CR 2004/106 - Income tax: scrip for scrip roll-over: proposed exchange of shares and options in The News Corporation Limited for shares and options in News Corporation Inc.

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This document has changed over time. This is a consolidated version of the ruling which was published on *1 July 2004*

Class Ruling

Income tax: scrip for scrip roll-over: proposed exchange of shares and options in The News Corporation Limited for shares and options in News Corporation Inc.

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Preamble

The number, subject heading, ***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 identified below applies to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. The tax law dealt with in this ruling is Subdivision 124-M of the *Income Tax Assessment Act 1997* (ITAA 1997).

Class of persons

3. The class of persons to which this Ruling applies are shareholders and option holders in The News Corporation Limited (TNCL) who:

(a) are 'residents of Australia' within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);

(b) are not 'significant stakeholders' within the meaning of that expression in Subdivision 124-M; and

(c) participate in the arrangement for TNCL shareholders and options holders under the planned Share Scheme of Arrangement and Option Scheme of Arrangement (the Schemes).

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 9 to 15.

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 Class Ruling applies to the year ended 30 June 2005.

Arrangement

9. The arrangement that is the subject of this Ruling is described below. The description is based on the documents listed below. 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) Class Ruling application dated 25 August 2004 from Ernst & Young requesting the ATO to make a class ruling in relation to the capital gains scrip for scrip roll-over provisions as they apply to the Schemes; and

(b) Information Memorandum lodged with the ASX dated 15 September 2004 in relation to a proposal to "reincorporate" in the United States and to acquire from Murdoch family interests their shareholding in Queensland Press Pty Ltd.

10. Under the arrangement, TNCL will be replaced by News Corporation Inc (NC) as the holding company of the TNCL group of companies.

11. Under the arrangement all the shares in TNCL (other than 100 redeemable ordinary shares held by NC) will be cancelled. NC will issue shares to the former shareholders of TNCL in the ratio of one share of NC stock for every two shares held in TNCL.

12. Also under the arrangement all the options in TNCL will be cancelled. NC will issue one option for every option held in TNCL. The options issued by NC will be exercisable for NC non-voting shares. Each NC option can be exercised for half the number of shares that was exercisable under the TNCL option it replaced. For example a current TNCL option for 200 TNCL shares will be replaced with a NC option for 100 NC shares.

13. The voting common stock of NC will be issued to current ordinary shareholders of TNCL and the non voting common stock of NC will be issued to current preferred limited voting shareholders of TNCL. The newly issued stock will carry rights that are substantially similar to the current shares.

14. TNCL will then issue to Carlholt Pty Ltd (Carlholt) the same number of ordinary and preferred shares as are cancelled at paragraph 11.

15. Features of the arrangement are:

- TNCL and Carlholt are Australian resident companies;
- NC is not an Australian resident;
- Carlholt becomes the owner of 80% or more of the voting shares of TNCL;
- NC shares will be issued to those Australian registered TNCL shareholders who elect to receive shares. Chess Depositary Instruments (CDIs) will be issued in respect of both the voting common and non voting common stock of NC to those TNCL shareholders whose address is in Australia and do not elect to receive shares. Each CDI represents an underlying NC share. CDIs are a mechanism which facilitates the electronic transfer of shares on the Australian Stock Exchange (ASX). CDIs are units of beneficial interests in securities where the legal title is held by an Australian depositary entity. That entity in the present case will be CHESS Depositary Nominees Pty Ltd (CDN), a wholly-owned subsidiary of the ASX. CDN will be

recognised under US law as the holder of such NC shares; and

- The CDIs are Chess Units of Foreign Security in terms of the ASX's Securities Clearing House Business Rules.

Ruling

16. Australian resident shareholders and option holders of TNCL who are within the class of persons to which this Ruling applies will be eligible to choose scrip for scrip rollover under paragraph 124-780(3)(d) for the cancellation of their TNCL shares or options in exchange for NC shares (including those represented by CDIs) or options pursuant to the arrangement if:

(a) they acquired the TNCL shares or options on or after 20 September 1985; and

(b) apart from the roll-over for which Subdivision 124-M provides, they would make a capital gain from a CGT event happening in relation to the TNCL shares or options; and

(c) they could not disregard (except because of rollover) any capital gain they might make from a replacement NC share (including those represented by CDIs) or option.

17. The first element of the cost base/reduced cost base of each NC share (including those represented by CDIs) will be equal to the sum of the cost base/reduced cost base of two TNCL shares which have been replaced.

18. The first element of the cost base/reduced cost base of each NC option will be equal to the cost base/reduced cost base of the TNCL option which it replaced.

Explanation

Availability of scrip for scrip rollover

19. Scrip for scrip rollover enables a shareholder or option holder to choose rollover relief in respect of certain capital gains. The effect of choosing rollover is that the shareholder or option holder is able to disregard a capital gain they make from a share or option that is disposed of as part of a corporate takeover or merger if the shareholder or option holder receives in exchange a replacement share or option. The capital gain is disregarded completely if the only capital proceeds the shareholder or option holder receives is a replacement share or option. The rollover also provides that the cost base/reduced cost base of the replacement share or option is based

on the cost base/reduced cost base of the original shares or options at the time of the rollover.

20. Subdivision 124-M contains a number of conditions for, and exceptions to, the eligibility of a shareholder or option holder to choose rollover. Some of these conditions and exceptions are not relevant to this arrangement. Below is an outline of the main conditions and exceptions that are relevant to the circumstances of the arrangement that is the subject of this Ruling.

21. **Subparagraph 124-780(1)(a)(i) requires an entity to exchange a share in a company (the 'original entity') for a share in another company.**

22. This requirement will be satisfied by TNCL shareholders because all TNCL shareholders will receive one NC share (including those represented by CDIs) as consideration for the cancellation of every two TNCL shares.

23. The receipt by TNCL shareholders of CDIs rather than the underlying NC shares does not preclude qualification for scrip for scrip roll over. Subsection 124-780(6) treats the holder of a CHESS Unit of Foreign Security as if the holder held the underlying interests that the unit represents. On the basis that the CDIs are CHESS Units of Foreign Securities, this subsection applies to treat the holder of a CDI as the holder of the underlying NC share and as such allows compliance with the requirements of subparagraph 124-780(1)(a)(i).

24. Subparagraph 124-780(1)(a)(ii) requires an entity to exchange an option in a company (the 'original entity') for an option in another company.

25. This requirement will be satisfied by TNCL option holders because all TNCL options holders will receive one NC option as consideration for the cancellation of every TNCL option.

26. Paragraph 124-780(1)(b) requires that the exchange of shares and options is in consequence of a single arrangement.

27. In the context of the scrip for scrip rollover provisions, the Schemes are considered to be a 'single arrangement'.

28. Paragraph 124-780(2)(a) requires that the exchange of shares and options is in consequence of a single arrangement that results in the acquiring entity (Carlholt) becoming the owner of 80% or more of the voting shares in the original entity (TNCL).

29. Under the arrangement Carlholt becomes the owner of 100% of the voting shares and therefore this requirement is satisfied.

30. Paragraph 124-780(2)(b) requires that the exchange of shares is in consequence of a single arrangement in which at least all owners of voting shares in the original entity (TNCL) (apart from the acquiring entity or members of the acquiring entity's wholly-owned group) could participate.

31. This requirement will be met because all the owners of the voting shares in TNCL can participate.

32. Paragraph 124-780(2)(c) requires that the exchange is in consequence of a single arrangement in which participation was available on substantially the same terms for all of the owners of interests of a particular type in the original entity (TNCL).

33. This requirement will be met as ordinary shareholders in TNCL will be offered voting common stock in NC (including those represented by CDIs), preferred limited voting shareholders will be offered non voting common stock in NC (including those represented by CDIs) and TNCL option holders will be offered options in NC.

34. As countenanced by the Share Scheme, overseas shareholders might not be allotted shares. Instead, those shares are to be allotted and issued to a nominee appointed by NC. The nominee will then be required to sell those NC shares and distribute the net proceeds of the sale to the overseas shareholders. This is consistent with the requirements of subsection 619(3) of the Corporations Law and so the requirement in paragraph 124-780(2)(c) is satisfied (see Note 2 paragraph 124-780(2)(c)).

35. Paragraphs 124-780(1)(c) and 124-780(3)(a) require the original interest holder (TNCL shareholder or option holder) to have acquired its original interest (TNCL shares or options) on or after 20 September 1985.

36. For TNCL shareholders or option holders who hold TNCL shares or options which were acquired before 20 September 1985, the cancellation of those shares and options will not be eligible for any rollover. For those shareholders or option holders not eligible for rollover because their shares or options were acquired before 20 September 1985, the first element of the cost base and reduced cost base of the replacement NC share or option will be its market value just after it was acquired (see subsection 124-800(1)).

37. Paragraphs 124-780(1)(c) and 124-780(3)(d) require that, apart from the rollover, the original interest holder (a TNCL shareholder or option holder) would make a capital gain from a CGT event happening in relation to its original interest (its TNCL or option).

38. Whether a TNCL shareholder or option holder would make a capital gain, apart from the rollover, in relation to its disposal of its TNCL shares or options under the arrangement is dependent on the specific circumstances of each shareholder and option holder- in particular the shareholder's cost base of each TNCL share and option and the value of the consideration received. Where a TNCL shareholder or option holder does make a capital gain they will be eligible for rollover.

39. Paragraphs 124-780(1)(c) and 124-780(3)(c) require that the replacement interest is in the acquiring entity (Carlholt), or the ultimate holding company of the wholly owned group which includes the acquiring entity (Carlholt).

40. This requirement will be satisfied as, pursuant to the arrangement, the shares (including those represented by CDIs) and

options will be in NC which is the ultimate holding company of Carlholt.

41. Paragraphs 124-780(1)(c) and 124-780(3)(d) provide that rollover is available for an original interest holder (a TNCL shareholder or option holder) that is a common stakeholder only if the replacement entity (NC) jointly elects the rollover.

42. Additional rules associated with the cost base of interests apply for the purposes of scrip for scrip rollover if a TNCL shareholder, that is otherwise eligible for the rollover, is a common stakeholder for the arrangement.

43. These additional rules will not apply as pursuant to subsection 124-783(5), no TNCL shareholder will be a common stakeholder by virtue of TNCL having more than 300 members before the arrangement started.

44. Paragraphs 124-780(1)(c) and 124-780(3)(d) require that the original interest holder (the TNCL shareholder or option holder) chooses to obtain rollover.

45. Rollover only applies to those shareholders and option holders who choose to obtain the rollover.

46. Paragraph 124-795(2)(a) provides that the rollover is not available if any capital gain you (the TNCL shareholder or option holder) might make from your replacement interest (the NC share or option) would be disregarded.

47. This exception may apply if for example the NC shares (including those represented by CDIs) or options are held as trading stock.

48. Paragraph 124-795(2)(b) provides that rollover is not available if you (the TNCL shareholder or option holder) and the acquiring entity (Carlholt) are members of the same wholly owned group just before you stop owning your original interest (the TNCL shares or options) and the acquiring entity (Carlholt) is a foreign resident.

49. This exception will not apply as Carlholt is not a foreign resident.

Cost Base

50. Subsection 124-785(2) provides that a shareholder or option holder works out the first element of the cost base of each CGT asset they receive as a result of the scrip for scrip exchange by reasonably attributing to it the cost base (or part of it) of the original asset. Further, the first element of the reduced cost base is worked out on a similar basis under subsection 124-785(4).

51. Consequently, the first element of the cost base/reduced cost base of each NC share (including those represented by CDIs) received by a TNCL shareholder will be the sum of the cost

base/reduced cost base that the shareholder had in two original TNCL shares which have been replaced.

52. Similarly, the first element of the cost base/reduced cost base of each NC option received by a TNCL option holder will be the cost base/reduced cost base that the option holder had in the original TNCL option which it replaced.

Detailed contents list

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

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Commissioner of Taxation
29 September 2004

Related Rulings/Determinations:
CR 2001/1; TR 92/1; TR 97/16

Subject references:
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- capital proceeds
- CGT event
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- company
- cost base
- interests
- option
- option holder
- ordinary share
- original interest
- reduced cost base
- replacement interest
- resident
- rollover
- scrip
- scrip for scrip
- significant stake
- significant stakeholder
- share
- shareholder

Legislative references:
- ITAA 1936 6(1)

- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-780(1)(a)(i)
- ITAA 1997 124-780(1)(a)(ii)
- ITAA 1997 124-780(1)(b)
- ITAA 1997 124-780(1)(c)
- ITAA 1997 124-780(2)(a)
- ITAA 1997 124-780(2)(b)
- ITAA 1997 124-780(2)(c)
- ITAA 1997 124-780(3)(a)
- ITAA 1997 124-780(3)(c)
- ITAA 1997 124-780(3)(d)
- ITAA 1997 124-780(6)
- ITAA 1997 124-783(5)
- ITAA 1997 124-785(2)
- ITAA 1997 124-785(4)
- ITAA 1997 124-795(2)(a)
- ITAA 1997 124-795(2)(b)
- ITAA 1997 124-800(1)
- Corporations Law 619(3)

ATO references

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