


CR 2015/45 - Income tax: Restructure of AusNet Services

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Class Ruling

Income tax: Restructure of AusNet Services

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	7
Scheme	8
Ruling	37
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
Explanation	68
Appendix 2:	
Detailed contents list	101

📌 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 provisions

2. The relevant provisions considered in this Ruling are:

- section 45B of the *Income Tax Assessment Act 1936* (ITAA 1936)
- Part IVA of the ITAA 1936
- section 102-5 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 102-10 of the ITAA 1997
- Subdivision 115-A of the ITAA 1997
- section 104-10 of the ITAA 1997
- section 109-5 of the ITAA 1997
- section 110-25 of the ITAA 1997
- section 115-30 of the ITAA 1997
- section 116-20 of the ITAA 1997

- section 124-10 of the ITAA 1997
- subsection 124-15(2) of the ITAA 1997, and
- Division 615 of the ITAA 1997.

All subsequent references 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 stapled securities in AusNet Services (Security Holders) who:

- participated in the scheme that is the subject of this Ruling
- are residents of Australia within the meaning of subsection 6(1) of the ITAA 1936
- are not temporary residents of Australia within the meaning of the term 'temporary resident' of Australia in subsection 995-1(1)
- acquired their AusNet Services securities after 19 September 1985
- held their AusNet Services securities on capital account for tax purposes
- hold their ordinary shares in AusNet Services Ltd (NewCo) on capital account for tax purposes, and
- are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their AusNet Services securities.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement 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 8 to 36 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.

Date of effect

7. This Ruling applies from 1 July 2014 to 30 June 2015. The Ruling continues to apply after 30 June 2015 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

8. 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:

- Class Ruling application dated 24 February 2015
- Constitution of AusNet Services (Transmission) Limited (Transmission)
- Constitution of AusNet Services (Distribution) Limited (Distribution)
- Constitution of AusNet Services Finance Trust (Finance Trust), and
- Correspondence received in relation to the Class Ruling application.

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

AusNet Services structure prior to the Restructure

9. AusNet Services consisted of the following entities:

- Transmission and its wholly owned subsidiaries
- Distribution and its wholly owned subsidiaries, and
- Finance Trust.

10. As at 18 June 2015, AusNet Services had a primary listing on the Australian Securities Exchange (ASX) and a secondary listing on the Singapore Exchange (SGX-ST) and traded as a triple stapled security consisting of the three entities listed above.

11. As at 18 June 2015, there were approximately 3.4 billion securities on issue, with 31.1% being held by Singapore Power International Pte Ltd, 19.9% by State Grid International Development Limited and the remaining 49% by minority shareholders.

Transmission

12. Transmission is a public company registered in Australia and is the head company of the Transmission tax consolidated group, which was formed with effect from 19 October 2005.

13. The operating subsidiaries of Transmission own assets comprising an electricity transmission business.

14. The Constitution of Transmission provides for one class of shares, being ordinary shares. The rights attached to each ordinary share are identical in respect of dividends, capital distribution and voting rights. Apart from the ordinary shares, Transmission does not have any other shares or options on issue.

Distribution

15. Distribution is a public company registered in Australia and is the head company of the Distribution tax consolidated group, which was formed with effect from 2 August 2004.

16. The operating subsidiaries of Distribution own assets comprising an electricity and gas distribution business.

17. The Constitution of Distribution provides for one class of shares, being ordinary shares. The rights attached to each ordinary share are identical in respect of dividends, capital distribution and voting rights. Apart from the ordinary shares, Distribution does not have any other shares or options on issue.

Finance Trust

18. Finance Trust is not regarded as a public trading trust under Division 6C of Part III of the ITAA 1936 and is therefore not treated as a company for taxation purposes.

19. Finance Trust provides financing to both Distribution and Transmission by way of interest-bearing and non-interest-bearing loans.

Restructure of AusNet Services

20. AusNet Services undertook a strategic review to consider its capital structure, ownership structure and future funding needs.

21. Upon finalisation of the review, AusNet Services made the decision to move from its triple stapled security to a single listed company in order to reduce administrative, reporting and compliance obligations.

22. The Restructure took place on 18 June 2015.

Detailed steps in the Restructure of AusNet Services

23. Step 1 – NewCo was incorporated as a dormant entity with nominal share capital, comprising four ordinary shares held by a member of AusNet Services.
24. Step 2 – The AusNet Services triple stapled securities were de-stapled and the stapling arrangements between Transmission, Finance Trust and Distribution were cancelled.
25. Step 3 – Each component of the AusNet Services triple stapled securities (being a share in Transmission, a unit in Finance Trust and a share in Distribution) held by certain overseas investors (Ineligible Foreign Security Holders) were transferred to a sale nominee (NomineeCo) prior to participating in the Restructure.
26. Step 4 – By way of a members' scheme of arrangement under Part 5.1 of the *Corporations Act 2001* (Corporations Act), approved by an order of a court, NewCo acquired 100% of the shares in Transmission from the Security Holders (including NomineeCo) in exchange for issuing a whole number of ordinary shares in NewCo to Security Holders in proportion to the percentage of the shares in Transmission originally held by the Security Holder. Each Security Holder received one share in NewCo for each share held in Transmission prior to the Restructure.
27. At the same time, under a pre-arranged selective share reduction, the two to four original ordinary shares in NewCo were cancelled, with the result that 100% of the shares in NewCo were owned by the Security Holders.
28. Step 5 – By way of a trust scheme, in respect of which the responsible entity of Finance Trust obtained judicial advice (court approval), NewCo acquired 100% of the units in Finance Trust from the Security Holders (including NomineeCo), in exchange for issuing a whole number of additional ordinary shares in NewCo in proportion to the percentage of units in Finance Trust originally owned by the Security Holder. Each Security Holder received one share in NewCo for each unit held in Finance Trust prior to the Restructure.
29. Step 6 – By way of a members' scheme of arrangement under Part 5.1 of the Corporations Act, approved by an order of a court, NewCo acquired 100% of the shares in Distribution from the Security Holders (including NomineeCo), in exchange for issuing a whole number of ordinary shares in NewCo in proportion to the percentage of shares in Distribution originally owned by the Security Holder. Each Security Holder received one share in NewCo for each share previously held in Distribution.
30. Step 7 – NewCo undertook a share consolidation in accordance with section 254H of the Corporations Act, such that each Security Holder holds one ordinary share in NewCo for each triple stapled security held by them prior to the Restructure.
31. Steps 1 to 7 are collectively referred to as the Restructure.

Ineligible Foreign Security Holders

32. Security Holders who were residents in jurisdictions outside of Australia are referred to as Ineligible Foreign Security Holders.

33. In order to issue NewCo shares to certain Ineligible Foreign Security Holders, AusNet Services would have been required to take additional steps to comply with the relevant securities laws in foreign jurisdictions. AusNet Services expected it to be unduly costly or onerous to either obtain legal advice or comply with the relevant foreign securities laws.

34. In accordance with the steps above, a court approved scheme of arrangement under Part 5.1 of the Corporations Act allowed for shares in Transmission and Distribution held by Ineligible Foreign Security Holders to be transferred to NomineeCo. In addition, the trust scheme allowed for units in Finance Trust held by Ineligible Foreign Security Holders to be transferred to NomineeCo. NomineeCo participated in the Restructure as a Security Holder.

35. After completion of the Restructure, NomineeCo sold the restructured securities it held and remitted the proceeds of the sale to the Ineligible Foreign Security Holders.

Assumptions

36. This Ruling is made on the basis that:

- (a) the Security Holders will either:
 - choose roll-over for the exchange of shares in Transmission, units in Finance Trust and shares in Distribution for the NewCo shares, or
 - not choose roll-over for the exchange of shares in Transmission, units in Finance Trust and shares in Distribution for the NewCo shares.
- (b) NewCo will make the required choices under section 615-30 in respect of Transmission, Distribution and Finance Trust within the timeframes as prescribed by subsection 615-30(3).

Ruling

De-stapling of the AusNet Services stapled securities

37. A Security Holder did not make a capital gain or capital loss on the de-stapling of the AusNet Services stapled securities.

Disposal of Transmission shares – CGT event A1

38. CGT event A1 happened as a result of the disposal by a Security Holder of their shares in Transmission to NewCo (section 104-10). The time of CGT event A1 was when the Transmission shares were transferred to NewCo on the date of implementation of the Restructure (paragraph 104-10(3)(b)).

39. Under subsection 116-20(1), the capital proceeds from CGT event A1 happening is the market value of the property (ordinary shares issued in NewCo) received or entitled to be received in respect of the disposal of a Transmission share.

40. A Security Holder made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a Transmission share exceeded its cost base. A Security Holder made a capital loss if the capital proceeds from the disposal of a Transmission share were less than its reduced cost base (subsection 104-10(4)).

Disposal of Transmission shares - Division 615 roll-over

41. A disposal of shares in a company to another company in exchange for shares in the other company (and nothing else), as described in section 615-5, happened when a Security Holder disposed of Transmission shares to NewCo in exchange for a whole number of NewCo shares. As the conditions for roll-over under Division 615 were satisfied in relation to this disposal, a Security Holder is eligible to choose roll-over under Division 615.

Division 615 roll-over is chosen

42. A Security Holder who chooses roll-over under Division 615 will disregard any capital gain or capital loss made when CGT event A1 happened (subsection 124-15(2)).

Division 615 roll-over is not chosen

43. A Security Holder who does not choose roll-over must take into account any capital gain or capital loss from the disposal of their Transmission shares in working out their net capital gain or net capital loss for the income year (sections 102-5 and 102-10).

44. A Security Holder, who made a capital gain where roll-over is not chosen, can treat the capital gain as a 'discount capital gain' provided that the conditions in Subdivision 115-A are met. In particular, the Transmission shares must have been acquired by the Security Holder at least 12 months before their disposal to NewCo.

Disposal of Finance Trust units – CGT event A1

45. CGT event A1 happened as a result of the disposal by a Security Holder of their units in Finance Trust to NewCo (section 104-10). The time of CGT event A1 was when the Finance Trust units were transferred to NewCo on the date of implementation of the Restructure (104-10(3)(b)).

46. Under subsection 116-20(1), the capital proceeds from CGT event A1 happening is the market value of the property (ordinary shares issued in NewCo) received or entitled to be received in respect of the disposal of a Finance Trust unit.

47. A Security Holder made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a Finance Trust unit exceeded its cost base. A Security Holder made a capital loss if the capital proceeds from the disposal of a Finance Trust unit were less than its reduced cost base (subsection 104-10(4)).

Disposal of Finance Trust units – Division 615 roll-over

48. A disposal of units in a unit trust to a company in exchange for shares in the company (and nothing else), as described in section 615-5, happened when a Security Holder disposed of Finance Trust units to NewCo in exchange for a whole number of NewCo shares. As the conditions for roll-over under Division 615 were satisfied in relation to this disposal, a Security Holder is eligible to choose the roll-over under Division 615.

Division 615 roll-over is chosen

49. A Security Holder who chooses roll-over will disregard any capital gain or capital loss made when CGT event A1 happened (subsection 124-15(2)).

Division 615 roll-over is not chosen

50. A Security Holder who does not choose roll-over must take into account any capital gain or capital loss from the disposal of their Finance Trust units in working out their net capital gain or their net capital loss for the income year (sections 102-5 and 102-10).

51. A Security Holder, who made a capital gain where roll-over is not chosen, can treat the capital gain as a 'discount capital gain' provided that the conditions in Subdivision 115-A are met. In particular, the Finance Trust units must have been acquired by the Security Holder at least 12 months before their disposal to NewCo.

Disposal of Distribution shares – CGT event A1

52. CGT event A1 happened as a result of the disposal by a Security Holder of their shares in Distribution to NewCo (section 104-10). The time of CGT event A1 was when the Distribution shares were transferred to NewCo on the date of implementation of the Restructure (paragraph 104-10(3)(b)).

53. Under subsection 116-20(1), the capital proceeds from CGT event A1 happening is the market value of the property (ordinary shares issued in NewCo) received or entitled to be received in respect of the disposal of a Distribution share.

54. A Security Holder made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a Distribution share exceeded its cost base. A Security Holder made a capital loss if the capital proceeds from the disposal of a Distribution share were less than its reduced cost base (subsection 104-10(4)).

Disposal of Distribution shares - Division 615 roll-over

55. A disposal of shares in a company to another company in exchange for shares in the other company (and nothing else), as described in section 615-5, happened when a Security Holder disposed of Distribution shares to NewCo in exchange for a whole number of NewCo shares. As the conditions for roll-over under Division 615 were satisfied in relation to this disposal, a Security Holder is eligible to choose roll-over under Division 615.

Division 615 roll-over is chosen

56. A Security Holder who chooses roll-over under Division 615 will disregard any capital gain or capital loss made when CGT event A1 happened (subsection 124-15(2)).

Division 615 roll-over is not chosen

57. A Security Holder who does not choose roll-over must take into account any capital gain or capital loss from the disposal of their Distribution shares in working out their net capital gain or net capital loss for the income year (sections 102-5 and 102-10).

58. A Security Holder, who made a capital gain where roll-over is not chosen, can treat the capital gain as a 'discount capital gain' provided that the conditions in Subdivision 115-A are met. In particular, the Distribution shares must have been acquired by the Security Holder at least 12 months before their disposal to NewCo.

Acquisition time of NewCo shares if roll-over is chosen

59. For the purposes of Division 115, where roll-over has been chosen, Security Holders will be regarded as having acquired their NewCo shares at the time they acquired their shares in Transmission, their units in Finance Trust and their shares in Distribution (subsection 115-30(1)).

Acquisition time of NewCo shares if roll-over is not chosen

60. If roll-over is not chosen, the acquisition time of the NewCo shares is the date that they were issued to the Security Holders (section 109-5).

No CGT event on the consolidation of NewCo shares

61. The consolidation of the NewCo shares did not result in a CGT event happening (paragraph 112-25(4)(a)).

Consolidated NewCo shares – first element of the cost base where roll-over is chosen

62. Where roll-over is chosen, the first element of the cost base of each NewCo share is calculated by dividing the cost bases of the shares in Transmission, units in Finance Trust and shares in Distribution at the time of disposal by the number of NewCo shares received in exchange for each entity on a standalone basis (subsections 124-10(3)).

63. The first element of the cost base of each NewCo share following consolidation of the NewCo shares is the sum of each of the figures calculated above for Transmission, Finance Trust and Distribution.

Consolidated NewCo shares – first element of the cost base where roll-over is not chosen

64. Where roll-over is not chosen, the first element of the cost base of each NewCo share is calculated by dividing the market value of the shares in Transmission, units in Finance Trust and shares in Distribution at the time of acquisition of the NewCo shares by the number of NewCo shares received in exchange for each entity on a standalone basis (subsection 110-25(2)).

65. The first element of the cost base of each NewCo share following consolidation of the NewCo shares is the sum of each of the figures calculated above for Transmission, Finance Trust and Distribution.

The anti-avoidance provisions***Part IVA of the ITAA 1936***

66. The Commissioner will not make a determination pursuant to subsection 177F(1) of the ITAA 1936 in respect of the capital proceeds received by the Security Holders under the Restructure.

Section 45B of the ITAA 1936

67. The Commissioner will not make a determination under subsection 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole, or a part, of the capital benefit provided by NewCo to the Security Holders under the Restructure.

Commissioner of Taxation1 July 2015

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.*

Roll-over under Division 615

68. Roll-over under Division 615 enables a member of a company or a trust to disregard a capital gain or capital loss from a share or a unit that is either disposed of, or redeemed or cancelled, as part of a reorganisation of the affairs of the entity, where the member becomes the owner of new shares in another company in exchange.

69. Division 615 contains a number of conditions for eligibility to choose roll-over. Given the number of conditions that need to be considered, it is not necessary to examine each section of Division 615 in detail in this explanation. However, the main conditions that are relevant to the disposal of shares in Transmission, units in Finance Trust and shares in Distribution are:

- at least two entities must own all the shares or units in the original entity (paragraph 615-5(1)(b))
- there must be a scheme for reorganising the original entity's affairs, and consideration for the disposal of the shares or units in the original entity must consist of receiving shares in another company (the interposed company) and nothing else (paragraph 615-5(1)(c))
- the interposed company must own all the shares or units in the original entity immediately after all the exchanging members have disposed of their shares or units in the original entity (the completion time) (section 615-15)
- immediately after the completion time, each exchanging member must own a whole number of shares in the interposed company (paragraph 615-20(1)(a))
- immediately after the completion time, each exchanging member must own a percentage of the shares in the interposed company that were issued to all the exchanging members of the original entity that is equal to the percentage of the shares or units in the original entity that the exchanging member owned (paragraph 615-20(1)(b))

- immediately after the completion time, the exchanging members must own all the shares in the interposed company, or entities other than those members must own no more than 5 shares in the interposed company and the market value of those shares is such that it is reasonable to treat the exchanging members as owning all the shares (subsection 615-25(3))
- the shares issued in the interposed company must not be redeemable shares (subsection 615-25(1)), and
- the ratio test in subsection 615-20(2) is met.

70. The main conditions above are satisfied because, as part of a members' scheme of arrangement, the Security Holders received ordinary shares in NewCo for all of their shares in Transmission and Distribution. As part of a trust scheme, the Security Holders received ordinary shares in NewCo for all of their units in Finance Trust.

71. Following the exchange, NewCo owned all the shares in Transmission, units in Finance Trust and shares in Distribution. In addition, each Security Holder owns a whole number of shares in NewCo in a percentage equal to the percentage of shares they previously held in Transmission, units they previously held in Finance Trust and shares they previously held in Distribution. Immediately after the completion time, all the shares in NewCo were held by the Security Holders.

72. The class of entities to which this Ruling applies and the scheme identified in this Ruling provide the relevant facts and circumstances that satisfy the conditions for roll-over under Division 615.

Consolidated NewCo shares – first element of the cost base where roll-over is chosen

73. In order to determine what the first element of the cost base of each NewCo share is on a consolidated basis it is first necessary to determine the first element of the cost base on a standalone basis for Transmission, Finance Trust and Distribution.

74. For Transmission, the first element of the cost base of a share in NewCo is worked out as follows (subsection 124-10(3)):

$$\frac{\text{Cost base of shares in Transmission (at the time of disposal)}}{\text{The number of new shares issued in NewCo}}$$

75. For Finance Trust, the first element of the cost base of a share in NewCo is worked out as follows (subsection 124-10(3)):

$$\frac{\text{Cost base of units in Finance Trust (at the time of disposal)}}{\text{The number of additional new shares issued in NewCo}}$$

76. For Distribution, the first element of the cost base of a share in NewCo is worked out as follows (subsection 124-10(3)):

Cost base of shares in Distribution (at the time of the disposal)

The number of additional new shares issued in NewCo

77. Upon calculating the first element of the cost base of each NewCo share on a standalone basis as above, the first element of the cost base of each NewCo share following consolidation of the NewCo shares is the sum of each of the figures calculated above for Transmission, Finance Trust and Distribution.

Consolidated NewCo shares – first element of the cost base where roll-over is not chosen

78. In order to determine what the first element of the cost base of each NewCo share is on a consolidated basis it is first necessary to determine the first element of the cost base on a standalone basis for Transmission, Finance Trust and Distribution.

79. For Transmission, the first element of the cost base of a share in NewCo is worked out as follows (subsection 110-25(2)):

Market value of shares in Transmission (at the time of acquisition)

The number of new shares issued in NewCo

80. For Finance Trust, the first element of the cost base of a share in NewCo is worked out as follows (subsection 110-25(2)):

Market value of units in Finance Trust (at the time of acquisition)

The number of additional new shares issued in NewCo

81. For Distribution, the first element of the cost base of a share in NewCo is worked out as follows (subsection 110-25(2)):

Market value of shares in Distribution (at the time of acquisition)

The number of additional new shares issued in NewCo

82. Upon calculating the first element of the cost base of each NewCo share on a standalone basis as above, the first element of the cost base of each NewCo share following consolidation of the NewCo shares is the sum of each of the figures calculated above for Transmission, Finance Trust and Distribution.

The anti-avoidance provisions***Part IVA of the ITAA 1936***

83. The Commissioner has the discretion to cancel all or part of a 'tax benefit' that has been obtained, or would, but for section 177F of the ITAA 1936, be obtained, by a taxpayer in connection with a scheme to which Part IVA applies.

84. Before the Commissioner can exercise the discretion in subsection 177F(1) of the ITAA 1936, the requirements of Part IVA of the ITAA 1936 must be satisfied. These requirements are that:

- (i) a 'tax benefit', as identified in section 177C of the ITAA 1936, was or would, but for section 177F of the ITAA 1936, have been obtained
- (ii) the tax benefit was or would have been obtained in connection with a 'scheme' as defined in section 177A of the ITAA 1936, and
- (iii) having regard to section 177D of the ITAA 1936, the scheme is one to which Part IVA applies.

85. In the present case, all the shares in Transmission, units in Finance Trust and shares in Distribution were disposed of by the Security Holders. The consideration that was received in respect of the disposal was the shares in NewCo upon the exchange under the Restructure. The Security Holders can either make a choice to obtain roll-over relief under Division 615 or not choose roll-over relief.

86. Generally, where the non-inclusion of an amount in the assessable income of a taxpayer is attributable to the making of a choice available under either the ITAA 1936 or the ITAA 1997, that amount is excluded from the meaning of 'obtaining by a taxpayer of a tax benefit in connection with a scheme' (subsection 177C(2) of the ITAA 1936).

87. Having regard to the facts and circumstances of this arrangement, Part IVA of the ITAA 1936 will not apply as, to the extent that a tax benefit may arise under the scheme, it cannot be concluded that the scheme was entered into for the dominant purpose of enabling the Security Holders to obtain a tax benefit as defined in section 177C of the ITAA 1936.

88. Therefore, the Commissioner will not make a determination under subsection 177F(1) of the ITAA 1936 in relation to the Restructure as it does not constitute a scheme to which Part IVA of the ITAA 1936 applies.

Section 45B of the ITAA 1936

89. Section 45B of the ITAA 1936 applies where certain capital benefits are provided to shareholders in substitution for dividends.

The provision applies where:

- there is a scheme under which a person is provided with a capital benefit by a company (paragraph 45B(2)(a) of the ITAA 1936)
- under the scheme a taxpayer, who may or may not be the person provided with the capital benefit, obtains a tax benefit (paragraph 45B(2)(b) of the ITAA 1936), and
- having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, entered into the scheme for a purpose, other than an incidental purpose, of enabling a taxpayer to obtain a tax benefit (paragraph 45B(2)(c) of the ITAA 1936).

Scheme

90. The exchange of the AusNet Services securities for shares under the Restructure is a 'scheme' for the purposes of paragraph 45B(2)(a) of the ITAA 1936.

Capital benefit

91. The issue of shares in NewCo is the provision of a capital benefit pursuant to paragraph 45B(5)(a) of the ITAA 1936 as it is the provision of an ownership interest in NewCo to the Security Holders.

Tax benefit

92. A shareholder 'obtains a tax benefit', as defined in subsection 45B(9) of the ITAA 1936, if:

- the amount of tax payable, or
- any other amount payable under the ITAA 1936 or the ITAA 1997,

would, apart from the operation of section 45B of the ITAA 1936:

- be less than the amount that would have been payable, or
- be payable at a later time than it would have been payable,

if the capital benefit instead had been a dividend.

93. In the event that the issue of the shares in NewCo was a dividend rather than a capital benefit, it is likely that Australian resident Security Holders would have incurred a greater tax liability. Consequently, the receipt of the capital benefit will represent a tax benefit.

Relevant circumstances

94. For the purposes of paragraph 45B(2)(c) of the ITAA 1936, the Commissioner is required to consider the 'relevant circumstances' set out in subsection 45B(8) of the ITAA 1936 to determine whether any part of the scheme would be entered into for a purpose, other than an incidental purpose, of enabling a relevant taxpayer to obtain a tax benefit. The test of purpose is an objective one. The relevant taxpayers in this instance would be the Australian resident Security Holders.

95. Subsection 45B(8) of the ITAA 1936 includes a non-exhaustive list of relevant circumstances designed to expose both the tax and non-tax implications of the scheme in order to answer the requisite purpose question objectively, as subsection 45B(3) of the ITAA 1936 prescribes.

96. The circumstances listed in subsection 45B(8) of the ITAA 1936 fall into three broad categories which include: the position of the company and its associates in relation to capital and profit (realised and unrealised) and the culture of distribution thereof; the tax profiles of the shareholders; and the eight matters from paragraph 177D(b) of the ITAA 1936 (included at paragraph 45B(8)(k) of the ITAA 1936) that pertain to the scheme itself, including the manner and timing of its execution, its form and substance, the results it produces, financial and otherwise, and the relations of the parties involved.

97. Having regard to the relevant circumstances of the scheme, identified above, it is apparent that the tax benefit obtained by the Australian resident Security Holders from the issue of shares in NewCo is merely incidental to the scheme to restructure the AusNet Services stapled structure.

98. After consolidation of the NewCo shares, the Security Holders who obtained roll-over relief under Division 615 became the holders of a single share in NewCo with a cost base equal to the combined cost base they had in their shares in Transmission, units in Finance Trust and shares in Distribution. In addition, there has been no enhancement in value between the AusNet Services securities held by the Security Holders prior to the Restructure and the shares in NewCo after the Restructure takes place. The scheme does not attempt to extract value from AusNet Services and distribute it to the Security Holders in a tax preferred form.

99. Accordingly, it cannot be objectively concluded that the Security Holders or AusNet Services entered into the Restructure for a more than incidental purpose of enabling the Security Holders to obtain a tax benefit.

100. Consequently, the Commissioner will not make a determination under subsection 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the provision of those capital benefits to the Australian resident Security Holders.

Appendix 2 – Detailed contents list

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

	Paragraph
What this Ruling is about	1
Relevant provisions	2
Class of entities	3
Qualifications	4
Date of effect	7
Scheme	8
AusNet Services structure prior to the Restructure	9
Transmission	12
Distribution	15
Finance Trust	18
Restructure of AusNet Services	20
Detailed steps in the Restructure of AusNet Services	23
Ineligible Foreign Security Holders	32
Assumptions	36
Ruling	37
De-stapling of the AusNet Services stapled securities	37
Disposal of Transmission shares – CGT event A1	38
Disposal of Transmission shares - Division 615 roll-over	41
Division 615 roll-over is chosen	42
Division 615 roll-over is not chosen	43
Disposal of Finance Trust units – CGT event A1	45
Disposal of Finance Trust units – Division 615 roll-over	48
Division 615 roll-over is chosen	49
Division 615 roll-over is not chosen	50
Disposal of the Distribution shares – CGT event A1	52
Disposal of Distribution shares - Division 615 roll-over	55
Division 615 roll-over is chosen	56
Division 615 roll-over is not chosen	57
Acquisition time of NewCo shares if roll-over is chosen	59
Acquisition time of NewCo shares if roll-over is not chosen	60
No CGT event on the consolidation of NewCo shares	61

Consolidated NewCo shares – first element of the cost base where roll-over is chosen	62
Consolidated NewCo shares – first element of the cost base where roll-over is not chosen	64
The anti-avoidance provisions	66
<i>Part IVA of the ITAA 1936</i>	66
<i>Section 45B of the ITAA 1936</i>	67
Appendix 1 – Explanation	68
Roll-over under Division 615	68
Consolidated NewCo shares – first element of the cost base where roll-over is chosen	73
Consolidated NewCo shares – first element of the cost base where roll-over is not chosen	78
The anti-avoidance provisions	83
<i>Part IVA of the ITAA 1936</i>	83
<i>Section 45B of the ITAA 1936</i>	89
Appendix 2 – Detailed contents list	101

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- arrangement
- CGT assets
- CGT capital proceeds
- CGT cost base
- CGT event A1 - disposal of a CGT asset
- CGT reduced cost base
- CGT roll-over relief
- consolidation of shares
- de-stapling of securities
- ordinary shares
- schemes of arrangement
- stapled securities
- shares
- shareholders
- unit trusts

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