



Class Ruling

Income tax: in specie distribution by Centuria Capital Limited and creation of a new stapled entity

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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, 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 dealt with in this Ruling are:

- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)
- section 45A of the ITAA 1936
- section 45B of the ITAA 1936
- section 45C of the ITAA 1936
- Division 104 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 104-135 of the ITAA 1997, and
- section 855-10 of the ITAA 1997

All subsequent references are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies is the holders of ordinary shares in Centuria Capital Limited (Centuria) who:

- were registered on the Centuria share register on 13 October 2016, the date for determining entitlement to the in specie distribution (Record Date)
- held their Centuria shares on capital account, and
- are not subject to the taxation of financial arrangement rules in Division 230 in relation to their gains and losses on their Centuria shares.

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

In this Ruling, a person belonging to this class of entities is referred to as a Centuria shareholder.

Qualifications

4. 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 7 to 25 of this Ruling.

5. 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

6. This Ruling applies from 1 July 2016 to 30 June 2017. The Ruling continues to apply after 30 June 2017 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

7. The following description of the scheme is based on information provided by 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

8. Centuria Capital Limited (Centuria) is a public company, incorporated in Australia and listed on the Australian Securities Exchange since 26 March 2002.

9. Centuria is a specialist investment manager with two key investment arms including Centuria Investment Bonds and Centuria Property Funds Management. The property funds management arm specialises in managing listed and unlisted property investments.

10. The property funds management arm takes strategic minority stakes in various listed and unlisted funds that it manages or hopes to manage (Co-investments). These stakes and the approximate percentage interests held by Centuria are:

- Centuria Metropolitan Real Estate Investment Trust (2.1% interest)
- Centuria Zenith Fund (6.35% interest)
- 19 Corporate Drive Fund (0.5% interest), and
- Centuria ATP Fund (0.8% interest).

Internal restructure and stapling

11. At an extraordinary general meeting of the company on 10 October 2016, Centuria shareholders voted in favour of a proposal to restructure the company and create a new stapled group.

12. The new stapled group consists of Centuria and a new unit trust, Centuria Capital Fund.

13. As part of the restructure, Centuria transferred to Centuria Capital Fund, its Co-investments and cash of \$40,489,000 for the Fund's future activities (Transferred Assets).

14. The restructure involved the following steps:

- (i) Centuria Capital Fund was settled with Centuria as the sole unitholder
- (ii) Centuria subscribed for \$52,535,795 worth of units in Centuria Capital Fund at a price of \$0.680562 per unit. Post subscription, Centuria held 77,194,733 units in Centuria Capital Fund

- (iii) Centuria made an in specie distribution of the units in Centuria Capital Fund to existing Centuria shareholders on a 1:1 basis (the Distribution) on 17 October 2016 (Payment Date)
- (iv) Centuria shares and units in Centuria Capital Fund were stapled on a 1:1 basis
- (v) The Transferred Assets were transferred at market value from Centuria to Centuria Capital Fund. The consideration for the Transferred Assets was offset against amounts owing by Centuria for its unit subscriptions in Centuria Capital Fund, and
- (vi) The stapled securities were listed for quotation on the ASX.

15. The market value of the Transferred Assets at the time of transfer (Payment Date) was \$52,535,795. The market value of each unit in Centuria Capital Fund at the Payment Date was \$0.680562.

16. As at 30 June 2016, the equity of Centuria comprised of 77,194,733 ordinary shares on issue, share capital of \$88,057,000, retained earnings of \$28,452,000 and a share based payment reserve of \$1,459,000.

17. The approximate net assets attributable to the security holders of the stapled structure after implementation of the restructure were:

	Centuria Capital Limited (\$m)	Centuria Capital Fund (\$m)	Centuria Capital Group (\$m)
Net assets	65.5	52.5	118.0

In specie distribution

18. The Distribution equating to \$0.680562 per share was made to all Centuria shareholders on 17 October 2016 (Payment Date).

19. The Distribution was made partly as a return of capital and partly as a fully franked dividend. \$39,204,614 of the Distribution, equating to \$0.507866 per Centuria share was made as a return of capital (Capital Component). \$13,331,181 of the Distribution, equating to \$0.172696 per Centuria share was made as a fully franked dividend (Dividend Component).

20. Centuria's share capital account is called 'contributed equity'.

21. The journal entries to record the return of capital were:

DR	Contributed Equity	\$39,204,614	
	CR	Stapled Fund Units	\$39,204,614

Other matters

22. The Centuria share capital account is not tainted within the meaning of Division 197.
23. As at 31 July 2016, approximately 4.59% of Centuria's shares were held by foreign resident shareholders.
24. Centuria has historically paid fully franked dividends in the 2013, 2014, 2015 and 2016 income years.
25. Centuria's franking account balance as at 30 June 2016 was approximately \$8,400,000.

Ruling**Capital Component of Distribution is not a dividend**

26. The Capital Component of the Distribution (\$0.507866 per Centuria share) is not a dividend as defined in subsection 6(1) of the ITAA 1936.

The application of sections 45A 45B and 45C of the ITAA 1936

27. The Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C applies to any part of the Capital Component of the Distribution.
28. The Commissioner will not make a determination under subsection 45B(3) of the ITAA 1936 that section 45C applies to any part of the Capital Component of the Distribution.

Capital gains tax (CGT) consequences

29. CGT event G1 happened to a Centuria shareholder to the extent of the Capital Component (\$0.507866 per Centuria share) when Centuria made the Distribution to the Centuria shareholder in respect of a share that they owned at the Record Date and continued to own at the Payment Date.
30. The first element of the cost base or reduced cost base of a unit in the Centuria Capital Fund is equal to the market value of the unit, worked out at the time of their acquisition.

Foreign resident shareholders

31. A Centuria shareholder disregards a capital gain or loss from a CGT event under subsection 855-10(1) if they are a foreign resident just before the Distribution happens in relation to a Centuria share that is not 'taxable Australian property'.

Stapling of securities

32. No CGT event in Division 104 will happen as a result of the stapling of shares in Centuria and the units in Centuria Capital Fund.

33. Centuria shares and units in Centuria Capital Fund are separate CGT assets as defined in section 108-5.

Commissioner of Taxation

2 November 2016

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 Component of Distribution is not a dividend

34. The term 'dividend' is defined in subsection 6(1) of the ITAA 1936 and includes a distribution made by a company to any of its shareholders. However, paragraph (d) of the definition of 'dividend' excludes a distribution that is debited against an amount standing to the credit of the share capital account of the company.

35. 'Share capital account' is defined in section 975-300 as an account which the company keeps of its share capital, or any other account created on or after 1 July 1998 where the first amount credited to the account was an amount of share capital.

36. Subsection 975-300(3) states that an account is not a share capital account, except for certain purposes, if it is tainted.

37. The Capital Component of the Distribution was recorded as being wholly debited to Centuria's share capital account. As Centuria's share capital account is not tainted within the meaning of section 197-50, paragraph (d) of the definition of 'dividend' in subsection 6(1) of the ITAA 1936 applies. Accordingly, the Capital Component of the Distribution will not be a dividend as defined in subsection 6(1) of the ITAA 1936.

Section 45A

38. Section 45A of the ITAA 1936 is an anti-avoidance provision that applies where capital benefits are streamed to certain shareholders who derive a greater benefit from the receipt of capital (the advantaged shareholders), and it is reasonable to assume that the other shareholders (the disadvantaged shareholders) have received or will receive dividends.

39. Where the Commissioner makes a written determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole or part of the capital benefits, the capital benefits will be treated as unfranked dividends paid out of the company's profits.

40. Although Centuria provided its shareholders with a 'capital benefit' as defined in paragraph 45A(3)(b) of the ITAA 1936 in the form of units in Centuria Capital Fund, the capital benefit was provided to all Centuria shareholders in the same proportion as their shareholdings in Centuria. Consequently, there are no advantaged or disadvantaged shareholders as contemplated by subsection 45A(1) of the ITAA 1936.

41. Accordingly, the Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole, or a part, of the return of capital.

Section 45B

42. Section 45B of the ITAA 1936 applies where certain capital payments are made to shareholders in substitution for dividends. Specifically the provision applies where:

- there is a scheme under which a person is 'provided with a capital benefit' by a company (paragraph 45B(2)(a) of the ITAA 1936), and
- under the scheme a taxpayer (the relevant taxpayer) who may or may not be the person provided with the capital benefit, obtains a tax benefit (paragraph 45B(2)(b) of the ITAA 1936), and
- having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered the scheme or carried out the scheme or any part of the scheme did so for a purpose, other than incidental purpose, of enabling the relevant taxpayer to obtain a tax benefit (paragraph 45B(2)(c) of the ITAA 1936).

43. The arrangement involving the in specie distribution to Centuria shareholders constitutes a scheme for the purpose of section 45B of the ITAA 1936.

44. The Capital Component of the Distribution will be recorded as a debit to Centuria's share capital account and Centuria shareholders will receive a distribution of share capital as part of the Distribution. Therefore, Centuria shareholders will be provided with a capital benefit (paragraph 45B(5)(b) of the ITAA 1936).

45. The meaning of 'obtaining a tax benefit' is defined in subsection 45B(9) of the ITAA 1936 to include the situation where the amount of tax payable from the treatment of a return of capital under the CGT provisions would, apart from the operation of 45B of the ITAA 1936, be less than the amount that would be payable if the distribution had instead been an assessable dividend.

46. As a distribution of capital will generally result in a lesser amount of tax payable for Centuria shareholders than the receipt of an assessable dividend, Centuria shareholders will obtain a tax benefit.

47. Paragraph 45B(2)(c) of the ITAA 1936 sets out an objective purpose test for the Commissioner to consider having regard to the 'relevant circumstances' of the scheme set out in subsection 45B(8) of the ITAA 1936.

48. Having regard to the relevant circumstances of the scheme set out in subsection 45B(8) of the ITAA 1936, it cannot be concluded that the scheme was entered into or carried out for a more than incidental purpose of enabling Centuria shareholders to obtain a tax benefit.

49. Accordingly, the Commissioner will not make a determination under subsection 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole, or a part of the Capital Component of the Distribution.

CGT consequences

CGT event G1

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

51. The Capital Component of the Distribution is not a dividend. Accordingly, CGT event G1 will happen when Centuria makes the in specie distribution to a Centuria shareholder in respect of a Centuria share that they own at the Record Date and continue to own at the Payment Date.

52. A Centuria shareholder will make a capital gain if the capital component is more than the cost base of the shareholder's Centuria share. The amount of the capital gain is equal to that excess (subsection 104-135(3)).

53. If a Centuria shareholder makes a capital gain from CGT event G1 happening, the cost base and reduced cost base of the Centuria share is reduced to nil. A Centuria shareholder cannot make a capital loss from CGT event G1 happening (subsection 104-135(3)).

54. If the return of capital amount is equal to or less than the cost base of the Centuria share at the Payment Date, the cost base and reduced cost base of the Centuria share will be reduced by the return of capital amount (subsection 104-135(4)).

55. A capital gain made when CGT event G1 happens will be eligible to be treated as a discount capital gain under Division 115 provided that the Centuria share was acquired at least 12 months before the payment of the return of capital amount (subsection 115-25(1)) and the other conditions of that Division are satisfied.

Foreign resident Centuria shareholders

56. Under subsection 855-10(1), an entity disregards a capital gain or capital loss from a CGT event if they are a foreign resident, or the trustee of a foreign trust for CGT purposes, just before the CGT event happens, and the CGT event happens in relation to a CGT asset that is not 'taxable Australian property'.

57. The term 'taxable Australian property' is defined in the table in section 855-15. The table sets out these five categories of CGT assets:

Item 1	taxable Australian real property
Item 2	an indirect Australian real property interest not covered by item 5
Item 3	a CGT asset used at any time in carrying on a business through a permanent establishment in Australia and which is not covered by item 1, 2 or 5
Item 4	an option or right to acquire a CGT asset covered by item 1, 2 or 3, and
Item 5	a CGT asset that is covered by subsection 104-165(3) of the ITAA 1997 (choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident).

58. A foreign resident Centuria shareholder who receives units in the Centuria Capital Fund may disregard any capital gain made when CGT event G1 happens if their Centuria shares did not constitute 'taxable Australian property'.

Appendix 2 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Legislative references:

- | | |
|-----------------------|------------------------|
| - ITAA 1936 | - ITAA 1936 45B(8) |
| - ITAA 1936 6(1) | - ITAA 1936 45B(5)(b) |
| - ITAA 1936 6(1)(a) | - ITAA 1936 45B(9) |
| - ITAA 1936 6(1)(d) | - ITAA 1936 45C |
| - ITAA 1936 45A | - ITAA 1997 |
| - ITAA 1936 45A(1) | - ITAA 1997 Div 104 |
| - ITAA 1936 45A(2) | - ITAA 1997 104-135 |
| - ITAA 1936 45A(3)(b) | - ITAA 1997 104-135(3) |
| - ITAA 1936 45B | - ITAA 1997 104-135(4) |
| - ITAA 1936 45B(2)(a) | - ITAA 1997 108-5 |
| - ITAA 1936 45B(2)(b) | - ITAA 1997 Div 115 |
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ATO references

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