



## Class Ruling

# Income tax: Singapore Telecommunications Limited – de-listing of CHESS Depositary Interests from the Australian Securities Exchange

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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 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 104-25 of the ITAA 1997
- section 104-55 of the ITAA 1997
- section 104-60 of the ITAA 1997
- section 104-75 of the ITAA 1997
- section 104-155 of the ITAA 1997
- section 106-50 of the ITAA 1997.

All legislative references in this Ruling are to ITAA 1997 unless otherwise indicated.

## Class of entities

3. The class of entities to which this Ruling applies are holders of Singtel CHESS Depositary Interests (CDIs) who:

- do not hold their Singtel share(s) (as represented by Singtel CDIs) as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)) – that is, they hold their Singtel share(s) on capital account
- do not hold their Singtel CDIs jointly
- undertake option 2 or 3 of the de-listing process which involves the transmutation of the Singtel CDI to the underlying ordinary share in Singtel, and
- are not subject to the taxation of financial arrangement rules in Division 230 in relation to gains and losses on their 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 8 to 25 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

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7. This Ruling applies to the income year ending 30 June 2015 and 30 June 2016. The Ruling continues to apply after 30 June 2016 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

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8. 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:

- Class ruling application dated 8 April 2015 (including attachments)
- Circular to CDI holders in relation to the Australian Securities Exchange (ASX) delisting dated 28 April 2015, and
- Correspondence regarding the application between the Commissioner and the applicant.

**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

9. Singtel is a Singapore-incorporated and tax resident company. Singtel's shares are listed and traded on the Singapore Stock Exchange (SGX). The Singtel shares are traded on the SGX on a scripless basis, with physical share certificates being issued in the name of The Central Depository (Pte) Limited (CDP), which holds Singtel shares as bare trustee on behalf of the shareholders.

10. The Singtel group acquired Singtel Optus Pty Limited (Optus) in 2001. Optus is an Australian incorporated and tax resident company.

11. Singtel established a listing on the ASX on 10 September 2001.

## CDI trading mechanism

12. The ASX Clearing House Electronic Subregister System (CHESS) facilitates the transfer of legal title and settlement of transactions on the ASX. However, CHESS cannot be used directly for the transfer of securities of companies domiciled in various countries, such as Singapore, whose laws have the effect that CHESS cannot be used for transferring or holding legal title to securities.

13. To overcome this difficulty, a special depositary receipt in the form of CDIs has been developed as a method of transferring and holding these foreign securities in CHESS, thereby allowing the underlying foreign securities to be listed and traded on the ASX, with each CDI representing an equivalent underlying foreign security.

14. The establishment of the Singtel CDIs therefore enabled investors to hold and electronically transfer their interests in Singtel shares through the CHESS platform, which they would not be able to do if they held their Singtel shares directly.

15. CDIs are units of beneficial ownership in underlying securities, which are legally held by an Australian depositary entity – in Singtel's case, by CHESS Depositary Nominees Pty Ltd (CDN), which is a wholly owned subsidiary of ASX Limited. CDN is registered as the depositor on the CDP register.

16. Each Singtel CDI is allocated to a sole holder which grants the Singtel CDI holder the totality of the beneficial interest in the underlying Singtel share.

17. The Singtel CDI holder is absolutely entitled to the Singtel share as against CDP.

## De-listing process

18. The de-listing process will allow Singtel CDI holders the following options:

- Option 1 – Sell Singtel CDIs on the ASX before close of market on the Suspension Date 29 May 2015
- Option 2 – Retain a holding in Singtel by converting Singtel CDIs into Singtel shares no later than 2 July 2015
- Option 3 – Convert Singtel CDIs into Singtel shares and sell on SGX no later than 2 July 2015
- Option 4 – Participate in the Voluntary Sale Facility
- Option 5 – Do nothing – Compulsory Sale Process.

## Transmutation

19. Option 2 and 3 of the de-listing process involves the conversion of the Singtel CDI to the underlying Singtel share. A reference to 'convert' (a Singtel CDI being converted to Singtel shares) should be considered as a reference to 'transmute' (a CDI being transmuted to Singtel shares) as that term applies under the ASX Settlement Operating Rules.

20. The ASX Operating Settlement Rules (dated 1 January 2012) provides that 'transmute' means to cause *'Principal Financial Products to be converted into CDIs, or CDIs to be converted into Principal Financial Products... under these Rules, without any change in beneficial ownership.'*

21. If the Singtel CDI holder chooses to transmute their Singtel CDIs into Singtel shares under either option 2 or 3, the Singtel CDI holder (or their depositary agent) will be recorded as the depositor on CDP's depositary register (in place of CDN) in respect of the underlying Singtel shares. The Singtel CDI holder will be recorded as the depositor where the Singtel CDI holder has established a CDP Securities Account. The depositary agent will be recorded as the depositor where the Singtel CDI holder chooses to set up a sub-account with a depositary agent. The Singtel CDI holder will become the depositor and legal member in respect of those shares under Singaporean law where they establish a CDP Securities Account. Where a Singtel CDI holder chooses to set up a sub-account with a depositary agent, the depositary agent will be recorded as the depositor on CDP's register and as the legal member of Singtel (although the Singtel CDI holder will at all times remain the beneficial owner of the Singtel shares).
22. The Singtel CDI holders will receive no consideration for, or in respect of, the transmutation.
23. There is no need for new share certificates to be issued, as CDP remains the holder of the legal title (as bare trustee) at all times.
24. The transmutation will not result in the cancellation of any Singtel shares for Singaporean or Australian corporate law purposes.
25. The transmutation will not result in the creation of any new share capital in Singtel.

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## **Ruling**

26. CGT event A1 will not happen as beneficial ownership of the Singtel share remains with the Singtel CDI holder prior to and after the Singtel CDI holder transmuting the Singtel CDI into the Singtel share.
27. CGT event C2 will not happen as the Singtel CDI holder's beneficial ownership of the Singtel share does not end as a result of the transmutation.
28. CGT events E1, E2 and E5 will not happen as the Singtel CDI holder has always been absolutely entitled as against the trustee.
29. As the Singtel CDI holders will not receive or be entitled to receive any capital proceeds in respect of the transmutation, the Singtel CDI holders will not make a capital gain under CGT event H2.
30. The transmutation of the Singtel CDI into the Singtel share will not give rise to a capital gain or loss.

## 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.*

31. Under section 106-50, a CGT asset of a trust to which a beneficiary is absolutely entitled as against the trustee (disregarding any legal disability) is treated for CGT purposes as being the beneficiary's asset (rather than an asset of the trust). Furthermore, any act done in relation to the asset by the trustee is taken to be done by the absolutely entitled beneficiary (rather than the trustee).

32. The Commissioner's views in respect of the meaning of the words 'absolutely entitled to a CGT asset as against the trustee of a trust' as used in Parts 3-1 and 3-3 of the ITAA 1997 is contained in Draft Taxation Ruling TR 2004/D25.

33. Prior to transmutation, each Singtel CDI holder is absolutely entitled to the underlying Singtel share. After transmutation, each Singtel CDI holder remains absolutely entitled to the Singtel share as against CDP.

34. CGT event A1 happens if a taxpayer disposes of a CGT asset (subsection 104-10(1)), and the disposal involves a change of ownership from the taxpayer to another entity. However, a change of ownership does not occur if the taxpayer stops being the legal owner of the asset but continues to be its beneficial owner (subsection 104-10(2)).

35. CGT event A1 will not happen as beneficial ownership of the Singtel share remains with the Singtel CDI holder prior to and after the transmutation.

36. CGT event C2 happens if a taxpayer's ownership of an intangible CGT asset ends by the asset being redeemed, cancelled, released, discharged, satisfied, expiring, abandoned, surrendered or forfeited (subsection 104-25(1)).

37. CGT event C2 will not happen in respect of the Singtel share as the Singtel CDI holder's beneficial ownership of the Singtel share does not end as a result of the transmutation.

38. CGT event E1 happens when a taxpayer creates a trust over a CGT asset by declaration or settlement (subsection 104-55(1)). CGT event E2 happens when a taxpayer transfers a CGT asset to an existing trust (subsection 104-60(1)). However, subsection 104-55(5) and subsection 104-60(5) respectively provide that CGT events E1 and E2 do not happen if the taxpayer is the sole beneficiary of the trust and:

- is absolutely entitled to the asset as against the trustee (disregarding any legal disability), and
- the trust is not a unit trust.

39. CGT event E5 happens if a beneficiary becomes absolutely entitled to a CGT asset of a trust (except a unit trust or a trust to which Division 128 applies) as against the trustee (disregarding any legal disability the beneficiary is under) (section 104-75).

40. CGT events E1, E2 and E5 will not happen as the Singtel CDI holder has always been absolutely entitled as against CDP.

41. CGT event H2 happens if an act, transaction or event occurs in relation to a CGT asset and the act, transaction or event does not result in an adjustment being made to the asset's cost base or reduced cost base (section 104-155). A capital gain is made if the 'capital proceeds' from the event are more than the incidental costs incurred in relation to it; a capital loss is made if the capital proceeds are less than the incidental costs (section 104-155).

42. Capital proceeds are the money or other consideration received, or entitled to be received, because of the act, transaction or event (subsection 116-20(2)). Paragraph 29 of Taxation Ruling TR 95/3 provides that 'consideration' for these purposes can include the benefit of mutual promises flowing to parties even if those promises are not in themselves property.

43. The Singtel CDI holders will not receive or be entitled to receive any capital proceeds in respect of the transmutation. Therefore Singtel CDI holders will not make a capital gain as they will not receive capital proceeds.

44. The transmutation of the Singtel CDI into the Singtel share will not give rise to a capital gain or loss.

## **Appendix 2 – Detailed contents list**

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

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## References

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|                                        |                       |
|----------------------------------------|-----------------------|
| <i>Previous draft:</i>                 | - ITAA 1997 104-25(1) |
| Not previously issued as a draft       | - ITAA 1997 104-55    |
|                                        | - ITAA 1997 104-55(1) |
| <i>Related Rulings/Determinations:</i> | - ITAA 1997 104-55(5) |
| TR 95/3; TR 2004/D25;                  | - ITAA 1997 104-60    |
| TR 2006/10                             | - ITAA 1997 104-60(1) |
|                                        | - ITAA 1997 104-60(5) |
| <i>Subject references:</i>             | - ITAA 1997 104-75    |
| - capital gains tax                    | - ITAA 1997 104-155   |
| - CGT event                            | - ITAA 1997 106-50    |
|                                        | - ITAA 1997 116-20    |
|                                        | - ITAA 1997 116-20(2) |
| <i>Legislative references:</i>         | - ITAA 1997 Pt 3-3    |
| - ITAA 1997                            | - ITAA 1997 Div 230   |
| - ITAA 1997 Pt 3-1                     | - ITAA 1997 977-50    |
| - ITAA 1997 104-10                     | - ITAA 1997 995-1(1)  |
| - ITAA 1997 104-10(1)                  | - TAA 1953            |
| - ITAA 1997 104-10(2)                  |                       |
| - ITAA 1997 104-25                     |                       |

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### ATO references

|                |                                                                                                  |
|----------------|--------------------------------------------------------------------------------------------------|
| NO:            | 1-6J9EK32                                                                                        |
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| ATO law topic: | Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT event – general                             |
|                | Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT event A1 – disposal of a CGT asset          |
|                | Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT events C1 to C3 – end of a CGT asset        |
|                | Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT events E1 to E9 – trusts                    |
|                | Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT events H1 and H2 – special capital receipts |

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