



Class Ruling

Income tax: Ardent Leisure Group – restructure

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This publication (excluding appendices) 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.

Summary – 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 considered in this Ruling are:

- section 45B of the *Income Tax Assessment Act 1936* (ITAA 1936)
- section 102-5 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 102-10 of the ITAA 1997
- section 104-10 of the ITAA 1997
- section 104-25 of the ITAA 1997
- section 104-155 of the ITAA 1997
- section 109-10 of the ITAA 1997
- section 109-55 of the ITAA 1997
- section 110-25 of the ITAA 1997

- section 110-55 of the ITAA 1997
- section 115-30 of the ITAA 1997
- section 124-15 of the ITAA 1997
- Division 615 of the ITAA 1997.

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

Class of entities

3. The class of entities to which this Ruling applies are the holders of Ardent Leisure Group (**ALG**) stapled securities (**ALG Securityholders**) who:

- participated in the scheme that is the subject of this Ruling
 - are residents of Australia within the meaning of subsection 6(1) of the ITAA 1936
 - are not temporary residents of Australia within the meaning of subsection 995-1(1)
 - did not hold their ALG stapled securities as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)) – that is, they held their ALG stapled securities on capital account, and
 - are not subject to the taxation of financial arrangements (TOFA) rules in Division 230 in relation to gains and losses on their ALG stapled securities.
- (**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 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.

Date of effect

7. This Ruling applies from 1 July 2018 to 30 June 2019. The Ruling continues to apply after 30 June 2019 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 *Public Rulings*).

Scheme

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:

- Constitution of the Ardent Leisure Trust
- Constitution of Ardent Leisure Limited
- Constitution of Ardent Leisure Group Limited
- Implementation Deed, dated 5 October 2018, and
- ALG Securityholder Booklet, dated 10 October 2018.

The Ardent Leisure Group

9. ALG consisted of the Ardent Leisure Trust (**ALT**) and Ardent Leisure Limited (**ALL**).

10. ALG was listed on the Australian Securities Exchange (ASX) and traded as a stapled security, with each stapled security consisting of one unit in ALT and one share in ALL.

11. As at 1 October 2018, there were approximately 479.7 million stapled securities on issue.

ALT

12. ALT is a trust formed in 1998. It is a withholding Managed Investment Trust for the purposes of Subdivision 12-H of the *Taxation Administration Act 1953* (TAA 1953). It is not a public trading trust under Division 6C of the ITAA 1936.

13. ALT holds real estate that is leased to ALL for rental income and also provides financing to ALL by way of interest-bearing loans.

14. ALT only has one class of units on issue. Each ALT unit carries the same rights to the income and capital of ALT as every other ALT unit.

15. Ardent Leisure Management Limited (**ALM**) is the responsible entity of ALT and is wholly owned by ALL.

ALL

16. ALL is a public company registered in Australia and is the head entity of an Australian income tax consolidated group. ALL was formed in 2003 and is a resident of Australia for income tax purposes.

17. ALL operates and manages several Australian leisure businesses (Dreamworld, WhiteWater World and the SkyPoint Observation Deck and Climb). ALL also owns Ardent Leisure US Holdings Inc. (**ALUSH**), a US company that holds the Main Event Entertainment business.

18. ALL has one class of shares on issue, being ordinary shares. The rights attached to each ordinary share are identical in respect of dividends, capital distribution and voting rights. Apart from the ordinary shares, ALL does not have any other shares on issue.

Restructure of ALG

19. ALG undertook a strategic review to consider its capital structure, ownership structure and future funding needs.

20. Upon finalisation of the review, ALG made the decision to move from its stapled security structure into a single listed company (the **Corporatisation**) to:

- provide greater flexibility for future capital expenditure
- simplify its corporate structure and appeal to a broader group of investors
- reduce administrative, reporting and compliance obligations, and
- retain capital to reinvest in its business.

21. The Corporatisation took place on 24 December 2018.

Detailed steps of the Corporatisation

22. Step 1 – On 18 September 2018, Ardent Leisure Group Limited (**NewCo**) was incorporated as a dormant Australian resident company with nominal share capital, comprising one fully paid ordinary share held by a current director of ALL.

23. Step 2 – On 24 December 2018 (the **Implementation Date**), the shares in ALL and units in ALT were de-stapled.

24. Step 3 – On the same day, NewCo acquired all the shares in ALL from the ALG Securityholders (including the Sale Agent) in accordance with the members' scheme of arrangement under Part 5.1 of the *Corporations Act 2001* (Corporations Act) that was approved by a court order (the **Company Scheme**). In exchange, NewCo issued a whole number of ordinary shares in NewCo to ALG Securityholders in proportion to the percentage of the shares in ALL originally owned by each ALG Securityholder. Each ALG Securityholder received one share in NewCo for each share held in ALL prior to the Corporatisation.

25. Step 4 – Later on the same day, NewCo acquired all the units in ALT from the ALG Securityholders (including the Sale Agent) in accordance with the trust scheme (the **Trust Scheme**), where judicial advice was obtained. In exchange, NewCo issued a whole number of ordinary shares in NewCo to ALG Securityholders in proportion to the percentage of the units in ALT originally owned by each ALG Securityholder. Each ALG Securityholder received one share in NewCo for each unit held in ALT prior to the Corporatisation.

26. Step 5 – Also later on the same day, NewCo undertook a 2:1 share consolidation in accordance with section 254H of the Corporations Act, such that each ALG Securityholder now held one ordinary share in NewCo for each ALG stapled security they held prior to the Corporatisation.

27. Step 6 – At the same time, the original share in NewCo held by the relevant ALL director was cancelled, with the result that 100% of the shares in NewCo were now held by only the ALG Securityholders.

28. Steps 1 to 6 are collectively referred to as the Corporatisation.

Ineligible Foreign Securityholders

29. ALG Securityholders who were residents in certain jurisdictions outside of Australia were unable to participate in the Corporatisation because of foreign securities law restrictions (the **Ineligible Foreign Securityholders**).

30. In accordance with the Corporatisation, the ALG stapled securities held by the Ineligible Foreign Securityholders were transferred to UBS AG (the **Sale Agent**) prior to the Corporatisation. The Sale Agent participated in the Corporatisation as an ALG Securityholder and was issued shares in NewCo in exchange for the ALG stapled securities it held.

31. After the completion of the Corporatisation (that is after the Implementation Date), the Sale Agent will sell the NewCo shares it received under the Corporatisation and remit the proceeds to the Ineligible Foreign Securityholders.

Assumptions

32. This Ruling is made on the basis that NewCo will make the required choices under section 615-30 in respect of ALL and ALT within the timeframes as prescribed by subsection 615-30(3).

Ruling

De-stapling of the Ardent Leisure Group stapled securities

33. No capital gain or capital loss arises on the de-stapling of the ALG stapled securities.

Disposal of ALL shares – CGT consequences

CGT event A1 happened

34. CGT event A1 happened as a result of the disposal by ALG Securityholders of their shares in ALL to NewCo (section 104-10). The time of CGT event A1 was when the ALL shares were transferred to NewCo on the Implementation Date (paragraph 104-10(3)(b)).

35. The capital proceeds from CGT event A1 happening is equal to the market value of the ordinary shares in NewCo received in exchange for the ALL shares (subsection 116-20(1)).

36. ALG Securityholders made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of their ALL shares exceeded the cost base of the shares. ALG Securityholders made a capital loss if the capital proceeds from the disposal of their ALL shares were less than the reduced cost base of the shares (subsection 104-10(4)).

Choosing Division 615 roll-over

37. A disposal of shares in a company to another company in exchange for shares in that other company (and nothing else), as described in section 615-5, happened when ALG Securityholders disposed of their ALL shares to NewCo in exchange for a whole number of NewCo shares. As the conditions for roll-over under Division 615 were satisfied in relation to this disposal, ALG Securityholders are eligible to choose roll-over under Division 615.

38. ALG Securityholders are taken to have chosen roll-over under Division 615 for the disposal of their ALL shares. Any capital gain or loss made when CGT event A1 happened is disregarded (subsection 124-15(2)).

Disposal of ALT units – CGT consequences***CGT event A1 happened***

39. CGT event A1 happened as a result of the disposal by ALG Securityholders of their units in ALT to NewCo (section 104-10). The time of CGT event A1 was when the ALT units were transferred to NewCo on the Implementation Date (paragraph 104-10(3)(b)).

40. The capital proceeds from CGT event A1 happening is equal to the market value of the ordinary shares in NewCo received in exchange for the ALT units (subsection 116-20(1)).

41. ALG Securityholders made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of their ALT units exceeded the cost base of the units. ALG Securityholders made a capital loss if the capital proceeds from the disposal of their ALT units were less than the reduced cost base of the units (subsection 104-10(4)).

Choosing Division 615 roll-over

42. A disposal of units in a unit trust to a company in exchange for shares in that other company (and nothing else), as described in section 615-5, happened when ALG Securityholders disposed of their ALT units to NewCo in exchange for a whole number of NewCo shares. As the conditions for roll-over under Division 615 were satisfied in relation to this disposal, ALG Securityholders are eligible to choose roll-over under Division 615.

43. ALG Securityholders can choose roll-over under Division 615 for the disposal of their ALT units. If roll-over is chosen, any capital gain or loss made when CGT event A1 happened will be disregarded (subsection 124-15(2)).

Acquisition time of NewCo shares if roll-over is chosen

44. If roll-over is chosen, ALG Securityholders will be regarded as having acquired their NewCo shares at the time they acquired their shares in ALL and their units in ALT (subsection 115-30(1)).

Acquisition time of NewCo shares if roll-over is not chosen

45. If roll-over is not chosen, the acquisition time of the NewCo shares (those received under the Trust Scheme) is the date that they were issued to the ALG Securityholders, being the Implementation Date (section 109-5).

No CGT event on the consolidation of NewCo shares

46. The consolidation of the NewCo shares did not result in a CGT event happening (paragraph 112-25(4)(a)).

Consolidated NewCo shares – cost base and reduced cost base

First element of the cost base where roll-over is chosen

47. Where roll-over is chosen, the first element of the cost base of each NewCo share is calculated by dividing the cost bases of the shares in ALL and units in ALT at the time of the disposal by the number of NewCo shares received in exchange for each entity on a standalone basis (subsection 124-15(3)).

48. The first element of the reduced cost base of each NewCo share is worked out similarly (subsection 124-15(3)).

49. The first element of the cost base and reduced cost base of each NewCo share following consolidation of the NewCo shares is the sum of each of the figures calculated above for ALL and ALT (paragraph 112-25(4)(b)).

First element of the cost base where roll-over is not chosen

50. Where roll-over is not chosen, the first element of the cost base of each NewCo share received under the Trust Scheme is the market value of the unit in ALT exchanged at the time of acquisition of the NewCo shares (paragraph 110-25(2)(b)).

51. The first element of the reduced cost base of each NewCo share received under the Trust Scheme is the same as the first element of the cost base (subsection 110-55(2)).

52. The first element of the cost base and reduced cost base of each NewCo share following consolidation of the NewCo shares is the sum of each of the figures calculated above.

Section 45B of the ITAA 1936

53. The Commissioner will not make a determination under subsection 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole, or a part, of the capital benefit provided by NewCo to the Securityholders under the Corporatisation.

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.*

Division 615 roll-over

54. Roll-over under Division 615 enables a member of a company or a trust to disregard a capital gain or capital loss from a share or a unit that is either disposed of, or redeemed or cancelled, as part of a reorganisation of the affairs of the entity, where the member becomes the owner of new shares in another company in exchange.

55. Division 615 contains a number of conditions for eligibility to choose roll-over. Given the number of conditions that need to be considered, it is not necessary to examine each section of Division 615 in detail in this explanation. However, the main conditions that are relevant to the disposal of shares in ALL and units in ALT are:

- at least two entities must own all the shares or units in the original entity (paragraph 615-5(1)(b))
- there must be a scheme for the reorganising the original entity's affairs, and consideration for the disposal of the shares or units in the original entity must consist of receiving shares in another company (the interposed company) and nothing else (paragraph 615-5(1)(c))
- the interposed company must own all the shares or units in the original entity immediately after all the exchanging members have disposed of their shares or units in the original entity (the completion time) (section 615-15)
- immediately after the completion time, each exchanging member must own a whole number of shares in the interposed company (paragraph 615-20(1)(a))
- immediately after the completion time, each exchanging member must own a percentage of the shares in the interposed company that were issued to all the exchanging members of the original entity that is equal to the percentage of the shares or units in the original entity that the exchanging member owned (paragraph 615-20(1)(b))
- the ratio test in subsection 615-20(2) is met
- the shares issued in the interposed company must not be redeemable shares (subsection 615-25(1)), and

- immediately after the completion time, the exchanging members must own all the shares in the interposed company, or entities other than those members must own no more than five shares in the interposed company and the market value of those shares is such that it is reasonable to treat the exchanging members as owning all the shares (subsection 615-25(3)).

56. The main conditions above are satisfied because, as part of the Company Scheme, the ALG Securityholders received ordinary shares in NewCo for all their shares in ALL. As part of the Trust Scheme, the ALG Securityholders received ordinary shares in NewCo for all their units in ALT.

57. Following the exchange, NewCo owned all the shares in ALL and units in ALT. In addition, each ALG Securityholder owned a whole number of shares in NewCo in a percentage equal to the percentage of shares they previously held in ALL and units they previously held in ALT. Immediately after the completion time, all the shares in NewCo were held by the ALG Securityholders.

58. The class of entities to which this Ruling applies and the scheme identified in this Ruling provide the relevant facts and circumstances that satisfy the conditions for roll-over under Division 615.

NewCo shares – first element of the cost base where roll-over is chosen

59. Where Division 615 roll-over is chosen, the first element of the cost base of a share in NewCo is worked out in accordance with subsection 124-15(3) (as set out in section 615-40).

60. For NewCo shares received under the Company Scheme, the first element of the cost base of a NewCo share is worked out as follows:

$$\frac{\text{Total of cost bases of ALL shares exchanged (at the time of disposal)}}{\text{Number of NewCo shares received}}$$

61. For NewCo shares received under the Trust Scheme, the first element of the cost base of a NewCo share is worked out as follows:

$$\frac{\text{Total of cost bases of ALT units exchanged (at the time of disposal)}}{\text{Number of NewCo shares received}}$$

62. The first element of the reduced cost base of a NewCo share is worked out similarly.

NewCo shares – first element of the cost base where roll-over is not chosen

63. Where Division 615 roll-over is not chosen, the first element of the cost base of the NewCo shares is worked out in accordance with section 110-25.

64. For NewCo shares received under the Trust Scheme, the first element of a NewCo share is the total of the market value of any property an ALG Securityholder gives, in respect of acquiring it, worked out as at the time of the acquisition (paragraph 110-25(2)(b)).

65. The first element of the reduced cost base of a NewCo share is the same as the first element of the cost base (subsection 110-55(2)).

Section 45B of the ITAA 1936

66. Section 45B of the ITAA 1936 applies where certain capital benefits are provided 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)
- under the scheme a 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 into the scheme or carried out the scheme or any part of the scheme did so for a purpose, other than an incidental purpose, of enabling a taxpayer to obtain a tax benefit (paragraph 45B(2)(c) of the ITAA 1936).

Scheme

67. The exchange of ALG stapled securities for NewCo shares under the Corporatisation is a 'scheme' for the purposes of paragraph 45B(2)(a) of the ITAA 1936.

Capital benefit

68. The issue of shares in NewCo is the provision of a capital benefit pursuant to paragraph 45B(5)(a) of the ITAA 1936 as it is the provision of an ownership interest in NewCo to the ALG Securityholders.

Tax benefit

69. A shareholder obtains a tax benefit if an amount of tax payable, or any other amount payable under the ITAA 1936 or ITAA 1997, would, apart from the operation of section 45B of the ITAA 1936, be less than the amount that would have been payable, or would be payable at a later time than it would have been payable,

if the capital benefit had been an assessable dividend (subsection 45B(9) of the ITAA 1936).

70. In the event that the issue of the shares in NewCo was a dividend rather than a capital benefit, it is likely that ALG Securityholders would have incurred a greater tax liability. Consequently, the receipt of the capital benefit will represent a tax benefit.

Relevant circumstances

71. For the purposes of paragraph 45B(2)(c) of the ITAA 1936, the Commissioner is required to consider the 'relevant circumstances' set out in subsection 45B(8) of the ITAA 1936 to determine whether any part of the scheme would be entered into for a purpose, other than an incidental purpose, of enabling a relevant taxpayer to obtain a tax benefit. The test of purpose is an objective one. The relevant taxpayers in this instance would be the ALG Securityholders.

72. Subsection 45B(8) of the ITAA 1936 sets out a non-exhaustive list of circumstances that are relevant in determining whether, in relation to the scheme, any person has more than an incidental purpose of enabling a taxpayer to obtain a tax benefit.

73. Having regard to the relevant circumstances of the Corporatisation, it is apparent that the tax benefit obtained by the ALG Securityholders from the issue of shares in NewCo was merely incidental to the scheme to restructure the ALG stapled structure.

74. Accordingly, the Commissioner will not make a determination under subsection 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies.

Appendix 2 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10; CR 2014/98

Legislative references:

- ITAA 1936
- ITAA 1936 6(1)
- ITAA 1936 45B
- ITAA 1936 45B(2)(a)
- ITAA 1936 45B(2)(b)
- ITAA 1936 45B(2)(c)
- ITAA 1936 45B(3)
- ITAA 1936 45B(5)(a)
- ITAA 1936 45B(8)
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- ITAA 1997 112-25(4)(a)
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- ITAA 1997 615-5
- ITAA 1997 615-5(1)(b)
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- ITAA 1997 615-20(1)(a)
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- ITAA 1997 977-50
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- TAA 1953
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