



CR 2005/30 - Income tax: scrip for scrip roll-over: proposed takeover of Foodland Associated Limited by Metcash Trading Limited

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Class Ruling

Income tax: scrip for scrip roll-over: proposed takeover of Foodland Associated Limited by Metcash Trading Limited

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Preamble

*The number, subject heading, **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVA 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. The tax laws dealt with in this Ruling are the following provisions of the *Income Tax Assessment Act 1997* (ITAA 1997):

- section 104-10;
- section 116-20;
- Subdivision 124-M;
- Subdivision 130-C; and
- Subdivision 974-C.

Class of persons

3. The class of persons to whom this Ruling applies are the shareholders of Foodland Associated Limited who:

- (a) hold their Foodland Associated Limited shares on capital account;

- (b) accept the offer from Metcash Trading Limited to acquire their Foodland Associated Limited shares or whose shares are compulsorily acquired under Part 6A.1 of the *Corporations Act 2001*;
- (c) are not 'significant stakeholders' within the meaning of that expression in Subdivision 124-M of the ITAA 1997; and
- (d) are 'residents of Australia' within the meaning of that expression in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936).

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 in paragraphs 9 to 18.

6. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling, then:

- 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
- this Ruling may be withdrawn or modified.

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Date of effect

8. This Class Ruling applies to the income year ended 30 June 2005 and to the extent that the transactions are not completed by that date, the income year ended 30 June 2006.

Arrangement

9. The arrangement that is the subject of this Ruling is described below. The description is based on, and includes, the following documents:

- (a) Class Ruling applications dated 1 February 2005 from Foodland Associated Limited (Foodland) and 7 March 2005 from Metcash Trading Limited (Metcash) requesting the Commissioner to make a Class Ruling in relation to the application of the scrip for scrip roll-over provisions as they apply to the proposed acquisition of Foodland by Metcash;
- (b) Bidder's Statement for the Offer;
- (c) Target Statement issued by Foodland;
- (d) Scheme Booklet for the Metcash Share Scheme of Arrangement;
- (e) Metcash announcement to the Australian Stock Exchange (ASX) dated 3 May 2005;
- (f) correspondence from Ernst & Young dated 18 February 2005, 7 April 2005 and 15 April 2005 providing further clarification and information to the Australian Taxation Office (the Tax Office); and
- (g) correspondence from Greenwoods and Freehills dated 1 April 2005 15 April 2005 and 22 April 2005 providing further clarification and information to the Tax Office.

Details of the offer

10. On 7 February 2005, Metcash made an off-market offer to acquire all of the ordinary shares in Foodland. The offer was subsequently revised on 3 May 2005.

11. Under the revised offer, the consideration for each Foodland share is:

- (a) 2.79 A class converting non-voting preference shares in Metcash (A shares) and one NZ class converting non-voting preference share in Metcash (NZ share), (the share offer); or
- (b) \$8.55 and one NZ share (the cash and share offer).

12. An A share will convert into one Metcash Limited ordinary share. Metcash Limited is a newly incorporated holding company of Metcash which holds all the ordinary shares in Metcash as a result of a reorganisation pursuant to the Metcash Share Scheme of Arrangement. While Metcash Limited holds all the ordinary shares in Metcash, Metcash is not a 100% subsidiary of Metcash Limited for the purposes of section 975-505 of the ITAA 1997 as some

institutional shareholders hold convertible undated preference shares (CUPS) in Metcash.

13. A NZ share will convert into or be exchanged for ordinary shares in a company that will hold all of the New Zealand businesses and assets of Foodland (NZ Holdco).

14. Metcash will apply for the A shares and NZ shares to be listed on the ASX as Metcash securities.

15. The Metcash offer is subject to a number of conditions. The condition in Section 23.9(a) of the Bidder's Statement is a condition precedent to the formation of any contract between a Foodland shareholder and Metcash. This condition was satisfied on 17 February 2005. Other conditions, including that relating to the 90% minimum acceptance threshold, are conditions subsequent.

16. If Metcash obtains 90% or more of the Foodland shares the remaining shares will be compulsorily acquired in accordance with the *Corporations Act 2001*.

17. The shares that would otherwise be issued to foreign shareholders as defined in Section 24 of the Bidder's Statement will be issued to a nominee. The nominee will sell those shares and remit the cash proceeds to the foreign shareholders.

18. Metcash and Foodland are both 'residents of Australia' within the meaning of that expression in subsection 6(1) of the ITAA 1936. Foodland also had at least 300 members just before the commencement of the arrangement.

Ruling

19. CGT event A1 in section 104-10 of the ITAA 1997 will happen if a Foodland shareholder disposes of a Foodland share to Metcash under the arrangement described in this Ruling.

20. The event will happen at the time the shareholder enters into a contract to dispose of the share or when the share is compulsorily acquired: subsection 104-10(3) of the ITAA 1997.

21. A shareholder will make a capital gain from CGT event A1 happening if the capital proceeds for a Foodland share exceeds its cost base. The shareholder will make a capital loss if those capital proceeds are less than the share's reduced cost base: subsection 104-10(4) of the ITAA 1997.

22. The capital proceeds for each Foodland share, calculated in accordance with subsection 116-20(1) of the ITAA 1997, are:

- for shareholders who choose the share offer – the market value of 2.79 A shares and one NZ share at the time the shareholder enters into the contract to dispose of their Foodland shares; or

- for shareholders who choose the cash and share offer – \$8.55 plus the market value of one NZ share at the time the shareholder enters into the contract to dispose of their Foodland shares or when they are compulsorily acquired.

23. A shareholder who:

- (a) acquired their Foodland share on or after 20 September 1985;
- (b) accepts the share offer or the cash and share offer; and
- (c) makes a capital gain from the disposal of the Foodland share to Metcash,

can choose roll-over under Subdivision 124-M of the ITAA 1997 if:

- (d) Metcash becomes the owner of 80% or more of the voting shares in Foodland as a result of the arrangement described in this Ruling; and
- (e) any capital gain that could be made upon a future CGT event happening in relation to their replacement A and NZ shares would not be disregarded (except because of a roll-over).

24. In this regard, the treatment afforded by Subdivision 130-C of the ITAA 1997 on the conversion of the A and NZ shares is considered to be a roll-over for the purposes of paragraph 124-795(2)(a) of the ITAA 1997.

Consequences of roll-over – share offer

25. If a shareholder who accepts the share offer chooses roll-over for the disposal of a Foodland share, the capital gain from the disposal will be disregarded.

26. The first element of the cost base of each A share and each NZ share will be equal to an amount which is reasonably attributable to the cost base of each Foodland share for which it was exchanged and for which roll-over was obtained: subsection 124-785(2) of the ITAA 1997. The first element of the reduced cost base is calculated similarly: subsection 124-785(4) of the ITAA 1997.

Consequences of roll-over – cash and share offer

27. If a shareholder who accepts the cash and share offer chooses roll-over for the disposal of a Foodland share, the capital gain from the disposal is disregarded to the extent that the shareholder received a NZ share. The capital gain is not disregarded to the extent that the shareholder received cash for the disposal of their Foodland share: section 124-790 of the ITAA 1997.

28. If a shareholder chooses roll-over, the cost base of a NZ share is worked out by reasonably attributing to it, the cost base of the Foodland share for which it was exchanged and for which roll-over was obtained. However, the cost base of the Foodland share must first be reduced by so much of it that is taken into account in working out the shareholder's capital gain relating to the cash proceeds: subsections 124-785(2) and (3) of the ITAA 1997. The first element of the reduced cost base is calculated similarly: subsection 124-785(4) of the ITAA 1997.

Convertible interests

29. A shares and NZ shares are convertible interests, the conversion of which (by exchange) will cause CGT event C2 in section 104-25 of the ITAA 1997 to happen. Any capital gain or loss arising from that event will be disregarded under subsection 130-60(3) of the ITAA 1997.

30. The cost base and reduced cost base of shares acquired upon conversion of the A and NZ shares will be determined in accordance with Subdivision 130-C of the ITAA 1997.

Explanation

CGT event A1 and capital proceeds

31. CGT event A1 in section 104-10 of the ITAA 1997 happens if there is a change in the ownership of an asset from one entity to another. The event happens when a contract to dispose of the asset is entered into, or if there is no contract, when the change of ownership occurs.

32. The time when CGT event A1 happens determines the income year in which any capital gain or loss is made and whether the CGT discount applies to any capital gain.

33. Taxation Determination TD 2002/4 states at paragraph 7:

... if an offer from a 'bidder' company for shares in a 'target' company is one which is subject to a condition precedent to the formation of a contract, the contract does not come into existence until the condition is satisfied.

34. Foodland shareholders will be taken to have disposed of their shares when they enter into a contract with Metcash to dispose of their shares. No contract for the disposal of a Foodland share was entered into before the condition precedent in Section 23.9(a) of the Bidder's Statement was satisfied on 17 February 2005. Foodland shareholders who accepted the offer before that time, entered into the contract to dispose of their shares on 17 February 2005. Foodland shareholders who accept the offer on or after the time the condition was satisfied, enter into a contract to dispose of their shares when they accept the offer.

35. Shareholders who do not accept the offer and have their shares compulsorily acquired in accordance with the *Corporations Act 2001* will be taken to have disposed of their shares when the compulsory acquisition occurs.

36. The time of CGT event A1 happening is also relevant to determining the capital proceeds received for each Foodland share. Subsection 116-20(1) of the ITAA 1997 provides that the capital proceeds from a CGT event are the money and market value of any property received or entitled to be received (worked out at the time of the event happening).

37. To facilitate practical compliance in those cases where the Foodland shareholder either enters into a contract to dispose of their shares, or has their Foodland shares compulsorily acquired, prior to the A shares and the NZ shares being listed on the ASX, the Commissioner accepts that the market value of an A share or a NZ share at the time CGT event A1 happens in relation to a Foodland share can be determined as follows:

Share	Value
A share	*closing price of Metcash share on ASX on date shareholder enters into contract
NZ share received as consideration for the disposal of a Foodland share prior to 4 April 2005	*closing price of Foodland share on ASX on date shareholder enters into contract /less \$0.43 (dividend) /less *closing price on ASX of 2.79 Metcash shares on date shareholder enters into contract
NZ share received as consideration for the disposal of a Foodland share on or after 4 April 2005	*closing price of Foodland share on ASX on date shareholder enters into contract /less *closing price on ASX of 2.79 Metcash shares on date shareholder enters into contract

*If the trading values over the course of the day vary significantly, closing price should be substituted with the average trade-weighted price for the share over the day.

38. If CGT event A1 happens in relation to a Foodland share after the A shares and the NZ shares are listed on the ASX, the Commissioner will accept as the market value of those shares at the time of the event the closing price of an A share and a NZ share on the ASX on the date that the shareholder disposed of their Foodland share provided that the closing price does not significantly vary from the trading values in such shares over the course of the day. If the closing price does vary significantly the Commissioner will accept the

average trade-weighted price for the shares over the day as representing that market value.

Availability of scrip for scrip roll-over

39. Scrip for scrip roll-over enables a shareholder to disregard a capital gain from a share that is disposed of as part of a corporate takeover or merger if the shareholder receives a replacement share in exchange.

40. A capital gain is disregarded completely if the only capital proceeds the shareholder receives is a replacement share(s). If the shareholder receives some other form of capital proceeds, the capital gain is disregarded in part. The roll-over also provides that the cost base and reduced cost base of the replacement share is based on the cost base and reduced cost base of the original share at the time of the roll-over.

41. Subdivision 124-M contains a number of conditions for, and exceptions to, the eligibility of a shareholder to choose scrip for scrip roll-over. The main conditions and exceptions that are relevant to the circumstances of the arrangement that is the subject of this Ruling are outlined below.

Subparagraph 124-780(1)(a)(i) requires an entity (a Foodland shareholder) to exchange a share in a company for a share in another company

42. This requirement will be satisfied by Foodland shareholders who accept either the share offer or the cash and share offer because at least some of the consideration they receive for the disposal of their Foodland shares will consist of a share. (Only a partial roll-over will be available for those shareholders who accept the cash and share offer – see paragraphs 60 to 63).

Paragraphs 124-780(1)(b) and 124-780(2)(a) of the ITAA 1997 require that shares in an entity (Foodland – the original entity) be exchanged in consequence of a single arrangement that results in another entity (Metcash – the acquiring entity) becoming the owner of 80% or more of the voting shares in the original entity (Foodland)

43. The only issued shares in Foodland are ordinary shares. These shares satisfy the definition of 'voting share' in subsection 995-1(1) of the ITAA 1997.

44. In the context of the scrip for scrip roll-over provisions, the offer to Foodland shareholders is a 'single arrangement'. If Metcash acquires 80% or more of the ordinary shares in Foodland in consequence of this arrangement then this condition will be satisfied. Paragraph 23(d) qualifies this Ruling in this regard.

45. The compulsory acquisition of shares can be in consequence of an arrangement. The Explanatory Memorandum to the New Business Tax System (Capital Gains Tax) Bill 1999 that introduced section 124-780 of the ITAA 1997 states that this test will be satisfied if the share acquisition has a causal connection with the arrangement. It indicates further that this connection will exist if, after a takeover offer expires, shares are acquired under powers of compulsory acquisition under the Corporations Law.

Paragraphs 124-780(1)(b) and 124-780(2)(b) require that the exchange of shares is in consequence of a single arrangement in which at least all owners of voting shares in the original entity (Foodland) could participate

46. This requirement will be met as the takeover offer was made to all Foodland shareholders.

Paragraphs 124-780(1)(b) and 124-780(2)(c) of the ITAA 1997 require that participation in the arrangement be on substantially the same terms for all of the owners of interests of a particular type in the original entity (Foodland)

47. Note 2 to subsection 124-780(2) states that participation will be on substantially the same terms even if matters such as those referred to in subsections 619(2) and (3) of the *Corporations Act 2001* affect the capital proceeds that each participant can receive. Subsection 619(3) deals with nominee arrangements for foreign shareholders.

48. Therefore, although the Metcash shares to which foreign shareholders are otherwise entitled will be issued to a nominee for sale, those shareholders are still able to participate in the arrangement on substantially the same terms as other Foodland shareholders. Accordingly this requirement will be satisfied.

Paragraphs 124-780(1)(c) and 124-780(3)(a) require the original interest holder (a Foodland shareholder) to have acquired its original interest (a Foodland share) on or after 20 September 1985

49. This condition will be satisfied by a Foodland shareholder in relation to the shares they acquired on or after 20 September 1985. Paragraph 23(a) qualifies this Ruling in this regard.

Paragraphs 124-780(1)(c) and 124-780(3)(b) of the ITAA 1997 require that, apart from the roll-over, the original interest holder (a Foodland shareholder) will make a capital gain from a CGT event happening in relation to its original interest (a Foodland share)

50. Whether a Foodland shareholder will, apart from the roll-over, make a capital gain in relation to the disposal of their Foodland shares under the arrangement is a question of fact that is dependent on the specific circumstances of each shareholder – in particular the cost base of each Foodland share and the value of the capital proceeds received for it. Paragraph 23(c) qualifies this Ruling in this regard.

Paragraphs 124-780(1)(c) and 124-780(3)(c) of the ITAA 1997 require that the replacement interest is in the acquiring entity (Metcash) or ultimate holding company of the wholly-owned group which includes the acquiring entity (Metcash)

51. This requirement is satisfied as the replacement interests received by Foodland shareholders will be in Metcash which is the ultimate holding company of the wholly-owned group of which it is a member.

52. While Metcash Limited holds all the ordinary shares in Metcash, Metcash is not a 100% subsidiary of Metcash Limited for the purposes of section 975-505 of the ITAA 1997 as some institutional shareholders hold CUPS in Metcash.

Paragraphs 124-780(1)(c) and 124-780(3)(d) require that the original interest holder (a Foodland shareholder) chooses to obtain the roll-over relief

53. Whether a Foodland shareholder chooses roll-over is a question of fact.

Additional requirements in subsection 124-780(5) of the ITAA 1997 must be satisfied if the original interest holder (a Foodland shareholder) and the acquiring entity (Metcash) did not deal with each other at arm's length and:

(a) neither the original entity (Foodland) nor the replacement entity (Metcash) had at least 300 members just before the arrangement started: paragraph 124-780(4)(a) of the ITAA 1997; or

(b) the original interest holder (a Foodland shareholder), the original entity (Foodland) and the acquiring entity (Metcash) were all members of the same linked group just before the arrangement started: paragraph 124-780(4)(b) of the ITAA 1997

54. Paragraph 124-780(4)(a) of the ITAA 1997 will not apply because both Foodland and Metcash had more than 300 members just before the arrangement started. Section 124-810 of the ITAA 1997 will not apply to either Foodland or Metcash as their ownership is not concentrated in the manner contemplated by that section.

55. Paragraph 124-780(4)(b) of the ITAA 1997 will not apply because Foodland and Metcash were not members of the same linked group (within the meaning in section 170-260 of the ITAA 1997) just before the arrangement started.

Exceptions to obtaining scrip for scrip roll-over

Paragraph 124-795(2)(a) of the ITAA 1997 provides that the roll-over is not available if any capital gain the original interest holder (a Foodland shareholder) might make from their replacement interest (a Metcash share) would be disregarded (except because of a roll-over)

56. Roll-over is not a defined term in the context of paragraph 124-795(2)(a) of the ITAA 1997 and includes any provision which has the effect of deferring the recognition of a capital gain from an asset and effecting a cost base transfer.

57. Support for this view can be found in the terms of Subdivision 124-M which specifically prescribes roll-over for option holders. Were roll-over in the context of paragraph 124-795(2)(a) to be restricted to a same asset roll-over or a replacement asset roll-over, option holders would be denied scrip for scrip roll-over because of the effect of subsection 130-40(7) of the ITAA 1997.

58. This exception may apply if, for example, a shareholder holds their Metcash shares as trading stock.

Paragraph 124-795(2)(b) provides that roll-over is not available if the original interest holder (a Foodland shareholder) and the acquiring entity (Metcash) are members of the same wholly-owned group just before the original interest holder stops owning their original interest (a Foodland share), and the acquiring entity is a foreign resident

59. As Metcash is an Australian resident this exception does not apply.

Partial roll-over

60. Subsection 124-790(1) of the ITAA 1997 provides that an original interest holder (a Foodland shareholder) will obtain only a partial roll-over if its capital proceeds include something other than a replacement interest. This will be the case for shareholders who accept the cash and share offer.

61. Under the cash and share offer Foodland shareholders are to receive \$8.55 and one NZ share for each Foodland share disposed of. Roll-over will not be available to the extent of the cash (ineligible proceeds) received.

62. In calculating the capital gain attributable to their ineligible proceeds, a Foodland shareholder should deduct from those proceeds a reasonable portion of the cost base of their Foodland share (just before its disposal to Metcash): subsection 124-790(2) of the ITAA 1997.

63. In making a reasonable apportionment of the cost base of a Foodland share, it would be appropriate for a shareholder to make an apportionment having regard to the value of the ineligible proceeds (cash) and the NZ share on the date that CGT event A1 happened to their Foodland share.

Cost base of replacement shares received

64. If a Foodland shareholder chooses the share offer, the first element of the cost base and reduced cost base of an A share and a NZ share will be determined by apportioning on a reasonable basis the cost base of the Foodland share which was exchanged for them: subsections 124-785(2) and (4) of the ITAA 1997.

65. For shareholders who choose the cash and share offer the first element of the cost base and reduced cost base of a NZ share will be worked out having regard to that portion of the cost base of a Foodland share that was not taken into account in working out the capital gain in respect of the ineligible proceeds: subsections 124-785(2), (3) and (4) of the ITAA 1997.

Convertible interests

66. Under the arrangement that is the subject of this Ruling, a CGT event will happen to the owners of A shares and NZ shares on the conversion, by exchange, of those shares to ordinary shares in Metcash Limited and NZ Holdco respectively. Subdivision 130-C of the ITAA 1997 will apply in respect of those conversions if the A shares and NZ shares are convertible interests.

67. A convertible interest in a company is defined in subsection 995-1(1) of the ITAA 1997 to mean an interest of a kind referred to in item 4 of the table in subsection 974-75(1) of the ITAA 1997.

A shares

68. Included among the interests referred to in item 4 of the table in subsection 974-75(1) of the ITAA 1997 are interests issued by a company that give its holder a right to be issued with an equity interest in the company or a connected entity of the company. As A shares will provide Foodland shareholders with the right to be issued with ordinary shares in Metcash Limited by way of an exchange, the A shares will qualify as convertible interests. As Metcash Limited is an associate of Metcash, it will qualify as a connected entity of Metcash within the meaning of that expression in subsection 995-1(1) of the ITAA 1997.

NZ shares

69. Item 4 in the table in subsection 974-75(1) of the ITAA 1997 also includes interests issued by a company that will, or may, convert into an equity interest in the company or a connected entity of the company. What is meant by 'an interest that will or may convert into another interest' is defined in section 974-165 of the ITAA 1997 and includes the issue or transfer of another interest.

70. Therefore, as the NZ shares will be cancelled in exchange for the transfer of ordinary shares in NZ Holdco, and as NZ Holdco is a connected entity of Metcash, the NZ shares will qualify as convertible interests.

Cost base and reduced cost base of ordinary shares in Metcash Limited and NZ Holdco

71. The first element of the cost base of a Metcash Limited ordinary share or a NZ Holdco ordinary share acquired upon conversion of an A share or a NZ share will be worked out under item 2 in the table in subsection 130-60(1) of the ITAA 1997 as the sum of:

- the cost base of the A share or the NZ share at the time of the conversion;
- any amount paid to convert the A shares or the NZ shares; and
- the amount, if any, by which the capital gain from the A share or the NZ share has been reduced under section 118-20 of the ITAA 1997 (even though the capital gain that is made on conversion is disregarded under subsection 130-60(3)).

72. The first element of the reduced cost base will be worked out similarly under item 2 in the table in subsection 130-60(1) of the ITAA 1997.

Detailed contents list

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Additional requirements in subsection 124-780(5) of the ITAA 1997 must be satisfied if the original interest holder (a Foodland shareholder) and the acquiring entity (Metcash) did not deal with each other at arm's length and:

(a) neither the original entity (Foodland) nor the replacement entity (Metcash) had at least 300 members just before the arrangement started: paragraph 124-780(4)(a) of the ITAA 1997; or

(b) the original interest holder (a Foodland shareholder), the original entity (Foodland) and the acquiring entity (Metcash) were all members of the same linked group just before the arrangement started: paragraph 124-780(4)(b) of the ITAA 1997

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Exceptions to obtaining scrip for scrip roll-over

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Paragraph 124-795(2)(a) of the ITAA 1997 provides that the roll-over is not available if any capital gain the original interest holder (a Foodland shareholder) might make from their replacement interest (a Metcash share) would be disregarded (except because of a roll-over)

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Paragraph 124-795(2)(b) provides that roll-over is not available if the original interest holder (a Foodland shareholder) and the acquiring entity (Metcash) are members of the same wholly-owned group just before the original interest holder stops owning their original interest (a Foodland share), and the acquiring entity is a foreign resident

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Cost base and reduced cost base of ordinary shares in Metcash Limited and NZ Holdco

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Commissioner of Taxation

11 May 2005

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 97/16;
TD 2002/4

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- ITAA 1997 124-780(2)(a)
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- ITAA 1997 974-75(1)
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- Corporations Act 2001 Pt 6A.1
- Corporations Act 2001 619(2)
- Corporations Act 2001 619(3)
- Copyright Act 1968
- TAA 1953 Pt IVA

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 104-10
- ITAA 1997 104-10(3)
- ITAA 1997 104-10(4)
- ITAA 1997 104-25
- ITAA 1997 116-20
- ITAA 1997 116-20(1)
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-780
- ITAA 1997 124-780(1)(a)(i)
- ITAA 1997 124-780(1)(b)
- ITAA 1997 124-780(1)(c)
- ITAA 1997 124-780(2)

Other references:

- Explanatory Memorandum to the New Business Tax System (Capital Gains Tax) Bill 1999

ATO references

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