

***CR 2008/43 - Income tax: conversion by Mackay  
Sugar Co-operative Association Limited to a  
company registered under the Corporations Act 2001***

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## Class Ruling

### Income tax: conversion by Mackay Sugar Co-operative Association Limited to a company registered under the *Corporations Act 2001*

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#### **📌 This publication provides you with the following level of protection:**

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

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

## What this Ruling is about

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1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

### Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:

- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 45 of the ITAA 1936;
- section 45A of the ITAA 1936;
- section 45B of the ITAA 1936;
- section 45C of the ITAA 1936;
- Division 104 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 124-520 of the ITAA 1997

- subsection 130-20(1) of the ITAA 1997;
- Division 725 of the ITAA 1997; and
- Division 727 of the ITAA 1997.

## **Class of entities**

3. The class of entities to which this Ruling applies are members and cancelled members of the Mackay Sugar Co-operative Association Limited (Mackay Sugar Co-op) who:

- (a) receive shares in the proposed Mackay Sugar Limited (MSL) under the scheme; and
- (b) are residents of Australia within the meaning of that expression in subsection 6(1) of the ITAA 1936.

## **Qualifications**

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

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 14 to 25 of this Ruling.

6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

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

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## Date of effect

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8. This Ruling applies from 11 June 2008 to 30 June 2009. However, the Ruling continues to apply after this date to all entities within the specified class who entered into the specified scheme during the term of the Ruling.

9. The Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

10. If this Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

11. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

12. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

## Previous Rulings

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13. CR 2007/58: Income tax: conversion by Mackay Sugar Co-operative Association Limited to a company registered under the *Corporations Act 2001*. CR 2007/58 has been withdrawn.

## Scheme

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14. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of and are to be read with the description:

- application for Class Ruling from McCullough Robertson on behalf of the Mackay Sugar Co-op dated 7 March 2008;

- the Rules of Mackay Sugar Co-operative Association Limited version 3 received 7 March 2008;
- the Mackay Sugar Limited draft Constitution version 7 received 17 April 2008;
- the Mackay Sugar Co-operative Association Limited Conversion Proposal 2008 – Information Memorandum for Members, version 23, received 17 April 2008; and
- correspondence received from McCullough Robertson between 7 March 2008 and 26 May 2008.

15. The Mackay Sugar Co-op is a co-operative registered under the *Cooperatives Act 1997* (Qld) (*Cooperatives Act*) since 1 September 1997.

16. The 961 members of the Mackay Sugar Co-op have shares and membership rights.

17. Each member holds one share. The shares carry the right to receive dividends; however, dividends have never been paid by the Mackay Sugar Co-op.

18. Members made no payment when acquiring these shares. The following rules of the Mackay Sugar Co-op are relevant in relation to the shares:

- Rule 12(1) – under which the shares have a ‘nominal value of \$1 each’;
- Rule 12(2) – which deems the shares to be fully paid at the date the Mackay Sugar Co-op Rules adopted in 1999 took effect; and
- Rules 68(2) and (3), which deal respectively with:
  - assets to be distributed without any right to receive back the \$1 nominal value referred to and deemed to be paid under Rule 12; and
  - the definition of ‘member entitlement’ on winding up.

19. The Mackay Sugar Co-op also has 59 cancelled members. These are former members of the Mackay Sugar Co-op whose membership has been cancelled under the *Cooperatives Act* and the rules of the Mackay Sugar Co-op due to the person not being able to satisfy the active membership test. These cancelled members hold statutory rights, as listed in section 137 of the *Cooperatives Act*, to be treated as continuing to hold their shares in Mackay Sugar Co-op for the purpose of working out their entitlement to participate in the conversion.

20. Membership rights in the Mackay Sugar Co-op derive from having the appropriate level of cane production area. Rights attaching to the membership are:

- voting rights (one vote per member);

- income distributions/bonus rights which have been based on the 12 month production history of each member; and
- winding up distribution rights which are based on the proportion of the tonnage of international poll scale sugar manufactured from sugar cane crushed by the Mackay Sugar Co-op's mills that they have supplied to the Mackay Sugar Co-op (Ten Year Production History).

21. In determining the Ten Year Production History, regard is had to the last 10 complete crushing seasons.

22. The Mackay Sugar Co-op wishes to convert from a co-operative structure to a Company registered under the *Corporations Act 2001*. The reasons for proposing a restructure as advised by the applicant include:

- the Mackay Sugar Co-op currently relies on debt financing for its existing business and any future diversification projects. The ability to continue to rely on debt funding for large projects is limited;
- the existing Rules of the Mackay Sugar Co-op hamper the ability to raise equity from current members;
- a new structure would allow the Mackay Sugar Co-op to better place itself to take advantage of diversification opportunities that it cannot pursue as a co-operative;
- debt funding requires longer lead times for introduction and opportunities can be lost due to delays in negotiating with financiers; and
- members have asked that the Co-op's Board investigate structure options for members to consider.

23. It is proposed that the members and cancelled members will exchange their interests in the Mackay Sugar Co-op for shares in MSL.

24. At the conclusion of the scheme there will be two classes of shares on issue in MSL:

- (a) Voting Shares – which will carry voting rights only and are intended to replicate the voting rights held by Mackay Sugar Co-op members; and
- (b) Investment Shares – which are intended to reflect each member's and cancelled member's underlying equity entitlement in the Mackay Sugar Co-op, which will be based on the Ten Year Production History of members and cancelled members. These Investment Shares will not carry any voting rights and will have a limited ability to be traded via an internal market.

25. There are four steps in the proposed restructure process. All steps are contemplated in the MSL Constitution so that, following the adoption of that constitution, the steps are self-executing and no further shareholder approvals are required:

- (a) Step 1 – Members’ interests in the Mackay Sugar Co-op are exchanged for shares in MSL. MSL will issue:
  - (i) 961 Grower Shares to members, having the following voting, dividend, income and capital rights:
    - (A) voting rights (one vote per share);
    - (B) dividend rights;
    - (C) income distribution/bonus rights (based on the 12 month production history of each member); and
    - (D) capital rights (based on Ten Year Production History of each member); and
  - (ii) 59 Former Grower Shares in MSL to cancelled members, having the following dividend, income and capital rights:
    - (A) dividend rights;
    - (B) income distribution/bonus rights (based on the 12 month production history of each member); and
    - (C) capital rights (based on the Ten Year Production History of each member).
- (b) Step 2 – the rights of the Grower Shares and the Former Grower Shares in MSL are adjusted so that:
  - (i) each Grower Share has the following rights:
    - (A) voting rights (one vote per share);
    - (B) dividend rights (based on the Ten Year Production History of each member); and
    - (C) capital rights (based on the Ten Year Production History of each member); and
  - (ii) each Former Grower Share in MSL has the following rights attached to it:
    - (A) dividend rights (based on the Ten Year Production History of each member); and
    - (B) capital rights (based on the Ten Year Production History of each member).

- (c) Step 3(a) – the voting rights of Grower Shares are removed and a new Voting Share (with a voting right of one vote per share) is issued to each holder of a Grower share;
- (d) Step 3(b) – the Grower Shares and the Former Grower Shares in MSL (which now have rights that are similarly expressed) are renamed Investment Shares; and
- (e) Step 4 – the number of Investment Shares in MSL is increased from 1,020 to 200 million shares. The effect of the division of shares is that the number of shares held by each member will be based on their Ten Year Production History. Thereafter, dividend and capital rights will be altered to a per share basis rather than the former Ten Year Production History basis.

## **Ruling**

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### **Choosing Subdivision 124-I roll-over for conversion**

26. Members of the Mackay Sugar Co-op can choose roll-over under section 124-520 of the ITAA 1997 for the ending of their shares and interests on conversion.

27. Cancelled members of the Mackay Sugar Co-op can choose roll-over under section 124-520 of the ITAA 1997 for the ending of their statutory rights to participate on conversion.

### **Value shifting provisions**

28. There will be no consequences under Divisions 725 and 727 of the ITAA 1997 for the issue of shares in MSL and the adjustment of rights attaching to those shares.

### **Adjustment of rights and issue of further shares**

29. Members and cancelled members who are issued with shares in MSL on conversion will not make any capital gain or capital loss under Division 104 of the ITAA 1997 as a result of the further issue and division of shares, and adjustments to share rights, that happen under the scheme.

30. Voting Shares issued to the holders of Grower shares are bonus equities in relation to those Grower shares: subsection 130-20(1) of the ITAA 1997.

## **Assessable dividend**

31. The proposed conversion will not result in an assessable dividend, as defined in subsection 6(1) of the ITAA 1936, for the members who are within the class of entities mentioned in paragraph 3 of this Ruling.

## **Anti-avoidance provisions**

32. Section 45 of the ITAA 1936 will not apply to treat any amount as a dividend as a consequence of the conversion.

33. Sections 45A and 45B of the ITAA 1936 will not apply to the issue of shares in MSL. The Commissioner will not, therefore, make a determination that section 45C of the ITAA 1936 applies to deem the issue of shares to be an unfranked dividend.

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**Commissioner of Taxation**

11 June 2008

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## Appendix 1 – Explanation

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❶ ***This Appendix 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.***

### **Choosing Subdivision 124-I roll-over for conversion**

34. Subdivision 124-I of the ITAA 1997 allows a member of a body that is incorporated under a law other than company law to choose roll-over for a CGT event that happens if the incorporated body converts to a company incorporated under the *Corporations Act 2001* or a similar foreign law (Company Law). The conditions for the roll-over are listed in subsection 124-520(1) of the ITAA 1997.

### **Conditions for roll-over – members**

35. CGT event C2 in section 104-25 of the ITAA 1997 happens when a member's share in the Mackay Sugar Co-op ends on the conversion. Members can choose roll-over for the ending of their shares, as the conditions in subsection 124-520(1) of the ITAA 1997 are satisfied.

36. In accordance with paragraphs 124-520(1)(a), (b), (c) and (e) of the ITAA 1997, members exchange their interests in a body incorporated under the Co-operatives Act (Mackay Sugar Co-op) for shares in a company registered under the *Corporations Act 2001* (MSL). Members receive only shares (and nothing else) in substitution for their membership interests. The class of persons is limited in paragraph 3(b) of this Ruling to residents of Australia.

37. In accordance with paragraph 124-520(1)(d) of the ITAA 1997, there is no significant difference between:

- (i) the ownership of the Mackay Sugar Co-op just before the conversion and the ownership of MSL just after the conversion; or
- (ii) the mix of ownership of the Mackay Sugar Co-op just before the conversion and the mix of the ownership of MSL just after the conversion.

38. 'Ownership' is not defined and bears its ordinary meaning in the context in which it appears. In the context of this provision, 'ownership' is not used in a narrow legal sense and refers instead to a member's economic ownership of the assets of the converting entity.

39. In accordance with subparagraph 124-520(1)(d)(i) of the ITAA 1997, the owners of Mackay Sugar Co-op just before the conversion are the existing members and the cancelled members who hold membership interests in the Mackay Sugar Co-op. The owners of MSL just after the conversion will be the existing members and cancelled members of Mackay Sugar Co-op who are issued with Grower Shares and Former Grower Shares in MSL.

40. In accordance with subparagraph 124-520(1)(d)(ii) of the ITAA 1997, the ownership interests in the Mackay Sugar Co-op just before the conversion are held by members and cancelled members. The following rights attach to the members' interests in the Mackay Sugar Co-op:

- (a) voting rights (one vote per share);
- (b) income distribution/bonus rights which have been based on the 12 month production history of each member; and
- (c) winding up distribution rights, which are based on the Ten Year Production History.

Cancelled members acquire a membership interest in the Mackay Sugar Co-op when they satisfy the conditions in section 137 of the Co-operatives Act. The character and ownership attributes of this membership interest are derived from the rights to participate in the conversion that it will secure.

41. On conversion, members will be issued with Grower Shares, and cancelled members will be issued with Former Grower Shares in MSL, to which the following rights attach:

- (a) Grower Shares
  - voting rights (one vote per share);
  - dividend rights;
  - income distribution/bonus rights (based on the 12 month production history of each member); and
  - capital rights (based on the Ten Year Production History of each member).
- (b) Former Grower Shares in MSL
  - dividend rights;
  - income distribution/bonus rights (based on the 12 month production history of each member); and
  - capital rights (based on Ten Year Production History of each member).

Also, there will be self executing changes to the rights attaching to the Grower Shares and Former Grower Shares in MSL at steps 2 to 4 of the scheme.

42. In the overall context of the scheme, any differences in the mix of ownership that result from the conversion at step 1 of the scheme are not regarded as significant for the purpose of subparagraph 124-520(1)(d)(ii) of the ITAA 1997.

***Conditions for roll-over – cancelled members***

43. Cancelled members acquire a membership interest in the Mackay Sugar Co-op when they satisfy all of the requirements to participate in the conversion under the terms of subsection 137(1) of the Cooperatives Act. These requirements are:

- the resolution under section 301 of the Cooperatives Act to convert to a company is passed within five years of the time when the shares were forfeited; and
- the cancelled member has satisfied the requirement in section 139 of the Cooperatives Act by repaying any forfeiture proceeds to the Co-operative.

44. CGT event C2 in section 104-25 of the ITAA 1997 happens when the membership interest ends on the issue of Former Grower shares in MSL. Cancelled members can choose roll-over for the ending of their membership interests, as the conditions in subsection 124-520(1) of the ITAA 1997 are satisfied.

45. The requirements in paragraphs 124-520(1)(b), (c),(d) and (e) of the ITAA 1997 are satisfied for the reasons stated in paragraphs 36 to 42 of this explanation.

46. The condition in paragraph 124-520(1)(a) of the ITAA 1997 is satisfied. For that provision, the term 'member of the body' would include any person entitled to benefit in the event that the co-operative is wound-up or converted to a company. This includes cancelled members.

***Consequences if Subdivision 124-I roll-over is chosen***

47. The consequences of choosing roll-over are set out in Subdivision 124-A of the ITAA 1997:

- for a member that holds shares and membership rights in the Mackay Sugar Co-op acquired before 20 September 1985, Grower Shares in MSL are taken to be acquired before that day;
- for a member that holds shares and membership rights in the Mackay Sugar Co-op acquired on or after 20 September 1985, a capital gain or capital loss made on the ending of those shares is disregarded, and the first element of the cost base and reduced cost base of their Grower Shares in MSL is worked out by apportioning part of the cost base and reduced cost base of the shares and rights that have ended; and

- for a cancelled member, a capital gain or capital loss made on the ending of their membership interest is disregarded, and the first element of the cost base and reduced cost base of their new Former Grower shares in MSL is worked out by apportioning the cost base and reduced cost base of the membership interests that have ended.

The first element of the cost base of the membership interests includes the amount of any forfeiture proceeds repaid to the Mackay Sugar Co-op: paragraph 110-25(2)(a) of the ITAA 1997.

## **Value shifting consequences**

48. The direct value shifting rules in Division 725 of the ITAA 1997 do not apply unless there is any entity that controls (for value shifting purposes) the target entity at some time during a scheme period: paragraph 725-50(b) and section 725-55 of the ITAA 1997.

49. The indirect value shifting rules in Division 727 of the ITAA 1997 do not apply unless the entities between which the value is shifted (the losing entity and the gaining entity) satisfy an ultimate controller test or a common ownership nexus test: paragraph 727-100(c) and sections 727-105 and 727-110 of the ITAA 1997.

50. There will be no consequences for any direct value shift as there is no entity that controls (for value shifting purposes) Mackay Sugar Co-op or (when converted) MSL at any time from when the scheme is entered into until when it is carried out: paragraph 725-50(b) and section 725-55 of the ITAA 1997.

51. There will be no consequences for any indirect value shift as no entity that provides economic benefits to MSL or receives such economic benefits in return, would together with Mackay Sugar Co-op or (when converted) MSL meet the ultimate controller test or common-ownership nexus test: paragraphs 727-100(c) and 727-110(1)(a), sections 727-105 and 727-355 of the ITAA 1997.

## **Adjustment of rights and issue of further shares**

52. In the overall context of this scheme, the adjustment of share rights do not give rise to CGT outcomes because the adjustments are effected within the bundle of rights comprising the shares and the shares do not thereby convert into other interests.

53. The Voting Share issued to each holder of Grower Shares is a bonus equity pursuant to paragraph 130-20(1)(b) of the ITAA 1997 because the Voting Share is issued in relation to the Grower Shares, which are the original equities contemplated in paragraph 130-20(1)(a) of the ITAA 1997.

54. The cost base and acquisition time of each Voting Share is determined pursuant to item 1 of the table in subsection 130-20(3) of the ITAA 1997. The Voting Share will be taken to have been acquired at the time the Grower Shares were acquired and the first element of the cost base of the Grower Shares must be apportioned in a reasonable way over both the Voting Share and the Grower Shares (which will be renamed Investment Shares under Step 3(b) of the scheme).

55. Taxation Determination TD 2000/10 states that if a company converts its shares into a larger or smaller number of shares (the converted shares) in accordance with section 254H of the *Corporations Act 2001* in that:

- (a) the original shares are not cancelled or redeemed in terms of the Corporations Law;
- (b) there is no change in the total amount allocated to the share capital account of MSL; and
- (c) the proportion of equity owned by each shareholder in the share capital account is maintained;

no CGT event happens to the shareholder's original shares for CGT purposes. While there is a change in the form of the original shares, there is no change in their beneficial ownership. The issue of roll-over relief under section 124-240 of the ITAA 1997 does not arise because no CGT event happens to the shares.

56. The converted Investment Shares have the same date of acquisition as the original Investment Shares to which they relate. For example, if the original Investment shares were acquired before 20 September 1985 (pre-CGT shares), the converted Investment Shares have the same acquisition date.

57. In the case of original Investment Shares acquired on or after 20 September 1985 (post-CGT shares), section 112-25 of the ITAA 1997 applies to attribute a proportionate cost base to the converted Investment Shares.

58. In the conversion under Step 4, the abovementioned requirements will be satisfied. No CGT event consequently happens upon the increase in the number of shares from 1,020 shares to 200 million shares.

### **Assessable dividend**

59. Subsection 6(1) of the ITAA 1936 defines 'dividend' for the purposes of the income tax legislation to include:

- (a) any distribution made by a company to any of its shareholders, whether in money or other property; and
- (b) any amount credited by a company to any of its shareholders as shareholders.

However, paragraph (d) of the definition within subsection 6(1) of the ITAA 1936 excludes any distribution which is debited against the share capital account of a company, except where subsection 6(4) of the ITAA 1936 applies.

60. Subsection 6(4) of the ITAA 1936 provides that paragraph (d) of the definition of 'dividend' in subsection 6(1) of the ITAA 1936 does not apply if, under an arrangement, a company raises share capital from one taxpayer which is credited to its share capital account, and then distributes that amount which has been credited to the share capital to another taxpayer.

61. In this case, the issue by MSL of shares (as described in paragraphs 14 to 25 of this Ruling), to members and cancelled members will not constitute a dividend as it will not involve either a distribution of money or property of MSL to the shareholders or an amount being credited by MSL to any of its shareholders as shareholders.

62. As none of the shares is an assessable dividend, shares issued in relation to original member interests in the Mackay Sugar Co-op that are acquired, or taken to be acquired, on a particular date on or after 20 September 1985, are also taken to be acquired on that date. A shareholder is required to work out the cost base of their member interest by apportioning the first element of the cost base of the original member interest in a reasonable way: item 1 in the table in subsection 130-20(3) of the ITAA 1997.

63. As no payment is required to be made for their issue, shares issued in relation to original member interests that are taken to be acquired before 20 September 1985 are also taken to be acquired before that date: item 3 in the table in subsection 130-20(3) of the ITAA 1997.

## **Anti-avoidance provisions**

### ***Section 45***

64. Section 45 of the ITAA 1936 applies where a company streams the provision of bonus shares and the payment of minimally franked dividends to its shareholders in such a way that bonus shares are received by some shareholders and minimally franked dividends are received by other shareholders. As the described share issue arrangement does not contemplate the distribution of dividends, section 45 does not apply.

### ***Section 45A***

65. Sections 45A and 45B of the ITAA 1936 are anti-avoidance provisions which, if either applies, allow the Commissioner to make a determination under section 45C of the ITAA 1936 that all or part of a capital benefit is treated as an unfranked dividend.

66. Section 45A of the ITAA 1936 applies in circumstances where capital benefits are streamed to certain shareholders who derive a greater benefit than other shareholders from the receipt of capital (the advantaged shareholders) and it is reasonable to assume that the other shareholders have received or will receive dividends (the disadvantaged shareholders).

67. The 'provision of a capital benefit' is defined in subsection 45A(3) of the ITAA 1936 to include the provision to a shareholder of shares in MSL.

68. Although a 'capital benefit', as defined in paragraph 45A(3)(a) of the ITAA 1936, will be provided to the Mackay Sugar Co-op members, the circumstances of the conversion and share issue arrangement indicate that there is no streaming of the provision of shares to some members and the payment of dividends to other members. As the second condition in subsection 45A(1) of the ITAA 1936, is not satisfied, section 45A of the ITAA 1936 will not apply to the issue of shares.

69. As section 45A of the ITAA 1936 will not apply to the issue of shares, the Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies to deem the provision of shares to be an unfranked dividend.

### **Section 45B**

70. Section 45B of the ITAA 1936 applies where certain capital benefits are provided to shareholders in substitution for dividends. Specifically, the provision applies where:

- there is a scheme under which a person is 'provided with a capital benefit' by a company (paragraph 45B(2)(a)) of the ITAA 1936 ;
- under the scheme a taxpayer, who may or may not be the person provided with the capital benefit, 'obtains a tax benefit' (paragraph 45B(2)(b)) of the ITAA 1936; and
- having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, entered into the scheme or carried out the scheme or any part of the scheme for a purpose, other than an incidental purpose, of enabling a taxpayer to 'obtain a tax benefit' (paragraph 45B(2)(c)) of the ITAA 1936.

71. In this case, while the conditions of paragraphs 45B(2)(a) and 45B(2)(b) of the ITAA 1936 will be met, it is apparent that there is no requisite purpose, in the conversion, by way of capital distribution, of enabling the members to obtain a tax benefit.

## **Appendix 2 – Detailed contents list**

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## References

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<i>Previous draft:</i>	- ITAA 1997 104-25
Not previously issued as a draft	- ITAA 1997 110-25(2)(a)
	- ITAA 1997 112-25
<i>Related Rulings/Determinations:</i>	- ITAA 1997 Subdiv 124-A
TD 2000/10	- ITAA 1997 124-240
	- ITAA 1997 Subdiv 124-I
<i>Previous Rulings/Determinations:</i>	- ITAA 1997 124-520
CR 2007/58	- ITAA 1997 124-520(1)
	- ITAA 1997 124-520(1)(a)
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<i>Subject references:</i>	- ITAA 1997 124-520(1)(d)
- assessable income	- ITAA 1997 124-520(1)(d)(i)
- bonus shares	- ITAA 1997 124-520(1)(d)(ii)
- capital gains	- ITAA 1997 124-520(1)(e)
- CGT events	- ITAA 1997 130-20(1)
- CGT roll-over relief	- ITAA 1997 130-20(1)(a)
- control test	- ITAA 1997 130-20(1)(b)
- co-operative companies	- ITAA 1997 130-20(3)
- distributions	- ITAA 1997 Div 725
- dividends	- ITAA 1997 725-55
- incorporation	- ITAA 1997 727-105
- profits	- ITAA 1997 727-110
- share capital	- ITAA 1997 725-50(b)
- shareholders	- ITAA 1997 Div 727
- shares	- ITAA 1997 727-100(c)
	- ITAA 1997 727-110(1)(a)
<i>Legislative references:</i>	- ITAA 1997 727-355
- ITAA 1936 6(1)	- TAA 1953
- ITAA 1936 6(4)	- TAA 1953 Sch 1 357-75(1)
- ITAA 1936 45	- Copyright Act 1968
- ITAA 1936 45A	- Corporations Act 2001
- ITAA 1936 45A(1)	- Corporations Act 2001 254H
- ITAA 1936 45A(2)	- Cooperatives Act 1997 (Qld)
- ITAA 1936 45A(3)	- Cooperatives Act 1997 (Qld)
- ITAA 1936 45A(3)(a)	137
- ITAA 1936 45B	- Cooperatives Act 1997 (Qld)
- ITAA 1936 45B(2)(a)	137(1)
- ITAA 1936 45B(2)(b)	- Cooperatives Act 1997 (Qld)
- ITAA 1936 45B(2)(c)	139
- ITAA 1936 45C	- Cooperatives Act 1997 (Qld)
- ITAA 1997 Div 104	301

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### ATO references

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