



CR 2003/10 - Income tax: Special Dividend, Capital Reduction and Related Scheme of Arrangement for the Demerger of Rinker Group Limited from CSR Limited

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Class Ruling

Income tax: Special Dividend, Capital Reduction and Related Scheme of Arrangement for the Demerger of Rinker Group Limited from CSR Limited

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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**, **Withdrawal**, **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.*

What this Class Ruling is about

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

Tax law(s)

2. The tax laws dealt with in this Ruling are
- Subsection 6(1) of the *Income Tax Assessment Act 1936* ('ITAA 1936');
 - Section 44 of the ITAA 1936;
 - Section 45B of the ITAA 1936;
 - Section 45BA of the ITAA 1936;
 - Section 45C of the ITAA 1936;
 - Subsection 128B(3D) of the ITAA 1936;
 - Subsection 160ARDM(1) of the ITAA 1936;
 - Section 104-135 of the *Income Tax Assessment Act 1997* ('ITAA 1997');
 - Division 125 of the ITAA 1997;

- Section 125-55 of the ITAA 1997;
- Section 125-65 of the ITAA 1997;
- Section 125-70 of the ITAA 1997;
- Section 125-80 of the ITAA 1997;
- Section 125-85 of the ITAA 1997;
- Section 136-25 of the ITAA 1997; and
- Section 202-45 of the ITAA 1997.

Class of persons

3. The class of persons to whom this Ruling applies are the shareholders of ordinary shares in CSR Ltd who will be entitled under a proposed demerger scheme of arrangement to ordinary shares in Rinker Group Ltd.

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 paragraphs 10 to 19 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:

- (a) 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
- (b) this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling applies to the year of income ended 30 June 2003 or substituted accounting period. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Withdrawal

9. This Ruling is withdrawn and ceases to have effect for income years after 30 June 2003 or substituted accounting period. The Ruling continues to apply, in respect of the tax laws ruled upon to all persons within the specified class who enter into a specified arrangement during the term of the Ruling. Thus the Ruling continues to apply to those persons, even following its withdrawal, for arrangements entered into prior to the withdrawal of the Ruling. This is subject to there being no change in the arrangement or in the persons' involvement in the arrangement.

Arrangement

10. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- Letter from CSR Ltd ('CSR') dated 15 October 2002 enclosing Application for Class Ruling and other material; and
- E-mail advice from CSR dated 24 October, 6 November, 7 November, 19 December 2002 and 17 January, 29 January, 4 February 2003.

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

11. The purpose of the arrangement is the demerger of Rinker Group Ltd ('RGL') and its subsidiaries from the CSR Group. The

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demerger group will consist of CSR and all its demerger subsidiaries. A restructure of group assets will take place prior to the demerger involving transfers of assets between members of the CSR group and RGL and its wholly owned subsidiaries. Just before the restructuring it is reasonable for CSR to assume that more than 50% of the shares in CSR are owned by Australian residents. All CSR shares on issue (approximately 935 million) are fully paid ordinary shares. CSR will pay a special dividend of approximately \$0.69 per share and will undertake a reduction of capital of approximately \$0.84 per share. The exact amounts of special dividend and reduction of capital per share will be communicated to the shareholders in the scheme booklet. Under the related scheme of arrangement, each CSR shareholder's entitlement to the dividend and return of capital will be compulsorily applied as moneys subscribed for the issue of new fully paid ordinary shares in RGL. CSR shareholders will be entitled to one share in RGL for every one CSR share held. Just after the demerger each CSR shareholder will have the same proportionate total market value of shares in CSR and RGL as each owned in CSR just before the demerger.

12. RGL will issue approximately 935 million new shares under the arrangement. Immediately prior to the arrangement, CSR will hold 1690 ordinary shares in RGL. These shares will be sold on-market shortly after the demerger.

13. The special dividend of approximately \$0.69 per share will be debited by CSR against its retained earnings account. The capital reduction of approximately \$0.84 per share will be debited by CSR against its share capital account.

14. No transfers have, or will, take place to taint the CSR share capital account as defined by subsection 160ARDM(1) of the ITAA 1936.

15. The effective date of the scheme of arrangement will be the date the final court order is lodged with ASIC.

16. The cost base and reduced cost base adjustments required under sections 125-80 or 125-85 of the ITAA 1997 will be advised to shareholders by CSR following the demerger, and will be based on the average market values of the original and new interests in the first five trading days after the demerger.

17. At the conclusion of the arrangement, the shares in RGL will be listed on the Australian Stock Exchange.

18. CSR will not elect to treat the special dividend as an assessable dividend for shareholders under subsection 44(2) of the ITAA 1936.

19. Just after the demerger, at least 50% by market value of the CGT assets of RGL and its subsidiaries will be used in businesses carried on by those entities.

20. No foreign resident CSR shareholder, or their associates, will beneficially own 10% or more by value of the shares in RGL.

Ruling

21. A demerger will happen to the CSR demerger group for the purposes of Division 125 of the ITAA 1997 in relation to the restructuring described under the arrangement.

22. CSR shareholders (other than non-resident shareholders) may choose to obtain a CGT roll-over under Division 125.

23. If a roll-over is chosen under Division 125, any capital gain or capital loss which would otherwise have been made from a CGT event happening under the demerger to the CSR shares will be disregarded under subsection 125-80(1).

24. If a shareholder does not choose a Division 125 roll-over, no capital gain will arise if the capital return amount in respect of a share (ie. approximately \$0.84 per share) is less than the cost base of that share (section 104-135).

25. Irrespective of whether a shareholder chooses a Division 125 roll-over, a shareholder (other than a non-resident shareholder or a shareholder in respect of pre-CGT shares) will be required to apportion the CGT cost base and reduced cost base of their CSR shares immediately before the demerger over the first element of the cost base and reduced cost base of their CSR and RGL shares immediately after the demerger having regard to the relative market values of the CSR and RGL shares (or anticipated reasonable approximations of those values) just after the demerger.

26. The special dividend of approximately \$0.69 per share will qualify as a demerger dividend such that it will not be assessable income or exempt income, pursuant to subsection 44(4) of the ITAA 1936.

27. For non-Australian residents, the special dividend of approximately \$0.69 per share will be exempt from Australian dividend withholding tax, pursuant to subsection 128B(3D) of the ITAA 1936.

28. The special dividend of approximately \$0.69 per share will be an unfrankable distribution under section 202-45 of the ITAA 1997.

29. The Commissioner will not make a determination under paragraph 45B(3)(a) of the ITAA 1936 that section 45BA applies to the whole, or any part, of the demerger benefit provided to the shareholders under the demerger. Nor will the Commissioner make a determination under paragraph 45B(3)(b) that section 45C applies to

the whole, or any part, of the capital benefit provided to the shareholders under the demerger.

Explanations

Demerger

30. For the purposes of the restructuring, under Division 125 of the ITAA 1997 the demerger group will consist of CSR and all of its demerger subsidiaries (section 125-65). CSR is the head entity (subsection 125-65(3)) of the demerger group and is also the demerging entity (subsection 125-70(7)). RGL, as a wholly-owned subsidiary of CSR, is a demerger subsidiary (subsection 125-65(6)) and is the demerged entity (subsection 125-70(6)).

31. Under the restructuring, RGL will issue approximately 935 million shares to existing CSR shareholders. The demerged entity (RGL) will thereby issue sufficient new ownership interests in itself with the result that owners of original interests in the head entity (CSR) will own at least 80% of the total ownership interests in the demerged entity. Accordingly, the condition in paragraph 125-70(1)(b) will be satisfied.

32. Under the restructuring, a CGT Event G1 happens to the CSR shareholders in respect of their CSR shares (as a result of the capital reduction) and those shareholders acquire new interests in RGL and nothing else. Accordingly, the condition in paragraph 125-70(1)(c) is satisfied.

33. The acquisition of RGL shares happens only because the CSR shareholders owned CSR shares. Accordingly, the condition in paragraph 125-70(1)(d) is satisfied.

34. The new interests acquired in RGL are shares, satisfying paragraph 125-70(1)(e).

35. Since it is reasonable for CSR to assume that more than 50% of the shares in CSR are owned by Australian residents, the condition in paragraph 125-70(1)(f) is satisfied.

36. Neither CSR nor RGL is a superannuation fund, satisfying paragraph 125-70(1)(g).

37. CSR has only ordinary shares on issue (approximately 935 million currently on issue). RGL will have only ordinary shares on issue (approximately 935 million to be issued under the demerger). Each CSR shareholder will acquire one RGL share for every one CSR share they own.

- They will therefore each acquire under the demerger the same (or nearly as practicable the same) proportion

of shares in RGL as they owned in CSR just before the demerger; and

- Just after the demerger, they will each have the same proportionate total market value in CSR and RGL as they had in CSR just before the demerger.

Accordingly, the condition in subsection 125-70(2) will be satisfied.

38. No other CGT roll-over is available (see subsection 125-70(5)).

39. Accordingly, the proposed CSR demerger will qualify as a demerger for the purposes of Division 125.

CGT Roll-over

40. Subsection 125-55(1) provides that you can choose to obtain a roll-over if:

- (a) you own an original interest in a company (your original interest);
- (b) the company is the head entity of a demerger group;
- (c) a demerger happens to the demerger group; and
- (d) under the demerger, a CGT event happens to your original interest and you acquire a new or replacement interest (your new interest) in the demerged entity.

41. Subsection 125-55(2) provides that you cannot choose to obtain roll-over for an original interest if:

- (a) you are a foreign resident; and
- (b) the new interest you acquire under the demerger in exchange for the original interest does not have the necessary connection with Australia just after you acquire it (section 136-25).

42. Under the arrangement:

- A CSR shareholder owns an original interest in CSR;
- CSR is the head entity of the CSR demerger group;
- A demerger happens to the CSR demerger group;
- As a result of the capital reduction, a CGT Event G1 will happen for all shareholders: section 104-135; and
- No foreign resident shareholder in CSR has an asset with the necessary connection with Australia (section 136-25).

43. On this basis, all CSR shareholders (other than foreign resident shareholders) will be entitled to choose to obtain roll-over under Division 125. The consequences of choosing the roll-over are set out in section 125-80, and include:

- (i) any capital gain or capital loss which might otherwise have been made under the demerger will be disregarded;
- (ii) a shareholder who acquired CSR shares before 20 September 1985 (ie. pre-CGT) will be taken to have acquired the corresponding RGL shares before that date.

CGT treatment if no roll-over chosen

44. If a shareholder does not choose Division 125 roll-over, the consequences of roll-over set out above will not arise. However, the first element of the cost base of the CSR and RGL shares will be calculated as described under the cost base apportionment heading below.

45. In addition, it will be necessary to determine whether the approximate \$0.84 per share capital return will give rise to an assessable capital gain. The capital return will constitute a CGT Event G1 (section 104-135). However, under that section, a capital gain will only arise to the extent that the capital return exceeds the cost base of the share. If the cost base of a share exceeds the amount of the capital return (ie. approximately \$0.84) there will be no resulting capital gain as a consequence of the demerger.

Cost base apportionment

46. If a shareholder chooses to obtain a roll-over in relation to post-CGT shares, section 125-80 requires an apportionment of the total cost bases and reduced cost bases of all of the shareholder's CSR shares over those shares and the new RGL shares received in respect of those shares. The apportionment must have regard to the relative market values of the original and new shares (or anticipated reasonable approximations of those market values) just after demerger. Note 2 to subsection 125-80(2) provides that the head entity or demerging entity may advise shareholders of the proportions. The appropriate cost base and reduced cost base adjustments will be advised to shareholders following the demerger, and will be based on the average market values of the original and new shares in the first five trading days after the demerger.

47. If a shareholder does not choose a roll-over in relation to post-CGT shares under the demerger, section 125-85 provides that the

shareholder must make the same adjustment for the cost base and reduced cost base of the original and new shares as would have been required under section 125-80 if a roll-over had been chosen. The appropriate cost base and reduced cost base adjustments will be advised to shareholders following the demerger, and will be based on the average market values of the original and new shares in the first five trading days after the demerger.

Demerger dividend

48. The total market value of new RGL shares issued under the CSR demerger will constitute the demerger allocation, as defined in subsection 6(1) of the ITAA 1936.

49. As the total special dividend is less than the demerger allocation, the whole of the special dividend of approximately \$0.69 per share will be a demerger dividend. CSR will not make an election under subsection 44(2) to treat the demerger dividend as assessable. Accordingly, the special dividend should be neither assessable income nor exempt income to the CSR shareholders: subsection 44(4).

Dividend withholding tax

50. Subsection 128B(3D) of the ITAA 1936 excludes as income subject to Australian withholding tax a demerger dividend to which section 45B does not apply. As the Commissioner will not make a determination under subsection 45B(3) in respect of the arrangement (see below), subsection 128B(3D) will operate to preclude the application of Australian dividend withholding tax to non-Australian residents entitled to the special dividend of approximately \$0.69 per share.

Unfrankable distributions

51. A demerger dividend is included in the section 202-45 ITAA 1997 list of unfrankable distributions. Accordingly, the special dividend of approximately \$0.69 per share will be unfrankable.

Section 45B

52. Section 45B of the ITAA 1936 applies to ensure that relevant amounts are treated as dividends for taxation purposes if:

- (a) components of a demerger allocation as between capital and profit do not reflect the circumstances of a demerger; or

- (b) certain payments, allocations and distributions are made in substitution for dividends.

53. Specifically, the provision applies where:

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

54. The provision of ownership interests in a company, a distribution, or the doing of a thing in relation to an ownership interest that increases the value of the ownership interest of the person, which occurs under a demerger, may be considered to be a demerger benefit and a capital benefit for the purposes of section 45B (subsections 45B(4) and (5)). However, if the provision of interests, the distribution or the thing done involves the person receiving a demerger dividend then, to that extent, it cannot be treated as a capital benefit (subsection 45B(6)). Accordingly, to the extent that the demerger benefit does not involve the receipt of a demerger dividend it will constitute both a demerger benefit and a capital benefit.

55. In this case, whilst the conditions of paragraphs 45B(2)(a) and (b) are met, the requisite purpose of enabling the CSR shareholders to obtain a tax benefit (by way of a demerger benefit or a capital benefit) is not present. In other words, having regard to the relevant circumstances of the scheme, set out in subsection 45B(8), it would not be concluded that any of the parties to the demerger entered into or carried out the scheme to obtain a tax benefit, in the form of a demerger benefit or a capital benefit.

56. It is apparent that the demerger benefit and capital benefit provided to the CSR shareholders reflect the circumstances of the demerger. In this regard, it is considered that the attribution of the demerger benefit between capital and dividend is reasonable. Also, the capital benefit provided cannot be said to be attributable to the profits of the company, nor does CSR's pattern of distributions indicate that it is being paid in substitution for a dividend. Furthermore, although the tax result for participating shareholders is favourable, there is nothing known of the circumstances of the CSR

shareholders to indicate that the demerger was structured to provide tax benefits. Accordingly, in this case the relevant circumstances outlined in paragraphs 45B(8)(c) to (g) do not incline for or against the relevant conclusion as to purpose.

Detailed contents list

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

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Commissioner of Taxation

19 February 2003

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Previous draft:

Not previously released in draft form.

Related Rulings/Determinations:

TR92/1; TR92/20; TR 97/16; CR 2001/1

Subject references:

- capital benefit
- capital gains
- cost base adjustments
- demerger
- demerger allocation
- demerger dividend
- demerger subsidiary
- demerger group
- non-resident shareholders
- return of capital
- roll-over

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 44
- ITAA 1936 44(2)
- ITAA 1936 44(4)
- 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(3)(a)
- ITAA 1936 45B(3)(b)
- ITAA 1936 45B(4)
- ITAA 1936 45B(5)
- ITAA 1936 45B(6)
- ITAA 1936 45B(8)
- ITAA 1936 45B(8)(c)

- ITAA 1936 45B(8)(d)
- ITAA 1936 45B(8)(e)
- ITAA 1936 45B(8)(f)
- ITAA 1936 45B(8)(g)
- ITAA 1936 45BA
- ITAA 1936 45C
- ITAA 1936 128B(3D)
- ITAA 1936 160ARDM(1)
- ITAA 1997 104-135
- ITAA 1997 125
- ITAA 1997 125-55
- ITAA 1997 125-55(1)
- ITAA 1997 125-55(2)
- ITAA 1997 125-65
- ITAA 1997 125-65(3)
- ITAA 1997 125-65(6)
- ITAA 1997 125-70
- ITAA 1997 125-70(1)(b)
- ITAA 1997 125-70(1)(c)
- ITAA 1997 125-70(1)(d)
- ITAA 1997 125-70(1)(e)
- ITAA 1997 125-70(1)(f)
- ITAA 1997 125-70(1)(g)
- ITAA 1997 125-70(2)
- ITAA 1997 125-70(5)
- ITAA 1997 125-70(6)
- ITAA 1997 125-70(7)
- ITAA 1997 125-80
- ITAA 1997 125-80(1)
- ITAA 1997 125-80(2)
- ITAA 1997 125-85
- ITAA 1997 136-25
- ITAA 1997 202-45
- Copyright Act 1968
- TAA 1953 Part IVAAA

ATO References

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