# ASX ANNOUNCEMENT

Tabcorp

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ASX Market Announcements
Australian Securities Exchange
20 Bridge Street
Sydney NSW 2000

## ATO class ruling on The Lottery Corporation demerger

Tabcorp Holdings Limited (**Tabcorp**) notes that the Australian Taxation Office has today issued a final class ruling setting out the tax consequences for Tabcorp shareholders of the demerger of The Lottery Corporation Limited (**The Lottery Corporation**) from Tabcorp which was implemented on 1 June 2022 (**Demerger**).

Attached is a copy of the class ruling, which is also available on the Tabcorp website at www.tabcorp.com.au/investors/shareholder-services.

A general guide to the tax implications for Tabcorp shareholders of the Demerger is contained within Section 6 of the Demerger Booklet lodged with the ASX on 31 March 2022.

This announcement was authorised for release by Chris Murphy, Company Secretary.

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# Class Ruling

# Tabcorp Holdings Limited – demerger of The Lottery Corporation Limited

**Relying on this Ruling**

This publication 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 penalties or interest in respect of the matters covered by this Ruling.

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## What this Ruling is about

1. This Ruling sets out the income tax consequences of the demerger of The Lottery Corporation Limited (TLC) by Tabcorp Holdings Limited (Tabcorp), which was implemented on 1 June 2022 (Implementation Date).

2. Full details of this scheme are set out in paragraphs 21 to 52 of this Ruling.

3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

## Who this Ruling applies to

4. This Ruling applies to you if you held ordinary shares in Tabcorp and you:

- were registered on the Tabcorp share register on 25 May 2022 (Record Date)
- did not hold your shares in Tabcorp as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)) on the Record Date – that is, you held your shares on capital account, and
- were a resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)).

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5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 21 to 52 of this Ruling.

**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 2021 to 30 June 2022.

## Ruling

### Demerger

7. A demerger, as defined in section 125-70, happened to the Tabcorp demerger group (which included Tabcorp and TLC) under the scheme described in paragraphs 21 to 52 of this Ruling.

### Capital gains tax consequences

#### *CGT event G1*

8. CGT event G1 happened when you were paid an amount by Tabcorp in respect of your Tabcorp shares by way of the transfer to you of TLC shares on the Implementation Date (section 104-135).

9. You will make a capital gain from CGT event G1 happening if the amount of the reduction of share capital for each Tabcorp share ($3.42) is more than the cost base of the Tabcorp share. If so, the capital gain is equal to the amount of the excess. No capital loss can be made from CGT event G1 (subsection 104-135(3)).

#### *Choosing a demerger roll-over*

10. You can choose to obtain a demerger roll-over for your Tabcorp shares (subsection 125-55(1)).

11. If you choose a demerger roll-over for your Tabcorp shares:

- any capital gain you made when CGT event G1 happened to your Tabcorp shares under the demerger is disregarded (subsection 125-80(1)), and
- you must recalculate the first element of the cost base and reduced cost base of your Tabcorp shares, and calculate the first element of the cost base and reduced cost base of the corresponding TLC shares you acquired under the demerger (subsection 125-80(2)) (see paragraphs 13 to 15 of this Ruling).

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### *Not choosing a demerger roll-over*

12. If you do not choose a demerger roll-over for your Tabcorp shares, you:

- cannot disregard any capital gain you made when CGT event G1 happened to your Tabcorp shares under the demerger, and
- must recalculate the first element of the cost base and reduced cost base of your Tabcorp shares, and calculate the first element of the cost base and reduced cost base of the corresponding TLC shares you acquired under the demerger (subsections 125-85(1) and 125-85(2)) (see paragraphs 13 to 15 of this Ruling).

### *Cost base and reduced cost base of your Tabcorp Holdings Limited and The Lottery Corporation Limited shares*

13. The first element of the cost base and reduced cost base of each Tabcorp share and corresponding TLC share is worked out by:

- taking the total of the cost bases of your Tabcorp shares just before the demerger, and
- apportioning that total between your Tabcorp shares and the TLC shares you acquired under the demerger.

14. The apportionment is done on a reasonable basis having regard to the market values (just after the demerger) of the Tabcorp shares and TLC shares, or an anticipated reasonable approximation of those market values (subsections 125-80(2) and (3)).

15. The Commissioner accepts that a reasonable apportionment is to attribute:

- 17.76% of the total of the cost bases of your Tabcorp shares just before the demerger to the Tabcorp shares, and
- 82.24% of the total of the cost bases of your Tabcorp shares just before the demerger to the corresponding TLC shares.

### *Acquisition date of the The Lottery Corporation Limited shares for discount capital gain purposes*

16. For the purpose of determining whether you can make a discount capital gain from a future CGT event that happens to a TLC share you acquired under the demerger, you will be taken to have acquired the TLC share on the date you acquired, for CGT purposes, the corresponding Tabcorp share (table item 2 of subsection 115-30(1)). This will be the case whether or not you choose a demerger roll-over.

### Not an assessable dividend

17. No part of the value of a TLC share transferred to you under the demerger will be included in your assessable income under subsection 44(1) of the ITAA 1936. Although the part of the value of a TLC share that is not debited to the share capital account of Tabcorp is a 'dividend' under subsection 6(1) of the ITAA 1936, it will be a 'demerger dividend' under subsections 44(3) to (5) of the ITAA 1936. A demerger dividend is non-assessable non-exempt income for you.

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### Specific anti-avoidance provisions will not apply to deem an assessable dividend

18. Section 45 of the ITAA 1936 will not apply to the demerger. This is because Tabcorp did not stream the provision of shares and the payment of minimally franked dividends to its shareholders.

19. The Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole, or any part, of the capital benefits provided to you under the demerger. This is because all shareholders of Tabcorp participated in the distribution of share capital based on the number of Tabcorp shares they held on the Record Date so that there was no streaming of capital benefits.

20. As the purpose condition in paragraph 45B(2)(c) of the ITAA 1936 is not satisfied, the Commissioner will not make a determination under either:

- paragraph 45B(3)(a) of the ITAA 1936 that section 45BA of the ITAA 1936 applies to the whole, or any part, of the demerger benefit provided to you under the demerger, or
- paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole, or any part, of the capital benefit provided to you under the demerger.

## Scheme

21. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

### Tabcorp Holdings Limited

22. Tabcorp is a company that was incorporated in Australia on 13 April 1994 and listed on the Australian Securities Exchange (ASX) on 15 August 1994.

23. Tabcorp operated 3 business divisions:

- Wagering and Media: betting facilities through physical venues and online services under the TAB brand, and the television, online and radio broadcasting of racing under the Sky brand
- Lotteries and Keno: lotteries in every Australian jurisdiction (except Western Australia) and keno games in New South Wales, Victoria, Queensland and the Australian Capital Territory, and
- Gaming Services: monitoring and related services for electronic gaming machines (for regulatory purposes) and the supply, installation, maintenance, repair and systems enhancement of electronic gaming machines, lottery and wagering terminals and other transaction devices in Australia (for venues).

24. Immediately before the Implementation Date, Tabcorp had:

- 2,225,771,703 fully-paid ordinary shares on issue, and
- $9,243,343,473 credited to its share capital account.

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25. Immediately before the Implementation Date, approximately 23.9% of the ordinary shares in Tabcorp were held by non-resident shareholders.

26. There were no other ownership interests (as defined in subsection 125-60(1)) in Tabcorp.

27. Tabcorp has paid regular dividends since listing on the ASX.

## The Lottery Corporation Limited

28. TLC is a company incorporated in Australia. It operated the Lottery and Keno businesses within the Tabcorp group.

29. TLC has one class of shares on issue, being fully-paid ordinary shares. Immediately before the Implementation Date, Tabcorp owned 100% of the ordinary shares in TLC (through a wholly-owned subsidiary).

## The demerger of The Lottery Corporation Limited

30. On 5 July 2021, Tabcorp announced its intention to demerge its Lotteries and Keno business and create 2 standalone ASX-listed companies.

31. The demerger of TLC was undertaken by a reduction of share capital under section 256B of the *Corporations Act 2001* (Corporations Act) and a scheme of arrangement under Part 5.1 of that Act.

32. The shareholders of Tabcorp voted on 12 May 2022 to:

- approve an ordinary resolution under section 256C of the Corporations Act to reduce the share capital of Tabcorp as an equal capital reduction, and
- pass a resolution in favour of the scheme of arrangement (as required by subparagraph 411(4)(a)(ii) of the Corporations Act).

33. The scheme of arrangement was approved by the Supreme Court of New South Wales under paragraph 411(4)(b) of the Corporations Act on 20 May 2022.

34. The reduction of share capital equated to $3.42 for each share in Tabcorp.

35. The directors of Tabcorp resolved to declare a dividend for each Tabcorp share on issue on the Record Date (25 May 2022).

36. The date for determining the entitlement of Tabcorp shareholders to receive TLC shares was the Record Date.

37. Under the scheme of arrangement, on the Implementation Date (1 June 2022) Tabcorp applied the aggregate amount of the reduction of share capital and the dividend on behalf of each Tabcorp shareholder as payment to acquire the shares in TLC from the subsidiary of Tabcorp.

38. On the Implementation Date, Tabcorp shareholders received one TLC share for each Tabcorp ordinary share they held on the Record Date, and nothing else.

39. After the demerger, Tabcorp did not own any shares in TLC directly or indirectly.

40. As a result of the demerger, Tabcorp shareholders owned shares in both Tabcorp and TLC.

41. Shares in TLC were listed for quotation on the ASX on 24 May 2022.

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## Accounting treatment and market valuation

42. Tabcorp accounted for the demerger by debiting its:

- share capital account by $7,601,518,828.33 (the capital reduction amount), and
- demerger reserve account by $2,868,511,262.59 (the demerger dividend).

43. The demerger dividend was calculated as the difference between the market value of the TLC shares that were transferred and the capital reduction amount.

## Sale facility

44. Tabcorp shareholders who held 500 shares or less could elect to sell their TLC shares under the Sale Facility. The TLC shares they would have otherwise received under the demerger were sold on the ASX by a nominee, with the net sale proceeds remitted to those shareholders.

45. Tabcorp shareholders who held 2,000 shares or less could elect to sell their Tabcorp shares under the Sale Facility with the net sale proceeds remitted to those shareholders.

46. Tabcorp shareholders who had a registered address in a jurisdiction that was determined to be ineligible, other than Australia, New Zealand, Canada, Hong Kong, Singapore, the United Kingdom and the United States of America, had the TLC shares they would have otherwise received under the demerger sold on the ASX by a nominee under the Sale Facility, with the net sale proceeds remitted to those shareholders.

## Reasons for the demerger

47. The directors of Tabcorp formed the view that the demerger would:

- better enable distinct business plans and growth strategies to be pursued for each business
- enable Tabcorp and TLC to adopt financial policies that are suitable for the different capital needs and competitive position of their respective businesses
- deliver to shareholders an investment choice depending on their individual investment objectives and strategies – shareholders would obtain greater flexibility to choose their level of investment in the Wagering and Media and Gaming Services businesses retained by Tabcorp and the Lotteries and Keno business of TLC, as the businesses have different characteristics, assets and risk profiles, and
- result in 2 independent businesses trading separately on the ASX and create 2 distinct core earnings streams which can be clearly valued by the market.

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## Other matters

48. Immediately before the Implementation Date, Tabcorp's share capital account was not tainted (within the meaning of Division 197).

49. Tabcorp did not elect under subsection 44(2) of the ITAA 1936 that subsections 44(3) and (4) of the ITAA 1936 will not apply to the demerger dividend for all Tabcorp shareholders.

50. Just after the demerger, CGT assets owned by TLC and its demerger subsidiaries representing at least 50% by market value of all the CGT assets owned by those entities were used in carrying on a business by those entities (subsection 44(5) of the ITAA 1936).

51. For the purposes of the cost base and reduced cost base apportionment under subsections 125-80(2) and (3), a reasonable approximation of the market values of a Tabcorp share and a TLC share just after the demerger has been calculated as:

- $1.016 for each Tabcorp share, being the volume-weighted average price of each Tabcorp share as traded on the ASX over the first 5 trading days from (and including) 24 May 2022, and
- $4.704 for each TLC share, being the volume-weighted average price of each TLC share as traded on the ASX over the first 5 trading days from (and including) 24 May 2022.

**Commissioner of Taxation**
22 June 2022

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# References

*Legislative references:*

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- ITAA 1936 44(1)
- ITAA 1936 44(2)
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- ITAA 1936 45
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- ITAA 1936 45B(3)(a)
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- ITAA 1997 115-30(1)
- ITAA 1997 Div 125
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- Corporations Act 2001 411(4)(a)(ii)
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