



Class Ruling

Income tax: business restructure and proposed capital distribution: News Corporation

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

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

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

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

What this Ruling is about

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

Relevant provisions

2. The relevant provisions to be dealt with this Ruling are:

- subsection 6(1) of the *former Income Tax Assessment Act 1936* (ITAA 1936);
- subsection 6(4) of the former ITAA 1936;
- subsection 44(1) of the ITAA 1936;
- section 45A of the ITAA 1936;
- section 45B of the ITAA 1936; and

- section 45C of the ITAA 1936.

(Note: all references to former subsection 6(1) and former subsection 6(4) of the ITAA 1936 are a reference to those provisions of the ITAA 1936 before they were amended by the *Taxation Laws Amendment (Company Law Review) Act 1998*)

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

Class of entities

3. The class of entities to which this Ruling applies are holders of Class A common stock and/or Class B common voting stock in News Corporation (News Corp) and holders of Australian Securities Exchange (ASX) listed CHESS Depository Interests (CDIs) in News Corp (collectively referred to as 'the Shareholders') who:

- are registered on the News Corp share registers on the Record Date, being the date for determining entitlements under the return of capital (Capital Return);
- hold their News Corp shares on capital account;
- are residents of Australia for the purposes of the Australian income tax legislation, including by virtue of the operation of any double tax agreement between Australia and any other country;
- are not 'temporary residents' of Australia within the meaning of section 995-1 of the ITAA 1997; and
- are not subject to the taxation of financial arrangements rules in Division 230 of the ITAA 1997 in relation to gains and losses on their News Corp shares.

(Note: Division 230 will generally not apply to individuals, unless they have made an election for it to apply to them)

Qualifications

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

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 9 to 31 of this Ruling.

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

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

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Date of effect

8. This Ruling applies from 1 June 2013 to 30 June 2014. The Ruling continues to apply after 30 June 2014 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

9. The following description of the scheme is based on information provided by the applicant. The following documents ('Transaction Documents'), or relevant parts of them, form part of and are to be read with this description:

- application for Class Ruling dated 19 December 2012;
- correspondence from the applicant for the period from 20 December 2012 to 9 April 2013; and
- News Corp's Annual Report for the year ended 30 June 2012 and Quarterly Report for the period ended 31 December 2012.

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

Background

10. News Corp, a publicly traded Delaware corporation, is the parent of a worldwide group of diversified global media entities.

11. News Corp has its primary listing on the NASDAQ Stock Exchange in the United States (US) and secondary listings on the ASX by way of CDI's and the London Stock Exchange.

12. News Corp is engaged in a number of businesses with two of its most significant segments being its Media and Entertainment and its Publishing businesses. News Corp's operations are diversified into six main industry segments: cable network programming, filmed entertainment, television, direct broadcast satellite television, publishing and other. The activities of News Corp are conducted principally in the US, Continental Europe, the United Kingdom, Australia, Asia, and Latin America.

Capital structure

13. News Corp has two classes of common stock, Class A common stock, par value US\$0.01 per share (the Class A Common Stock), and Class B common voting stock, par value US\$0.01 per share (the Class B Common Stock) (together with the Class A Common Stock, referred to as the News Corp Common Stock). Other than voting rights differences, the Class A Common Stock and Class B Common Stock entitle holders to the same economic rights in News Corp (that is rights with respect to distribution, liquidation etc).

14. There are subsidiaries within the News Corp group which own News Corp Common Stock. These shareholders will be referred to below as 'Hook Stock shareholders'.

15. As at 30 September 2012, News Corp had 3,535,233,152 shares of Class A Common Stock and 907,131,250 Class B Common Stock including shares held by members of the News Corp Worldwide Group. None of the News Corp Common Stock were acquired before 20 September 1985.

16. News Corp shareholders comprise a mix of individuals, companies, and superannuation and pension funds. The proportion of Australian resident shareholders, including Hook Stock shareholders is estimated to be approximately 20%, of which Hook Stock shareholders comprise approximately 9.5%.

Proposed Transaction

17. On 28 June 2012, News Corp announced its intention to pursue the separation of its business to enhance strategic alignment and increase operational flexibility. As part of this strategy, it is proposed that News Corp will distribute in specie to its shareholders 100% of shares held in Publishing SpinCo, a new Delaware incorporated company.

18. The assets proposed to be included in Publishing SpinCo (excluding cash and intercompany receivables) currently have, or will have, a carrying value in News Corp's general ledger accounts of approximately US\$24.4 billion. Prior to the transaction, these assets are to be the subject of an internal reorganisation and transferred to Publishing SpinCo. This internal reorganisation is expected to give rise to an accounting loss of approximately US\$13.0 billion to News Corp, and as a result the retained earning account balance (currently a loss of US\$3.1 billion) in News Corp's general ledger would increase to a loss of approximately US\$16.1 billion on a stand alone basis.

19. Publishing SpinCo will have a similar share structure to News Corp such that, pursuant to the distribution, holders of Class A Common Stock in News Corp will receive class A Common Stock in Publishing SpinCo that limit voting rights, whilst the holders of Class B Common Stock in News Corp will receive Class B Common Stock in Publishing SpinCo that have full voting rights.

20. Following the separation, each company would maintain two classes of Common Stock; Class A Common Stock and Class B Common Voting Stock.

21. No shares will be cancelled by News Corp in respect of the proposed distribution. In the case of any fractional entitlements to Publishing SpinCo shares, these would be aggregated, issued to a sales agent, and sold on behalf of those who were entitled to fractions and to whom the cash proceeds would then be distributed.

22. All shareholders, including Hook Stock shareholders, will be entitled to receive shares in Publishing SpinCo pursuant to the proposed distribution. The applicant anticipates that most News Corp shareholders will have a cost base in their News Corp shares at least equal to the value of the proposed in specie distribution.

23. In addition to the in specie distribution described above, the Australian Hook Stock shareholders will immediately distribute their Publishing SpinCo shares to their US parent companies. In order to complete the separation of the Publishing and Entertainment businesses, the US parent companies will immediately exchange their Publishing SpinCo shares for News Corp shares of an equivalent market value.

Reasons for the restructure

24. News Corp believes that a separation of its businesses into distinct public corporations with each having its own identities and strategies would allow each company to:

- focus on and pursue distinct strategic priorities and industry-specific opportunities that would maximise each company's long-term potential and increase flexibility;
- have greater flexibility to create tailored capital structures, and allocate and deploy resources in a manner consistent with each company's strategic objectives, including returning of capital and pursuing investment opportunities;
- create equity-based compensation programs to better reflect the specific business objectives, goals and financial performance of each business;
- enhance share value and create separate acquisition currencies to increase each company's flexibility to optimize its capital structure and financial capacity to pursue future acquisitions; and
- have the potential ability to raise more capital through more tailored equity ownership, which, as pure-play companies, should also allow more accessibility to research analysts.

Capital account

25. The proposed transaction will be effected by way of a pro rata distribution of the Publishing SpinCo shares to all shareholders of News Corp. The in specie distribution of Publishing SpinCo shares will be recorded as a debit against News Corp's additional paid in capital account of approximately US\$16.0 billion. The estimated distribution amount reflects the estimated fair market value of the Publishing SpinCo shares to be distributed to the News Corp shareholders. This will also equate to News Corp's book value of the Publishing SpinCo shares as this book value results from the estimated fair market value of the assets upon contribution of those assets to Publishing SpinCo in exchange for shares.

26. The overall additional paid in share capital of News Corp would be reduced by \$16.0 billion from approximately US\$44.8 billion to US\$28.8 billion.

Other matters

27. News Corp since its inception in 2005 has paid regular semi-annual distributions on its publicly traded Class A Common Stock and Class B Common Stock.

28. News Corp commenced a stock repurchase program in June 2005 under which News Corp was authorised to acquire on-market from time to time Class A Common Stock and Class B Common Stock. The stock repurchase program was funded from existing cash reserves.

29. The consolidated balance sheet of the News Corp group as at 31 December 2012 states that the consolidated economic group held 'retained earnings and accumulated other comprehensive income' of approximately US\$12.2 billion.

30. News Corp is a resident of the United States of America for tax purposes and is a non-resident of Australia for tax purposes.

31. The Applicant states that News Corp does not have, and has not had, a general policy of financing specific acquisition through equity capital raisings.

Ruling

Distribution is not a dividend

32. The proposed in specie distribution is not a dividend as defined in former subsection 6(1).

The application of sections 45A, 45B and 45C

33. The Commissioner will not make a determination under either subsection 45A(2) or subsection 45B(3) that section 45C applies to the proposed in specie distribution.

Commissioner of Taxation**5 June 2013**

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.*

Distribution is not a dividend

34. Amendments to the *Corporations Act 2001* (Corporations Act) in 1997 abolished the concept of par value shares and associated concepts of share premium, share premium accounts, and paid-up capital. As a result of these Corporations Act amendments, consequential amendments were made to the taxation laws by the *Taxation Laws Amendment (Company Law Review) Act 1998* ('the Act'). These amendments included repealing the definition of share premium account and amending the definition of dividend in subsection 6(1) of the ITAA 1997, and amending subsection 6(4) of the ITAA 1997 (These provisions as enacted prior to the amendments contained in the Act will be referred to hereafter as the 'former provisions').

35. However, the amendments only have effect from 1 July 1998 for companies that do not have on issue par value shares. For those companies that continue to have par value shares on issue, the former provisions continue to apply.¹

36. Since News Corp is a company incorporated under Delaware General Corporation Law and both the Class A Common Stock and Class B Common Stock have a par value of US\$ 0.01 per share, the former provisions apply.

37. In the present circumstances, subsection 44(1) includes in a shareholder's assessable income any dividends, as defined in former subsection 6(1), paid to the shareholders out of profits derived by the company from any source (if the shareholder is a resident of Australia) and from an Australian source (if the shareholder is a non resident of Australia).

38. The term 'dividend' in former subsection 6(1) includes any distribution made by a company to any of its shareholders. However, paragraph (d) of the definition of 'dividend' in former subsection 6(1) provides that money paid by a company to a shareholder which is debited against an amount standing to the credit of a share premium account is excluded from the definition of 'dividend' in former subsection 6(1), subject to former subsection 6(4). Former subsection 6(4) does not apply in the present circumstances.

¹ See the application Clause (Clause 8) to Schedule 3 of the amending Act, which provides that the amendments made by the Schedule apply after commencement to dividends paid by a company with shares with no par value.

39. News Corp's additional paid in capital account is a 'share premium account' for the purposes of that definition under former section 6(1). As the amount of distribution is debited entirely against an amount standing to the credit of News Corp's additional paid in capital account, the distribution will not constitute a 'dividend' as defined in subsection 6(1) because of the exclusions provided by paragraph (d) of the definition of 'dividend' in former subsection 6(1).

Anti-avoidance provisions

40. Sections 45A and 45B are anti-avoidance provisions which, if applicable, allow the Commissioner to make a determination that section 45C applies to treat all or part of the return of capital received by the shareholders as an unfranked dividend paid by News Corp out of profits to shareholders.

Section 45A – streaming of dividends and capital benefits

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

42. News Corp will provide both Class A and Class B shareholders with a 'capital benefit' (as defined in paragraph 45A(3)(b) and the capital benefit will be provided to all shareholders in direct proportion to their individual shareholding. As all shareholders benefit equally from the return of capital there is no 'streaming' of capital benefits to some shareholders and not to others.

43. Accordingly, section 45A will not apply to the proposed distribution of capital and the Commissioner will not make a determination under subsection 45A(2) that section 45C applies in relation to the proposed distribution to the shareholders.

Section 45B – schemes to provide capital benefits

44. Section 45B of the ITAA 1936 applies to ensure that relevant amounts are treated as dividends for taxation purposes if certain payments, allocations and distributions are made in substitution for dividends (subsection 45B(1) of the ITAA 1936).

45. Subsection 45B(2) of the ITAA 1936 provides (relevantly) that the section applies if:

- (a) there is a scheme under which a person is provided with a demerger benefit or a capital benefit by a company;
- (b) under the scheme, a taxpayer obtains a tax benefit as defined in subsection 45B(9) of the ITAA 1936; and

- (c) having regard to the relevant circumstances of the scheme, it would be concluded that the scheme was entered into or carried out for a more than incidental purpose of enabling the taxpayer to obtain the tax benefit.

46. Where the requirements of subsection 45B(2) of the ITAA 1936 are met, subsection 45B(3) empowers the Commissioner to make a determination that either section 45BA of the ITAA 1936 applies in relation to a demerger benefit or section 45C of the ITAA 1936 applies in relation to a capital benefit.

47. In this case, while the conditions of paragraphs 45B(2)(a) and 45B(2)(b) of the ITAA 1936 are met, the requisite purpose of enabling News Corp shareholders to obtain a tax benefit is not present.

48. Accordingly, the Commissioner will not make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the scheme to which this Ruling relates.

Section 45C

49. As the Commissioner will not make a determination under subsection 45A(2) or subsection 45B(3) in relation to the scheme as described, section 45C will not deem any part of either proposed capital distribution to be an unfranked dividend for the purposes of the ITAA 1936 or the ITAA 1997.

Appendix 2 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- anti avoidance measures
- Capital gains tax
- Distributions
- Dividends
- Return of capital on shares
- Share capital

Legislative references:

- ITAA 1936
- Former ITAA 1936 6(1)
- Former ITAA 1936 6(1)(d)
- Former ITAA 1936 6(4)
- ITAA 1936 44(1)
- ITAA 1936 45A
- ITAA 1936 45A(2)

- ITAA 1936 45A(3)(b)
- ITAA 1936 45B
- ITAA 1936 45B(1)
- ITAA 1936 45B(2)
- ITAA 1936 45B(2)(a)
- ITAA 1936 45B(2)(b)
- ITAA 1936 45B(2)(c)
- ITAA 1936 45B(3)
- ITAA 1936 45B(3)(b)
- ITAA 1936 45B(9)
- ITAA 1936 45B(A)
- ITAA 1936 45C
- ITAA 1997
- ITAA 1997 Div 230
- ITAA 1997 995-1
- TAA 1953
- Copyright Act 1968

Other references:

- *Taxation Laws Amendment
(Company Law Review) Act
1998*

ATO references

NO: 1-4FVXNCV

ISSN: 1445-2014

ATOlaw topic: Income Tax ~~ Return of capital