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Class Ruling

Afterpay Limited – scrip for scrip roll-over

❶ 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 for the holders of ordinary shares in Afterpay Limited (Afterpay) in relation to the acquisition of those shares by Lanai (AU) 2 Pty Ltd (Block Acquirer) on 1 February 2022 (Implementation Date).
2. Full details of this scheme are set out in paragraphs 26 to 49 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:
 - were a holder of Afterpay ordinary shares who participated in the scheme that is the subject of this Ruling
 - were not a temporary resident as defined in subsection 995-1(1) on the Implementation Date (1 February 2022)
 - are not subject to the investment manager regime in Subdivision 842-I in relation to your Afterpay shares, and
 - did not hold your Afterpay shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)); that is, your Afterpay shares were held on capital account for tax purposes.

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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 26 to 49 of this Ruling.

Note: Division 230 will not apply to individuals, unless they have made an election for it to apply.

6. This Ruling does not apply to anyone who owned (together with their associates) 10% or more of the ordinary shares in Afterpay just before the Implementation Date.

When this Ruling applies

7. This Ruling applies from 1 July 2021 to 30 June 2022.

Ruling

CGT event A1 happened on the disposal of your Afterpay Limited shares

8. CGT event A1 happened when you disposed of your Afterpay shares to Block Acquirer (section 104-10).

9. The time of CGT event A1 is on the Implementation Date (1 February 2022) (paragraph 104-10(3)(b)).

10. The capital proceeds from CGT event A1 happening to each Afterpay share is the market value of the part of the share in Block, Inc. (Block) or the part of the CHES Depositary Interest (CDI) in relation to shares in Block, you received in respect of your disposal of the Afterpay share (subsection 116-20(1)). The market value of the Block shares or CDIs is worked out as at the time of CGT event A1 happening.

11. You will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your Afterpay share exceeded the cost base of that share (subsection 104-10(4)). You will make a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your Afterpay share were less than the reduced cost base of that share (subsection 104-10(4)).

Foreign-resident shareholders of Afterpay Limited

12. If you were a foreign resident just before the Implementation Date (that is, you were not a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*) and your Afterpay shares were not 'taxable Australian property', you must disregard a capital gain or capital loss you made from CGT event A1 happening when you disposed of your Afterpay shares to Block Acquirer (section 855-10).

13. Your Afterpay shares were 'taxable Australian property' if they were:

- used by you at any time in carrying on a business through a permanent establishment in Australia in the circumstances specified in table item 3 of section 855-15, or
- a CGT asset that is covered by subsection 104-165(3) (choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident) (table item 5 of section 855-15).

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Availability of scrip for scrip roll-over for your Afterpay Limited shares

14. Subject to the qualification in paragraphs 15 and 16 of this Ruling, if you make a capital gain from the disposal of your Afterpay shares, you may choose to obtain scrip for scrip roll-over for the capital gain (sections 124-780 and 124-785).
15. Scrip for scrip roll-over cannot be chosen if any capital gain you might make from a replacement Block share or CDI would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).
16. If you were a foreign resident just before the Implementation Date, you cannot choose scrip for scrip roll-over unless your Block shares or CDIs were taxable Australian property (as defined in section 855-15) just after the Implementation Date (subsection 124-795(1)).

Consequences if you choose scrip for scrip roll-over for your Afterpay Limited shares***Capital gain is disregarded***

17. If you choose scrip for scrip roll-over, your capital gain is disregarded (subsection 124-785(1)).
18. For the purposes of determining your eligibility to make a discount capital gain, the Block shares or CDIs acquired in exchange for your Afterpay shares are taken to have been acquired on the date you acquired, for CGT purposes, the corresponding Afterpay shares (table item 2 of subsection 115-30(1)).

Cost base and reduced cost base of shares in Block, Inc. or CDIs

19. If you choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of a replacement Block share or CDI you received is worked out by reasonably attributing to it the cost base and reduced cost base (respectively) of the Afterpay shares for which it was exchanged and for which the roll-over was obtained (subsections 124-785(2) and (4)).
20. You can calculate the first element of the cost base and reduced cost of each replacement Block share or CDI by dividing the total cost bases of your Afterpay shares by the number of replacement Block shares or CDIs you received.

Consequences if you do not choose, or cannot choose, scrip for scrip roll-over for your Afterpay Limited shares***Capital gain is not disregarded***

21. If you do not choose, or cannot choose, scrip for scrip roll-over, you must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of your Afterpay shares in working out your net capital gain or net capital loss for the income year in which CGT event A1 happened (sections 102-5 and 102-10).
22. If you make a capital gain where scrip for scrip roll-over is not chosen, or cannot be chosen, you can treat the capital gain as a discount capital gain provided that the conditions of Subdivision 115-A are met.

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Cost base and reduced cost base of shares in Block, Inc. or CDIs

23. If you do not choose, or cannot choose, scrip for scrip roll-over, the first element of the cost base and reduced cost base of a replacement Block share or CDI that you received is equal to the market value of the Afterpay shares you gave in respect of acquiring the Block share or CDI (subsections 110-25(2) and 110-55(2)).

24. The market value of the Afterpay shares you gave is to be worked out as at the time when you acquired the Block shares or CDIs.

Acquisition date of shares in Block, Inc. or CDIs

25. If you do not choose, or cannot choose, scrip for scrip roll-over, the acquisition date of the Block shares or CDIs is the date on which those shares or CDIs were issued to you (table item 2 of section 109-10).

Scheme

26. 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.

Afterpay Limited

27. Afterpay is a financial services company that was incorporated in Australia on 30 March 2017.

28. Afterpay is the head company of an income tax consolidated group under Part 3-90.

29. The shares in Afterpay were listed on the Australian Securities Exchange (ASX) on 6 July 2017 under the ASX code 'APT'. Afterpay has one class of shares on issue.

30. Just before the Scheme Implementation Deed was entered into, and just before the Implementation Date, Afterpay had more than 300 shareholders.

31. Afterpay had 302,350,920 ordinary shares on issue just before the Implementation Date.

Block, Inc. and Block Acquirer

32. Block is a financial services company that was incorporated in Delaware in the United States of America in June 2009.

33. The Class A common stock of Block is listed on the New York Stock Exchange (NYSE) under the NYSE code 'SQ'. Block commenced its operations in Australia in 2016.

34. Block has more than 300 shareholders.

35. Block Acquirer is a company that was incorporated in Australia on 28 July 2021. It is an indirect wholly-owned subsidiary of Block.

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The scheme of arrangement

36. On 2 August 2021, Afterpay, Block and Block Acquirer announced that they had entered into a Scheme Implementation Deed. Under the Deed, Afterpay agreed to propose to the shareholders of Afterpay that Afterpay and the shareholders enter into a scheme of arrangement under Part 5.1 of the *Corporations Act 2001* pursuant to which Block Acquirer would acquire all of the ordinary shares in Afterpay in exchange for Block shares or CDIs (CHESS Depositary Interests).

37. A resolution in favour of the scheme of arrangement was passed by the shareholders of Afterpay as required by subparagraph 411(4)(a)(ii) of the *Corporations Act 2001* on 14 December 2021. The scheme of arrangement was approved by the Supreme Court of New South Wales under paragraph 411(4)(b) of the *Corporations Act 2001* on 17 December 2021.

38. Block Acquirer acquired 100% of the shares in Afterpay on the Implementation Date (1 February 2022).

39. In consideration for the disposal of their Afterpay shares, an Afterpay shareholder received:

- if they elected to receive shares in Block that can be traded on the NYSE – 0.375 of a share of Class A common stock of Block for each Afterpay share, or
- if they elected to receive CDIs listed on the ASX in relation to shares of Class A common stock of Block – 0.375 of a CDI for each Afterpay share. (Each CDI represents a beneficial interest in, but not legal title to, one share of Class A common stock in Block).

40. The choice to receive either shares in Block or CDIs was made available to all shareholders of Afterpay whose registered address was in Australia or New Zealand as at the Record Date (21 January 2022). The choice was also made available to shareholders of Afterpay whose registered address was in other jurisdictions (other than an Ineligible Foreign Shareholder).

41. An Ineligible Foreign Shareholder is an Afterpay shareholder who was a citizen or resident of, or whose address on the share register was in, a jurisdiction other than Australia, New Zealand, Canada, Hong Kong, Singapore, Switzerland, the United Kingdom and the United States of America. An Ineligible Foreign Shareholder did not receive the Block shares to which they would otherwise be entitled for the disposal of their Afterpay shares. Those Block shares were issued to a sale agent, who sold them on the NYSE. The net sale proceeds were paid by Block to each Ineligible Foreign Shareholder.

42. The shares in Afterpay were suspended from trading on the ASX from the close of trading on 19 January 2022. Afterpay was removed from the official list of the ASX on 2 February 2022.

Other matters

43. There was no 'significant stakeholder' or 'common stakeholder' in Afterpay within the meaning of those terms in section 124-783.

44. Paragraph 124-780(3)(f) is satisfied in respect of the disposal of Afterpay shares to Block Acquirer.

45. The CDIs in relation to the shares of Class A common stock of Block are a 'Chess Unit of Foreign Security' under subsection 124-780(6).

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46. An Afterpay shareholder, Afterpay and Block (or Block Acquirer) were not all members of the same linked group (within the meaning given by section 170-260) just before the Scheme Implementation Deed was entered into.

47. Block did not make a choice under subsection 124-795(4) that Afterpay shareholders could not obtain the roll-over in Subdivision 124-M for CGT event A1 happening in relation to the exchange of Afterpay shares.

48. Subsections 124-810(3) and 124-810(5) did not apply to Afterpay just before the Scheme Implementation Deed was entered into.

49. For the purposes of section 855-30, the sum of the market values of the assets of Afterpay that were 'taxable Australian real property' under section 855-20 on the Implementation Date did not exceed the sum of the market values of the assets of Afterpay that were not 'taxable Australian real property' on the Implementation Date.

Commissioner of Taxation

9 February 2022

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References

Previous draft:

Not previously issued as a draft

Legislative references:

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ATO references

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