


***CR 2007/111 - Income tax: capital gains tax:
acquisition of Publishing and Broadcasting Limited
by Crown Limited and demerger of Publishing and
Broadcasting Limited by Crown Limited***

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Class Ruling

Income tax: capital gains tax: acquisition of Publishing and Broadcasting Limited by Crown Limited and demerger of Publishing and Broadcasting Limited by Crown Limited

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ⓘ This publication provides you with the following level of protection:

This publication (excluding appendixes) 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 (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid 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

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

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:

- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 45B of the ITAA 1936;
- section 45C of the ITAA 1936;
- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 104-135 of the ITAA 1997;
- Subdivision 124-M of the ITAA 1997; and

- Division 125 of the ITAA 1997.¹

Class of entities

3. The class of entities to which this Ruling applies comprises the shareholders of Publishing and Broadcasting Limited (PBL) who:
- (a) participate in the scheme that is the subject of this Ruling;
 - (b) own ordinary shares in PBL and hold those shares on capital account at the time of the commencement of the scheme; and
 - (c) are 'residents of Australia' (as that term is defined in subsection 6(1) of the ITAA 1936) at the time of the scheme.

In this Ruling the class of entities are referred to, individually and collectively, as the 'participating PBL shareholders'.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling and the contractual, legislative and commercial reasoning provided by the applicant for the manner in which the arrangement is to be undertaken.
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 13 to 19 of this Ruling.
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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¹ All subsequent legislative references in this Ruling are to the ITAA 1997 unless indicated otherwise.

Date of effect

8. This Ruling applies from 1 July 2007 to 30 June 2008. However, the Ruling continues to apply after 30 June 2008 to all entities within the specified class who entered into the specified scheme during the term of the Ruling.

9. This 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. Furthermore, this Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

10. If this Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

11. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

12. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

13. The following description of the scheme is based on documents and information provided by Ernst & Young (the applicant for this Ruling). The scheme that is the subject of this Ruling is based on the following documents. These documents, or the relevant parts of them, as the case may be, form part of and are to be read in conjunction with this description. Those documents include the following:

- Class Ruling application dated 23 May 2007 on behalf of PBL lodged by Ernst & Young;
- PBL Scheme Booklet (Scheme Booklet);
- various statements provided by PBL; and
- various correspondence from Ernst & Young.

Note: where certain information has been provided by Ernst & Young on a commercial-in-confidence basis it will not be disclosed or released under the Freedom of Information legislation.

Overview

14. PBL is a public company listed on the Australian Securities Exchange that proposes to undertake a major restructure. It involves two Schemes of Arrangement under Part 5.1 of the *Corporations Act 2001*. Those two Schemes of Arrangement deliver a series of related transactions which have been called the PBL Scheme and the Demerger Scheme. These transactions will:

- separate the existing businesses of the PBL group into two distinct groups – a media group and a gaming group; and
- provide the existing PBL shareholders with equity interests in each of the new groups.

For the purposes of this ruling that series of related transactions is a single scheme.

15. PBL has approximately 688 million fully paid ordinary shares on issue. PBL has a major shareholder, Consolidated Press Holdings Limited (CPH), which owns (together with 4 other associates) approximately 38% of the ordinary shares in PBL. CPH and those associates each have a significant stake in PBL as that term is defined in subsection 124-783(6). The applicant has advised that there are no other 'significant stakeholders' or 'common stakeholders'.

The PBL Scheme Booklet

16. The participating PBL shareholders have been provided with the PBL Scheme Booklet describing the PBL Scheme and the Demerger Scheme. This document largely describes the scheme to which this Ruling applies. In summary the PBL Scheme Booklet provides that:

- under the *PBL Scheme* – PBL shareholders will dispose of their PBL shares to Crown Limited (Crown) for a mix of cash and Crown shares; and
- under the *Demerger Scheme* – the new Crown shareholders will receive Consolidated Media Holdings Limited (CMH) shares as an *in specie* distribution in satisfaction of a reduction of share capital by Crown (the share capital reduction amount).

CMH will be the new name for PBL.

Reasons for undertaking the scheme

17. PBL has advised that the reasons for undertaking the various transactions which together form the scheme on which this Ruling is based are to:

- (a) unlock value by removing the perceived holding company discount that applies to the PBL share price. It is anticipated by PBL that the PBL Scheme and the Demerger Scheme will provide shareholders and potential investors with greater transparency around the business cost structures and earnings potential of the underlying assets upon which to base their investment decisions;
- (b) allow separate Boards and management teams to focus their attention on the strategic priorities and growth of the individual (media and gaming) businesses; and
- (c) enable the remuneration of management to be more directly aligned with the performance of the businesses they oversee.

18. The entirety of the transactions delivered under the two Schemes of Arrangement are both practically and commercially interdependent; the second will not, as a matter of practicality, happen without the first and commercially the Schemes are being recommended to PBL shareholders on the basis that they both occur. This interdependence arises because the Demerger Scheme cannot proceed without the PBL Scheme. PBL states that these transactions are being implemented in this particular way because regulatory issues in regard to the gaming businesses, and contractual issues in regard to the media businesses, preclude a direct demerger by PBL of either its media or its gaming businesses. PBL states that the only practical way to demerge the businesses without triggering adverse regulatory and contractual issues is to incorporate Crown as the new holding company and to demerge CMH. PBL states that this requires the undertaking of this series of related transactions. PBL states that a distribution of profit or capital (except by way of on-market share buy-back) would not occur if this transaction does not proceed.

19. PBL advises that the purpose of each of the participants in the incorporation of Crown and its finance subsidiary; the formation of a consolidated group; the borrowing by the finance subsidiary and on-lending to Crown of approximately \$2.1 billion (supported by guarantees from members of the PBL group); the acquisition by Crown of all the PBL shares partly by way of scrip and partly by way of money obtained under that finance agreement; the steps thereafter to demerge PBL; and the voting arrangements with respect to the eight original shareholders, is to be explained mainly or entirely by reference to the purpose of achieving the matters mentioned in paragraph 17 of this Ruling (and avoiding adverse regulatory and contractual consequences in regard to its gaming and media businesses by demerging in another way).

Ruling

The transfer of PBL shares under the scheme

CGT event A1 will happen on the disposal of PBL shares to Crown

20. CGT event A1 will happen when a participating PBL shareholder disposes of a PBL share to Crown under the PBL Scheme (section 104-10). The event will happen when the participating PBL shareholder stops being the owner of the PBL share on the Implementation Date for the PBL Scheme (subsection 104-10(3)).

21. A participating PBL shareholder will make a capital gain from the disposal of their PBL shares if the capital proceeds for the disposal of each share exceeds its cost base. The participating PBL shareholder will make a capital loss if those capital proceeds are less than the share's reduced cost base (subsection 104-10(4)).

22. The capital proceeds received by the participating PBL shareholder for each of their PBL shares will be the sum of:

- (a) the cash received in exchange for that PBL share; and
- (b) the market value of the Crown share(s) (or part of a Crown share if applicable) received in exchange for that PBL share (subsections 116-20(1) and 116-40(1)).

23. The market value of the Crown shares is worked out at the time the participating PBL shareholder disposes of their PBL shares (paragraph 116-20(1)(b)).

Choosing scrip for scrip roll-over

24. A participating PBL shareholder will be eligible to choose scrip for scrip roll-over to the extent that they receive Crown shares in exchange for their PBL shares under the PBL Scheme if:

- (a) they acquired their PBL shares on or after 20 September 1985 (paragraph 124-780(3)(a));
- (b) apart from the roll-over under Subdivision 124-M, they would make a capital gain from the disposal of their PBL shares (paragraph 124-780(3)(b)); and
- (c) they could not disregard (except because of a roll-over) any capital gain they might make from a replacement Crown share (subsection 124-795(2)).

25. Each entity that has a significant stake in PBL must jointly choose with Crown to obtain the rollover (paragraph 124-780(3)(d)).

Consequences of choosing scrip for scrip roll-over***Ignore some or all of a capital gain***

26. For participating PBL shareholders who choose scrip for scrip roll-over, any capital gain arising from the disposal of their PBL share can be disregarded to the extent that the participating PBL shareholder receives Crown shares as proceeds for the disposal of that PBL share (subsection 124-785(1)).

27. To the extent that a participating PBL shareholder receives cash as consideration for the disposal of a PBL share the capital gain cannot be disregarded (section 124-790).

Cost base and time of acquisition of the Crown shares

28. If scrip for scrip roll-over is chosen, the first element of the cost base of each Crown share is worked out as a portion of the cost base of the PBL share(s) for which it was exchanged, after reducing that cost base by so much of it that is attributable to the cash consideration received (subsections 124-785(2) and (3)). The first element of the reduced cost base is worked out similarly (subsection 124-785(4)).

29. A participating PBL shareholder will acquire their replacement Crown share when the Crown share is allotted to them (item 2 in the table in section 109-10).

30. For CGT discount purposes, if a participating PBL shareholder has chosen scrip for scrip roll-over in respect of their PBL share, the Crown share they receive is taken to be acquired at the time the PBL share for which it was exchanged was acquired (item 2 in the table in subsection 115-30(1)).

Consequences where scrip for scrip roll-over is not, or cannot be, chosen***Capital gain or loss not disregarded***

31. If a participating PBL shareholder cannot, or does not, choose scrip for scrip roll-over, any capital gain or capital loss arising from CGT event A1 happening on the disposal of their PBL shares must be included when working out their net capital gain or capital loss (subsection 104-10(4)).

Cost base and time of acquisition of the Crown shares

32. The first element of the cost base and reduced cost base of the Crown shares acquired by a participating PBL shareholder is the market value of the corresponding PBL share(s) (or part thereof) they disposed of under the PBL Scheme reduced by the cash consideration (paragraph 110-25(2)(b)).

33. A participating PBL shareholder will acquire their replacement Crown share when the Crown shares are allotted to them (item 2 in the table in section 109-10).

The demerger of CMH shares under the scheme

CGT Event G1 will happen

34. CGT event G1 will happen in relation to each Crown share owned by participating PBL shareholders at the time of the share capital reduction (the amount receivable is satisfied by the *in specie* distribution of CMH shares) under the Demerger Scheme (section 104-135).

Reducing the cost base and reduced cost base of Crown shares

35. As a result of CGT event G1 happening, the cost base and reduced cost base of each Crown share owned by participating PBL shareholders will be reduced (but not below nil) by the share capital reduction amount (subsections 104-135(3) and (4)).

Capital gain

36. Participating PBL shareholders will make a capital gain from CGT event G1 happening to the extent that the share capital reduction amount exceeds the cost base of their Crown shares (worked out in accordance with either paragraph 28 or 32 of this Ruling). A capital loss cannot be made from CGT event G1 happening (subsections 104-135(3) and (4)).

Cost base of the CMH shares

37. The first element of the cost base and reduced cost base of each share in CMH received by the participating PBL shareholders is equal to the money paid (as applied under the capital reduction) by each participating PBL shareholder to acquire the CMH share (section 110-25).

Acquisition date of the CMH shares

38. The acquisition date of each share in CMH received by the participating PBL shareholders is the date they were transferred to the participating PBL shareholders (section 109-10).

Dividend on receipt of CMH shares

39. Crown will account for the share capital reduction by debiting this amount against its share capital account. As a consequence, no part of the share capital reduction amount will be a dividend as defined in subsection 6(1) of the ITAA 1936.

Demerger relief not available

40. The Demerger Scheme is not a demerger within the meaning of that term in section 125-70 of the ITAA 1997. Therefore, the CGT and dividend consequences and relief described in Subdivision 125-B of the ITAA 1997 and subsections 44(3) and (4) of the ITAA 1936 will not apply to the participating PBL shareholders.

Application of sections 45B and 45C

41. The Commissioner cannot 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 the participating PBL shareholders under the scheme.

Commissioner of Taxation5 December 2007

Appendix 1 – Explanation

① *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.*

The transfer of PBL shares under the scheme

42. The tax consequences and relevant legislative provisions that arise in regard to the PBL Scheme are outlined in the Ruling part of this document.

43. One of the consequences is the availability of scrip for scrip roll-over. It 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.

44. The scrip for scrip rollover provisions in Subdivision 124-M contain a number of conditions for, and exceptions to, eligibility to choose scrip for scrip roll-over. The main conditions and exceptions that are relevant to the PBL Scheme are:

- (i) shares are exchanged for shares in another company;
- (ii) the exchange occurs as part of a single arrangement;
- (iii) conditions for roll-over are satisfied;
- (iv) further conditions are not applicable; and
- (v) exceptions to obtaining scrip for scrip roll-over are not applicable.

45. Under the PBL Scheme the conditions for roll-over under Subdivision 124-M are satisfied. Further, the PBL Scheme raises no novel issues of tax law interpretation other than in one aspect of the conditions for roll-over. The relevant issue is the effect of the existence of 'significant stakeholders' on the operation of Subdivision 124-M. This matter is explained at paragraphs 46 to 49 of this Ruling.

Significant stakeholder

46. The relevant condition for scrip for scrip roll-over is that, if section 124-782 applies to the original interest holder for the arrangement, it and the replacement entity must jointly choose to obtain the roll-over. For the purposes of this test the original interest holder is CPH and each of its associates and the replacement entity is Crown.

47. Section 124-782 applies where there are, inter alia, significant stakeholders in PBL. A significant stake is defined in subsection 124-783(6) to mean an entity who, together with its associates, own shares that carry 30% or more of the voting rights, rights to receive dividends, or the rights to receive capital in a company. CPH and its associates each hold a significant stake in PBL as they together own approximately 38% of the ordinary shares in PBL which confer the voting, dividend and capital rights.

48. As a consequence, CPH and those associates will each be a significant stakeholder for the purposes of the PBL Scheme. It follows that section 124-782 applies to the PBL Scheme. If CPH and its associates wish to choose scrip for scrip roll-over, each significant stakeholder and Crown must jointly choose the roll-over.

49. Each significant stakeholder must inform Crown in writing of the cost base (just before the PBL shares are disposed) of their PBL shares (paragraph 124-780(3)(e)).

The demerger of CMH shares under the scheme

50. The tax consequences of the Demerger Scheme arise as a result of the application of the CGT provisions as set out in Part 3-1, and are described in paragraphs 34 to 41 of this Ruling.

51. This transaction does not qualify for the demerger concessions outlined in Division 125 of the ITAA 1997 and in subsections 44(3) and (4) of the ITAA 1936.

Demerger roll-over relief is not available

52. In order for participating PBL shareholders to choose demerger roll-over, the requirements of section 125-55 must be met. One of those requirements is that a demerger (as defined in section 125-70) happens to the demerger group (see paragraph 125-55(1)(c)).

53. The Demerger Scheme is not a demerger as defined in section 125-70. The relevant demerger group is the PBL group as it stood prior to the incorporation of Crown. A demerger group is to be identified in the context of a restructuring and on the facts as provided, it is clear that it is the PBL group that is being restructured and is the relevant demerger group. Note that, in this context, the series of related transactions form the one restructuring for the purposes of considering the demerger provisions. As a consequence, it is the PBL group as it stood prior to the incorporation of Crown that the requirements of section 125-70 are to be assessed against. A demerger does not happen because the requirements of subsection 125-70(1) are not satisfied.

Section 45B – schemes to provide certain benefits

54. For the purposes of section 45B of the ITAA 1936, the participating PBL shareholders are provided with a capital benefit on the distribution by Crown of CMH shares in satisfaction of the share capital reduction amount (subsection 45B(5) of the ITAA 1936).

55. The participating PBL shareholders are also likely to obtain a tax benefit since the capital reduction will, for most participating PBL shareholders, result in less tax than if it were treated as a dividend (subsection 45B(9) of the ITAA 1936).

56. However, having regard to the relevant circumstances of the scheme as set out in subsection 45B(8) of the ITAA 1936, the distribution of share capital is not seen as having been made in substitution for the distribution of a dividend.

57. Rather, the purpose of the distribution is entirely to be explained by the separation of the gaming and media businesses of PBL. This conclusion has been reached after taking into account the propositions of fact provided by the applicant as outlined in paragraphs 17 to 19 of this Ruling.

58. On the facts presented, there is also nothing to suggest that a purpose of the scheme is to enable the Crown or CMH shares to be sold for cash immediately on receipt so as to realise an amount that effectively represents distributed profits of PBL.

59. Therefore it cannot be concluded that PBL, its shareholders or any other person entered into or carried out the scheme for the purpose of enabling the participating PBL shareholders to obtain a tax benefit. The Commissioner cannot make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the scheme.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Subject references:

- capital gains tax
- CGT roll-over relief
- scrip for scrip roll-over
- demerger roll-over

Legislative references:

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 - ITAA 1936 44(3)
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 - ITAA 1936 45B
 - ITAA 1936 45B(3)(b)
 - ITAA 1936 45B(5)
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NO: 2007/20507

ISSN: 1445-2014

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