



Class Ruling

Income tax: scrip for scrip: merger of Australian Wealth Management Limited and IOOF Holdings 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:

- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 110-25 of the ITAA 1997;
- section 110-55 of the ITAA 1997;
- section 116-20 of the ITAA 1997; and
- section 116-40 of the ITAA 1997.

All subsequent 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 consists of entities who were Registered shareholders of Australian Wealth Management Limited (AWM) and who:
- (a) received fully paid ordinary shares in IOOF Holdings Limited (IOOF) as a result of the implementation of a scheme of arrangement for the merger of AWM and IOOF;
 - (b) were residents of Australia within the meaning of that expression in subsection 6(1) of the *Income Tax Assessment Act 1936*;
 - (c) have not applied for or who are not eligible for scrip for scrip roll-over under Subdivision 124-M for their AWM shares; and
 - (d) held their shares on capital account at the time of this scheme.
4. This Ruling does not deal with whether scrip for scrip roll-over under Subdivision 124-M is available to registered shareholders of AWM in relation to the merger of AWM and IOOF.

Qualifications

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 21 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.
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Date of effect

8. This Ruling applies from 22 April 2009 to 30 June 2010. The Ruling continues to apply after 30 June 2010 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 and annexures dated 7 July 2009;
- Scheme booklet dated 6 March 2009 for the proposed merger between Australian Wealth Management Limited and IOOF Holdings Limited; and
- the trading information of IOOF Holdings Limited shares on 12 May 2009.

Note: certain information has been provided by the applicant on a commercial-in-confidence basis and will not be disclosed or released under the Freedom of Information legislation.

Details of the Scheme

10. The scheme that is the subject of this Ruling involves the merger of AWM and IOOF by a scheme of arrangement (the Scheme).

Background to AWM

11. At the time of the Scheme AWM was an Australian resident company listed on the Australian Securities Exchange (ASX). It was a service provider of wealth management products and services in Australia to financial planners and clients and was formed in July 2003 as a division of Tower, an Australian and New Zealand financial services company.

12. In February 2005, AWM formally separated from Tower and listed on the ASX. In June 2006, AWM merged with Select Managed Fund Limited. In June 2008, AWM acquired a 70% interest in wealth management company Ord Minnett.

Background to IOOF

13. IOOF is an Australian financial services provider, specialising in investment and superannuation management and administration. It has its origins in the Independent Order of Odd Fellows formed in the mid 1800s. Following a period as a friendly society, it subsequently evolved into a dedicated financial services organisation before demutualising in 2002. The company was listed on the ASX in December 2003.

The merger

14. On 24 November 2008, AWM and IOOF announced a proposal to merge the two companies by way of a scheme of arrangement. Under the Scheme, eligible AWM shareholders received 1 IOOF share for every 3.73 AWM shares registered in the name of the eligible AWM shareholder in AWM's register at the record date of 7 May 2009.

15. The IOOF shares received are known as the Scheme Consideration. AWM shareholders were not provided with any cash consideration in relation to the Scheme. Under the Scheme, all AWM shares were acquired by IOOF.

16. If the Scheme Consideration in respect of an AWM shareholder results in a fractional entitlement to IOOF shares, then any such fractional entitlement of less than 0.5 will be rounded down to the nearest whole number of IOOF shares; and of 0.5 or more will be rounded up to the nearest whole number of IOOF shares.

17. The key dates in relation to the Scheme were as follows:

- The Scheme meeting was held on 22 April 2009, in which a sufficient majority of AWM shareholders supported the Scheme.
- The decision to accept the Scheme was approved by the Supreme Court of Victoria on 29 April 2009. This is the effective date of the Scheme.
- The orders of the Supreme Court of Victoria approving the Scheme were lodged with the Australian Securities and Investments Commission on 30 April 2009. This was also the last day of trading for AWM's shares.
- New IOOF shares commenced trading on 1 May 2009.
- The Scheme was implemented on 12 May 2009, whereby 160,730,273 new IOOF ordinary shares were allotted to the eligible Scheme shareholders, and all AWM ordinary shares were transferred to IOOF.
- Normal trading of the new IOOF shares commenced on 15 May 2009.

18. On 30 April 2009 the merger became effective. Once implemented, AWM became a wholly owned subsidiary of IOOF and has now been delisted from the ASX.

19. The trading information of IOOF shares on 12 May 2009 is as follows:

Date	Open	High	Low	Close	Volume	Adj Close
12/05/2009	4.21	4.49	4.15	4.49	316700	4.49

20. The variation of the closing price to the minimum trade price was equal to 7.572%.

Other matters

21. All of the ordinary shares in AWM were acquired on or after 20 September 1985.

Ruling

CGT event A1 happens on the disposal of AWM shares to IOOF

22. CGT event A1 happened as a result of the disposal by an AWM shareholder of each AWM share to IOOF on the implementation date of the Scheme on 12 May 2009 (subsections 104-10(1) and 104-10(2) and paragraph 104-10(3)(b)).

Capital gain or capital loss

23. An AWM shareholder made a capital gain when CGT event A1 happened if the capital proceeds from the disposal of their AWM share exceeded its cost base.

24. An AWM shareholder made a capital loss if the capital proceeds were less than the reduced cost base of the AWM share (subsection 104-10(4)).

Capital proceeds

25. The capital proceeds for the disposal of each AWM share is that part of the market value of the IOOF share received (worked out as at the time that CGT event A1 happened) that is reasonably attributable to the disposal of the AWM share (subsections 116-20(1) and 116-40(1)).

Cost base and reduced cost base of IOOF shares

26. The first element of the cost base and reduced cost base of each IOOF share received in exchange for AWM shares under the Scheme is that part of the market value of the AWM shares given in exchange for each IOOF share on the implementation date of the Scheme (subsections 110-25(2) and 110-55(2)).

Market valuation

27. The Commissioner will accept the amount of \$1.14 as the market value of each AWM share on the implementation date of the Scheme.

28. The Commissioner will accept the amount of \$4.25 as the first element of the cost base and reduced cost base of each IOOF share acquired by an AWM shareholder for the disposal of their AWM shares.

Commissioner of Taxation

16 September 2009

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.*

CGT event A1 happens on the disposal of AWM shares to IOOF

29. CGT event A1 happens if there is a change in the ownership of an asset from one entity to another entity (section 104-10).

30. The time when CGT event A1 happens is when a contract to dispose of the asset is entered into, or if there is no contract, when the change of ownership occurs (subsection 104-10(3)). The time when a CGT event happens determines the income year in which any capital gain or capital loss is made and whether the CGT discount applies to any capital gain.

31. On 12 May 2009, the implementation date of the Scheme, a change of ownership occurred when new IOOF ordinary shares were allotted to AWM eligible Scheme shareholders as consideration for the transfer of their AWM shares to IOOF.

Capital gain or capital loss

32. An AWM shareholder makes a capital gain when CGT event A1 happens if the capital proceeds from the disposal of an AWM share exceed its cost base. Alternatively, an AWM shareholder makes a capital loss if the capital proceeds were less than the reduced cost base of the AWM share (subsection 104-10(4)).

Capital proceeds

33. The capital proceeds from a CGT event is the money and the market value of any property received or entitled to be received, worked out at the time the CGT event happens (subsections 116-20(1) and 116-40(1)). Under the Scheme, that is that part of the market value of the IOOF share received that is reasonably attributable to the disposal of the AWM share.

34. The Commissioner will accept that the capital proceeds from the disposal of each AWM share was \$1.14 (\$4.25 divided by 3.73). This represents the amount of the volume weighted average price (VWAP) of each IOOF share on the implementation date of the Scheme that is reasonably attributable to each AWM share.

Cost base and reduced cost base of IOOF shares

35. The first element of an AWM shareholder's cost base and reduced cost base for each IOOF share received, is equal to the market value of the property given, being AWM shares, in exchange for the relevant IOOF share (subsection 110-25(2) and subsection 110-55(2)).

36. Under the Scheme, AWM shareholders received 1 IOOF share for every 3.73 AWM shares that they held and received no cash consideration for the shares.

37. The Commissioner will accept that the first element of an AWM shareholder's cost base and reduced cost base for each IOOF share received is \$4.25. This was the VWAP of an IOOF share on the implementation date of the Scheme and the Commissioner will accept that this represents the market value of the 3.73 AWM shares given in exchange for an IOOF share.

Market value

38. 'Market value' is defined in section 995-1 as having a meaning affected by Subdivision 960-S. Section 960-400 states that the term market value is often used in the ITAA 1997 according to its ordinary meaning, however, in some cases that expression has a meaning affected by this subdivision. Special rules apply where the Goods and Services Tax affects the market value of an asset and in the case of market value of non-cash benefits. Neither of these special rules is relevant for the purposes of the market value of the IOOF shares under the Scheme so market value has its ordinary meaning.

39. The trading information of IOOF shares on 12 May 2009 was as follows:

Date	Open	High	Low	Close	Volume	Adj Close
12/05/2009	4.21	4.49	4.15	4.49	316700	4.49

40. The variation of the closing price to the minimum trade price is equal to 7.572%. In such situations, the volatile trading on the day of the CGT event may mean that the market value may be more correctly ascertained by using the VWAP for the shares over the day.

41. As the share price on the implementation date of the Scheme fluctuated by more than 5% during the course of the day, the VWAP is therefore an appropriate market value price for the IOOF shares.

42. The VWAP of an IOOF share on 12 May 2009 (the implementation date of the Scheme) was \$4.25 per share.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- CGT capital proceeds
- CGT event A1- disposal of CGT asset
- CGT events
- CGT cost base
- disposal of shares
- market value cost base
- ordinary shares
- schemes of arrangement
- shareholders

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997

- ITAA 1997 104-10
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(2)
- ITAA 1997 104-10(3)
- ITAA 1997 104-10(3)(b)
- ITAA 1997 104-10(4)
- ITAA 1997 110-25
- ITAA 1997 110-25(2)
- ITAA 1997 110-55
- ITAA 1997 110-55(2)
- ITAA 1997 116-20
- ITAA 1997 116-20(1)
- ITAA 1997 116-40
- ITAA 1997 116-40(1)
- ITAA 1997 Subdiv 124-M
- ITAA 1997 Subdiv 960-S
- ITAA 1997 960-400
- ITAA 1997 995-1
- TAA 1953
- Copyright Act 1968

ATO references

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ATOlaw topic: Income Tax ~~ Capital Gains Tax ~~ CGT event A1 - disposal of a CGT asset