

25th March 2020

AUSTRALIAN TAXATION OFFICE CLASS RULING – IN SPECIE DISTRIBUTION

PS&C Limited (ASX:PSZ) (**PS&C**) is pleased to announce that the Australian Taxation Office has published a Class Ruling (CR 2020/18) in relation to the in specie distribution of Tesseract Limited (ASX:TNT) (**TNT**) shares, ruling that no part of the return of capital made to shareholders by way of the in specie distribution of TNT shares is a 'dividend' as defined in subsection 6(1) of the Income Tax Assessment Act.

A copy of the Class Ruling is attached to this announcement.

This announcement has been authorised for release by PS&C's Board of Directors.

END



Class Ruling

PS&C Limited – return of capital by way of in specie distribution

📌 Relying on this Ruling

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

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or pay any penalties or interest in respect of the matters covered by this Ruling

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

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What this Ruling is about

1. This Ruling sets out the tax consequences for shareholders of PS&C Limited (PS&C) who received a return of share capital from PS&C on 29 January 2020 (Payment Date) by way of an in specie distribution of shares in Tesseract Limited (TNT).
2. Details of the in specie distribution are set out in paragraphs 15 to 30 of this Ruling.
3. All legislative references are to provisions of the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* (as detailed in the table in Appendix 2 of this Ruling) unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - were a PS&C shareholder on 22 January 2020 (the Record Date) for the in specie distribution, and you continued to hold your PS&C shares on 29 January 2020 (Payment Date)
 - held your PS&C shares on capital account, that is, you did not hold your PS&C shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)), and

- were a resident of Australia as defined in subsection 6(1) at all relevant times.

5. This Ruling does not apply to you if you are subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on your PS&C shares.

Note: Division 230 will not apply to individuals, unless they have made an election for it to apply.

When this Ruling applies

6. This Ruling applies from 1 July 2019 to 30 June 2020.

Ruling

Return of capital not a dividend

7. No part of the return of capital made to you by PS&C on the Payment Date by way of the in specie distribution of TNT shares is a 'dividend' as defined in subsection 6(1).

Application of sections 45A, 45B and 45C

8. The Commissioner will not make a determination under either subsection 45A(2) or paragraph 45B(3)(b) that section 45C applies to any part of the return of share capital made to you as a PS&C shareholder.

Demerger relief not available

9. You are not entitled to obtain CGT demerger relief (being demerger roll-over pursuant to Division 125) as the scheme did not satisfy the requirements of a demerger under subsection 125-70(1).

Capital gains tax (CGT) consequences

Resident shareholders

CGT event G1 happened to your PS&C shares

10. CGT event G1 happened to you when PS&C paid an amount to you by way of an in specie distribution in respect to the PS&C shares you owned on the Record Date and continued to own on the Payment Date (section 104-135).

11. You made a capital gain from CGT event G1 happening to your PS&C shares if the amount of the return of capital of \$0.05 per TNT share received (multiplied by the number of TNT shares received) under the in specie distribution is more than the cost base of your PS&C shares. The capital gain is equal to the difference, and the cost base and reduced cost base of your PS&C shares are reduced to nil (subsection 104-135(3)). You cannot make a capital loss from CGT event G1 happening (Note 1 to subsection 104-135(3)).

12. If you made a capital gain when CGT event G1 happened to your PS&C shares, you are entitled to treat the capital gain as a discount capital gain under Subdivision 115-A provided you acquired your PS&C shares on or before 29 January 2019 (subsection 115-25(1)) and the other conditions in that Subdivision are satisfied.

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13. If the amount of the return of capital of \$0.05 per TNT share received (multiplied by the number of TNT shares received) is not more than the cost base of your PS&C shares, the cost base and reduced cost base of your PS&C shares are reduced by the total amount of the return of capital you received (subsection 104-135(4)).

Cost base and reduced cost base of TNT shares

14. You are taken to have acquired the TNT shares you received by way of the in specie distribution on 29 January 2020 (Event number A1 (case 1) of the table in subsection 109-5(2)).

Scheme

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

Background

PS&C

16. PS&C was incorporated on 9 July 2013 and listed on the Australian Securities Exchange (ASX) on 2 December 2013. PS&C is a resident company for income tax purposes.

17. PS&C's principal activities are providing information and technology services to a diverse client base in Australia which are categorised into four distinct business lines. These are:

- Discovery + Insights – provision of services associated with shaping digital ambition, strategy and business cases based on insights.
- Design + Process – sourcing and providing specialist contractors to customers for medium and long-term information and communications technology projects.
- Delivery + Cloud – consulting and implementation of services around unified communications, conferencing and messaging, contact centre solutions and secure voice technologies.
- Defend + Secure – services and consulting around reducing operational, financial, reputational risk and digital security matters.

18. As at 22 January 2020, PS&C had issued capital of \$94,280,229. As disclosed in its Annual Report for the year ended 30 June 2019, PS&C had reserves of \$593,769 and accumulated losses of \$58,357,552.

19. During the year ended 30 June 2019, PS&C revised its business strategy and decided to consolidate its business lines, culminating in the subsequent disposal of its Defend + Secure business line.

Disposal of security subsidiaries

20. On 2 October 2019, PS&C and TNT entered into a Share Purchase Agreement (SPA) for the sale of the subsidiaries making up the Defend + Secure business line.

21. The sale was completed on 10 December 2019 for revised consideration of:

- \$9 million in cash, and
- 100 million fully paid ordinary shares in TNT (equivalent to an agreed price of \$5 million based on the transaction share price of \$0.05 per share), payable on completion.

22. Under the terms of the SPA, PS&C was obliged to make an in specie distribution of all the TNT shares it received to PS&C shareholders who held their PS&C shares within 10 days of the issue and allotment of the TNT shares.

23. PS&C shareholders approved the in specie distribution of TNT shares at the General Meeting on 15 January 2020.

24. PS&C did not realise a profit on the disposal made under the SPA.

Return of capital

25. PS&C distributed 100 million shares in TNT on 29 January 2020 to its shareholders on a pro rata basis. PS&C shareholders received one TNT share for every 3.511 PS&C shares held on the Record Date, with any fractional entitlements rounded down to the nearest whole number.

PS&C's share capital account

26. PS&C debited an amount of \$5 million to its share capital account for the in specie distribution, or \$0.05 for each TNT share distributed.

27. PS&C's share capital account (as defined in section 975-300) is not tainted (within the meaning of Division 197).

Other matters

28. PS&C shareholders are mainly residents.

29. PS&C has not declared a dividend or paid a dividend since 18 February 2016.

30. PS&C had no realised or unrealised profits.

Commissioner of Taxation

25 March 2020

Appendix 1 – Explanation

❶ *This Explanation 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.*

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Return of capital not a dividend

31. The return of capital payment by way of an in specie distribution of TNT shares is not a dividend as defined in subsection 6(1) as it was debited to PS&C's untainted share capital account.

32. If section 45A or section 45B applies, then in turn, section 45C will in turn apply to treat some or all of the return of capital payment as a dividend.

33. Section 45A generally 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 while those other shareholders have received, or will receive, dividends.

34. As all PS&C shareholders received the in specie distribution of one TNT share for every 3.511 PS&C shares, there was no streaming of capital benefits to some shareholders, and accordingly, section 45A does not apply.

35. Section 45B applies where certain capital benefits are, having regard to the relevant circumstances of the scheme set out 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.

36. Having regard to the relevant circumstances of the scheme, the Commissioner considers the scheme was not entered into or carried out for a more than incidental purpose of enabling PS&C shareholders to obtain a tax benefit. Accordingly, section 45B does not apply.

CGT consequences

37. The Ruling section provides a detailed explanation of the Commissioner's decision and consequences for CGT event G1 happening. Therefore, no further explanation is required.

38. The following example is provided to assist you.

Example – cost base of PS&C and TNT shares after the in specie distribution

39. *Veruca owned 10,000 PS&C shares which she acquired on 10 September 2018 for \$800 (\$0.08 per share).*

40. *Veruca held her PS&C shares on capital account.*
41. *The 2,848 TNT shares Veruca received by way of the in specie distribution is neither a dividend nor taken to be a dividend.*
42. *Veruca did not make a capital gain when CGT event G1 happened because the amount of \$142.40 she received being 2,848 TNT shares \times \$0.05 per share), did not exceed the cost base of her PS&C shares, which was \$800. Therefore, she is required to reduce the cost base and reduced cost base of her PS&C shares by \$142.40 to \$657.60 or \$0.0675 per share.*
43. *Veruca was taken to have acquired her TNT shares on 29 January 2020 for \$142.40 or \$0.05 per share.*

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Appendix 2 – Legislative provisions

44. This paragraph sets out the details of the provisions ruled upon or referenced in this Ruling.

<i>Income Tax Assessment Act 1936</i>	subsection 6(1)
<i>Income Tax Assessment Act 1936</i>	section 45A
<i>Income Tax Assessment Act 1936</i>	section 45A(2)
<i>Income Tax Assessment Act 1936</i>	section 45B
<i>Income Tax Assessment Act 1936</i>	section 45B(3)(b)
<i>Income Tax Assessment Act 1936</i>	section 45C
<i>Income Tax Assessment Act 1997</i>	section 104-135
<i>Income Tax Assessment Act 1997</i>	section 104-135(1)
<i>Income Tax Assessment Act 1997</i>	section 104-135(2)
<i>Income Tax Assessment Act 1997</i>	section 104-135(3)
<i>Income Tax Assessment Act 1997</i>	section 109-5
<i>Income Tax Assessment Act 1997</i>	section 109-5(2)
<i>Income Tax Assessment Act 1997</i>	Subdivision 115-A
<i>Income Tax Assessment Act 1997</i>	Division 125
<i>Income Tax Assessment Act 1997</i>	Division 197
<i>Income Tax Assessment Act 1997</i>	Division 230
<i>Income Tax Assessment Act 1997</i>	section 975-300
<i>Income Tax Assessment Act 1997</i>	section 977-50
<i>Income Tax Assessment Act 1997</i>	subsection 995-1(1)

References

Previous draft:

Not previously issued as a draft

ATO references

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ATOlaw topic: Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT events G1 to G3 – shares

Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45A

Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45B

Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45C

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