

CR 2017/3 - Income tax: Intecq Limited - Scheme of Arrangement



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Class Ruling

Income tax: Intecq Limited – Scheme of Arrangement

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	7
Scheme	8
Ruling	24
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
Explanation	31
Appendix 2:	
Detailed contents list	47

① This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:
- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997)
 - Division 115 of the ITAA 1997
 - subsection 116-20(1) of the ITAA 1997
 - subsection 855-10(1) of the ITAA 1997, and
 - section 855-15 of the ITAA 1997.

All legislative references in this Ruling are to provisions of the ITAA 1997 unless specified otherwise.

Class of entities

3. The class of entities to which this Ruling applies are the ordinary shareholders of Intecq Limited (Intecq) shares who:

- were registered on the Intecq share register on 9 December 2016 (Scheme Record Date)
- participated in the scheme of arrangement (the Scheme) under which Tabcorp acquired 100% of the shares in Intecq
- received the Scheme Consideration pursuant to the Scheme
- held their Intecq shares on capital account, that is, the shares are neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)), and
- are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their Intecq 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, an entity belonging to this class of entities is referred to as an 'Intecq 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 24 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 2016 to 30 June 2017. The Ruling continues to apply after 30 June 2017 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.

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

Relevant Entities

Intecq Limited

9. Intecq Limited (Intecq) is a public company listed on the Australian Securities Exchange (ASX). Intecq was incorporated in Australia on 22 June 1992.

10. The Intecq group is a gaming technology company which develops and markets a range of networked solutions for electronic gaming machines, including gaming management and loyalty systems, Licensed Monitoring Operator services and business intelligence tools and expertise.

11. Intecq provides products and services to venues which operate electronic gaming machines across Australia and parts of the Asia-Pacific region.

12. As at 23 August 2016 (the Class Ruling application date), the Intecq share capital structure consisted of:

- 17,634,492 fully paid shares which are officially quoted on the stock market conducted by the ASX, and
- 239,195 performance rights which will be issued as fully paid shares pursuant to employee incentive arrangements prior to the scheme of arrangement being implemented.

13. The shareholders in Intecq are a mix of individuals, companies, superannuation funds and other institutional investors, some of whom are foreign residents.

Tabcorp Holdings Limited

14. Tabcorp Holdings Limited (Tabcorp) is a public company incorporated in Australia that was listed on the ASX in August 1994. Tabcorp Gaming Holdings Pty Ltd (Tabcorp Gaming) is a 100% owned subsidiary of Tabcorp. It is limited by shares and a company incorporated in Australia.

The Scheme

15. On 1 August 2016, Intecq and Tabcorp announced in the ASX that they had entered into a Scheme Implementation Agreement (SIA) under which Tabcorp, through Tabcorp Gaming, proposed to acquire all of the Intecq shares on issue by way of a scheme of arrangement under the *Corporations Act 2001*.

16. The Scheme is subject to certain terms and conditions which are set out in the SIA including, but not limited to, approval from the shareholders of Intecq, ASIC, the Court, gaming regulators and other regulatory approvals including ACCC approval.

17. The Scheme was implemented on 16 December 2016, the Scheme Implementation Date.

Scheme Consideration

18. Following implementation of the Scheme, Intecq Shareholders received total cash of \$7.15 (Scheme Consideration) for each Intecq share held at the Scheme Record Date.

19. The Scheme Consideration represents:

- a 31% premium to the ASX closing share prices of Intecq shares of A\$5.44 on 29 July 2016
- a 31% premium to the \$5.47 one month volume weighted average ASX share price of Intecq shares, and
- a 32% premium to the \$5.40 three months volume weighted average ASX share price of Intecq shares,

up to and including 29 July 2016, being the last trading day prior to the announcement of the Scheme on 1 August 2016.

20. The Intecq Board did not declare or pay any dividends prior to implementation of the Scheme.

21. Under the Scheme, the Intecq Shareholders received the Scheme Consideration in respect of the Intecq shares they held as at the Scheme Record Date.

22. The Scheme Consideration was paid on the Scheme Implementation Date being 16 December 2016.

23. Following the Scheme Implementation Date, Intecq must apply:

- for termination of the official quotation of Intecq shares on ASX, and
- to have itself removed from the official list of ASX.

Ruling

Capital gains tax (CGT) consequences

CGT event A1

24. CGT event A1 happened when an Intecq Shareholder disposed of their Intecq shares to Tabcorp Gaming under the Scheme on the Scheme Implementation Date of 16 December 2016 (section 104-10).

Capital gain or capital loss

25. An Intecq Shareholder will make a capital gain if the capital proceeds from the disposal of Intecq shares exceed the cost base of the shares (subsection 104-10(4)). The capital gain is the amount of the excess.

26. An Intecq Shareholder will make a capital loss if the capital proceeds are less than the reduced cost base of the Intecq shares (subsection 104-10(4)). The capital loss is the amount of the difference.

Capital proceeds

27. The capital proceeds for CGT event A1 happening to an Intecq Shareholder is the money received or entitled to be received in respect of the event happening (paragraph 116-20(1)(a)).

28. The capital proceeds received by an Intecq Shareholder who disposed of Intecq shares pursuant to the Scheme was \$7.15 per share.

Discount capital gain

29. A capital gain made by an Intecq Shareholder when the Intecq shares were disposed of under the Scheme is a discount capital gain if the shareholder acquired the shares at least 12 months before the date of disposal, that is, on 16 December 2016, being the Scheme Implementation Date, and the other conditions in Division 115 are satisfied.

Non-resident shareholders

30. A non-resident Intecq Shareholder who disposed of their Intecq shares under the Scheme, disregards any capital gain or capital loss made when CGT event A1 happened if the shares were not 'taxable Australian property' (section 855-10).

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

CGT event A1

31. CGT event A1 happens when an entity disposes of a CGT asset. This occurs when there is a change in the ownership of a CGT asset from one entity to another. The time of CGT event A1 is when the disposing entity enters into a contract for the disposal, or if there is no contract, when the change of ownership occurs (subsections 104-10(1), 104-10(2) and 104-10(3)).

32. The disposal of Intecq shares under the Scheme is not under a contract.

33. CGT event A1 happened when an Intecq Shareholder disposes of their Intecq shares under the Scheme pursuant to the Scheme Implementation Agreement (SIA) (subsections 104-10(1) and 104-10(2)). The disposal happened when the change of ownership occurred on 16 December 2016, that is the Scheme Implementation Date (paragraph 104-10(3)(b)).

34. The time when CGT event A1 happened determines the year of income in which an Intecq Shareholder makes a capital gain or a capital loss, and may affect whether the shareholder is entitled to the CGT discount for any capital gain or capital loss made.

35. An Intecq Shareholder makes a capital gain when CGT event A1 happened if the capital proceeds from the disposal of their Intecq shares were more than the cost base of their Intecq shares. An Intecq Shareholder makes a capital loss if the capital proceeds were less than the reduced cost base of their Intecq shares (subsection 104-10(4)).

Capital proceeds

36. The capital proceeds for the disposal of an Intecq share under the Scheme is the money the Intecq Shareholder received, or was entitled to receive, '... in respect of the event happening' and '...the market value of any other property...' (subsection 116-20(1)).

37. The term '... in respect of the event happening' in subsection 116-20(1) requires that the relationship between the CGT event and the receipt of money, or entitlement to receive money, must be more than coincidental or caused simply by temporal proximity. An amount is not included in the capital proceeds from a CGT event merely because it is received in association with the event.

38. Intecq Shareholders participating in the Scheme received total cash of \$7.15 per Intecq share in accordance with the Scheme.

39. Intecq Shareholders did not receive any other property.

40. Accordingly, an Intecq Shareholder received capital proceeds of \$7.15 per Intecq share pursuant with the Scheme.

Discount capital gain

41. Division 115 provides a CGT discount that reduces the amount of CGT otherwise payable by a taxpayer by the relevant discount percentage in accordance with Subdivision 115-B. Only discount capital gains are eligible for the CGT discount.

42. To be eligible to treat a capital gain as a discount capital gain, the capital gain must:

- (a) be made by an individual, a complying superannuation entity, a trust or (in certain circumstances) a life insurance company (section 115-10)
- (b) result from a CGT event happening after 11.45am legal time in the Australian Capital Territory on 21 September 1999 (section 115-15)
- (c) have been worked out using a cost base that was not subject to indexation (subsection 115-20(1)), and
- (d) result from a CGT event happening to a CGT asset that was acquired by the entity at least 12 months before the CGT event (subsection 115-25(1)).

43. Where an Intecq Shareholder made a capital gain when they disposed of a Intecq share, the capital gain may be treated as a discount capital gain if the Intecq share was acquired at least 12 months before 16 December, (Scheme Implementation Date) when the shares were disposed of pursuant to the Scheme, subject to the other requirements listed in paragraph 43 of this Explanation being satisfied.

Non-resident shareholders

44. Under subsection 855-10(1), an entity disregards a capital gain or capital loss from a CGT event if the entity is a non-resident, or the trustee of a foreign trust for CGT purposes, just before the CGT event happens and the CGT event happens in relation to a CGT asset that is not 'taxable Australian property'.

45. The term 'taxable Australian property' is defined in the table in section 855-15. The table sets out these five categories as follows:

Item 1	taxable Australian real property
Item 2	an indirect Australian real property interest not covered by item 5

Item 3	a CGT asset used at any time in carrying on a business through a permanent establishment in Australia and which is not covered by item 1, 2 or 5
Item 4	an option or right to acquire a CGT asset covered by item 1, 2 or 3, and
Item 5	a CGT asset that is covered by subsection 104-165(3) (choosing to disregard a gain or loss on ceasing to be an Australian resident).

46. However, a non-resident or the trustee of a foreign trust for CGT purposes cannot disregard, under subsection 855-10(1), a capital gain from CGT event A1 if just before the CGT event happens:

- their Intecq shares were an 'indirect Australian real property interest' not covered by item 5 (item 2 of the table in section 855-15 of the ITAA 1997)
- their Intecq shares had been used at any time by the non-resident in carrying on a business through a permanent establishment in Australia (item 3 of the table in section 855-15 of the ITAA 1997), or
- their Intecq shares were covered by subsection 104-165(3) of the ITAA 1997 (item 5 of the table in section 855-15 of the ITAA 1997).

Appendix 2 – Detailed contents list

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

	Paragraph
What this Ruling is about	1
Relevant provision(s)	2
Class of entities	3
Qualifications	4
Date of effect	7
Scheme	8
Relevant Entities	9
<i>Intecq Limited</i>	9
<i>Tabcorp Holdings Limited</i>	14
The Scheme	15
Scheme Consideration	18
Ruling	24
Capital Gains Tax (CGT) consequences	24
<i>CGT event A1</i>	24
<i>Capital gain or capital loss</i>	25
<i>Capital proceeds</i>	27
<i>Discount capital gain</i>	29
<i>Non-resident shareholders</i>	30
Appendix 1 – Explanation	31
CGT consequences	31
<i>CGT event A1</i>	31
<i>Capital proceeds</i>	36
<i>Discount capital gain</i>	41
<i>Non-resident shareholders</i>	44
Appendix 2 – Detailed contents list	47

References

Previous draft:

Not previously issued as a draft

- ITAA 1997 Div 115
- ITAA 1997 Subdiv 115-B
- ITAA 1997 115-10

Related Rulings/Determinations:

TR 2006/10

- ITAA 1997 115-15
- ITAA 1997 115-20(1)
- ITAA 1997 115-25(1)
- ITAA 1997 116-20

Legislative references:

- ITAA 1997
 - ITAA 1997 104-10
 - ITAA 1997 104-10(1)
 - ITAA 1997 104-10(2)
 - ITAA 1997 104-10(3)
 - ITAA 1997 104-10(3)(b)
 - ITAA 1997 104-10(4)
 - ITAA 1997 104-165(3)
 - ITAA 1997 116-20(1)
 - ITAA 1997 855-10
 - ITAA 1997 855-10(1)
 - ITAA 1997 855-15
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - TAA 1953
 - Corporations Act 2001
-

ATO references

NO: 1-9P2C57G

ISSN: 2205-5517

BSL: PGI

ATOlaw topic: Income tax ~~ Assessable income ~~ Dividend, interest and royalties ~~ Dividend income
Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT event A1 - disposal of a CGT asset
Income tax ~~ Capital gains tax ~~ Capital proceeds
Income tax ~~ Capital gains tax ~~ Cost base and reduced cost base

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