


CR 2017/39 - Income tax: Henderson Group plc - consolidation of shares and of ASX CHESS Depositary Interests

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Class Ruling

Income tax: Henderson Group plc – consolidation of shares and of ASX CHESS Depositary Interests

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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* (TAA).

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.

Summary – 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 dealt with in this Ruling are:

- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 112-25 of the ITAA 1997
- Division 115 of the ITAA 1997
- section 116-20 of the ITAA 1997.

All 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 are the shareholders of Henderson Group plc (Henderson) and/or persons who held ASX CHESS Depositary Interests (CDIs) that represent a Henderson share and who:

- (a) are residents of Australia (as defined in subsection 6(1) of the ITAA 1936)
- (b) did not hold their Henderson shares and/or CDIs as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)) – that is, they held their Henderson shares and/or CDIs on capital account
- (c) had their Henderson shares and/or CDIs consolidated under the scheme described below, and
- (d) were not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their Henderson shares and/or CDIs.

Note: Division 230 will generally not apply to individuals unless they have made an election for it to apply to them.

4. In this Ruling, a person belonging to this class of entities may be referred to as a 'Henderson shareholder' or 'Henderson CDI holder'. The class of persons to which this Ruling applies does not include Henderson.

Qualifications

5. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

6. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 9 to 28 of this Ruling.

7. 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

8. This Ruling applies to the income year ending 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

9. The following description of the scheme is based on information provided by the applicant and includes the application for a Class Ruling received on 16 March 2017.

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. Henderson is incorporated in Jersey and is a resident of the United Kingdom for tax purposes.

11. Henderson ordinary shares were listed and traded on the London Stock Exchange (LSE).

12. Henderson also has CHESS Depositary Interests (CDIs) quoted and traded on the financial market operated by ASX Limited (ASX). Each CDI corresponds to a share in Henderson.

CDI trading mechanism

13. The ASX Clearing House Electronic Sub-register System (CHESS) facilitates the paperless transfer of legal title and settlement of transactions on the ASX. However, CHESS cannot be used directly for the transfer of securities of companies domiciled in certain countries whose laws have the effect that CHESS cannot be used for transferring or holding legal title to securities.

14. To overcome this difficulty, a special depositary receipt in the form of CDIs was developed as a method of transferring and holding foreign securities in CHESS, thereby allowing interests in underlying foreign securities to be listed and traded on the ASX with each CDI representing an equivalent underlying foreign security.

15. The establishment of the Henderson CDI enabled investors to hold and electronically transfer their interests in Henderson shares through the CHESS platform which they would not be able to do if they held Henderson shares directly.

16. CDIs are units of beneficial ownership in underlying securities which are legally held by an Australian depositary entity, in Henderson's case, CHESS Depositary Nominees Pty Limited (CDN) which is a wholly-owned subsidiary of ASX Limited. CDN is registered as the legal owner of the shares on Henderson's share register that correspond to each CDI.

Shareholding

17. As at 30 April 2017, Henderson had:

- 1,131,842,110 ordinary shares on issue to 43,927 security holders
- 762,232,036 of those ordinary shares held by CDN, and
- CDIs held by 39,341 CDI holders.

Merger

18. On 30 May 2017, Henderson and Janus Capital Group Inc. (a US-based public company listed on the New York Stock Exchange) merged and Henderson was renamed Janus Henderson Group plc (Janus Henderson).

19. Henderson shares were de-listed from the LSE and Janus Henderson shares were admitted for trading on the New York Stock Exchange (NYSE).

20. CDIs (in renamed Janus Henderson) remain listed on the ASX.

Share consolidation and CDI consolidation

21. Immediately prior to the merger taking effect, Henderson consolidated its shares on a one-for-ten basis. Fractional entitlements were not rounded.

22. The share consolidation was undertaken in compliance with Jersey companies law such that:

- a shareholder's original shares were not cancelled and new shares issued
- there was no change in the total amount allocated to the Henderson share capital account, and
- the proportion of equity owned by each shareholder in the share capital account was maintained.

23. After the share consolidation, Henderson shareholders owned fewer shares that are proportionately higher priced. The share consolidation had no effect on the value of each shareholding relative to the total market value of Henderson.



24. Commensurate with the share consolidation, CDN also consolidated the Henderson CDIs on a one-for-ten basis. Fractional entitlements were not rounded.

Cash for fractional entitlement

25. Henderson shareholders and CDI holders whose original holding of Henderson shares and CDIs could not be consolidated into a whole number of new Henderson shares and CDIs were left with a fractional entitlement to one new share.

26. The Henderson shares that made up these fractional entitlements were aggregated and sold in the market for the best price reasonably obtainable on behalf of the relevant Henderson shareholders or Henderson CDI holders.

27. The net proceeds of the sale of those Henderson shares, after the deduction of the expenses of the sale, were paid in due proportion to the relevant Henderson shareholders or Henderson CDI holders. A Henderson CDI holder was paid the amount they would have received for their fractional entitlement had they been a direct holder of the relevant Henderson shares for the purposes of the share consolidation.

28. The value of any fractional entitlement to any one shareholder or CDI holder would not exceed the value of one new Janus Henderson share when the relevant shares are sold.

Ruling

Share consolidation and CDI consolidation

No CGT event

29. The original Henderson shares and Henderson CDIs that were able to be consolidated into a whole number of new shares and CDIs (on the one-for-ten basis) did not result in a CGT event happening in relation to those original shares and CDIs (paragraph 112-25(4)(a)). Accordingly, a Henderson shareholder or CDI holder does not make a capital gain or capital loss from the consolidation of their original shares or CDIs.

Cost base

30. Each element of the cost base and reduced cost base of the new shares and CDIs (at the time of the consolidation) is the sum of the corresponding elements of each original share and CDI (paragraph 112-25(4)(b)).

Acquisition date

31. The new consolidated shares and CDIs have the same date of acquisition as the corresponding original shares and CDIs had.

Fractional entitlement

CGT event

32. CGT event A1 happened as a result of the disposal of the shares that made up the fractional entitlement under the scheme described in this Ruling (subsection 104-10(1)).

33. The time of the event was when the relevant shares were sold on the 31 May 2017 (Australian time) under the scheme (paragraph 104-10(3)(b)).

Capital gain or loss

34. A Henderson shareholder or CDI holder made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a Henderson share exceeded its cost base. A Henderson shareholder or CDI holder made a capital loss if those capital proceeds were less than its reduced cost base (subsection 104-10(4)).

Capital proceeds

35. The capital proceeds for Henderson shareholders and CDI holders are the cash proceeds received or entitled to be received for their fractional entitlement (subsection 116-20(1)).

Cost base and reduced cost base

36. The cost base or reduced cost base is the existing cost base or reduced cost base of the parcel of unconsolidated Henderson shares or CDIs that made up a holders fractional entitlement.

Discount capital gains

37. A Henderson shareholder or CDI holder who made a capital gain from their fractional entitlement may be eligible to treat the gain as a 'discount capital gain' provided that they satisfy the requirements of Division 115.

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.*

Share consolidation – CGT consequences

38. A CGT event will not happen to a shareholder if a company converts its shares into a larger or smaller number of shares provided the original shares were not cancelled or redeemed and new shares were issued in exchange (section 112-25).

39. No shares in Henderson were cancelled as a result of the consolidation of Henderson shares and there was no change to Henderson's share capital. There was no change to the proportionate interests held by each shareholder.

40. While there was a change in the form of the original shares, there was no change in their beneficial ownership.

41. Therefore, no CGT event occurred as a result of the share consolidation.

42. The same view is taken in relation to the consolidation of the Henderson CDIs.

43. The CGT cost base and acquisition date of the new consolidated shares or CDIs is set out at paragraphs 29 and 31.

Fractional entitlement – CGT consequences

CGT event A1

44. CGT event A1 happened when Henderson sold the Henderson shares on the market on behalf of shareholders (including the Henderson shares represented by the Henderson CDIs) that corresponded to fractional entitlements of shares under the scheme because this involved a change in the ownership of those shares from the original shareholder to another entity (including a change in their beneficial ownership) (section 104-10).

45. Accordingly, the CGT consequences set out at paragraphs 32 to 37 apply.

Discount capital gains

46. A Henderson shareholder and CDI holder who made a capital gain from their fractional entitlement is eligible to treat the capital gain as a 'discount capital gain' provided that:

- the Henderson shareholder or CDI holder is an individual, complying superannuation entity or, subject to the rules in Subdivision 115-C, a trust (section 115-10)

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- the capital gain has been worked out using a cost base that has been calculated without reference to indexation at any time (subsection 115-20(1)), and
- the relevant Henderson shares or CDIs had been acquired at least 12 months before the CGT event.

Appendix 2 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Legislative references:

- ITAA 1997 112-25
- ITAA 1997 Div 115
- ITAA 1997 115-10
- ITAA 1997 115-20(1)
- ITAA 1997 Sub Div 115-C
- ITAA 1997 Div 116
- ITAA 1997 116-20
- ITAA 1997 116-20(1)
- ITAA 1936
- ITAA 1936 6(1)
- ITAA 1997
- ITAA 1997 104-10
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(3)(b)
- ITAA 1997 104-10(4)
- ITAA 1997 116-30
- ITAA 1997 Div 230
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- TAA 1953

ATO references

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Income tax ~~ Capital gains tax ~~ Discount capital gains
Income tax ~~ Capital gains tax ~~ Exemptions ~~ Other

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