


CR 2008/61 - Income tax: implications of the Centennial Coal Company Limited return of capital for participants in the Centennial Deferred Employee Share Plan

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Class Ruling

Income tax: implications of the Centennial Coal Company Limited return of capital for participants in the Centennial Deferred Employee Share Plan

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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 (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided 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:

- Division 13A of Part III of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 104-70 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 104-135 of the ITAA 1997;
- Subdivision 115-A of the ITAA 1997; and
- section 115-100 of the ITAA 1997.

All subsequent legislative references are to the ITAA 1997 unless otherwise stated.

Class of entities

3. The class of entities to which this Ruling applies is all Australian resident employees (participating employees) of Centennial Coal Company Limited (Centennial) and its associated companies (the Centennial Coal Group) who participated in the Centennial Coal Company Limited Deferred Employee Share Plan (the Plan) and:

- whose shares were held by the Plan trustee at the record date and payment date of the return of capital, as described in Class Ruling CR 2007/120;
- did not make an election under section 139E of the ITAA 1936 covering those shares;
- received a return of capital payment from the Plan trustee in relation to those shares; and
- had not, at the time of the payment, had a cessation time (within the meaning of section 139CA of the ITAA 1936) happen in relation to those shares.

4. The Centennial Coal Group comprises:

- Airly Coal Pty Limited;
- Berrima Coal Pty Limited;
- Centennial Angus Place Pty Limited;
- Centennial Fassifern Pty Limited;
- Centennial Hunter Pty Limited;
- Centennial Mandalong Pty Limited;
- Centennial Munmorah Pty Limited;
- Centennial Myuna Pty Limited;
- Centennial Newstan Pty Limited;
- Centennial Springvale Pty Limited;
- Centennial Springvale Holdings Pty Limited;
- Centennial Mannering Pty Limited;
- Charbon Coal Pty Limited;
- Clarence Coal Investments Pty Limited;
- Clarence Colliery Pty Limited;
- Clarence Coal Pty Limited;
- Coalex Pty Limited;
- Collieries Superannuation Pty Limited;
- Elcom Collieries Pty Limited;

- Hartley Valley Coal Company Pty Limited;
- Huntley Colliery Pty Limited;
- Ivanhoe Coal Pty Limited;
- Japan Energy (Australia) Pty Limited;
- Mandalong Pastoral Management Pty Limited;
- Powercoal Pty Limited;
- Powercoal Employee Entitlements Company Pty Limited;
- Powercoal Superannuation Pty Limited;
- Preston Coal Pty Limited; and
- Springvale Coal Pty Limited.

Qualifications

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

6. 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 13 to 18 of this Ruling.

7. 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

9. This Ruling applies to the income year ended 30 June 2008. 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.

10. If this 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)).

11. If this 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.

12. 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).

Scheme

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

- application for Class Ruling from Deloitte Touche Tohmatsu Ltd dated 17 March 2008;
- Centennial Coal Company Limited Deferred Employee Share Plan Trust Deed dated 22 November 2002 (Trust Deed);
- Centennial Coal Deferred Employee Share Plan Information Booklet;
- Class Ruling CR 2003/68 Income tax: Centennial Coal Company Limited – Deferred Employee Share Plan; and
- Class Ruling CR 2007/120 Income tax: proposed return of capital: Centennial Coal Company Limited.

14. The Plan is described in CR 2003/68. Under the Plan, shares are vested in the Plan Trustee and held upon trust on behalf of participants and notionally allocated, as a beneficial interest, to the participating employees.

15. The Trust Deed states that the Plan Trustee must pay all dividends and other distributions received in respect of any Plan shares allocated to a participant to that participant without deductions.

16. The return of capital is described in CR 2007/120. Centennial distributed a return of capital payment of \$1.88 per share to each of its shareholders on 29 January 2008, which represented a return of capital to shareholders as at 18 January 2008.

17. The Commissioner explained in paragraph 54 of CR 2007/120 that Capital Gains Tax (CGT) event G1 (section 104-135) will happen when Centennial pays the return of capital in respect of each share that a Centennial shareholder owns at the time of the payment.

18. At the time of the return of capital, there were participating employees in the Plan for whom the cessation time for their shares had not yet occurred.

Ruling

CGT event G1

19. CGT event G1 in section 104-135 of the ITAA 1997 did not happen to a participating employee who received the return of capital prior to the cessation time under Division 13A of Part III of the ITAA 1936.

CGT event E4 happened on the return of capital

20. A participating employee of the Centennial Coal Group has an interest in the Plan and hence an 'interest in the trust' for the purpose of subsection 104-70(1). CGT event E4 happened when a participating employee received the return of capital payment from the Plan Trustee.

CGT discount

21. A participating employee who acquired their interest in the Plan at least 12 months before CGT event E4 happened is entitled to treat any capital gain as a discount capital gain under section 115-25 provided they satisfy the other requirements of Subdivision 115-A. The discount percentage is 50% as specified in subparagraph 115-100(a)(i).

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.*

CGT event G1

22. CGT event G1 (section 104-135 of the ITAA 1997) happened to the trustee of the Plan in respect of each share where the trustee was registered as a Centennial shareholder on the record date and continued to own the share at the time when the return of capital was paid. CGT event G1 did not happen to a participating employee who received the return of capital prior to the 'cessation time' under Division 13A of Part III of the ITAA 1936.

CGT event E4

23. CGT event E4 happens if the trustee of a trust makes a payment to you in respect of your unit or your interest in the trust and some or all of the payment is not included in your assessable income (subsection 104-70(1)).

24. An 'interest in a trust' for the purpose of subsection 104-70(1) includes a situation where shares under an employee share trust have been allocated to a participating employee.

25. As the participating employees have an interest in the Plan, being an interest in a trust, CGT event E4 therefore happened when a participating employee received the return of capital payment from the Plan Trustee.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

CR 2003/68; CR 2007/120

Subject references:

- capital gains tax
- CGT events
- CGT events E1-E9 - trusts
- employee share scheme & options
- return of capital on shares

Legislative references:

- ITAA 1936 Pt III Div 13A
 - ITAA 1936 139CA
 - ITAA 1936 139E
 - ITAA 1997 104-70
 - ITAA 1997 104-70(1)
 - ITAA 1997 104-135
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-25
 - ITAA 1997 115-100
 - ITAA 1997 115-100(a)(i)
 - TAA 1953
 - TAA 1953 Sch 1 357-75(1)
 - Copyright Act 1968
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ATO references

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