



CR 2002/85 - Income tax: Capital gains tax: CGT event G3: Pasminco Limited (subject to Deed of Company Arrangement)

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Class Ruling

Income Tax: Capital gains tax: CGT event G3: Pasminco Limited (subject to Deed of Company Arrangement)

| Contents | Para |
|--|-----------|
| What this Class Ruling is about | 1 |
| Date of effect | 7 |
| Withdrawal | 9 |
| Arrangement | 10 |
| Ruling | 17 |
| Explanations | 18 |
| Detailed contents list | 26 |

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 law(s)’ identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. This Ruling relates to the application of the following provisions of the *Income Tax Assessment Act 1997* (‘ITAA 1997’):

- section 104-145;
- subsection 104-145(1);
- subsection 104-145(2); and
- subsection 104-145(3).

Class of persons

3. The class of persons to which this Ruling applies is the shareholders with ordinary shares in Pasminco Limited (‘Pasminco’).

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 10 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- (b) this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling applies to the 2002-2003 year of income. 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 the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Withdrawal

9. This Ruling is withdrawn from 30 June 2003. The Ruling continues to apply, in respect of the tax laws ruled upon, to all persons within the specified class who enter into a specified arrangement during the term of the Ruling. Thus the Ruling continues to apply to those persons, even following its withdrawal, for arrangements entered into prior to the withdrawal of the Ruling. This is subject to there being no change in the arrangement or in the persons' involvement in the arrangement.

Arrangement

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

- application for the Class Ruling dated 22 October 2002 in relation to the operation of section 104-145 of the ITAA 1997;
- Deed of Company Arrangement dated 4 October 2002; and
- draft description of the restructure process dated 1 October 2002.

11. On 19 September 2001 the board of Pasminco appointed Voluntary Administrators under section 436A of the Corporations Act 2001. Trading in Pasminco shares on the stock exchange was subsequently suspended on 20 September 2001.

12. A proposal to restructure the Pasminco group was presented at a creditors meeting on 30 August 2002 at which Pasminco's creditors voted to accept the proposal through a Deed of Company Arrangement (**'the proposal'**).

13. On 4 September 2002 the Voluntary Administrators issued a letter to the shareholders of Pasminco outlining the status of their shares in the company following the creditors vote to accept the proposal through the Deeds of Company Arrangement. In the letter the Voluntary Administrators made the following statement:

'Some shareholders have asked about receiving a declaration from us that they will not receive any return for their Pasminco shares, thereby allowing them to seek a tax write off in relation to the shares held by them. We confirm that we believe that shareholders will not receive any return on their existing shares in Pasminco.'

14. Following this statement, shareholders of Pasminco have sought advice from the Voluntary Administrators as to whether this statement constitutes a liquidators declaration for the purposes of section 104-145 of the ITAA 1997 which allows shareholders to choose to make a capital loss under CGT event G3 on a share when a liquidator declares those shares to be worthless.

15. The Deeds of Company Arrangement under which the restructure will be carried out were signed and executed by the Voluntary Administrators and the Deed Administrators on 4 October 2002. As a result Pasminco is moving into the implementation phase of the planned restructure under which the existing shares in Pasminco have no practical value.

16. Unless a subsequent meeting of creditors resolves otherwise, a liquidator will not be appointed to Pasminco until the completion of the Deeds of Company Arrangement. Given the time it may take creditors to have their various claims heard and for the proposed restructure to be carried out the date of completion will be several years away.

Ruling

17. The actions of the administrators do not cause a CGT event to occur, in particular, the declaration by the administrator that the shares in Pasminco are worthless will not result in CGT event G3 (liquidator declares shares worthless) happening. Accordingly, the shareholders of Pasminco cannot choose to make a capital loss.

Explanations

CGT event G3, section 104–145

18. CGT event G3 deals with situations where a liquidator declares shares worthless. The event happens if a taxpayer owns a share in a company and the liquidator of the company declares in writing that the liquidator has reasonable grounds to believe that there is no likelihood that shareholders in the company, or shareholders of the relevant class of shares, will receive any further distribution in the course of winding up the company: subsection 104-145(1) of the ITAA 1997.

19. CGT event G3 is not a compulsory event in that although the event happens, it only has consequences, if the taxpayer chooses that it does. It effectively enables a taxpayer to accelerate a capital loss that may otherwise not arise under another CGT event until some future date: subsection 104-145(2) and 104-145(3) of the ITAA 1997.

Appointment of Voluntary Administrators

20. On 19 September 2001 the board of Pasminco appointed Voluntary Administrators under section 436A of the Corporations Act. The process known as administration under Part 5.3A of the Corporations Act 2001 exists to provide for the business, property and affairs of an insolvent company to be administered in a way that:

- (a) maximises the chances of the company, or as much as possible of its business, continuing in existence; or

- (b) if it is not possible for the company or its business to continue in existence – results in a better return for the company's creditors and members than would result from an immediate winding up of the company.

21. The appointment of an administrator commences an irrevocable process leading to an evaluation of the company's future, and the presentation of the administrator's opinion at a meeting of creditors. The administrators report to creditors may recommend a rescue or compromise proposal for the company in the form of a Deed of Company Arrangement. Alternatively, the administrator will recommend the company's liquidation, or simply the termination of voluntary administration.

22. On 4 October 2002 the companies in the Pasminco group in administration executed Deeds of Company Arrangement under Part 5.3A of the Corporations Act 2001, ending the voluntary administration with the objective of effecting the restructure of the Pasminco Group.

23. The role of an administrator (refer to paragraph 20) is to assume control of the business of the company with the intention of maximising the chances of the company continuing in existence. This is clearly distinguishable from the duties of a liquidator who's responsibility is to assume control of the company's assets and to discharge its liabilities in preparation for dissolution.

24. No liquidator has been appointed to Pasminco nor has a recommendation been made to liquidate the company. In fact the application for the Ruling states:

'Unless a subsequent meeting of creditors resolves otherwise a liquidator will not be appointed to Pasminco Limited until the completion of the Deeds of Company Arrangement. Given the time it may take creditors to have their various claims heard and for the proposed restructure to be carried out the date of completion will be several years away.'

25. In the circumstances as described in the application for the Class Ruling, there is no liquidator appointed to Pasminco therefore CGT event G3 will not happen when the administrator declares that the shares are worthless and the shareholders are not able to choose to make a capital loss.

Detailed contents list

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

Paragraph

CR 2002/85

| | |
|---|-----------|
| What this Class Ruling is about | 1 |
| Tax law(s) | 2 |
| Class of persons | 3 |
| Qualifications | 4 |
| Date of effect | 8 |
| Withdrawal | 9 |
| Arrangement | 10 |
| Ruling | 17 |
| Explanations | 18 |
| CGT event G3, section 104-145 | 18 |
| Appointment of Voluntary Administrators | 20 |
| Detailed contents list | 26 |

Commissioner of Taxation

4 December 2002

Previous draft:

Not previously released in draft form.

Class Rulings

Public Rulings

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 92/20;
TR 97/16; TD 2000/52; TD 2002/3;
TD 2002/3A; TD 2002/17

Legislative references:

TAA 1953 Pt IVAAA
ITAA 1997 104-145
ITAA 1997 104-145(1)
ITAA 1997 104-145(2)
ITAA 1997 104-145(3)
Corporations Act 2001 Pt 5.3A
Corporations Act 2001 436A
Copyright Act 1968

Subject references:

Capital Gains Tax
Capital Losses
Liquidation
Voluntary Administration
CGT event G3

ATO References

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