

CR 2025/5 - Boral Limited - off-market takeover - exchange of shares for shares in SGH Limited

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Status: **legally binding**

Class Ruling

Boral Limited – off-market takeover – exchange of shares for shares in SGH Limited

• 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.

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What this Ruling is about

1. This Ruling sets out the income tax consequences for shareholders of Boral Limited (Boral) in relation to the disposal of Boral shares by participating in the off-market takeover by SGH Limited (formerly Seven Group Holdings Limited) (SGH) and the payment of a special ordinary fully franked dividend of \$0.26 (Boral Dividend) from Boral on 26 April 2024 (Payment Date).
2. Details of this scheme are set out in paragraphs 47 to 73 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - sold your Boral shares to Network Investment Holdings Pty Limited (SGH Bidder) during the period commencing on 4 March 2024 and ending at 7:00pm AEST on 28 June 2024 (Offer Period)
 - held your Boral shares on capital account – that is, your Boral shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)).

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5. This Ruling does not apply to you if:
- your Boral shares were compulsorily acquired under subsection 661A(1) of the *Corporations Act 2001* as part of the takeover
 - you acquired your Boral shares under an employee share scheme (as defined in section 83A-10)
 - you are subject to the investment manager regime in Subdivision 842-I in relation to your Boral shares, or
 - you are subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 47 to 73 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

Dividend and frankable distribution

7. The Boral Dividend, received by Boral shareholders who held Boral shares on 18 April 2024 (Record Date), is a 'dividend' as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) and a frankable distribution under section 202-40.

Boral Dividend included in the assessable income of Australian-resident shareholders

8. If you are a resident individual or a 'corporate tax entity', (as defined in section 960-115) who received the Boral Dividend and are a 'qualified person' (as defined in Division 1A of former Part IIIAA of the ITAA 1936), you:

- include the Boral Dividend and the franking credits attached to the Boral Dividend in your assessable income (subparagraph 44(1)(a)(i) of the ITAA 1936 and sections 207-20, 207-70 and 207-145), and
- are entitled to a tax offset equal to the amount of those franking credits (subsection 207-20(2)).

9. If you received the Boral 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 on the Boral Dividend are included in your assessable income, provided you are a 'qualified person' (subsection 207-35(1)).

10. If you are a partner in a partnership or a beneficiary of a trust, and the Boral Dividend flows indirectly through the partnership or trust to you, you include your share of the Boral Dividend in your assessable income and you are entitled to a tax offset equal to your share of the franking credits on the Boral Dividend, provided both you and the partnership or trust (as relevant) are each a 'qualified person' (section 207-45 and former subsection 160APHU(1) of the ITAA 1936).

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11. The franking credit tax offset is refundable if you satisfy the requirements of the refundable tax offset rules in Division 67.

Related payment and qualified persons

12. If you received the Boral Dividend, you have made a related payment in respect of the Boral Dividend (former section 160APHN of the ITAA 1936), and therefore the secondary qualification period applies (former paragraph 160APHO(1)(b) of the ITAA 1936).

13. The secondary qualification period was the period 5 March 2024 to 3 June 2024 (inclusive).

14. You will be a 'qualified person' in relation to the Boral Dividend you received if you held your Boral shares for a continuous period of at least 45 days during the qualification period 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.

15. The small shareholder exception in former section 160APHT of the ITAA 1936 does not apply as the Boral Dividend is a related payment (former subsection 160APHT(2) of the ITAA 1936). Therefore, a Boral shareholder who is an individual and who has total franking credit tax offsets which do not exceed \$5,000 for the income year ended 30 June 2024 must still satisfy the holding period rule in relation to the Boral Dividend.

Exempting entity

16. Boral was not an exempting entity when the Boral Dividend was paid to you (section 208-20 and subsection 208-25(1)), nor was it a former exempting entity at that time (section 208-50).

17. 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 Boral Dividend, or deny the tax offset to which you are otherwise entitled to under Division 207.

Non-resident shareholders

Boral Dividend attributable to a permanent establishment in Australia

18. If you are a non-resident and the Boral Dividend is attributable to a permanent establishment in Australia, you include the Boral 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 dividend (subsection 128B(3E) of the ITAA 1936).

19. If you are a qualified person, you also include the amount of the franking credit attached to the Boral Dividend in your assessable income and are entitled to a tax offset equal to the amount of that franking credit (sections 207-20 and 207-70 and subsection 207-75(2)).

20. The tax offset is not refundable (subsection 67-25(1DA)).

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Boral Dividend not attributable to a permanent establishment in Australia

21. If you are a non-resident and the Boral Dividend is not attributable to a permanent establishment in Australia, no part of the Boral Dividend is included in your assessable income (subparagraph 44(1)(b)(i) and section 128D of the ITAA 1936) and you are not liable to pay withholding tax in respect of the Boral Dividend (paragraph 128B(3)(ga) of the ITAA 1936).

22. You do not include the amount of the franking credits on the Boral Dividend in your assessable income and you are not entitled to a tax offset for those franking credits (sections 207-20 and 207-70).

Anti-avoidance and integrity provisions

23. The Commissioner will not make a determination to deny the whole, or any part, of the imputation benefits you received in relation to the Boral Dividend under:

- paragraph 177EA(5)(b) of the ITAA 1936 because the purpose condition in paragraph 177EA(3)(e) of the ITAA 1936 is not satisfied, and
- paragraph 204-30(3)(c) because there is no streaming of distributions.

Capital gains tax consequences

CGT event A1

24. CGT event A1 happened when you disposed of each of your Boral shares to SGH Bidder in accordance with the terms of the Offer (refer to paragraphs 52 and 53 of this Ruling) (section 104-10).

25. The time of CGT event A1 is the date on which you entered into the contract with SGH Bidder to dispose of your Boral shares with SGH Bidder (Contract Date) (paragraph 104-10(3)(a)).

26. Your Contract Date will depend on the method of acceptance you chose when you accepted the Offer (refer to paragraph 66 of this Ruling).

27. The capital proceeds you received in respect of each Boral share you disposed of is the sum of the cash consideration and the market value of the proportion of the SGH share you received (subsection 116-20(1)).

28. The market value of the proportion of the SGH share you received is worked out as at the time of CGT event A1 happening.

29. We accept that the market value of an SGH share on each Contract Date that happened during the Offer Period is the amount detailed in Appendix 2 of this Ruling.

30. The Boral Dividend of \$0.26 per Boral share is not included in the capital proceeds.

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

32. You made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your Boral share were less than the reduced cost base of that share (subsection 104-10(4)). The capital loss is the difference.

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33. If you made a capital gain on disposing of your Boral share, you can treat the capital gain as a 'discount capital gain' provided that:

- you are an individual, complying superannuation entity or a trust (section 115-10), and
- you acquired, or are taken to have acquired, your Boral share at least 12 months before your Contract Date (section 115-25) and the other conditions of Subdivision 115-A are met.

Foreign resident shareholders

34. If you were a 'foreign resident' or the trustee of a 'foreign trust for CGT purposes' (defined in subsection 995-1(1)) just before the Contract Date, you disregard a capital gain or capital loss you made from CGT event A1 happening when you disposed of your Boral shares (section 855-10) provided your Boral shares:

- had not been used at any time by you in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- were not covered by subsection 104-165(3) (about individuals choosing to disregard capital gains upon ceasing to be Australian residents) (table item 5 of section 855-15).

Availability of scrip for scrip roll-over if a capital gain is made

35. Subject to the qualifications in paragraph 36 of this Ruling, if you received a SGH share and make a capital gain from the disposal of your Boral share, you may choose scrip for scrip roll-over for that gain (sections 124-780, 124-785 and 124-790). Scrip for scrip roll-over is not available if you made a capital loss.

36. Scrip for scrip roll-over cannot be chosen if any capital gain you made from the replacement SGH shares would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

Consequences if scrip for scrip roll-over is chosen

37. If you choose scrip for scrip roll-over, the part of the capital gain from the disposal of your Boral share that is attributable to the receipt of an SGH share is disregarded (subsections 124-785(1) and 124-790(1)).

38. Any part of the capital gain that is attributable to the receipt of cash consideration is not disregarded because it is ineligible proceeds for which roll-over is not available (subsection 124-790(1)).

39. If you choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of each SGH share is worked out by reasonably attributing the cost base and reduced cost base (respectively) of the Boral shares to the SGH shares you received, reduced by so much of the cost bases and reduced cost bases (respectively) of your SGH shares as is attributable to the cash consideration (subsections 124-785(2), (3) and (4)).

40. We accept a reasonable method of attribution would be to calculate the first element of the cost base and reduced cost base of each SGH share by dividing the total cost bases and total reduced cost bases (respectively) of your Boral shares (as reduced by so much of the total cost bases and total reduced cost bases (respectively) of your Boral

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shares as is attributable to the cash consideration) by the number of SGH shares you received (subsections 124-785(2), (3), (4) and section 124-790).

41. For the purposes of determining your eligibility to make a discount capital gain, if you choose scrip for scrip roll-over, the date you acquired your replacement SGH shares is taken to be the date you acquired your original Boral shares (table item 2 of subsection 115-30(1)).

Consequences if you do not, or cannot, choose scrip for scrip roll-over

42. If you do not, or cannot, choose scrip for scrip roll-over, you must account for any capital gain or capital loss from the disposal of your Boral shares in working out your net capital gain or net capital loss for the income year in which CGT event A1 happened (sections 102-5 and 102-10).

43. If you made a capital gain, you can treat the capital gain as a discount capital gain if the conditions in Subdivision 115-A are met. In particular, the Boral shares you disposed of must have been acquired at least 12 months before the Contract Date (section 115-25).

44. The first element of the cost base and reduced cost base of each replacement SGH share is equal to that part of the market value of the Boral shares you exchanged in respect of acquiring an SGH share (paragraph 110-25(2)(b) and subsection 110-55(2)), reduced by the proportion of the market value of the Boral shares that is reasonably attributable to the cash consideration of the capital proceeds you received (subsection 112-30(1)).

45. The market value of the Boral shares you gave is to be worked out as at the Contract Date (which is also the time at which CGT event A1 happens (paragraph 110-25(2)(b) and subsection 110-55(2)).

46. You are taken to have acquired the SGH shares on the Contract Date (table item 2 of section 109-10 and paragraph 104-35(5)(c)).

Scheme

47. 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.

Boral Limited

48. Boral is an Australian-incorporated public company, which was re-listed on the Australian Securities Exchange (ASX) since 21 February 2000.

49. Boral is an integrated construction materials company, producing and selling a broad range of construction materials.

SGH Limited

50. SGH is an Australian-incorporated public company that was listed on the ASX on 13 May 2010.

51. SGH is a diversified operating and investment group with businesses and investments in industrial services, media and energy sectors.

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52. SGH Bidder is a wholly owned subsidiary of SGH.

Off-market takeover

53. On 19 February 2024, SGH announced an off-market takeover bid to acquire, through SGH Bidder, all of the Boral shares it did not own. SGH Bidder also released a bidder statement for the takeover which outlined the details of the off-market takeover bid (Offer).

54. Under the terms of the Offer, the minimum consideration was 0.1116 SGH shares (Scrip Consideration) and \$1.50 cash for each Boral share.

55. A Boral shareholder, whose address as shown in the register of members of Boral was in a jurisdiction other than Australia or its external territories, or New Zealand, at the time the Offer was made (Foreign Shareholder), was not entitled to receive SGH shares as consideration for Boral shares as a result of accepting the Offer. Instead, a Foreign Shareholder was offered and received a cash amount as determined after SGH Bidder:

- arranged for the issue of the number of SGH shares to which all Foreign Shareholders would have been entitled but were issued to a nominee approved by Australian Securities and Investment Commission (ASIC) (Nominee)
- caused the Nominee to offer those SGH shares for sale on the ASX
- caused the Nominee to pay an amount of cash ascertained in accordance with the formula

$$\frac{N \times YS}{TS}$$

TS

Where:

- N is the amount which is received by the Nominee upon the sale of all relevant SGH shares less brokerage and sale expenses
- YS is the number of SGH shares which would, otherwise have been allotted to the Foreign Shareholder, and
- TS is the total number of relevant SGH shares allotted to the Nominee.

56. On 4 March 2024, SGH Bidder released a first supplementary bidder's statement (1st Supplementary Bidder's Statement) and a replacement bidder's statement (Replacement Bidder's Statement) in relation to its off-market takeover bid, which:

- replaced the original bidder's statement, dated 19 February 2024 (Original Bidder's Statement), supplemented and was to be read together with the Original Bidder's Statement, and
- provided that the Offer opened on 4 March 2024 and was scheduled to close at on 4 April 2024 (Offer Period) unless extended or withdrawn.

57. Also on 4 March 2024, SGH Bidder released a second supplementary bidder's statement (2nd Supplementary Bidder's Statement), in which:

- SGH Bidder gave notice declaring that the Offer was free from all conditions
- Boral shareholders who accepted the Offer would be issued SGH shares and sent payment within 7 Business Days

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- SGH Bidder had established an acceptance facility that was open to all Boral shareholders to facilitate the receipt of acceptances to the Offer (Facility), and
- Boral shareholders could immediately accept the Offer by lodging a completed and executed acceptance form, in the form attached to the Original Bidder's Statement.

58. A third supplementary bidder's statement (3rd Supplementary Bidder's Statement) was released on 26 March 2024.

59. On 4 April 2024, SGH Bidder gave notice that the Offer had been varied by extending the period which the Offer would remain open until 18 April 2024.

60. On 12 April 2024, in a fourth supplementary bidder's statement (4th Supplementary Bidder's Statement), SGH Bidder announced a package of measures agreed with the Bid Response Committee, including:

- consideration consisting of cash of \$1.70, and Scrip Consideration, being 0.1116 of an SGH share, per Boral share would be paid to all Boral shareholders who accepted the Offer, including those who had accepted the Offer before 12 April 2024
- Boral would pay the Boral Dividend, to deliver \$0.11 of franking credits to shareholders, with the cash consideration to be correspondingly reduced by \$0.26, to \$1.44, for shareholders whose Boral shares were transferred to SGH Bidder after the Record Date
- if a shareholder was entitled to a fraction of an SGH share, it would be rounded up or down to the nearest whole SGH share
- as the Boral Board (excluding SGH nominees) had unanimously recommended that Boral shareholders accept the Offer (or sell their shares on market)
 - the condition to the Facility had been satisfied or, to avoid any doubt, waived
 - all shares which were the subject of the Facility would be unconditionally accepted into the bid, and shareholders would receive their consideration within 7 business days of accepting
 - shareholders who had tendered into the Facility to that date would be entitled to receive the Boral Dividend
- the Offer Period was further extended and was scheduled to close on 15 May 2024.

61. Also on 12 April 2024, the package of measures outlined in paragraph 60 of this Ruling was reflected in a variation of the Offer lodged with ASIC.

62. On 30 May 2024, SGH Bidder submitted a notice of compulsory acquisition to ASIC following the acquisition of the relevant interest in more than 90% of the shares in Boral. As a result, a compulsory acquisition process was commenced by SGH Bidder under Part 6A.1 of the *Corporations Act 2001* to acquire the remaining Boral shares that had not been acquired under the Offer.

63. On 31 May 2024, the Offer Period was extended to 28 June 2024.

64. On 6 June 2024, Boral shares were suspended from quotation on the ASX, following despatch of the compulsory acquisition notices by SGH Bidder.

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65. The compulsory acquisition process completed on 4 July 2024 (Completion Date), at which time SGH Bidder acquired all remaining shares in Boral.

Contract Date

66. A Boral shareholder who accepted the Offer during the Offer Period entered into a contract with SGH Bidder to dispose of their Boral shares on the Contract Date, being for:

- an Issuer Sponsored shareholder or Clearing House Electronic Subregister system (CHES) shareholder who accepted the Offer through the Offer website, the date of the email confirming automatic validation of their acceptance
- a CHES shareholder who was the Controlling Participant, the date that shareholder initiated the acceptance by sending the electronic CHES message to ASX Settlements
- a CHES shareholder who instructed a Controlling Participant to accept the Offer on their behalf, the date communicated to the shareholder by the Controlling Participant, and
- a shareholder who accepted the Offer by completing and signing the Acceptance Form enclosed with the Bidder's Statement in accordance with the instructions on it and returning it to the address indicated on the Acceptance Form, the date communicated to the Boral shareholder by SGH in the letter dated 24 January 2025.

Other matters

67. This Ruling is made on the basis that:

- the Offer was not carried out in contravention of paragraphs 612(a) to (g) of the *Corporations Act 2001*, for the purposes of subsection 124-780(2A)
- paragraph 124-780(3)(f) is satisfied in respect of the sale of Boral shares to SGH Bidder
- SGH Bidder has not made a choice that scheme shareholders cannot obtain roll-over prior to the exchange
- there was no 'significant stakeholder' or 'common stakeholder' in Boral within the meaning of those terms in section 124-783, and
- all parties that participated in the scheme dealt at arm's length for the purposes of subsection 124-780(4).

68. As at the Payment Date, less than 1% of the issued share capital of Boral was estimated by Boral to be held by non-residents.

69. Prior to the Payment Date, Boral had never been an 'exempting entity', as defined in section 208-20.

70. Neither SGH, SGH Bidder, nor their associates, had any influence or control over the declaration and payment of the Boral Dividend.

71. Neither SGH, SGH Bidder, nor their associates, facilitated or financed the payment of the Boral Dividend.

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72. The Offer was not conditional on the Boral Dividend being declared and SGH Bidder did not have any right to terminate the Offer if Boral did not declare and pay the Boral Dividend.

73. Throughout the Offer Period, for the purposes of Division 855:

- the aggregate market value of Boral's assets, that were taxable Australian property, exceeded the aggregate market value of Boral's assets which were not taxable Australian property, and
- no foreign resident shareholder together with its associates held an aggregate of 10% or more of the total Boral shares.

Commissioner of Taxation

29 January 2025

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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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Dividend and frankable distribution

74. 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 property, but excludes a distribution debited against an amount standing to the credit of the share capital account of the company.

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75. The Boral Dividend is a dividend under subsection 6(1) of the ITAA 1936 as it was a distribution of money made by Boral to its shareholders and was not debited against its share capital account.

76. 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.

77. The Boral Dividend is a frankable distribution under section 202-40 as none of the circumstances in section 202-45 apply.

Boral Dividend included in the assessable income of Australian-resident shareholders

78. The assessable income of a resident shareholder includes dividends paid by a company out of profits derived by it from any source (subparagraph 44(1)(a)(i) of the ITAA 1936).

79. As the Boral Dividend was paid by Boral to its resident shareholders out of profits derived by Boral, resident shareholders are required to include the dividend in their assessable income.

Non-resident shareholders

Boral Dividend attributable to a permanent establishment in Australia

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

81. To the extent the dividends are paid out of profits derived from sources outside Australia, subparagraph 44(1)(c)(i) of the ITAA 1936 includes dividends in the assessable income of a non-resident shareholder that is carrying on business in Australia at or through a permanent establishment where the dividends are attributable to the permanent establishment.

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

83. Subsection 128B(3E) of the ITAA 1936 states that section 128B does not apply to dividend income that is:

- paid to a person who is a non-resident carrying on business in Australia at or through a permanent establishment of the person in Australia
- attributable to the permanent establishment, and
- not paid to the person in the person's capacity as trustee.

84. Accordingly, if you are a non-resident Boral shareholder carrying on a business in Australia at or through a permanent establishment who received the Boral Dividend (otherwise than in your capacity as trustee), you include the dividend in your assessable income, to the extent the dividend was attributable to the permanent establishment (subparagraphs 44(1)(b)(i) and (c)(i) of the ITAA 1936). You will not be liable for withholding tax in relation to the dividend (subsection 128B(3E) of the ITAA 1936).

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Boral Dividend not attributable to a permanent establishment in Australia

85. Where the Boral Dividend is not attributable to a permanent establishment in Australia, subparagraph 44(1)(b)(i) of the ITAA 1936 includes the dividend in a non-resident shareholder's assessable income to the extent the dividend is paid by the company out of profits derived from sources in Australia.

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

87. Where a dividend would have been subject to withholding tax but for paragraph 128B(3)(ga) of the ITAA 1936, section 128D of the ITAA 1936 operates to treat the dividend as non-assessable non-exempt income. Subparagraph 128B(3)(ga)(i) excludes from subsection 128B(1) income derived by a non-resident that consists of the franked part of a dividend.

88. As the Boral Dividend was fully franked, it will not be subject to withholding tax, and because paragraph 128B(3)(ga) of the ITAA 1936 applies, the Boral Dividend will be treated as non-assessable non-exempt income.

89. Accordingly, a non-resident Boral shareholder, who received the fully franked Boral Dividend that is not attributable to a permanent establishment in Australia, is not required to include the dividend as assessable income (subparagraph 44(1)(b)(i) and section 128D of the ITAA 1936) and is not liable to withholding tax in relation to the dividend (subparagraph 128B(3)(ga)(i) of the ITAA 1936).

Gross-up and tax offset

90. 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) and sections 207-70 and 207-145). The shareholder will also be entitled to a tax offset equal to the franking credit on the distribution (subsection 207-20(2)).

Refundable tax offset

91. Your entitlement to the franking credit tax offset under Division 207 in relation to the Boral Dividend is subject to the refundable tax offset rules in Division 67, provided you are not excluded by the operation of section 67-25.

92. Under section 67-25, the following entities are excluded from the operation of the refundable tax offset rules:

- trustees of 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 you are an exempt institution that is eligible for a refund, or a life insurance company that has received the Boral Dividend on the Boral shares which were not held by you on behalf of your shareholders (subsections 67-25(1C) and (1D)), and

Status: **not legally binding**

- non-resident entities carrying on business in Australia at or through a permanent establishment (subsection 67-25(1DA)).

93. 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 in subsection 63-10(1)). Division 63 sets out the rules on how, and in what order, tax offsets are applied against your income tax liability.

Related payment rule and holding period rule

Qualified person

94. 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 the dividend (subsection 207-145(1)).

95. The test of what constitutes a qualified person is set out in former subsection 160APHO(1) of the ITAA 1936 (paragraph 207-145(1)(a)). Broadly, you will be a qualified person in relation to a dividend if:

- where you were not under an obligation to make a related payment in relation to the dividend – you satisfy the holding period rule in relation to the primary qualification period, or
- where you were under an obligation to make a related payment in relation to the dividend – you satisfy the holding period rule in relation to the secondary qualification period.

96. 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 (former section 160APHU of the ITAA 1936).

Related payment rule

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

98. Examples of what constitutes the making of a related payment for the purposes of Division 1A of former Part IIIA 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 which has the effect of passing the benefit of the dividend to one or more other persons.

99. Under the terms of the Offer, the cash consideration was reduced by the amount of the Boral Dividend paid to shareholders. The reduction of the cash consideration payable to a Boral shareholder by SGH Bidder, calculated with reference to the amount of the Boral Dividend, has the effect of passing the benefit of the dividend from a Boral shareholder to SGH Bidder.

100. Therefore, you (or a partner in a partnership or a beneficiary of a trust that has an interest in Boral shares) are taken to have made a related payment in respect of the Boral Dividend.

101. Boral shareholders who acquired Boral shares on or after 18 April 2024 were not entitled to receive the Boral Dividend.

Status: **not legally binding**

102. The relevant qualification period is thus the secondary qualification period (former paragraph 160APHO(1)(b) of the ITAA 1936).

Secondary qualification period

103. The secondary qualification period is the period beginning 45 days before, and ending 45 days after, the day on which a share becomes ex dividend (former section 160APHD of the ITAA 1936).

104. 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 (former subsection 160APHE(1) of the ITAA 1936).

105. In respect of the Boral Dividend, the Record Date (18 April 2024) was the last day on which a person who acquired a Boral share was entitled to receive the Boral Dividend. Boral shares became ex dividend (for the purposes of former subsection 160APHE(1) of the ITAA 1936) on the Record Date (18 April 2024).

106. Accordingly, the secondary qualification period is the period beginning 45 days before, and ending 45 days after 19 April 2024, namely 5 March 2024 to 3 June 2024.

Holding period rule

107. The holding period rule requires that you held your Boral shares, on which the Boral Dividend was 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).

108. Any days on which you had 'materially diminished risks of loss or opportunities for gain' (as defined under former section 160APHM of the ITAA 1936) in respect of your Boral shares are excluded, but the exclusion is not taken to break the continuity period during which you held the shares (former subsection 160APHO(3) of the ITAA 1936). You are taken to have materially diminished risks of loss or opportunities for gain on a particular day with respect to your Boral shares if your net position on that day had less than 30% of those risks and opportunities (former subsection 160APHM(2) of the ITAA 1936).

109. Under the Offer, you ceased to hold your Boral shares at risk on the date that you entered into the contract to dispose of your Boral shares.

110. The secondary qualification period for Boral shareholders is from 5 March 2024 to 3 June 2024 (inclusive). Therefore, you will be a qualified person in relation to the Boral Dividend if you held your Boral shares at risk for at least 45 days during the period from 5 March 2024 to 3 June 2024 for a continuous period. You will need to determine, having regard to your personal circumstances, whether during that period there were any days you had materially diminished risks of loss or opportunities for gain in respect of your Boral shares, resulting in the holding period rule not being satisfied.

111. The period of 45 days does not include the day on which your Boral shares were acquired or the day of disposal (former paragraph 160APHO(2)(a) of the ITAA 1936). Therefore, you will not be a qualified person in relation to the Boral Dividend if, for example, you:

- acquired your Boral shares on 5 March 2024 and disposed of them on 18 April 2024, or
- acquired your Boral shares on 16 April 2024 and disposed of them on 31 May 2024.

Status: **not legally binding**

112. The small shareholder exception in former section 160APHT of the ITAA 1936 does not apply as you are taken to have made a related payment in respect of the Boral Dividend.

Exempting entity

113. You are not entitled to a tax offset in respect of the franking credit on the dividend if the Boral Dividend was a distribution by an exempting entity (section 208-195).

114. Boral was not an exempting entity at the Payment Date as less than 95% of the accountable membership interests or accountable partial interests held in Boral were held by foreign residents at that date (section 208-20 and subsection 208-25(1)) nor was Boral a former exempting entity at the Payment Date as Boral had never been an exempting entity before that date (section 208-50).

115. Accordingly, section 208-195 will not apply to deny the gross up of your assessable income by the amount of the franking credits attached to the Boral Dividend, nor to deny the tax offset to which you may otherwise be entitled.

Anti-avoidance and integrity provisions

Section 177EA

116. Section 177EA of the ITAA 1936 is a general anti-avoidance provision that applies if one of the purposes (other than an incidental purpose) of a particular scheme is to enable a taxpayer to obtain an imputation benefit (paragraph 177EA(3)(e) of the ITAA 1936).

117. It is considered that the conditions for applying section 177EA of the ITAA 1936 are not satisfied in relation to Boral's payment of the Boral Dividend. In particular, having regard to the relevant circumstances of the scheme (as prescribed by subsection 177EA(17) of the ITAA 1936), it cannot be concluded that the scheme was entered into or carried out for a more than incidental purpose of enabling Boral shareholders to obtain an imputation benefit.

118. Therefore, 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 received by Boral shareholders in relation to the Boral Dividend.

Section 204-30

119. Section 204-30 applies where a corporate tax entity streams the payment of dividends to its members in such a way that members to whom distributions are streamed 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.

120. Under the scheme, you received an imputation benefit when the Boral Dividend was paid to you. The dividend was paid equally to all Boral shareholders and was fully franked regardless of the tax profiles of shareholders. Accordingly, it cannot be said that Boral selectively directed the flow of franked dividends to certain members.

121. 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 benefit received by you as a Boral shareholder in relation to the Boral Dividend.

Status: **not legally binding**

Capital gains tax consequences

CGT event A1

122. 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 the asset is entered into or, if there is no contract, when the change of ownership occurs (subsection 104-10(3)).

123. The acquisition of your Boral shares by SGH Bidder involved a disposal of shares under a contract (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?*).

124. Therefore, CGT event A1 happened when you entered into the contract for the disposal of your Boral shares with SGH Bidder under the terms of the Offer (subsections 104-10(1) and (2) and paragraph 104-10(3)(a)).

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

Capital proceeds

126. The capital proceeds you received from a CGT event is the money and the market value of any property received or entitled to be received in respect of the event happening (subsection 116-20(1)).

127. The term 'in respect of the event happening' 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 (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*).

128. The Boral Dividend was not paid in respect of the disposal of Boral shares under the Offer. The Offer was not conditional on the declaration of the dividend. Nor was it dependent on SGH or SGH Bidder (or a third party) financing or facilitating payment of the dividend, or SGH or SGH Bidder (or a third party) being obliged to bring about the result that the dividend would be paid to existing shareholders.

129. We consider that the Boral Dividend was not received in respect of the disposal of Boral shares under the Offer. Accordingly, the dividend does not form part of the capital proceeds in respect of CGT event A1 happening.

130. We accept that the market value of an SGH share on each Contract Date during the Offer Period was the 5-day volume-weighted average price as detailed in Appendix 2 to this Ruling.

Foreign resident shareholders

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

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132. The term 'taxable Australian property' is defined to include an indirect Australian real property interest (section 855-15). A membership interest held by an entity in another entity is an indirect Australian real property interest at the time if the interest passes the non-portfolio interest test and the principal asset test (subsection 855-25(1)).

133. Throughout the Offer Period, no non-resident Boral shareholder owned, individually or together with associates, more than 10% of Boral's ordinary shares. Therefore, the non-portfolio interest test is not satisfied (section 960-195) and your Boral share is not taxable Australian property.

134. However, you cannot disregard a capital gain or capital loss you made when CGT event A1 happened if your Boral share:

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

Availability of scrip for scrip roll-over if a capital gain is made

135. Scrip for scrip roll-over under Subdivision 124-M enables a shareholder to disregard a capital gain from a share that is disposed of if they receive a replacement share in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement share.

136. Subdivision 124-M contains a number of conditions for a shareholder being able to choose scrip for scrip roll-over and sets out certain exceptions. The requirements that are relevant to the scheme that is the subject of this Ruling were satisfied as:

- Boral shareholders exchanged their Boral shares for shares in SGH (paragraph 124-780(1)(a) and subparagraph 124-780(3)(c)(ii)).
- The exchange was a consequence of a single arrangement entered into by SGH under Part 6 of the *Corporations Act 2001* under which SGH increased its ownership of Boral to 80% or more of the voting shares (paragraph 124-780(2)(a) and subsection 124-780(2A)).
- Neither SGH nor any of its wholly owned subsidiaries issued equity, apart from the SGH shares issued to Boral shareholders in exchange for their Boral shares, or owed new debt under the arrangement in relation to the issue of those SGH shares, to an entity that was not a member of the group (paragraph 124-780(3)(f)).
- Boral shareholders dealt with SGH Bidder at arm's length (subsection 124-780(4)).
- SGH Bidder did not make a choice under subsection 124-795(4) that Boral shareholders could not obtain the roll-over.

Capital gain partially disregarded

137. If you choose scrip for scrip roll-over, the capital gain you made from the disposal of a Boral share is disregarded to the extent you received a replacement SGH share (eligible proceeds) (subsection 124-785(1)). The capital gain is not disregarded to the

Status: **not legally binding**

extent that you received cash consideration for the disposal of your Boral share (ineligible proceeds).

138. Subsection 124-790(2) provides that the cost base of the ineligible proceeds is that part of the cost base of the original interest as is reasonably attributable to the ineligible proceeds. The cost base of each Boral share is, for the purposes of working out the cost base of the replacement SGH shares, reduced by that part of the cost base which is reasonably attributable to the cash consideration.

139. The method to be used by a Boral shareholder to calculate that part of the cost base of each Boral share that is not reasonably attributable to the cash consideration (eligible proceeds cost base) is:

$$\begin{aligned} &\text{eligible proceeds cost base} = \\ &\text{cost base of Boral share} \times (\text{market value of 0.1116 of an SGH share} \div (\text{market} \\ &\quad \text{value of 0.1116 of an SGH share} + \text{cash consideration})) \end{aligned}$$

140. The method to be used by a Boral shareholder to calculate that part of the cost base of each Boral share that is reasonably attributable to the cash consideration (ineligible proceeds cost base) is:

$$\begin{aligned} &\text{ineligible proceeds cost base} = \\ &\text{cost base of Boral share} \times (\text{cash consideration} \div (\text{market value of 0.1116 of an} \\ &\quad \text{SGH share} + \text{cash consideration})) \end{aligned}$$

141. In working out the amount of the capital gain that is subject to scrip for scrip roll-over, the following method may be applied:

$$\text{capital gain (roll-over)} = \text{eligible proceeds} - \text{eligible proceeds cost base}$$

142. In working out the amount of the capital gain that is not subject to scrip for scrip roll-over, the following method may be applied:

$$\text{capital gain} = \text{ineligible proceeds} - \text{ineligible proceeds cost base}$$

Example 1 – consequences of choosing the roll-over

143. *Douglas, an Australian resident, owned 10,000 Boral shares that he acquired for \$5.00 per share on 1 July 2023. Douglas accepted the Offer on the Contract Date, being 4 March 2024. He received \$17,000 cash and 1,116 SGH shares.*

144. *Douglas' capital proceeds from the disposal of each of his Boral shares were \$6.0064633142 (being the market value of the SGH shares divided by the number of Boral shares plus cash consideration, that is, $(1,116 \times \$38.5883809520) \div 10,000 + \1.70). Douglas made a capital gain of \$1.0064633142 per share (being $\$6.0064633142 - \5.00), or \$10,064.63 overall.*

145. *As Douglas chooses scrip for scrip roll-over, he disregards the capital gain which is made from the disposal of a Boral share to the extent he received a replacement SGH share (eligible proceeds).*

146. *The part of the cost base of each Boral share that is not reasonably attributable to the cash consideration (eligible proceeds cost base) is \$3.5848577515, that is $\$5.00 \times (\$4.3064633142 \div (\$4.3064633142 + \$1.70))$.*

147. *The part of the cost base of each Boral share that is reasonably attributable to the cash consideration (ineligible proceeds cost base) is \$1.4151422485, that is $\$5.00 \times (\$1.70 \div (\$4.3064633142 + \$1.70))$.*

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148. *The capital gain that is subject to scrip for scrip roll-over is \$0.7216055627 for each Boral share, that is \$4.3064633142 – \$3.5848577515.*

149. *The capital gain that is not subject to scrip for scrip roll-over is \$0.2848577515 for each Boral Share, that is \$1.70 – \$1.4151422485.*

150. *Douglas must take the capital gain that is not subject to scrip for scrip roll-over into account when preparing his tax return for the income year ended 30 June 2024.*

151. *Douglas works out the first element of the cost base or reduced cost base of each of his SGH shares to be \$32.1223812859 (being the total of the cost bases of the Boral shares apportioned across the SGH shares as reduced by so much of that cost base which is attributable to the cash consideration, that is, $(10,000 \times (\$5.00 - \$1.4151422485)) \div 1,116$).*

Example 2 – consequences of choosing the roll-over

152. *Pia, an Australian resident, owned 10,000 Boral shares that she acquired for \$5.00 per share on 1 July 2023. Pia accepted the Offer on the Contract Date, being 28 June 2024. She received \$14,400 cash and 1,116 SGH shares.*

153. *Pia's capital proceeds from the disposal of each of her Boral shares were \$5.6144037086 (being the market value of the SGH shares divided by the number of Boral shares plus cash consideration, that is, $(1,116 \times \$37.4050511524) \div 10,000$) + \$1.44. Pia made a capital gain of \$0.6144037086 per share (being \$5.6144037086 – \$5.00), or \$6,144.03 overall.*

154. *As Pia chooses scrip for scrip roll-over, she disregards the capital gain which is made from the disposal of a Boral share to the extent she received a replacement SGH share (eligible proceeds).*

155. *The part of the cost base of each Boral share that is not reasonably attributable to the cash consideration (eligible proceeds cost base) is \$3.7175842042, that is $\$5.00 \times (\$4.1744037086 \div (\$4.1744037086 + \$1.44))$.*

156. *The part of the cost base of each Boral share that is reasonably attributable to the cash consideration (ineligible proceeds cost base) is \$1.2824157958, that is $\$5.00 \times (\$1.44 \div (\$4.1744037086 + \$1.44))$.*

157. *The capital gain that is subject to scrip for scrip roll-over is 0.4568195044 for each Boral share, that is \$4.1744037086 – \$3.7175842042.*

158. *The capital gain that is not subject to scrip for scrip roll-over is \$0.1575842042 for each Boral share, that is \$1.44 – \$1.2824157958.*

159. *Pia must take the capital gain that is not subject to scrip for scrip roll-over into account when preparing her tax return for the income year ended 30 June 2024.*

160. *Pia works out the first element of the cost base or reduced cost base of each of her SGH shares to be \$33.3116864175 (being the total of the cost bases of the Boral shares apportioned across the SGH shares as reduced by so much of that cost base which is attributable to the cash consideration, that is, $(10,000 \times (\$5.00 - \$1.2824157958)) \div 1,116$).*

Example 3 – consequences of not choosing the roll-over

161. *Peppa, an Australian resident, owned 10,000 Boral shares that she acquired for \$5.00 per share on 1 July 2023. Peppa accepted the Offer on the Contract Date, being 28 June 2024. She received \$14,400 cash and 1,116 SGH shares.*

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162. *Peppa's capital proceeds from the disposal of each of her Boral shares were \$5.6144037086, that is, $(1,116 \times \$37.4050511524) \div 10,000 + \1.44 . Peppa made a capital gain of \$0.6144037086 per share (being $\$5.6144037086 - \5.00), or \$6,144.03 overall.*

163. *Although she is entitled to claim scrip for scrip roll-over, Peppa chooses to take the capital gain into account when preparing her tax return for the income year ended 30 June 2024. She works out the first element of the cost base or reduced cost base of each of her SGH shares to be \$37.4050511524 (being the total market value of her Boral shares reduced by the cash consideration apportioned across the SGH shares, that is $(10,000 \times (\$5.6144037086 - \$1.44)) \div 1,116$).*

 Status: **not legally binding**

Appendix 2 – Contract Date market value of an SGH share

164. We accept that the market value of an SGH share on each Contract Date during the Offer Period was as follows:

Table 1: Market value of SGH shares

Contract Date	Market value – \$ per SGH share
4/3/2024	38.5883809520
5/3/2024	38.7606050244
6/3/2024	38.8948130067
7/3/2024	40.4117104800
8/3/2024	40.8503200822
9/3/2024	40.8503200822
10/3/2024	40.8503200822
11/3/2024	41.0074884246
12/3/2024	40.9770387055
13/3/2024	41.0916383019
14/3/2024	41.0088373637
15/3/2024	40.7351232165
16/3/2024	40.7351232165
17/3/2024	40.7351232165
18/3/2024	40.7740033291
19/3/2024	40.8994467145
20/3/2024	41.0142228625
21/3/2024	41.0064217070
22/3/2024	41.1574103574
23/3/2024	41.1574103574
24/3/2024	41.1574103574
25/3/2024	41.3072215770
26/3/2024	41.0170903141
27/3/2024	40.8389524486
28/3/2024	40.7236877953
29/3/2024	40.7236877953
30/3/2024	40.7236877953
31/3/2024	40.7236877953
1/4/2024	40.7236877953
2/4/2024	40.6946471525

Status: **not legally binding**

Contract Date	Market value – \$ per SGH share
3/4/2024	40.3616622538
4/4/2024	40.3630782136
5/4/2024	40.1271837446
6/4/2024	40.1271837446
7/4/2024	40.1271837446
8/4/2024	39.8859751862
9/4/2024	39.6722377100
10/4/2024	39.8153844140
11/4/2024	39.8396511139
12/4/2024	40.0169244162
13/4/2024	40.0169244162
14/4/2024	40.0169244162
15/4/2024	39.9117404266
16/4/2024	39.7073171453
17/4/2024	39.2642165925
18/4/2024	38.9823154490
19/4/2024	38.5237005685
20/4/2024	38.5237005685
21/4/2024	38.5237005685
22/4/2024	38.2667884884
23/4/2024	38.2921977945
24/4/2024	38.3175817608
25/4/2024	38.3175817608
26/4/2024	38.2838570926
27/4/2024	38.2838570926
28/4/2024	38.2838570926
29/4/2024	38.4483971384
30/4/2024	38.4628047786
1/5/2024	38.3260377488
2/5/2024	38.1256962946
3/5/2024	38.2294477756
4/5/2024	38.2294477756
5/5/2024	38.2294477756
6/5/2024	38.4402768964
7/5/2024	38.5470008443
8/5/2024	38.6931845159

Status: **not legally binding**

Contract Date	Market value – \$ per SGH share
9/5/2024	38.9950722573
10/5/2024	39.1632150830
11/5/2024	39.1632150830
12/5/2024	39.1632150830
13/5/2024	39.4928268389
14/5/2024	39.2990241522
15/5/2024	39.0708545821
16/5/2024	38.9106782900
17/5/2024	38.6908289506
18/5/2024	38.6908289506
19/5/2024	38.6908289506
20/5/2024	38.6246931298
21/5/2024	38.7911733011
22/5/2024	39.0182476490
23/5/2024	39.0333568185
24/5/2024	39.0480122562
25/5/2024	39.0480122562
26/5/2024	39.0480122562
27/5/2024	39.1741080891
28/5/2024	39.2938052936
29/5/2024	39.2577156351
30/5/2024	39.1416005571
31/5/2024	39.1475675031
1/6/2024	39.1475675031
2/6/2024	39.1475675031
3/6/2024	39.1102392766
4/6/2024	39.0730439092
5/6/2024	39.0853616664
6/6/2024	39.1925376691
7/6/2024	39.3822054078
8/6/2024	39.3822054078
9/6/2024	39.3822054078
10/6/2024	39.3822054078
11/6/2024	39.4425994261
12/6/2024	39.5019411031
13/6/2024	39.6091503512

Status: not legally binding

Contract Date	Market value – \$ per SGH share
14/6/2024	39.5732296701
15/6/2024	39.5732296701
16/6/2024	39.5732296701
17/6/2024	39.1607245512
18/6/2024	38.8325374529
19/6/2024	38.6041022086
20/6/2024	38.3197189273
21/6/2024	37.8272546707
22/6/2024	37.8272546707
23/6/2024	37.8272546707
24/6/2024	37.7591139858
25/6/2024	37.5346407796
26/6/2024	37.2667466743
27/6/2024	37.1554325315
28/6/2024	37.4050511524

Status: **not legally binding**

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Related Rulings/Determinations:

TD 2002/4; TR 2010/4

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Status: **not legally binding**

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