CR 2005/72 - Income tax: cancellation of shares in The News Corporation Limited - consequences for shareholders who do not or cannot choose scrip for scrip rollover

This document has changed over time. This is a consolidated version of the ruling which was published on *1 July 2004*

Class Ruling

Income tax: cancellation of shares in The News Corporation Limited – consequences for shareholders who do not or cannot choose scrip for scrip rollover

Contents Para

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 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. The tax laws dealt with in this Ruling are:

- section 110-25 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 110-55 of the ITAA 1997;
- section 116-20 of the ITAA 1997; and
- section 124-800 of the ITAA 1997.

Class of persons

3. The class of persons to which this Ruling applies consists only of former shareholders of The News Corporation Limited (TNCL) who:

(a) are 'residents of Australia' within the meaning of that expression in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);

(b) had their existing TNCL ordinary shares or TNCL preferred shares cancelled and were issued News Corp US voting Chess Depository Instruments (voting CDIs) or News Corp US non-voting CDIs (non-voting CDIs) on 12 November 2004;

(c) held their TNCL ordinary shares or TNCL preferred shares on capital account; and

(d) are ineligible for, or do not choose, rollover relief under Subdivision 124-M of the ITAA 1997 in respect of the cancellation.

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 10 to 16.

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.

Date of effect

8. This Class Ruling applies to the year ended 30 June 2005.

Related Ruling

9. Class Ruling CR 2004/106 deals with the application of scrip for scrip rollover under Subdivision 124-M of the ITAA 1997 for TNCL shareholders and option holders.

Arrangement

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

11. These documents or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

(a) Class Ruling application dated 16 May 2005 from Ernst and Young requesting the ATO make a class ruling in relation to former shareholders of TNCL who are ineligible for, or who do not choose, scrip for scrip rollover; and

(b) Information Memorandum lodged with the ASX dated 15 September 2004 in relation to a proposal to ‘reincorporate’ in the United States (the share scheme).

12. Under the arrangement TNCL was replaced by News Corporation (NC) as the holding company of the TNCL group of companies. All of the shares in TNCL (other than 100 redeemable ordinary shares) were cancelled on 12 November 2004 under the share scheme.

13. Australian share scheme participants who owned ordinary shares in TNCL received one voting CDI for every two ordinary shares in TNCL. Australian share scheme participants who owned preferred shares in TNCL received one non-voting CDI for every two preferred shares in TNCL.

14. CDIs were issued in respect of both the voting and non-voting common stock of NC to those TNCL shareholders whose addresses were in Australia. CDIs facilitate the electronic transfer of shares on the Australian Stock Exchange (ASX). CDIs are units of beneficial interests in securities where the legal title is held by an Australian depository entity. That entity in this share scheme is CHESS Depository Nominees Pty Ltd (CDN), a wholly owned subsidiary of the ASX. Each CDI represents an underlying NC share. CDN is recognised under US law as the holder of those NC shares. The CDIs are Chess Units of Foreign Security in terms of the ASX’s Securities Clearing House Business Rules.

15. TNCL ordinary shares (ASX Code NCP) and TNCL preferred shares (ASX Code NCPDP) ceased trading in their own right on the ASX on 3 November 2004. The voting and non-voting CDIs commenced trading on the ASX on a deferred settlement basis on 4 November 2004 (under ASX codes NWS and NWSLV, respectively). These CDIs effectively represented, and were equal to, the value of two TNCL ordinary shares and two TNCL preferred shares respectively.

16. The cancellation of TNCL ordinary shares and TNCL preferred shares happened before the opening of the New York Stock Exchange on 12 November 2004. The voting CDIs and non-voting CDIs commenced trading in their own right on the ASX on 12 November 2004.

Ruling

17. The capital proceeds received by TNCL shareholders for each TNCL ordinary share that was cancelled is equal to half of the market value of a voting CDI at the time of the cancellation on 12 November 2004 (paragraph 116-20(1)(b) of the ITAA 1997).

18. The capital proceeds received by TNCL shareholders for each TNCL preferred share that was cancelled is equal to half of the market value of a non-voting CDI at the time of the cancellation on 12 November 2004 (paragraph 116-20(1)(b) of the ITAA 1997).

19. The first element of the cost base and reduced cost base for each voting CDI issued in relation to two TNCL ordinary shares for which scrip for scrip rollover under Subdivision 124-M of the ITAA 1997 is not chosen is the market value of two TNCL ordinary shares at the time of cancellation on 12 November 2004 (paragraph 110-25(2)(b) of the ITAA 1997).

20. The first element of the cost base and reduced cost base for each non-voting CDI issued in relation to two TNCL preferred shares for which scrip for scrip rollover under Subdivision 124-M of the ITAA 1997 is not chosen is the market value of two TNCL preferred shares at the time of cancellation on 12 November 2004 (paragraph 110-25(2)(b) of the ITAA 1997).

21. The first element of the cost base and reduced cost base of each voting CDI issued in relation to two TNCL ordinary shares that were acquired by the TNCL shareholder before 20 September 1985 is its market value just after it was acquired on 12 November 2004 (subsection 124-800(1) of the ITAA 1997).

22. The first element of the cost base and reduced cost base of each non-voting CDI issued in relation to two TNCL preferred shares that were acquired by the TNCL shareholder before 20 September 1985 is its market value just after it was acquired on 12 November 2004 (subsection 124-800(1) of the ITAA 1997).

Explanation

Capital proceeds

23. CGT Event C2 happens if ownership of an intangible CGT asset ends by the asset being redeemed or cancelled (paragraph 104-25(1)(a) of the ITAA 1997).

24. CGT Event C2 happens when all of the shares in TNCL (except the 100 redeemable ordinary shares) are cancelled on 12 November 2004 (subsection 104-25(2) of the ITAA 1997).

25. The capital proceeds from a CGT event happening are:

- the total of the money you have received, or are entitled to receive, in respect of the event happening; and
- the market value of any other property you have received, or are entitled to receive, in respect of the event happening (subsection 116-20(1) of the ITAA 1997).

26. The TNCL ordinary shareholders received one voting CDI as consideration for every two TNCL ordinary shares cancelled. Therefore, the capital proceeds from the cancellation of each TNCL ordinary share is equal to half of the market value of a voting CDI at the time of cancellation on 12 November 2004 (subsection 116-20(1) of the ITAA 1997).

27. The TNCL preferred shareholders received one non-voting CDI as consideration for every two TNCL preferred shares cancelled. Therefore, the capital proceeds from the cancellation of each TNCL preferred share is equal to half of the market value of a non-voting CDI at the time of cancellation on 12 November 2004 (subsection 116-20(1) of the ITAA 1997).

Cost base and reduced cost case

28. The first element of the cost base and reduced cost base of a CGT asset (subsection 110-25(2) and subsection 110-55(2) of the ITAA 1997, respectively) is the total of:

- the money you paid or are required to pay, in respect of acquiring it; and
- the market value of any other property you gave, or are required to give, in respect of acquiring it (worked out as at the time of the acquisition).

29. The TNCL ordinary shareholders received one voting CDI as consideration for every two TNCL ordinary shares cancelled. Therefore, the first element of the cost base and reduced cost base of each voting CDI issued in relation to two TNCL ordinary shares for which scrip for scrip rollover under Subdivision 124-M of the ITAA 1997 is not chosen is the market value of two TNCL ordinary shares at the time of cancellation on 12 November 2004. The Commissioner accepts that this value is equivalent to the market value of each voting CDI at the time of cancellation on 12 November 2004.

30. The TNCL preferred shareholders received one non-voting CDI as consideration for every two TNCL preferred shares cancelled. Therefore, the first element of the cost base and reduced cost base of each non-voting CDI issued in relation to two TNCL preferred shares for which scrip for scrip rollover under Subdivision 124-M of the ITAA 1997 is not chosen is the market value of two TNCL preferred shares at the time of cancellation on 12 November 2004. The Commissioner accepts that this value is equivalent to the market value of each non-voting CDI at the time of cancellation on 12 November 2004.

Pre-CGT interests

31. TNCL ordinary shareholders or preferred shareholders who acquired their shares before 20 September 1985 will receive one voting CDI or one non-voting CDI, respectively, as consideration for every two TNCL ordinary or preferred shares cancelled. The cost base and reduced cost base of each voting CDI or non-voting CDI issued in relation to two TNCL shares that were acquired by the TNCL shareholder before 20 September 1985 is its market value just after it was acquired (subsection 124-800(1) of the ITAA 1997).

Determining the market value

32. The Commissioner of Taxation will accept the volume weighted average price (VWAP) of a voting CDI or a non-voting CDI respectively, during the period 4 to 11 November 2004, as indicative of the market value of the CDIs at the time of cancellation on 12 November 2004.

33. The VWAP of a voting CDI during the period 4 to 11 November 2004 was A$23.28. The VWAP of a non-voting CDI during the period 4 to 11 November 2004 was A$22.61.

Detailed contents list

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

Commissioner of Taxation
7 September 2005

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 97/16; CR 2004/106

Subject references:

- capital proceeds
- cost base
- market value
- pre-CGT interest
- reduced cost base
- share cancellation

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 104-25(1)(a)
- ITAA 1997 104-25(2)
- ITAA 1997 110-25
- ITAA 1997 110-25(2)
- ITAA 1997 110-25(2)(b)
- ITAA 1997 110-55
- ITAA 1997 110-55(2)
- ITAA 1997 116-20
- ITAA 1997 116-20(1)
- ITAA 1997 116-20(1)(b)
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-800
- ITAA 1997 124-800(1)
- TAA 1953 Pt IVAAA
- Copyright Act 1968

ATO references

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