

CR 2003/13 - Income tax: CSR Limited Demerger - CSR Universal Share/Option Plan

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Class Ruling

Income tax: CSR Limited Demerger - CSR Universal Share/Option Plan

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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 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 26AAC of the ITAA 1936,
- Division 13A of the ITAA 1936,
- Part 3-1 of the *Income Tax Assessment Act 1977* ('ITAA 1977'),
- Division 125 of Part 3-3 of the ITAA 1977,
- Subdivision 130-D of Part 3-3 of ITAA 1977,
- Section 130-95 and section 130-100 of the *Income Tax (Transitional Provisions) Act 1997*, and
- Part 4 of Schedule 2 of the *Taxation Laws Amendment Act (No 2) 1995*

Class of persons

3. The class of persons to whom this Ruling applies 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' with CSR shares acquired under the CSR Universal Share/Option Plan ('USOP'). In respect of these shares, acquired after 19 September 1985:

- an election has been made by the employee under section 139E of the *Income Tax Assessment Act 1936* to be taxed on their shares in the year of acquisition;
- no election has been made under Items 12 or 13 of Part 4 of Schedule 2 to the *Taxation Laws Amendment Act (No 2) 1995* that the amendments made by that Schedule apply to their acquisition, so that Division 13A will only apply to the CSR shares acquired under the USOP on or after 1 July 1996; and
- no election has been made under subsection 26AAC(4C) to the effect that subsection 26AAC(4F) did not apply to the employee in relation to the income year in which the shares were acquired.

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.

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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 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:

- (a) Application for Class Ruling dated 18 September 2002,
and
- (b) USOP Terms and Conditions.

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.

The Employee Share Acquisition Scheme

11. Under the USOP which commenced in 1981:

- Eligible employees have acquired ordinary shares in CSR under the USOP in one of two ways:
 - (a) purchasing the shares at a 5% discount to the shares' full market value, funded via an interest free loan from CSR, or
 - (b) purchasing the shares at their full market value and being granted an equal number of shares for free (ie one for one match),
- The CSR shares acquired by an employee under the USOP are registered in the name of the employee (i.e. the shares are not held on trust),
- The CSR shares are subject to a disposal restriction until the earlier of the end of 3 years after the shares were acquired by the employee or the employee ceases to be employed by CSR or any of its subsidiaries,
- The USOP has been operated from its inception on the premise that the shares acquired by the employees are 'ESAS' shares for the purposes of former section 26AAC and 'qualifying shares' for the purposes of Division 13A, and
- The employees have been assessed on the discount given in relation to the shares in the year of income the shares were acquired.

The Demerger

12. CSR is proposing a demerger of Rinker Group Ltd ('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.

13. Under a 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 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.

14. Following the demerger, CSR will advise shareholders of the cost base and reduced cost base adjustments required under sections 125-80 or 125-85, which will be based on the average market values of the CSR and RGL shares in the first five trading days after the demerger.

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 the employee holding CSR shares under the USOP of certain events

Declaration by CSR of the special dividend

16. The special dividend of \$0.69 per share will not be assessable income or exempt income of the employee under subsection 44(4). The payment does not give rise to a CGT event G1 happening.

Return of capital by CSR.

17. CGT event G1 will happen on the return of capital of \$0.84 on each share. Under section 104-135 a capital gain will arise if the capital return of \$0.84 exceeds the cost base of that share.

18. For a CSR share acquired on or after 20 September 1985 to 30 June 1996 under the USOP, the first element of the cost base of the CSR share is its market value at the date the share was acquired, reduced by the amount excluded from assessable income under paragraph 26AAC(4F)(c).

19. For a CSR share acquired on or after 1 July 1996 under the USOP, the first element of the cost base of the CSR share is its market value at the date the employee acquired the share (subsection 130-80(2)). There will be no capital gain under section 104-135 where the market value of the CSR share at the date the employee acquired the share under the USOP is more than the capital return of \$0.84.

20. Where a capital gain arises, the employee can choose to obtain roll-over under Division 125 with the consequence that the capital gain will be disregarded under subsection 125-80(1). The conditions to obtain roll-over under Division 125 are satisfied.

21. There can be no capital loss under section 104-135 where the capital return of \$0.84 is less than the cost base of the CSR share. In these circumstances, while the employee can choose to obtain roll-over, there is no capital loss to be disregarded.

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

22. The value of the RGL shares allotted is not assessable to the employee. It is not income according to ordinary concepts and is not subject to tax under Division 13A.

Disposal of CSR shares

23. When the employee disposes of the CSR shares after the Demerger, CGT event A1 will happen (section 104-10). A capital gain will arise if the capital proceeds exceed the cost base of the share. A capital loss will arise if the capital proceeds are less than the reduced cost base of that share. The first element of the cost base and reduced cost base of the CSR share (acquired on or after 20 September 1985 and prior to the Demerger) is a proportion of the sum of the cost bases of all of the CSR shares the employee acquired on or after 20 September 1985 and prior to the Demerger, worked out in accordance with the proportion of the market value of the CSR shares to the total market value of the CSR and RGL shares held by the employee just after the Demerger (section 125-80).

24. Where the CSR shares are held by the employee for at least 12 months from the date of acquisition for CGT purposes, any capital gain will be taxed as a discount capital gain under Subdivision 115-A.

Disposal of RGL shares

25. When the employee disposes of the RGL share a CGT event A1 will happen (section 104-10). A capital gain arises if the capital proceeds exceed the cost base of the RGL share. A capital loss arises if the capital proceeds are less than the reduced cost base of the RGL share. The first element of the cost base and reduced cost base of the RGL share that is not taken to have been acquired before 20 September 1985 is a proportion of the sum of the cost bases of all of the CSR shares the employee acquired on or after 20 September 1985 and prior to the Demerger, worked out in accordance with the proportion of the market value of the RGL shares to the total market value of the CSR and RGL shares held by the employee just after the Demerger (section 125-80).

26. Where the employee holds the RGL shares for at least 12 months from the date the shares are acquired for CGT purposes, any capital gain will be taxed as a discount capital gain under Subdivision 115-A. Where the employee chooses the roll-over, the date the RGL share is acquired for CGT purposes is the date the original CSR share was acquired by the employee. Where no roll-over is chosen by the employee, the date the RGL share is acquired for CGT purposes is the date of allotment of the share to the employee.

Explanations

Consequences for taxation of the employee holding CSR shares under the USOP of certain events

Declaration by CSR of the special dividend

27. Paragraphs 48 and 49 of the Demerger Class Ruling explain why the special dividend of \$0.69 per share is a demerger dividend. Subsection 44(4) will apply such that the demerger dividend will neither be assessable income nor exempt income to the employee.

28. Subsection 104-135 provides that where a company makes a payment in respect of a share owned by the shareholder, CGT event G1 will happen where some or all of the payment (the *non-assessable part*) is not a dividend. CGT event G1 will not happen as the payment constitutes a dividend.

Return of capital by CSR

29. Where a company makes a payment in respect of a share owned by the employee and some or all of the payment (the *non-assessable part*) is not a dividend, a CGT event G1 happens. The return of capital of \$0.84 on each share therefore gives rise to a CGT event G1 happening. The CGT event G1 arises at the time the company makes the payment. A capital gain arises if the *non-assessable part* exceeds the cost base of that share. The cost base of the CSR share is determined under different rules, depending upon when the share was acquired.

Cost base of CSR shares acquired on or after 20 September 1985 to 30 June 1996

30. Where an amount has been included in the assessable income of an employee under section 26AAC in respect of shares acquired before 1 July 1996, sections 130-95 and 130-100 of the *Income Tax (Transitional Provisions) Act 1997* provide that the first element of the cost base of the share is its market value at the date the share was

acquired by the employee, reduced by the amount that has been excluded from the employee's assessable income under paragraph 26AAC(4F)(c).

31. It is uncertain whether the cost base of the CSR share so determined would be greater or less than the capital return of \$0.84. Under subsection 104-135(3), a capital gain arises where the capital return \$0.84 is more than the cost base of the CSR share. The employee can choose to obtain roll-over under Division 125 as the requirements of section 125-55 are satisfied (see paragraphs 40 to 43 of the Demerger Class Ruling). If the employee chooses to obtain roll-over, the capital gain that would otherwise have arisen on the CGT event G1 happening under the Demerger is disregarded under subsection 125-80(1).

32. If the capital return of \$0.84 is less than the cost base of the CSR share, there is no capital loss arising under section 104-135. In these circumstances, while the employee can choose to obtain roll-over, there is no capital loss to be disregarded.

Cost base of CSR shares acquired on or after 1 July 1996 for less than market value

33. Where the CSR share has been acquired under an employee share scheme for the purposes of Division 13A, subsections 130-80(1) and (2) provide that the first element of the cost base of the share is its market value (as determined under section 139FA) at the date the share was acquired by the employee (i.e. the date the share was allotted to the employee). The market value as determined in accordance with section 139FA is the weighted average of the prices at which the shares were traded on the stock exchange over the one week period up to and including the day the share was acquired by the employee.

34. It is unlikely there will be a capital gain as it is expected that the market value of the share at the date the share was acquired by the employee will be in excess of \$0.84. In the event that a capital gain arises, the employee can choose to obtain roll-over under Division 125 as the requirements of section 125-80 have been satisfied. If the employee chooses to obtain roll-over, the capital gain that would otherwise have arisen on the CGT event G1 happening under the Demerger is disregarded under subsection 125-80(1).

35. If the capital return of \$0.84 is less than the cost base of the CSR share, there is no capital loss arising under section 104-135. In these circumstances, while the employee can choose to obtain roll-over, there is no capital loss to be disregarded.

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

36. 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 RGL shares is to be made to all CSR shareholders, including employees who hold CSR shares under the USOP. The employee will be allotted the RGL shares by virtue of their ownership of CSR shares 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 employee will not be subject to the application of Division 13A in relation to the RGL shares allotted. The 3 year disposal restriction required in subsection 139CE(3) will not apply to the RGL shares.

Cost base apportionment

37. Where the employee chooses to obtain a roll-over, subsection 125-80(2) requires a cost base apportionment in order to determine:

- the first element of the cost base and reduced cost base of each RGL share (i.e. the 'new interest') that is not taken to have been acquired before 20 September 1985 (see paragraph 41 below); and
- the first element of the cost base and reduced cost base of each CSR share (i.e. the 'original interest') that was acquired by the employee on or after 20 September 1985.

38. The sum of the cost bases of all of the employee's CSR shares that were acquired on or after 20 September 1985 and prior to the Demerger is apportioned over those CSR shares and their RGL shares that are not taken to have been acquired before 20 September 1985. The apportionment will be based upon the respective market values of the employee's CSR and RGL shares just after the Demerger.

39. The employee's CSR shares under the USOP whose cost bases are included for the purpose of the cost base apportionment include:

- shares that the employee has acquired on or after 20 September 1985 to 30 June 1996, which have the first element of their cost bases determined under section 130-100 of the *Income Tax (Transitional Provisions) Act*, being their market values at the time the shares were acquired reduced by the amount excluded from assessable income under paragraph 26AAC(4F)(c), and/or
- shares that the employee has acquired on or after 1 July 1996 for less than market value, which have the

first element of their cost bases determined under subsection 130-80(2), being their market value when the shares were acquired by the employee.

40. Where the employee also holds CSR shares not acquired under the USOP, which were acquired on or after 20 September 1985 and prior to the Demerger, the cost bases of these shares are also required to be included for the purpose of the cost base apportionment. These shares acquired at market value will have the first element of their cost bases determined by subsection 110-25(2), being the money paid or the market value of any property given by the employee for the shares.

41. In the case where the employee who chooses roll-over holds CSR shares not acquired under the USOP, which were acquired before 20 September 1985 (i.e. pre-CGT shares), the same proportion of pre-CGT CSR shares owned by the employee is applied to the RGL shares allotted in order to determine the number of RGL shares that are taken to have been acquired before 20 September 1985 (i.e. pre-CGT shares) (subsection 125-80(6)).

42. The cost base apportionment must reflect the relative market values or reasonable approximation of the market values of the CSR and RGL shares just after the 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 CSR and RGL shares in the first five trading days after the Demerger.

43. Where the employee does not choose to obtain the roll-over the employee is required under section 125-85 to make the same cost base apportionment as would have been required if the employee could have chosen roll-over.

Disposal of CSR shares

44. Subsections 104-10(1) provides that CGT event A1 happens if a 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.

45. Under subsection 104-10(4) a capital gain arises on the CGT event A1 happening if the capital proceeds from the disposal are 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. The first element of the cost base (or reduced cost base) of the CSR share (acquired on or after 20 September 1985 and prior to the Demerger) will be a proportion of the sum of the cost bases of all of the CSR shares the employee acquired on or after 20 September 1985 and prior to the Demerger, worked out in accordance with the proportion of

the market value of the CSR shares to the total market value of the CSR and RGL shares held by the employee just after the Demerger (section 125-80).

Discount capital gain

46. The employee is entitled to the 50% CGT discount where the requirements of Subdivision 115-A are satisfied. In determining whether the 12 month holding rule is satisfied, the date of acquisition of the CSR share is the date the share was allotted to the employee under Section 109-10, item 2.

Disposal of RGL shares

47. Subsection 104-10(1) provides that CGT event A1 happens if a taxpayer disposes of a CGT asset (i.e. a 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.

48. Under subsection 104-10(4) a capital gain is made on the CGT event A1 happening if the capital proceeds from the disposal are 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. The first element of the cost base (or reduced cost base) of the RGL share that is not taken to have been acquired before 20 September 1985 will be a proportion of the sum of the cost bases of all of the CSR shares the employee acquired on or after 20 September 1985 and prior to the Demerger, worked out in accordance with the proportion of the market value of the RGL shares to the total market value of the CSR and RGL shares held by the employee just after the Demerger (section 125-80).

Discount capital gain

49. The employee will be entitled to the 50% CGT discount where the requirements of Subdivision 115-A are satisfied. In determining whether the 12 month holding rule in section 115-25 is satisfied, the employee who chooses to obtain roll-over will be taken to have acquired the RGL share at the date the original CSR share was allotted.

50. Subsection 115-30(1), item 2, provides that where a CGT asset is acquired as a replacement asset for a 'replacement-asset roll-over', the replacement asset is treated as having been acquired at the time the original asset involved in the roll-over was acquired. The definition of 'replacement-asset roll-over' in section 995-1 provides that the 'replacement-asset roll-overs' are listed in section 112-115. The list includes demergers covered by Division 125. The Demerger will constitute a replacement-asset roll-over, with the consequence that the

employee will be treated as acquiring the RGL share (i.e. the replacement asset) at the date the employee acquired the original CSR share.

51. The employee who chooses not to obtain roll-over will be entitled to the 50% CGT discount for RGL shares where CGT Event A1 happens at least 12 months after the employee acquired the RGL shares. The date the RGL share is acquired for CGT purposes is the date of allotment of the share to the employee.

Detailed contents list

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Commissioner of Taxation

26 February 2003

<i>Related Rulings/Determinations:</i>	- ITAA 1997 104-10(4)
TR92/1; TR92/20; TR 97/16;	- ITAA 1997 104-135
CR 2001/1; CR 2003/10	- ITAA 1997 104-135(3)
	- ITAA 1997 109-10
<i>Subject references:</i>	- ITAA 1997 110-25(2)
- capital gains	- ITAA 1997 112-115
- cost base adjustments	- ITAA 1997 115-A
- demerger	- ITAA 1997 115-25
- demerger dividend	- ITAA 1997 115-30(1)
- discount capital gain	- ITAA 1997 125
- employee share acquisition scheme	- ITAA 1997 125-55
- return of capital	- ITAA 1997 125-80
- roll-over	- ITAA 1997 125-80(1)
	- ITAA 1997 125-80(2)
<i>Legislative references:</i>	- ITAA 1997 125-80(6)
- ITAA 1936 13A	- ITAA 1997 125-85
- ITAA 1936 26AAC	- ITAA 1997 130-D
- ITAA 1936 26AAC(4C)	- ITAA 1997 130-80(1)
- ITAA 1936 26AAC(4F)	- ITAA 1997 130-80(2)
- ITAA 1936 26AAC(4F)(c)	- ITAA 1997 995-1
- ITAA 1936 44	- TAA 1953 Part IVAAA
- ITAA 1936 44(4)	- Taxation Laws Amendment Act (No 2) 1995 Item12, Part 4 of Schedule 2
- ITAA 1936 139C(1)	- Taxation Laws Amendment Act (No 2) 1995 Item13, Part 4 of Schedule 2
- ITAA 1936 139CE(3)	- Copyright Act 1968
- ITAA 1936 139E	- Income Tax (Transitional Provisions) Act 1997 130-95
- ITAA 1936 139FA	
- ITAA 1997 3-1	
- ITAA 1997 104-10	
- ITAA 1997 104-10(1)	
- ITAA 1997 104-10(2)	

- Income Tax (Transitional Provisions) Act 1997 130-100
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