



# ***CR 2006/5 - Income tax: capital gains: demerger of AGL Energy Limited by the Australian Gas Light Company***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *1 July 2005*



## Class Ruling

### Income tax: capital gains: demerger of AGL Energy Limited by the Australian Gas Light Company

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#### **① This Ruling provides you with the following level of protection:**

This publication (excluding appendices) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any under-paid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

## What this Ruling is about

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1. This Ruling sets out the Commissioner's opinion on the way in which the 'taxation provision(s)' identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

#### **Relevant taxation provision(s)**

2. The tax provisions dealt with in this Class Ruling are:

- section 44 of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 45B of the ITAA 1936;
- section 45BA of the ITAA 1936;
- section 45C of the ITAA 1936;
- section 104-135 of the *Income Tax Assessment Act 1997* (ITAA 1997); and
- Division 125 of the ITAA 1997.

## Class of entities

3. The class of entities to which this Ruling applies comprises the shareholders of the Australian Gas Light Company (AGL) who:

- (a) participate in the scheme that is the subject of this Ruling;
- (b) own ordinary shares in AGL and will hold those shares on capital account at the time of the demerger; and
- (c) are 'residents of Australia' (as that term is defined in subsection 6(1) of the ITAA 1936) at the time of the demerger.

## Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 10 to 26.

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

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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## Date of effect

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8. This Ruling applies to the income year ended 30 June 2006 or, where a substituted accounting period is used, the substituted accounting period in which the demerger occurs. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of a 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). Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by *Gazette*;
- it is not taken to be withdrawn by an inconsistent later public ruling; or
- the relevant tax laws are not amended.

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## Withdrawal

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9. This Class Ruling is withdrawn and ceases to have effect after 30 June 2006. However, the Ruling continues to apply after its withdrawal in respect of the tax provisions ruled upon, to all entities within the specified class who entered into the specified scheme during the term of the Ruling, subject to there being no change in the scheme or in the entities involvement in the scheme.

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## Scheme

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

- Class Ruling application dated 13 October 2005 from Greenwoods & Freehills;
- draft AGL Media Release supplied on 24 October 2005;
- correspondence from AGL between 18 October 2005 and 31 January 2006; and
- draft Demerger Scheme Booklet.

**Note:** certain information received from Greenwoods & Freehills or AGL has been provided on a commercial-in-confidence basis and will not be disclosed or released under the Freedom of Information legislation.

11. The scheme that is the subject of this Ruling involves the demerger of the retail energy, merchant energy and power generation business conducted by the AGL group of companies (Energy Business). The business of owning, managing and operating energy infrastructure assets (Infrastructure Business) will remain in AGL.

## **The AGL group**

12. AGL is an Australian resident company listed on the Australian Stock Exchange (ASX) and is the head company of the AGL group of companies (the AGL group). It has approximately 455.91 million ordinary shares on issue, and no other types of issued equity. More than 50% of the shares in AGL are owned by Australian residents.

13. The entity to be demerged, AGL Energy Limited (EnergyCo), is currently a wholly-owned subsidiary of AGL.

## **Pre-demerger transactions**

14. Prior to the demerger, the AGL group of companies will undertake a number of transactions (including the transfer of business assets and shares) to separate the Energy Business from the other businesses of AGL. As a result the Energy Business will be owned and operated by EnergyCo and its subsidiaries, and AGL will retain ownership and continue to operate the Infrastructure Business.

15. These asset transfers will be recognised in the accounts of the transferor and transferee as a 'receivable' and 'payable' respectively. In addition, the AGL group will rationalise all existing intra-group debt.

16. The net effect of those transactions is that EnergyCo will be indebted to AGL for approximately \$3.96 billion. EnergyCo will repay approximately \$3.6 billion of this debt by issuing approximately 455.91 million shares to AGL. As a result, the number of ordinary shares on issue in EnergyCo will be the same as the number of ordinary shares on issue in AGL at the time of the demerger.

## **The demerger**

17. AGL will then undertake a restructure where it will demerge EnergyCo at fair value to its shareholders. As a result of the demerger, AGL shareholders will acquire the same number of shares in EnergyCo as they owned in AGL just before the demerger.

18. The demerger will allow the Energy Business and Infrastructure Business to separately pursue differing business strategies and commercial objectives. The Energy Business will focus on earnings growth, including by further investment in retail and power generation assets. The Infrastructure Business will focus on strong cash flow generation particularly through natural growth opportunities, and provide a higher yielding investment for shareholders.

19. The demerger will be undertaken pursuant to a General Meeting and Scheme of Arrangement between AGL and its shareholders.

20. At the General Meeting, shareholders will be asked to approve a return of capital in the amount of \$3.00 per ordinary share (the capital reduction amount).

21. Shareholders will then be asked to approve a Scheme of Arrangement under which the following steps will occur:

- the capital reduction amount will be applied on behalf of AGL shareholders by AGL as payment for the purchase of all of the issued shares of EnergyCo from AGL; and
- AGL shareholders will purchase one new EnergyCo share for each AGL share they own just before the demerger.

22. Under the demerger, AGL will also debit an amount to its retained earnings account. Shareholders will not receive any dividend in cash as a result of this debit to AGL's retained earnings account. However, they will be taken to have received a dividend for purposes of subsection 6(1) of the ITAA 1936 to the extent the market value of an EnergyCo share at the demerger date exceeds the capital reduction of \$3.00 per share.

23. EnergyCo will be listed on the ASX following the demerger.

#### **Other matters**

24. At 1 July 2002, no transfers had taken place to taint the AGL share capital account as defined by subsection 160ARDM(1) of the ITAA 1936.

25. Just after the demerger, at least 50% of the market value of capital gains tax (CGT) assets owned by EnergyCo and its demerger subsidiaries will be used in the carrying on of a business by those entities.

26. Certain AGL shareholders whose addresses are shown in the AGL share register as being outside Australia (and certain other countries) have been classified as *Ineligible Overseas Shareholders*. These Ineligible Overseas Shareholders will be entitled to the capital reduction amount on the same basis as other AGL shareholders. However, the EnergyCo shares to which that capital reduction amount is applied will be transferred to a Nominee. The Nominee will sell these EnergyCo shares and remit the net proceeds to the Ineligible Overseas Shareholders.

## Ruling

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### **CGT event G1**

27. CGT event G1 (section 104-135 of the ITAA 1997) will happen to each of the shares of the AGL shareholders at the time of the demerger.

### **Demerger rollover**

28. AGL and its subsidiary EnergyCo will be part of a demerger group under subsection 125-65(1) of the ITAA 1997.

29. A demerger, as described under section 125-70 of the ITAA 1997, will happen to this demerger group under the scheme.

30. AGL shareholders will be eligible to choose demerger rollover under subsection 125-55(1) of the ITAA 1997 for their AGL shares. The consequences of choosing demerger rollover will depend on whether the AGL shares were acquired:

- before 20 September 1985 (pre-CGT shares); or
- on or after 20 September 1985 (post-CGT shares).

### **Choosing demerger rollover for pre-CGT AGL shares**

31. AGL shareholders who choose demerger rollover for their pre-CGT AGL shares will be taken to have acquired an equal number of their EnergyCo shares as pre-CGT shares (subsection 125-80(6) of the ITAA 1997).

### **Choosing demerger rollover for post-CGT AGL shares**

32. AGL shareholders who choose demerger rollover for their post-CGT AGL shares will disregard any capital gain made in respect of CGT event G1 that happens to those AGL shares (subsection 125-80(1) of the ITAA 1997).

33. If an AGL shareholder chooses demerger rollover for their post-CGT AGL shares, the first element of the cost base and reduced cost base of each post-CGT AGL share and each corresponding EnergyCo share they acquire under the demerger, will be the sum of the cost bases (just before the demerger) of the post-CGT AGL shares, apportioned over those AGL and EnergyCo shares on a reasonable basis having regard to the market values (just after the demerger) of the AGL shares and EnergyCo shares, or a reasonable approximation of those market values (subsections 125-80(2) and (3) of the ITAA 1997).

**Note:** indexation of the cost bases is not included in the amount of the summed cost base to be apportioned under this calculation.

However, if a shareholder has AGL shares that they acquired before 11.45am (by legal time in the ACT) on 21 September 1999 and they later dispose of those shares, they may be entitled to include indexation in the cost base of those AGL shares (see Division 114 of the ITAA 1997).

Indexation cannot be included in the cost base of the EnergyCo shares since they were acquired at the date of the demerger (that is, after 11.45am (by legal time in the ACT) 21 September 1999 – see subsections 110-25(7) and (8)).

#### **AGL shareholders who do not choose demerger rollover**

34. For AGL shareholders who do not choose demerger rollover:

- they will not be entitled to disregard any capital gain made in respect of CGT event G1 that happens to their post-CGT AGL shares under the demerger;
- none of the EnergyCo shares they receive in respect of pre-CGT AGL shares will be taken to be pre-CGT shares (those EnergyCo shares will be acquired on the date of the demerger). The first element of the cost base and reduced cost base of these post-CGT EnergyCo shares will be calculated in accordance with the rules in Division 110 of the ITAA 1997; and
- the first element of the cost base and reduced cost base of each post-CGT AGL share and the corresponding EnergyCo share will be calculated in the same manner described in paragraph 33 (subsections 125-85(1) and (2) of the ITAA 1997).

#### **Acquisition date of the post-CGT EnergyCo shares for the purposes of the CGT discount**

35. For the EnergyCo shares received in relation to post-CGT AGL shares under the demerger, the acquisition date of those EnergyCo shares is the date that each shareholder acquired their corresponding AGL shares, for the purposes of the CGT discount method of calculating capital gains (subsection 115-30(1) of the ITAA 1997 (item 2)).

36. For the EnergyCo shares received in relation to pre-CGT AGL shares under the demerger where demerger rollover is not chosen, the acquisition date of those EnergyCo shares is the date of the demerger for the purposes of the CGT discount method of calculating capital gains.

#### **Demerger dividend**

37. Any dividend arising under the demerger will be a demerger dividend (subsection 6(1) of the ITAA 1936).



38. The demerger dividend will be neither assessable income nor exempt income of the AGL shareholders (subsections 44(3) and 44(4) of the ITAA 1936).

39. As the capital reduction amount will be debited to AGL's share capital account it will not be a dividend, as defined in subsection 6(1) of the ITAA 1936.

## **Application of sections 45B and 45C of the ITAA 1936**

40. The Commissioner will not make a determination under paragraph 45B(3)(a) of the ITAA 1936 that section 45BA of the ITAA 1936 applies to the whole, or any part, of any demerger benefit provided to AGL shareholders under the demerger.

41. The Commissioner will not make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole, or any part, of the capital benefit provided to AGL shareholders under the demerger.

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**Commissioner of Taxation**

8 February 2006

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## Appendix 1 – Explanation

**❶** *This Appendix 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.*

### CGT event G1

42. CGT event G1 (section 104-135 of the ITAA 1997) happens if a company makes a payment to a shareholder in respect of their shares in the company and some or all of that payment is not a dividend or an amount that is taken to be a dividend under section 47 of the ITAA 1936 (non-assessable payment).

43. If CGT event G1 happens, a shareholder will make a capital gain if the non-assessable payment made by the company in relation to a share exceeds the cost base of the share (subsection 104-135(3) of the ITAA 1997).

44. CGT event G1 will happen upon the distribution by AGL of the capital reduction amount (subsection 104-135(2) of the ITAA 1997) as this amount will be neither a dividend nor an amount taken to be a dividend under section 47 of the ITAA 1936.

45. A capital gain will arise to an AGL shareholder to the extent that the capital reduction amount of \$3.00 per AGL share exceeds the cost base of the AGL share at that time.

46. AGL shareholders who make a capital gain from the CGT event G1 that happens to their AGL shares under the demerger:

- will disregard that capital gain if it relates to a pre-CGT AGL share (subsection 104-135(5) of the ITAA 1997); and
- may choose demerger rollover (section 125-55 of the ITAA 1997) in order to disregard this capital gain if it relates to post-CGT AGL shares (subsection 125-80(1) of the ITAA 1997).

### Demerger rollover

47. Subsection 125-55(1) of the ITAA 1997 provides that rollover may be chosen if:

- a shareholder owns a share in a company – this requirement is satisfied as AGL shareholders own shares in AGL;
- the company is the head entity of a demerger group – this requirement is satisfied as AGL is the head entity of a demerger group (refer to paragraphs 49 to 50 of this Appendix);

- a demerger happens to the demerger group – this requirement is satisfied as a demerger happens to the AGL demerger group (refer to paragraph 52 of this Appendix); and
- under the demerger a CGT event happens to the original interest and a new or replacement interest is acquired in the demerged entity – this requirement is satisfied as CGT event G1 happens to the AGL shares (refer to paragraphs 42 to 44 of this Appendix) and AGL shareholders receive EnergyCo shares under the demerger.

48. Therefore, AGL shareholders may choose rollover for the demerger.

### ***Is AGL the head entity of a demerger group?***

49. A demerger group comprises one head entity and at least one demerger subsidiary (subsection 125-65(1) of the ITAA 1997). The demerger group in this case will include AGL as head entity and EnergyCo as a demerger subsidiary (AGL demerger group).

50. AGL is the head entity because:

- EnergyCo has no ownership interests in AGL (subsection 125-65(3) of the ITAA 1997); and
- there is no other company or trust capable of being a head entity of a demerger group of which AGL could be a demerger subsidiary (subsection 125-65(4) of the ITAA 1997).

51. EnergyCo is a demerger subsidiary of AGL because AGL owns ownership interests that carry the right to:

- receive 100% of any distribution of income or capital by EnergyCo; and
- the right to exercise 100% of the voting power in EnergyCo (subsection 125-65(6) of the ITAA 1997).

### ***Has a demerger happened to the demerger group?***

52. A demerger will happen (subsections 125-70(1), (2) and (3) of the ITAA 1997) to the AGL demerger group because:

- there will be a restructuring (paragraph 125-70(1)(a)), and AGL will dispose of 100% of its existing EnergyCo shares to the AGL shareholders (subparagraph 125-70(1)(b)(i));
- CGT event G1 will happen to AGL shares and AGL shareholders will acquire new shares in EnergyCo and nothing else (subparagraph 125-70(1)(c)(i));

- under the restructure, EnergyCo shares will be acquired by AGL shareholders on the basis of their ownership of their shares in AGL (paragraph 125-70(1)(d) and subparagraph 125-70(1)(e)(i));
- paragraphs 125-70(1)(f) and 125-70(1)(g) will be satisfied;
- each AGL shareholder will acquire EnergyCo shares in the same proportion as they will own AGL shares just before the demerger (paragraph 125-70(2)(a));
- each AGL shareholder will have, just after the demerger, the same proportionate total market value of AGL and EnergyCo shares as they had in AGL just before the demerger (paragraph 125-70(2)(b)); and
- subsections 125-70(4) and (5) will not apply.

**Choosing demerger rollover for pre-CGT AGL shares**

53. Where a shareholder has pre-CGT shares in a head entity and chooses demerger rollover, then:

- if all of the shareholder's shares in the head entity are pre-CGT shares, all of the new shares in the demerged entity are taken to be pre-CGT shares (subsection 125-80(5) of the ITAA 1997); and
- if some of the shareholder's shares in the head entity are pre-CGT shares, then a corresponding number of new shares in the demerged entity are taken to be pre-CGT shares. The number of new shares that are taken to be pre-CGT shares is determined by reference to the relative market value of the head entity and demerged entity shares just after the demerger (or an anticipated reasonable approximation of those market values) (subsection 125-80(6) of the ITAA 1997).

54. Under the scheme that is the subject of this Ruling, where the shareholder has pre-CGT AGL shares, they will have the same number of pre-CGT EnergyCo shares as the number of pre-CGT AGL shares in respect of which they choose demerger rollover.

**Choosing demerger rollover for post-CGT AGL shares**

55. For AGL shareholders who choose demerger rollover, a capital gain made from CGT event G1 happening to post-CGT AGL shares on the return of capital made under the demerger will be disregarded (subsection 125-80(1) of the ITAA 1997).

56. Each AGL shareholder will be required to calculate the first element of the cost base and reduced cost base of their post-CGT AGL shares and their corresponding new EnergyCo shares just after the demerger (subsections 125-80(2) and (3) of the ITAA 1997).

57. Section 125-80 of the ITAA 1997 requires shareholders to apportion the total of the cost bases of their post-CGT AGL shares over those shares and the corresponding new EnergyCo shares. The apportionment must have regard to the relative market values of the AGL and EnergyCo shares (or anticipated reasonable approximations of those market values) just after the demerger. Note 2 to subsection 125-80(2) provides that the head entity or demerging entity may advise shareholders of the proportions. AGL will advise shareholders of these proportions following the demerger; these proportions will be based on the volume weighted average price of the AGL and EnergyCo shares in the first five ASX trading days after EnergyCo is listed.

#### **AGL shareholders who do not choose demerger rollover**

58. For AGL shareholders who do not choose demerger rollover, any capital gain made from CGT event G1 happening to post-CGT AGL shares on the return of capital (capital reduction amount) made under the demerger will not be disregarded.

59. The method of calculating the first element of the cost base and reduced cost base for a shareholder's post-CGT AGL shares and the corresponding new EnergyCo shares will be the same whether or not rollover is chosen (see paragraph 57 of this Ruling and subsection 125-85(2) and Note 1 to subsection 125-80(2) of the ITAA 1997).

60. Where the shareholder has pre-CGT AGL shares, the corresponding new EnergyCo shares received under the demerger will be post-CGT shares. The first element of the cost base and reduced cost base of these EnergyCo shares will be calculated in accordance with the rules in Division 110 of the ITAA 1997, and will reflect the market value of those EnergyCo shares.

#### **Acquisition date of the post-CGT EnergyCo shares for the purposes of the CGT discount**

61. For the purpose of this 12 month condition, shareholders will be taken to have acquired:

- the post-CGT EnergyCo shares received in relation to post-CGT AGL shares on the date they acquired the corresponding AGL share (item 2 in the table in subsection 115-30(1) of the ITAA 1997); and

- the post-CGT EnergyCo shares received in relation to pre-CGT AGL shares where demerger rollover is not chosen on the date of the demerger (section 109-10 of the ITAA 1997).

**Note:** for general CGT purposes, shareholders will acquire their post-CGT EnergyCo shares when those shares are received under the demerger (section 109-10 of the ITAA 1997). This means, for example, that when calculating a capital gain on the subsequent disposal of these EnergyCo shares, indexation will not be included in the cost base of those shares.

### **Demerger dividend**

62. Subsection 44(1) of the ITAA 1936 includes in a shareholder's assessable income a dividend, as defined in subsection 6(1) of the ITAA 1936, paid to a shareholder out of company profits.

63. Paragraph (d) of the subsection 6(1) definition of a dividend excludes amounts debited against an amount standing to the credit of the share capital account of the company.

64. In the circumstances of this demerger, AGL will debit the capital reduction amount of \$3.00 per share against the amount standing to the credit of the 'share capital account' as defined in section 6D of the ITAA 1936. That amount therefore will not constitute a dividend for the purposes of subsection 6(1) of the ITAA 1936 and will not be assessable as a subsection 6(1) dividend under subsection 44(1) of the ITAA 1936.

65. AGL shareholders will, however, receive a dividend if the market value of the EnergyCo shares distributed under the demerger exceeds the amount debited against the share capital account (see Taxation Ruling TR 2003/8).

66. This dividend will be neither an assessable income nor an exempt income amount (subsections 44(3) and (4) of the ITAA 1936) if:

- the dividend is a demerger dividend (as defined in subsection 6(1) of the ITAA 1936);
- the head entity does not elect that subsections 44(3) and (4) of the ITAA 1936 do not apply to the demerger dividend (subsection 44(2) of the ITAA 1936); and
- subsection 44(5) of the ITAA 1936 is satisfied.

67. In the present circumstances, each of the conditions in paragraph 66 will be satisfied. Therefore any dividend received by AGL shareholders under the demerger (as described in paragraph 65) will be neither assessable income nor exempt income by operation of subsections 44(3) and (4) of the ITAA 1936.

## **Application of sections 45B, 45BA and 45C of the ITAA 1936**

68. Section 45B of the ITAA 1936 applies to ensure that relevant amounts are treated as dividends for taxation purposes if:

- (a) components of a demerger allocation as between capital and profit do not reflect the circumstances of a demerger; or
- (b) certain payments, allocations and distributions are made in substitution for dividends.

69. Specifically, the provision applies where:

- there is a scheme under which a person is provided with a demerger benefit or capital benefit by a company (paragraph 45B(2)(a) of the ITAA 1936);
- under the scheme a taxpayer, who may or may not be the person provided with the demerger benefit or the capital benefit, obtains a tax benefit (paragraph 45B(2)(b) of the ITAA 1936); and
- having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into the scheme or carried out the scheme or any part of the scheme did so for a purpose, other than an incidental purpose, of enabling a taxpayer to obtain a tax benefit (paragraph 45B(2)(c) of the ITAA 1936).

70. Where the requirements of subsection 45B(2) of the ITAA 1936 are met, subsection 45B(3) empowers the Commissioner to make a determination under either section 45BA in relation to a demerger benefit, or section 45C in relation to a capital benefit.

## ***Scheme, demerger and capital benefit***

71. The restructure that is the subject of this Ruling will constitute a 'scheme' within the broad meaning of that term (subsection 45B(10) of the ITAA 1936).

72. The provision of ownership interests to a shareholder under a demerger constitutes the shareholder being provided with a demerger benefit (subsection 45B(4) of the ITAA 1936) and a capital benefit (subsection 45B(5) of the ITAA 1936) to the extent that the demerger benefit is not a demerger dividend (subsection 45B(6) of the ITAA 1936).

73. In the present scheme therefore, the provision of the EnergyCo shares will constitute the AGL shareholders receiving a demerger benefit and a capital benefit.

***Tax benefit***

74. For most shareholders, the tax payable on the demerger benefit and the capital benefit will be less than it would be if they had been an assessable dividend or a dividend respectively. This arises because the CGT and dividend concessions ensure that the demerger is largely free of tax for shareholders. As such, the provision of those benefits will constitute the shareholders obtaining a tax benefit (subsection 45B(9) of the ITAA 1936).

***Purpose***

75. In this case, while the conditions of paragraphs 45B(2)(a) and 45B(2)(b) of the ITAA 1936 are met, the requisite purpose of enabling the AGL shareholders to obtain a tax benefit (by way of a demerger benefit or a capital benefit) is not present. In other words, having regard to the relevant circumstances of the scheme, set out in subsection 45B(8) of the ITAA 1936, it would not be concluded that any of the parties to the demerger will enter into or carry out the scheme to obtain a tax benefit in the form of a demerger benefit or a capital benefit.

76. Those circumstances, particularly those enumerated in paragraph 177D(b) of the ITAA 1936 and incorporated by operation of paragraph 45B(8)(k), are concerned with the commercial or business effects of the demerger. Under the proposed scheme, it is apparent that a substantial purpose of the demerger is to separate two distinct businesses which, following their separation, will apply different business strategies and focus on separate and different commercial objectives. This is consistent with the underlying object of the demergers measure.

77. It is also apparent from the circumstances of the demerger that the capital and profit components of the demerger allocation are consistent with the commercial circumstances of the transaction. In addition, there is nothing in the other relevant circumstances of the demerger, including the company's distribution history or the known circumstances of the shareholders, to suggest that the favourable tax outcome of the demerger for the shareholders is anything more than the natural incident of the business restructure.

78. Therefore, the Commissioner will not make a determination under either paragraph 45B(3)(a) or (b) that sections 45BA or 45C applies to the scheme.



## Appendix 2 – Detailed contents list

79. The following is a detailed contents list for this Ruling:

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## References

### *Previous draft:*

Not previously issued as a draft

### *Related Rulings/Determinations:*

TR 92/20; TR 2003/8

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- capital benefit  
- capital gains  
- cost base adjustments  
- demerger  
- demerger allocation  
- demerger benefit  
- demerger dividend  
- demerger group  
- demerger subsidiary  
- return of capital rollover  
- schemes to provide certain benefits

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