

CR 2020/24 - GrainCorp Limited - demerger of United Malt Group Limited



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Class Ruling

GrainCorp Limited – demerger of United Malt Group Limited

❶ Relying on this Ruling

This publication 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 demerger of United Malt Group Limited (UMG) by GrainCorp Limited (GrainCorp), which was implemented on 1 April 2020 (Implementation Date).
2. Full details of the demerger are set out in paragraphs 30 to 61 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 GrainCorp and you:
 - were registered on the GrainCorp share register on 25 March 2020 (Record Date), and
 - did not hold your shares in GrainCorp as revenue assets (as defined in section 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.
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 30 to 61 of this Ruling.

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

When this Ruling applies

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

Ruling**Demerger happened**

7. A demerger, as defined in section 125-70, happened to the GrainCorp demerger group (which included GrainCorp and UMG) under the scheme described in paragraphs 30 to 61 of this Ruling.

CGT consequences – Australian resident GrainCorp shareholders***CGT event G1***

8. CGT event G1 happened when you were paid an amount by GrainCorp in respect of your GrainCorp shares by way of the in specie transfer to you of UMG shares (section 104-135).
9. You will make a capital gain from CGT event G1 happening if the amount of the reduction of share capital for each GrainCorp share (\$3.3870) is more than the cost base of the GrainCorp share. If so, the capital gain is equal to the amount of the excess. No capital loss can be made from CGT event G1 (subsection 104-135(3)).

Choosing demerger roll-over

10. You can choose to obtain demerger roll-over under subsection 125-55(1) for your GrainCorp shares.
11. If you choose demerger roll-over for your GrainCorp shares:
- any capital gain you made when CGT event G1 happened to your GrainCorp shares under the demerger is disregarded (subsection 125-80(1)), and
 - you must recalculate the first element of the cost base and reduced cost base of your GrainCorp shares, and calculate the first element of the cost base and reduced cost base of the corresponding UMG shares you acquired under the demerger (subsection 125-80(2)) - see paragraphs 13 to 15 of this Ruling for more details.

Not choosing demerger roll-over

12. If you do not choose demerger roll-over for your GrainCorp shares, you:
- cannot disregard any capital gain you made when CGT event G1 happened to your GrainCorp shares under the demerger, and
 - must recalculate the first element of the cost base and reduced cost base of your GrainCorp shares, and calculate the first element of the cost base and reduced cost base of the corresponding UMG shares you acquired under the demerger (subsections 125-85(1) and 125-85(2)) - see paragraphs 13 to 15 of this Ruling.

Cost base and reduced cost base of your GrainCorp and UMG shares

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

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

14. The apportionment is done on a reasonable basis having regard to the market values (just after the demerger) of the GrainCorp shares and UMG shares, or an anticipated reasonable approximation of those market values (subsections 125-80(2) and 125-80(3)) - see paragraph 61 of this Ruling about the market values of these shares.

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

- 42.50% of the total of the cost bases of your GrainCorp shares just before the demerger to the GrainCorp shares, and
- 57.50% of the total of the cost bases of your GrainCorp shares just before the demerger to the corresponding UMG shares.

Acquisition date of the UMG shares for discount capital gain purposes

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

Shareholders that hold pre-CGT shares in GrainCorp

17. If you acquired, or are taken to have acquired, your GrainCorp shares before 20 September 1985 (pre-CGT shares), disregard any capital gain made when CGT event G1 happened to your GrainCorp shares (subsection 104-135(5)).

18. If you choose demerger roll-over for your pre-CGT shares, you are taken to have acquired the corresponding UMG shares under the demerger before 20 September 1985 (subsections 125-55(1), 125-80(4), 125-80(5) and 125-80(6)).

19. If you own pre-CGT shares and do not choose demerger roll-over:

- none of the corresponding UMG shares acquired under the demerger are taken to be pre-CGT shares
- you are taken to have acquired those UMG shares on the Implementation Date (section 109-5), and
- the first element of the cost base and reduced cost base of those UMG shares is calculated in accordance with the rules in Division 110.

CGT consequences – foreign resident GrainCorp shareholders**CGT event G1**

20. CGT event G1 happened when you were paid an amount by GrainCorp in respect of your GrainCorp shares by way of the *in specie* transfer to you of UMG shares (section 104-135).

21. You will make a capital gain from CGT event G1 happening if the amount of the reduction of share capital for a GrainCorp share (\$3.3870) is more than the cost base of that GrainCorp share. If so, the capital gain is equal to the amount of the excess. No capital loss can be made from CGT event G1 (subsection 104-135(3)).

22. However, any capital gain you make from CGT event G1 is disregarded unless the GrainCorp share is taxable Australian property (section 855-10). A GrainCorp share is taxable Australian property if it:

- was used by you (the foreign resident shareholder) in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- is 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 (table item 5 of section 855-15)).

Limited availability of demerger roll-over

23. If you are a foreign resident, you cannot choose to obtain demerger roll-over under subsection 125-55(1) for your GrainCorp shares unless the UMG shares you acquire under the demerger are taxable Australian property just after you acquired them (subsection 125-55(2)).

Cost base and reduced cost base of your GrainCorp and UMG shares

24. Whether or not you choose demerger roll-over or demerger roll-over is available to you, you must work out the first element of the cost base and reduced cost base of each GrainCorp share and corresponding UMG share in the same way as described in paragraphs 13 to 15 of this Ruling (subsections 125-80(2), 125-80(3), 125-85(1) and 125-85(2)).

Acquisition date of the UMG shares

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

Not a dividend

26. No part of the value of a UMG share transferred to you under the demerger will be included in your assessable income under subsection 44(1) of the *Income Tax Assessment Act 1936* (ITAA 1936). Although the part of the value of a UMG share that is not debited to the share capital account of GrainCorp is a 'dividend' under subsection 6(1)

of the ITAA 1936, it will be a 'demerger dividend' under subsections 44(3), 44(4) and 44(5) of the ITAA 1936. A demerger dividend is non-assessable non-exempt income for you.

No dividend withholding tax for non-resident GrainCorp shareholders

27. If you are not a resident of Australia (as defined in subsection 6(1) of the ITAA 1936), no part of the value of a UMG share transferred to you under the demerger will be subject to dividend withholding tax (subsection 128B(3D) of the ITAA 1936).

The anti-avoidance provisions in sections 45B, 45BA and 45C of the ITAA 1936 will not apply to deem an assessable dividend

28. 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. This is because the purpose test in paragraph 45B(2)(c) of the ITAA 1936 is not satisfied. Therefore, you will not include any part of the amount of the demerger benefit (the market value of the UMG shares) in your assessable income under subsection 44(1) of the ITAA 1936.

29. 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. This is because the purpose test in paragraph 45B(2)(c) of the ITAA 1936 is not satisfied. Therefore, you will not include any part of the amount of the capital benefit (the market value of the UMG shares to the extent that it is not a demerger dividend you receive) in your assessable income under subsection 44(1) of the ITAA 1936.

Scheme

30. 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.

GrainCorp

31. GrainCorp is an Australian resident public company listed on the Australian Securities Exchange (ASX). It is the head company of an income tax consolidated group for the purposes of Part 3-90.

32. GrainCorp is an international food ingredients and agribusiness company with an integrated business model across three main activities – supply chain, origination and processing.

33. GrainCorp was privatised by the Government of New South Wales in 1992, and was listed on the ASX in 1998.

34. Immediately before the demerger, GrainCorp had on issue:

- 228,855,628 fully paid ordinary shares, and
- 657,518 unlisted rights issued to directors and employees, representing less than 3% of the total number of ownership interests (as defined in subsection 125-60(1)) in GrainCorp.

35. There were no other ownership interests (as defined in subsection 125-60(1)) in GrainCorp.

36. Immediately before the demerger, GrainCorp had \$1,347,953,821 credited to its share capital account.

United Malt Group Limited

37. UMG is an Australian resident company that was incorporated on 23 October 2009.

38. Immediately before the demerger, UMG was a wholly-owned subsidiary of GrainCorp.

39. UMG has malting facilities around the world, supplying malt and other brewing ingredients/products to global brewers, craft brewers and distillers.

The demerger of UMG

40. On 4 April 2019, GrainCorp announced to the ASX the proposed demerger of UMG.

41. The demerger of UMG was undertaken by a reduction of share capital under section 256B of the *Corporations Act 2001* and a court-approved scheme of arrangement under Part 5.1 of the *Corporations Act 2001*.

42. The shareholders of GrainCorp voted at a meeting on 16 March 2020 to approve:

- an ordinary resolution under section 256C of the *Corporations Act 2001* to reduce the share capital of GrainCorp. The reduction of share capital equated to \$3.3870 per GrainCorp share.
- the scheme of arrangement under subparagraph 411(4)(a)(ii) of the *Corporations Act 2001*.

43. The Record Date for determining the entitlement of GrainCorp shareholders to receive UMG shares was 25 March 2020.

44. Under the scheme of arrangement, on the Implementation Date (1 April 2020), the aggregate of the amount of the reduction of share capital and the demerger dividend (see paragraph 49 of this Ruling) was applied on behalf of GrainCorp shareholders as payment to acquire the UMG shares to which they were entitled. Shares in UMG were transferred *in specie* by GrainCorp to GrainCorp shareholders.

45. GrainCorp shareholders received one UMG share for each GrainCorp share they held on the Record Date, and nothing else.

46. After the demerger, GrainCorp held 10%, or 25,428,404, of the shares in UMG. The other 90%, or 228,855,628, of the shares in UMG were distributed to GrainCorp shareholders (subject to the Sale Facility - see paragraphs 53 to 56 of this Ruling).

47. As a result of the demerger, GrainCorp shareholders owned shares in both GrainCorp and UMG.

48. Shares in UMG were listed for quotation on the ASX on 24 March 2020 and commenced trading on a deferred settlement basis. Normal trading of UMG shares commenced on the ASX on 2 April 2020.

Accounting treatment

49. GrainCorp accounted for the demerger by debiting its:
- share capital account by \$775,124,458 (the capital reduction amount), and
 - retained earnings account by \$181,217,443 (the demerger dividend).
50. The demerger dividend was calculated as the difference between the market value of the UMG shares distributed and the capital reduction amount.
51. The market values of UMG shares were calculated by reference to the volume weighted average price of UMG and GrainCorp shares as traded on the ASX over the first five trading days from (and including) 24 March 2020 – see paragraph 61 of this Ruling.

Reasons for the demerger

52. The directors of GrainCorp formed the view that the demerger would:
- separate the grains and oils business, which has volatile earnings based on weather in eastern Australia, from other businesses that are unconnected to the eastern Australian harvest, so as to attract additional investors in UMG who have previously been deterred by GrainCorp's volatile grains and oils businesses
 - create two distinct core earnings streams which can be clearly valued by the market
 - recognise the limited integration and synergies between the malt business and the grains and oil businesses of GrainCorp, and
 - result in two independent businesses trading separately on the ASX, consisting of GrainCorp (an integrated grains and edible oils specialist) and UMG (one of the largest independent maltsters in the world and the only listed company purely focused on malt).

Sale Facility

53. 'Ineligible Overseas Shareholders' had the UMG shares to which they were entitled sold by GrainCorp through a sale agent on the ASX (Sale Facility), who remitted the sale proceeds to the relevant shareholders. The shares of Ineligible Overseas Shareholders were transferred to the sale agent on the Implementation Date.
54. Ineligible Overseas Shareholders were shareholders who were not 'Eligible Shareholders' at the Record Date.
55. Eligible Shareholders were shareholders whose registered address on the GrainCorp share register on the Record Date was in Australia, New Zealand, The Bahamas, Canada, Germany, Hong Kong, the Isle of Man, the United Kingdom, the United States of America, or any other jurisdiction in which GrainCorp reasonably believed it was not prohibited or unduly onerous or impractical to implement the demerger and to transfer the UMG shares to those shareholders.
56. 'Small Shareholders' were Eligible Shareholders who held 500 or fewer GrainCorp shares as at the Record Date. They were able to choose to participate in the Sale Facility, receiving the sale proceeds of the UMG shares to which they were entitled. The shares of participating Small Shareholders were transferred to the sale agent on the Implementation Date.

Other matters

57. Just before the Implementation Date, no foreign resident and no trustee of a foreign trust for CGT purposes (in both cases, together with its associates as defined in section 318 of the ITAA 1936) held 10% or more of the shares in GrainCorp.

58. Immediately before the Implementation Date, GrainCorp's share capital account was not tainted (within the meaning of Division 197).

59. GrainCorp did not elect under subsection 44(2) of the ITAA 1936 that subsections 44(3) and (4) of the ITAA 1936 would not apply to the demerger dividend for all GrainCorp shareholders.

60. Just after the demerger, CGT assets owned by UMG and its demerger subsidiaries representing at least 50% by market value of all the CGT assets owned by those entities were used in carrying on a business by those entities (subsection 44(5) of the ITAA 1936).

61. For the purposes of the cost base and reduced cost base apportionment under subsection 125-80(2) and (3), a reasonable approximation of the market values of a GrainCorp share and a UMG share just after the demerger has been calculated as:

- \$3.0882 for each GrainCorp share, being the volume-weighted average price of GrainCorp shares as traded on the ASX over the first five trading days from (and including) 24 March 2020.
- \$4.1788 for each UMG share, being the volume-weighted average price of UMG shares as traded on the ASX on a deferred settlement basis over the first five trading days from (and including) 24 March 2020.

Commissioner of Taxation

29 April 2020

References*Previous draft:*

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Legislative references:

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- ITAA 1936 44(1)
- ITAA 1936 44(2)
- ITAA 1936 44(3)
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- ITAA 1936 44(5)
- ITAA 1936 45B
- ITAA 1936 45B(2)(c)
- ITAA 1936 45B(3)(a)
- ITAA 1936 45B(3)(b)
- ITAA 1936 45BA
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- ITAA 1936 128B
- ITAA 1936 128B(3D)
- ITAA 1936 318
- ITAA 1997 104-135
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- ITAA 1997 Div 197
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- ITAA 1997 855-10
- ITAA 1997 855-15
- ITAA 1997 977-50
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- Corporations Act 2001 411(4)(a)(ii)

ATO references

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