

# ***CR 2005/14A - Addendum - Income tax: off-market share buy-back: Tower Limited***

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## Addendum

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### Class Ruling

#### Income tax: off-market share buy-back: Tower Limited

This Addendum amends Class Ruling CR 2005/14 to advise of the Commissioner's error in not determining that part of the purchase price should have been taken to be a dividend.

**CR 2005/14 is amended as follows:**

**1. Paragraph 21**

Omit '\$1.00' and substitute '\$1.085'.

**2. Heading preceding Paragraph 22**

Omit Heading '**The distribution is not a dividend**' and substitute '**No part of the distribution to be treated as a dividend**'.

**3. Paragraph 22**

Omit the paragraph and substitute:

22. No part of the return of the share capital will be treated as a dividend for the purposes of both the ITAA 1936 and ITAA 1997.

**4. Paragraph 28**

(a) Omit '\$1.00' and substitute '\$1.085'.

(b) Insert new last sentence: 'Accordingly, the purchase price of each Tower share sold is \$2.33.'

**5. Paragraph 31**

(a) Omit from first sentence 'the entire purchase price of' and substitute 'only'.

(b) Omit second sentence and substitute 'Consequently, the difference between the purchase price (\$2.33) and the amount debited against the company's share capital account (\$2.155) would have been taken to be a dividend under section 159GZZP of the ITAA 1936.'

**6. New Paragraph 31A before the heading 'The capital component (or sale consideration)'**

Insert:

31A. However, as the Commissioner erred in the Class Ruling issued on 30 March 2005 in not determining that part of the purchase price should have been taken to be a dividend under section 159GZZZP of the ITAA 1936 no part of the purchase price will be included in the assessable income of the shareholders under section 44 of the ITAA 1936.

**7. Paragraph 34**

Omit the paragraph and substitute:

34. The methodology for arriving at a market value pursuant to subsection 159GZZZQ(2) of the ITAA 1936 is set out in Taxation Determination TD 2004/22. Tower has adopted the methodology set out in TD 2004/22 to arrive at a market value of \$2.33 per share.

**8. Paragraph 35**

Omit the paragraph and substitute:

35. As the actual consideration received by Tower shareholders was equal to the market value of Tower shares, no further price adjustment is required under subsection 159GZZZQ(2) of the ITAA 1936.

**9. After Paragraph 36**

(a) Insert new heading:

***No reduction to the deemed consideration***

(b) Insert new Paragraph 36A:

36A. Where the purchase price under an off-market buy-back includes a dividend amount that has been included in assessable income the consideration deemed to have been received is reduced by that dividend amount: subsections 159GZZZQ(3) and (4) of the ITAA 1936. In this instance, because no dividend amount is to be included in the seller's assessable income Tower shareholders are deemed to have received consideration in respect of the sale of each of their shares equal to \$2.33 for the purposes of section 159GZZZQ of the ITAA 1936.

**10. Detailed contents list**

Insert:

*No reduction to the deemed consideration*

36A

**11. Legislative references**

Insert:

- ITAA 1936 159GZZZQ(4)

This Addendum applies to the year ended 30 June 2005.

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**Commissioner of Taxation**5 October 2005

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## ATO references

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