

# ***CR 2019/73 - GBST Holdings Limited - Scheme of Arrangement and payment of Special Dividend***



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## Class Ruling

# GBST Holdings Limited – Scheme of Arrangement and payment of Special Dividend

### **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 pay any 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 tax consequences of the Special Dividend paid on 5 November 2019 and the Scheme of Arrangement (Scheme) implemented by GBST Holdings Limited (GBST) on 5 November 2019.
2. Full details of the Special Dividend and this Scheme are set out in paragraphs 29 to 38 of this Ruling.
3. All legislative references are to provisions of the *Income Tax Assessment Act 1997* or the *Income Tax Assessment Act 1936* (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 a shareholder of GBST who:
  - is not exempt from Australian income tax
  - acquired your GBST shares on or after 20 September 1985
  - held your GBST shares on capital account, that is, your GBST 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 Special Dividend, and
- disposed of your GBST shares under the 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 29 to 38 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 2019 to 30 June 2020.

## **Ruling**

### **Special Dividend**

7. The Special Dividend is a 'dividend' as defined in subsection 6(1) as it was not debited against GBST's share capital account.

8. The Special Dividend is a frankable distribution<sup>1</sup>, and has been franked by GBST.

### *Special Dividend is included in assessable income*

9. If you received the Special Dividend directly, you will have to include the Special Dividend in your assessable income.<sup>2</sup> Additionally, you will:

- have to include the amount of the franking credits on the Special Dividend in your assessable income, and
- be entitled to a tax offset equal to the amount of the franking credits on the Special Dividend

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

10. 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, you will include an amount equal to the franking credits on the Special Dividend in your assessable income<sup>3</sup>, subject to you being a 'qualified person' in relation to the Special Dividend.

11. 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 credits on the Special Dividend included in the assessable income of the partnership or trust.<sup>4</sup>

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<sup>1</sup> Section 202-40.

<sup>2</sup> Subparagraph 44(1)(a)(i).

<sup>3</sup> Subsection 207-35(1).

<sup>4</sup> Section 207-45.

***Qualified persons***

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

13. For the purposes of Division 1A of former Part IIIAA, to be a 'qualified person' in relation to the Special Dividend<sup>5</sup>, you must have held your GBST shares 'at risk' for a continuous period of at least 45 days in the secondary qualification period.<sup>6</sup> However, you will cease to hold your GBST shares 'at risk' on the Scheme Record Date (25 October 2019).

14. That is, you will be a qualified person in relation to the Special Dividend if, during the period from 9 September 2019 to 24 October 2019 (inclusive), you held your GBST shares for a continuous period of at least 45 days (not counting the day on which you acquired the GBST share or the day on which you disposed of the GBST share, and not counting the days on which you had 'materially diminished risks of loss or opportunities for gain'<sup>7</sup> in respect of your GBST shares).

***Refundable tax offset***

15. Your entitlement to the franking credit tax offset 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.

16. There are a range of taxpayers 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<sup>8</sup>
- trustees of a trust who are liable to be assessed under sections 98 or 99A<sup>9</sup>
- 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<sup>10</sup>, and
- non-resident entities carrying on business in Australia at or through a permanent establishment.<sup>11</sup>

***The anti-avoidance provisions***

17. The Commissioner will not make a determination under paragraph 177EA(5)(b) to deny the whole, or any part, of the imputation benefits received in relation to the Special Dividend. This is because the purpose requirement in paragraph 177EA(3)(e) is not satisfied.

18. 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. This is because there was no streaming of franked distributions as required by

<sup>5</sup> Paragraph 207-145(1)(a).

<sup>6</sup> Former paragraph 160APHO(1)(b) and subsection 160APHO(2).

<sup>7</sup> As defined in former section 160APHM.

<sup>8</sup> Subsection 67-25(1A).

<sup>9</sup> Subsection 67-25(1B).

<sup>10</sup> Subsections 67-25(1C) and 67-25(1D).

<sup>11</sup> Subsection 67-25(1DA).

subsection 204-30(1), as the fully franked Special Dividend was paid equally to all GBST shareholders.

19. The Special Dividend is not a scheme, or a scheme having substantially the effect of a scheme, by way of or in the nature of dividend stripping, within the meaning of section 177E.

20. Section 207-145 will not apply to the whole or any part of the Special Dividend. The Commissioner does not consider that the Special Dividend was made as part of a distribution washing arrangement (under section 207-157). Furthermore, no part of the Special Dividend will give rise to a foreign income tax deduction (section 207-158). Accordingly, section 207-145 will not adjust your assessable income to exclude the amount of the franking credits on the Special Dividend, nor will it deny the tax offsets to which you would otherwise be entitled.

### **CGT consequences**

#### *CGT event A1*

21. CGT event A1 happened on 5 November 2019 (Implementation Date) when you disposed of your GBST shares to FNZ (Australia) Bidco Pty Ltd (FNZ Australia).<sup>12</sup>

#### *Capital proceeds*

22. You are taken to have received \$3.50 in money (being \$3.85 less the Special Dividend of \$0.35 per share) as the capital proceeds for disposing of each of your GBST shares.<sup>13</sup>

23. The capital proceeds do not include the Special Dividend.

#### *Capital gain or capital loss*

24. You will make a capital gain if the capital proceeds from the disposal of a GBST share exceed its cost base.<sup>14</sup> The capital gain is the amount of the excess.

25. If you made a capital gain from the disposal of your GBST share, you are entitled to treat the capital gain as a 'discount capital gain' provided that the conditions of Subdivision 115-A are met. In particular, you must have acquired the GBST shares that were disposed of at least 12 months before the Implementation.<sup>15</sup>

26. You will make a capital loss if the capital proceeds from the disposal of a GBST share are less than its reduced cost base.<sup>16</sup> The capital loss is the amount of the difference.

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<sup>12</sup> Section 104-10.

<sup>13</sup> Subsection 116-20(1)

<sup>14</sup> Subsection 104-10(4)

<sup>15</sup> Subsection 115-25(1)

<sup>16</sup> Subsection 104-10(4)

**Foreign resident shareholders**

27. If you were a foreign resident GBST shareholder just before CGT event A1 happened to your GBST shares on the Implementation Date, you disregard the capital gain or capital loss you made as a result of CGT event A1 happening, if your GBST shares were not taxable Australian property.<sup>17</sup>

28. A GBST share will have been taxable Australian property if:

- the GBST share was used at any time by the shareholder in carrying on a business through a permanent establishment in Australia (table item 3 in section 855-15), or
- the GBST share was covered by subsection 104-165(3) (table item 5 in section 855-15).

**Scheme**

29. 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.

**GBST**

30. GBST is an Australian resident company which was listed on the Australian Securities Exchange. As at 23 August 2019, GBST had 68,852,107 fully paid ordinary shares on issue.

31. As at 23 August 2019, no more than 28% of GBST's ordinary shares on issue were held by non-residents.

32. The share capital account of GBST is not tainted for the purposes of Division 197.

33. On the Implementation Date, less than 50% of the market values of the assets of GBST were taxable Australian real property (as defined in section 855-20).

**Scheme of Arrangement**

34. On 29 July 2019, GBST announced that it had entered into a Scheme Implementation Deed dated 26 July 2019 under which FNZ Australia would acquire all of the shares in GBST, by way of a scheme of arrangement under Part 5.1 of the *Corporations Act 2001*, for a cash price of \$3.85 per share, reduced by the Special Dividend (Scheme Consideration).

35. A resolution in favour of the Scheme was passed by GBST shareholders at a meeting on 14 October 2019. This was followed by the approval of the Scheme by the Supreme Court of New South Wales. The Scheme was implemented on 5 November 2019.

36. The implementation of the Scheme resulted in FNZ Australia acquiring all the shares in GBST from GBST shareholders who held their GBST shares as at 25 October 2019 (Scheme Record Date).

<sup>17</sup> Section 855-10.

## **Special Dividend**

37. On 11 October 2019, the directors of GBST declared a fully franked Special Dividend of \$0.35 per share, to be payable to shareholders who held their shares as at 23 October 2019 (Special Dividend Record Date). The Special Dividend was paid on the Implementation Date.

38. The Special Dividend was funded by existing cash reserves and borrowings of GBST.

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**Commissioner of Taxation**

21 November 2019

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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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**Qualified person**

39. Paragraph 207-145(1)(a), which refers to Division 1A of former Part IIIAA, provides the statutory tests that you must satisfy to be a 'qualified person' in relation to a franked distribution you have received, in order for you to be entitled to a tax offset for the franking credit on the distribution.

40. A partner in a partnership or a beneficiary of a trust cannot be a qualified person in relation to the dividend unless the partnership or the trustee of the trust is also a qualified person in relation to the dividend.<sup>18</sup>

41. 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 respect of 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 respect of the dividend, you will have to satisfy the holding period rule in relation to the secondary qualification period.

***Special Dividend is a related payment***

42. In order to determine the relevant qualification period, it is necessary to determine whether, under the Scheme, you or an associate have made, are under an obligation to make, or are likely to make, a related payment in respect of the Special Dividend you have received.<sup>19</sup>

43. Former section 160APHN defines the making of a related payment, and gives examples of, but does not limit, what constitutes the making of a related payment for the purposes of Division 1A of former Part IIIAA.

44. Under the terms of the Scheme, the Scheme Consideration (paid by FNZ Australia) is defined as \$3.85 less the amount of the Special Dividend paid by GBST to the GBST shareholders. The reduction of the Scheme Consideration payable by GBST has the effect of passing the benefit of the Special Dividend from a GBST shareholder to FNZ Australia.<sup>20</sup> Therefore, you (or a partner in a partnership or a beneficiary of a trust that has an interest in GBST shares<sup>21</sup>) are taken to have made a related payment in respect of the Special Dividend.

<sup>18</sup> Former section 160APHU.

<sup>19</sup> Former subsection 160APHO(1).

<sup>20</sup> Former subsection 160APHN(2), former paragraphs 160APHN(3)(f) and 160APHN(4)(c) and (d).

<sup>21</sup> Former subsection 160APHG.



*Holding period rule*

45. The holding period rule requires you to hold your GBST shares on which the Special Dividend was paid 'at risk' for a continuous period of at least 45 days during the relevant qualification period.<sup>22</sup> The relevant qualification period is the secondary qualification period, which begins on the 45<sup>th</sup> day before, and ends on the 45<sup>th</sup> day after, the day on which the shares became ex dividend.<sup>23</sup> A share 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.<sup>24</sup>

46. In respect of the Special Dividend, eligibility to receive the Special Dividend was determined on the Special Dividend Record Date (23 October 2019), being the last day on which the acquisition by a person of a GBST share entitled the person to receive the Special Dividend. Accordingly, the day on which GBST shares became ex dividend for the Special Dividend was 24 October 2019. This means that the secondary qualification period for the Special Dividend began on 9 September 2019.

47. You ceased to hold your GBST shares 'at risk' on the Scheme Record Date (25 October 2019) because on that day you became committed to dispose of your GBST shares in exchange for the Scheme Consideration.

48. As you received the Special Dividend because you held shares in GBST, you will only be a qualified person in relation to the Special Dividend if, during the period from 9 September 2019 to 24 October 2019 (the last day on which you could have held your shares at risk) (inclusive), you held your GBST shares for a continuous period of at least 45 days (not counting the day on which you acquired the GBST share or the day on which you disposed of the GBST share, and not counting the days on which you had 'materially diminished risks of loss or opportunities for gain').<sup>25</sup>

<sup>22</sup> Former paragraph 160APHO(2)(a).

<sup>23</sup> Former section 160APHD.

<sup>24</sup> Former section 160APHE.

<sup>25</sup> Former paragraph 160APHO(2)(a).

**Appendix 2 – Legislative provisions**

49. This paragraph sets out the details of the provisions ruled upon or referred to in this Ruling.

<i>Income Tax Assessment Act 1936</i>	section 6
<i>Income Tax Assessment Act 1936</i>	section 44
<i>Income Tax Assessment Act 1936</i>	section 98
<i>Income Tax Assessment Act 1936</i>	section 99A
<i>Income Tax Assessment Act 1936</i>	Division 1A of former Part IIIAA
<i>Income Tax Assessment Act 1936</i>	former section 160APHD
<i>Income Tax Assessment Act 1936</i>	former section 160APHE
<i>Income Tax Assessment Act 1936</i>	former section 160APHG
<i>Income Tax Assessment Act 1936</i>	former section 160APHM
<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 160APHU
<i>Income Tax Assessment Act 1936</i>	section 177EA
<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>	section 104-10
<i>Income Tax Assessment Act 1997</i>	section 104-165
<i>Income Tax Assessment Act 1997</i>	Subdivision 15-A
<i>Income Tax Assessment Act 1997</i>	section 115-25
<i>Income Tax Assessment Act 1997</i>	section 116-20
<i>Income Tax Assessment Act 1997</i>	section 202-40
<i>Income Tax Assessment Act 1997</i>	section 204-30
<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>	section 207-35
<i>Income Tax Assessment Act 1997</i>	section 207-45
<i>Income Tax Assessment Act 1997</i>	section 207-145
<i>Income Tax Assessment Act 1997</i>	section 207-157
<i>Income Tax Assessment Act 1997</i>	section 207-158
<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 855-20
<i>Income Tax Assessment Act 1997</i>	section 977-50
<i>Income Tax Assessment Act 1997</i>	subsection 995-1(1)

<i>Taxation Administration Act 1953</i>	
<i>Corporations Act 2001</i>	Part 5.1
<i>Corporations Act 2001</i>	section 254T

**References***Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

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## ATO references

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Income tax ~~ Capital gains tax ~~ Capital proceeds  
Income tax ~~ Capital management ~~ Anti avoidance rules ~~  
Section 177EA  
Income tax ~~ Capital management ~~ Qualified person rule  
Income tax ~~ Capital management ~~ Franking credits / tax offsets

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