



## Class Ruling

### Income tax: bonus share plan: Whitefield Limited

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#### **ⓘ This publication provides you with the following level of protection:**

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

## What this Ruling is about

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1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

#### **Relevant provision(s)**

2. The relevant provisions dealt with in this Ruling are:

- section 6 of the *Income Tax Assessment Act 1936* (ITAA 1936)
- section 6BA of the ITAA 1936
- section 44 of the ITAA 1936
- section 45 of the ITAA 1936
- section 45A of the ITAA 1936
- section 45B of the ITAA 1936
- section 45C of the ITAA 1936
- Subdivision 115-D of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 130-20 of the ITAA 1997, and

- section 202-30 of the ITAA 1997.

All subsequent legislative references in this Ruling are to the ITAA 1936 unless otherwise stated.

## **Class of entities**

3. The class of entities to which this Ruling applies are the participating shareholders who hold fully paid ordinary shares in Whitefield Limited (WHF) and who:

- (a) are listed on the share register of WHF as at the dividend record date
- (b) do not hold their WHF shares as a revenue assets (as defined in section 977-50 of the ITAA 1997) nor as trading stock (as defined in subsection 995-1(1) of the ITAA 1997- that is, they hold their shares in WHF on capital account
- (c) are eligible, and choose, to participate in the bonus share plan (BSP)
- (d) are Australian residents for tax purposes, and
- (e) are not subject to the taxation of financial arrangements rules in Division 230 of the ITAA 1997 in relation to gains and losses on their WHF shares.

(Note - Division 230 of the ITAA 1997 will generally not apply to individuals, unless they have made an election for it to apply to them.)

In this Ruling, a person belonging to this class of entities is referred to as a 'Participating Shareholder'.

## **Qualifications**

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 8 to 22 of this Ruling.

6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled, and
- this Ruling may be withdrawn or modified.

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## Date of effect

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7. This Ruling applies from 1 July 2014 to 30 June 2019. The Ruling continues to apply after 30 June 2019 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

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## Scheme

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8. The following description of the scheme is based on information provided by the Applicant. The following documents, or relevant parts of them form part of and are to be read with the description:

- application for class ruling dated 31 October 2014
- WHF Bonus Share Plan Booklet, and
- 2014 Annual Report for WHF.

**Note:** certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

9. WHF is an Australian resident public company listed on the Australian Securities Exchange (ASX). WHF satisfies the definition of a 'listed public company' under subsection 995-1(1) of the ITAA 1997.

10. WHF satisfies the definition of a 'listed investment company' (LIC) under section 115-290 of the ITAA 1997 and specialises in investing in Australian equities.

11. WHF has historically paid dividends to its shareholders, twice a year, since 1989. Since 1987 all dividends paid in respect of ordinary shares have been fully franked. It is WHF's intention to continue this pattern of paying fully franked dividends to its shareholders.

12. WHF has offered its shareholders the choice to receive dividends in cash or to participate in a dividend reinvestment plan (DRP). If shareholders participate in the DRP, they are able to have dividends applied by WHF to fund the purchase of additional fully paid ordinary shares in WHF. An amount was credited to the share capital account of WHF in connection with the issue of shares under the DRP equal to the dividend which the shareholder would have otherwise received in cash.

13. WHF has offered a BSP to its shareholders. Under the BSP, shareholders will be able to elect to receive additional fully paid ordinary shares in WHF in lieu of receiving dividends.

14. Under the BSP, WHF shareholders will be able to nominate the number of shares that will participate in the BSP (subject to a minimum and maximum as determined from time to time by the directors of WHF). To the extent that WHF shareholders opt not to participate in the BSP, or do not fully nominate for their shareholdings to participate, a dividend will be received.

15. Where a WHF shareholder elects to participate in the BSP, they will be issued with ordinary shares in WHF (the Bonus Shares). The number of Bonus Shares received will be determined by dividing the amount of the participating shareholder's potential dividend entitlement (less any withholding tax) by the relevant Market Price (see below) for that dividend, rounded up or down to nearest whole number of shares.

16. The relevant Market Price is the volume weighted average price (VWAP) per share (as traded on the ASX) during the 5 days of trading from and including the day the shares are first quoted on an 'ex dividend' basis on the ASX in relation to the dividend. In addition, WHF may discount the relevant Market Price by up to a maximum of 5%, in accordance with its discount policy as announced on the ASX.

17. WHF shareholders are not required to provide consideration in order to receive the Bonus Shares under the BSP, rather they will forfeit their entitlement to receive a dividend.

18. The BSP will not be a DRP. The issue of shares under the BSP will not result in a debit to retained earnings or a credit to share capital account.

19. WHF offered the BSP to WHF shareholders on 5 March 2015 and it is the intention of WHF to continue to declare and pay fully franked dividends.

20. Only shareholders that are resident in Australia or New Zealand may participate in the BSP.

21. As WHF has been listed on the ASX since 1971 some shareholders who choose to participate in the BSP may have acquired their shares before 20 September 1985.

22. As a LIC, WHF may distribute amounts which may be sourced from LIC capital gains to shareholders who receive a dividend. Shareholders who participate in the BSP will not obtain a benefit in the form of a tax deduction in relation to LIC capital gains which may have been included in dividends forgone.

## Ruling

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### Section 44 – dividend

23. If a Participating Shareholder chooses to participate in the BSP and is issued with Bonus Shares under the BSP, and if WHF does not credit its share capital account in connection with the issue of those Bonus Shares, the value of those Bonus Shares will not be

taken to be a dividend that is included in the assessable income of the Participating Shareholder under section 44 (subsections 6BA(5) and (6)).

### **Anti-avoidance provisions**

#### ***Sections 45 and 45A***

24. Section 45 will not apply in respect of the issue of Bonus Shares under the BSP as it cannot be concluded that shares will be received by certain shareholders while other shareholders receive minimally franked dividends.

25. The Commissioner will not make a determination under subsection 45A(2) that section 45C applies to the whole, or any part, of the Bonus Share issued to Participating Shareholders under the BSP.

#### ***Section 45B***

26. The Commissioner will not make a determination under subsection 45B(3) that section 45C applies in relation to the whole, or a part, of the Bonus Shares issued to Participating Shareholders under the BSP.

### **Cost base of shares**

27. If the Bonus Shares issued under the BSP are issued for no consideration, and are not a dividend or taken to be a dividend, the first element of the cost base and reduced cost base of a Participating Shareholder's ordinary shares will be determined by apportioning the first element of the cost base of the WHF shares they owned before being issued with Bonus Shares under the BSP (the 'original shares') over both the Bonus Shares and the original shares (where the original shares are acquired on or after 20 September 1985 – subsections 6BA(3) and (6) and section 130-20 of the ITAA 1997).

28. Where the original shares are acquired before 20 September 1985, a Participating Shareholder can disregard any capital gain or capital loss made from the Bonus Shares issued under the BSP (subsection 130-20(3) of the ITAA 1997).

### **Acquisition date of shares**

29. If the Bonus Shares issued under the BSP are issued for no consideration, and are not a dividend or taken to be a dividend, the Bonus Shares are taken to have been acquired by the Participating Shareholder at the time the original shares were acquired (subsection 130-20(3) of the ITAA 1997).

## **Franking credits**

30. The Bonus Shares issued under the BSP are not, and will not be taken to be, dividends. Accordingly, the Participating Shareholders have not and will not be taken to have received a 'distribution' as defined in section 960-120 of the ITAA 1997 and will not be entitled to franking credits on the Bonus Shares (section 202-30 of the ITAA 1997).

## **Deduction for LIC capital gain**

31. The participating Shareholders will not be entitled to claim a deduction pursuant to section 115-280 of the ITAA 1997 as the Bonus Shares issued under the BSP by WHF do not constitute dividends paid by a LIC. Therefore, the LIC discount would not be available to Participating Shareholders.

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**Commissioner of Taxation**

11 March 2015

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## Appendix 1 – Explanation

**❶** *This Appendix 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.*

### Section 44 – dividend

32. Subsection 6(1) defines a 'dividend' to include any distribution made by a company to any of its shareholders, whether in money or other property, and any amount credited by a company to any of its shareholders as shareholders. However, Bonus Shares issued by a company will not fall under the general definition of dividends in subsection 6(1), provided they are not paid out of profits of the company.

33. Section 44 sets out when an amount received as a dividend is assessable income of a shareholder in a company, but does not apply to the extent to which another provision of the income tax legislation excludes the amount of the dividend from the shareholder's assessable income.

34. The taxation treatment of Bonus Shares being issued is dealt with in section 6BA. Subsection 6BA(1) provides that section 6BA applies if a shareholder holds shares in a company (the 'original shares') and the company issues other shares (the 'bonus shares') in respect of the original shares. The ordinary shares which a Participating Shareholder owned before being issued with shares under the BSP are the original shares. The ordinary shares issued under the BSP are the Bonus Shares.

35. Subsection 6BA(5) provides that, subject to subsection 6BA(6), if a shareholder has a choice whether to be paid a dividend or to be issued shares and the shareholder chooses to be issued with shares:

- (a) the dividend is taken to be credited to the shareholder; and
- (b) the dividend is taken to have been paid out of profits; and
- (c) subsections 6BA(2) and (3) apply in working out the consideration for the acquisition of the shares for the purposes of this Act.

36. The effect of subsection 6BA(5) is that the issue of shares will be treated as the payment of a dividend for tax purposes and will be included in the assessable income of the shareholder under section 44.

37. The exception to this treatment is provided for in subsection 6BA(6) which provides that subsection 6BA(5) does not apply if:

- (a) a shareholder in a listed public company (within the meaning of the ITAA 1997) has a choice whether to be paid a dividend (other than a minimally franked dividend within the

meaning of subsection 45(3)) or to be issued shares and the shareholder chooses to be issued with shares; and

- (b) the company does not credit the share capital account in connection with the issue of those shares.

38. WHF is a 'listed public company' under subsection 995-1(1) of the ITAA 1997. If a Participating Shareholder chooses to participate in the BSP, they will be issued with ordinary shares under the BSP in lieu of receiving a more than minimally franked cash dividend. As WHF will not credit its share capital account in connection with the issue of those shares, the requirements of subsection 6BA(6) will be satisfied.

39. The effect of subsection 6BA(6) is that the value of those shares will not be taken to be a dividend that is included in the assessable income of the Participating Shareholder under section 44.

40. Further, the Note to subsection 6BA(6) states that: 'If subsection (5) does not apply because of this subsection, subsection (3) will apply.'

41. Subsection 6BA(3) provides the rules for determining the tax treatment of the Bonus Shares issued for no consideration that are not a dividend or taken to be a dividend.

## **Anti-avoidance provisions**

### **Section 45**

42. Section 45 applies in respect of a company that, whether in the same year of income or in different years of income, streams the provision of shares (other than shares to which subsection 6BA(5) applies) and the payment of minimally franked dividends to its shareholders in such a way that:

- (a) the shares are received by some shareholders but not all shareholders; and
- (b) some or all of the shareholders who do not receive the shares receive or will receive minimally franked dividends.

43. If section 45 applies, the value of the share at the time that the shareholder is provided with the share is taken to be an unfrankable dividend that is paid by the company out of its profits. The effect is that the value of the share will be included in the assessable income of the shareholder under section 44.

44. A minimally franked dividend is defined in subsection 45(3) as a dividend that is not franked, or is franked to less than 10%, in accordance with section 202-5 or section 208-60 of the ITAA 1997. WHF has a history of paying fully franked dividends on its ordinary shares. If WHF continues this pattern of paying fully franked dividends, there will not be a payment of minimally franked dividends to any of its shareholders.

45. Accordingly, section 45 will not apply in respect of the issue of ordinary shares under the BSP, as it cannot be concluded that shares

will be received by certain shareholders while other shareholders will receive minimally franked dividends.

### **Section 45A**

46. Section 45A is an anti-avoidance provision which seeks to deal with potential streaming of capital benefits and the payment of capital benefits to shareholders instead of dividends. If the Commissioner makes a determination pursuant to subsection 45A(2), the amount of the capital benefit or a part of the capital benefit received by the shareholder under the BSP is treated as an unfranked dividend.

47. Section 45A applies in circumstances where capital benefits are streamed to certain shareholders (the advantaged shareholders) who derive a greater benefit from the receipt of capital, and it is reasonable to assume that the other shareholders (the disadvantaged shareholders) have received or will receive dividends.

48. However, section 45A does not apply in respect of certain capital benefits provided under particular circumstances. Subsection 45A(5) rules out the application of this provision where the capital benefit provided is shares, and it is reasonable to assume that the disadvantaged shareholder has received or will receive fully franked dividends. As previously discussed, WHF has a history of paying fully franked dividends on its ordinary shares. If WHF maintains this pattern, section 45A will have no application in respect of the proposed BSP.

49. As section 45A does not apply to the BSP, the Commissioner will not make a determination under subsection 45A(2) that section 45C will apply to the BSP.

### **Section 45B**

50. Section 45B applies where certain capital benefits are provided in substitution for dividends.

51. The issue of Bonus Shares under the BSP is a scheme under which a capital benefit is provided to Participating Shareholders (subsection 45B(5)).

52. For the provision to apply, paragraph 45B(2)(c) requires that, having regard to the relevant circumstances of the scheme, it would be concluded that a person who entered into or carried out the scheme or any part of the scheme for a purpose, other than an incidental purpose, of enabling a taxpayer to obtain a tax benefit. The 'relevant circumstances' of the scheme are listed in subsection 45B(8).

53. Having regard to the relevant circumstances surrounding the issue of Bonus Share under the BSP, it cannot be concluded that any of the parties to the scheme will enter into, or carry out, the scheme

for a more than an incidental purpose of enabling a Participating Shareholder to obtain a tax benefit.

54. The Commissioner will not make a determination under subsection 45B(3).

## **Cost base of shares**

55. As the Bonus Shares are issued for no consideration by WHF, and as they are not a dividend (under section 44) or taken to be a dividend (under sections 45, 45B or 45C), subsection 6BA(3) will apply. For the purposes of the income tax legislation, where any of the original shares or any of the Bonus Shares are not articles of trading stock of the Participating Shareholder, the following methodology is to be used in determining:

- (i) the amount or value of the consideration paid in respect of the acquisition of any of those shares for the purposes of Part 3-1 or 3-3 of the ITAA 1997, or
- (ii) the amount of any profit or loss arising on the sale or disposal of any of those shares.

56. The methodology prescribed by subsection 6BA(3) is that any amounts paid or payable by the shareholder in respect of the original shares (whether on purchase of the shares, on application for or allotment of the shares, to meet calls or otherwise) shall be deemed to have been paid or to be payable by the shareholder in respect of the original shares and the Bonus Shares in such proportions as the Commissioner considers appropriate in the circumstances.

57. This means that subsection 6BA(3) is relevant in determining the first element of the cost base and the reduced cost base of the original shares and the Bonus Shares.

58. The Commissioner considers that an appropriate apportionment in the circumstances of this scheme is that the first element of the cost base and reduced cost base of each parcel of the original shares should be spread in a pro rata manner over both the parcel of original shares and the Bonus Shares issued in respect of them. The result of this apportionment will be the first element of the cost base and reduced cost base of each of those WHF shares.

59. A parcel of original shares refers to original shares acquired at the same time for the same consideration per share.

60. Subsection 130-20(1) of the ITAA 1997 provides that section 130-20 of the ITAA 1997 sets out what happens if a shareholder owns shares in a company (the 'original equities') and the company issues other shares (the 'bonus equities') to the shareholder in relation to the original equities. The ordinary shares which a Participating Shareholder owned before being issued with shares under the BSP are the original equities. The Bonus Shares issued under the BSP are the bonus equities.

61. Item 1 of the table in subsection 130-20(3) of the ITAA 1997 will apply if the following conditions are satisfied:

- none of the Bonus Shares are a dividend, or taken to be a dividend under subsections 45(2) or 45C(1), and
- a Participating Shareholder acquired the original shares on or after 20 September 1985.

62. If item 1 of the table in subsection 130-20(3) of the ITAA 1997 applies, the Participating Shareholder must apportion the first element of the cost base and reduced cost base of the original shares in a reasonable way over both the original shares and the Bonus Shares.

63. The Commissioner considers that a reasonable apportionment under item 1 of the table in subsection 130-20(3) of the ITAA 1997 in the circumstances of this scheme will produce the same outcome as subsection 6BA(3) for the first element of the cost base and reduced cost base of each of the original shares and the Bonus Shares.

64. Item 3 of the table in subsection 130-20(3) of the ITAA 1997 will apply if the following conditions are satisfied:

- none of the Bonus Shares are a dividend, or taken to be a dividend under subsections 45(2) or 45C(1), and
- a Participating Shareholder acquired the original shares before 20 September 1985 and the Bonus Shares are fully paid.

65. If item 3 of the table in subsection 130-20(3) of the ITAA 1997 applies, the Participating Shareholder can disregard any capital gain or capital loss made from the Bonus Shares.

### **Acquisition date of shares**

66. Item 1 of the table in subsection 130-20(3) of the ITAA 1997 provides an acquisition date for the issue of the Bonus Shares where the original shares were acquired on or after 20 September 1985.

67. The Bonus Shares are taken to have been acquired when a Participating Shareholder acquired the original shares. This will ensure for the purposes of determining eligibility to a discount capital gain (Subdivision 115-A of the ITAA 1997) that the Bonus Shares are taken to have been acquired on the same date as the original shares.

68. Where the original shares were acquired before 20 September 1985, item 3 of the table in subsection 130-20(3) of the ITAA 1997 provides that the Bonus Shares are taken to have been acquired when a Participating Shareholder acquired the original shares.

### **Franking credits**

69. The Bonus Shares issued under the BSP are not, and will not be taken to be a dividend. Accordingly, the Participating Shareholders

have not and will not be taken to have received a 'distribution' as defined in section 960-120 of the ITAA 1997 and will not be entitled to franking credits on the Bonus Shares (section 202-30 of the ITAA 1997).

## **Deduction for LIC capital gain**

70. Subdivision 115-D allows investors covered by subsection 115-280(1) of the ITAA 1997 (certain individuals, trusts and complying superannuation funds) to claim a deduction for dividends paid to such investors where all or some part of the dividend paid is reasonably attributable to a 'LIC capital gain' made by a 'listed investment company'. The amount of the deduction is determined in accordance with subsections 115-280(2) and 115-280(3) of the ITAA 1997 and broadly is meant to reflect the CGT discount the investor would have secured if they had made the capital gain directly.

71. The participating Shareholders will not be entitled to claim a deduction pursuant to section 115-280 of the ITAA 1997 as the Bonus Shares issued under the BSP by WHF do not constitute dividends paid by a LIC. Therefore, the LIC discount would not be available to Participating Shareholders.

## **Appendix 2 – Detailed contents list**

72. The following is a detailed contents list for this Ruling:

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## References

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<i>Previous draft:</i>	- ITAA 1936 45A(5)
Not previously issued as a draft	- ITAA 1936 45B
	- ITAA 1936 45B(2)(c)
<i>Related Rulings/Determinations:</i>	- ITAA 1936 45B(3)
TR 2006/10	- ITAA 1936 45B(5)
	- ITAA 1936 45B(8)
<i>Subject references:</i>	- ITAA 1936 45C
- bonus shares	- ITAA 1936 45C(1)
- CGT cost base	- ITAA 1997 Subdiv 115-A
- dividend income	- ITAA 1997 Subdiv 115-D
	- ITAA 1997 115-280
<i>Legislative references:</i>	- ITAA 1997 115-280(1)
- ITAA 1936	- ITAA 1997 115-280(2)
- ITAA 1936 6	- ITAA 1997 115-280(3)
- ITAA 1936 6(1)	- ITAA 1997 115-290
- ITAA 1936 6BA	- ITAA 1997 130-20
- ITAA 1936 6BA(1)	- ITAA 1997 130-20(1)
- ITAA 1936 6BA(2)	- ITAA 1997 130-20(3)
- ITAA 1936 6BA(3)	- ITAA 1997 202-5
- ITAA 1936 6BA(5)	- ITAA 1997 202-30
- ITAA 1936 6BA(6)	- ITAA 1997 208-60
- ITAA 1936 44	- ITAA 1997 Div 230
- ITAA 1936 45	- ITAA 1997 Pt 3-1
- ITAA 1936 45(2)	- ITAA 1997 Pt 3-3
- ITAA 1936 45(3)	- ITAA 1997 960-120
- ITAA 1936 45A	- ITAA 1997 977-50
- ITAA 1936 45A(2)	- ITAA 1997 995-1(1)
	- TAA 1953

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### ATO references

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