

CR 2024/32 - Advanced Share Registry Limited - scheme of arrangement and special dividend



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Status: **legally binding**

Class Ruling

Advanced Share Registry Limited – scheme of arrangement and special dividend

❶ Relying on this Ruling

This publication 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 income tax consequences for the holders of ordinary shares in Advanced Share Registry Limited (ASW) in relation to the payment of a special dividend paid by ASW on 13 December 2023 (Special Dividend) and acquisition of all the ordinary shares in ASW by Automic Pty Ltd (Automic), a wholly owned subsidiary of Automic Enterprise Pty Ltd (Automic Enterprise) on 20 December 2023 (Scheme Implementation Date).

2. Details of this scheme are set out in paragraphs 40 to 67 of this Ruling.

3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Note: By issuing this Ruling, the ATO is not endorsing this scheme. Potential users must form their own view about the scheme.

Who this Ruling applies to

4. This Ruling applies to you if you were a shareholder of an ordinary share in ASW who:

- held your ASW ordinary shares on
 - 12 December 2023 (Special Dividend Record Date) and received the Special Dividend
 - 13 December 2023 (Scheme Record Date) and participated in the scheme of arrangement under which Automic, acquired all the ordinary shares in ASW

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- held your ASW ordinary shares on capital account – that is, your ASW ordinary shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)), and
 - is a ‘resident’ or ‘non-resident’ of Australia within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936).
5. This Ruling does not apply to you if you:
- acquired your ASW ordinary shares under an ASW employee share scheme, option or rights plan
 - are subject to the investment manager regime in Subdivision 842-I in relation to your ASW ordinary shares
 - are a ‘temporary resident’ of Australia within the meaning of subsection 995-1(1), or
 - are subject to the taxation of financial arrangement rules in Division 230 on financial arrangements under the scheme outlined in paragraphs 40 to 67 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 2023 to 30 June 2024.

Ruling

Special Dividend paid by Advanced Share Registry Limited

7. The Special Dividend is a ‘dividend’ as defined in subsection 6(1) of the ITAA 1936.
8. The Special Dividend is a frankable distribution pursuant to section 202-40.

Assessability of the Special Dividend, franking credits and tax offsets

Resident shareholders

9. If you are a resident of Australia as defined in subsection 6(1) of the ITAA 1936, you are required to include the Special Dividend in your assessable income (subparagraph 44(1)(a)(i) of the ITAA 1936).
10. If you satisfy the residency requirements in section 207-75, you 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 IIIA of the ITAA 1936).
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)).

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12. 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.

Non-resident shareholders

Special Dividend attributable to a permanent establishment in Australia

13. If you are a non-resident and the Special Dividend is attributable to a permanent establishment in Australia, you include the Special Dividend in your assessable income (paragraphs 44(1)(b) and (c) of the ITAA 1936) and you are not liable to pay withholding tax in respect of the Special Dividend (subsection 128B(3E) of the ITAA 1936).

14. If you are also a qualified person (as defined in Division 1A of former Part IIIAA of the ITAA 1936), you include the amount of 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 franking credits (section 207-20 and subsection 207-75(2)).

15. The franking credit tax offset is not refundable (subsection 67-25(1DA)).

Special Dividend not attributable to a permanent establishment in Australia

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

17. You do not include the amount of the franking credits attached to the 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 person

18. Paragraph 207-145(1)(a) refers to Division 1A of former Part IIIAA of the ITAA 1936, which contains the conditions you must satisfy to be a qualified person in relation to a franked distribution you have received. The main way in which you can be a qualified person is by satisfying the holding period rule.

19. The Special Dividend constitutes a 'related payment' for the purposes of former section 160APHN of the ITAA 1936. This is because the Scheme Consideration paid by Automic for acquiring the ASW ordinary shares is reduced by the amount of the Special Dividend. This reduction has the effect of passing the benefit of the Special Dividend from the shareholders of ASW to Automic (former subsection 160APHN(2), former paragraphs 160APHN(3)(f), 160APHN(4)(c) and (d) of the ITAA 1936).

20. Therefore, you are taken to have made a related payment in respect of the Special Dividend.

21. You will satisfy the holding period rule in relation to the Special Dividend if you held your ASW ordinary shares for a continuous period of at least 45 days during the secondary qualification period for the Special Dividend (former paragraph 160APHO(1)(b) and former subsection 160APHO(2) of the ITAA 1936).

22. The secondary qualification period begins on the 45th day before, and ends on the 45th day after, the day on which the shares became ex dividend (former section 160APHD of the ITAA 1936).

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23. Former subsection 160APHE(1) of the ITAA 1936 states that a share in respect of which a dividend is to be paid, or an interest in such 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.

24. In relation to the Special Dividend, the ASW ordinary shares became ex dividend on 13 December 2023.

25. Therefore, you satisfy the holding period rule in relation to the Special Dividend if, during the period beginning from 29 October 2023 to 27 January 2024 (inclusive), you held each of your ASW ordinary shares for a continuous period of at least 45 days (not counting the day on which you acquired the ASW ordinary share, or the day on which you disposed of the ASW ordinary share, and not counting the days, if any, on which you had 'materially diminished risks of loss or opportunities for gain' (as defined in former section 160APHM of the ITAA 1936) in respect of the ASW ordinary shares).

26. You had materially diminished risks of loss or opportunities for gain on and after the Scheme Record Date, when you became committed to disposing of your ASW ordinary shares to Automic in exchange for the Scheme Consideration. Therefore, the secondary qualification period for the Special Dividend ended on 12 December 2023.

Exempting entity and former exempting entity

27. ASW was not an exempting entity (section 208-20), or a former exempting entity (section 208-50), at the time when the Special Dividend was paid to you.

28. Section 208-195 will not apply to deny the inclusion in your assessable income of the amount of the franking credit on the Special Dividend you received or deny the franking credit tax offset to which you are otherwise entitled under Division 207 at the time when the Special Dividend was paid to you.

Section 177E of the ITAA 1936

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

Section 177EA of the ITAA 1936

30. 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 benefits you received in relation to the Special Dividend. This is because it cannot be concluded that ASW or the shareholders of ASW entered into or carried out the scheme for a more than incidental purpose of enabling the shareholders of ASW to obtain an imputation benefit, and accordingly the purpose requirement in paragraph 177EA(3)(e) of the ITAA 1936 is not satisfied.

Section 204-30

31. As there is no streaming of distributions, 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 in relation to the Special Dividend.

Status: **legally binding**

Capital gains tax consequences

CGT event A1

32. CGT event A1 happened to you on the Scheme Implementation Date when you disposed of each of your ASW ordinary shares to Automic (section 104-10).

Resident shareholders

33. The Scheme Consideration of \$0.1625 (\$0.165 less the amount of the Special Dividend of \$0.0025) you received for each ASW ordinary share is your capital proceeds from CGT event A1 happening (subsection 116-20(1)).

34. The capital proceeds do not include the Special Dividend of \$0.0025 per share as it was not paid in respect of CGT event A1 happening to your ASW ordinary shares.

35. You made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your ASW ordinary share exceeded the cost base of that ASW ordinary share at the time of CGT event A1 (subsection 104-10(4)). The capital gain is the amount of the excess.

36. If you made a capital gain from CGT event A1 happening, you are entitled to treat the capital gain as a 'discount capital gain' provided that the conditions in Subdivision 115-A are met. In particular, you must have acquired your ASW ordinary share at least 12 months before the Scheme Implementation Date (excluding the date of acquisition of the ASW ordinary share and the Scheme Implementation Date).

37. You made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your ASW share were less than its reduced cost base at the time of CGT event A1 (subsection 104-10(4)). The capital loss is the amount of the difference.

Foreign-resident shareholders

38. You must disregard a capital gain or capital loss you made from CGT event A1 happening when you disposed of your ASW ordinary shares to Automic (section 855-10) if:

- you were a foreign resident, or the trustee of a foreign trust for CGT purposes, just before the Scheme Implementation Date, and
- your ASW ordinary shares were not 'taxable Australian property' (as defined in section 855-15).

39. Your ASW ordinary shares were taxable Australian property if they were either:

- used by you at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- covered by subsection 104-165(3) about individuals choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident (table item 5 of section 855-15).

Scheme

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

Status: **legally binding**

Advanced Share Registry Limited

41. ASW is a company incorporated in Australia and listed on the Australian Securities Exchange (ASX) since 10 June 2008.
42. ASW was a base rate entity for the income year ended 30 June 2023.
43. ASW business consists of providing an online platform for investors to view and update all shareholder details relating to their investments.
44. On 20 December 2023, ASW had 193,407,776 ordinary shares on issue.
45. ASW shareholders include both Australian-resident and foreign-resident entities. Foreign-resident entities did not hold or come to hold (pursuant to the scheme), 95% or more of the shares in ASW (directly or indirectly).

Automic Pty Ltd

46. Automic is a proprietary company incorporated in Australia and is a wholly owned subsidiary of Automic Enterprise.
47. Automic Enterprise is an Australian-incorporated company that provides registry, employee share plan, board management, environmental, social and corporate governance and investor relations solutions.
48. The majority of shares in Automic Enterprise are owned by Australian-resident entities.

Acquisition of Advanced Share Registry Limited by Automic Pty Ltd

49. On 7 September 2023, ASW and Automic Enterprise entered into the Scheme Implementation Deed pursuant to which Automic Enterprise, through its wholly owned subsidiary, Automic, would acquire all the ordinary shares in ASW by way of a scheme of arrangement under Part 5.1 of the *Corporations Act 2001*.
50. Under the scheme of arrangement, Automic Enterprise or Automic would pay \$0.1625 (\$0.165 less the amount of the Special Dividend of \$0.0025) in cash for each ASW ordinary share disposed of to Automic (Scheme Consideration).
51. On 5 December 2023, a resolution in favour of the scheme of arrangement was passed by the shareholders of ASW as required by subparagraph 411(4)(a)(ii) of the *Corporations Act 2001*.
52. On 7 December 2023, the Federal Court of Australia approved the scheme of arrangement under paragraph 411(4)(b) of the *Corporations Act 2001*.
53. ASW ordinary shares were suspended from trading on the ASX from close of trading on 8 December 2023 (Scheme Effective Date).
54. On 21 December 2023, ASW was removed from the official list of the ASX.
55. Under the scheme of arrangement, the shareholders of ASW as at the Scheme Record Date (5:00 pm AWST on 13 December 2023) received the Scheme Consideration for each ordinary share in ASW on the Scheme Implementation Date.
56. Payment of the Scheme Consideration to ASW shareholders and the transfer of the ASW ordinary shares to Automic occurred on 20 December 2023 (Scheme Implementation Date).

Status: **legally binding**

Special Dividend

57. On 5 December 2023, ASW declared a fully franked dividend of \$0.0025 per ASW share to be paid to ASW shareholders who held their shares at 5:00 pm AWST on 12 December 2023 (Special Dividend Record Date).

58. Payment of the Special Dividend occurred on 13 December 2023.

59. The Special Dividend was not debited against ASW's share capital account.

60. The Special Dividend was:

- sourced from retained and current year earnings
- conditional on the scheme of arrangement becoming effective on 8 December 2023
- compliant with the requirements of the *Corporations Act 2001*, including section 254T of that Act
- determined by ASW in its sole discretion, and
- fully franked.

Other matters

61. The following facts are relevant for the purposes of section 207-159:

- prior to the payment of the Special Dividend, ASW had a history of paying fully franked dividends to ASW shareholders on a regular basis
- no proceeds from an equity issue by ASW or its subsidiaries has been, or will be, applied to replenish the money expended by ASW in paying the Special Dividend, and
- ASW's last capital raising occurred in 2008.

62. Neither Automic Enterprise, nor any of its associates, had any influence or control over the declaration and payment of the Special Dividend.

63. Neither Automic Enterprise, nor any of its associates facilitated or financed the payment of the Special Dividend.

64. The scheme of arrangement was not conditional on the Special Dividend being declared or paid.

65. When the Special Dividend was paid, foreign-resident entities did not hold (directly or indirectly) 95% or more of the shares in ASW. ASW was not an exempting entity (section 208-20), or a former exempting entity (section 208-50), at the time of payment of the Special Dividend.

66. On the Scheme Implementation Date, the sum of the market values of ASW's assets that were taxable Australian real property (as defined in section 855-20) did not exceed the sum of the market values of its other assets for the purposes of section 855-30.

Status: **legally binding**

67. The following table is a summary of the key dates for the scheme of arrangement and the Special Dividend:

Table 1: Summary of the key dates for the scheme of arrangement and the Special Dividend

Date	Event
7 September 2023	Scheme Implementation Deed executed
8 September 2023	Announcement date
1 November 2023	First Court date
3 November 2023	Date of Scheme Booklet (despatch to ASW shareholders)
3 December 2023	Scheme meeting record date
5 December 2023	Scheme meeting
7 December 2023	Second Court date
8 December 2023	Scheme Effective Date
12 December 2023	Special Dividend Record Date
13 December 2023	Special Dividend Payment Date
13 December 2023 5:00 pm AWST	Scheme Record Date
20 December 2023	Scheme Implementation Date

Commissioner of Taxation

12 June 2024

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1936 44(1)(a)(i)
 - ITAA 1936 44(1)(b)
 - ITAA 1936 44(1)(c)
 - ITAA 1936 128B(3)(ga)(i)
 - ITAA 1936 128B(3E)
 - ITAA 1936 128D
 - ITAA 1936 former Pt IIIAA Div 1A
 - ITAA 1936 former 160APD
 - ITAA 1936 former 160APHE(1)
 - ITAA 1936 former 160APHM
 - ITAA 1936 former 160APHN
 - ITAA 1936 former 160APHN(2)
 - ITAA 1936 former 160APHN(3)(f)
 - ITAA 1936 former 160APHN(4)(c)
 - ITAA 1936 former 160APHN(4)(d)
 - ITAA 1936 former 160APHO(1)(b)
 - ITAA 1936 former 160APHO(2)
 - ITAA 1936 177E
 - ITAA 1936 177EA
 - ITAA 1936 177EA(3)(e)
 - ITAA 1936 177EA(5)(b)
 - ITAA 1997 Div 67
 - ITAA 1997 67-25
 - ITAA 1997 67-25(1DA)
 - ITAA 1997 104-10
 - ITAA 1997 104-10(4)
 - ITAA 1997 104-165(3)
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 116-20(1)
 - ITAA 1997 202-40
 - ITAA 1997 204-30
 - ITAA 1997 204-30(3)(c)
 - ITAA 1997 Div 207
 - ITAA 1997 207-20
 - ITAA 1997 207-35(1)
 - ITAA 1997 207-70
 - ITAA 1997 207-75
 - ITAA 1997 207-75(2)
 - ITAA 1997 207-145(1)(a)
 - ITAA 1997 207-159
 - ITAA 1997 208-20
 - ITAA 1997 208-50
 - ITAA 1997 208-195
 - ITAA 1997 Div 230
 - ITAA 1997 Subdiv 842-I
 - ITAA 1997 855-10
 - ITAA 1997 855-15
 - ITAA 1997 855-20
 - ITAA 1997 855-30
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - Corporations Act 2001 Pt 5.1
 - Corporations Act 2001 411(4)(a)(ii)
 - Corporations Act 2001 411(4)(b)
 - Corporations Act 2001 254T
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ATO references

NO: 1-108MA7KP
 ISSN: 2205-5517
 BSL: PG
 ATOLaw topic: Capital gains tax ~~ CGT events ~~ A1 – disposal of a CGT asset
 Income tax ~~ Assessable income ~~ Dividend income
 Income tax ~~ Capital management ~~ Scheme of arrangement

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