


# ***CR 2016/2 - Income tax: Hyne & Son Pty Ltd - exchange of shares for stapled securities in Mayflower Enterprises Pty Ltd***

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## Class Ruling

### Income tax: Hyne & Son Pty Ltd – exchange of shares for stapled securities in Mayflower Enterprises Pty Ltd

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**1 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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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

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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:

- section 45B of the *Income Tax Assessment Act 1936* (ITAA 1936)
- section 45C of the ITAA 1936
- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 109-10 of the ITAA 1997
- subsection 110-25(2) of the ITAA 1997
- subsection 110-55(2) of the ITAA 1997
- subsection 112-20(1) of the ITAA 1997
- Division 115 of the ITAA 1997

- Section 124-10 of the ITAA 1997
- Division 615 of the ITAA 1997, and
- Division 855 of the ITAA 1997.

All subsequent legislative references in this Ruling are to the ITAA 1997 unless otherwise indicated.

## **Class of entities**

3. The class of entities to which this Ruling applies are the ordinary shareholders of Hyne & Son Pty Ltd (Hyne) who:

- (a) participated in the exchange of their ordinary shares in Hyne (Hyne Shares) in return for ordinary shares and non-redeemable preference shares in Mayflower Enterprises Pty Ltd (Mayflower) that were stapled together (the Mayflower Stapled Securities)
- (b) held their Hyne Shares on capital account, and not as revenue assets or trading stock, and
- (c) were not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their Hyne Shares.

(Note – Division 230 will generally not apply to individuals, unless they have made an election for it to apply to them.)

4. In this Ruling, this class of entities is referred to as 'participating shareholders'.

## **Qualifications**

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

6. The class of entities defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the scheme described in paragraphs 10 to 23 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

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8. This Ruling applies from 1 July 2015 to 30 June 2016. However, this 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).

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## Scheme

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9. The following description of the scheme is based on information provided to the Commissioner. The following documents, or the relevant parts of them, form part of and are to be read with the description:

- Class Ruling application (with Annexures) dated 12 February 2015 lodged by the Applicant on behalf of Hyne.

### Hyne

10. Hyne is a privately owned timber manufacturer and distributor in Australia.

11. The Hyne group of companies consisted of the operating company (Hyne) and its three wholly-owned subsidiaries which had minimal assets and earned nominal income. Hyne was the head company of an income tax consolidated group.

12. All shareholders in Hyne owned ordinary shares and there were no other categories of shares on issue.

### The reorganisation

13. The arrangement that is the subject of this Ruling involved interposing a new holding company between Hyne and its existing shareholders.

14. The reorganisation of Hyne was part of a broader simplification of the Hyne group that was aimed at:

- (a) improving the consistency of the distribution of profits to the company's existing shareholders, and
- (b) allowing the Hyne Group better access to funding for future projects which are separate to the existing business.

## The Scheme of Arrangement

15. The steps required to complete the restructure included:
  - (a) The incorporation of a new company, which is a resident of Australia for tax purposes (Mayflower).
  - (b) Mayflower issued each participating shareholder with one ordinary share and one non-redeemable preference share in Mayflower (that were stapled together) for each Hyne Share that they owned.
  - (c) Mayflower acquired 100% of the issued share capital in Hyne from its existing shareholders.
16. The non-redeemable preference shares issued as part of the proposed restructure carry a fixed dividend entitlement that is subject to Board discretion and is not cumulative.
17. The restructure was implemented by a Court approved scheme of arrangement with shareholders under the *Corporations Act 2001*. Confirmation was obtained from the Supreme Court of Queensland that Hyne was justified in convening a meeting of its members to approve the Scheme. After obtaining Court approval, Hyne shareholders voted on the Scheme resolution at a special general meeting on 9 November 2015 convened to approve the Scheme. The Scheme was approved at the Scheme meeting by a majority of shareholders voting (either in person or by proxy), and by at least 75% of the votes cast on the Scheme resolution.
18. The individuals with overall responsibility for governance and management of the Hyne group remain the same following the restructure. The composition of the board of directors of Mayflower is identical to the previous membership of the Hyne board and those directors continue to have carriage of the same issues.
19. The Scheme became effective on 18 November 2015 and the implementation date of the Scheme was 30 November 2015.

## Other matters

20. No foreign shareholder was prevented from participating in the Scheme due to the application of laws in their relevant country of residence.
21. At the time of the reorganisation, Hyne only had ordinary shares on issue.
22. Mayflower made the choice pursuant to subsection 615-30(2) for the Hyne income tax consolidated group to continue its existence at and after the 'completion time'. The completion time is defined in section 615-15 to mean the time at which each participating shareholder disposed of their shares in Hyne pursuant to the terms of the Scheme.
23. The choice made by Mayflower referred to in paragraph 22 above was made within 28 days after the completion time in satisfaction of the requirement for roll-over relief under paragraph 615-30(3)(b).

## Ruling

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### CGT event A1

24. CGT event A1 happened when a participating shareholder disposed of their Hyne Shares in exchange for Mayflower Stapled Securities (subsection 104-10(1)).

25. The time of CGT event A1 was the Implementation Date of the Scheme (subsection 104-10(3)).

### Division 615 roll-over

26. Participating shareholders who are Australian tax residents or foreign residents whose ownership interests in Hyne were taxable Australian property within the meaning of section 855-15, were taken to have chosen to obtain roll-over under Division 615 for the exchange of their Hyne Shares for the Mayflower Stapled Securities under the Scheme (subsection 615-5(2)).

27. To the extent that a participating shareholder obtains rollover under Division 615:

- (a) any capital gain or capital loss made on the disposal of their Hyne Shares under the Scheme will be disregarded (section 615-40 and subsection 124-10(2))
- (b) the first element of the cost base or reduced cost base of their ordinary shares and non-redeemable preference shares in Mayflower will be a reasonable portion of the market value of the cost base of their corresponding Hyne Shares disposed of under the Scheme (section 615-40, subsection 112-20(1) and subsection 124-10(3))
- (c) for the purposes of Division 115, the date on which they will be taken to have acquired their ordinary shares and non-redeemable preference shares in Mayflower will be the date on which they acquired their corresponding Hyne Shares (item 2(a) of the table in subsection 115-30(1))
- (d) for general CGT purposes, the date on which they will be taken to have acquired their ordinary shares and non-redeemable preference shares in Mayflower will be the date on which the relevant shares are allotted or issued (item 2 of the table in section 109-10)
- (e) where they are treated as having acquired their Hyne Shares before 20 September 1985 (that is, their ownership interest in Hyne is treated as a pre-CGT interest), their ordinary shares and non-redeemable preference shares in Mayflower will be treated as being acquired before that date (subsection 124-10(4)).

## **Foreign resident shareholders**

28. Any capital gain or capital loss made by a foreign resident participating shareholder from the disposal of their Hyne shares, which are not taxable Australian property, under the Scheme is disregarded (section 855-10).

29. Where a foreign resident participating shareholder does not obtain rollover under Division 615:

- (a) the first element of the cost base or reduced cost base of their ordinary shares and non-redeemable preference shares in Mayflower will be a reasonable portion of the market value of the cost base of their corresponding Hyne Shares disposed of under the Scheme (subsection 110-25(2), subsection 110-55(2) and subsection 112-20(1)), and
- (b) the date on which they will be taken to have acquired their ordinary shares and non-redeemable preference shares in Mayflower will be the date on which the relevant shares are allotted or issued (item 2 of the table in section 109-10).

## **The application of section 45B of the ITAA 1936**

30. The Commissioner will not make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole or any part of any capital benefit provided to the participating shareholders under the Scheme.

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**Commissioner of Taxation**

13 January 2016

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## **Appendix 1 – Explanation**

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**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.*

### **Roll-over under Division 615**

31. The participating shareholders will be taken, under subsection 615-5(2), to have chosen to obtain the roll-over because:

- (a) the exchange satisfies of the necessary conditions in subsection 615-5(1) and Subdivision 615-B
- (b) the participating shareholders were 'residents of Australia' for the purposes of subsection 6(1) of the ITAA 1936 at the time of disposing of their Hyne Shares under the exchange, or were foreign residents whose Hyne Shares were taxable Australian property and whose stapled securities issued in Mayflower are taxable Australian property immediately after the completion time (subsection 615-20(3))
- (c) immediately before the completion time, Hyne was the head company of the consolidated group, and
- (d) immediately after the completion time, Mayflower was the head company of the consolidated group.

### ***Hyne Shares held on capital account***

32. For the participating shareholders who held their Hyne Shares on capital account, and not as revenue assets or trading stock, the roll-over consequences for the participating shareholders are as set out in paragraph 27 of this Ruling.

### **Anti-avoidance provision**

33. Section 45B of the ITAA 1936 applies where certain capital payments are paid to shareholders in substitution for dividends. In broad terms, section 45B applies where:

- (a) there is a scheme under which a person is provided with a capital benefit by a company (paragraph 45B(2)(a))
- (b) under the scheme, a taxpayer, who may or may not be the person provided with the capital benefit, obtains a tax benefit (paragraph 45B(2)(b)), and

- (c) having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who 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 (paragraph 45B(2)(c)).

34. Under the present scheme, each of the participating shareholders received the Mayflower Stapled Securities which constituted the provision of a capital benefit.

35. If the amount of tax payable by a participating shareholder would be payable at a later time (as a result of the roll-over under Division 615) than it would be payable if the capital benefit had been a dividend, then the participating shareholder will obtain a tax benefit in accordance with paragraph 45B(2)(b) of the ITAA 1936.

36. However, under the present Scheme, the requisite purpose of enabling a participating shareholder to obtain a tax benefit is not present. Having regard to the 'relevant circumstances' of the Scheme, as set out in subsection 45B(8) of the ITAA 1936, it is considered that none of the persons entered into or carried out the Scheme, or any part of it, for the requisite purpose of enabling a participating shareholder to obtain a tax benefit.

37. Accordingly, the Commissioner will not make a determination under subsection 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole, or a part, of the capital benefit received by any of the participating shareholders.

## **Appendix 2 – Detailed contents list**

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

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## References

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- Previous draft:*
- ITAA 1997 110-55(2)
- Not previously issued as a draft
- ITAA 1997 112-20(1)
  - ITAA 1997 Div 115
- Related Rulings/Determinations:*
- ITAA 1997 115-30(1)
  - ITAA 1997 124-10
- TR 2006/10
- ITAA 1997 124-10(2)
  - ITAA 1997 124-10(3)
  - ITAA 1997 124-10(4)
- Legislative references:*
- ITAA 1936
  - ITAA 1936 6(1)
  - ITAA 1936 45B
  - ITAA 1936 45B(2)(a)
  - ITAA 1936 45B(2)(b)
  - ITAA 1936 45B(2)(c)
  - ITAA 1936 45B(3)
  - ITAA 1936 45B(3)(b)
  - ITAA 1936 45B(8)
  - ITAA 1936 45C
  - ITAA 1997
  - ITAA 1997 104-10
  - ITAA 1997 104-10(1)
  - ITAA 1997 104-10(3)
  - ITAA 1997 109-10
  - ITAA 1997 110-25(2)
  - ITAA 1997 Div 230
  - ITAA 1997 Div 615
  - ITAA 1997 615-5(1)
  - ITAA 1997 615-5(2)
  - ITAA 1997 Subdiv 615-B
  - ITAA 1997 615-15
  - ITAA 1997 615-20(3)
  - ITAA 1997 615-30(2)
  - ITAA 1997 615-30(3)(b)
  - ITAA 1997 615-40
  - ITAA 1997 Div 855
  - ITAA 1997 855-10
  - ITAA 1997 855-15
  - Corporations Act 2001
  - TAA 1953
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### ATO references

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