


CR 2003/12 - Income tax: CSR Limited Demerger - CSR Employee Share Acquisition Plan

 This cover sheet is provided for information only. It does not form part of *CR 2003/12 - Income tax: CSR Limited Demerger - CSR Employee Share Acquisition Plan*

 This document has changed over time. This is a consolidated version of the ruling which was published on *1 July 2002*

Class Ruling

Income Tax: CSR Limited Demerger – CSR Employee Share Acquisition Plan

Contents	Para
What this Class Ruling is about	1
Date of effect	8
Withdrawal	9
Arrangement	10
Ruling	16
Explanations	38
Detailed contents list	83

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.*

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. The tax laws dealt with in this Ruling are:

- Section 44 of the *Income Tax Assessment Act 1936* (‘ITAA 1936’),
- Section 97 of the ITAA 1936,
- Division 13A of Part III of the ITAA 1936,
- Part 3-1 of the *Income Tax Assessment Act 1997* (‘ITAA 1997’),
- Division 125 of Part 3-3 of the ITAA 1997, and
- Subdivision 130-D of Part 3-3 of the ITAA 1997.

Class of persons

3. The class of persons to whom this Ruling applies (‘Participating Employees’) consists of Australian resident employees of CSR Ltd (‘CSR’) and its subsidiaries who, at the date of the demerger of the CSR Group, are ‘eligible employees’ under the

CSR Employee Share Acquisition Plan ('ESAP') with CSR shares held on their behalf by the ESAP Trustee and in respect of which an election under section 139E of the ITAA 1936 has not been made.

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 15 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.
7. This work is copyright. Apart from any use permitted under the *Copyright Act 1968* no Class Ruling may be reproduced by any process without prior written permission from the Commonwealth. Requests and enquiries concerning reproduction and rights should be sent to:

Commonwealth Copyright Administration
Intellectual Property Branch
Department of Communications, Information Technology and the Arts
GPO Box 2154
Canberra ACT 2601

or by e-mail: commonwealth.copyright@dcita.gov.au.

Date of effect

8. This Ruling applies to the year of income ended 30 June 2003. 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 on 30 June 2003 and ceases to have effect for income years commencing after that date. 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 and incorporates so far as relevant the information contained in the following documents:

- Application for Class Ruling dated 18 September 2002,
- Copy of the ESAP Plan Rules, and
- Copy of Trust Deed for the ESAP Trust.

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 arrangement for the purposes of this Ruling has two principal aspects – the participation of Participating Employees in an employee share acquisition scheme to which Division 13A applies and a demerger of the corporate group headed by the company in which the employees' shares are held.

The Employee Share Acquisition Scheme

12. Under the ESAP which commenced in 1998:

- Participating Employees have acquired fully paid ordinary shares in CSR under the ESAP by sacrificing a portion of their salary and/or bonus,
- The CSR shares so acquired are subject to a disposal restriction and to forfeiture where the Participating Employee is dismissed with cause or has committed any act of fraud, defalcation or gross misconduct in relation to the affairs of CSR or any of its subsidiaries,

- The Participating Employee's shares are held on trust by the ESAP Trustee, with the legal ownership of the shares remaining with the ESAP Trustee, until the conditions for withdrawal of the shares are satisfied and a Notice of Withdrawal is approved by CSR,
- If a Participating Employee ceases to be employed by CSR or one of its subsidiaries, including the situation where the Participating Employee's employer ceases to be a CSR subsidiary, the Participating Employee will be deemed to have submitted a Notice of Withdrawal,
- The Participating Employee is entitled to any dividends or other distribution (whether income or capital in nature) made in respect of the CSR shares held under the ESAP on their behalf,
- The ESAP has operated from its inception on the premise that shares acquired by Participating Employees are 'qualifying shares' for the purposes of Division 13A, and
- The Participating Employees have not been assessed on the discount given in relation to their acquisition of the shares.

The Demerger

13. CSR is proposing a demerger of Rinker Group Limited ('RGL'), formerly named HBMI International Ltd, and its subsidiaries from the CSR Group. 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. Under the proposed demerger arrangement CSR will declare 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 will be communicated in the Scheme Booklet that will issue to all CSR shareholders.

14. Under a scheme of arrangement, each CSR shareholder's entitlement to the special dividend and return of capital will be compulsorily applied as moneys subscribed for the issue of a pro rata number of new fully paid ordinary shares in RGL. CSR shareholders will be entitled to one share in RGL for every one CSR share held. The ESAP Trustee, as the legal owner of the CSR shares under the ESAP, will receive the allotment of shares in RGL. The RGL shares allotted to the ESAP Trustee will be held on behalf of the Participating Employees and will not be subject to any restrictions or conditions. The RGL shares are to be immediately distributed by the ESAP

Trustee to the beneficial owners (i.e. the Participating Employees) after allotment.

15. The proposed demerger arrangement is a 'demerger' for the purposes of Division 125 (see Class Ruling CR 2003/10, Income Tax: Special Dividend, Capital Reduction and Related Scheme of Arrangement for the Demerger of Rinker Group Limited from CSR Limited) ('the Demerger Class Ruling'). Hereafter in this ruling it is referred to as 'the Demerger'.

Ruling

Consequences for taxation of Participating Employees of certain events

Transfer of employment

16. Where a Participating Employee is transferred in their employment between companies in the CSR Group prior to the Demerger the employee will not be assessable on the discount given in relation to the acquisition of CSR shares solely as a consequence of their employment ceasing.

17. However, if at any time a Participating Employee's employment with the CSR Group ceases, including by a transfer on or after the Demerger to employment with RGL or any of its subsidiaries, the employee will be assessable on the discount given in relation to their acquisition of CSR shares in the income year in which their employment ceases.

18. The discount to be included in the Participating Employee's assessable income where the shares are disposed of in an arm's length transaction within 30 days of the cessation time is the amount or value of the consideration received for the disposal under subsection 139CC(3).

19. The discount to be included in the Participating Employee's assessable income where the shares are not disposed of in an arm's length transaction within 30 days of the cessation time is the market value of the shares at the cessation time under subsection 139CC(4). The market value of the shares is determined under section 139FA.

The exit of RGL and its subsidiaries from the CSR group

20. A Participating Employee who is employed by CSR or any of its subsidiaries at the date of the Demerger and who continues to be employed by the CSR group after the Demerger will not be assessable in that income year on the discount given in relation to the acquisition of their CSR shares as a consequence of the Demerger.

21. A Participating Employee who is employed by RGL and its subsidiaries at the date of the Demerger will be assessable in that income year on the discount given in relation to their acquisition of CSR shares as a consequence of the Demerger. The same rules apply for calculating the amount of the discount to be included as stated in paragraphs 18 and 19 above.

Disposal of CSR shares at or after the cessation time

22. Upon a Participating Employee becoming absolutely entitled to the CSR shares when the Notice of Withdrawal is approved, a CGT event E5 will happen under subsection 104-75(1). There will be no capital gain or loss arising on the CGT event E5 happening as the Participating Employee does not incur any expenditure to acquire their interest in the shares.

23. When the CSR share is disposed of at or after the cessation time, either by a Participating Employee or by the ESAP Trustee on their behalf, a CGT event A1 will happen. A capital gain arises to the extent that the capital proceeds exceed the cost base of the share. A capital loss arises where the capital proceeds are less than the reduced cost base of that share.

24. Any capital gain or capital loss arising on a CSR share that is disposed of under an arm's length transaction at or within 30 days after the cessation time is disregarded under subsection 130-83(2).

25. Where the CSR share is disposed of more than 30 days after the cessation time, there is no roll-over relief available under subsection 125-55(1) with respect to any capital gain or capital loss arising on the CGT event A1 happening as that event will not happen 'under the demerger'.

26. Where the CSR share is not disposed of in an arm's length transaction at or within 30 days after the cessation time, the first element of the cost base and reduced cost base of the CSR share is its market value at that time (subsection 130-83(3)).

27. Where the CSR share has been held by the Participating Employee for at least 12 months from the date the share was acquired for CGT purposes, any capital gain will be taxed as a discount capital gain under Subdivision 115-A.

Declaration by CSR of the special dividend

28. The special dividend of \$0.69 per share attributable to the CSR shares acquired by a Participating Employee under the ESAP is not assessable income.

Return of capital by CSR

29. The return of capital of \$0.84 per share attributable to the CSR shares acquired by a Participating Employee under the ESAP is not part of any net capital gain included in their assessable income.

The satisfaction of the dividend and return of capital by allotment of the RGL shares

30. Except as ruled in paragraph 32, the value of the RGL shares allotted to the ESAP Trustee on account of a Participating Employee's CSR shares is not part of the employee's assessable income. It is not income according to ordinary concepts and is not subject to tax under Division 13A.

31. As the Participating Employee becomes absolutely entitled to the RGL shares immediately after they are allotted to the ESAP Trustee, a CGT event E5 will happen. It is expected that there will be no capital gain or capital loss because the cost base of the Participating Employee's interest in the trust capital to the extent that it relates to the RGL share will be equal to the market value of the RGL share at the time the CGT event E5 happens. In the event there is a capital gain or capital loss, that gain or loss is disregarded under subsection 104-75(6).

32. Any capital gain arising to the ESAP Trustee from the CGT event E5 happening will be included in the assessable income of the Participating Employee under paragraph 97(1)(a) as the Participating Employee is presently entitled to the income of the trust. Rules are prescribed in section 115-215 for calculating the Participating Employee's capital gain that is included under paragraph 97(1)(a).

33. Any capital loss arising to the ESAP Trustee from the CGT event E5 happening will be retained by the ESAP Trustee and not passed on to the Participating Employee.

Transfer of RGL shares by the ESAP Trustee to the Participating Employees

34. The transfer of the RGL shares by the ESAP Trustee to a Participating Employee does not give rise to any tax implications for the Participating Employee.

Disposal of RGL shares

35. When a RGL share is disposed of either by the Participating Employee directly or by the ESAP Trustee on behalf of the Participating Employee, CGT event A1 will happen. A capital gain arises to the extent that the capital proceeds exceed the cost base of

the share. A capital loss arises where the capital proceeds are less than the reduced cost base of that share. The first element of the cost base of a RGL share is its market value at the time the Participating Employee becomes absolutely entitled to it (subsection 112-20(1)).

36. There is no roll-over relief available to a Participating Employee under Division 125 with respect to any capital gain or capital loss arising on disposal of their RGL shares. Under Division 125 a RGL share is not an 'original interest' in relation to which the CGT event happens 'under the demerger'.

37. Where a RGL share is disposed of at least 12 months after the Participating Employee acquired it for CGT purposes, any capital gain will be taxed as a discount capital gain.

Explanations

When will the discount given be included in assessable income?

38. The ESAP is an employee share scheme to which Division 13A of the ITAA 1936 applies. A premise upon which this Ruling is based is that the shares acquired are 'qualifying shares' for the purposes of the Division. This means that Participating Employees, in relation to their acquisition, had the option of being taxed on the discount given in the year of income that they acquired the shares or in the income year that the 'cessation time' occurs. As they did not make an election under section 139E the latter applies.

39. A matter of interest for these employees in the context of the proposals by CSR for the restructuring of the Group is whether the cessation time and consequentially the time for taxing of the assessable income derived in the nature of the discount will be triggered.

40. Cessation time with respect to a share is defined in section 139CA. As under the ESAP Plan Rules, the shares were subject to a disposal restriction and risk of forfeiture at the time they were acquired, subsection 139CA(2) applies.

41. Subsection 139CA(2) provides that the cessation time is the earliest of:

- (a) the time when the taxpayer disposes of the shares,
- (b) the later of :
 - (i) the time when any restriction preventing the taxpayer from disposing of the shares ceases to have effect, and

- (ii) the time when any condition that could result in the taxpayer forfeiting the shares ceases to have effect,
- (c) the time when the employment in respect of which the shares were acquired ceases, and
- (d) the end of 10 years after the taxpayer acquired the shares.

42. Relevantly Participating Employees may be concerned about whether events including changes to their employment and the exiting of RGL and its subsidiaries will have the effect of the cessation time occurring with respect to their shares.

43. For changes to employment arrangements to be significant, it is necessary that there be a cessation of the taxpayer's employment for Division 13A purposes. Ceasing employment in respect of which the shares were acquired is defined in subsection 139CA(3). It only ceases when the taxpayer is no longer employed by any of the following:

- (a) the employer of the taxpayer in that employment – in other words, the company employing the Participating Employer at the time that the shares were acquired,
- (b) a holding company of the employer – this would include any company higher up the chain than the employer and ultimately CSR Limited, and
- (c) a subsidiary of the employer or of a holding company of the employer – this would include another company in the CSR Group.

44. It follows that transfers of Participating Employees between companies in the CSR Group will not cease the employment in respect of which the shares were acquired under the ESAP. However, employment will cease and cause the cessation time to occur if a Participating Employee leaves the CSR Group altogether, e.g. resigns or retires, or on or after the Demerger moves in employment from a CSR Group company to a RGL Group company.

45. The exiting of the RGL Group from the CSR Group will be a critical event for some Participating Employees. This will be regardless of the fact that their employer does not change.

46. Under the ESAP Plan Rules restrictions imposed on shares are lifted in certain circumstances. One such circumstance is when a Participating Employee ceases to be an Eligible Employee under the Plan by virtue of the employer company ceasing to be a subsidiary of CSR. This will be the situation exactly of RGL and its subsidiaries at the point of demerger. All Participating Employees of the demerged companies will no longer be eligible and will be entitled to call for

their CSR shares. This is a cessation time event under paragraph 139CA(2)(b).

47. In contrast, Participating Employees who remain in their employment with the CSR Group will continue to be Eligible Employees under the Plan. They will not be affected under the ESAP Plan Rules in the same way as the employees of RGL and its subsidiaries.

48. The condition in paragraph 139CA(2)(a) – the disposal of the share is not seen as a critical event for present purposes. A Participating Employee is not permitted under the ESAP Plan Rules to dispose of their shares before a Notice of Withdrawal is approved and this cannot occur until after the restrictions are lifted (paragraph 139CA(2)(b)).

49. The condition in paragraph 139CA(2)(d) – the end of 10 years from the date of acquisition – is potentially relevant but is unrelated to any Group restructuring.

The amount included in assessable income in the income year that the cessation time occurs

Discount where CSR shares disposed of within 30 days after the cessation time

50. Subsection 139CC(3) provides for the calculation of the discount to be included in assessable income where the shares are disposed of by the Participating Employee in an arm's length transaction within 30 days after the cessation time. As the Participating Employee has not provided any consideration for the acquisition of the shares, the discount on the CSR shares is the amount or value of any consideration received on the disposal.

Discount where CSR shares not disposed of within 30 days after the cessation time

51. Shares that are not disposed of in an arm's length transaction within 30 days after the cessation time either by the Participating Employee directly or by the ESAP Trustee on behalf of the Participating Employee will have the discount calculated in accordance with subsection 139CC(4). As no consideration has been provided by the Participating Employee for the shares, the discount to be included is the market value of the shares at the cessation time.

52. As the shares in CSR are listed on an approved stock exchange the market value of the shares will be determined in accordance with section 139FA. The market value of an ordinary share under section 139FA is:

- if there was at least one transaction on the ASX in those shares in the week up to and including the day of acquisition – the weighted average of the prices at which those shares were traded on the ASX during that week, or
- if there were no such transactions in the week up to and including the day of acquisition – the last price at which an offer was made on the ASX in that period to buy such a share, or if no such offer was made, the value of the share determined as if section 139FB applied to the share.

Capital gains tax implications of a disposal of CSR shares at or after the cessation time

53. The CSR shares will no longer be subject to the disposal restriction or forfeiture conditions when the Notice of Withdrawal is approved. The Participating Employee will become absolutely entitled to the shares as against the ESAP Trustee, giving rise to a CGT event E5 happening. As the Participating Employee does not incur any expenditure to acquire their interest in the shares, any capital gain or loss of the employee arising on the CGT event E5 will be disregarded under subsection 104-75(6).

54. Subsection 104-10(1) provides that CGT event A1 happens if the taxpayer disposes of a CGT asset (i.e. CSR share). Subsection 104-10(2) provides that a CGT asset is disposed of if a change of ownership occurs in relation to the asset.

55. Under subsection 104-10(4) a capital gain arises on the CGT event A1 happening if the capital proceeds from the disposal is more than the cost base of the asset. A capital loss arises if the capital proceeds are less than the reduced cost base of that asset.

56. Subsection 130-83(2) provides that any capital gain or capital loss arising from a CGT event A1 is disregarded where the share that is a qualifying share (i.e. a share within the meaning of section 139CD of Division 13A) is disposed of in an arm's length transaction at the cessation time or within 30 days after that time. It is a premise of this Ruling that CSR shares acquired under the ESAP are qualifying shares for the purposes of Division 13A.

57. A taxpayer under subsection 125-55(1) can choose to obtain a roll-over if a CGT event happens to the original interest of the taxpayer 'under the demerger.' A CGT event happening subsequent to the Demerger will therefore not qualify for roll-over under Division 125. Accordingly, where the CSR share is disposed of more than 30 days after the cessation time, any capital gain or capital loss is not disregarded.

Cost base of the CSR share

58. Subsection 130-83(3) provides that the first element of the cost base and reduced cost base of the CSR share is its market value (as determined under section 139FA) at the cessation time where the share that is a qualifying share is not disposed of in an arm's length transaction at or within 30 days after the cessation time.

Discount capital gain

59. A Participating Employee will be entitled to a 50% CGT discount where the requirements of Subdivision 115-A are satisfied. For the purpose of determining whether the 12 month holding period is satisfied, the date of acquisition for CGT purposes is when the Participating Employee becomes absolutely entitled to the shares as against the ESAP Trustee.

Declaration by CSR of the special dividend

60. Paragraphs 48 and 49 of the Demerger Class Ruling CR 2003/10 explains why the special dividend of \$0.69 per share is a demerger dividend. Subsection 44(4) will apply such that the demerger dividend will not be assessable income and therefore not form part of the net income of the ESAP Trust. Paragraph 97(1)(a) will not apply to include the special dividend in the assessable income of the Participating Employee

Return of capital by CSR

61. Subsection 104-135(1) provides that CGT event G1 happens if a company makes a payment in respect of shares the taxpayer owns in the company and some or all of the payment (the *non-assessable part*) is not a dividend. A taxpayer acquires a CGT asset when they become its owner under subsection 109-5(1). The ESAP Trustee has legal ownership of the share held in trust under the ESAP on behalf of the Participating Employee. Therefore the return of capital of \$0.84 does not constitute a CGT event G1 happening for the Participating Employee.

Satisfaction of the dividend and return of capital by the allotment of RGL shares

62. Under the Demerger, the special dividend and return of capital is compulsorily applied as moneys subscribed for a pro rata number of RGL shares. The allotment of the RGL shares is to be made to all CSR shareholders, including the ESAP Trustee who holds the legal ownership of the CSR shares on behalf of Participating Employees. The Participating Employee will therefore acquire the RGL shares by virtue of their entitlement as a beneficiary of the ESAP Trust and not *'in respect of, or for or in relation directly or indirectly to'* any employment with CSR (subsection 139C(1)). The value of the RGL shares will therefore not constitute income according to ordinary concepts. The Participating Employee will not be subject to the application of Division 13A in relation to the RGL shares allotted.

63. Clause 3.3 of the ESAP Trust Deed provides that a Participating Employee is beneficially and absolutely entitled to any dividend or other distribution (whether income or capital in nature) made in respect of CSR shares held under the ESAP. As the special dividend and return of capital to which the Participating Employee is absolutely and beneficially entitled under the ESAP Trust Deed is satisfied by the allotment of RGL shares, the Participating Employee will become absolutely entitled to the RGL shares immediately after they are allotted to the ESAP Trustee.

64. Under subsection 104-75(1), a CGT event E5 will happen if a beneficiary becomes absolutely entitled to a CGT asset of a trust as against the trustee. The CGT event E5 will happen immediately after the RGL shares are allotted to the ESAP Trustee, as it is at this time that the Participating Employee will become absolutely entitled to the RGL shares.

65. Under subsection 104-75(5), a beneficiary will make a capital gain if the market value of the asset at the time the CGT event E5 happens is more than the cost base of the beneficiary's interest in the trust capital to the extent it relates to the asset. Alternatively, a beneficiary will make a capital loss if that market value is less than the reduced cost base of the beneficiary's interest in the trust capital to the extent it relates to the asset.

66. The Participating Employee will acquire their interest in the RGL shares held by the ESAP Trustee at the same time CGT event E5 happens (i.e. immediately after the RGL shares are allotted to the trustee). Consequently, it can be expected there will be no difference between the market value of the RGL shares at the time CGT event E5 happens and the cost base of the Participating Employee's interest in the RGL shares.

67. Subsection 104-75(6) provides that the capital gain or capital loss the beneficiary makes is disregarded where the beneficiary does not incur any expenditure to acquire that interest. Accordingly, in the event there is a difference between the market value of the RGL shares at the time CGT event E5 happens and the cost base of the Participating Employee's interest in the RGL shares, the capital gain or capital loss is disregarded.

Participating Employee presently entitled to the income of the Trust

68. Under paragraph 97(1)(a), a resident beneficiary who is presently entitled to a share of the income of a trust estate is required to include in their assessable income their share of the net income of the trust estate. This will include any taxable capital gain arising to the ESAP Trustee on the happening of CGT event E5.

69. Section 115-215 contains rules for assessing presently entitled beneficiaries of a trust estate that has a net capital gain included in its net income where the capital gain arose from a CGT event that happens after 21 September 1999.

70. The purpose of section 115-215 is to ensure that appropriate amounts of the net income of the trust estate attributable to the capital gains of the trust estate are treated as the beneficiary's capital gains. The beneficiary can apply capital losses (where available) against the capital gains and can apply the appropriate discount percentage (if any) to the gains. A more detailed description of the operation of section 115-215 to the Participating Employees follows.

Where the trustee has not made a discount capital gain

71. Where the trustee's capital gain has not been reduced under step 3 of the method statement in subsection 102-5(1), the beneficiary will be treated as having made an extra capital gain equal to the part of the trust amount (i.e. the amount under paragraph 97(1)(a)) that is attributable to the trustee's capital gain (paragraph 115-215(3)(a)).

72. For example, if the Participating Employee's trust amount is \$4,000 arising from the ESAP Trustee having made a capital gain upon the CGT event E5 happening and is not a discounted capital gain, the tax consequences for the Participating Employee are:

- \$4,000 is included in assessable income under paragraph 97(1)(a),
- \$4,000 is included as an extra capital gain under paragraph 115-215(3)(a), and
- a deduction of \$4,000 is allowed, being the part of the trust amount that is attributable to the ESAP Trustee's

net capital gain (subsection 115-215(6)). This deduction ensures that the Participating Employee is not taxed twice on the part of the trust amount that is attributable to the ESAP Trustee's net capital gain.

Where the trustee has made a discount capital gain

73. Where the trustee's capital gain has been reduced under step 3 of the method statement in subsection 102-5(1), the beneficiary will need to gross up their own capital gain by multiplying it by two (paragraph 115-215(3)(b)). The beneficiary can apply capital losses (if any) against the grossed up capital gain before reducing the capital gain by the discount percentage.

74. For example, if the Participating Employee's trust amount is \$4,000 arising from the ESAP Trustee having made a capital gain upon the CGT event E5 happening and is a discounted capital gain, the tax consequences for the Participating Employee are:

- \$4,000 is included in assessable income under paragraph 97(1)(a),
- \$8,000 is included as a grossed up capital gain by multiplying \$4,000 by 2 under paragraph 115-215(3)(b), and
- a deduction of \$4,000 is allowed, being the part of the trust amount that is attributable to the ESAP Trustee's net capital gain (subsection 115-215(6)).

75. Assuming that the Participating Employee has no capital losses available, the 50% discount is applied, leaving a net capital gain of \$4,000 to be included in assessable income.

Capital loss made from CGT event E5 not passed to Participating Employee

76. Where the ESAP Trustee makes a capital loss upon the happening of the CGT event E5 in relation to the RGL shares, the ESAP Trustee will not derive any assessable income in relation to the RGL shares. Accordingly, paragraph 97(1)(a) will not apply to distribute the capital loss to the Participating Employee.

Transfer of RGL shares by the ESAP Trustee to the Participating Employees

77. The Participating Employee is absolutely entitled to the RGL shares immediately after the shares are allotted to the ESAP Trustee,

hence the transfer of legal ownership of the shares to the Participating Employee does not give rise to any further taxation implications.

Disposal of RGL shares

78. Subsection 104-10(1) provides that CGT event A1 happens if the taxpayer disposes of a CGT asset (ie RGL share). Subsection 104-10(2) provides that a CGT asset is disposed of if a change of ownership occurs in relation to the asset.

79. Under subsection 104-10(4) a capital gain arises on the CGT event A1 happening if the capital proceeds from the disposal is more than the cost base of the asset. A capital loss arises if the capital proceeds are less than the reduced cost base of that asset.

80. A taxpayer under subsection 125-55(1) can choose to obtain a roll-over if a CGT event happens to the original interest of the taxpayer 'under the demerger.' The RGL share allotted is a 'replacement interest' acquired under the Demerger and therefore does not qualify for roll-over. Therefore, any capital gain or capital loss arising on the disposal of the RGL shares is not disregarded.

Cost base of the RGL shares acquired by the Participating Employee

81. As the Participating Employee will not be incurring any expenditure to acquire the RGL shares, the first element of the cost base and reduced cost base of the RGL share is its market value at the time of acquisition under subsection 112-20(1).

Discount capital gain

82. To be eligible for the 50% CGT discount, the Participating Employee has to hold the share for at least 12 months from its date of acquisition (section 115-25).

Detailed contents list

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

	Paragraph
What this Class Ruling is about	1
Tax law(s)	2
Class of persons	3
Qualifications	4

Date of effect	8
Withdrawal	9
Arrangement	10
<i>The Employee Share Acquisition Scheme</i>	12
<i>The Demerger</i>	13
Ruling	16
Consequences for taxation of Participating Employees of certain events	16
<i>Transfer of employment</i>	16
<i>The exit of RGL and its subsidiaries from the CSR group</i>	20
<i>Disposal of CSR shares at or after the cessation time</i>	22
<i>Declaration by CSR of the special dividend</i>	28
<i>Return of capital by CSR</i>	29
<i>The satisfaction of the dividend and return of capital by allotment of the RGL shares</i>	30
<i>Transfer of RGL shares by the ESAP Trustee to the Participating Employees</i>	34
<i>Disposal of RGL shares</i>	35
Explanations	38
When will the discount given be included in assessable income?	38
<i>The amount included in assessable income in the income year that the cessation time occurs</i>	50
<i>Discount where CSR shares disposed of within 30 days after the cessation time</i>	50
<i>Discount where CSR shares not disposed of within 30 days after the cessation time</i>	51
<i>Capital gains tax implications of a disposal of CSR shares at or after the cessation time</i>	53
<i>Cost base of the CSR share</i>	58
<i>Discount capital gain</i>	59
<i>Declaration by CSR of the special dividend</i>	60
<i>Return of capital by CSR</i>	61
<i>Satisfaction of the dividend and return of capital by the allotment of RGL shares</i>	62
<i>Participating Employee presently entitled to the income of the Trust</i>	68

CR 2003/12

<i>Where the trustee has not made a discount capital gain</i>	71
<i>Where the trustee has made a discount capital gain</i>	73
<i>Capital loss made from CGT event E5 not passed to Participating Employee</i>	76
<i>Transfer of RGL shares by the ESAP Trustee to the Participating Employees</i>	77
<i>Disposal of RGL shares</i>	78
<i>Cost base of the RGL shares acquired by the Participating Employee</i>	81
<i>Discount capital gain</i>	82
Detailed contents list	83

Commissioner of Taxation

26 February 2003

<i>Related Rulings/Determinations:</i>	- ITAA 1936 139CA(3)
TR 92/1; TR 92/20; TR 97/16;	- ITAA 1936 139CC(3)
CR 2001/1	- ITAA 1936 139CC(4)
	- ITAA 1936 139CD
<i>Subject references:</i>	- ITAA 1936 139E
- beneficiary	- ITAA 1936 139FA
- capital gains	- ITAA 1936 139FB
- cessation time	- ITAA 1997 3-1
- cost base adjustments	- ITAA 1997 102-5(1)
- demerger	- ITAA 1997 104-10(1)
- demerger dividend	- ITAA 1997 104-10(2)
- discount capital gain	- ITAA 1997 104-10(4)
- employee share acquisition scheme	- ITAA 1997 104-75(1)
- present entitlement	- ITAA 1997 104-75(5)
- qualifying shares	- ITAA 1997 104-75(6)
- return of capital	- ITAA 1997 104-135(1)
- roll-over	- ITAA 1997 109-5(1)
	- ITAA 1997 112-20(1)
	- ITAA 1997 115-A
<i>Legislative references:</i>	- ITAA 1997 115-25
- ITAA 1936 Part III	- ITAA 1997 115-215
- ITAA 1936 13A	- ITAA 1997 115-215(3)(a)
- ITAA 1936 44	- ITAA 1997 115-215(3)(b)
- ITAA 1936 44(4)	- ITAA 1997 115-215(6)
- ITAA 1936 97	- ITAA 1997 125
- ITAA 1936 97(1)(a)	- ITAA 1997 125-55(1)
- ITAA 1936 139C(1)	- ITAA 1997 130-D
- ITAA 1936 139CA	- ITAA 1997 130-83(2)
- ITAA 1936 139CA(2)	- ITAA 1997 130-83(3)
- ITAA 1936 139CA(2)(a)	- TAA 1953 Part IVAAA
- ITAA 1936 139CA(2)(b)	- Copyright Act 1968
- ITAA 1936 139CA(2)(d)	

ATO References

NO: 2003/001867

ISSN: 1445-2014