


CR 2018/40 - Income tax: demerger of GlyTherix Ltd by Minomic International Limited

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Class Ruling

Income tax: demerger of GlyTherix Ltd by Minomic International Limited

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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 provisions

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

- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)
- section 44 of the ITAA 1936
- section 45A of the ITAA 1936
- section 45B of the ITAA 1936
- section 45BA of the ITAA 1936
- section 45C of the ITAA 1936
- section 104-135 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- subsection 115-30(1) of the ITAA 1997
- Division 125 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 is the holders of ordinary shares in Minomic International Limited (Minomic) who:

- were listed on the share register of Minomic as at the Record Date (12 September 2018) for the demerger of ordinary shares in GlyTherix Ltd (GlyTherix)
- did not hold their ordinary shares in Minomic as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)) on the Record Date – that is, they held their shares on capital account
- are a ‘resident of Australia’ (as defined in subsection 6(1) of the ITAA 1936), and
- are not subject to the taxation of financial arrangements (TOFA) rules in Division 230 in relation to gains and losses on their ordinary shares in Minomic.

(**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, a person belonging to this class of entities is referred to as a ‘Minomic shareholder’.

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 scheme actually carried out is carried out in accordance with the scheme described in paragraphs 9 to 27 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.

Date of effect

8. This Ruling applies from 1 July 2018 to 30 June 2019. The Ruling continues to apply after 30 June 2019 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 *Public Rulings*).

Scheme

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

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

Minomic

10. Minomic is an unlisted public company that was incorporated on 16 March 2007. Minomic is an Australian resident company for income tax purposes.

11. Minomic is a non-invasive biomarker research and development company with a focus on commercialising biomarkers for the diagnosis and therapeutic treatment of prostate cancer and other related cancers.

12. The diagnostic business is in an advanced stage and Minomic now wishes to license its product.

13. Immediately before the demerger, Minomic had 252,292,809 fully paid ordinary shares on issue.

14. There were no other ownership interests (as defined in subsection 125-60(1)) in Minomic immediately before the demerger.

15. Minomic has not paid any dividends since the company was incorporated in 2007.

GlyTherix

16. GlyTherix is an unlisted public company that was incorporated on 24 August 2017 and immediately before the demerger was wholly owned by Minomic. It is an Australian resident company for income tax purposes.

17. Immediately before the demerger, GlyTherix had 252,292,809 ordinary shares on issue.

18. Immediately before the demerger, there were no other ownership interests (as defined in subsection 125-60(1)) in GlyTherix.

19. GlyTherix focuses on commercialising biomarkers for the therapeutic treatment of prostate cancer and other related cancers. The therapeutic business, which includes intellectual property and other assets, was transferred from Minomic to GlyTherix.

20. The therapeutic activities are in the early research stage and were commenced in 2015. The therapeutic business has not yet provided goods or services to customers, and its income will consist of government research and development credits and grants.

The demerger of GlyTherix

21. To effect the demerger by Minomic of GlyTherix, the shareholders of Minomic voted at a meeting on 7 September 2018 to approve an ordinary resolution under section 256C of the *Corporations Act 2001* to reduce the share capital of Minomic by \$7,041,722 (the capital reduction amount). This amount was debited to the share capital account of Minomic. The capital reduction amount equates to approximately 2.79 cents per Minomic ordinary share.

22. The payment of the capital reduction amount was satisfied by an *in specie* distribution to the shareholders of Minomic of all of the ordinary shares in GlyTherix held by Minomic. The ordinary shares in GlyTherix were transferred to the shareholders of Minomic on a pro rata basis on 14 September 2018. The shareholders of Minomic received one GlyTherix ordinary share for every Minomic ordinary share they held at the Record Date for the demerger (12 September 2018). As a result of the demerger, the shareholders of Minomic will own ordinary shares in both Minomic and GlyTherix.

Reasons for the demerger

23. By separating the therapeutic business from the diagnostic business, Minomic seeks to achieve the following commercial objectives:

- to allow each business to focus more clearly on their strategies, growth objective and core competencies
- to enable each business to put in place a capital structure tailored to its particular business characteristics, with the ability to raise additional funding from investors looking for exposure to the particular business
- to facilitate the development and commercialisation of its diagnostic and therapeutic products, and
- to allow existing shareholders to realise a return on their investment with the diagnostic business which is well developed and still give Minomic shareholders the

option to support the therapeutic business through the ability to voluntarily subscribe for additional shares when requested by GlyTherix.

Accounting treatment

24. Minomic, on a stand-alone basis, accounted for the capital reduction and the distribution of GlyTherix ordinary shares that effected the demerger with the following journal entry:

DR Share Capital	\$7,041,722	
CR Investment in GlyTherix		\$7,041,722

Other matters

25. No amounts have been transferred to the share capital account (as defined in section 975-300) of Minomic from any of its other accounts. Accordingly, Minomic's share capital account is not tainted (within the meaning of Division 197).

26. Minomic did not elect under subsection 44(2) of the ITAA 1936 that subsections 44(3) and (4) of the ITAA 1936 will not apply to any demerger dividend.

27. Just after the demerger, at least 50% of the market value of the CGT assets owned by GlyTherix was used, directly or indirectly in one or more businesses it carries on.

Ruling

Dividend consequences

28. No part of the value of a GlyTherix ordinary share distributed to a Minomic shareholder will be assessable income of a Minomic shareholder under subsection 44(1) of the ITAA 1936.

29. Any dividend arising under the demerger is a demerger dividend (subsection 6(1) of the ITAA 1936). The demerger dividend is not assessable income or exempt income of the Minomic shareholders under subsection 44(4) of the ITAA 1936.

Anti-avoidance provisions will not apply

30. The Commissioner will not make a determination under subsections 45A(2) or 45B(3) of the ITAA 1936 that either sections 45BA or 45C of the ITAA 1936 applies to the demerger.

CGT consequences

CGT event G1

31. CGT event G1 in section 104-135 happened in respect of each Minomic ordinary share owned by an Australian resident Minomic shareholder at the time Minomic made the payment of the capital reduction amount (satisfied by distributing the GlyTherix ordinary shares). This is because Minomic made a payment (which can include giving property) to its shareholders in respect of the ordinary shares they owned in Minomic, some or all of the payment is not a dividend, and the payment is not included in the assessable income of shareholders (subsection 104-135(1)).

32. An Australian resident Minomic shareholder will make a capital gain from CGT event G1 happening if the capital reduction amount for each Minomic ordinary share (approximately 2.79 cents) is more than the cost base of the Minomic ordinary share. The capital gain is equal to the amount of the excess. No capital loss can be made from CGT event G1 (subsection 104-135(3)).

Demerger roll-over

33. A demerger, as defined in section 125-70, happened to the Minomic demerger group (which included Minomic and GlyTherix) under the scheme that is the subject of this Ruling.

34. An Australian resident Minomic shareholder can choose to obtain demerger roll-over under Division 125.

Consequences of choosing demerger roll-over

35. An Australian resident Minomic shareholder who chooses demerger roll-over:

- will disregard a capital gain made when CGT event G1 happened under the demerger to their Minomic ordinary shares (subsection 125-80(1)), and
- must recalculate the first element of the cost base and reduced cost base of their Minomic ordinary shares, and calculate the first element of the cost base and reduced cost base of the GlyTherix ordinary shares they acquired under the demerger (subsection 125-80(2)).

36. The first element of the cost base and reduced cost base of each Minomic ordinary share and GlyTherix ordinary share is worked out by:

- taking the total of the cost bases of each Minomic ordinary share just before the demerger, and

- apportioning that total between the Minomic ordinary shares and the GlyTherix ordinary shares acquired under the demerger.

37. The apportionment of this total is done on a reasonable basis having regard to the market values (just after the demerger) of the Minomic ordinary shares and GlyTherix ordinary shares, or a reasonable approximation of those market values (subsections 125-80(2) and 125-80(3)).

38. The Commissioner accepts that a reasonable apportionment is to:

- attribute 82.2% of the total of the cost bases of the Minomic ordinary shares just before the demerger to the Minomic ordinary shares, and
- attribute 17.8% of the total of the cost bases of the Minomic ordinary shares just before the demerger to the GlyTherix ordinary shares.

Consequences of not choosing demerger roll-over

39. An Australian resident Minomic shareholder who does not choose demerger roll-over:

- cannot disregard a capital gain made when CGT event G1 happened under the demerger to their Minomic ordinary shares, and
- must recalculate the first element of the cost base and reduced cost base of their Minomic ordinary shares, and calculate the first element of the cost base and reduced cost base of the GlyTherix ordinary shares they acquired under the demerger, in the same way as if they had chosen demerger roll-over (subsections 125-85(1) and (2)).

Acquisition date of the GlyTherix ordinary shares for the purpose of making a discount capital gain

40. For the purpose of determining eligibility to make a discount capital gain, a GlyTherix ordinary share acquired by an Australian resident Minomic shareholder under the demerger will be taken to have been acquired on the date the shareholder acquired, for CGT purposes, the corresponding Minomic ordinary shares (item 2 of the table in subsection 115-30(1)). This will be the case whether or not the Australian resident Minomic shareholder chooses demerger roll-over.

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.*

41. The income tax consequences and relevant legislative provisions concerning the scheme that is the subject of this Ruling are outlined in the Ruling part of this document.

Dividend consequences

42. Subsection 44(1) of the ITAA 1936 includes in a shareholder's assessable income any dividends, as defined in subsection 6(1) of the ITAA 1936, paid to the shareholder out of profits derived by the company from any source (if the shareholder is an Australian resident) or out of profits derived by the company from sources in Australia (if the shareholder is a non-resident).

43. The term 'dividend' is defined in subsection 6(1) of the ITAA 1936, and includes any distribution made by a company to any of its shareholders, whether in money or other property. However, paragraph (d) of the definition of 'dividend' in subsection 6(1) of the ITAA 1936 excludes a distribution by a company to its shareholders from being a dividend where the amount of the money paid or credited, or the amount of the value of the property, is debited against an amount standing to the credit of the share capital account of the company.

44. The term 'share capital account' is defined in section 975-300 as an account which the company keeps of its share capital, or any other account created on or after 1 July 1998 where the first amount credited to the account was an amount of share capital.

45. Subsection 975-300(3) states that an account is not a share capital account if it is tainted.

46. The demerger of GlyTherix was implemented by Minomic distributing property (GlyTherix ordinary shares) to shareholders of Minomic. The amount of \$7,041,722 (approximately 2.79 cents per Minomic ordinary share) was debited against an amount standing to the credit of Minomic's share capital account. As Minomic's share capital account is not tainted within the meaning of Division 197 of the ITAA 1997, this amount will not be a dividend as defined in subsection 6(1) of the ITAA 1936 and will not be included in a shareholder's assessable income under subsection 44(1) of the ITAA 1936.

47. The amount (if any) by which the value of a GlyTherix ordinary share exceeds the amount debited to Minomic's share capital account will be a dividend as defined in subsection 6(1) of the ITAA 1936 (Taxation Ruling TR 2003/8 *Income tax: distributions of property by companies to shareholders - amount to be included as an assessable dividend*). However, any such dividend will be a demerger dividend (as defined in subsection 6(1) of the ITAA 1936). This means it will not be included in the assessable income of a Minomic shareholder under subsection 44(1) of the ITAA 1936 as a result of the operation of subsection 44(4) of the ITAA 1936.

The application of sections 45A and 45B of the ITAA 1936

48. For section 45A of the ITAA 1936 to apply, a company must have streamed the provision of capital benefits to its shareholders.

49. The phrase 'provision of capital benefits' is defined in subsection 45A(3) of the ITAA 1936 and includes the distribution of share capital. The payment of share capital to Minomic shareholders (satisfied through the transfer of the GlyTherix ordinary shares) means Minomic shareholders were provided with capital benefits.

50. However, Minomic did not stream the provision of capital benefits because all Minomic shareholders on the Record Date participated in the return of capital based on the number of Minomic shares they held.

51. Accordingly, the Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole, or any part, of the capital benefits provided to Minomic shareholders under the demerger of GlyTherix. As a result, no part of the capital benefits will be taken to be an unfranked dividend.

52. Section 45B of the ITAA 1936 applies where:

- (a) there is a scheme under which a person is provided with a demerger benefit or a capital benefit by a company (paragraph 45B(2)(a) of the ITAA 1936)
- (b) under the scheme a taxpayer, who may or may not be the person provided with the demerger benefit or the capital benefit, obtains a tax benefit (paragraph 45B(2)(b) of the ITAA 1936), 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 (other than an incidental purpose) of enabling a taxpayer to obtain a tax benefit (paragraph 45B(2)(c) of the ITAA 1936).

53. The arrangement involving the distribution of GlyTherix ordinary shares to the shareholders of Minomic constitutes a scheme for the purposes of section 45B of the ITAA 1936.

54. The phrase 'provided with a demerger benefit' is defined in subsection 45B(4) of the ITAA 1936 and includes a company providing a person with ownership interests (such as shares) in that or another company. The phrase 'provided with a capital benefit' is defined in subsection 45B(5) of the ITAA 1936 and includes the provision of ownership interests (such as shares) in a company to a person. The distribution of GlyTherix ordinary shares to the shareholders of Minomic means that Minomic shareholders were provided with a demerger benefit and were provided with a capital benefit.

55. The Commissioner considers that at least the Australian resident Minomic shareholders obtained a tax benefit (within the meaning given by subsection 45B(9) of the ITAA 1936) under the scheme.

56. For the purposes of paragraph 45B(2)(c) of the ITAA 1936, the Commissioner is required to consider the relevant circumstances (as outlined in subsection 45B(8) of the ITAA 1936) of the scheme to determine whether it could be concluded that persons who 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 (Minomic shareholders) to obtain a tax benefit. Having regard to the relevant circumstances as outlined in subsection 45B(8) of the ITAA 1936, the Commissioner has formed the view that such a purpose did not exist.

57. Accordingly, section 45B of the ITAA 1936 does not apply to the scheme, and the Commissioner will not make a determination:

- under paragraph 45B(3)(a) of the ITAA 1936 that section 45BA of the ITAA 1936 applies to the whole, or any part, of the demerger benefit provided to Minomic shareholders under the demerger of GlyTherix.
- under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole, or any part, of the capital benefit provided to Minomic shareholders under the demerger of GlyTherix.

58. As a result, no part of the demerger benefit or capital benefit provided to Minomic shareholders will be taken to be an unfranked dividend.

CGT consequences – the demerger of GlyTherix

59. The demerger roll-over provisions in Division 125 contain a number of conditions for eligibility to choose the roll-over. The main conditions that are relevant to the demerger of GlyTherix by Minomic are:

- (a) an entity owns a share in a company (the original interest)
- (b) the company is the head entity of a demerger group
- (c) a demerger happens to the demerger group
- (d) under the demerger, a CGT event happens to the original interest and the entity acquires a new interest in the demerged entity (which must be a company) only because they own the original interest, and acquires nothing else, and
- (e) the entity owning the original interest must acquire, under the demerger, the same proportion of new interests in the demerged entity as they owned in the head entity just before the demerger.

60. The conditions for choosing demerger roll-over under Division 125 were satisfied in respect of the demerger of GlyTherix. Accordingly, the demerger concessions in Division 125 are available to Australian resident Minomic shareholders in respect of the demerger of GlyTherix.

Appendix 2 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2003/8; TR 2006/10

Legislative references:

- ITAA 1936 45BA
- ITAA 1936 45C
- ITAA 1997
- ITAA 1997 104-135
- ITAA 1997 104-135(1)
- ITAA 1997 104-135(3)
- ITAA 1997 115-30(1)
- ITAA 1997 Div 125
- ITAA 1997 125-60(1)
- ITAA 1997 125-70
- ITAA 1997 125-80(1)
- ITAA 1997 125-80(2)
- ITAA 1997 125-80(3)
- ITAA 1997 125-85(1)
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- ITAA 1936
- ITAA 1936 6(1)
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- ITAA 1936 45B(3)(b)
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- ITAA 1936 45B(5)
- ITAA 1936 45B(8)
- ITAA 1936 45B(9)

ATO references

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Income tax ~~ Capital gains tax ~~ Exemptions ~~ Other

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