


# ***CR 2021/47 - Asaleo Care Limited - scheme of arrangement and special dividend***

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## Class Ruling

# Asaleo Care Limited – scheme of arrangement and special dividend

### **📌 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.

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### **What this Ruling is about**

1. This Ruling sets out the tax consequences of the dividends paid by Asaleo Care Limited (Asaleo) and the Scheme of Arrangement implemented between Asaleo and Essity Group Holding BV (Essity).
2. Full details of this scheme are set out in paragraphs 32 to 58 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise indicated.

### **Who this Ruling applies to**

4. This Ruling applies to you if you:
  - were an Asaleo shareholder on 1 July 2021 who participated in the Scheme of Arrangement under which Essity acquired 100% of the shares in Asaleo
  - are not exempt from Australian income tax
  - are a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) or a non-resident (other than a non-resident who carried on a business at or through a permanent establishment in Australia)
  - acquired your Asaleo shares on or after 20 September 1985

- held your Asaleo shares on capital account, that is, the shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1))
  - disposed of your Asaleo shares under the Scheme of Arrangement between Asaleo and Essity pursuant to Part 5.1 of the *Corporations Act 2001* (Corporations Act)
  - received the FY 2021 Ordinary Dividend and Special Dividend.
5. This Ruling does not apply to you if you:
- are subject to the investment manager regime in Subdivision 842-I in respect to your Asaleo shares
  - acquired your Asaleo shares pursuant to an employee share plan
  - are subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on your Asaleo 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 2020 to 30 June 2022.

**Ruling****FY 2021 Ordinary Dividend**

7. The FY 2021 Ordinary Dividend of three cents per share is a 'dividend' as defined in subsection 6(1) of the ITAA 1936.
8. The FY 2021 Ordinary Dividend is a frankable distribution pursuant to section 202-40.

**Special Dividend**

9. The Special Dividend of two cents per share is a dividend as defined in subsection 6(1) of the ITAA 1936.
10. The Special Dividend is a frankable distribution pursuant to section 202-40.

**Assessability of the FY 2021 Ordinary Dividend, Special Dividend, franking credits and tax offsets****Residents**

11. If you are a resident of Australia as defined in subsection 6(1) of the ITAA 1936, you are required to include the FY 2021 Ordinary Dividend and the Special Dividend in your assessable income (subparagraph 44(1)(a)(i) of the ITAA 1936).
12. If you satisfy the residency requirements in section 207-75, you include the franking credits attached to the FY 2021 Ordinary Dividend and 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 IIIA of the ITAA 1936).

13. If you received the FY 2021 Ordinary Dividend and 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 FY 2021 Ordinary Dividend and Special Dividend are included in your assessable income, provided you are a qualified person (subsection 207-35(1)).

14. If you are a partner in a partnership or a beneficiary of a trust and the FY 2021 Ordinary Dividend and Special Dividend flows indirectly through the partnership or trust to you, you include your share of the FY 2021 Ordinary Dividend and 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 FY 2021 Ordinary Dividend and Special Dividend, provided both you and the partnership or trust as is relevant are each a qualified person (section 207-45 and former subsection 160APHU(1) of the ITAA 1936).

15. The tax offset is refundable, subject to the refundable tax offset rules in Division 67.

### **Non-resident shareholders**

#### *FY 2021 Ordinary Dividend and Special Dividend not attributable to a permanent establishment in Australia*

16. If you are a non-resident and the FY 2021 Ordinary Dividend and Special Dividend are not attributable to a permanent establishment in Australia, the FY 2021 Ordinary Dividend and Special Dividend are not included in your assessable income (section 128D of the ITAA 1936) and you are not liable to withholding tax in respect of the dividend (paragraph 128B(3)(ga) of the ITAA 1936).

17. You do not include the amount of the franking credits attached to the FY 2021 Ordinary Dividend or Special Dividend in your assessable income and you are not entitled to a tax offset for those franking credits (sections 207-20 and 207-70).

### **Qualified persons**

18. The FY 2021 Ordinary Dividend and Special Dividend you received do not constitute a 'related payment' for the purposes of former section 160APHN of the ITAA 1936.

19. You will be a qualified person in relation to the FY 2021 Ordinary Dividend and/or the Special Dividend if, during the period from when you acquired your Asaleo shares to 22 June 2021, you held your Asaleo 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 of the ITAA 1936) in respect of the shares.

20. The period of 45 days does not include the day on which your Asaleo shares were acquired or the day of the disposal of your Asaleo shares.

### **Exempting entity**

21. Asaleo was not an 'exempting entity' when either the FY 2021 Ordinary Dividend or Special Dividend was paid to you, nor was it a 'former exempting entity' at that time (Division 208).

22. Therefore, section 208-195 will not apply to deny the gross up of your assessable income by the amount of the franking credit attached to the FY 2021 Ordinary Dividend or Special Dividend you received, or to deny the tax offset to which you are otherwise entitled to under Division 207 at the time when either the FY 2021 Ordinary Dividend or Special Dividend was paid.

**Section 177EA of the ITAA 1936**

23. 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 FY 2021 Ordinary Dividend or the Special Dividend.

**Section 204-30**

24. 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 FY 2021 Ordinary Dividend or the Special Dividend.

**CGT consequences****CGT event A1**

25. CGT event A1 happened on 1 July 2021 (Scheme Implementation Date) when you disposed of each of your Asaleo shares to Essity in accordance with the Scheme of Arrangement (section 104-10).

**Capital proceeds**

26. The Scheme Consideration of \$1.40 you received for each Asaleo share is your capital proceeds from CGT event A1 happening (subsection 116-20(1)).

27. The capital proceeds do not include the FY 2021 Ordinary Dividend or the Special Dividend.

**Capital gain or capital loss**

28. You made a capital gain if the capital proceeds from the disposal of your Asaleo share exceed its cost base (subsection 104-10(4)). The capital gain is the difference.

29. You made a capital loss if the capital proceeds from the disposal of your Asaleo share is less than its reduced cost base (subsection 104-10(4)). The capital loss is the difference.

**Discount capital gain**

30. If you made a capital gain from the disposal of an Asaleo share, you are eligible to treat the capital gain as a 'discount capital gain' provided you acquired, or are taken to have acquired, your Asaleo share on or before 30 June 2020 and you satisfy the other requirements of Division 115.

**Non-resident shareholders**

31. If you are a non-resident shareholder just before CGT event A1 happened to your Asaleo shares on 1 July 2021, you disregard any capital gain or capital loss made as a result of CGT event A1 happening if your shares were not taxable Australian property for the purposes of section 855-10.

## **Scheme**

32. 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**

#### ***Asaleo Care Limited***

33. Asaleo is a public company listed on the Australian Securities Exchange since 27 June 2014.

34. Asaleo is an Australian resident for tax purposes.

35. Asaleo manufactures, distributes and sells essential everyday consumer products across various personal care and hygiene categories.

36. As at 1 March 2021, Asaleo had approximately 543.12 million ordinary shares on issue and each ordinary share carried the same rights in relation to voting power, dividends and capital distributions. Asaleo had no other class of share on issue.

37. Asaleo had 128,336 Employee Share Rights on issue which carried no right to voting, dividends or capital distributions of the company.

38. All Employee Share Rights were dealt with as follows, such that there were no outstanding Employee Share Rights by the Effective Date by ensuring they were:

- vested in sufficient time to allow the relevant former holders of the Employee Share Rights to participate in the scheme, and
- cancelled as necessary where any outstanding Employee Share Rights did not vest.

#### ***Essity Group Holding BV***

39. Essity AB is a leading global hygiene and health company, headquartered in Stockholm, Sweden and listed on the Nasdaq in Stockholm.

40. Essity AB is the ultimate parent company of Essity, the largest direct shareholder in Asaleo.

41. Essity is a tax resident of The Netherlands and directly held approximately 36.16% of shares in Asaleo as at 1 February 2021.

### **Scheme of Arrangement**

42. On 17 February 2021, Asaleo and Essity entered into a Scheme Implementation Agreement (SIA) whereby Essity (or its nominee) would acquire the remaining shares on issue in Asaleo.

43. To give effect to the SIA, a Scheme of Arrangement was proposed to Asaleo shareholders pursuant to Part 5.1 of the Corporations Act.

44. Under the terms of the SIA, each share in Asaleo held by an Asaleo shareholder would be transferred to Essity Holding Company Australia Pty Ltd resulting in Asaleo becoming a wholly-owned subsidiary of Essity.

45. In consideration for each share, Essity would pay Asaleo shareholders \$1.40 per share (Scheme Consideration).

46. At a shareholder meeting held on 1 June 2021, Asaleo shareholders approved the Scheme of Arrangement.
47. On 9 June 2021 (Effective Date), the Federal Court of Australia approved the Scheme of Arrangement and provided orders pursuant to Part 5.1 of the Corporations Act.
48. Entitlement to the Scheme Consideration to Asaleo shareholders and the transfer of Asaleo shares to Essity occurred on 1 July 2021.

**FY 2021 Ordinary Dividend**

49. On 17 February 2021, Asaleo declared to pay a fully franked dividend of three cents per Asaleo share, sourced from the pre-existing 'dividend appropriation reserve' balance that existed as at 31 December 2020.
50. The FY 2021 Ordinary Dividend had a record date of 16 March 2021 and was paid on 31 March 2021.
51. The FY 2021 Ordinary Dividend was not debited against Asaleo's share capital account.
52. The FY 2021 Ordinary Dividend was sourced from the dividend appropriation reserve of Asaleo.

**Special Dividend**

53. On 17 February 2021, Asaleo announced an intention to pay, at the Board's absolute discretion, a special dividend of two cents per Asaleo share. On 1 June 2021, the Board declared to pay the fully franked Special Dividend, subject to approval of the Scheme of Arrangement being obtained from the Court.
54. Entitlements to the Special Dividend were determined on 15 June 2021 (Special Dividend Record Date) meaning the ex dividend date for the Special Dividend was 16 June 2021 (Ex Special Dividend Date).
55. Payment of the Special Dividend occurred on 21 June 2021.
56. The Special Dividend was:
- sourced from the dividend appropriation reserve of Asaleo following the payment of the FY 2021 Final Dividend
  - wholly at the discretion of Asaleo
  - fully franked.
57. Neither Essity nor any of its associates had any influence or control over the declaration and payment of the Special Dividend.

**Key dates**

58. The following is a summary of the key dates for the Scheme of Arrangement, FY 2021 Final Dividend and the Special Dividend:

Scheme Implementation Agreement executed	17 February 2021
Announcement date	17 February 2021
First Court hearing (lodged Scheme Booklet with Court)	22 April 2021
Dispatch of Scheme booklet to Asaleo shareholders	23 April 2021
Record Date for FY 2021 Final Dividend	16 March 2021
Payment Date for FY 2021 Final Dividend	31 March 2021
Scheme meeting	1 June 2021
Final Court hearing (Court approved scheme)	9 June 2021
Record Date for Special Dividend	15 June 2021
Payment Date for Special Dividend	21 June 2021
Scheme Record Date	22 June 2021
Scheme Implementation Date	1 July 2021

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**Commissioner of Taxation**21 July 2021

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**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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**FY 2021 Ordinary Dividend and Special Dividend**

59. The term 'dividend' is defined in subsection 6(1) of the ITAA 1936 to include any distribution made by a company to any of its shareholders, whether in money or other property. However, paragraph (d) of the definition of dividend excludes a distribution debited against an amount standing to the credit of the share capital account of the company.

60. The payment of the FY 2021 Ordinary Dividend and the Special Dividend is a distribution of money which Asaleo made to its shareholders. Asaleo did not debit the FY 2021 Ordinary Dividend and the Special Dividend against its share capital account.

61. Therefore, the exclusion in paragraph (d) of the definition of dividend does not apply and the FY 2021 Ordinary Dividend and the Special Dividend each constitute a dividend for the purposes of subsection 6(1) of the ITAA 1936.

62. A distribution is a frankable distribution to the extent it is not unfrankable (section 202-40). Section 202-45 sets out the circumstances under which an amount or distribution is taken to be unfrankable.

63. None of the circumstances in section 202-45 apply to the FY 2021 Ordinary Dividend or the Special Dividend. Therefore, the FY 2021 Ordinary Dividend and the Special Dividend are frankable distributions under section 202-40 and in turn are capable of being franked in accordance with section 202-5.

### **Assessability of the FY 2021 Ordinary Dividend and Special Dividend**

#### ***Residents***

64. 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) of the ITAA 1936).

65. As the FY 2021 Ordinary Dividend and the Special Dividend were paid to shareholders out of profits derived by Asaleo, shareholders who are residents of Australia as defined in subsection 6(1) of the ITAA 1936 are required to include the FY 2021 Ordinary Dividend and the Special Dividend in their assessable income under subparagraph 44(1)(a)(i) of the ITAA 1936.

#### ***Non-residents not carrying on a business at or through a permanent establishment***

66. Subparagraph 44(1)(b)(i) of the ITAA 1936 includes in the assessable income of a non-resident shareholder in company dividends paid out of profits derived by a company from sources in Australia in the assessable income of a non-resident shareholder in a company.

67. However, subsection 44(1) of the ITAA 1936 does not apply to a dividend to the extent to which it is included in, or excluded from, assessable income by another provision that expressly deals with dividends in the ITAA 1936 or the ITAA 1997.

68. Subsection 128B(1) of the ITAA 1936 imposes Australian withholding tax on income which consists of a dividend paid by a resident company to a non-resident on or after 1 January 1968.

69. Subparagraph 128B(3)(ga)(i) of the ITAA 1936 excludes from subsection 128B(1) of the ITAA 1936 income derived by a non-resident that consists of the franked part of a dividend. As the FY 2021 Ordinary Dividend and the Special Dividend were fully franked, they will not be subject to Australian withholding tax when derived by a non-resident shareholder.

70. Section 128D of the ITAA 1936 operates to treat the FY 2021 Ordinary Dividend and the Special Dividend as non-assessable non-exempt income.

71. Accordingly, a non-resident who received the fully franked FY 2021 Ordinary Dividend or the Special Dividend (other than those shareholders who received the FY 2021 Ordinary Dividend or Special Dividend in carrying on business in Australia at or through a permanent establishment in Australia) is not required to include the FY 2021 Ordinary Dividend or the Special Dividend as assessable income pursuant to subparagraph 44(1)(b)(i) of the ITAA 1936 (section 128D of the ITAA 1936) and is not liable to Australian withholding tax in relation to the FY 2021 Ordinary Dividend or the Special Dividend (subparagraph 128B(3)(ga)(i) of the ITAA 1936).

**Gross-up and tax offset**

72. Section 207-20 provides:

- If an entity makes a franked distribution to another entity, the assessable income of the receiving entity for the income year in which the distribution is made includes the amount of the franking credit on the distribution. This is in addition to any other amount included in the receiving entity's assessable income in relation to the distribution under any other provision of the ITAA 1997.
- The receiving entity is entitled to a tax offset for the income year in which the distribution is made. The tax offset is equal to the franking credit on the distribution.

73. Where a shareholder receives a franked distribution directly, satisfies the residency requirement in section 207-75 and is a qualified person in relation to the franked distribution, the assessable income of the shareholder includes the amount of the franking credit (subsection 207-20(1)). The shareholder will also be entitled to a tax offset equal to the franking credit on the distribution (subsection 207-20(2)).

74. A shareholder that is not a qualified person in relation to the FY 2021 Ordinary Dividend or the Special Dividend:

- does not include the franking credit attached to the relevant dividend in their assessable income (paragraph 207-145(1)(e)), and
- is not entitled to a tax offset equal to the amount of the franking credit attached to the relevant dividend (paragraph 207-145(1)(f)).

75. Subject to satisfying the qualified person rule, the assessable income of a shareholder (not being an entity taxed as a corporate tax entity) that is a partnership or a trustee of a trust (not being a complying superannuation fund) includes the amount of the franking credit attached to the Special Dividend (subsection 207-35(1)).

**Qualified person, related payment rule and holding period rule****Qualified person**

76. An entity must be a qualified person in relation to a dividend in order to be entitled to a tax offset in respect of the franking credit on a dividend (subsection 207-145(1)).

77. Paragraph 207-145(1)(a), which refers to Division 1A of former Part IIIAA of the ITAA 1936, provides the statutory tests 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.

78. 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.

79. The test of what constitutes a qualified person is set out in former subsection 160APHO(1) of the ITAA 1936. Broadly, if you were not under an obligation to make a related payment in relation to 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 relation to the dividend, you will have to satisfy the holding period requirement within the secondary qualification period.

***Related payment rule***

80. In order to determine the relevant qualification period, it is necessary to determine whether (under the Scheme of Arrangement) you or an associate have made, were under an obligation to make, or are likely to make a related payment in respect of the dividend you have received (former subsection 160APHN(2) of the ITAA 1936).

81. Examples of what constitutes the making of a related payment for the purposes of Division 1A of former Part IIIAA of the ITAA 1936 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.

82. Under the terms of the Scheme Implementation Arrangement, the Scheme Consideration was not reduced by the amount of the FY 2021 Ordinary Dividend or the Special Dividend, and the FY 2021 Ordinary Dividend and the Special Dividend were paid at the discretion of the Asaleo Board.

83. Therefore, it is considered that the payment of the FY 2021 Ordinary Dividend and the Special Dividend are not an integral part of the Scheme of Arrangement and you (or a partner in a partnership or a beneficiary of a trust that has an interest in Asaleo shares) are not taken to have made a related payment in respect of the FY 2021 Ordinary Dividend or the Special Dividend.

***Holding period rule***

84. The holding period rule requires that you hold your Asaleo shares, on which the FY 2021 Ordinary Dividend and Special Dividend were each paid, 'at risk' for a continuous period of at least 45 days during the relevant qualification period (former paragraph 160APHO(2)(a) of the ITAA 1936). The relevant qualification period is the primary qualification period.

85. The primary qualification period is the period beginning on the day after the date of acquisition of the share and ends 45 days after the day on which a share becomes ex dividend (former section 160APHD of the ITAA 1936).

86. Under former subsection 160APHE(1) of the ITAA 1936, 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.

87. In respect of the FY 2021 Ordinary Dividend, eligibility to receive the FY 2021 Ordinary Dividend was determined on the FY 2021 Ordinary Dividend Record Date (16 March 2021), being the last day on which the acquisition by a person of an Asaleo share entitled the person to receive the FY 2021 Ordinary Dividend. Accordingly, the day on which Asaleo shares became ex dividend for the FY 2021 Ordinary Dividend was 17 March 2021.

88. Accordingly, the primary qualification period begins on the day after the day on which the shareholder acquired the shares and ends 45 days after the ex dividend date (17 March 2021). This means that the primary qualification period for the FY 2021 Ordinary Dividend ended on 1 May 2021.

89. In respect of the Special Dividend, eligibility to receive the Special Dividend was determined on the Special Dividend Record Date (15 June 2021), being the last day on which the acquisition by a person of an Asaleo share entitled the person to receive the Special Dividend.

90. The last day on which a person could have acquired an Asaleo share and be entitled to receive the Special Dividend was the record date for the dividend, which was 15 June 2021. It follows that Asaleo shares became ex dividend on 16 June 2021.

91. You ceased to hold your Asaleo shares 'at risk' on the Scheme Record Date (22 June 2021) because on that day you became committed to dispose of your Asaleo shares in exchange for the Scheme Consideration.

92. Accordingly, the primary qualification period begins on the day after the day on which the shareholder acquired the shares and ends 45 days after the ex dividend date (16 June 2021). However, pursuant to former subsection 160APHO(3) of the ITAA 1936, any days on which a taxpayer has materially diminished risks of loss or opportunities for gain in respect of the Asaleo shares are to be excluded.

93. Asaleo shareholders will no longer be considered to hold their Asaleo shares at risk for the purposes of Division 1A of former Part IIIA of the ITAA 1936 as of 22 June 2021. Accordingly, the primary qualification period runs from the day after acquisition until 22 June 2021 (inclusive). In this context, there are 45 clear days in the period from 7 May 2021 until 22 June 2021.

94. If you acquired your Asaleo shares on or before 7 May 2021 and disposed of them to Essity under the Scheme of Arrangement, you satisfied the holding period rule if you held those shares at risk for at least 45 continuous days.

95. Any days on which a shareholder has materially diminished risks of loss or opportunities for gain in respect of the shares are excluded, but the exclusion is not taken to break the continuity of the period for which the taxpayer held the shares (former subsection 160APHO(3) of the ITAA 1936).

96. You will need to determine whether you satisfy the holding period rule 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' (as defined under former 160APHM of the ITAA 1936) in respect of your Asaleo shares and is outside of the scope of this Ruling).

### **Refundable tax offset**

97. Your entitlement to the franking credit tax offsets under Division 207 in relation to the FY 2021 Ordinary Dividend or 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.

98. 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 (subsection 67-25(1A))
- trustees of a trust who are liable to be assessed under sections 98 or 99A of the ITAA 1936 (subsection 67-25(1B))
- 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 (subsections 67-25(1C) and (1D)).

99. 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 your income tax liability, you are entitled to a refund of the difference (table item 40 of section 63-10).

**Anti-avoidance provisions****Section 177EA of the ITAA 1936**

100. Section 177EA of the ITAA 1936 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.

101. Considering the circumstances of the Scheme of Arrangement, it cannot be concluded that Asaleo or Asaleo Shareholders entered into or carried out the scheme for the purpose of enabling Asaleo Shareholders to obtain an imputation benefit.

102. 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 Special Dividend.

**Section 204-30**

103. 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.

104. 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.

105. Under the scheme, you received imputation benefits when the FY 2021 Ordinary Dividend and Special Dividend were each paid. The FY 2021 Ordinary Dividend and Special Dividend were paid equally to all Asaleo shareholders and were fully franked regardless of the tax profiles of Asaleo's shareholders. Accordingly, it cannot be said that Asaleo selectively directed the flow of franked dividends to those members who obtained the most benefit from the franking credits.

106. 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 an Asaleo shareholder in relation to the FY 2021 Ordinary Dividend or the Special Dividend.

**CGT consequences****CGT event A1**

107. 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)).

108. The acquisition of shares in Asaleo under a court approved Scheme of Arrangement does not involve a disposal of shares under a contract.<sup>1</sup>

<sup>1</sup> See paragraph 9 of Taxation Determination TD 2002/4 *Income tax: capital gains: what is the first element of the cost base and reduced cost base of a share in a company you acquire in exchange for a share in another company in a takeover or merger?*

109. Therefore, CGT event A1 happened when there was a change of ownership in an Asaleo share from a shareholder to Essity under the Scheme Implementation Agreement (subsections 104-10(1) and (2)). The change of ownership occurred on the Scheme Implementation Date of 1 July 2021 (paragraph 104-10(3)(b)).

110. The time when CGT event A1 happens determines the income year in which a capital gain or capital loss is made and whether the CGT discount applies to any capital gain.

111. A shareholder makes a capital gain from CGT event A1 happening if the capital proceeds from the disposal of an Asaleo share are more than the cost base of the share. A shareholder makes a capital loss if the capital proceeds are less than the reduced cost base of the Asaleo share (subsection 104-10(4)).

### **Capital proceeds**

112. 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 (subsection 116-20(1)).

113. 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.

114. In this case, the FY 2021 Ordinary Dividend and/or the Special Dividend was not paid in respect of the disposal of Asaleo shares under the scheme. The Scheme of Arrangement was not conditional on the declaration of the FY 2021 Ordinary Dividend and the Special Dividend was declared at the sole discretion of the Asaleo Board. The FY 2021 Ordinary Dividend was paid before shareholder approval was obtained for the Scheme of Arrangement. The FY 2021 Ordinary Dividend and the Special Dividend were not dependent on Essity or a third party financing or facilitating payment of the FY 2021 Ordinary Dividend or the Special Dividend, or Essity or a third party being obliged to bring about the result that the FY 2021 Ordinary Dividend or the Special Dividend would be paid to existing shareholders.

115. The Commissioner considers that the FY 2021 Ordinary Dividend and the Special Dividend were not received in respect of the disposal of Asaleo shares under the Scheme of Arrangement. Accordingly, the FY 2021 Ordinary Dividend and Special Dividend do not form part of the capital proceeds in respect of CGT event A1 happening.

116. Therefore, the capital proceeds that you received from CGT event A1 happening for the disposal of each of your Asaleo shares is the Scheme Consideration of \$1.40 per share.

### **Capital gain or capital loss**

117. You made a capital gain if the capital proceeds from the disposal of your Asaleo share exceed its cost base (subsection 104-10(4)). The capital gain is the difference.

118. You made a capital loss if the capital proceeds from the disposal of your Asaleo share is less than its reduced cost base (subsection 104-10(4)). The capital loss is the difference.

119. The cost base and reduced cost base of the Asaleo share depends on your individual circumstances.

***Discount capital gain***

120. If you make a capital gain from the disposal of your Asaleo 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 Asaleo share on or before 30 June 2020 which was at least 12 months prior to CGT event A1 happening (subsection 115-25(1)).

***Non-resident shareholders***

121. You disregard a capital gain or capital loss you make from a CGT event if you are a non-resident, or the trustee of a non-resident trust for CGT purposes just before the CGT event happens and the CGT event happens in relation to a CGT asset that is not taxable Australian property (subsection 855-10(1)).

122. The term 'taxable Australian property' is defined in the table in section 855-15. Where you are a non-resident or a trustee of a non-resident trust for CGT purposes just before CGT event A1 happened to your Asaleo shares under the Scheme of Arrangement, you cannot disregard a capital gain or capital loss you made from CGT event A1 happening (under subsection 855-10(1)) if, relevantly, your Asaleo shares were:

- an indirect Australian real property interest which is not covered by table item 5 of section 855-15 (table item 2 of section 855-15)
- covered by subsection 104-165(3) (table item 5 of section 855-15).



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Not previously issued as a draft

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TD 2002/4

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                      Income tax ~~ Capital management ~~ Anti avoidance rules ~~  
                      Section 177EA  
                      International issues ~~ Non-resident Australian income ~~ Dividends

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