# Mystery over Murdoch family payout

The media group's December half accounts fail to reflect a contentious related-party payment, **Neil Chenoweth** writes.

News Corporation has refused to disclose the details of a $77.6 million payment to cover the cost of a failed tax avoidance scheme operated by the family companies of its chairman, Rupert Murdoch.

News made no reference to the related-party payment in its December half-year accounts after it made a $77.6 million settlement late last year in a stamp-duty case brought by the ACT government.

Transaction documents suggest the Murdoch family trusts, which were the chief beneficiaries of the Bermuda-based tax scheme, should be responsible for at least $60 million of the payout and legal costs.

News Ltd spokesman Greg Baxter insisted in a series of emails yesterday that shareholders were not "out of pocket".

But he declined to say how much of the $77.6 million total paid out by News would be reimbursed by the group's controlling shareholder, or how any reimbursement due would be calculated under the original 2004 deal.

News of the payout emerged as Australian institutional shareholders were already expressing concerns over another related-party deal, in which News Corp is expected to buy Elisabeth Murdoch's British programming company, Shine, for £450 million ($720 million).

The ACT payout dates back to the November 2004 buyout of Murdoch family interests as part of News Corp's reincorporation in Delaware in the United States. The family buyout has always been a sensitive issue for News. "Clearly, the restructuring was not a 'tax dodge', there was no 'sidestepping' of any tax obligation and the Murdochs did not benefit at the expense of other shareholders," Mr Baxter wrote in a spirited letter published in *The Australian Financial Review* in March 2005.

Mr Baxter was responding to revelations in the *AFR* that the Murdoch family buyout had taken a bizarre excursion to Bermuda.

"All of these and other tax issues were described in the information memorandum," Mr Baxter wrote.

However, the 374-page information memorandum issued to News Corp shareholders in September 2004 made no reference to Bermuda.

Instead, shareholders were told that the $8.85 billion deal for holding company Kayarem Ltd and its subsidiaries Queensland Press Ltd (QPL) and Cruden Investments would attract estimated stamp duty of $51 million, payable in the ACT where Kayarem was registered.

Stamp duty is the legal responsibility of the buyer, but as part of the sale price the Murdoch family interests had agreed to cap News Corp's share of the bill at $18 million. The excess, estimated to be $31 million, would be paid by the Murdoch family trusts. But in the event, no stamp duty was paid at all.

**The provisions have been complied with by all parties. I am repeating myself – no one is out of pocket.**
News Ltd spokesman Greg Baxter

According to ACT court documents, Murdoch company lawyers tried unsuccessfully to reregister Kayarem in Victoria. When this failed, they applied for a waiver of most of the duty, which now stood at $53.16 million. This too failed.

Events took a dramatic turn on October 27, 2004. On the eve of News Corp's move to the US, as the *AFR* reported, the Murdoch family interests renamed Kayarem as Karlholt Ltd, and listed Karlholt's 10 shares on the Bermuda Stock Exchange.

On November 12, News Australian Holdings bought the 10 shares for $8.85 billion. Buying or selling shares on an international stock exchange does not attract Australian stamp duty – unless a court finds it was a sham transaction set up to avoid tax.

While Karlholt continued to be listed in Bermuda, the shares never traded again.

The Murdoch family, and to a lesser extent News, had saved a fortune in tax.

While the Bermuda switch aroused little attention, in the months following the *AFR* article, the ACT government commissioned senior Melbourne barrister Norman O'Bryan, who had recently finished his work as counsel assisting the HIH Royal Commission, to assess the prospects to sue News for the unpaid stamp duty.

In November 2008, the Commissioner for ACT Revenue, Graeme Dowell, launched a legal action against News Australia Holdings for the $53.16 million in unpaid stamp duty plus $5 million of interest and $26 million in penalty payments for tax avoidance.

After brief court appearances in 2009, settlement talks continued through much of last year.

The final settlement figure of $77.6 million represents stamp duty and interest payments, with reduced penalties of some $20 million.

As the defendant in the ACT case, News Australia Holdings would have had to sign the settlement cheque. But how much of the settlement and legal bill was passed to News Corp's controlling shareholder, which had set up the deal and profited most from it?

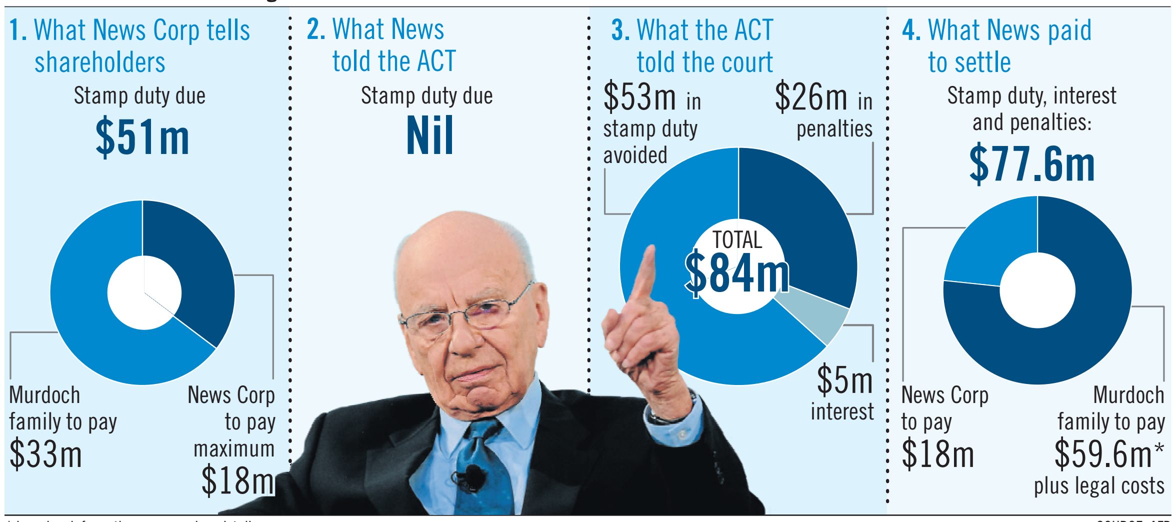
The 2004 information memorandum (IM) seems clear that the News share is capped at $18 million, and that stamp duty "is in excess of $A18 million, which excess the Murdoch Trusts have agreed to pay … To the extent actual net debt or stamp duty differ from the estimates, there will be a cash adjustment".

That would be $59.6 million plus legal costs due to the Murdoch family trusts. But is this how News interprets the contract? Mr Baxter declined to say: "The provisions of the Cruden/QPL transaction, including as described in the IM, have been complied with by all parties."

When pressed, Mr Baxter said: "I am repeating myself – no one is out of pocket."

## Cashing out

How Murdoch's Bermuda triangle unravelled




* based on information memorandum details

SOURCE: AFR