


# ***CR 2013/30 - Income tax: demerger of FIIG Securities Limited by Driven Holdings Pty Ltd***

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## Class Ruling

### Income tax: demerger of FIIG Securities Limited by Driven Holdings Pty Ltd

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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 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 44 of the ITAA 1936;
- section 45B of the ITAA 1936;
- section 45BA of the ITAA 1936;
- section 45C of the ITAA 1936;
- section 104-135 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 115-30 of the ITAA 1997; and
- Division 125 of the ITAA 1997.

## Class of entities

3. The class of entities to whom this Ruling applies is the shareholders of Driven Holdings Pty Ltd (Driven) who:

- participated in the scheme that is the subject of this Ruling;
- were residents of Australia as defined in subsection 6(1) of the ITAA 1936;
- held those shares on capital account on 24 April 2013 (Record Date); and
- were not subject to the taxation of financial arrangement rules in Division 230 of the ITAA 1997 in relation to gains and losses on their Driven shares.

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

In this Ruling, a person belonging to this class of entities is referred to as a 'Driven shareholder'.

## 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 10 to 27 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).

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## 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.

### Background

10. On 30 April 2013 (Implementation Date), Driven carried out a demerger of all the shares in FIIG Securities Limited (FIIG) by way of an *in-specie* distribution, whereby all of the issued shares in FIIG held by Driven were transferred to the Driven shareholders.

11. The transfer was done on a pro rata basis partly by way of dividend and partly by way of capital reduction. One share in FIIG was transferred to each Driven shareholder for every Driven share held at Record Date.

### Relevant Entities

#### ***Driven***

12. Driven is the head entity of the Driven Group. The Driven Group is a consolidated group for income tax purposes. Driven is an Australian resident company. Just prior to the demerger Driven had 30,029,003 fully paid ordinary shares on issue. There were no other ownership interests in Driven just before the demerger.

13. Driven, as the parent company of the Driven Group undertakes strategic and oversight roles for the group. It also acts as the issuer of shares under the group's employee share scheme. As head company of the tax consolidated group, Driven has primary responsibility for the group's income tax compliance obligations including lodgment of tax returns and payment of tax instalments.

14. All of the shares in Driven were acquired after 20 September 1985.

## **FIIG**

15. FIIG is an Australian resident company and is one of Australia's largest independent dealers in fixed interest security products.
16. FIIG deals predominantly in fixed income financial products such as term deposits, government and semi-government bonds, and corporate bonds including hybrids either as principal or as a broker.
17. Prior to the demerger, FIIG was wholly owned by Driven.

## **The demerger of FIIG**

18. The demerger was approved by the Driven shareholders by an ordinary resolution on 24 April 2013.
19. The demerger was effected by way of a capital return and dividend on a pro rata basis for each Driven share on issue.
20. The purpose for entering into the demerger was to separate FIIG from the remainder of the Driven group. It was expected that this would enhance the commercial efficiency with which FIIG could pursue its distinct operations and goals. Also, it was intended that FIIG would commence an active employee share scheme from the time of the demerger to enable its employees to participate beneficially in the direct ownership of shares in FIIG.
21. On the date of the demerger, Driven distributed all of the ordinary shares it owned in FIIG so that each shareholder in Driven received shares in FIIG in proportion to their shareholding in Driven on the Record Date in satisfaction of the capital reduction amount and the dividend amount.
22. The combined value of the demerger benefit and capital benefit was substantially more than the cost bases of the Driven shares held by the Driven shareholders prior to the demerger.

## **Accounting for the scheme**

23. Driven accounted for the transfer of the FIIG shares to Driven shareholders by:
  - debiting its share capital account by \$6,603,413 in aggregate (total capital reduction amount); and
  - debiting the balance of the demerger allocation (\$2,642,047) to its retained earnings account (total dividend amount).

## **Other matters**

24. Driven confirmed that no amounts have been credited to its share capital account other than amounts received for the subscription for shares and its share capital account was not 'tainted' within the meaning of Division 197 of the ITAA 1997.

25. Driven did not make an election under subsection 44(2) of the ITAA 1936 that subsections 44(3) and 44(4) of the ITAA 1936 will not apply to the dividend component of the demerger distribution.

26. After the demerger, at least 50% of the market value of capital gains tax (CGT) assets owned by FIIG or its subsidiaries were used directly or indirectly in one or more businesses carried on by FIIG.

## **Ruling**

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### **Capital Gains Tax**

#### ***CGT event G1***

27. CGT event G1 happened in relation to each ordinary share held by the Driven shareholders at the time Driven made the payment of the capital reduction amount under the demerger (section 104-135 of the ITAA 1997).

#### ***Capital gain***

28. Driven shareholders made a capital gain when CGT event G1 happened if the capital reduction amount received for each Driven share exceeded the cost base of that share. The capital gain was equal to the amount of the excess. No capital loss can be made from CGT event G1 (subsection 104-135(3) of the ITAA 1997).

#### ***Demerger roll-over***

29. Driven and FIIG were part of a demerger group under subsection 125-65(1) of the ITAA 1997.

30. A demerger, as described in section 125-70 of the ITAA 1997, happened to this demerger group under the scheme.

31. Therefore, Driven shareholders can choose demerger roll-over relief under subsection 125-55(1) of the ITAA 1997.

#### ***CGT consequences of choosing roll-over***

32. Driven shareholders who choose demerger roll-over relief disregard any capital gain made when CGT event G1 happens to their Driven shares under the demerger (subsection 125-80(1) of the ITAA 1997).

#### ***Other CGT consequences of choosing roll-over***

33. Driven shareholders who choose demerger roll-over must also recalculate the cost base and reduced cost base of their Driven shares and the new FIIG shares they received under the demerger.

34. The first element of the cost base and reduced cost base of each Driven share and each FIIG share received under the demerger is worked out (under subsection 125-80(2) of the ITAA 1997) as follows:

- take the sum of the cost bases of the Driven shares (just before the demerger); and
- apportion that sum over the Driven shares and corresponding FIIG shares received under the demerger.

The apportionment of this sum is done on a reasonable basis having regard to the market values (just after the demerger) of the Driven shares and FIIG shares, or a reasonable approximation of those market values (subsections 125-80(2) and 125-80(3) of the ITAA 1997).

### ***CGT consequences of not choosing roll-over***

35. Driven shareholders who do not choose demerger roll-over relief:

- cannot disregard any capital gain made in respect of CGT event G1 happening to their Driven shares under the demerger; and
- the first element of the cost base and reduced cost base of their Driven shares and the corresponding FIIG shares is calculated in the manner described in paragraph 35 of this Ruling (subsections 125-85(1) and 125-85(2) of the ITAA 1997).

### ***Acquisition date of the FIIG shares for the purposes of the CGT discount***

36. For the purpose of determining eligibility for a discount capital gain, a FIIG share received by Driven shareholders will be taken to have been acquired on the date the shareholder acquired, for CGT purposes, the corresponding Driven shares (item 2 of the table in subsection 115-30(1) of the ITAA 1997). This will be the case whether or not the Driven shareholder chooses demerger roll-over relief.

### ***Dividend consequences***

37. Any dividend arising under the demerger is a demerger dividend (subsection 6(1) of the ITAA 1936).

38. The demerger dividend is neither assessable income nor exempt income of the Driven shareholders (subsections 44(3) and 44(4) of the ITAA 1936).

**Application of sections 45B, 45BA and 45C of the ITAA 1936**

39. The Commissioner will not make a determination under paragraph 45B(3)(a) of the ITAA 1936 that section 45BA of the ITAA 1936 applies to the whole or any part of any demerger benefit provided to the Driven shareholders under the demerger.

40. The Commissioner will not 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 Driven shareholders under the demerger.

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**Commissioner of Taxation**22 May 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.*

### **CGT consequences**

41. The CGT consequences and relevant legislative provisions that arise concerning the scheme that is the subject of this Ruling are outlined in the Ruling part of this document.

42. A significant tax consequence of the scheme is the availability of demerger roll-over under Division 125 of the ITAA 1997. Broadly, the Driven shareholders can choose roll-over to disregard a capital gain made under the demerger.

43. There are special rules for calculating the cost base and reduced cost base of the Driven and FIIG shares for the Driven shareholders regardless of whether or not they choose roll-over.

### ***The demerger roll-over relief conditions***

44. Demerger roll-over enables a shareholder to choose to disregard a capital gain made as a result of CGT event G1 happening when a non-assessable payment is made to them under a demerger in respect of a share they own.

45. The demerger roll-over provisions in Division 125 of the ITAA 1997 contain a number of conditions for eligibility to choose demerger roll-over relief. The main conditions that are relevant to the scheme are that:

- (a) a shareholder owns a share in a company;
- (b) the company is the head entity of a demerger group;
- (c) a demerger happens to the demerger group; and
- (d) under the demerger, a CGT event happens to the original interest and a new or replacement interest is acquired in the demerged entity and nothing else.

46. Under the scheme to which this Ruling relates the conditions for demerger roll-over relief under Division 125 of the ITAA 1997 are satisfied. As the scheme to which this Ruling relates raises no novel issues of tax law interpretation, the Commissioner does not consider that any further explanation beyond that contained in the Ruling section of the document is warranted.

**Was a dividend paid under the demerger?**

47. The definition of a dividend in subsection 6(1) of the ITAA 1936 includes any amount distributed or credited by a company to any of its shareholders whether in money or other property. Paragraph (d) of the definition excludes amounts debited against an amount standing to the credit of the share capital account of the company.

48. The amount of \$6,603,413 was debited against an amount standing to the credit of the share capital account of Driven.

49. Therefore, the distribution of the FIIG shares in part, constituted a dividend of the Driven shareholders. The amount of the dividend was the market value of the FIIG shares at the time of the demerger less the amount debited to the share capital account.

***Demerger dividend***

50. Subsection 44(1) of the ITAA 1936 includes in a shareholder's assessable income a dividend, as defined in subsection 6(1) of the ITAA 1936, paid to a shareholder out of company profits.

51. A demerger dividend is that part of a demerger allocation that is assessable as a dividend under subsection 44(1) or that would be assessable apart for subsections 44(3) and 44(4) of the ITAA 1936.

52. Demerger allocation is defined in subsection 6(1) of the ITAA 1936. For the purpose of this demerger paragraph (b) of the definition is relevant which states that the demerger allocation is:

- the total market value of the allocation represented by the ownership interests disposed of by a member of a demerger group under a demerger to the owners of ownership interests in the head entity.

53. In general, a dividend satisfied by a distribution of property (such as shares in a subsidiary) will be a dividend paid out of profits derived if, immediately after the distribution of that property, the market value of the assets of the company exceed the total amount (as shown in the company's books of account) of its liabilities and share capital (see paragraph 8 of Taxation Ruling TR 2003/8).

54. However, a demerger dividend is taken not to have been paid out of profits and is neither an assessable income nor an exempt income amount (subsections 44(3) and (4) of the ITAA 1936) where:

- the dividend is a demerger dividend (as defined in subsection 6(1) of the ITAA 1936);
- the head entity does not elect that subsections 44(3) and 44(4) of the ITAA 1936 do not apply to the demerger dividend (subsection 44(2) of the ITAA 1936); and
- subsection 44(5) of the ITAA 1936 is satisfied.

55. In the present circumstances, the dividend paid to the Driven shareholders under the demerger did satisfy the conditions necessary to be a demerger dividend and was therefore neither assessable income nor exempt income pursuant to subsections 44(3) and 44(4) of the ITAA 1936.

## **Application of sections 45B, 45BA and 45C of the ITAA 1936**

56. The purpose of section 45B of the ITAA 1936 is to ensure that relevant amounts distributed to shareholders of a company are treated as dividends for tax purposes if:

- (a) components of a demerger allocation as between capital and profit do not reflect the circumstances of the demerger; or
- (b) certain payments, allocations and distributions are made in substitution for dividends (subsection 45B(1) of the ITAA 1936).

57. Subsection 45B(2) of the ITAA 1936 provides that the section applies if:

- (a) there is a scheme under which a person is provided with a demerger benefit or a capital benefit by a company;
- (b) under the scheme the taxpayer obtains a tax benefit as defined in subsection 45B(9) of the ITAA 1936; and
- (c) having regard to the relevant circumstances of the scheme, it would be concluded that the scheme was entered into or carried out for a more than incidental purpose of enabling the taxpayer to obtain the tax benefit.

58. In this case, while the conditions of paragraphs 45B(2)(a) and 45B(2)(b) of the ITAA 1936 are met, the requisite purpose of enabling Driven shareholders to obtain a tax benefit (by way of a demerger benefit or a capital benefit) is not present.

59. Accordingly, the Commissioner will not make a determination under paragraph 45B(3)(a) or 45B(3)(b) of the ITAA 1936 that either section 45BA or 45C of the ITAA 1936 apply to the scheme to which this Ruling relates.

## Appendix 2 – Detailed contents list

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

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2003/8; TR 2006/10

*Subject references:*

- capital benefit
- capital gains
- cost base adjustments
- demerger
- demerger allocation
- demerger benefit
- demerger dividend
- demerger group
- demerger subsidiary

- ITAA 1936 44
- ITAA 1936 45B
- ITAA 1936 45BA
- ITAA 1936 45C
- ITAA 1997 104-135
- ITAA 1997 115-30
- ITAA 1997 Div 125
- ITAA 1997 125-55
- ITAA 1997 125-65
- ITAA 1997 125-70
- ITAA 1997 125-80
- ITAA 1997 125-85
- ITAA 1997 Div 197
- ITAA 1997 Div 230
- TAA 1953
- Copyright Act 1968

*Legislative references:*

- ITAA 1936 6(1)
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ATO references

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