


CR 2017/74 - Income tax: Spicers Ltd - CGT treatment of disposal of PaperlinX Step-Up Preference Securities in exchange for Spicer's ordinary shares

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Class Ruling

Income tax: Spicers Ltd – CGT treatment of disposal of PaperlinX Step-Up Preference Securities in exchange for Spicer's ordinary shares

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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, 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.

Summary – 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 104 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- Division 115 of the ITAA 1997
- section 110-25 of the ITAA 1997
- Subdivision 855-A of the ITAA 1997.

All 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 Unitholders of PaperlinX SPS Trust who:

- (a) participated in the transaction as described in paragraphs 7 to 14 of this Ruling
- (b) held their units on capital account, not as trading stock or revenue account
- (c) were not subject to the taxation of financial arrangements provisions in Division 230 of the ITAA 1997 in relation to gains and losses on their PaperlinX Step-Up Preference Securities (SPS Units)
(Note: Division 230 will generally not apply to individuals, unless they have made an election for it to apply to them.)
- (d) were foreign tax residents or Australian tax residents that did not hold their SPS units as part of an enterprise carried on at or through a permanent establishment in a foreign country, and
- (e) were not financial institutions, insurance companies, partnerships, tax exempt organisations, trusts (except where expressly stated), superannuation funds (except where expressly stated) or temporary residents.

Qualifications

4. 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 7 to 14 of this Ruling.

5. 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

6. This Ruling applies from 27 June 2017 to 30 June 2017. The Ruling continues to apply after 30 June 2017 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

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

- application for Class Ruling on behalf of Spicers Ltd dated 30 August 2017, and
- other correspondence and emails from the applicant in relation to the application of the class ruling.

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

Background

8. Spicers Limited (Spicers) is an Australian listed public company and the parent company of the Spicers Group.

9. Spicers is the head company of the Spicers income tax consolidated group (Spicers Tax Group).

10. The PaperlinX SPS Trust (SPS Trust) is a special purpose trust which was established in 2007 to raise funds for the Spicers Group.

The Acquisition of the SPS Units by Spicers

11. On 27 June 2017, Spicers acquired the remaining 2,626,398 SPS Units in the SPS Trust not already held by Spicers in exchange for Spicers issuing new Spicers shares to the SPS Unitholders (Acquisition). The Acquisition was effected by a trust scheme for SPS Unitholders (Trust Scheme) and an ordinary resolution for Spicers shareholders (Ordinary Resolution).

12. The steps of the Acquisition were as follows:

Step 1: The Trust Scheme was voted on by the SPS Trust Unitholders and the Ordinary Resolution was voted on by the Spicers ordinary shareholders, and was approved by the requisite majorities. The Trust Scheme was approved by the Supreme Court of New South Wales.

Step 2: On the Implementation date 27 June 2017, the SPS Unitholders exchanged their SPS Units for new Spicers ordinary shares.

Step 3: The consideration for the Trust Scheme was 545 ordinary Spicers shares for every one SPS Unit. The closing

price of Spicers shares on 27 June 2017 (being the Implementation Date of the Trust Scheme) was \$0.029.

Step 4: Once Spicers acquired the SPS Units under the Trust Scheme, Spicers held 100% of the SPS Units.

13. At the time of disposal of the SPS Units, the SPS Trust did not have assets that were taxable Australian real property.

14. The cost base of the SPS units has not been subject to indexation at any time.

Ruling

CGT consequences

15. CGT event A1 happened as a result of the disposal by an SPS Unitholder of their SPS Units to Spicers under the scheme described in the Ruling (subsection 104-10(1)).

16. CGT event A1 happens when a contract to dispose of an asset is entered into or if there is no contract when the change of ownership occurs (subsection 104-10(3)).

17. As there was no contract between an SPS Unitholder and Spicers, the time of the event was when the SPS Units were transferred to Spicers on the Implementation Date, 27 June 2017 (paragraph 104-10(3)(b)).

Capital gain or loss

18. An SPS Unitholder made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of an SPS Unit exceeded its cost base. An SPS Unitholder made a capital loss if those capital proceeds were less than the SPS Unit's reduced cost base (subsection 104-10(4)).

19. The capital proceeds from a CGT event are the money and the market value of any property received or entitled to be received (worked out at the time of the event happening) (subsection 116-20(1)).

20. The capital proceeds for each SPS Unit are the market value of the Spicers ordinary shares received in respect of CGT event A1 happening, worked out at the time of the CGT event (being the Implementation Date). The market value of the Spicers ordinary shares should be determined by reference to the last closing price of the shares on the Implementation Date, being \$0.029.

Cost base of new Spicers ordinary shares

21. The first element of the cost base of the Spicers ordinary shares is determined under section 110-25. The first element of the cost base of the new Spicers ordinary shares received is equal to the market value of SPS Units given in respect of acquiring the new Spicers ordinary shares.

22. The market value of the SPS Units given is worked out on the Implementation Date being 27 June 2017. The Commissioner accepts on the facts and circumstances under the Scheme, that the market value of one SPS unit would be equal to the market value of 545 ordinary Spicers shares on the Implementation Date.

23. Accordingly, the effect is that the cost base of each new Spicers ordinary share acquired is \$0.029.

Discounted capital gains

24. The SPS Unitholders that are individuals, complying superannuation entities, or trusts are entitled to the discount capital gains treatment in Division 115 of the ITAA 1997 if they have held the SPS Units for at least 12 months before the implementation date on 27 June 2017.

Foreign residents

25. In accordance with section 855-10 of the ITAA 1997, capital gains and capital losses made by foreign residents on the disposal of the SPS Units are disregarded for Australian income tax purposes.

Commissioner of Taxation

1 November 2017

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.*

CGT consequences

26. In accordance with section 104-10 of the ITAA 1997, CGT event A1 happens if you dispose of a CGT asset. You dispose of a CGT asset if a change of ownership occurs from you to another entity. The time of the event is when you enter into the contract for the disposal or if there is no contract, when the change of ownership occurs.

27. On the Implementation Date, 27 June 2017, there was a change of ownership in the SPS Units for the SPS Unitholders. Spicers issued 545 Spicer ordinary shares in exchange for every one SPS Unit held by the SPS Unitholders. It was at that time that CGT event A1 was triggered as a result of the change of ownership of the SPS Units.

Capital proceeds

28. Subsection 104-10(4) provides that you make a capital gain if the capital proceeds from the disposal are more than the asset's cost base. You make a capital loss if those capital proceeds are less than the asset's reduced cost base.

29. The term 'capital proceeds' is defined in section 116-20 of the ITAA 1997 as follows:

- (1) The **capital proceeds** from a CGT event are the total of:
 - (a) the money you have received, or are entitled to receive, in respect of the event happening; and
 - (b) the market value of any other property you have received, or are entitled to receive, in respect of the event happening (worked out at the time of the event).

30. In this case, the SPS Unitholders received 545 Spicer ordinary shares for each SPS Unit, being the capital proceeds for the disposal of the SPS Units. The Commissioner accepts that in this case the market value of the Spicer ordinary shares can be determined by reference to the last closing price of the stock listed on the ASX.

Cost base of new Spicers ordinary shares

31. Section 110-25 of the ITAA 1997 provides that the cost base of a CGT asset consists of 5 elements.

32. Subsection 110-25(2) provides:

- (2) The first element is the total of:
 - (a) the money you paid, or are required to pay, in respect of acquiring it; and
 - (b) the market value of any other property you gave, or are required to give, in respect of acquiring it (worked out as at the time of the acquisition).

33. Taxation Determination TD 2002/4 *Income tax: capital gains: what is the first element of the cost base and reduced cost base of a share in a company you acquire in exchange for a share in another company in a takeover or merger?* provides that if a takeover or merger is effected by a court ordered scheme of arrangement, the bidder company shares are acquired otherwise than under a contract. The first element of their cost base and reduced cost base is determined having regard to the market value of the target company shares on the date the bidder company shares are allotted or issued; or in any other case, when they are acquired.

34. The first element of the cost base of the new Spicers ordinary shares received is equal to the market value of SPS Units given in respect of acquiring the new Spicers ordinary shares.

35. The market value of the SPS Units given is worked out on the Implementation Date being 27 June 2017. The Commissioner accepts on the facts and circumstances under the Scheme, that the market value of one SPS unit would be equal to the market value of 545 ordinary Spicers shares on the Implementation Date.

36. Accordingly, the effect is that the cost base of each new Spicers ordinary share acquired is \$0.029.

Discounted capital gain treatment

37. The discount capital treatment is only applicable to a discount capital gain. Section 115-5 provides that a discount capital gain is a capital gain that meets the requirements of sections 115-10, 115-15, 115-20 and 115-25.

38. To be eligible to treat a capital gain as a discount capital gain, the capital gain must:

- Be made by an individual, a complying superannuation entity; a trust; or a life insurance company in relation to a discount capital gain from a CGT event in respect of a CGT asset that is a complying superannuation asset.
- Result from a CGT event happening after 11.45am (by legal time in the Australian Capital Territory) on 21 September 1999.

- Have been worked out using a cost base that has been calculated without reference to indexation at any time.
- Result from a CGT event happening to a CGT asset that was acquired by the entity making the capital gain at least 12 months before the CGT event.

39. In this case, discount capital gains treatment will apply for a SPS Unit that was held by an individual, complying superannuation entity or trust provided that the SPS unit was held for at least 12 months before the Implementation Date.

Foreign residents

40. A foreign resident SPS Unitholder who disposed of their SPS Units under the Acquisition, may disregard any capital gain or capital loss made when they disposed of their SPS Units (CGT event A1) if the SPS Units are not 'taxable Australian property'. (section 855-10 of the ITAA 1997).

41. The term 'taxable Australian property' is defined in the table in section 855-15 of the ITAA 1997.

42. None of the items in the table in section 855-15 are satisfied. Therefore, a foreign resident SPS Unitholder who disposed of their SPS Units under the Acquisition, may disregard any capital gain or capital loss made when they disposed of their SPS Units.

Appendix 2 – Detailed contents list

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

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References

<i>Related Rulings/Determinations:</i>	- ITAA 1997 110-25
TD 2002/4	- ITAA 1997 Div 115
	- ITAA 1997 115-10
	- ITAA 1997 115-15
<i>Legislative references:</i>	- ITAA 1997 115-20
- ITAA 1997	- ITAA 1997 115-25(2)
- ITAA 1997 Div 104	- ITAA 1997 116-20
- ITAA 1997 104-10	- ITAA 1997 116-20(1)
- ITAA 1997 104-10(1)	- ITAA 1997 Div 230
- ITAA 1997 104-10(3)	- ITAA 1997 Subdiv 855-A
- ITAA 1997 104-10(3)(b)	- ITAA 1997 855-10
- ITAA 1997 104-10(4)	- TAA 1953

ATO references

NO: 1-CNDX43P
ISSN: 2205-5517
ATOlaw topic: Income tax ~~ Capital gains tax ~~ CGT assets ~~
General
Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT
event A1 – disposal of a CGT asset
Income tax ~~ Capital gains tax ~~ Capital proceeds
Income tax ~~ Capital gains tax ~~ Cost base and
reduced cost base
Income tax ~~ Capital gains tax ~~ Discount capital gains
Income tax ~~ Capital gains tax ~~ Valuation / market
value issues

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