

CR 2015/28 - Income tax: exchange of shares in Fiducian Portfolio Services Limited for shares in Fiducian Group Limited

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Class Ruling

Income tax: exchange of shares in Fiducian Portfolio Services Limited for shares in Fiducian Group Limited

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1 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, 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.

What this Ruling is about

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 115-30(1) of the *Income Tax Assessment Act 1997* (ITAA1997)
- section 124-15 of the ITAA 1997
- Division 615 of the ITAA 1997, and
- section 855-10 of the ITAA 1997.

All legislative references in this Ruling are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies is the ordinary shareholders of Fiducian Portfolio Services Limited (Fiducian) who:

- (a) are:
 - (i) Australian residents, or
 - (ii) foreign residents who do not hold their Fiducian shares as taxable Australian property,
- (b) participate in the exchange of their Fiducian shares for shares in Fiducian Group Limited (NewCo shares)
- (c) hold their Fiducian shares on capital account, and not as revenue assets or trading stock, and
- (d) are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their Fiducian shares.

(Note – Division 230 will generally not apply to individuals, unless they have made an election for it to apply to them.)

4. In this Ruling, this class of entities is referred to as 'participating shareholders'.

Qualifications

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

6. 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 9 to 21 of this Ruling.

7. 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

8. This Ruling applies from 1 July 2014 to 30 June 2015. The Ruling continues to apply after 30 June 2015 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).

Scheme

9. 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:

- Class ruling application dated 27 January 2015 (including appendices)
- The scheme booklet dated 5 December 2014 for the proposed restructure of the Fiducian Group, and
- Correspondence from the applicant dated 28 and 29 January 2015 and 2 April 2015.

Background

10. The Fiducian Group is a group of related entities that provide financial services including financial planning, funds management, investment platform administration, information technology services, and accounting/accountancy resourcing services.

11. Prior to the restructure of the Fiducian Group, Fiducian was the ultimate holding company and the group comprised of four wholly-owned subsidiaries, being Fiducian Financial Services Pty Limited (FFS), Harold Bodinnar & Associates Pty Ltd (HBA), Money and Advice Pty Ltd (MAA), and Fiducian Business Services Pty Limited (FBS). FBS holds 90% of the ownership interests in Fiducian Resourcing Services Private Limited before and after the restructure of the group.

12. Fiducian was the holder of a number of licences including Australian Financial Services Licences and a Responsible Superannuation Entity Licence.

13. The restructure of the Fiducian Group involved the structural separation of the Fiducian Group's superannuation services from its other capacities, all of which were operated by Fiducian.

The restructure of the Fiducian Group

14. Fiducian Group Limited (NewCo) was incorporated on 20 October 2014 to act as the new ultimate holding company for the Fiducian Group as part of the restructure of the group.

15. Fiducian Investment Management Services Limited (FIM) and Fiducian Services Pty Limited (FSL) are two newly incorporated wholly owned subsidiaries of NewCo. Both were incorporated on 21 October 2014.

16. All Fiducian shareholders registered at 5:00pm (Sydney time) on 13 February 2015 (the Scheme Record Date) participated in the exchange.

17. The restructure of the Fiducian Group occurred in two stages:

Stage 1 – interposition of NewCo:

- (a) each Fiducian share held by Fiducian ordinary shareholders on the Scheme Record Date (other than Ineligible Foreign Shareholders), were exchanged for one NewCo share on 20 February 2015 (Implementation Date)
- (b) Fiducian shares ceased to be listed on the Australian Securities Exchange (ASX), and
- (c) each option to acquire unissued Fiducian shares was exchanged for equivalent options to acquire the same number of NewCo shares on substantially the same terms and conditions.

Stage 2 – restructure of NewCo:

- (a) NewCo became listed on the ASX, and
- (b) NewCo elected to form a tax consolidated group with its subsidiary members being Fiducian, FFS, FBS, HBA, MAA, FIM and FSL.

18. The scheme was approved by Fiducian shareholders at the scheme meeting held on 2 February 2015, and by way of a court approved scheme of arrangement under subsection 411(6) of the *Corporations Act 2001* on 5 February 2015.

Other matters

19. For the purposes of Division 855, Fiducian shares are not taxable Australian real property or indirect Australian real property interests at the Scheme Record Date.

20. Fiducian was not the head company of a consolidated group.

21. NewCo will choose that section 615-65 applies after the Implementation Date in accordance with section 615-30.

Ruling

Resident participating shareholders

22. Participating shareholders who are Australian residents for the purposes of subsection 995-1(1) (resident participating shareholders) will be eligible to choose roll-over relief under Division 615 for the exchange of each of their Fiducian shares for NewCo shares.

23. Resident participating shareholders who chose roll-over under Division 615 can disregard any capital gains or capital losses from the disposal of Fiducian shares under the exchange (section 615-40).

24. For resident participating shareholders who chose roll-over relief under Division 615, the first element of the cost base and reduced cost base of each NewCo share they have acquired under the exchange will be the total of the cost bases of all the Fiducian shares (worked out when the resident participating shareholders dispose of their shares) apportioned over the number of NewCo shares (sections 124-15 and 615-40).

25. For the purposes of determining discount capital gains under Division 115, resident participating shareholders who chose roll-over relief will be taken to have acquired their NewCo shares on the same date they acquired their Fiducian shares (Item 2 in the table under subsection 115-30(1)).

Foreign resident participating shareholders

26. Any capital gains or losses made by foreign resident participating shareholders from the disposal of their Fiducian share(s), which are not taxable Australian property, under the scheme shall be disregarded (section 855-10).

Commissioner of Taxation

22 April 2015

Appendix 1 – Explanation

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.*

Resident participating shareholders

27. Resident participating shareholders can choose to obtain a roll-over under subsection 615-5(1) because:

- (a) they were ordinary shareholders of Fiducian, being the original entity
- (b) there was more than one shareholder who owned shares in Fiducian, being the exchanging members
- (c) under the scheme for re-organising its affairs, the exchanging members disposed of all their shares in Fiducian in exchange for shares in NewCo, being the interposed company
- (d) the requirements in Subdivision 615-B are satisfied as outlined below:
 - NewCo owns all the shares in the original entity, Fiducian, immediately after the time (the completion time) all the participating shareholders have disposed of their shares in the original entity under the scheme (section 615-15)
 - only one share in NewCo is owned by an entity other than a participating shareholder immediately after completion time, its market value being such that it is reasonable to treat the participating shareholders as owning all the NewCo shares (paragraph 615-25(3)(b))
 - immediately after the completion time, each participating shareholder owned a whole number of shares in NewCo equal to the percentage of shares held in Fiducian (subsection 615-20(1))
 - the ratio of the market value of each participating shareholder's shares in NewCo to the market value of all shares issued in NewCo equals the ratio of the market value of their shares in Fiducian disposed of to NewCo to the market value of all the shares in Fiducian that were disposed of to NewCo (subsection 615-20(2))
 - the participating shareholders to which roll-over applies are Australian residents (subsection 615-20(3))
 - the shares issued in NewCo are not redeemable shares (subsection 615-25(1))

- each exchanging member who was issued shares in NewCo holds their shares from the time they are issued until at least the completion time (subsection 615-25(2))
- immediately after the completion time, the exchanging members owned all the shares in NewCo (subsection 615-25(3)), and
- NewCo has chosen after the completion time, that 615-65 applies (subsection 615-30(1)).

28. For the resident participating shareholders the roll-over consequences are as set out in paragraphs 23 to 25 of this Ruling.

Foreign resident participating shareholders

29. Division 855 applies to participating shareholders who are foreign residents.

30. The foreign resident participating shareholders (being foreign residents that do not hold their shares in Fiducian as taxable Australian property) shall disregard any capital gains or losses from the disposal of their shares in Fiducian under the scheme (section 855-10).

Appendix 2 – Detailed contents list

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

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References

- Previous draft:*
- ITAA 1997 Subdiv 615-B
- Not previously issued as a draft
- ITAA 1997 615-5(1)
 - ITAA 1997 615-15
- Related Rulings/Determinations:*
- TR 2006/10
- ITAA 1997 615-20(1)
 - ITAA 1997 615-20(2)
 - ITAA 1997 615-20(3)
 - ITAA 1997 615-25(1)
 - ITAA 1997 615-25(2)
- Subject references:*
- Capital gains tax
 - Roll-over for business restructures
 - Capital gains tax and foreign residents
- ITAA 1997 615-25(3)
 - ITAA 1997 615-30
 - ITAA 1997 615-30(1)
 - ITAA 1997 615-40
 - ITAA 1997 615-65
- Legislative references:*
- ITAA 1997
 - ITAA 1997 Div 115
 - ITAA 1997 115-30(1)
 - ITAA 1997 124-15
 - ITAA 1997 Div 230
 - ITAA 1997 Div 615
 - ITAA 1997 Div 855
 - ITAA 1997 855-10
 - ITAA 1997 995-1(1)
 - Corporations Act 2001 411(6)
 - TAA 1953
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ATO references

NO: 1-6AWIVYF
 ISSN: 1445-2014
 ATOLaw topic: Income tax ~ Capital gains tax ~ Rollovers ~ Scrip for scrip

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