



CR 2004/74 - Income tax: capital reduction: Singapore Telecommunications Limited

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Class Ruling

Income tax: capital reduction: Singapore Telecommunications Limited

Contents	Para
What this Class Ruling is about	1
Date of effect	9
Withdrawal	10
Arrangement	11
Ruling	26
Explanation	29
Detailed contents list	44

Preamble

*The number, subject heading, **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 Class Ruling are:

- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) definition of 'dividend';
- subsection 6(4) of the ITAA 1936;
- subsection 44(1) of the ITAA 1936;
- section 45A of the ITAA 1936;
- section 45B of the ITAA 1936; and
- section 45C of the ITAA 1936.

Class of persons

3. The class of persons to which this Ruling applies is:

- (a) Australian resident entities that hold ordinary shares in Singapore Telecommunications Limited ('SingTel') which are listed on the Singapore Stock Exchange ('SGX') in Singapore dollars; and

- (b) Australian resident entities that hold CHESS Units of Foreign Securities ('CUFS'), representing beneficial ownership of ordinary SingTel shares on a one-for-one basis, which are listed on the Australian Stock Exchange ('ASX') in Australian dollars;

who receive distributions under the capital reduction described in paragraphs 11 to 25.

4. Entities include individuals, bodies corporate, bodies politic, partnerships, any other unincorporated associations or bodies of persons, trusts, superannuation funds. The above class of persons are collectively referred to in this Ruling as 'Australian Participants'. SingTel shares and SingTel CUFS are referred to in this Ruling as 'SingTel Interests'.

Qualifications

5. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

6. 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 11 to 25.

7. 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

9. This Class Ruling applies to the income year ended 30 June 2005. 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 issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20). Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by Gazette;
- it is not taken to be withdrawn by an inconsistent later public ruling; or
- the relevant tax laws are not amended.

Withdrawal

10. This Class Ruling is withdrawn and ceases to have effect after 30 June 2005. However, the Ruling continues to apply after its withdrawal in respect of the tax laws ruled upon, to all persons within the specified class who entered into the specified arrangement during the term of the Ruling, subject to there being no change in the arrangement or in the person's involvement in the arrangement.

Arrangement

11. The arrangement that is the subject of this 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:

- The application for a Class Ruling dated 24 May 2004;
- Copies of the News Release and the announcement to the SGX and ASX by SingTel dated 6 May 2004 of the proposed capital reduction;
- extracts from SingTel's summary audited financial report for the year ended 31 March 2004.

12. SingTel is a company incorporated under the Singapore Companies Act and is listed on the Singapore Stock Exchange. On 6 May 2004, SingTel announced its intention to undertake a capital reduction (the 'SingTel Capital Reduction'). At the time of issue of this Ruling, implementation of the SingTel Capital Reduction was still subject to the approval of shareholders at an Extraordinary General Meeting to be held on 29 July 2004 and thereafter by the High Court of Singapore. If all approvals are given, the SingTel Capital Reduction is expected to occur in September 2004.

13. SingTel operates various communications businesses. During the year ended 31 March 2004, SingTel had successfully completed a number of non-core asset divestments, resulting in cash of approximately S\$3.3 billion which, the SingTel Directors consider, is in excess of the needs of SingTel and its subsidiaries. SingTel proposes to distribute cash of approximately S\$3.0 billion in the form of a return of capital to its shareholders as part of its capital management strategy.

14. Under the announced SingTel Capital Reduction, SingTel intends to cancel approximately 1.3 billion ordinary shares (or about 7.1% of SingTel's total issued share capital of 17.9 billion ordinary shares, as at 3 May 2004). There are no other classes of share on issue.

15. The SingTel Capital Reduction will result in distributions to about 30,000 holders of CUFS in Australia and to some holders of SingTel shares who are residents of Australia for income tax purposes. The CUFS holders' interests represent approximately 2% of SingTel's issued shares. The majority of the interests in SingTel's share capital that is beneficially owned by Australian resident entities is held via SingTel CUFS.

16. SingTel also proposes to pay a final gross dividend in relation to the year ended 31 March 2004 of S\$6.4¢ per share totalling S\$1.1 billion which, if approved, will be paid before the SingTel Capital Reduction.

17. Under the proposed SingTel Capital Reduction, and subject to a rounding-up rule, one SingTel share will be cancelled for every 14 SingTel shares owned by shareholders as at a date to be determined by the SingTel Directors (referred to as the 'Books Closure Date'). The resultant number of SingTel shares that would have been held by each shareholder following the proposed cancellation of SingTel shares will be rounded up (where applicable) to the nearest multiple of 10 SingTel shares¹.

18. Shareholders who hold or own less than 14 SingTel shares as at the Books Closure Date will not be subject to, and their SingTel shares will not be cancelled pursuant to, the SingTel Capital Reduction.

¹ The purpose of this rounding-up is to enable shareholders to own SingTel shares in multiples of 10, which is the minimum trading board lot for shares on the SGX, after the SingTel Capital Reduction.

19. For each SingTel share cancelled, shareholders will receive a distribution of S\$2.36 based on the average closing prices of SingTel shares traded on the SGX from 27 April 2004 to 3 May 2004 (both dates inclusive). The equivalent amount in Australian Dollars, at a foreign exchange rate to be determined by SingTel Directors, will be paid to the holders of CUFS.

20. The SingTel Capital Reduction will be financed from the sale of short-term investments, cash on deposit, and cash and bank balances of the SingTel Group at the time of the SingTel Capital Reduction.

21. SingTel has stated that the purpose of the SingTel Capital Reduction is to optimise SingTel's capital structure by achieving a right mix of debt and cash, and to enhance shareholders' value by increasing its return on equity from 25.5% to 30.7% (earnings per share is expected to improve by 7.7%).

22. Further, there should not be any dilution for SingTel shareholders as their proportionate ownership and voting rights will remain substantially unchanged.

23. The SingTel Capital Reduction will be accounted for by debiting SingTel's share capital account to the extent of the par value of each cancelled share (S\$15¢) with the balance of S\$2.21 per cancelled share debited to SingTel's share premium account.

24. SingTel confirms that there have not been any transfers to the share premium account. That is, the share premium account only contains premiums received by SingTel on the issue of its shares. The amount standing to the credit of SingTel's share premium account is due largely to the shares that were issued by SingTel as part of the consideration given for the acquisition of SingTel Optus Pty Ltd (formerly Cable & Wireless Optus Limited) in 2001.

25. Shareholders' equity disclosed in SingTel's audited Balance Sheet as at 31 March 2004 is as follows:

Shareholders' Equity [S\$ million]	Company	Group
Paid-up share capital	2,677	2,677
Share premium account	4,882	4,882
Revenue and other reserves	<u>9,774</u>	<u>12,193</u>
Total equity	<u>17,333</u>	<u>19,752</u>

Ruling

Distribution is not a dividend for income tax purposes

26. The distribution to be received by the Australian Participants under the proposed SingTel Capital Reduction is not a 'dividend' as defined by subsection 6(1) of the ITAA 1936.

Specific anti-avoidance provisions do not apply

27. 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 treat, as an unfranked dividend, the whole, or any part, of the distribution to be received by the Australian Participants under the proposed SingTel Capital Reduction.

28. Therefore, the distribution will not be included in an Australian Participant's assessable income under subsection 44(1) of the ITAA 1936.

Explanation

Distribution is not a dividend for income tax purposes

29. A distribution will be included in an Australian Participant's assessable income under subsection 44(1) of the ITAA 1936 if it falls within the definition of 'dividend' in subsection 6(1) of the ITAA 1936, subject to subsection 6(4). SingTel is a non-resident company incorporated in Singapore with shares that have a par value. The definition of 'dividend' in subsection 6(1) of the ITAA 1936, as presently enacted, only applies to dividends paid on or after 1 July 1998 by a company with shares with no par value, as provided by the *Taxation Laws Amendment (Company Law Review) Act 1998* (Act No. 63 of 1998). However, this Act also continued in force the previously enacted definition of 'dividend' in subsection 6(1) and subsection 6(4) of the ITAA 1936 for companies with shares that have a par value. As SingTel is a company with shares that have a par value, the provisions of the income tax law that apply to the SingTel Capital Reduction distribution are those as enacted before the amendments. In this Ruling, these previously enacted provisions are referred to as the 'par value provisions'.

30. It is proposed that the whole of the return of capital by SingTel will be debited, firstly, against its share capital account to the extent of the paid up amount of each share that is cancelled (\$15¢ per share), and the balance against the credit standing in its share premium account.

31. Under the par value provisions, money paid by a company by way of repayment of moneys paid up on a share is excluded from the definition of 'dividend' in subsection 6(1), subject to certain exceptions. The exception at subparagraph (e)(i), which applies when a share is cancelled, does not apply in this case as the proposed distribution from SingTel's share capital account will be equal to, and will not be greater than, the amount to which a share is paid up immediately before the cancellation takes place, ie, \$15¢ per share (paragraph (e) of the definition of 'dividend').

32. Further, under the par value provisions, money paid by a company to a shareholder which is debited against an amount standing to the credit of the share premium account is excluded from the definition of 'dividend' in subsection 6(1) of the ITAA 1936, subject to subsection 6(4) of the ITAA 1936. In the circumstances of the proposed SingTel Capital Reduction, subsection 6(4) does not apply as the amount standing to the credit of SingTel's share premium account is due largely to the shares that were issued by SingTel as part of the consideration given for the acquisition of shares in SingTel Optus Pty Ltd in 2001, which could not be said to have been done for the purpose of facilitating this proposed distribution out of the share premium account (paragraph (d) of the definition of 'dividend').

33. As a result, the money received by Australian Participants from the SingTel Capital Reduction will not be a dividend.

Specific anti-avoidance provisions

34. However, sections 45A and 45B of the ITAA 1936 are two anti-avoidance provisions which, if they apply, allow the Commissioner to make a determination that section 45C applies in relation to the distribution of capital received by the Australian Participants under the SingTel Capital Reduction, with the result that either the whole or a part of the distribution is taken to be an unfranked dividend. Accordingly, the application of these two provisions to the SingTel Capital Reduction must be considered.

35. Section 45A of the ITAA 1936 is an anti-avoidance provision that applies in circumstances where capital benefits are streamed to certain shareholders (the advantaged shareholders) who derive a greater benefit from the receipt of capital and it is reasonable to assume that the other shareholders (the disadvantaged shareholders) have received or will receive dividends.

36. Although a 'capital benefit', as defined in paragraph 45A(3)(b) of the ITAA 1936, is provided to the Australian Participants under the SingTel Capital Reduction, the circumstances of the SingTel Capital Reduction indicate that there is no streaming of capital benefits to some shareholders and dividends to other shareholders in the manner contemplated by section 45A. Accordingly, section 45A has no application to the SingTel Capital Reduction.

37. Section 45B of the ITAA 1936 applies where certain capital payments are paid to shareholders in substitution for dividends. Broadly, section 45B applies where:

- (a) there is a scheme under which a person is provided with a capital benefit by a company: paragraph 45B(2)(a);
- (b) under the scheme, a taxpayer, who may or may not be the person provided with the capital benefit, obtains a tax benefit: paragraph 45B(2)(b); and

- (c) having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a purpose (whether or not the dominant purpose but not including an incidental purpose), of enabling a taxpayer to obtain a tax benefit: paragraph 45B(2)(c).

38. The SingTel Capital Reduction is a 'scheme' within the broad meaning of that term and, because share capital and share premium will be distributed, Australian Participants will be provided with a capital benefit in accordance with paragraph 45B(5)(b).

39. As an Australian Participant will be subject to income tax on the distribution under the capital gains and losses provisions in Part 3-1 of the ITAA 1997, the tax payable on the distribution will be less than if the distribution were a dividend. An Australian participant will therefore obtain a tax benefit within the meaning conveyed by subsection 45B(9) of the ITAA 1936.

40. Although the conditions of paragraphs 45B(2)(a) and 45B(2)(b) of the ITAA 1936 are satisfied, it cannot reasonably be concluded that there is a more than incidental purpose of enabling the Australian Participants to obtain a tax benefit – by SingTel carrying out the SingTel Capital Reduction.

41. In addition to the proposed return of capital of some S\$3 billion, SingTel also proposes to pay a final gross dividend in respect of the year ended 31 March 2004 of S\$6.4¢ per share totalling some S\$1.1 billion and constituting about 40% of SingTel's net profit before goodwill and exceptional gains for that year. The dividend is S\$0.9¢ per share greater than the final dividend paid in recent years.

42. However, SingTel has also realised a significant amount of exceptional gains during the year ended 31 March 2004 which are included in the proceeds of divestments in that year. This suggests that some or all of the distribution is attributable to profits. In addition, the interests of shareholders before and after the proposed SingTel Capital Reduction would largely remain the same.

43. Weighing against such factors, in concluding that the requisite degree of purpose under paragraph 45B(2)(c) is not present, is the fact that the Australian Participants combined hold a relatively small proportion of the equity in SingTel - approximately 2% of the issued share capital. It therefore can reasonably be concluded that any purpose of enabling an Australian Participant to obtain a tax benefit from the distribution would be merely incidental to the purposes of the SingTel Capital Reduction.

Detailed contents list

44. 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	5
Date of effect	9
Withdrawal	10
Arrangement	11
Ruling	26
Distribution is not a dividend for income tax purposes	26
Specific anti-avoidance provisions	27
Explanation	29
Distribution is not a dividend for income tax purposes	29
Specific anti-avoidance provisions	34
Detailed contents list	44

Commissioner of Taxation

14 July 2004

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 92/20; TR 97/16

Subject references:

- anti avoidance measures
- capital reductions
- deemed dividends
- dividend income
- return of capital on shares
- share capital
- share premium accounts

Legislative references:

- Copyright Act 1968

- TAA 1953 Pt IVA

- ITAA 1936 6(1)
- ITAA 1936 6(4)
- ITAA 1936 44(1)
- ITAA 1936 45A
- ITAA 1936 45A(2)(a)
- ITAA 1936 45A(2)(c)
- ITAA 1936 45A(3)(b)
- ITAA 1936 45B
- ITAA 1936 45B(5)(b)
- ITAA 1936 45B(9)
- ITAA 1936 45C

Other references:

- Taxation Laws Amendment (Company Law Review) Act 1998

Class Ruling

CR 2004/74

Page 10 of 10

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