



CR 2003/95 - Income tax: capital gains: scrip for scrip roll over: exchange of shares in GPG (UK) Holdings plc (GPG Holdings) known formerly as Guinness Peat Group plc for shares in the Guinness Peat Group plc (GPG) known formerly as Brunel Holdings plc

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 This document has changed over time. This is a consolidated version of the ruling which was published on 1 July 2002

Class Ruling

Income tax: capital gains: scrip for scrip roll over: exchange of shares in GPG (UK) Holdings plc (GPG Holdings) known formerly as Guinness Peat Group plc for shares in the Guinness Peat Group plc (GPG) known formerly as Brunel Holdings plc

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Preamble

*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains **Class Rulings** and **Taxation Rulings** TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

What this Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below applies to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. The tax law dealt with in this Ruling is Subdivision 124-M of the *Income Tax Assessment Act 1997* (ITAA 1997).

Class of persons

3. The class of persons to which this Ruling applies is the shareholders in GPG Holdings who:

- (a) are 'residents of Australia' as that term is defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- (b) are not 'significant stakeholders' or 'common stakeholders' within the meaning of those expressions as used in Subdivision 124-M of the ITAA 1997; and

- (c) participate in the arrangement that is the subject of this Ruling.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.
5. The class of persons defined in this Ruling may rely on its contents provided the arrangement described below at paragraphs 9 to 18 were carried out in accordance with the details of the arrangement provided in this Ruling.
6. If the arrangement described in this Ruling was materially different from the arrangement that was actually carried out:
- (a) this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled; and
 - (b) this Ruling may be withdrawn or modified.
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Date of effect

8. This Class Ruling applies to the 2002-2003 income year.

Arrangement

9. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or

parts of documents incorporated into this description of the arrangement are:

- (a) Letter dated 14 April 2003 from Ernst & Young requesting the ATO to make a Class Ruling in relation to the capital gains scrip for scrip roll-over provisions as they apply to the merger between two companies resident in the United Kingdom and listed on the London Stock Exchange;
- (b) 'Scheme Circular' dated 21 October 2002, incorporating the Scheme of Arrangement dated 21 October 2002; and
- (c) 'Listings Particulars Circular' dated 21 October 2002.

10. These documents have been subject to a verification procedure by the directors of both GPG Holdings and GPG.

Background

11. The arrangement that is the subject of this Ruling involves the merger of GPG and GPG Holdings.

12. Prior to the merger, GPG Holdings (a UK resident company) was listed on the London Stock Exchange. GPG Holdings was also listed on the Australian and New Zealand Stock Exchanges. Shareholders on the Australian branch register held approximately 14% of GPG Holdings shares on issue.

13. GPG Holdings was the holding company of the GPG Holdings Group which had a diversified range of strategic interests in a number of businesses, mainly located in Europe, Australia and New Zealand.

14. GPG was the holding company of the Brunel Group. GPG is a UK resident company listed on the London Stock Exchange. The Group's principal operating companies were demerged from GPG prior to the merger.

Merger

15. The arrangement that is the subject of this ruling involves the merger of GPG Holdings and GPG, both UK resident companies. The merger took place on 13 December 2002.

16. The Merger was implemented by GPG acquiring GPG Holdings under a scheme of arrangement pursuant to section 425 of the *Companies Act 1985 (UK)*.

17. Under the scheme of arrangement GPG Holdings shares held by:

- shareholders registered on the UK register and the Australian branch register were cancelled and new GPG Holdings shares were issued to GPG; and
- shareholders registered on the New Zealand branch register were transferred to GPG.

18. The consideration for each GPG Holdings share that was cancelled or transferred was one GPG share. After the merger, GPG has maintained separate branch registers in respect of shares listed and officially quoted on the ASX and NZSX. GPG shareholders on the Australian branch register have the opportunity to hold their shares in uncertificated form in CHESS in the form of CDIs.

Ruling

19. Subject to the qualifications in paragraphs 4 to 6 of this Ruling, GPG Holdings shareholders who are within the class of persons to which this Ruling applies can choose a roll-over under Subdivision 124-M in relation to a GPG Holdings share acquired on or after 20 September 1985 if:

- (a) apart from the roll-over for which Subdivision 124-M provides, they would make a capital gain from the GPG Holdings share under the arrangement; and
- (b) they might make a capital gain from a replacement share in GPG which would not be disregarded (except because of a roll-over).

20. If roll-over is chosen any capital gain (but not capital loss) from the GPG Holdings share is disregarded: subsection 124-785(1).

21. The first element of the cost base and reduced cost base of each GPG share will be equal to the cost base and reduced cost base of each GPG Holdings share that was cancelled: subsections 124-785(2) and (4) of the ITAA 1997.

Explanation

Availability of scrip for scrip roll-over

22. Scrip for scrip roll-over enables a shareholder to disregard a capital gain they make from a share that is transferred or cancelled as part of a corporate takeover or merger if the shareholder receives a replacement share in exchange. The roll-over also provides that the

cost base and reduced cost base of each new share is based on those of the original shares at the time of the roll-over.

23. The roll-over will be available for a GPG Holdings shareholder if certain conditions are satisfied. Below is an outline of the main conditions and exceptions that are relevant to the circumstances of the arrangement that is the subject of this Ruling.

24. A shareholder must exchange a share in the original company (GPG Holdings) for a share in the replacement company (GPG): subparagraph 124-780(1)(a)(i). This requirement is satisfied because all GPG Holdings shareholders received a GPG share as consideration for the transfer or cancellation of each of their GPG Holdings shares.

25. The exchange must be in consequence of a single arrangement: paragraph 124-780(1)(b). The scheme of arrangement is considered to be a 'single arrangement' as that expression is used in its context in the scrip for scrip roll-over provisions.

26. The arrangement must result in a company (GPG) that is a member of a wholly owned group increasing the percentage of voting shares that it owns in the original entity (GPG Holdings) to 80% or more: subparagraph 124-780(2)(a)(ii).

27. The only GPG Holdings shares that satisfy the definition of 'voting shares' in subsection 995-1(1) are the ordinary shares that were transferred or cancelled. Under the arrangement, GPG (a member of a wholly-owned group) became the owner of 100% of these shares. Therefore, this requirement is satisfied.

28. The arrangement must be one in which at least all the owners of voting shares in GPG Holdings (except GPG) could participate: paragraph 124-780(2)(b). This requirement is satisfied because all of the owners of GPG Holdings ordinary shares were bound by the Scheme of Arrangement once it was approved by the Court.

29. The arrangement must be one in which participation was available on substantially the same terms for all the owners of shares in GPG Holdings: paragraph 124-780(2)(c). This requirement is satisfied as each GPG Holdings ordinary shareholder received one GPG share (or the equivalent thereof) for each GPG Holdings share under the scheme of arrangement.

30. The scheme of arrangement was conducted pursuant to UK Company Law but the treatment of the overseas shareholders under the scheme is equivalent to that provided for under subsection 619(3) of the *Corporations Act 2001*. Therefore, the arrangement was on substantially the same terms for all shareholders.

31. The shareholder must have acquired their original shares in GPG Holdings on or after 20 September 1985: paragraphs 124-780(1)(c) and 124-780(3)(a). This Ruling is limited in paragraph 19 to shares in GPG Holdings acquired on or after 20 September 1985.

32. Apart from the roll-over, the original interest holders (GPG Holdings shareholders) would make a capital gain from a CGT event happening in relation to their original interests (GPG Holdings shares): paragraphs 124-780(1)(c) and 124-780(3)(b).

33. Whether a GPG Holdings shareholder would have made a capital gain, apart from the roll-over, in relation to the cancellation of a GPG Holdings share is dependent on the specific circumstances of each shareholder – in particular the shareholder's cost base of each GPG Holdings share and the value of the consideration received. This Ruling is qualified in this regard at paragraph 19(a).

34. The replacement interest is in a company that is the ultimate holding company (GPG) of the wholly owned group: paragraph 124-780(1)(c) and subparagraph 124-780(3)(c)(ii). This requirement is satisfied because GPG was the ultimate holding company of the Brunel group and the replacement interests were shares in GPG.

35. Roll-over is available for an original interest holder (a GPG Holdings shareholder) who is a significant stakeholder or a common stakeholder only if the original entity (GPG Holdings) and the replacement entity (GPG) jointly choose the roll-over: paragraphs 124-780(1)(c) and 124-780(3)(d). Significant and common stakeholders have been specifically excluded from the class of persons to which this Class Ruling applies.

36. Additional requirements must be satisfied if the original interest holder (a GPG Holdings shareholder) and an acquiring entity (GPG) did not deal with each other at arm's length and:

- neither the original entity (GPG Holdings) nor the replacement entity (GPG) had at least 300 members just before the arrangement started: paragraph 124-780(4)(a); or
- the original interest holder (a GPG Holdings shareholder), the original entity (GPG Holdings) and an acquiring entity (GPG) were all members of the same linked group just before the arrangement started: paragraph 124-780(4)(b).

37. Paragraph 124-780(4)(a) will not apply because GPG Holdings and GPG had at least 300 members just before the arrangement started. (Section 124-810 will not apply to GPG Holdings and GPG as their ownership is not concentrated in the manner contemplated by that section.)

38. Paragraph 124-780(4)(b) will not apply because GPG, GPG Holdings and the GPG Holdings shareholders were not members of the same linked group (within the meaning in section 170-260 of the ITAA 1997) just before the scheme of arrangement started.

39. Roll-over is not available to a non-resident of Australia, unless the replacement interest (GPG share) is in a replacement entity (GPG) which is an Australian resident: subsection 124-795(1). The class of persons to which this Class Ruling is applicable is limited to residents of Australia, as defined in subsection 6(1) of the ITAA 1936. Therefore, this condition is not relevant.

40. Roll-over is not available if any capital gain a GPG Holdings shareholder might make from the replacement interest (a GPG share) would be disregarded: paragraph 124-795(2)(a). This exception may apply if, for example, the GPG shares were held by a taxpayer as trading stock. The Ruling is limited in paragraph 19(b) to shareholders who hold their shares on capital account.

41. The roll-over is not available if the GPG Holdings shareholders and GPG are members of the same wholly-owned group just before the GPG Holdings shareholders stop owning their GPG Holdings shares: paragraph 124-795(2)(b). GPG Holdings shareholders and GPG were not members of the same wholly owned group prior to the transaction and therefore this exception does not apply.

42. The roll-over is not available for certain arrangements involving a non-resident original company (GPG Holdings) and a non-resident acquiring company (GPG): subsections 124-795(4) and (5). However, as GPG Holdings had at least 300 members just before the arrangement started this exception will not apply.

Cost base

43. Subsection 124-785(2) provides that a shareholder works out the first element of the cost base of each CGT asset they receive as a result of the scrip for scrip exchange by reasonably attributing to it the cost base (or part of it) of the original asset. Further, the first element of the reduced cost base is worked out on a similar basis under subsection 124-785(4).

44. Consequently, the first element of the cost base of each GPG share received by a GPG Holdings shareholder will be the cost base of the original GPG Holdings share that was cancelled.

45. Similarly, the first element of the reduced cost base of each GPG share received by a GPG Holdings shareholder will be the reduced cost base of the original GPG Holdings share that was cancelled.

Detailed contents list

46. Below is a detailed contents list for this Class Ruling:

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Previous Ruling:

Not previously released in draft form

*Related Rulings/Determinations:*TR 92/1; TR 92/20; TR 97/16;
CR 2001/1*Subject references:*

- acquiring entity
- arrangement
- capital
- capital gain
- class of persons
- exchange
- fixed entitlement
- income
- original entity
- original interest
- replacement interest
- roll-over
- scrip
- scrip for scrip roll-over
- share
- shareholder
- share company

- ITAA 1997 Subdivision 124-M
- ITAA 1997 124-780(1) (a)(i)
- ITAA 1997 124-780(1) (b)
- ITAA 1997 124-780(1) (c)
- ITAA 1997 124-780(2) (a)(ii)
- ITAA 1997 124-780(2) (b)
- ITAA 1997 124-780(2) (c)
- ITAA 1997 124-780(3) (a)
- ITAA 1997 124-780(3) (b)
- ITAA 1997 124-780(3)(c)(ii)
- ITAA 1997 124-780(3) (d)
- ITAA 1997 124-780(4)(a)
- ITAA 1997 124-780(4)(b)
- 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(2)(b)
- ITAA 1997 124-795(4)
- ITAA 1997 124-810
- ITAA 1997 170-260
- ITAA 1997 995-1(1)
- TAA 1953 Part IVAAA
- Companies Act 1985 (UK) 425
- Copyright Act 1968
- Corporations Act 2001 619(3)

Legislative references:

- ITAA 1936 6(1)

ATO references

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