



CR 2005/12 - Income tax: Aventis SA 'Aventis Shares' and 'Aventis Performance' Group Savings Plans for employees - Sanofi-Synthelabo Tender Offer for Aventis SA shares

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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: Aventis SA 'Aventis Shares' and 'Aventis Performance' Group Savings Plans for employees – Sanofi-Synthelabo Tender Offer for Aventis SA shares

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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**, **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 6-1 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- subsection 6-5(4) of the ITAA 1997;
- subsection 6-10(3) of the ITAA 1997;
- section 102-5 of the ITAA 1997;
- subsection 100-20(1) of the ITAA 1997;
- subsection 110-10(2) of the ITAA 1997; and
- Division 104 of the ITAA 1997.

Class of persons

3. The class of persons to which this Ruling applies is the Australian residents employed by Aventis SA's Australian employer companies, Aventis Pasteur Pty Ltd and Aventis Pharma Pty Ltd and its Australian subsidiaries, who will participate in the offer under the arrangement described below in paragraphs 10 to 24 ('the unit holders').

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 24.

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 arrangements entered into during the income year ending 30 June 2005. However, this 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).

Withdrawal

9. This Class Ruling is withdrawn and ceases to have effect on and after 1 July 2005. The Ruling continues to apply, in respect of the tax law(s) ruled upon, even following its withdrawal, for arrangements entered into prior to the withdrawal of the Ruling. This is subject to there being no material change in the arrangement or in the class of persons involved in the arrangement.

Arrangement

10. 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:

- Sanofi-Synthelabo Tender Offer;
- Application for Class Ruling dated 1 July 2004;
- E-mail correspondence from Freehills Solicitors, dated 11 January 2005;
- E-mail correspondence from Freehills Solicitors, dated 19 January 2005;
- Group Employee Mutual Fund 'Aventis Shares' by-laws;
- Information Note of the *Funds Commun de Placement d'Enterprise* ('FCPE');
- Copy of the Aventis Group Savings Plan (with amendments) for the 2002 and 2003 offers;
- Employee brochure including 'Australian Supplement' for the 2002 and 2003 offers;
- By-laws of 'Aventis Performance 2002';
- Information notice 'Aventis Performance 2002';
- Minute confirming terms of the 'Swap Transaction Agreement' between the Interepargne for the Aventis Performance FCPE and Deutsche Bank AG;
- Underwriting guarantee agreement; and
- Securities sale agreement.

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

Description of the arrangement

11. 'Aventis Shares 2000', 'Aventis Shares 2002', 'Aventis Shares 2003', 'Aventis Performance', 'Aventis Performance 2002' and 'Aventis Performance 2003' are arrangements under which Australian resident employees of the Aventis SA (Aventis) group may invest in securities referable to a portfolio of shares in Aventis SA. The Aventis Shares 2000, Aventis Shares 2002 and Aventis Shares 2003 plans are referred to collectively as the 'Classic Plan'. The Aventis Performance, Aventis Performance 2002 and Aventis Performance 2003 plans are referred to collectively as the 'Leveraged Plan'.

12. The share portfolios relating to the Aventis Shares 2000, Aventis Shares 2002 and Aventis Shares 2003 plans are held through a FCPE, a collective investment vehicle established under French law.

13. The share portfolios relating to the Aventis Performance, Aventis Performance 2002 and Aventis Performance 2003 plans are each held through a separate FCPE.

14. The Classic Plan and the Leveraged Plan share the following features:

- (a) The FCPE manager subscribes for ordinary shares in the capital of Aventis SA pursuant to a capital increase reserved to company employees on a worldwide basis by Aventis SA. The shares are held in the name of the FCPE custodian in the name of the relevant Plan.
- (b) An employee participates in the Plan by paying (or contributing to the payment of) the 'Subscription Price'.
- (c) In consideration for the payment of the Subscription Price, employees are allotted units in the FCPE. When a unit is issued, one unit is equivalent to the value of one Aventis SA share. However, from that time, the value of a unit is the 'Net Asset Value' as defined broadly under the FCPE by-laws.
- (d) Units may be redeemed by a unit holder for the 'Net Asset Value' at its 'maturity date' or earlier in the event that a condition of early redemption is satisfied. In the case of early redemption the unit holder's entitlements based on the Net Asset Value at the relevant time are satisfied by a cash payment. Unit holders may also leave their entitlements in the Fund.

15. Under the terms of the Classic Plan, dividends paid on shares are not paid to unit holders but are reinvested by the applicable FCPE manager in further Aventis SA shares. This is reflected by the issue of additional units (or fractions of units) to the unit holders.

16. Under the terms of the Leveraged Plan, the FCPE manager is required to pay all dividends, as they are received, to Deutsche Bank AG as per the terms of a 'Swap Transaction Agreement'.

17. The Classic Plan is described in detail in paragraphs 10 to 18 of CR 2004/5. The Leveraged Plan is described in detail in paragraphs 10 to 26 of CR 2004/6.

The Tender Offer

18. Sanofi-Synthelabo (Sanofi) has made a Tender Offer for the shares of Aventis and Aventis has recommended this Tender Offer to its shareholders.

19. The Tender Offer consists of three alternatives:

- (a) a 'Principle Offer in Cash and Shares', where shareholders will receive 0.8333 Sanofi shares and 20 Euro in cash for each Aventis share tendered;
- (b) a 'Subsidiary Offer in Shares', where shareholders will receive 1.1739 Sanofi shares for each Aventis share tendered; and
- (c) a 'Subsidiary Offer in Cash', where shareholders will receive 68.93 Euro for each Aventis share tendered.

20. The subsidiary offers were subject to potential adjustment to ensure compliance with the 'Global Ratio' of the Tender Offer: 71% of shares and 29% of cash (the 'Global Ratio').

21. On 30 June 2004, the supervisory boards for the Aventis Performance, Aventis Performance 2002 and Aventis Performance 2003 FCPEs resolved to tender the Aventis shares into the 'Subsidiary Offer in Cash'.

22. In minutes dated 18 June 2004, the supervisory board for the Aventis Shares FCPE resolved to tender the Aventis shares into the 'Principle Offer in Cash and Shares'.

23. The tender offers submitted by the respective boards of the Leveraged Plan were adjusted to comply with the Global Ratio. As a result, the Aventis Performance, Aventis Performance 2002 and Aventis Performance 2003 FCPEs disposed of their Aventis shares for proceeds composed of 33% cash and 67% Sanofi shares. The tender offer submitted by the FCPE for the Classic Plan was accepted in full.

24. The Sanofi shares received as a result of the exchange will remain held by the FCPEs and restricted for the remainder of the lock-up period originally applicable to the Aventis shares. The cash proceeds have been reinvested by the FCPEs in Sanofi shares which will also remain held by the FCPEs and subject to the remainder of the original lock-up period. Additional units have not been issued as a result of accepting the Tender Offer or reinvestment of the cash proceeds.

Ruling

25. The change of Aventis shares for Sanofi shares in both the Classic Plan and Leveraged Plan:

- (a) will not result in any unit holder making a capital gain or capital loss under Division 104 of the ITAA 1997; and
- (b) will not give rise to assessable income to the respective unit holders under section 6-1, subsection 6-5(4) or subsection 6-10(3) of the ITAA 1997.

Explanation

Capital gains tax (CGT)

26. A taxpayer's assessable income for a given income year includes his or her net capital gain for that year: subsection 102-5(1) of the ITAA 1997. A taxpayer's net capital gain is the total of his or her capital gains for the income year, reduced by certain capital losses: subsection 110-10(2) of the ITAA 1997. A capital gain or loss can only arise if a CGT event happens: subsection 100-20(1) of the ITAA 1997.

27. The characterisation for CGT purposes of the unit holders' respective interests in the FCPE is set out in Class Rulings CR 2004/5 (for the Classic Plan) and CR 2004/6 (for the Leveraged Plan). Each of the FCPE's regulations is considered to confer upon its unit holders a chose in action entitling that unit holder to a fractional interest in net assets and rights to a share of reinvested income. For the purposes of Parts 3-1 and 3-3 of the ITAA 1997 the relevant asset is this chose in action rather than any interest the employee may have in the underlying property of the fund.

28. For CGT purposes, the exchange of Aventis shares for Sanofi shares is considered to have no effect on the CGT asset held by the unit holders, namely, their choses in action. In particular, none of the units is transferred or comes to an end, and no payment or other distribution is made in respect of a unit. For CGT purposes, the effect of the transaction is considered to be limited to the underlying assets of the FCPE. It is therefore considered that no CGT event happens in relation to the unit holders as a result of the exchange.

29. As no CGT event happens to the unit holders as a result of the exchange of Aventis shares for Sanofi shares by the FCPE, no capital gain or loss will arise in the unit holders' hands. Accordingly, no amount will fall to be taken into account in the calculation of any unit holder's net capital gain.

Assessable income

30. A question as to whether the unit holders derive assessable income from the exchange of Aventis shares for Sanofi shares (otherwise than under the CGT provisions) will arise if the unit holders are entitled to, and therefore derive, the proceeds of the disposal. Such an entitlement will exist if the unit holders receive the proceeds of the exchange or if those proceeds are applied or dealt with on behalf of the unit holders or as they direct (subsection 6-5(4) or subsection 6-10(3) of the ITAA 1997).

31. Under the arrangement, the unit holders do not directly receive any part of the proceeds of the exchange. Further, according to the terms of the Sanofi Tender Offer, the exchange of Aventis shares for Sanofi shares will not result in any additional units being issued to the unit holders. Instead, the value of the Sanofi shares and any reinvested cash proceeds will be added to the Net Asset Value of the FCPE. The reinvestment of the proceeds in this way is not considered to constitute a dealing with the proceeds of the exchange on behalf of the unit holders or as they direct within the meaning of subsection 6-10(3) of the ITAA 1997.

32. As they are not considered to have derived anything from the exchange of Aventis shares, the arrangement does not give rise to assessable income in the hands of the unit holders.

Detailed contents list

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

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Commissioner of Taxation

16 March 2005

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

CR 2001/1; CR 2004/5;
CR 2004/6; TR 92/1; TR 92/20;
TR 97/16

Subject references:

- assessable income
- CGT events

Legislative references:

- Copyright Act 1968
- TAA 1953 Pt IVAAA
- ITAA 1997 6-1
- ITAA 1997 6-5(4)
- ITAA 1997 6-10(3)
- ITAA 1997 Pt 3-1
- ITAA 1997 100-20(1)
- ITAA 1997 102-5
- ITAA 1997 102-5(1)
- ITAA 1997 Div 104
- ITAA 1997 110-10(2)
- ITAA 1997 Pt 3-3

ATO references

NO: 2005/3500
ISSN: 1445-2014