


# ***CR 2011/77 - Income tax: demutualisation of NobleOak Life Limited***

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## Class Ruling

### Income tax: demutualisation of NobleOak Life 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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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

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1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified 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:

- Section 104-25 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- Section 316-55 of the ITAA 1997;
- Section 316-105 of the ITAA 1997; and
- Section 316-200 of the ITAA 1997.

All legislative references are to the ITAA 1997 unless otherwise indicated.

#### **Class of entities**

3. The class of entities to which this Ruling applies is the members of NobleOak Life Limited (NobleOak), or the legal personal representatives of those members who have died, who:

- (a) hold their NobleOak membership interests on capital account;
- (b) are absolutely entitled to receive NobleOak demutualisation shares on the Implementation Date;
- (c) are not subject to the Taxation of Financial Arrangement (TOFA) rules in Division 230 in relation to gains and losses on their NobleOak shares; and
- (d) do not receive their demutualisation shares through either the NobleOak Unverified Members Trust or the NobleOak Overseas Members Trust.

(Note – Division 230 will generally not apply to individuals, unless they have made an election for it to apply to them.)

## 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 9 to 24 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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## Date of effect

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8. This Ruling applies from 1 July 2010 to 30 June 2011. The Ruling continues to apply after 30 June 2011 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will 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 this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

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## Scheme

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9. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them, form part of and are to be read with the description:

- application for a Class Ruling, dated 7 October 2010;
- NobleOak Disclosure Statement 2010;
- draft Trust Deed of NobleOak Unverified Members Trust, dated 7 October 2010;
- draft Trust Deed of NobleOak Overseas Members Trust, dated 7 October 2010;
- draft constitution of NobleOak Life Limited, dated 7 October 2010; and
- correspondence from the Applicant dated 17 November 2010 to 19 July 2011.

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

10. NobleOak is a 'friendly society' within the meaning of section 995-1. NobleOak does not have capital divided into shares held by its members.

11. Prior to 1 July 1999, NobleOak was registered and incorporated as a friendly society under the *Friendly Societies Act 1986* of the State of New South Wales.

12. Since 1 July 1999, NobleOak has been registered as a company under section 21 of the *Life Insurance Act 1995*.

13. NobleOak continued as a friendly society after the regulatory transfer of jurisdiction, on 1 July 1999, under section 11 of Division 5 of Part 1 of Schedule 8 of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No 1) 1999*.

14. NobleOak determined to demutualise under Part 5 of Schedule 4 of the *Corporations Act 2001*. The NobleOak Disclosure Statement was registered with ASIC on 17 November 2010.
15. On 17 December 2010 at the NobleOak Annual General Meeting, a resolution was passed by NobleOak members in favour of a demutualisation.
16. The NobleOak demutualisation was gazetted on 22 February 2011. The demutualisation involves a change of company type under section 163(3) of the *Corporations Act 2001*, from a company limited by guarantee to a company limited by shares. After demutualising, NobleOak will be carried on for the object of securing a profit or pecuniary gain for its members.
17. The Implementation Date of the demutualisation was 6 April 2011. On this date, demutualisation shares (shares) were issued by NobleOak to absolutely entitled verified members.
18. Members will be absolutely entitled to receive shares if they:
- were members of NobleOak on 15 September 2010 (the cut-off entitlement date);
  - continued to be members of NobleOak as at the Implementation Date, being 6 April 2011; and
  - were established as verified (meaning 'identified and confirmed') members of NobleOak, either immediately upon the demutualisation or subsequently during the verification period which ends on 17 June 2012, subject to an extension of up to six months at the discretion of the Directors.
19. An immediately verified member who is not an overseas member will:
- (i) receive an allocation of shares upon the implementation of the demutualisation; and
  - (ii) may receive a further allocation of shares from the pool of any residual shares at the end of the verification period.
20. A subsequently verified member who is not an overseas member will:
- (i) receive an allocation of shares during the verification period after the member is verified; and
  - (ii) may receive a further allocation of shares from the pool of any residual shares at the end of the verification period.
21. Shares for unverified members who are not overseas members will initially be issued to the trustee of the NobleOak Unverified Members Trust pending subsequent verification.

22. The shares of an immediately verified or subsequently verified overseas member who is absolutely entitled will be dealt with as follows:

- (i) the trustee of NobleOak Overseas Members Trust will receive the member's allocation of shares, which it will hold and later sell on behalf of the member; and
- (ii) the appropriate amount of share sale proceeds (including any capital gain component) is then distributed to the member.

23. Under the demutualisation:

- (i) the members cease to be mutual members of NobleOak;
- (ii) NobleOak issues shares to each person specified in the list that must be prepared under section 163(3) of the *Corporations Act 2001*; and
- (iii) each person specified in the list is taken to have consented to being a shareholder of NobleOak.

24. This Ruling does not address the income tax outcomes for shares distributed to the NobleOak Unverified Members Trust, or the NobleOak Overseas Members Trust.

## **Ruling**

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### **Capital Gains Tax (CGT)**

25. CGT event C2 happened when a membership interest in NobleOak ended as a result of the demutualisation of NobleOak (subsection 104-25(1)). The time of the CGT event was the Implementation Date on 6 April 2011 (subsection 104-25(2)).

### **Division 316**

26. A capital gain or capital loss made by a member from CGT event C2 happening in relation to a membership interest in NobleOak is disregarded (section 316-55).

27. The first element of the cost base and reduced cost base of a verified member's allocation of shares following the demutualisation of NobleOak is calculated in accordance with subsections 316-105(1) and (2).

28. The time of acquisition of each share was when the share was issued (subsection 316-105(3)).

29. Where a share, or an interest in a share, forms part of a member's deceased estate, was not owned by the member just before death, and passes to a beneficiary in the member's estate by transfer from the member's legal personal representative:

- (a) any capital gain or capital loss made by the legal personal representative is disregarded (section 316-200); and
- (b) when the share passes to the beneficiary:
  - (i) the cost base and the reduced cost base of the share in the hands of the legal personal representative just before it passes to the beneficiary becomes the first element of the cost base and reduced cost base of the share in the hands of the beneficiary; and
  - (ii) the beneficiary is taken to have acquired the share when the legal personal representative acquired it.

## **Appendix 1 – Explanation**

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**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.*

### **Capital Gains Tax**

#### **CGT event C2**

30. CGT event C2 happens on the ending of an intangible asset such as a membership interest in a friendly society (subsection 104-25(1)). Where that ending is not pursuant to a contract, the CGT event happens at the time of the ending (subsection 104-25(2)).

#### **Division 316**

31. Division 316 sets out the special tax consequences following the demutualisation of a friendly society that provides health insurance and/or life insurance. Whether Division 316 applies is determined by section 316-5, which sets out three conditions. Those conditions have been satisfied in the circumstances of this Ruling.

#### **CGT consequences**

32. Division 316 applies where a verified member receives shares under the demutualisation. The member's capital gain or capital loss from CGT event C2, which happens on the ending of the corresponding membership interest, is disregarded (section 316-55). Subsections 316-105(1) and (2) set the acquisition cost of the shares and subsection 316-105(3) determines the time of their acquisition. The first element of the cost base and reduced cost base of each share is the amount worked out using the formula in subsection 316-105(2).

#### **Legal personal representatives and beneficiaries**

33. Subdivision 316-E, in particular section 316-200, provides special rules for legal personal representatives and beneficiaries. The Ruling section provides a detailed explanation of the operation of this subdivision.

## **Appendix 2 – Detailed contents list**

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

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## References

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- Previous draft:*
- ITAA 1997 104-25(1)
  - ITAA 1997 104-25(2)
- Not previously issued as a draft
- ITAA 1997 230
  - ITAA 1997 316
- Related Rulings/Determinations:*
- TR 2006/10
- ITAA 1997 316-5
  - ITAA 1997 316-55
  - ITAA 1997 Subdiv 316-C
  - ITAA 1997 316-105
  - ITAA 1997 316-105(1)
  - ITAA 1997 316-105(2)
  - ITAA 1997 316-105(3)
  - ITAA 1997 Subdiv 316-E
  - ITAA 1997 316-200
  - Copyright Act 1968
  - Corporations Act 2001 163(3)
  - Corporations Act 2001 Schedule 4 Part 5
  - Financial Sector Reform (Amendments and Transitional Provisions) Act (No 1) 1999
  - Life Insurance Act 1995
  - TAA 1953
- Subject references:*
- Capital Gains Tax
  - CGT demutualisation
  - CGT events
  - CGT events C1-C3 – end of a CGT asset
  - friendly societies
  - income
  - non-assessable non-exempt income
- Legislative references:*
- ITAA 1997
  - ITAA 1997 104-25
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### ATO references

NO: 1-2D3U0YU  
 ISSN: 1445-2014  
 ATOlaw topic: Income Tax ~~ Capital Gains Tax ~~ CGT assets  
 Income Tax ~~ Capital Gains Tax ~~ CGT events C1 to C3 – end of a CGT asset  
 Income Tax ~~ Entity specific matters ~~ demutualisation of entities