

Section 6

Tax Implications



Section 6 – Tax Implications

6.1 Taxation outline – Scheme Shareholders

This outline contains a general overview of the main Australian taxation implications for Integrated Shareholders who are Australian tax resident individuals, companies and trustees of complying superannuation funds who receive cash and New Programmed Shares as Scheme Consideration under the Scheme.

It also contains broad comments in relation to taxation for non-residents and for Integrated Shareholders who hold their Integrated Shares on revenue account such as banks and share trading entities.

The information contained in this outline is of a general nature only. It does not constitute tax advice and should not be relied upon as such. All Integrated Shareholders should seek independent professional advice on the consequences of participating in the Scheme, based on their particular circumstances.

6.2 Australian tax consequences of participating in the Scheme

Integrated Shareholders who participate in the Scheme will receive consideration for the transfer of their Integrated Shares to Programmed in the form of cash and New Programmed Shares.

a) Shares held on capital account

The transfer of Integrated Shares to Programmed will be a CGT event for Integrated Shareholders. Integrated Shareholders will:

- make a capital gain if the capital proceeds for their Integrated Shares are greater than the cost base of their Integrated Shares subject to the application of CGT scrip-for-scrip roll-over relief (CGT partial rollover relief) (refer to 6.2(b) below); or
- make a capital loss if the capital proceeds for their Integrated Shares are less than the reduced cost base of their Integrated Shares. Capital losses may be used to offset any capital gains made in the current year or carried forward for offset against future capital gains, subject to certain carry forward loss tests being satisfied. Capital losses cannot be offset against ordinary income. CGT rollover relief is not available when capital losses apply.

The capital proceeds from the exchange will be the total of the cash consideration plus the market value of the New Programmed Shares.

The market value of the New Programmed Shares should be worked out at the time of the CGT event, which should be the day on which the Scheme is implemented.

The cost base of Integrated Shares will generally include their original or deemed cost of acquisition, plus incidental costs incurred in relation to their acquisition and disposal.

b) CGT partial rollover relief

Conditions for rollover relief

The following conditions must be satisfied for CGT partial rollover relief to be available to Integrated Shareholders.

- i) The Integrated Shareholder exchanges Integrated Shares for Programmed Shares;

- ii) The exchange is in consequence of a single scheme of arrangement where:
- All owners of voting shares in Integrated could participate;
 - Participation is available on substantially the same terms for all owners of interests of a particular type (i.e. ordinary shareholders) in Integrated; and
 - As a result of the scheme, Programmed becomes the owner of 80% or more of the Integrated Shares.
- iii) The Integrated Shareholder acquired their Integrated Shares on or after 20 September 1985;
- iv) Apart from the rollover, the Integrated Shareholder would make a capital gain as a result of the exchange; and
- v) The Integrated Shareholder chooses to obtain the CGT partial rollover relief.

On the basis that the Merger proceeds, it is anticipated conditions (i), (ii), (iii) and (iv) above should be satisfied. Further comments are provided below in relation to condition (ii). For condition (v), Integrated Shareholders will need to choose to obtain the CGT partial rollover relief.

Participation on substantially the same terms

As outlined above, a condition for CGT rollover relief is that participation is available on substantially the same terms for all Integrated Shareholders.

In the case of Integrated Shareholders who are Ineligible Foreign Holders, the New Programmed Shares to which the Integrated Shareholder would otherwise be entitled will be sold by a Sale Agent and the Ineligible Foreign Holder will receive the net proceeds of the sale. Integrated Shareholders with their registered address overseas (in a jurisdiction which renders them an Ineligible Foreign Holder) will therefore only ultimately receive cash proceeds on sale, as opposed to an ongoing shareholding in Programmed.

Based on a number of Class Rulings issued by the Commissioner of Taxation dealing with similar scrip for scrip transactions, the Scheme will be eligible for CGT partial rollover relief. The process to provide a cash payment on the sale of Programmed Shares on behalf of Ineligible Foreign Holders does not prevent the Scheme being on substantially the same terms for all Integrated Shareholders. In particular, Ineligible Foreign Holders receive the same economic value as Australian resident Integrated Shareholders and the sale of Programmed Shares on their behalf is an event which occurs subsequent to the completion of the Scheme.

Availability

Integrated Shareholders, who would otherwise make a capital gain in respect of the transfer of their Integrated Shares, should be eligible to choose CGT partial rollover relief for the transfer of their Integrated Shares to the extent the capital gain relates to New Programmed Shares received.

CGT partial rollover relief is not available to Integrated Shareholders who make a capital loss. Tax non-resident Integrated Shareholders are generally not subject to Australian tax (see below), provided the Scheme Shares are not held through a permanent establishment of the non-resident shareholder. Therefore rollover relief is not applicable in their circumstances.

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Effect

A Scheme Shareholder who receives Scheme Consideration will be entitled to CGT partial rollover relief. It will be necessary to work out whether a capital gain arises in respect of the \$1.25 cash portion of the Scheme Consideration by apportioning the cost base of the Scheme Shares over the New Programmed Share component and the cash component. An example is provided below. The capital gain that relates to the consideration received in the form of New Programmed Shares is disregarded.

How to choose CGT partial rollover relief

Integrated Shareholders will generally need to choose CGT partial rollover relief before lodging their income tax return for the income year in which the CGT event happens. For Integrated Shareholders who are individuals, this is expected to be the tax return for the year ending 30 June 2007. Choosing CGT partial rollover relief can simply be evidenced by excluding the relevant capital gain, in respect of which CGT partial rollover relief is chosen, from the Integrated Shareholder's tax return.

How to calculate a capital gain when CGT partial rollover relief is chosen

As discussed above, CGT partial rollover relief is not available to the extent that part of the exchange of an Integrated Share for a Programmed Share is cash. With respect to this part of the consideration, a capital gain will be included in the Integrated Shareholder's tax return.

Example 1

- i) Values given for illustrative purposes only.

Notional Integrated Share cost base	\$1.00
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Notional Programmed Share market value on Implementation Date	\$5.40
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- ii) Scheme Consideration received for each Integrated Share

Cash consideration	\$1.25
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Share consideration (0.26 x \$5.40)	\$1.40
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Total consideration	\$2.65
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- iii) Cost base attributable to Cash Consideration

Integrated Share cost base x (Cash consideration / total consideration)

$$1 \times 1.25 / 2.65 = \$0.47$$

- iv) Capital gain on Cash Consideration portion of Integrated Share

Cash consideration – cost base attributable to cash consideration

$$1.25 - 0.47 = \$0.78$$

c) CGT indexation

If the Integrated Shares were acquired after 20 September 1985 and before 21 September 1999, for the purpose of calculating a capital gain (but not a capital loss), Integrated Shareholders may choose that the cost base of those shares be indexed for inflation to 30 September 1999.

d) CGT discount

Individuals, trustees or complying superannuation entities that have held Integrated Shares for at least 12 months should be entitled to discount the amount of the capital gain (after the application of any current year or carry forward capital losses). The amount of this discount is 50% in the case of individuals and trustees and 33½% for complying superannuation entities. This is referred to as the "CGT discount". The CGT discount is not available for Integrated Shareholders that are companies.

Where the Integrated Shareholder is a trustee of a trust, the CGT discount may flow through to the beneficiaries in that trust, other than beneficiaries which are companies. Integrated Shareholders that are trustees should seek specific advice regarding the tax consequences of distributions to beneficiaries which are attributable to discount capital gains.

e) CGT cost base of Programmed Shares

The cost base will be relevant in working out the CGT consequences of a future disposal of the New Programmed Shares.

Where CGT partial rollover relief is chosen

Following the exchange of shares, the cost base for each 0.26 New Programmed Share will generally be worked out by apportioning the cost base of the Scheme Shares over the New Programmed Share component and the cash component. Each New Programmed Share received in exchange for Integrated Shares will be taken for CGT purposes to have the same acquisition date as the original acquisition date of the Integrated Shares.

Example 2 – Cost base of Programmed Shares when CGT partial rollover relief is chosen

Based on Example 1 above

- i) Cost base attributable to 0.26 New Programmed Shares

Integrated Share cost base x (Share consideration / total consideration)

$$1 \times \$1.40 / \$2.65 = \$0.53$$

- ii) Cost base attributable to 1 New Programmed Share

$$\$0.53 / 0.26 = \$2.04$$

Where CGT partial rollover relief is not chosen or is not available

The cost base of the New Programmed Shares received will be equal to their market value on the Implementation Date. In the above example this equates to \$1.40 per 0.26 share, and \$5.40 per share. On the above example the New Programmed Shares will be taken for CGT purposes to have been acquired at the time the Scheme is implemented.

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f) Shares held on revenue account (other than as trading stock)

If an Australian tax resident Scheme Shareholder holds Scheme Shares on revenue account (but not as trading stock), then any profit on sale will be included in the Scheme Shareholder's assessable income or any loss should be an allowable deduction. The disposal of Scheme Shares under the Scheme will constitute a sale for these purposes. No rollover relief applies to the profit or loss. The CGT treatment will be as described above at 6.2(b); however any resulting capital gain or loss should be reduced to nil to avoid double counting.

g) Shares held as trading stock

If an Australian tax resident Integrated Shareholder holds Scheme Shares as trading stock, then the value of the Scheme Consideration will be included in the Scheme Shareholder's assessable income. No rollover relief applies.

h) Non-residents for tax purposes

A tax non-resident holding Scheme Shares on revenue account or as trading stock may be liable to Australian income tax on disposal of their Scheme Shares. This will depend upon the particular circumstances of the tax non-resident (i.e. if the Scheme Shares are held through an Australian branch and/or the terms of any applicable double tax agreement). Such Scheme Shareholders are advised to seek their own advice in relation to this issue.

A tax non-resident holding Scheme Shares on capital account generally will not be subject to Australian CGT. The capital gain or capital loss will generally be disregarded as the Integrated Shares are not taxable Australian property. Such Scheme Shareholders are advised to seek their own advice in relation to this issue.

6.3 Dividends

a) Residents for tax purposes

This section applies to Scheme Shareholders who are Australian residents for tax purposes. The Integrated Interim Dividend will be paid to Integrated Shareholders. As holders of New Programmed Shares, Integrated Shareholders will also be entitled to any Programmed Final Dividend provided they are the registered owner of the New Programmed Shares as at the Programmed Record Date.

Individuals

Generally the value of any franked dividend received directly by Australian resident shareholders will be grossed up to take account of the franking credits attached to the dividend and will be included in the assessable income of the shareholder. A tax offset equal to the franking credits will be available to offset or reduce the resulting tax liability. Individuals are entitled to a refund of any excess tax offset amount.

There are specific anti-avoidance provisions which may apply to deny your entitlement to tax offsets attaching to dividends. The application of these provisions, known as the "45-day rule", which potentially apply to all types of investors, are discussed further below.

We recommend that you seek independent tax advice if you think these anti-avoidance rules may apply to you.

Superannuation funds

Generally speaking, superannuation funds treat the receipt of a dividend in the same way as an individual. However, superannuation funds are subject to different tax rates to those of individuals. Where applicable, superannuation funds are also entitled to a refund of any excess tax offset amount in the same way as individuals.

The 45-day rule, which is discussed further below, can also apply to superannuation funds.

Companies

Companies must include in their assessable income dividends they receive. To the extent that the dividend is franked, the company will gross up the dividend in the same way as individuals and superannuation funds, and similarly be entitled to a tax offset for the franking credit paid by Integrated or Programmed in respect of the dividend. Accordingly, companies will generally pay no further tax on the dividend as the corporate tax rate and the tax offset are the same rate. However, companies are not entitled to receive a refund of any excess tax offset amounts (or to carry forward these amounts) if the tax offset exceeds the amount of tax that would otherwise be payable by the company in an income year.

Excess tax offsets attaching to dividends may be converted into a tax loss which may then be available to carry forward.

The 45-day rule, which is discussed further below, also applies to company shareholders.

Unfranked dividends

To the extent that any dividend received by an individual, trustee, superannuation fund or company is unfranked, it will also be fully assessable without any gross-up or tax offset.

b) 45-day rule

To qualify for the tax offsets on franked dividends received, the 45-day rule requires that, if you are an Australian resident shareholder, you must have held your Integrated Shares "at risk" for a period of at least 45 days (excluding the days of acquisition and disposal) within a period beginning on the day after those Integrated Shares were acquired.

The 45-day rule is complex. Generally, if you are subject to the 45-day rule and you acquired your Integrated Shares on or before the record date for the Integrated Interim Dividend of 4 April 2007, and you are still holding those shares at the record date for the Scheme, you would have held your shares for at least 45 clear days in respect of this dividend. This is on the assumption that the Implementation Date for the Scheme is 20 May 2007 or later (the Implementation Date is currently scheduled to be on 7 June 2007).

You can still fail the requirements of the 45-day rule even where you acquired Integrated Shares on or before 4 April 2007. This may arise where you have entered into other arrangements regarding the Integrated Shares which reduce the risk of loss or opportunity for gain on the Integrated Shares. For example, granting an option to another person to acquire the Integrated Shares would reduce that risk or opportunity.

Scheme Shareholders should carefully consider the 45-day rule if they receive any Programmed Final Dividend and they are considering disposing of their New Programmed Shares within 45 days of the Implementation Date.

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Shareholders who are individuals and whose total franking credit entitlement for the income year does not exceed A\$5000 will not be subject to the 45-day rule.

c) **Non-residents for tax purposes**

Tax non-resident Shareholders in receipt of a franked dividend have no further Australian tax to pay on the dividend, as franked dividends are exempt from withholding tax.

Unfranked dividends paid to tax non-residents are liable to a final withholding tax, generally at 30%, but subject to any double tax agreement with Australia.

6.4 GST

No GST should generally be payable in respect of the exchange of Integrated Shares or the acquisition of the New Programmed Shares.

6.5 Tax file numbers

It is not compulsory for Integrated Shareholders to notify Programmed of their Australian Tax File Number (**TFN**) or Australian Business Number (**ABN**).

However if a TFN or ABN notification is not provided to Programmed, tax at the top individual marginal tax rate plus the Medicare levy, currently totalling 46.5%, will be deducted from the unfranked component of any dividends paid. Shareholders are entitled to claim an income tax credit or refund (as applicable) in their income tax returns in respect of the tax withheld.