

CR 2022/49 - Qube Holdings Limited - off-market share buy-back



This cover sheet is provided for information only. It does not form part of *CR 2022/49 - Qube Holdings Limited - off-market share buy-back*



Page status: **legally binding**

Class Ruling

Qube Holdings Limited – off-market share buy-back

❶ 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	62
Appendix 2 – Legislative provisions	101

What this Ruling is about

1. This Ruling sets out the income tax consequences for shareholders of Qube Holdings Limited (Qube) who participated in the Qube off-market share buy-back (Buy-Back) announced on 21 March 2022.
2. Full details of the Buy-Back are set out in paragraphs 39 to 61 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* (as detailed in the table in Appendix 2 to this Ruling), unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you are an Australian resident or a New Zealand resident who held ordinary shares (shares) in Qube and participated in the Buy-Back with some or all of those shares.
5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 39 to 61 of this Ruling.

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

Page status: **legally binding**

When this Ruling applies

6. This Ruling applies from 1 July 2021 to 30 June 2022.

Ruling**Off-market purchase**

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

Dividend Component

8. Qube is taken to have paid you a dividend of \$0.98 (Dividend Component) on 16 May 2022 (the Buy-Back Date) for each Qube share you sold in the Buy-Back (section 159GZZZP).

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

10. The difference between the buy-back price of \$2.59 (Buy-Back Price) and the Dividend Component, being \$1.61 (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, you include in your assessable income for the income year in which the Buy-Back occurred:

- the Dividend Component of \$0.98 per Qube share you sold in the Buy-Back, 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)).

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 \$0.98 per Qube share you sold in the Buy-Back (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).

Page status: **legally binding**

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 \$0.98 per Qube share you sold in the Buy-Back (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)).

Resident shareholders – indirect distributions**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 not entitled to the refundable tax offset rules in accordance with subsections 67-25(1A) to (1D).

New Zealand-resident shareholders**Dividends attributable to a permanent establishment in Australia**

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

- the Dividend Component of \$0.98 per Qube share you sold in the Buy-Back (paragraphs 44(1)(b) and (c)), and
- 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, the franking credit tax offset is not refundable under the refundable tax offset rules (subsection 67-25(1DA)).

20. As you include the Dividend Component in your assessable income, you are not liable to pay Australian withholding tax in respect of the Dividend Component (subsection 128B(3E) and paragraph 128B(3)(ga)).

Page status: **legally binding**

Dividends not attributable to a permanent establishment in Australia

21. If you are a New Zealand-resident shareholder who participated in the Buy-Back and the Dividend Component is not attributable to Qube 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

22. You are taken to have received \$1.96 (Sale Consideration) for each Qube share you sold in the Buy-Back on the Buy-Back Date (section 159GZZZQ). The Sale Consideration may be adjusted if you are a corporate tax entity to which subsections 159GZZZQ(8) and (9) apply.

Shares held on capital account

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

24. The Sale Consideration represents the capital proceeds for CGT purposes (subsection 116-20(1)).

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

- capital gain on each Qube 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
- capital loss on each Qube share 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.

26. Where you made a capital gain, you can treat the capital gain as a 'discounted capital gain' if you acquired your Qube shares on or before 15 May 2021 and the other conditions of Subdivision 115-A are met.

27. If you held the Qube shares through a partnership, any capital gain or capital loss will be made by the partners individually. Each partner in a partnership has a separate cost base and reduced cost base for the partner's interest in each Qube share sold in the Buy-Back by the partnership (subsection 106-5(2)). The partnership would allocate to you an appropriate share of the Sale Consideration which the partnership received for the sale of Qube shares in the Buy-Back.

Page status: **legally binding**

Shares held as trading stock or on revenue account

28. If you held your Qube 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 per Qube share you sold in the Buy-Back 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 your Qube shares as revenue assets (as defined in section 977-50), but not as trading stock, then the amount by which:

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

30. If you also made a capital gain in respect of the Qube shares you held on revenue account but not as trading stock, the capital gain on each Qube 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 Qube shares you held on revenue account but not as trading stock, you reduce the reduced cost base of each Qube 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 Qube 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 paragraphs 207-145(1)(a) and 207-150(1)(a) (which refer to Division 1A of former Part IIIA) if:

- you acquired the Qube shares which you sold in the Buy-Back before 28 March 2022, and
- during the period when you held your Qube shares, you had sufficient risks of loss or opportunities for gain in respect of the Qube shares (as defined in former section 160APHM), having regard to any positions you have taken in relation to your Qube 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 11 February 2022 to 12 May 2022 inclusive.

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

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 Qube shares you acquired on or

Page status: **legally binding**

after 28 March 2022, as these Qube shares 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 of the Buy-Back Price you received.

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 of the Buy-Back Price.

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 of the Buy-Back Price.

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.

Qube Holdings Limited

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

41. Qube is an integrated provider of import and export logistics services. It operates in over 135 locations across Australia, New Zealand, Papua New Guinea and South East Asia.

42. As at 30 June 2021 Qube had 1,906,736,204 ordinary shares on issue to a mixture of resident and non-resident shareholders.

43. The financial statements of Qube as at 30 June 2021 disclose that it had issued share capital of approximately \$3.2 billion, retained earnings of approximately \$254 million and total equity of approximately \$3.5 billion.

44. Qube was comprised of 3 main business units: the Operating Division, the Property Division and Qube's 50% interest in Patrick Terminals, a container terminal operator. The Property Division was responsible for non-operational property development activities for Qube, primarily the development of the Moorebank Logistics Park (MLP).

45. Following completion of the transaction to sell MLP, Qube discontinued the Property Division and transferred the remaining assets and operations to the Operating Division.

Off-market share buy-back

46. On 21 March 2022, Qube announced its intention to undertake the Buy-Back through a tender process, using excess cash generated from the sale of MLP and surplus cash from its business operations. Qube intended to buy back up to approximately \$400 million worth of shares, equivalent to approximately 8% of issued capital in Qube.

Page status: **legally binding**

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

48. Participation in the Buy-Back was not open to:

- Qube shareholders that were an 'excluded foreign person', being a person who resides in a jurisdiction other than Australia or New Zealand, and
- shares held under any Qube employee share plan.

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

50. The tender period opened on 7 April 2022 (Opening Date) and closed on 13 May 2022 (Closing Date).

51. Under the tender process, eligible shareholders could make an offer to sell some or all of their Qube shares to Qube at specified discount percentages (Tender Discounts) to the volume-weighted average price (VWAP) of Qube shares sold on the ASX over the last 5 trading days up to and including the Closing Date. The Tender Discounts ranged from 6% to 14% inclusive, in 1% increments. Eligible shareholders also had the option to offer to sell their shares at the final Buy-Back price (a 'Final Price Offer') as determined by Qube at the close of the tender period. 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 Qube shares.

52. Eligible shareholders who held 1,736 Qube shares or less 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.

53. If the total number of shares tendered as Final Price Applications and at Tender Discounts equal to or greater than the Buy-Back Discount were more than the total number of shares that Qube determined to buy back, a scale back procedure would apply.

54. The Buy-Back Price was subject to 2 overriding limits:

- Qube would not buy back shares at a discount greater than 14% applied to the VWAP of Qube shares sold on the ASX over the last 5 trading days up to and including the Closing Date, and
- the Buy-Back Price would not exceed the market value of a Qube 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
21 March 2022	First announcement date
28 March 2022	Ex entitlement Date
29 March 2022	Record Date for Buy-Back Participation
7 April 2022	Opening Date for the tender period

Page status: **legally binding**

Date	Details
13 May 2022	Closing Date for the tender period
16 May 2022	Buy-Back Date

56. On 16 May 2022, Qube announced that:

- it had successfully completed the Buy-Back of 154,438,667 Qube shares, representing 8% of the issued capital of Qube
- the total value of Qube shares purchased under the Buy-Back was \$400 million
- the Buy-Back Price was \$2.59 per Qube share
- eligible shareholders who tendered their Qube shares at a discount of 6% or greater or at the Final Price Offer had their tenders accepted in full at the Buy-Back price, and
- eligible shareholders who tendered their Qube shares at a discount of 5% had a priority tender of 1,736 Qube shares (or less) bought back before any scale back was applied.

57. Under the Buy-Back, Qube debited \$1.61 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 Qube shares bought back under the Buy-Back were cancelled.

Other matters

60. Qube's share capital account (as defined in section 975-300), was not tainted within the meaning of Division 197.

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

Commissioner of Taxation

1 June 2022

Appendix 1 – Explanation

① *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 purchase	62
The Dividend Component	64
Calculation of sale consideration	68
New Zealand-resident shareholders – capital gains tax consequences	76
Qualified persons – dividend component of buy-back	77
The anti-avoidance provisions	88
<i>Sections 45A and 45B</i>	88
<i>Section 177EA</i>	93
<i>Section 204-30</i>	97

Off-market purchase

62. For the purposes of Division 16K, where a company buys a share in itself from a shareholder, the purchase is either an 'on-market purchase' (paragraph 159GZZZK(c)) or an 'off-market purchase' (paragraph 159GZZZK(d)).

63. Although Qube's ordinary shares are listed for quotation in the official list of the ASX, the Buy-Back was not made in the ordinary course of trading on the ASX. Therefore, the Buy-Back is an off-market purchase within the meaning of paragraph 159GZZZK(d).

The Dividend Component

64. 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 Qube's share capital account is taken to be a dividend which Qube paid to you.

65. The Buy-Back Price was \$2.59. Qube debited \$1.61 per share it purchased in the Buy-Back against the amounts standing to the credit of its share capital account. As a result, the Dividend Component is \$0.98 per Qube share.

66. Where the buy-back price of a share sold in an off-market share buy-back exceeds the share's 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)).

67. The Buy-Back Price for each Qube share purchased under the Buy-Back was less than the share's market value for the purposes of paragraph 202-45(c), as worked out in accordance with TD 2004/22. Therefore, the entire Dividend Component is frankable.

Page status: **not legally binding**

Calculation of sale consideration

68. For the purpose of determining the amount of gain or loss you made on the disposal of your Qube 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.

69. The effect of section 159GZZZQ is to adjust the amount of Sale Consideration you received for your Qube shares for either CGT purposes or revenue account purposes.

70. 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 \$2.59 you received for each Qube 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.

71. 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 Qube 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 an amount of \$1.96 for the sale of each Qube share.

72. Pursuant to subsections 159GZZZQ(3) and (4), the amount is reduced by a 'reduction amount' which is equivalent to the Dividend Component. As a result, the Sale Consideration for each Qube share you disposed of under the Buy-Back is \$1.96 (being \$2.94 less the Dividend Component).

73. However, if you are a corporate tax entity, and you made a loss as a result of selling your Qube shares in the Buy-Back, the Sale Consideration is subject to further adjustments pursuant to subsections 159GZZZQ(8) and (9).

74. You are taken to have disposed of your Qube shares under the Buy-Back on 16 May 2022 (CGT event A1 under section 104-10).

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

- if you held your Qube shares on capital account, you are subject to the CGT provisions (see paragraphs 23 to 27 of this Ruling), or
- if you held your Qube shares as trading stock or otherwise on revenue account, you are 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

76. If you are a New Zealand-resident shareholder, you only have CGT consequences if the Qube 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 Qube share was not an 'indirect Australian real property interest' (table item 2 of section 855-15). Therefore, your Qube 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 of section 855-15), or
- your share is a CGT asset that is covered by subsection 104-165(3), which is about you as an individual taxpayer choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident (table item 5 of section 855-15).

Page status: **not legally binding**

Qualified persons – dividend component of buy-back price

77. Paragraph 207-145(1)(a) provides that, for 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).

78. 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 Qube shares is:

- in the absence of a related payment, the primary qualification period, which commences on the day after you acquired the shares and ends on the 45th day after the day on which the shares became ex dividend, or
- if a related payment was or will be made (see paragraphs 82 to 83 of this Ruling), the secondary qualification period, which commences on the 45th day before, and ends on the 45th day after, the day on which the shares became ex dividend.

79. 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.

80. Under former subsection 160APHM(2), you are taken to have materially diminished risks of loss or opportunities for gain 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%.

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

82. 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.

83. There are at least 45 days from 28 March 2022 (the Ex entitlement Date) to 15 May 2022 (the date before the date tender offers were accepted) inclusive. If you acquired Qube shares before 28 March 2022 that were purchased under the Buy-Back, you will satisfy the holding period rule as long as you held those shares 'at risk' for at least 45 continuous days. Where a 'related payment' arises in relation to the Dividend Component, the 45 continuous days must be during the period 11 February 2022 to 12 May 2022 inclusive.

84. Generally, under the holding period rule a shareholder is 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 are deemed to have disposed of their most recently acquired shares first for the purposes of applying the rule.

85. If you acquired ex entitlement Qube shares and participated in the Buy-Back with cum entitlement shares (which conferred an entitlement to participate in the Buy-Back),

Page status: **not legally binding**

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) in respect of the ex entitlement shares. Qube shares commenced trading on an ex entitlement basis on 28 March 2022 and ex entitlement shares do not constitute 'related securities' for the Dividend Component of the Buy-Back Price for the purposes of former subsection 160APHI(2) in relation to any cum entitlement shares.

86. Therefore, the last-in first-out rule will not apply in relation to any additional Qube shares you acquired on or after 28 March 2022 on an ex entitlement basis.

87. If you are an individual who has received franking credit offsets not exceeding \$5,000 for the income year ending 30 June 2022 (and you are not or were not under an obligation to make, or would not or will not be obliged to make, a related payment passing on the benefit of the Dividend Component), you are not required to satisfy the holding period rule in relation to the Dividend Component (former subsection 160APHT(1)).

The anti-avoidance provisions

Sections 45A and 45B

88. 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.

89. 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.

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

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

92. 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 from the provision of capital benefits. Therefore, section 45B does not apply to the Buy-Back.

Section 177EA

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

94. 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 than to non-resident shareholders.

95. Where section 177EA applies, the Commissioner has a discretion pursuant to subsection 177EA(5) to make a determination to debit Qube's franking account pursuant to

Page status: **not legally binding**

paragraph 177EA(5)(a) or to deny the imputation benefit to each participating shareholder pursuant to paragraph 177EA(5)(b).

96. The Commissioner will exercise their discretion in such a way that they will not make a determination under paragraph 177EA(5)(b) to deny the whole, or any part, of the imputation benefits you obtained by participating in the Buy-Back.

Section 204-30

97. Subsection 204-30(1) empowers the Commissioner to make a determination under paragraph 204-30(3)(c) if an entity streams distributions in a certain way.

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

99. The Commissioner considers that the conditions in subsection 204-30(1) are met in the circumstances of the Buy-Back and that the Commissioner can make a determination under subsection 204-30(3), including a determination under paragraph 204-30(3)(c) to deny the imputation benefit to each participating Qube shareholder.

100. However, the Commissioner will not make a determination under paragraph 204-30(3)(c).

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

101. 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>	paragraphs 44(1)(b)
<i>Income Tax Assessment Act 1936</i>	paragraphs 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>	paragraph 45B(2)(c)
<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(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 160API(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>	former section 160APHT(1)
<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>	Subdivision 115-A
<i>Income Tax Assessment Act 1997</i>	subsection 116-20(1)
<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)

Page status: **not legally binding**

<i>Income Tax Assessment Act 1997</i>	paragraph 204-30(3)(a)
<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

Related Rulings/Determinations:

TD 2004/22

Legislative references:

- TAA 1953

ATO references

NO: 1-SWO1UT3

ISSN: 2205-5517

BSL: PGI

ATOlaw topic: 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).