


CR 2020/10 - Cardno Limited - demerger of Intega Limited

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Class Ruling

Cardno Limited – demerger of Intega Limited

❶ Relying on this Ruling

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

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

Table of Contents	Paragraph
What this Ruling is about	1
Who this Ruling applies to	4
When this Ruling applies	6
Ruling	7
Scheme	23
Appendix – Explanation	46

What this Ruling is about

1. This Ruling sets out the income tax consequences of the demerger by Cardno Limited (Cardno) of Intega Limited (Intega), which was implemented on 31 October 2019 (Implementation Date).
2. Full details of this demerger are set out in paragraphs 23 to 45 of this Ruling.
3. All legislative references are to provisions of the *Income Tax Assessment Act 1997* unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you held ordinary shares in Cardno and you:
 - were listed on the share register of Cardno as at 7.00pm (AEDT time) on 23 October 2019 (the Record Date)
 - did not hold your shares in Cardno as revenue assets (as defined in subsection 977-50) nor as trading stock (as defined in subsection 995-1(1)) on the Record Date, that is, you held your shares on capital account, and
 - are a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) on the Implementation Date.

5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 23 to 45 of this Ruling.

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

When this Ruling applies

6. This Ruling applies from 1 July 2019 to 30 June 2020.

Ruling

CGT consequences

CGT event G1

7. CGT event G1 happened at the time the payment of the capital reduction amount was satisfied by way of an *in specie* distribution of an Intega share to you in respect of each share you owned in Cardno (section 104-135).

Capital gain

8. You will make a capital gain from CGT event G1 happening if the capital reduction amount for each Cardno share, \$0.8803, is more than the cost base of the Cardno share. If so, the capital gain is equal to the amount of the excess. No capital loss can be made from CGT event G1 (Note 1 to subsection 104-135(3)).

Demerger roll-over is available

9. Cardno and its subsidiary Intega were part of a demerger group for which Cardno was the head entity under subsection 125-65(1).

10. A demerger, as defined in section 125-70, happened to the demerger group under the scheme described in paragraphs 23 to 45 of this Ruling.

11. You can choose to obtain demerger roll-over under subsection 125-55(1) for your Cardno shares.

Choosing demerger roll-over

12. If you choose demerger roll-over for your Cardno shares:

- any capital gain you made when CGT event G1 happened to your Cardno shares under the demerger is disregarded (subsection 125-80(1))
- your Intega shares were acquired on the Implementation Date (section 109-5) except for the purpose of determining an entitlement to make a discount capital gain in relation to a subsequent CGT event that happens to the Intega shares – see paragraph 17 of this Ruling, and
- you must recalculate the first element of the cost base and reduced cost base of your Cardno shares, and calculate the first element of the cost base and reduced cost base of the corresponding Intega shares you acquired

under the demerger (subsection 125-80(2)) – see paragraphs 13 to 15 of this Ruling.

13. The first element of the cost base and reduced cost base of each Cardno share and corresponding Intega share is worked out by:

- taking the total of the cost bases of your Cardno shares just before the demerger, and
- apportioning that total between your Cardno shares and your Intega shares acquired under the demerger.

14. The apportionment of this total is done on a reasonable basis having regard to the market values (just after the demerger) of the Cardno shares and the Intega shares, or an anticipated reasonable approximation of those market values (subsections 125-80(2) and 125-80(3)).

15. The Commissioner accepts that a reasonable apportionment is to:

- attribute 49.94% of the total of the cost bases of the Cardno shares just before the demerger to the Cardno shares, and
- attribute 50.06% of the total of the cost bases of the Cardno shares just before the demerger to the corresponding Intega shares.

Not choosing demerger roll-over

16. If you do not choose demerger roll-over for your Cardno shares you:

- cannot disregard any capital gain you made when CGT event G1 happened to your Cardno shares under the demerger, and
- must recalculate the first element of the cost base and reduced cost base of your Cardno shares, and calculate the first element of the cost base and reduced cost base of the corresponding Intega shares you acquired under the demerger (subsections 125-85(1) and 125-85(2)) – see paragraphs 13 to 15 of this Ruling.

Acquisition date for Intega shares for the purpose of making a discount capital gain

17. For the purpose of determining whether you can make a discount capital gain from a future CGT event that happens to an Intega share you acquired under the demerger, you will be taken to have acquired the Intega share on the date you acquired, for CGT purposes, the corresponding Cardno share (table item 2 of subsection 115-30(1)). This will be the case whether or not you choose demerger roll-over.

Dividend consequences

18. No part of the value of an Intega share transferred to you under the demerger will be included in your assessable income under section 44 of the ITAA 1936 (subsection 6(1) of the ITAA 1936 definitions of 'dividend' and 'demerger dividend', subsections 44(3), 44(4) and 44(5) of the ITAA 1936).

The application of sections 45, 45A, 45BA and 45C

19. Section 45 of the ITAA 1936 will not apply in relation to the distribution of Intega shares to you.

20. The Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole, or any part, of the capital benefits provided to you under the demerger.

21. 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 you under the demerger.

22. The Commissioner will not make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole, or any part, of the capital benefit provided to you under the demerger.

Scheme

23. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

Cardno

24. Cardno is an Australian resident public company listed on the Australian Securities Exchange (ASX) since 20 May 2004 and the head company of an income tax consolidated group for the purposes of Part 3-90.

25. Before the demerger, Cardno's diverse services business delivered infrastructure, environmental and social solutions as well as materials testing and quality assurance for clients across a broad range of sectors.

26. Immediately before the demerger, Cardno had on issue:

- 444,749,495 fully paid ordinary shares, and
- a number of performance rights and options issued under the Cardno employee share scheme (ESS interests), representing less than 2.3% of the total value of ownership interests in Cardno.

Intega

27. Before the demerger, Intega was a wholly-owned subsidiary of Cardno and a member of the Cardno tax consolidated group.

28. Immediately before the demerger, Cardno held 100% of the number of shares Intega had on issue.

29. The entities subject to the demerger are the Intega subsidiaries which carry on the businesses of materials testing and quality assurance.

The demerger of Intega

30. The demerger of Intega was undertaken by a reduction of share capital under section 256B of the *Corporations Act 2001* (Corporations Act) and a court approved scheme of arrangement under Part 5.1 of the Corporations Act.

31. The shareholders of Cardno voted at a meeting on 10 October 2019 to approve an ordinary resolution under section 256C of the Corporations Act to reduce the share capital of Cardno by an amount equal to the market value of Intega (as a proportion of the combined market values of Intega and Cardno, calculated by reference to the VWAP of Intega shares and Cardno shares for the first five trading days after the demerger as a proportion of the amount of the issued capital of Cardno). The reduction of share capital equates to \$0.8803 per Cardno share.
32. On the Implementation Date, payment of the amount of the reduction of share capital (capital reduction amount) (which the shareholders of Cardno were entitled to) was satisfied by an in specie transfer of all of the shares in Intega to the shareholders of Cardno (Distribution).
33. The Cardno shareholders received one Intega share for each Cardno share they held on the Record Date.
34. Shares in Intega were listed for quotation on the ASX on 22 October 2019 and commenced trading on a deferred settlement basis. Normal trading of Intega shares commenced on the ASX on 1 November 2019.
35. No Cardno shares were cancelled under the demerger. Cardno shareholders continued to hold the same number and proportion of Cardno shares as they held before the demerger (subject to the Sale Facility discussed at paragraph 38 of this Ruling). Cardno no longer held any shares in Intega after the demerger.
36. Under the demerger, Cardno shareholders acquired shares in Intega and nothing else.
37. The demerger was not legally or economically conditional on any other transaction occurring.

Sale facility

38. 'Ineligible Foreign Holders', as defined in section 6.6 of the Scheme Booklet, had the Intega shares to which they were otherwise entitled to under the demerger transferred to a sale agent on the ASX (Sale Facility). The shares of Ineligible Overseas Shareholders were transferred to the sale agent on the Implementation Date and the sale agent remitted the sale proceeds to the relevant shareholders.
39. Pursuant to clause 6.6 of the Scheme Booklet, small Cardno shareholders, being eligible shareholders who held 5,000 Cardno shares or less as at the Record Date, were able to choose to participate in the Sale Facility. The shares of participating small Cardno shareholders were transferred to the sale agent on the Implementation Date and the sale agent remitted the sale proceeds of the Intega shares to which the participating small shareholders were entitled.

Accounting for the demerger

40. Cardno accounted for the market value of the Distribution by debiting it entirely to Cardno's share capital account.
41. The Distribution in the amount of \$240,209,720 was worked out by reference to the 5-day Volume Weighted Average Price (VWAP) of the Intega shares, \$0.5401, as traded on the ASX on a deferred settlement basis from (and including) 24 October 2019.

Reasons for the demerger

42. Cardno considered the demerger would:
- eliminate commercial conflicts within Cardno
 - enable Cardno and Intega, under their separate boards and management teams, to pursue their own growth agendas and strategic priorities in accordance with their different operational risk and return profiles
 - increase transparency internally and externally, allowing for more effective management oversight
 - greater future access to capital and debt markets based on specific company make up, and
 - deliver to shareholders an investment choice depending on their individual investment objectives and strategies.

Other matters

43. Immediately before the demerger, Cardno confirmed that its share capital account was not tainted (within the meaning of Division 197).

44. Cardno did not elect under subsection 44(2) that subsections 44(3) and (4) of the ITAA 1936 will not apply to the demerger.

45. ESS interests in Cardno have been issued in accordance with Division 83A and are interests to which either Subdivision 83A-B or Subdivision 83A-C applies.

Commissioner of Taxation

19 February 2020

Appendix – Explanation

❶ *This Explanation 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.*

Table of Contents	Paragraph
CGT consequences	46
Dividend consequences	51
The application of sections 45, 45A, 45BA and 45C	57

CGT consequences

46. Demerger roll-over enables a shareholder to choose to disregard a capital gain made as a result of a CGT event that happens to their shares in the original company under a demerger.

47. The demerger roll-over provisions in Division 125 contain a number of conditions for eligibility to choose the roll-over. The main conditions that are relevant to the scheme that is the subject of this Ruling are:

- (a) a shareholder owns a share in a company – this requirement was satisfied as the shareholders owned shares in Cardno
- (b) the company is the head entity of a demerger group – this requirement was satisfied as Cardno was the head entity of a demerger group just before the Distribution
- (c) a demerger (as defined in subsection 125-70(1)) happens to the demerger group because there is a restructuring of the demerger group – this requirement was satisfied as Cardno disposed of 100% of its ownership interests in Intega, and
- (d) under the restructuring of the demerger group, a CGT event happens to the share and a shareholder acquires a new or replacement interest in the demerged entity and nothing else – this requirement is satisfied because CGT event G1 happened to the Cardno shares and Cardno shareholders only received Intega shares under the restructuring.

48. For the purposes of the cost base and reduced cost base apportionment under subsections 125-80(2) and (3), the Commissioner accepts the volume weighted average prices of \$0.5401 for the Intega shares and \$0.5389 for the Cardno shares, as traded on the ASX on a deferred settlement basis over the first five trading days from (and including) 24 October 2019, as a reasonable approximation of the relative market value of those shares.

49. The apportionment of cost bases in paragraph 15 of this Ruling is based on the volume weighted average prices mentioned in paragraph 48 of this Ruling.

50. The Ruling section provides a detailed explanation of the consequences of demerger roll-over.

Dividend consequences

51. Subsection 44(1) of the ITAA 1936 includes in a shareholder's assessable income any dividends, as defined in subsection 6(1) of the ITAA 1936, paid to the shareholder out

of profits derived by the company from any source (if the shareholder is an Australian resident) or out of profits derived by the company from sources in Australia (if the shareholder is a non-resident).

52. The term 'dividend' is defined in subsection 6(1) of the ITAA 1936 and includes a 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.

53. The term 'share capital account' is defined in section 975-300 as an account which the company keeps its share capital, or any other account created on or after 1 July 1998 where the first amount credited to the account was an amount of share capital.

54. Subsection 975-300(3) states that an account is not a share capital account if it is tainted. Cardno confirmed that its share capital was not tainted immediately before the demerger.

55. The demerger of Intega was implemented by way of Cardno making an in specie distribution of Intega shares to Cardno shareholders. The full amount of the total market value of Intega shares distributed to Cardno shareholders was debited against an amount standing to the credit of Cardno's share capital account which was not tainted within the meaning of Division 197.

56. Therefore, the amount debited against the share capital account of Cardno will not be a dividend as defined in subsection 6(1) of the ITAA 1936. Accordingly, it will not be included in the assessable income of a Cardno shareholder under subsection 44(1) of the ITAA 1936.

The application of sections 45, 45A, 45BA and 45C

57. 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 but not all shareholders and shareholders who do not receive shares instead receive minimally franked dividends. Minimally franked dividends are dividends which are franked to less than 10%.

58. All Cardno shareholders were entitled to receive one Intega share for each Cardno share owned. A sales agent acquired Intega shares from the Ineligible Foreign Holders and those small shareholders who elected to participate in the Sale Facility. The proceeds from the Sale Facility for these shareholders were remitted to them in consideration for the disposal of their Intega shares by the sale agent.

59. Therefore, there is no streaming and section 45 of the ITAA 1936 will not apply to the Intega shares received by Cardno shareholders under the demerger.

60. Section 45A of the ITAA 1936 applies in circumstances where a company streams capital benefits 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 have received or will receive dividends (the disadvantaged shareholders).

61. Because all Cardno shareholders were entitled to receive one Intega share for each Cardno share they owned, there is no streaming. The Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole, or any part, of the capital benefits.

62. 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 of the ITAA 1936 also applies where the components of a demerger allocation as between capital and profit do not reflect the circumstances of the demerger.

63. 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 or 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.

64. The in specie distribution of Intega shares to Cardno shareholders under the demerger constituted the provision of a demerger benefit and, to the extent the value of the Intega shares was debited to Cardno's share capital account, also represented 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).

65. As the provision of Intega shares would generally result in a lesser amount of tax payable by Cardno shareholders than the amount that would be payable if the provision of those shares was instead an assessable dividend, Cardno shareholders would obtain a tax benefit (paragraph 45B(2)(b) and subsection 45B(9) of the ITAA 1936).

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

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

68. 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 Cardno shareholders under the demerger, or
- 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 Cardno shareholders under the demerger.

References

Previous draft:

Not previously issued as a draft

Legislative references:

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| <ul style="list-style-type: none">- ITAA 1936 6(1)- ITAA 1936 44- ITAA 1936 44(1)- ITAA 1936 44(2)- ITAA 1936 44(3)- ITAA 1936 44(4)- ITAA 1936 44(5)- ITAA 1936 45- ITAA 1936 45A(2)- ITAA 1936 45B- ITAA 1936 45B(2)(a)- ITAA 1936 45B(2)(b)- ITAA 1936 45B(3)(a)- ITAA 1936 45B(3)(b)- ITAA 1936 45B(4)(a)- ITAA 1936 45B(5)(a)- ITAA 1936 45B(6)- ITAA 1936 45B(8)- ITAA 1936 45B(9)- ITAA 1936 45BA | <ul style="list-style-type: none">- ITAA 1936 45C- ITAA 1997 Div 83A- ITAA 1997 Subdiv 83A-B- ITAA 1997 Subdiv 83A-C- ITAA 1997 104-135- ITAA 1997 104-135(3)- ITAA 1997 109-5- ITAA 1997 115-30(1)- ITAA 1997 125-55(1)- ITAA 1997 125-65(1)- ITAA 1997 125-70- ITAA 1997 125-80(1)- ITAA 1997 125-80(2)- ITAA 1997 125-80(3)- ITAA 1997 125-85(1)- ITAA 1997 125-85(2)- ITAA 1997 Div 197- ITAA 1997 Div 230- ITAA 1997 975-300- ITAA 1997 975-300(3)- ITAA 1997 977-50- Corporations Act 2001 256B |
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