



Class Ruling

Income tax: Vodafone Group Plc: return of capital and share consolidation – employee share schemes

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① This publication provides you with the following level of protection:

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

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

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

What this Ruling is about

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

Relevant provision(s)

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

- section 139B of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 139CC of the ITAA 1936;
- section 139DQ of the ITAA 1936; and
- section 139E of the ITAA 1936.

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

Class of entities

3. The class of entities to which this Ruling applies is all Australian resident employees of Vodafone Network Pty Limited and Vodafone Pty Limited who acquired a share, option or performance share under any of the employee share plans listed in paragraph 15 of this Ruling. They are persons who, as at 28 July 2006:

- held a share, option or performance share acquired under one of those plans;
- had not made an election under section 139E in relation to the share, option or performance share; and
- had not had a cessation time happen (within the meaning of section 139CA or 139CB) in relation to the share, option or performance share.

In this Ruling, a person belonging to this class of entities is referred to as a participating employee.

Qualifications

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

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 14 to 20 of this Ruling.

6. It should be noted that while this Ruling gives certainty to participating employees in respect of the issues addressed in the Ruling section, the Commissioner has not been asked to form a view, and has not formed a view, on the other tax issues relating to the return of capital undertaken by Vodafone Group Plc and those schemes integral and ancillary to them.

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

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

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Date of effect

9. This Ruling applies to the income year ended 30 June 2007. However, the Ruling continues to apply after this date to all entities within the specified class who entered into the specified scheme during the term of the Ruling, subject to there being no change in the scheme.

10. The Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

11. If this Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

12. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

13. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

14. The scheme that is the subject of the Ruling is described below. This description is based on, and includes reference to, the following documents:

- Application for Class Ruling from PricewaterhouseCoopers dated 12 October 2006;
- Vodafone Pacific Limited – Vodafone Employee Share Plan (Rules Applicable to Australian Participants) – Trust Deed;
- Vodafone Pacific Limited Employee Share Plan Trust – Amending Deed;
- The Vodafone Employee Share Plan;

- Circular to Shareholders of Vodafone Group Plc, dated 13 June 2006;
- Vodafone Pacific Limited Executive Option Plan Trust – Amending Deed;
- Vodafone Pacific Limited Executive Option Plan Trust Deed;
- Vodafone Group Plc Rules of the Vodafone Global Incentive Plan;
- Vodafone Group Plc Rules of the Vodafone Group Plc Global All Employee Share Plan;
- Vodafone Group Plc Rules of the Vodafone Group Plc Global Long Term Incentive Plan (Performance Shares);
- Vodafone Group Plc Rules of the Vodafone Group Plc Global Long Term Incentive Plan (Options);
- Vodafone Group Plc GEM and Executive Option Terms 2003;
- Vodafone Group Plc GEM Option Terms Agreement December 2002;
- Vodafone Group Plc GEM Option Terms 2002;
- Vodafone Group Plc GEM Option Terms; and
- Vodafone Group Plc 1999 Long Term Stock Incentive Plan.

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

15. Vodafone Group Plc (Vodafone) operates a number of employee share plans. Participants in these plans include persons employed in Australia by Vodafone Network Pty Limited and Vodafone Pty Limited (being wholly owned subsidiaries of Vodafone Australia Limited, which is itself a wholly owned subsidiary of Vodafone Group Plc), who have acquired:

- Vodafone shares (shares);
- options to acquire Vodafone shares (rights); and
- Vodafone performance shares (rights),

under one of the following plans:

- the Vodafone Pacific Limited – Vodafone Employee Share Plan;
- the Vodafone Group Plc Long Term Incentive Plan, incorporating:
 - Long Term Incentive Plan (1999);
 - GEM Option Terms (2 July 2001);

- GEM Option Terms (1 July 2002);
- GEM Option Terms Agreement (2 December 2002);
- GEM and Executive Options Terms (7 July 2003);
- Global Long Term Incentive Plan (GLTI) (Options);
- Global Long Term Incentive Plan (GLTI) (Performance Shares); and
- Global All Employee Share Plan.

16. The applicant has advised that:

- shares acquired by participating employees under any of these plans (Plans) are qualifying shares (within the meaning of section 139CD); and
- rights acquired by participating employees under these Plans are qualifying rights (within the meaning of section 139CD).

Return of capital and share consolidation

17. On 17 March 2006, Vodafone announced that, subject to shareholder approval, it would effect a return of capital by way of a special distribution to shareholders.

18. The return of capital, to be effected by the creation and issue of redeemable preference shares (B Shares), also involved the simultaneous consolidation of Vodafone's share capital. Both measures received shareholder approval at a meeting held on 25 July 2006.

Shares

19. As a result of the return of capital and share consolidation, on 31 July 2006 shareholders (including participating employees) held:

- 7 ordinary shares; and
- 8 B Shares,

for every 8 ordinary shares they held on 28 July 2006.

Rights

20. Prior to the return of capital and share consolidation, every right held by a participating employee entitled the participating employee to receive one ordinary share on the exercise or operation of the right, and after the return of capital and share consolidation, every right held by a participating employee entitled the participating employee to receive one ordinary share on the exercise or operation of the right.

Ruling

Acquisition of share or right

21. Where a participating employee acquires a share or right under one of the Plans they acquire a qualifying share or a qualifying right, and the discount given in relation to the share or right is included in their assessable income pursuant to subsection 139B(1).

22. As a participating employee has not made an election under section 139E in relation to the share or right, the discount (calculated under subsection 139CC(3) or 139CC(4)) is included in their assessable income in the year the cessation time happens in relation to the share or right, pursuant to subsection 139B(3).

Return of capital and share consolidation

23. Under the return of capital and share consolidation:

- a participating employee who held 8 ordinary shares acquired under one of the Plans will have a cessation time happen in relation to one of those ordinary shares, and the discount included in their assessable income in relation to that share will be nil, pursuant to subsection 139CC(3)); and
- a participating employee who held rights acquired under one of the Plans will continue to hold those rights and will not have a cessation time happen in relation to the rights as a consequence of the return of capital and share consolidation.

24. Section 139DQ will not apply to the shares or rights held by a participating employee after the return of capital and share consolidation.

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

Acquisition of share or right

25. Where an employee acquires a share or a right that is a qualifying share or a qualifying right within the meaning of section 139CD, the discount given in relation to the share or right is included in the employee's assessable income, pursuant to subsection 139B(1).

26. Where the employee does not make an election under section 139E in relation to the share or right, the discount (calculated under subsection 139CC(3) or 139CC(4)) is included in the employee's assessable income in the year that the cessation time occurs, pursuant to subsection 139B(3).

Return of capital and share consolidation

Cessation time for shares

27. For the purposes of this Ruling, the Commissioner accepts the statement by the applicant that shares acquired by a participating employee are qualifying shares (within the meaning of section 139CD). As this Ruling applies to participating employees who:

- have not made an election under section 139E; and
- have not had a cessation time happen to their shares prior to the return of capital and share consolidation,

the discount in relation to their shares will be included in the participating employee's assessable income in the year the cessation time (determined in accordance with subsection 139CA(2)) occurs.

28. Subsection 139CA(2) provides that the cessation time for a share held by a participating employee will be the earliest of:

- the time when the participating employee disposes of the share;
- subject to subsection 139CA(4), the later of:
 - the time when any restrictions preventing the participating employee from disposing of the share cease to have effect; and
 - the time when any condition that could result in the participating employee forfeiting ownership of shares ceases to have effect;
- the time when the participating employee ceases employment within the meaning of subsection 139CA(3); and

- the end of the 10 year period starting when the participating employee acquired the share.

29. Immediately after the return of capital and share consolidation, a participating employee holds fewer ordinary shares than they held on 28 July 2006. Thus for the purposes of Division 13A of Part III (Division 13A) they are considered to have disposed of one in every 8 ordinary shares as a result of the return of capital and share consolidation.

30. Subsection 139CC(3) provides that where an employee disposes of a share in an arm's length transaction within 30 days of the cessation time, the discount is the amount or value of any consideration received by the employee for the disposal less the amount or value of any consideration paid or given by the employee for the acquisition of the share.

31. Whilst a participating employee receives B shares as a result of the return of capital and share consolidation, the B shares are not received as consideration for the disposal of ordinary shares. Thus as no consideration is received, and the disposal of one share for every 8 ordinary shares held at 28 July 2006 is accepted as being at arm's length, the discount in respect of the disposal is nil.

Cessation time for rights

32. For the purposes of this Ruling, the Commissioner accepts the statement by the applicant that rights acquired by a participating employee are qualifying rights (within the meaning of section 139CD). Thus, as this Ruling applies to participating employees who:

- have not made an election under section 139E; and
- have not had a cessation time happen to their rights prior to the return of capital and share consolidation,

the discount in relation to their rights will be included in a participating employee's assessable income in the year the cessation time (determined in accordance with subsection 139CB(1)) occurs.

33. Subsection 139CB(1) provides that the cessation time for a right held by an employee will be the earliest of:

- the time when the employee disposes of the right (other than by exercising it);
- the time when the employee ceases employment within the meaning of subsection 139CB(2);
- the time when the right is exercised (where there are no disposal restrictions or forfeiture conditions that apply to the share that is acquired on exercise);

- where disposal restrictions or forfeiture conditions apply to a share that is acquired on exercise of the right, the time when any such restrictions or conditions cease to have effect; or
- the end of the 10 year period starting when the employee acquired the share.

34. A right held by a participating employee prior to the return of capital and share consolidation entitles them to acquire an ordinary share in Vodafone. As the number of rights they hold is not affected by the return of capital and share consolidation, and as each right continues to entitle them to acquire an ordinary share in Vodafone, the Commissioner accepts that a participating employee will not dispose of a right within the meaning of Division 13A. Thus a cessation time will not happen in relation to rights held by a participating employee as a consequence of the return of capital and share consolidation.

Takeovers and restructures

35. Section 139DQ provides that where a taxpayer acquires shares or rights in a company (the new company) that can reasonably be regarded as matching shares or matching rights in another company (the old company) that the taxpayer had acquired under an employee share scheme:

- and the acquisition occurs in connection with a 100% takeover, or a restructure, of the old company; and
- as a result of the takeover or restructure, the taxpayer ceased to hold shares or rights in the old company; then
- if the conditions in section 139DR are met,

the matching shares or matching rights will be treated, for the purposes of Division 13A, as if they were a continuation of the shares or rights in the old company.

36. Under the return of capital and share consolidation a participating employee does not acquire shares or rights in a new company within the meaning of paragraph 139DQ(1)(a), therefore Subdivision DA of Division 13A will not apply.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Subject references:

- employee benefits
- employee share schemes

Legislative references:

- | | |
|---|--|
| <ul style="list-style-type: none"> - ITAA 1936 Pt III Div 13A - ITAA 1936 Pt III Div 13A Subdiv DA - ITAA 1936 139B - ITAA 1936 139B(1) - ITAA 1936 139B(3) - ITAA 1936 139CA - ITAA 1936 139CA(2) - ITAA 1936 139CA(3) | <ul style="list-style-type: none"> - ITAA 1936 139CA(4) - ITAA 1936 139CB - ITAA 1936 139CB(1) - ITAA 1936 139CB(2) - ITAA 1936 139CC - ITAA 1936 139CC(3) - ITAA 1936 139CC(4) - ITAA 1936 139CD - ITAA 1936 139DQ - ITAA 1936 139DQ(1)(a) - ITAA 1936 139DR - ITAA 1936 139E - TAA 1953 - TAA 1953 Sch 1 357-75(1) - Copyright Act 1968 |
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ATO references

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