

CR 2020/3 - Bellamy's Australia Limited - Scheme of Arrangement and Special Dividend



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Class Ruling

Bellamy's Australia Limited – Scheme of Arrangement and 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 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 for shareholders of Bellamy's Australia Limited (Bellamy's) who sold their Bellamy's shares pursuant to the scheme of arrangement announced on 16 September 2019 (Scheme of Arrangement).
2. Details of this Scheme of Arrangement and the special dividend paid by Bellamy's on 23 December 2019 (Special Dividend) are set out in paragraphs 23 to 40 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 Bellamy's shareholder at 7:00pm (AEDT) on 17 December 2019 (Scheme Record Date) who participated in the Scheme of Arrangement under which Wise Journey Pty Ltd (Wise) acquired 100% of the ordinary shares in Bellamy's

- held your Bellamy's shares on capital account, that is, you did not hold your Bellamy's shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1))
 - were a resident of Australia as defined in subsection 6(1) at all relevant times, and
 - received the Special Dividend.
5. This Ruling does not apply to you if you:
- acquired your Bellamy's shares under a Bellamy's employee share plan on or after 16 September 2019 (including any shares issued under the vesting of the Bellamy's Long-Term Incentive Plan), or
 - are subject to the taxation of financial arrangements rules in Division 230 in relation to your Bellamy's shares.
- Note:** Division 230 will not apply to individuals, unless they have made an election for it to apply.

When this Ruling applies

6. This Ruling applies from 1 July 2019 to 30 June 2020.

Ruling**Special Dividend**

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

Assessability of the Special Dividend, franking credits and tax offsets

9. You include the Special Dividend in your assessable income (paragraph 44(1)(a)).
10. You also include the franking credits attached to the Special Dividend in your assessable income and you are entitled to a tax offset equal to the amount of those credits (section 207-20), provided you are a 'qualified person' (as defined in Division 1A of former Part IIIAA).
11. If you received the Special Dividend as a trustee of a trust (not being a complying superannuation entity) or as a partnership and you are not a corporate tax entity, the franking credits attached to the Special Dividend are included in your assessable income, provided you are a 'qualified person' (subsection 207-35(1)).
12. If you are a partner in a partnership or beneficiary of a trust and the Special Dividend flows indirectly through the partnership or trust to you, you include your share of the Special Dividend in your assessable income and you are entitled to a tax offset equal to your share of the franking credit attached to the Special Dividend provided both you and the partnership or trust, as relevant, are each a 'qualified person' (section 207-45 and former 160APHU(1)).
13. The tax offset is refundable, subject to the refundable tax offset rules in Division 67.

Qualified persons

14. The Special Dividend you received does not constitute a 'related payment' for the purposes of paragraph 207-145(1)(a) and former section 160APHN.

15. You will be a qualified person in relation to the Special Dividend, if during the period from when you acquired your Bellamy's shares to 17 December 2019 (inclusive), you held your Bellamy's shares for a continuous period of at least 45 days during which you did not have 'materially diminished risks of loss or opportunities for gain' (as defined in former section 160APHM) in respect of the shares.

Capital gains tax consequences**Resident shareholders****CGT event A1**

16. CGT event A1 happened to you on 23 December 2019 (Scheme Implementation Date) when you disposed of each of your Bellamy's shares to Wise in accordance with the Scheme of Arrangement (section 104-10).

Capital proceeds

17. The cash consideration of \$12.65 you received for each Bellamy's share (Scheme Consideration) is the capital proceeds from CGT event A1 happening (subsection 116-20(1)).

18. The capital proceeds do not include the Special Dividend of \$0.60.

Capital gain or capital loss

19. You made a capital gain if the capital proceeds from the disposal of your Bellamy's share exceed its cost base (subsection 104-10(4)). The capital gain is the amount of the excess.

20. You made a capital loss if the capital proceeds from the disposal of your Bellamy's share are less than its reduced cost base (subsection 104-10(4)). The capital loss is the amount of the shortfall.

Discount capital gain

21. If you made a capital gain from the disposal of your Bellamy's share, you are entitled to treat the capital gain as a 'discount capital gain' provided you acquired, or are taken to have acquired, your Bellamy's share on or before 23 December 2018 and the other conditions of Division 115 are satisfied (subsection 115-25(1)).

Anti-avoidance provisions

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

Scheme

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

24. Other information referred to is the Scheme Implementation Deed released on the Australian Securities Exchange (ASX) on 16 September 2019 and the Scheme Booklet released on the ASX on 31 October 2019.

Relevant entities

Bellamy's

25. Bellamy's is an Australian resident company listed on the ASX since 5 August 2014. Bellamy's operates in the organic milk powder and baby formula industry and carries on activities in various locations across Australia. Bellamy's is headquartered in Launceston, Tasmania.

26. Bellamy's has a single class share capital structure consisting of ordinary shares. As at 16 December 2019, Bellamy's had 116,348,108 ordinary shares on issue. No Bellamy's shares were acquired or taken to be acquired on or before 19 September 1985.

27. Bellamy's shareholders include both residents and non-residents.

China Mengniu Dairy Company Limited (Mengniu)

28. Mengniu is a dairy product manufacturer in China. Mengniu and its subsidiaries manufacture and distribute dairy products in China, with 'Mengniu' as its core brand. Mengniu's product range includes liquid milk, ice cream, milk powder, cheese and other products. Mengniu was incorporated in the Cayman Islands and was listed on the Hong Kong Stock Exchange in June 2004.

29. Wise is an Australian proprietary company which was incorporated on 10 October 2019 for the purpose of acquiring all of Bellamy's shares. Wise is a wholly-owned subsidiary of Bright Treasure Pty Ltd, an Australian incorporated company which is an indirectly, wholly-owned subsidiary of Mengniu.

Scheme of Arrangement

30. On 16 September 2019, Bellamy's announced it had entered into a Scheme Implementation Deed with Wise. Wise proposed to acquire all the issued shares of Bellamy's by way of a Scheme of Arrangement under Part 5.1 of the *Corporations Act 2001* for a cash consideration of \$12.65 per Bellamy's share.

31. The Scheme of Arrangement was approved by Bellamy's shareholders under section 411 of the *Corporations Act 2001* at the Scheme Meeting held on 5 December 2019 and by the Federal Court on 9 December 2019.

32. Under the Scheme of Arrangement, each person registered as a holder of Bellamy's shares on the Scheme Record Date as at 7:00pm (AEDT) on 17 December 2019 (a scheme shareholder) was entitled to participate in the Scheme of Arrangement.

33. Scheme shareholders agreed to transfer their Bellamy's shares to Wise in return for receiving the Scheme Consideration on the Scheme Implementation Date (23 December 2019). The Scheme Consideration per Bellamy's share was \$12.65.

34. Bellamy's shares were removed from official quotation on the ASX on 24 December 2019.

Special Dividend

35. On 9 October 2019, the Board determined to pay a Special Dividend of \$0.60 per share which was fully franked. The Special Dividend was payable to Bellamy's shareholders who held their shares on 17 December 2019 (Special Dividend Record Date).

36. Bellamy's paid the Special Dividend on 23 December 2019.

37. The Special Dividend was subject to the Scheme of Arrangement becoming effective. The Scheme of Arrangement was not conditional on Wise or a third-party financing or facilitating payment of the Special Dividend, or Wise or a third party being obliged to bring about the result that the dividend would be received by Bellamy's shareholders.

38. The Special Dividend was declared and paid by Bellamy's in its absolute discretion. Neither Wise nor any of its associates had any influence or control over the declaration and payment of the Special Dividend.

39. The Special Dividend complied with the requirements of the *Corporations Act 2001*, including section 254T of that Act. The Special Dividend was entirely debited against Bellamy's retained earnings and funded from Bellamy's existing debt facilities and cash reserves.

Key dates

40. A summary of the key dates for the Scheme of Arrangement is provided below:

Announcement date	16 September 2019
Scheme Implementation Deed executed	15 September 2019
First Court Hearing (lodged Scheme Booklet with court)	30 October 2019
Despatch Scheme Booklet to Bellamy's shareholders	31 October 2019
Scheme meeting	5 December 2019
Second Court hearing	9 December 2019
Effective Date	10 December 2019
Special Dividend Record Date	7.00pm (AEDT) 17 December 2019
Scheme Record Date	7:00pm (AEDT) 17 December 2019
Scheme Implementation Date	23 December 2019
Special Dividend Payment Date	23 December 2019
Bellamy's delisted from ASX	24 December 2019

Appendix 1 – 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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Special Dividend

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

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

Assessability of Special Dividend

43. The assessable income of a resident shareholder includes dividends paid by the company out of profits derived by it from any source (subparagraph 44(1)(a)(i)).

44. The Special Dividend you received is included in your assessable income as it was paid out of profits derived by Bellamy's.

Special Dividend can be franked

45. Dividends paid out of profits by an Australian resident company are generally frankable (and therefore capable of being franked under section 202-5) to the extent they are not unfrankable under section 202-45.

46. As none of the circumstances listed in section 202-45 apply to the Special Dividend, the Special Dividend was frankable under section 202-40.

Gross up and tax offset

47. Where you are a qualified person in accordance with paragraph 207-145(1)(a) which refers to Division 1A of former Part IIIAA (other than a partnership or a trustee of a trust (except a partnership or trustee that is a corporate tax entity, or a trustee of a trust that is a complying superannuation entity, when the distribution is made)), you:

- include the franking credit attached to the Special Dividend in your assessable income (subsection 207-20(1)), and
- are entitled to a tax offset equal to the amount of the franking credit attached to the Special Dividend (subsection 207-20(2)),

in the income year the dividend is paid.

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

49. Where you are not a qualified person in relation to the Special Dividend, you:

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

Qualified person

50. The test of what constitutes a 'qualified person' is provided in former subsection 160APHO(1). Broadly, you are a qualified person:

- if you are not under an obligation to make a related payment in relation to the Special Dividend – you satisfy the holding period rule in relation to the primary qualification period, or
- if you are under an obligation to make a related payment in relation the Special Dividend – you satisfy the holding period rule in relation to the secondary qualification period.

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

Related payment rule

52. Former section 160APHN sets out examples of what constitutes the making of a related payment. Broadly, a Bellamy's shareholder is taken to have made or to be under an obligation to make a related payment in respect of the Special Dividend if the

shareholder has done, or is under an obligation to do, anything which has the effect of passing the benefit of the Special Dividend to one or more other persons.

53. As the Scheme Consideration was not affected by the Special Dividend, the Commissioner considers that scheme shareholders were not under an obligation to make a related payment in relation to the Special Dividend.

Primary qualification period

54. The primary qualification period is the period beginning on the day after the day on which the Bellamy's shareholder acquired their shares, and ending 45 days after the day on which a share became ex dividend (former section 160APHD).

55. Under former subsection 160APHE(1), a share becomes ex dividend on the day after the last day on which the acquisition by a person of the share entitles them to receive the dividend. The last day on which the acquisition by a person of a Bellamy's share entitled the person to receive the Special Dividend was the record date for the Special Dividend of 17 December 2019. It follows that Bellamy's shares became ex dividend on 18 December 2019.

Holding period rule

56. If you are an individual who has franking credit offsets not exceeding \$5,000 for the income year ending 30 June 2020, you do not need to satisfy the holding period rule in relation to the Special Dividend (former subsection 160APHT(1)).

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

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

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

60. Under the Scheme of Arrangement, you no longer held your Bellamy's shares at risk on the Scheme Record Date of Tuesday 17 December 2019 (when you became committed to dispose of your Bellamy's shares to Wise under the Scheme of Arrangement).

61. Accordingly, if you acquired your Bellamy's shares on or before 1 November 2019 and disposed of them to Wise under the Scheme of Arrangement, you satisfied the holding period rule if you held those shares at risk for at least 45 continuous days during the period from when you acquired your Bellamy's shares to 17 December 2019.

Refundable tax offset

62. You are entitled to a refund of tax offsets available to you under Division 207 unless otherwise stated in Division 67.

63. You are not entitled to a refund of tax offsets pursuant to section 67-25 if you are a:

- non-complying superannuation fund or non-complying approved deposit fund (subsection 67-25(1A))
- a trustee of a trust who is liable to be assessed under section 98 or 99A (subsection 67-25(1B)), or
- corporate tax entity, unless the entity is an exempt institution that is eligible for a refund, or a life insurance company that has received distributions on membership interests which were not held by the company on behalf of its shareholders (subsections 67-25(1C) and 67-25(1D)).

64. Division 63 sets out rules about how tax offsets are applied against your basic income tax liability. Where a tax offset is refundable under Division 67, you are entitled to a refund of the difference by which the offset exceeds your basic income tax liability (table item 40 of section 63-10).

Capital gains tax (CGT) consequences

CGT event A1

65. CGT event A1 happens if there is a change in the ownership of a CGT asset (section 104-10). The event happens when a contract to dispose of the asset is entered into or, if there is no contract, when the change of ownership occurs (subsection 104-10(3)).

66. The disposal of Bellamy's shares under a court approved Scheme of Arrangement results in a disposal of shares, but not under a contract. Therefore, CGT event A1 happened on the Scheme Implementation Date of 23 December 2019 when there was a change of ownership in a Bellamy's share from you to Wise under the Scheme of Arrangement (subsections 104-10(1) and 104-10(2) and paragraph 104-10(3)(b)).

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

Capital proceeds

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

69. The term 'in respect of the event happening' in subsection 116-20(1) requires the relationship between the event and the receipt of the money, or the entitlement to receive the money, to be more than coincidental. An amount is not capital proceeds received or entitled to be received in respect of a CGT event merely because it is received in association with the CGT event.¹

70. In this case, the Special Dividend was not paid in respect of the disposal of Bellamy's shares under the scheme. The Scheme of Arrangement was not conditional on declaration of the dividends, Wise or a third party financing or facilitating payment of the dividends, or Wise or a third party being obliged to bring about the result that the dividends would be paid to existing shareholders.

¹ 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.*

71. The Commissioner considers that the Special Dividend was not received in respect of the disposal of Bellamy's shares under the Scheme of Arrangement. Accordingly, the dividend does not form part of the capital proceeds in respect of CGT event A1 happening.

72. Therefore, the capital proceeds you received from CGT event A1 happening on disposal of each Bellamy's share is the Scheme Consideration of \$12.65 per share.

Capital gain or capital loss

73. You made a capital gain if the capital proceeds from the disposal of your Bellamy's share exceed its cost base (subsection 104-10(4)). The capital gain is the amount of the excess.

74. You made a capital loss if the capital proceeds from the disposal of your Bellamy's share are less than its reduced cost base (subsection 104-10(4)). The capital loss is the amount of the shortfall.

75. The cost base and reduced cost base of the Bellamy's share depends on your individual circumstances.

Discount capital gain

76. If you made a capital gain from the disposal of your Bellamy's share, you are eligible to treat the capital gain as a 'discount capital gain' provided that:

- you are an individual, complying superannuation entity, or, subject to the rules in Subdivision 115-C, a trust (section 115-10)
- the capital gain was worked out using a cost base that was calculated without reference to indexation (subsection 115-20(1)), and
- you acquired, or were taken to have acquired your Bellamy's share on or before 23 December 2018 which was at least 12 months prior to CGT event A1 happening (subsection 115-25(1)).

Anti-avoidance provisions

Section 177EA

77. Section 177EA is a general anti-avoidance provision that operates to prevent franking credit trading. For section 177EA to apply, the conditions of paragraphs 177EA(3)(a) to (e) must be satisfied.

78. The conditions of paragraphs 177EA(3)(a) to (d) are satisfied as Bellamy's is a corporate tax entity, the Scheme of Arrangement is a scheme for the disposal of Bellamy's shares, and a franked distribution was paid to scheme shareholders (the relevant taxpayers) who received imputation benefits as a result of the distribution.

79. Paragraph 177EA(3)(e) is satisfied if, in considering the relevant circumstances of a scheme, it would be concluded that a person, or one of the persons, who entered into or carried out the scheme, did so for a purpose (whether or not the dominant purpose but not including an incidental purpose) of enabling the taxpayer to obtain an imputation benefit.

80. In arriving at a conclusion, the Commissioner must have regard to the relevant circumstances of the scheme which include, but are not limited to, those set out in subsection 177EA(17). The relevant circumstances encompass a range of matters which, taken individually or in conjunction with other matters, could indicate that the delivery of the imputation benefit is more than an incidental purpose of the Scheme of Arrangement.

81. The relevant circumstances are that the disposition of Bellamy's shares was made pursuant to a takeover by Wise by way of a scheme of arrangement under the *Corporations Act 2001*, voted upon by Bellamy's shareholders entitled to vote.

82. The Scheme of Arrangement under which Bellamy's was acquired by Wise is an ordinary commercial transaction.

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

84. Having regard to the relevant circumstances of the scheme, it cannot be concluded that Bellamy's or Bellamy's shareholders entered into or carried out the scheme for the purpose of enabling a person to obtain an imputation benefit.

85. Accordingly, the Commissioner will not make a determination under paragraph 177EA(5)(b) to deny the whole, or any part, of the imputation benefit which Bellamy's shareholders received in relation to the Special Dividend.

Section 204-30

86. 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.

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

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

89. As the conditions in subsection 204-30(1) were not met, the Commissioner will not make a determination under paragraph 204-30(3)(c) to deny the whole, or any part, of the imputation benefits received by you in relation to the Special Dividend.

Appendix 2 – Legislative provisions

90. This paragraph sets out the details of the provisions ruled upon or referenced 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 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 160APHT
<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 63
<i>Income Tax Assessment Act 1997</i>	section 63-10
<i>Income Tax Assessment Act 1997</i>	Division 67
<i>Income Tax Assessment Act 1997</i>	section 67-25
<i>Income Tax Assessment Act 1997</i>	section 104-10
<i>Income Tax Assessment Act 1997</i>	Division 115
<i>Income Tax Assessment Act 1997</i>	section 115-10
<i>Income Tax Assessment Act 1997</i>	Subdivision 115-C
<i>Income Tax Assessment Act 1997</i>	Subsection 115-20
<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 202-5
<i>Income Tax Assessment Act 1997</i>	section 202-40
<i>Income Tax Assessment Act 1997</i>	section 202-45
<i>Income Tax Assessment Act 1997</i>	section 204-30
<i>Income Tax Assessment Act 1997</i>	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>	Division 230
<i>Income Tax Assessment Act 1997</i>	section 977-50
<i>Income Tax Assessment Act 1997</i>	section 995-1

References*Previous draft:*

Not previously issued as a draft

Related Rulings/Determinations:

TR 2010/4

Legislative references:

- Corporations Act 2001
- Corporations Act 2001 Pt 5.1
- Corporations Act 2001 254T
- Corporations Act 2001 411

ATO references

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