



Class Ruling

Income tax: CGT event K6: Tattersall's Group Restructure: Beneficiaries of the Estate of the Late George Adams

Contents	Para
What this Class Ruling is about	1
Date of effect	8
Arrangement	9
Ruling	26
Explanation	28
Detailed contents list	50

Preamble

*The number, subject heading, **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 laws' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. The tax laws dealt with in this Ruling are:
- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997);
 - section 104-25 of the ITAA 1997;
 - section 104-230 of the ITAA 1997; and
 - Subdivision 124-N of the ITAA 1997.

Class of persons

3. The class of persons to which this Ruling applies comprises the beneficiaries of the Estate of the Late George Adams (the Estate) who acquired their interests in the Estate before 20 September 1985. These beneficiaries are referred to in this Ruling as pre-CGT beneficiaries.

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 actually carried out is carried out in accordance with the arrangement described in paragraphs 9 to 25.

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

- 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- this Ruling may be withdrawn or modified.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 year ended 30 June 2005. However, 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 this Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Arrangement

9. The arrangement that is the subject of this Ruling is described below. The description is based on, and includes, the following documents:

- (a) Class Ruling application dated 10 March 2005 from Moore Stephens HF requesting the Tax Office to make a Class Ruling; and
- (b) the agreements executed with the major operating subsidiaries (Sub-licence Agreements).

10. This Ruling does not address any issues associated with the valuation of the goodwill or any other assets of the Estate. However, paragraphs 47 to 49 of Taxation Ruling TR 1999/16 provide some guidance on these issues.

Establishment of the Estate

11. The Estate was established by the will of the late George Adams dated 16 March 1901 together with a Codicil dated 31 May 1902 (collectively, the Will).
12. At the time of his death, Mr Adams conducted a sweep known as 'The Tattersall's Sweep Consultation care of George Adams'. In the Will, Mr Adams authorised the Trustees of his Estate (Trustees):
- ...to carry on and continue or to use their best endeavours to carry on and continue in Tasmania or in any other place whatsoever [the Business]...as heretofore carried on by me with the fullest most complete and most absolute powers in all respects as if they were the sole owners thereof.
13. Since Mr Adams' death, the Trustees continued to conduct the business previously carried on by Mr Adams. In the century that has elapsed since Mr Adams' death, there were successive appointments of Trustees who continued to hold, conduct and progressively expand the Estate's business activities of the Tattersall's group. The activities of the group now include sweeps, lotteries (including Tattslotto), Club Keno and gaming activities.
14. The licence to conduct the sweeps business within Victoria was originally granted to the Estate on 23 June 1954, pursuant to the Victorian *Tattersalls Consultations Act 1958*. The lottery licence was periodically extended throughout the period 1963 to 2002. In 2002 the licence was extended to 2007.
15. The gaming licence was granted to the Estate on 14 April 1992 pursuant to the Victorian *Gaming Machine Control Act 1991* and is due to expire in 2012.
16. The authorisation to conduct and promote Club Keno games in Victoria was granted to the Estate pursuant to the Victorian *Club Keno Act 1993*.
17. The major assets of the Estate, other than goodwill, were:
- trade marks, brands and similar items of intellectual property;
 - holdings of real estate;
 - shares in Tattersall's Holdings Pty Ltd (Holdings); and
 - statutory licences and authorisations, principally those issued by the State Government of Victoria permitting the Trustees to conduct public lotteries, Club Keno and gaming activities.
18. In addition to the assets referred to above, the Estate (through its shareholding in Holdings and other subsidiaries) held interests in other active businesses carried on in Australia, South Africa, the United Kingdom and Sweden.

Modernisation of the legal structure

19. In 1998, the Trustees, in accordance with powers granted under Clause NN of the Will, modernised the legal structure under which the business operated. Amongst the key objectives of this restructure was a structure that would more readily facilitate the retention of profits for expansion and growth (Corporatisation). The Corporatisation resulted in the establishment of a new holding company, Holdings, all the shares in which were owned by the Estate, and the establishment of a number of wholly owned subsidiaries of Holdings. These companies were established to conduct the trading activities under sub-licences from the Estate. These major subsidiaries are:

- Tattersall's Sweeps Pty Ltd (Sweeps), which conducts the lotteries and sweeps;
- Tattersall's Club Keno Pty Ltd (Keno), which conducts and promotes Club Keno games; and
- Tattersall's Gaming Pty Ltd (Gaming), which conducts the gaming activity.

Licence agreements with subsidiaries

20. Under the Sub-licence Agreements executed with the major operating subsidiaries, the Trustees authorised the three subsidiaries referred to in paragraph 19 to operate the relevant activities and, in doing so, to exercise the powers granted to the Estate under the relevant statutory licences and authorisations. For Gaming the relevant gambling activity is gaming, for Sweeps the relevant gambling activity is conducting lotteries and for Keno the relevant gambling activity is the conduct and promotion of Club Keno games in Victoria.

21. In addition, the Trustees authorised the subsidiaries to use the intellectual property rights of the Estate, including patents, designs, trademarks, copyrights, drawings, plans, know-how, technology and expertise.

22. Under the terms of each of these agreements, the Estate retained at all times ownership of the statutory licences, intellectual property and also goodwill (under Clause 12 of each of the Sub-licence Agreements). The Sub-licence Agreements licensed the three subsidiaries to use these assets in the conduct of their respective operations.

Restructure

23. A restructure (Restructure) of the Tattersall's Group has occurred in order to effect the ultimate listing of the group on the Australian Stock Exchange. The Restructure satisfies the conditions for rollover relief under Subdivision 124-N of the ITAA 1997. However, it is possible that some beneficiaries of the Estate will not choose, or will not be in a position to choose, the rollover.

24. The Restructure included the transfer of relevant assets of the Estate (including the shares in Holdings) to a newly established holding company, Tattersall's Limited, in return for shares in Tattersall's Limited being issued to the Trustees which were distributed to the beneficiaries. Some liabilities of the Estate were assumed by Tattersall's Limited as part of the consideration for the assets transferred, but the bulk of the consideration for the transfer of assets was the allotment of shares.

25. After the Restructure, Tattersall's Limited owns the relevant assets of the Estate. A substantial asset is the goodwill of the business and it is accepted that it is a pre-CGT asset if Tattersall's Limited chooses rollover under Subdivision 124-N of the ITAA 1997 in respect of assets transferred under the Restructure. There are no plans for Tattersall's Limited and its subsidiaries to acquire or dispose of assets in the period after the Restructure.

Ruling

26. CGT event K6 (section 104-230 of the ITAA 1997) does not happen as a result of CGT event C2 (section 104-25 of the ITAA 1997) happening to the interests of the pre-CGT beneficiaries under the Restructure.

27. CGT event K6 (section 104-230 of the ITAA 1997) does not happen to the shares in Tattersall's Limited acquired by the pre-CGT beneficiaries under the Restructure who choose a rollover under Subdivision 124-N in respect of the Restructure where CGT event A1 (section 104-10 of the ITAA 1997) happens to those shares immediately after the shares are acquired.

Explanation

CGT event K6 (section 104-230 of the ITAA 1997)

28. CGT event K6 in section 104-230 of the ITAA 1997 happens if one of the CGT events listed in paragraph 104-230(1)(b) happens in relation to a share in a company or an interest in a trust that was acquired before 20 September 1985, and there is no rollover for that CGT event. However, CGT event K6 will not happen if the 75% test in subsection 104-230(2) is not satisfied.

29. The most likely of the CGT events listed in paragraph 104-230(1)(b) of the ITAA 1997 to happen for the pre-CGT beneficiaries' shares in Tattersall's Limited is CGT event A1 (section 104-10 of the ITAA 1997). CGT event A1 happens on the disposal of shares in Tattersall's Limited.

30. The 75% test will be satisfied if either the market value of the post-CGT property (other than trading stock) of the company or trust or the market value of interests the company or trust owned through interposed companies or trusts in post-CGT property (other than trading stock), is at least 75% of the net value of the company or trust.

31. Subsection 104-230(6) of the ITAA 1997 provides that the capital gain arising from CGT event K6 is that part of the capital proceeds from the shares or trust interests that is reasonably attributable to the excess of the market value of the post-CGT property over the sum of the cost bases of that property.

32. For those pre-CGT beneficiaries who choose rollover under Subdivision 124-N of the ITAA 1997 in respect of the Restructure, CGT event K6 did not happen upon the ending (CGT event C2 in section 104-25 of the ITAA 1997) of their pre-CGT interests in the Estate.

33. Whether CGT event K6 happens as a result of one of the CGT events listed in paragraph 104-230(1)(b) of the ITAA 1997 happening to their shares in Tattersall's Limited will depend on whether the 75% test in subsection 104-230(2) of the ITAA 1997 is satisfied at the time of that event.

34. Pre-CGT beneficiaries who do not choose the rollover under Subdivision 124-N of the ITAA 1997 will acquire post-CGT shares in Tattersall's Limited. CGT event K6 does not apply to a CGT event that happens to these post-CGT shares.

Goodwill of the Estate

35. Taxation Ruling TR 2004/18 provides that for the purposes of CGT event K6 (section 104-230 of the ITAA 1997), an item of property that constitutes a single CGT asset will be taken to be acquired at the time that the ITAA 1936 or the ITAA 1997 treats the CGT asset as having been acquired. It is necessary to ascertain whether that CGT asset is pre-CGT acquired or post-CGT acquired.

36. Taxation Ruling TR 1999/16 provides the Commissioner's view on the basis for determining whether the goodwill of business is a pre or post-CGT asset.

37. Whether goodwill is considered to be a pre or post-CGT asset depends on whether there has been an expansion of an existing business or a new business has commenced.

38. If a new operation or activity introduced by a taxpayer is an expansion of an existing business, any goodwill built up in conducting the expanded business is merely an expansion of the existing goodwill of the business. If a business which commenced before 20 September 1985) is expanded, goodwill generated in conducting the expanded business is merely an accretion to the pre-CGT goodwill.

Expansion of existing business or commencement of new business

39. The test for determining whether the same business is being carried on is not the same test as that described in paragraphs 9 and 10 of Taxation Ruling TR 1999/9 for continuity of business in applying the tax loss provisions in subsection 165-210(1) of the ITAA 1997.

40. Whether an increase in business operations or in the scale of activity constitutes an expansion of an existing business, or a new and separate business in its own right, is a question of fact dependent on the circumstances of each particular case.

41. It is considered that, despite the fact that the Estate had expanded its gambling related activities of sweeps, lotteries, Club Keno and gaming activities, the Trustees did not cease to carry on the same business as the business retained its essential nature or character in its gambling operations.

42. Expansion or diversification of a business by adopting new compatible operations, servicing different clients or offering improved products or services, does not cause it to be a new business provided the business retains its essential nature or character.

43. It is considered that the Estate simply expanded its gambling related activities in line with its key objectives of restructuring for the retention of profits for expansion and growth.

44. It is considered that the Estate did not undertake a planned or systematic process of change since 1985. There has been no sudden or dramatic change in the business brought about by either the acquisition or the shedding of activities or assets on a larger scale.

45. It is considered that, notwithstanding the Sub-licence Agreements, the Estate still carried on the business in relation to various gambling activities. It is also considered that the Estate still carried on a business of providing the various forms of gambling, albeit through operating subsidiaries, and the goodwill of those activities enured to the Estate.

46. It is considered that the Estate remained the owner of the gambling business to which the goodwill attached, notwithstanding the operation of the gambling activities by the operating subsidiaries over the past six years.

47. It is considered that the whole of the goodwill of the business of the Estate was pre-CGT goodwill and that the same business continued. The Trustees merely expanded the Estate's existing business by operating other gambling related activities.

48. The remaining pre-CGT assets of the Estate that were transferred to Tattersall Limited under the Restructure will also be taken to be pre-CGT assets of Tattersall's Limited if rollover under Subdivision 124-N of the ITAA 1997 is chosen by the company for those assets.

49. At the time of the Restructure, the proportion of the net value of the post-CGT assets of Tattersall's Limited did not exceed 75% of the total net value of the company (subsection 104-230(2) of the ITAA 1997). Accordingly, CGT event K6 will not apply to the disposal by the pre-CGT beneficiaries of any of their shares in Tattersall's Limited immediately after the Restructure.

Detailed contents list

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

	Paragraph
What this Class Ruling is about	1
Tax law(s)	2
Class of persons	3
Qualifications	4
Date of effect	8
Arrangement	9
Establishment of the Estate	11
Modernisation of the legal structure	19
Licence agreements with subsidiaries	20
Restructure	23
Ruling	26
Explanation	28
CGT event K6 (section 104-230 of the ITAA 1997)	28
Goodwill of the Estate	35
Expansion of existing business or commencement of new business	39
Detailed contents list	50

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 92/1; TR 92/20; TR 95/31;
TR 97/16; TR 99/16; TR 99/9;
TR 2004/18; CR 2001/1

Subject references:

- capital gains tax
- CGT event
- estate
- rollover relief
- shares
- trust

Legislative references:

- Copyright Act 1968
- TAA 1953 Pt IVAAA
- ITAA 1997 104-10
- ITAA 1997 104-25
- ITAA 1997 104-230
- ITAA 1997 104-230(1)(b)
- ITAA 1997 104-230(2)
- ITAA 1997 104-230(6)
- ITAA 1997 Subdiv 124-N
- ITAA 1997 165-210(1)
- Club Keno Act 1993 (Vic)
- Gaming Machine Control Act 1991 (Vic)
- Tattersall's Consultation Act 1958 (Vic)

ATO references

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