


CR 2007/45 - Income tax: demutualisation of the IOR Friendly Society Limited

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Class Ruling

Income tax: demutualisation of the IOR Friendly Society 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 provision(s) 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:

- Division 9AA of Part III of the *Income Tax Assessment Act 1936* (ITAA 1936);
- paragraph 121AB(1)(c) of the ITAA 1936;
- subsection 121AD(3) of the ITAA 1936;
- subsection 121AE(4) of the ITAA 1936;
- subsection 121AE(6) of the ITAA 1936;
- section 121AH of the ITAA 1936;
- section 121AM of the ITAA 1936;
- section 121AQ of the ITAA 1936;
- section 121AS of the ITAA 1936;

- subsection 995-1(1) of the *Income Tax Assessment Act 1997* (ITAA 1997); and
- section 104-35 of the ITAA 1997.

All subsequent references are to the ITAA 1936 unless otherwise stated.

Class of entities

3. The class of entities to which this Ruling applies is the members of IOR Friendly Society Limited (IOR) and employees of the IOR Group who receive shares in IOR Group Limited (IORG) from IORG as a result of the demutualisation of IOR in accordance with the scheme identified in this Ruling.

Qualifications

4. 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 paragraph 11 of this Ruling.

5. 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

7. This Ruling applies to the income years ended 30 June 2007, 30 June 2008, 30 June 2009 and 30 June 2010. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or

- the relevant provisions are not amended.

8. 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)).

9. 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.

10. 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

11. The scheme that is the subject of the Ruling is based on information provided by the applicant. The scheme 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 in conjunction with this description. The relevant documents or parts of documents incorporated into this description of the scheme are the:

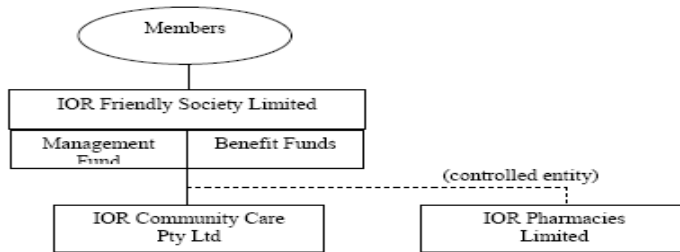
- Class Ruling application dated 14 May 2007;
- Constitution of IOR;
- Annual Report and Accounts as at 30 June 2006;
- **Proposal to Demutualise** document attached to the application for a Ruling:

The Proposal to demutualise

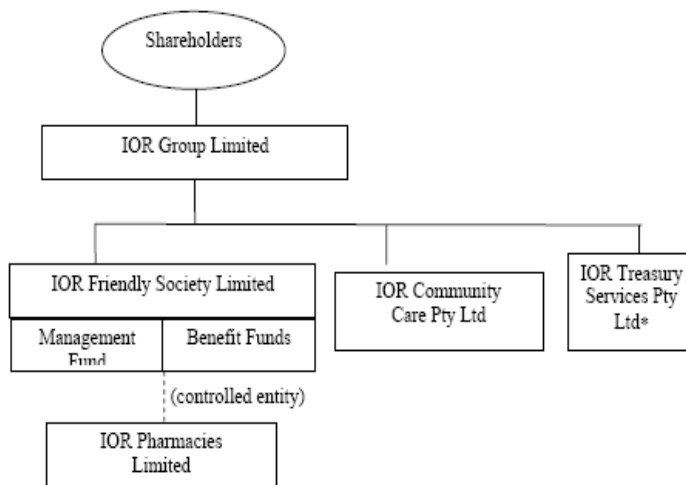
On the demutualisation 'implementation date', pursuant to subsection 166(2) of the *Corporations Act 2001*, the following events will occur:

- a new entity structure is established, reflecting **Demutualisation Method 3** as described in section 121AH, as illustrated below:

Current Structure



Proposed New Structure



- the liability of each Member and past Member of IOR, as a guarantor on the winding up of IOR, is extinguished;
- the Members cease to be members of IOR;
- shares are taken to be issued by a new group holding entity, IORG, to each person specified in the List*;
- each person specified in the List* is taken to have consented to be a member of IOR; and
- each person specified in the List* becomes a member of IORG.

List* means a list referred to in subsection 163(3) of the *Corporations Act 2001* which must accompany an application to change from a company limited by guarantee to a company limited by shares, setting out prescribed details about each person to whom shares will be issued on such change of type.

Ruling

12. The class of entities who receive shares in IORG pursuant to the scheme will be entitled to the tax concessions as provided in Division 9AA of Part III as follows:

- (a) any capital gain or capital loss arising from the extinguishment of membership rights in IOR will be disregarded (item 1 in Table 1 of section 121AS);
- (b) there will be no tax consequences for the class of entities in respect of the grant of shares in IORG until the shares are disposed of;
- (c) for the purposes of calculating a capital gain or loss on disposal of the shares, the class of entities will be taken to have acquired the shares on the demutualisation resolution day and to have paid as consideration for the shares an amount based on the lesser of:
 - the embedded value of IOR – as calculated by an eligible actuary under section 121AM, and
 - the value of the company based on the closing first trading day price after the shares are listed on the Australian Stock Exchange (ASX) – as defined in section 121AQ.

Note: if any shares are disposed of before the shares are listed, only subparagraph (a) above will be relevant.

- (d) a capital loss, if applicable, will not be available to the class of entities if the shares are disposed of before IORG is listed on the ASX.

Note that this Ruling does not apply to shares that are issued under special arrangements which apply to overseas members of IOR and members of IOR who do not confirm their details or otherwise verify their name and address details by the scheme's 'Effective Date'.

Commissioner of Taxation

30 May 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.*

13. IOR is a 'mutual insurance company' as defined in paragraph 121AB(1)(c) in that it is:

- a 'Life insurance company' that was in existence on 1 July 1999;
- a friendly society as defined under subsection 995-1(1) of the ITAA 1997 that was in existence on 9 May 1995; and
- a company that does not have capital divided into shares held by its members.

14. Under the scheme, IOR ceases to be a mutual insurance company. The demutualisation will be implemented using a scheme that is reflected by demutualisation method 3, one of the demutualisation methods referred to in section 121AE and set out in section 121AH. The scheme as described satisfies the requirements of section 121AH in that:

- In connection with the demutualisation all membership rights in the mutual insurance company will be extinguished (refer to paragraph 121AH(1)(a)).
- Shares in IOR will be issued to IORG (the Holding company) (refer to paragraph 121AH(1)(b)).
- Shares of only one class will be issued to each person in the policyholder/member group of IOR under subparagraph 121AH(1)(c)(i). Policyholder member group is defined in subsection 121AE(4).
- IORG intends to list the demutualisation shares on the ASX within the 'listing period' as required by paragraph 121AH(1)(d). The listing period is defined in subsection 121AE(6) as the period ending 2 years after the demutualisation resolution day, or such time as the Commissioner, before the end of 2 years, allows. The demutualisation resolution day is defined in subsection 121AD(3) as the day on which the resolution to proceed with the demutualisation is passed.
- The table in section 121AS of the ITAA 1936 sets out the modifications of the application of Parts 3-1 and 3-3 of the ITAA 1997 in respect of events that are described in or relate to events that are described in particular demutualisation methods.

15. For the class of entities, the tax consequences set out in this Ruling are given on the basis of the modifications in Table 1 of section 121AS and section 104-35 of the ITAA 1997 as follows:

- extinguishment of membership rights: item 1 of Table 1;
- capital loss before listing day: item 11 of Table 1 and the modifications that apply to item 5, paragraph 1;
- the cost base for the shares on disposal: item 11 of Table 1 and the modifications that apply to item 5 in the Table – specifically paragraph 2 and the notes to the Table;
- tax consequences of the grant of shares in IORG: under section 104-35, CGT event D1 happens if you create a contractual right or other legal or equitable right in another entity; and
- the issue of shares in IORG is such a right, however CGT event D1 does not happen if a company issues or allots equity interests in the company (refer to paragraph 104-35(5)(c) of the ITAA 1997).

Appendix 2 – Detailed contents list

16. 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:

- banking, finance and securities
- financial institutions
- financial services industry
- friendly societies

Legislative references:

- ITAA 1936 Pt III Div 9AA
- ITAA 1936 121AB(1)(c)
- ITAA 1936 121AD(3)
- ITAA 1936 121AE
- ITAA 1936 121AE(4)
- ITAA 1936 121AE(6)
- ITAA 1936 121AH
- ITAA 1936 121AH(1)(a)

- ITAA 1936 121AH(1)(b)
 - ITAA 1936 121AH(1)(c)(i)
 - ITAA 1936 121AH(1)(d)
 - ITAA 1936 121AM
 - ITAA 1936 121AQ
 - ITAA 1936 121AS
 - ITAA 1997 Pt 3-1
 - ITAA 1997 104-35
 - ITAA 1997 104-35(5)(c)
 - ITAA 1997 Pt 3-3
 - ITAA 1997 995-1(1)
 - TAA 1953
 - TAA 1953 Sch 1 357-75(1)
 - Corporations Act 2001 163(3)
 - Corporations Act 2001 166(2)
 - Copyright Act 1968
-

ATO references:

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