

# ***CR 2017/85 - Income tax: demerger of Clime Private Ltd by Clime Investment Management Limited***

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## Class Ruling

### Income tax: demerger of Clime Private Ltd by Clime Investment Management Limited

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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.

## Summary – 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 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:
- section 45B of the *Income Tax Assessment Act 1936* (ITAA 1936)
  - section 45BA of the ITAA 1936
  - section 45C of the ITAA 1936.

All subsequent 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 is the ordinary shareholders of Clime Investment Management Limited (CIML) who:

- were listed on the CIML share register on 3 November 2016 (Record Date) for the demerger of Clime Private Limited (Clime Private)
- held their ordinary shares on capital account on the Record Date, that is, the shares were neither held as revenue assets (as defined in section 977-50 of the *Income Tax Assessment Act 1997* (ITAA 1997)) nor as trading stock (as defined in subsection 995-1(1) of the ITAA 1997)
- were residents of Australia (as that term is defined in subsection 6(1)) on the Record Date, and
- were not subject to the taxation of financial arrangement rules in Division 230 of the ITAA 1997 in relation to gains and losses on their CIML shares.

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

In this Ruling, a person belonging to this class of entities is referred to as a 'CIML Shareholder'.

## 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 31 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.

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## Date of effect

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7. This Ruling applies from 1 July 2016 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).

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## Scheme

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8. 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:

- Clime Investment Management Limited, *Notice of Annual General Meeting* released on 26 September 2016.
- ASX notice released on 27 October 2016, 'Results of Annual General Meeting held on 27th October 2016'.
- Clime Investment Management Limited 2016 Annual Report.

9. The scheme that is the subject of this Ruling involves the demerger of Clime Private by CIML. CIML announced the demerger on 26 September 2016. The date for determining entitlements to the Clime Private shares of CIML Shareholders under the demerger was on the Record Date. The demerger took effect on 11 November 2016 (Demerger Date).

### **CIML**

10. CIML is an Australian resident public company whose shares are listed on the Australian Securities Exchange.

11. The principal activities of CIML include managing client investments operating under Australian Securities and Investment Commission approved Australian Financial Services licenses in the funds management industry.

12. Immediately before the demerger, CIML had 50,275,000 ordinary shares on issue (inclusive of 1,375,000 employee shares).

### **Clime Private**

13. Clime Private is an Australian resident company that immediately before the demerger was wholly owned by CIML.

14. Clime Private owns approximately 20.9% of the ordinary shares in Jasco Holdings Limited (Jasco), an Australian resident company and arts supplier.

15. Jasco is the only long term investment that Clime Private owns and manages.

## Shareholder meeting

16. At the Shareholders Annual General Meeting held on 27 October 2016, CIML Shareholders approved the distribution and transfer of all Clime Private shares to holders of CIML shares held as at the Record Date on a 1 to 1 basis.

## Pre-demerger transactions

17. To effect the separation of its investment in Jasco, CIML transferred its investment in Jasco to Clime Private.

18. The pre-demerger transfer of assets were undertaken within the CIML tax consolidated group.

19. Jasco was acquired when CIML was operating as a pooled development fund. CIML has exited all other long term investments that it acquired as a pooled development fund.

## The demerger

20. On 11 November 2016, CIML demerged Clime Private by way of an *in-specie* distribution of Clime Private shares to CIML Shareholders on a pro-rata basis.

21. The demerger group was comprised of CIML as the head entity of a demerger group and Clime Private, the relevant demerged entity.

22. CIML Shareholders received one share in Clime Private for each share they held in CIML.

23. CIML Shareholders acquired shares in Clime Private and nothing else.

## Accounting treatment

24. CIML accounted for the market value of the *in-specie* distribution of Clime Private shares transferred to CIML Shareholders by debiting the share capital account (capital reduction) and the demerger dividend reserve account (demerger dividend).

25. This resulted in a return of capital of \$5,125,151 and a dividend distribution of \$2,677,655.

26. The *in-specie* distribution was \$0.1558 per CIML share held.

27. The total value of the demerger was approximately \$7.8 million.

### **Reasons for the demerger**

28. CIML's primary reason for undertaking the demerger was to separate CIML and Jasco, as they are fundamentally different businesses, operating in distinctly different industries. CIML is an entity that manages investments in listed and unlisted securities, while Jasco is an arts supplier.

29. CIML's commercial rationale for the demerger included:

- CIML being constrained by its pre-demerger ownership structure
- CIML Shareholders being offered greater flexibility to choose whether to hold shares in CIML (a funds management business) and Clime Private (a retail art and designs business) after the demerger
- the anticipated combined value of CIML and Clime Private increasing after the demerger.

### **Other matters**

30. All CIML shares were acquired after 20 September 1985 for Australian income tax purposes.

31. Immediately before the demerger, CIML's share capital account was not 'tainted' for the purposes of Division 197 of the ITAA 1997.

## **Ruling**

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### **Applications of sections 45B, 45BA and 45C**

32. The Commissioner will not make a determination under paragraph 45B(3)(a) that section 45BA applies in relation to the whole, or a part, of the demerger benefit provided to CIML Shareholders under the demerger.

33. The Commissioner will not make a determination under paragraph 45B(3)(b) that section 45C applies in relation to the whole, or a part, of the capital benefit provided to CIML Shareholders under the demerger.

## **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.*

### **Applications of sections 45B, 45BA and 45C**

34. Section 45B applies where certain payments, allocations and distributions are made to shareholders in substitution for dividends. In the event of demergers, section 45B also applies where the components of a demerger allocation as between the capital and profit do not reflect the circumstances of the demerger.

35. In broad terms, there needs to be a scheme in which, having regard to the relevant circumstances of the scheme, it would be concluded that the person or one of the persons who entered into the scheme did so for a purpose, other than an incidental purpose, of enabling the relevant taxpayer to obtain a tax benefit.

36. A 'scheme' for the purposes of section 45B is taken to have the same meaning as provided in subsection 177A(1) pursuant to the reference to 'scheme' in subsection 995-1(1) of the ITAA 1997, as contained in subsection 45B(10).

37. It is expected that a demerger would constitute a scheme for the purposes of section 45B. Therefore, the demerger arrangement involving the distribution of Clime Private shares to CIML Shareholders constitutes a scheme for the purposes of section 45B.

38. The phrase 'provided with a demerger benefit' is defined in subsection 45B(4) and includes a company providing a person with ownership interests in that or another company. The phrase 'provided with a capital benefit' is defined in subsection 45B(5) and includes provision of ownership interests in a company to a person and the distribution of share capital to a person (but not to the extent that such a provision involves the person receiving a demerger dividend: subsection 45B(6)).

39. The arrangement involving the *in-specie* distribution of Clime Private shares to CIML Shareholders under the demerger, constituted the provision of a demerger benefit and, to the extent the value of Clime Private shares was debited to CIML's share capital account, also represented the provision of a capital benefit.

40. As the provision of Clime Private shares would generally result in a lesser amount of tax payable by CIML Shareholders than the amount that would have been payable if the provision of those shares was instead an assessable dividend, CIML Shareholders would obtain a tax benefit (paragraph 45B(2)(b)).

41. For the purposes of paragraph 45B(2)(c), the Commissioner is required to consider the relevant circumstances (as outlined in subsection 45B(8)) of the scheme to determine whether it could be concluded that entities that entered into or carried out the scheme, or any part of the scheme, did so for a purpose (other than an incidental purpose) of enabling the relevant taxpayer (CIML Shareholder) to obtain a tax benefit.

42. Having regard to the relevant circumstances, as outlined in subsection 45B(8), the Commissioner has formed the view that such a purpose did not exist.

43. Accordingly, section 45B does not apply to the scheme, and the Commissioner will not make a determination:

- under paragraph 45B(3)(a) that section 45BA applies to the whole, or any part, of the demerger benefit provided to CIML Shareholders under the demerger of Clime Private shares, or
- under paragraph 45B(3)(b) that section 45C applies to the whole, or any part, of the capital benefit provided to CIML Shareholders under the demerger of Clime Private shares.

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

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

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## References

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- Previous draft:*
- ITAA 1936 45B(5)
  - ITAA 1936 45B(6)
- Not previously issued as a draft
- ITAA 1936 45B(8)
- Related Rulings/Determinations:*
- ITAA 1936 45B(10)
  - ITAA 1936 45BA
  - ITAA 1936 45C
  - ITAA 1936 177A(1)
- TR 2006/10
- Legislative references:*
- ITAA 1936
  - ITAA 1936 6(1)
  - ITAA 1936 45B
  - ITAA 1936 45B(2)(b)
  - ITAA 1936 45B(2)(c)
  - ITAA 1936 45B(3)(a)
  - ITAA 1936 45B(3)(b)
  - ITAA 1936 45B(4)
  - ITAA 1997
  - ITAA 1997 Div 197
  - ITAA 1997 Div 230
  - ITAA 1997 977-50
  - ITAA 1997 995-1(1)
  - TAA 1953
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### ATO references

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