


# ***CR 2016/53 - Income tax: APN News & Media Limited - demerger of NZME Limited***

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## Class Ruling

# Income tax: APN News & Media Limited – demerger of NZME 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:

- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)
- section 44 of the ITAA 1936
- section 45 of the ITAA 1936
- section 45A 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.

All subsequent legislative references in this Ruling are to the ITAA 1997, unless otherwise stated.

## Class of entities

3. The class of entities to which this Ruling applies is shareholders of APN News & Media Limited (APN) who:

- held their ordinary shares on capital account at the time of the demerger, that is, the shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1))
- obtained one ordinary share in NZME Limited (NZME) per APN Share as a result of the demerger
- are residents of Australia (as that term is defined in subsection 6(1) of the ITAA 1936) at the time of the demerger, and
- are not subject to the taxation of financial arrangement rules in Division 230 in relation to gains and losses on their APN shares.

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

In this Ruling, a person belonging to this class of entities is referred to as an 'APN 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 8 to 40 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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7. This Ruling applies from 1 July 2015 to 30 June 2016. The Ruling continues to apply after 30 June 2016 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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8. The following description of the scheme is based on information provided by the applicant and the *Explanatory Memorandum: For the Demerger of NZME by APN* dated 11 May 2016.

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

9. The scheme that is the subject of this Ruling involves the demerger of NZME and its subsidiaries by APN. APN announced the proposed demerger on 11 May 2016. The Record date for determining entitlements to NZME Shares of APN Shareholders under the Demerger was 7.00pm 28 June 2016 (Demerger Record Date). The Demerger took effect on 29 June 2016 (Demerger Date).

### APN

10. APN is a public company whose shares became listed on the Australian Securities Exchange (ASX) on 7 May 1992. APN's shares are also listed on the New Zealand Stock Exchange (NZX). APN had 1,029,041,356 ordinary shares on issue as at 31 December 2015.

11. No shareholder owned more than 20% of the APN Shares at the time of the demerger. APN employees held less than 3% of the ownership interests in APN just before the demerger. There are no other shares or ownership interests in APN.

12. APN is a media and entertainment company. In Australia, APN owns radio business ARN which includes the KIIS and Pure Gold networks. APN's Hong Kong business, Cody, specialises in outdoor billboard advertising. In Australia and New Zealand, APN's advertising business Adshel operates a portfolio of roadside and street furniture through a joint venture with Clear Channel. APN also conducts additional businesses in New Zealand through NZME (discussed below).

13. In the Annual Report for the year ended 31 December 2015, APN disclosed the following amounts:

Contributed equity	\$1,222,780,000
Reserves	(\$137,102,000)
Accumulated losses	<u>(\$659,333,000)</u>
Total parent entity interest	\$ 426,345,000
Non-controlling interests	<u>\$ 35,180,000</u>
Total equity	\$ 461,525,000

## **NZME**

14. Wilson & Horton Limited (WHL) was renamed NZME prior to implementation of the demerger.

15. In December 2001, APN acquired WHL and its subsidiaries from Independent News and Media PLC.

16. NZME is a New Zealand incorporated entity which owns a group of regional and community newspapers including The New Zealand Herald, as well as broadcasting, printing and other publishing businesses. NZME owns 'NZME Radio' which operates more than 130 radio stations in New Zealand including Newstalk ZB, The Hits and Coast.

## **Capital raising**

17. APN announced a renounceable entitlement offer on 11 May 2016 to its existing shareholders which was completed on 7 June 2016. APN issued one APN Share for each three APN Shares on issue.

18. Following the capital raising, there were 1,372,057,507 APN Shares on issue and APN's Contributed equity increased to \$1,399,478,000.

19. Any new APN Shareholders as a result of the capital raising participated in the demerger in the same way as existing APN Shareholders.

20. The demerger and the capital raising were independent of each other. That is, one could proceed if the other did not.

21. The capital raising was undertaken to repay a portion of APN's existing corporate debt and to ensure an appropriate capital structure for the post-demerger separated groups if the demerger was to proceed.

**Shareholder meeting**

22. At the Shareholders meeting held on 16 June 2016, APN Shareholders approved:

- the Share Consolidation whereby each seven APN Shares were consolidated into one APN Share, and
- the NZME demerger.

23. Following the Share Consolidation, there were 196,011,282 APN Shares on issue.

**Pre-demerger transactions**

24. On 24 June 2016, APN undertook a restructure to effect the geographical separation of its operations by transferring the majority of its New Zealand entities and assets to NZME. The non-transferred entities and assets remained with APN including Cody, APN's Hong Kong business. Further intra-group distributions were completed to eliminate receivables between the demerged groups.

25. The pre-demerger transfer of entities and assets were undertaken at market value.

26. NZME Shares were consolidated in order to ensure the appropriate number of shares was available for distribution to APN Shareholders under the demerger.

**The demerger**

27. Pursuant to the demerger, each APN Shareholder received one (1) NZME Share for each APN Share.

28. On 29 June 2016 (Demerger Date), APN demerged NZME by making a capital reduction to APN Shareholders by way of an specie distribution to APN Shareholders of one (1) NZME Share for each APN Share. All NZME Shares were distributed to APN Shareholders (subject to the Sale Facility).

29. No APN Shares were cancelled under the demerger. APN Shareholders continued to hold the same number and proportion of APN Shares as they held before the demerger (subject to the Sale Facility). APN no longer held any shares in NZME after the demerger.

30. On 27 June 2016 NZME was listed on the NZX with a secondary listing on the ASX.

**Sale Facility**

31. A Sale Facility was made available for 'ineligible overseas shareholders' and 'small shareholders' to enable the sale of all (but not some) of their NZME Shares by APN on the ASX via a sales agent. The net proceeds from the sales were remitted to the 'ineligible overseas shareholders' and 'small shareholders'.

32. Ineligible overseas shareholders as at the Demerger Record Date were APN Shareholders that were not Eligible Shareholders. Eligible Shareholders of APN were APN Shareholders whose registered address was:

- in Australia or New Zealand, or
- in another jurisdiction in respect of which APN reasonably believed that it was not prohibited or unduly onerous or impractical to transfer NZME Shares to an APN Shareholder in that place.

33. Small shareholders as at the Demerger Record Date were APN Shareholders that held 500 APN Shares or less.

### **Accounting for the demerger distribution**

34. APN accounted for the market value of the in specie distribution of NZME Shares transferred to APN Shareholders by debiting the entire demerger distribution amount to APN's share capital account.

35. The value of the demerger distribution amount of \$141,128,123 was worked out by reference to the 5 day post-demerger Volume Weighted Average Price (VWAP) of the NZME Shares, \$0.72, as traded on the ASX and the NZX.

### **Reasons for the demerger**

36. APN's primary reason for undertaking the demerger was to separate the business geographically. The commercial rationale includes that the demerger:

- provides APN Shareholders with flexibility of investment choice and potential incremental demand from New Zealand investors
- is a natural progression for the ownership of the New Zealand operations and is consistent with APN's strategic focus of investment in growth assets
- creates two geographically focused integrated media companies which will be operated through two independent, listed companies, with fundamentally different operating models, strategies and capital requirements
- enables APN and NZME as listed companies to benefit from separate ownership and separate management and Boards
- will allow independent focus, strategic decision making and tailored capital structures and allocation frameworks, and

- will remove competition for capital resources within APN which will enhance access to growth capital as both APN and NZME see fit.

**Other matters**

37. All APN Shares were acquired or are taken to have been acquired on or after 20 September 1985 for Australian income tax purposes.

38. Immediately before the demerger, APN's share capital account was not 'tainted', within the meaning of Division 197.

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**Ruling****Capital gains tax (CGT)****CGT event G1**

39. CGT event G1 happened when APN made the payment of the capital reduction amount which was satisfied by the in specie distribution of NZME Shares (section 104-135).

40. An APN Shareholder made a capital gain when CGT event G1 happened if the capital reduction amount of \$0.72 for each APN Share exceeds the cost base of that APN Share. The capital gain is equal to the amount of the excess and the cost base and reduced cost base of the APN Share is reduced to nil (subsection 104-135(3)). No capital loss can be made when CGT event G1 happens (Note 1 to subsection 104-135(3)).

**Demerger roll over**

41. APN Shareholders can choose to obtain demerger roll over (subsection 125-55(1)).

**CGT consequences of choosing demerger roll over**

42. If an APN Shareholder chooses demerger roll over, any capital gain made when CGT event G1 happens to their APN Shares under the demerger is disregarded (subsection 125-80(1)).

43. An APN Shareholder who chooses demerger roll over must also recalculate the first element of the cost base and reduced cost base of their APN Shares, and calculate the first element of the cost base and reduced cost base of their new NZME Shares acquired under the demerger in the manner described in paragraphs 64 to 65 below (subsection 125-80(2)).

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

44. An APN Shareholder who does not choose demerger roll over:

- is not entitled to disregard any capital gain made when CGT event G1 happened under the demerger to their APN Shares, and
- must make adjustments to the cost bases and reduced cost bases of their APN Shares and NZME Shares in the manner described in paragraphs 64 to 65 below (subsections 125-85(1), 125-85(2) and 125-80(2)).

## **Acquisition date of NZME Shares**

45. For CGT purposes, an APN Shareholder acquired their NZME Shares on the Demerger Date, 29 June 2016 (subsection 109-5(2)).

46. However, for the purpose of determining eligibility to a discount capital gain, the NZME Shares acquired by an APN Shareholder as a result of the demerger are taken to have been acquired on the date the shareholder acquired, for CGT purposes, the corresponding APN Shares (Item 2 in the table in subsection 115-30(1)). This is the case whether or not the APN Shareholder chooses demerger roll over.

## **Dividend consequences**

47. No part of the in specie distribution of NZME Shares to APN Shareholders is a 'dividend' as defined in subsection 6(1) of the ITAA 1936.

## **Section 45 of the ITAA 1936**

48. Section 45 of the ITAA 1936 will not apply to treat the value of the NZME Shares received by APN Shareholders under the demerger as a dividend paid by APN which is unfrankable.

## **Section 45A of the ITAA 1936**

49. The Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies.

## **Section 45B of the ITAA 1936**

50. The Commissioner will not make a determination under paragraph 45B(3)(a) of the ITAA 1936 that section 45BA of the ITAA 1936 applies.

51. The Commissioner will not make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies.

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**Commissioner of Taxation**

20 July 2016

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## Appendix 1 – Explanation

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**ⓘ** *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 event G1

52. CGT event G1 (section 104-135) happens when:

- a company makes a payment (which may include providing property) to a shareholder in respect of a share they own in the company
- some or all of the payment (the non-assessable part) is not a dividend nor an amount that is taken to be a dividend under section 47 of the ITAA 1936, and
- the payment is not included in the shareholder's assessable income.

53. Under the demerger, APN made a payment to its shareholders in the form of an in-specie distribution of 196,011,282 NZME Shares held by APN. The full value of the in specie distribution was debited to the share capital account (that is, \$141,128,123, it is not a dividend and is not included in the assessable income of APN Shareholders).

54. Accordingly, CGT event G1 happened in relation to each APN Share owned by an APN Shareholder on the Demerger Date, 29 June 2016, when APN made the payment of the capital reduction amount which was satisfied by the in specie distribution of NZME Shares.

55. An APN Shareholder will have made a capital gain when CGT event G1 happened if the capital reduction amount of \$0.72 per APN Share exceeds the cost base of that share. The capital gain is equal to the amount of the excess and the cost base and reduced cost base of the APN Share is reduced to nil (subsection 104-135(3)). No capital loss can be made when CGT event G1 happens.

### Demerger roll over

56. APN Shareholders may obtain demerger roll over where the requirements of section 125-70 and subsection 125-55(1) are satisfied.

57. A shareholder in a company may at the time of a demerger choose to obtain a demerger roll over if:

- the shareholder owns a share in the company (the original interest)
- the company is the head entity of a demerger group
- a demerger happens to the demerger group, and

- under the demerger, a CGT event happens to the original interest and the shareholder acquires a new or replacement interest (the new interest) in the demerged entity (subsection 125-55(1)).

58. A demerger happened to the APN demerger group because:

- there was a restructuring of the APN demerger group (paragraph 125-70(1)(a))
- under the restructuring, APN disposed of at least 80% of its total ownership interests in NZME to APN Shareholders (subparagraph 125-70(1)(b)(i)), and
- under the restructure:
  - a CGT event happened in relation to the APN Shares held by the APN Shareholders and the APN Shareholders acquired new NZME Shares and nothing else (subparagraph 125-70(1)(c)(i))
  - the NZME Shares were acquired by APN Shareholders because of their ownership of interests in APN (paragraph 125-70(1)(d) and subparagraph 125-70(1)(e)(i))
  - neither APN nor NZME is a trust that is a superannuation fund (paragraph 125-70(1)(g))
  - each APN Shareholder acquired NZME Shares in the same proportion as they owned APN Shares just before the demerger (paragraph 125-70(2)(a))
  - each APN Shareholder owned, just after the demerger, the same proportionate total market value of APN and NZME Shares as they owned in APN just before the demerger (paragraph 125-70(2)(b)), and
  - subsections 125-70(4) and (5) do not apply.

59. The requirements of a demerger and the conditions for choosing demerger roll over under were satisfied in respect of the demerger (section 125-70 and subsection 125-55(1)). Accordingly, APN Shareholders are entitled to obtain demerger roll over in Division 125 for the demerger.

60. If an APN Shareholder chooses demerger roll over, they may disregard any capital gain made when CGT event G1 happened to their APN Shares under the demerger (subsection 125-80(1)).

61. If an APN Shareholder does not choose demerger roll over, they cannot disregard any capital gain made when CGT event G1 happened under the demerger.

62. Whether or not an APN Shareholder chooses the demerger roll over, they must recalculate the cost base and reduced cost base of their APN Shares and calculate the cost base and reduced cost base of their new NZME Shares in the same way (subsections 125-80(2), 125-80(3) and 125-85(2)).

63. The first element of the cost base and reduced cost base of each APN Share and the corresponding NZME Share received under the demerger is worked out as follows:

- the sum of the cost bases of each APN Share just before the demerger, and
- apportioning that sum between the APN Shares and the NZME Shares acquired under the demerger.

64. For the purposes of the cost base and reduced cost base apportionment under subsections 125-80(2) and (3), the Commissioner accepts the 5 day post-demerger VWAP of the NZME Shares, \$0.72, and of the APN Shares, \$3.95, as a reasonable approximation of the relative market value of those shares.

65. Based on the VWAP calculated in paragraph 64 above, 15.42% of the shareholder's original cost base and reduced cost base for the APN Shares becomes the first element of the cost base and reduced cost base of NZME Shares, and 84.58% becomes the first element of the cost base and reduced cost base of the APN Shares (section 125-85 and subsections 125-80(2) and (3)).

### **Example**

66. On 1 July 2012, Greg purchased 210 APN Shares for \$0.50 per share. The total cost base of Greg's APN Shares before the Share Consolidation was \$105.00. Following the approval of the Share Consolidation on 16 June 2016, Greg now holds 30 (210÷7) APN Shares with a cost base of \$3.50 (\$0.50×7) per share.

67. On 29 June 2016 (Demerger Date), APN demerged NZME by making an in-specie distribution to APN Shareholders of one NZME Share for each APN Share. As a result Greg obtained 30 NZME Shares. The post-consolidation cost base of \$3.50 per share will be apportioned between each APN Share and NZME Share as follows:

$$\begin{array}{rcl}
 \text{Cost base of consolidated APN Share} & \times & \text{VWAP ratio of APN Shares} \\
 \$3.50 & \times & 84.58\% \\
 & & = \$2.96 \text{ per APN Share}
 \end{array}$$

$$\begin{array}{rcl}
 \text{Cost base of consolidated APN Share} & \times & \text{VWAP ratio of NZME Shares} \\
 \$3.50 & \times & 15.42\% \\
 & & = \$0.54 \text{ per NZME Share}
 \end{array}$$

**Dividend consequences**

68. The term 'dividend' is defined in subsection 6(1) of the ITAA 1936 and includes any distribution made by a company to any of its shareholders whether in money or other property. However, paragraph (d) of the definition of 'dividend' excludes a distribution that is debited against an amount standing to the credit of the share capital account of the company.

69. An account is not a share capital account if it is tainted (subsection 975-300(3)). APN has confirmed that its share capital account was not tainted immediately before the demerger.

70. The demerger of NZME was implemented by way of APN making an in specie distribution of NZME Shares to APN Shareholders. The full amount of the total market value of NZME Shares distributed to APN Shareholders was debited against an amount standing to the credit of APN's share capital account which was not tainted within the meaning of Division 197.

71. Therefore the in specie distribution of NZME Shares is not a dividend.

**Section 45 of the ITAA 1936**

72. Section 45 of the ITAA 1936 applies where a company streams the provision of shares and the payment of minimally franked dividends to its shareholders in such a way that the shares are received by some shareholders and minimally franked dividends are received by other shareholders. Minimally franked dividends are dividends which are franked to less than 10% (subsection 45(3) of the ITAA 1936).

73. All APN Shareholders received one NZME Share for each APN Share owned. A sales agent received NZME Shares on behalf of ineligible overseas shareholders and eligible small shareholders. The net proceeds from the Sale Facility were or will be remitted to these shareholders as consideration for the sale of the NZME Shares on their behalf.

74. Therefore, section 45 of the ITAA 1936 will not apply to the provision of NZME Shares to APN Shareholders under the demerger.

**Section 45A of the ITAA 1936**

75. Subsection 45A(1) of the ITAA 1936 applies where capital benefits are streamed to certain shareholders who derive a greater benefit from the receipt of capital benefits (the advantaged shareholders), and it is reasonable to assume that the other shareholders (the disadvantaged shareholders) have received, or will receive, dividends.

76. Although APN provides its shareholders with a 'capital benefit' as defined in paragraph 45A(3)(b) of the ITAA 1936 in the form of NZME Shares, the capital benefit was provided to each APN Shareholder in the same proportion as their respective shareholding in APN. Consequently, there are no advantaged nor disadvantaged shareholders as contemplated by subsection 45A(1) of the ITAA 1936.

77. Accordingly, the Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies.

## **Section 45B of the ITAA 1936**

78. Section 45B of the ITAA 1936 applies where certain payments, allocations and distributions are made to shareholders in substitution for dividends. In the event of demergers, section 45B also applies where the components of a demerger allocation as between capital and profit do not reflect the circumstances of the demerger.

79. In broad terms, there needs to be a scheme in which, having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into the scheme, carried out the scheme, or any part of the scheme, did so for a purpose, other than an incidental purpose, of enabling the relevant taxpayer to obtain a tax benefit.

80. The in specie distribution of NZME Shares to APN Shareholders under the demerger is the provision of a demerger benefit and, to the extent the value of NZME Shares was debited to APN's share capital account, is also the provision of a capital benefit (paragraphs 45B(2)(a), 45B(4)(a) and 45B(5)(a), and subsection 45B(6) of the ITAA 1936).

81. As the provision of NZME Shares will generally result in a lesser amount of tax payable to APN Shareholders than the amount that would be payable if the provision of those shares was instead an assessable dividend, APN shareholders will obtain a tax benefit (paragraph 45B(2)(b) and subsection 45B(9) of the ITAA 1936).

82. The relevant circumstances of the scheme which the Commissioner is required to have regard in determining whether or not the requisite purpose exists are set out in subsection 45B(8) of the ITAA 1936.

83. Having regard to the relevant circumstances, the Commissioner considers that the requisite purpose of enabling one or more APN Shareholders or other taxpayers to obtain a tax benefit did not exist.

84. Accordingly, section 45B of the ITAA 1936 will not apply to the demerger and 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 the demerger benefit provided to APN Shareholders under the demerger, and
- 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 APN Shareholders under the demerger.

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

85. 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 2006/10

*Legislative references:*

- ITAA 1936
  - ITAA 1936 6(1)
  - ITAA 1936 44
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