



CR 2002/71 - Income tax: reduction of capital and related scheme of arrangement for the demerger of Loomis Limited by Mayne Group Limited

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Class Ruling

Income tax: reduction of capital and related scheme of arrangement for the demerger of Loomis Limited by Mayne Group Limited

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Preamble

*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains **Class Rulings** and **Taxation Rulings** TR 92/1 and TR 97/16 together explain when a **Ruling** is a public ruling and how it is binding on the Commissioner.*

What this Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the tax laws identified below apply to the defined class of persons who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. The tax law dealt with in this Ruling are the following provisions of the *Income Tax Assessment Act 1936* ('ITAA 1936'):

- section 45B (Scheme to provide capital benefits); and
- section 45C (Effect of determination under section 45B).

Class of persons

3. The class of persons to which this Ruling applies are the shareholders with fully paid ordinary shares in Mayne Group Limited ('Mayne') who receive shares in Loomis Limited ('Loomis') under a reduction of capital and a related scheme of arrangement for the demerger of Loomis.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.
5. The class of persons defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the arrangement described below at paragraphs 11 to 16 in this Ruling.
6. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling:
 - (a) this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled; and
 - (b) this Ruling may be withdrawn or modified.
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8. The Ruling is based on the income tax law as at 27 August 2002 and is subject to any changes in the law which may arise under the demerger relief provisions contained in proposed Schedule 16 of the New Business Tax System (Consolidations, Value Shifting, Demergers and Other Measures) Bill 2002.

Date of effect

9. This Class Ruling applies to the year ending 30 June 2003. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Withdrawal

10. This Class Ruling is withdrawn and ceases to have effect after 30 June 2003. However, the Ruling continues to apply after its withdrawal in respect of the tax laws ruled upon, to all persons within the specified class who enter into the specified arrangement during the term of the Ruling, subject to there being no change in the arrangement or in the person's involvement in the arrangement.

Arrangement

11. The arrangement that is the subject of this Ruling is described below. This description is based on the following documents:

- (a) application dated 2 August 2002 from KPMG for a Class Ruling in relation to the application of section 45B to the proposed demerger of Loomis by Mayne;
- (b) further correspondence from KPMG dated 16 August 2002; and
- (c) e-mails with attachments from Mayne dated 23 August 2002.

These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description.

Note: certain information received from KPMG and Mayne has been provided on a commercial-in-confidence basis and will not be disclosed or released under the Freedom of Information Legislation.

12. Mayne is a widely held public company listed on the Australian Stock Exchange. It has a number of subsidiaries, including Loomis. Mayne owns all of the issued capital of Loomis.

13. Mayne proposes to undertake a capital reduction and a related scheme of arrangement to demerge all of its interest in Loomis to its own ordinary shareholders whose shares are fully paid up (the Mayne shareholders). This restructure will be effected by the following transactions:

- Mayne will undertake a reduction of capital of 50 cents per share by returning this amount to its fully paid ordinary shareholders; and
- under the scheme of arrangement, each Mayne shareholder's entitlement to the return of capital will be compulsorily applied as consideration for the acquisition of shares in Loomis from Mayne. Each

fully paid ordinary shareholder in Mayne at the Record Date (as defined in the scheme of arrangement) will be entitled to receive one Loomis share for each ten Mayne shares they hold at that date (rounded for fractional interests).

14. Mayne shareholders may elect to retain their Loomis shares acquired under the scheme of arrangement, or may offer to sell some or all of those shares under the terms of a Sale Facility (described in the 'Scheme Book'). Mayne shareholders may also acquire additional Loomis shares that are sold under the Sale Facility. The Loomis shares of Ineligible Overseas Shareholders will be compulsorily disposed of under the Sale Facility or on the Australian Stock Exchange.

15. No transfers have taken place up until 30 June 2002 to taint Mayne's share capital account as described by former subsection 160ARDM(1) of the ITAA 1936.

16. The effective date of the scheme of arrangement will be the date the final court order is lodged with ASIC.

Ruling

17. Subject to the qualifications in paragraphs 4 to 8 of this Ruling, the Commissioner will not make a determination under section 45B that section 45C will apply to deem any part of the capital reduction or associated transfer of shares to be an unfranked dividend in the hands of the Mayne shareholders.

Explanations

Scheme to Confer a Tax Benefit - Section 45B

18. Section 45B applies where certain capital benefits are provided to shareholders in substitution for dividends. Specifically, the provision applies where:

- (a) there is a scheme under which a person is provided with a capital benefit by a company (paragraph 45B(2)(a));
- (b) under the scheme a taxpayer, who may or may not be the person provided with the capital benefit, obtains a tax benefit (paragraph 45B(2)(b)); and
- (c) having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, entered into the scheme or carried out

the scheme or any part of the scheme for a purpose, other than an incidental purpose, of enabling a taxpayer to obtain a tax benefit (paragraph 45B(2)(c)).

19. In this case, whilst the conditions of paragraph 45B(2)(a) and (b) are met, the requisite purpose of enabling the Mayne shareholders to obtain a tax benefit (by way of a capital distribution) is not present.

20. Having regard to the relevant circumstances of the scheme, set out in subsection 45B(5), it is apparent that the capital reduction amount is not attributable to the profits of Mayne or its subsidiaries, nor do the pattern of distributions indicate that it is being paid in substitution for a dividend. Furthermore, the Mayne shareholders do not possess any identifiable significant characteristics which indicate that receipt in the form of capital is tax advantageous. Rather, the occasion for the capital distribution is the demerger of Mayne's non-health care assets and the amount being distributed could reasonably be regarded as the share capital invested in those assets. As a result of the capital reduction in association with the demerger of these assets all Mayne shareholders will have a proportionate lesser interest in Mayne than their pre-reduction interest.

Detailed contents list

21. Below is a detailed contents list for this Class Ruling:

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Previous draft:

Not previously released in draft form

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 97/16

Subject references:

- demerger
- reduction of capital

- TAA 1953 Pt IVAAA
- ITAA 1936 45B
- ITAA 1936 45B(2)(a)
- ITAA 1936 45B(2)(b)
- ITAA 1936 45B(2)(c)
- ITAA 1936 45B(5)
- ITAA 1936 45C
- ITAA 1936 160ARDM(1)
- Copyright Act 1968

Legislative references:

ATO References

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