



CR 2004/7 - Income tax: Dividends: Guinness Peat Group plc (GPG) Capitalisation Issue

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 This document has changed over time. This is a consolidated version of the ruling which was published on *1 July 2002*

Class Ruling

Income tax: Dividends: Guinness Peat Group plc (GPG) Capitalisation Issue

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Preamble

*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains **Class Rulings** and **Taxation Rulings** TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

What this Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law' identified below applies to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. The tax law dealt with in this Ruling is subsections 6(1) and 44(1) of the *Income Tax Assessment Act 1936* (ITAA 1936).

Class of persons

3. The class of persons to which this Ruling applies is the shareholders in GPG, who:

- are 'residents of Australia' as that term is defined in subsection 6(1) of the ITAA 1936; and
- hold ordinary shares in GPG.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

5. The class of persons defined in this Ruling may rely on its contents provided the arrangement described below at paragraphs 9 to 15 were carried out in accordance with the details of the arrangement provided in this Ruling.

6. If the arrangement described in this Ruling was materially different from the arrangement that was actually carried out:

- this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled, and
- this Ruling may be withdrawn or modified.

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Date of effect

8. This Class Ruling applies to the 2002-2003 income year.

Arrangement

9. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- Letter dated 10 June 2003 from Ernst & Young requesting the ATO to make a Class Ruling in relation to the GPG Capitalisation Issue; and
- The GPG Shareholder Scrip Dividend & Capitalisation Issue Circular dated 17 April 2003.

GPG

10. GPG is a UK resident company which is listed on the London, Australian and New Zealand Stock Exchanges.

Merger

11. On 13 December 2002, GPG merged with GPG Holdings (UK) plc (GPG Holdings).

The merger was implemented by the acquisition of GPG Holdings by GPG by means of a Scheme of Arrangement under section 425 of the Companies Act 1985, (UK).

As a result of the merger, GPG recorded in its balance sheet for the year ended 31 December 2002 a reserve called the 'Other Reserve'. The Other Reserve represents the difference between the nominal value (ie, par value) of the shares issued by GPG to former GPG Holdings shareholders and the fair value of the assets that GPG acquired (being the shares in GPG Holdings).

12. No other amount has been credited to the Other Reserve.

Capitalisation Issue

13. Shareholders whose names were entered on the GPG share register at the close of business on 23 May 2003 received one new ordinary share (also called a Capitalisation Share), credited as fully paid, for every ten ordinary shares then held, and so on in proportion for any number of ordinary shares then held. Shareholders' entitlements were rounded down to the nearest whole number of Capitalisation Shares and fractions were not allotted.

14. The nominal value of the ordinary shares issued under this arrangement was debited to the Other Reserve.

15. The Capitalisation Shares were listed on the London, Australian and New Zealand Stock Exchanges as from 28 May 2003.

Ruling

16. The receipt of ordinary shares arising from the Capitalisation Issue will not be an assessable dividend under subsection 44(1) of the ITAA 1936 to GPG shareholders who are within the class of persons to whom this Ruling applies (as set out in paragraph 3 of this Ruling) and subject to the qualifications in paragraphs 4 to 6 of this Ruling.

Explanation

17. The issue of the Capitalisation Shares would be assessable to shareholders under subsection 44(1) of the ITAA 1936 if the issue satisfied the definition of 'dividend' in subsection 6(1) of the ITAA 1936.

18. The definition of 'dividend' was modified by Act No. 63 of 1998 (as a consequence of the Company Law changes which abolished the concept of par value of shares). The current definition applies to dividends paid on or after 1 July 1998 by a company with shares with no par value (Schedule 3, Items 1 – 6, Act No. 63 of 1998).

19. The current definition does not apply to dividends paid on or after 1 July 1998 by a company with shares that do have a par value. As GPG is a company incorporated under UK Company Law, GPG shares have a par value.

20. Therefore, the definition of 'dividend' prior to the amendments made by Act No.63 of 1998 applies to this Capitalisation Issue as GPG shares have a par value.

21. Under paragraph (d) of that definition, amounts debited against an amount standing to the credit of the share premium account are excluded from the definition of 'dividend'.

22. The definition of 'share premium account' in subsection 6(1) of the ITAA 1936 was repealed by Act No. 63 of 1998 (Schedule 5, Item 5) with effect from 1 July 1998 where the relevant company has shares with no par value.

23. Since GPG has shares with a par value, the former definition of 'share premium account' applies to GPG. This definition formerly provided that the meaning of share premium account meant, 'in relation to a company, an account whether called a share premium account or not, to which the company has, in respect of premiums received by the company on shares issued by it, credited amounts, being amounts not exceeding the respective amounts of the premiums, but does not include:

- where any other amount is included in the amount of standing to the credit of such an account – that account; or
- where an amount that has been credited to such an account in respect of a premium received by the company on a share issued by it (not being an amount that has been so credited immediately after the receipt by the company of the premium) could not, at any time

before it was so credited, be identified in the books of the company as such a premium – that account.’

24. Although the Other Reserve is not called a share premium account, it is an account which GPG has credited with the premium that it received on the issue of shares by it as a result of the merger of GPG and GPG Holdings. The premium is the difference between the par value of the shares issued by GPG to former GPG Holdings shareholders and the fair value of the assets that GPG acquired (being the shares in GPG Holdings).

25. No other amount is included in the amount standing to the credit of the Other Reserve.

26. The Other Reserve was credited immediately with the premium following the issue of GPG shares to GPG Holdings shareholders.

27. The exclusion in sub-paragraph (d) of the former definition of dividend applies to the Capitalisation Issue because the Capitalisation Issue was debited against amounts standing to the credit of the Other Reserve and the Other Reserve is a ‘share premium account’. Accordingly, the issue of the Capitalisation Shares will not be assessable under subsection 44(1).

Detailed contents list

28. Below is a detailed contents list for this Class Ruling:

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Commissioner of Taxation

14 January 2004

Previous draft:

Not previously issued as a draft

- par value

- share premium account

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 97/16

Legislative references:

- ITAA 1936 6(1)

- ITAA 1936 44(1)

- TAA 1953 Pt IVAAA

- Copyright Act 1968

- Companies Act 1985 (UK)

Subject references:

- bonus shares

- capitalisation issue

- distribution

- dividend

ATO references

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