



Class Ruling

Income tax: capital gains tax for shareholders - Separation of new News Corporation from Twenty-First Century Fox, Inc.

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❶ 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 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 103-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 104-25 of the ITAA 1997
- section 104-135 of the ITAA 1997;
- section 109-5 of the ITAA 1997;
- section 112-20 of the ITAA 1997;
- section 115-25 of the ITAA 1997; and
- section 116-20 of the ITAA 1997.

All subsequent legislative references in this Ruling are to the ITAA 1997 unless otherwise stated.

Class of entities

3. The class of entities to which this Ruling applies are the current and/or former shareholders in Twenty-First Century Fox, Inc ('21CF') who:
- (a) are 'resident of Australia' as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
 - (b) were shareholders in 21CF on the Record Date of Friday, 21 June 2013 (being the date 21CF determined shareholders entitlement to receive the distribution of shares in new News Corporation under the Separation);
 - (c) did not hold their 21CF Class A common stock and/or Class B voting common stock or their Australian Securities Exchange (ASX) listed CHESS Depository interests (CDIs) in 21CF as revenue assets (as defined in section 977-50 of the ITAA 1997) nor as trading stock (as defined in subsection 995-1(1) of the ITAA 1997) - that is, the shareholders held their 21CF shares broadly on capital account; and
 - (d) are not subject to the taxation of financial arrangement rules in Division 230 of the ITAA 1997 in relation to gains and losses on their 21CF 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 11 to 20 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.

Date of effect

7. This Ruling applies from 1 July 2012 to 30 June 2013. The Ruling continues to apply after 30 June 2013 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).

Previous Rulings

8. Class Ruling CR 2013/34 Income tax: business restructure and proposed capital distribution: News Corporation.

9. CR 2013/34 advises that the in-specie distribution by 21CF under the Separation is not a dividend for Australian tax purposes and that the anti-avoidance rules in sections 45A or 45B of the ITAA 1936 will not apply to the distribution.

Scheme

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

- Application for a Class Ruling dated 6 September 2013 lodged by the Applicant on behalf of 21CF (formerly News Corporation).

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

11. On 28 June 2013, 21CF (then News Corporation) completed the separation of its business into two independent publicly traded companies by distributing to its shareholders shares of the new News Corporation ('new News Corp') ('the Separation').

12. Throughout the Separation, the 21CF Class A common stock and Class B voting common stock continued to trade on the NASDAQ Stock Exchange in the United States of America (NASDAQ).

13. The 21CF Class A common stock and Class B voting common stock also continued to trade on the ASX in Australia in the form of CHESS Depository Interests (CDIs).

14. On 19 June 2013, the new News Corp Class A common stock and Class B voting common stock commenced trading on NASDAQ.

15. On 19 June 2013, CDIs representing new News Corp Class A common stock and Class B voting common stock commenced trading on ASX on a deferred settlement basis.

16. The Record Date for determining entitlement to new News Corp shares under the Separation was 21 June 2013.

17. On 28 June 2013, 21CF made an in-specie distribution of 100% of the shares it held in new News Corp, a Delaware incorporated company, to eligible shareholders registered on the Record Date of 21 June 2013.

18. The distribution ratio under the Separation was one Class A common stock in new News Corp for every four Class A common stock held in 21CF, and one Class B voting common stock in new News Corp for every four class B voting common stock held in 21CF.

19. No shares were cancelled by 21CF in respect of this distribution.

20. 21CF continues to have its primary listing on NASDAQ, and a secondary listing on the ASX by way of CDIs.

Ruling

Capital gains tax (CGT) consequences

CGT events

21. CGT event G1 happened to a 21CF shareholder who received new News Corp shares in respect of their 21CF shares that they owned at the Record Date (21 June 2013) and continued to own at the date of distribution of the new News Corp shares (28 June 2013): section 104-135.

22. CGT event C2 happened to a 21CF shareholder who received new News Corp shares in respect of their 21CF shares that they owned at the Record Date (21 June 2013) but which they ceased to own before the date of distribution of the new News Corp shares (28 June 2013): section 104-25.

Amount of Capital Payment from the Separation

23. The amount of the capital payment (or capital proceeds) received by a 21CF shareholder in relation to each 21CF share held at the Record Date, for the purposes of determining whether there is a capital gain made from CGT event G1 or CGT event C2 happening, is equal to one quarter of the market value of a new News Corp share received at the time of distribution (28 June 2013): section 103-5 and paragraph 116-20(1)(b).

24. The Commissioner accepts the amount of the capital payment received in relation to each 21CF Class A common stock to be A\$4.15.

25. The Commissioner accepts the amount of the capital payment received in relation to each 21CF Class B voting common stock to be A\$4.12.

Cost base and reduced cost base of shares in new News Corp

26. The first element of the cost base and reduced cost base of each new News Corp Class A common stock and Class B voting common stock acquired under the Separation is their market value at the time of distribution on 28 June 2013: paragraph 112-20(1)(a).

27. The Commissioner accepts the market value, and therefore the first element of the cost base and reduced cost base of each new News Corp Class A common stock, at 28 June 2013, to be A\$16.60.

28. The Commissioner accepts the market value, and therefore the first element of the cost base and reduced cost base of each new News Corp Class B voting common stock, at 28 June 2013, to be A\$16.50.

Acquisition date of shares in new News Corp

29. The acquisition date of the new News Corp Class A common stock and Class B voting common stock is the date they were distributed to each 21CF shareholder: section 109-5. The distribution date was 28 June 2013.

Commissioner of Taxation

6 November 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.*

Capital gains tax (CGT) consequences

CGT event G1 (21CF shareholder who owned a share at the Record Date and continued to own that share at the Payment Date)

30. CGT event G1 (section 104-135) happens if a company makes a payment to a shareholder in respect of a share they own in the company and some or all of the payment (the non-assessable part) is not dividend, or an amount that is taken to be a dividend under section 47 of the ITAA 1936. A payment can include the giving of property.

31. Where the payment is the giving property, the amount of the payment is the market value of the property given (section 103-5). In the present circumstances the amount of the payment for the purposes of CGT event G1 was the market value of the new News Corp Class A common stock and Class B voting common stock at the time they were distributed (28 June 2013).

32. CGT event G1 happened to a participating 21CF shareholder in respect of a 21CF share that they owned at the Record Date (21 June 2013) and continued to own at the time of distribution of the new News Corp shares (28 June 2013).

33. As a result of CGT event G1 happening, the cost base and reduced cost base of a 21CF share is reduced (but not below nil) by the amount of the non-assessable part (subsection 104-135(4)), in this case being the amount of the payment. Note, as no part of the payment is a dividend (in accordance with Class Ruling CR 2013/34), the whole of the payment is the non-assessable part.

34. A 21CF shareholder made a capital gain if the amount of capital payment exceeded the cost base of the 21CF share (subsection 104-135(3)). The amount of capital gain is equal to the excess.

35. In working out whether a 21CF shareholder made a capital gain when CGT event G1 happened to a 21CF share, the capital payment is A\$4.15 for each 21CF Class A common stock and A\$4.12 for each 21CF Class B voting common stock.

36. If a 21CF shareholder made a capital gain when CGT event G1 happened, the cost base and reduced cost base of a 21CF share is reduced to nil. A participating 21CF shareholder cannot make a capital loss when CGT event G1 happened (subsection 104-135(3)).

37. Each 21CF shareholder will need to determine according to their own circumstances what their cost base and reduced cost base of their 21CF shares was immediately before the distribution of the new News Corp shares.

38. A capital gain made when CGT event G1 happened will be eligible to be treated as a discount capital gain under Subdivision 115-A provided that the 21CF share was acquired at least 12 months before the date of distribution (subsection 115-25(1)) and the other conditions of that Subdivision are satisfied.

CGT event C2 (21CF shareholder who owned a share at the Record Date and ceased to own that share prior to the Payment Date)

39. The right to receive the new News Corp shares distributed under the Separation is one of the rights inherent in the 21CF shares held at the Record Date. If, after the Record Date but before the distribution date, a 21CF shareholder ceased to own a 21CF share, the right to receive the new News Corp shares will be retained by the 21CF shareholder and is a separate CGT asset.

40. CGT event C2 happened when the new News Corp shares were distributed (section 104-25). The right to receive the distribution (being an intangible CGT asset) ended by the right being discharged or satisfied at the time the distribution was made.

41. A 21CF shareholder made a capital gain if the capital proceeds from the ending of the right were more than its cost base. The capital gain is equal to the amount of the excess. A 21CF shareholder will make a capital loss if the capital proceeds from the ending of the right were less than its reduced cost base (subsection 104-25(3)). The capital loss is equal to the amount of the difference.

42. In working out the capital gain or capital loss made when CGT event C2 happens to the right, the capital proceeds is A\$4.15 for each 21CF Class A common stock disposed of prior to the distribution date and A\$4.12 for each 21CF Class B voting common stock disposed of prior to the distribution date.

43. The cost base of a 21CF shareholder's right to receive the new News Corp shares is worked out under Division 110 of the ITAA 1997 (modified by Division 112 of the ITAA 1997). The cost base of the right does not include the cost base or reduced cost base of the 21CF share previously owned by the 21CF shareholder that has been applied in working out a capital gain or capital loss made when a CGT event happened to the 21CF share - for example, when the 21CF shareholder disposed of the 21CF share after the Record Date resulting in CGT event A1 happening (section 104-10).

44. Therefore, if the full cost base or reduced cost base of a 21CF share has been previously applied in working out a capital gain or capital loss made when a CGT event happened to that share, the right to receive the new News Corp shares will likely have a nil cost base.

45. As the right to receive the new News Corp shares was inherent in the 21CF share during the time it was owned, the right is considered to have been acquired at the time when the corresponding 21CF share was acquired (section 109-5 of the ITAA 1997). A capital gain made when CGT event C2 happened on the ending of the right will be eligible to be treated as a discount capital gain under Subdivision 115-A provided that the corresponding 21CF share was acquired at least 12 months before the date of distribution (subsection 115-25(1)) and the other conditions of that Subdivision are satisfied.

Capital Payment (Capital Proceeds)

46. Where payment is the giving property, the amount of the payment is the market value of the property given (section 103-5). Accordingly in the present circumstances the amount of the payment for the purposes of CGT event G1 and CGT event C2 is based on the market value of the new News Corp Class A common stock and Class B voting common stock at the time the new News Corp shares were distributed (28 June 2013).

47. The distribution ratio under the Separation was one new News Corp Class A common stock for every four 21CF Class A common stock held, and one new News Corp Class B voting common stock for every four 21CF Class B voting common stock held.

48. Therefore, the amount of the capital payment, in relation to each individual 21CF Class A common stock and each individual 21CF Class B voting common stock, is equal to (respectively) one quarter of the market value of a new News Corp Class A common stock and Class B voting common stock at the time of distribution on 28 June 2013.

49. The market value of a new News Corp Class A common stock and Class B voting common stock at the time of distribution on 28 June 2013 is outlined below at paragraph 51-53.

Cost base and reduced cost base of shares in new News Corp

50. As 21CF shareholders who received shares in new News Corp under the Separation did not and were not required to pay money or give property for the new News Corp shares, the first element of the cost base or reduced cost base of the new News Corp shares acquired under the Separation is their market value at the time of acquisition on 28 June 2013 (paragraph 112-20(1)(a)).

Determining the market value of the new News Corp shares at 28 June 2013

51. The Commissioner accepts that the volume weighted average price (VWAP) of a new News Corp Class A common stock and Class B voting common stock respectively as traded in the ordinary course of trading on the ASX, during the period 24 June 2013 to 28 June 2013, as being indicative of the market value of the shares at the time of distribution on 28 June 2013.

52. The VWAP of a new News Corp Class A common stock during the period 24 June 2013 to 28 June 2013 was A\$16.60

53. The VWAP of a new News Corp Class B voting common stock during the period 24 June 2013 to 28 June 2013 was A\$16.50.

Acquisition date of shares in new News Corp

54. The acquisition date of new News Corp Class A common stock and Class B voting common stock under the Separation is the date they were distributed to each 21CF shareholder (section 109-5). The distribution date was 28 June 2013.

Appendix 2 – Detailed contents list

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

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References

<i>Previous draft:</i>	- ITAA 1936 45B
Not previously issued as a draft	- ITAA 1936 47
	- ITAA 1997
<i>Related Rulings/Determinations:</i>	- ITAA 1997 103-5
TR 2006/10; CR 2013/34	- ITAA 1997 104-25
	- ITAA 1997 104-25 (3)
	- ITAA 1997 104-135
<i>Subject references:</i>	- ITAA 1997 104-135(3)
- capital gains tax	- ITAA 1997 104-135(4)
- CGT event G1	- ITAA 1997 109-5
- CGT event C2	- ITAA 1997 Div 110
- CGT capital payment	- ITAA 1997 Div 112
- CGT cost base	- ITAA 1997 112-20(1)(a)
- CGT reduced cost base	- ITAA 1997 Subdiv 115-A
- return of capital on shares	- ITAA 1997 115-25(1)
- shareholders	- ITAA 1997 116-20(1)(b)
	- ITAA 1997 Div 230
<i>Legislative references:</i>	- TAA 1953
- ITAA 1936	- Copyright Act 1968
- ITAA 1936 6(1)	
- ITAA 1936 45A	

ATO references

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