CR 2015/47 - Income tax: Murray Goulburn Co-operative Co. Limited - Supplier Share Offer

Class Ruling

Income tax: Murray Goulburn Co-operative Co. Limited – Supplier Share Offer

Contents Para

What this Ruling is about

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

Relevant provisions

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

- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)
- section 21A of the ITAA 1936
- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 83A-25 of the ITAA 1997
- Division 104 of the ITAA 1997, and
- Division 725 of the ITAA 1997.

Class of entities

3. The class of entities to which this Ruling applies are Suppliers who hold Ordinary Shares in Murray Goulburn Co-operative Co. Limited (Murray Goulburn) and who:

- acquire Ordinary Shares under the Supplier Share Offer in order to meet their Share Standard
- do not hold their Ordinary Shares as revenue assets (as defined in section 977-50 of the ITAA 1997) nor as trading stock (as defined in subsection 995-1(1) of the ITAA 1997) – that is, they hold their Ordinary Shares on capital account, and
- are not subject to the taxation of financial arrangements rules in Division 230 of the ITAA 1997 in relation to financial arrangements under the scheme.

  (Note: Division 230 of the ITAA 1997 will generally not apply to individuals, unless they have made an election for it to apply to them.)

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

5. 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 8 to 18 of this Ruling.

6. 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- this Ruling may be withdrawn or modified.

Date of effect

7. This Ruling applies to the income years ending 30 June 2015 and 30 June 2016. The Ruling continues to apply after 30 June 2016 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

8. The following description of the scheme is based on information provided by the applicant:

- Class Ruling application dated 10 April 2015,
- Murray Goulburn Constitution (adopted 27 November 2014),
- Capital Structure Booklet and Notices of Meetings to Shareholders and Preference Shareholders of Murray Goulburn,
- Milk Supply Commitment Agreement, and
- Standard Milk Payment Terms.

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

9. Murray Goulburn is an unlisted company, registered in Victoria under the *Corporations Act 2001*.

10. Murray Goulburn operates as a co-operative company. Its primary business is the acquisition of milk from Suppliers, production of dairy products from that milk and the sale of dairy products that it manufactures.

11. Broadly, a Supplier is an entity which is, or is in the process of becoming, a current and active supplier of milk to Murray Goulburn or its associates. The supply of milk between Murray Goulburn and its Suppliers is governed by the Standard Milk Payment Terms.

12. Murray Goulburn introduced a Share Standard which requires that Suppliers hold 1 Ordinary Share for every 1 kilogram of milk solids supplied to Murray Goulburn (measured on a 3 year rolling average basis).

Supplier Share Offer (SSO)

13. Under the SSO, Murray Goulburn offered Suppliers the opportunity to acquire additional Ordinary Shares in Murray Goulburn in order to meet their Share Standard.

14. The number of shares offered to a Supplier under the SSO was limited to the number of shares that the Supplier required in order to meet their Share Standard.

15. The issue price for shares under the SSO was determined by reference to the time period for which a Supplier had supplied milk to Murray Goulburn.

16. The issue price ranged from $1.00 to $1.24 per share. The issue price may have been at a discount to the market value of those shares.

17. Suppliers who participated in the SSO were required to enter into a 'Milk Supply Commitments Agreement' with Murray Goulburn.

Other matters

18. This Ruling is made on the basis that there was no entity (either alone or together with its associates) which controls (for valuing shifting purposes) (within the meaning of section 727-355 of the ITAA 1997) Murray Goulburn at any time during the period starting when the scheme is entered into and ending when it has been carried out by issuing shares under the SSO.

Ruling

19. To the extent that Ordinary Shares issued under the SSO are issued at a discount to market value, the amount of the discount is not an amount of ordinary income and will not be included in a Supplier's assessable income pursuant to section 6-5 of the ITAA 1997. As the amount is not ordinary income, section 21A of the ITAA 1936 is not applicable.

20. The Ordinary Shares issued under the SSO are not an ESS interest. Therefore, any discount given in relation to the shares will not be included in a Supplier's assessable income pursuant to section 83A-25 of the ITAA 1997.

21. The issue of Ordinary Shares under the SSO will not constitute a dividend as defined in subsection 6(1) of the ITAA 1936.

22. The issue of Ordinary Shares under the SSO will not cause a CGT event in Division 104 of the ITAA 1997 to happen for a Supplier.

23. The direct value shifting provisions in Division 725 of the ITAA 1997 will not apply to the SSO.

Commissioner of Taxation
8 July 2015

Appendix 1 – Explanation

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.

Ordinary income

24. The assessable income of an entity includes income according to ordinary concepts, which is called ordinary income (subsection 6-5(1) of the ITAA 1997).

25. Whether a receipt is ordinary income depends upon its quality in the hands of the recipient (*Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514; 10 AITR 367).

26. If Ordinary Shares are issued at a discount to their market value under the SSO, the gain reflecting that discount cannot be separated from the share itself. The gain does not have an income character in the hands of the Suppliers, and will not constitute ordinary income.

ESS interests

27. Under section 83A-25 of the ITAA 1997, an entity's assessable income for the income year in which they acquire an ESS interest includes any discount given in relation to the ESS interest. An ESS interest in a company means a beneficial interest in a share in the company or a right to acquire a beneficial interest in a share in the company (subsection 83A-10(1) of the ITAA 1997).

28. Subdivision 83A-B of the ITAA 1997 (which includes section 83A-25) applies to an ESS interest if an entity acquires the interest under an 'employee share scheme' at a discount (subsection 83A-20(1) of the ITAA 1997). An employee share scheme is a scheme under which ESS interests in a company are provided to employees, or associates of employees, of the company or subsidiaries of the company in relation to the employees' employment (subsection 83A-10(2) of the ITAA 1997).

29. The relationship between Murray Goulburn and the Suppliers is not an employment or employment-like relationship for the purposes of Division 83A. The Ordinary Shares issued under the SSO are not ESS interests. Any discount given in relation to the Ordinary Shares will not be included in the assessable income of Suppliers under section 83A-25 of the ITAA 1997.

Dividend

30. A 'dividend' includes any distribution made by a company to any of its shareholders, whether in money or other property, and any amount credited by a company to any of its shareholders as shareholders (subsection 6(1) of the ITAA 1936).

31. Although Ordinary Shares issued under the SSO will constitute property in the hands of the Suppliers, their issuance will not be a disposition of property in the ordinary meaning of that expression (*Ord Forrest Pty Ltd v. Federal Commissioner of Taxation* (1974) 130 CLR 124; 74 ATC 4034; 4 ATR 230). As there will be no disposition, there cannot be a distribution of property by Murray Goulburn.

32. Accordingly, the issue of Ordinary Shares will not constitute a dividend as defined in subsection 6(1) of the ITAA 1936.

CGT consequences

33. No CGT event will happen to Suppliers when Murray Goulburn issues Ordinary Shares to them under the SSO. Specifically, CGT event D1 and CGT event H2 will not happen if a company issues or allots shares in the company (paragraphs 104-35(5)(c) and 104-155(5)(c) of the ITAA 1997 respectively).

Direct value shifting

34. Division 725 of the ITAA 1997 will have consequences for an entity (the target entity) where there is a direct value shift under a scheme involving equity interests in an entity and, amongst other things, the ‘controlling entity test’ in section 725-55 of the ITAA 1997 is satisfied (paragraph 725-50(b) of the ITAA 1997).

35. Under section 725-55 of the ITAA 1997, an entity (the controller) must control (for value shifting purposes) the target entity at some time during the period starting when the scheme is entered into and ending when it has been carried out.

36. Section 727-355 of the ITAA 1997 sets out the circumstances in which an entity controls (for value shifting purposes) a company (such as Murray Goulburn).

37. In this case, the scheme involving equity interests in Murray Goulburn consists of the SSO. No entity, either alone or together with its associates, would be regarded as controlling Murray Goulburn during the period starting when the scheme is entered into and ending when it has been carried out.

38. Therefore, as the threshold requirement in paragraph 725-50(b) of the ITAA 1997 is not satisfied, Division 725 of the ITAA 1997 will not have consequences for Suppliers in respect of the scheme.

Appendix 2 – Detailed contents list

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

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- ordinary income
- shares

Legislative references:

- TAA 1953
- ITAA 1936
- ITAA 1936 6(1)
- ITAA 1936 21A
- ITAA 1997
- ITAA 1997 6-5
- ITAA 1997 Div 83A
- ITAA 1997 Subdiv 83A-B
- ITAA 1997 83A-10(1)
- ITAA 1997 83A-10(2)
- ITAA 1997 83A-20(1)
- ITAA 1997 83A-25
- ITAA 1997 Div 104
- ITAA 1997 104-35(5)(c)
- ITAA 1997 104-155(5)(c)
- ITAA 1997 Div 725
- ITAA 1997 725-50(b)
- ITAA 1997 725-55
- ITAA 1997 727-355

Case references:

- Scott v. Federal Commissioner of Taxation [1966] HCA 48; (1966) 117 CLR 514; (1966) 10 AITR 367
- Ord Forrest Pty Ltd v. Federal Commissioner of Taxation [1974] HCA 57 (1974) 130 CLR 124; 74 ATC 4034; (1974) 4 ATR 230

ATO references

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