


CR 2020/34 - Longevity Group Australia Limited - off-market share buy-back

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Class Ruling

Longevity Group Australia Limited – off-market share buy-back

❶ Relying on this Ruling

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in the ruling. That is, you will not pay any more tax or pay any penalties or interest in respect of the matters covered by this Ruling

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

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What this Ruling is about

1. This Ruling sets out the tax consequences for shareholders of Longevity Group Australia Limited (Longevity) who participated in the off-market share buy-back which was completed on 16 June 2020 (Buy-Back).
2. Details of the Buy-Back are set out in paragraphs 20 to 42 of this Ruling.
3. All legislative references are to provisions of the *Income Tax Assessment Act 1997* or the *Income Tax Assessment Act 1936* (as detailed in Appendix 2 of this Ruling) unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - were an individual who was a resident of Australia (as defined in subsection 6(1)) at all relevant times, or if you were a partnership or the trustee of a trust
 - held your Longevity shares on capital account; that is, you did not hold your Longevity shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)), and

- sold your ordinary shares in Longevity under the Buy-Back.

5. This Ruling does not apply to you if you are subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on your Longevity shares.

Note: Division 230 will not apply to individuals, unless they have made an election for it to apply.

When this Ruling applies

6. This Ruling applies from 1 July 2019 to 30 June 2020.

Ruling

Off-market purchase

7. For the purposes of Division 16K, the Buy-Back is an off-market purchase within the meaning given by paragraph 159GZZZK(d).

The Dividend Component

8. You are taken to have been paid a dividend of 93c (Dividend Component) on 16 June 2020 for each share Longevity purchased from you in the Buy-Back (section 159GZZZP).

9. The Dividend Component is an unfrankable distribution pursuant to paragraph 202-45(c) and is not capable of being franked in accordance with section 202-5.

10. The difference between the buy-back price of \$1.78 (Buy-Back Price) and the Dividend Component is the capital component (Capital Component). The Capital Component is not a dividend for income tax purposes (subsection 159GZZZP(2)).

Assessability of the Dividend Component

11. If you are an individual and you participated in the Buy-Back, you include the Dividend Component of 93c per share in your assessable income in the income year in which the Buy-Back occurred (subsection 44(1)).

12. As the Dividend Component is an unfrankable distribution, there is no franking credit and you are not entitled to a tax offset (section 207-20).

Partnerships

13. For shares held by a partnership, the Dividend Component of 93c per share is included in the partnership's assessable income in the income year in which the Buy-Back occurred (subsection 44(1)), for the purposes of calculating its net income pursuant to section 90.

Trusts

14. For shares held on trust, the Dividend Component of 93c per share is included in the trust's assessable income in the income year in which the Buy-Back occurred

(subsection 44(1)), for the purposes of calculating its net income pursuant to subsection 95(1).

Sale consideration

15. You are taken to have received 85c per share as consideration in respect of each share you sold in the Buy-Back (Sale Consideration) on 16 June 2020 in accordance with section 159GZZZQ.

Shares held on capital account

16. For capital gains tax (CGT) purposes, you disposed of the Longevity shares you sold in the Buy-Back on 16 June 2020 (CGT event A1 under section 104-10).

17. The Sale Consideration of 85c per share is the capital proceeds you received for CGT purposes (section 116-20). If you did not hold the shares through a partnership, you made a:

- capital gain if the Sale Consideration per Longevity share sold in the Buy-Back exceeds the cost base of that share. The capital gain is the difference
- capital loss if the Sale Consideration per Longevity share sold in the Buy-Back is less than the reduced cost base of the share (subsection 104-10(4)). The capital loss is the difference.

18. Each partner in a partnership has a separate cost base and reduced cost base for their interest in a Longevity share sold in the Buy-Back by the partnership (subsection 106-5(2)). The partnership allocates to each partner an appropriate share of the Sale Consideration which the partnership received for the sale of Longevity shares in the Buy-Back.

The anti-avoidance provisions

19. The Commissioner will not make a determination under subsections 45A(2) or 45B(3) that section 45C applies to the whole, or any part, of the Capital Component of the Buy-Back Price you received.

Scheme

20. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

Background

Longevity's corporate structure and shareholding

21. Longevity is an unlisted public company that designs, builds and delivers homes for 'empty nesters' and retirees.

22. Longevity was formerly known as Transport Friendly Society Ltd, which was demutualised on 1 July 2014, as detailed in Class Ruling CR 2014/35 *Income tax: demutualisation of Transport Friendly Society Ltd*. Upon demutualisation, Longevity's members became shareholders, with a cost base 'embedded value' of \$2.92 per share.

23. As at 17 December 2019, Longevity had 18,176,500 fully-paid ordinary shares on issue held by 4,205 shareholders. All shareholders are residents of Australia.

24. There are no partly-paid shares or any other class of shares on issue.

Trading history

25. Ordinary shares in Longevity trade in a low-volume market administered in accordance with the *Corporations (Low Volume Financial Markets) Exemption Notice 2013*.

26. In the 12-month period since 4 May 2019, approximately 208,400 shares were traded at a weighted-average trade price of 85c per share, a 12-month volume of 1.14% of total shares on issue.

Distribution history

27. Longevity has not paid any dividends since it demutualised on 1 July 2014.

Buy-back arrangement

28. Since demutualisation, Longevity's shares have traded at a low rate of turnover and at low prices. This makes it difficult for shareholders to dispose of their shares. The Buy-Back was structured to provide Longevity shareholders some liquidity for their shares.

29. Longevity also has many shareholders who hold a small number of shares. This imposes an administrative burden on Longevity. Longevity considered that all shareholders would benefit from a reduced administrative burden and cost and encouraged the shareholders with a small number of shares to participate in the Buy-Back.

30. On 4 May 2020, Longevity invited its shareholders to participate in an off-market buy-back of a maximum of 10% of its shares on issue, being a total of 1,817,650 shares for a maximum amount of \$3,235,417.

31. Each Longevity shareholder could apply to participate in the Buy-Back with a minimum amount of 1,100 shares. Any shareholders who held 1,100 shares or fewer (Small Holders) could only apply to participate in the Buy-Back by tendering all their shares.

32. If, at the close of the Buy-Back offer, the aggregate number of shares tendered by shareholders into the Buy-Back was less than or equal to 1,817,650 shares, Longevity would purchase all the shares offered in the Buy-Back.

33. If shareholders offered to participate in the Buy-Back to an extent greater than 1,817,650 shares, Longevity would undertake a pro rata scale back of the offer.

34. Small Holders would not be subject to a scale back.

35. Longevity would also give priority to shareholders (other than Small Holders) who tendered to sell all their shares into the Buy-Back, but would be left with parcels with a value of less than or equal to \$500, or 280 Longevity shares, as a result of the scale back (Small Residual Holdings).

36. All shareholders who held Longevity shares at 5:00pm AEST on 5 May 2020 (the Record Date) and continued to be registered on Longevity's Share Registry on that date were eligible to participate in the Buy-Back with shares held on that date.

37. Shareholders could offer to participate in the Buy-Back via a tender process from 11 May 2020 to 11 June 2020.

38. On 16 June 2020, Longevity announced that it had purchased 1,816,836 of its shares under the Buy-Back for \$3,233,968. A scale back was applied.
39. The Buy-Back was completed on 16 June 2020.
40. For each share purchased in the Buy-Back, Longevity paid \$1.78, comprising:
- 85c which was debited to Longevity's share capital account (Capital Component), and
 - 93c which was debited to Longevity's retained earnings (Dividend Component). The Dividend Component was unfranked.
41. Longevity's share capital account (as defined in section 975-300) was not tainted for the purposes of section 197-50.
42. Longevity cancelled all the shares it purchased under the Buy-Back.

Commissioner of Taxation2 July 2020

Appendix 1– Explanation

❶ *This Explanation 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.*

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Off-market purchase

43. For the purposes of Division 16K, where a company buys a share in itself from a shareholder, the purchase is a 'buy-back' (paragraph 159GZZZK(a)).

44. As Longevity shares are not listed for quotation on a stock exchange in Australia or elsewhere, the Buy-Back is an off-market purchase (paragraph 159GZZZK(d)).

The Dividend and Capital Components

45. The Buy-back Price you received comprises a Dividend Component and a Capital Component.

46. The amount of each of these components is determined in accordance with sections 159GZZZP and 159GZZZQ, having regard to how Longevity accounted for the Buy-Back.

The Dividend Component

47. For an off-market purchase, the difference between the Buy-Back Price of \$1.78 and the part of the Buy-Back Price which was debited against amounts standing to the credit of Longevity's share capital account (85c) is taken to be a dividend paid by Longevity to you as a participating shareholder on the day the Buy-Back occurred (section 159GZZZP). As a result, the Dividend Component is 93c per share.

48. Where the buy-back price of a share sold in an off-market buy-back is greater than its market value worked out as if the buy-back was not announced and did not happen, the Dividend Component is unfrankable to the extent the buy-back price exceeds the market value (paragraph 202-45(c)).

49. The Commissioner has agreed that the market value of a Longevity share was 85c. The basis of this value is set out at paragraphs 25 and 26 of this Ruling, and is further considered at paragraph 63 of this Ruling.

50. As the Buy-Back price of \$1.78 per share was greater than the market value of 85c, the entire Dividend Component of 93c per share is an unfrankable dividend (paragraph 202-45(c)).

Assessability of the Dividend Component

51. You are taken to have received the Dividend Component on the day the Buy-Back was completed, which was 16 June 2020.

52. Paragraphs 11 to 14 of this Ruling set out a complete explanation of the assessability of the Dividend Component.

The Capital Component

Calculation of Sale Consideration

53. For the purposes of determining the amount of a gain or loss you made on the disposal of your shares in the Buy-Back, the consideration you are taken to have received in respect of the disposal is worked out in accordance with section 159GZZZQ. The effect of section 159GZZZQ is to adjust the Capital Component in order to determine the Sale Consideration for CGT purposes.

54. Subsection 159GZZZQ(1) provides that you are taken to have received an amount equal to the purchase price as consideration in respect of each share sold in the Buy-Back. However, this amount is subject to certain adjustments in order to arrive at the Sale Consideration.

55. Subsection 159GZZZQ(2) is one of the adjusting provisions. The subsection provides that if the Buy-Back price was less than what would have been the market value of the Longevity share (calculated as if the Buy-Back did not occur and was never proposed to occur), then the consideration is increased to the market value. However, as the Buy-Back Price of \$1.78 per Longevity share was greater than – rather than less than – the market value of 85c, subsection 159GZZZQ(2) does not operate to increase the Sale Consideration.

56. Pursuant to subsections 159GZZZQ(3) and (4), the Buy-Back Price of \$1.78 is reduced by a 'Reduction Amount' which relevantly is equivalent to the Dividend Component of 93c. As a result, the Sale Consideration for each Longevity share disposed of under the Buy-Back is 85c (being \$1.78 less 93c). Participating shareholders are taken to have disposed of their shares on 16 June 2020.

57. As the Dividend Component was unfranked, and there was no 'offsetable amount', subsections 159GZZZQ(8) and (9) do not operate to make a further adjustment for you if you were a company.

58. Paragraphs 15 to 18 of this Ruling set out a complete explanation of treatment of the Sale Consideration.

The anti-avoidance provisions***Sections 45A and 45B***

59. Sections 45A and 45B are anti-avoidance provisions, which if they apply, allow the Commissioner to make a determination that section 45C applies. The effect of such a determination is that all or part of the Capital Component you received under the Buy-Back is treated as an unfranked dividend. Accordingly, the application of these two provisions to the Buy-Back must be considered.

60. Section 45A applies in circumstances where capital benefits are streamed to certain shareholders (the advantaged shareholders) who derive a greater benefit from the receipt of share capital, and it is reasonable to assume that the other shareholders (the disadvantaged shareholders) have received or will receive dividends.

61. There was a 'provision of a capital benefit' (as defined in paragraph 45A(3)(b)) to you under the Buy-Back, the circumstances of the Buy-Back indicate that there was no streaming of capital benefits to some shareholders and dividends to other shareholders. Under the Buy-Back, all shareholders received both a distribution of share capital and a Dividend Component on the Longevity shares they sold into the Buy-Back. Accordingly, section 45A does not apply to the Buy-Back.

62. Section 45B applies where certain capital payments are paid to shareholders in substitution for dividends. In broad terms, section 45B applies where under a scheme:

- a person is provided with a capital benefit by a company (paragraph 45B(2)(a))
- a taxpayer (the relevant taxpayer), who may or may not be the person provided with the capital benefit, obtains a tax benefit (paragraph 45B(2)(b)), and
- 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 more-than-incidental purpose of enabling the relevant taxpayer to obtain a tax benefit (paragraph 45B(2)(c)).

63. The conditions of paragraphs 45B(2)(a) and 45B(2)(b) were met in respect of the Buy-Back. However, having regard to the relevant circumstances of the Buy-Back (as set out in subsection 45B(8)), the requisite purpose of enabling a person to obtain a tax benefit as a result of providing the capital distribution was not present. Some of the key factors are:

- 85c is consistent with the market price at which Longevity's shares have been traded in the low-volume market in the last 12 months
- the distribution of share capital of 85c per share is lower than the average capital per share and could not be said to be attributable to the profits of Longevity
- the profile of Longevity's shareholders
- the Buy-Back is not expected to alter Longevity's dividend policy and there is no indication that the 85c Capital Component was in substitution for a dividend, and
- as a consequence of the Buy-Back, the distribution of share capital resulted in Longevity cancelling the ordinary shares you held together with a corresponding loss of dividend, voting and other rights.

64. Accordingly, the Commissioner will not make a determination under subsection 45B(3) that section 45C applies to treat all or any part of the distribution of share capital of 85c per share as an unfranked dividend paid by Longevity.

Sections 177EA and 204-30

65. As the Dividend Component was both unfrankable and unfranked, it is not necessary to consider the operation of sections 177EA and 204-30. These provisions operate in certain circumstances when franked dividends are provided to shareholders.

Appendix 2 – Legislative provisions

66. This paragraph sets out the details of the provisions ruled upon or referenced in this Ruling.

<i>Income Tax Assessment Act 1936</i>	subsection 6(1)
<i>Income Tax Assessment Act 1936</i>	subsection 44(1)
<i>Income Tax Assessment Act 1936</i>	section 45A
<i>Income Tax Assessment Act 1936</i>	subsection 45A(2)
<i>Income Tax Assessment Act 1936</i>	paragraph 45A(3)(b)
<i>Income Tax Assessment Act 1936</i>	section 45B
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(2)(a)
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(2)(b)
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(2)(c)
<i>Income Tax Assessment Act 1936</i>	subsection 45B(3)
<i>Income Tax Assessment Act 1936</i>	subsection 45B(8)
<i>Income Tax Assessment Act 1936</i>	section 45C
<i>Income Tax Assessment Act 1936</i>	section 90
<i>Income Tax Assessment Act 1936</i>	subsection 95(1)
<i>Income Tax Assessment Act 1936</i>	Division 16K
<i>Income Tax Assessment Act 1936</i>	paragraph 159GZZZK(a)
<i>Income Tax Assessment Act 1936</i>	paragraph 159GZZZK(d)
<i>Income Tax Assessment Act 1936</i>	section 159GZZZP
<i>Income Tax Assessment Act 1936</i>	section 159GZZZQ
<i>Income Tax Assessment Act 1936</i>	subsection 159GZZZQ(2)
<i>Income Tax Assessment Act 1936</i>	subsection 159GZZZQ(3)
<i>Income Tax Assessment Act 1936</i>	subsection 159GZZZQ(4)
<i>Income Tax Assessment Act 1936</i>	subsection 159GZZZQ(8)
<i>Income Tax Assessment Act 1936</i>	subsection 159GZZZQ(9)
<i>Income Tax Assessment Act 1936</i>	section 177EA
<i>Income Tax Assessment Act 1997</i>	section 104-10
<i>Income Tax Assessment Act 1997</i>	subsection 104-10(4)
<i>Income Tax Assessment Act 1997</i>	subsection 106-5(2)
<i>Income Tax Assessment Act 1997</i>	section 116-20
<i>Income Tax Assessment Act 1997</i>	section 197-50
<i>Income Tax Assessment Act 1997</i>	section 202-5
<i>Income Tax Assessment Act 1997</i>	paragraph 202-45(c)
<i>Income Tax Assessment Act 1997</i>	section 204-30
<i>Income Tax Assessment Act 1997</i>	section 207-20
<i>Income Tax Assessment Act 1997</i>	Division 230
<i>Income Tax Assessment Act 1997</i>	section 975-300
<i>Income Tax Assessment Act 1997</i>	section 977-50
<i>Income Tax Assessment Act 1997</i>	subsection 995-1(1)

References*Previous draft:*

Not previously issued as a draft

Related Rulings/Determinations:

CR 2014/35, TR 2006/10

*Other references:*Corporations (Low Volume Financial
Markets) Exemption Notice 2013
PS LA 2007/9

ATO references

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