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The Board of Directors
Sunland Group Limited
140A Alice Street
BRISBANE QLD 4000

25 February 2025

Sunland Group Limited - Tax Implications of the scheme of arrangement and fully franked pre-acquisition dividend

Dear Directors

We refer to your request for advice in relation to the Australian income tax implications for shareholders arising from the Scheme Implementation Arrangement between Sunland Group Limited ("Sunland") and Sun Holdings GC Pty Ltd ("Sun Holdings").

All legislative references relate to the Income Tax Assessment Act 1997 ("ITAA 1997") unless stated otherwise.

1. Scope of Work

Our advice has been limited to the Australian income tax implications in relation to the following issues:

- ▶ Assessability of a Permitted Dividend paid by Sunland;
- ▶ Ability of Sunland shareholders to claim a tax offset in respect of the Permitted Dividend;
- ▶ Application of section 204-30 of the ITAA 1997.
- ▶ Application for section 177EA of the Income Tax Assessment Act 1936 ("ITAA 1936");
- ▶ Whether the capital proceeds received by Sunland shareholders includes the Permitted Dividend paid by Sunland; and
- ▶ Availability of the CGT discount for certain shareholders.

Our opinion is based on the Australian income tax legislation, applicable case law, regulations and published rulings, determinations and statement of administrative practice of the ATO as at the date of this letter.

The law, regulations, the tax authorities' interpretation, and administrative practices are subject to change. The policies and practices prevailing in the future when the transactions are reviewed by the tax authorities may also differ from those relied upon for the purposes of this letter. Should the relevant policies and practices change, our opinion may change as well. We will not be responsible for

updating the information herein, unless we are specifically requested to do so under a separate engagement.

We, Ernst & Young, consider the Australian income tax considerations in this letter represent the material Australian income tax considerations for Sunland shareholders in accordance with the relevant Australian income tax laws enacted as the date of this letter. Whilst the Australian tax considerations in this letter do not claim to describe all possible Australian income tax consequences for Sunland shareholders, we are of the opinion it provides a fair representation of the matters we consider are the material Australian income tax consequences.

Our advice is based on the background facts, listed in Section 4. Should any of the facts or assumptions be incomplete or incorrect, please inform us as soon as possible as this may affect the outcome of our advice.

2. Executive Summary

Set out below is a summary of our analysis of the Australian income tax implications in respect of the matters outlined in this letter, based on the factual background outlined in Section 4 and our technical discussion in Section 5.

In summary, we are of the view that:

- ▶ The Permitted Dividend paid by Sunland should be assessable income for Australian resident shareholders:
- ▶ Australian resident shareholders should be entitled to a tax offset equal to the franking credits attached to the dividend as they are expected to satisfy franking credit entitlement requirements;
- ▶ the anti-avoidance rules, specifically section 204-30 and section 177EA of the ITAA 1936, should not apply to the scheme. In our view:
 - it should not be concluded that any franking credit streaming exists on the basis that the dividend is paid *pari-passu* to all shareholders. Further, on the basis that 99% of Sunland shareholders are Australian residents and any Permitted Dividend payable is subject to the usual franking rules, that is, any imputation benefits attached to dividends are franked to the same extent in the same franking period to all shareholders.
 - Having regard to the eighteen circumstances listed in subsection 177EA(17) of the ITAA 1936, including the eight matters listed in subsection 177D(2) of the ITAA 1936, in our view there are substantial arguments when viewed objectively that Sunland should not have the requisite purpose of entering into the Scheme to enable the Sunland Shareholders to obtain an imputation benefit/s. This is because:
 - The overwhelming purpose of the Scheme entered into and carried out was to

facilitate the sale of shares held by Sunland shareholders to the ultimate third party bidder, following a number of takeover offers initiated by various parties between 2 July 2024 and 20 February 2025, whom were interested in the cash reserves held by Sunland.

- The Permitted Dividend paid to Sunland shareholders prior to takeover by way of a Scheme of Arrangement is a relatively common transaction in Australia. The payment of the dividend by Sunland was from existing cash reserves on ordinary shares held by Sunland shareholders and payable to shareholders whom nearly all Australian tax residents and therefore, there should be no shareholder whom is deriving a greater benefit from franking credits attached.
- ▶ The Permitted Dividend should not be considered part of the capital proceeds from the disposal of Sunland shares under CGT Event A1 on the basis that the Sunland shareholder's acceptance of the Scheme proceeding is not conditional on payment of the Permitted Dividend, the Sunland shareholder's do not have a right to refuse to complete the transfer if the Permitted Dividend is not paid or financed by Sun Holdings and that the Permitted Dividend was paid in cash from existing cash reserves.
- ▶ Eligible Sunland shareholders who have held Sunland shares for a minimum of twelve months prior to the Implementation Date may be eligible for a CGT discount on any capital gains realised.

3. Class of Persons to whom this Tax Opinion applies

The applicability of this opinion is confined to those who hold Sunland shares on capital account and received the Permitted Dividend from Sunland (hereafter referred to as "Sunland shareholders") under the Scheme Implementation Agreement between Sunland and Sun Holdings.

The opinion does not cover the specific factual positions of Sunland shareholders and as such should be regarded as general advice only by Sunland shareholders.

Our opinion is confined to the application of the relevant tax rules for Sunland shareholders who hold a direct interest in Sunland shares. We do not have any information in respect the arrangements resulting in franked dividends and capital gain/loss arising and flowing through trusts and partnerships and as such cannot express any opinion on the application of the relevant tax rules to indirect beneficial owners of Sunland shares.

The Australian income tax consequences of each Sunland shareholder will vary depending on their specific profile, characteristics and circumstances. Sunland shareholders should obtain specific tax advice having regard to their specific circumstances.

Our opinion does not cover the Australian income tax implications for non-residents of Australia or any other foreign tax implications that may arise as a result of entering into or implementing the Scheme of Arrangement.

The analysis in this Tax Opinion is based upon the Australian income tax laws contained in ITAA 1997, ITAA 1936, applicable case law, regulations, and published Australian Taxation Office ("ATO") rulings, determinations and statements of administrative practice as at the date of this advice.

The law, regulations, the tax authorities' interpretation and administrative practices are subject to change. The policies and practices prevailing in the future when the transactions are reviewed by the tax authorities may also differ from those relied upon for the purposes of this advice. Should the relevant policies and practices change, some of the issues/conclusions discussed in this advice may change as well. We will not be responsible for updating the information herein, unless we are specifically requested to do so under a separate engagement.

Our advice is provided solely for use by Sunland shareholders. If any other party wishes to rely on our advice we will require each party to sign an appropriate reliance letter before the party receives a copy of our advice.

No other entity or party is entitled to use or rely upon our advice without our prior written consent and only after such a party has executed a reliance letter acceptable to us and provided the signed letter to us. In the absence of such an arrangement, EY will not be held liable to any other party that seeks to rely upon this advice.

We disclaim all liability to any other party for all costs, loss, damage and liability that the other party may suffer or incur arising from, or relating to, or in any way connected with, the contents of our advice or the provision of our advice to the other party or the reliance on our advice by such other party.

4. Confirmed Factual Background

Our opinion is based on the following facts. If any of this background information is incorrect or incomplete, please advise us as it may affect the accuracy of the opinion set out in this letter. Sunland management have reviewed this information and confirmed it is factually accurate.

4.1 Corporate Background and Asset Realisation Strategy

- ▶ Sunland is an Australian-resident company incorporated in 1983.
- ▶ It has been listed on the Australian Securities Exchange (ASX) since 28 February 1995.
- ▶ Sunland is the head company of an Australian income tax consolidated group (Sunland Group).
- ▶ The principal activities of Sunland Group have historically been residential property development and construction in Australia.
- ▶ Sunland has a single class of shares on issue, being ordinary shares.
- ▶ Sunland's franking rate for the year ended 30 June 2025 is 25%.
- ▶ On 20 October 2020, Sunland announced a strategic plan (hereafter referred to as Asset Realisation Strategy) to sell all completed inventory and complete development of other projects over approximately 3 years. The Asset Realisation Strategy aimed to realise Sunland's unrealised profits, convert all of Sunland's assets to cash, repay liabilities, and return the cash realised to shareholders through dividends and capital returns.
- ▶ On 30 September 2022, Sunland provided an update on the Asset Realisation Strategy and announced that it expected to have no active projects or material business assets remaining by 30 June 2023, around which time Sunland may take steps to cease operating and potentially delist, subject to and in accordance with legal and financial advice, regulatory requirements and market conditions.
- ▶ On 22 June 2023, Sunland announced that:
 - it had completed its remaining projects and sold all undeveloped inventory;
 - it had some remaining assets, which were not material and expected to be sold over the next few months;
 - cash balances would be managed to satisfy remaining obligations including staff salaries, employee entitlements, necessary operating expenses, maintenance of completed projects, defects rectification as required by law, contingent liabilities, and costs that may crystallize as the Asset Realisation Strategy is completed;
 - it had set aside sufficient funds to meet these remaining obligations as statutory defect periods run off for projects completed by Sunland Group, and

- the last defects liability period was not scheduled to expire until December 2029.
- ▶ Sunland realised substantial amounts of cash in accordance with the Asset Realisation Strategy. Sunland has paid dividends to distribute surplus cash to shareholders. Between the announcement of the Asset Realisation Strategy and 30 September 2023 Sunland paid \$339,535,5897 of dividends to shareholders. All dividends have been fully franked.
- ▶ The 30 August 2023 Notice of Sunland's Annual General Meeting (AGM) included a proposal that Sunland make a capital return of surplus capital related to cash realised under the Asset Realisation Strategy and also noted that Sunland would then be delisted from the Australian Securities Exchange (ASX).
- ▶ The capital return proposal was approved at the AGM and the capital return was paid to shareholders on 31 October 2023. Sunland obtained a Class Ruling from the Australian Taxation Office (ATO) in which the ATO confirmed this transaction was a capital return for tax purposes and that the capital benefit tax anti-avoidance rules did not apply.
- ▶ The capital return reduced the cost base and reduced cost base of Sunland shareholders in respect to their shares in Sunland.
- ▶ Sunland was delisted from the ASX on 30 October 2023.
- ▶ On 15 March 2024 Sunland provided an update on the status of the Asset Realisation Strategy. Sunland confirmed that all the properties had been sold and all sales settled, and Sunland had no further obligations under its finance facilities. Sunland noted that it had legal obligations that needed to be managed. Sunland advised that it would continue to distribute funds identified as being surplus as they arose. In accordance with this approach a further dividend of \$5,467,381 was paid on 30 June 2024.
- ▶ One of Sunland's key areas of focus in respect to the Asset Realisation Strategy was on managing cash requirements to satisfy remaining obligations, including any defects remediation required in respect to completed projects and estimated costs expected to be incurred in respect to the Asset Realisation Strategy. The defects period in respect to Sunland's completed projects concluded in December 2029. Defect liability obligations were difficult to forecast and accordingly the Sunland's Directors took a prudent approach and held back funds expected to be sufficient to cover any future defects liabilities and operational costs that may arise. Consequently, Sunland had proposed to defer any decisions regarding the final stages of the Asset Realisation Strategy until the liability period has fully elapsed, post December 2029.
- ▶ While not specifically stated in the Sunland announcements in respect to the Asset Realisation Strategy, it was expected that in the event that Sunland future obligations proved to be less than anticipated and provisioned for, then Sunland would be able to distribute further dividends as part of the Asset Realisation Strategy.
- ▶ The following table sets out the dividends and capital returns Sunland paid in respect to the Asset Realisation Strategy.
- ▶

Payment date	Share capital	Dividend
31/03/2021	-	10,952,761
31/03/2021	-	30,120,093
30/09/2021	-	5,476,381
30/09/2021	-	21,905,522
31/01/2022	-	13,690,952
31/03/2022	-	16,429,142
31/07/2022	-	41,072,855
30/09/2022	-	20,536,427
31/12/2022	-	82,145,709
31/03/2023	-	27,381,903
31/03/2023	-	27,381,903
31/07/2023	-	27,381,903
30/09/2023	-	15,060,047
31/10/2023	123,218,564	-
30/06/2024	-	5,476,381
31/07/2024	-	684,548
19/02/2025	-	8,899,118
Total	123,218,564	354,595,644

4.2 Trading in Sunland shares since Sunland was delisted

- ▶ Sunland delisted from the ASX on 30 October 2023.
- ▶ Since the delisting of Sunland, there has been no official trading platform available for the purchase and sale of Sunland Shares. While shareholders were legally able to sell their shares, they were required to find a buyer and obtain approval from Sunland for any share transfer.
- ▶ As a result, Sunland has had substantial shareholder stability since it was delisted with only minimal numbers of shares being transferred between 30 October 2023 and 20 February 2025 when the Scheme discussed below was implemented.

4.3 Sunland takeover offers

- ▶ Sunland received a number of takeover offers between 2 July 2024 and 20 February 2025 when the Sunland Scheme of Arrangement discussed below was implemented. It is understood that the commercial rationale of the parties who made takeover offers was their desire to access Sunland cash reserves. It is also understood that the parties considered that they were in a better position to manage Sunland's ongoing compliance obligations and potential defects obligations, if Sunland was part of a private company group, compared with the cost structure applicable to Sunland operating as a standalone unlisted public company.
- ▶ On 2 July 2024 Sunland announced that it has received an on-market takeover offer at \$0.05 per share from Sun Holdings GC Pty Ltd (Sun Holdings) that was part of the

Homecorp Property Group. The Sun Holdings offer was subject to a 90% acceptance condition. The Sunland Board recommended the Sun Holdings offer subject to receiving a superior offer. However, as discussed below other higher offers were received, and as a result the Sun Holdings on-market takeover offer lapsed.

- ▶ On 19 August 2024 Sunland announced that it had received a competing offer from Harvest Lane Asset Management Pty Limited to acquire Sunland through a Scheme of Arrangement for \$0.05 per share. The offer was subject to a number of conditions.
- ▶ On 29 August 2024 Sunland announced that it had received a further indicative competing offer from Abedian & Co Pty Ltd to acquire Sunland through a Scheme of Arrangement for \$0.07 per share. This offer was subject to due diligence.
- ▶ On 4 September 2024 Sunland announced that it had received a further offer from Sun Holdings GC Pty Ltd to acquire Sunland through a Scheme of Arrangement for \$0.0725 per share. The offer was subject to due diligence and entering into a Scheme Implementation Agreement (SIA).
- ▶ On 23 October 2024 Sunland announced that it had entered into a SIA with Sun Holdings GC Pty Ltd in respect to a scheme for the acquisition of Sunland for \$0.0675 per share.

The Sunland board meticulously evaluated various takeover offers, carefully weighing the relative value and conditionality of each offer. The board decided that the offer of \$0.0675 cents per share was the best offer received. While the board received takeover offers which were higher than \$0.0675 per share, these higher offers were not unconditional and did not ultimately proceed.

4.4 Sun Holdings scheme

The Sun Holdings scheme provided for scheme consideration of \$0.0675. The scheme allowed for a dividend (referred to as the Permitted Dividend) of up to \$0.065 per shares with the scheme consideration being reduced by any Permitted Dividend. The Scheme was not conditional on any Permitted Dividend being paid. Whether a Permitted Dividend was paid was at the discretion of the Sunland Directors.

The following table details the key dates and events associated with the Sun Holdings Scheme process:

Date and time	Event
3 December 2024	<u>First court hearing</u> First court hearing at which the Court convened the Scheme Meeting
3 December 2024	<u>Date of Scheme Booklet</u>
6 January 2025	<u>Permitted Dividend declared</u> Date by when the Sunland Board needed to determine if Sunland was going to pay a Permitted Dividend. A Permitted dividend of \$0.065 per shares was declared with payment conditional on the Scheme becoming Effective
9 January 2025	<u>Permitted Dividend announced</u>

10 January 2025 7:00pm (Sydney time)	Announcement of the permitted dividend had been declared subject to the Scheme becoming effective
14 January 2025	<u>Despatch of Supplementary Scheme Booklet</u> <u>Permitted Dividend Record Date</u> Time and date for determining entitlements to Permitted Dividend
11:30am (Sydney time) on 18 January 2025	<u>Proxy return date</u> Latest time and date for receipt of Proxy Forms or powers of attorney by the Sunland Registry for the Scheme Meeting
10:30am (Brisbane time) on 20 January 2025	<u>Scheme Meeting</u> Court ordered meeting to consider and vote on the Scheme Resolution. The vote approved the Scheme
3 February 2025	<u>Second Court Hearing</u> Second Court Hearing at which the Court approved the Scheme
4 February 2025	<u>Effective Date</u> Effective Date of the Scheme: <ul style="list-style-type: none"> ▪ date on which the Scheme becomes Effective and is legally binding on Sunland Shareholders; and ▪ lodgement of the Scheme Order with ASIC.
7:00pm (Sydney time) on 13 February 2025	<u>Record Date</u> Time and date for determining entitlements to Scheme Consideration
19 February 2025	<u>Permitted Dividend Payment Date (if declared)</u> The Permitted Dividend of \$0.065 per share was distributed by Sunland
20 February 2025	<u>Implementation Date</u> The Scheme was implemented, and the Scheme Consideration of \$0.0025 was distributed by Sunland

Factual aspects related to the Scheme that are important in the context of the tax issues covered by this tax opinion included the following:

- ▶ The Sunland Directors met on 6 January 2025 to consider whether to declare a Permitted dividend and if so the amount of the Permitted dividend. The Sunland Directors decided to declare a Permitted dividend of \$0.065 per share. The matters considered by the Directors in respect to the Permitted dividend are set out in detail below.
- ▶ The Permitted Dividend Record Date was 14 January 2025. This was the date that determined who was eligible to receive the declared dividend. Shareholders registered at this time were entitled to the Permitted Dividend. If shares were purchased on or after this date, the new buyers would not be eligible for the dividend payment.
- ▶ At the Scheme Meeting held on 20 January 2025, the Sunland shareholders voted in favor of the scheme.
- ▶ Following shareholder approval, Sunland obtained Court approval for the Scheme on 3 February 2025. From this date the Sunland shares were effectively in the process of being

acquired by Sun Holdings.

- ▶ The Record Date for the scheme, being 13 February 2025, determines the shareholders who were eligible for Scheme Consideration under the scheme. The Scheme Consideration was \$0.0025 cents per Sunland share, being \$0.0675 per share less the \$0.065 per share amount of the Permitted Dividend.
- ▶ The Permitted Dividend was paid to eligible shareholders on 19 February 2025.
- ▶ The scheme was implemented on 20 February 2025, involving the transfer of shares to Sun Holdings and the payment of the scheme consideration to shareholders.
- ▶ On 20 February 2024 Sunland's board members were replaced by Sun Holdings' nominees, and Sunland now operates as a subsidiary of Sun Holdings.

4.5 Declaration of Permitted Dividend by the Board

- ▶ The decision in respect to whether to declare a Permitted Dividend involved a careful and considered process to ensure compliance with their obligations as directors under the Corporations Act. After ongoing consideration, the Board convened a meeting on 6 January 2025 to assess Sunland's ability to pay a permitted dividend, taking into consideration the company's financial position and retained earnings. This thorough evaluation was essential to ensure that any permitted dividend would not compromise Sunland's financial position.
- ▶ As part of the consideration in respect to whether to pay a permitted dividend the Board reviewed the disclosures in the Sun Holdings Scheme booklet and related documents and the 31 October 2024 Sunland Limited financial statements that disclosed the following equity position.

31 October 2024	
Equity	
Share capital	6,241,034
Retained earnings	12,206,398
Total equity	18,447,432

- ▶ The Sunland's net assets on 31 October 2024 were made up of cash and cash equivalents of \$17,327,150 and other net asset of assets of \$1,119,282.
- ▶ The Sunland Board had historically considered that it was prudent to hold cash reserves to allow the final stages of the Asset Realisation Strategy to be completed, as discussed above. However, the Board considered that in the context of the Scheme and Sunland becoming part of the Sun Holdings private group that Sunland had surplus cash.

- ▶ As such in accordance with the Asset Realisation Strategy practice the Board decided to declare and later pay a Permitted Dividend \$0.065 per shares being \$8,899,118 in total. This dividend was fully franked at a 25% franking rate and paid *pari-passu* to all shareholders.
- ▶ Sunland funded the payment of the Permitted Dividend, by drawing down on its cash reserves. The dividend was able to be paid without jeopardizing Sunland's financial position. It was noted that cash reserves \$5.6 million would remain available to Sunland post the Permitted Dividend being paid.
- ▶ This distribution of this amount of cash backed retained earnings was in accordance the Asset Realisation Strategy practice and brought the total amount of dividends paid under Asset Realisation Strategy to \$354,595,644.

4.6 Other Matters

- ▶ As of 31 October 2023, Sunland had 136,909,515 ordinary shares on issue.
- ▶ As at 30 June 2024 Sunland's franking account balance was \$5,731,589.
- ▶ Shares were owned by a mix of individuals, companies, trusts, partnerships, and superannuation funds, with less than 1% being non-residents.
- ▶ One individual shareholder and his related entities owned approximately 36.52% of Sunland shares. These shares have been owned for more than 10 years and in respect to many shares since Sunland was established.
- ▶ A maximum of 9.5% of Sunland shares are pre-CGT assets.
- ▶ Sunland's share capital account was not tainted within the meaning of Division 197.
- ▶ The shares in Sun Holdings GC Pty Ltd are wholly directly and beneficially owned by Australian tax residents.

5. Technical Discussion

5.1 Assessability of the Permitted Dividends under ITAA 1936

5.1.1 Definition of “Dividend”

The Sunland directors have declared a Permitted Dividend of \$0.065 per share, which was paid on 19 February 2025, the Dividend Payment date.

The income tax law defines “dividend” in subsection 6(1) of the ITAA 1936 to include:

“ (a) any distribution made by a company to any of its shareholders, whether in money or other property; and

(b) any amount credited by a company to any of its shareholders as shareholders;

(c) (Repealed by Act No 63 of 1998)

but does not include:

(d) moneys paid or credited by a company to a shareholder or any other property distributed by a company to shareholders (not being moneys or other property to which this paragraph, by reason of subsection (4), does not apply to moneys paid or other credited, or property distributed for the redemption or cancellation of a redeemable preference share), where the amount of the moneys paid or credited, or the amount of the value of the property, is debited against an amount standing to the credit of the share capital account of the company; or

(e) ...”

The Permitted Dividend, which was declared and paid by Sunland, has been paid from the retained earnings of Sunland Group. This payment meets the above criteria, and as a result the Permitted Dividend is classified as a dividend for tax purposes.

5.1.2 Exempting Entity

Section 208-20 provides that a corporate tax entity is an exempting entity if, at a particular time, the entity is effectively owned by prescribed persons.

Subsection 208-25(1) provides that an entity is effectively owned by prescribed persons if not less than 95% of accountable membership interests or accountable partial interests (broadly direct and indirect ownership interests) are held by or on behalf of prescribed persons or the risks or opportunities of ownership of such membership interests are held by or on behalf of prescribed persons.

Section 208-40 provides the definition of a prescribed person in relation to another corporate tax entity. Generally, the definition includes companies, trustees, partnerships or individuals that are a foreign resident. Where the distribution is from a corporate tax entity, the distribution would be exempt income or non-assessable non-exempt income of the company, trust estate, partnership or individual.

Less than 1% of Sunland's issued capital is held by non-resident shareholders. In addition, shares in Sun Holdings GC Pty Ltd are wholly directly and beneficially owned by Australian tax residents. As such it is clear that Sunland is not effectively controlled by prescribed persons, in accordance with the definitions set forth in the ITAA 1997.

Given this ownership profile, Sunland Group Limited does not fulfill the conditions to be an exempting entity under Division 208.

The implications of this status are significant for the tax treatment of dividends paid by Sunland Group Limited for Sunland shareholders. Specifically, because Sunland Group Limited is not an exempting entity, any dividends it pays, including Permitted Dividends, are not considered distributions from an exempting entity. Consequently, any franking credits attached to dividends paid by Sunland Group to Sunland shareholders should be available as a tax offset to Sunland shareholders to reduce its Australian tax payable on dividends received provided Sunland Group and Sunland shareholders adheres to the relevant provisions of the Australian tax legislation.

5.1.3 Assessability of dividend

Subparagraph 44(1)(a)(i) of the ITAA 1936 provides that the assessable income of an Australian resident shareholder in a company includes:

"dividends (other than non-share dividends) that are paid to the shareholder by the company out of profits derived by it from any source..."

In the context of Sunland, the company declared the Permitted Dividend from its retained earnings and paid the Permitted Dividend from its cash reserves. As such, Australian resident shareholders are required to include this Permitted Dividend in their assessable income, as stipulated by subparagraph 44(1)(a)(i) of the ITAA 1936.

The inclusion of the Permitted Dividend in assessable income may have implications for their overall Australian tax liability. Having said this, certain Sunland shareholders may be able to realise the benefit of franking credits attached to Permitted Dividend. Franking credits, also known as imputation credits, can offset the tax payable on dividends for Australian residents, effectively preventing double taxation of these earnings at both the corporate and individual levels.

5.2 Ability to claim a tax offset

5.2.1 Gross up and tax offset

Section 207-20 outlines the tax treatment of franked distributions received by entities, which includes the gross-up of assessable income and entitlement to tax offsets. Specifically:

"(1) If an entity makes a franked distribution to another entity, the assessable income of the receiving entity, for the income year in which the distribution is made, includes the amount of the franking credit on the distribution. This is in addition to another amount included in the receiving entity's assessable income in relation to the distribution under any other provision of this Act.

(2) The receiving entity is entitled to a tax offset for the income year in which the distribution is made. The tax offset is equal to the franking credit on the distribution."

Therefore, in the case of Sunland issuing a fully franked Permitted Dividend, subject to the shareholder meeting the qualified person criteria, the shareholder will:

- ▶ include the amount of the franking credit attached to the Permitted Dividend in their assessable income; and
- ▶ be entitled to a tax offset equal to the amount of the franking credits attached to the relevant dividend.

Where the fully franked Sunland Dividend is received by a Sunland shareholder (not being an entity taxed as a corporate tax entity) that is a trustee of a trust (not being a complying superannuation fund) or a partnership, subsection 207-35(1) applies, subject to the trustee or partnership being a qualified person.

Subsection 207-35(1) provides:

"If:

(a) a franked distribution is made in an income year to an entity that is a partnership or the trustee of a trust; and

(b) the entity is not a corporate tax entity when the distribution is made; and

*(c) if the entity is the trustee of a trust - the trust is not a *complying superannuation entity or FHSA trust when the distribution is made;*

the assessable income of the partnership or trust for that income year includes the amount of the franking credit on the distribution."

Therefore, provided that the qualified person rule is met, the Sunland shareholders must include the franking credit amount attached to the Permitted Dividend in their assessable income under subsection 207-35(1).

5.2.2 Qualified person

In accordance with section 207-20, it is incumbent upon recipients of franked dividends to include the associated franking credits in their assessable income for the relevant income year. Additionally, these recipients are entitled to claim a tax offset equivalent to the amount of the associated franking credits.

Nonetheless, according to section 207-145, if the recipient does not meet the criteria of a "qualified person" as outlined in the former Division 1A of Part IIIAA of the ITAA 1936, then the franking credits associated with the franked dividend are not to be added to the recipient's assessable income. Furthermore, the recipient is not eligible for a tax offset for these franking credits. Essentially, this means the recipient is treated as though they have received a dividend without franking credits, and only the cash value of the dividend received is considered assessable income.

The test for what constitutes a "qualified person" is provided in former section 160APHO of the ITAA 1936.

In this regard, consideration is to be given to the holding period rule and the related payment rule.

Former subsection 160APHO(1) of the ITAA 1936 states:

*“A taxpayer who has held shares or an interest in shares on which a dividend has been paid is a **qualified person** in relation to the dividend if:*

(a) where neither the taxpayer nor an associate of the taxpayer has made, is under obligation to make, or is likely to make, a related payment in respect of the dividend - the taxpayer has satisfied subsection (2) in relation to the primary qualification period in relation to the dividend; or;

(b) where the taxpayer or an associate of a taxpayer has made, is under an obligation to make or is likely to make, a related payment in respect of the dividend - the taxpayer has satisfied subsection (2) in relation to the secondary qualification in relation to the dividend.”

If a taxpayer is not under an obligation to make a related payment in relation to a dividend or distribution, the taxpayer will have to satisfy the holding period requirement within the primary qualification period.

If a taxpayer is under an obligation to make a related payment in relation to a dividend or distribution, the taxpayer will have to satisfy the holding period requirement within the secondary qualification period.

5.2.3 Related Payment

For the purpose of identifying the applicable qualification period, it is crucial to evaluate if the shareholders of Sunland are obligated to make a related payment as per the statutory provisions.

Former section 160APHN of the ITAA 1936 gives examples of, but does not limit, what constitutes the making of a related payment within the framework of the former Division 1A of the ITAA 1936.

Former subsection 160APHN(2) of the ITAA 1936 provides as follows:

“The taxpayer or associate is taken, for the purposes of this Division, to have made, to be under an obligation to make, or to be likely to make, a related payment in respect of the dividend or distribution if, under an arrangement, the taxpayer or associate has done, is under an obligation to do, or may reasonably be expected to do, as the case may be, anything having the effect of passing the benefit of the dividend or distribution to one or more other persons.”

Former subsection 160APHN(3) of the ITAA 1936 states:

“Without limiting subsection (2), the doing of any of the following by the taxpayer or an associate of the taxpayer in the circumstances mentioned in subsection (4) may have the effect of passing the benefit of the dividend or distribution to one or more other persons:

- (a) causing a payment or payments to be made to, or in accordance with the directions of, the other person or other persons; or*
- (b) causing an amount or amounts to be credited to, or applied for the benefit of, the other person or the other persons; or*

- (c) *causing services to be provided to, or in accordance with the directions of, the other person or other persons; or*
- (d) *causing property to be transferred to, or in accordance with directions of, the other person or other persons; or*
- (e) *allowing any property or money to be used by the other person or other persons or by someone nominated by the other person or other persons; or*
- (f) *causing an amount or amounts to be set off against, or to be otherwise applied in reduction of, a debt or debts owed by the other person or other persons; or*
- (g) *agreeing to treat an amount or amounts owed to the other person or other persons by the taxpayer or associate as having been increased.*

Former subsection 160APHN(4) of the ITAA 1936 states:

“The circumstances referred to in subsection (3), are where:

- (a) *the amount or the sum of the amounts paid, credited or applied; or*
- (b) *the value or the sum of the values of the services provided, of the property transferred or of the use of the property or money; or*
- (c) *the amount or the sum of the amounts of the set-offs, reductions or increases;*

as the case may be:

- (d) *is, or may reasonably be expected to be, equal to; or*
- (e) *approximates or may reasonably be expected to approximate; or*
- (f) *is calculated by reference to;*

the amount of dividend or distribution.

The Scheme Consideration was adjusted by the amount of the Permitted Dividend paid to Sunland shareholders who accepted the Sun Holdings Scheme offer. This satisfies former paragraphs 160APHN(3)(f) and 160APHN(4)(c) as the reduction of the Sun Holdings Scheme consideration has the effect of passing the benefit of the Permitted Dividend from a Sunland shareholder to Sun Holdings.

A Sunland shareholder, or a partner in a partnership, or a beneficiary of a trust that had an interest in Sunland shares, is taken to have made, or to have been under an obligation to make, a related payment in respect of the Permitted Dividend. Therefore, the relevant qualification period for Sunland shareholders is the secondary qualification period under the former paragraph 160APHO(1)(b) of the ITAA 1936.

5.2.4 Holding Period Rule

The holding period rule requires a shareholder to hold the shares, or the interest in the shares on

which a dividend is paid, at risk for a continuous period of at least 45 days during the qualification period.

As the Sunland shareholders, for the purposes of former Division 1A, made a related payment in respect of the Permitted Dividend, the relevant holding period requirement is within the secondary qualification period pursuant to former paragraph 160APHO(1)(b).

The secondary qualification period is defined in former section 160APHD of the ITAA 1936 as follows:

"In relation to a taxpayer in relation to shares or an interest in shares, means:

- (a) if the shares are not preference shares - the period beginning on the 45th day before, and ending on the 45th day after, the day on which the shares or interest becomes ex dividend..."*

The concept of 'ex dividend' is defined by former section 160APHE(1) of the ITAA 1936 as follows:

"A share in respect of which a dividend is to be paid, or an interest (other than an interest as a beneficiary of a widely held trust) in such a share, becomes ex dividend on the day after the last day on which the acquisition by a person of the share will entitle the person to receive the dividend."

The analysis of the 45-day holding rule is a critical element in determining a shareholder's status as a "qualified person" for the purpose of claiming franking credits.

The eligibility for the Permitted Dividend was determined on 14 January 2025 (the Permitted Dividend Record Date). This was the last day on which acquisition by a person of a Sunland share entitled the person to receive the Permitted Dividend as per former section 160APHE of the ITAA 1936. Accordingly, the ex-dividend date for the purposes of former subsection 160APHE(1) of the ITAA 1936 is 15 January 2025.

As per the definition in former section 160APHD of the ITAA 1936, the secondary qualification period begins 45 days before the ex-dividend date of 15 January 2025 and ends 45 days after that day. This means that the secondary qualification period would ordinarily run from 1 December 2024 to the period that the at-risk period was concluded on the scheme record date of 13 February 2025.

Pursuant to former subsection 160APHO(3) of the ITAA 1936, any days on which an entity had materially diminished risks of loss or opportunities for gain in respect of their Sunland shares, or interests in Sunland shares, are excluded from counting towards the 45 day holding period requirement. The term 'at risk' implies that the shareholder must not engage in any risk mitigation strategies, such as hedging, that would insulate them from the normal risks associated with share ownership during this holding period.

Virtually all Sunland shareholders entitled to the Permitted dividend acquired their shares before 1 December 2024 and continued to hold their shares 'at risk' until 13 February 2025. As a result these Sunland shareholders should satisfy the holding period rule in respect to the Permitted Dividend. Any shareholders who acquired their shares after 1 December 2024 or who did not hold their shares 'at risk' should obtain their own tax advice.

5.3 Non-Application of Section 204-30 of the ITAA 1997 to the Permitted Dividend

Section 204-30 is a specific tax anti-avoidance provision that allows the Commissioner to make a determination to cancel imputation benefits and / or debit a corporate tax entity's franking account in relation to distributions with imputation benefits being streamed to shareholders that derive a greater benefit in preference to another.

Subsection 204-30(8) provides a non-exhaustive list of circumstances where a shareholder would be considered to derive a greater benefit from franking credits than another shareholder.

According to PBR 1012433390920, 'whether or not a streaming arrangement has been implemented requires an objective determination to be made of whether the arrangement involves the selective directing of franked distributions to those members who can most benefit from franking credits to the exclusion of others.'

According to the present arrangement, all Sunland shareholders have received an imputation benefit from the Permitted Dividend (provided they otherwise are qualified persons as discussed above).

As noted:

- ▶ Australian resident shareholders should receive the benefit of a tax offset (paragraph 204-30(6)(a) of the ITAA 1997) or receive a franking credit to their franking account as a result of the distribution; and
- ▶ Non-resident shareholders should receive an imputation benefit in the form of an exemption from dividend withholding tax (paragraph 204-30(6)(e) of the ITAA 1997).

Sunland did not orchestrate the distribution of dividends in a way that would ensure imputation benefits were exclusively maximized for shareholders who benefit more from franking credits, while others received lesser or no imputation benefits. Instead, all shareholders received the same imputation benefits from the Permitted Dividend as any distributions made by Sunland are subject to the ordinary franking rules. That is, the usual franking rules require any imputation benefit attached to dividends made to be franked to the same extent as any other distributions made on ordinary shares during the same franking period due to the benchmark franking rules.

Furthermore, it should not be concluded that 'streaming' exists, due to the majority of the Sunland Shareholder's being Australian residents and on the basis that the dividend is paid *pari-passu* to all shareholders.

Considering these factors and all relevant circumstances, section 204-30 of the ITAA 1997 should not apply to the Sunland. Therefore, in our view, there should be no 'streaming' of franking credits and no cancellation of franking credits or debit to Sunland's franking account arising from the payment of the Permitted Dividend.

5.4 Application of section 177EA: Imputation benefit

Section 177EA of the ITAA 1936 is designed to prevent schemes that result in a particular taxpayer obtaining a greater franking credit benefit than they would otherwise receive.

Section 177EA targets franking credit trading and dividend streaming schemes where one of the purposes (other than an incidental purpose of the scheme) is to obtain an imputation benefit.

The reason for its introduction was set out in the Explanatory Memorandum (EM) to the Taxation Laws Amendment (No. 3) Act 1998. According to the EM two of the underlying principles of the imputation system are, firstly, that the benefits of imputation should only be available to the true economic owners of shares, and only to the extent that those taxpayers are able to use the franking credits themselves and, secondly, that tax paid at the company level is in broad terms imputed to shareholders proportionately to their shareholdings.

Franking credit trading schemes allow franking credits to be inappropriately transferred by, for example, allowing the full value of franking credits to be accessed without bearing the economic risk of holding the shares. These schemes undermine the first principle.

Companies can also engage in dividend streaming (i.e. the distribution of franking credits to select shareholders), which undermines the second principle by attributing tax paid on behalf of all shareholders to only some of them. Generally this entails the streaming of franking credits to taxable residents and away from non-residents and tax-exempts.

If section 177EA ITAA 1936 applies, the Commissioner may make a determination under subsection 177EA(5) that either a franking debit arises to the company in respect of the dividend paid to the relevant taxpayer or, in the alternative, that no franking credit benefit arises in respect of the dividend paid to the relevant taxpayer.

Specifically, subsection 177EA(3) of the ITAA 1936 provides that section 177EA:

"... applies if:

- (a) *there is a scheme for a disposition of membership interests, or an interest in membership interests, in a corporate tax entity; and*
- (b) *either:*
 - (i) *a frankable distribution has been paid, or is payable or expected to be payable, to a person in respect of the membership interests; or*
 - (ii) *a frankable distribution has flowed indirectly, or flows indirectly or is expected to flow indirectly, to a person in respect of the interest in membership interests, as the case may be; and*
- (c) *the distribution was, or is expected to be, a franked distribution or a distribution franked with an exempting credit; and*
- (d) *except for this section, the person (the 'relevant taxpayer') would receive, or could reasonably be expected to receive, imputation benefits as a result of the distribution; and*
- (e) *having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a purpose (whether or not the dominant purpose but not including an incidental purpose) of enabling the relevant taxpayer to obtain an imputation benefit."*

In Practice Statement PS LA 2007/9 the ATO makes the following comments about the application of section 177EA of the ITAA 1936.

“Accordingly, the issue is whether, having regard to the relevant circumstances of the scheme, it would be concluded that, on the part of a company, its shareholders or any other relevant party, there is a purpose more than merely an incidental purpose of conferring an imputation benefit under the scheme [...].

In arriving at a conclusion, the Commissioner must have regard to the relevant circumstances of the scheme which include, but are not limited to, the circumstances set out in subsection 177EA(17) of the ITAA 1936. The relevant circumstances listed there encompass a range of circumstances which taken individually or collectively could indicate the requisite purpose. Due to the diverse nature of these circumstances some may not be present at any one time in any one scheme.”

We have applied each element of section 177EA(3) below.

5.4.1 Scheme for disposition of membership interests

A “scheme” for the purpose of section 177EA is taken to have the same meaning as provided in subsection 177A(1) of Part IVA of the ITAA 1936. That definition in accordance with subsection 995-1(1) is widely drawn and includes any agreement, arrangement, understanding, promise, undertaking, scheme, plan or proposal.

Subsection 177EA(14)(b) provides that a “scheme for disposition” specifically includes entering into any contract, arrangement, transaction or dealing that changes or otherwise affects the legal or equitable ownership of the shares or interest in shares.

Sunland has executed the Scheme, resulting in the disposal of Sunland shares to Sun Holdings. Through this arrangement, Sun Holdings has acquired 100% ownership of the shares, effectuating a complete change in the legal and equitable ownership of Sunland. As a result, there is a Scheme for the disposition of shares.

5.4.1.1 Frankable distribution

As part of the Sun Holdings Scheme a frankable distribution has been paid to the shareholders in respect of their membership interests. This condition is satisfied as the distribution process aligns with the requirements of section 177EA.

5.4.1.2 Franked distribution or a distribution franked with an exempting credit

The distributions made to the shareholders were franked distributions, and as a result the condition specified in subsection 177EA(3)(c) is met.

5.4.1.3 Imputation benefits as a result of the distribution to the 'relevant taxpayer'

This factor is also satisfied and the relevant taxpayers (Sunland shareholders) received imputation benefits as a result of receiving the franked distributions.

5.4.1.4 Objective purpose of enabling the relevant taxpayer to obtain an imputation benefit

In respect to the Sun Holdings scheme the conditions in paragraphs 177EA(3)(a) to (d) of the ITAA 1936 have been satisfied.

Central to the operation of section 177EA is the purpose test, set out in paragraph 177EA(3)(e). Section 177EA applies where having regard to the relevant circumstances of the scheme, it would be concluded that a person(s) entered into a scheme for the purpose, which is more than merely an incidental purpose, of enabling the relevant taxpayer to obtain an imputation benefit

In considering when a purpose is an incidental purpose, the High Court's decision in *Mills v Commissioner of Taxation* [2012] HCA 51, quoted the statement in the Explanatory Memorandum for s177EA that "a purpose is an incidental purpose when it occurs fortuitously or in subordinate conjunction with another purpose, or merely follows another purpose as its natural incident". The Court went on to say that a purpose would be an incidental purpose and outside the scope of s177EA(3)(e) "if that purpose does no more than further some other purpose or follow from some other purpose".

The High Court considered that a purpose of proving an imputation benefit can be incidental even where it is central to the design of a scheme if that design is directed to the achievement of another purpose. The High Court suggested the purpose for the design of a scheme should be the focus and whether the fact an imputation benefit arises merely flows from the primary purposes this imputation benefit would be incidental to the main purposes.

The High Court also considered that a counterfactual analysis could be relevant to the statutory inquiry mandated by s 177EA(3)(e). Purpose is a matter for inference and incidentality is a matter of degree. Consideration of possible alternatives may well assist the drawing of a conclusion in a particular case that a purpose of enabling a shareholder to obtain a franking credit does or does not exist and, if such a purpose exists, that the purpose is or is not incidental to some other purpose."

Based on that construction of s177EA(3)(e) the High Court considered that, in the case of a capital raising where the issuer intended to frank distributions on an equity interest, there would be a purpose of enabling the holder of the interest to obtain franking credits. However, if the franking served no other purpose than to facilitate the capital raising, that would be an incidental purpose and s177EA would not apply. The High Court contrasted that with franking credit trading and franking credit streaming where it is the issue of equity interests that is incidental to the provision of franking credits. The High Court noted that there are other scenarios where the circumstances would be more nuanced.

In respect the Sun Holdings Scheme the aspect that gives rise to the imputation benefit is the decision of the Sunland board to declare and pay the \$0.065 per share Permitted Dividend. It follows that the factual background in respect to the decision of the Sunland directors to declare and pay the Permitted dividend are at the core of the analysis of the section 177EA(17) relevant circumstances.

A detailed analysis of the application of s177EA(3)(e) is set out in section 5.4.4 below.

5.4.2 The Mere Acquisition exclusion

As part of the review of the application is section 177EA it is necessary to review the mere acquisition exclusion in section 177EA(4). This exclusion provides that the mere acquisition of shares or interests in a company, accompanied by the receipt of dividends, should not be regarded as an imputation benefit. This exclusion acknowledges the expectation that the shareholder will bear the customary risks and reap the potential rewards that are inherently tied to the economic ownership of the company's shares.

The Explanatory Memorandum (EM) accompanying the introduction of section 177EA clarifies that simply acquiring shares, where the shares are held at risk in the ordinary way, does not in itself attract the application of anti-avoidance rules, even if the shares are expected to pay franked dividends.

Paragraph 8.64 of the EM articulates:

"The mere acquisition of shares or units in a unit trust where the shares or units are to be held at risk in the ordinary way, will not, in the absence of further features, attract the rule, even though the shares or units are expected to pay franked dividends or distributions".

The EM further explains that the risks and opportunities associated with share ownership are significant factors in determining whether there can be seen to be a more than incidental purpose of enabling the holder to obtain an imputation benefit.

In respect to the Sun Holdings Scheme we are of the view that the subsection 177EA(4) should not apply as the Sun Holding scheme involved the disposal of shares rather than the mere holding of shares. Even though this exclusion does not apply to the Sun Holding Scheme we are of the view that the enactment section 177EA(4) is supportive of the proposition that shareholders being exposed to the risks and opportunities associated with share ownership is a significant factor in determining whether there can be seen to be a more than incidental purpose of enabling the holder to obtain an imputation benefit.

5.4.3 ATO approach - Scheme pre-acquisition dividends

Australian companies paying a pre-acquisition dividend as part of a takeover by way of a Scheme of Arrangement are a relatively common transaction on Australian capital markets. The ATO is asked to provide Class Rulings and as part of these rulings the ATO has established practices that are followed in determining whether the ATO will seek to apply section 177EA.

Generally the ATO accepts that section 177EA does not apply to such special dividends paid from tax realised profits that are funded from the financial resources of the target company. Generally the ATO considers that section 177EA does not apply where the Special Dividend is:

- ▶ sourced from realised profits;
- ▶ funded from the target company's cash reserves or existing working capital debt facilities;
- ▶ not funded, directly or indirectly, by acquiring entities under the scheme or their associates; and
- ▶ compliant with the requirements of the Corporations Act including section 254T of that Act.

The ATO also generally accepts that the possible application is section 177EA is less sensitive where the Australian company has a small percentage of non-resident shareholders and there has not been abnormal trading in the target company's shares before or around the time of the announcement of the takeover Scheme.

We are of the view that the factual circumstances of the Sun Holdings scheme are aligned with the above ATO practices and as such we are of the view that the ATO should conclude that section 177EA should not apply to the Sun Holdings scheme.

The only aspect of the Sun Holdings scheme that may be considered somewhat unusual is the fact that the special dividend is \$0.065 per share leaving the net scheme consideration as \$0.0025 per share. We are of the view that this low amount of the net scheme consideration is explicable by the fact that Sunland has implemented the Asset Realisation Strategy and had already distributed substantial amounts of dividends and capital to its shareholders. We are of the view that the small amount of the net Scheme consideration relative to the amount of the special dividend is not likely to be considered sensitive by the ATO.

5.4.4 Detailed review of section 177EA

While as discussed above we are of the view that the circumstances of the Sun Holding Scheme pre-acquisition dividend are consistent with other scheme pre-acquisition dividends the ATO has ruled positively in respect to we considered it is appropriate to also conduct a detailed tax technical and factual review of the application of section 177EA of the Sun Holdings scheme. This involves;

- ▶ Confirming that the analysis of the High Court's comments on where a purpose of enabling an imputation benefit will be regarded as an incidental purpose are applicable to the Sunland permitted dividend; and
- ▶ That the detailed review of the section 177EA(17) relevant considerations supports the view that no more than incidental purpose of enabling an imputation benefit.

We have concluded that both of these matters positively support the view that section 177EA should not apply to the Sunland Permitted Dividend.

Our analysis of each of these matters is set out below

5.4.5 Application of High Court approach to determining what is an incidental purpose test

The test of whether a person had the requisite purpose of enabling the relevant taxpayer to obtain an imputation benefit is an objective one. This requisite purpose does not have to be the most influential or prevailing purpose, but it must be more than an incidental purpose.

An incidental purpose does not attract the operation of s177EA. The High Court in the *Mills v Commissioner of Taxation* [2012] HCA 51 (*Mills*), referred to the explanatory memorandum to s177EA for the meaning of incidental purpose. This is extracted as follows:

'A purpose is an incidental purpose when it occurs fortuitously or in subordinate conjunction with another purpose, or merely follows another purpose as its natural incident.'

Further commented that,

'to say that a purpose would be an incidental purpose and outside the scope of s177EA(3)(e) if that purpose does not more than further some other purpose or follow from some other purpose.'

'Indeed, the centrality of a purpose to the design of a scheme directed to the achievement of another purpose may be the very thing that gives it a quality of subsidiarity and therefore incidentality. ... The parenthesised words in s 177EA(3)(e) make clear that a dominant purpose of enabling a holder to obtain a franking credit is sufficient but not necessary for the requisite jurisdictional fact to exist, but it does not follow that a purpose which does no more than further or follow from some dominant purpose is incidental. Purpose is a matter for inference and incidentality is a matter of degree.'

The relevant circumstances include (but are not limited to) the matters listed in s177EA(17). The High Court considered that a purpose of proving an imputation benefit can be incidental even where it is central to the design of a scheme if that design is directed to the achievement of another purpose. The High Court suggested the purpose for the design of a scheme should be the focus and whether the fact an imputation benefit arises merely flows from the primary purposes this imputation benefit would be incidental to the main purposes.

We are of the view that it follows that if the transaction that gave rise to the imputation benefit is a normal commercial transaction that is explicable commercially based on the objective facts without reference to the imputation benefit then it is likely that the purpose of enabling an imputation benefit will be an incidental purpose.

Consider for example the payment of a dividend by a company to long-term shareholders out of taxed profits and is thus franked by the company. It is a design feature of the imputation system that a \$70 dividend franked at 30% provides \$30 tax credit to the shareholder. On the face of it a \$30 tax credit on a \$70 cash payment could be seen as more than incidental. However, applying the High Courts approach, we consider the primary purpose of the payment of a dividend is generally to provide the shareholders a return on their invested funds. We consider that providing a return to shareholders would ordinarily be seen as the main purpose for paying the dividend such that the fact a franking tax credit is available does not result in a more than incidental purpose of enabling.

As the franking credit merely flows from a normal commercial transaction, being the payment of the dividend, then it follows from the High Court's approach that as enabling the imputation benefit merely flows from paying a dividend this would, without other facts, be seen as incidental purpose in respect to enabling the imputation benefit.

This interpretation aligns with our assessment of how section 177EA should be applied to the Sunland scheme Permitted dividend. Sunland has been implementing the Asset Realisation Strategy since 20 October 2020. Under the Asset Realisation Strategy, Sunland has paid total franked dividends of \$345,696,562 from surplus tax paid retained earnings.

When the Sunland directors met on 6 January 2025 to consider the payment of a Permitted Dividend that director conceded that Sunland had excess cash attributable to taxed retained profits to allow the maximum Permitted Dividend on \$0.065 per share to be paid.

While the Permitted Dividend was paid in the context of the Sun Holdings scheme we are of the view that this does not affect commercial nature of this dividend as an ordinary commercial transaction

representing the payment of a return to Sunland shares in respect to their investment in Sunland.

Applying the High Court's approach in the Mills case the providing a return to Sunland shareholders based on cash based tax retained earnings was the main purpose of the dividend and providing the imputation benefit was an incidental purpose.

The High Court also highlighted the utility of counterfactual analysis in determining the purpose of a Scheme. In the context of Sunland, alternative scenarios without the Scheme do not suggest a contrived arrangement for exploiting franking credits. Instead, they indicated that the Scheme's primary purpose was consistent with Sunland's ongoing commercial objectives.

5.4.6 Review of section 177EA relevant circumstances

In determining whether there was a purpose of enabling an imputation benefit subsection 177EA(3)(e) requires the Commissioner to consider the "relevant circumstances" of the scheme as set out in subsection 177EA(17). Considering these circumstances determines whether a person/s entered into any part of the scheme for a purpose, other than an incidental purpose, of enabling the relevant taxpayer to obtain an imputation benefit.

The list contained in s177EA(17) has been confirmed by the High Court in the decision in *Mills* as a non-exhaustive list and 'an individual analysis of each of the relevant circumstances [...] [i]s not required and that a global assessment of purpose was permissible as long as the factors were taken into account.'

Based on a detailed review of the section 177EA(17) relevant circumstances we have concluded that no more than incidental purpose of enabling an imputation benefit arises in respect to the Permitted Dividend. This conclusion is based on an analysis of each individual matter in s177EA(17), as set out in detail in Appendix A and summarised below, seeking to apply both an individual and global assessment of the relevant circumstances.

While some of the relevant circumstances could be considered to indicate some limited purpose of enabling an imputation benefit in our view there are substantial arguments when viewed objectively that no party should have the requisite purpose on entering into the Scheme to enable Sunland Shareholders to obtain an imputation benefit in respect to the payment of the Permitted Dividend.

Positive factors (indicating no enablement of more than incidental imputation benefits)	Negative factors (indicating possible enablement of more than incidental imputation benefits)
<p>Extent and Duration and Changes in the Risks and Opportunities of Ownership (Strongly positive) Virtually all Sunland shareholders entitled to the Permitted dividend have held their Sunland share since 30 October 2023 and many for much longer.</p> <p>The Sunland shareholders' interests in Sunland are exposed to the relevant risks or opportunities that would ordinarily attend to ownership interests in the company, as their</p>	<p>Greater Benefit from Franking Credits (slightly negative) Virtually all Sunland shareholders are Australian tax residents and not exempting entities, fully eligible for imputation credits, indicating no significant shareholders are entitled to a greater tax offset from franking credit compared to other Sunland shareholders.</p> <p>Shareholders who receive a greater franking benefit is defined to include shareholders who have income tax payable on the distribution</p>

<p>interests held are legal form shares and are ordinary class shares that ordinarily attend ownership interests in the company and are considered 'equity interests' for tax.</p> <p>Further, the Sunland shareholders interests in the Sunland shares are exposed to the economic performance of the business and dividends are determined at the discretion of the Board based on the profits of the business. In the event that the business was not profitable, the Sunland shareholders would not receive a return (compared to a return that would be available on debt like instruments or other investments). Exposure to variable returns further supports that the Sunland shareholders are exposed to the risks and rewards of ownership.</p> <p>There were no transactions that changed the ability of the Sunland shareholders to benefit from the risks and opportunities of ownership prior to the ex-dividend date for the Permitted dividend. There was no trading of Sunland shares around the announcement of the Sun Holdings scheme. On this basis we consider this factor to be strongly positive.</p>	<p>which is less than the tax offset to which the entity would be entitled. It is noted that shareholders who are superannuation funds would have a tax rate of 15% (or 0% if they are in pension phase) and individual shareholders who have 2025 taxable income of less than \$45,000 would also have a tax rate of less than 25%.</p> <p>While Sunland does thus have shareholders who are regarded as being entitled to greater franking credits that other shareholders as there have been no trading in Sunland shares since 30 October 2023 these greater franking credit shareholders have received their proportionate share of the Sunland Permitted dividend and as such we consider the fact some Sunland shareholders are entitled to greater benefits from franking credits is not a significant negative factor in the overall section 177EA(17) analysis.</p> <p>On this basis we consider this factor to be slightly negative.</p>
<p><i>Consideration not calculated by reference to Imputation Benefits (positive)</i></p> <p>The overall consideration received by Sunland shareholders in respect to the Scheme was not calculated by reference to credits. The overall \$0.0675 per share cash consideration, including a Permitted Dividend, applied regardless of whether the Sunland directors declared a Permitted dividend. In addition the declaration of the Permitted dividend was solely at the discretion of the Sunland directors. On this based we are of the view that this fact should be weighted as positive.</p>	<p><i>Retention or Use of Franking Credits (neutral)</i></p> <p>Absent the payment of the Permitted dividend Sunland would have retained an additional \$2,966,373 of franking credits. This outcome arises in respect every payment of a franked dividend. The additional retained franking credits would have become available to the Sun Holdings Group, as the new owners of Sunland, and would be available for distribution to its Australian resident shareholders subsequent to the implementation date.</p> <p>One this basis we are of the view this factor should not point to the requisite purpose as there is no suggestion that Sunland is seeking to utilise franking credits that would be otherwise be 'wasted'.</p>
<p><i>Distribution not Sourced from Unrealised or Untaxed Profits (strongly positive)</i></p> <p>The Permitted dividend paid by Sunland was sourced from realised taxed profits and Sunland</p>	<p><i>Capital Losses Realised (neutral)</i></p> <p>Sunland shareholders that acquired the shares for more than \$0.90 per share would likely have</p>

<p>did not have any unrealised or untaxed profits. We consider this to be a strongly positive factor.</p>	<p>realised a capital loss as a result of the Sun Holdings scheme because all Shareholders disposed of their share for \$0.0025 per share.</p> <p>The low consideration offered under the Scheme and accepted by the Sunland Shareholders can be indirectly regarded as having resulted from the Asset Realisation Strategy being undertaken and the substantial dividends Sunland paid exercising that strategy since 20 October 2020.</p> <p>Further, absent the Sun Holdings Scheme, it is likely that a capital loss would have been realised by Sunland Shareholders following the completion of the Asset Realisation Strategy by Sunland and placing Sunland into liquidation in 2019.</p>
<p>Period of Holding Membership Interests (Strongly positive) - Virtually all Sunland shareholders entitled to the Permitted dividend have held the Sunland share since 30 October 2023 and many for much longer. There was no trading of Sunland shares around the announcement of the Sun Holdings scheme. On this basis we consider this factor to be strongly positive.</p>	

Our detailed analysis on the application of relevant circumstances outlined in subsection 177EA(17) to Sunland is set out at Appendix A.

5.5 Timing of CGT Event A1 for Disposal of Sunland Shares on Implementation Date

For Sunland shareholders, CGT Event A1 per section 104-10 is triggered by a change in ownership of an asset from one entity to another.

This event is deemed to have occurred at the occasion when a contract for the disposal of the asset is entered into, or, in the absence of a contract, at the point when the change of ownership actually takes place, as stipulated by subsection 104-10(3).

Per Taxation Determination TD 2002/4 as amended September 2023, the Australian Taxation Office (ATO) maintains that a takeover or merger facilitated through a court-sanctioned Scheme of Arrangement does not involve the disposal of shares under a contract.

Consequently, applying TD 2002/4 as amended, CGT Event A1 for Sunland's shareholders transpired upon the transfer of their shares to Sun Holdings on the Implementation Date, specifically on 20 February 2025.

The exact timing of CGT Event A1 is critically significant as it determines the income year in which any capital gain or loss must be recognized. Furthermore, whether a Sunland shareholder has held the asset for the required period to be eligible as a discount capital gain under s104-10(3).

5.6 Exclusion of the Permitted Dividend from Capital Proceeds in CGT Event A1 Calculations

A Sunland shareholder realised a capital gain from CGT Event A1 when the capital proceeds from the disposal of a Sunland share exceeded its cost base. Conversely, a capital loss was realised by a Sunland shareholder when the capital proceeds were less than the share's reduced cost base, as per subsection 104-10(4).

For the purposes of this transaction, the capital proceeds received by a shareholder in respect of the disposal of a Sunland share were characterised as the money received or the entitlement to receive such money as a result of the disposal, in line with subsection 116-20(1).

Under the terms of the Scheme, Sunland shareholders were entitled to a consideration of \$0.0025 per share disposed and this consideration was affected by the Permitted Dividend of \$0.065 cents per share.

It is also pertinent to highlight that the term “in respect of the event happening” within subsection 116-20(1) requires a substantive connection between the event and the receipt or entitlement to the money, which must extend beyond a mere coincidental relationship. Therefore, an amount does not constitute “capital proceeds” of an event simply because it is received in temporal proximity to the event.

In Taxation Ruling, TR 2010/4 (“TR 2010/4”), the Commissioner expresses the following view:

“10. A dividend will be capital proceeds of CGT event A1 happening in respect of a disposal of shares under a contract if any one or more of the following circumstances is present:

- the vendor shareholder is entitled under the contract to refuse to complete the transfer if the dividend is not declared by the target company or if the dividend is not paid by the target company; or*
- the vendor shareholder is entitled to refuse to complete the transfer if a purchaser or third party does not finance or facilitate payment of the dividend; or*
- the vendor shareholder has bargained for any other obligation on the part of the purchaser to bring about the result that the dividend shall be received by the vendor shareholder.*

11. Similarly, a dividend will be capital proceeds of CGT event A1 happening in respect of a disposal of shares under a scheme of arrangement if the vendor shareholders' acceptance of the scheme of arrangement (by the requisite majority vote) is conditional upon one or more of the following circumstances being present:

- the dividend being declared by the target company; or*
- the purchaser or a third party financing or facilitating payment of the dividend; or*

- *the purchaser or a third party being obliged to bring about the result that the dividend will be received by the vendor shareholders.*

...

24. *A dividend declared and paid independently of the contract for the sale of shares is not capital proceeds from the disposal of shares in respect of CGT event A1 happening merely because payment of the dividend:*

- *is contingent on the sale proceeding; or*
- *contemporaneous with the disposal of the shares under the contract.*

25. *However a dividend is not declared or paid independently of the contract for the sale of shares, in the sense used in this Ruling, if the purchaser of the shares under the contract or its associate participates in arrangements in respect of the dividend that are collateral to the contract for the sale of the shares.*

26. *Similarly, a dividend declared and paid independently of the scheme of arrangement is not capital proceeds from a disposal of shares under a scheme of arrangement in respect of CGT event A1 happening merely because payment of the dividend is contingent (otherwise than under the scheme) on the scheme of arrangement proceeding (even if payment of the dividend is offered by the directors of the target company as an incentive for its shareholders to vote for the sale), or contemporaneous with the disposal of the shares under the scheme."*

The core issue under consideration is whether the dividend constitutes a transaction solely between the corporation and its shareholders, or if the genuine cause or source is attributable to the disposal of shares.

This distinction is crucial in understanding the nature of the dividend within the context of corporate actions and shareholder benefits.

Following this line of inquiry, the Scheme Implementation Agreement defines the Permitted Dividend as:

"4.4 Sunland dividends

(a) *The parties acknowledge that:*

- conditional upon the Scheme becoming Effective, Sunland may declare and pay a dividend of up to 6.5 cents per Sunland Share (Permitted Dividend). Nothing in this clause 4.4(a)(i) obliges Sunland to declare a dividend up to this amount and the parties acknowledge and agree that the 6.5 cents per Sunland Share is an indicative only figure and not reflective of the actual quantum of the Permitted Dividend, which could be a lower amount (as at the Sunland Directors' absolute discretion);*
- Sunland Shareholders as at the Permitted Dividend Record Date will be eligible to receive the Permitted Dividend;*
- the Permitted Dividend Record Date is the date that is the Business Day that is 5 days before the Record Date; and*

(iv) the payment date for the Permitted Dividend will be determined by Sunland (in its absolute discretion), but must be at least one Business Day before the Implementation Date.

(b) The parties acknowledge the Permitted Dividend (if any):

(i) may be franked; and

(ii) is to be paid from accumulated profits, retained earnings or distributable reserves (or a combination of all or some of them) of Sunland immediately prior to the declaration of that dividend.

(c) The provisions of this clause 4.4 do not prevent the determination to pay, or declaration or payment of a dividend by Sunland if this agreement is terminated.

The Scheme Consideration of \$0.0675 per share was affected by the declaration and payment of the Permitted Dividend.

The decision to declare the Permitted Dividend lies solely with the Sunland Board and is not subject to participation, influence, or veto by Sun Holdings. Furthermore, Sun Holdings possess no special rights to terminate the acquisition in the event that the dividend is not disbursed.

The Permitted Dividend represented a distribution of profits that had accumulated to shareholders prior to the implementation of the scheme of arrangement and was expected to be distributed at a subsequent date. It was financed by Sunland using its existing cash reserves and/or facilities.

Whilst payment of the Permitted Dividend was conditional on the Scheme becoming effective per TR 2010/4, the mere contingency is not sufficient to constitute forming part of the capital proceeds on disposal of the shares. Furthermore, the Sunland Shareholder's acceptance of the Scheme proceeding is not conditional on payment of the Permitted Dividend and the Sunland Shareholder's do not have a right to refuse to complete the transfer if the Permitted Dividend is not paid or financed by Sun Holdings.

Therefore, there was no significant causal or logical connection between the sale of Sunland shares by its shareholders and the payment of the Permitted Dividend. Consequently, the Permitted Dividend should not have been regarded as being received 'in respect of' the CGT event A1 triggered by the sale of the shares.

On this basis, the Permitted Dividend should not be included as part of the capital proceeds received by a Sunland shareholder for the sale of each Sunland share. This is because the dividend was declared and paid independently of the sale of shares, and there was no obligation or arrangement that linked the payment of the dividend to the disposal of the shares.

5.7 Entitlement to Discount Capital Gains for Certain Sunland Shareholders under Subdivision 115-A of the ITAA 1997

If a Sunland Shareholder that is an individual, complying superannuation entity or a trust (the **eligible entity**) had made a capital gain from the disposal of their Sunland shares, the shareholder may be entitled to treat the capital gain as a discount capital gain provided all the relevant requirements under Division 115 of the ITAA 1997 are met.

Notably, if the eligible entity has maintained ownership of the CGT asset (in this case, Sunland shares)

for a minimum of twelve months before their disposal under the Scheme a discount capital gain is available per subsection 115-25(1) of the ITAA 1997.

Therefore, for eligible Sunland shareholders who acquired their shares at least 12 months prior to the Scheme Implementation Date of 20 February 2025, realised a capital gain on disposal of their Sunland shares worked out using a cost base that was calculated without reference to indexation (subsection 115-20(1)) should be eligible to treat the capital gain as a discount capital gain provided the other requirements in Subdivision 115-A and if applicable, Subdivision 115-C are satisfied.

Appendix A

Detailed Analysis of Section 177EA Relevant Circumstances

As noted above, subsection 177EA(3)(e) requires the Commissioner to consider the “relevant circumstances” of the scheme as set out in subsection 177EA(17). The objective in considering these relevant circumstances is to determine whether a person/s entered into the scheme for a purpose, other than an incidental purpose, of enabling the relevant taxpayer to obtain an imputation benefit.

Having regard to the eighteen circumstances listed in subsection 177EA(17) of the ITAA 1936, including the eight matters listed in subsection 177D(2) of the ITAA 1936, in our view there are substantial arguments when viewed objectively that Sunland should not have the requisite purpose of entering into the Scheme to enable the Sunland Shareholders to obtain an imputation benefit/s.

Taking a global view,

- The overwhelming purpose of the Scheme entered into and carried out was to facilitate the sale of shares held by Sunland shareholders to ultimate third party bidder, following a number of takeover offers initiated by various parties between 2 July 2024 and 20 February 2025, whom were interested in the cash reserves held by Sunland.
- Sunland shareholders are exposed to the ordinary risks and rewards of ownership of the Sunland ordinary shares as any dividends payable were referable to the profits of the business.
- Sunland shareholders do not to any significant extent derive a greater benefit from franking credits attached to the ordinary shares as nearly all Sunland shareholders are Australian tax residents.

These conclusions are based on following analysis of the relevant circumstances that are applied to the Sun Holdings scheme and Sunland Permitted Dividend.

For the purposes of our analysis we have focused on the application of the relevant circumstances in the context of the imputation benefits being available to the Sunland shareholders. While we do not have any information in respect the arrangements resulting in imputation benefits that arose in respect to indirect distributions such as those that may have flowed through trusts and partnership we consider that the same analysis and conclusions apply in respect to imputation benefits flowing indirectly subject to any specific circumstances related to the indirect distribution arrangements.

Our detailed analysis of the relevant circumstances under subsection 177EA(17) is set out below.

- a) ***the extent and duration of the risks of loss, and the opportunities for profit or gain, from holding membership interests, or having interests in membership interests, in the corporate tax entity that are respectively borne by or accrue to the parties to the scheme, and whether there has been any change in those risks and opportunities for the relevant taxpayer or any other party to the scheme (for example, a change resulting from the making of any contract, the granting of any option or the entering into of any arrangement with respect to any membership interests, or interests in membership interests, in the corporate tax entity);***

The relevant circumstances include the extent and duration that the risks of loss and the opportunities for profit or gain that accrued to the Sunland shareholders as a result of holding membership interests. For this relevant circumstance any change in those risks or opportunities of ownership is also relevant.

As discussed previously, the relevant Explanatory Memorandum (EM) to the introduction of section 177EA indicated that two of the underlying principles of the imputation system are, firstly, that the benefits of imputation should only be available to the true economic owners of shares, and only to the extent that those taxpayers are able to use the franking credits themselves and, secondly, that tax paid at the company level is in broad terms imputed to shareholders proportionately to their shareholdings. The EM at paragraph 8.84 also notes that the longer the period for which the shares were held at risk by the person obtaining the franking credit benefit, the less likely it is that the requisite purpose is present.

Further, as expressed in Taxation Ruling, TR 2009/3 paragraph 31,

'A scheme could be susceptible to the application of section 177EA if a party receives or expects to receive an imputation benefit from holding some interest in a company in circumstances where that party will not thereby have any of the relevant risks or opportunities that would ordinarily attend ownership interests in the company.'

As a result we consider that relevant circumstances (a) should be given a high weighting in determining the overall review of the section 177EA(17) relevant circumstances.

Nearly all Sunland shareholders entitled to the Permitted Dividend have held their Sunland shares, as ordinary shareholders since 30 October 2023 and many for much longer. The Sunland shareholders' interest in Sunland are exposed to the relevant risks or opportunities that would ordinarily attend to ownership interests in the company, as their interests held are legal form shares and are ordinary class shares that ordinarily attend ownership interests in the company and are considered 'equity interests' for tax.

Further, the Sunland shareholders interest in the Sunland shares are exposed to the economic performance of the business and dividends are determined at the discretion of the Board based on the profits of the business. In the event that the business was not profitable, the Sunland shareholders would not receive a return (compared to a return that would be available on debt like instruments or other investments). Exposure to variable returns further supports that the Sunland shareholders are exposed to the risks and rewards of ownership.

There were no transactions that changed the ability of the Sunland shareholders to benefit from the risks and opportunities of ordinary share ownership prior to the ex-dividend date for the Permitted Dividend. There was no trading of Sunland shares around the announcement of the Sun Holdings scheme.

On this basis we consider this high weighting factor to be strongly positive in supporting the overall conclusion that no more than incidental purpose of enabling imputation benefits exists in respect to the payment of the Permitted dividend.

- b) **whether the relevant taxpayer would, in the year of income in which the distribution is made, or if the distribution flows indirectly to the relevant taxpayer, in the year in which the distribution flows indirectly to the relevant taxpayer, derive a greater benefit from franking credits than other entities who hold membership interests, or have interests in membership interests, in the corporate tax entity;**

For the purposes of subsection 177EA(17)(b), subsection 177EA(19) provides a non-exhaustive list of factors to consider in determining whether a distribution from a taxpayer to whom a distribution flows receives 'a greater benefit from franking credits' than another entity. For imputation benefits flowing directly section 177EA(19) refers to section 2024-30(7) to (10) which are set out below

*(8) A * member of an entity * derives a greater benefit from franking credits than another member of the entity if any of the following circumstances exist in relation to the other member in the income year in which the distribution giving rise to the benefit is made, and not in relation to the first member:*

- (a) the other member is a foreign resident;*
- (b) the other member would not be entitled to any * tax offset under Division 207 because of the distribution;*
- (c) the amount of income tax that, apart from this Division, would be payable by the other member because of the distribution is less than the tax offset to which the other member would be entitled;*
- (d) the other member is a * corporate tax entity at the time the distribution is made, but no * franking credit arises for the entity as a result of the distribution;*
- (e) the other member is a * corporate tax entity at the time the distribution is made, but cannot use * franking credits received on the distribution to * frank distributions to its own members because:
 - (i) it is not a * franking entity; or*
 - (ii) it is unable to make * frankable distributions;**
- (f) the other member is an * exempting entity.*

*(9) A * member of an entity * derives a greater benefit from franking credits than another member of the entity if any of the following circumstances exist in relation to the first member in the income year in which the * distribution giving rise to the benefit is made, and not in relation to the other member:*

- (a) a * franking credit arises for the first member under item 5, 6 or 7 of the table in section 208 - 130 (distributions by * exempting entities to exempting entities);*
- (b) a franking credit or * exempting credit arises for the first member because the distribution is * franked with an exempting credit;*
- (c) the first member is entitled to a * tax offset because:*

- (i) the distribution is a * franked distribution made by an exempting entity; or
(ii) the distribution is * franked with an exempting credit.

(10) A * member of an entity * derives a greater benefit from franking credits than another member if the first member is entitled to a * tax offset under section 210 - 170 as a result of the * distribution, and the other member is not.

In considering whether distributions to Sunland shareholders allow for a greater benefit from franking credits compared to other entities, we have set out each of the factors in subsection 177EA(19) in the table below:

Factor	Application to Sunland
a) <i>The residency of the members (non-residents cannot fully use imputation credits)</i>	▶ Not applicable as Sunland shareholders are almost exclusively Australian tax residents.
b) <i>The entity would not be entitled to any tax offset under Division 207 of the ITAA 1997 because of the distribution</i>	▶ Not applicable. Sunland shareholders (direct and indirect beneficial owners) are almost exclusively Australian tax residents, who should be entitled to tax offsets in respect to the receipt of the Permitted Dividend.
c) <i>The amount of income tax that would be payable by the entity because of the distribution is less than the tax offset to which the entity would be entitled</i>	▶ Sunland has a franking rate of 25% for the 2025 year so the Permitted dividend is franked at the 25% rate. The majority of the Sunland shareholders (and indirect beneficial owners) would have a tax liability in respect to the Permitted dividend (before tax offsets) of 25% or more. However, shareholders that are superannuation funds would have a tax rate of 15% (or 0% if they are in pension phase) and individual shareholders who have 2025 taxable income of less than \$45,000 would also have a tax rate of less than 25%
d) <i>the entity is a corporate tax entity, but no franking credit arises at the time of the distribution</i>	▶ Sunland corporate tax entity shareholders are expected to be entitled to franking credit arises at the time of distribution.
e) <i>the entity is a corporate tax entity but cannot use franking credits that arise from the distribution to frank distributions to its members because it is not a franking entity or it is unable to make frankable distributions</i>	▶ Sunland corporate tax entity shareholders are expected to be able to make frankable distributions.

f) <i>The entity is an exempting entity</i>	▶ Sunland is not expected to have shareholders who are exempting entities.
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Nearly all Sunland shareholders are Australian tax residents and should be eligible for imputation credits, indicating no significant shareholders should be entitled to a greater tax offset from franking credit compared to other Sunland shareholders.

Shareholders who receive a greater franking benefit is defined to include shareholders who have income tax payable on the distribution which is less than the tax offset to which the entity would be entitled. Sunland shareholders who are superannuation funds would have a tax rate of 15% (or 0% if they are in pension phase) and individual shareholders who have 2025 taxable income of less than \$45,000 would also have a tax rate of less than 25%. Sunland does not have information available to identify what proportion of Sunland shareholders had a 2025 year tax rate of less than 25% it is expected that this would likely be less than 10% of all Sunland direct and indirect shareholders.

While Sunland has some direct and indirect shareholders who are regarded as being entitled to greater franking credits than other shareholders, it is noted that there has been minimal trading in Sunland shares since 30 October 2023 and all shareholders are entitled to their proportionate share of the Permitted dividend. As discussed above, the EM to the introduction of section 177EA indicated that one of the key underlying principles of the imputation system is that tax paid at the company level is in broad terms imputed to shareholders proportionately to their shareholdings. While there are some Sunland shareholders that would have a tax rate of less than 25%, shareholders have received their proportionate share of the Sunland Permitted dividend and as such we consider the fact some Sunland shareholders are entitled to greater benefits from franking credits is not a significant negative factor in the overall section 177EA(17) analysis.

On this basis we consider this factor to be slightly negative relevant circumstance.

- c) *whether, apart from the scheme, the corporate tax entity would have retained the franking credits or exempting credits or would have used the franking credits or exempting credits to pay a franked distribution to another entity referred to in paragraph (b);*

Absent the payment of the Permitted Dividend, Sunland would have retained an additional \$2,966,373 of franking credits. The additional retained franking credits would have become available to the Sun Holdings Group, as the new owners of Sunland, for distribution to its Australian resident shareholders subsequent to the implementation date.

On this basis we are of the view this factor should not point to the requisite purpose as there is no suggestion that Sunland is seeking to utilise franking credits that would be otherwise be 'wasted.'

- d) *whether, apart from the scheme, a franked distribution would have flowed indirectly to another entity referred to in paragraph (b);*

Paragraph 86 of TR 2009/6 explains the objective of this factor:

'This factor again falls to be decided on the particular facts. For example, it would be relevant if

those facts indicated that, but for the scheme, a franked distribution would have been indirectly received by other members of the entity that derived limited or no benefits from franking credits.'

As discussed above, if Sunland did not pay the franked Permitted Dividend it would have retained the additional franking credits. These retained franking credits would have become available to the Sun Holdings Group, an Australian tax resident group and made available for distribution to the Sun Holdings Group Australian resident shareholders.

This factor is not relevant as there is no indication that the scheme is diverting franking credits away from other entities that would receive a lesser imputation benefit.

- e) *if the scheme involves the issue of a non-share equity interest to which section 215-10 of the Income Tax Assessment Act 1997 applies--whether the corporate tax entity has issued, or is likely to issue, equity interests in the corporate tax entity:*
- (i) *that are similar, from a commercial point of view, to the non-share equity interest; and*
 - (ii) *distributions in respect of which are frankable;*

This factor is aimed at addressing franking credit streaming per TR 2009/3.

'88. This paragraph is unlikely to be relevant to the instant arrangements.

'89. This factor would be relevant where an authorised deposit-taking institution (ADI) issues interests that are not frankable (by virtue of section 215-10) through a branch to non-residents, and other commercially similar interests to Australian residents which are frankable. In these circumstances a risk of dividend streaming may exist. This paragraph is intended to draw attention to the use of section 215-10 to engage in dividend streaming. However, similar considerations apply where a taxpayer issues debt interests of similar nature to non-share equity interests.'

The Sunland Scheme did not involve the issue of non-share equity interests and distributions on non-share equity interests made by an ADI. As such this relevant circumstance is not relevant to the Sunland permitted dividend.

- f) ***whether any consideration paid or given by or on behalf of, or received by or on behalf of, the relevant taxpayer in connection with the scheme (for example, the amount of any interest on a loan) was calculated by reference to the imputation benefits to be received by the relevant taxpayer;***

The overall consideration received by Sunland shareholders in respect to the Scheme was not calculated by reference to franking credits. The overall \$0.0675 per share cash consideration, inclusive of the Permitted Dividend, applied regardless of whether the Sunland directors declared a Permitted Dividend. In addition the declaration of the Permitted Dividend was solely at the discretion of the Sunland directors.

On this based we are of the view that this fact should be weighted as positive.

- g) *whether a deduction is allowable or a capital loss is incurred in connection with a distribution that is made or that flows indirectly under the scheme;*

These factors are not indicative of a more than incidental purpose of obtaining an imputation

benefit.

No deduction is available to Sunland in relation to the Permitted Dividend made on ordinary shares under the Sun Holdings Scheme and the Permitted Dividend is determined from existing retained profits having regard to available cash reserves.

The Permitted Dividend while part of the Scheme and payable if the Scheme becomes effective, should not be considered to have the requisite connection with the sale of the Sunland Shares on the basis that the Sunland Shareholder's acceptance of the Scheme proceeding is not conditional on payment of the Permitted Dividend and the Sunland Shareholder's do not have a right to refuse to complete the transfer if the Permitted Dividend is not paid or financed by Sun Holdings.

We consider that any capital loss that may arise to a Sunland Shareholder as a result of the Sun Holdings Scheme is independent of the Permitted Dividend being made and directly as a result of Sunland Shareholders accepting consideration for the disposal of their shares of \$0.0025 per share. The low consideration offered under the Scheme and accepted by the Sunland Shareholders can be regarded as having resulted from the Asset Realisation Strategy being undertaken and the substantial dividends Sunland paid exercising that strategy since 20 October 2020.

Further, absent the Sun Holdings Scheme, it is likely that a capital loss would have been realised by Sunland Shareholders following the completion of the Asset Realisation Strategy by Sunland and placing Sunland into liquidation in 2019.

ga) *whether a distribution that is made or that flows indirectly under the scheme to the relevant taxpayer is sourced, directly or indirectly, from unrealised or untaxed profits;*

Gageler J in Mills also addressed the relevance of whether the distribution effectively franks foreign profits (i.e. not taxed in Australia).

'The circumstances that Tier 1 capital raised by the Bank from the issue of PERLS v was to be used by the Bank to generate income in New Zealand not taxable in Australia, and that distributions on the notes were deductible against assessable income in New Zealand, are required to be taken into account as relevant circumstances (ss 177EA(17)(ga), 177D(b)(ii) and 177D(b)(vi)). However, their probative value for the purpose of answering the question ultimately posed by s 177EA(3)(e) is elusive. They do not make it more or less likely that the Bank had a purpose of enabling the holders of PERLS v to obtain franking credits and they do nothing to alter the relationship between that purpose and its purpose of raising Tier 1 capital.'

The Permitted Dividend paid by Sunland was sourced from realised taxed profits derived in Australia and Sunland did not have any unrealised or untaxed profits.

We consider this to be a strongly positive factor.

h) *whether a distribution that is made or that flows indirectly under the scheme to the relevant taxpayer is equivalent to the receipt by the relevant taxpayer of interest or of an amount in the nature of, or similar to, interest;*

The distribution received by Sunland as part of the Scheme did not constitute interest or an amount in the nature of interest in substance or form as the returns are not calculated with reference to a risk free rate of return and are based on retained profits available for distribution and subject to Sunland's free cash flow policy set under the Asset Realisation Strategy.

As such this factor is relevant circumstance is not relevant to the Sunland Permitted Dividend.

- i) *the period for which the relevant taxpayer held membership interests, or had an interest in membership interests, in the corporate tax entity;*

As discussed above, the EM to the introduction of section 177EA at paragraph 8.84 notes that the longer the period for which the shares were held at risk by the person obtaining the franking credit benefit, the less likely it is that the requisite purpose is present.

Nearly all Sunland shareholders entitled to the Permitted Dividend have held the Sunland shares since 30 October 2023 and many for much longer. There was no trading of Sunland shares around the announcement of the Sun Holdings scheme. As such, it is considered that the nearly all Sunland shareholders have held their shares in Sunland on a long term basis (>12 months).

On this basis we consider this factor to be strongly positive.

- j) *any of the matters referred to in subsection 177D(2).*

We have also addressed in the table below whether 'any of the matters referred to in subsection 177D(2)' are relevant circumstances, per paragraph 177EA(17)(j).

Relevant circumstances in subsection 177D(2)	Analysis
(a) <i>The manner in which the scheme was entered into or carried out</i>	<ul style="list-style-type: none"> ▶ The manner in which the Sunland shareholders became entitled to the Permitted Dividend under the Sun Holdings Scheme does not suggest that that the scheme was entered into by Sunland for the dominant purpose of enabling Sunland shareholder to obtain an imputation benefit. ▶ The payment of the Permitted Dividend whilst part of the terms of the Sun Holdings Scheme commonly occurs under Scheme of Arrangement for non-hostile takeovers by third party purchasers. ▶ Furthermore, in absence of the scheme being carried out, the Sunland shareholders would have expected to receive the Permitted Dividend under the

	Asset Realisation Strategy prior to formal liquidation of Sunland.
<i>(b) The form and substance of the scheme</i>	<ul style="list-style-type: none"> ▶ The legal and substance of the scheme align. The Permitted Dividend has been paid on ordinary shares which are considered legal form shares and equity interests for tax. As such, any returns on the dividends are not deductible under s26-26 of the ITAA 1997. ▶ The risks and opportunities for gain or loss on holding an interest in the Sunland shares are consistent with the risks and opportunities that ordinarily attend to ownership interests in the company.
<i>(c) The time at which the scheme was entered into and the length of the period during which the scheme was carried out</i>	<ul style="list-style-type: none"> ▶ The time at which the scheme was entered into and carried out aligns with the timelines commonly occurring under Schemes of Arrangement for the non-hostile takeover of a company. ▶ The time entered into and carried out were not indicative of Sunland enabling Sunland shareholders to have the requisite purpose of obtaining an imputation benefit.
<i>(d) The result in relation to the operation of this Act, but for this Part, would be achieved by the scheme</i>	<ul style="list-style-type: none"> ▶ Prima facie, there is a parity in the outcome on the basis that the Sunland shareholders would ordinarily have received an imputation benefit on dividends payable under the Asset Realisation Strategy and under the Sun Holdings Scheme. ▶ This factor does not support a conclusion that there is a requisite purpose of obtaining a franking benefit.
<i>(e) Any change in the financial position of the relevant taxpayer that has resulted, will result, or may reasonably be expected to result, from the scheme</i>	<ul style="list-style-type: none"> ▶ We consider that the considerations set out in the above analysis of s177D(2)(d) are equally applicable here.
<i>(f) Any change in the financial position of any person who has, or has had, any</i>	<ul style="list-style-type: none"> ▶ Where the Sunland shares are held directly by a trust, superannuation entity

<p><i>connection (whether of a business, family or other nature) with the relevant taxpayer, being a change that has resulted, will result or may reasonably be expected to result, from the scheme</i></p>	<p>or corporate entity of which an individual Sunland shareholder is the beneficial owner, similar considerations may apply.</p> <ul style="list-style-type: none"> ▶ The scope of our tax opinion excludes the application of the relevant tax rules including these anti-avoidance measures to indirect holdings through partnerships and trusts.
<p><i>(g) Any other consequence for the relevant taxpayer, or for any person referred to in paragraph (f), of the scheme having been entered into or carried out</i></p>	<ul style="list-style-type: none"> ▶ We are not aware of any other outcomes or considerations for the Sunland shareholders that are applicable.
<p><i>(h) The nature of any connection (whether of a business, family or other nature) between the relevant taxpayer and any person referred to in paragraph (f).</i></p>	<ul style="list-style-type: none"> ▶ Refer to the above comments at s177D(2)(e) and (f).