


CR 2003/98 - Income tax: capital reduction: Australand Holdings Limited

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Class Ruling

Income tax: capital reduction: Australand Holdings 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 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:
- sub-section 6(1) of the *Income Tax Assessment Act* 1936 (ITAA 1936);
 - section 44 of the ITAA 1936;
 - section 45A of the ITAA 1936; and
 - section 45B of the ITAA 1936.

Class of persons

3. The class of persons to which this Ruling applies are the ordinary shareholders of Australand Holdings Limited (‘Australand’) who are on record as holders and who participate in the capital reduction (‘Arrangement’) announced on 20 August 2003 and described in the arrangement part of this Ruling.

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 actually carried out is carried out in accordance with the arrangement described in paragraphs 10 to 15, 22 and 26.
6. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling, then:
 - 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 - this Ruling may be withdrawn or modified.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

8. This Ruling applies to events occurring in the year ending 30 June 2004. The Arrangement will be completed within that period.

Withdrawal

9. This Class Ruling is withdrawn and ceases to have effect after 30 June 2004. The Ruling continues to apply, in respect of the tax laws ruled upon, to all persons within the specified class who enter into the specified arrangement during the term of the Ruling.

Arrangement

10. The Arrangement that is the subject of the Ruling is described by Greenwoods & Freehills Pty Limited, in their Class Ruling request dated 3 July 2003.

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

11. Australand announced an equal capital reduction for ordinary shareholders ('the Capital Reduction') pursuant to section 256B of the *Corporations Act 2001* on 20 August 2003. At the time of the announcement, Australand had approximately 524,901,691 ordinary shares on issue, and 500,000 reset convertible preference shares on issue. The total equity of Australand as at 31 December 2002 was approximately \$670 million, consisting of approximately \$593 million of contributed equity, and approximately \$76.7 million in retained profits.

12. The Capital Reduction has been set at 70 cents per ordinary share ('Capital Reduction Amount'). The aggregate Capital Reduction Amount in respect of the ordinary shares will be approximately \$370 million. The Capital Reduction Amount will be debited against the credit amount standing in the 'share capital account' (as defined in section 6D of the ITAA 1936) of Australand. It will reduce the cost base, and reduced cost base, of Australand shareholders in their shares to the extent of 70 cents per share (and any excess of the reduction over a shareholder's existing cost base will be an assessable capital gain).

13. No transfers have taken place, or will take place, to taint Australand's share capital account as defined by sub-section 160ARDM(1) of the ITAA 1936.

14. The Capital Reduction Amount will be applied by shareholders in subscription to a unit trust for units which will be stapled to Australand shares. The unit trust is not to carry on any business other than an 'eligible investment business' as defined in section 102M of the ITAA 1936. It will invest in land for the purpose of deriving rent, and if it lends available money to Australand or otherwise deals with Australand it will do so on arm's-length terms.

15. Holders of reset convertible preference shares will vote on whether to have their shares cancelled and redeemed for consideration entirely out of the credit amount standing in the share capital account of Australand. Otherwise the reset convertible preference shares will be converted into ordinary shares of Australand participating as such in the Capital Reduction and the Arrangement.

Ruling

16. The shareholders who receive the Capital Reduction Amount under the Arrangement will not thereby receive dividends to be included in their assessable income under section 44 of the ITAA 1936.

17. The Commissioner will not make a determination (under sections 45A or 45B of the ITAA 1936) that section 45C of the ITAA 1936 applies to the whole, or any part, of the Capital Reduction Amount received by the holders of Australand ordinary share.

Explanation

Dividends

18. Subsection 44(1) of the ITAA 1936 includes in a shareholder's assessable income a dividend, as defined in subsection 6(1) of the ITAA 1936, paid to a shareholder out of company profits.

19. The Commissioner is satisfied that, providing the aggregate Capital Reduction Amount is debited to an amount standing to the credit of Australand's untainted share capital account, the Capital Reduction Amount would not constitute a dividend because of the exclusion in paragraph (d) in the definition of a 'dividend' in subsection 6(1) of the ITAA 1936.

20. Australand advises that the aggregate Capital Reduction Amount will be debited against the amount standing to the credit of the 'share capital account', as defined in section 6D of the ITAA 1936. The Commissioner considers that on that basis no part of the Capital Reduction Amount will be characterised as a dividend for the purposes of subsection 6(1).

Section 45A

21. Section 45A of the ITAA 1936 can apply in circumstances where capital benefits and dividends are streamed in such a way that capital benefits are received by advantaged shareholders and it is reasonable to assume that other shareholders have received or will receive dividends.

22. Section 45A does not apply as although capital benefits from the Capital Reduction are to be received by advantaged shareholders it is not reasonable to assume that disadvantaged shareholders have received or will receive dividends. This is on the basis of assumed facts:

- that those reset convertible preference shares which are to be cancelled will be cancelled in exchange for a payment wholly debited from the amount standing to the credit of the 'share capital account' of Australand, as defined in section 6D of the ITAA 1936 and that is not a dividend;
- that those reset convertible preference shares which are not to be cancelled will be converted into ordinary shares participating in the equal capital reduction made to, and reallocation made by, all shareholders of ordinary shares; and
- that the predetermined dividend payments to holders of reset convertible preference shares will be made as planned (including the payment due in December 2003 which is to be made early), without any association with or conditionality upon the cancellation or conversion of the reset convertible preference shares.

Section 45B

23. Section 45B of the ITAA 1936 applies where certain capital payments are paid to shareholders in substitution for dividends. Specifically, the provision applies where:

- There is a scheme under which a person is provided with a capital benefit by a company (section 45B(2)(a) of the ITAA 1936);
- Under the scheme a taxpayer, who may or may not be the person provided with the capital benefit, obtains a tax benefit (section 45B(2)(b) of the ITAA 1936); and
- Having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, 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 (section 45B(2)(c) of the ITAA 1936).

24. In the circumstances of the Arrangement, it is considered that the conditions of paragraphs (a) and (b) of section 45B(2) of the ITAA 1936 are satisfied, as under the Arrangement those shareholders that participate in the Arrangement will be provided with a benefit in the form of an amount not a dividend and debited to the share capital account of Australand and shareholders will pay less tax on the returned capital than they would on an equivalent amount of dividend.

25. After having considered the relevant circumstances of the Arrangement and on the basis of the facts put forward by Australand the Commissioner does not and would not conclude that either Australand or the participating shareholders entered into or carried out the scheme for the purpose of enabling such shareholders to obtain a tax benefit.

26. In the circumstances of the Arrangement as set out by Australand the Commissioner accepts that the aggregate Capital Reduction Amount represents a genuine return of capital to and reallocation of capital by the shareholders of Australand. The assumed fact is that the Amount is not attributable to the profits of Australand, and the Commissioner accepts that it does not give the shareholders access to the value of profits of Australand in a substitute form, as the returned capital must be contributed as capital in a unit trust the units of which will be stapled to Australand shares under the Arrangement. To the extent to which trust entitlements may arise under the Arrangement the assumed fact is that these represent only arm's-length returns and returns at arm's-length rates on the capital reallocated from Australand to the unit trust. The purposes of Australand and of the shareholders are directed to the market advantages of the return and reallocation of capital and the associated stapling of shares to units in the unit trust to which the capital is reallocated. Those purposes exclude any purpose that is other than incidental of obtaining a tax benefit. Accordingly, section 45B of the ITAA 1936 would not apply to the Arrangement.

Detailed contents list

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

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Commissioner of Taxation

5 November 2003

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

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

Legislative references:

- ITAA 1936 6D
- ITAA 1936 6(1)
- ITAA 1936 6(1)(d)
- ITAA 1936 44
- ITAA 1936 44(1)
- ITAA 1936 45A

- ITAA 1936 45B
- ITAA 1936 45B(2)
- ITAA 1936 45B(2)(a)
- ITAA 1936 45B(2)(b)
- ITAA 1936 45B(2)(c)
- ITAA 1936 45C
- ITAA 1936 102M
- ITAA 1936 160ARDM(1)
- TAA 1953 Pt IVAAA
- Copyright Act 1968
- Corporations Act 2001 256B

ATO references

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