


# ***CR 2020/22 - Djerriwarrh Investments Limited - bonus share plan***

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## Class Ruling

### Djerriwarrh Investments Limited – bonus share plan

#### **📌 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.

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#### **What this Ruling is about**

1. This Ruling sets out the income tax consequences of the proposed bonus share plan (BSP) to be offered to the shareholders of Djerriwarrh Investments Limited (Djerriwarrh).
2. Full details of the BSP are set out in paragraphs 12 to 21 of this Ruling.
3. All legislative references are to provisions of the *Income Tax Assessment Act 1936* unless otherwise stated.

#### **Who this Ruling applies to**

4. This Ruling applies to you if you are a shareholder of Djerriwarrh who:
  - is an Australian resident for income tax purposes
  - is listed on the share register of Djerriwarrh as at the record date for a dividend
  - holds your Djerriwarrh shares on capital account – that is, your Djerriwarrh shares are neither held as revenue assets (as defined in section 977-50 of the *Income Tax Assessment Act 1997* (ITAA 1997)) nor as trading stock (as defined in subsection 995-1(1) of the ITAA 1997), and
  - is eligible to and elects to participate in the BSP.

5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 of the ITAA 1997 in relation to the scheme outlined in paragraphs 12 to 21 of this Ruling.

**Note:** Division 230 of the ITAA 1997 will not apply to individuals, unless they have made an election for it to apply.

### **When this Ruling applies**

6. This Ruling applies to entities that enter into the scheme during 1 July 2020 to 30 June 2025.

## **Ruling**

### **Bonus share not a dividend**

7. If you choose to participate in the BSP and are issued with shares under the BSP (Bonus Shares), and if Djerriwarrh does not credit its share capital account in connection with the issue of those shares, the value of those shares will not be taken to be a dividend to be included in your assessable income under section 44.<sup>1</sup>

### **Anti-avoidance provisions**

8. Section 45 will not apply in respect of the issue of the Bonus Shares, as it cannot be concluded that the shares will be received by certain shareholders while other shareholders receive minimally franked dividends.

9. The Commissioner will not make a determination under subsection 45A(2) that section 45C applies to the whole, or any part, of the Bonus Shares issued to you.

### **Cost base and acquisition date**

10. If the Bonus Shares are issued for no consideration, and are not a dividend or taken to be a dividend, the first element of the cost base and reduced cost base of your Bonus Shares will be determined by apportioning the first element of the cost base of the shares you owned before being issued with the Bonus Shares (Original Shares) over both the Bonus Shares and the Original Shares.<sup>2</sup>

11. The acquisition date of the Bonus Shares will be taken to be the acquisition date of the Original Shares to which those Bonus Shares relate.<sup>3</sup>

## **Scheme**

12. 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.

<sup>1</sup> Subsections 6BA(5) and (6).

<sup>2</sup> Section 130-20 of the ITAA 1997 and subsections 6BA(3) and (6).

<sup>3</sup> Table item 1 of subsection 130-20(3) of the ITAA 1997.

**Djerriwarrh**

13. Djerriwarrh is a public company listed on the Australian Securities Exchange. It is a 'listed public company' as defined in subsection 995-1(1) of the ITAA 1997, and a 'listed investment company' as defined in section 115-290 of the ITAA 1997.

14. As at 30 June 2019, Djerriwarrh had a total of 222,697,000 shares on issue. All shareholders in Djerriwarrh acquired their shares after 19 September 1985.

15. Djerriwarrh has paid fully franked dividends in respect of its shares for each year since 1996. It is Djerriwarrh's intention to continue this pattern of paying fully franked dividends to shareholders.

**Bonus share plan**

16. Djerriwarrh is proposing to offer its shareholders a choice to receive dividends or to participate in the BSP from the 2020 calendar year.

17. Under the BSP, shareholders can choose to have some or all of their Djerriwarrh shares participate in the BSP (subject to the minimum and maximum levels as determined from time to time by the directors of Djerriwarrh). Participation in the proposed BSP is voluntary, and may be varied and terminated at any time subject to notice requirements.

18. If shareholders choose to participate in the BSP, they will not receive dividends in respect of the Djerriwarrh shares that they have chosen to participate in the BSP. Instead, under the plan rules they will be issued with fully paid shares in Djerriwarrh, broadly equivalent to the value of the dividend foregone. Djerriwarrh shareholders are not required to provide consideration to receive shares under the BSP. To the extent that a Djerriwarrh shareholder does not choose to participate in the BSP, the Djerriwarrh shareholder will continue to receive dividends from Djerriwarrh.

19. The BSP will be offered to all Djerriwarrh shareholders, with certain exceptions provided under the plan rules. Generally, Djerriwarrh shareholders will only be eligible to participate in the BSP if they have a registered address in Australia or New Zealand.

20. Djerriwarrh will not credit its share capital account in connection with the issue of Bonus Shares.

21. It is not intended that any dividend paid by Djerriwarrh on its shares will be unfranked or franked to less than 10%.

**Appendix – Explanation**

**ⓘ** *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.*

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**Bonus Shares not a dividend**

22. Section 6BA provides the rules for the treatment of the issue of bonus shares.

23. Where a shareholder has a choice to receive a dividend or to be issued shares, and the shareholder chooses to be issued with shares, subsection 6BA(5) deems the dividend is taken to be credited to the shareholder and the dividend is taken to have been paid out of profits.<sup>4</sup> However, subsection 6BA(5) is not applicable where the company is a listed public company and the company does not credit its share capital account in connection with the bonus shares issued.<sup>5</sup>

24. Djerriwarrh is a listed public company as defined in subsection 995-1(1) of the ITAA 1997. If you choose to participate in the BSP, you will be issued with the Bonus Shares in lieu of receiving a more than minimally franked cash dividend. As Djerriwarrh will not credit its share capital account in connection with the issue of the Bonus Shares, the requirements of subsection 6BA(6) will be satisfied.

25. The effect of subsection 6BA(6) is that the value of those Bonus Shares will not be taken to be a dividend that is included in your assessable income under section 44.

**Cost base of Original Shares spread across Bonus Shares and Original Shares**

26. Since the Bonus Shares are issued for no consideration by Djerriwarrh, and they are not a dividend (under section 44) or taken to be a dividend (under section 45 or section 45C), subsection 6BA(3) specifies the methodology to be used in determining the:

- amount or value of the consideration paid in respect of the acquisition of any of those shares for the purposes of Part 3-1 or 3-3 of the ITAA 1997, or
- amount of any profit or loss arising on the sale or disposal of any of those shares.

27. The methodology prescribed by subsection 6BA(3) is that any amounts paid or payable by you in respect of the Original Shares (whether on purchase of the shares, on application for or allotment of the shares, to meet calls or otherwise) shall be deemed to have been paid or to be payable by you in respect of the Original Shares and the Bonus Shares in such proportions as the Commissioner considers appropriate in the circumstances.

28. In this case, the Commissioner considers that an appropriate apportionment in the circumstances of this scheme is that the first element of the cost base of each parcel of the Original Shares should be spread in a pro rata manner over both the parcel of Original

<sup>4</sup> Paragraphs 6BA(5)(a) and (b).

<sup>5</sup> Subsection 6BA(6).

Shares and the Bonus Shares issued in respect of them. The result of this apportionment will be the first element of the cost base and reduced cost base of each of those Djerrivarrh shares.

## References

*Previous draft:*

Not previously issued as a draft

*Legislative references:*

- |                       |                       |
|-----------------------|-----------------------|
| - ITAA 1936 6BA       | - ITAA 1936 45        |
| - ITAA 1936 6BA(3)    | - ITAA 1936 45A(2)    |
| - ITAA 1936 6BA(5)    | - ITAA 1936 45C       |
| - ITAA 1936 6BA(5)(a) | - ITAA 1997 115-290   |
| - ITAA 1936 6BA(5)(b) | - ITAA 1997 130-20    |
| - ITAA 1936 6BA(6)    | - ITAA 1997 130-20(3) |
| - ITAA 1936 44        | - ITAA 1997 Div 230   |
|                       | - ITAA 1997 977-50    |
|                       | - ITAA 1997 995-1(1)  |
|                       | - TAA 1953            |

ATO references

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