


# ***CR 2022/36 - Eftpos Payments Australia Limited - demutualisation***

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Status: **legally binding**

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## Class Ruling

# Eftpos Payments Australia Limited – demutualisation

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### **📌 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.

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

1. This Ruling sets out the income tax consequences of the demutualisation of Eftpos Payments Australia Limited (EPAL) for members of EPAL.
2. Full details of this scheme are set out in paragraphs 12 to 29 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1936*, unless otherwise indicated.

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

4. This Ruling applies to you if you:
  - were a member of EPAL on 26 October 2021 (Demutualisation Resolution Day) who received an ordinary share in Australian Payments Plus Ltd (APP) being a Demutualisation Share, as defined in section 326-25 of Schedule 2H, on 4 February 2022 (Demutualisation Date) under the scheme set out in paragraphs 12 to 29 of this Ruling (EPAL member), and
  - were a resident of Australia (as defined in subsection 6(1)).
5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 of the *Income Tax Assessment Act 1997* (ITAA 1997) in relation to the scheme outlined in paragraphs 12 to 29 of this Ruling.

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**When this Ruling applies**

6. This Ruling applies from 1 July 2021 to 30 June 2022.

**Ruling****CGT event C2 happened on the demutualisation of Eftpos Payments Australia Limited**

7. CGT event C2 happened on the ending of your membership rights in EPAL (subsection 104-25(1) of the ITAA 1997).

8. Any capital gain or capital loss arising from the ending of your membership rights in EPAL on the demutualisation of EPAL is disregarded (subsection 326-65(2) of Schedule 2H).

**Cost base and reduced cost base of shares in Australian Payments Plus Ltd**

9. The first element of the cost base and reduced cost base of the APP ordinary share you received under the demutualisation of EPAL (in accordance with paragraph 326-50(1)(d) of Schedule 2H) is calculated pursuant to section 326-150 or section 326-165 of Schedule 2H, as relevant.

**Assessable income arising from the issue of shares in Australian Payments Plus Ltd**

10. No amount is to be included in your assessable income as a result of the receipt of an ordinary share in APP under the demutualisation of EPAL (section 326-245 of Schedule 2H).

**Acquisition date of shares in Australian Payments Plus Ltd**

11. The acquisition date of the ordinary share you received in APP is taken to be the Demutualisation Resolution Day (section 326-150 or 326-165 of Schedule 2H, as relevant).

**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.

**Eftpos Payments Australia Limited**

13. EPAL was a public company limited by guarantee incorporated in Australia on 14 April 2009.

14. EPAL was at all times and continues to be an Australian resident (as defined in subsection 6(1)).

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15. Prior to the scheme, EPAL was the head company of an income tax consolidated group for the purposes of Part 3-90 of the ITAA 1997, consisting of EPAL and its subsidiary member Digital Wallet Pty Ltd.

16. At all relevant times, EPAL was not an insurance company (within the meaning of subsection 121AB(2)), a mutual affiliate company (within the meaning of section 121AC), a private health insurer (within the meaning of section 50-30 of the ITAA 1997), a health insurer or life insurer subject to Division 316, for the purposes of paragraphs 326-10(1)(a) to (bb) of Schedule 2H.

17. At all relevant times, EPAL was not carried on for the object of securing a profit or pecuniary gain for its members for the purposes of paragraph 326-10(1)(c) of Schedule 2H.

18. Immediately before the Demutualisation Resolution Day, EPAL did not have capital divided into shares held by its members for the purposes of paragraph 326-10(1)(d) of Schedule 2H and did not hold property in which any of its members had a disposable interest (directly or indirectly) for the purposes of paragraph 326-10(1)(e) of Schedule 2H.

19. EPAL members have not at any time received distributions from EPAL.

#### **Australian Payments Plus Ltd**

20. APP is an unlisted public company limited by shares, incorporated in Australia on 21 June 2021. Prior to the scheme, APP had one share on issue.

21. APP was established as a holding company for NPP Australia Limited (NPPA), BPAY Group Holding Pty Ltd (BPAY) and EPAL to facilitate a proposed merger of these entities (Proposed Merger) and manage the affairs of the group following the Proposed Merger.

22. APP was at all times and continues to be an Australian resident (as defined in subsection 6(1)).

#### **The demutualisation**

23. On 10 December 2020, NPPA, EPAL and BPAY entered into an agreement to implement the Proposed Merger.

24. On 30 September 2021, NPPA, EPAL, BPAY and APP entered into a Deed of Accession, Amendment and Restatement in furtherance of the Proposed Merger.

25. On 26 October 2021 (Demutualisation Resolution Day), EPAL members resolved to demutualise EPAL in accordance with Schedule 2H.

26. On 4 February 2022 (Demutualisation Date):

- the membership rights of EPAL members were extinguished and EPAL was converted to a company limited by shares pursuant to section 162 of the *Corporations Act 2001* and paragraphs 326-50(1)(a) and (b) of Schedule 2H
- EPAL issued ordinary shares of only one class to APP in accordance with paragraph 326-50(1)(c) of Schedule 2H, and
- APP issued ordinary shares of only one class to EPAL members in accordance with paragraph 326-50(1)(d) of Schedule 2H.

27. All shares in APP issued in connection with the demutualisation of EPAL were issued to EPAL members.

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**Other matters**

28. All EPAL members were given the opportunity to take up shares in APP under the demutualisation of EPAL.

29. The requirements of paragraph 326-60(2)(c) of Schedule 2H were satisfied in respect of the demutualisation of EPAL.

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**Commissioner of Taxation**

6 April 2022

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Status: **not legally binding**

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## Appendix – Explanation

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**ⓘ** *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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### Demutualisation

30. Division 326 of Schedule 2H sets out the income tax consequences of the demutualisation of mutual entities (as defined in section 326-10 of Schedule 2H) other than insurance companies and health insurers.

31. EPAL was a mutual entity as defined in section 326-10 of Schedule 2H as immediately before the Demutualisation Resolution Day, EPAL was a body corporate (subsection 326-10(1) of Schedule 2H) that:

- was not an insurance company, a mutual affiliate company, private health insurer, or a health or life insurer (paragraphs 326-10(1)(a) to (bb) of Schedule 2H)
- was not carried on for the object of securing a profit or pecuniary gain for its members (paragraph 326-10(1)(c) of Schedule 2H), and
- did not have capital divided into shares held by its members nor hold property in which any of its members had a disposable interest (directly or indirectly) (paragraphs 326-10(1)(d) and (e) of Schedule 2H).

32. EPAL passed a demutualisation resolution that met the requirements of paragraph 326-5(1)(a) of Schedule 2H on 26 October 2021 (Demutualisation Resolution Day) which was after 14 March 2002.

33. EPAL was an Australian resident (as defined in subsection 6(1)) immediately before the Demutualisation Resolution Day (paragraph 326-5(1)(b) of Schedule 2H).

34. EPAL demutualised on 4 February 2022 under the 'holding company method' prescribed in section 326-50 of Schedule 2H, being one of the methods mentioned in section 326-40 of Schedule 2H (paragraph 326-5(1)(c) of Schedule 2H). EPAL satisfied the requirements of the holding company method as follows:

- EPAL members had their membership rights extinguished
- EPAL was converted to a company limited by share capital and is therefore a demutualised entity as EPAL ceased to be a mutual entity without ceasing to be a body corporate (subsection 326-10(3) of Schedule 2H)
- ordinary shares of only one class in EPAL were issued to APP, the 'holding company', within the limitation period (being the period of two years beginning on the Demutualisation Resolution Day or such further period as the Commissioner allows pursuant to subsection 326-20(3) of Schedule 2H), and

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- ordinary shares of only one class in APP were issued to EPAL members within the limitation period.

35. The demutualisation of EPAL was completed on the day on which all the shares in the holding company, APP that were to be issued in connection with the demutualisation had been issued, being 4 February 2022 (paragraph 326-5(2)(b)), which is after 12 May 1998 (paragraph 326-5(1)(e) of Schedule 2H).

36. The demutualisation of EPAL satisfied the continuity of beneficial interest test in section 326-60 of Schedule 2H to the ITAA 1936 (paragraph 326-5(1)(d) of Schedule 2H), as:

- all members of EPAL had the opportunity to take up shares in the holding company, APP under the demutualisation (paragraph 326-60(2)(a) of Schedule 2H)
- more than 90% of the shares in the holding company, APP that were issued in connection with the demutualisation, were issued to EPAL members (paragraph 326-60(2)(b) of Schedule 2H), and
- the accumulated surplus of EPAL was allocated in the form of APP shares to EPAL members in proportions that broadly accorded with any one or more of the matters identified in paragraph 326-60(2)(c) of Schedule 2H.

37. Therefore, the demutualisation of EPAL satisfied the requirements in section 326-5 of Schedule 2H. The shares in APP received by EPAL members under the demutualisation are Demutualisation Shares as defined in 326-25 of Schedule 2H.

### **Capital gains tax**

38. Subdivision 326-C of Schedule 2H sets out the capital gains tax (CGT) consequences of the extinguishment of membership rights in a mutual entity (as defined in section 326-10 of Schedule 2H) other than insurance companies and health insurers.

39. When a membership right in EPAL ended as a result of the demutualisation of EPAL, CGT event C2 occurred (subsection 104-25(1) of the ITAA 1997). The time of the CGT event was the Demutualisation Date, being 4 February 2022 (subsection 104-25(2) of the ITAA 1997).

40. Section 326-65 of Schedule 2H provides that where membership rights are extinguished as mentioned in paragraph 326-50(1)(a) of Schedule 2H, the capital gain or capital loss arising from the extinguishment is to be disregarded.

41. Subdivision 326-E of Schedule 2H sets out the CGT consequences of the disposal of Demutualisation Shares where the entity or the holding company becomes a company that is not a listed public company. Under section 326-150 or section 326-165 of Schedule 2H, as relevant, the Demutualisation Shares are taken to have been acquired by EPAL members on the Demutualisation Resolution Day for the purposes of determining the CGT consequences of the disposal of those shares.

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## References

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### *Legislative references:*

- ITAA 1936 6(1)
- ITAA 1936 121AB(2)
- ITAA 1936 121AC
- ITAA 1936 Sch 2H
- ITAA 1936 Sch 2H Div 326
- ITAA 1936 Sch 2H 326-5
- ITAA 1936 Sch 2H 326-5(1)(a)
- ITAA 1936 Sch 2H 326-5(1)(b)
- ITAA 1936 Sch 2H 326-5(1)(c)
- ITAA 1936 Sch 2H 326-5(1)(d)
- ITAA 1936 Sch 2H 326-5(1)(e)
- ITAA 1936 Sch 2H 326-5(2)(b)
- ITAA 1936 Sch 2H 326-10
- ITAA 1936 Sch 2H 326-10(1)
- ITAA 1936 Sch 2H 326-10(1)(a)
- ITAA 1936 Sch 2H 326-10(1)(b)
- ITAA 1936 Sch 2H 326-10(1)(ba)
- ITAA 1936 Sch 2H 326-10(1)(bb)
- ITAA 1936 Sch 2H 326-10(1)(c)
- ITAA 1936 Sch 2H 326-10(1)(d)
- ITAA 1936 Sch 2H 326-10(1)(e)
- ITAA 1936 Sch 2H 326-10(3)
- ITAA 1936 Sch 2H 326-20(3)
- ITAA 1936 Sch 2H 326-25
- ITAA 1936 Sch 2H 326-40
- ITAA 1936 Sch 2H 326-50
- ITAA 1936 Sch 2H 326-50(1)(a)
- ITAA 1936 Sch 2H 326-50(1)(b)
- ITAA 1936 Sch 2H 326-50(1)(c)
- ITAA 1936 Sch 2H 326-50(1)(d)
- ITAA 1936 Sch 2H 326-60
- ITAA 1936 Sch 2H 326-60(2)(a)
- ITAA 1936 Sch 2H 326-60(2)(b)
- ITAA 1936 Sch 2H 326-60(2)(c)
- ITAA 1936 Sch 2H Subdiv 326-C
- ITAA 1936 Sch 2H 326-65
- ITAA 1936 Sch 2H 326-65(2)
- ITAA 1936 Sch 2H Subdiv 326-E
- ITAA 1936 Sch 2H 326-150
- ITAA 1936 Sch 2H 326-165
- ITAA 1936 Sch 2H 326-245
- ITAA 1997 50-30
- ITAA 1997 104-25(1)
- ITAA 1997 104-25(2)
- ITAA 1997 Div 230
- ITAA 1997 Div 316
- ITAA 1997 Pt 3-90
- TAA 1953
- Corporations Act 2001 162

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### ATO references

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