Status: **legally binding**

Class Ruling

Anteris Technologies Ltd – scrip for scrip roll-over for option holders

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 certain options in Anteris Technologies Ltd (Anteris) who had those options replaced by options in Anteris Technologies Global Corp (Anteris US) on 16 December 2024 (Implementation Date).

2. Details of this scheme are set out in paragraphs 28 to 48 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:

- held options in Anteris on the 9 December 2024 (Record Date) which you
  - did not acquire under an 'employee share scheme' (as defined in section 83A-10), or
  - acquired under an employee share scheme and an ESS deferred taxing point under Subdivision 83A-C had occurred in relation to your Anteris options before the Implementation Date, and
- are either a
  - 'resident' of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)), or
  - 'foreign resident' (as defined in subsection 995-1(1)) who is not a 'temporary resident' of Australia (as defined in subsection 995-1(1))

and you did not hold your Anteris options through a permanent establishment in Australia, and

- held your Anteris options on capital account – that is, you did not hold your Anteris options as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)).

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 28 to 48 of this Ruling.

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

When this Ruling applies

6. This Ruling applies from 1 July 2024 to 30 June 2025.

Ruling

CGT event C2 happened on the cancellation of your Anteris Technologies Ltd options

7. CGT event C2 happened when your Anteris options were cancelled (section 104-25).

8. The time of CGT event C2 was on the Implementation Date (section 104-25(2)(b)).

9. The capital proceeds from CGT event C2 happening to each Anteris option is the market value of the Anteris US option you received in respect of that cancellation (subsection 116-20(1)(b)). The market value of the Anteris US option is worked out as at the time of CGT event C2 happening.

10. You made a capital gain from CGT event C2 happening if the capital proceeds from the cancellation of your Anteris option were more than the cost base of that option (subsection 104-25(3)).

11. You made a capital loss from CGT event C2 happening if the capital proceeds from the cancellation of your Anteris option were less than the reduced cost base of that option (subsection 104-25(3)).

Availability of scrip for scrip roll-over for Australian-resident shareholders

12. Subject to the qualification in paragraph 13 of this Ruling, if you are a resident of Australia and you made a capital gain from the cancellation of your Anteris options, you may choose to obtain scrip for scrip roll-over for the capital gain (sections 124-780 and 124-785).

13. Scrip for scrip roll-over cannot be chosen if any capital gain you might make from a replacement Anteris US option would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

Status: **legally binding**

Consequences if you choose scrip for scrip roll-over for your Anteris Technologies Ltd options

Capital gain is disregarded

14. If you choose scrip for scrip roll-over, you disregard the capital gain you made from CGT event C2 happening on the cancellation of your Anteris options (subsection 124-785(1)).

Cost base and reduced cost base of options in Anteris Technologies Global Corp

15. If you choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of a replacement Anteris US option you received is worked out by reasonably attributing to it the cost base and reduced cost base (respectively) of the Anteris option for which it was exchanged and for which you obtained the roll-over (subsections 124-785(2) and (4)).

16. We accept that a reasonable method of attribution would be to calculate the first element of the cost base and reduced cost base of each replacement Anteris US option by dividing the total cost bases of your Anteris options by the number of replacement Anteris US options you received.

Acquisition date of options in Anteris Technologies Global Corp

17. For the purposes of working out whether a future capital gain from a replacement Anteris US option is a discount capital gain, the Anteris US option you acquired in exchange for your Anteris option is taken to have been acquired on the date you acquired, for CGT purposes, the corresponding Anteris option involved in the roll-over (table item 2 of subsection 115-30(1)).

Consequences if you do not choose, or cannot choose, scrip for scrip roll-over for your Anteris Technologies Ltd options

Capital gain is not disregarded

18. 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 C2 happening on the cancellation of your Anteris options in working out your net capital gain or net capital loss for the income year in which CGT event C2 happened (sections 102-5 and 102-10).

19. If you made a capital gain from CGT event C2 happening on the cancellation of your Anteris options 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.

Cost base and reduced cost base of options in Anteris Technologies Global Corp

20. 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 Anteris US option you received is equal to the market value of the Anteris option you gave in respect of acquiring the Anteris US option (subsections 110-25(2) and 110-55(2)).

21. The market value of the Anteris options you gave is worked out as at the time when you acquired the Anteris US options on the Implementation Date.

Status: **legally binding**

22. We accept that you can apportion the total market value of your Anteris options (worked out as at the Implementation Date) across the total number of Anteris US options you acquired on the Implementation Date (subsection 112-30(1)).

Acquisition date of options in Anteris Technologies Global Corp

23. If you do not choose, or cannot choose, scrip for scrip roll-over, the acquisition date of the Anteris US options is the date on which those options were issued to you, being the Implementation Date (table item 2 of section 109-10).

Foreign resident option holders

24. If you were a foreign resident just before the Implementation Date, you cannot choose scrip for scrip roll-over unless your Anteris US options were taxable Australian property (as defined in section 855-15) just after the Implementation Date (subsection 124-795(1)).

25. Your Anteris US options were taxable Australian property if they were a CGT asset covered by subsection 104-165(3) (choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident).

26. If you were a foreign resident just before the Implementation Date, you disregard any capital gain or capital loss you made from CGT event C2 happening on the cancellation of your Anteris options unless your Anteris options were taxable Australian property (section 855-10).

27. The acquisition date of the Anteris US options is the date on which those options were issued to you, being the Implementation Date (table item 2 of section 109-10).

Scheme

28. 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.

Anteris Technologies Ltd

29. Anteris is a company that was incorporated in Australia on 23 June 1999.

30. Anteris was listed on the Australian Securities Exchange on 24 March 2004.

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

32. The business of Anteris consists of designing, developing and commercialising innovative medical devices.

33. Anteris had 21,139,816 ordinary shares and 3,028,933 unlisted share options on issue just before the Implementation Date.

Anteris Technologies Global Corp

34. Anteris US is a company that was incorporated in Delaware, United States of America on 29 January 2024.

Status: **legally binding**

Option and share schemes of arrangement

35. On 13 August 2024, Anteris announced that it had entered into a scheme implementation deed. Under the scheme implementation deed, Anteris agreed to propose to the:

- shareholders of Anteris that Anteris and the shareholders enter into a share scheme of arrangement under Part 5.1 of the *Corporations Act 2001* pursuant to which Anteris US would acquire all the ordinary shares in Anteris in exchange for shares or CHESS Depositary Interests (CDIs) in Anteris US, and
- option holders of Anteris that Anteris and the option holders enter into an option scheme of arrangement under Part 5.1 of the *Corporations Act 2001* pursuant to which Anteris options would be cancelled in exchange for options in Anteris US.

36. A resolution in favour of each scheme of arrangement was passed by the shareholders and option holders of Anteris (respectively) as required by subparagraph 411(4)(a)(ii) of the *Corporations Act 2001* on 3 December 2024.

37. Each scheme of arrangement was approved by the Supreme Court of Queensland under paragraph 411(4)(b) of the *Corporations Act 2001* on 4 December 2024.

38. Anteris US acquired 100% of the ordinary shares in Anteris on the Implementation Date.

39. In consideration for the disposal of their ordinary shares in Anteris on the Implementation Date, the shareholders of Anteris received either one Anteris US share or an equivalent CDI for each Anteris ordinary share they held.

40. In consideration for the cancellation of their options in Anteris on the Implementation Date, the Anteris option holders received one Anteris US option for each Anteris option they held.

41. The Anteris US shares were listed on the Nasdaq Stock Market and the Anteris US CDIs were listed on the Australian Securities Exchange.

Other matters

42. Just before the scheme implementation deed was entered into, and just before the Implementation Date, Anteris had more than 300 shareholders.

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

44. The CDIs in relation to the shares of Anteris US are a 'Chess Unit of Foreign Security' under subsection 124-780(6).

45. An Anteris option holder, Anteris and Anteris US 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.

46. Anteris US did not make a choice under subsection 124-795(4) that Anteris option holders could not obtain the roll-over in Subdivision 124-M for CGT event C2 happening in relation to the cancellation of Anteris options.

47. Subsections 124-810(3) and (5) did not apply to Anteris just before the scheme implementation deed was entered into.

Status: **legally binding**

48. For the purposes of section 855-30, the sum of the market values of the assets of Anteris that were 'taxable Australian real property' (as defined in section 855-20) did not exceed the sum of the market values of the assets of Anteris US that were not taxable Australian real property on the Implementation Date.

Commissioner of Taxation
12 February 2025

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 83A-10
- ITAA 1997 Subdiv 83A-C
- ITAA 1997 102-5
- ITAA 1997 102-10
- ITAA 1997 104-25
- ITAA 1997 104-25(2)(b)
- ITAA 1997 104-25(3)
- ITAA 1997 104-165(3)
- ITAA 1997 109-10
- ITAA 1997 110-25(2)
- ITAA 1997 110-55(2)
- ITAA 1997 112-30(1)
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-30(1)
- ITAA 1997 116-20(1)(b)
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-780
- ITAA 1997 124-780(6)
- ITAA 1997 124-783
- ITAA 1997 124-785
- ITAA 1997 124-785(1)
- ITAA 1997 124-785(2)
- ITAA 1997 124-785(4)
- ITAA 1997 124-795(1)
- ITAA 1997 124-795(2)(a)
- ITAA 1997 124-795(4)
- ITAA 1997 124-810(3)
- ITAA 1997 124-810(5)
- ITAA 1997 170-260
- ITAA 1997 Pt 3-90
- ITAA 1997 855-10
- ITAA 1997 855-15
- ITAA 1997 855-20
- ITAA 1997 855-30
- ITAA 1997 Div 230
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- Corporations Act 2001 Pt 5.1
- Corporations Act 2001 411(4)(a)(ii)
- Corporations Act 2001 411(4)(b)

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