


CR 2021/97 - Wingate Group Holdings Pty. Ltd. - demerger of Now Finance Group Holdings Pty Ltd

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Class Ruling

Wingate Group Holdings Pty. Ltd. – demerger of Now Finance Group Holdings Pty Ltd

❶ Relying on this Ruling

This publication 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 this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out the income tax consequences of the demerger of Now Finance Group Holdings Pty Ltd (NOW Finance) and its wholly-owned subsidiaries by Wingate Group Holdings Pty. Ltd. (Wingate), which was implemented on 30 November 2021 (Implementation Date).
2. Full details of this scheme are set out in paragraphs 25 to 48 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you held ordinary shares in Wingate and you:
 - were registered on the Wingate share register in Australia on 30 November 2021 (Demerger Record Date), and
 - did not hold your Wingate shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)) on the Demerger Record Date.
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 the scheme outlined in paragraphs 25 to 48 of this Ruling. Division 230 will not apply to an individual, unless they have made an election for it to apply.

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When this Ruling applies

6. This Ruling applies from 1 July 2021 to 30 June 2022.

Ruling**Demerger**

7. A demerger, as defined in section 125-70, happened to the Wingate demerger group (which included Wingate and NOW Finance) under the scheme described in paragraphs 25 to 48 of this Ruling.

Demerger roll-over

8. If you are an Australian resident, you can choose to obtain demerger roll-over under section 125-55 for your Wingate ordinary shares.

9. If you are a foreign resident, you can only choose to obtain demerger roll-over under section 125-55 for your Wingate ordinary shares if the NOW Finance ordinary shares you acquired under the demerger are taxable Australian property just after you acquired them.

Capital gains tax consequences

10. On the Implementation Date, CGT event G1 happened when Wingate paid to you the reduction of share capital in Wingate ordinary shares by way of the transfer to you of NOW Finance ordinary shares (section 104-135).

11. You will make a capital gain from CGT event G1 happening if the amount of the reduction of share capital for each Wingate ordinary share (17.5 cents) was more than the cost base of your share. If so, 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)).

Additional capital gains tax consequences for foreign-resident shareholders

12. If you are a foreign resident just before the Implementation Date, any capital gain you make from CGT event G1 is disregarded unless the Wingate ordinary share is taxable Australian property (section 855-10). A Wingate ordinary share is taxable Australian property if it:

- was used by you (the foreign-resident shareholder) in carrying on a business through a permanent establishment in Australia (table item 3 in section 855-15), or
- is a CGT asset that is covered by subsection 104-165(3) (choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident) (table item 5 of section 855-15).

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Consequences of choosing demerger roll-over

13. If you choose demerger roll-over for your Wingate ordinary shares:
- any capital gain you made when CGT event G1 happened to your Wingate ordinary shares under the demerger is disregarded (subsection 125-80(1)), and
 - you must recalculate the first element of the cost base and reduced cost base of your Wingate ordinary shares, and calculate the first element of the cost base and reduced cost base of the corresponding NOW Finance ordinary shares you acquired under the demerger (subsection 125-80(2)) (see paragraphs 15 to 17 of this Ruling).

Consequences of not choosing demerger roll-over

14. If you do not choose demerger roll-over for your Wingate ordinary shares, you:
- cannot disregard any capital gain you made when CGT event G1 happened to your Wingate ordinary shares under the demerger (subsection 125-80(1)), and
 - must recalculate the first element of the cost base and reduced cost base of your Wingate ordinary shares, and calculate the first element of the cost base and reduced cost base of the corresponding NOW Finance ordinary shares you acquired under the demerger (subsections 125-85(1) and (2)) (see paragraphs 15 to 17 of this Ruling).

Cost base and reduced cost base of your Wingate Group Holdings Pty. Ltd. and Now Finance Group Holdings Pty Ltd ordinary shares

15. The first element of the cost base and reduced cost base of each Wingate ordinary share and corresponding NOW Finance ordinary share is worked out by:
- taking the total of the cost bases of the Wingate ordinary shares just before the demerger, and
 - apportioning that total between the Wingate ordinary shares and the NOW Finance ordinary shares acquired under the demerger.
16. The apportionment is done on a reasonable basis having regard to the market values (just after the demerger) of the Wingate ordinary shares and NOW Finance ordinary shares, or an anticipated reasonable approximation of those market values (subsections 125-80(2) and (3)).
17. The Commissioner accepts that a reasonable apportionment is to attribute:
- 67.82% of the total of the cost bases of the Wingate ordinary shares just before the demerger to the Wingate ordinary shares, and
 - 32.18% of the total of the cost bases of the Wingate ordinary shares just before the demerger to the corresponding NOW Finance ordinary shares.

Acquisition date of the Now Finance Group Holdings Pty Ltd ordinary shares

18. For CGT purposes, you acquired each NOW Finance ordinary share on the Implementation Date (section 109-5).

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19. However, for the purpose of determining whether you can make a discount capital gain from a future CGT event that happens to a NOW Finance ordinary share you acquired under the demerger, you will be taken to have acquired the NOW Finance ordinary share on the date you acquired, for CGT purposes, the corresponding Wingate ordinary share (table item 2 of subsection 115-30(1)). This will be the case whether or not you choose demerger roll-over.

Not an assessable dividend

20. No part of the value of a NOW Finance ordinary share transferred to you under the demerger will be included in your assessable income as a dividend under subsection 44(1) of the *Income Tax Assessment Act 1936* (ITAA 1936). Although the part of the value of a NOW Finance ordinary share that is not debited to the share capital account of Wingate is a 'dividend' under subsection 6(1) of the ITAA 1936, it will be a 'demerger dividend' under subsections 44(3) to (5) of the ITAA 1936. A demerger dividend is non-assessable non-exempt income for you.

No dividend withholding tax for foreign-resident Wingate Group Holdings Pty. Ltd. ordinary shareholders

21. No part of the value of a NOW Finance ordinary share transferred to you under the demerger will be subject to dividend withholding tax (subsection 128B(3D) of the ITAA 1936).

The anti-avoidance provisions in sections 45, 45A, 45B, 45BA and 45C of the ITAA 1936 will not apply to deem an assessable dividend

22. Section 45 of the ITAA 1936 will not apply to the Now Finance ordinary shares provided to you under the demerger. This is because all ordinary shareholders of Wingate participated in the demerger based on their shareholding on the Demerger Record Date.

23. 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 you under the demerger. This is because the circumstances of the demerger do not indicate that there was streaming of capital benefits to some shareholders and dividends to other shareholders.

24. As the purpose test in paragraph 45B(2)(c) of the ITAA 1936 is not satisfied, the Commissioner will not make a determination under either:

- 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 you under the demerger, or
- 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 you under the demerger.

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Scheme

25. 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.

Wingate Group Holdings Pty. Ltd.

26. Wingate is an Australian-resident company that was incorporated in 2007 and is an unlisted private company.

27. Wingate is the head company of an Australian income tax consolidated group.

28. Wingate's core business consists of consumer finance, property lending and investment, corporate lending and investment, residential and consumer mortgage lending and investor services, as well as business in the property and finance market.

29. Immediately before the demerger, Wingate had on issue:

- 149,546,401 ordinary shares
- 6,725,000 Class A Performance Shares
- 13,369,398 ordinary share equivalent Share Appreciation Rights (SARs), and
- 3,060,000 Deferred Equity Rights (DERs).

30. There were no other ownership interests (as defined in subsection 125-60(1)) in Wingate.

31. As at 30 June 2021, Wingate (on a consolidated basis) had:

- \$67,210,000 credited to its share capital account
- retained earnings of \$17,149,000, and
- reserves of \$15,508,000.

32. Wingate ordinary shareholders include both Australian residents and foreign residents and are a mix of individuals, companies, trusts and superannuation funds. No foreign-resident ordinary shareholder of Wingate, together with their associates, held an interest of 10% or more of the ordinary shares of Wingate.

33. Wingate has paid regular dividends since it was incorporated.

Now Finance Group Holdings Pty Ltd

34. NOW Finance is an Australian-resident company that was incorporated in 2012.

35. NOW Finance is a non-bank personal loan consumer finance business which provides secured and unsecured personal loan products that are distributed through a national network of accredited finance brokers, as well as direct to consumers.

36. Immediately before the demerger, Wingate held 52.91% of the ordinary shares in NOW Finance.

37. Following the demerger, NOW Finance proposes to further grow its operations.

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The demerger of Now Finance Group Holdings Pty Ltd

38. On 30 September 2021, Wingate shareholders voted at the Extraordinary General Meeting to approve a resolution to reduce the share capital of Wingate under sections 256B and 256C of the *Corporations Act 2001*. The date for determining the entitlement of Wingate ordinary shareholders to receive the share capital reduction was 30 September 2021.

39. On the Implementation Date, Wingate satisfied the capital reduction by transferring its ordinary shares in NOW Finance to Wingate ordinary shareholders.

40. On the Implementation Date, the Wingate ordinary shareholders received 0.137003 of a NOW Finance ordinary share for each Wingate ordinary share they held at the Demerger Record Date.

41. NOW Finance also issued securities of an equivalent kind to the holders of Class A performance Shares, SARs and DERs in Wingate.

42. After the demerger, Wingate will hold no shares in NOW Finance. As a result of the demerger, Wingate ordinary shareholders will now own ordinary shares in both Wingate and NOW Finance.

Accounting treatment and market valuation

43. Wingate accounted for the demerger by debiting its:

- share capital account by \$26,213,931 (the capital reduction amount), and
- demerger reserve account by \$130,087,929 (the demerger dividend).

44. The demerger dividend was calculated as the difference between the market value of the NOW Finance ordinary shares distributed and the capital reduction amount.

Reasons for the demerger

45. The Wingate board formed the view that the demerger would:

- enable it to pursue step-change growth in the consumer finance business
- ensure it is appropriately structured to respond and adapt to changes in the consumer finance market, and
- formalise the separation and independence of the NOW Finance business outside the Wingate Group.

Other matters

46. Immediately before the Implementation Date, Wingate's share capital account was not tainted (within the meaning of Division 197).

47. Wingate 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 the demerger dividend for all Wingate ordinary shareholders.

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48. Just after the demerger, CGT assets owned by NOW Finance and its demerger subsidiaries representing at least 50% by market value of all the CGT assets owned by those entities were used in carrying on a business by those entities (subsection 44(5) of the ITAA 1936).

Commissioner of Taxation

15 December 2021

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References

Previous draft:

Not previously issued as a draft

Legislative references:

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ATO references

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 Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45A
 Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45B
 Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45C

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