



Class Ruling

Income tax: scrip for scrip: exchange of securities in Atlassian Corporation Pty Limited for securities in Atlassian Corporation PLC

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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 provisions 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 104-25 of the ITAA 1997
- section 106-50 of the ITAA 1997
- section 109-10 of the ITAA 1997
- section 110-25 of the ITAA 1997
- section 110-55 of the ITAA 1997
- subsection 112-30(1) of the ITAA 1997

- section 115-30 of the ITAA 1997
- section 115-45 of the ITAA 1997
- section 116-20 of the ITAA 1997, and
- Subdivision 124-M of the ITAA 1997.

All references are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies is Shareholders in Atlassian Corporation Pty Limited (Atlassian, the original entity) and Optionholders in Atlassian who:

- participated in the Scheme as described in this Ruling;
- are residents of Australia for the purposes of section 6 of the *Income Tax Assessment Act 1936* (ITAA 1936) at all relevant times and were not considered temporary residents for tax purposes;
- held their Atlassian Shares or Options (the original interests) as original interest holders for the purposes of Subdivision 124M;
- held their Atlassian Shares or Options neither as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)) - that is, broadly they were held on capital account;
- are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their Atlassian Securities.

(Note: Division 230 will generally not apply to individuals, unless they make an election for it to apply to them.)

Qualifications

4. The Commissioner makes his ruling 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 paragraph 8 to 25 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 2013 to 30 June 2014. The Ruling continues to apply after 30 June 2014 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:

- Atlassian Class Ruling Application dated 11 October 2013 plus appendices;
- Atlassian Draft Scheme Booklet dated 21 November 2013;
- Unregistered Deposit Agreement Execution Copy (Series A Preference Shares) dated 2 December 2013;
- Unregistered Deposit Agreement Execution Copy (Series B Preference Shares) dated 2 December 2013;
- Unregistered Deposit Agreement Execution Copy (Restricted Shares) dated 2 December 2013;
- Unregistered Deposit Agreement Execution Copy (Class B Ordinary Shares) dated 2 December 2013; and
- Correspondence from PricewaterhouseCoopers on behalf of Atlassian in relation to this ruling request.

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

9. Atlassian is an Australian resident that was the head company of the Atlassian group.

10. Atlassian had four classes of shares on issue (Atlassian shares):

- Class B Ordinary Shares;
- Series A Preference Shares;
- Series B Preference Shares; and

- Restricted Shares

11. Atlassian also had in place two share option schemes for employees (Atlassian options).

12. Atlassian entered into a Scheme Implementation Deed with Atlassian Corporation Plc and Atlassian Australia 2 Pty Limited in relation to a proposed restructure of the Atlassian group which involved Atlassian Corporation Plc becoming the parent company of the Atlassian group. The restructure was implemented by way of four share schemes of arrangement (the Share Schemes) and two option schemes of arrangement (the Option Schemes, and together with the Share Schemes, the Schemes) on 12 February 2014.

13. As part of the Share Schemes, Atlassian Shareholders transferred all their Atlassian Shares to a new company incorporated in Australia known as Atlassian Australia 2 Pty Limited (which is indirectly wholly owned by Atlassian Corporation Plc).

14. Atlassian Corporation Plc has four classes of shares on issue after implementation of the Schemes. Each share class in Atlassian Corporation Plc carries the same kind of rights and obligations as the corresponding share class in Atlassian. Under the Share Schemes, Atlassian Shareholders received a beneficial ownership interest in one equivalent share in Atlassian Corporation Plc (Atlassian UK share) for each Atlassian share.

15. Two new share option schemes have been established by Atlassian Corporation Plc. Pursuant to the Option Schemes, each Atlassian optionholder received a corresponding option in Atlassian Corporation Plc in exchange for the cancellation of their Atlassian options. The Atlassian Corporation Plc options (Atlassian UK option) were issued on the same terms as the corresponding options held in Atlassian.

16. The market value of the replacement shares and options for each original shareholder and optionholder was at least substantially the same as the market value of the original interest immediately preceding the Schemes implementation time.

17. The purchaser under the Schemes is a wholly owned subsidiary of Atlassian Corporation Plc.

18. All Atlassian Shareholders were entitled to participate in the Share Schemes (as appropriate). Each of the Share Schemes is on substantially the same terms. Atlassian Shareholders voted to approve the Share Schemes at shareholder meetings on 29 January 2014.

19. All Atlassian Optionholders were entitled to participate in the Option Schemes (as appropriate). Each of the Option Schemes is on substantially the same terms. Atlassian Optionholders voted to approve the Option Schemes at optionholder meetings on 29 January 2014.

Scheme consideration

20. In order to efficiently effect a possible future listing of Atlassian Corporation Plc on a recognised stock exchange, upon implementation of the Share Schemes, the replacement shares in Atlassian Corporation Plc were issued by Atlassian Corporation Plc to a third party professional Depositary in the UK (the Depositary). The Depositary is the legal owner of the Atlassian Corporation Plc shares. Under the terms of the Unregistered Deposit Agreements entered into between the Depositary, Atlassian Corporation Plc and the replacement shareholders (Deposit Agreements), the replacement shareholders have, at all times, an absolute entitlement to their corresponding shares in Atlassian Corporation Plc.

21. The Depositary created and issued to replacement shareholders Unregistered Depositary Shares (Depositary Shares) which represent the underlying shares in Atlassian Corporation Plc legally held by the Depositary. The Depositary Shares are not themselves shares in a company. The Depositary Shares issued by the Depositary are evidenced by Unregistered Depositary Receipts which were issued to each scheme shareholder.

22. Each Depositary Share represents one share in Atlassian Corporation Plc. Under the Deposit Agreements, the Depositary Share holders, as beneficial owners of the shares in Atlassian Corporation Plc, have equivalent rights to legal shareholders appearing on Atlassian Corporation Plc's register of members.

23. Under the Deposit Agreements, beneficial owners of the shares in Atlassian Corporation Plc are entitled to surrender the Depositary Shares and withdraw the deposited Atlassian Corporation Plc shares represented by the Depositary Shares at any time.

Other Matters

24. Atlassian Shareholders and Optionholders would apart from this roll-over make a capital gain from a CGT event happening in relation to their original Shares and Options.

25. There is a 'common stakeholder' for the Schemes pursuant to subsection 124-783(3).

Ruling**CGT Event A1**

26. CGT event A1 happens as a result of the disposal by an Atlassian Shareholder of their Atlassian shares to Atlassian Australia 2 Pty Limited (subsections 104-10(1) and (2)).

27. The time of the event is when the Atlassian shares are transferred to Atlassian Australia 2 Pty Limited on the implementation date for the Schemes (paragraph 104-10(3)(b)).

CGT Event C2

28. CGT event C2 happened when each Atlassian option held by a participating Atlassian Optionholder was cancelled under the Option Schemes (subsection 104-25(1)).

29. The time of the event was the date when the Atlassian options were cancelled as part of the Option Schemes (subsection 104-25(2)).

Capital Gains/Losses on Atlassian Shares

30. A participating Atlassian Shareholder made a capital gain if the capital proceeds from the disposal of their Atlassian share exceeded its cost base. The capital gain is the amount of the excess (subsection 104-10(4)).

31. A participating Atlassian Shareholder made a capital loss if the capital proceeds from the disposal of their Atlassian share is less than its reduced cost base. The capital loss is the amount of the difference (subsection 104-10(4)).

Capital Proceeds

32. The capital proceeds for the disposal of each Atlassian share is the market value, at the time when CGT event A1 happened, of the replacement share. The Commissioner accepts that the market value of the replacement share may be determined by reference to the market value of the Depositary Share which represents the underlying share in Atlassian Corporation Plc (paragraph 116-20(1)(b)).

Capital Gains/Losses on Atlassian Options

33. A participating Atlassian Optionholder made a capital gain from CGT event C2 happening if the capital proceeds from each cancelled Atlassian option was more than its cost base. The capital gain is the amount of the excess (subsection 104-25(3)).

34. A participating Atlassian Optionholder made a capital loss if the capital proceeds from the disposal of their Atlassian option was less than its reduced cost base. The capital loss is the amount of the difference (subsection 104-25(3)).

Capital Proceeds

35. The capital proceeds for each cancelled Atlassian option was the market value of the Atlassian UK option received in respect of CGT event C2 happening, worked out at the time of the CGT event (paragraph 116-20(1)(b)).

Availability of scrip for scrip roll-over if a capital gain is made

36. Subject to the qualification in paragraph 37 - 39 of this Ruling, an Atlassian Shareholder or Atlassian Optionholder who made a capital gain from the disposal of their Atlassian share or of their Atlassian option is eligible to choose scrip for scrip roll-over (section 124-780). Scrip for scrip roll-over is not available for a capital loss.

37. Participating Atlassian Shareholders or Atlassian Optionholders who are considered non residents for tax purposes just after they acquire the Atlassian UK shares or Atlassian UK options respectively will not be able to obtain a roll-over (subsection 124-795(1)).

38. Scrip for scrip roll-over cannot be obtained if any capital gain a participating Atlassian Shareholder or Atlassian Optionholder made from the disposal of their Atlassian share or Atlassian option would be disregarded except because of a roll-over (paragraph 124-795(2)(a)).

39. Scrip for scrip roll-over cannot be obtained if the participating Atlassian Shareholder or Atlassian Optionholder can choose a roll-over under Division 122 or Subdivision 124-G (subsection 124-795(3)).

40. If scrip for scrip roll-over is chosen, the capital gain the Atlassian Shareholder or Atlassian Optionholder made on the disposal of their Atlassian share or cancellation of their Atlassian option is disregarded (subsection 124-785(1)).

41. As all Atlassian Shareholders and Atlassian Optionholders are common stakeholders, section 124-782 applies. To obtain roll-over, each Atlassian Shareholder and Atlassian Optionholder must jointly elect with Atlassian Corporation Plc to obtain rollover (paragraph 124-780(3)(d)) and must notify Atlassian Corporation Plc in writing of the cost base of their original interest worked out just before the disposal of the Atlassian shares or the cancellation of the Atlassian options under the Schemes (paragraph 124-780(3)(e)).

Acquisition date for Atlassian UK Shares

42. The date of acquisition of an Atlassian UK share will be on the day when the Atlassian Shareholder acquires the beneficial ownership of the Atlassian UK share. The Atlassian Shareholder is considered to have an absolute entitlement to the Atlassian UK share for the purposes of section 106-50 when it acquires the corresponding Depositary Share in accordance with the relevant Deposit Agreement and the relevant Share Scheme.

43. For the purposes of applying the CGT discount to any later disposal of their Atlassian UK shares, Atlassian Shareholders who choose scrip for scrip roll-over are taken to have acquired their Atlassian UK shares when they acquired the corresponding Atlassian shares (item 2 in the table in subsection 115-30(1)). However, where an Atlassian Shareholder disposes of their share in Atlassian Corporation Plc within twelve months of the scheme implementation date, and that shareholder and its associates has at least 10% of the equity in Atlassian Corporation Plc, the CGT discount may be denied where the conditions in section 115-45 are satisfied.

Cost base of Atlassian UK Shares

44. Where scrip for scrip roll-over is chosen, the first element of the cost base and reduced cost base of the replacement Atlassian UK share is worked out by reasonably attributing to it the cost base of the corresponding Atlassian share (subsections 124-785(2) and 124-785(4)).

45. Where scrip for scrip roll-over is not chosen or cannot be chosen, the first element of the cost base and reduced cost base of each replacement Atlassian UK share is worked out by reasonably attributing to it a proportion of the market value of the corresponding Atlassian share (paragraph 110-25(2)(b) and subsections 110-55(2) and 112-30(1)).

Acquisition date for Atlassian UK Options

46. The date of acquisition of the Atlassian UK Option will be on the day when the Atlassian Optionholder acquires the Atlassian UK Option.

47. For the purposes of applying the CGT discount to any later disposal of their Atlassian UK options, Atlassian Optionholders who choose scrip for scrip roll-over are taken to have acquired their Atlassian UK options when they acquired the corresponding Atlassian Options (item 2 in the table in subsection 115-30(1)).

Cost base of Atlassian UK Options

48. Where scrip for scrip roll-over is chosen, the first element of the cost base and reduced cost base of the replacement Atlassian UK option is worked out by reasonably attributing to it the cost base of the corresponding Atlassian option (subsections 124-785(2) and 124-785(4)).

49. Where scrip for scrip roll-over is not chosen or cannot be chosen, the first element of the cost base and reduced cost base of each replacement Atlassian UK option is worked out by reasonably attributing to it a proportion of the market value of the corresponding Atlassian option (paragraph 110-25(2)(b) and subsections 110-55(2) and 112-30(1)).

Commissioner of Taxation5 March 2014

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.*

50. The significant tax consequence that is the subject of this Ruling is the availability of scrip for scrip roll-over under Subdivision 124-M. It enables an original interest holder to disregard a capital gain from an original interest that is disposed of as part of a corporate takeover or merger if the original interest holder receives a replacement interest in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement interest.

51. Subdivision 124-M contains a number of conditions for, and exceptions to, an original interest holder being eligible to choose scrip for scrip roll-over. The main requirements that are relevant to the scheme that are the subject of this Ruling are:

- interests in a company are exchanged for like interests in another company;
- the exchange occurs as part of a single arrangement;
- (c) conditions for roll-over are satisfied;
- further conditions are not applicable or are satisfied; and
- exceptions to obtaining scrip for scrip roll-over are not applicable.

52. The schemes as stated in this ruling involve an exchange of shares in Atlassian Corporation Pty Limited for shares in Atlassian Corporation Plc. The Atlassian Shareholders are considered to be absolutely entitled to their Atlassian UK shares when the exchange occurs as defined in the Scheme.

53. The Commissioner considers the exchange to be part of a single arrangement and that the conditions set in section 124-780 are satisfied. The Commissioner accepts as a fact that under subsection 124-780(4) and 124-780(5) that even though the parties in this exchange are not dealing with each other at arms length, the market value of the Atlassian UK shares and Atlassian UK options the Atlassian Shareholders and Atlassian Optionholders receive in Atlassian Corporation Plc respectively will have substantially the same market value as the original interests and the rights and obligations attached to the shares and options will be the as those attached to the respective original shares and options.

54. No further exceptions or conditions will apply to the Scheme.

Appendix 2 – Detailed contents list

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References

<i>Previous draft:</i>	- ITAA 1997 104-25
Not previously issued as a draft	- ITAA 1997 106-50
	- ITAA 1997 109-10
<i>Related Rulings/Determinations:</i>	- ITAA 1997 110-25
TR 2006/10	- ITAA 1997 110-25(2)(b)
	- ITAA 1997 110-55(2)
<i>Subject references:</i>	- ITAA 1997 112-30(1)
- scrip for scrip roll-over	- ITAA 1997 115-30(1)
- capital gains tax	- ITAA 1997 115-45
- CGT assets	- ITAA 1997 116-20
- CGT cost base	- ITAA 1997 116-20(1)(b)
- CGT events	- ITAA 1997 Subdiv 124-G
- CGT event A1 – disposal of a CGT asset	- ITAA 1997 Subdiv 124-M
- CGT events C1-C3 – end of a CGT asset	- ITAA 1997 124-780
	- ITAA 1997 124-782
	- ITAA 1997 124-783
	- ITAA 1997 124-783(5)
<i>Legislative references:</i>	- ITAA 1997 124-784A
- ITAA 1936 6(1)	- ITAA 1997 124-785(2)
- ITAA 1997 104-10	- ITAA 1997 124-785(4)
- ITAA 1997 104-10(1)	- ITAA 1997 Div 230
- ITAA 1997 104-10(2)	- ITAA 1997 977-50
- ITAA 1997 104-10(3)(b)	- ITAA 1997 995-1(1)
- ITAA 1997 104-10(4)	- TAA 1953
- ITAA 1997 104-25(1)	- Copyright Act 1968
- ITAA 1997 104-25(3)	

ATO references

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