} \text{Cost base of the AIRR} & - & \text{cost base of an Elders share reasonably} \\ \text{share exchanged} & & \text{attributable to the ineligible proceeds} \end{array}$$

²³ Paragraph 124-780(1)(a).

115. Where the scrip for scrip rollover has been chosen, the acquisition date of the Elders shares received will be the same as the original acquisition date of the AIRR shares to which receipt of those Elders shares relate.

References*Previous draft:*

Not previously issued as a draft

Related Rulings/Determinations:

TR 2010/4

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 44
- ITAA 1936 44(1)
- ITAA 1936 98
- ITAA 1936 99A
- ITAA 1936 Div 1A of former Pt IIIAA
- ITAA 1936 former 160APHE
- ITAA 1936 former 160APHM
- ITAA 1936 former 160APHN
- ITAA 1936 former 160APHN(2)
- ITAA 1936 former 160APHO
- ITAA 1936 former 160APHO(1)
- ITAA 1936 former 160APHO(2)(a)
- ITAA 1936 former 160APHU
- ITAA 1936 177E
- ITAA 1936 177EA
- ITAA 1936 177EA(3)(a)
- ITAA 1936 177EA(3)(b)
- ITAA 1936 177EA(3)(c)
- ITAA 1936 177EA(3)(d)
- ITAA 1936 177EA(3)(e)
- ITAA 1936 177EA(5)(b)
- ITAA 1936 177EA(17)
- ITAA 1997 Div 63
- ITAA 1997 63-10
- ITAA 1997 Div 67
- ITAA 1997 67-25
- ITAA 1997 104-10
- ITAA 1997 115-30
- ITAA 1997 116-20(1)
- ITAA 1997 118-20
- ITAA 1997 118-20(1B)(b)
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-780
- ITAA 1997 124-780(1)(a)
- ITAA 1997 124-780(2A)
- ITAA 1997 124-780(3)
- ITAA 1997 124-785(1)
- ITAA 1997 124-785(2)
- ITAA 1997 124-785(3)
- ITAA 1997 124-785(4)
- ITAA 1997 124-790(1)
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