# *CR 2019/7 - Income tax: Inghams Group Limited - return of share capital*

# Class Ruling

## Income tax: Inghams Group Limited - return of share capital

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

This publication (excluding appendices) 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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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.

## Summary – what this Ruling is about

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

### Relevant provisions

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

- section 44 of the *Income Tax Assessment Act 1936* (ITAA 1936)
- section 45A of the ITAA 1936
- section 45B of the ITAA 1936
- section 45C of the ITAA 1936
- section 104-25 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 104-135 of the ITAA 1997
- Subdivision 115-A of the ITAA 1997
- Division 855 of the ITAA 1997.

All legislative references in this Ruling are to the ITAA 1936 unless otherwise indicated.

### Class of entities

3. The class of entities to which this Ruling applies are the holders of ordinary shares in Inghams Group Limited (Inghams) who:

- were registered on the Inghams share register on 11 December 2018 (the Record Date)
- did not hold their shares in Inghams as revenue assets (as defined in section 977-50 of the ITAA 1997) or as trading stock (as defined in subsection 995-1(1) of the ITAA 1997) on the Record Date – that is, they held their shares on capital account, and
- are not subject to the taxation of financial arrangements rules in Division 230 of the ITAA 1997 in relation to gains and losses on their Inghams shares.

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

In this Ruling, a person belonging to this class of entities is referred to as an 'Inghams shareholder'.

### Qualifications

4. 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 7 to 20 of this Ruling.

5. 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.

## Date of effect

6. This Ruling applies from 1 July 2018 to 30 June 2019. The Ruling continues to apply after 30 June 2019 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10 *Public Rulings*).

# Scheme

7. The following description of the scheme is based on information provided by the applicant.

**Note:** certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

### Background

8. Inghams is an Australian resident company that has been listed on the Australian Securities Exchange (ASX) since 7 November 2016.

9. Inghams operates in the poultry industry. It is involved in the entire supply chain from feed milling to chicken breeding, growing, processing and distribution of chickens and chicken products.

### Reduction of share capital

10. Inghams was established by a private equity group in 2013 to acquire an existing poultry business. After selling assets and restructuring the business of Inghams, the private equity group floated Inghams by way of an initial public offering (IPO) on the ASX on 7 November 2016.

11. To reassure prospective investors about its financial strength after its ownership by a private equity group, and to ensure a moderate level of gearing, Inghams raised a substantial amount of share capital under the IPO.

12. As a result of the cash flow generated by its business since the IPO in November 2016, the directors of Inghams have formed the opinion that Inghams has share capital in excess of what is needed for its ongoing operations.

13. Inghams foreshadowed a reduction of share capital in February 2018. On 22 August 2018, Inghams announced its intention to propose a reduction of share capital of approximately A$125 million to its shareholders.

14. At an extraordinary general meeting held on 6 December 2018, the shareholders of Inghams approved an equal reduction of share capital of approximately A$125 million under section 256B of the *Corporations Act 2001*.

15. The reduction of share capital of A$0.33 per share was paid to all shareholders of Inghams on 18 December 2018 (the Payment Date).

16. The reduction of share capital of approximately A$125 million was debited in full against Inghams' share capital account and was funded from Inghams' existing cash reserves.

### Other matters

17. Immediately prior to the reduction of share capital, Inghams had 380,243,196 ordinary shares on issue, and a credit balance in its share capital account of A$263.6 million.

18. Inghams has confirmed that its share capital account (as defined in section 975-300 of the ITAA 1997) is not tainted (within the meaning of Division 197 of the ITAA 1997).

19. Inghams has paid a dividend to its shareholders every 6 months since the IPO.

20. Shares in Inghams are not 'taxable Australian property' under items 1 or 4 of the table in section 855-15 of the ITAA 1997. As less than 50% of the market values of Inghams' assets are 'taxable Australian real property' under section 855-20 of the ITAA 1997, shares in Inghams are not 'taxable Australian property' under item 2 of the table in section 855-15 of the ITAA 1997.

## Ruling

### Not a dividend

21. No part of the reduction of share capital will be included in the assessable income of Inghams shareholders under section 44.

22. The Commissioner will not make a determination under subsection 45A(2) that section 45C applies in relation to the whole, or any part, of the reduction of share capital.

23. The Commissioner will not make a determination under paragraph 45B(3)(b) that section 45C applies in relation to the whole, or any part, of the reduction of share capital.

### CGT consequences

#### *CGT event G1*

24. CGT event G1 happened to an Australian resident Inghams shareholder when Inghams paid the amount of the reduction of share capital to the Inghams shareholder in respect of Inghams shares that they owned at the Record Date and continued to own at the Payment Date (section 104-135 of the ITAA 1997).

25. CGT event G1 happened because a company (Inghams) made a payment to a shareholder in respect of a share they own in the company, some or all of the payment is not a dividend (or an

amount that is taken to be a dividend under section 47), and the payment is not included in the shareholder's assessable income.

26. The amount of the reduction of share capital to which CGT event G1 applies is A$0.33 per Inghams share (subsection 104-135(1) of the ITAA 1997).

27. An Inghams shareholder will make a capital gain from CGT event G1 happening if the amount of the reduction of share capital of A$0.33 is more than the cost base of the shareholder's Inghams share. If so, the capital gain is equal to the amount of the excess and the cost base and reduced cost base of the Inghams share is reduced to nil (subsection 104-135(3) of the ITAA 1997). No capital loss can be made from CGT event G1 (Note 1 to subsection 104-135(3) of the ITAA 1997).

28. A capital gain made when CGT event G1 happens will be a discount capital gain under Subdivision 115-A of the ITAA 1997 provided the Inghams share was acquired at least 12 months before the CGT event (subsection 115-25(1) of the ITAA 1997) and the other conditions in that Subdivision are satisfied.

29. If the amount of the reduction of share capital is not more than the cost base of the shareholder's Inghams share, the cost base and reduced cost base of the share are reduced by the amount of the reduction of share capital (subsection 104-135(4) of the ITAA 1997).

### *CGT event C2*

30. CGT event C2 happened to an Australian resident Inghams shareholder when Inghams paid the amount of the reduction of share capital to the Inghams shareholder in respect of Inghams shares that they owned at the Record Date but had ceased to own at the Payment Date (section 104-25 of the ITAA 1997).

31. CGT event C2 happened because, by ceasing to own an Inghams share after the Record Date but before the Payment Date, an Inghams shareholder retained the right to receive the reduction of share capital (which is a separate CGT asset from the Inghams share). When the reduction of share capital was paid, the right to receive the return of share capital (being an intangible CGT asset) ended by the right being discharged or satisfied.

32. An Inghams shareholder will make a capital gain if the capital proceeds from the ending of the right are more than the cost base of the right. The capital gain is equal to the amount of the excess. An Inghams shareholder will make a capital loss if the capital proceeds from the ending of the right are less than the reduced cost base of the right. The capital loss is equal to the amount of the difference (subsection 104-25(3) of the ITAA 1997).

33. In working out the capital gain or capital loss made from CGT event C2, the capital proceeds will be the amount of the reduction of share capital of A$0.33 per Inghams share (subsection 116-20(1) of the ITAA 1997).

34. The cost base of the right of the Inghams shareholder to receive the reduction of share capital is worked out under Division 110 of the ITAA 1997 (modified by Division 112 of the ITAA 1997). The cost base of the right does not include the cost base or reduced cost base of the Inghams share previously owned by an Inghams shareholder that has been applied in working out a capital gain or capital loss made when a CGT event happened to the Inghams share – for example, when the shareholder disposed of the share after the Record Date. Therefore, the right to receive the reduction of share capital will have a nil cost base. As a result, an Inghams shareholder will make a capital gain equal to the capital proceeds, being A$0.33 per Inghams share.

### *Foreign resident shareholders*

35. Non-resident Inghams shareholders will not be liable to pay Australian withholding tax on any part of the reduction of share capital, as it is not a dividend (subsections 128B(1) and (4)).

36. A foreign resident Inghams shareholder must disregard a capital gain from CGT event G1, and a capital gain or capital loss from CGT event C2, where it happens in relation to a CGT asset that is not 'taxable Australian property' (section 855-10 of the ITAA 1997).

37. An Inghams share is taxable Australian property if:

- the Inghams share has been used at any time by the shareholder in carrying on a business through a permanent establishment in Australia (item 3 of the table in section 855-15 of the ITAA 1997), or
- the Inghams share is covered by subsection 104-165(3) of the ITAA 1997 (item 5 of the table in section 855-15 of the ITAA 1997).

**Commissioner of Taxation**
16 January 2019

# Appendix 1 – Explanation

***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.***

38. The tax consequences and relevant legislative provisions that arise concerning the scheme that is the subject of this Ruling are outlined in the Ruling section of this document.

39. The two main issues that arise under the scheme are:

- the reduction of share capital will not give rise to a dividend for income tax purposes under either the definition of 'dividend' in subsection 6(1), or section 45A or section 45B (pursuant to section 45C), that would otherwise be included in the assessable income of Inghams shareholders under section 44, and
- the reduction of share capital will cause CGT event G1 or CGT event C2 to happen.

40. Section 45A applies when a company streams the provision of 'capital benefits' to shareholders who would derive a greater benefit from the capital benefits than other shareholders and it is reasonable to assume that the other shareholders have received, or will receive, dividends.

41. The phrase 'provision of a capital benefit' to a shareholder in a company is defined in subsection 45A(3) of the ITAA 1936 and includes the distribution to the shareholder of share capital. The reduction of share capital paid to Inghams shareholders means that there was the provision of a capital benefit to them.

42. However, as all shareholders of Inghams participated in the reduction of share capital based on the number of Inghams shares they held at the time, there was no streaming of capital benefits. Accordingly, the Commissioner will not make a determination under subsection 45A(2) that section 45C applies in relation to the whole, or a part, of the capital benefits provided to Inghams shareholders. No part of the reduction of share capital will be treated as a dividend for income tax purposes under section 45A.

43. Section 45B applies where certain capital benefits are, having regard to the relevant circumstances of the scheme in subsection 45B(8), considered to have been provided to shareholders by a company for a more than incidental purpose of enabling a taxpayer to obtain a tax benefit. Where section 45B applies, the Commissioner may make a determination that all or part of the capital benefit is taken to be a dividend paid by the company for income tax purposes.

44. Having regard to the relevant circumstances of Inghams' reduction of share capital, the Commissioner considers that the scheme was not entered into or carried out for a more than incidental

purpose of enabling Inghams shareholders to obtain a tax benefit. Accordingly, the Commissioner will not make a determination under paragraph 45B(3)(b) that section 45C applies in relation to the whole, or a part, of the capital benefit constituted by the distribution of share capital to Inghams shareholders. No part of the reduction of share capital will be treated as a dividend for income tax purposes under section 45B.

45. The Ruling section provides a detailed explanation of the CGT consequences of the reduction of share capital. Therefore, no further explanation is warranted.

# Appendix 2 – Detailed contents list

46. The following is a detailed contents list for this Ruling:

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# References

*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2006/10

*Legislative references:*

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- ITAA 1936 6(1)
- ITAA 1936 44
- ITAA 1936 45A
- ITAA 1936 45A(2)
- ITAA 1936 45A(3)
- ITAA 1936 45B
- ITAA 1936 45B(3)(b)
- ITAA 1936 45B(8)
- ITAA 1936 45C
- ITAA 1936 47
- ITAA 1936 128B(1)
- ITAA 1936 128B(4)
- ITAA 1997
- ITAA 1997 104-25
- ITAA 1997 104-25(3)
- ITAA 1997 104-135
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