

# ***CR 2001/36 - Income tax: Income tax: Capital Restructure By Resolute Ltd***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *1 July 2001*



## **Class Ruling**

### **Income tax: Capital Restructure By Resolute Ltd**

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#### ***Preamble***

*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Arrangement** and **Ruling** parts of this document are a ‘public ruling’ in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains Class Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

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### **What this Class Ruling is about**

1. This Ruling sets out the Commissioner’s opinion on the way in which the ‘tax law(s)’ identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

#### **Tax law(s)**

2. This Ruling relates to the application of the following provisions of the *Income Tax Assessment Act 1936*:

- Section 177E (stripping of company profits); and
- Part IVA (Schemes to reduce income tax).

#### **Class of persons**

3. All shareholders of Resolute Ltd (“Resolute”) who participate in the capital restructure.

#### **Qualifications**

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

5. The class of persons defined in this Ruling may rely on its contents provided the arrangement described below at paragraph 9 is carried out in accordance with the details of the arrangement provided in this Ruling.

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

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- this Ruling may be withdrawn or modified.

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## Date of effect

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8. This Class Ruling applies to the year ended 30 June 2002.

## Arrangement

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9. The arrangement that is the subject of the Ruling is described below. This description is based on the application for the class ruling dated 8 May 2001 in relation to the proposal by Resolute to restructure its capital. This document, or relevant parts of it, as the case may be, form part of and are to be read with this description.

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

- (a) A new company (referred to as "NewCo") will be interposed between Resolute and its existing shareholders (ordinary and preference).
- (b) The shareholders of Resolute will be invited to exchange their shares in Resolute for ordinary shares in NewCo. It is anticipated that the exchange will be on the following terms:
  - Ordinary shareholders will receive 1 NewCo share in exchange for each 5 Resolute ordinary shares they hold; and

- Preference shareholders will receive an estimated 2.25 NewCo shares for every Resolute preference share they hold. In addition, preference shareholders will receive 7 cents for every Resolute preference share they hold.
- (c) Resolute will loan monies on arms length terms to NewCo to enable it to fund the cash component of the preference share acquisition. This loan will need to be separately approved by Resolute shareholders.
- (d) Resolute's operating foreign subsidiaries have current year profits. It is intended that dividends from these foreign subsidiaries will be paid to Resolute which in turn will pay dividends on the convertible cumulative redeemable preference shares [to Newco] after the implementation of the capital restructure.

## **Ruling**

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10. In relation to the proposed capital restructure by Resolute, it is confirmed that:

- (a) Section 177E will not apply to the arrangement; and
- (b) No other provision within Part IVA applies.

## **Explanations**

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### **A. Section 177E - Effect of Capital reconstruction**

11. Resolute has requested confirmation that the proposed capital restructure will not attract the operation of Section 177E (Stripping of company profits).

12. Section 177E is specifically directed at the vendor shareholders of the target company and applies to a 'scheme by way of or in the nature of dividend stripping or a scheme having substantially that effect'. It applies only to those schemes which can be said to have the dominant purpose of tax avoidance, namely, of enabling the vendor shareholders to receive profits of the target company in a substantially tax- free form, thereby avoiding tax that would or might be payable if the target company's profits were distributed to shareholders by way of dividends (*FCT v Consolidated Press Holdings Ltd*, *FCT v Murray Leisure Group Pty Ltd*, *CPH Property Pty Ltd v FCT* [2001] HCA 32; 2001 ATC 4343; 47 ATR 229.)

13. From the information presented by Resolute, the following matters are evident:

- (a) Resolute - the target company - has over \$200 million in accumulated losses. It does not have any profits out of which a dividend may presently be paid.
- (b) The current year profits that exist in Resolute's operating foreign subsidiaries represent only a small component of the value of the Resolute group. For commercial reasons, dividends have not to date been paid from these profits.
- (c) Resolute intends for its foreign operating subsidiaries to pay a dividend out of current year operating profits, that could be considered to be part of the scheme of capital reconstruction.

It is intended that Resolute will pay a dividend on the preference shares to Newco subsequent to the acquisition by Newco of the Resolute preference shares. Resolute has stated that there are commercial reasons for paying the dividend and it will not be paid with the intention of avoiding tax.

- (d) The shareholders of Newco, subject to the discretion of the company to pay dividends, will always be entitled to receive dividends from any profits declared by the company. Newco will collectively retain 100% ownership of the Resolute group.
- (e) The value of the Newco shares exchanged for the Resolute shares is not greater than the market value of the Resolute shares or the paid-up capital of the Resolute shares.
- (f) The reasons for the re-organisation relate to removing marketplace uncertainty as to the value and rights attaching to each class of Resolute shares and providing an avenue for new capital to be raised and value created which is not undermined by any potential claims against Resolute.
- (g) The corporate restructure will not be entered into or carried out for the dominant purpose of the avoidance of taxation.

14. The aggregation of these factors leads to the conclusion that the scheme proposed by Resolute is not a dividend stripping scheme or a scheme having substantially that effect.

**Conclusion**

15. The corporate restructure is not within Section 177E.

**B. The general provisions of Part IVA**

16. For Part IVA to apply there must be a “scheme” (section 177A), a tax benefit (section 177C) and a dominant purpose of entering into the scheme to obtain a tax benefit (section 177D). The scheme of arrangement will be a “scheme”. It will commence on the day the shares in Resolute are exchanged.

17. However, as it is not possible to establish a reasonable expectation that dividend income would be derived by the shareholders in any particular income year, as the payment of dividends lies in the discretion of Newco, a tax benefit cannot be identified. Therefore, Part IVA will not apply.

**Conclusion**

18. Part IVA will not apply to the capital restructuring arrangement.

**Detailed contents list**

19. Below is a detailed contents list for this Class Ruling:

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# CR 2001/36

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## Commissioner of Taxation

22 August 2001

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*Previous draft:*

Not previously issued in draft form

- ITAA 1936 177A

- ITAA 1936 177C

- ITAA 1936 177D

*Related Rulings/Determinations:*

CR 2001/1; TR 92/1; TR 97/16

*Case references:*

- *FCT v Consolidated Press*

*Holdings Ltd, FCT v Murray*

*Leisure Group Pty Ltd, CPH*

*Property Pty Ltd v FCT* [2001]

HCA 32; 2001 ATC 4343;

47 ATR 299

*Subject references:*

- Dividend stripping

*Legislative references:*

- ITAA 1936 177E

- ITAA 1936 Part IVA

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ATO References

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