


CR 2024/23 - The Trustee for the Voyager Resort - tax consequences for former timeshare owners

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Status: **legally binding**

Class Ruling

The Trustee for the Voyager Resort – tax consequences for former timeshare owners

📌 Relying on this Ruling

This publication (excluding appendix) 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 arising for the former timeshare owners of Voyager Resort at 167 Old Burleigh Road, Broadbeach, Queensland from the sale of that property and from related events.
2. Details of this scheme are set out in paragraphs 16 to 27 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 all of the following apply:
 - You are a former timeshare owner in the Voyager Resort (Resort).
 - You were entitled to a share of the proceeds from the sale of the property at 167 Old Burleigh Road, Broadbeach, Queensland.
 - You were an Australian tax resident during the 2021–22, 2022–23, or 2023–24 income years.

When this Ruling applies

5. This Ruling applies from 1 July 2021 to 30 June 2024.

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Ruling

Capital gains tax

6. CGT event A1 happened in respect of your timeshare interest in the Resort when the statutory trustees were appointed by court order on 25 March 2022, and the time of that event is in the 2021–22 income year.
7. Your capital proceeds from this CGT event A1 were the share of the sale proceeds you were entitled to receive from the trustees – that is from the sale of the property at 167 Old Burleigh Road, Broadbeach, Queensland.
8. You will have a capital gain from CGT event A1 if your share of the sale proceeds exceeded the cost base of your former timeshare interest.
9. You can disregard any capital gain or capital loss if you acquired your whole timeshare interest before 20 September 1985.

Interest income

10. You include a proportionate share of the interest income derived by the trustees in your assessable income for each of the 2022–23 and 2023–24 income years. For each year, your proportion of the total interest income (received by the trustees in that year) will be the same proportion as your share of the sale proceeds.
11. The trustees will advise you of the amount of interest income to be included in your assessable income for each of the 2022–23 and 2023–24 income years.

Penalties and interest charges

12. We will remit all penalties that may apply because you failed to lodge a tax return for the 2021–22 or 2022–23 income years, provided:
 - you lodge your return by 31 May 2024, and
 - the requirement to lodge a return arises because of the matters dealt with in this Ruling.
13. We will remit all penalties that may apply to any false or misleading statements made on your tax returns for the 2021–22 or 2022–23 income years provided:
 - those statements related to the omission of income connected to the ending of your timeshare interest in the Resort, and
 - you request an amendment of your income tax assessment to include this income and to reflect the Commissioner’s position in this Ruling by 31 May 2024.
14. We will remit all applicable interest charges where you request we amend your assessment, or you lodge your tax return, consistent with this Ruling by 31 May 2024.
15. In the event any penalty or interest charge is applied by our systems, you will need to phone **13 11 42**, and explain that you are requesting a remission of interest and penalties consistent with this Ruling and to quote the reference number CR 2024/23.

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Scheme

16. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, you cannot rely on this Ruling.

17. Voyager Resort was a block of apartments at 167 Old Burleigh Road, Broadbeach, Queensland, with 62 strata-titled lots.

18. Lots 1 and 2 and the common areas of the Resort were owned by Voyager Resort Limited (the company) since the 1980s.

19. Lots 3 to 62 each had 51 timeshare ownership rights which were held by 1,017 timeshare owners. The company was one of the timeshare owners.

20. When a timeshare owner acquired a timeshare interest in the Resort, they acquired a share in the company, and a fractional interest in a lot of the Resort.

21. The titles of Lots 3 to 62 show the fractional ownership of each timeshare owner for the relevant lot. The titles also show that the lots are subject to 99-year leases made by the timeshare owners to the company. Those leases began on 27 December 1984.

22. The trustees were appointed as statutory trustees for sale of Lots 3 to 62 of the Resort, by an order of the Supreme Court of Queensland, made on 24 March 2022, under section 38 of the former *Property Law Act 1974* (Qld).

23. The court order:

- vested all scheme lots in the trustees, to be held upon trust to sell them and hold the proceeds, after paying costs and expenses, and any net income until sale (after paying rates, taxes, insurance, et cetera properly payable out of that income)
- required the trustees to appoint a valuer to determine the proportionate share of each Lot (a share) in the purchase price
- authorised the trustees to sell all lots jointly, together with the company selling Lots 1 and 2.

24. The court order required the trustees to distribute the proceeds in this order:

- (i) discharge encumbrances
- (ii) pay fees and costs associated with holding or selling the Resort (including agents fees, rates, et cetera)
- (iii) reimburse trustees for properly incurred expenses
- (iv) pay the proceeds for Lots 1 and 2 to the company
- (v) divide the balance into shares (1 for each Lot), with each share being divided into 51 co-owner shares, and pay the co-owner share to the co-owner (after deducting any debts), with different procedures for any outstanding mortgages.

25. The Resort was sold in the 2022 calendar year, with settlement occurring in late December 2022. The sale was effected by 2 interdependent sale contracts – one for the trustees, and one for the company.

26. The trustees and the purchasing entity were both willing but not anxious participants in the contract.

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27. The trustees placed the sale proceeds of Lots 3 to 62 of the Resort into interest-earning bank accounts while they began finalising distributions to timeshare owners.

Commissioner of Taxation

10 April 2024

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Appendix – Explanation

ⓘ *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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Capital gains tax

28. CGT event A1 happens if you dispose of a capital gains tax (CGT) asset. See subsection 104-10(1).

29. You dispose of a CGT asset if a change of ownership occurs from you to another entity, whether because of some act or event or operation of law. However, a change of ownership doesn't occur if you stop being the asset's legal owner but you continue to be its beneficial owner. See subsection 104-10(2).

30. The Commissioner's view is that CGT event A1 happens when a court appoints statutory trustees for sale. ATO Interpretative Decision ATO ID 2009/129 *Capital gains tax: land vested in a statutory trustee for sale, CGT event A1 or CGT event E1?* says a court order appointing statutory trustees for the sale of co-owned property effects a disposal. The order vests the property in the trustees and authorises them to convert the property into money. The co-owners lose their interest in the property, and receive a personal claim against the trustees to collect their share of the proceeds of sale.

31. Following ATO ID 2009/129, CGT event A1 happened to the timeshare owners' interests in Lots 3 to 62 when the statutory trustees were appointed.

32. Subsection 104-10(3) says the time of the event (for CGT event A1) is:

- when you enter into the contract for the disposal, or
- if there's no contract, when the change of ownership occurs.

33. The time of the event will be the court order date. The trustees were appointed by court order in March 2022, so the timeshare owners didn't enter a contract disposing of their timeshare interests in the Resort. Therefore, the time of the event will be when the court orders effected the change of ownership in March 2022, which is during the 2021–22 income year.

34. You have a capital gain from CGT event A1 if your capital proceeds for the CGT event are more than your cost base. See subsection 104-10(4).

35. Section 116-20 says the capital proceeds are the money and market value of property you have received (or are entitled to receive) in respect of the event happening.

36. Section 116-30 says that if you received no capital proceeds from a CGT event, you are taken to have received the market value of the CGT asset that's the subject of the CGT event.

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37. On these facts, the Commissioner accepts that timeshare owners capital proceeds in respect of the disposal of their timeshare interests (to the trustees) is equal to the share of the sale proceeds they will later receive from the trustees.

38. Timeshare owners will have a capital gain if their share of the sale proceeds is more than the cost base for their timeshare interest.

Interest income

39. Interest income is ordinary income under section 6-5, and derived when it's received or credited.

40. Division 6 of Part III of the *Income Tax Assessment Act 1936* applies to trust income. The interest derived by the trustees is trust income and is included in the net income of the trust estate in the income year they received it.

41. Under section 97 of the *Income Tax Assessment Act 1936*, beneficiaries who are presently entitled to a share of the income of the trust estate include their share of the net income of the trust estate in their assessable income for the corresponding income year.

42. In these circumstances, the Commissioner accepts that each timeshare owner was presently entitled to a percentage share of the total interest income derived by the trustees equal to their percentage share of the total sale proceeds.

Administrative penalties

43. Subdivision 284-B of Schedule 1 to the *Taxation Administration Act 1953* (TAA) is about administrative penalties for making false or misleading statements. Taxpayers may be liable for penalties if they make a statement to the Commissioner that's false or misleading in a material particular.

44. Division 286 of Schedule 1 to the TAA is about penalties for failing to lodge documents on time. Taxpayers may be liable for an administrative penalty if they are required to give a document to the Commissioner by a particular day and fail to do so.

45. The Commissioner has a discretion to remit administrative penalties under section 298-20 of Schedule 1 to the TAA.

46. The Commissioner will remit any penalties for timeshare owners that may be applicable if the timeshare owners lodge their returns or seek amendments of their assessments by 31 May 2024 and comply with the requirement in paragraphs 12 and 13 of this Ruling.

Interest charges

47. There are 2 types of interest charges. Shortfall interest charge (SIC), worked out under Division 280 of Schedule 1 to the TAA, applies on any additional income tax payable as a result of an amended assessment. General interest charge (GIC), worked out under section 5-15 and Part IIA of the TAA, applies to late payments. Section 280-160 of Schedule 1 to the TAA allows the Commissioner to remit SIC, and section 8AAG of the TAA allows the Commissioner to remit GIC, in circumstances specified in those provisions.

48. Law Administration Practice Statement PS LA 2006/8 *Remission of shortfall interest charge and general interest charge for shortfall periods* says it may be appropriate to remit SIC in some circumstances, including where the delay in reporting correctly

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arose from circumstances outside the taxpayer's control, or where the taxpayer couldn't have been aware of the shortfall when lodging the return.

49. Law Administration Practice Statement PS LA 2011/12 *Remission of General Interest Charge* says it may be appropriate to remit GIC where:

- the Commissioner is satisfied that the circumstances contributing to delayed payment arose because of events beyond their control, and they took reasonable steps to mitigate, or
- ordinary and reasonable members of the community (who pay tax on time) would agree that it's fair and reasonable for the Commissioner to remit GIC.

50. The Commissioner considers that it's appropriate to remit SIC and GIC so long as:

- the SIC or shortfall GIC is solely attributable to shortfalls or tax liabilities arising from the income tax issues addressed in this Ruling
- the timeshare owners amend their assessments or lodge the relevant tax returns by 31 May 2024
- the relevant amendments or lodgments adopt the position outlined in this Ruling.

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References

Legislative references:

- ITAA 1936 Div 6
 - ITAA 1936 97
 - ITAA 1997 5-15
 - ITAA 1997 6-5
 - ITAA 1997 104-10(1)
 - ITAA 1997 104-10(2)
 - ITAA 1997 104-10(3)
 - ITAA 1997 104-10(4)
 - ITAA 1997 116-20
 - ITAA 1997 116-30
 - TAA 1953 Pt IIA
 - TAA 1953 8AAG
- TAA 1953 Sch 1 Div 280
 - TAA 1953 Sch 1 280-160
 - TAA 1953 Sch 1 Subdiv 284-B
 - TAA 1953 Sch 1 Div 286
 - TAA 1953 Sch 1 298-20
 - Property Law Act 1974 (Qld) 38 (repealed)

Other references:

- ATO ID 2009/129
- PS LA 2006/8
- PS LA 2011/12

ATO references

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