


# ***CR 2013/11 - Income tax: conversion of shares - WorkPac Pty Ltd***

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## Class Ruling

### Income tax: conversion of shares – WorkPac Pty Ltd

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Contents	Para
<b>LEGALLY BINDING SECTION:</b>	
<b>What this Ruling is about</b>	<b>1</b>
<b>Date of effect</b>	<b>8</b>
<b>Scheme</b>	<b>9</b>
<b>Ruling</b>	<b>18</b>
<b>NOT LEGALLY BINDING SECTION:</b>	
<b>Appendix 1:</b>	
<b><i>Explanation</i></b>	<b>25</b>
<b>Appendix 2:</b>	
<b><i>Detailed contents list</i></b>	<b>47</b>

#### **ⓘ 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 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 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 6-10 of the ITAA 1997;
- Division 104 of the ITAA 1997;
- section 112-25 of the ITAA 1997
- section 130-20 of the ITAA 1997; and
- Division 725 of the ITAA 1997.

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

## Class of entities

3. The class of entities to which this Ruling applies are the holders of B Class, C Class, D Class, E Class, I Class and K Class shares (together the Class shares) and ordinary shares in WorkPac Pty Ltd who:

- have their WorkPac Pty Ltd Class shares converted into ordinary shares under the scheme described in paragraphs 9 to 17 of this Ruling;
- have their WorkPac Pty Ltd ordinary shares converted into a greater number of ordinary shares under the scheme described in paragraphs 9 to 17 of this Ruling;
- hold those shares on capital account;
- are the beneficial owners of those shares;
- are residents of Australia for tax purposes as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* who are entitled to participate in the scheme; and
- are not subject to the taxation of financial arrangement rules in Division 230 in relation to gains and losses on their shares.

(Note: Division 230 will not generally 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 17 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 2012 to 30 June 2013. The Ruling continues to apply after 30 June 2013 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

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

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

### Share capital of WorkPac Pty Ltd

10. WorkPac Pty Ltd is a registered company under the *Corporations Act 2001* (Corporations Act). WorkPac Pty Ltd is a company limited by shares including one ordinary share and seven different classes of shares – B Class, C Class, D Class, E Class, G Class, I Class and K Class (together the Class shares).

11. Each Class share carries limited rights to the equity and returns of certain business centres in priority over the one ordinary share and the other classes of shares.

12. None of the Class shares carry a right to vote at general meetings of the company where an ordinary share is on issue. Each Class share carries a right to vote with all the other holders of Class shares for the appointment of one director of WorkPac Pty Ltd. Each Class share carries a right to vote in special meetings of the relevant Class shareholders.

13. The one ordinary share in WorkPac Pty Ltd is subordinated to the Class shares in respect of dividend and capital rights relating to specific streams of income, but carries a right to vote at general meetings of WorkPac Pty Ltd.

14. None of the ordinary shares or Class shares in WorkPac Pty Ltd were acquired before 20 September 1985.

## Conversion of shares

15. Under the proposed scheme, WorkPac Pty Ltd will take steps to convert the Class shares into ordinary shares which will then be converted into a greater number of ordinary shares.

16. The steps taken in the scheme will be:

- each Class share will be converted, on the passing of necessary resolutions in accordance with the WorkPac Consolidated Constitution, into one ordinary share;
- on the passing of necessary resolutions in accordance with section 254H of the Corporations Act each ordinary share will then be converted into a greater number of ordinary shares by splitting each ordinary share into 1000 ordinary shares with the total holding being rounded up to the next whole number (in the case of fractional shares, if any).

17. Both before and after implementation of the scheme the total market value of shares held by each shareholder will be the same.

## Ruling

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### Capital gains tax

18. The variation of rights attaching to the Class shares on the conversion of the Class shares into ordinary shares will cause CGT event H2 in section 104-155 to happen in respect of those shares. However, no shareholder will make a capital gain as a result of the event happening as they will not receive capital proceeds. The acquisition dates of the Class shares will not be affected by CGT event H2 happening.

19. The conversion of the ordinary shares into a greater number of ordinary shares will not result in a CGT event in Division 104 happening (subsections 112-25(1) and (2)).

20. Each new ordinary share will have:

- the same acquisition date as the original ordinary share to which they relate; and
- a cost base and reduced cost base that is based on a reasonable apportionment of the cost base and reduced cost base of the original ordinary share to which they relate (subsection 112-25(3)).

21. No other CGT event in Division 104 will happen as a result of the conversion of the Class shares to ordinary shares and the subsequent conversion of ordinary shares into a greater number of ordinary shares.

#### **Issue of shares to round up fractional interests**

22. The issue of a fraction of a share to a shareholder to round up their shareholding to the nearest whole number following the conversion is a bonus equity (subsection 130-20(1)). No part of the bonus equity is a dividend.

#### **Value shifting**

23. Division 725 will not apply to the arrangement involving the conversion of Class shares to ordinary shares and the conversion of ordinary shares into a greater number of ordinary shares.

#### **Assessable income**

24. The conversion of the Class shares to ordinary shares and the subsequent conversion of ordinary shares into a greater number of ordinary shares will not result in any assessable income being derived by any shareholder to whom this Ruling applies under sections 6-5 (ordinary income) or under section 6-10 (statutory income).

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**Commissioner of Taxation**

13 February 2013

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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.*

### Capital gains tax

#### **Conversion of Class shares into ordinary shares**

25. The conversion of the Class shares into ordinary shares results in a variation of rights.

#### **CGT event C2**

26. Shares are comprised of a bundle of rights, however, those rights are not separate pieces of property capable of being divided out and held separately. Accordingly, for CGT purposes, the rights attaching to shares do not constitute individual assets as defined in section 108-5, but rather combine to make up the ultimate asset, being the share (refer to Taxation Ruling TR 94/30).

27. Pursuant to section 104-25, CGT event C2 happens if the ownership of an intangible asset, such as a share, ends by that share being redeemed or cancelled (paragraph 104-25(1)(a)). As the conversion of the Class shares into ordinary shares constitutes a mere variation of rights attaching to the shares and does not constitute a redemption or cancellation of the shares for CGT purposes, CGT event C2 under paragraph 104-25(1)(a) does not happen.

#### **CGT event H2**

28. CGT event H2 happens if an act, transaction or event occurs in relation to a CGT asset that you own and the act, transaction or event does not result in an adjustment being made to the asset's cost base or reduced cost base (subsection 104-155(1)). The variation in the rights attached to the Class shares is an act, transaction or event in relation to those shares. Therefore, the variation results in CGT event H2 happening in respect of them.

29. A capital gain is made if the capital proceeds from the event are more than the incidental costs incurred in relation to it. A capital loss is made if the capital proceeds are less than the incidental costs (subsection 104-155(3)).

30. Subsection 116-20(2) provides that the capital proceeds from CGT event H2 happening are the money or other consideration received, or entitled to be received, because of the act, transaction or event. Paragraph 29 of Taxation Ruling TR 95/3 provides that 'consideration' for these purposes can include the benefit of mutual promises flowing to parties even if those promises are not in themselves properties.

31. The holders of the Class shares will not receive or be entitled to receive money or other consideration, nor will they receive the benefit of any mutual promises in respect of the event happening. Further, the conversion of the ordinary shares into a larger number of ordinary shares does not result in the receipt of consideration because it involves a mere change in the nature of property that is already beneficially owned.

32. Therefore, although CGT event H2 will happen in respect of the Class shares, the holders of those shares will not make a capital gain. They will make a capital loss to the extent of any incidental costs they incur in respect of the variation.

33. The acquisition date of the Class shares will not be affected by CGT event H2 happening. The operation of section 104-155 together with Division 109 does not require or prescribe any alteration to the acquisition date of an asset to which CGT event H2 happens. Therefore, although CGT event H2 will happen in respect of the Class shares, the shares will retain their existing acquisition date for CGT purposes.

### ***Splitting of shares***

34. If a CGT asset is split into two or more assets and the beneficial owner of the original asset and of each new asset is the same, the splitting is not a CGT event (subsections 112-25(1) and 112-25(2)).

35. Under the scheme, there will be no cancellation or redemption of the ordinary shares. Each ordinary share will be converted into a greater number of ordinary shares by splitting each ordinary share into 1000 ordinary shares (new ordinary shares). The beneficial owner of each original ordinary share will be the beneficial owner of the new ordinary shares resulting from the share conversion. Accordingly, the conversion of the ordinary shares into a greater number of ordinary shares is not a CGT event.

36. As no CGT event happens, there will be no change in the acquisition date of the shares. That is, the acquisition date of each new ordinary share will be the same as the acquisition date of the original ordinary share to which it relates. For example, if an original ordinary share was acquired before 20 September 1985, a new ordinary share to which that original ordinary share relates will also be taken to have been acquired before that date.

37. The cost base and reduced cost base of each new ordinary share will be worked out by apportioning in a reasonable way each element of the cost base and reduced cost base of the original ordinary share to each new ordinary share (subsection 112-25(3)).

38. In this case, the Commissioner is satisfied that a reasonable apportionment will be obtained by dividing the cost base and reduced cost base of each original ordinary share by 1000.



## **Issue of shares to round up fractional interests**

39. As a result of the conversion, certain shareholders may hold a fraction of an ordinary share. WorkPac Pty Ltd will issue these shareholders with a part of a share (a fractional share) to round up the fraction of a share to the nearest whole number.

40. A share issued by a company in relation to other shares that the recipient owns is called a bonus equity (subsection 130-20(1)). Fractional shares issued to the owners of original Class shares following the conversion in order to round up their total holdings to the nearest whole number, satisfy this definition. The newly issued fraction (the bonus equity) is in relation to the fraction already held (the original equity).

41. The acquisition date of the bonus equity and the cost base and reduced cost base of the original and bonus equities is worked out under Subdivision 130-A. As no amount will be paid for the bonus fractional shares, and no part of them will be a dividend, their acquisition date will be the same as the acquisition date for the original fractions (items 1 and 3 in the table in subsection 130-20(3)).

42. For a bonus fraction issued in relation to an original fraction acquired after 19 September 1985, the first element of the cost base of the original fraction is apportioned in a reasonable way over the original fraction and the bonus fraction (item 1 in the table in subsection 130-20(3)). The apportioned cost bases and reduced cost bases are re-merged when, immediately following the issue of the bonus equity, the original and bonus equities are merged to form a whole share (subsection 112-25(4)).

43. This means that the newly rounded share will have the same cost base and reduced cost base as the original fractional share.

## **Value shifting**

44. Division 725 applies where there is a direct value shift.

45. As there will be no change in the total market value of shares held by each shareholder as a result of the scheme, there will not be a direct value shift for the purposes of Division 725.

## **Assessable income**

46. The variation of rights on conversion of the Class shares into ordinary shares and the conversion of the ordinary shares into a greater number of ordinary shares by splitting each ordinary share into 1000 ordinary shares will not result in any assessable income being derived by any shareholder to whom this Ruling applies under section 6-5 (ordinary income) or under section 6-10 (statutory income).

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

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

	<b>Paragraph</b>
<b>What this Ruling is about</b>	<b>1</b>
Relevant provision(s)	2
Class of entities	3
Qualifications	4
<b>Date of effect</b>	<b>8</b>
<b>Scheme</b>	<b>9</b>
Share capital of WorkPac Pty Ltd	10
Conversion of shares	15
<b>Ruling</b>	<b>18</b>
Capital gains tax	18
Issue of shares to round up fractional interests	22
Value shifting	23
Assessable income	24
<b>Appendix 1 – Explanation</b>	<b>25</b>
Capital gains tax	25
<i>Conversion of Class shares into ordinary shares</i>	25
<i>CGT event C2</i>	26
<i>CGT event H2</i>	28
<i>Splitting of shares</i>	34
Issue of shares to round up fractional interests	39
Value shifting	44
Assessable income	46
<b>Appendix 2 – Detailed contents list</b>	<b>47</b>

## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 94/30; TR 95/3; TR 2006/10

*Subject references:*

- capital gains tax
- CGT capital proceeds
- CGT cost base
- CGT events C1-C3 – end of a CGT asset
- CGT events H1-H2 – special capital receipts
- entity interests direct value shifts
- shares

*Legislative references:*

- ITAA 1936 6(1)
- ITAA 1997 6-5
- ITAA 1997 6-10

- ITAA 1997 Div 104
- ITAA 1997 104-25
- ITAA 1997 104-25(1)(a)
- ITAA 1997 104-155
- ITAA 1997 104-155(1)
- ITAA 1997 104-155(3)
- ITAA 1997 108-5
- ITAA 1997 Div 109
- ITAA 1997 112-25(1)
- ITAA 1997 112-25(2)
- ITAA 1997 112-25(3)
- ITAA 1997 112-25(4)
- ITAA 1997 116-20(2)
- ITAA 1997 130-20(1)
- ITAA 1997 130-20(3)
- ITAA 1997 Div 230
- ITAA 1997 Div 725
- TAA 1953
- Corporations Act 2001
- Corporations Act 2001 254H
- Copyright Act 1968

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ATO references

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Income Tax ~~ Capital Gains Tax ~~ cost base and reduced cost base  
Income Tax ~~ Capital Gains Tax ~~ value shifting