



Class Ruling

Income tax: Royal Dutch Shell plc. combination with BG Group plc. – CGT scrip for scrip roll-over

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	9
Scheme	10
Ruling	21
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
<i>Explanation</i>	41
Appendix 2:	
<i>Detailed contents list</i>	51

❶ 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 102-5 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 102-10 of the ITAA 1997
- section 104-10 of the ITAA 1997
- section 109-10 of the ITAA 1997
- section 110-25 of the ITAA 1997
- Subdivision 115-A of the ITAA 1997
- section 116-20 of the ITAA 1997, and
- Subdivision 124-M of the ITAA 1997.

All subsequent legislative references in this Ruling are to provisions of the ITAA 1997, unless otherwise stated.

Class of entities

3. The class of entities to which this Ruling applies is holders of ordinary shares in BG Group plc (BG) at the time BG was acquired by Royal Dutch Shell plc (Shell) (the Combination) that:

- were residents of Australia within the meaning of that expression in subsection 6(1) of the ITAA 1936
- had their BG Shares wholly or partially replaced with Shell A shares and/or Shell B shares (Shell Shares), and
- are not subject to the Taxation of Financial Arrangements rules in Division 230.

(**Note:** Division 230 will generally not apply to individuals unless they have made an election for it to apply.)

4. The class of entities includes Australian employees of BG and its subsidiaries in respect of any BG Shares which were:

- acquired under a BG employee share scheme, and
- subject to a 'deferred taxing point' prior to, or as a result of, the Combination.

(**Note:** The Australian income tax consequences of the Combination for BG employees who received Shell Rights and / or Shell Shares in exchange for unvested BG Rights and / or BG Shares which, prior to the Combination, were subject to a BG employee share scheme, are set out in Class Ruling CR 2016/59).

5. In this Ruling, a person belonging to the class of entities is referred to as a 'Shareholder'.

Qualifications

6. The Commissioner makes the Ruling based on the precise scheme identified in this Ruling.

7. 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 10 to 20 of this Ruling.

8. 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

9. This Ruling applies from 1 July 2015 to 30 June 2016. The Ruling continues to apply after 30 June 2016 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

10. The following description of the scheme is based on information provided by the applicant.

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

11. BG is a company incorporated in the United Kingdom and has subsidiary entities in Australia.

12. Shell is incorporated in the United Kingdom and a tax-resident of the Netherlands.

13. BG shares were traded on the London Stock Exchange.

14. Shell has ordinary shares consisting of Shell A shares and Shell B shares (Shell Shares). These are traded on the London, New York and Amsterdam stock exchanges.

15. Shell acquired 100% of BG Shares by way of a court approved scheme of arrangement. Court approval was granted on 11 February 2016 (the Court Order Date).

16. The Combination came into effect on 15 February 2016 (the Combination Date).

17. Some, but not all, interests in BG employee share scheme plans vested on the Court Order Date. Employees shareholders whose BG Shares vested, or whose BG Rights vested and were automatically exercised on that date became shareholders of BG in relation to those interests and participated in the scheme of arrangement in the same way as all other BG Shareholders.

18. Under the terms of the Combination, all BG Shareholders received GBP3.83 in cash and 0.4454 Shell B Shares (Default Consideration) for each BG Share they held, unless they actively elected to:

- receive all or part of the share component in Shell A Shares (as opposed to Shell B Shares) at the same exchange ratio under the 'Shell A Share Alternative', and/or
- vary the proportions in which they receive New Shell Shares and cash, subject to elections made by other BG Shareholders under the 'Mix and Match Facility'.

19. The Shell A Share Alternative and the Mix and Match Facility discussed in this paragraph, together with the Default Consideration, are collectively referred to in this Ruling as the 'Combination consideration alternatives'.

Other matters

20. Shell did not make a choice under subsection 124-795(4).

Ruling

CGT event A1

21. CGT event A1 happened when Shareholders disposed of their BG Shares in exchange for the Combination consideration alternatives (section 104-10).

22. The time when CGT event A1 happened to the BG Shares was the date on which the Combination occurred via the Court Sanction (11 February 2016) (paragraph 104-10(3)(b)).

23. A Shareholder made a capital gain when CGT event A1 happened to the BG Shares if the capital proceeds from the disposal of a BG Share exceeded the cost base of that share. The capital gain is the amount of the excess (subsection 104-10(4)).

24. A Shareholder made a capital loss when CGT event A1 happened to the BG Shares if the capital proceeds from the disposal of a BG Share were less than the reduced cost base of that share. The capital loss is the amount of the difference (subsection 104-10(4)).

25. The capital proceeds from CGT event A1 happening to a BG Share is the:

- money received or entitled to be received (in Australian Dollars), and

- the market value (in Australian Dollars) of any Shell B shares and/or Shell A shares received or entitled to be received, in respect of the disposal of that BG Share.

26. The market value of the Combination consideration alternatives received is worked out as at the time of CGT event A1, which is on the Court Sanction Date (11 February 2016) (subsection 116-20(1)).

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

27. Subject to the qualification in paragraph 28, a Shareholder who made a capital gain from the disposal of their BG Shares may choose to obtain partial scrip for scrip roll-over for that part of the capital gain that is referable only to the receipt of the Shell Shares. See paragraphs 33-36 below where some or all of the proceeds received in exchange for BG Shares was cash.

28. Scrip for scrip roll-over cannot be chosen if, should the shareholder make another capital gain upon a subsequent CGT event happening to the replacement Shell Shares, that capital gain would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)). For example, where the replacement Shell Shares are held as trading stock.

Consequences if scrip for scrip roll-over is chosen

Capital gain is partially disregarded

29. If a Shareholder chooses scrip for scrip roll-over, the part of the capital gain that is referable to the receipt of Shell Shares is disregarded (subsections 124-785(1) and 124-790(1)). See paragraphs 33-36 below where some or all of the proceeds received in exchange for BG Shares was cash.

Acquisition date of the new Shell Shares

30. If a Shareholder chooses scrip for scrip roll-over, the acquisition date of the new Shell Shares for the purposes of entitlement to a discount capital gain should a subsequent CGT event happen to the Shell Shares (such as a disposal of the Shell Shares) is the date when the shareholder acquired the BG Shares that were exchanged for the new Shell Shares (item 2 of the table in subsection 115-30(1)).

31. Where a BG employee was subject to a 'deferred taxing point' prior to, or as a result of the Combination, any period where the interests in BG Shares were held as BG Rights is not taken into account in determining when the employees acquired their BG Shares (and therefore are not taken into account in determining when the employees acquired their Shell Shares).

Cost base and reduced cost base of new Shell Shares received

32. If a Shareholder chooses scrip for scrip roll-over, the first element of the cost base and reduced cost base of replacement new Shell Shares received (in exchange for their BG Shares) is worked out by reasonably attributing the cost base and reduced cost base (respectively) of the BG Shares which were exchanged and for which the roll-over was obtained (subsections 124-785(2) and 124-785(4)). The cost base and reduced cost base of the BG Shares exchanged by a shareholder is reduced by so much of it that is referable to the receipt of cash (subsection 124-785(3)).

Cash component

33. To the extent a BG Shareholder received cash in exchange for their BG Shares, no CGT roll-over is available.

34. Where a BG Shareholder received:

- both cash and Shell B shares
- both cash and Shell A shares, or
- cash, Shell B shares and Shell A shares,

the BG Shareholder may choose partial CGT scrip-for-scrip roll-over for the Shell Shares received (the cost base and reduced cost base outcomes for the Shell Shares received are set out in paragraph 32). Where the shareholder makes the choice, then for the cash received in exchange for the BG Shares, the shareholder makes:

- a capital gain if the cash received exceeds the portion of the cost base of the BG Shares that is referable to cash, or
- a capital loss if the cash received is less than the portion of the reduced cost base of the BG Shares that is referable to cash.

35. Where a Shareholder received consideration in foreign cash (such as GBP3.83 per BG Share where the Default Consideration was received), the Australian dollar value of any cash received must be worked out on the Court Sanction Date (11 February 2016).

36. The relevant portion of the cost base or reduced cost base of BG shares which are exchanged for Shell Shares and cash is the amount that is reasonably attributable to each respectively (subsection 124-790(2)).

Consequences if scrip for scrip roll-over is not chosen, or cannot be chosen***Capital gain is not disregarded***

37. A Shareholder who does not choose scrip for scrip roll-over, or cannot choose the roll-over, must take into account any capital gain or capital loss made as a result of CGT event A1 happening on the disposal of their BG Shares in working out their net capital gains, or for determining any current or carried forward capital losses for the income year in which CGT event A1 happens (sections 102-5 and 102-10).

38. A Shareholder, who makes a capital gain where scrip for scrip roll-over is not chosen, or cannot be chosen, is entitled to treat the capital gain as a 'discount capital gain' provided that the conditions of Subdivision 115-A are met. In particular, the BG Shares were acquired, or taken to have been acquired, by the shareholder at least 12 months before the Court Sanction Date (11 February 2016). Where a subsequent CGT event happened to the Shell Shares such as a later disposal of the shares, the period when the Shell Shareholder previously held BG Shares is not taken into account.

Acquisition date of the new Shell Shares

39. A Shareholder who does not choose scrip for scrip roll-over, or cannot choose the roll-over, acquired their new Shell Shares on the Court Sanction Date (11 February 2016) (item 2 of the table in section 109-10).

Cost base and reduced cost base of new Shell Shares

40. If a Shareholder does not choose scrip for scrip roll-over, or cannot choose the roll-over, the first element of the cost base and reduced cost base of the replacement new Shell Shares received is equal to the market value of the BG Shares given in respect of acquiring the new Shell Shares (subsections 110-25(2) and 110-55(2)). The market value of the BG Shares given is worked out on the Court Sanction Date (11 February 2016). The cost base or reduced cost base of new Shell Shares received does not include any portion of the market value of the BG Shares that was given in exchange for the cash consideration received (subsection 112-30(1)).

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.*

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

41. The tax consequences that arise concerning the scheme that is the subject of this Ruling are outlined in the Ruling part of this document.

42. The main tax consequences for Australian shareholders that are the subject of this Ruling are:

- the availability of scrip for scrip roll-over under Subdivision 124-M
- the application of the rules where some of the proceeds received is cash, and
- where scrip for scrip roll-over is not chosen or does not apply.

43. The roll-over enables a shareholder to disregard any part of the capital gain from a share that is disposed of if the shareholder receives a replacement share in exchange. Any part of the capital gain that is referable to the receipt of cash is not disregarded because it is ineligible proceeds for which the roll-over is not available. It also provides special rules for calculating the cost base and reduced cost base of the replacement share.

44. Subdivision 124-M contains a number of conditions for, and exceptions to, a shareholder being eligible to choose scrip for scrip roll-over. The main requirements as relevant to the combination are:

- an entity exchanges shares in a company for shares in another company
- the exchange is in consequence of a single arrangement
- conditions for the roll-over are satisfied
- further conditions, if applicable, are satisfied, and
- exceptions to obtaining scrip for scrip roll-over are not applicable.

45. This Ruling has taken into account the amendments made to Subdivision 124-M by the *Tax and Superannuation Laws Amendment (2015 Measures No. 4) Act 2015* which received Royal Assent on 13 October 2015. Schedule 1 to the Act applies to CGT events happening after 7:30pm (by legal time in the Australian Capital Territory) on 8 May 2012.

Example

46. *Mr Jones, an Australian resident, acquired 1,000 BG Group plc (BG) Shares on 1 July 2012 for \$18,000. On the Court Sanction Date (11 February 2016), Mr Jones received the Default Consideration of GBP3.83 in cash and 0.4454 Shell B Shares per BG Share. Mr Jones received cash of \$7,271.88 after his bank deducted a foreign currency transaction fee of \$250. The market value of Shell B Shares on the Court Sanction date was GBP14.455 per share. The market value of BG Shares on the Court Sanction date was GBP10.20 per share. The market value of Shell B Shares on the Combination Date (15 February 2016) was GBP15.405 per share.*

47. The Commissioner's published foreign exchange rate on the Court Sanction Date was GBP0.5100:\$1.

48. Therefore, Mr Jones received:

- 445 Shell B Shares (rounded down). The market value of these shares on the Court Sanction Date was GBP6,432.48 [445×14.455] which translates to \$12,612.70 [$6,432.48 \div 0.5100$]
- the cash value of his fractional entitlement to 0.4 Shell B Shares as at 15 February 2016 [GBP15.405 per Shell B Share] = GBP6.16 [0.40×15.405] which translates to \$12.08 [$6.16 \div 0.5100$], and
- cash entitlement of GBP3830.00 which translates to \$7,509.80 [$3,830 \div 0.5100$].

Consequences if Mr Jones chooses scrip for scrip roll-over

49. If Mr Jones chooses scrip for scrip roll-over, then Mr Jones:

- apportions the cost base of his BG Shares (\$18,000) across the cash received (\$7,521.88), and the value of the Shell B Shares received (\$12,612.70):
 - the portion allocated to the Shell B Shares is \$11,275.55
 $[(12,612.70 \div (7,521.88 + 12,612.70)) \times 18,000]$.
 This is the cost base or reduced cost base of the Shell B Shares (or \$25.34 per Shell B Share) should a subsequent CGT event happen to those shares, and
 - the portion allocated to cash received is \$6,724.45
 $[(7,521.88 \div (7,521.88 + 12,612.70)) \times 18,000]$,
- disregards the capital gain of \$1,337.15 (\$12,612.70 - \$11,275.55) made on the disposal of his BG Shares to the extent he received Shell B Shares [however the cost base or reduced cost base of the Shell B Shares are \$11,275.55]:

- Mr Jones is taken to have acquired the Shell B Shares on 1 July 2012 (for CGT discount capital gains purposes for any subsequent CGT event such as a disposal happening to the Shell B Shares), and
- to the extent he received cash, makes a capital gain of \$797.43 (\$7,521.88-\$6,724.45). If Mr Jones held the BG Shares for more than 12 months before the Court Sanction Date (11 February 2016) and the other requirements of Division 115 are met, then Mr Jones as an individual shareholder is entitled to a CGT discount of 50% on the cash component received.

Consequences if Mr Jones does not or cannot choose scrip for scrip roll-over

50. If Mr Jones does not or cannot choose scrip for scrip roll-over, then Mr Jones:

- makes a capital gain of \$2,134.58 (\$20,134.58-\$18,000.00) on the disposal of his BG Shares in exchange of Shell B Shares and cash:
 - as Mr Jones held the BG Shares for more than 12 months before the Court Sanction Date (11 February 2016) and if Mr Jones meets the other requirements of Division 115, then Mr Jones as an individual shareholder is entitled to a CGT discount of 50% on the above capital gain.
- acquired the Shell B Shares on 11 February 2016 (for CGT discount capital gains purposes for any subsequent CGT event such as a disposal happening to the Shell B Shares), and
- the cost base or reduced cost base of the newly acquired 445 Shell B Shares will be market value of the BG Shares on 11 February 2016, GBP10,200 (1,000×10.20) which translates to \$20,000 (10,200÷0.5100) less the portion of market value given for the cash amount received, \$7,471.60 $[(7,521.88÷(7,521.88+12,612.70))×20,000]$, that is \$12,528.40 (\$28.15 per Shell B Share).

Appendix 2 – Detailed contents list

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

	Paragraph
What this Ruling is about	1
Relevant provision(s)	2
Class of entities	3
Qualifications	6
Date of effect	9
Scheme	10
Other matters	20
Ruling	21
CGT event A1	21
Availability of partial scrip for scrip roll-over if a capital gain is made	27
Consequences if scrip for scrip roll-over is chosen	29
<i>Capital gain is partially disregarded</i>	29
<i>Acquisition date of the new Shell Shares</i>	30
<i>Cost base and reduced cost base of new Shell Shares received</i>	32
<i>Cash component</i>	33
Consequences if scrip for scrip roll-over is not chosen, or cannot be chosen	37
<i>Capital gain is not disregarded</i>	37
<i>Acquisition date of the new Shell Shares</i>	39
<i>Cost base and reduced cost base of new Shell Shares</i>	40
Appendix 1 – Explanation	41
Availability of scrip for scrip roll-over if a capital gain is made	41
<i>Example</i>	46
<i>Consequences if Mr Jones chooses scrip for scrip roll-over</i>	49
<i>Consequences if Mr Jones does not or cannot choose scrip for scrip roll-over</i>	50
Appendix 2 – Detailed contents list	51

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10 CR 2016/59

Legislative References:

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- ITAA 1936 6(1)
- ITAA 1997
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- ITAA 1997 102-10
- ITAA 1997 104-10
- ITAA 1997 104-10(3)(b)
- ITAA 1997 104-10(4)
- ITAA 1997 109-10
- ITAA 1997 109-50
- ITAA 1997 109-55
- ITAA 1997 110-25
- ITAA 1997 110-25(2)
- ITAA 1997 110-55(2)
- ITAA 1997 112-30(1)
- ITAA 1997 Subdiv115-A
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- ITAA 1997 115-30(1)
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