


CR 2006/61 - Income tax: proposed capital reduction: Singapore Telecommunications Limited

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Class Ruling

Income tax: proposed capital reduction: Singapore Telecommunications Limited

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ⓘ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:

- subsection 6(1) of the *Income Tax Assessment Act 1936* (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.

All legislative references in this Ruling are to the ITAA 1936 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies are:
 - (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 ('CUFS Holders'),

who receive distributions under the capital reduction described in paragraphs 15 to 28 of this Ruling.

4. Entities include individuals, bodies corporate, bodies politic, partnerships, any other unincorporated associations or bodies of persons, trusts, superannuation funds.

5. The above class of persons are collectively referred to in this Ruling as 'Australian Participants'. SingTel shares and SingTel CUFS are collectively referred to in this Ruling as 'SingTel Interests'.

6. This Ruling deals with whether the payment to Australian Participants is a dividend. It does not deal with the capital gains tax consequences of the share cancellation.

Qualifications

7. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 15 to 28 of this Ruling.

8. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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Date of effect

10. This Ruling applies to the income year ended 30 June 2007. 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. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

11. If this Class Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

12. If this Class Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Class Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

13. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Withdrawal

14. This Ruling is withdrawn and ceases to have effect after 30 June 2007. However, the Ruling continues to apply after its withdrawal in respect of the relevant provisions ruled upon, to all entities within the specified class who entered into the specified scheme during the term of the Ruling, subject to there being no change in the scheme or in the entities involved in the scheme.

Scheme

15. The scheme that is the subject of the Ruling is described below. This description is based on, and includes reference to, the following documents:

- The application for a Class Ruling dated 15 June 2006;
- Copies of the News Release and the announcement to the SGX and ASX by SingTel dated 4 May 2006 of the proposed capital reduction; and
- Extracts from SingTel's summary financial report for the year ended 31 March 2006.

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

16. SingTel is a company incorporated under the Singapore Companies Act and is listed on the SGX. On 4 May 2006, SingTel announced its intention to undertake a capital reduction (the SingTel Capital Reduction). At the time of the 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 in July 2006 and thereafter by the High Court of Singapore. If all approvals are given, the SingTel Capital Reduction is expected to be paid by the end of September 2006.

17. SingTel operates various communications businesses. The SingTel Capital reduction will be financed from short-term investments, cash on deposit, and cash and bank balances of SingTel and its subsidiaries. SingTel proposes to distribute cash of approximately S\$2.3 billion in the form of a return of capital to its shareholders as part of its capital management strategy.

18. Under the proposed SingTel Capital Reduction, SingTel intends to cancel approximately 835 million ordinary shares (or about 5% of SingTel's total issued share capital of 16.7 billion ordinary shares, as at 28 April 2006). There are no other classes of share on issue.

19. The SingTel Capital Reduction will result in distributions to about 30,000 CUFS Holders in Australia and to some holders of SingTel shares who are residents of Australia for income tax purposes. The CUFS Holders' interests represent approximately 2.78% of SingTel's issued shares.

20. Shareholders who hold or own less than 20 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.

21. SingTel also proposes to pay a final gross dividend in relation to the year ended 31 March 2006 totalling S\$1.7 billion which, if approved, will be paid before the SingTel Capital Reduction. SingTel confirms that payment of the final dividend is not conditional on shareholder's approval of the SingTel Capital Reduction.

22. Under the proposed SingTel Capital Reduction, and subject to a rounding-up rule, one SingTel share will be cancelled for every 20 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 shares.

23. For each SingTel share cancelled, shareholders will receive a distribution of S\$2.74 ('the Distribution') based on the average closing prices of SingTel shares traded on the SGX from 24 April 2006 to 28 April 2006 (both dates inclusive). The equivalent amount in Australian Dollars, at a foreign exchange rate to be determined by SingTel Directors, will be paid to CUFS Holders.

24. 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 20.6% to 23.3%% (earnings per share is expected to improve by 5.3%).

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

26. All of the SingTel Capital Reduction will be accounted for by debiting SingTel's share capital account. Following an amendment to the Singapore Companies Act (with effect from 30 January 2006) pursuant to which the 'par value' concept was abolished, all amounts standing to the credit of SingTel's share premium account and capital redemption reserve became part of its share capital.

27. SingTel confirms that apart from the effect described at paragraph 26 of this Ruling, there have not been any transfers to the share capital account. That is, the share capital account only contains capital received by SingTel on the issue of its shares as well as premiums received on the issue of shares which were previously standing to the credit of the share premium account.

28. Shareholders' equity disclosed in SingTel's audited Balance Sheet as at 31 March 2006 is as follows:

Shareholders' Equity	\$S million
Share capital	4,775
Revenue and other reserves	<u>9,549</u>
Total equity	<u>14,324</u>

Ruling

Is the Distribution a dividend as defined in subsection 6(1)?

29. The distribution pursuant to the SingTel Capital Reduction will not be a dividend as defined in subsection 6(1).

The application of sections 45A, 45B and 45C to the SingTel Capital Reduction

30. The Commissioner will not make a determination (under sections 45A or 45B) that section 45C applies to the SingTel Capital Reduction. Accordingly, no part of the Distribution will be taken to be a dividend for income tax purposes under section 45C.

Commissioner of Taxation

28 June 2006

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

Dividends

31. Subsection 44(1) includes in a shareholder's assessable income any dividends, as defined in subsection 6(1), paid to the shareholder out of profits derived by the company from any source (if a resident of Australia) and from an Australian source (if non-resident).

32. The term 'dividend' in subsection 6(1) includes any distribution made by a company to any of its shareholders. However, later paragraphs in this subsection exclude certain items from being a dividend for income tax purposes.

33. Relevantly, the specific exclusion in paragraph 6(1)(d) of the definition of 'dividend' provides:

money paid or credited by a company to a shareholder or any other property distributed by a company to shareholders (not being moneys or other property to which this paragraph, by reason of subsection 6(4), does not apply or moneys paid or credited, or property distributed for the redemption or cancellation of a redeemable preference share), where the amount of the moneys paid or credited, or the amount of the value of the property, is debited against an amount standing to the credit of the share capital account of the company.

34. The Distribution will be debited against SingTel's share capital account. There have been no transfers into SingTel's share capital account as defined in section 6D from any of SingTel's other accounts. Therefore, paragraph 6(1)(d) of the definition of 'dividend' applies and the Distribution will not constitute a dividend.

Anti-avoidance provisions

35. Sections 45A and 45B are two anti-avoidance provisions which, if they apply, allow the Commissioner to determine that all or part of a distribution is treated as an unfrankable dividend that is paid by the company out of profits to the shareholder.

Section 45A – streaming of dividends and capital benefit

36. Section 45A applies in circumstances where capital benefits are streamed to advantaged shareholders who would, in the year of income in which the capital benefits are provided, derive a greater capital benefit than the other shareholders (the disadvantaged shareholders) who would receive dividends.

37. SingTel will provide the Australian Participants with a 'capital benefit' (as defined in paragraph 45A(3)(b)), and the capital benefit is to be provided to the Australian Participants in direct proportion to their individual shareholding. However the circumstances of the SingTel Capital Reduction indicate that there is no 'streaming' of capital benefits to some shareholders and not to other shareholders. Accordingly, section 45A will not apply to the Distribution, and the Commissioner will not make a determination under subsection 45A(2) that section 45C applies to the Distribution.

Section 45B – schemes to provide capital benefits in substitution for dividends

38. Section 45B applies where certain amounts of a capital nature are provided to shareholders in substitution for dividends.

39. Subsection 45B(2) sets out the conditions under which the Commissioner will make a determination under subsection 45B(3) that section 45C applies. These conditions are that:

- (a) there is a scheme under which a person is provided with a capital benefit by a company;
- (b) under the scheme a person (the relevant taxpayer), who may or may not be the person provided with the capital benefit, obtains a tax benefit; and
- (c) having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, 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.

40. The SingTel Capital Reduction is a 'scheme' within the broad meaning of that term.

41. The Australian Participants will be 'provided with a capital benefit' as defined in subsection 45B(2) under the SingTel Capital Reduction. The definition includes a distribution of share capital.

42. A shareholder 'obtains' a 'tax benefit', as defined in subsection 45B(9), where:

- the amount of tax payable; or
- any other amount payable under the ITAA 1936 or the *Income Tax Assessment Act 1997* (ITAA 1997),

by the taxpayer would, apart from the operation of section 45B:

- be less than the amount that would have been payable; or
- be payable at a later time than it would have been payable,

if the capital benefit had instead been a dividend.

43. As an Australian Participant will be subject to income tax on the distribution under the CGT 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.

44. Although the conditions of paragraphs 45B(2)(a) and 45B(2)(b) 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.

45. With respect to the 'relevant circumstances' in section 45B(8), the following observations can be made. It is evident from an examination of the audited balance sheet of SingTel that SingTel has significant amounts of retained earnings relative to share capital. Further, SingTel carried out a similar capital return amounting to some S\$3.0 billion in September 2004. In addition, the interests of shareholders before and after the proposed SingTel Capital reduction would largely remain the same.

46. 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 – less than 3% 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. Accordingly, the Commissioner will not make a determination under subsection 45B(3) that section 45C applies to the Distribution.

Section 45C – deeming dividends to be paid where determination made under sections 45A or 45B

47. As the Commissioner will not make a determination under subsection 45A(2) or subsection 45B(3) in relation to the scheme as described, section 45C will not apply.

Appendix 2 – Detailed contents list

48. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

- ITAA 1936 45A(2)
- ITAA 1936 45A(3)(b)
- ITAA 1936 45B

Subject references:

- capital reduction
- return of share capital
- share cancellation

- ITAA 1936 45B(2)
- ITAA 1936 45B(2)(a)
- ITAA 1936 45B(2)(b)
- ITAA 1936 45B(2)(c)

Legislative references:

- Copyright Act 1968
- ITAA 1936 6(1)
- ITAA 1936 6(1)(d)
- ITAA 1936 6(4)
- ITAA 1936 6D
- ITAA 1936 44(1)
- ITAA 1936 45A

- ITAA 1936 45B(3)
 - ITAA 1936 45B(8)
 - ITAA 1936 45B(9)
 - ITAA 1936 45C
 - ITAA 1936 318
 - ITAA 1997 Pt 3-1
 - TAA 1953
 - TAA 1953 Sch 1 357-75(1)
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ATO references

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