ASX Release

20 May 2015

Distribution to shareholders - ATO Class Ruling published

Sydney: UGL Limited (ASX: UGL) today advises that the Australian Taxation Office (ATO) has published a Class Ruling (CR 2015/35) in relation to the taxation treatment for UGL shareholders of the distribution of $3 per share paid on 27 November 2014.

The outcome of the Class Ruling is consistent with information previously advised by UGL to shareholders.

The distribution of $3 per share comprises:

- $2.94 per share as a return of capital; and
- $0.06 per share as an unfranked dividend.

No immediate tax liability should arise in relation to the capital component of the distribution for most UGL shareholders. Instead for capital gains tax purposes, the cost base of shareholdings will be reduced by the capital component of $2.94 per share. For shareholders with a cost base of less than $2.94 per share, an assessable capital gain may arise.

The unfranked dividend component of $0.06 per share will be taxed as a normal unfranked dividend.

The Class Ruling is attached to this announcement and is also available on the ATO website at www.ato.gov.au.

Tax implications will depend on the circumstances of the individual shareholder. Shareholders should seek their own professional advice in relation to their personal tax position.

ENDS

FOR FURTHER INFORMATION CONTACT:

Rebecca Hill
EGM Investor Relations & Corporate Development
UGL Limited
+61 2 9492 1431
rebecca.a.hill@ugllimited.com

Carrie Barrack
Group Investor Relations & Corporate Affairs Manager
UGL Limited
+61 2 9492 1510
carrie.barrack@ugllimited.com

Ross Taylor
Managing Director & CEO
UGL Limited
+61 2 9492 8802
ross.taylor@ugllimited.com

Media please contact: Ben Jarvis +61 413 150 448

Class Ruling

Income tax: return of share capital: UGL Limited

Contents Para

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 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:

- subsection 6(1) 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
- Division 115 of the ITAA 1997, and
- section 855-10 of the ITAA 1997.

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

Class of entities

3. The class of entities to which this Ruling applies to are the ordinary shareholders of UGL Limited (UGL) who:

(a) were registered on the UGL share register on the Record Date, being the date for determining entitlements under the return of capital as described in paragraphs 17 to 24 of this Ruling

(b) did not hold their UGL shares as revenue assets (as defined in section 977-50 of the ITAA 1997) nor as trading stock (as defined in subsection 995-1(1) of the ITAA 1997) – that is, they will hold their UGL shares broadly on capital account, and

(c) 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 UGL shares.

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

In this Ruling, a person belonging to this class of entities is referred to as a ‘UGL Shareholder’.

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this 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 8 to 32 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.

Date of effect

7. 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

8. 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 dated 22 September 2014 lodged by KPMG on behalf of UGL (the Applicant), and
- Correspondence from the Applicant dated 22 September 2014 to 25 March 2015.

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

9. UGL is a global diversified services company, which was listed on the Australian Securities Exchange on 19 December 1994.

10. UGL comprises of two business units:

(i) Engineering, and

(ii) DTZ.

11. UGL's engineering business unit is a provider of end-to-end outsourced engineering, construction, asset management and maintenance services with a diversified end-market exposure across core sectors of rail, transport and technology systems, power, resources, water and defence.

12. DTZ is a provider in property services, offering solutions to clients in leasing agency, investment agency, property and facilities management, project and building consultancy, valuation, research and investment and asset management.

Business Disposal

13. On 12 August 2013, UGL's Board of Directors (the Board) announced that it would pursue a separation of the DTZ business. On 16 June 2014, UGL announced the sale of DTZ for $1.215 billion to a private equity consortium.

14. On 5 November 2014, UGL completed the sale of DTZ.

15. An accounting profit was made in relation to the sale of DTZ.

16. Following the sale of DTZ, the Board decided to apply excess working capital from the sale of DTZ to reduce long term debt, return capital to its shareholders, and pay an unfranked dividend.

Distribution to UGL Shareholders

17. At UGL's Annual General Meeting (AGM) on 30 October 2014, a resolution was passed by UGL's shareholders for the company to reduce its share capital by an amount up to $500 million by way of an equal capital reduction. This equated to $3.00 per share (the Distribution).

18. On 14 November 2014, at a meeting of the Board of Directors of UGL, it was subsequently resolved that the Distribution would be comprised of:

(i) a capital return of $2.94 (Capital Component), and

(ii) an unfranked dividend of $0.06 per share (Dividend Component).

The Distribution was paid equally to all shareholders who were registered on the UGL share register at the Record Date of 20 November 2014.

19. The payment date was 27 November 2014 (the Payment Date).

20. UGL debited the full amount of the Capital Component against the company's share capital account and reduced the share capital account by $2.94 per share. This represents a total return of capital of $489.5 million to UGL Shareholders.

21. There was no change in either the number of UGL shares on issue or the proportionate interest of each UGL Shareholder in UGL.

22. The return of capital was effected by way of an equal reduction of capital under section 256B of the *Corporations Act 2001* (Corporations Act) and requires shareholder approval by ordinary resolution under section 256C of the Corporations Act.

23. The Dividend Component of $0.06 per share was unfranked and debited to UGL's retained earnings account. The Dividend Component represented a distribution of approximately $10 million to UGL Shareholders.

24. The Distribution was sourced from the proceeds of sale from the sale of DTZ.

Capital Structure

25. As at 11 September 2014, UGL had 166.5 million ordinary shares on issue.

26. Approximately 16% of the shares in UGL are beneficially held by foreign residents.

Other matters

27. All shares in UGL were acquired by UGL Shareholders after 19 September 1985.

28. UGL currently has more than 28,000 shareholders. As at August 2014, the top 20 shareholders held 51.7% of the issued shares.

29. Prior to the year ended 30 June 2013, UGL has paid fully franked interim and final dividends each year. In the year ended 30 June 2013, UGL paid an interim dividend of $0.34 per share that was 50% franked and a final unfranked dividend of $0.05 per share. UGL did not pay an interim and final year dividend during the year ended 30 June 2014 in order conserve cash and to allow for consideration of UGL's future capital management strategy. Payments of dividends have been suspended for the year ended 30 June 2015.

30. Historically dividends have generally represented approximately 70% of underlying earnings of UGL, excluding non-operating items.

31. UGL's 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).

32. UGL foreign resident shareholders do not have an 'indirect Australian real property interest' (within the meaning of item 2 in the table in section 855-15 and section 855-25 of the ITAA 1997).

Ruling

Capital Component not a dividend

33. The Capital Component that was paid to UGL Shareholders of $2.94 per share is not a 'dividend' as defined in subsection 6(1).

Application of sections 45A, 45B and 45C

34. The Commissioner will not make a determination under subsection 45A(2) or subsection 45B(3) that section 45C applies to the whole or any part of the Capital Component received by UGL Shareholders. Accordingly, no part of the Capital Component will be taken to be a dividend for income tax purposes.

Capital gains tax (CGT) consequences

CGT event G1

35. CGT event G1 (section 104-135 of the ITAA 1997) happens when UGL paid the $2.94 per share Capital Component to a UGL Shareholder in respect of a UGL share that they owned at the Record Date and continued to own at the Payment Date.

CGT event C2

36. CGT event C2 (section 104-25 of the ITAA 1997) happens when UGL paid the $3.00 per share Distribution to a UGL Shareholder in respect of a UGL share that they owned at the Record Date, but did not own at the Payment Date.

37. Any capital gain made by a UGL Shareholder as a result of CGT event C2 happening is reduced under section 118-20 of the ITAA 1997 by the amount of the Dividend Component that is included in assessable income of the UGL Shareholder under section 44.

Foreign resident shareholders

38. A foreign resident UGL Shareholder who is paid the Distribution may disregard any capital gains made when CGT event G1 happens as their UGL share does not constitute ‘taxable Australian property’ (section 855-10 of the ITAA 1997).

39. A foreign resident UGL Shareholder who is paid the Distribution may disregard any capital gain or capital loss made when CGT event C2 happens as their right to receive the Distribution is not 'taxable Australian property' (section 855-10 of the ITAA 1997).

Commissioner of Taxation
20 May 2015

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.

Capital Component debited to the share capital account not a dividend for income tax purposes

40. The term 'dividend' is defined in subsection 6(1) and includes any distribution made by a company to any of its shareholders. However, paragraph (d) of the definition of 'dividend' excludes a distribution from the meaning of 'dividend' if the amount of the distribution is debited against an amount standing to the credit of the company's share capital account.

41. The term 'share capital account' is defined in section 975-300 of the ITAA 1997 as an account which the company keeps of its share capital, or any other account created on or after 1 July 1998 where the first amount credited to the account was an amount of share capital.

42. Subsection 975-300(3) of the ITAA 1997 provides that an account is generally taken not to be a share capital account if it is tainted. UGL has confirmed that its share capital account is not tainted within the meaning of Division 197 of the ITAA 1997.

43. The Capital Component of $2.94 per share was recorded as a debit against an amount standing to the credit of UGL’s share capital account. As the share capital account of UGL is not tainted within the meaning of Division 197 of the ITAA 1997, paragraph (d) of the definition of 'dividend' in subsection 6(1) applies. Accordingly, the Capital Component will not be a 'dividend' as defined in subsection 6(1).

Anti-avoidance provisions

44. Sections 45A and 45B are two anti-avoidance provisions which, if they apply, allow the Commissioner to make a determination that section 45C applies to treat all or part of the Capital Component received by UGL Shareholders as an unfranked dividend paid by the company out of profits.

Application of sections 45A, 45B and 45C

Section 45A - streaming of dividends and capital benefits

45. Section 45A applies in circumstances where capital benefits are streamed to certain shareholders (the Advantaged Shareholders), who derive a greater benefit from the receipt of capital than other shareholders (the Disadvantaged Shareholders) and it is reasonable to assume the Disadvantaged Shareholders have received, or will receive, dividends.

46. Although a 'capital benefit' (as defined in paragraph 45A(3)(b)) is provided to UGL Shareholders, the circumstances of the return of capital indicate that there is no streaming of capital benefits to some shareholders and dividends to other shareholders.

47. 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 Component.

Section 45B - scheme to provide capital benefits

48. Section 45B applies where certain capital payments are made 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))
- under the scheme, a taxpayer (the relevant taxpayer), who may or may not be the person provided with the capital benefit, obtains a tax benefit (paragraph 45B(2)(b)), and
- having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, entered into or carried out the scheme or any part of the scheme for a purpose (whether or not the dominant purpose but not including an incidental purpose), of enabling the relevant taxpayer to obtain a tax benefit (paragraph 45B(2)(c)).

49. While the Capital Component satisfies the conditions in paragraphs 45B(2)(a) and 45B(2)(b), paragraph 45B(2)(c) is not satisfied. Having regard to the relevant circumstances of the scheme, set out in subsection 45B(8), it cannot be concluded that the scheme is to be entered into or carried out for a more than incidental purpose of enabling UGL Shareholders to obtain a tax benefit.

50. Accordingly, the Commissioner will not make a determination under subsection 45B(3) that section 45C applies to the whole, or a part, of the payment for the Capital Component.

CGT consequences

CGT event G1 - section 104-135 of the ITAA 1997

51. CGT event G1 (section 104-135 of the ITAA 1997) happens when UGL paid the Capital Component to a UGL Shareholder in respect of a share that the shareholder owned at the Record Date and continues to own at the Payment Date.

52. A UGL Shareholder makes a capital gain if the Capital Component is more than the cost base of the shareholder's UGL share. The amount of the capital gain is equal to the excess (subsection 104-135(3) of the ITAA 1997).

53. If a UGL Shareholder makes a capital gain when CGT event G1 happens, the cost base and reduced cost base of the UGL share is reduced to nil. A UGL Shareholder cannot make a capital loss when CGT event G1 happens (subsection 104-135(3) of the ITAA 1997).

54. If the Capital Component (i.e., $2.94 per share) is equal to or less than the cost base of the UGL share at the time of payment, the cost base and reduced cost base of the share will be reduced by the amount of the payment (subsection 104-135(4) of the ITAA 1997).

55. A capital gain made when CGT event G1 happens is eligible to be treated as a discount capital gain under Division 115 of the ITAA 1997 provided that the UGL Shareholder acquired the share at least 12 months before the payment of the Distribution (subsection 115-25(1) of the ITAA 1997) and the other conditions of Division 115 of the ITAA 1997 are satisfied.

CGT event C2 - section 104-25 of the ITAA 1997

56. CGT event C2 happens when the Distribution is paid to a shareholder that held the share at the Record Date but no longer owned the share at the Payment Date (section 104-25 of the ITAA 1997).

57. The right to receive the Distribution is one of the rights inherent in a UGL share held at the Record Date. If, after the Record Date but before the Payment Date, a UGL Shareholder ceased to own a UGL share in respect of which the Distribution was payable, the right to receive the Distribution is retained by that shareholder and constitutes a separate CGT asset.

58. The right to receive the Distribution ended by the right being discharged or satisfied when the payment was made.

59. A UGL Shareholder makes 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. A UGL Shareholder makes 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).

60. However, any capital gain made by a UGL Shareholder as a result of CGT event C2 happening is reduced under the anti-overlap rule in section 118-20 of the ITAA 1997 by the amount of the Dividend Component where the dividend is included in the assessable income of a UGL Shareholder under section 44.

61. In working out the capital gain or capital loss made when CGT event C2 happens, the capital proceeds will be the amount of the Distribution ($3.00 per share) the UGL Shareholder received or is entitled to receive (subsection 116-20(1) of the ITAA 1997).

62. The cost base of the UGL Shareholder's right to receive the Distribution 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 share previously owned by a UGL Shareholder that was applied in working out a capital gain or capital loss made when a CGT event happened to the share, for example when the UGL Shareholder disposed of the share after the Record Date.

63. Therefore, if the entire cost base or reduced cost base of the UGL share was applied in working out a capital gain or capital loss when a CGT event happened to that share, then the right to receive the Distribution is likely to have a cost base of nil.

64. As the right to receive the payment of the Distribution was inherent in the UGL share during the time it was owned, the right is considered to have been acquired at the time when the corresponding share was acquired (section 109-5 of the ITAA 1997).

65. Accordingly, if the UGL share was acquired at least 12 months before the payment of the Distribution, a capital gain made from the ending of the corresponding right satisfies the requirements of section 115-25 of the ITAA 1997. The capital gain may be eligible to be treated as a discount capital gain under Division 115 of the ITAA 1997 provided the other conditions of Division 115 of the ITAA 1997 are satisfied.

Foreign resident shareholders

66. Under subsection 855-10(1) of the ITAA 1997, an entity disregards a capital gain or capital loss made from a CGT event if:

- just before the CGT event happened, the entity is a foreign resident, or the trustee of a foreign trust for CGT purposes, and
- the CGT event happens in relation to a CGT asset that is not 'taxable Australian property'.

67. The term 'taxable Australian property' is defined in the table in section 855-15 of the ITAA 1997. The table sets out five categories of CGT assets:

Item 1	taxable Australian real property;
Item 2	an indirect Australian real property interest not covered by item 5;
Item 3	a CGT asset used at any time in carrying on a business through a permanent establishment in Australia and which is not covered by item 1, 2, or 5;
Item 4	an option or right to acquire a CGT asset covered by item 1, 2 or 3; and
Item 5	a CGT asset that is covered by subsection 104 165(3) (choosing to disregard a gain or loss on ceasing to be an Australian resident).

68. A foreign resident, or the trustee of a foreign resident trust for CGT purposes, cannot disregard a capital gain or capital loss made when CGT event G1 happens to their UGL share under subsection 855-10(1) of the ITAA 1997 if:

(a) their UGL share was an indirect Australian real property interest (item 2 of the table in section 855-15 of the ITAA 1997), or

(b) their UGL share had been used at any time by them 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

(c) their UGL share was covered by subsection 104-165(3) of the ITAA 1997 (item 5 of the table in section 855-15 of the ITAA 1997).

69. A foreign resident, or the trustee of a foreign resident trust for CGT purposes, cannot disregard a capital gain or capital loss made when CGT event C2 happens to their right to receive the Distribution if:

(a) the right had been used at any time by them 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

(b) the right was covered by subsection 104-165(3) of the ITAA 1997 (item 5 of the table in section 855-15 of the ITAA 1997).

Appendix 2 – Detailed contents list

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

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- capital benefit
- capital reductions
- CGT event C1-C3 - end of a CGT asset
- CGT event G1-G3 – shares
- return of capital on shares
- share capital
- shareholder payments

Legislative references:

- ITAA 1936
- ITAA 1936 6(1)
- ITAA 1936 45A
- ITAA 1936 45A(2)
- ITAA 1936 45A(3)(b)
- ITAA 1936 45B
- ITAA 1936 45B(2)
- ITAA 1936 45B(2)(a)
- ITAA 1936 45B(2)(b)
- ITAA 1936 45B(2)(c)
- ITAA 1936 45B(3)
- ITAA 1936 45B(8)
- ITAA 1936 45C
- ITAA 1997
- ITAA 1997 104-25
- ITAA 1997 104-25(3)
- ITAA 1997 104-135
- ITAA 1997 104-135(3)
- ITAA 1997 104-135(4)
- ITAA 1997 104-165(3)
- ITAA 1997 Div 110
- ITAA 1997 Div 112
- ITAA 1997 Div 115
- ITAA 1997 115-25
- ITAA 1997 115-25(1)
- ITAA 1997 116-20(1)
- ITAA 1997 Div 197
- ITAA 1997 Div 230
- ITAA 1997 855-10
- ITAA 1997 855-10(1)
- ITAA 1997 855-15
- ITAA 1997 975-300
- ITAA 1997 977-50
- ITAA 1997 995-1
- TAA 1953

ATO references

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