


CR 2011/89 - Income tax: scheme of arrangement - Centrebet International Limited

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Class Ruling

Income tax: scheme of arrangement – Centrebet International 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

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:

- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 104-25 of the ITAA 1997;
- section 110-25 of the ITAA 1997;
- section 112-30 of the ITAA 1997;
- Division 115 of the ITAA 1997; and
- section 116-20 of the ITAA 1997.

Unless specified otherwise, all legislative references are to the ITAA 1997.

3. On 12 May 2010, the Assistant Treasurer announced the Government's intention to introduce legislation to change the tax law as it relates to earnout arrangements (Assistant Treasurer's Media Release No. 098) and the Tax Office has announced administrative transitional arrangements (see attached link: Tax Office – Administrative Treatment). This Ruling does not address the consequences that may arise as a result of the scheme under either the proposed law change or the administrative transitional arrangements.

Class of entities

4. The class of entities to which this Ruling applies is Australian resident entities (scheme participants) that:

- hold shares in Centrebet International Limited (Centrebet) on the Record Date;
- hold their Centrebet shares on capital account;
- do not participate in the administrative transitional arrangements described in paragraph 3 of this Ruling; and
- are not subject to the taxation of financial arrangements rules in Division 230 in relation to the gains and losses on their Centrebet shares.

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

Qualifications

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

6. 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 23 of this Ruling.

7. 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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Barton ACT 2600

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Date of effect

9. This Ruling applies from 1 July 2011 to 30 June 2012. The Ruling continues to apply after 30 June 2012 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).

Scheme

10. The following description of the scheme is based on information provided by the applicant.

11. Centrebet was a publicly listed company on the Australian Securities Exchange.

12. The scheme participants sold all their shares and performance rights in Centrebet to Sbet Australia Pty Ltd (Sbet) under a court approved scheme of arrangement. Options that were issued prior to the scheme of arrangement will be either sold or cancelled by agreement with Centrebet and Sbet, and do not form part of this scheme.

13. Sbet is a wholly owned subsidiary of Sportingbet PLC, which is a UK listed company.

14. Centrebet Pty Limited (CPL) is a wholly owned subsidiary of Centrebet. CPL is involved in litigation (the Litigation Claim). The Litigation Claim was unresolved on the Implementation Date.

15. The scheme participants transferred their Centrebet shares to Sbet on the Implementation Date in return for:

- \$2.00 per Centrebet share (the cash component);
- one Litigation Claim Right, valued at \$0.079 as at 31 August 2011, per Centrebet share; and

- one Litigation Claim Unit, valued at \$0.008 as at 31 August 2011, per Centrebet share.

16. The Litigation Claim Right and the Litigation Claim Unit are designed to facilitate the scheme participants sharing in any financial proceeds that arise from the Litigation Claim.

17. The Litigation Claim Right is a contingent liability and its term is five years from the Implementation Date (the Liability Period) or such longer term as may be determined by the scheme's Claim Committee. During the Liability Period, Sbet will make payments, as they fall due, to the Collection Agent who will then make payments to the scheme participants on the basis of their Litigation Claim Rights.

18. After the Liability Period has ended, Sbet will make payments, if any fall due, to the trustee of the Litigation Claim Unit Trust and the trustee will then make payments to the scheme participants on the basis of their Litigation Claim Units.

Other Matters

19. The Record Date for the scheme is **30 August 2011**.

20. The Implementation Date for the scheme is 31 August 2011.

21. The applicant has advised that the scheme participants are absolutely entitled to any monies received by the Collection Agent.

22. This Ruling does not address options and performance rights.

23. This Ruling does not address distributions by the trustee of the Litigation Claim Unit Trust or the income tax consequences of holding Litigation Claim Units.

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

Ruling

CGT event A1

24. CGT event A1 happens when a scheme participant disposes of a Centrebet share to Sbet (subsection 104-10(1)).

25. CGT event A1 happens on the Implementation Date (paragraph 104-10(3)(b)).

Capital Gain and Capital Loss

26. A capital gain is made when CGT event A1 happens to a Centrebet share if the capital proceeds from the disposal are more than the share's cost base. A capital loss is made if the capital proceeds are less than the share's reduced cost base (subsection 104-10(4)).

Capital Proceeds

27. The capital proceeds (subsection 116-20(1)) in respect of CGT event A1 for each Centrebet share consist of:

- the market value of the Litigation Claim Unit;
- the market value of the Litigation Claim Right; and
- \$2.00 cash.

28. The market values of the Litigation Claim Unit and the Litigation Claim Right are determined as at the Implementation Date, when CGT event A1 happens (paragraph 116-20(1)(b)).

CGT Discount

29. If a scheme participant makes a capital gain when CGT event A1 happens to their Centrebet share, they may be eligible to treat the gain as a discount capital gain provided that the requirements of Division 115 are satisfied.

Litigation Claim Unit***Cost Base***

30. The first element of the cost base of each Litigation Claim Unit is so much of the market value of the Centrebet share that has been exchanged for it, worked out as at the time of the Implementation Date (paragraph 110-25(2)(b) and subsection 112-30(1)).

31. This is equal to the market value of each Litigation Claim Unit as at the Implementation Date.

Litigation Claim Right***Cost Base***

32. The first element of the cost base of the Litigation Claim Right is so much of the market value of the Centrebet share that has been exchanged for it, worked out as at the time of the Implementation Date (paragraph 110-25(2)(b) and subsection 112-30(1)).

33. This is equal to the market value of each Litigation Claim Right as at the Implementation Date.

CGT event C2

34. CGT event C2 happens each time a payment is made in respect of the Litigation Claim Right (subsection 104-25(1)).

35. CGT event C2 happens at the time the payment is made (subsection 104-25(2)(b)).

Capital Proceeds

36. The capital proceeds when CGT event C2 happens are the amount of the payment received in respect of the Litigation Claim Right (paragraph 116-20(1)(a)).

Cost Base

37. The scheme participant's cost base for the part of the Litigation Claim Right to which CGT event C2 happens is apportioned according to the formula in subsection 112-30(3).

38. The remainder of the cost base after each payment is attributed to the part of the Litigation Claim Right that remains (subsection 112-30(4)).

CGT Discount

39. If a scheme participant makes a capital gain when CGT event C2 happens to their Litigation Claim Right, they may be eligible to treat the gain as a discount capital gain provided that the requirements of Division 115 are satisfied.

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.*

Litigation Claim Right

40. The Litigation Claim Right is a discrete CGT asset (subsection 108-5(1)). The right does not represent an entitlement to a certain sum but is contingent on the successful conclusion of the Litigation Claim which is a business objective. The amount that may be received by the scheme participants are referenced to the amounts receivable by CPL under the Litigation Claim. The entitlements of scheme participants to payments under their Litigation Claim Rights are enforceable against Sbet.

41. Scheme participants receive a single Litigation Claim Right in exchange for each Centrebet share they hold. If the Litigation Claim is successful, the Litigation Claim Right will be discharged in instalments and the right to each payment forms part of a single CGT asset. Each time a payment is made under the Litigation Claim Right, there is a partial satisfaction of that right and CGT event C2 happens (paragraph 104-25(1)(b)).

42. A scheme participant's cost base for the part of the Litigation Claim Right to which the event happens is apportioned according to the formula in subsection 112-30(3):

$$\text{Cost base of the Litigation Claim Right} \times \frac{\text{Capital proceeds for the CGT event happening to the part}}{\text{Those capital proceeds plus the market value of the remainder of the asset}}$$

43. Under subsection 112-30(4), the remainder of the cost base after each payment date is attributed to the part of the Litigation Claim Right that remains.

44. In all other respects, the Ruling section provides a detailed explanation of the Commissioner's decision. Therefore, no further explanation is warranted.

Appendix 2 – Detailed contents list

45. 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 2006/10

Subject references:

- absolute entitlement
- bare trust
- capital gains tax
- CGT discount
- CGT event A1
- CGT event C2
- cost base
- litigation claims right

- ITAA 1997 Div 104
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(2)
- ITAA 1997 104-10(4)
- ITAA 1997 104-25(1)
- ITAA 1997 104-25(1)(b)
- ITAA 1997 104-25(2)(b)
- ITAA 1997 108-5(1)
- ITAA 1997 110-25(2)(b)
- ITAA 1997 112-30(1)
- ITAA 1997 112-30(3)
- ITAA 1997 112-30(4)
- ITAA 1997 115-A
- ITAA 1997 115-C
- ITAA 1997 116-20(1)
- ITAA 1997 116-20(1)(b)
- Copyright Act 1968

Legislative references:

- ITAA 1997
-

ATO references

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ATOlaw topic: Income Tax ~~ Capital Gains Tax ~~ CGT event A1 - disposal of a CGT asset
Income Tax ~~ Capital Gains Tax ~~ CGT events C1 to C3 - end of a CGT asset